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NO. COA05-709

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2006

IN THE MATTER OF:

Zo. M; Za. M; & Jo. M	Orange County Nos. 00 J 92; 01 J 83; 03 J 1

Appeal by respondent-mother from orders entered 17 December 2004 by Judge Joseph Moody Buckner in Orange County District Court. Heard in the Court of Appeals 7 February 2006.

Northern Blue, L.L.P., by Carol J. Holcomb and Samantha H. Cabe, for Orange County Department of Social Services, petitioner-appellee.

Womble Carlyle Sandridge & Rice, PLLC, by John J. Bowers, for Guardian ad Litem, petitioner-appellee.

Sofie W. Hosford, for respondent-mother-appellant.

JACKSON, Judge.

Respondent appeals from orders entered 17 December 2004 terminating her parental rights to three of her four children.

The instant case marks the third proceeding to terminate respondent's parental rights to one or all of the children at issue in this action. In the first proceeding resulting in the termination of respondent's parental rights to her child Zo. M., the termination order was vacated by this Court for lack of subject

matter jurisdiction by *In re McKinney*, 158 N.C. App. 441, 581 S.E.2d 793 (2003). In the second proceeding which resulted in the termination of respondent's parental rights to Za. M., the order of termination was set aside by the district court due to the fact that a guardian ad litem had not been appointed for respondent.

The instant cases were initiated by the filing of Motions in the Cause for Termination of Parental Rights 20 October 2003 regarding Zo. M. and Za. M. and the filing of a Motion in the Cause for Termination of Parental Rights 5 January 2004 with regard to Jo. M. All three of the motions alleged that respondent was incapable of providing the proper care and supervision of each child in question and that she willfully had left the children in foster care for more than twelve months without showing reasonable progress within those twelve months to correct the problems that led to the placement of the children in foster care.

A licensed attorney was appointed guardian ad litem for respondent 29 May 2003. A pre-trial conference was held, in which counsel for all parties, respondent, respondent's guardian ad litem, and the children's guardian ad litem all appeared. The trial court entered a pre-trial order enumerating the agreements and stipulations entered into at the conference. These stipulations included, *inter alia*, that the hearings on all of the motions for termination would be consolidated and that testimony of, and reports submitted by, Dr. Clyde Evely, Dr. David Ziff, and Ms. Bonnie Ferrell in the previous termination proceedings were admissible in the instant action and that the testimony and reports

were not prejudicial to respondent. The order also noted that respondent's attorney was unable to agree to the stipulations as respondent had not given him the authority to either agree or disagree. The trial court also denied respondent's attorney's request to withdraw as counsel in that order.

In addition to the testimony and reports from the earlier proceedings, petitioner presented the testimony of Dr. Helen Brantley ("Dr. Brantley"). Dr. Brantley was offered and admitted as an expert in the area of forensic psychology with respect to parental competency evaluations and custody evaluations. Dr. Brantley gave her opinion that, based upon the parental competency evaluation that she conducted on respondent, she could not see how respondent could parent her children competently. Petitioner also submitted Dr. Brantley's report of her evaluation of respondent into evidence.

Based upon the testimony and reports in the prior proceedings and the testimony of Dr. Brantley, the trial court made, *inter alia*, the following findings of fact:

> 18. Dr. Ziff's report, which was admitted in to evidence without objection, indicates that [respondent's] "prognosis as an effective parent in the future is poor . . . I do not believe that we in the mental health [sic] field have found an effective treatment for her condition and, regrettably, I expect her problems to persist indefinitely." Based, in part, upon that testimony, this Court finds that Respondent's mental illness and her personality disorders are not treatable, and will render her incapable of providing for the proper care and supervision of the minor child for the foreseeable future.

> 19. Ms. Bonnie Ferrell, a parenting instructor, worked with [respondent] from September to November of 2000. Ms. Ferrell, who taught [respondent] in a parenting class during that time, decided that [respondent] was unable to attend the class due to her aggressive outbursts and inability to participate in a group. After outlining examples of [respondent's] complete failure to participate either in the parenting group or in individual parenting classes, Ms. Ferrell offered the opinion that [respondent] is not capable of parenting a child and cannot learn how to parent a child and the Court so finds.
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> 21. Based on Dr. Brantley's testimony and her written report, the Court finds that [respondent] suffers from the following diagnosis: Axis I, Panic Disorder with Agoraphobia, Substance Abuse and Depressive Disorder, NOS; Axis II, Borderline Personality Disorder; Axis III, Obesity, Multiple Sclerosis, Asthma and Axis IV, loss of her child, marital stress, and health and financial concerns. Dr. Brantley concluded, based upon her expertise, the test she completed, the interviews she conducted, the collateral contacts she made and the records she reviewed, that [respondent] does not have the capacity to parent and the Court so finds.
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> 36. The Petitioner has proved by clear, cogent and convincing evidence that the criteria exists to terminate the parental rights of [respondent] and that it is in the best interest of the juvenile that her rights be terminated.

