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NO. COA06-1303

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

IN RE: T.B.J.B. and Z.C.,
Minor Children

Mecklenburg County
Nos. 05 JT 20-21

Appeal by respondent from order entered 12 June 2006 by Judge Hugh B. Lewis in Mecklenburg County District Court. Heard in the Court of Appeals 12 March 2007.

Thomas B. Kakassy, for respondent-mother appellant.

Mecklenburg County Attorney's Office, by Tyrone C. Wade, for petitioner appellee.

McCULLOUGH, Judge.

Respondent-mother appeals from the district court's order terminating her parental rights to the minor children T.B.J.B. ("T.B.") and Z.C. We affirm.

The Charlotte-Mecklenburg County Department of Social Services ("DSS") was awarded non-secure custody of respondent-mother and her two children on 17 July 2002. Respondent-mother was sixteen years old; her son, T.B., was thirteen months old; and her daughter, Z.C., was one and one-half months old. All three juveniles were placed in foster care. T.B. and Z.C. were adjudicated dependent juveniles on 10 September 2002. Respondent-mother attained majority in January of 2004.

DSS filed petitions to terminate respondent-mother's parental rights to T.B. and Z.C. on 12 January 2005, asserting as grounds for termination that she (1) neglected the juveniles, (2) willfully failed to pay a reasonable portion of the cost of care for the juveniles for more than six continuous months immediately prior to the filing of the petition, and (3) willfully left the juveniles in a placement outside of the home for more than twelve months without reasonable progress in correcting the conditions that necessitated the placement under N.C. Gen. Stat. § 7B-1111(a)(1)-(3) (2005). The petitions further sought termination of the unknown father's parental rights, based on the aforementioned grounds as well as the father's failure to legitimate the juveniles, establish paternity, or provide substantial financial support of consistent care to respondent-mother and the juveniles.

After a hearing, the district court entered the following findings of fact pertinent to respondent-mother:

8. [Youth and Family Services ("YFS")] has been involved with the respondent mother since 1991, initially as a juvenile and subsequently as a parent.
9. The respondent mother was five-years-old when YFS began receiving reports of abuse or neglect [of] her.
10. The respondent mother's own life . . . as [a] child involved being exposed to drug use and an unsafe environment created by her mother.
11. The respondent mother's lack of any history of having a stable home as a child has not allowed her to develop appropriate parenting skills and she learned the behavior of inappropriate

parenting skills and discipline as the norm.

12. When these children were placed in the department's custody, YFS entered into a case plan with the respondent mother which was appropriate considering [her] age. . . .
13. In that case plan, [respondent mother] agreed to: engage in counseling, complete parenting education, complete her GED and, at an appropriate time, to obtain appropriate housing and employment, as well as to attend medical appointments with the children.
14. The respondent mother procrastinated with respect to parenting education. She ultimately completed parenting classes on January 10, 2005. When the respondent mother began working with the parent educator, however, she was unable to complete that service and, on July 12, 2005, the mother threw a tantrum. During a fit of rage she cursed and screamed at the parent educator along with others who were present, including the children. After that incident, the mother had little or no contact with YFS.
15. The respondent mother has not been able to establish patience with the children, although there has been some improvement since she turned 18.
16. The mother has gained insight with respect to her anger management issues but has not reached a level in which she can apply those skills while in situations in which she becomes angry. She has not learned to set boundaries with the children.
17. While the respondent mother has . . . matured somewhat, she remains saddled with an 8th grade education and destructive character habits to the point where she cannot put lessons learned into practice and control her anger issues before they appear.

