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NO. COA06-1686

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN THE MATTER OF:

N.D.H., C.J.H, and C.E.H.,
Minor Children.

Iredell County
Nos. 97 JT 126
02 JT 258-59

Appeal by respondents from an order entered 22 September 2006 by Judge Wayne L. Michael in Iredell County District Court. Heard in the Court of Appeals 2 April 2007.

Lauren Vaughan for Iredell County Department of Social Services, petitioner-appellee.

Mary McCullers Reece for respondent-appellant mother.

Betsy J. Wolfenden for respondent-appellant father.

Holly M. Groce for appellee guardian ad litem.

BRYANT, Judge.

C.H.¹ (respondent-father) and D.H. (respondent-mother) appeal from an order entered 22 September 2006 terminating their parental rights to their three minor children, N.D.H., C.J.H, and C.E.H. For the reasons below, we affirm the order of the trial court.

Facts and Procedural History

The children came into the legal custody of the Iredell County

¹Initials are used throughout to protect the identity of the juveniles.

Department of Social Services (petitioner) on 5 March 2003 following an adjudication that the children were neglected juveniles. After review and permanency planning hearings, petitioner filed motions to terminate the parents' parental rights on 9 March 2004. The trial court dismissed these motions by order filed 2 May 2005 and changed the plan to reunification with respondent-father. Due to subsequent developments, the trial court changed the plan back to termination of parental rights/adoption by order filed 25 July 2005.

Petitioner filed a second set of petitions to terminate parental rights on 24 February 2006. The trial court conducted a hearing on the petitions during the 22 August 2006 Juvenile Session of District Court for Iredell County. At the conclusion of the adjudication hearing, the trial court concluded that four grounds existed to terminate respondents' parental rights: (1) the parents have neglected the children; (2) the parents, for a continuous period of six months next preceding the filing of the petition, willfully failed for such period to pay a reasonable portion of the cost of care for the minor children; (3) the parents have left the children in foster care for a period of more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting the conditions that led to removal of the children; and (4) the parents are incapable of providing proper care and supervision of the children such that they are dependent juveniles and there is a reasonable probability that such incapability will continue for the

foreseeable future and the parents have no alternative child care arrangement. The trial court then proceeded to a disposition hearing. After hearing testimony from the social worker, supervisor and the guardian ad litem, the trial court concluded that it is in the children's best interests that respondents' parental rights be terminated. Respondents appeal.

Respondent-father individually raises the issue of (I) whether the trial court erred by considering the best interests of the children during the adjudicatory phase of the termination hearing and in basing its findings and conclusions on the testimony and opinions of Bruce Steadman, where his testimony was beyond the scope of his qualifications. Respondent mother similarly raises issues concerning the testimony of Bruce Steadman, including whether the trial court erred: (II) in finding that "if the minor children were not doing well in their present placement, [Mr. Steadman's] recommendation would be placing the minor children in another foster care placement and not back with the respondent parents"; and (III) by considering the report of Bruce Steadman, which was largely a best interests of the child evaluation, while determining whether grounds to terminate existed. Respondents also present the following identical issues of whether the trial court erred in concluding: (IV) respondents left the juveniles in foster care for a period of 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 that led

to the removal of the minor children; (V) respondents were incapable of providing proper care and supervision of the juveniles such that the juveniles were dependent and that there was a reasonable probability that such incapability would continue for the foreseeable future; (VI) respondents neglected their children within the meaning of N.C. Gen. Stat. § 7B-1111(a)(1); and (VII) respondents failed to pay a reasonable portion of the costs of care for their children.

Standard of Review

Review of an order terminating one's parental rights consists of examining (1) the findings of fact to determine whether they are supported by clear, cogent and convincing evidence and (2) the conclusions of law to determine whether they are supported by the findings of fact. *In re Pope*, 144 N.C. App. 32, 40, 547 S.E.2d 153, 158, *aff'd*, 354 N.C. 359, 554 S.E.2d 644 (2001). Unchallenged findings of fact are deemed supported by the evidence and are binding on this Court on appeal. *In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001). If the trial court's determination of the existence of a single ground for termination of rights can be upheld, then the appellate court need not consider other grounds. *In re Davis*, 116 N.C. App. 409, 413, 448 S.E.2d 303, 305, *disc. review denied*, 338 N.C. 516, 452 S.E.2d 808 (1994).

I-III

Both respondents contend that the trial court erred by considering the report of Bruce Steadman, a licensed clinical social worker, in determining the existence of grounds to terminate

parental rights. They argue that because his report was not based upon his assessment of the parenting abilities of the parents but was based upon an assessment of the best interests of the children, the report should not have been considered in the adjudicatory stage of the proceeding. They also argue that his testimony in the form of a psychosocial assessment was beyond the scope of his qualifications and expertise as a social worker.

