NO. COA01-93

NORTH CAROLINA COURT OF APPEALS

Filed: 5 March 2002

IN THE MATTER OF:

STACEY SMITH — Harnett County Nos. 98-J-135

LaRHONDA SMITH — 98-J-136

Appeal by respondent Ida Marie Smith from judgment entered 29 November 2000 by Judge Frank Lanier in Harnett County District Court. Heard in the Court of Appeals 6 November 2001.

Mark A. Key for respondent appellant.

Richard E. Jester for Harnett County Department of Social Services, petitioner appellee.

McCULLOUGH, Judge.

Respondent Ida Marie Smith is the mother of Stacey Allene Smith and LaRhonda Smith. When Stacey was born on 1 June 1995, she tested positive for cocaine. Prior to 28 September 1998, respondent and Stacey lost their home due to fire. In between being homeless, they had a brief stay in a motel room and later in a car provided for them by Stacey's father. When LaRhonda was born on 22 September 1998, she was found to be infected with syphilis and had cocaine in her system. On 28 September 1998, Harnett County Department of Social Services (DSS) took custody of the Smith children pursuant to a non-secure custody order. Harnett County

DSS filed a petition alleging the children were neglected on the same day. In addition, LaRhonda was alleged to be abused.

The Smith children were adjudicated neglected on 9 October 1998, on the grounds that they did not receive proper care and supervision from their mother and lived in an environment injurious to their welfare in that:

> a. The respondent mother admits to using crack cocaine during both pregnancies with the juveniles herein and both juveniles were born with cocaine in their systems.
>
> b. The respondent mother received no prenatal care during her pregnancy with juvenile LaRhonda.
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> c. The respondent mother does not have a permanent stable residence because her home burned and she has no income with which to obtain a place for the children and herself to live.
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> d. The respondent mother does not have sufficient baby supplies to care for juvenile LaRhonda.
>
> e. The respondent mother has no funds with which to support herself or the juveniles herein.

Full custody was awarded to the Harnett County DSS at that time. The order also made certain demands of the respondent if she wanted to get her children back:

> 2. The respondent mother shall enter and complete a drug rehabilitation program and refrain from future drug use.
>
> 3. The respondent mother shall obtain suitable housing for herself and the juveniles herein.
>
> 4. The respondent mother shall obtain stable employment.

> . . . .
>
> 6. The respondent parents shall make arrangements with the Harnett County Child Support Enforcement Office to make child support payments for the juveniles while they are in the custody of the petitioner.

In addition, respondent entered into Family Service Case Plans with DSS. These plans included the above requirements and added that respondent attend parenting classes and submit to random drug testing.

A review hearing was held on 7 May 1999, at which the trial court continued full custody of the children with DSS. The trial court then held a permanency planning hearing on 22 October 1999. The children by that time had been out of their mother's custody for over one year.

At the permanency planning hearing, the trial court found that respondent had "not made any progress on the goal of reunification." Specifically, the order cited that respondent had not maintained a suitable residence or stable employment, had missed a significant number of visitations, and had not demonstrated any learned skills from parenting classes. Respondent had not participated in therapy for her substance abuse and had tested positive for cocaine on 14 September 1999. Respondent had not paid any child support for the entire period while petitioner had custody. The result of this order was to discontinue reunification efforts and seek termination of respondent's parental

rights.

DSS filed petitions for the termination of parental rights of respondent as to Stacey and LaRhonda on 16 December 1999. The petitions alleged four grounds for terminating respondent's parental rights:

> A. Respondent mother has neglected the child[ren] in that she has failed to properly care for said child[ren] and it is probable that the neglect would continue if the child[ren] were returned to the mother. [N.C.G.S. § 7B-1111(a)(1)]
>
> B. The child[ren] ha[ve] been placed in the custody of the Department of Social Services, Harnett County, North Carolina and the respondent mother, for a continuous period of six months next (sic) preceding the filing of the Petition, has willfully failed for such period to pay a reasonable portion of the costs of care for the child although physically and financially able to do so. [N.C.G.S. § 7B-1111(a)(3)]
>
> C. Respondent mother willfully abandoned the child[ren] for at least six (6) consecutive months immediately preceding the filing of this petition. [N.C.G.S. § 7B-1111(a)(7)]
>
> D. The respondent mother has willfully and not solely due to poverty left the child[ren] in foster care for more than twelve months without showing to the satisfaction of the Court that reasonable progress has been made in correcting those conditions which led to the removal of the juvenile[s]. [N.C.G.S. § 7B-1111(a)(2)]

The petitions alleged the facts from the permanency planning hearing in support of termination. The petitions also alleged that termination was in the best interests of the children.

Respondent filed responses to the petitions of DSS denying the allegations. In her responses, respondent also attributed the

allegations of petitioner to the fact that she was unable to obtain transportation, and that this was due solely to poverty.

