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NO. COA06-118

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

IN THE MATTER OF:

P.L.C.  
A Minor Child

Catawba County  
No. 03 J 239

Appeal by respondent from judgments entered 18 October 2005 by Judge L. Suzanne Owsley in Catawba County District Court. Heard in the Court of Appeals 24 July 2006.

*J. David Abernethy for Catawba County Department of Social Services, petitioner-appellee.*

*Tammera S. Hill, Attorney Advocate.*

*Winifred H. Dillon for respondent-appellant.*

MARTIN, Chief Judge.

The Catawba County Department of Social Services (DSS) filed a juvenile petition on 28 August 2003 alleging that P.L.C. was abused and neglected because P.L.C. tested positive for cocaine twenty-four hours after his birth and his mother had a "substantial history with [DSS] and with using illegal substances." DSS took non-secure custody of P.L.C. that same day. By order filed 3 November 2003, respondent consented to an adjudication that P.L.C. was an abused and neglected child based upon the facts alleged in the juvenile petition. The trial court ordered respondent to

comply with the Family Services Case Plan, which included respondent obtaining a substance abuse assessment and being "drug free."

On 29 September 2004, DSS filed a petition to terminate the parental rights of both respondent and the minor child's father alleging that each had: (1) neglected the minor child (N.C. Gen. Stat. § 7B-1111(a)(1)), and (2) willfully left the child in foster care or placement outside the home for more than twelve months without showing reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the child. (N.C. Gen. Stat. §7B-1111(a)(2)).

In its 18 October 2005 judgment and adjudication order, the trial court concluded that based upon clear, cogent and convincing evidence, sufficient grounds existed for terminating the parental rights of respondent and the father in that P.L.C. was neglected pursuant to N.C.G.S. § 7B-1111(a)(1), and that respondent and the father willfully left P.L.C. in foster care for more than 12 months without reasonable progress under the circumstances pursuant to section 7B-1111(a)(2). The trial court entered a disposition order that same day and concluded that the best interests of the child required termination of the parental rights of P.L.C.'s parents. Respondent appeals. We affirm. The father is not a party to this appeal.

Respondent contends the trial court's conclusion that she neglected her son is not supported by sufficient, competent evidence or findings of fact. We find the evidence sufficient to

support the order terminating parental rights and affirm the decision of the trial court. A termination of parental rights proceeding is conducted in two phases: (1) the adjudication phase which is governed by N.C. Gen. Stat. § 7B-1109 and (2) the disposition phase which is governed by N.C. Gen. Stat. § 7B-1110. See *In re Brim*, 139 N.C. App. 733, 738, 535 S.E.2d 367, 370 (2000). During the adjudication stage, petitioner has the burden of proof by clear, cogent, and convincing evidence that one or more of the statutory grounds set forth in N.C. Gen. Stat. § 7B-1111 for termination exists. See N.C. Gen. Stat. § 7B-1109(e)-(f) (2005). The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

If petitioner meets its burden of proof that grounds for termination exist, the trial court then moves to the disposition phase and determines whether termination is in the juvenile's best interest. See N.C. Gen. Stat. § 7B-1110(a) (2005). The trial court has discretion, if it finds by clear, cogent, and convincing evidence that at least one of the statutory grounds for termination exists, to terminate parental rights upon a finding that it would be in the best interests of the child. *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001). The trial court's decision to terminate parental rights is reviewed under an abuse of discretion standard. *In re Brim*, 139 N.C. App. at 744, 535 S.E.2d

at 373. Abuse of discretion occurs "when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387, (citation omitted), *aff'd*, 360 N.C. 165, 622 S.E.2d 495 (2005).

In this case, the trial court terminated respondent's parental rights under section 7B-1111(a)(1) based upon a finding that the minor child was a "neglected juvenile" within the meaning of N.C. Gen. Stat. § 7B-101. Section 7B-101(15) defines "neglected juvenile" as follows:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. . . .