The record shows that petitioner tendered Mr. Steadman "as a licensed professional social worker qualified to give psychological assessments and substance abuse assessments." Respondent-father's attorney expressly stated that he had "[n]o objection" to the tender of Mr. Steadman while the attorney of respondent-mother remained silent and did not object. "In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(b)(1). Having failed to challenge the qualifications of the witness in the trial court below, respondents are barred from making this challenge for the first time on appeal. We thus will not address the issue of his qualifications and dismiss these assignments of error.

A termination of parental rights proceeding consists of two stages: (1) an adjudication phase in which the trial court determines, based upon the evidence, whether a ground to terminate rights exists; and (2) if there is a ground, the trial court

proceeds to the disposition phase in which the court determines whether it is in the best interest of the child to terminate parental rights. *In re Howell*, 161 N.C. App. 650, 656, 589 S.E.2d 157, 160-61 (2003). Although different evidentiary standards apply to each stage, it is not error for a trial court to hold a single hearing integrating both phases because "it is presumed, in the absence of some affirmative indication to the contrary, that the judge, having knowledge of the law, is able to consider the evidence in light of the applicable legal standard." *In re White*, 81 N.C. App. 82, 85, 344 S.E.2d 36, 38 (1986).

The trial court's findings of fact pertinent to Mr. Steadman's report demonstrate that the court did indeed consider the report under the applicable standard. In finding of fact number eleven, the trial court expressly limited its consideration of Mr. Steadman's report to "assessing the parenting matters of the [r]espondent [p]arents." In finding of fact number twelve, the trial court noted that even if the children were not doing well in their current foster care placement, Mr. Steadman could not recommend returning the children to respondents. These findings are contained within the trial court's adjudicatory findings. The testimony of Mr. Steadman as to whether respondents were capable of providing proper care and supervision of their minor children and whether respondents had made reasonable progress under the circumstances is directly relevant to the issues before the trial court at the adjudicatory stage of the hearing. While the same evidence is also relevant to an analysis regarding the best

interests of the minor children, this fact does not prohibit the trial court from considering the evidence at the adjudicatory stage. *Cf. In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001) ("Evidence heard or introduced throughout the adjudicatory stage, as well as any additional evidence, may be considered by the court during the dispositional stage.").

Respondent-mother also challenges the finding of fact that if the children were not doing well in their current placement, Mr. Steadman's recommendation is that the children be placed in another home rather than be returned to respondents. She contends this finding is not supported by clear, cogent and convincing evidence.

A trial court's findings of fact in a juvenile matter are deemed conclusive, even where some evidence supports contrary findings, if they are supported by clear and convincing evidence. N.C. Gen. Stat. § 7B-805 (2005); *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). Clear and convincing evidence is defined as "evidence which 'should fully convince.'" *Williams v. Blue Ridge Bldg. & Loan Ass'n*, 207 N.C. 362, 364, 177 S.E. 176, 177 (1934) (citation omitted). In making findings of fact, the trial court must not simply recite allegations or evidence, but must through "processes of logical reasoning from the evidentiary facts" find the ultimate facts essential to support the conclusions of law. *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 601-02 (2002) (citation and quotations omitted).

Mr. Steadman testified that respondent-mother admitted to him that she had not been compliant with the case plan recommendations.

Respondent-mother also admitted to him that she is impulsive, dyslexic, and speech and hearing impaired. She also related that she has been physically abused by several men, she has twice attempted suicide, and she has difficulty maintaining steady employment. Respondent-mother also has limited insight and she requires assistance in managing the activities of everyday living. Based upon information that he was able to gather from testing and other sources, including information provided by respondent-mother, Mr. Steadman found that respondent-mother exhibits characteristics of bipolar disorder, paranoia, and impulsiveness. Mr. Steadman concluded that reunification with respondent-mother should not be pursued.

Similarly, with regard to respondent-father, Mr. Steadman testified that respondent-father admitted he had not complied with recommendations of the court and petitioner listing things he should do in order to regain custody of the children. Respondent-father has a history of substance abuse and inability to maintain stable or regular employment. Based upon respondent-father's failure to comply with the court orders and to demonstrate that he could be a parent to the children, Mr. Steadman concluded that reunification with respondent-father should not be pursued. We hold competent evidence supports the trial court's finding of fact and the trial court properly considered this evidence. These assignments of error are overruled.

IV

Respondents next contend the trial court erred in concluding

they have left the children in foster care for a period of more than twelve months without showing to the satisfaction of the court that reasonable progress had been made in correcting the conditions that led to the removal of the children from their home. Respondents argue this conclusion is inadequate to support termination of rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). This statute provides for termination of rights on the ground

[t]he parent has willfully left the juvenile in foster care or placement outside the home 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) (2005). Respondents argue the trial court erred by failing to conclude that they "willfully" left the juveniles in foster care without making reasonable progress in correcting the conditions that led to the removal of the children from the home. They also argue the findings of fact and evidence do not support such conclusion.

