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NO. COA06-1623

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN THE MATTER OF:

A.S.
A.J.S.

Wayne County
Nos. 04 J 220 and 221

Appeal by respondent from judgments entered 25 September 2006 by Judge Joseph E. Setzer, Jr. in Wayne County District Court. Heard in the Court of Appeals 2 April 2007.

E.B. Borden Parker for petitioner-appellee Wayne County Department of Social Services.

Winifred H. Dillon for respondent-appellant.

CALABRIA, Judge.

Respondent-appellant M.S. ("respondent-mother") appeals from orders terminating her parental rights to A.S. and A.J.S. (collectively "the minor children") on the grounds of neglect. We affirm.

On 14 October 2004, the Wayne County Department of Social Services ("DSS") filed two juvenile petitions alleging that A.S. and A.J.S. were neglected and dependent. The petitions alleged that DSS substantiated reports in October 2003 that the parents, respondent-mother and her husband (collectively "the parents"), used drugs and did not provide proper care for the children. The

petitions further alleged that the children were exposed to domestic violence and that the father was arrested for a domestic violence assault against respondent-mother. Also, the petitions alleged that as of October 2004, the family was "living place to place with friends" and both parents tested positive for marijuana. The trial judge placed the minor children in non-secure custody with DSS. Subsequently, the minor children were placed in foster care.

On 4 November 2004, the trial court entered an order adjudicating the children neglected and dependent. In the order, the trial court found that respondent-mother and the father admitted that A.S. and A.J.S. were neglected and dependent at the time of the filing of the petitions. The trial court ordered both respondent-mother and the father to complete psychological evaluations and substance abuse assessments and to comply with recommendations. Also, respondent-mother and the father were ordered to submit to random drug screens. The father was also ordered to "attend and participate in domestic violence classes at the Lighthouse of Wayne County, Inc."

At a review hearing on 3 February 2005, the trial court found that respondent-mother was currently employed but had not complied with previous court orders. The respondent-mother was ordered to submit to a substance abuse test on the date of the hearing. Also, respondent-mother was ordered to comply with random drug tests, to complete a psychological and substance abuse evaluation, and to comply with all recommendations.

At a subsequent review hearing on 28 April 2005, the trial court found that respondent-mother and the father had obtained psychological evaluations. The trial court also found that the psychologist recommended a psychiatric evaluation for each parent and recommended that each complete the requirements for a high school diploma or a GED. At a 30 June 2005 hearing, the trial court found that the parents had not complied with random drug screens or completed substance abuse assessments. Also, the parents had not obtained psychological evaluations. The trial court ordered each parent to "go to Med Stat on this date when they leave the Court for a drug test to be paid for by the Department of Social Services." The parents were also ordered to complete psychiatric evaluations, submit to random drug screens, and complete substance abuse assessments. Additionally, the parents were ordered to complete the requirements for a GED and secure and maintain stable housing and employment.

A permanency planning hearing was held on 21 December 2005, wherein the trial court entered an order finding that respondent-mother had successfully completed a parenting class. The trial court also found that she had negative drug screens on three separate occasions. Further, respondent-mother was actively participating and progressing in her substance abuse therapy. The trial court also found that respondent-mother visited with her children regularly on a bi-weekly basis and that she was currently employed. However, the trial court found that respondent-mother was not pursuing her GED, had not completed a psychiatric

evaluation, and had not obtained stable housing. In addition, neither parent was contributing to the support of the children. More importantly, respondent-mother stated she would not comply with any court order that prevented the children from being in the presence of the father. At the close of the hearing, the court ordered that the permanent plan for the minor children was adoption and termination of parental rights.

On 20 February 2006, DSS filed motions to terminate the parental rights of both respondent-mother and the father based upon neglect. By separate orders filed 25 September 2006, the trial court terminated the parental rights of respondent-mother and the father. Respondent-mother appeals. The father did not file a notice of appeal.

The termination of parental rights to minor children is a two-step process that requires this Court to apply two separate standards of review. First there is an adjudicatory phase, governed by N.C. Gen. Stat. § 7B-1109(e) (2005), followed by a dispositional phase, governed by N.C. Gen. Stat. § 7B-1110 (2005). The standard of review for the adjudication phase of a termination of parental rights is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support its conclusions of law. *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). "Clear, cogent and convincing evidence describes an evidentiary standard stricter than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt." *N.C. State Bar v.*

Sheffield, 73 N.C. App. 349, 354, 326 S.E.2d 320, 323 (1985). "A finding of one statutory ground is sufficient to support the termination of parental rights." *In re A.D.L.*, 169 N.C. App. 701, 710, 612 S.E.2d 639, 645 (2005).

