NO. COA05-1489

NORTH CAROLINA COURT OF APPEALS

Filed: 05 July 2006

IN THE MATTER OF:
C.E.E.

Yancey County
No. 98 J 72

Appeal by respondent from order entered 15 June 2005 by Judge Greg Horne in Yancey County District Court. Heard in the Court of Appeals 19 June 2006.

Hockaday & Hockaday, P.A., by Daniel M. Hockaday, for petitioner-appellee Yancey County Department of Social Services.

Don Willey, for respondent-appellant.

STEELMAN, Judge.

Respondent Tammy Elkins appeals from an order of the district court terminating her parental rights to the minor child, C.E.E. We affirm.

Respondent gave birth to C.E.E. on 4 January 1998. The Yancey County Department of Social Services ("DSS") obtained non-secure custody of the child on 7 March 2002, upon evidence of inappropriate discipline by respondent and possible sexual abuse. The district court adjudicated C.E.E. a neglected juvenile during the 8 April 2002 term of court. Based on respondent's failure to satisfy the requirements of her DSS case plan, the district court

ceased reunification efforts in November of 2002.

DSS filed a motion and petition to terminate respondent's parental rights on 11 August 2003, alleging as grounds for termination her continued neglect of C.E.E., *see* N.C. Gen. Stat. § 7B-1111(a)(1), and her willful failure to correct the conditions which led to C.E.E.'s placement outside the home for a period exceeding twelve consecutive months, *see* N.C. Gen. Stat. § 7B-1111(a)(2). On 14 April 2004, the district court entered an order terminating respondent's parental rights. Respondent appealed. When the court reporter's audio tapes of the termination hearing were found to be blank, the district court entered a consent order dismissing respondent's appeal and awarding respondent a new termination hearing.

The district court held a second termination of parental rights hearing on 17 May 2005. After hearing the evidence, the court found by clear, cogent and convincing evidence that "respondent mother has neglected [C.E.E.] as set forth in N[.C. Gen. Stat. §] 7B-1111(a)(1)[,]" and that she "has willfully left [C.E.E.] in foster care or placement outside the home for a period of more than twelve months" without reasonable progress to correct the conditions leading to the child's removal, as provided by N.C. Gen. Stat. § 7B-1111(a)(2). Noting that thirty-eight months had passed since C.E.E. was placed in DSS custody, the court supported its adjudication with detailed findings of respondent's failure to comply with a court order entered 8 April 2002, and her lack of reasonable progress toward the goals of her DSS case plan. After

finding both grounds for termination alleged by DSS, the court further found "by clear cogent and convincing evidence" that termination of respondent's parental rights served the best interests of C.E.E. Respondent again appealed from the termination order.

Respondent first contends the district court erred in failing to appoint a guardian *ad litem* to represent her in the termination proceedings. We disagree.

Respondent concedes that DSS did not make an allegation of dependency requiring the appointment of a guardian *ad litem* under N.C. Gen. Stat. § 7B-602 (2005), but argues that the evidence of her substance abuse and the allegations regarding her neglect of C.E.E. were "'so intertwined at times as to make separation of the two virtually . . . impossible.'" *In re J.D.*, 164 N.C. App. 176, 182, 605 S.E.2d 643, 646, *disc. review denied*, 358 N.C. 732, 601 S.E.2d 531 (2004).

C.E.E. was never alleged to be or adjudicated a dependent juvenile; nor did DSS allege dependency as a ground for termination in its motion filed 11 August 2003. *See* N.C. Gen. Stat. § 7B-1111(a)(6). Accordingly, respondent was not entitled to a guardian *ad litem* under the plain language of N.C. Gen. Stat. § 7B-602(b)(1). Moreover, neither party offered evidence tending to show that respondent's substance abuse caused her neglect of C.E.E. Rather, the original adjudication of neglect was based on respondent's inappropriate discipline of C.E.E. and the evidence of possible sexual abuse of C.E.E. by respondent's boyfriend, Billy

Garner. The finding of ongoing neglect under N.C. Gen. Stat. § 7B-1111(a)(1) was based on respondent's failure to satisfy most, if not all, of the requirements of her case plan. Those requirements included participating in C.E.E.'s mental health evaluation and treatment, understanding and accepting responsibility for the reasons for C.E.E.'s removal from her home, and demonstrating her ability to provide a safe and stable home environment for C.E.E. Although respondent tested positive for marijuana use on several occasions and admitted experimenting with pain medication in 2004, the record does not suggest that her substance abuse was so severe as to cause her non-compliant behaviors or to render her incapable of parenting C.E.E.