The "willful" action within the meaning of N.C. Gen. Stat. § 7B-1111(a)(2) is something less than the purposeful or deliberate action required to terminate parental rights for abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). *In re Shepard*, 162 N.C. App. 215, 224, 591 S.E.2d 1, 7 (2004). "Willfulness under this section means something less than willful abandonment and does not require a finding of fault by the parent." *In re B.S.D.S.*, 163 N.C. App. 540, 545, 594 S.E.2d 89, 93 (2004). Termination on this ground may be made even though the parent has made some efforts to

regain custody of the children. *In re Becker*, 111 N.C. App. 85, 95, 431 S.E.2d 820, 826-27 (1993). The efforts made by the parents must have obtained positive results. *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 225 (1995).

At the time the children were adjudicated as neglected, respondents stipulated that the allegations of the petition were true. They thus stipulated that one of the children had sustained an unexplained burn to the side of his face; that the home in which they were living was infested with roaches; that the home was filthy as dried feces were found on fixtures and the floors were heavily stained with dirt; that a knife was left on the floor; that an electrical receptacle had a broken cover accessible to the children; that respondent-mother was uncooperative with law enforcement officers when they were called to assist; and that respondent-mother was not providing adequate supervision of the children.

Respondents were unable to meet the children's basic needs even though respondent-father was employed. Respondent-father was subsequently incarcerated, leaving the unemployed mother with insufficient income to meet the needs of the children. Respondent-mother had been attending classes at Mitchell Community College but she was unable to maintain adequate attendance or grades to be successful. Respondent-mother also had a history of mental illness, including a commitment to Broughton Hospital for a second time in 1997. Her only child at the time, the eldest of the three juveniles at bar, was removed from her care on 15 July 1997. The

child had dried feces on his body. Between 1997 and 2002 the Iredell County Department of Social Services had received six other reports expressing concern about the care and living environment of the children.

The evidence at the termination hearing shows that prior to the removal of the children from the home, respondent-mother had been offered assistance with parenting skills, housekeeping, budgeting and housing but despite all of this assistance, respondent-mother could not safely parent the children so as to prevent their removal from the home. Subsequent to the children's removal from the home, in an effort to help respondent-mother deal with the children's behavior problems, petitioner engaged a parent educator to provide interactive therapy and work with respondent-mother during visitations with the children. Despite this intervention, respondent-mother could not control the eldest child's behavior. Her inability to control or discipline the children has been an ongoing problem. The social worker supervisor in charge of the case expressed frustration that respondent-mother would ignore or turn her back to the supervisor when she offered parenting instruction or advice to respondent-mother. Further proof of respondent-mother's resistance to instruction or failure to learn is provided by respondent-mother's own testimony whereby she could not identify a single item she learned during parenting classes.

Respondent-father was incarcerated in 2002 after probation was revoked on the ground respondent-father used illegal controlled

substances in violation of the terms and conditions of probation. Notwithstanding his completion of the DART program for the treatment of substance abuse while in prison, respondent-father twice tested positive for the consumption of cocaine subsequent to his release from prison in 2004, the first on 26 July 2004 and the second on 26 August 2006. The second positive test occurred merely one week after a case plan was established on 19 August 2004 for him. That case plan included parenting classes, substance abuse assessment and following the recommendations of the assessment, random drug tests, maintaining stable housing and employment, and completion of anger management classes. Respondent-father did complete parenting classes and he underwent a drug assessment but he never produced a report of the assessment as ordered by the court. Respondent-father also enrolled in anger management classes but missed so many classes he was dropped from the program. Respondent-father also refused on at least two occasions to submit to random drug screens.

Respondents cite their obtaining employment, moving into a nice home with a fenced yard, attendance of parenting and anger management classes, and attendance of psychiatric appointments and drug evaluation assessments as evidence of reasonable progress. The evidence also shows, however, that the employment was obtained just a few months prior to the termination hearing and was obtained through a temporary employment agency. The evidence also shows that respondent-mother had consistently been unemployed for years, that she had been terminated from her immediate past employment for

cause, and that she had been unemployed for more than nine months after being terminated from her most recent employment. Respondents had only recently moved into the home with the fenced yard and had failed to notify the DSS or the court about the new residence so a home study could be conducted.

We have held that the prolonged inability of a parent to rectify the conditions which led to the removal of the children, despite good faith or good-intentioned efforts made near the time of the termination hearing, will support a finding of willfulness to warrant termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004). Respondents have demonstrated a similar prolonged inability to comply during the three years the children have been in foster care and longer.

We accordingly hold the trial court's findings of fact are based upon clear, cogent, and convincing evidence and support its conclusion of law that respondents have left the children in foster care for a period of more than twelve months without showing to the satisfaction of the court that reasonable progress had been made in correcting the conditions that led to the removal of the children from their home. Thus, the trial court did not err in terminating respondents' parental rights to their minor children, N.D.H., C.J.H., and C.E.H. Having held this ground is supported by the record, we need not consider respondents' arguments as to the remaining three grounds. *Id.* at 546, 594 S.E.2d. at 94.

Affirmed.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).