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NO. COA05-704

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

IN THE MATTER OF J.W.

Mecklenburg County  
No. 2004 J 235

Appeal via petition for writ of *certiorari* by respondent-mother from order entered 25 October 2004 by Judge Louis A. Trosch, Jr., in Mecklenburg County District Court. Heard in the Court of Appeals 25 January 2006.

*Mecklenburg County Attorney's Office, by Twyla Hollingsworth George, for petitioner appellee; and Emily B. Uhler-Lewis, for the Guardian ad Litem.*

*Winifred H. Dillon for respondent-mother appellant.*

McCULLOUGH, Judge.

Respondent-mother seeks review of a district court order terminating her parental rights as to the minor child J.W. We grant her petition for review and affirm the district court's order.

#### Facts

The minor child J.W. was born to respondent-mother on 16 October 2003. J.W. was born prematurely, weighed less than four pounds upon delivery, and tested positive for cocaine. J.W. remained in the hospital for six weeks following his birth.

On 27 October 2003, a social worker with Mecklenburg County Youth and Family Services ("YFS") met with the parents of the child. During this meeting, respondent-mother admitted to having a six-year crack cocaine habit. She was also serving a term of criminal probation. Respondent-mother agreed to begin a substance abuse treatment program.

Respondent-mother failed to subsequently complete a substance abuse program. Further, she made infrequent and sporadic attempts to visit with J.W. during his six-week stay in the hospital, and YFS experienced difficulty contacting her and confirming her whereabouts. In addition, respondent-mother failed to complete the requisite paperwork to obtain financial assistance from YFS. Accordingly, on 2 December 2003, J.W. was placed in the non-secure custody of YFS.

At a dispositional hearing conducted 19 February 2004, the evidence tended to show that respondent-mother was arrested on 18 January 2004. She admitted that she had been "hiding out" while J.W. was in the hospital in an effort to avoid incarceration. Respondent-mother informed the court that she could be facing a twelve-month active sentence. There was also evidence that respondent-mother had not maintained contact with YFS and had not inquired about the welfare of the child. The trial court entered an order making adoption the permanent plan for J.W. and directed YFS to file a petition to terminate respondent-mother's parental rights within sixty days. YFS filed a petition to terminate parental rights in March of 2004.

During a hearing held in August and September of 2004, respondent-mother testified that she had a "lifestyle" that involved "drug addiction," "criminal behavior," and stealing from family members. At a subsequent termination hearing, the evidence tended to show that J.W. continued to need considerable medical care due to conditions resulting from his premature, drug-positive birth. Further, the evidence tended to show that respondent-mother was not in a position to meet J.W.'s extensive medical needs and that she had not even inquired about J.W.'s health between December of 2003 and October of 2004.

On 25 October 2004, the trial court entered an order terminating respondent-mother's parental rights as to J.W. Specifically, the court concluded that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) because respondent-mother had neglected J.W. and there was a high probability that such neglect would continue in the future. The court also determined that J.W.'s best interests would be served by a termination of respondent-mother's parental rights.

Respondent-mother's Petition for Review

Respondent-mother failed to file a timely notice of appeal following entry of the order terminating her parental rights. The statute which was applicable at the time that respondent-mother filed her notice of appeal, N.C. Gen. Stat. § 7B-1113, *repealed by* 2005 N.C. Sess. Laws ch. 398, §§ 18, 19 (effective Oct. 1, 2005 and applicable to actions filed thereafter), required a parent to give written notice of appeal within ten days after entry of the order

terminating her parental rights. Respondent-mother failed to file her notice of appeal within ten days after entry of the termination order which she seeks to challenge. Accordingly, her appeal is improper.

However, respondent-mother has filed with this Court a petition for a writ of *certiorari* in which she seeks review of the arguments set forth in her appellate brief. Rule 21(a)(1) of the North Carolina Rules of Appellate Procedure permits this Court to issue a writ of *certiorari* to review an order "when the right to prosecute an appeal has been lost by failure to take timely action." Pursuant to our authority under this Rule, we grant respondent-mother's petition for a writ of *certiorari* and review the order terminating her parental rights.

#### Discussion of Issues

##### I.

The first issue for our consideration is whether the trial court erred by concluding that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) because respondent-mother had neglected J.W. and there was a high probability that such neglect would continue in the future. We discern no error in this conclusion.

This Court reviews an order terminating parental rights for whether the findings of fact are supported by clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental rights should be terminated for one of the grounds set forth in N.C. Gen. Stat. § 7B-1111(a) (2005). *In re*

*Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), a parent's rights to a child may be terminated if "[t]he parent has . . . neglected the juvenile. The juvenile shall be deemed to be . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of [N.C. Gen. Stat. §] 7B-101." N.C. Gen. Stat. § 7B-101(15) (2005) 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.

In previous decisions, this Court has upheld a determination of neglect where the parent infrequently corresponded with the person taking care of the child and failed to inquire as to the well being of the child. *In re Bradshaw*, 160 N.C. App. 677, 682, 587 S.E.2d 83, 86 (2003).

In the instant case, the evidence tended to show that respondent-mother was unable to care for J.W. because of a substance abuse problem and a pattern of criminal behavior and that, notwithstanding the child's serious medical problems, respondent-mother failed to maintain regular correspondence with YFS and failed to make inquiries concerning the welfare of the child. Further, given respondent-mother's failure to complete substance abuse treatment and her continuing inability to provide for the needs of the child, the evidence established that she was

likely to continue to neglect J.W. in the future. The trial court's findings to this effect, and the court's resulting conclusion that grounds existed to terminate respondent-mother's parental rights because of her neglect of J.W., must be affirmed.

II.

Respondent-mother also raises an issue as to whether the trial court erred by determining that J.W.'s best interests would be served by a termination of parental rights. Respondent-mother's contention in this regard lacks merit.

If a trial court determines that grounds to terminate parental rights exist, "the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated." N.C. Gen. Stat. § 7B-1110(a) (2003), *amended by* 2005 N.C. Sess. Laws ch. 398, § 17 (effective Oct. 1, 2005 and applicable to actions filed thereafter). "The trial court's decision to terminate parental rights, if based upon a finding of one or more of the statutory grounds supported by evidence in the record, is reviewed on an abuse of discretion standard." *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 174, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001).

Given the facts and circumstances of the instant case, we discern no abuse of discretion in the trial court's determination that the best interests of J.W. would be served by terminating

respondent-mother's parental rights. The trial court's decision in this regard therefore must be affirmed.

III.

The foregoing discussion makes it unnecessary for this Court to address respondent-mother's remaining argument on appeal. The trial court's order is

Affirmed.

Judges ELMORE and LEVINSON concur.

Report per Rule 30(e).