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NO. COA06-1328

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

IN THE MATTER OF:
M.A.I.B.K.

Wake County
No. 04 JT 340

Appeal by respondent from order entered 20 July 2006 by Judge Debra Sasser in Wake County District Court. Heard in the Court of Appeals 19 February 2007.

Wake County Attorney's Office, by Corinne G. Russell and John W. Strange, for petitioner-appellee Wake County Human Services.

Janet K. Ledbetter for respondent-appellant.

Poyner & Spruill, LLP, by Bryn Dodge Wilson, for guardian ad litem.

MARTIN, Chief Judge.

On 1 July 2004, Wake County Human Services ("WCHS") filed a petition alleging that M.A.I.B.K., born out-of-wedlock to respondent-mother, was a neglected and dependent juvenile. Briefly summarized, WCHS alleged that respondent-mother had been arrested on charges relating to a fraudulent "trustee scheme," in which she represented to the victim that respondent was an heiress with substantial financial holdings. She and the child moved into the victim's home and she contracted with him to provide "trustee"

services for which she paid with worthless checks for large amounts of money. Prior to her arrest, respondent and M.A.I.B.K. had been living with the trustee and his family for more than a month. After respondent's arrest, respondent left M.A.I.B.K. in the care of the trustee and his wife, but they indicated that they could not care for the child. WCHS further claimed that respondent was unemployed, had no housing, and appeared to suffer from an "as yet unidentified mental illness[.]" Therefore, WCHS alleged that respondent could not provide, and M.A.I.B.K. did not receive, proper care and supervision, and that M.A.I.B.K. lived in an environment injurious to her welfare. An order for non-secure custody was entered and WCHS assumed immediate custody of M.A.I.B.K. On 15 September 2004, M.A.I.B.K. was adjudicated a neglected and dependent juvenile.

On 30 January 2006, WCHS filed a petition to terminate respondent's parental rights. WCHS alleged four grounds for termination: (1) that respondent had neglected M.A.I.B.K. within the meaning of N.C. Gen. Stat. § 7B-101(15) (2005), and that it was probable that there would be a repetition of neglect if the child were returned to her, pursuant to N.C. Gen. Stat. § 7B-1111(a) (1) (2005); (2) that respondent had willfully left M.A.I.B.K. in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances had been made in correcting those conditions that led to the child's removal, pursuant to 7B-1111(a) (2) (2005); (3) that the child had been placed in the custody of the petitioner and that

respondent, for a continuous period of six months immediately preceding the filing of the petition, had failed to pay a reasonable portion of the cost of care for the child although physically and financially able to do so, pursuant to N.C. Gen. Stat. § 7B-1111(a)(3) (2005); and (4) that respondent was incapable of providing for the proper care and supervision of M.A.I.B.K., such that she was a dependent juvenile within the meaning of N.C. Gen. Stat. § 7B-101(9) (2005), and there was a reasonable probability that such incapability would continue for the foreseeable future, pursuant to N.C. Gen. Stat. § 7B-1111(a)(6) (2005).

Hearings were held on the petition to terminate respondent's parental rights on 22 June 2006. The trial court concluded that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2) and (6) (2005) to terminate respondent's parental rights. The court further concluded that it was in the child's best interest that respondent's parental rights be terminated. Respondent appeals.

Respondent argues that the trial court erred by finding that there were grounds to support the termination of her parental rights. Respondent further argues that the trial court's findings of fact were not supported by competent evidence in the record. We disagree.

N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support a

termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "[T]he party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997) (citation omitted).

N.C.G.S. § 7B-1111(a)(1) provides that a court may terminate parental rights upon a finding that "[t]he parent has abused or neglected the juvenile." N.C. Gen. Stat. § 7B-1111(a)(1) (2005). The juvenile is deemed "neglected" if the court finds the juvenile to be "a neglected juvenile within the meaning of G.S. 7B-101." *Id.* "Neglected juvenile" is defined in N.C.G.S. § 7B-101(15) as

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2005). Where, as in this case, there is an adjudication of neglect in a prior removal action, a "court must take into consideration 'any evidence of changed conditions in light of the evidence of prior neglect and *the probability of a repetition of neglect*. The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding.*'" *In re Brim*, 139 N.C. App. 733, 742, 535 S.E.2d 367, 372 (2000) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)).

In the case *sub judice*, the trial court concluded as a matter of law that respondent-mother had neglected the juvenile M.A.I.B.K. pursuant to N.C. Gen. Stat. § 7B-1111(a)(1):

3. That there are facts sufficient to warrant a determination that grounds exist for the termination of parental rights of [respondent], said grounds as follows:

. . .

b. That [respondent], mother of [M.A.I.B.K.], neglected the child within the meaning of N.C.G.S. Section 7B-101(15), and it is probable that there would be a repetition of the neglect if the child were returned to the care of the mother.