Accordingly, respondent's episodic drug use was not so intertwined with the circumstances of C.E.E.'s neglect as to require the district court to appoint a guardian *ad litem* for respondent, *sua sponte*, under N.C. Gen. Stat. § 7B-602(b)(1). *See In re H.W.*, 163 N.C. App. 438, 447, 594 S.E.2d 211, 216, *disc. review denied*, 358 N.C. 543, 599 S.E.2d 46 (2004). Nothing in the materials of record tend to "raise a substantial question as to whether [respondent was] *non compos mentis*," thereby obligating the district court to inquire into her competency under N.C.R. Civ. P. 17(b)(2). *In re J.A.A.*, __ N.C. App. __, __, 623 S.E.2d 45, 49 (2005) (citing *Rutledge v. Rutledge*, 10 N.C. App. 427, 432, 179 S.E.2d 163, 166 (1971)).

Respondent next contends that the district court applied an incorrect standard in adjudicating grounds for termination under

N.C. Gen. Stat. § 7B-1111(a)(2). Specifically, she avers the court improperly confined its assessment of her progress in correcting the conditions which led to C.E.E.'s placement outside of her home to a twelve-month period following DSS's removal of the child from the home. We disagree.

Respondent notes that the current version of the statute does require that reasonable progress be shown "'within twelve (12) months'" as stated in the termination order. *See* N.C. Gen. Stat. § 7B-1111(a)(2). Here, however, any error in the district court's analysis under N.C. Gen. Stat. § 7B-1111(a)(2) was harmless, since the court found a second ground for termination not contested by respondent. *See In re C.L.C.*, 171 N.C. App. 438, 447, 615 S.E.2d 704, 709 (2005). "'The finding of any one of the grounds is sufficient to order termination.'" *Id.* (citation omitted). Accordingly, "because, in this case, the mother has not assigned error to the trial court's other ground[] for termination - neglect under N.C. Gen. Stat. § 7B-1111(a)(1) . . . – the trial court's error is immaterial." *Id.* We further note that the court's findings clearly reflect its consideration of respondent's progress from March of 2002 up to the date of the termination hearing.

In her remaining argument on appeal, respondent contends the trial court erred at the disposition stage of the proceedings by finding and concluding that termination of her parental rights was in the best interests of C.E.E. Respondent cites no authority in support of her argument, *see* N.C.R. App. P. 28(b)(6), but asserts the "court failed to consider the steps taken by the mother to deal

with her substance abuse and stabilize her situation in order to care for her child."

If the district court finds grounds for termination under N.C. Gen. Stat. § 7B-1111(a), it must terminate the respondent's parental rights unless it determines that doing so would be contrary to the best interests of the child. N.C. Gen. Stat. § 7B-1110 (2005); *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001). We review the court's disposition under N.C. Gen. Stat. § 7B-1110 only for abuse of discretion. *See In re V.L.B.*, 168 N.C. App. 679, 684, 608 S.E.2d 787, 791 (2005). "[T]he decision to terminate parental rights...will not be overturned on appeal absent a showing that the judge['s] actions were manifestly unsupported by reason." *In re J.A.A.*, __ N.C. App. at __, 623 S.E.2d at 51.

We find no such abuse of discretion. The court found grounds for termination under N.C. Gen. Stat. § 7B-1111(a). Dr. Jay Fine, C.E.E.'s treating psychologist from July of 2002 to the time of the termination hearing, testified at the hearing and recommended termination of respondent's parental rights and C.E.E.'s adoption by a non-relative as serving the best interests of the child. Jonathan McDuffie, C.E.E.'s case manager at New Vista Behavioral Health, stated that placing C.E.E. with "a two-parent family that is part of an agency specifically trained to deal with sexually reactive children would benefit [her] by providing consistent structure . . . as well as therapeutic intervention on a daily, perhaps hourly basis, given her behaviors." The district court's

findings in support of termination acknowledge respondent's several negative drug screens, and her conviction for conspiracy to commit armed robbery in August, 2004. The court also found that respondent failed to participate in C.E.E.'s mental health evaluation, "failed to consistently participate" in the child's treatment with Dr. Fine, terminated her own therapy with Paul Feldman at the Blue Ridge Center, refused to disassociate herself from Garner despite C.E.E.'s consistent claims that he had sexually abused her, and pled guilty to a felony criminal offense committed with Garner in May of 2004. The court further detailed respondent's failure to maintain stable housing and employment, her several positive drug screens, her absence of training to address C.E.E.'s specialized needs, and her lack of contact with C.E.E. since August of 2002.

The court concluded that, "although the respondent mother has made some progress, her progress is not reasonable under the circumstances and the respondent mother has not made sufficient progress since the TPR Motion was filed 11 August, 2003." Finally, the court cited C.E.E.'s need for "a high level of care due to her behaviors[,]" her improvement through counseling with Dr. Fine, her placement in therapeutic foster care, and DSS's plan "to move the juvenile to a two parent home with parents who have received specialized training . . . to address the juvenile's behaviors" with a goal of adoption. In light of the undisputed findings, *see In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001), and the expert opinion in favor of termination, we overrule this

assignment of error.

The record on appeal includes additional assignments of error not addressed by respondent in her brief to this Court. Pursuant to N.C.R. App. P. 28(b)(6), we deem them abandoned.

AFFIRMED.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).