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NO. COA05-939

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

IN THE MATTER OF:

C.J.H.-D.

Mecklenburg County  
No. 04 J 288

Appeal by respondents from a judgment entered 30 November 2004 by Judge Elizabeth D. Miller in Mecklenburg County District Court. Heard in the Court of Appeals 8 February 2006.

*Associate County Attorney Twyla H. George for Mecklenburg County Youth & Family Services petitioner-appellee.*

*Attorney Advocate Jeannie Brown, Guardian ad Litem.*

*Katharine Chester for respondent-mother.*

*Richard E. Chester for respondent-father.*

BRYANT, Judge.

Respondents (mother, T.H.<sup>1</sup> and father, W.D.) appeal from a 30 November 2004 adjudication order changing the goal from reunification to termination and adoption of C.J.H.-D., their newborn son.

Respondents began dating each other in 2001. Both have been perpetrators of domestic violence in their relationship. In June 2002, C.J.H.-D.'s sibling, T.D. and half-brother, K.H. were removed from respondents' custody and placed in the custody of DSS

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<sup>1</sup>Initials are used throughout the opinion to protect the identity of the juveniles.

(Department of Social Services, Youth & Family Services for Mecklenburg County) as a result of respondents' adversarial relationship, which included arguments and physical altercations. After K.H. and T.D. were adjudicated neglected and dependant in 2002, the trial court developed and adopted a case plan to address previously identified issues with respondents. Respondent mother was required to complete domestic violence treatment, maintain housing, maintain employment, visit the children, and complete parenting classes. Respondent father was required to address substance abuse issues, attend parenting classes, address domestic violence issues and attend visits with the children. DSS made several referrals to respondents to assist them with complying with the trial court's case plan.

In February 2003, respondent mother completed a twelve week domestic violence treatment program. In the program respondent mother learned what domestic violence signs to look for in a potential mate, how to keep domestic violence incidents from occurring, and how to establish a safety plan if involved in a domestic violence situation. After completing domestic violence counseling on 25 October 2003 and after arguing with respondent father over the phone, respondent mother went to see respondent father and the two became involved in an altercation. EMS medics and a Mecklenburg County Police Officer responded to the scene.

In December 2003 and January 2004, respondents saw a parenting capacity evaluator who was not informed of the October 2003 incident. Respondent mother denied the incident when speaking with

a social worker. Respondent father does not recall whether he informed DSS of the incident. Accordingly, respondent mother was notified that the trial court and DSS had concerns regarding her honesty.

Despite the trial court ordering otherwise, respondents have maintained an ongoing relationship. Respondent mother had been previously notified that continued contact with respondent father could impact reunification. From 2002 until 2004, respondents informed DSS they did not have a relationship. However, C.J.H.-D. was conceived in 2003 and born to respondents in 2004.<sup>2</sup> At the time of C.J.H.-D.'s birth, his siblings K.H. and T.D. had been in DSS custody for approximately two years. Shortly after C.J.H.-D.'s birth, and pursuant to a trial court order dated 1 April 2004, C.J.H.-D. was placed in DSS custody for having been "exposed to a substantial risk of physical injury . . . because the parent[s] . . . inflicted injury or abuse; created the conditions causing the injury, abuse, or exposure; failed to provide or [are] unable to provide, adequate supervision or protection[.]" Even after C.J.H.-D. was placed in DSS custody, respondents continued to visit each other.

On 30 November 2004, the trial court entered an order finding and concluding C.J.H.-D. was neglected and dependent and continued his placement in foster care. In addition, the trial court ordered the permanent plan for C.J.H.-D. be changed to termination of parental rights and adoption. From that order, respondents appeal.

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<sup>2</sup>Respondent father acknowledged paternity of C.J.H.-D.

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Respondent mother raises three issues on appeal: whether the trial court erred in (I) concluding the juvenile was neglected and dependent based on clear, cogent and convincing evidence; (II) ordering the permanency plan changed to adoption; and (III) entering a permanency plan without making the requisite findings of fact. Respondent father raises several issues on appeal: whether the trial court erred in (IV) taking judicial notice of and considering evidence of prior case orders; (V) making findings of fact and conclusions of law which failed to support the trial court's order concluding neglect of the juvenile as to respondent father; and (VI) ordering that the case proceed to termination of parental rights.

I

Respondent mother argues the trial court erred in concluding C.J.H.-D. was neglected and dependent because there was insufficient clear, cogent and convincing evidence. We disagree.

