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NO. COA06-1227

NORTH CAROLINA COURT OF APPEALS

Filed: 20 February 2007

IN THE MATTER OF:

J.W.,

A Minor Juvenile

Mecklenburg County  
Nos. 05 JA 719; 06 JT 339

Appeal by respondent-mother from judgment entered 27 July 2006 by Judge Louis A. Trosch, Jr., in Mecklenburg County District Court. Heard in the Court of Appeals 22 January 2006.

*Twyla George for Mecklenburg County Department of Social Services, Division of Youth and Family Services petitioner-appellee; Kilpatrick Stockton, LLP by Alan D. McInnes and J. Christopher Jackson for guardian ad litem petitioner-appellee.*

*Mary McCullers Reece for respondent-mother appellant.*

McCULLOUGH, Judge.

Respondent-mother ("respondent") appeals from an order terminating her parental rights to J.W. We affirm.

FACTS

On 5 July 2005, the Department of Social Services, Division of Youth and Family Services ("YFS") received a referral that J.W., the three-year-old child of respondent, was found wandering around the parking lot of an apartment complex naked and unsupervised. When the police returned J.W. to respondent's care, they found respondent asleep and unaware that J.W. had left the apartment. On

13 July 2005, YFS received a second referral on J.W. He was found wandering around the parking lot unsupervised. When the police arrived, they found respondent's apartment open with no one at home. The officers attempted to contact respondent and waited for three and one-half hours for her to return home before placing the child in the custody of YFS.

On 14 July 2005, YFS filed a petition alleging that J.W. was abused, neglected and dependent, and J.W. was placed in foster care. On 12 August 2005, respondent, YFS, and the guardian ad litem ("GAL") attended a dependency mediation and reached a mediation agreement. In an adjudicatory hearing on 29 August 2005, the trial court adjudicated J.W. dependent and neglected, and at the dispositional hearing, accepted the mediated case plan which established a goal of reunification of J.W. with respondent. The case plan required respondent to complete an assessment by Families in Recovery to Stay Together ("F.I.R.S.T.") and to comply with the recommendations; complete parenting classes and demonstrate the skills learned; provide proof of, and maintain, stable housing and employment; complete a parenting capacity evaluation; maintain contact with YFS and the GAL; and visit J.W.

On 17 November 2005, the trial court held a review hearing which respondent failed to attend. In its review hearing order, the trial court found that J.W. had been moved from foster care to placement with his paternal grandparents and was doing well. However, the trial court also found that respondent had not demonstrated progress on the case plan. Specifically, the trial

court found that respondent had missed an assessment appointment on three occasions, had been terminated from the parenting class program for inconsistent attendance, had not consistently attended visits with J.W., had minimal interaction with him during visits, had not provided proof of employment other than an "American Idol" tryout, and had an outstanding warrant for her arrest for failure to appear in court for a 31 October 2005 arrest. The trial court continued custody of J.W. with YFS, thereby allowing YFS to maintain placement of J.W. with the paternal grandparents. The trial court also ordered respondent to attend supervised visits with J.W. and specified that failure to miss another visit would result in the cancellation of these visits. Finally, the trial court changed the goal of the permanent plan from foster care to guardianship.

On 26 January 2006, the trial court held a permanency planning hearing. Based on the evidence presented at this hearing, the trial court found that J.W. was doing well with his paternal grandparents. The court also found that respondent had not made sufficient progress on the case plan. In particular, the trial court found that respondent had not attended parenting classes on a consistent basis, had not visited with J.W. on a consistent basis resulting in the cancellation of these visits, had failed to provide proof of employment, and had failed to demonstrate to YFS how she was maintaining housing for herself. Respondent offered the excuse of lack of transportation for her failure to attend visits, classes and other appointments. However, the trial court

found that respondent had refused the bus passes offered to her by YFS and had been able to make sufficient transportation arrangements necessary "to further her [American] Idol/celebrity status."

The trial court changed the goal of the permanency plan to adoption. The court instructed YFS to prepare, but not file, the petition to terminate parental rights. The trial court delayed the initiation of the termination process until the next scheduled permanency planning hearing due to respondent having arranged on her own to participate in some of the ordered services in the two weeks prior to the hearing. The trial court further ordered respondent to pay \$50.00 per month in child support, attend domestic violence counseling, continue to participate in the previously adopted case plan, attend parenting capacity sessions, complete a substance abuse assessment and comply with any recommendations, attend parenting classes, and obtain and maintain legitimate employment.

