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NO. COA05-1019

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

IN THE MATTER OF:
E.M. and
I.M.

Pitt County
Nos. 04 J 10, 11

Appeal by respondents from orders entered 22 November 2004 and 9 March 2005 by Judge David A. Leech in Pitt County District Court. Heard in the Court of Appeals 23 February 2006.

Anthony Hal Morris for Pitt County Department of Social Services, petitioner appellee.

Sofie W. Hosford for respondent-mother appellant.

Lisa Skinner Lefler for respondent-father appellant.

McCULLOUGH, Judge.

The present appeal arises from district court orders terminating the parental rights of respondent-mother to her minor children E.M. and I.M. and terminating the parental rights of respondent-father to his minor child E.M. On appeals filed by both respondents, we affirm the orders of the district court.

Facts

E.M. was born in September of 1998, and I.M. was born in July of 2000. E.M. and I.M. are the biological children of respondent-mother. E.M., but not I.M., is the biological child of respondent-father.

E.M. was placed in the custody of the Pitt County Department of Social Services (DSS) for approximately three to four months in 1999. Both children were removed from the home of respondent-mother at her request in 2002, and they have remained in the care of DSS since that time. Respondent-mother requested removal of the children because she could not find a job, was living with her mother, and "just couldn't take care of them."

As of July 2002, respondent-mother had no stable housing, no employment, and no money with which to support the juveniles. Respondent-mother also tested positive for marijuana use in July 2002. Thereafter, respondent-mother began working thirty-six to forty hours per week at a Wendy's fast food restaurant, and she initiated the process of procuring an apartment. In an adjudication and disposition order entered in December 2002, the district court ordered respondent-mother to seek substance abuse treatment and to submit to random drug screens.

Respondent-mother sought a substance abuse assessment, but she failed to follow the recommendations. Indeed, she continued using marijuana approximately three or four times per week. Respondent-mother refused to submit to drug screens because she knew that she would test positive for marijuana. Respondent-mother was terminated from her job at Wendy's and was unemployed as of January 2005. Evidence was presented that respondent-mother visited with the children approximately three times in 2004. Respondent-mother testified that, although she did not wish to have her parental

rights terminated, she preferred that E.M. and I.M. continue to be placed with someone else.

Respondent-father was incarcerated from 2000 to 2003 for possession of crack cocaine. By his own admission, respondent-father had absolutely no contact with E.M. during this period of incarceration. Further, although respondent-father had several thousand dollars available to him while he was in prison, he did not send any money to provide for the care of E.M.. After being released from prison, respondent-father did not contact DSS to request visitation, notwithstanding his knowledge that E.M. was in the custody of DSS, and he neither made telephone calls nor wrote letters to the child. As of October 2004, respondent-father had not seen E.M. since 1999 or the first of 2000, and he was again incarcerated and was facing additional drug charges.

DSS placed the children with Patricia Waller, who had cared for them since July 2002. While in this placement, the children did well, and Ms. Waller provided for their financial and emotional needs.

Following a hearing, the district court entered orders in which it concluded that grounds existed to terminate respondent-parents' parental rights pursuant to, *inter alia*, N.C. Gen. Stat. § 7B-1111(a)(1) because the children were neglected and there was a high probability that such neglect would continue in the future. In subsequent orders, the trial court concluded that a termination of parental rights would be in the children's best interests. Accordingly, the trial court terminated the parental rights of

respondent-mother as to E.M. and I.M. and terminated the parental rights of respondent-father as to E.M. Respondents appeal.

Discussion

I.

On appeal, both respondents assert that the district court erred by determining that grounds existed to terminate their parental rights. Each respondent's contention in this regard is entirely without merit.

This Court reviews an order terminating parental rights for whether the findings of fact are supported by clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental rights should be terminated for one of the grounds set forth in N.C. Gen. Stat. § 7B-1111(a). *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). Where a trial court concludes that parental rights should be terminated pursuant to several of the statutory grounds, the order of termination will be affirmed if the court's conclusion with respect to any one of the statutory grounds is supported by findings of fact which are appropriately grounded in the record. *In re Swisher*, 74 N.C. App. 239, 240-41, 328 S.E.2d 33, 34-35 (1985).

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2005), a parent's rights to a child may be terminated if "[t]he parent has . . . neglected the juvenile. The juvenile shall be deemed to be . . . neglected if the court finds the juvenile to be . . . a neglected

juvenile within the meaning of [N.C. Gen. Stat. §] 7B-101." N.C. Gen. Stat. § 7B-101(15) (2005) defines a "neglected juvenile" as

[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.

This Court has upheld a termination of parental rights on the ground of neglect where a parent refused to correct her substance abuse problems and failed to make improvements in her lifestyle which might help her care for and supervise her children. *In re Leftwich*, 135 N.C. App. 67, 72-73, 518 S.E.2d 799, 803 (1999). This Court likewise has upheld a trial court termination of parental rights on the ground of neglect where a parent, who had been incarcerated since his child's birth, had not provided any financial support for the child, had not sought personal contact with the child or attempted to convey love or affection to the child, and had rarely inquired about the child. *In re Bradshaw*, 160 N.C. App. 677, 682, 587 S.E.2d 83, 86 (2003).

In the instant case, respondent-mother placed her children in the custody of DSS because she was unable to care for them and refused to address a substance abuse problem which was adversely affecting her ability to care for the children. Accordingly, the trial court did not err by concluding that neglect existed as a ground to terminate respondent-mother's parental rights as to E.M. and I.M. Further, respondent-father had no contact with E.M. for

approximately five years, offered no financial support to help rear the child, and did not seek contact or visitation with the child. Accordingly, the trial court did not err by concluding that neglect existed as a ground to terminate respondent-father's parental rights as to E.M.

II.

Both respondents also challenge the trial court's best interests determinations. With respect to each respondent, this challenge is feckless.

If a trial court determines that grounds to terminate parental rights 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) (2003), amended by 2005 N.C. Sess. Laws ch. 398, § 17 (effective 1 October 2005).¹ "The trial court's decision to terminate parental rights, if based upon a finding of one or more of the statutory grounds supported by evidence in the record, is reviewed on an abuse of discretion standard." *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 174, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001).

In the instant case, the evidence tended to show that respondent-parents had engaged in a pattern of neglect that was likely to recur and that the children were doing well in foster

¹The 2003 version of the statute was applicable to the proceedings in the present case.

placement. On these facts, we discern no abuse of discretion in the district court's determinations that the best interests of E.M. and I.M would be served by a termination of respondent-mother's parental rights and that the best interest of E.M. would be served by a termination of respondent-father's parental rights.

III.

It is unnecessary for us to address respondents' remaining arguments, which challenge the district court's conclusions that additional grounds existed to terminate each respondent's parental rights. See *Swisher*, 74 N.C. App. at 240-41, 328 S.E.2d at 34-35. The assignments of error are overruled. The challenged orders are

Affirmed.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).