NO. COA05-1551

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

IN THE MATTER OF:

L.L., Jr., A Minor Child	Mecklenburg County No. 04 J 795

Appeal by father from judgment entered 29 April 2005 by Judge Regan A. Miller in Mecklenburg County District Court. Heard in the Court of Appeals 16 August 2006.

J. Edward Yeager, Jr. for petitioner-appellee Mecklenburg County Attorney's Office.

Leslie C. Rawls for respondent-appellant father.

Matt McKay as guardian ad litem.

ELMORE, Judge.

This appeal arises from the district court's decision entered 29 April 2005 to terminate L.L., Sr.'s (respondent) parental rights to his son, L.L., Jr. (Jr.). After careful review, we affirm the order of the trial court.

The minor child, Jr., was born in January 2002. After the newborn tested positive for cocaine, he was discharged into the care of his maternal aunt. On 27 March 2003, Mecklenburg County DSS-Youth and Family Services (YFS) filed a petition alleging that the child was neglected and dependent. The trial court held a hearing on 29 May 2003, after which it determined Jr. to be

dependent as to respondent. Respondent was assigned a case plan, which required that he (1) complete a Family Drug Court substance abuse assessment, complying with its recommendations, (2) complete the SAIL program, complying with its recommendations, (3) attend AA/NA meetings, providing documentation thereof, (4) obtain and maintain a sponsor, (5) complete random drug testing, (6) complete parenting classes, (7) complete the NOVA program, complying with its recommendations, and (8) obtain suitable housing and demonstrate that he could meet the child's financial, medical, and emotional needs. On 23 July 2004, DSS filed a petition to terminate respondent's parental rights, alleging, *inter alia*, that respondent failed to comply sufficiently with his case plan by not completing substance abuse or domestic violence treatment and by proving unable to secure appropriate housing and employment. In an order entered 29 April 2005 the trial court concluded that respondent had willfully left Jr. in a placement outside the home for more than twelve months without showing reasonable progress in the correction of the conditions which led to the removal of the child. As a result, the court ordered that respondent's parental rights be terminated. It is from this order that respondent appeals.

The standard of review is well-estabished:

> When reviewing an appeal from an order terminating parental rights, our standard of review is whether: (1) there is clear, cogent, and convincing evidence to support the district court's findings of fact; and (2) the findings of fact support the conclusions of law. Clear, cogent, and convincing evidence is greater than the preponderance of the

> evidence standard required in most civil cases, but not as stringent as the requirement of proof beyond a reasonable doubt required in criminal cases. If the decision is supported by such evidence, the district court's findings are binding on appeal even if there is evidence to the contrary.

In re A.D.L. J.S.L., C.L.L., 169 N.C. App. 701, 710, 612 S.E.2d 639, 645 (2005) (citations and quotations omitted).

Respondent first contends that the trial court erred by finding as fact that his housing situation has been unstable. This assignment of error is without merit. With respect to this finding, there was "clear, cogent, and convincing evidence to support the district court's findings of fact." *Id.* Respondent seeks to demonstrate the stability of his housing via his and his fiancée's testimony that he had been staying with his fiancée since November 2003. Respondent argues that the trial court, ignoring this testimony, based its finding on the testimony of Felicia Brown, respondent's former case worker. Ms. Brown testified that respondent moved three times in the thirteen-month span in which she worked with him. Respondent now claims that because she had not been his caseworker for at least eight months prior to the hearing, Ms. Brown's information was stale. He also notes that his then-current case worker, Leslie Burros, gave no information as to his housing situation. Respondent chooses to ignore, however, Ms. Burros's testimony to the effect that she did not know where he was living. Indeed, when Ms. Burros requested a specific address at which he could be reached he had been unable to provide one to her, instead coming to her office to be served with his paperwork.

Likewise, in his own testimony respondent acknowledged that he continued to receive mail at a prior address, that he had recently spent the night at that address, and that his name was not on the lease of his fiancée's apartment, despite his having discussed the option with his fiancée. He also acknowledged that he was entirely dependent on his fiancée for all of his housing expenses. Under these circumstances, the trial court had "clear, cogent, and convincing evidence to support [its] findings of fact." *Id.* Because this finding is so supported, respondent's evidence to the contrary is of no help to him. *See id.*

Respondent next assigns error to the trial court's conclusion that respondent neglected Jr., arguing that this conclusion is not supported by clear, cogent, and convincing evidence. Neglect is one ground upon which parental rights may be terminated. N.C. Gen. Stat. § 7B-1111(a)(1) (2005). "The juvenile shall be deemed . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-101." *Id.* Section 7B-101(15) defines "neglected juvenile," in pertinent part, as "[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent . . . ." N.C. Gen. Stat. § 7B-101(15) (2005). "This Court has additionally 'required that there be some physical, mental, or emotional impairment of the juvenile *or a substantial risk of such impairment* as a consequence of the failure to provide "proper care, supervision, or discipline"' in order to adjudicate a juvenile neglected." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (quoting

In re Safriet, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993)). Respondent makes much of the trial court's findings that he had completed parenting classes, was engaged in substance abuse treatment, and visited regularly with the child. Respondent quotes this Court in *In re Phifer* to support his assertion that a finding of substance abuse, standing alone, "without proof of adverse impact upon the child, is not a sufficient basis for an adjudication of termination of parental rights for neglect." *In re Phifer*, 67 N.C. App. 16, 25, 312 S.E.2d 684, 689 (1984).

