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NO. COA05-1556

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

IN RE: S.T.C.

Pasquotank County
No. 04 J 71

Respondent mother appeals from order entered 8 June 2005 by Judge C. Christopher Bean in the District Court in Pasquotank County. Heard in the Court of Appeals 8 June 2006.

The Twiford Law Firm, P.C., by H. P. Williams, Jr., for petitioner-appellee Pasquotank County Department of Social Services.

Womble Carlyle Sandridge & Rice, P.L.L.C., by Lewis S. Rowell, for petitioner-appellee Guardian ad Litem.

Annick Lenoir-Peek, for respondent-appellant.

HUDSON, Judge.

In October 2004, the Pasquotank County Department of Social Services ("DSS") filed a petition to terminate respondent mother's parental rights as to minor child S.T.C. The trial court held a hearing on 9 May 2005 and entered its order on 8 June 2005. Respondent appeals. We affirm the trial court's order.

The record shows that the court adjudicated S.T.C. neglected and dependent in March 2002, because respondent had a history of alcohol abuse and would not participate in treatment. DSS initially became involved with S.T.C. because of its involvement

with S.T.C.'s older sister. Following the adjudication, S.T.C. remained in respondent's custody until April 2003.

In June 2002, shortly after the initial adjudication, DSS received a report that respondent was intoxicated and yelled at and spanked S.T.C.'s sibling. In March 2003, DSS filed a 30-day juvenile petition, based on information that respondent continued to consume alcohol to the point of intoxication. She told a DSS worker that a 28-day inpatient treatment program would not help her addiction, but would only "dry her out" for 28 days. She admitted to abusing alcohol for over half of her life. In April 2003, DSS took custody of S.T.C. after respondent was very intoxicated, made threatening phone calls to relatives, and was very aggressive and profane to the DSS worker who came to investigate. On 3 July 2003, S.T.C. was adjudicated neglected and dependent. In April 2004, after respondent completed an inpatient substance abuse program, received ongoing outpatient counseling, and was participating in Alcoholics Anonymous, the court granted unsupervised visits with S.T.C. However, in August 2004, DSS cancelled the visitations due to respondent's inconsistent scheduling, as well as her arrest for Driving While Impaired ("DWI") on 17 May 2004. She was convicted on that charge on 10 September 2004. On 11 August 2004, the court ordered that DSS cease reunification efforts.

Respondent first argues that the trial court committed reversible error in failing to hold the termination hearing within ninety days of the filing of the petition. We disagree. N.C. Gen. Stat. § 7B-1109(a) (2003) provides that a termination hearing be

held "no later than 90 days from the filing of the petition or motion unless the judge pursuant to subsection (d) of this section orders that it be held at a later time." *Id.* Pursuant to subsection (d),

[t]he court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-1109(d) (2003). Here, the initial summons was issued on 12 October 2004, but returned unserved on 13 November 2004. An alias and pluries summons was then issued on 29 November 2004 and served on 30 January 2005. Following service on respondent, a notice of hearing for 25 February 2005 was issued. On 1 March 2005, respondent filed a motion for extension of time of 30 days, in order to prepare and serve responsive pleadings. A second notice of hearing was issued on 22 April 2005 and the court heard the matter on 9 May 2005.

Although this Court has held that a trial court's failure to hold the termination hearing within 90 days of the petitions was reversible error, *In re S.W.*, ___ N.C. App. ___, 625 S.E.2d 594 (2006), we have also held that the delay is not prejudicial error where a respondent contributes to the delay by moving for a continuance. *In re D.J.D.*, 171 N.C. App. 230, 243, 615 S.E.2d 26, 35 (2005). Here, it is undisputed that part of the delay resulted from respondent's request for a continuance. Furthermore, we note that the initial summons was issued on 12 October 2004 and

respondent was not actually served until 30 January 2005, as she could not be located. We overrule this assignment of error.

Respondent also contends that the trial court erred in finding and concluding that grounds existed to terminate her parental rights. The court concluded that the evidence established three statutory grounds to terminate respondent's parental rights: N.C. Gen. Stat. §§ 1111(a)(1), (2), and (6) (2003). In three separate assignments of error, respondent asserts that the court lacked competent evidence to support termination under each of these statutory grounds.