Sara Bradley was appointed as Guardian Ad Litem to the children and filed answers to the petitions with the trial court. In both of these, every allegation of petitioner was admitted.

The hearing was held 21 August 2000 before the Honorable Frank Lanier. The evidence revealed that respondent had complied with only some of the requirements ordered on 9 October 1998 and the Family Service Case Plans.

As to respondent's drug problem, she had been ordered to complete a residential drug treatment program and then remain drug free. The evidence showed that respondent had been enrolled at the Carolina Manor in Lumberton, North Carolina in October of 1998. However, respondent did not complete that program because Medicaid would not continue to pay for her treatment. The staff at the Carolina Manor recommended that respondent go to a halfway house upon her discharge. However, respondent refused, even after DSS had emphasized to her the importance of going to the halfway house. Respondent did start attending treatment and counseling at Lee-Harnett Mental Health, however she failed to complete this course.

As part of her course of recovery, respondent was to be tested for drug use. Respondent failed to report to the hospital to be tested. She was tested by DSS on 14 September 1999 during a visitation with the children and she tested positive for cocaine. Again respondent was advised to seek treatment at Lee-Harnett Mental Health, and again she failed to follow through. Respondent

attributed these failures to lack of transportation.

Respondent testified that she has been going to Narcotics Anonymous (NA) meetings in a nearby town. According to her, she has been to anywhere from "15, 20, [or] 30," meetings, but had no documentation to that effect. She admitted to using drugs on 14 September 1999. Respondent claimed that she was not still using crack cocaine, although she admitted to using crack cocaine one time since being tested in September of 1999.

Testimony as to respondent's housing situation revealed that she was no longer homeless. Respondent had purchased a mobile home at 684 Gentry Road in November of 1999 for fifty dollars. DSS visited the trailer and found the trailer to be in poor shape, and that it was not suitable for children. However, respondent made repair efforts over a three-week period after that visit. When DSS returned to the trailer, the social worker stated, "It still wasn't a hundred percent but, you know, at that time, it was probably a suitable -- we could put the children in it at that time. Still needed to do some more work on it but I, we had seen worse." This was in June of 1999. The trailer had electricity and running water, but no heat. According to respondent, this was because it was then August, and there was no need for it.

Respondent testified that she had steady employment at Spotless Auto Wash making about $150 dollars a week. She had been employed there for three weeks prior to the hearing. Unlike her prior jobs, respondent has had fewer problems getting to work because she is neighbors with her boss. Prior to working at

Spotless, she had been sporadically employed at a relative's auto garage, a sportswear dealer, and a cleaners.

As to the other requirements, the evidence showed that respondent had made no payments of child support whatsoever. Respondent testified that she had recently entered into a contract with DSS to repay the child support, but she had not made any payments to date. Respondent also missed 14 of 44 scheduled visitations with her children, although she did manage to occasionally see Stacey at church or at family gatherings outside of scheduled visitations. For instance, at Christmas in 1999, after visitation had been canceled, respondent visited with Stacey and gave her a card and gifts. Testimony tended to show that there was a good relationship between respondent and Stacey, however, respondent has not seen LaRhonda since 22 October 1999. Of the four team meetings scheduled with DSS and respondent, respondent attended only two.

Respondent completed a parenting course, but was unable to demonstrate to the trial court any newly acquired skills.

The trial court found that respondent had failed to meet all the goals set forth for reunification. The trial court found all four grounds in the petitions to be supported by clear, cogent, and convincing evidence, and that it was in the best interests of the children that respondent's parental rights be terminated. The orders were filed 29 November 2000.

Respondent appeals from the orders terminating her parental rights as to Stacey Allene Smith and LaRhonda Smith. Respondent

assigns error to certain findings of fact and conclusions of law by the trial court, presenting the following questions on appeal: (1) the evidence adduced during the trial was insufficient to support a finding that respondent willfully abandoned the minor children in the six months preceding the filing of the termination; (2) there was insufficient testimony and evidence at trial to find that Ms. Smith had the ability to pay a reasonable portion of cost of care in the six months preceding the filing of the petition; (3) there was insufficient evidence to support the trial court's conclusion that there is a probability that Ms. Smith may neglect the children in the future; (4) there was insufficient evidence to find that Ms. Smith willfully left the children in foster care for a continuous period of 12 months without showing that reasonable progress under the circumstances have been made within 12 months in correcting those conditions that led to the removal of the juveniles; (5) the trial court erred in finding that it was in the best interests of the children to terminate Ms. Smith's parental rights.

I.

The North Carolina Juvenile Code, Chapter 7A, was revised effective 1 July 1999. Portions of Chapter 7A were replaced by the new Chapter 7B. The petitions in the present case were filed on 16 December 2000. Thus, this appeal is governed by the provisions of Chapter 7B. *See In re Frasher*, ___ N.C. App. ___, 555 S.E.2d 379 (2001).