18. The respondent mother engaged in therapy with Desiree Rew¹ for anger management, after many false starts with another therapist whom the mother said she did not like. The respondent mother saw Ms. Rew for approximately two years for anger management; however, she missed as many as one out of every four therapist appointments with Ms. Rew during her most consistent period of attendance.
19. The respondent mother testified . . . that despite the altercation between herself and the parenting educator in the summer of 2005 and the fact that she had not attended further therapy since that altercation she no longer needed to be in therapy.
20. The respondent mother has obtained subsidized housing for which she pays \$25.00 per month.
21. . . . She has obtained employment and has been working for the last four months at approximately 35 hours per week at the rate of \$5.50 per hour.
22. She testified that her only expenses were rent, food and telephone. Her current housing is a three bedroom apartment. It was initially furnished but the friend . . . took the furniture back.
23. YFS has spent \$45,000.00 in caring for the children since they've been in the department's custody as well as providing Medicaid benefits.
24. The respondent mother was never ordered to pay child support; however, she has paid nothing toward the children's cost of care. She has provided several items of clothing for the children.
25. During the six months preceding the filing of the petitions to terminate the

¹The transcript identifies the therapist as Desiree Rule Johnson.

respondent mother's parental rights the respondent mother was employed at the Airport in the housekeeping department.

26. Since the incident in July 2005, the respondent mother has only provided one outfit for the children.
27. After the mother was placed in the Department's custody she . . . on July 8, 2003 went AWOL with the children. Since taking the children without permission in July 2003 the children have thereafter been placed in a separate residence from the respondent mother.
28. The mother has not completed the components of her GED.
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31. The children have specific educational needs that require consistent parenting and are doing well in their placements and have been there for one and a half years. They are currently in a foster to adopt home.

Based on these findings, the court concluded that three grounds for terminating respondent-mother's parental rights had been established, as follows:

2. The respondent [mother has] neglected these juveniles as that term is defined in N.C. Gen. Stat. § 7B-101(15) in that [she has] failed to provide proper care, supervision and discipline for the juveniles
3. The children have been placed in the custody of [DSS,] and the respondent mother, for a continuous period of more than six (6) months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for said child[ren] although physically and financially able to do so.

4 The respondent [mother has] willfully left the juveniles in foster care or placement outside the home for more than twelve (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 juveniles.

. . . .

6. The court concludes that despite the mother's age when she and the children were placed in the department's custody she has to bear the responsibility for her own actions over the last several years, including her lack of maturity. The mother's own lack of maturity and behavioral issues from her childhood are not something the court or DSS can eliminate The only way to ensure permanence for these children in a reasonable amount of time is through termination of parental rights.

7. The best interests of the above-named juveniles would be served by the termination of parental rights of both parents with respect to these juveniles.

In light of its findings and conclusions, the court terminated both parents' parental rights. Respondent-mother filed timely notice of appeal.

Respondent-mother challenges the court's Findings of Fact 11 and 31 on the ground that they were based on a parenting capacity evaluation that was not introduced into evidence at the termination hearing. In her second claim, she avers that the court improperly based its decision to terminate her parental rights, "at least in part, upon her age at the conception and birth of the children." Finally, respondent-mother asserts that the court abused its

discretion in determining that termination of her parental rights served the best interests of her children.

A proceeding to terminate parental rights involves distinct adjudicatory and dispositional stages. At the adjudicatory stage, the district court must determine whether the petitioner has established one or more grounds for termination under N.C. Gen. Stat. § 7B-1111(a) by clear, cogent, and convincing evidence. If the court finds at least one statutory ground for termination, it proceeds to the dispositional stage. In selecting an appropriate disposition pursuant to N.C. Gen. Stat. § 7B-1110 (2004) (amended 1 October 2005), the court must terminate the respondent's parental rights unless it finds that doing so would be contrary to the best interests of the child. *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001).

In reviewing an order terminating parental rights, our task is to determine whether any contested findings of fact are supported by clear, cogent, and convincing evidence and whether the court's findings of fact, in turn, support its conclusions of law. See *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). A finding of fact that is not challenged by a properly briefed assignment of error is binding on appeal. See *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Although conclusions of law are reviewed *de novo*, *In re J.S.L.*, ___ N.C. App. ___, ___, 628 S.E.2d 387, 389 (2006), any single ground for termination is sufficient to support a termination of parental

rights. *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93-94 (2004). Accordingly, once we find a valid ground for termination under N.C. Gen. Stat. § 7B-1111(a), we need not review any additional grounds included in the termination order. *Huff*, 140 N.C. App. at 293, 536 S.E.2d at 842. We review the district court's disposition under N.C. Gen. Stat. § 7B-1110 only for abuse of discretion. See *In re Brim*, 139 N.C. App. 733, 744, 535 S.E.2d 367, 373 (2000).

