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NO. COA05-1671

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

IN THE MATTER OF M.G.M.

Sampson County
No. 02 J 73

Appeal by respondent from order entered 11 May 2005 by Judge William M. Cameron, III, in Sampson County District Court. Heard in the Court of Appeals 16 August 2006.

Philip E. Williams for petitioner-appellee Sudie R.

The Turrentine Law Group, PLLC, by Karlene Scott-Turrentine, for respondent-appellant Manuel M.

Isaac Cortes, Jr., for Guardian ad Litem.

CALABRIA, Judge.

Manuel M. ("respondent") appeals from an order of the trial court, terminating his parental rights to M.G.M. ("the minor child"). We vacate the order and remand to the trial court.

Respondent and Sheena W. ("Sheena W.") are the biological parents of the minor child. At the time of the minor child's conception, respondent and Sheena W. were teenagers, and shortly after the minor child's birth in September 2000, respondent was convicted of forgery, larceny, and disorderly conduct. Based on these convictions, respondent was incarcerated from 13 December 2000 until 1 February 2003, and it is undisputed that since the

birth of the minor child, Sudie R. ("petitioner"), the minor child's maternal grandmother, has provided primary care for him.

In a 24 April 2001 order, Sheena W. transferred her custodial rights to petitioner. In an 8 May 2001 order of the Johnston County District Court, petitioner was granted exclusive care, custody, and control of the minor child, and respondent's contact with the minor child was limited to "terms and conditions . . . dictated by [petitioner]." Respondent never sought to modify the order.

Sheena W. executed a consent to the adoption of the minor child by petitioner. Since respondent refused to consent to adoption, petitioner filed a petition to terminate respondent's parental rights on 8 October 2002. Petitioner voluntarily dismissed the petition on 1 May 2003 and then refiled her petition on 19 February 2004 in Sampson County District Court. The petition alleged grounds existed to terminate respondent's parental rights based on neglect, willfully leaving the minor child in placement outside the home for more than twelve months, and willfully abandoning the minor child for at least six consecutive months. The Sampson County District Court subsequently heard this matter and made, *inter alia*, the following findings of fact:

9. Between the birth of the child . . . and the incarceration of [respondent] on December 13, 2000 [respondent]:
 - A. Neglected the welfare of the minor child by not providing proper care or supervision for the child;
 - B. Consumed illegal drugs;
 - C. Committed illegal acts;
 - D. Failed to provide financial support for the minor child;

E. Failed to provide care for the minor child; and

F. Failed to have regular contact with the minor child.

G. This constitutes a statutory ground for termination of parental rights and has been proven by clear and convincing evidence.

10. The court fails to find that any other grounds for termination have been proven by clear and convincing evidence.

11. The petitioner is the maternal grandmother of the child, and the child has resided in the petitioner's home since birth.

12. The petitioner has consistently provided the child with a loving, appropriate home environment.

13. The petitioner and her husband have acted in the role of mother and father throughout the life of the child, and they are the only parental figures known by the child.

14. [Respondent] was incarcerated from December 13, 2000 until February 1, 2003.

. . .

16. [Respondent] did not see the child from June, 2001 until he was released from jail on February 1, 2003.

17. The petitioner obtained legal custody of the minor child pursuant to a Johnston County court order dated May 8, 2001.

A. Said order provided contact between the child and [respondent] "only in the sole discretion of [petitioner] and according to such terms and conditions as are dictated by [petitioner]."

B. In awarding custody to the petitioner, the court's findings included the following: "that [respondent] had an extensive criminal record and was then incarcerated; that prior to going to jail [respondent] had little contact with the child and provided no financial support; that [respondent] had a history of illegal drug use; that [respondent's] actions constituted neglect of the minor child; that [respondent] was an unfit parent and was unsuitable to have custody of his child; and

that [respondent] had forfeited his constitutionally protected status as a parent by acting in a manner inconsistent with his parental rights and duties."

18. Subsequent to his release from prison, [respondent] has made significant progress in stabilizing and improving his own life.

A. He has not resumed use of illegal drugs or involvement in criminal activity;

B. He has worked hard to maintain employment, at times holding two jobs at one time, and is considered a good employee by his employer; and

C. He has married, and although he is currently separated from his wife, is working to resolve problems with his spouse.

19. Visits between [respondent] and [the minor child] after his release from incarceration on February 1, 2003 have typically lasted an hour or so, and have occurred on a sporadic basis, often ending with an argument or disagreement between [respondent] and petitioner.

. . .

21. The frequency of the disputes with petitioner has caused [respondent] to visit with the minor child less, sometimes with several months passing between visits.

. . .

26. [Respondent] has allowed the disagreements between himself and the petitioner to continue without resolution, not only failing to take affirmative legal action to expand his relationship with [the minor child], but also acquiescing to a belief that he should see the child less in order to minimize conflict with the petitioner.

