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NO. COA05-1424

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

IN RE:

N.E.G.,
A minor child

Haywood County
No. 04-J-88

Appeal by respondent from judgment entered 11 February 2005 by Judge Steven J. Bryant in Haywood County District Court. Heard in the Court of Appeals 8 May 2006.

Ira L. Dove for petitioner-appellee Haywood County Department of Social Services.

Ann H. Davis for Guardian ad Litem appellee.

Carol Ann Bauer for respondent-appellant.

HUNTER, Judge.

R.E.G. ("respondent") appeals an order terminating his parental rights as the father of N.E.G. For the reasons stated herein, we affirm.

The Haywood County Department of Social Services ("DSS") took nonsecure custody of N.E.G. on 11 June 2002. A month later, the trial court entered a "Consent Order on Adjudication," in which respondent and the mother of the minor child admitted that N.E.G. was a neglected juvenile

in that the Respondent mother had the sole care of the juvenile on or about June 10, 2002 and was too impaired to provide proper care for him; the juvenile lives in an environment injurious to his welfare; and the Respondent father left the juvenile in the care of the Respondent mother for extended periods of time and should have known that the mother was unable to provide proper care for the juvenile.

The trial court subsequently entered a "Consent Order on Disposition" and ordered respondent, among other things, to visit with N.E.G. on a weekly basis. Respondent made the weekly visits with N.E.G. between July 2002 and March 2003.

In June 2004, DSS filed a petition to terminate the parental rights of both respondent and the minor child's mother pursuant to N.C. Gen. Stat. § 7B-1111(a) (1), (2), (3), (6) and (7). Respondent subsequently spoke with N.E.G. on the phone several times, but only made one weekly visit. The trial court conducted an adjudication hearing on the petition in October 2004. After the hearing, respondent resumed his weekly visits with N.E.G. In its adjudication order dated 12 November 2004, the trial court concluded that based upon clear, cogent, and convincing evidence, sufficient grounds existed for terminating respondent's parental rights in that N.E.G. was neglected pursuant to N.C. Gen. Stat. § 7B-1111(a) (1); respondent willfully left N.E.G. in foster care for more than twelve months without reasonable progress under the circumstances pursuant to section 7B-1111(a) (2), and respondent failed to pay a reasonable portion of the cost of care for N.E.G. pursuant to section 7B-1111(a) (3). Respondent continued his weekly

visits with N.E.G. until the trial court conducted its dispositional hearing in January 2005.

The trial court entered its dispositional order on 11 February 2005 and made the following pertinent findings of fact:

2. That the minor child, NEG . . . has been diagnosed with attention deficit hyperactivity disorder (ADHD), oppositional defiance disorder, and mood disorder.
3. That attention deficit hyperactivity disorder is best treated by providing NEG with consistency and structure and by setting limits for him. His activities need to be modified to maximize his chance for success. NEG's parent or caretaker needs to implement strategies to help the child deal with the symptoms of ADHD. The appropriate medications together with the required help with social skills are necessary for proper treatment.
4. That NEG's mood disorder is not exactly the same as bi-polar disorder or depression, but has some features of both. NEG is not on medication for this disorder at this time. Treatment consists of helping NEG to express himself appropriately and by helping him deal with emotional issues.
5. That oppositional defiance disorder is characterized by an irritable mood and oppositional behavior. This mood and behavior are often triggered by limits being set for NEG, causing him to act out and to be argumentative.
6. That since November, 2004, NEG has deteriorated emotionally, with anxiety about his future and about the loss of his mother. He has suffered from both encopresis and enuresis during this period of time.
7. The child has been observed banging his head against the wall when he is angry,

biting other children on the playground and displaying an incredible amount of anger. NEG has also had difficulty focusing.