Respondent-mother has not assigned error to any of the findings of fact related to her failure to provide a reasonable portion of the cost of the children's care under N.C. Gen. Stat. § 7B-1111(a)(3); nor has she assigned error to the court's conclusions of law that grounds for termination exist under N.C. Gen. Stat. § 7B-1111(a)(3) based on her failure to defray any of their cost of care. Because these findings and conclusions are binding on appeal, we need not review either of the remaining grounds found by the court. *In re J.M.W.*, ___ N.C. App. __, __, 635 S.E.2d 916, 919 (2006) ("Since the unchallenged grounds are sufficient to support the trial court's order of termination, we affirm without examining [r]espondent-mother's arguments as to the other grounds."); accord *In re C.D.A.W.*, 175 N.C. App. 680, 686, 625 S.E.2d 139, 143, *disc. review denied*, ___ N.C. __, 638 S.E.2d 464 (2006). We note, however, that respondent-mother has not assigned error to the court's conclusions that grounds for termination exist under N.C. Gen. Stat. § 7B-1111(a)(1) and (2).

In light of their potential impact on the court's evaluation of the children's best interests, we will review respondent-mother's challenge to Findings of Fact 11 and 31.

Respondent-mother claims that no evidence supported the court's finding that her "lack of any history of having a stable home as a child has not allowed her to develop appropriate parenting skills and she learned the behavior of inappropriate parenting skills and discipline as the norm." We disagree. YFS social worker Belinda McLaughlin testified that respondent "need[ed] to learn skills in parenting" and that her initial case plan required her to learn parenting skills. Shymia Neal, who provided in-home family education services to respondent-mother from April to July of 2005, testified that respondent-mother needed to learn how to apply the lessons from her parenting classes, and "to learn and apply positive discipline techniques for parenting the child." When Neal first observed respondent with her children, respondent was unable to respond effectively to her children's behavior problems. By the time Neal began in-home instruction with respondent, the children's behavior had "gotten worse . . . and [respondent] wasn't overall able to redirect them or handle them in a positive manner." On "several occasions" during the in-home sessions, respondent-mother displayed "a negative way of coming across[,]" used "inappropriate language" and was "very loud and out of control." On 12 July 2005, the police were called to Walton Plaza after respondent "started cussing, just going out of control" and threatened to hit Neal in front of her children. Neal ceased

working with respondent after this episode because respondent failed to attend a scheduled meeting with her supervisor. Respondent was terminated from the program when she failed to reschedule the meeting. Neal testified that respondent made no progress on any of the three goals of her parenting education.

Respondent-mother's former therapist, Desiree Rule Johnson, testified that she worked with respondent from 2003 until June of 2005 in the areas of anger management, her "strained relationship" with her own mother, and "helping her develop some appropriate ways, better ways to deal with frustrating situations, . . . as well as to kind of process her life and how it impact[ed] and was impacting her decisions at the time." In observing respondent with her children on five occasions ending in July of 2004, Johnson found that she was "very caring" but had difficulties establishing boundaries with the children. Counsel for respondent-mother elicited the following testimony from Johnson as to the effect of respondent's upbringing:

I think [her] upbringing, her background impacted her tremendously in terms of um, a lot of her behavior was pretty much learned. It was, she dealt with situations the way she had seen situations dealt with. Um, she and she didn't really know at the time other ways to do things. Just what she had been brought up, the things that were going on around her. That's pretty much how she dealt with life and so I think it did have a great impact on her. She did not have a, she did not grow up in a stable environment um, and I think that had a lot to do with her inability to get stable. Because I don't think that [respondent] really knows what that looks like, what a stable environment looks like.

When asked to assess whether respondent had developed insight into her anger management issues, Johnson replied that "she does realize the problem but when she is face to face with it at the time, she's not able to put it in practice." Asked why her therapy ended, Johnson testified that respondent grew inconsistent with her attendance and "just kind of made a few and missed a few and never followed up." Respondent called Johnson for an appointment after the incident with Neal on 12 July 2005, but respondent failed to show up for the appointment.