Based upon these and other findings of fact, the trial court concluded that respondent was incapable of providing the proper care and supervision of the juveniles, that there was a reasonable probability that such incapability would continue for the foreseeable future, and that it was in the best interest of all of the juveniles in question that respondent's parental rights be terminated.

Respondent’s parental rights were terminated as to all children in question in separate orders entered 17 December 2004. Respondent gave timely notice of appeal from each order 23 December 2004.

Respondent assigns as error: (1) the admission of transcripts and reports submitted in the two previous termination proceedings which resulted in the termination of respondents’ parental rights to the same children and which had been subsequently reversed on appeal; (2) the trial court’s conclusion that grounds existed to terminate respondent’s parental rights; and, (3) the trial court’s finding of fact that respondent did not call any witnesses and did not offer any evidence at the hearing in defense of the petition to terminate her parental rights.

Respondent first argues that the admission of the transcripts of the prior hearings and the reports submitted in those hearings was erroneous as respondent had not yet had a guardian ad litem appointed on her behalf at those proceedings as required due to the allegations that she was incompetent. However, an uncontested pre-trial order indicates that respondent, with the assistance of a guardian ad litem, stipulated to the admission of these transcripts and reports. The order also indicates that respondent’s attorney was unable to agree to the stipulations contained in it as respondent did not give him the authority to agree or disagree.

When petitioner sought to admit the transcripts and reports at the hearing, respondent’s counsel requested that the record reflect that he was unable to agree to the stipulations. Respondent now

contends that her attorney objected to the admission of the transcripts and reports at that time. Respondent bases this assertion on the following exchange between her attorney and the court:

Mr. Bryan:	Let the record reflect, Judge, that the Order, I believe, indicates that I did not consent.
The Court:	I think it was that you could not consent or –
Mr. Bryan:	(Interposing) Could not consent.
The Court:	– or were in a position to –
Mr. Bryan:	(Interposing) Object.
The Court:	– object.
Mr. Bryan:	Right.
The Court:	And that the Court accepted it. All right.

This exchange does not, however, constitute an objection as respondent's attorney merely sought to put his inability to agree or object to the stipulations on record.

"[S]tipulations are judicial admissions and are therefore binding in every sense, preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish an admitted fact." *In re I.S.*, 170 N.C. App. 78, 86, 611 S.E.2d 467, 472 (2005) (quoting *Thomas v. Poole*, 54 N.C. App. 239, 241, 282 S.E.2d 515, 517 (1981), *disc. rev. denied*, 304 N.C. 733, 287 S.E.2d 902 (1982)). In the instant case, respondent does not

challenge the pre-trial order that she stipulated to the admissibility of the transcripts and exhibits in question. Further, respondent does not allege that she agreed to these stipulations without the guidance of her appointed guardian ad litem. Accordingly, the stipulations regarding the admissibility of this evidence are binding on respondent. This assignment of error is overruled.

Respondent next argues that the trial court erred in concluding that grounds for termination of her parental rights existed due to a lack of sufficient evidence and findings of fact to support that conclusion. Our review consists of two stages, 1) whether the trial court's findings of fact are supported by clear, cogent and convincing evidence; and 2) whether the findings of fact that are supported by clear, cogent and convincing evidence support the trial court's conclusions of law. *In re Humphrey*, 156 N.C. App. 533, 539-40, 577 S.E.2d 421, 426 (2003).

"Findings of fact to which a respondent did not object are conclusive on appeal." *Id.* at 540, 577 S.E.2d at 426 (citing *In re Wilkerson*, 57 N.C. App. 63, 65, 291 S.E.2d 182, 183 (1982)). Respondent specifically challenges only one of the trial court's findings of fact, namely, that respondent did not present evidence in defense of the petitions to terminate her parental rights. Assigning error to a trial court's conclusion of law based upon a general assertion that the evidence is insufficient to support the conclusion is not sufficient to preserve the issue of whether the evidence supports the findings of fact upon which the conclusion is

based. *In re J.D.S.*, 170 N.C. App. 244, 251, 612 S.E.2d 350, 355 (2005), *cert. denied*, 360 N.C. 64, 623 S.E.2d 584 (2005). Therefore, this assignment of error is overruled.

In her one assignment of error that specifically challenges the trial court's findings of fact, respondent argues that the trial court erred in finding that she had not called any witnesses or offered any evidence at the hearing in defense of the petitions against her, and that she also had not offered any evidence that she had made progress or improvement with regard to her ability to parent the children. The record tended to show, however, that respondent called one witness, her mother, and testified in her own behalf at the hearing. Accordingly, this finding of fact is not supported by clear, cogent, and convincing evidence. This assignment of error is sustained.

Nonetheless, the trial court's remaining, unchallenged, findings of fact are conclusive on appeal and are sufficient to support its conclusion of law that grounds existed to terminate respondent's parental rights. Consequently, we affirm the termination of respondent's parental rights.

Affirmed.

Judges WYNN and HUNTER concur.

Report per Rule 30 (e).