N.C. Gen. Stat. § 7B-101(15) defines a neglected individual in pertinent part as:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who lives in an environment injurious to the juvenile's welfare . . . . In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has . . . been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2005).

An adjudicatory hearing is held to determine the existence or nonexistence of any of the conditions alleged in a petition. N.C. Gen. Stat. § 7B-802 (2005). "The allegations in a petition alleging abuse, neglect, or dependency shall be proved by clear and convincing evidence." N.C. Gen. Stat. § 7B-805 (2005). "Where the trial court sits without a jury and hears the evidence in a neglect adjudication, the facts found by the trial court are binding on an appellate court if supported by clear and convincing competent evidence." *In re McLean*, 135 N.C. App. 387, 394, 521 S.E.2d 121, 125 (1999). "A proper review of a trial court's finding of . . . neglect entails a determination of (1) whether the findings of fact are supported by 'clear, cogent, and convincing evidence,' and (2) whether the legal conclusions are supported by the findings of fact." *In re Pittman*, 149 N.C. App. 756, 763-64, 561 S.E.2d 560, 566 (2002) (citation omitted).

In order to sustain an adjudication of neglect, the courts have "required there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (neglect existed where "the conduct at issue constituted either severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile") (emphasis added) (quotation omitted); see *In re Helms*, 127 N.C. App. 505, 512, 491 S.E.2d 672, 676 (1997) (child adjudicated a neglected juvenile where the child was substantially

at risk due to the instability of her living arrangements and through repeated exposure to violent individuals in the home).

In the case *sub judice*, respondents have been involved in a dating relationship since 2001 which has been plagued with acts of domestic violence. In 2002, because of the nature of their relationship, respondent father's substance abuse and respondents' inability to maintain stable housing, C.J.H.-D.'s siblings were placed in DSS custody. The siblings were adjudicated neglected and a case plan was developed to assist respondents in addressing the issues that led to neglect. Implicit in this case plan development was the requirement that there be meaningful changes in the lives of respondents such that the children could be returned to a safe, appropriate environment. *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). Even though respondent mother had completed a domestic violence prevention course prior to the birth of C.J.H.-D., the trial court stated "the court does not find that [respondent mother] has been able to apply anything that she learned" from that course. Despite attempts to educate and correct respondents' domestic violence incidents, another incident of domestic violence occurred after C.J.H.-D.'s siblings had been placed in DSS custody. The trial court found that on 25 October 2003, the mother went to the father's home to retrieve her belongings. The father struck the mother and kneed her in the abdomen while she was five months pregnant with C.J.H.-D. The mother shoved the father. Respondents attempted to hide the October 2003 incident from the trial court, DSS and the parenting

capacity evaluator. The trial court found that even after all the assistance from DSS and several educational programs, respondent mother did not help her circumstance with C.J.H.-D. -- that responsibility "rest[ed] squarely on [respondent mother's] shoulders because of her inability to be honest and straightforward." Additional evidence before the trial court supported that C.J.H.-D. was neglected: respondent father's admission that he planned to continue using marijuana after completion of a substance abuse program; mother's inability to maintain stable housing in 2003; and mother's inability to pay household expenses in June 2004. These concerns led to the removal of C.J.H.-D. from respondent mother's care. Further these concerns had not been fully addressed at the time C.J.H.-D. was adjudicated neglected. See *In re Davis*, 116 N.C. App. 409, 414, 448 S.E.2d 303, 306 (1994) ("failing to take steps to correct the circumstances leading to [the juvenile's] adjudication as a neglected juvenile and placement in foster care, despite having approximately two years to do so before the petition for termination of parental rights was filed, respondent [had] not provided 'proper care, supervision and discipline' and [had] not corrected the environment 'that is injurious to [the juvenile's] welfare.'"). The trial court also adjudicated C.J.H.-D. dependent with respect to both parents. However, "where the trial court finds multiple grounds on which to base a termination of parental rights, and 'an appellate court determines there is at least one ground to support a conclusion that parental rights should be

terminated, it is unnecessary to address the remaining grounds.'" *In re P.L.P.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 618 S.E.2d 241, 246 (2005) (quoting *In re Clark*, 159 N.C. App. 75, 78, 582 S.E.2d 657, 659 n.3 (2003)). This assignment of error is overruled.

## II

Respondent mother next argues the trial court abused its discretion when it failed to return the juvenile to his mother or to place the juvenile with a relative and instead, ordered the permanent plan for the juvenile to be adoption. We disagree.