N.C. Gen. Stat. § 7B-101(15) (2005). "To prove neglect in a termination case, there must be clear and convincing evidence:" that (1) the juvenile is neglected within the meaning of N.C. Gen. Stat. § 7B-101(15), and (2) "the juvenile has sustained 'some physical, mental, or emotional impairment . . . or [there is] a substantial risk of such impairment as a consequence'" of the neglect. *In re Reyes*, 136 N.C. App. 812, 814-15, 526 S.E.2d 499, 501 (2000) (quoting *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993)).

"A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the

termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). "Termination of parental rights for neglect may not be based solely on past conditions which no longer exist." *Id.* "[A] prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect." *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). If the child has been removed from the parents' custody before the termination hearing, and the petitioner presents evidence of prior neglect, including an adjudication of such neglect, then "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *Id.* at 715, 319 S.E.2d at 232. Thus, where

there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to [his or] her parents.

*In re Reyes*, 136 N.C. App. at 815, 526 S.E.2d at 501.

In support of its conclusion that respondent's parental rights should be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), the trial court entered the following pertinent findings of fact:

8. The initial Petition was filed on August 28, 2003 and the minor child came into nonsecure custody on that date, and has remained in nonsecure custody ever since that time.

9. After several continuations of nonsecure

custody, the minor child was adjudicated abused and neglected on October 7, 2003. The mother was present and consented to the adjudication. . . .

10. The minor child was born . . . at Carolinas Medical Center-University Hospital, Charlotte, North Carolina. Upon admission to the hospital, the Mother admitted to using heroin the night before (possibly on the morning of) birth. The Mother was drug screened while in the hospital and tested positive for opiates, cocaine, and marijuana. The minor child tested positive for cocaine twenty-four (24) hours after birth. The minor child was experiencing withdrawals and was being administered Phenobarbital.

11. As of the date of adjudication, the Mother had a substantial history with Departments of Social Services and with using illegal substances.

12. The minor child is the Mother's fourth child. The Mother does not have custody of any of her other children. . . . The Mother's third child was removed by Catawba County Department of Social Services in 1999 due to the Mother's drug use during pregnancy and the minor child testing positive for cocaine twenty-four (24) hours after birth. The third-born child has been adopted by paternal grandparents in Gaston County, North Carolina.

. . .

14. In the initial order of disposition, the court ordered that the parents should comply with all aspects of the Family Services Case Plan. Specifically, the mother was ordered to comply with the requirements of her substance abuse assessment. She was to obtain a substance abuse assessment and a psychological evaluation. She was to obtain appropriate housing, get a job when one was available and pay child support. She was ordered to be drug free and to comply with frequent random drug screens at the request of the Department of Social Services and the Guardian ad Litem.

15. The mother did enter into a case plan on September 25, 2003, and did get a substance

abuse assessment, which was a part of her case plan.

16. The mother enrolled in the McLeod Methadone clinic in Hickory. She was terminate[d] from the clinic for not attending. During her treatment at McLeod, she was using illegal drugs; specifically heroin. After that she sought treatment at another McLeod program in another county, but there is no verification of her completing it.

17. The mother was asked to do random drug screens. She did submit to a drug screen on only one occasion, and never did so thereafter.

18. The mother was to live with her mother; however, she did not comply with this provision as her mother frequently did not know where the mother was or where she was living.

19. The case plan called for visits at DSS. From September 29 to December 1, 2003, the mother visited five times, and missed three or four visits. Her last visit was on December 1, 2003. She has not seen the minor child since the court date on March 23, 2004. At that time the court authorized two additional visits. The mother left court on that occasion and did not contact the DSS. . .

. . .

21. The mother has a very long history of substance use and abuse. She used heroin on a daily basis since her third child was removed in the year 2000. She also used cocaine and marijuana on a regular basis.

22. The mother has been incarcerated several times since the child was born. The mother currently is in the Department of Corrections. She is serving a sentence for felonious larceny and probation violation. In August of 2004 she agreed to her sentence being activated. She has an expected release date of February of 2006.

