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NO. COA05-990

NORTH CAROLINA COURT OF APPEALS

Filed: 5 July 2006

IN RE:
E.J.C.,
minor child

Wayne County
No. 04 J 194

Appeal by respondents from order entered 24 January 2005 by Judge Rose Vaughn Williams in Wayne County District Court. Heard in the Court of Appeals 18 April 2006.

Borden Parker, for petitioner-appellee Wayne County Department of Social Services.

Annick Lenoir-Peek, for respondent-appellant mother.

Katharine Chester, for respondent-appellant father.

Nelson Mullins Riley & Scarborough, LLP, by Christopher M. Thomas and Wallace C. Howell, III, for Guardian ad Litem.

Tim Finan, for Guardian ad Litem.

LEVINSON, Judge.

Respondent parents appeal from an order terminating their parental rights in the minor child E.J.C. We affirm.

E.J.C. was born on 23 April 2003 in Wayne County to both respondents. The day after E.J.C. was born, Wayne County Department of Social Services (DSS) received a protective services report because mother tested positive for cocaine. Between April 2003 and March 2004, E.J.C. began living with his aunt and, beginning 14 March 2004, he was placed in foster care. On 21

September 2004, DSS filed a petition to terminate the parental rights of both parents. The petition alleged that respondents neglected E.J.C. in that they abused controlled substances. A hearing was held on 10 January 2005, and by order entered 24 January 2005 the trial court terminated the parental rights of respondents. From this order respondents now appeal.

Respondents contend the trial court erred in concluding that grounds exist to terminate their parental rights because (1) certain findings of fact are not supported by sufficient evidence, and (2) neglect did not exist at the time of the hearing.

Respondents first argue that certain findings of fact are not supported by clear, cogent and convincing evidence. We disagree.

A court's termination of parental rights is a two-step process: there is an adjudicatory stage to the proceeding under N.C. Gen. Stat. § 7B-1109 (2005), and a dispositional stage under N.C. Gen. Stat. § 7B-1110 (2003). *In re Howell*, 161 N.C. App. 650, 656, 589 S.E.2d 157, 160-61 (2003). During the adjudication stage, the trial court determines whether clear, cogent, and convincing evidence exists to support at least one of the grounds for termination under N.C. Gen. Stat. § 7B-1111 (2005). *In re Shepard*, 162 N.C. App. 215, 220-21, 591 S.E.2d 1, 5 (2004). Where such evidence is present, the court moves to the dispositional stage, and it considers whether terminating parental rights would be in the best interest of the child. *Howell*, 161 N.C. App. at 656, 589 S.E.2d at 161 (citation omitted).

While respondents challenge many findings on appeal, the salient findings challenged are that:

5. The father admits a long history of substance abuse.

. . . .

23. The father quit participating with the Methodist Home for Children Drug Relapse and Prevention Program in December 2003.

. . . .

28. The mother quit participating with the Methodist Home for Children Drug Relapse and Prevention program in February 2004. Her last session was February 5, 2004. The mother canceled four of the last six appointment with Ms. Brock.

. . . .

30. Ms. Brock was available to the parents on call 24 hours a day, 7 days a week. Ms. Brock gave the parents several business cards when they began, and they knew how to get in touch with her, but did not do so after February 2004, except for speaking to Ms. Brock in court one day.

. . . .

37. The mother also blames her relapse after her stay at Coastal Plains not on her failure to go to a halfway house after the 14-day stay, but on this Court's removal of another child from her custody in the spring of 2004. That other child is now residing with that child's father.

38. The juvenile was moved from the home of the maternal aunt to foster care in March, 2004, because of concerns raised about the care the juvenile was receiving in the aunt's home while both parents were actively using crack cocaine.

39. In the early part of 2004, the parents' oldest child, [J.J.], a teenager, lived back and forth with her aunt, her parents, and her

boyfriend while the mother and father continued using crack cocaine.

. . . .

45. Relapse into drug use is usual and constant.

. . . .

56. The mother's whereabouts sometime after the first of June 2004 through mid September 2004 remain unknown.

. . . .

78. It is too soon to determine if the mother will relapse.

. . . .

80. The father is in prison because of his own voluntary criminal acts until the child will be at least 8 years old.

. . . .

91. The juvenile appears to have developmental delays and because of his condition, he presents challenges for his caretakers that will require patience and care. The father is in prison for at least the next six years and the mother is just embarking on another effort to conquer a serious drug addiction. The mother lacks independent housing, employment, a job to support herself, and she is undergoing treatment for depression. These problems do not provide the mother a solid foundation from which she can focus on this juvenile's serious and important needs.

