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NO. COA03-193

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2003

IN THE MATTER OF
TRE'ZHA COLLETTE YANCEY,
DOB 11/8/2001

Forsyth County
No. 01 J 464

Appeal by respondent mother from order entered 11 September 2002 by Judge William Graham in Forsyth County District Court. Heard in the Court of Appeals 17 November 2003.

Forsyth County Department of Social Services, by Assistant County Attorney Theresa A. Boucher, for petitioner-appellee.

Rebekah W. Davis, for respondent-appellant.

Womble, Carlyle, Sandridge & Rice, P.L.L.C., by Joann A. Waters, for the Guardian ad Litem.

MARTIN, Judge.

Respondent, Rima Yancey, is the mother of Tre'Zha Collette Yancey, born on 8 November 2001. Due to respondent's incarceration at the time of the minor child's birth, Tre'Zha was placed in the custody of the Forsyth County Department of Social Services ("DSS") on 9 November 2001. On 13 November 2001, DSS filed a petition alleging that Tre'Zha did not receive proper care, supervision or discipline, and had been abandoned by respondent, and thus, was a neglected and dependent juvenile. The petition alleged that respondent had lost custody of another child due to neglect, and

her parental rights had been terminated as to three other children.

On 15 May 2002, *nunc pro tunc* 13 February 2002, Tre'Zha was adjudicated a neglected and dependent juvenile pursuant to G.S. §§ 7B-101(9) and (15). The trial court determined that "reunification [with respondent] is not appropriate at this time," approved DSS's plan for adoption, and relieved DSS of any further reunification efforts. However, the trial court determined that respondent was entitled to three hours per week of supervised visitation with Tre'Zha, and that respondent may be reunified with her daughter if she: (1) undergoes a full psychological evaluation and follows through with any recommendations; (2) undergoes a substance abuse assessment and follows all recommendations; and (3) submits to random drug testing.

On 13 March 2002, DSS filed a petition to terminate respondent's parental rights to Tre'Zha. The petition alleged that one or more grounds existed to support the termination pursuant to G.S. § 7B-1111. On 19 and 23 August 2002, a hearing was held to determine the merits of the petition to terminate respondent's parental rights. In an order entered 11 September 2002, the trial court found that respondent neglected the juvenile pursuant to G.S. § 7B-1111(a)(1). Specifically, the trial court found that the juvenile had previously been adjudicated neglected on 13 February 2002, that although respondent was released from prison on 10 December 2001 and re-incarcerated on 21 February 2002, she had not visited Tre'Zha while she was able to do so, that respondent has

failed to provide any support for Tre'Zha during the lifetime of the child, that respondent failed to complete previously ordered substance abuse treatment, failed to attend a previously ordered psychological evaluation, failed to attend previously ordered parenting classes, failed to establish steady employment during the time she was not incarcerated, and that respondent's parental rights to three other children had been involuntarily terminated by the Juvenile Court of Forsyth County. The trial court also found that respondent lacked the ability to establish a safe home pursuant to G.S. § 7B-1111(a)(9). Specifically, the trial court found that respondent "continues to maintain a lifestyle which includes multiple incarcerations, illegal drug use and instability in maintaining a safe home for herself and her children." Accordingly, the trial court concluded that it was in the best interest of the minor child that the parental rights of respondent be terminated. Respondent appeals.

Respondent first argues that the trial court's conclusion that Tre'Zha is a neglected juvenile pursuant to G.S. § 7B-1111(a)(1) is not supported by clear and convincing evidence. After careful review, we disagree.

An order terminating one's parental rights is not authorized unless the trial court determines that "any one or more of the conditions authorizing a termination of the parental rights of a parent exist" N.C. Gen. Stat. § 7B-1110(a) (2001). A finding of neglect is sufficient to authorize a termination of

parental rights. N.C. Gen. Stat. § 7B-1111(a)(1) (2001). The standard of review for neglect determinations under G.S. § 7B-1111(a)(1) is whether there is clear and convincing evidence that: (1) the juvenile is neglected pursuant to G.S. § 7B-101(15), and (2) "the juvenile has sustained 'some physical, mental, or emotional impairment . . . or [there is] a substantial risk of such impairment' as a consequence of the neglect." *In re Beasley*, 147 N.C. App. 399, 403, 555 S.E.2d 643, 646 (2001) (citations omitted). A neglected juvenile pursuant to N.C. Gen. Stat. § 7B-101(15) (2001) is a juvenile:

who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

Since respondent did not challenge the sufficiency of the evidence supporting the findings of fact, we treat such findings as conclusive. *In re Caldwell*, 75 N.C. App. 299, 301, 330 S.E.2d 513, 515 (1985). The trial court found that Tre'Zha was previously adjudicated neglected on 13 February 2002, that respondent failed to attend court ordered substance abuse treatment or parenting classes in January and February of 2002, that respondent failed to visit with Tre'Zha while she was able to do so, attending only two out of sixteen visitation opportunities, that respondent has provided no support for Tre'Zha, that she failed to attend a court ordered psychological evaluation on 12 February 2002, that she

caused herself to be re-incarcerated on 21 February 2002, with an anticipated release date of December 2003, and that respondent's parental rights to three other children had been involuntarily terminated. Respondent argues that these findings of fact do not support a conclusion that "the juvenile has sustained 'some physical, mental, or emotional impairment . . . or [there is] a substantial risk of such impairment' as a consequence of the neglect," *In re Beasley*, 147 N.C. App. at 403, 555 S.E.2d at 646 (citations omitted), because none of the findings point to any evidence of neglect at the time of the termination proceeding.

However, "[i]f there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parents." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000). In this case, there is a past adjudication of neglect, but respondent argues that the findings of fact are not sufficient to support a conclusion that the neglect would be repeated if the juvenile were returned to the care of respondent. We disagree.

In the case of *In re Davis*, 116 N.C. App. 409, 413-414, 448 S.E.2d 303, 306, *disc. review denied*, 338 N.C. 516, 452 S.E.2d 808 (1994), the Court held that the parents' failure to "obtain[] continued counseling, a stable home, stable employment, and [attend] parenting classes" was sufficient to show a probability

that neglect would be repeated if the juvenile were returned to the care of the parents. In the case of *In re Bradshaw*, ___ N.C. App. ___, ___, 587 S.E.2d 83, ___ (2003), the Court held that a failure to provide any financial support for a child, no matter how trivial, and the failure to seek personal contact with or attempt to convey love and affection to a child were sufficient to support a conclusion of neglect. Likewise, the findings of fact in this case are more than sufficient to support the conclusion that there was a probability that the neglect would be repeated if Tre'Zha was returned to the custody of respondent, and thus, Tre'Zha was neglected pursuant to G.S. § 7B-1111(a) (1).

Since the trial court's findings are sufficient to support the termination of respondent's parental rights under G.S. § 7B-1111(a) (1), we need not address the issue of whether the trial court's findings are also sufficient to support the termination of respondent's parental rights under G.S. § 7B-1111(a) (9). N.C. Gen. Stat. § 7B-1111(a) (2001); see also *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982) (if any of the grounds for termination listed by the trial court is "supported by findings of fact based on clear, cogent and convincing evidence, the order appealed from should be affirmed").

Respondent lastly argues that the trial court erred when it concluded that termination of respondent's parental rights was in the best interest of the child. Once a trial court determines 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) (2001). Whether termination is in the best interest of the child is discretionary. *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001). Thus, we review such a finding for abuse of discretion only.

A trial court may decline to terminate parental rights only where "there is reasonable hope that the family unit within a reasonable period of time can reunite and provide for the emotional and physical welfare of the child." *Id.* There is no requirement that the trial court make findings of fact when entering an order terminating parental rights; only when the court determines that termination is not in the best interests of the child are such findings required. *Id.*

In this case, respondent argues that the numerous demands made of respondent in the two and half months that she was not incarcerated were unrealistic and unmanageable, and that a termination of parental rights only nine months after the birth of the child was an abuse of discretion. "One of the underlying principles guiding the trial court in the dispositional stage is the recognition of the necessity for any child to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all children from the unnecessary severance of a relationship with biological parents or legal

guardians." *In re Blackburn*, 142 N.C. App. at 612, 543 S.E.2d at 910. Here, respondent caused herself to be re-incarcerated and is not scheduled to be released from prison until December 2003, over a year after the termination proceedings were held. Coupled with the extensive findings of fact supporting the conclusion that Tre'Zha was neglected pursuant to G.S. § 7B-1111(a)(1), we agree with the trial court that there was not a reasonable hope that the family unit could be reunited successfully within a reasonable period of time. Thus, we find no abuse of discretion in the trial court's conclusion that it was in the best interest of the child that respondent's parental rights be terminated.

Affirmed.

Chief Judge EAGLES and Judge LEVINSON concur.

Report per rule 30(e).