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NO. COA06-1382

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

IN THE MATTER OF:

A.L.P.,  
Minor Child

Wilkes County  
No. 02 J 209

Appeal by respondents from an order entered 19 July 2006 by Judge Jeanie R. Houston in Wilkes County District Court. Heard in the Court of Appeals 12 March 2007.

*Paul W. Freeman, Jr. for petitioner-appellee Wilkes County Department of Social Services.*

*Tracie M. Jordan for appellee Guardian ad Litem.*

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

*Richard E. Jester for respondent-appellant father.*

HUNTER, Judge.

Respondents (hereinafter "mother" and "father") are the named parents of a child born out of wedlock. Mother and father have never married and father has never legitimated the child. Petitioner Wilkes County Department of Social Services ("petitioner") filed a petition on 25 November 2002 alleging that the child, nineteen months old at the time, is a neglected juvenile in that the child lives in an environment injurious to the child's welfare. The trial court entered an order granting custody to petitioner, who has continuously retained custody since that time.

On 7 June 2005, petitioner filed a petition to terminate the parental rights of the parents. The trial court conducted a hearing on the petition on 28 March 2006. The trial court filed an order terminating the parental rights of both parents on 19 July 2006.

In its order terminating the parents' parental rights, the trial court concluded that petitioner proved by clear and convincing evidence the existence of the following grounds for termination of mother's parental rights: (1) the child remains a neglected juvenile; (2) mother willfully left the child 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 the conditions which led to the removal of the child; and (3) mother willfully abandoned the child for at least six consecutive months preceding the filing of the petition to terminate rights.

The trial court concluded that petitioner likewise proved the existence of the following grounds to terminate father's parental rights: (1) father has not established paternity or otherwise legitimated the child; and (2) father is incapable of providing proper care and supervision of the child due to his incarceration and there is a reasonable probability that such incapability will continue for the foreseeable future. The trial court concluded that it is in the best interest of the child to terminate their parental rights.

Mother and father filed separate notices of appeal on 31 July 2006. After careful review, we affirm the order of the trial court as to both.

Mother's Appeal

I.

Mother contends the trial court's conclusions of law that three grounds exist to terminate her parental rights are not supported by the findings of fact which are based on clear, cogent, and convincing evidence.

An appellate court's review of a trial court's determination that sufficient ground(s) exist pursuant to N.C. Gen. Stat. § 7B-1111 to terminate parental rights is twofold: (1) whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence; and (2) whether the findings of fact support the conclusions of law. *In re Allred*, 122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996). Although mother lists in the record on appeal assignments of error challenging the sufficiency of the evidence to support certain findings, she does not bring forward these assignments of error. Assignments of error to findings of fact are deemed abandoned if the assignment of error is not brought forward and argued in the brief. *In re J.M.W.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 635 S.E.2d 916, 919 (2006). Unchallenged findings of fact "are deemed supported by competent evidence" and are binding upon this Court. *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003).

In this appeal, mother challenges all three grounds upon which her parental rights were terminated. The trial court found that (1) the child remains a neglected juvenile pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2005), (2) mother had willfully left the child in foster care for more than twelve (12) months without showing to the satisfaction of the trial court that reasonable progress had been made in correcting the conditions which led to the removal of the child pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), and (3) mother had willfully abandoned the child for at least six (6) consecutive months before the filing of the petition to terminate rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(7).

A finding of any 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). Thus, because we find that mother has violated N.C. Gen. Stat. § 7B-1111(a)(2), we address only that issue.

N.C. Gen. Stat. § 7B-1111(a)(2) permits termination of parental rights if the "parent has willfully left the juvenile in foster care . . . for more than 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 juvenile." N.C. Gen. Stat. § 7B-1111(a)(2). To terminate rights on this ground, the court must determine two things: (1) whether the parent willfully left the child in foster care for more than twelve months; and if so, (2) whether the parent has not made reasonable progress in correcting

the conditions that led to the removal of the child from the home. *In re O.C. & O.B.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396, *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005).

"A finding of willfulness does not require a showing of fault by the parent." *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). It can be found where a parent voluntarily leaves a child in foster care for more than twelve (12) months or where the parent has made some efforts but has not been responsive toward the efforts of DSS. *Id.* at 440, 473 S.E.2d at 398. Similarly, a parent's prolonged inability to improve his or her situation, despite some efforts and good intentions, will support a conclusion of lack of reasonable progress. *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004). Because the facts to establish both of these elements are often intertwined we address them together.