. . . .

102. The parents' drug use has caused them to lose their home to house the juvenile, to lose their belongings in the home, and to lose their jobs to provide for the juvenile. In the father's case, he has lost his freedom to care for the juvenile.

Much of the evidence presented at the termination hearing concerned respondents' history of using crack cocaine. Melissa Brock, a substance abuse specialist from the Methodist Home for Children, began working with respondents in May of 2003. Brock testified that father ceased his participation in the treatment program in December of 2003, when he and mother relapsed. Brock further testified that father never attended any actual sessions. Mother also ceased her participation in the treatment program in February of 2004, canceling four of her six appointments, and tested positive for narcotics soon thereafter. Mother's cessation of the program occurred despite Brock's being "on call" for her "24/7." Father testified that he and mother used crack cocaine two to three times per week while mother was pregnant with E.J.C. In addition, father testified that he and mother again began using crack "off and on" seven months after E.J.C was born due to the custody of another child that mother had with a man from a separate relationship being granted to the child's father.

Mother testified that she used drugs during the first part of her pregnancy, was unable to quit for three months before E.J.C. was born, and used cocaine with father the day before E.J.C. was born. In March 2004, mother entered an in-patient treatment program in Rocky Mount, North Carolina. Nevertheless, mother failed to enter a halfway house as recommended and tested positive for drugs shortly after leaving the treatment program. Mother also failed to appear at a required drug screening in May 2004; admitted to using cocaine in June 2004; and tested positive for cocaine in

July 2004. Mother missed two months of visitation with E.J.C. during the summer of 2004. Josie Allen James, a DSS foster care social worker, testified that despite numerous attempts, she was unable to get in touch with mother from June 2004 through September 2004. Mother began living at Lifeline, another in-patient treatment facility, in September of 2004. When mother entered Lifeline she did not have any monetary resources, a vehicle or a job. In addition, she had sold her home and personal belongings. While in Lifeline, mother tested negative for drugs.

Father failed to take a scheduled drug test in June 2004 and also missed his visits with E.J.C. Father testified that on 10 September 2004, he was incarcerated as an habitual felon on a conviction for felony breaking and entering to a term of six to nine years. In addition, father testified that he continued to use drugs until 10 days before his incarceration.

Mother testified that she was 36 years old and has battled a substance abuse problem since age 31. Father testified that he was 46 years old and first developed an addiction to drugs at age 21 and that he is in danger of relapsing at any time. Father further testified that, unless drug users "stay with some kind of [a substance abuse program], they're going to relapse." Father further testified that "no child should have to go through what we put him through, and I know I was wrong[.]"

Due to respondents' continued use of crack cocaine, their unsupervised visits were terminated and, in July 2004, the trial court ordered that reunification efforts cease. E.J.C. was removed

from his aunt's home where he also lived with J.J., the eldest daughter of mother, who had also tested positive for drugs. Jordan Casquillo, a DSS social worker, testified that due to respondents' positive drug tests and refusals to be screened for drugs, E.J.C. was removed from the aunt's home and placed in foster care.

We conclude that the challenged findings of fact are supported by clear, cogent and convincing evidence. The relevant assignments of error are overruled.

Respondents next contend that the trial court erred in concluding that grounds existed to terminate their parental rights because neglect did not exist at the time of the hearing. We disagree.

According to N.C. Gen. Stat. § 7B-1111(a)(1) (2005), a court may terminate one's parental rights where:

The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

"Neglect", in turn, is defined as follows:

Neglected juvenile. - 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 determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or 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).

In a termination of parental rights proceeding based on neglect, the trial court must determine whether neglect is present at the time of the termination proceeding. *In re Ballard*, 311 N.C. 708, 716, 319 S.E.2d 227, 232 (1984). If a juvenile should ever be removed from the parent before the date of the termination hearing "evidence of neglect by a parent prior to losing custody . . . is admissible in subsequent proceedings to terminate parental rights. The trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *Id.* at 715, 319 S.E.2d at 232 (citation omitted). The probability of a repetition of neglect must be shown by clear, cogent and convincing evidence. *In re Young*, 346 N.C. 244, 250, 485 S.E.2d 612, 616 (1997).

