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NO. COA06-214

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

IN THE MATTER OF:
F.G.

Durham County
No. 04 TPR 40

Appeal by respondent father from order entered 28 September 2005 by Judge James T. Hill in Durham County District Court. Heard in the Court of Appeals 11 October 2006.

Woodrena Baker-Harrell, for petitioner mother-appellee.

Susan J. Hall, for respondent-appellant.

TYSON, Judge.

L.G. ("respondent") appeals from order entered terminating his parental rights to his minor child, F.G. We vacate the trial court's order and remand for further proceedings consistent with this opinion.

I. Background

A. Respondent's Evidence

Respondent is the father of F.G., who is five years old. Respondent and F.G.'s mother ("petitioner") never married, but lived together in Texas, where F.G. was born. Petitioner and respondent separated in February 2002. Respondent offered to pay child support as long as petitioner and F.G. remained in Texas. After the parties separated, petitioner moved to North Carolina.

Respondent testified he attempted to make child support payments after petitioner and F.G. moved to North Carolina. Respondent testified he sent checks to petitioner and offered to establish a bank account in F.G.'s name. Respondent was unable to open the bank account because petitioner refused to provide F.G.'s social security number to him.

Respondent sent four checks to petitioner, each for \$150.00. Two checks were sent on 15 April 2002, one on 20 May 2002, and one on 14 June 2002. Respondent testified that he sent checks to pay other bills, but the checks sent to petitioner were close in sequence. The check numbers were 318, 319, 320, and 322. Respondent also testified he sent clothing, toys, and gave petitioner one hundred dollars cash for F.G.'s support. Petitioner never cashed the checks and respondent testified petitioner had told him F.G. did not need anything from respondent. Respondent never pursued paying child support through a court order.

Respondent contacted petitioner in July 2002 and sought visitation with F.G. Respondent testified that he visited F.G. in North Carolina twice while he continued to live in Texas.

Respondent moved to North Carolina in April 2003. Respondent did not know the address for petitioner and F.G. because she had moved to a new location. Respondent contacted petitioner's brother to locate petitioner's telephone number, but her brother refused to provide respondent with petitioner's telephone number.

Respondent eventually received petitioner's telephone number from her sister. With the help of a friend, respondent used

petitioner's telephone number in a computer search and located petitioner's address. Respondent drove to petitioner's home and watched F.G., while he played in the front yard. Respondent did not request visitation at that time because he did not want to create problems for petitioner.

The last contact respondent had with F.G. was a telephone call in November 2004. During the conversation, F.G. told respondent that he was not his father. Respondent did not seek assistance in obtaining visitation before or after the petition to terminate his parental rights was filed.

Respondent and a girlfriend have established a relationship for two years and plan to marry. Respondent has one child from his relationship with his girlfriend and is expecting a second child. Respondent has also had a steady construction job in North Carolina for the last three years. Respondent testified that he did not want his parental rights to F.G. terminated.

B. Petitioner's Evidence

Petitioner testified respondent was a violent person. Petitioner described an incident where respondent tried to hit her when she was pregnant and actually did hit her when F.G. was a baby. Petitioner had accused respondent of cheating on her.

Petitioner also testified that she never tried to keep respondent away from F.G. Petitioner stated that she never knew where respondent was living because he was always moving so she could not call him and "tell him about the baby." Petitioner felt the need to terminate respondent's parental rights because

respondent would not be a good father and had a violent temper. Respondent denied he had committed any acts of domestic violence against petitioner.

A petition for termination of parental rights was filed on 4 August 2004. On 7 July 2005, a termination hearing was conducted. The trial court's brief order concluded solely: (1) the trial court has jurisdiction over the subject matter and the parties and (2) it is in the best interest of F.G. to terminate respondent's parental rights. Respondent appeals.

II. Issues

Respondent argues the trial court: (1) erred by failing to make appropriate conclusions of law pursuant to N.C. Gen. Stat. § 7B-1109 and N.C. Gen. Stat. § 1A-1, Rule 52; (2) erred by concluding it was in the best interest of F.G. to terminate his parental rights; (3) lacked subject matter jurisdiction; and (4) erred by failing to enter its order within thirty days pursuant to N.C. Gen. Stat. § 7B-1109 and N.C. Gen. Stat. § 7B-1110.

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., 173 N.C. App. 375, 380-81, 618 S.E.2d 813, 817 (2005) (internal quotations and citations omitted).

IV. Conclusions of Law

____ Respondent argues the trial court failed to make appropriate conclusions of law to support its decretal ruling that "any and all parental rights that the father, [respondent] has as the parent of F.G. are hereby terminated." We agree.

