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NO. COA06-1025

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IN THE MATTER OF:
M.D.B.

Caldwell County
No. 04 J 130

Appeal by Respondent from order entered 8 February 2006 by Judge Burford A. Cherry in District Court, Caldwell County. Heard in the Court of Appeals 16 January 2007.

Lauren Vaughan for Petitioner-Appellee, Caldwell County Department of Social Services.

Attorney Advocate Christopher G. Daniel for Guardian ad Litem-Appellee.

Carol Ann Bauer for Respondent-Appellant.

McGEE, Judge.

Joyce Angela Reece (Respondent) appeals from the trial court's order which terminated her parental rights to her minor child M.D.B. We affirm.

The Caldwell County Department of Social Services (Petitioner) filed a juvenile petition on 16 August 2004 alleging that M.D.B. was dependent and neglected. Following a hearing on 27 October 2004, the trial court adjudicated M.D.B. to be a dependent juvenile. Pursuant to a disposition order entered on 24 November 2004, the trial court placed custody of M.D.B. with Petitioner.

Petitioner filed a motion on 1 July 2005 to terminate the parental rights of both Respondent and the child's father.

After several continuances, the trial court conducted a hearing on the petition to terminate parental rights on 23 January 2006. In its order entered on 8 February 2006, the trial court found in its adjudication that:

2. The direct circumstances which brought [M.D.B.] into the care of the Department of Social Services were that . . . Respondent . . . had an extensive history of child protective services in several counties; she was unemployed and living in her car; she had left [M.D.B.] with the paternal grandparents and did not return to care for [M.D.B.].

. . . .

12. That for a period in excess of six months prior to the filing of the Motion herein, . . . Respondent . . . had failed to have any contact with [M.D.B.]. She did not visit with [M.D.B.] from on or about December 29, 2004 until after the filing of the Motion [on 1 July 2005]. She had no contact with [Petitioner] during that same period of time. . . . Respondent . . . called the social worker in July to ask why [M.D.B.] had been removed from the paternal grandparents['] home but she did not request a visit at that time. . . .

13. That for that same period of time, to-wit: from December 29, 2004 until September, 2005 . . . Respondent . . . did not appear in Court; she did not work with [Petitioner] to develop a case plan and she did not send any items as gifts or acknowledgments to [M.D.B.].

At the conclusion of the adjudication, the trial court concluded:

8. That . . . Respondent . . . has abandoned [M.D.B.] in that she had no contact with [M.D.B.] for a period in excess of six months prior to the filing of the Motion herein.

. . . .

Further, the Court finds that grounds exist pursuant to N.C.G.S. § 7B-1111(a)(7) to terminate the parental rights of . . . Respondent . . . in and to . . . M.D.B.

During the disposition, the trial court additionally found:

1. That the Court afforded . . . Respondent . . . a chance to remedy the situation regarding care of [M.D.B.] but . . . did not do so. . . . Respondent . . . had a significant history of substance abuse. Her history of drug tests which were positive for cocaine date back to at least 2001 and continued through the early portions of this case. During much of the time [M.D.B.] has been in the custody of [Petitioner], . . . Respondent . . . has been unavailable for drug testing. She has been transient and [Petitioner] was unable to locate her to request drug tests. At the beginning of this case, . . . Respondent left [M.D.B.] with the paternal grandparents and disappeared for some few days. She then returned and attempted to remove [M.D.B.] from their care. She was incoherent in her conversation and had slurred speech. In the opinion of a police officer who responded to the scene she was under the influence of an impairing substance. At the time of this hearing, she is not involved in any treatment for her substance abuse issues. She does not attend NA or AA.

. . . .

3. That . . . Respondent . . . by choosing to not visit with [M.D.B.] for six months or more prior to the filing of the Motion, has made herself a stranger to [M.D.B.]. [M.D.B.] is in counseling at Bright Beginnings where they are addressing her anger and behavior issues. She has had a DEC evaluation. When . . . Respondent . . . did return to request visitation with [M.D.B.], the therapist for [M.D.B.] recommended against renewing that contact. The therapist expressed the opinion that such contact would be detrimental to [M.D.B.] and possibly lead to an escalation of the problematic behaviors of [M.D.B.].

. . . .

