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NO. COA05-1435

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

IN THE MATTER OF:
S.C.S.

Alamance County
No. 03 J 58

Appeal by respondent-parents from judgment entered 7 March 2005 by Judge G. Wayne Abernathy in Alamance County District Court. Heard in the Court of Appeals 20 April 2006.

Jamie L. Hamlett, for petitioner-appellee Alamance County Department of Social Services.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for Guardian Ad Litem.

Susan J. Hall for respondent-appellant mother.

Winifred H. Dillon for respondent-appellant father.

STEELMAN, Judge.

Respondent-mother and respondent-father separately appeal the district court's order terminating their parental rights to their child S.C.S. For the reasons discussed herein, we affirm.

Respondents are the natural parents of S.C.S., born September 2001. Respondents are also the parents of two older children who live with their maternal grandfather. While S.C.S was in the custody of DSS, respondent-mother gave birth to a forth child.

Only the respondents' parental rights to S.C.S. are at issue in this appeal.

It appears the Alamance Department of Social Services (DSS) became involved with the family in April 2002 after a report that respondent-father had assaulted respondent-mother and hit S.C.S., then six months old, in the back of the head. Respondent-mother took the child to the hospital, which reported the incident to DSS. When DSS responded to the report, respondent-mother said she and respondent-father had gotten into an argument about her seeing another man and respondent-father hit the minor child while trying to hit her. She told DSS respondent-father had been drinking and she had been smoking marijuana that day. Following the incident, respondent-mother obtained a domestic violence protection order against respondent-father for one year. The order specifically prohibited respondent-father from having any contact with S.C.S. Respondent-mother violated the protective order when she got respondent-father out of jail and allowed him to move into her home where S.C.S. was also living. Despite respondent-father's abusive behavior and alcohol abuse, she carried on a relationship with him and allowed him to live in her home with S.C.S.

During S.C.S.'s life, respondent-mother received assistance, including Medicaid, AFDC, and Graham Housing. Despite the assistance, respondent-mother was unable to provide for the child's basic needs. In addition, respondent-mother allowed numerous people to live in her home with S.C.S. and allowed drugs to be used there, including crack. Respondent-mother often left S.C.S. with

her great-aunt, Ms. Dorlis Lee, for up to three weeks at a time without adequate supplies and without the aunt knowing respondent-mother's whereabouts. Ms. Lee testified she had cared for the child for ten of the eighteen months of his life. In addition, respondent-mother would also leave S.C.S. in the sole care of her grandmother, Pearl Lee, who was a registered sex offender. (R. 95). In February 2003, respondent-mother dropped S.C.S. off at Dorlis Lee's home. While S.C.S. was with Ms. Lee, the police arrested respondent-mother on a charge of possession of stolen goods, which arose from events that occurred in 1997. While respondent-mother was incarcerated, S.C.S. was placed in the non-secure custody of DSS. On 3 March 2003, DSS filed a petition alleging the minor child to be a neglected juvenile within the meaning of N.C. Gen. Stat. § 7B-101(15). On 10 March 2003, respondent-mother was placed on supervised probation for possession of stolen goods. On 12 June 2003, following an adjudicatory hearing, the trial court found S.C.S. to be neglected based upon the instability of respondent-mother's living arrangements, her failure to provide appropriate care for the child, domestic violence involving respondent-father, and continuous drug and alcohol abuse by both parents. Immediately thereafter, the trial court held a disposition hearing and awarded DSS custody of the minor child.

As part of the case plan, the trial court required respondent-mother to have consistent visitation, obtain and maintain suitable housing, comply with the conditions of her probation, and provide

for the minor child's needs. In addition, the trial court ordered respondent-mother receive alcohol and drug treatment, complete the TASC Program, and be routinely tested for drugs. The trial court periodically held review hearings and permanency planning hearings.

In December 2003, respondent-mother moved in with her father. During this period, respondent-mother was allowed weekly unsupervised visitation with S.C.S., including weekend visits. However, in March 2004, respondent-mother's father told her she could no longer stay in his home after he learned she had pawned his tools without permission. Thereafter, DSS was unable to locate respondent-mother and she did not have visitation with S.C.S. from 19 April 2004 until 2 June 2004. In April 2004, respondent-mother was found to have violated the conditions of her probation by testing positive for marijuana while pregnant with her fourth child, failing to report to her probation officer as scheduled, and being in arrears on her costs and supervision fees. The trial court sentenced respondent-mother to forty-five days confinement. On 16 October 2004 respondent-mother attempted to have the domestic violence order she obtained against respondent-father dismissed. As late as June 2004, respondent-mother stated she was still contemplating a reconciliation with respondent-father despite his history of domestic violence and alcohol abuse.

During the time DSS had custody of the minor child, respondent-mother lived at various homes. At one time, respondent-mother was living with an individual whose children had been removed from her care because of inappropriate parenting.