The trial court made the following findings of fact:

16. That the circumstances which caused the child, [M.A.I.B.K.], to be placed in foster care on July 1, 2004, were the following: [respondent] was arrested for acts of fraud involving her writing bad checks for large sums of money. She was seeking trustee services to manage what she claimed was a large inheritance, and she was in jail as a result for acts involving contracting with Essau Harris. [Respondent] did not have employment or housing at that time when [M.A.I.B.K.] entered foster care, and there was no one available to care for [M.A.I.B.K.].

17. That [M.A.I.B.K.] had previously been in foster care in New Jersey for two to three weeks in 2003, as a result of [respondent]'s arrest in New Jersey. Upon [respondent]'s release from jail, [M.A.I.B.K.] was returned to her mother's care.

18. That [M.A.I.B.K.] was adjudicated by Wake County Juvenile Court in 04 J 340, on September 15, 2004, to be a neglected and dependent juvenile, and [respondent] was ordered to do certain acts as conditions for reunification with her child. . . .

19. That [respondent] was ordered to maintain safe, stable housing. She maintained an

apartment through her bail bondsman from August 2004 until November 2005, at which time she was arrested for embezzlement and was evicted from that residence. Since that time she has resided at 65 Angela Court, Clayton, NC 27520, where she lives with her boyfriend and boyfriend's mother at their will. While her housing was stable between August 2004 to November 2005, she is not on the lease at her current residence, and she is there at the will of her boyfriend.

20. That [respondent] was ordered to maintain stable employment. During the time that [M.A.I.B.K.] has been in foster care, [respondent] has held approximately 23 jobs. She is now employed at Chile's where she has worked for three months. She has never stayed longer in a job than four months. She has lost several jobs as a result of being fired and she has quit several jobs. Her employment has not been stable.

. . .

26. That [respondent] acknowledged to Heather Shapiro that she entered into a contract purchase of [sic] 1.9 million dollar home in Orange County, knowing that she did not have the funds to purchase the home. [Respondent] stated that she did it for approval so that people would like her. . . .

. . .

31. That [respondent] was ordered to go to a DBT (Dialectical Behavioral Therapy) Group in April of 2005, and WCHS made attempts to refer her to the group. However, [respondent] did not follow through, stating she could not make payments and she was also afraid and not ready to engage in therapy.

. . .

33. That during the time [M.A.I.B.K.] has been in foster care, the Court has never approved moving to unsupervised visitation for [M.A.I.B.K.] and her mother.

. . .

36. That during the time [respondent] worked with Melanie Roskin, [respondent] had a diagnosis of Post-Traumatic Stress Disorder, Anti-Social Personality Disorder and Borderline Personality Disorder. Her treatment plan included work to increase [respondent]'s self-esteem, to address her severe abandonment issues and to address her anxiety.

37. That Melanie Roskin met approximately once a week with [respondent]. However, Ms. Roskin was unable to address much of the treatment plan since her work with [respondent] revolved around present issues and crisis intervention work. . . .

38. That in Ms. Roskin's professional judgment, she did not make much progress with [respondent]. She found [respondent]'s judgment to be poor, and [respondent] continually created chaos in her life in the areas of her partners, her home and her job.

. . .

40. That any one of [respondent]'s diagnoses would take years of regular treatment. In addition, a client must be forthright to succeed in therapy. [Respondent] was not candid and honest in therapy nor did she stay engaged in regular treatment. Without such treatment, [respondent] is unable to parent [M.A.I.B.K.].

. . .

42. That during the time [M.A.I.B.K.] was in foster care, [respondent] continued to engage in acts of deception in her personal relationships, often resulting in obtaining money under false pretenses.

43. That Matt Crawford met [respondent] over the Internet and ended up losing money as [sic] result of his acquaintance with her and her deception. . . .

. . .

50. That Mr. Snow has filed embezzlement charges against [respondent]. Mr. Snow has

lost at least \$27,000 as a result of [respondent]'s embezzlement through use of the Keene's Tires Service American Express credit card

. . . .

53. That a check written on November 23, 2005 for \$2,500.00, by [respondent] to [respondent] on Keene's Tire Service Inc. [sic] account was cashed by [respondent] and was unauthorized by Richard Snow.

. . . .

60. That in Ms. Wagner's experience, [respondent] was continually making misrepresentations and engaging in deception. When Ms. Wagner confronted [respondent] on November 29, 2005, about why she engaged in these continual acts of deception, including the actions at Keene's Tire Service, [respondent] stated, "I don't know."

. . . .