The evidence set forth above amply supported the court's finding that respondent-mother's difficulty in developing effective parenting skills was the product of her upbringing in an unstable home without an appropriate parenting model. Therefore, we overrule this assignment of error.

Respondent-mother also challenges the evidentiary support for the court's Finding of Fact 31 that "[t]he children have specific educational needs that require consistent parenting[.]" Our review of the transcript reveals that the children's social worker, Crystal Simpson, testified that T.B. "is having difficulty in school, . . . continues to have some anger management problems and outbursts in school" and had been diagnosed with an anxiety disorder and ADHD. Although we agree with respondent-mother that DSS adduced no evidence of Z.C.'s specific educational needs, we do not believe the court's error in referring to both children's educational needs had any impact on its overall assessment of Z.C.'s best interests. Simpson testified that Z.C. was "doing

extremely well" in her foster placement, and that she and T.B. had been with the same adoptive foster family since 14 January 2005. Moreover, McLaughlin's testimony that both children needed a parent who was "consistent and nurturing, [and] stable" supported the court's finding that T.B. and Z.C. "require consistent parenting." Because we find no prejudice to respondent-mother from the finding that Z.C. has specific educational needs, we overrule this assignment of error. Cf. *In re T.M.*, __ N.C. App. __, __, 638 S.E.2d 236, 240-41 (2006).

Respondent next claims the court improperly chose to terminate her parental rights due to her age at the conception and birth of the children. Citing our decision in *In re Matherly*, 149 N.C. App. 452, 562 S.E.2d 15 (2002), she avers the court failed to take her youth into account in assessing her compliance with DSS's case plan and the willfulness of her leaving of the children in foster care. She notes the absence of any age-appropriate services provided to her by DSS during the period of her minority, other than the parenting classes provided through the Family Center.

Although respondent was herself a juvenile when DSS obtained non-secure custody of her children in 2002, DSS continued its involvement with respondent after she attained majority in January of 2004. Moreover, DSS developed a new case plan with respondent on 30 March 2004, after she reached adulthood; and it did not file the petition to terminate her parental rights until January of 2005. The grounds for termination alleged in DSS's petition and found by the district court were based upon respondent's conduct

during the twelve months immediately preceding the filing of the petition. Because respondent was an adult throughout the relevant period, our decision in *Matherly* is inapposite. *Id.* at 454-55, 562 S.E.2d at 17 (addressing termination petition filed when respondent was seventeen years old); see also *In re J.G.B.*, __ N.C. App. __, __, 628 S.E.2d 450, 456 (2006). Accordingly, we find no merit to this claim.

Respondent-mother also argues that the district court abused its discretion at the dispositional stage of proceedings by electing to terminate her parental rights. See N.C. Gen. Stat. § 7B-1110(a). Having found grounds for termination under N.C. Gen. Stat. § 7B-1111(a), the court was required at the dispositional stage to terminate respondent's parental rights "unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated." N.C. Gen. Stat. § 7B-1110(a). As acknowledged by respondent-mother, the best interest of the child is the focus of the inquiry at the dispositional stage of termination proceedings under *id.* *In re Johnston*, 151 N.C. App. 728, 731, 567 S.E.2d 219, 221 (2002). We review the court's decision to terminate parental rights only for manifest abuse of discretion. *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005).

As found by the district court, respondent-mother unilaterally ceased the therapy needed to address her persistent anger-management and behavioral issues in June of 2005. Similarly, she made no progress in accomplishing the goals of her in-home

parenting education and failed to meet with Neal's supervisor in order to resume these services after the incident in July of 2005. Respondent-mother has made no progress on obtaining her GED since 2002 and took more than two years to complete six weeks of parenting classes. Despite consistent employment and limited living expenses, she provided nothing but a single outfit of clothes to the children since July of 2005, and contributed nothing toward their cost of care. The children have been in foster care since July of 2002. At the time of the termination hearing, they had been living with the same adoptive foster family since 14 January 2005, and were thriving in their placement. We find no abuse of discretion by the court.

Affirmed.

Judges HUNTER and TYSON concur.

Report per Rule 30(e).