23. Since August of 2004 the mother has made efforts to maintain contact, calling the DSS

and the foster parents and sending letters. She has taken a parenting class. In March of 2005 she began substance abuse treatment in the Department of Corrections. She obtained her GED and is taking cosmetology classes from a community college. After release she will be required to be on six months of intensive probation and two years of regular probation.

. . .

33. Each [] parent[] has neglected the minor child and willfully left the minor child in foster care or placement outside the home for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the minor child.

34. The mother has abused and neglected the minor child; she abused the minor child when she created a substantial risk of serious physical injury to the minor child by other than accidental means when she used heroin, cocaine, opiates and marijuana before the birth of the minor child, causing the minor child to have cocaine in his system at birth and to experience medical problems. She has not showed [sic] the ability to remain substance abuse-free for any significant period of time or to maintain employment while not incarcerated.

. . .

36. That based on the evidence presented the court finds that the facts alleged in the motion are true and correct by clear, cogent and convincing evidence, and that these facts constitute neglect by each parent. The evidence presented also supports a strong likelihood that neglect would continue if the child were returned to the home of either of the parents at this time or any time in the foreseeable future.

Respondent has brought forward on appeal assignments of error regarding only findings of fact 33, 34 and 36. N.C. R. App. P. 28(b)(6). Accordingly, the remaining findings are presumed to be

correct and supported by competent evidence. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982). In addition, a review of the record and transcript shows that each of the trial court's findings is based upon competent evidence, including orders entered in the case and testimony from DSS social worker Marcie Bland and respondent herself. The prior adjudication established the existence of prior neglect. Respondent's choice to continue using drugs, her failure to obtain appropriate housing, and her failure to participate in drug treatment as ordered by the court supported the court's determination that there was a probability that neglect would be repeated in the future. The trial court thus properly considered both evidence of past neglect by respondent, as well as evidence of conditions since that time showing a likelihood of neglect in the future.

Although respondent points to evidence that she has made "dramatic progress in addressing her drug dependency while in prison[,] " the trial court was free to conclude, as it did, that respondent's pattern of drug abuse suggested a probability that the drug abuse would recur. We, therefore, hold that the trial court's findings of fact were based on clear, cogent, and convincing evidence. We further hold that these findings support the court's conclusion that grounds justifying termination existed under N.C. Gen. Stat. § 7B-1111 (a)(1). *See, e.g., In re Leftwich*, 135 N.C. App. 67, 72, 518 S.E.2d 799, 803 (1999) (trial court could properly find neglect when respondent mother had not made meaningful progress in improving her lifestyle, including continuing to abuse

alcohol). As only one ground is necessary to support the termination, we need not address whether evidence existed to support termination based on N.C. Gen. Stat. § 7B-1111(a)(2).

Respondent also contends the trial court abused its discretion in concluding that the best interest of the child would be served by terminating respondent's rights and that terminating the rights of the mother would not result in an unnecessary severance of the relationship between child and the mother. We disagree.

In the disposition order, the trial court incorporated by reference its findings of fact in the adjudication order and additionally found:

9. The minor child is doing well in his foster/adopt home, which is the only home he has ever known. He is developmentally on track. His foster family has the ability and desire to take care of the minor child and to meet his needs.

10. Despite very recent attempts by each of the parents to address his or her very serious substance abuse issues, based on their histories of substance abuse, criminal histories, and instability in lifestyle, it is not reasonable to believe that either of the parents will be able to put his or her life in order and maintain a suitable home for any significant period of time, within a reasonable amount of time, so as to be able to provide appropriate care for the minor child. The child is now twenty-five months old and neither parent ha[s] been able to care for the minor child since birth.

The trial court found clear indications that respondent is either unwilling or incapable of assuming the responsibilities associated with the proper care of her child. Therefore, the trial court concluded the best interest of the minor child would be promoted by

terminating the respondent's parental rights. Here, the trial court set out detailed findings based on substantial and competent evidence which support the conclusion that it is in the best interest of the child to terminate respondent's parental rights. Based on the record, we cannot say that the trial court abused its discretion in finding and concluding that it was in the minor child's best interest to terminate respondent's parental rights. Therefore, this assignment of error is overruled.

Affirmed.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).