Here, however, there were multiple other findings that, in combination with his substance abuse problems, allow for a conclusion of neglect. Though respondent notes it only briefly, he was at the time of the hearing enrolled in substance abuse classes for the second time, having been discharged for positive drug use and rules violations on his first attempt. As a result of the delay caused by his initial failure to successfully complete the SAIL program, respondent was unable to participate in the NOVA program as prescribed by his case plan. Respondent attempts to characterize his renewed efforts at treating his substance abuse problems as a significant step towards "removing the impediment to participation in [the] domestic violence program." While his efforts are indeed laudable, they do not relieve him of the responsibility to take the steps outlined in his case plan. His case plan instructed him to complete a substance abuse program and participate in a domestic violence program; his failure to

accomplish the former promptly does not exempt him from his obligation to perform the latter in a timely manner.

Moreover, the trial court found that the evidence did not support respondent's contention that he was unable to work due to his disability. Throughout the proceedings, respondent was waiting to hear about a disability claim; at no point does it appear from the record that he sought employment. Respondent essentially concedes this point; he argues only that without the "improper findings" regarding the domestic violence program and housing, the finding of respondent's failure to secure employment is insufficient to find neglect. Because we hold that the findings concerning housing and the domestic violence treatment were proper, we need not further address respondent's lack of employment. Respondent suggests that were he a woman, the employment issue would be moot. Yet he admits that he can find no case law to support his contention that the system itself is sexist. Moreover, respondent's argument misses the underlying point: this matter is about Jr.'s situation, not respondent's. Lacking any visible means of income or support, or a formal relationship with his fiancée that would provide for such, respondent is simply unable to show how he would provide "proper care" to the child.

Finally, as noted above, the court found that respondent's housing situation remained unstable. "The inability to maintain secure living arrangements is relevant to a determination of whether there is a substantial risk of injury to the juvenile." *In*

re Helms, 127 N.C. App. at 511, 491 S.E.2d at 676 (citation omitted).

Based on the foregoing, we hold that there was clear, cogent, and convincing evidence to form the basis of the trial court's conclusion that respondent neglected Jr. Because respondent failed to participate in the domestic violence program, to obtain and maintain employment, and to obtain and maintain appropriate housing, the trial court acted properly in finding "a substantial risk of . . . impairment as a consequence of the failure to provide 'proper care, supervision, or discipline.'" *Id.* (citation, quotation, and emphasis omitted).

Having found a legitimate basis for the trial court's termination of respondent's parental rights, we need not address respondent's additional assignment of error concerning another ground for termination. "The finding of any one of the grounds is sufficient to order termination." *In re C.L.C., K.T.R., A.M.R., E.A.R.*, 171 N.C. App. 438, 447, 615 S.E.2d 704, 709 (2005) (quoting *Owenby v. Young*, 357 N.C. 142, 145, 579 S.E.2d 264, 267 (2003)).

Finally, respondent argues that the trial court abused its discretion by holding that the child's best interests were served by terminating respondent's rights. As respondent notes, "After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen.

Stat. § 7B-1110(a) (2005).[1] Even "upon a finding that grounds exist to authorize termination, the trial court is never required to terminate parental rights under any circumstances, but is merely given the discretion to do so." *Bost v. Van Nortwick*, 117 N.C. App. 1, 7, 449 S.E.2d 911, 914 (1994) (quoting *In re Tyson*, 76 N.C. App. 411, 419, 333 S.E.2d 554, 559 (1985)). "The trial court has discretion to terminate parental rights if it finds termination would be in the best interest of the juvenile. The standard for appellate review of the trial court's decision to terminate parental rights is abuse of discretion." *In re M.N.C.*, ___ N.C. App. ___, ___, 625 S.E.2d 627, 633 (2006) (citations omitted).

It appears here that there was no abuse of discretion. Based on its findings that Jr. was neglected, that respondent had failed to follow his case plan, and, perhaps most importantly, that respondent had failed to show that he was capable of obtaining or maintaining appropriate housing or employment, the trial court had adequate grounds for determining that termination was in the child's best interest. Moreover, the child's situation following the adjudication is well settled: Jr. will be adopted by his aunt, who has been his caretaker since birth, and with whom the record indicates he is safe and happy. Respondent's recitation of the

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[1]We note that appellee's arguments would be more persuasive if they relied on a current version of the statute. Appellee's contention that the trial court *must* terminate unless it finds that the best interests of the child dictate otherwise, while perhaps true under the version of the statute on which appellee relies, is now certainly incorrect.

facts concerning his relationship with his son are not enough to convince this Court that there was an abuse of discretion.

Affirmed.

Judges McGEE and BRYANT concur.

Report per Rule 30(e).