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NO. COA02-465

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

IN THE MATTER OF: ELONDIA
HARVEY, a minor child

Cabarrus County
No. 99 J 91

Appeal by respondent from order entered 23 October 2001 *nunc pro tunc* 10 May 2001 by Judge William G. Hamby, Jr., in Cabarrus County District Court. Heard in the Court of Appeals 7 October 2002.

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

Scott C. Robertson for respondent appellant.

McCULLOUGH, Judge.

Respondent Shana Cadelle-Celeste King, mother of the minor child Elondia Sheba-Qamar Harvey, appeals from the district court's order terminating her parental rights. We affirm.

Respondent gave birth to the minor child on 7 August 1998. On 11 June 1999, while living with her mother, Linda King (King), respondent was arrested for assaulting King with a kitchen knife while the minor child sat on the porch of the residence in a car seat. A social worker who was dispatched to the scene by the Cabarrus County Department of Social Services (DSS) was forced to flee the house after she was physically threatened by respondent.

Respondent was involuntarily committed to the psychiatric care unit of Stanley Memorial Hospital on 13 June 1999. The district court entered an order on 14 June 1999, granting non-secure custody of the minor child to DSS, which placed her in foster care. A psychological evaluation by Catawba County Mental Health Services diagnosed respondent with schizophrenia. The evaluation concluded that respondent's ability to care for the minor child was contingent upon her taking her medications and receiving treatment for her disorder.

In September 1999, the minor child was adjudicated a dependent juvenile under N.C. Gen. Stat. § 7B-101(9) (2001). After an initial review hearing, the district court entered an order on 19 January 2000, establishing a permanent plan of reunification and allowing respondent unsupervised overnight visitation. The court found that respondent had made reasonable progress addressing the issues that led to the finding of dependency. The court reviewed the case on 27 April 2000, found respondent had made only "minimal progress[,] " and changed the placement plan from reunification to guardianship with a relative. On 10 August 2000, the court entered an order finding no progress by respondent and establishing a permanent plan for adoption of the minor child.

DSS petitioned to terminate respondent's parental rights on 8 November 2000. In a review order entered 22 February 2001, the court again found respondent had made no progress in addressing the issues leading to the child's dependent status. A court summary incorporated into the review order found that petitioner "continues

to use illegal drugs" and had tested positive for cocaine on 9 October 2000. After petitioner refused to return the child to the foster home, the court reduced respondent's visitation with the minor child to DSS-supervised forty-five-minute visits and scheduled a hearing on the petition to terminate her parental rights.

At the termination hearing held 10 May 2001, respondent testified that she had been living at Catawba Village, an assisted-living facility, for more than three weeks. She described her daily routine as follows:

Well, I shower and dress, breakfast, I usually watch a little television, listen to a little music until I get tired and then I lay down and rest; lunch, the same thing, watch a little television, listen to a little music until I get tired, lay down and rest; and then the same thing, I watch a little T.V. and listen to a little music until I get tired and then I lay down and rest; and usually after dinner if I lay down and rest I will turn in for the night.

Respondent stated she had "[n]ot yet" participated in any activities other than watching television and listening to music, and had not interacted with the other residents. She admitted smoking crack cocaine as recently as March 2001, while she was pregnant with her second child. She has admitted to using illegal drugs since age 15/16. She expressed an intention to enroll in a nursing assistant's program and to obtain employment in that field after leaving Catawba Village. However, she acknowledged she had not worked or looked for employment since 1996. Respondent stated she was on a waiting list for Section 8 housing in Kannapolis and

explained that she would need a "three bedroom apartment" in order to care for her two children. If she was unable to obtain subsidized housing, respondent "was hoping [she] could come back home" to live with King.

Upon findings of fact based on "clear, cogent and convincing evidence," the district court found the following three grounds for termination of respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6) (2001): (1) respondent had neglected the minor child with probability of repetition of neglect; (2) the minor child was a dependent juvenile as defined by N.C. Gen. Stat. § 7B-101(9), and would remain so for the foreseeable future; and (3) respondent willfully left the minor child in foster care for a period of more than twelve months without making reasonable progress to correct the conditions leading to the foster care placement. The court further found that the adoption by the foster family would "provide a stable loving home for the child[,] and concluded that termination of respondent's parental rights was in the child's best interests.

Respondent argues on appeal that the district court erred in finding each of the three grounds for termination. Respondent also claims that the court abused its discretion in finding termination to be in the child's best interest, despite respondent's testimony that she loves her child and wants to keep her.

The termination of a party's parental rights is a two-stage process. During the initial, adjudication stage, the district court must determine if clear, cogent and convincing evidence

establishes grounds for termination under N.C. Gen. Stat. § 7B-1111. See *In re Brim*, 139 N.C. App. 733, 741, 535 S.E.2d 367, 371 (2000). Our review, in turn, addresses whether the court's findings of fact are supported by clear, cogent and convincing evidence, and whether its findings of fact support its conclusions of law. See *In re Blackburn*, 142 N.C. App. 607, 612, 543 S.E.2d 906, 909 (2001).

