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NO. COA06-1539

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

IN RE: Harnett County
M.S. No. 05 J 129

Appeal by respondent mother from order entered 26 September 2006 by Judge Jacquelyn L. Lee in Harnett County District Court. Heard in the Court of Appeals 12 March 2007.

E. Marshall Woodall and Duncan B. McCormick, for petitioner-appellee Harnett County Department of Social Services.

Elizabeth Boone, for guardian ad litem.

Susan J. Hall, for respondent-appellant.

TYSON, Judge.

M.P. ("respondent") appeals from order entered terminating her parental rights to her minor child, M.S. We affirm.

I. Background

M.S. was born premature and tested positive for cocaine in her body. Respondent and M.S.'s father, C.S., ("C.S.") were living in a boarding home where known drug users resided when M.S. was born. On 19 July 2005, Harnett County Department of Social Services ("DSS") received a report alleging M.S. resided in an injurious environment.

On 10 August 2005, DSS filed a juvenile petition which alleged that M.S. was neglected and dependent. The trial court entered an

order of non-secure custody and placed M.S. in DSS' custody. M.S. has resided in foster care since 22 August 2005.

On or about 12 February 2006, a child support order directed respondent to pay \$56.00 per month in child care. Before the termination of parental rights hearing, respondent paid a total of \$129.95 to DSS toward M.S.'s care. On 17 February 2006, M.S. was adjudicated neglected and dependant.

On 24 February 2006, the trial court continued custody with DSS, ordered efforts to reunite M.S. with respondent cease and amended the plan to adoption. Respondent's last visit with M.S. occurred on 16 March 2006.

On 19 May 2006, DSS filed a motion to terminate respondent's and C.S.' parental rights. The motion alleged grounds for termination pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) (neglect and abuse), (3) (cost of care) and (7) (willfully abandoned). C.S. failed to answer the motion.

On 11 August 2006, the trial court heard DSS' motion to terminate parental rights. Neither parent was present at the motion. Respondent's attorney stated respondent had notice of the hearing.

Social Worker Elaine Coley ("Coley") testified she became involved with M.S., respondent, and C.S. in September 2005. Coley completed a family services case plan with respondent for her to seek and obtain employment and housing and attend parenting and substance abuse classes. Respondent failed to adhere to this plan. Respondent had worked at the Family Dollar Store and earned \$5.50

per hour and was currently working at McDonald's Restaurant. Coley also stated respondent was currently on probation.

The trial court entered findings of fact that respondent: (1) failed to comply with the family services plan; (2) failed to pay the reasonable cost of M.S.'s care; and (3) failed "to show appropriate parental concern for [M.S.] since December 9, 2005[.]" The trial court terminated respondent's parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a) (1) (neglect and abuse); (3) (failure to pay reasonable portion M.S.'s expenses for six months); and (7) (willful abandonment for at least six months immediately prior to the filing of the motion). Respondent appeals.

II. Issue

Respondent contends the trial court's findings of fact are not supported by clear, cogent, and convincing evidence and the trial court abused its discretion by concluding M.S.'s best interest was served by terminating respondent's parental rights.

III. Standard of Review

A proceeding to terminate parental rights is a two step process with an adjudicatory stage and a dispositional stage. A different standard of review applies to each stage. In the adjudicatory stage, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that one of the grounds for termination of parental rights set forth in N.C. Gen. Stat. § 7B-1111(a) exists. The standard for appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings of fact support its conclusions of law. Clear, cogent, and convincing describes an evidentiary standard stricter than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt.

If the petitioner meets its burden of proving at least one ground for termination of parental rights exists under N.C. Gen. Stat. § 7B-1111(a), the court proceeds to the dispositional phase and determines whether termination of parental rights is in the best interests of the child. The standard of review of the dispositional stage is whether the trial court abused its discretion in terminating parental rights.

In re C.C., J.C., 173 N.C. App. 375, 380-81, 618 S.E.2d 813, 817 (2005) (internal quotations and citations omitted). "The trial court's 'conclusions of law are reviewable *de novo* on appeal.'" *In re D.M.M.*, ___ N.C. App. ___, ___, 633 S.E.2d 715, 716 (2006) (quoting *Starco, Inc. v. AMG Bonding and Ins. Servs.*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996)).

IV. Analysis

Respondent argues the trial court's findings of fact are not supported by clear, cogent, and convincing evidence.

The trial court found DSS presented clear, cogent, and convincing evidence to support termination of respondent's parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(1), (3), and (7):

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

. . . .

(3) The 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.

. . . .

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion.

A. Neglect

A neglected juvenile is defined 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.

In re Yocum, 158 N.C. App. 198, 204, 580 S.E.2d 399, 403 (quoting N.C. Gen. Stat. § 7B-101(15)), *aff'd per curiam*, 357 N.C. 568, 597 S.E.2d 674 (2003).