6. That the family with whom [M.D.B.] is placed have become very bonded to her and are committed to meeting her needs for counseling, speech therapy and any other issues. They would like to adopt her if she becomes legally available for adoption. They have done very well in dealing with her negative behaviors and temper tantrums. They have demonstrated an ability and willingness to meet the needs of [M.D.B.].

The trial court then concluded that "[t]he best interests of [M.D.B.] will be served by termination of the parental rights of . . . Respondent . . . with respect to [M.D.B.][]" and ordered termination of the parental rights. From the trial court's order, Respondent appeals.

In her first argument, Respondent contends the motion to terminate her parental rights was legally insufficient. She argues the motion failed to comply with N.C. Gen. Stat. § 7B-1104(5) because a copy of the custody order was not attached to the termination petition. We are not persuaded by Respondent's argument.

When "a trial court places custody of the juvenile in some agency or person other than the parent, N.C. Gen. Stat. § 7B-1104(5) (2003) requires that a copy of the custody order be attached to a subsequent petition to terminate parental rights." *In re B.D.*, 174 N.C. App. 234, 241, 620 S.E.2d 913, 918 (2005), *disc. review denied*, 360 N.C. 289, 628 S.E.2d 245 (2006). However, failure to comply with the requirement does not deprive the trial court of subject matter jurisdiction in the absence of a showing of prejudice. *Id.* at 241-42, 620 S.E.2d at 918.

While the motion for termination states that a copy of the

custody order was attached to it, there is no indication that the custody order was actually attached. The motion does state that Petitioner was given legal custody of M.D.B. in a disposition order following a hearing on 27 October 2004. Both Respondent and her attorney were present at that hearing, and Respondent was represented by the same attorney at the hearing on the motion for termination. Respondent indicated her awareness of M.D.B.'s placement with Petitioner in both her written response to the motion and her testimony in open court. The hearing on the motion for termination was continued on a number of occasions from the original date of 24 August 2005 until 23 January 2006. In light of the foregoing, we conclude Respondent is unable to demonstrate any prejudice arising from Petitioner's failure to attach the custody order to the petition. Accordingly, we overrule this argument.

Respondent next contends the evidence did not support the trial court's conclusion that she had willfully abandoned M.D.B. for at least six consecutive months immediately preceding the filing of the motion to terminate. She argues the trial court erred in concluding that grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(A)(7) (2005). We disagree.

While Respondent assigned error to the trial court's conclusion of law that she had willfully abandoned M.D.B., she did not assign error to any of the supporting findings of fact. If unchallenged on appeal, findings of fact "are deemed supported by competent evidence" and are binding upon this Court. *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003). "So

long as the findings of fact support a conclusion based on § 7A-289.32 [now N.C. Gen. Stat. § 7B-1111], the order terminating parental rights must be affirmed." *In re Oghenekevebe*, 123 N.C. App. 434, 436, 473 S.E.2d 393, 395-96 (1996). In its uncontested findings of fact, the trial court found Respondent failed to have any contact with either M.D.B. or Petitioner during the relevant time period. As a result of those findings, the trial court properly concluded that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a) (7).

In her final argument, Respondent contends the trial court abused its discretion by concluding that the best interests of M.D.B. would be served by terminating Respondent's parental rights. She characterizes the circumstances involving the removal of M.D.B. as a family feud and points to evidence that she is currently in a stable environment.

"After the trial court has determined grounds exist for termination of parental rights at adjudication, the court is required to issue an order of termination in the dispositional stage, unless it finds the best interests of the child would be to preserve the parent's rights." *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001). In its order, the trial court found Respondent had a significant history of substance abuse and had tested positive for cocaine during the early portions of this case. Respondent later was transient and could not be located for drug tests. She did not visit M.D.B. or have any contact with Petitioner for at least six months prior to the filing of the

motion to terminate her parental rights. At the time of the hearing, Respondent was not involved in any treatment for her substance abuse issues. There was nothing upon which the trial court could reasonably base a decision to find it would not be in M.D.B.'s best interests to terminate Respondent's parental rights. Respondent has shown no abuse of discretion by the trial court in terminating her parental rights. Accordingly, the trial court's order is affirmed.

Affirmed.

Chief Judge MARTIN and Judge HUNTER concur.

Report per Rule 30(e).