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NO. COA05-1653

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

IN THE MATTER OF:
T.M.B. and K.M.B.,
Minor Children

Haywood County
Nos. 05 J 53,54

Appeal by respondent father and respondent mother from order entered 29 July 2005 by Judge Monica H. Leslie in Haywood County District Court. Heard in the Court of Appeals 11 September 2006.

Ira L. Dove and Mary G. Holliday, for petitioner-appellee Haywood County Department of Social Services.

Hall & Hall Attorneys at Law, P.C., by Douglas L. Hall, for respondent-appellant father.

Carol Ann Bauer, for respondent-appellant mother.

CALABRIA, Judge.

T.M.G. ("respondent mother") and C.W.B. ("respondent father") (collectively known as "respondents") appeal from orders entered terminating their parental rights. We dismiss in part and affirm in part.

On 7 January 2004, the Haywood County Department of Social Services ("DSS") filed a juvenile petition alleging K.M.B. and T.M.B. ("the minor children") were neglected and dependent. The court entered two separate Adjudication Orders. First, the court

entered a "Consent Order on Adjudication," where respondent father consented

that the juveniles are neglected juveniles, as defined by N.C.G.S. 7B-101(15), . . . in that T.B. was not provided proper medical care following involvement in an automobile accident in late December 2003 - early January 2004, and T.B. and K.B. have been in the presence of domestic violence between the Respondent parents.

Since the respondent-mother did not sign the consent order, the court adjudicated the minor children neglected in a second adjudication order dated 4 March 2004. In this order, the court found that respondent mother failed to obtain medical treatment for T.M.B. following an automobile accident in late December 2003 to early January 2004, and further, left the children with their paternal grandmother from March 2003 to May 2003 without making her whereabouts known until she was taken into custody by Jackson County, North Carolina law enforcement. The court further found DSS substantiated neglect of the children on 18 July 2003, when respondent mother disappeared with K.M.B. and left T.M.B. at the home of her paternal great-grandmother without "diapers, baby food, or the child's breathing treatment."

The court entered two Disposition Orders. In the first order, the minor children were placed in the home of their paternal grandmother and respondents were approved for DSS supervised visitation for one hour a week. The court ordered respondent father to submit to random drug screens, complete parenting and anger management classes, obtain drug and alcohol assessments, maintain regular visitation with the minor children, comply with

the terms of his probation, and find suitable housing.

In the second disposition order, the court ordered respondent mother to submit to random drug screens, complete parenting classes and substance abuse assessments, maintain regular visitation with the children, and obtain suitable housing. On 13 April 2004, DSS obtained a nonsecure custody order. On 20 April 2004, the court dissolved the nonsecure custody order and ordered the return of the minor children to their paternal grandmother.

On 13 May 2004, following a 90-day review hearing pursuant to N.C. Gen. Stat. § 7B-908(a), the court removed the minor children from the home of their paternal grandmother as a result of alcohol abuse and an incident of domestic violence related to the dissolution of her marriage. Further, the court determined respondent father failed to attend the 90-day hearing, purchased another person's urine to use for his drug screens, failed to provide information to DSS regarding his participation in anger management classes or substance abuse treatment, engaged in unauthorized visits with the minor children at his mother's residence, and failed to attend his authorized visitations at DSS. The court also determined respondent mother had complied with her drug screens and consistently visited the minor children since 7 April 2004, but had not located stable housing. The court ordered that DSS maintain custody of the minor children. On 12 May 2004, DSS placed the minor children in foster care in Haywood County. On 1 June 2004, the minor children were moved to a foster home in McDowell County.

On 26 August 2004, after a six-month review, the court found the minor children were "doing very well" in their foster placement but that T.B. required specialized medical treatment for encopresis. For respondent father, the court found he had not visited with the minor children since 24 May 2004, had been incarcerated since mid-June 2004, and had not provided DSS any letters for the minor children. For respondent mother, the court found she had tested positive on three separate occasions for marijuana, methamphetamine, and cocaine and announced in July of 2004 that she would no longer submit to drug screens. Later, respondent mother agreed to resume drug screens, but failed to follow several other requirements. She failed to follow up with drug treatment, missed several appointments with a therapist, lacked stable housing, and failed to earn an income. Although respondent mother attended visits with the minor children, she upset T.B. at the conclusion of her visitations "by not letting go of the child and promising that T.B. will be home soon."

A permanency planning review was held on 14 January 2005. The court found respondent-father was "currently incarcerated and w[ould] remain incarcerated for a period of approximately [1] year" and had not visited the children since May of 2004. The court also found respondent mother's whereabouts were unknown, that she failed to visit her daughters since August of 2004, and had not requested any further visitation since that time. As a result, the court relieved DSS of further reunification efforts, changed the minor children's permanent plan to adoption, and ordered DSS to seek

termination of respondents' parental rights.

On 29 July 2005, the court entered a termination of parental rights order pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) (neglect); (a)(2) (juvenile in foster care for 12 months and little progress made to correct conditions which led to removal); (a)(3) (cost of care); and (a)(7) (willful abandonment) and concluded based on clear, cogent, and convincing evidence, grounds existed to terminate respondents' parental rights. The trial court also ordered, pursuant to N.C. Gen. Stat. § 7B-1110(a), that it was in the best interests of the minor children to terminate the parental rights of respondents. Respondents appeal.