8. That since the adjudication hearing in November of 2004, [REG] has increased the frequency of his visits with NEG. During that same time, the child's actions, referred to above, have increased.
9. After the visits, NEG refuses to follow directions, is angry and has difficulty getting along with the other children at Broyhill Children's Home. NEG's behavior was not as aggressive when [REG] was not visiting.
10. That during the visits, NEG and [REG] interact appropriately, playing and having a good time. They walk the campus together and display affection toward one another. The visits generally last 2 hours and [REG] has brought clothes and toys for his son during some of the visits. NEG appears happy to see his father when visits begin.
11. That a parent of a child with NEG's disorders, as described above, needs to be accountable for his own actions as well as his own mental health needs in order to be able to maintain the necessary consistent contact, build a relationship, and attend to the child's physical and emotional needs. Consistence and stability are necessary for effective parenting. Absent that stability, it would be difficult for a parent to provide the child's emotional needs.
12. That with NEG's problems, a parent with [REG's] mental health issues (as set forth in adjudication findings of fact numbers 14-18), if untreated, would find it very difficult to meet the child's physical and emotional requirements and would damage the child emotionally.
13. That from a therapeutic point of view, termination of parental rights would be in the best interest of the child, in

that NEG continues to deteriorate emotionally, suffers high anxiety, and is angry at [his] mother and father. Continued placement and the ensuing lack of permanency are emotionally damaging.

14. That [REG] is currently unemployed and has been since about two weeks after the adjudication hearing. He still receives Social Security disability for his bipolar disorder. Currently, [REG] receives no medication or treatment for any of the conditions listed in the adjudicatory findings of fact.
15. That [REG] currently lives in Greenville, South Carolina with his mother. He has lived in South Carolina with his mother since May of 2004.
16. That [REG] had a vehicle when he left North Carolina in May of 2004, but sold it approximately a week after his arrival because it had a bad transmission. [REG] currently has a car and a valid driver's license.
17. That [REG's] case plan provided for visitation, which he exercised while living in North Carolina.
18. That since the hearing on adjudication, [REG] has visited with the child every week, making the three hour round-trip drive with his mother from Greenville, SC to Waynesville, NC.
19. That [REG] and NEG engage in different activities, including watching videos, playing on the playground and at the gymnasium, playing basketball and football together. NEG is happy to see him when he arrives for visitation and generally in good spirits. He runs to [REG] and hugs him upon his arrival for visitation.
20. That [REG] has talked with NEG's counselors about how he is doing.

21. That it is in NEG's best interest that the parental rights of this father, [REG], be terminated.

Based upon these findings, the trial court terminated respondent's parental rights. Respondent appeals.

Respondent does not challenge the trial court's conclusion that grounds existed to terminate his parental rights. In his sole argument on appeal, respondent contends the trial court abused its discretion by concluding that it was in the best interests of N.E.G. to terminate his parental rights.

A termination of parental rights proceeding is conducted in two phases: (1) the adjudication phase which is governed by N.C. Gen. Stat. § 7B-1109, and (2) the disposition phase which is governed by N.C. Gen. Stat. § 7B-1110. See *In re Brim*, 139 N.C. App. 733, 738, 535 S.E.2d 367, 370 (2000). The trial court has discretion, if it finds by clear, cogent, and convincing evidence that at least one of the statutory grounds exists, to terminate parental rights upon a finding that it would be in the best interests of the child. *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001). In considering evidence relevant to the dispositional stage, "[t]he children's best interests are paramount, not the rights of the parent." *In re Smith*, 56 N.C. App. 142, 150, 287 S.E.2d 440, 445 (1982). 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[.]" *Blackburn*, 142 N.C. App. at 613, 543 S.E.2d at

910. 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. *Id.* at 612, 543 S.E.2d at 910.

Respondent asserts that because he and N.E.G. were allowed to continue to develop their relationship after the adjudication hearing, the trial court abused its discretion in terminating his parental rights. In light of the fact that stability and consistency are necessary for N.E.G.'s emotional needs and that N.E.G.'s behavior worsened when R.E.G. increased the frequency of his visits after the adjudication hearing, we cannot conclude that the trial court's decision to terminate respondent's parental rights was an abuse of discretion. Accordingly, the order terminating respondent's parental rights is affirmed.

Affirmed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).