On 23 March 2006, YFS filed a petition for termination of respondent's parental rights. On 7 April 2006, the trial court conducted another permanency planning hearing. Following this hearing, the trial court again found that respondent had failed to make sufficient progress on the case plan. Specifically, the trial court found that respondent had failed to follow the recommendations from the substance abuse assessment, failed to provide proof of housing and employment, failed to pay child support, failed to complete a parenting capacity evaluation, and

failed to comply with the trial court's requirements to reestablish visitation with J.W. The trial court further found that J.W.'s father had surrendered his parental rights on 4 April 2006. On the date of this hearing, respondent was served with the termination petition.

After a hearing on the termination petition, the trial court entered an order terminating respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a) (1) and (3) (2005). With respect to these two statutory grounds for termination, the trial court concluded as follows:

5. That the respondent mother has neglected this juvenile as that term is defined in N.C.G.S. § 7B-101(15) in that they have failed to provide proper care, supervision and discipline for the juvenile as set forth in the paragraphs above.
6. The Court further concludes that the likelihood of ongoing or continued neglect is significant in that respondent mother has not properly availed herself to any of the services necessary to enable them to properly parent the juvenile either now or in the foreseeable future.
7. The juvenile has been placed in the custody of Mecklenburg County Department of Social Services and the respondent mother, for a continuous period of more than six (6) months next preceding the filing of the petition, have willfully failed for such period to pay a reasonable portion of the cost of care for such juvenile although physically and financially able to do so.

Respondent appeals.

#### ANALYSIS

##### I.

Respondent contends the trial court erred in concluding that (1) respondent, for a continuous period of more than six months

next preceding the filing of the petition, willfully failed for such period to pay a reasonable portion of the cost of care for J.W., although physically and financially able to do so; and (2) respondent neglected J.W. within the meaning of the North Carolina General Statutes. We disagree.

This Court reviews an order terminating parental rights for whether findings of fact are supported by clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental rights should be terminated for one of the grounds set forth in the North Carolina General Statutes. *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397 (1996). Where a trial court concludes that parental rights should be terminated pursuant to several of the statutory grounds, the order of termination will be affirmed if the court's conclusion with respect to any one of the statutory grounds is supported by valid findings of fact. *In re Swisher*, 74 N.C. App. 239, 240, 328 S.E.2d 33, 34-35 (1985).

The trial court terminated respondent's parental rights based on a couple of statutory grounds including N.C. Gen. Stat. § 7B-1111(a)(3). This provision permits termination where

[t]he juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

N.C. Gen. Stat. § 7B-1111(a)(3). Respondent contends the trial court's termination on this statutory ground is erroneous because the trial court's findings regarding her financial circumstances and resources were insufficient.

"[A] finding that a parent has ability to pay support is essential to termination for nonsupport' pursuant to N.C. Gen. Stat. § 7B-1111(a)(3)." *In re T.D.P.*, 164 N.C. App. 287, 289, 595 S.E.2d 735, 737 (2004), *aff'd per curiam*, 359 N.C. 405, 610 S.E.2d 199 (2005) (citation omitted).

"[I]n determining what constitutes a 'reasonable portion' of the cost of care for a child, the parent's ability to pay is the controlling characteristic[,] [and] [a] parent is required to pay that portion of the cost of foster care . . . that is fair, just and equitable based upon the parent's ability or means to pay."

*Id.* at 290, 595 S.E.2d at 737 (citation omitted, alterations in original). However, there "is no requirement that the trial court make a finding as to what specific amount of support [constitutes] . . . a 'reasonable portion' under the circumstances." *In re Huff*, 140 N.C. App. 288, 293, 536 S.E.2d 838, 842 (2000), *disc. review denied, appeal dismissed*, 353 N.C. 374, 547 S.E.2d 9 (2001).

The trial court made the following findings of fact pertinent to respondent's financial situation and her failure to contribute to the costs of J.W.'s care:

21. In order to be reunified with [J.W.], [respondent] was required to maintain stable income/employment. [Respondent] has not demonstrated any consistent stable income to meet her needs and [J.W.]'s needs. It is clear that [respondent] had income over the last twelve months, the time that [J.W.] was in YFS

custody. However, she never provided proof of income or stable employment to the Court. She testified that she works part-time at the Gold Club as either a waitress or entertainer or dancer. [Respondent] reports that she takes two weeks off at a time to go to auditions. She could not specifically state the amount of income received. The amount of income she claimed changed throughout her testimony.

22. In terms of employment, [respondent] only talked about what is going to happen in the future. [Respondent] reports that she has contracts for several movie deals; however, she could not state the contract amounts for the movie deals. She did not provide proof of any contracts.
23. The respondent mother failed to provide proof of income or stable employment. The Court is unsure of the respondent mother's income or employment.