I. Respondent Father's Appeal:

Respondent father argues the trial court erred in terminating his parental rights. However, respondent father's brief to this Court violates North Carolina Rule of Appellate Procedure 28(b)(6). First, the arguments raised in his brief lack any "reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal." N.C. R. App. P. 28(b)(6) (2006). Second, the brief lacks "a concise statement of the applicable standard(s) of review for each question presented, which shall appear either at the beginning of the discussion of each question presented or under a separate heading placed before the beginning of the discussion of all the questions presented." *Id.* Our Supreme Court amended Rule 28(b)(6) to include this requirement effective 1 September 2005. Respondent father filed his brief to this Court on 10 April 2006,

after the effective date. Thus, respondent father's failure to include an applicable standard of review also subjects his appeal to dismissal. See *State v. Summers*, __ N.C. App. __, __, 629 S.E.2d 902, 908 (2006) (stating "[s]ince defendant failed to brief the applicable standard of review, we do not address this assignment of error.") Respondent father failed to comply with North Carolina Rule of Appellate Procedure 28(b)(6) and therefore, all of his assignments of error are dismissed.

II. Respondent Mother's Appeal:

Respondent mother contends the court abused its discretion in concluding that termination of her parental rights was in the best interests of the children. We disagree.

First, we must address respondent-mother's petition for writ of certiorari as an alternative ground for appellate review. Respondent mother acknowledges her trial counsel filed a notice of appeal after the court announced its decision to terminate her parental rights, but nineteen days before the court entered adjudication and disposition orders. See N.C. Gen. Stat. § 7B-1001(b) (2005); N.C. R. App. P. 3 (2005). Since the rulings rendered by the judge in open court were clearly final and thus subject to appeal under N.C. Gen. Stat. § 7B-1001(a)(6), we shall deem timely the notice of appeal filed by respondent mother prior to entry of the court's written order. See *Stachlowski v. Stach*, 328 N.C. 276, 278-79, 401 S.E.2d 638, 640 (1991) (stating "the rendering of judgment establishes the point from which a party may appeal under Rule 3, and the entry of judgment marks the beginning

of the period during which a party *must* file written notice of appeal.”) (emphasis added). Accordingly, we dismiss her petition for writ of certiorari as moot.

Termination of parental rights is a two-stage process, consisting of (1) an adjudication of the existence or nonexistence of grounds for termination under N.C. Gen. Stat. § 7B-1111, and (2) a disposition based on this determination. See N.C. Gen. Stat. §§ 7B-1109, 1110 (2005). At the adjudication stage, the court must determine whether the petitioner has adduced “clear, cogent and convincing evidence of grounds for termination.” N.C. Gen. Stat. § 7B-1109(f) (2005). “Once one or more of the grounds for termination are established, the trial court must proceed to the dispositional stage where the best interests of the child are considered.” *In re Locklear*, 151 N.C. App. 573, 575, 566 S.E.2d 165, 166 (2002). In choosing a disposition under N.C. Gen. Stat. § 7B-1110, the court must terminate a respondent’s parental rights unless it determines that termination would be contrary to the child’s best interest. See N.C. Gen. Stat. § 7B-1110(b) (2005). The decision to terminate parental rights is discretionary and “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. __, __, 623 S.E.2d 45, 51 (2005).

In the instant case, respondent mother conceded she offered no evidence at the termination hearing, but her concern is that the court’s decision will leave the children without any tie to their biological parents. She also noted one of the witnesses testified

that the children displayed a bond with her during visitations, and that T.B. might have difficulty bonding with a foster family. However, though respondent mother appropriately assigned error in the record on appeal, she failed to present an argument in her brief to this Court regarding any of the four grounds for termination found by the trial court, including neglect, willful abandonment, willful failure to pay cost of care, and willfully leaving the minor children in foster care. Consequently, pursuant to N.C. R. App. P. 28(b)(6), these potential arguments are abandoned. Therefore, any of the four grounds cited by the trial court, and not contested by respondent mother, are valid means through which her parental rights may be terminated. See N.C. Gen. Stat. § 7B-1111 (2005). Here, respondent mother argues the trial court erred in terminating her parental rights. However, her failure to present any argument against the four statutorily cited reasons supporting the trial court's decision to terminate her parental rights, renders her lone argument moot.

Additionally, respondent mother failed to assign error to any of the findings of fact at either the adjudication or disposition orders. "'Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.'" *In re L.A.B.*, __ N.C. App. __, __, __ S.E.2d __, __ (July 5, 2006) (No. 05-1316) (quoting *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)). These uncontested findings established her ongoing substance abuse and non-compliance with her case plan, her lack of cooperation with

DSS, and her failure to visit the children after August of 2004 -- more than seven months prior to the filing of the termination petition. The trial court found respondent parents' conduct reflected that they would "not promote the children's healthy and orderly physical and emotional well being[,]" and that their neglect of the children was likely to recur. The court described the children's progress in foster care and cited expert opinion regarding T.B.'s need for specialized medical and mental health treatment, "parenting by persons not involved with substance abuse[,]" and placement in a two-parent home without domestic violence. Finally, the court found that the children "are in need of a permanent plan of care at the earliest age possible which can be obtained only by the severing of the relationship between the juveniles and the [r]espondent parents." For all the above reasons, the trial court did not abuse its discretion in concluding that terminating respondent mother's rights served the best interests of the children. This assignment of error is overruled.

Orders affirmed in part and dismissed in part; petition for writ of certiorari dismissed.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).