If one or more grounds exist for termination of parental rights, the district court proceeds to the disposition stage under N.C. Gen. Stat. § 7B-1110 (2001), where it must decide if termination would serve the best interests of the child. See *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908 (2001). We review the district court's ruling at the disposition stage only for abuse of discretion. See *id.* at 614, 543 S.E.2d at 911.

We begin our review at the adjudication stage. The district court concluded that the minor child was a dependent juvenile as defined by N.C. Gen. Stat. § 7B-101 and that there was a "reasonable probability" that she would remain so for the foreseeable future. N.C. Gen. Stat. § 7B-1111(a)(6). A dependent juvenile is one "whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2001). Under the statute, a parent's inability to care for or supervise the juvenile "may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition." N.C. Gen. Stat.

§ 7B-1111(a)(6). The court also concluded that respondent "willfully left the [minor child] in foster care . . . for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2). For the purpose of the statute, "[w]illfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001); *In re Bluebird*, 105 N.C. App. 42, 411 S.E.2d 820 (1992)). A finding of willfulness under N.C. Gen. Stat. § 7B-1111(a)(2) does not require a showing of fault on the part of the respondent. *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). A respondent's prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness "regardless of her good intentions." *In re Bishop*, 92 N.C. App. 662, 669, 375 S.E.2d 676, 681 (1989).

Although the district court's findings of fact are fully reviewable under the clear, cogent and convincing evidence standard, respondent has raised only general exceptions to the grounds for termination entered below. Therefore, the court's findings of fact are binding on appeal. See *In re Caldwell*, 75 N.C. App. 299, 301, 330 S.E.2d 513, 515 (1985). We address whether the findings of fact support the conclusions of law. *Id.*

We believe the trial court's findings fully support its

conclusions (1) that the minor child was a dependent juvenile and would probably remain so for the foreseeable future, and (2) that respondent had willfully left the child in foster care for at least twelve months without making reasonable progress toward correcting the causes of the initial placement. The minor child entered foster care in June of 1999, in conjunction with respondent's involuntarily hospitalization for schizophrenia. DSS filed the motion to terminate her parental rights in November 2000. As reflected in the review orders and accompanying court summaries which were incorporated by reference into the termination order, see, e.g., *In re Reyes*, 136 N.C. App. 812, 814, 526 S.E.2d 499, 501 (2000), respondent consistently demonstrated an unwillingness or inability to control her mental illness outside of an assisted-living or institutional environment. From August to December of 1999, respondent was treated at Heritage House, a residential care facility. During her stay, she made "steady progress" and took her medication "regularly and compliantly." Upon her release from Heritage House and her return to King's home in January of 2000, however, respondent quickly regressed. She failed to follow her medication regimen or obtain the individual therapy prescribed by her psychological evaluation. On 21 February of 2000, King was forced to call the police when respondent refused to surrender the minor child after an overnight visitation. Respondent exhibited erratic behavior such as leaving food unattended on the stove, staying out all night, talking to herself, and defying her mother, her case manager, and the DSS social worker. Moreover, respondent

resumed her use of illegal drugs. King testified that respondent sold her stereo equipment and videocassette recorder, and the minor child's toys, high chair, and playpen in order to buy crack cocaine. After testing positive for cocaine on 9 October 2000, respondent entered a drug rehabilitation program but was asked to leave after she again stopped taking her medication. At the termination hearing, respondent admitted using crack cocaine as recently as March 2001, while she was pregnant with her second child. Although respondent's condition did stabilize when she entered the assisted-living environment at Catawba Village in April 2001, her activity there was limited to watching television, listening to music, eating, and sleeping. Nothing in the record suggests that respondent has made meaningful progress toward assuming the responsibilities involved in caring for a child.

Moreover, the court's findings reflect respondent's lack of an alternative child care arrangement for her child, as required to show dependency under N.C. Gen. Stat. § 7B-101(9). King was physically unable to assume custody due to her arthritis. No other relative was willing to care for the child.

Because any single ground under N.C. Gen. Stat. § 7B-1111(a) is sufficient to support a termination of parental rights, we need not address the third ground for termination found by the court. See *In re Huff*, 140 N.C. App. 288, 293, 536 S.E.2d 838, 842 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

We further find no abuse of discretion by the district court

in terminating respondent's parental rights. The evidence showed the minor child was thriving in an attentive and caring foster family, which hoped to adopt her. King testified that she supported the minor child's adoption by the foster family, characterizing the child's progress in their care as "amazing" and "fantastic." Likewise, the minor child's DSS Social Worker, Libby Moss, expressed strong support for the foster family's adoption of the minor child.

Affirmed.

Chief Judge EAGLES and Judge HUDSON concur.

Report per Rule 30(e).