27. The effect of [respondent's] inaction has been to maintain his role in the child's life as one of irrelevance and unimportance.

28. Rather than developing a relationship with the child over the last two years that is beneficial and meaningful to the child, his contact with the child, at best, has been of little value to the child's best interests,

and at worst, has been in the nature of a disturbance to the normal routine of the child.

. . .

30. [Respondent's] failure to take meaningful action as described above has continued over an extended period of time, over two years having passed since his release from prison, and raises the concern as to whether he has sufficient ability or desire to ever make meaningful progress with his son in the future.

Based on these and related findings of fact, the trial court concluded in the adjudicatory phase that grounds existed to terminate respondent's parental rights based on neglect. See N.C. Gen. Stat. § 7B-1111(a) (1) (2005). At the dispositional phase, the trial court determined termination of respondent's parental rights was in the best interests of the minor child. See N.C. Gen. Stat. § 7B-1110 (2005). From the order terminating his parental rights, respondent appeals.

We initially address respondent's argument that the trial court erred by failing to bifurcate the proceeding into both an adjudicatory and dispositional phase. Termination of parental rights is a two-phase process comprised of the adjudicatory phase and the dispositional phase. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). In the adjudicatory phase, the trial court determines if the petitioner has proven one or more grounds for termination of parental rights by clear and convincing evidence. N.C. Gen. Stat. § 7B-1111 (2005). See also *In re Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908. If the petitioner meets the burden of proving that one or more statutory

grounds for termination exists, the trial court then moves to the dispositional phase where it must consider if termination is in the child's best interests. N.C. Gen. Stat. § 7B-1110 (2005). See also *In re Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908.

This Court has held that a trial court does not err in conducting both the adjudicatory and the dispositional stages in the same hearing as long as the trial court applies the appropriate legal standards. *In re White*, 81 N.C. App. 82, 85, 344 S.E.2d 36, 38 (1986). In the case *sub judice*, during the adjudicatory phase, the trial court specifically stated that its findings were based on clear, cogent, and convincing evidence. Then, during the dispositional phase, the trial court determined that termination of respondent's parental rights was in the minor child's best interests. Accordingly, the trial court applied the appropriate legal standards in each phase of the hearing, and this assignment of error is without merit.

Respondent next argues that the trial court erred by concluding that neglect existed based *solely* on respondent's actions between the birth of the minor child and respondent's incarceration on 13 December 2000. Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2005), one basis for termination of parental rights is upon a determination that "[t]he parent has . . . neglected the juvenile." A parent has neglected the juvenile if the trial court finds the juvenile is a "neglected juvenile" within the meaning of G.S. 7B-101(15) (2005). N.C. Gen. Stat. § 7B-1111(a)(1). North

Carolina General Statutes § 7B-101(15) defines a "neglected juvenile" as:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. . . .

Id. In interpreting this statute, we have held, "[d]uring a proceeding to terminate parental rights, the trial court must admit and consider evidence, find facts, make conclusions and resolve the ultimate issue of whether neglect authorizing termination of parental rights under [N.C. Gen. Stat. § 7B-1111 (a)(1)] and [N.C. Gen. Stat. § 7B-101 (15)] is present at that time." *In re Beasley*, 147 N.C. App. 399, 404, 555 S.E.2d 643, 647 (2001) (citations omitted) (emphasis added).

In this case, the trial court concluded,

2. Between the birth of the child . . . and the incarceration of [respondent] on December 13, 2000 the father neglected the welfare of his minor child by not providing proper care or supervision for the child. During said period of time, [respondent] consumed illegal drugs, committed illegal acts, failed to provide financial support [to] the minor child, failed to provide care for the minor child, and failed to have regular contact with the minor child. This constitutes a statutory ground for termination of parental rights and has been proven by clear and convincing evidence, pursuant to North Carolina General Statute 7B-1111 (a)(1), et. seq.

This Court considers challenged conclusions of law *de novo*. *In re K.D.L.*, __ N.C. App. __, __, 627 S.E.2d 221, 222 (2006) (citation

omitted). Upon a *de novo* review of this conclusion of law, we hold that the conclusion relates solely to a time period in the past and fails to resolve the ultimate issue of whether neglect was present at the time of the hearing. See *In re Beasley*, 147 N.C. App. at 404, 55 S.E.2d at 647. Thus, because the trial court's conclusion is insufficient to establish that a statutory ground for termination of parental rights exists under N.C. Gen. Stat. § 7B-1111, we vacate the order and remand to the trial court to determine the ultimate issue: whether neglect existed at the time of the hearing.

Since we have remanded this matter to the trial court for a new order, we need not address respondent's other arguments on appeal.

Vacated and remanded.

Judges GEER and JACKSON concur.

Report per Rule 30(e).