In the dispositional phase, the trial court considers the best interests of the child. We review this determination for an abuse of discretion. *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 407 (2003). Reversal for abuse of discretion is limited to instances where the appellant can show the judge's decision is "manifestly unsupported by reason." *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980). "So long as the findings of fact support a conclusion based on [the statute], the order terminating parental rights must be affirmed." *Oghenekevebe*, 123 N.C. App. at 436, 473 S.E.2d at 395-96.

Respondent-mother argues the trial court's finding regarding the likelihood of a repetition of neglect were not supported by clear, cogent and convincing evidence. We disagree.

In its order, the trial court found that "it is probable that the parents of the [minor children] will continue to act in a way that would prevent the return of the [minor children] to them." The trial court also found that "[the parents'] actions indicate to the Court that they have continued to neglect the [minor children] and will most likely continue to neglect the [minor children] if the [minor children are] returned to [the parents'] care." These findings were supported by clear, cogent and convincing evidence in the record.

The minor children were removed from respondent-mother's care because of substantiated reports that the minor children were exposed to illegal drug use and to domestic violence. Although respondent-mother had taken steps to resolve her substance abuse issues and had made progress in that area, respondent-mother continued to reside with the father who had not complied with any of the court's orders. Not only had the father not completed a domestic violence program to resolve some of the causes for the removal of the minor children, he also continued to display patterns of domestic violence by assaulting respondent-mother during July of 2005. Additionally, the father had not completed a substance abuse assessment and admitted to using controlled substances as recently as December of 2005. Further, despite the father's lack of progress, respondent-mother continued to reside with him and stated that she would continue to care for him and would not abide by a court order if it required her to prevent the minor children from being in their father's presence. This evidence alone supports the trial court's finding that it was probable respondent-mother would continue to act in a manner that would prevent her children from being returned to her.

Respondent-mother also contends the trial court's conclusion that grounds existed to terminate her parental rights on the basis of neglect was not supported by the findings of fact. We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1111 (a)(1) (2005), a court may terminate parental rights upon a finding that the parent has neglected the child. *Id.* The definition of a neglected child, in

pertinent part, is one who "does not receive proper care, supervision, or discipline . . . or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15) (2005). In order for a parent's rights to be terminated on the basis of neglect, the petitioner must prove by clear, cogent and convincing evidence that evidence of neglect existed at the time of the termination proceeding. *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). The dispositive question in determining whether a child is neglected is the fitness of the parent to care for the child at the time of the termination proceeding. *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005). Additionally, "a prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect." *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). However, when a child has not been in the parent's custody for a significant period of time, "a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect." *In re L.O.K.*, 174 N.C. App. at 435, 621 S.E.2d at 242 (internal quotations omitted).

Here, there is clear, cogent and convincing evidence that respondent-mother neglected her children in the past and that neglect would likely occur in the future. The evidence showed that when DSS became involved, the children were not receiving proper medical care and were exposed to domestic violence and illegal drug

use. The record indicates that respondent-mother eventually took the necessary steps to comply with court orders. She completed a psychological evaluation, had a substance abuse evaluation and attended substance abuse counseling, and tested negative during the random drug screens. In addition, respondent-mother maintained stable employment. However, respondent-mother continued to reside with the father and expressed to DSS and GAL that she would not abide by a court order that required her to keep the children away from their father. At the time of the termination proceedings, the father had not complied with court orders. He had not completed random drug screens, attended domestic violence classes, or obtained substance abuse counseling. Further, the father admitted that he was using drugs in July of 2005 and that he assaulted respondent-mother. The fact that respondent-mother insisted upon continuing to live with the father who continued to be involved in the same conduct that brought about the removal of the children supports the trial court's conclusion that a probability of a repetition of neglect existed.

Respondent-mother also argues several other findings of fact made by the trial court were not supported by clear, cogent and convincing evidence. Although several of the trial court's findings were made regarding respondent-mother and the father collectively, some of the findings were not applicable to respondent-mother. We agree that these findings challenged by respondent-mother were not supported by clear, cogent and convincing evidence. However, we have already determined that the

trial court's finding regarding the probability of a repetition of neglect was supported by clear, cogent and convincing evidence and this finding supported the trial court's conclusion that grounds existed to terminate respondent-mother's parental rights.

Upon careful review of the record and transcript, we hold that the evidence of circumstances at the time of the hearing supports the conclusion that there was a history of neglect by respondent-mother and that the previous neglect was likely to reoccur. The orders of the trial court terminating the parental rights of respondent-mother is affirmed.

Affirmed.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).