Termination of parental rights proceedings are conducted in

two phases: adjudication and disposition. *See In re Brim*, 139 N.C. App. 733, 535 S.E.2d 367 (2000); N.C. Gen. Stat. § 7B-1109 (1999); N.C. Gen. Stat. § 7B-1110 (1999). During adjudication, petitioner has the burden of proof to demonstrate by clear, cogent, and convincing evidence that one or more of the statutory grounds for termination set forth in N.C. Gen. Stat. § 7B-1111(a) exist. N.C. Gen. Stat. § 7B-1109(e)-(f) (1999); *In re Nolen*, 117 N.C. App. 693, 453 S.E.2d 220 (1995). The standard of appellate review of the trial court's conclusion that grounds exist for termination of parental rights is whether the trial judge's findings of fact are supported by clear, cogent, and convincing evidence, and whether these findings support its conclusions of law. *In re Huff*, 140 N.C. App. 288, 536 S.E.2d 838 (2000), *appeal dismissed, disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

If petitioner meets its burden of proof that there are grounds to terminate parental rights, the trial court then moves to the disposition phase and must consider whether termination is in the best interest of the child. *See* N.C. Gen. Stat. § 7B-1110(a) (1999); *In re Blackburn*, 142 N.C. App. 607, 543 S.E.2d 906 (2001). The trial court does not automatically terminate parental rights in every case that presents statutory grounds to do so. *In re Leftwich*, 135 N.C. App. 67, 518 S.E.2d 799 (1999). The trial court has discretion if it finds that at least one of the statutory grounds exist, to terminate parental rights upon a finding that it would be in the child's best interests. *Id.* The trial court's decision to terminate parental rights is reviewed under an abuse of

discretion standard. *Brim*, 139 N.C. App. at 744, 535 S.E.2d at 373.

We begin our analysis with the trial court's basis for terminating respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) which states that:

> (a) The court may terminate the parental rights upon a finding of one or more of the following:
>
> . . . .
>
> (2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

It is undisputed that the Smith children have been in foster care for more than 12 months. At the time of hearing, 21 August 2001, the children had been in foster care for 23 months. Thus, this Court must determine whether the record supports the trial court's findings that respondent willfully failed to make progress in correcting the conditions which led to the children's removal. To reiterate, the conditions of concern to the trial court were respondent's drug abuse, her housing situation, employment situation, parenting skills, and paying child support.

As to housing, the trial court found that:

> 7. The respondent mother has failed to obtain adequate housing for herself and the juvenile. From May of 1999 to August of 1999, the respondent mother rented a mobile home at 272 Gentry Road, Erwin, North Carolina for $250 per month. That home did not have electrical power; it was in poor condition and not suitable for the juvenile herein. The respondent mother lives in a trailer (mobile home) at her current address and has lived there since November of 1999. The mother testified that she bought the trailer for $50.00. There is no provision for heat and it is not suitable as a home for the child. The respondent mother is currently living in the trailer and is continuing to make repairs to it to make it suitable for living.

This finding is in direct conflict with the testimony of the social worker who testified that the mobile home was suitable to place the children therein. We hold that this finding of fact was not supported by clear, cogent, and convincing evidence.

However, after careful review of the record and transcripts, we hold that the remaining findings of fact do support the conclusion that the ground for termination under subsection (2) has been established. While we recognize that respondent has made some efforts at correcting the conditions which led to removal, the evidence supports the trial court's discretionary determination that her progress was insufficient within the statutory time period.

"A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children." *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). Nor does a finding of willfulness require a showing of fault by the parent. *In re Oghenekevebe*, 123 N.C. App. 434, 439,

473 S.E.2d 393, 398 (1996). Clearly respondent's failure has been willful as to her drug abuse dilemma. She refused to enter into a halfway house in the face of urging from the treatment facility and DSS. Respondent also failed to attend the Lee-Harnett Mental Health Center for therapy and counseling treatment. She tested positive for cocaine on 14 September 1999, and admitted that she had used cocaine since that date. "Extremely limited progress is not reasonable progress." *Nolen*, 117 N.C. App. at 700, 453 S.E.2d at 224-225.

Because we hold that termination was proper pursuant to subsection 2, it is unnecessary to address respondent's remaining arguments. *See In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) (A finding of any one of the separately enumerated grounds is sufficient to support a termination.).

N.C. Gen. Stat. § 7B-1110(a) provides:

> Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

N.C. Gen. Stat. § 7B-1110(a) (1999). We recognize the importance of the right at hand and the severity of the penalty of termination of parental rights. We find no abuse of discretion by the trial court in its finding that it was in the children's best interests that respondent's parental rights be terminated.

Affirmed.

Judges GREENE and CAMPBELL concur.

Report per Rule 30(e).