The purpose of a dispositional hearing is to develop a plan to meet the needs of the juvenile and to achieve the objective of the State in exercising jurisdiction. "If possible, the initial approach should involve working with the juvenile and the juvenile's family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile." N.C. Gen. Stat. § 7B-900 (2005). A trial court may consider any evidence, including hearsay evidence that the court finds to be "relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C. Gen. Stat. § 7B-901 (2005). At the disposition phase, the standard of review on appeal is abuse of discretion. *In re Yocum*, 158 N.C. App. 198, 206, 580 S.E.2d 399, 403, *aff'd per curiam*, 357 N.C. 568, 597 S.E.2d 674 (2003).

As addressed in *Issue I*, respondent mother was not a placement alternative for C.J.H.-D. If certain statutory criteria are met,



the trial court must order placement of the child with a relative unless the trial court finds that placement with the relative would not be in the child's best interests. N.C. Gen. Stat. § 7B-505 (2005). Initially, DSS allowed placement of C.J.H.-D. with respondent mother's cousin. Such placement was based on respondent mother stating she no longer was involved with respondent father; however the trial court found that the mother had lied with respect to her relationship with respondent father. The trial court cited respondent mother's lack of credibility, the fact that DSS had provided the parents with access to sufficient service programs, and extra time in which to comply with the court adopted case plan to attempt to achieve reunification. The trial court further found "[r]easonable efforts to eliminate the need for placement shall cease pursuant to 7B-507(b) [and the trial court] specifically [found] efforts to reunite would be futile and [] inconsistent with the juvenile's health, safety, and need for a safe permanent home within a reasonable period of time." Based on these findings and conclusions, we find the trial court did not abuse its discretion in ordering C.J.H.-D. to be placed in DSS custody. This assignment of error is overruled.

III

Respondent mother next argues the trial court erred in entering a permanent plan for the juvenile and failed to make the required findings of fact in violation of her constitutional rights. We disagree.

The trial court in any order placing a juvenile in DSS custody, shall decide whether reunification efforts should be made or eliminated. N.C. Gen. Stat. § 7B-507(b) and (b1) (2005). "In determining reasonable efforts to be made with respect to a juvenile and in making reasonable efforts, the juvenile's health and safety shall be the paramount concern." N.C. Gen. Stat. § 7B-507(d) (2005).

In the present case, the trial court considered DSS reports, the GAL report, the previously adopted case plan, and the siblings' juvenile files. The trial court also considered all the services previously provided respondents as well as their response to the offered services. The trial court found that due to the extended length of time required to complete the adjudicatory hearing, respondents were also given extra time to comply with the service programs and respondents failed to take advantage of the opportunities. The trial court found that there were no additional services that could be offered to respondents. Therefore, reunification efforts would be futile, or inconsistent with the health, safety, and need for a safe permanent home within a reasonable amount of time. The goal for C.J.H.-D.'s siblings was adoption. See *In re M.J.G.*, 168 N.C. App. 638, 608 S.E.2d 813 (2005) (order affirmed ceasing reunification efforts at the dispositional hearing when the mother had one child in custody and an order ceasing reunification efforts had been entered; mother had a second child who was later placed in DSS custody; mother had not made progress on the previously adopted plan; and was not making

sufficient progress by the dispositional hearing of the second child).

Here, the trial court ceased reunification efforts at disposition. The trial court had sufficient evidence to conclude the C.J.H.-D. was a neglected juvenile. "The natural and legal right of the parents to the custody, companionship, control, and bringing up their children . . . may be interfered with or denied for substantial and sufficient reason, and it is subject to judicial control when the interest and welfare of the child require it." *In re Stratton*, 153 N.C. App. 428, 433, 571 S.E.2d 234, 237 (2002) (citation omitted). After having worked closely with respondents for over two years and considering the lack of response to the services provided, the trial court properly found that obtaining a safe, permanent home in a reasonable period of time is in the best interest of the juvenile. This assignment of error is overruled.

#### IV

Respondent father argues the trial court erred in taking judicial notice and considering evidence of prior case orders. We disagree.

The trial court adjudicated T.D. at six months old to be dependent as to the father and neglected as to the mother. K.H. was adjudicated neglected as to the mother. A juvenile is dependent where he is "in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or

custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement[.]” N.C. Gen. Stat. § 7B-101(9) (2005). “Under this definition, the trial court must address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.” *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). When considering whether a juvenile is neglected, “it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.” N.C.G.S. § 7B-101(15) (2005). The court may consider abuse of other children in determining the custody of a child who has not yet been abused, and the court in its discretion decides what weight to be given that evidence. *In re Nicholson*, 114 N.C. App. 91, 94, 400 S.E.2d 852, 854 (1994).

