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NO. COA05-1483

NORTH CAROLINA COURT OF APPEALS

Filed: 5 July 2006

IN THE MATTER OF:
H.S.M. and S.S.H.,
Minor Children.

Buncombe County
Nos. 04 J 236-37

Appeal by respondent from orders entered 27 April 2005 by Judge Marvin P. Pope, Jr., in Buncombe County District Court. Heard in the Court of Appeals 19 June 2006.

Lisa M. Morrison for Buncombe County Department of Social Services petitioner-appellee.

Judy N. Rudolph for Guardian Ad Litem.

Leslie C. Rawls for respondent-appellant.

McCULLOUGH, Judge.

Respondent-father appeals from an order terminating his parental rights. We affirm. H.S.M. was born in May 2000, and S.S.H. was born in April 1999. Respondent is their father. From August 2003 through January 2004, the Buncombe County Department of Social Services ("DSS") received several reports indicating that the children were being neglected by their mother due to her abuse of drugs. On 7 April 2004, the children were placed in the care of DSS by a non-secure custody order. An adjudicatory hearing was held on 27 May 2004. Respondent did not appear at the hearing and his whereabouts was unknown. On 8 July 2004, *nunc pro tunc* 27 May

2004, the children were adjudicated neglected and dependent juveniles in that they did not receive proper care, supervision or discipline from their parents, that they lived in an environment injurious to their welfare, and the parents were unable to provide for their care or supervision.

On 22 September 2004, petitions to terminate parental rights were filed by DSS alleging that respondent had neglected and abandoned the children and had failed to establish his paternity. On 28 and 30 March 2005, hearings were held on the petition to terminate respondent's parental rights. On 27 April 2005, the trial court determined that grounds existed to terminate respondent's parental rights. The trial court found that respondent had neglected the children and that it was "reasonably probable" that there would be a repetition of neglect. The court cited respondent's "serious, longstanding untreated substance abuse problems and anger management problems" and his failure to comply with services offered by DSS to alleviate these problems. Accordingly, the court concluded that it was in the best interests of the children that respondent's parental rights be terminated. Respondent now appeals.

Respondent's sole argument on appeal is that the trial court abused its discretion by concluding that termination of his parental rights was in the best interests of the children. Respondent contends that he had begun to address his substance abuse problems and further also cites *Bost v. Van Nortwick*, 117 N.C. App. 1, 449 S.E.2d 911 (1994), arguing that the trial court's

finding that the children were doing well in their current, pre-adoptive foster care placement was insufficient to satisfy the best interest requirement for termination in light of his "paramount rights" as their father.

After careful review of the record, briefs and contentions of the parties, we affirm. Once the trial court has found that grounds exist to terminate parental rights, "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 2005 N.C. Sess. Laws ch. 398, s. 17). The trial court's decision to terminate parental rights at the disposition stage is discretionary. See *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). "A ruling based on a trial court's discretion will not be reversed without a showing of manifest abuse of that discretion." *In re Black*, 76 N.C. App. 106, 110, 332 S.E.2d 85, 87 (1985).

Here, the trial court concluded in its discretion that it was in the best interests of the child that respondent's parental rights be terminated. Respondent contends that the court abused its discretion in making this conclusion, citing *Bost*. However, we find *Bost* to be distinguishable from the instant case. This Court in *Bost* stated that "a finding that the children are well settled in their new family unit . . . does not *alone* support a finding that it is in the best interest of the children to terminate

respondent's parental rights." *Bost*, 117 N.C. App. at 8, 449 S.E.2d at 915 (emphasis added). Here, however, the finding that the children were doing well with their foster families was not the sole ground in support of the court's conclusion that termination was in the children's best interests. The trial court also based its conclusion on findings that respondent had a long history of drug abuse, had been unable to maintain sobriety, and had failed to comply with court orders aimed at addressing his drug abuse. The court found that respondent had failed to attend treatment and continued to abuse drugs, as evidenced by criminal activities used to finance drug purchases. The court also noted that respondent was incarcerated and not projected to be released for approximately two years, and was unable to provide any placement for the children. Furthermore, the court found that respondent had never provided consistent care for the children, and has been incarcerated in other states for most of their lives. Finally, the court found that respondent had not seen the children since January 2004, had not contributed any financial support, and had failed to send any cards, gifts or letters to the children. Thus, we hold that based on these findings, as well as the Court's finding that the children were doing well in their pre-adoptive placement, the trial court could reasonably conclude that termination of respondent's parental rights was in the best interests of the children. Accordingly, the order terminating respondent's parental rights is affirmed.

Affirmed.

Judges HUDSON and STEELMAN concur.

Report per Rule 30(e).