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NO. COA06-221

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

IN THE MATTER OF:
C.E.M., a/k/a D.M.

Johnston County
No. 05 J 85

Appeal by respondent mother from an order entered 4 October 2005 by Judge Jim L. Love, Jr., in Johnston County District Court. Heard in the Court of Appeals 2 October 2006.

Jennifer S. O'Connor, for Johnston County Department of Social Services, petitioner-appellee.

Elizabeth Boone, for Guardian Ad Litem, petitioner-appellee.

Sofie W. Hosford, for respondent-appellant.

JACKSON, Judge.

Gwendolyn M. ("respondent") appeals from an order terminating her parental rights.

On 31 August 2002, the Johnston County Department of Social Services ("DSS") received a report that respondent had given birth to a C.E.M. (the "minor child"). DSS previously had been involved with respondent regarding another minor child, D.G. Dee Etheridge ("Etheridge"), a DSS social worker, went to Johnston County Memorial Hospital to meet with respondent and investigate the report. Etheridge determined that there had been no change in

respondent's status since DSS' prior involvement with her. Specifically, there were concerns about respondent's cognitive ability, as well as her ability to care for a child. Respondent resided in a home that had been ruled as inappropriate for the prior child, she did not have an appropriate support system, and could not identify an appropriate alternative caregiver. Accordingly, DSS assumed custody by non-secure custody order and the minor child was placed in foster care. On 12 February 2003, the trial court adjudicated the minor child as a neglected and dependent juvenile.

On 28 April 2005, DSS filed a petition seeking to terminate respondent's parental rights. DSS alleged five grounds for termination: (1) that respondent had neglected the minor child within the meaning of North Carolina General Statutes, section 7B-101, and there was a probability of a repetition of neglect if the minor child was returned to the home; (2) that respondent willfully had left the minor 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 to correcting the conditions which led to the minor child's removal; (3) that respondent was incapable of providing for the proper care and supervision of the minor child, such that the minor child is a dependent juvenile within the meaning of section 7B-101, and there is a reasonable probability that such incapability will continue for the foreseeable future, pursuant to North Carolina General Statutes, section 7B-1111(a)(6); (4) that respondent willfully had

abandoned the minor child for at least six consecutive months immediately preceding the filing of the petition; and (5) that respondent's parental rights with respect to another child, D.G., had been terminated involuntarily by a court of competent jurisdiction, and respondent lacks the ability or willingness to establish a safe home, pursuant to the provisions of North Carolina General Statutes, section 7B-1111(a)(9).

On 7 September 2005, the trial court held hearings on the motion to terminate respondent's parental rights. In an order entered 4 October 2005, the trial court concluded that grounds existed pursuant to sections 7B-1111(a)(1), (2), (6), (7) and (9) to terminate respondent's parental rights. The trial court further concluded that it was in the minor child's best interest that respondent's parental rights be terminated. Respondent appeals to this Court.

Respondent first argues that the trial court erred by finding that there were grounds to support the termination of her parental rights. We disagree.

"On appeal, our standard of review for the termination of parental rights is whether the court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law." *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003) (citations and internal quotations and alterations omitted). The trial court's "conclusions of law are reviewable *de novo* on appeal." *Starco, Inc. v. AMG Bonding & Ins. Servs.*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996).

North Carolina General Statutes, section 7B-1111 sets out the statutory grounds for terminating parental rights. N.C. Gen. Stat. § 7B-1111 (2005). A finding of any one 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). North Carolina General Statutes, section 7B-1111 states that:

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

. . . .

- (9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

N.C. Gen. Stat. § 7B-1111(a) (9) (2005).

In the case *sub judice*, the trial court concluded that respondent's parental rights with respect to another child have been terminated involuntarily by a Court of competent jurisdiction and that respondent lacks the ability or willingness to establish a safe home. See N.C. Gen. Stat. § 7B-1111(a) (9). Upon a careful and thorough review of the record, there was both evidence and sufficient findings of fact to support the trial court's conclusion. First, it is undisputed that on 27 November 2002, respondent's parental rights were terminated as to another minor child, D.G. Second, the trial court concluded that respondent lacked the willingness or ability to establish a safe home. The trial court based its conclusion on evidence and findings that

respondent had failed to utilize services offered to her by DSS; had not consistently maintained contact with DSS; did not maintain stable housing; and that respondent was incapable as a result of her mental retardation of providing for the care and supervision of the minor child. The findings regarding respondent's cognitive limitations were based on respondent's comprehensive psychological evaluation with Dr. Robert Aiello on 21 August 2001. Accordingly, there was clear, cogent and convincing evidence in the record to support the trial court's findings and conclusion that respondent lacked the ability or willingness to establish a safe home.

Since grounds exist pursuant to North Carolina General Statutes, section 7B-1111(a) (9) to support the trial court's order, the remaining grounds found by the trial court to support termination need not be reviewed by the Court. *See Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

Respondent next argues that the trial court erred by determining that termination of her parental rights was in the best interests of the child.

After careful review of the record, briefs and contentions of the parties, we affirm. Once the trial court has found that grounds exist to terminate parental rights, "the court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2005). The trial court's decision to terminate parental rights at the disposition stage is discretionary. *See In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). Here, based on respondent's

past history of inability to parent, her failure to improve her parenting skills or to take advantage of services offered by DSS, and also the fact that the minor child was thriving in foster care, we conclude that the trial court did not abuse its discretion in determining that termination was in the child's best interest. Accordingly, we affirm.

Affirmed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).