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NO. COA05-1245

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

IN THE MATTER OF:

D.G.D.,
a minor child.

Forsyth County
No. 02 J 243

Appeal by Respondent from order entered 29 March 2005 by Judge Lisa V. L. Menefee in District Court, Forsyth County. Heard in the Court of Appeals 20 March 2006.

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

Womble Carlyle Sandridge & Rice, by Murray C. Greason, III; and Stuart L. Teeter, for guardian ad litem.

Duncan B. McCormick, for respondent-appellant.

WYNN, Judge.

A court may terminate parental rights on the ground that "[t]he 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 in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2) (2005). As the findings of fact support the trial court's conclusion of law that Respondent willfully left the child in foster care for twelve months without making reasonable

progress, we affirm the trial court's order.

On 17 July 2002, the Forsyth County Department of Social Services filed a petition to terminate the parental rights of Respondent, the putative father of a child, D.G.D., born out of wedlock. As grounds for terminating Respondent's parental rights, petitioner asserted (1) Respondent willfully left the child in foster care or placement out of the home for more than twelve months without showing that reasonable progress has been made in correcting the conditions which led to the removal of the child; (2) Respondent failed to establish paternity of the child, legitimate the child, or provide substantial financial support or care of the child; and (3) Respondent willfully abandoned the child. The court entered an order terminating the mother's parental rights to the child on 21 March 2003. After several continuances, the court conducted an evidentiary hearing on 28 February 2005 and 2 March 2005, on the petition to terminate Respondent's rights. At the conclusion of the hearing, the court entered an order concluding that Petitioner established all three grounds by clear, cogent and convincing evidence and that termination of Respondent's parental rights is in the best interest of the child. From this order Respondent appeals.

A proceeding to terminate parental rights consists of two separate phases: an adjudicatory stage and a dispositional stage. *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). During the adjudicatory stage, the petitioner must prove by clear,

cogent, and convincing evidence the existence of at least one of the statutory grounds for termination. *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). The appellate court reviews the trial court's findings of fact to determine whether they are supported by "clear, cogent, and convincing evidence" and whether the findings support the trial court's conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). Upon finding proof of at least one ground for termination, the trial court proceeds to the dispositional phase and considers whether termination of parental rights is in the best interests of the child. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Appellate review of the trial court's dispositional decision is for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). If this Court can determine that the trial court has validly found at least one ground to terminate parental rights, then it is not necessary for this Court to consider the remaining grounds. *In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986).

Respondent makes three arguments on appeal: (1) the trial court's conclusion that Respondent abandoned his child is not supported by the findings of fact or the evidence; (2) the trial court's conclusion that Respondent willfully left his child in foster care for more than twelve months is not supported by the findings of fact or clear, cogent and convincing evidence; and (3) the trial court's conclusion that Respondent had not established

paternity is not supported by the findings and is contradicted by other juvenile orders finding Respondent is the father of the child.

We first address Respondent's contention challenging the trial court's conclusion that Respondent willfully left his child in foster care for more than twelve months without making reasonable progress in correcting the conditions that led to the child's placement in foster care. A court may terminate parental rights on the ground "[t]he 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 in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2). The twelve-month period under the present version of section 7B-1111(a)(2) of the North Carolina General Statutes is not limited to the twelve months immediately preceding the filing of the petition. *In re Pierce*, 356 N.C. 68, 75, fn.1, 565 S.E.2d 81, 86, fn.1 (2002). The willful leaving of the child is "something less than willful abandonment" and "does not require a showing of fault by the parent." *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). A finding of this ground may be made when the parent has made some attempt to regain custody of the child but has failed to show reasonable and positive progress has been made in this effort. *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 225 (1995).

We find clear, cogent and convincing evidence in the record to

support the trial court's findings of fact. These findings of fact show that the child was placed in the custody of the Forsyth County Department of Social Services (D.S.S.) on 29 June 2001, upon an adjudication of dependency. Respondent was arrested in November 2001, was convicted of armed robbery in April 2002, and was sentenced to fifty months in prison. He was incarcerated continuously from November 2001 until 27 October 2004. Respondent was not present for the birth of the child because he was incarcerated serving sentences for convictions of breaking or entering.

At Respondent's request in August of 2003, the court permitted Respondent to seek reunification with the child on condition that Respondent comply with the following four conditions: (1) attend and complete parenting classes; (2) obtain a parenting capacity evaluation and follow all recommendations; (3) obtain a substance abuse assessment and complete any recommended treatment; and (4) write letters to the child at least twice per week. The court also obtained Respondent's transfer to Forsyth Correctional in order for Respondent to be nearer to the child. However, three months later, Respondent tested positive for the presence of marijuana, thereby resulting in his transfer to another correctional facility.

Respondent acknowledged that he did not write two letters per week to the child. DSS reported receiving only three letters from Respondent dated 30 September 2003, 10 November 2003 and 17 November 2003. Respondent further acknowledged that after he was transferred from the Forsyth Correctional Institution, he failed

another drug test in February 2004. He acknowledged that he used marijuana while incarcerated.

Respondent did not complete parenting classes. He did not obtain the parenting capacity evaluation and substance abuse assessment ordered by the court. Respondent failed to remember his child through cards, gifts or letters on Christmas, his birthday or other significant holidays in the years 2001, 2003 and 2004. Respondent did send the child a Christmas gift in 2002 but failed to acknowledge the child's birthday that year.

After his release from prison in 2004, Respondent obtained a job paying nine dollars per hour, working forty or more hours per week. Respondent paid nothing out of those earnings toward the support of the child. Although Respondent expressed a desire at the hearing to have wages withheld for the support of the child, he had done nothing to cause it to happen as of the time of the termination of parental rights hearing. Further, after his release from prison in October 2004, Respondent has not visited the child and has not mailed any letters or sent any gifts to the child.

A dependent juvenile is one who "has no parent . . . responsible for the juvenile's care or supervision" or whose parent "is unable to provide for the care or supervision" of the juvenile. N.C. Gen. Stat. § 7B-101(9) (2005). The foregoing findings show that Respondent has not been a responsible parent and has not made reasonable progress in becoming a responsible parent. Respondent has not been able due to his repeated incarcerations and prison infractions to provide for the care and supervision of the child,

who has special needs.

We hold the findings support the trial court's conclusion that Respondent willfully left the child in foster care for twelve months without making reasonable progress in correcting the conditions which led to the placement of the child in foster care. As a finding of only one ground is required to terminate rights, it is not necessary for us to consider the remaining grounds. *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93-94 (2004).

The order terminating Respondent's parental rights is,
Affirmed.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).