Respondent-mother's visitation was suspended while she lived with this individual. In late June or early July 2004, respondent-mother moved in with her boyfriend of only a week or two, Tim Williams, who lived with his grandmother, Inez Smith. Ms. Smith paid the bills. Respondent-mother did not pay rent or contribute towards the bills. Respondent-mother and Ms. Smith frequently argued, including when respondent-mother had S.C.S. During the time DSS had custody, respondent-mother failed to maintain consistent employment despite being able to work. In addition, respondent-mother missed numerous visitations without excuse, and when she did have visitation, she failed to provide adequate supplies for the child during those visits.

Respondent-father was incarcerated at the time the petition to terminate parental rights was filed. His expected release date is 26 June 2006. Respondent-father was not incarcerated at the time DSS assumed custody of S.C.S., but did not make contact with the social worker because he was running from the law. DSS first met with respondent-father in July 2003 at the county jail. Respondent-father did not keep in contact with DSS during his incarceration, even though he had the social worker's contact information. At a hearing involving the minor child in December 2003, he asked the court not to be brought back from prison for future hearings. (R. 100). While incarcerated, respondent-father has not written to S.C.S, inquired about the child's welfare, sent cards or gifts, or made any other effort to contact the child.

Respondent-father asked to be returned to prison after the lunch recess of the first day of the TPR hearings.

On 31 August 2004, DSS filed a petition to terminate respondents' parental rights to S.C.S. The petition alleged as grounds for termination: (1) respondents neglected the minor child (N.C. Gen. Stat. § 7B-1111(a)(1)); and (2) respondents willfully left the juvenile in foster care for more than twelve months without demonstrating they had made reasonable progress to correct the conditions which led to the child's removal (N.C. Gen. Stat. § 7B-1111(a)(2)); (3) respondents willfully failed to pay a reasonable portion of the cost of care for the minor child while he was in DSS's custody (N.C. Gen. Stat. § 7B-1111(a)(3)); and (4) respondent-father had not, prior to the filing of the motion to terminate parental rights, established paternity to or legitimated the juvenile (N.C. Gen. Stat. § 7B-1111(a)(5)). The trial court terminated respondents' parental rights, finding as a basis the grounds listed in N.C. Gen. Stat. § 7B-1111(a)(1) and (2) as to each respondent. The trial court further determined it was in S.C.S.'s best interests that both respondent-mother and respondent-father's parental rights be terminated. Respondents appeal.

Respondent-mother and father made separate assignments of error. We address each in turn.

Respondent-mother's Assignments of Error

Respondent-mother assigned error to each of the trial court's conclusions of law specifying the grounds for termination, certain

findings of fact, and to the court's decision that termination of her parental rights was in the child's best interests.

"On appeal, our standard of review for the termination of parental rights is whether the court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law." *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003) (citations and internal quotation marks omitted). If the findings of fact support a conclusion of law that grounds exist under N.C. Gen. Stat. § 7B-1111 to terminate parental rights, we must affirm the order. *In re Oghenekevebe*, 123 N.C. App. 434, 436, 473 S.E.2d 393, 395-96 (1996).

In order to establish neglect in a termination case, there must be clear, cogent, and convincing evidence that at the time of the termination hearing: (1) the juvenile is neglected within the meaning of N.C. Gen. Stat. § 7B-101(15), and (2) as a consequence of the neglect, the juvenile "has sustained some physical, mental, or emotional impairment. . . or [there is] a substantial risk of such impairment." *In re Reyes*, 136 N.C. App. 812, 814-15, 526 S.E.2d 499, 501 (2000) (citations and internal quotation marks omitted). A neglected juvenile 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

N.C. Gen. Stat. § 7B-101(15) (2006). "A finding of neglect sufficient to terminate parental rights must be based on evidence

showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). The trial court may admit and consider a prior adjudication of neglect in ruling on a petition to terminate parental rights based upon neglect. *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). However, where the child has been removed from the parent's custody prior to the termination hearing, as is the case here, the trial court may still terminate parental rights "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 [their] parents." *Reyes*, 136 N.C. App. at 815, 526 S.E.2d at 501.

In the present case, the trial court found as fact that S.C.S. had previously been adjudicated neglected. The trial court also made additional findings of fact to support its conclusion that there existed a likelihood of repetition of neglect should the child be returned his parents. These findings include the following:

19. On September 17, 2003, the Respondent Mother received her second ex parte domestic violence protective order (03 CVD 2047) against Respondent Father. The Respondent Father assaulted the Respondent Mother while she was pregnant with [P.C.S.]. On September 17, 2003, the court entered a domestic violence protective order.

21. In January of 2004, the Respondent Mother gave birth to her fourth child, [P.C.S.].

24. When the Respondent Mother left her father's home, [DSS] initially did not know where the Respondent Mother was staying and her visitation was disrupted.

25. The Respondent Mother took her approximately three-month-old child to Dorlis Lee and Pearl Lee's home and left the child for one week because she need a break. Dorlis Lee had to contact Mr. Satterfield [respondent-mother's father] to obtain supplies for the child.

26. The respondent Mother did not have visitation with S.C.S. from April 19, 2004 until June 2, 2004.

33. On October 16, 2004, the Respondent Mother attempted to get the domestic violence order numbered 03 CVD 2047 dismissed as to Respondent Father.