The evidence that this trial court considered regarding the prior dependency adjudication of C.J.H.-D.’s siblings included: respondent father suffers from sickle cell anemia; respondent father planned to allow respondent mother to be the children’s primary caretaker; and the trial court had reservations about respondent father’s ability to protect T.D. and K.H. given that respondent mother lied about the respondents’ relationship in order for DSS to agree to place the children with a relative. The evidence considered in the prior cases with respect to a neglect adjudication for C.J.H.-D.’s siblings included that: respondents argue in front of the children; police have been called to the home

to address incidents of domestic violence; the father stipulated to committing acts of domestic violence with the mother (e.g. assault on a female and communicating threats); the father is unwilling to receive treatment for domestic violence; in addition to domestic violence, the problems which led to adjudication and which must be corrected include providing stable housing, treating mental illness, obtaining substance abuse treatment, and meeting the needs of the children.

In the present case, C.J.H.-D. was an infant at the time of the adjudication. Respondent father failed to address the issues that led to placement of C.J.H.-D.'s siblings in DSS custody. Respondent father likewise failed to rectify the same issues by the time of C.J.H.-D.'s birth. The trial court properly considered the prior adjudications of neglect and dependency as to C.J.H.-D.'s siblings in determining respondent's neglect of C.J.H.-D. See *In re E.N.S.*, 164 N.C. App. 146, 595 S.E.2d 167 (2004) (prior adjudication of a sibling's neglect considered as evidence of respondent's continued neglect of his other children) and *In re D.J.D.*, 171 N.C. App. 230, 615 S.E.2d 26 (2005) (children were dependent where the parents were neither able to care for them nor did they suggest appropriate alternate replacements; the father's proposed replacement was insufficient because there was no evidence that his aunt was willing or able to care for the children). This assignment of error is overruled.

Respondent father argues the trial court erred in making findings of fact and conclusions of law in support of the trial court's order concluding the juvenile was neglected as to respondent. For many of the reasons discussed in *Issue I supra*, we disagree.

"The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject." *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) (citing *Knutton v. Cofield*, 273 N.C. 355, 359, 160 S.E.2d 29, 33 (1968)). As long as competent evidence supports the findings of the trial court, they are binding on appeal, despite evidence to the contrary. *Id.*

The trial testimony from respondents and several witnesses, in addition to the DSS reports and other evidence, led the trial court to find that: respondents have admitted to a history of domestic violence with each other; respondents continued to have a relationship with each other which exposed C.J.H.-D. to danger and created an environment in which C.J.H.-D. was neglected; respondent father did not complete domestic violence treatment and is unwilling to accept such treatment; and there is a continued risk of domestic violence between the parents such that C.J.H.-D. continues to be at risk of neglect. Based on these extensive findings the trial court ordered that "C.J.H.-D. is adjudicated neglected and dependent as to the father[.]" After careful and

thorough review, we find the trial court did not err in concluding the juvenile was neglected as to respondent father. This assignment of error is overruled.

VI

Respondent father argues the trial court erred in ordering that the case proceed to termination of parental rights. North Carolina General Statutes, Section 7B-507(a) states:

An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease[.]

N.C.G.S. § 7B-507(a) (2005). North Carolina General Statutes, Section 7B-507(b) states:

[T]he court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time.

N.C.G.S. § 7B-507(b) (2005).

The trial court made the finding that DSS "previously provided reasonable efforts to the parents to address the issues that led to [DSS] custody. The parents did not take full advantage of the

service programs. There are no other services available that [DSS] can offer the parents." The trial court specifically found that efforts to reunite would be futile and inconsistent with C.J.H.-D.'s health, safety, and need for a safe permanent home within a reasonable period of time. The trial court concluded DSS "has made reasonable efforts since the initial (7-Day) hearing to prevent or eliminate the need for placement of the child in foster care." After making numerous findings of fact based on clear and convincing evidence, taking into consideration the needs of C.J.H.-D., and the available resources, the trial court found that it was in the best interests of the juvenile to cease reunification efforts. This assignment of error is overruled.

Affirmed.

Judges HUNTER and CALABRIA concur.

Report per Rule 30(e).