In the instant case, the trial judge took judicial notice of all prior orders entered in the matter and incorporated them by reference. Among those was a May 2005 order in which it was found that the child had been in foster care for approximately two years. Thus, the trial judge was correct in concluding that the child had been in foster care for more than twelve months. Next, the trial court determined that mother had willfully left the child in foster care.

The facts clearly establish mother's inability to make reasonable progress toward correcting the circumstances that led to the child's removal. In the original order adjudicating the child

as neglected, the findings of fact show that petitioner received a report on 20 November 2002 indicating that the child was suffering from "failure to thrive" and that mother was not providing a stable home. On 21 November 2002, mother and the man with whom she was living tested positive for the presence of cocaine. The home in which they were residing was infested with roaches. Other orders show that the child was diagnosed with having fetal alcohol syndrome as a result of mother's heavy consumption of alcohol and cocaine while she was pregnant with the child.

Initially mother took positive steps toward regaining custody of the child. She completed parenting classes and an inpatient drug rehabilitation clinic in May 2003, and she tested negative for the presence of drugs on 5 January 2004. However, just seven days earlier she reported to a hospital emergency room seeking treatment for lacerations. Her blood alcohol level at 4:30 a.m. on 30 December 2003 was measured at .388. After having tested negative for drugs, she presented to a hospital emergency room on 4 February 2004 complaining of pain in her right arm. She tested positive for the presence of cocaine. Her blood alcohol level at 7:30 a.m. on that date was .276. Eight days later, on 12 February 2004, she presented again to the emergency room, this time complaining of pain in her chest and abdomen. At 12:40 p.m. on that date, her blood alcohol level was .334.

On 17 February 2004 and 9 March 2004, mother met with her social worker. On both dates mother was asked to undergo drug screens. Mother failed to follow through with the drug screens.

A representative of New River Mental Health Substance Abuse Services ("NRMHSA"), where mother was receiving outpatient treatment, reported in February 2004 that mother had not been seen "in some time." Although mother did subsequently report to the center for a substance abuse assessment on 18 March 2004, she refused to submit to a drug screen. Mother failed to show for an appointment with NRMHSA on 25 March 2004 and she cancelled an appointment for 1 April 2004. Mother failed to submit to any drug screens requested by DSS. Mother's substance abuse counselor dropped mother from her caseload in December 2005 due to mother's noncompliance.

Meanwhile, mother failed to obtain suitable housing. In June 2003, mother was approved for a public housing voucher. She failed to find suitable housing within sixty days and the voucher expired. She never re-applied for housing assistance. Despite repeated attempts, the social worker in charge of the case could get in contact with mother only twice before the 12 April 2004 review hearing, specifically on 17 February 2004 and 9 March 2004. Against petitioner's recommendation, mother continued to reside with a man who also tested positive for the presence of cocaine when the child was removed from mother's residence. This man's two children were also removed from the home at the same time. Mother resided with this man until he was incarcerated in late 2003 due to drug and alcohol charges.

In a review order entered in open court on 12 April 2004 and signed on 26 April 2004, the trial court found that "[i]t is not

possible" for the child to be returned to the home within the next six months due to mother's continued alcohol or substance abuse.

As to willfulness, the trial court found that mother's contact with the child also dwindled. Since December 2004, mother called petitioner to set up a visit with the child only once, and actually visited the child only twice, on the dates of 28 January 2005 and 24 March 2005. Mother cancelled scheduled visits on 16 September 2005 and 30 September 2005, citing illness. A review order entered 8 May 2006 and signed 25 May 2006 indicates that mother had visited the child only once within the prior six months. Mother has not sent the child gifts, cards, letters, or inquired about the child on a regular basis.

We hold the foregoing findings of fact support a conclusion that mother has willfully left the juvenile in foster care for more than twelve (12) months without a showing of reasonable progress toward correcting the problems that led to the removal of the child. See N.C. Gen. Stat. § 7B-1111(a)(2). Due to her continued abuse of alcohol and cocaine, mother is unable to parent the child and to provide a safe home. Although she has made some efforts to correct the conditions that led to the removal of the child from her home, these efforts have been sporadic and diminishing. Her visitations and contacts with the child have also been significantly reduced, from regular monthly visitations to two visitations within six months, and none within three months next preceding the filing of the petition to terminate parental rights.



Mother lastly challenges the trial court's conclusion of law that it is in the best interests of the child to terminate mother's parental rights. She argues this conclusion is not supported by the findings of fact or clear, cogent, and convincing evidence.