N.C. Gen. Stat. § 7B-1109(e) (2005) states in relevant part that in terminating parental rights, "The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent." N.C. Gen. Stat. § 7B-1111 (2005) states the grounds upon which the court, upon a finding of one or more of the grounds, may terminate someone's parental rights.

N.C. Gen. Stat. § 1A-1, Rule 52 (2005) states, "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially *and state separately its conclusions of law thereon and direct the entry of the appropriate*

judgment." (Emphasis supplied). "Under our rules, where a case is tried before a court without a jury, findings of fact and conclusions of law sufficient to support a judgment are essential parts of the decision making process." *Girard Trust Bank v. Easton*, 12 N.C. App. 153, 155, 182 S.E.2d 645, 646, cert. denied, 279 N.C. 393, 183 S.E.2d 245 (1971). This Court has stated:

[T]he trial court is required to find the facts specially and state separately its conclusions of law thereon and direct the entry of appropriate judgment. The trial court is required to find specific ultimate facts to support the judgment, and the facts found must be sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence. *A conclusion of law is the court's statement of the law which is determinative of the matter at issue between the parties. A conclusion of law must be based on the facts found by the court and must be stated separately. The conclusions of law necessary to be stated are the conclusions which, under the facts found, are required by the law and from which the judgment is to result.*

Montgomery v. Montgomery, 32 N.C. App. 154, 156-57, 231 S.E.2d 26, 28-29 (1977) (emphasis supplied) (internal citations and quotations omitted).

In order to terminate respondent's parental rights, the trial court had to find as fact and conclude as a matter of law one of the enumerated reasons existed as set out in N.C. Gen. Stat. § 7B-1111. The trial court made only two conclusions of law in its order: (1) the trial court has jurisdiction over the subject matter and the parties and (2) it is in the best interest of F.G. to terminate respondent's parental rights. Neither of these conclusions state that any of the grounds enumerated for

terminating respondent's parental rights existed. N.C. Gen. Stat. § 7B-1111.

None of the trial court's findings of fact state a ground for terminating respondent's parental rights. The trial court found as fact:

1. The minor child, F.G., was born . . . in Houston, Texas but currently lives in Durham County, North Carolina.
2. The name of the child's mother is [petitioner] whose current address is
3. The child has been in the care, custody and control of [petitioner] since birth. Petitioner and child lived at
4. Prior to February 2004, the mother and child lived at . . . for one year.
5. [Respondent] is listed on the birth certificate as being the father of the minor child, as named by [petitioner].
6. [Respondent] was served with the summons and petition to terminate parental rights by the Sheriff's Department of Wake County on 19 October 2004.
7. The minor child was born out of wedlock.
8. That [respondent] has not established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Human Resources.
9. That [respondent] has not legitimated the child pursuant to the provisions of North Carolina General Statute Section 49-10 or filed a petition for the specific purpose of legitimizing the minor child.
10. That [respondent] has not legitimated the child by marriage to [petitioner]
11. That [respondent] has paid only \$300 for support of the minor child since the child's

birth. That amount was inadequate to support the child.

12. That [respondent] has abandoned the child in that he has known where the child has lived for the past 2 years but made no effort to contact the child or seek visitation.

13. It is in the best interest of the child that [respondent's] parental rights are terminated and the minor child remains in the physical and legal custody of [petitioner].

Even if we interpreted these findings of fact as conclusions of law, the trial court's order does not state a ground for terminating respondent's parental rights under N.C. Gen. Stat. § 7B-1111. The trial court's order lacks a finding that petitioner has not "provided substantial financial support or consistent care with respect to the juvenile and mother." N.C. Gen. Stat. § 7B-1111(a)(5)(d).

The trial court's order is vacated and the case is remanded for further proceedings consistent with this opinion. See *Montgomery*, 32 N.C. App. at 158, 231 S.E.2d at 29 ("Since the judgment appealed from does not contain sufficient findings of fact and no conclusions of law to support its dispositive provisions, the judgment is vacated, and this cause is remanded for proceedings consistent with this decision.")

V. Conclusion

The trial court's order does not contain conclusions of law to support its findings of fact. The trial court's failure to conclude one of the grounds enumerated in N.C. Gen. Stat. § 7B-1111 existed to terminate respondent's parental rights requires its order to be vacated. The trial court's order is vacated and this

case is remanded to the trial court for further proceedings consistent with this opinion. In light of our holding, we do not address respondent's remaining assignments of error.

Vacated and Remanded.

Judges BRYANT and LEVINSON concur.

Report per Rule 30(e).