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NO. COA06-1238

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

IN THE MATTER OF:

M.S.M. AND M.S.M.

Johnston County
Nos. 05 J 89, 05 J 97

Appeal by Respondent-father from orders entered 21 June 2006 by Judge Jimmy L. Love, Jr., in District Court, Johnston County. Heard in the Court of Appeals 19 February 2007.

Law Office of Sally Scherer, by Sally Scherer, for Petitioner-appellee.

Michael E. Casterline, for Respondent-appellant.

WYNN, Judge.

Our legislative policy regarding termination of parental rights recognizes a "necessity for any juvenile to have a permanent plan of care at the earliest possible age."¹ Here, Respondent-father contends that terminating his rights was not necessary to achieve a permanent plan of care since Petitioner (the minor children's maternal aunt) already had legal custody of the children. Because the trial court found clear, cogent, and convincing evidence that the minor children were in need of a

¹N.C. Gen. Stat. § 7B-1100(2) (2005).

permanent plan of care at the earliest possible age, we affirm the trial court's order of termination.

This appeal arises from an order terminating the rights of Respondent-Father to his two minor children. Respondent-Father and the children's mother began living together when they were respectively eighteen and seventeen years old. Respondent-Father killed the children's mother in 2003, while the children were the ages of twenty-two months and eleven months. Petitioner took custody of the two minor children in March of 2003.

In January 2005, Respondent pled guilty to voluntary manslaughter and was sentenced to an imprisonment term of eight and one half to eleven years.

In May 2005, Petitioner filed separate petitions to terminate Respondent's parental rights of the two minor children. Petitioner was awarded permanent custody of the two minor children in February 2006. Thereafter, by orders filed on 21 June 2006, the trial court terminated Respondent's parental rights based on the statutory grounds set forth in sections 7B-1111(a)(1) (neglect); 7B-1111(a)(5)(d) (failure to provide substantial support or consistent care); 7B-1111(a)(6) (dependent); and 7B-1111(a)(7) (willfully abandon). Respondent appeals.

Respondent's sole issue on appeal is whether the trial court erred in terminating his rights because termination was not necessary to achieve a permanent plan of care since Petitioner already had legal custody of the children.

"The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child. *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004) (citations omitted).

Respondent does not challenge the findings of fact in the termination orders; therefore, the findings are presumed to be correct and supported by the evidence. *In re Moore*, 306 N.C. 394, 293 S.E.2d 127 (1982). A review of the record and transcript shows each of the trial court's findings is based upon orders entered in the case and testimony from a former police officer with the Plymouth Police Department, the Guardian ad Litem, the minor children's clinical social worker, Petitioner, another maternal aunt, Respondent and Respondent's mother.

The trial court's findings of fact demonstrate Respondent and the deceased mother relied on family members for financial support throughout their relationship; Respondent had numerous jobs and was also in and out of jail on various charges during the relationship; Respondent and the deceased mother were involved in a domestic dispute on 23 February 2003; Respondent left the mother dying or dead in the home with the children; police found the oldest child in the living room and the youngest child on a bed at the feet of deceased mother; Respondent was incarcerated on 27 February 2003

and pled guilty to voluntary manslaughter on 26 January 2005; and Respondent did not correspond with his children after Petitioner was awarded custody of the children although no court orders prevented Respondent from doing so.

Since the trial court's findings are supported by clear, cogent and convincing evidence, and that these findings support the court's conclusion that Respondent was subject to having his parental rights terminated pursuant to N.C. Gen. Stat. § 7B-1111 (a)(1), we reject this assignment of error.

Furthermore, we reject Respondent's argument that severance of the children's relationship with the father was unnecessary. Respondent is correct that our legislature recognizes the necessity for any child to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all children from the unnecessary severance of a relationship with biological or legal parents. See N.C. Gen. Stat. § 7B-1100 (2006). However, "the fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody . . . [is] that the best interest of the child is the polar star." *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251 (1984). "The trial court's decision to terminate parental rights is reviewed [for] an abuse of discretion[.]" *In re Yocum*, 158 N.C. App. 198, 206, 580 S.E.2d 399, 404 (2003). Respondent fails to show, nor do we find, that the trial court abused its discretion in terminating his parental rights. See *Dept. of Social Services v. Roberts*, 22 N.C. App. 658, 207 S.E.2d 368 (1974).

In addition to the findings of fact recited above, the trial court entered additional findings of fact in support of its determination that termination was in the best interests of the child. These findings state that the children have been living with Petitioner since 2003; that Petitioner's home is appropriate and that the children have their own rooms. Further, Petitioner takes both children to therapy for post-traumatic stress disorder and the children are improving. The court also found that "the condition of the biological father has been such as to demonstrate that the biological father will not promote the healthy and orderly, physical and emotional well being of the minor child[ren]." Finally, the trial court found that the children were in "need of a permanent plan of care at the earliest possible age which can be obtained by severing the relationship between the child and the biological father[.]"

We hold that the trial court did not abuse its discretion in determining that termination was in the best interests of M.S.M. and M.S.M. Accordingly, the trial court orders terminating Respondent's rights are,

Affirmed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).