We first address respondent's contention that the trial court erred in concluding that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), for willfully leaving her child in foster care placement for more than twelve months without making reasonable progress in correcting the conditions which led to the removal of the juvenile. *Id.* We note that in her brief, respondent does not bring forth her assignment of error challenging specific findings of fact. Accordingly, we presume that the trial court's findings of facts are supported by competent evidence and these findings become binding on appeal. *Anderson Chevrolet/Olds, Inc. v. Higgins*, 57 N.C. App. 650, 653, 292 S.E.2d 159, 161 (1982); see also, *In re T.L.B.*, 167 N.C. App. 298, 301, 605 S.E.2d 249, 251 (2004). Thus, we must determine only whether the unchallenged findings of fact support the court's legal conclusion that statutory grounds existed to terminate respondent's parental rights.

Here, it is undisputed that S.T.C. had been in foster care for more than 12 months and the court made the following pertinent findings of fact:

31. Since June 2004, [respondent's] commitment to treatment, cooperation and contact with the Pasquotank County Department of Social Services and visitations with [S.T.C.] has decreased. During the August 11, 2004, Permanency planning review hearing, [respondent] admitted, under oath, that she had resumed consuming alcohol. It is unknown when [respondent] began consuming alcohol again; however, she was arrested on May 17, 2004 for Driving While Impaired. This charge was obtained during the time period in which [respondent] was allowed unsupervised visitation with [S.T.C.] and she was transporting [S.T.C.] from Pasquotank County to Beaufort County and back. [S.T.C.] was not in the vehicle with [respondent] at the time of her DWI. She was convicted of this charge at a court hearing held September 16, 2004 in Beaufort, North Carolina . . .

* * *

36. Alcohol addiction/dependency is a chronic, relapsing/reoccurring problem and a long-term commitment must be made to achieve sobriety. Recovery is a life long decision. Although [respondent] has made attempts at recovery by receiving outpatient as well as inpatient substance abuse treatment, she relapsed which continues to be a pattern. There have been indications and admissions from [respondent] that although she has stated she has remained sober for periods of time; she has continued to consume alcohol. Pasquotank County Department of Social Services has been involved with [respondent] and her family since December 1999 as a result of her addiction to alcohol. This agency provided case planning/case management and permanency planning services from December 1999 to June 2002. Five days after having legal custody of her children returned to her care, another child protective services report was received because of [respondent's] consumption of alcohol and the risk of harm to her children.

Again, case planning/case management and permanency planning services were provided from June 2002 until present. With [respondent's] admission to alcohol use after a period of reported sobriety . . . [respondent] was permitted to have unsupervised visits with [S.T.C.] and was permitted to transport from Pasquotank County to Beaufort County for visits. In the five years this agency has been involved with this family, [respondent] has been unable to maintain sobriety and continues to use/abuse alcohol. She admits to abusing alcohol beginning at an early age (14-15 years old). Given the fact that she has been (documented by her history) unable to maintain sobriety for any substantial amount of time, it is highly unlikely that there will be a substantial change in her circumstances. [Respondent] admits she is an alcoholic. She has used alcohol with the three months preceding the hearing.

Thus, we conclude that these findings of fact support the conclusion that respondent had failed to make reasonable progress in correcting the conditions which led to the removal of S.T.C. Respondent also contends that the trial court failed to establish that such failure to make progress was willful. However, the trial court made several findings regarding respondent's failure to follow through on treatment as well as her failure to follow up with DSS in scheduling and attending meetings and visitations. We overrule this assignment of error. Because we conclude that the trial court properly terminated respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2), we need not address her other related assignments of error: "the finding of any one of the grounds is sufficient to order termination." *Owenby v. Young*, 357 N.C. 142, 145, 579 S.E.2d 264, 267 (2003).

Finally, respondent argues that the trial court erred in concluding that termination was in S.T.C.'s best interest. Once the trial court concludes that one or more grounds for termination exists, it "must proceed to the dispositional stage where the best interests of the child are considered." *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). "There, the court shall issue an order terminating the parental rights unless it further determines that the best interests of the child require otherwise." *Id.* (emphasis added). This Court reviews the trial court's decision whether to terminate parental rights for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). Here, given the trial court's findings and conclusions of respondent's chronic alcohol abuse, as well as its determination that S.T.C. was thriving in a foster home with foster parents who wished to adopt, we cannot conclude that the trial court abused its discretion in terminating respondent's parental rights.

Affirmed.

Judges MCCULLOUGH and TYSON concur.

Report per Rule 30(e).