"The trial court has discretion, if it finds that at least one of the statutory grounds exists, to terminate parental rights upon a finding that it would be in the child's best interests." *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). "Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict." N.C. Gen. Stat. § 7B-1100(3) (2005). As a discretionary decision, the trial court's disposition ruling will not be disturbed unless it could not have been the product of reasoning. *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387, *affirmed per curiam*, 360 N.C. 165, 622 S.E.2d 495 (2005).

We find no abuse of discretion. Considerations in determining the child's best interests include: (1) the age of the child; (2) the likelihood of adoption; (3) the impact in accomplishing the permanent plan; (4) the bond between the child and the parent; (5) the relationship between the child and a proposed adoptive parent or other permanent placement; and (6) any other relevant consideration. N.C. Gen. Stat. § 7B-1110(a) (2005). The findings of fact show that the child was removed from mother's custody when the child was nineteen months old. The child has been in petitioner's continuous custody since then and in the same foster

home for an extended period of time. She has bonded with the foster parents, who desire to adopt her. She is no longer suffering any lasting effects from fetal alcohol syndrome. She is doing well in school. In contrast, mother's problems with alcohol and drug abuse have continued throughout this period.

Father's Appeal

I.

Father argues the trial court erred by terminating his parental rights on the ground of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). The trial court did not terminate father's rights on this ground, but rather pursuant to N.C. Gen. Stat. § 7B-1111(a)(5) and (6). Section 7B-1111(a)(6) provides for termination of parental rights when a parent is incapable of providing for the proper care and supervision of the child.

Under Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure "[a]ssignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned." N.C.R. App. P. 28(b)(6); see also *In re P.L.P.*, 173 N.C. App. 1, 9, 618 S.E.2d 241, 246 (2005) (where respondent failed to argue or assert authority in support of certain assignments of error on appeal from termination proceeding, those assignments held to be abandoned under Rule 28(b)(6)).

Father has neither articulated an argument, nor provided citations of authority in support of, his assignment of errors addressed to the trial court's conclusions that he is unable to

provide proper care and supervision to the child under N.C. Gen. Stat. § 7B-1111(a)(6).<sup>1</sup> Consequently, the assignments of error concerning N.C. Gen. Stat. § 7B-1111(a)(6) are deemed abandoned under Rule 28(b)(6). When assignments of error are deemed abandoned, the trial court's findings and conclusions are binding on appeal. *In re P.L.P.*, 173 N.C. App. at 9, 618 S.E.2d at 246. In termination cases, a finding of any of the separately enumerated grounds is sufficient to support a termination. *In re Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34. Thus, in the instant case, the N.C. Gen. Stat. § 7B-1111(a)(6) ground for termination is conclusively established, and we need not address father's arguments concerning the other ground for termination found by the trial court. *In re P.L.P.*, 173 N.C. App. at 9, 618 S.E.2d at 246.

We have, however, reviewed the alternate ground found by the trial court to terminate father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(5). We find father's appeal with regard to that issue without merit. The assignments of error pertinent to this discussion are overruled.

## II.

Father next contends the trial court erred by failing to comply with the requirement of N.C. Gen. Stat. § 7B-1110(a) that an order be reduced to writing and entered within thirty days after completion of the termination of parental rights hearing. The record shows that the hearing was completed on 28 March 2006 but

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<sup>1</sup> Father filed a motion to brief this issue in a reply brief. This motion was denied since reply briefs cannot be used to raise additional issues. N.C.R. App. P. 28(h)(3).

the order was not filed until 19 July 2006. A court's failure to enter the order in a timely fashion is not reversible error unless the appellant can show prejudice. *In re C.J.B. & M.G.B.*, 171 N.C. App. 132, 134, 614 S.E.2d 368, 369 (2005). Father has made no showing of prejudice.

III.

Father lastly contends the trial court erred by failing to hold a bifurcated proceeding which distinguished between the adjudication phase and the disposition phase. Although a proceeding to terminate parental rights involves the foregoing two stages, we have held that it is not necessary for the court to conduct separate hearings at each stage. *In re White*, 81 N.C. App. 82, 85, 344 S.E.2d 36, 38 (1986). We overrule this contention.

IV.

In summary, we hold that the trial court did not error in terminating the parental rights of mother and in its finding that the termination was in the best interest of the child. Because father abandoned a necessary assignment of error for his appeal, we also uphold the trial court's order terminating father's parental rights. We similarly find no prejudicial error in the timing of the trial court's order and no error in failing to hold a bifurcated trial.

Affirmed.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).