34. At a hearing in June of 2004, the Respondent Mother was not certain if she would or would not reconcile with the Respondent Father despite the history of domestic violence and alcohol abuse.

35. The Respondent Mother did not visit with the juvenile from June 2, 2004 until July 26, 2004. Social Worker Hamlet is not sure why the Respondent Mother did not visit.

37. The Respondent Mother has demonstrated issues with controlling her own anger, including kicking out a window of a car while she was angry with her boyfriend, Timothy Williams. The Respondent Mother has thrown perfectly good bacon away, hitting Mr. Williams with it, because she was angry.

41. The Respondent Mother and Ms. Inez Smith [Mr. Williams' grandmother, with whom Respondent Mother was living] argue on a regular basis and Ms. Inez Smith often threatens to throw the Respondent Mother out of her home. On two occasions, the Respondent Mother has left the home to stay in a hotel.

42. The Respondent Mother and Ms. Inez Smith sometimes argue during times when the Respondent Mother is having visitation with the juvenile. This has a negative impact upon the juvenile.

53. The Respondent Mother has not maintained consistent employment while working with [DSS].

60. The Respondent Mother has missed two consecutive weeks of visitations on four occasions.

61. The Respondent Mother has been unable to consistently provide supplies for the juvenile during visitations. The daycare, social worker and others have helped provide supplies for the Respondent Mother during her visitations.

63. The Respondent Mother struggles to maintain a minimum level of care for one child, despite numerous supports and services. This is troubling considering she wants responsibility for the care of two young children.

Respondent-mother did not except to any of these findings of fact. Findings of fact unchallenged on appeal "are deemed supported by competent evidence" and are binding upon this Court. *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003). These undisputed findings were sufficient to support the trial court's conclusion that the child is neglected, as well as the court's conclusion that sufficient grounds existed to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). Having so concluded, we need not address respondent-mother's argument regarding termination of her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). *In re J.A.A.*, ___ N.C. App. ___, ___, 623 S.E.2d 45, 50 (2005) (noting a finding of only one statutory ground is sufficient to support termination of parental rights).

In respondent-mother's next argument, she contends the trial court abused its discretion by concluding as a matter of law that it was in the minor child's best interest to terminate her parental rights. We disagree.

We review the trial court's decision to terminate a parent's rights under an abuse of discretion standard. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). An abuse of discretion occurs where the trial court's decision "is so arbitrary that it could not have been the result of a reasoned decision." *In re J.B.*, ___ N.C. App. ___, ___, 616 S.E.2d 385, 387, *aff'd*, 360 N.C. 165, 622 S.E.2d 495 (2006).

In determining whether termination is in the best interests of the minor child, the court considers: (1) the age of the juvenile; (2) the likelihood the juvenile will be adopted; (3) whether terminating parental rights will help accomplish the permanent plan for the child; (4) the bond between the child and the parent; (5) the quality of the relationship between the child and the proposed adoptive parent, as well as (6) any other relevant consideration. N.C. Gen. Stat. § 7B-1110(a) (2005).

In the instant case, the court considered the minor child's age of three years, the fact the child had been placed in foster care for almost two years, the child's positive adjustment to his placement, the foster family's commitment to the child, as well as their desire to adopt him. Those findings combined with the court's findings concerning respondent-mother's failure to: comply with her case plan, secure stable housing and employment, complete

the court ordered substance abuse treatment, and visit with the child on a consistent basis, coupled with her inability to consistently provide supplies for the child during visitations and her continuing to leaving her youngest child with a registered sex offender, support the trial court's conclusion that it was in the child's best interests to terminate respondent-mother's parental rights. Thus, the trial court did not abuse its discretion. This argument is without merit.

Respondent-father's Assignments of Error

Respondent-father contends the trial court's finding of fact that he had made little or no effort to reunite with the juvenile or overcome the conditions which led to the juveniles removal from the home, was unsupported by the evidence, and as such, the trial court's conclusion that grounds exist pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate his parental rights, was unsupported by the findings.

The trial court can terminate a respondent's parental rights upon the finding of one of the grounds listed in N.C. Gen. Stat. § 7B-1111(a). *J.A.A.*, ___ N.C. App. at ___, 623 S.E.2d at 50. In the instant case, the trial court cited two grounds for terminating respondent-father's parental rights. While respondent-father assigned as error both grounds in the record on appeal, he only argued as error one of those grounds in his brief. "Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned." N.C. R. App. P. 28(b)(6). Since respondent-father

does not contest the other ground, it is binding on appeal. As only one ground is necessary to support the termination, we need not address whether evidence existed to support termination based on N.C. Gen. Stat. § 7B-1111(a)(2). *J.A.A.*, ___ N.C. App. at ___, 623 S.E.2d at 50. Nor did respondent-father assign as error the trial court's decision that terminating his parental rights was in the child's best interests. This argument is without merit.

For the reasons discussed herein, we affirm the order of the trial court terminating respondents' parental rights to S.C.S.

AFFIRMED.

Judge MCCULLOUGH and CALABRIA concur.

Report per Rule 30(e).