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NO. COA06-1094

NORTH CAROLINA COURT OF APPEALS

Filed: 5 June 2007

IN THE MATTER OF:

N.L.,
a minor child

Mecklenburg County
No. 05-JT-1027

Appeal by respondent-father from an order entered 21 February 2006 by Judge Louis A. Trosch, Jr. in Mecklenburg County District Court. Heard in the Court of Appeals 21 March 2007.

Tyrone C. Wade for petitioner-appellee Mecklenburg County Department of Social Services.

Womble Carlyle Sandridge & Rice, PLLC, by Richard J. Caira, Jr., for appellee Guardian ad Litem.

Mercedes O. Chut for respondent-appellant.

HUNTER, Judge.

Respondent-father ("respondent") appeals from an order terminating his parental rights as to the juvenile N.L. After careful review, we affirm.

On 21 February 2006, the trial court entered an order terminating respondent's parental rights as to the juvenile N.L. The trial court found five grounds for terminating respondent's parental rights: The child is a neglected juvenile; respondent willfully left the child in foster care for more than twelve months without reasonable progress to correct the conditions leading to

removal of the child; failure to pay a reasonable portion of the cost of care though able to do so; failure to establish paternity; and willful abandonment. N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3), (5), (7) (2005).

This Court's review of a trial court's order terminating parental rights involves two inquiries: Whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and whether those findings support its conclusions of law. *In re Allred*, 122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996). A finding by the trial court of any one of the grounds enumerated in N.C. Gen. Stat. § 7B-1111 is sufficient to support an order of termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990).

One of the grounds on which the trial court terminated respondent's parental rights was failure to contribute to the cost of child care once the juvenile is placed outside the home. N.C. Gen. Stat. § 7B-1111(a)(3). That statute states that a trial court may terminate a parent's rights when:

The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

Id.

In its order, the trial court made a finding of fact that respondent had contributed nothing to the cost of child care though

he was physically and financially able to do so were he to "obtain employment." In another finding of fact, the trial court specifically noted that respondent has contributed no funds toward the cost of N.L.'s care since his involvement in the case began, which was in August 2003. The court then concluded that respondent willfully failed to contribute a reasonable portion of child care costs though able to do so.

A parent's ability to pay is the controlling characteristic of what is a 'reasonable portion' of [the] cost of foster care A parent is required to pay that portion of the cost of foster care . . . that is fair, just and equitable based upon the parent's ability or means to pay.

In re Clark, 303 N.C. 592, 604, 281 S.E.2d 47, 55 (1981); see also *In re Montgomery*, 311 N.C. 101, 113, 316 S.E.2d 246, 254 (1984). First, however, the court must find that the parent has the ability to pay some amount greater than zero. *In re Bradley*, 57 N.C. App. 475, 479, 291 S.E.2d 800, 802 (1982).

The trial court here found that respondent was "physically and financially able to [contribute financially] should [he] obtain employment." Respondent does not contend that he did in fact contribute toward the cost of caring for the child, but rather that during the six months preceding the filing of the petition, he was incarcerated, making him unable to pay an amount greater than zero. If that is the case, his failure to contribute cannot be considered willful under the statute.

The petition to terminate respondent's parental rights was filed on 11 October 2005, so the relevant time period to consider

respondent's ability to contribute is 11 April 2005 to 11 October 2005. According to respondent's testimony at the hearing on 2 February 2006, he had been in jail since 17 August 2005. He also testified that he was currently able to work, that he visited the Department of Social Services ("DSS") office on 4 February 2005, and that he held a job at J&K Cafeteria in 2004. In its order, the trial court notes that a DSS social worker visited respondent apparently in prison on 15 July 2005.

Respondent offered no evidence that he was unable to work and earn money to contribute to the cost of child care between 11 April and 15 July. According to his own testimony, he had been able to work and earn money in the recent past, and he offered no evidence that he was incarcerated or otherwise unable to work and earn money during the April to July period.

This Court has held that when a parent forfeits an opportunity to provide for a portion of the cost of child care by his own misconduct, he "will not be heard to assert that he . . . has no ability or means to contribute to the child's care and is therefore excused from contributing any amount." *Bradley*, 57 N.C. App. at 479, 291 S.E.2d at 802-03; see also *In re Tate*, 67 N.C. App. 89, 95-96, 312 S.E.2d 535, 539-40 (1984) (holding that a mother's failure to pay child care costs due to her own refusal to work when able to do so constituted the "misconduct" described by *Bradley*).

Respondent mentions in passing in his brief that he was not ordered to pay support for the minor child. Although he does not rely on this fact to bolster his points above, we feel it is worth

noting that no support order is necessary to require a parent to pay a portion of the cost of his child's foster care. *In re T.D.P.*, 164 N.C. App. 287, 289, 595 S.E.2d 735, 737 (2004), *affirmed per curiam*, 359 N.C. 405, 610 S.E.2d 199 (2005).

It is evident from the record that respondent was able at various points during the six months preceding the petition to terminate his rights as to N.L. to contribute to the cost of child care but failed to do so. As such, we affirm the order terminating his parental rights.

Affirmed.

Judges TYSON and JACKSON concur.

Report per Rule 30(e).