NO. COA06-1214

NORTH CAROLINA COURT OF APPEALS

Filed: 20 February 2007

IN THE MATTER OF:

Mi. T., Kys. T., Ma. T., & Kye. T.

Buncombe County
Nos. 05 J 513; 05 J 514
05 J 515; 05 J 516

Appeal by respondent from judgments entered 27 June 2006 by Judge Rebecca B. Knight in Buncombe County District Court. Heard in the Court of Appeals 22 January 2007.

Danya Ledford Vanhook, Buncombe County Department of Social Services, for petitioner-appellee.

Sofie W. Hosford for respondent-appellant.

Michael N. Tousey for Guardian ad Litem-appellee.

MARTIN, Chief Judge.

Respondent appeals from judgments terminating her parental rights to her four minor children. At the conclusion of the termination hearing on 9 May 2006, the court indicated that it had determined grounds existed to terminate parental rights but that it was taking under advisement the determination of whether it is in the best interests of the children to terminate respondent's parental rights. The court subsequently filed written judgments on 27 June 2006 terminating respondent's parental rights. The court terminated respondent's parental rights to each child on the

grounds that respondent: (1) neglected each child, and (2) willfully left each child and siblings in a placement outside the home for more than twelve months without showing reasonable progress under the circumstances in correcting the conditions which led to the removal of the children. Respondent filed notice of appeal from the judgments on 26 July 2006.

In reviewing an order terminating one's parental rights, we examine the findings of fact to determine whether they are supported by clear, cogent and convincing evidence and whether the conclusions of law are supported by the findings of fact. *In re Pope*, 144 N.C. App. 32, 40, 547 S.E.2d 153, 158, *aff'd*, 354 N.C. 359, 554 S.E.2d 644 (2001). Findings of fact that are not challenged on appeal are deemed supported by the evidence and are binding. *In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001). If the appellate court can uphold the trial court's determination of the existence of a single ground for termination of rights, then it need not consider other grounds determined by the trial court to be existent. *In re Davis*, 116 N.C. App. 409, 413, 448 S.E.2d 303, 305, *disc. review denied,* 338 N.C. 516, 452 S.E.2d 808 (1994).

Respondent first contends the court erred in concluding that she willfully left her children in foster care for more than twelve months without correcting the conditions that led to their removal. This conclusion tracks the language of N.C.G.S. § 7B-1111(a)(2), which permits termination of parental rights upon a finding that "[t]he parent has willfully left the juvenile in foster care or

placement outside the home for more than 12 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 juvenile." N.C. Gen. Stat. § 7B-1111(a)(2) (2005). Respondent argues petitioner failed to show that she willfully failed to correct the conditions that led to the removal of the children from her custody. She submits that the evidence actually shows she made great progress toward correcting those conditions.

The "willful" action within the meaning of N.C.G.S. § 7B-1111(a)(2) to terminate rights for willfully leaving a child in foster care is something less than the purposeful or deliberate action required to terminate parental rights for willful abandonment pursuant to N.C.G.S. § 7B-1111(a)(7). *See In re Shepard*, 162 N.C. App. 215, 224, 591 S.E.2d 1, 7 (2004); *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). "Willfulness under this section means something less than willful abandonment and does not require a finding of fault by the parent." *In re B.S.D.S.*, 163 N.C. App. 540, 545, 594 S.E.2d 89, 93 (2004). Termination on this ground may be made even though the parent has made some efforts to regain custody of the children. *In re Becker*, 111 N.C. App. 85, 95, 431 S.E.2d 820, 826-27 (1993).

The court's findings of fact to which respondent has not taken exception, and thus are binding, show that the children were removed from her home on 14 May 2004 and placed in foster care. On 12 October 2004, the court adjudicated the children as neglected

and dependent in that they did not receive proper care, supervision or discipline, they lived in an environment injurious to their welfare, and respondent could not provide for the care and supervision of the children. The court ordered respondent to, *inter alia*, follow the recommendations of her psychological evaluation, including psychotherapy; complete anger management classes; complete parenting classes; complete substance abuse treatment; and obtain and maintain employment.

Initially, respondent complied with the court's order by completing parenting classes, undergoing treatment, and completing substance abuse treatment. However, at the time of a permanency planning hearing on 6 July 2005, respondent had not seen her therapist for two months and she had missed an appointment with a psychiatrist. On 11 July 2005, one day after the children visited her home, a male friend of respondent assaulted her with a knife and knocked her unconscious. Respondent did not report this incident to petitioner. Respondent acknowledged that she exposed the children to her assailant, who brought them fireworks. On 15 July 2005, respondent was jailed for violation of terms and conditions of probation imposed following a conviction of driving while impaired. She did not visit her therapist in August 2005. Following her release from jail in September 2005, respondent resumed weekly visitations with the children. However, respondent cancelled the scheduled visit on 17 October 2005 because she did not feel like walking to the visit. On 2 November 2005, respondent appeared in court for a permanency planning hearing and agreed to

undergo a drug screen. Respondent tested positive for cocaine and marijuana. The court conditioned further visitations on respondent's having a clean drug screen. At the next court hearing on 29 November 2005, respondent tested positive for marijuana.

