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NO. COA06-1031

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

IN THE MATTER OF:

Wayne County
No. 05 JT 120

D.W.,

A Minor Child

Appeal by respondent from an order entered 7 April 2006, *nunc pro tunc* 22 February 2006, by Judge R. Les Turner in Wayne County District Court. Heard in the Court of Appeals 2 April 2007.

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

Holly M. Groce for appellee Guardian ad Litem.

Susan J. Hall for respondent-appellant.

HUNTER, Judge.

On 2 August 2004, the Wayne County Department of Social Services ("DSS") filed a petition alleging that D.W. was a neglected and dependent juvenile. Specifically, DSS alleged that D.W. was a dependent juvenile in that he had no parent, guardian, or custodian responsible for his care or supervision. The child's mother had died in a car accident in June 2004, after which the child resided with his maternal aunt. DSS further alleged that D.W. was neglected in that respondent, the child's father, was "very violent and has a criminal history." DSS claimed that

respondent did not "have a stable living environment or employment to care for [D.W.]" On 1 June 2005, the court entered an order granting custody of D.W. to DSS, while authorizing DSS to leave him in the home of his maternal aunt. The court adopted a permanent plan of termination of respondent's parental rights and adoption by the maternal aunt.

On 15 June 2005, DSS filed a petition to terminate respondent's parental rights. DSS alleged that respondent had neglected and continued to neglect D.W., had not paid any child support and had abandoned D.W. The court held a hearing on the petition on 22 February 2006. The trial court concluded that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7) to terminate respondent's parental rights. The court further concluded that it was in the child's best interest that respondent's parental rights be terminated. Respondent appeals. After a careful review of the record, briefs, and contentions of the parties, we affirm.

Respondent's sole argument is that the trial court erred by finding that there were grounds to support the termination of his parental rights.

N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support a termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "[T]he party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds

authorizing the termination of parental rights exist." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997) (citing N.C. Gen. Stat. § 7A-289.30(d) and (e)).

In the case *sub judice*, the trial court concluded that respondent-father had neglected the juvenile pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). Respondent claims that he did not neglect D.W., citing his incarceration as grounds for his failure to visit the child. However, this Court has stated that "[a] father's neglect of his child cannot be negated by incarceration alone." *In re D.J.D., D.M.D., S.J.D., J.M.D.*, 171 N.C. App. 230, 240, 615 S.E.2d 26, 33 (2005). In *D.J.D.*, the respondent-father argued that he was unable to visit his child due to his incarceration. This Court explained that "while we acknowledge that incarceration limited his ability to show affection, it is not an excuse for respondent's failure to show 'interest in the children's welfare by whatever means available.'" *Id.* (citation omitted).

Similarly, respondent's incarceration alone does not excuse his neglect. N.C. Gen. Stat. § 7B-101(15) (2005) defines a neglected juvenile as one "who does not receive proper care, supervision, or discipline . . . or who has been abandoned[.]" *Id.* "A determination of neglect must be based on evidence showing neglect at the time of the termination proceeding." *In re J.G.B.*, ___ N.C. App. ___, ___, 628 S.E.2d 450, 455 (2006) (emphasis omitted). "Neglect is more than a parent's 'failure to provide physical necessities' and can include the total failure to provide

love, support, affection, and personal contact." *D.J.D.*, 171 N.C. App. at 240, 615 S.E.2d at 33.

Here, the trial court found that: (1) respondent never paid any child support for the benefit of the child; (2) respondent has been in and out of jail for the majority of D.W.'s life; (3) there is no stability in respondent's life that would enable him "to care for and supervise the nurturing and development of the juvenile being a current and frequent resident of the North Carolina Department of Correction"; (4) respondent never had custody of D.W., never sought custody of D.W. either before or after the death of the mother, and lived with them only during his "short periods of intermittent freedom from the bonds of incarcerations for convicted criminal offenses"; (5) respondent knew of the location of the maternal grandfather's residence, but never inquired of him of the child's whereabouts; (6) when he last saw D.W. in June 2004, he informed the maternal aunt that he wanted to see him again on his birthday, which was not until December; (7) the maternal aunt gave respondent her cellular telephone number, but he never called the number nor attempted to make contact with the child prior to her changing it in December 2004; and (8) respondent has sent no cards, letters, or gifts to the juvenile. The court based its findings on evidence in the record, including testimony from the maternal aunt, as well as from the child's social workers. Additionally, the trial court specifically found, despite respondent's contentions to the contrary, that the maternal aunt has never attempted to hide D.W. from him. Therefore, we conclude

there was clear, cogent, and convincing evidence in the record to support the trial court's findings and conclusion that grounds exist to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Since grounds exist pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to support the trial court's order, the remaining grounds found by the trial court to support termination need not be reviewed by the Court. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34. Accordingly, we affirm.

Affirmed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).