The court may conclude a child is neglected where a parent has failed or is unable to adequately provide for the child's physical and economic needs, and it is proved that the parent will not or is not able to correct those inadequate conditions within a reasonable time. *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984). Neglect may also be proved by a parent's failure to

provide a stable living environment and proper food and clothing.

In re Adcock, 69 N.C. App. 222, 225, 316 S.E.2d 347, 349 (1984).

The trial court entered the following findings of fact:

24. The juvenile was born premature and tested positive for cocaine at her birth on [].

25. The parents did not made [sic] appropriate provisions for the juvenile's care upon release from the hospital after her birth.

26. Upon discharge from the hospital, the juvenile was placed on an apnea monitor and was expected to need the same for approximately six (6) months. The parents lived in a boarding home where known drug users resided and these people had caused problems for the family. The parents' home environment was not conducive to the special needs of the juvenile.

. . . .

38. Since the December 2005 hearing, the mother had failed to comply with or make any real progress on the family services case plan. The mother stated that she had no transportation available and could not comply with the plan of services.

. . . .

49. The mother has failed to show appropriate parental concern for the juvenile since December 9, 2005; she has failed to make any plan for her care since her birth. She has visited the juvenile but failed to prepare herself to properly care for the juvenile who is a special needs juvenile. She has a history of breaking, entering and larceny and is currently on probationary sentence. The mother has attended several court sessions and has been living with the father in Angier, NC for some appreciable time. She has purchased a care [sic] and a truck. Her failure to be involved with and support the juvenile has been willful.

50. As indicated by the evidence and the foregoing findings, the neglect of the

juvenile continues to the time of the hearing and there is a likelihood that if she is returned to the parents, the neglect would continue.

Respondent only assigns error to and argues on appeal that the trial court erred when it entered findings of fact numbered 52 and 56 and conclusion of law numbered 7. "Assignments of error not set out in the appellant's brief . . . will be taken as abandoned." N.C.R. App. P. 28(b)(6) (2007). Unchallenged findings of fact are binding on appeal. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133, *disc. rev. denied*, 306 N.C. 565 (1982).

Clear, cogent, and convincing evidence shows respondent neglected M.S. because: (1) M.S. tested positive for cocaine at birth; (2) respondent failed to make appropriate provisions for M.S. upon M.S.'s release from the hospital; (3) respondent resided at a boarding home, where known drug users lived, was not conducive to M.S.'s special needs; (4) respondent failed to make reasonable progress on her family case plan; (5) respondent failed to show appropriate parental concern for M.S.; and (6) respondent's neglect of the juvenile continues and a likelihood exists that neglect would continue if M.S. returned to respondent's custody.

Uncontested and binding findings of fact support the trial court's conclusion that respondent neglected M.S. Because a finding of any one of the enumerated grounds in N.C. Gen. Stat. § 7B-1111 is sufficient to support termination, we do not address respondent's other grounds for termination. *In re Pierce*, 67 N.C. App. 257, 263, 312 S.E.2d 900, 904 (1984).

B. Challenged Findings of Fact and Conclusions of Law

Respondent contends the trial court erred when it entered findings of fact numbered 52 and 56 and conclusion of law numbered

7. Findings of fact numbered 52 and 56 state:

52. The juvenile was placed in a licensed foster care home on August 22, 2005. As a special needs baby, she was placed on an apnea monitor at birth and has continued to need the monitor until recently. The foster parents engaged in special training at the hospital on how to feed, bathe and care for the juvenile and became proficient in the use of the apnea monitor. The mother failed to participate with this training.

56. It is in the best interest of the juvenile that the parental rights of the parents be terminated.

Conclusion of law numbered 7 states:

7. It is in the best interests of the juvenile to terminate the parental rights of the parents.

At the trial court's termination of parental rights hearing, Coley testified the hospital trained the foster parents to care for M.S. using the apnea monitor, and to bathe and feed M.S. Coley testified respondent began training for M.S.' care at the hospital but the hospital staff asked her to leave due to her being disruptive. Coley testified respondent refused to accept any further training for M.S.'s care.

Coley's testimony provides clear, cogent, and convincing evidence to support finding of fact numbered 52. The trial court did not err when it entered finding of fact numbered 52. Clear, cogent, and convincing evidence supports finding of fact numbered 56, which supports conclusion of law numbered 7. The trial court did not err when it concluded it was in M.S.'s best interest to

terminate respondent's parental rights. Respondent's assignment of error is overruled.

V. Conclusion

Clear, cogent, and convincing evidence supports the trial court's findings of fact that a statutory ground exists to terminate respondent's parental rights. The trial court did not abuse its discretion when it concluded M.S.'s best interest was served by terminating respondent's parental rights. The trial court's order terminating respondent's parental rights is affirmed.

Affirmed.

Judges HUNTER and MCCULLOUGH concur.

Report per Rule 30(e).