The evidence presented showed that neglect was likely to recur. Melissa Brock, who holds a masters degree in substance abuse, clinical and rehabilitation counseling, testified that there is a "high probability" that a person commencing a drug abuse plan would relapse in the first six months. Brock further testified that those who have recovered are still classified as persons who have a "substance abuse problem." Sandra Kilby, the in-house supervisor at Lifeline, testified that relapse is a real problem for those addicted to drugs. Dorothy Hunt, founder and executive director of Lifeline, testified that it was too soon to tell if mother had recovered. Additionally, mother had already relapsed by

testing positive for crack cocaine after leaving the drug treatment program in Rocky Mount.

Father has unsuccessfully battled a cocaine addiction since the age of 21. He ceased his participation in the Methodist Home for Children drug treatment program in December 2003 and never attended any sessions. Father also used drugs just 10 days before his incarceration and had not received drug treatment as of the date of the termination of parental rights hearing. In addition, when asked how the court could know that he would not use drugs anymore, father answered, "I haven't got any."

Respondents used cocaine while mother was pregnant with E.J.C., and used crack "off and on" just seven months after E.J.C. was born. Mother tested positive for drugs shortly after leaving an in-patient treatment program in Rocky Mount, and subsequently entered Lifeline, another drug treatment facility. Additionally, father testified that he used drugs just days before entering prison and had not received treatment as of the date of the termination of parental rights hearing. Melissa Brock testified that there is a "high probability" that a person commencing a drug abuse plan would relapse in the first six months. Dorothy Hunt, founder and executive director of Lifeline testified that it was too soon to tell if mother has recovered. We conclude that all this evidence, together with other evidence in the record, amply supports the trial court's finding that it is likely that the respondents' neglect of E.J.C. will recur. Consequently, this assignment of error is overruled.

Respondents also contend that the trial court erred in concluding that it was in E.J.C.'s best interests to terminate their parental rights in him. We disagree.

N.C. Gen. Stat. § 7B-1110(a) (2003) provides, in pertinent part, that:

Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent 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. . . .

We review the trial court's conclusion that a termination of parental rights would be in the best interest of the child on an abuse of discretion standard. *In re V.L.B.*, 168 N.C. App. 679, 684, 608 S.E.2d 787, 791 (citing *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002)), *disc. review denied*, 359 N.C. 633, 614 S.E.2d 924 (2005). "Abuse of discretion exists when 'the challenged actions are manifestly unsupported by reason.'" *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004) (quoting *Blankenship v. Town and Country Ford, Inc.*, 155 N.C. App. 161, 165, 574 S.E.2d 132, 134 (2002)).

On this record, we conclude the trial court did not abuse its discretion by terminating respondents' parental rights. This assignment of error is overruled.

We next turn to father's separate arguments on appeal. He contends that the petition to terminate his parental rights was facially insufficient in violation of N.C. Gen. Stat. § 7B-1104(6)

(2005) because it failed to provide notice as to what acts, omissions or conditions were at issue in the case. We disagree.

N.C. Gen. Stat. § 7B-1104(6) (2005) provides, in pertinent part, that:

The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile"; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state: . . . [f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

In *In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160 (1992), this Court held that a "petitioners' bare recitation . . . of the alleged statutory grounds for termination does not comply with the requirement in N.C. Gen. Stat. § 7A-289.25(6) [now G.S. § 7B-1104(6)] that the petition state 'facts which are sufficient to warrant a determination' that grounds exist to warrant termination." In addition, "[w]hile there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue." *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002).

Here, the petition to terminate father's parental rights alleged that "the parents have abused controlled substances and continue to abuse controlled substances and are unable to care for the juvenile due to the abuse of the controlled substances." This was sufficient to put father on notice of the acts, omissions and

conditions at issue in the case. Consequently, this assignment of error is overruled.

Father also contends that the trial court erred in terminating his parental rights because no separate best interest dispositional phase was conducted. We disagree.

Although there is both an adjudicatory stage and a dispositional stage involved in a termination of parental rights proceeding, there is no requirement that these stages be conducted during two separate hearings. *In re White*, 81 N.C. App. 82, 85, 344 S.E.2d 36, 38 (1986). Furthermore, the trial court judge in this proceeding does not need to be insulated during the adjudicatory stage, as respondent suggests, from evidence that is only relevant to the dispositional stage. "[I]t is presumed, in the absence of some affirmative indication to the contrary, that the judge, having knowledge of the law, is able to consider the evidence in light of the applicable legal standard and to determine whether grounds for termination exist before proceeding to consider evidence relevant only to the dispositional stage." *Id.* This assignment of error is overruled.

We have considered respondents' remaining assignments of error and conclude they are without merit.

Affirmed.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).