63. That in [respondent]'s May, 2005 BB&T statement, [respondent] spent \$1,014.00 on restaurants. She had over \$1,000 cash withdrawals

. . . .

65. That during the time [M.A.I.B.K.] has been in foster care, [respondent] was renting a three bedroom apartment at \$800.00 a month incurring expenses of \$90.00 a month for TV and cable, and \$150.00 for a phone bill. During this same period she was unable to pay for her therapist, Melanie Roskin.

. . . .

68. That during the time [M.A.I.B.K.] has been in foster care, [respondent] has failed to consistently engage in mental health treatment, continued to engage in acts of deception and unlawful conduct, lost her jobs and housing due to deception, made unwise decisions and engaged in unwise spending. Her conduct places her child at risk.

Respondent claims that "[t]here is no evidence in the Record on Appeal that M.A.I.B.K. has suffered some physical, mental, or emotional impairment while in the care of [respondent]." In support of this argument, respondent cites *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997), which states that "[t]his Court has additionally '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 order to adjudicate a juvenile neglected." Respondent also contends that "[w]hile [respondent]'s deceitful behavior may be unacceptable and intolerable, her actions have never directly involved M.A.I.B.K. in a harmful and inappropriate way, never placed her at risk, or created an injurious environment for M.A.I.B.K. which would meet the statutory definition of neglect."

We disagree with respondent's arguments. The prior adjudication of neglect was based in part on respondent's failure to provide proper care after she was arrested on fraud charges because no one was available to take care of M.A.I.B.K. while respondent was in jail. This situation created a substantial risk of physical and emotional impairment to M.A.I.B.K. The above findings of fact demonstrate that respondent continues to engage in fraudulent and unlawful conduct, has been charged with embezzlement, and has not engaged in regular therapy for her mental illnesses. These findings constitute clear, cogent, and convincing evidence on the record that there is sufficient probability of a

repetition of neglect and risk of impairment to M.A.I.B.K. to support the trial court's conclusion of neglect.

Respondent further contends that Findings of Fact Nos. 43, 50, 51, 63, 65 are mere recitations of testimony by witnesses and, therefore, are insufficient to support the trial court's conclusion of neglect. In support of this argument, respondent cites *Moore v. Moore*, 160 N.C. App. 569, 572, 587 S.E.2d 74, 76 (2003) (finding the "trial court's recitation of the testimony of witnesses and findings of fact are insufficient to support its conclusions on the ultimate facts based on the weight of the evidence"). However, unlike *Moore*, the trial court in the instant case does not merely recite witness testimony but cites physical evidence such as an employment agreement, bank records, and credit card statements in support of its findings. Further, there is little evidence in the record that is in direct conflict with the witnesses' testimony. Thus, respondent's argument that the above findings of fact are mere recitations of testimony and insufficient to support the trial court's conclusion of neglect has no merit.

Respondent also contends that Finding of Fact No. 40 is not supported by clear, cogent, and convincing evidence. Specifically, respondent claims that there is no evidence to support the statement that "without such treatment, [respondent] is unable to parent [M.A.I.B.K.]." We disagree. While respondent correctly points out that Melanie Roskin did not specifically testify as to whether respondent's mental illnesses made her incapable of providing proper care to M.A.I.B.K., Ms. Roskin did testify that

respondent was "continually in crisis," her "judgment was pretty poor," her life was not stable, she was "creating a lot of this chaos," she suffered from post-traumatic stress disorder and borderline personality disorder, that persons who suffer from such disorders have trouble making good personal relationships, that it would take "many years of therapy" and commitment to change to work through her disorders, and that she was not candid and honest during her therapy sessions. Such testimony provides clear, cogent, and convincing evidence that respondent's mental illnesses made her incapable of providing proper care to M.A.I.B.K.

Finally, respondent contends that Findings of Facts Nos. 19 and 20 are not supported by clear, cogent, and convincing evidence because respondent was employed and not homeless at the time of the termination hearing. We disagree. During the time that M.A.I.B.K. has been in foster care, respondent has held approximately twenty-three jobs and has never stayed longer than four months in a job. She has lost several jobs as a result of being fired and has quit several jobs. Although respondent had stable housing from August 2004 until November 2005, she was evicted after she was arrested for embezzlement. Respondent is not on the lease of her current residence and lives there at the will of her boyfriend. Thus, contrary to respondent's argument, the trial court's findings demonstrate a history of unstable employment and housing and the probability of continued neglect.

We conclude that the trial court's conclusion of neglect is supported by clear, cogent, and convincing evidence. Since grounds

exist pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to support the trial court's order, the remaining grounds found by the trial court to support termination need not be reviewed by the Court. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

Affirmed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).