NO. COA06-1174

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN THE MATTER OF:
J.A.P.,
A Minor Child

Caldwell County
No. 04 J 161

Appeal by respondent-mother from order entered 13 February 2006 by Judge C. Thomas Edwards in Caldwell County District Court. Heard in the Court of Appeals 16 April 2007.

Lauren Vaughan for Caldwell County Department of Social Services, petitioner appellee.

Charlotte Gail Blake for respondent-mother appellant.

Womble Carlyle Sandridge & Rice, PLLC, by Sarah L. Buthe, for guardian ad litem appellee.

McCULLOUGH, Judge.

Respondent-mother T.D.R. ("respondent") appeals from the trial court's 13 February 2006 order terminating her parental rights to her minor child, J.A.P. Because we conclude the trial court's findings of fact are supported by clear, cogent, and convincing evidence, we affirm the trial court's order.

J.A.P. was born to respondent and J.P. in 2004. On 21 October 2004, the Caldwell County Department of Social Services ("DSS") filed a juvenile petition alleging J.A.P. was a neglected juvenile on the grounds the child did not receive proper care, supervision,

or discipline from the child's parents and the child lived in an environment injurious to the child's welfare. The petition also alleged J.A.P. was dependent on the ground J.A.P.'s parents were unable to provide for her care or supervision and lacked an appropriate alternative child care arrangement. DSS made the following factual allegations in the petition: (1) J.A.P. was born six weeks premature; (2) J.A.P. had moved five times since she was born; (3) J.A.P.'s father hit respondent with his class ring, called her names, pinched J.A.P., picked J.A.P. up by her arms, and threatened to kill respondent if she took J.A.P. and left him; (4) when the social workers assisted respondent in moving out of the home in which she resided with J.A.P.'s father, there were no sheets on the bed or in the crib for J.A.P., and there was only one bottle, a few clothes, no wipes, few diapers, and very little formula for J.A.P.; (5) respondent had mixed cereal in J.A.P.'s bottle at night despite the doctor's instructions to respondent not to feed cereal to J.A.P.; and (6) respondent informed the social worker on one occasion in October 2004 that J.A.P. had gotten diaper rash so badly that her bottom was bleeding.

The petition further alleged that on 21 October 2004, when social workers arrived at the home of respondent's mother, the home where respondent and J.A.P. were then living, they discovered the following: (1) the home was "filthy with broken glass, large pieces of metal and wood with nails sticking out of it in the yard" (2) "plastic plates full of cigarette butts, old food, trash lying on the floors, trash bags full of clothes and general clutter"; (3)

J.A.P. appeared to have thrush in her mouth and was in the home by herself when the social workers arrived; and (4) J.A.P. had feces in her vaginal area that had not been properly cleaned. The social workers assisted respondent's mother in taking J.A.P. to the doctor at which time it was confirmed that J.A.P. had thrush. Further, J.A.P. had not received any of her shots and, thus, received four shots while at the doctor's appointment. On the same date, the trial court entered a nonsecure custody order placing J.A.P. in DSS custody. By order entered 27 October 2004, the trial court continued nonsecure custody of J.A.P. with DSS.

On or about 15 December 2004, an adjudication and disposition hearing was held in Caldwell County District Court. Both respondent and J.A.P.'s father stipulated to the facts alleged in the juvenile petition with respect to J.A.P.'s dependency and stipulated that J.A.P. was a dependent juvenile. The trial court thereafter entered an adjudication order concluding J.A.P. was a dependent juvenile and a disposition order continuing custody of J.A.P. with DSS. The trial court also ordered respondent to complete her high school education and to participate in a pre-job program or to present a letter to the court documenting that she was not eligible to do so. The trial court adopted the family services case plan as part of its order and, thus, ordered respondent to complete a nurturing parenting program and demonstrate what was learned in the program; obtain and maintain appropriate housing and keep it clean; demonstrate that she can appropriately care for J.A.P. by keeping herself clean and coming

to visits clean; and attend domestic violence support group meetings.

A permanency planning review hearing was held on or about 4 May 2005. At that time, respondent was pregnant, was not working, and continued to reside with her mother in the home from which J.A.P. was removed. Although respondent had completed the nurturing program, she continued to exhibit difficulty in interacting and comforting J.A.P. during her supervised visits. Further, respondent had not attended any domestic violence support group meetings nor had she enrolled in the pre-job program as she was previously ordered to do. Respondent also had not attended any GED sessions since 2 March 2005. The trial court found respondent had "exhibited no ability to provide for the basic needs of herself and her child." Thus, the trial court ceased reunification efforts with respondent. Reunification efforts with J.A.P.'s father had been ceased at a previous review hearing and the trial court ordered that such efforts remain ceased.

On 10 August 2005, DSS filed a motion to terminate the parental rights of respondent and J.A.P.'s father. DSS filed an amended motion on 11 August 2005. On 17 October 2005, J.A.P.'s father executed a relinquishment of his parental rights.

By order entered 13 February 2006, the trial court terminated respondent's parental rights to J.A.P. pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (6) (2005). Respondent appeals.

Respondent contends the trial court erred in concluding that grounds for termination existed because the trial court's findings of fact were not supported by clear, cogent, and convincing evidence. We disagree.

