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NO. COA06-1220

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IN THE MATTER OF:

Burke County  
No. 06 J 38

C.P.A.

Appeal by respondent from orders entered 26 June 2006 and 18 July 2006 by Judge Burford A. Cherry in Burke County District Court. Heard in the Court of Appeals 22 January 2007.

*Burke County Department of Social Services, by Stephen M. Schoeberle for petitioner-appellee.*

*Winifred H. Dillon, for respondent-appellant.*

*Mary R. McKay, for Guardian ad Litem.*

LEVINSON, Judge.

Respondent-mother appeals from adjudication and disposition orders concluding her infant son, C.P.A., was neglected and dependent, and ceasing reunification efforts. We affirm.

The Burke County Department of Social Services (DSS) filed a juvenile petition on 5 April 2006 alleging that C.P.A. was: (1) abused because he was born with drugs in his system, and (2) neglected because of respondent-mother's history of substance abuse and respondent's positive drug test when C.P.A. was born. DSS took non-secure custody of C.P.A. the next day. DSS subsequently amended its juvenile petition to delete the abuse allegation and

add the allegation that C.P.A. was dependent because respondent-mother's five other minor children were not in her custody "due to her substance abuse and criminal activity."

The trial court conducted a hearing on the petition. After DSS and respondent-mother presented evidence, the trial court entered an adjudication order with the following findings of fact:

1. In the summer of last year, [respondent] was at Keller's Garage in Glen Alpine, North Carolina, with her uncle, a known drug user. [Respondent] was also there. The adults then went into a room at the garage known as the "drug room" and they returned later behaving in a noticeably changed manner.

2. In October of last year, at a time that [respondent] was clearly pregnant with the juvenile who was born on April 2, 2006, Ms. [B] witnessed [respondent] smoke something in a pipe that smelled "like ammonia".

3. On at least one occasion while she was pregnant with the juvenile, [respondent] consumed illegal substances.

4. [Respondent] frequents Keller's Garage, an establishment where illegal drugs are known to be sold and consumed. Recently, the Burke County Narcotics Task Force raided that establishment and charged the proprietor, Robert Blake Keller, with conspiracy to distribute methamphetamine. [Respondent] continues her association with Mr. Keller.

5. [The alleged father] was served with a summons and the original petition in this matter by certified mail on April 12, 2006, and he was served with a copy of the amended petition by first class mail on June 1, 2006. He is not present in court. [Respondent] testified that [he] is heavily involved with methamphetamine, although she states that he wasn't involved with the drug when she conceived the juvenile with him approximately in early July of 2005. Additionally, [the alleged father] suffers from tuberculosis and is unable to care for the juvenile.

6. [Respondent] received minimal prenatal care while pregnant with the juvenile. She had at least one doctor's visit, as she did have an ultrasound, but she did not have a regular obstetrician. Although she is a resident of Burke County, she delivered the juvenile at Caldwell Memorial Hospital in Caldwell County, on April 2, 2006, out of fear that the petitioner would take nonsecure custody of the juvenile. She has 5 other children under the age of 18, none of whom reside with her, due to her inability to care for them. 3 of those children reside with [respondent's] sister in Shelby, and the other 2 reside with [respondent's] sister in Tennessee. She has not suggested an appropriate alternative childcare arrangement for this juvenile.

7. [Respondent's] current husband and therefore the juvenile's legal father, was served with a summons and the original petition by certified mail on April 13, 2006. He has told the Department that he would not participate in this proceeding, as he knows that he is not the juvenile's biological father.

8. The original petition was filed on April 5, 2006, and the amended petition was filed on May 25, 2006. This hearing is taking place 64 days after the filing of the original petition, 4 days later than the 60 days required by N.C.G.S. § 7B-801(c). However, the delay has been reasonable, as [respondent] filed a discovery motion on May 24, 2006, that the Court heard today. The intervening continuances have been with [respondent's] consent.

The trial court concluded that C.P.A. was a neglected and dependent juvenile. The trial court ordered that disposition be continued until 6 July 2006 to provide respondent-mother time to file written objections to DSS and Guardian Ad Litem reports. The trial court also ordered respondent-mother to submit to drug testing, and based upon negative drug tests, ordered respondent-

mother to have supervised visitation with C.P.A. pending disposition.

After hearing testimony at the disposition hearing, the trial court entered its order. The trial court made additional findings of fact that respondent-mother: (1) failed to make written objections due to her failure to maintain contact with her attorney, (2) failed to report for drug testing as the court ordered, and (3) stated that she "would not cooperate with the Department and would not comply with court-ordered directives." The trial court concluded that reunification was not in the best interests of the juvenile and that reunification efforts should cease. Respondent-mother appeals.

On appeal, respondent makes eight assignments of error but presents argument and authority for only one of these assignments in her brief. The assignments of error for which no argument is presented are deemed abandoned. N.C.R. App. P. 28(b)(6). Respondent's remaining assignment of error is that the trial court's conclusion that C.P.A. was a neglected and dependent juvenile is not supported by its findings of fact.

"In a non-jury adjudication of abuse, neglect, and dependency, 'the trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.'" *In re K.D.*, \_\_ N.C. App. \_\_, \_\_, 631 S.E.2d 150, 154 (2006) (quoting *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997)). Where no exception is taken to findings of fact, they are presumed to be

supported by clear and convincing evidence and are, therefore, binding upon appeal. *In re J.D.S.*, 170 N.C. App. 244, 252-53, 612 S.E.2d 350, 355, *cert. denied*, 360 N.C. 64, 623 S.E.2d 584 (2005). As noted above, respondent-mother has challenged the sufficiency of the evidence supporting the findings of fact and they are therefore binding on this Court.

Respondent-mother first argues that the trial court erred in concluding C.P.A. is a neglected juvenile because the trial court failed to find a threat of future harm to C.P.A.

N.C. Gen. Stat. § 7B-101(15) (2005) defines a neglected juvenile as "[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent[.]" "[T]his Court has consistently required that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide 'proper care, supervision, or discipline.'" *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (quoting *In re Thompson*, 64 N.C. App. 95, 101, 306 S.E.2d 792, 796 (1983)).

Here, the findings of fact reveal that respondent-mother used drugs while she was pregnant with C.P.A., and continued to frequent establishments where illegal drugs were used and sold. In addition, respondent has five (5) other children under the age of eighteen (18) who do not reside with her because of her inability to care for them. On this record, considering all of the trial court's findings of fact, we conclude that the trial court's

conclusion of law that C.P.A. is a neglected juvenile was not in error.

Respondent-mother also argues that the trial court erred in concluding C.P.A. is a dependent child because the trial court failed to find that respondent-mother was incapable of caring for C.P.A. A dependent juvenile is one who is:

in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-101(9) (2005). Here, the trial court found that respondent-mother consumed illegal drugs, that she received minimal prenatal care, and that she refused to cooperate with DSS and would not abide by court-ordered directives. Further, the court found that respondent-mother was incapable of properly caring for any of her children. The trial court also found that the putative father is unable to care for the juvenile and that the juvenile's legal father is not participating in the proceedings. Finally, the trial court found respondent-mother lacked an appropriate alternative child care arrangement. We conclude that the trial court did not err by concluding that C.P.A. is a dependent juvenile.

Affirmed.

Chief Judge MARTIN and Judge McCullough concur.

Report per Rule 30(e).