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NO. COA01-810

NORTH CAROLINA COURT OF APPEALS

Filed: 16 April 2002

In Re:

Cabarrus County  
No. 99 J 30

SOFIA MARIA TRULL

Appeal by respondent from order entered 7 August 2000 by Judge Donna H. Johnson in District Court, Cabarrus County. Heard in the Court of Appeals 27 March 2002.

*Kathleen Arundell Widelski, for the Cabarrus County Department of Social Services, petitioner-appellee.*

*Scott C. Robertson, for the respondent-appellant.*

WYNN, Judge.

Elizabeth Dawn Trull Morgan, the mother of the juvenile in this case, challenges an order terminating her parental rights. After review of her appeal,<sup>1</sup> we hold that the trial court properly terminated her parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) (1999) on the basis of neglect. See N.C. Gen. Stat. § 7B-101(15) (1999). Since that basis alone is sufficient to uphold the trial court's order of termination, we do not consider her

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<sup>1</sup> Ms. Morgan filed her brief three days beyond its extended due date of 7 September 2001; thus, her appeal is subject to dismissal. See N.C.R. App. P. 13(c) (2002). Nevertheless, we exercise our discretion under N.C.R. App. P. 2 (2002) and consider the merits of her appeal. See *Davis v. City of Archdale*, 81 N.C. App. 505, 344 S.E.2d 369 (1986).

additional argument that her parental rights were improperly terminated under N.C. Gen. Stat. § 7B-1111(a) (6) (1999). See *In re Pope*, 144 N.C. App. 32, 547 S.E.2d 153, *aff'd*, 354 N.C. 359, 554 S.E.2d 644 (2001); N.C. Gen. Stat. § 7B-1111(a).

In her appeal, Ms. Morgan argues that the trial court's findings of neglect "are from years previous to the termination of parental rights hearing," and that the trial court failed to consider changed conditions and the probability of the repetition of neglect before terminating her parental rights. She contends in her brief that "the [trial] court did not specifically state that it had sufficiently considered all evidence of changed conditions, and other determining factors set out in [*In re Ballard*, 311 N.C. 708, 319 S.E.2d 227 (1984)] that must be considered by the [trial court] before terminating parental rights based on grounds of neglect."<sup>2</sup> We find no merit in her contentions.

In *Ballard*, our Supreme Court stated that "termination of parental rights for neglect may not be based solely on conditions which existed in the distant past but no longer exist." 311 N.C. at 714, 319 S.E.2d at 231-32. The Court held that the trial court may consider evidence of neglect by a parent before losing custody of the juvenile, but it "must also consider any evidence of changed conditions in light of the evidence of prior neglect and the

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<sup>2</sup> Notably, Ms. Morgan did not except to any of the trial court's findings of fact, and those findings are therefore presumed to be correct and supported by evidence. See *In re Moore*, 306 N.C. 394, 293 S.E.2d 127 (1982). Nonetheless, we reviewed the evidence in this matter and determined that the trial court's findings of fact are supported by clear and convincing evidence.

probability of a repetition of neglect." *Id.* at 715, 319 S.E.2d at 232.

In the instant case, custody of the juvenile was placed with the Cabarrus County Department of Social Services (DSS) in early March 1999. On 15 February 2000, DSS petitioned to terminate Ms. Morgan's parental rights. In ordering her rights terminated, the trial court found that: (1) Ms. Morgan stipulated to the neglect of the juvenile at an adjudication hearing before Judge Donna H. Johnson on 20 May 1999; (2) At a dispositional hearing on 24 June 1999, Judge Randall C. Combs ordered Ms. Morgan to submit to a psychological evaluation and substance abuse assessment, comply with any treatment recommendations, maintain suitable housing, comply with the assigned social worker's reasonable requests to secure housing, abide by a visitation plan, abstain from the use of alcohol and illegal drugs, and refrain from abusing prescription drugs; (3) Ms. Morgan tested positive for cocaine three times between June and August 1999; (4) Ms. Morgan was admitted to the hospital on 2 August 1999 for treatment of depression and chemical dependency and was discharged on 13 August 1999; (5) Following a dispositional review hearing on 9 September 1999, Judge Combs found that Ms. Morgan had made no progress and had failed to follow up with treatment following her discharge from the hospital in August 1999; (6) Following a permanency planning hearing on 12 October 1999, Judge Combs again found that Ms. Morgan had made no progress; and (7) When Ms. Morgan was served with eviction papers on 24 March 2000, the deputy observed animal feces on the floor, liquor and

beer bottles on the floor, and trash and clothing stacked chest high.

Contrary to Ms. Morgan's assertions, these findings demonstrate that the trial court carefully considered evidence of neglect from the time following placement of the juvenile's custody with DSS (4 March 1999) until its petition to terminate her parental rights (12 February 2000). Furthermore, the trial court made additional findings in its order that (1) Ms. Morgan was arrested on 29 March 2000 and charged with possession of marijuana; (2) on 27 April 2000, Ms. Morgan's social worker observed her impaired and incoherent; and (3) despite Ms. Morgan's efforts, she was unable to compel the juvenile to attend school regularly. These findings of fact, which are unchallenged by Ms. Morgan, adequately support the trial court's conclusion that the juvenile has been *and is* neglected within the meaning of G.S. § 7B-101(15). Furthermore, Ms. Morgan's contention that the trial court abused its discretion in finding that it is in the juvenile's best interest that her parental rights be terminated is wholly without merit. Accordingly, the trial court's 7 August 2000 order terminating Ms. Morgan's parental rights under G.S. § 7B-1111(a)(1) is,

Affirmed.

Judges McCULLOUGH and BIGGS concur.

Report per Rule 30(e).