. . . .

47. YFS has spent \$4000 on daycare expenses for [J.W.] YFS spent \$608.00 on clothing and food for [J.W.]'s care. YFS also spent \$667.00 on [J.W.]'s placement.
48. During the time that [J.W.] was in YFS custody, [respondent] had the ability to make some payments toward [J.W.]'s care.
49. In January 2006, [respondent] was ordered to pay child support in the amount of \$50.00 per month. The payments were to begin on February 1, 2006. Child support was not originally ordered because the respondent mother needed an opportunity to get her finances in order.
50. [Respondent] has not paid any monies to defray the cost of [J.W.]'s care.

The trial court was only required to make specific findings that respondent was able to pay some amount greater than the amount she, in fact, paid during the relevant time period. See *In re Garner*, 75 N.C. App. 137, 140-41, 330 S.E.2d 33, 35-36 (1985). Given that respondent made no financial contribution, a finding



that respondent did not disagree with in her brief, the trial court was only required to find that respondent failed to pay some amount greater than zero to satisfy N.C. Gen. Stat. § 7B-1111(a)(3).

In the instant case, there was clear, cogent, and convincing evidence to support the trial court's finding that respondent was able to make some contribution. At the hearing, respondent testified that during the relevant period, she earned as much as \$2,000.00 per month working four days per week as an entertainer or waitress at the Gold Club. Respondent also testified that there was "other work" for which she also received compensation. We conclude that respondent's testimony supports the trial court's finding that respondent had the ability to make some contribution greater than zero during the six-month period prior to the filing of the termination petition.

Because grounds for termination have been established under N.C. Gen. Stat. § 7B-1111(a)(3), respondent's remaining argument regarding the additional ground relied upon by the trial court under section 7B-1111(a)(1) need not be addressed. See *In re Bradshaw*, 160 N.C. App. 677, 682-83, 587 S.E.2d 83, 87 (2003). Accordingly, we disagree with respondent.

## II.

Respondent contends the trial court abused its discretion in terminating her parental rights. We disagree.

Once statutory grounds for termination have been established, the trial court is required to "determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen.

Stat. § 7B-1110(a) (2005). In so doing, the trial court must consider the following:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a)(1)-(6). The standard for appellate review of the trial court's decision to terminate parental rights is abuse of discretion. *In re Brim*, 139 N.C. App. 733, 745, 535 S.E.2d 367, 374 (2000).

In the instant case, the trial court found the following:

69. Based on the evidence before the Court, [respondent] has little understanding of the needs of a three[-]year[-]old child. On July 6, 2006, she still exhibited little to no understanding of the needs of a four[-]year[-]old child.
70. Other than [the social worker's] testimony of [J.W.]'s needs, [respondent] was not aware of [[J.W.]'s needs or services. [Respondent] testified that she referred [J.W.] to the Watkins Center. At the initial hearing, the Court ordered a Watkins Center evaluation because of concerns about developmental delays. The respondent mother did not make this recommendation.

71. [Respondent] did not participate in [J.W.]'s speech therapy. She has not inquired about [J.W.]'s speech therapy status.
72. [Respondent] was unsure if [J.W.] attended school or daycare because she has not inquired about [J.W.]'s school or daycare. Yet, [respondent] could clearly articulate every detail about her upcoming movie deals.
- . . . .
74. [J.W.] has been placed with the paternal grandparents . . . since August 23, 2005.
75. [J.W.] is placed in a stable, supportive, and loving environment. The [paternal grandparents] are ensuring that [J.W.]'s emotional and physical needs are being met. They ensure that he participates in speech therapy. [J.W.] is thriving in this environment.
76. At this time, there are no concerns about [J.W.]'s developmental delays.
77. The [grandparents] attempted to allow contact between the respondent mother and [J.W.]
78. [J.W.] deserves permanence. He deserves someone who will focus on him.
79. [J.W.] [is] placed in a potential adoptive placement.
80. The goal of the case is adoption.

These findings clearly indicate that the trial court gave careful consideration to the interests of J.W., particularly the improved circumstances he experienced following placement with his paternal grandparents and the possibility of making this placement permanent through adoption. Balanced against the trial court's additional numerous findings regarding respondent's continual

failure to comply with the trial court's orders and to improve the conditions that led to the initial loss of custody, we conclude that the trial court did not abuse its discretion by concluding it was in the best interests of the child that respondent's parental rights be terminated. Accordingly, we disagree with respondent.

Affirmed.

Chief Judge MARTIN and Judge LEVINSON concur.

Report per Rule 30(e).