NO. COA06-1158

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IN THE MATTER OF:

Wake County
No. 05 J 723

T.M.W.

On a writ of certiorari from order entered 8 May 2006 by Judge Debra Sasser in Wake County District Court. Heard in the Court of Appeals 17 January 2007.

Wake County Attorney's Office, by Corinne G. Russell and Albert Singer, for petitioner-appellee.

Womble Carlyle Sandridge & Rice, PLLC, by Theresa M. Sprain, for Guardian ad Litem-appellee.

Winifred H. Dillon for respondent-appellant.

MARTIN, Chief Judge.

Respondent is the father of T.M.W. (hereinafter "the child"). His parental rights to her were terminated on the grounds that (1) respondent neglected the child and (2) respondent is incapable of providing for the proper care and supervision of the child. Counsel for respondent timely filed notice of appeal from the order entered 8 May 2006 but failed to serve the notice of appeal on petitioner. The notice of appeal also failed to contain respondent's signature as required by Rule 3A of the Rules of Appellate Procedure. Upon petitioner's motion, the trial court

dismissed the appeal on 20 July 2006. This Court allowed respondent's petition for a writ of certiorari on 27 July 2006.

Although respondent lists 36 assignments of error in the record on appeal, he brings forward and argues only assignments of error numbers 34 and 35. Assignment of error number 34 challenges, as not supported by the findings of fact, the court's finding of fact number 100 and conclusion of law number 3 in which the court found and concluded it is in the best interest of the child to terminate respondent's parental rights. Assignment of error number 35 posits that the court's order terminating respondent's parental rights constituted an abuse of discretion. All of the other assignments of error, including those contending findings of fact are unsupported by evidence, are deemed abandoned. N.C. R. App. P. 28(b)(6).

"The trial court has discretion, if it finds that at least one of the statutory grounds exists, to terminate parental rights upon a finding that it would be in the child's best interests." *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). Findings of fact that are not challenged on appeal are deemed supported by the evidence and are binding upon this Court. *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003). An order terminating parental rights must be affirmed if the findings of fact support conclusions of law based upon the termination of parental rights statutes. *In re Oghenekevebe*, 123 N.C. App. 434, 436, 473 S.E.2d 393, 395-96 (1996).

Factors to consider in determining the child's best interests

include: (1) the age of the child; (2) the likelihood of adoption; (3) the impact in accomplishing the permanent plan; (4) the bond between the child and the parent; (5) the relationship between the child and a proposed adoptive parent or other permanent placement; and (6) any other relevant consideration. N.C. Gen. Stat. § 7B-1110(a) (2006). The court is to take action "which is in the best interests of the juvenile" when "the interests of the juvenile and those of the juvenile's parents or other persons are in conflict." N.C. Gen. Stat. § 7B-1100 (3) (2006). As a discretionary decision, the trial court's disposition order will not be disturbed unless it could not have been the product of a reasoned decision. *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387, *aff'd*, 360 N.C. 165, 622 S.E.2d 495 (2005).

Respondent contends in his brief that the court abused its discretion by terminating respondent's parental rights. He argues that "it has not been shown that termination and adoption are *necessary* to achieve a permanent plan for this child." (Emphasis in original.) He maintains that a safe and permanent home can be provided to the child, without terminating his parental rights, by granting guardianship or custody to the paternal relatives who currently have custody of the child. He argues guardianship will achieve the necessary permanency as N.C. Gen. Stat. § 7B-600(b) provides that a guardianship may not be terminated without specific findings that the guardian is unfit or the guardianship is no longer in the child's best interests.

We are not persuaded by defendant's argument. The legislative

policy with respect to parental rights is "to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents." N.C. Gen. Stat. § 7B-1100(2) (2005). Guardianship or legal custody does not have the permanence of termination of parental rights as guardianship and custody can be changed, as respondent himself notes. Guardianship can be changed pursuant to N.C. Gen. Stat. § 7B-600(b) and a custody order may be changed or modified following a review hearing pursuant to N.C. Gen. Stat. § 7B-906 or permanency planning hearing pursuant to N.C. Gen. Stat. § 7B-907.

The testimony of the prospective adoptive mother, a paternal aunt, is perhaps the most telling and forceful. When asked how she would feel about respondent at some point becoming able to parent the child, she responded:

> I am no yo-yo; that if [the child] goes and stays with [respondent] and gets off the course that I have her on now, I won't accept her back. And I don't mean that disrespectfully. I've got her in my home, I've gotten used to her, my husband's gotten used to her. We have developed a bond. She knows what she can get away with, she knows what she can't get away with. If she goes to his home and it's like it generally is like with [the child's older sister] – she was there, then she was at my mom's, then she was back there, and she was with my mom – see what I'm saying, I can't live that way. I can't live that way.

Further, she expressed concern about the child's future should something happen to her and her husband. She testified that if the

child were adopted by them, she has made her son and daughter aware they would have an obligation to care for the child as their sibling should she and her husband die or become incapacitated. She understood that adoption would give her children some legal rights to the child. She could not be assured of this if she only had legal custody of the child. She further noted that as legal guardian or custodian, she could not qualify for day care assistance for the child whereas as the adoptive parent she could.

She also related how in her family it had "been a tradition" for a relative to raise another relative's child "[e]xcept for some of us broke away from that tradition and did not allow it to happen." She remarked, "[I]t's not anything unusual in our family for someone to go and visit my mother and say, I'm leaving the children there for the week-end and they're there until they graduate." Respondent himself was raised by her mother, respondent's natural grandmother. Although she anticipates that breaking away from this tradition might cause strain on her relationship with some members of her family, she expects to have the support of her husband's family, friends of the family, and her mother.

The court's findings of fact show that the child has been in the custody of the paternal aunt and her husband and residing in a safe, stable home since March 2005, when the child's mother relinquished her parental rights to the child. The adoptive parents are both employed, the prospective adoptive mother as nursing manager of a medical center. They own a four-bedroom home.

The child and adoptive parents are "extremely bonded" and the child "has an extremely rich relationship with her caregiver." The child calls the prospective adoptive mother "Ninnie" and the prospective adoptive father "Papa." Although the paternal aunt is "supportive" of respondent having visitations with the child, respondent has not made efforts to visit. The child has no bond with respondent, and respondent does not have a family support system in place such that he could care for the child.

Finally, and not insignificantly, the court could find no evidence to show that termination of respondent's parental rights is not in the child's best interests. Respondent does not contest this finding of fact and fails to cite any evidence to show that termination of respondent's parental rights is not in the child's best interests.

We hold the court did not abuse its discretion by terminating respondent's parental rights. The order is

Affirmed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).