A termination of parental rights proceeding is conducted in two phases: (1) adjudication and (2) disposition. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). In the adjudication phase, the petitioner has the burden of proving by clear, cogent, and convincing evidence that one or more of the statutory grounds for termination under N.C. Gen. Stat. § 7B-1111(a) exists. *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908. If a petitioner meets its burden of proving one or more statutory grounds for termination, the trial court then moves to the disposition phase where it must decide whether termination is in the child's best interests. *Id.*

The standard of review of the adjudication phase of termination of parental rights is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support its conclusions of law. *See In re Oghenekevebe*, 123 N.C. App. 434, 439-41, 473 S.E.2d 393, 397-99 (1996). Findings of fact are conclusive on appeal if they are supported by "ample, competent evidence," even if there is evidence to the contrary. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). "So long as the findings of fact support a conclusion based on [the statute], the

order terminating parental rights must be affirmed." *In re Oghenekevebe*, 123 N.C. App. at 436, 473 S.E.2d at 395-96.

Respondent assigns error to the following findings of fact on the ground they are not supported by clear, cogent, and convincing evidence:

> 6. The Respondent mother has been enrolled in the GED Program for over a year and, as of the date of the final hearing in this matter, she is still not eligible to take any tests to achieve the certification. Between the hearing on October 17, 2005 and the hearing on January 23, 2006, she attended only two additional classes.
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> 7. The Respondent mother does not have a car or any means of providing for her own transportation needs. She has no drivers license. She is not presently employed. As of the date of the second hearing in this matter, she asserts that she has a job interview for a dishwasher position in the near future but she is unsure of the wages for the job. During the times that she has resided with her "fiancé", he was not working either.
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> 8. The Respondent mother has completed Parenting classes but it is doubtful that she was able to learn or apply any of the information presented during those classes. She expressed the opinion that thrush was a build up of milk in the baby's mouth. She asserts that she learned how to feed the baby. She was unable to answer questions about the developmental stages of children or what the needs of the minor child would be now that she is older.
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> 9. The Respondent mother was determined to have an IQ in the Borderline Intellectual Functioning range. She also displayed characteristics of a Dependent Personality Disorder. She scored very low scores on the Comprehension Scale which

> would indicate problems with her ability to learn and use new information. She also displayed self-defeating characteristics. She likely does not see herself as an adult with the responsibilities to care for her child.
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> 10. The psychological evaluation made certain recommendations of activities that could assist the Respondent mother in being better equipped to meet the needs of her minor child. She has not complied with several of those recommendations. She has not been able to benefit from some of the classes in which she did participate, such as the parenting classes.
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> . . . .
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> 12. The Respondent mother has been unable to demonstrate the ability to meet the basic needs of the child for food, diaper changes, hygiene or other basic needs.
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> 13. The Respondent mother did complete Parenting Classes but the notes from the program coordinator indicate that the Respondent mother did not participate in discussions and often did not even seem to be paying attention. It was further noted that the Respondent mother was immature and young and needs lots of support. The class participants are given a quiz at the beginning of the classes to establish a baseline of knowledge and a quiz at the end of the classes, the Respondent mother's score actually declined slightly from the pre-test to the final test.

The only argument respondent makes to support her assignments of error relating to these findings of fact is that the trial court's failure to order that she obtain therapy to work on her assertiveness, self-esteem and confidence, as recommended by Dr. Cole, made it more likely that she would be unable to complete the tasks ordered by the trial court. For example, respondent argues

the trial court's failure to require respondent to obtain such therapy "made it more likely that [respondent] would not be able to complete her GED or pre-job program successfully or to benefit from parenting classes." Respondent, however, fails to argue or present any evidence showing these findings of fact are not supported by the evidence. Indeed, we have carefully reviewed the record and conclude that clear, cogent, and convincing evidence supports these findings of fact. Thus, these assignments of error are overruled.

Respondent further challenges Finding of Fact Number 11 on the ground it is not supported by the evidence. This finding provides:

> 11. The Respondent mother frequently reported transportation problems which interfered with her ability to attend some visits with the minor child or complete other tasks the Court had directed her to do. She would not report these problems in time to allow the Department to assist her with transportation. She would actually report to the Department that she had made other arrangements for transportation but will still have difficulties.

Although respondent admits the trial court correctly found she experienced transportation problems that made it difficult for her to visit with J.A.P. or to complete other tasks ordered by the trial court, she contends she told her caseworker only once that she had transportation problems. Further, respondent argues there is no evidence that DSS ever offered to assist her with transportation and her case plans required her to provide her own transportation.

Contrary to respondent's contention, Wendie Triplett, a social worker with DSS, testified that respondent was frequently late for her visits with J.A.P. and respondent "always blamed [her tardiness] on her mom's car." When Ms. Triplett asked respondent if she could speak with respondent's mother about the importance of respondent being on time, respondent informed Ms. Triplett that "she would take care of it." Further, respondent testified that she did not participate in the pre-job program because she had transportation problems. However, respondent testified that she never asked DSS for transportation assistance. We conclude this testimony constitutes competent evidence to support the trial court's finding. This assignment of error is overruled.

Respondent does not argue in her brief that the trial court's findings of fact do not support its conclusions that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (6) to terminate her parental rights. Thus, this issue is not before this Court for review. *See* N.C. R. App. P. 28 (b)(6) ("Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned."). Because the trial court's findings of facts were supported by clear, cogent, and convincing evidence, we affirm the trial court's order terminating respondent's parental rights.

Affirmed.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).