According to the trial court's findings, respondent's employment history has been sporadic. She has had a number of jobs lasting for short durations. She was employed by a McDonald's restaurant in September 2005 but she quit this job after only one month because allegedly the manager "yelled at her." She did not work again until approximately two and one-half weeks before the court hearing of 29 November 2005. She told the court that she is a good worker but she has not found a job that she likes a lot so she just works a while for money as needed. However, her actions have contradicted her words. Her failure to obtain and maintain employment resulted in her being unable to pay her electrical bill and pay fines and costs arising out of her conviction of driving while impaired, as a result of which she lost free Section 8 housing and the criminal court revoked her probation and incarcerated her. Finally, the trial court found that respondent has been difficult to work with due to her high degree of hostility, high degree of emotional outbursts, and her resistance to services. For example, she declined one-on-one parenting classes designed to ease the transition of the children back into her home, asserting she did not need them because "she was a good mom." Respondent also became angry when a counselor advised her not to expose the children to persons who could have a bad

influence on them. The counselor identified one man in particular, who reeked of marijuana when the counselor walked past him.

In April 2006 respondent showed up unexpectedly at a therapy session for the minor children. As a result of her visit, one of the children had to be admitted to a hospital. All three of the boys have been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and all three exhibit behavior problems. One of the boys has been diagnosed with several psychological disorders, and the girl has also exhibited behavior problems and is in therapy. The behavior problems worsen in the days immediately before visitations with respondent.

We hold the foregoing findings of fact support the court's conclusion that she willfully left her children in foster care for more than twelve months without correcting the conditions that led to their removal.

Respondent next contends the court erred in concluding that she neglected the children and that there was a likelihood of repetition of neglect. As only one ground is required to terminate parental rights and we uphold the termination of rights pursuant to N.C.G.S. § 7B-1111(a)(2), we need not consider this contention. *See Davis*, 116 N.C. App. at 413, 448 S.E.2d at 305.

Respondent next contends the court erred in concluding that it is in the best interests of the children that her parental rights be terminated.

"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). 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 on the accomplishment of 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) (2005). 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) (2005). As a discretionary decision, the trial court's disposition order will not be disturbed unless it could not have been the product of reasoning. *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 argues that because she demonstrated her fitness as a parent and the children are bonded to her, the court's decision to terminate rights could not be the product of reasoned decision.

We are not persuaded by respondent's argument. In making its determination to terminate respondent's parental rights, the court made the following findings of fact, to which respondent has not assigned error and are therefore binding:

> 1. Each child has special mental health needs and their needs are being addressed while in care. The children are making progress with their treatment and behaviors and have benefited from the stability provided by being placed outside the home of the respondent

> mother.
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> 2. The respondent mother has not been able to maintain stability sufficient to care for herself. She has been incarcerated for probation violations; she has been assaultive; she has been the victim of a violent assault; she has been unable to maintain employment; she has been inconsistent in being willing/able to accept services for herself and her family; and she has used illegal drugs. There is no evidence the respondent mother has the ability to meet the needs of any one of her children at this time and she certainly has not demonstrated the ability to meet the needs of all four children at this time.
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> 3. The children (except the youngest) are bonded with the mother and the respondent mother clearly loves her children. At the same time, they have demonstrated behavior problems connected to visitation. Overall, the respondent mother's contact with the children is having a negative impact on the children's stability.
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> 4. The Court has exhausted services available in this community to assist the respondent mother in functioning as a responsible parent for the four children. While the respondent mother is benefiting at this time from her mental health treatment, she has not reached a point where she is able to attend to her needs and responsibilities. For example, she lives within walking distance of the courthouse, but was one hour and forty minutes late getting to court, was inappropriately dressed when she arrived and had to have her cell phone taken away from her. Further, she has a cell phone but is in significant arrears on her child support.

These findings reflect a rational reasoning process. They support the court's discretionary decision to terminate respondent's parental rights.

Respondent's final contention is that the court erred by not entering an order within 30 days after the court rendered its

decision to terminate parental rights as required by N.C.G.S. § 7B-1109(e). This subsection provides:

> The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent. The adjudicatory order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

N.C. Gen. Stat. § 7B-1109(e) (2005). The last two sentences of this subsection were added by House Bill 1150 during the 2005 General Assembly. 2005 N.C. Sess. Laws ch. 398, § 16. Nothing in the record shows that the clerk scheduled or that respondent requested the hearing contemplated by this section. Moreover, "[t]his Court has previously stated that absent a showing of prejudice, the trial court's failure to reduce to writing, sign, and enter a termination order beyond the thirty day time window may be harmless error." *In re L.E.B.*, 169 N.C. App. 375, 378-79, 610 S.E.2d 424, 426, *disc. review denied*, 359 N.C. 632, 616 S.E.2d 538 (2005). "[T]he complaining party must appropriately articulate the prejudice arising from the delay in order to justify reversal." *In re S.N.H.*, ___ N.C. App. ___, ___, 627 S.E.2d 510, 513 (2006). "[T]he longer the delay in entry of the order beyond the thirty-day

deadline, the more likely prejudice will be readily apparent." *In re C.J.B.*, 171 N.C. App. 132, 135, 614 S.E.2d 368, 370 (2005). Respondent has not shown, and we fail to perceive, how the nineteen-day delay prejudiced respondent. This assignment of error is overruled.

The orders terminating respondent's parental rights are Affirmed.

Judges McCULLOUGH and LEVINSON concur.

Report per Rule 30(e).