NO. COA06-229

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

In re S.M.S.

Halifax County
No. 03 J 52

Appeal by Respondent-mother from judgment entered 19 August 2005 by Judge H. Paul McCoy, Jr., in District Court, Halifax County. Heard in the Court of Appeals 6 February 2006.

Joyce L Terres and Jeffrey L. Jenkins for Halifax County Department of Social Services, Petitioner-Appellee.

Womble, Carlyle, Sandridge, & Rice, by Christopher G. Daniel, Guardian ad Litem for Petitioner-Appellee.

Winfred H. Dillon for Respondent-mother.

WYNN, Judge.

This appeal arises from the trial court's order terminating Respondent-mother's parental rights. Because the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and the findings of fact support the conclusions of law, we affirm the trial court's order.

In North Carolina, a termination proceeding is conducted in two stages, adjudication and disposition. N.C. Gen. Stat. §§ 7B-1109 and 1110. At the adjudication stage, the trial court takes evidence, finds facts, and adjudicates whether any of the statutory

circumstances under G.S. 7B-1111 for terminating parental rights exists. N.C. Gen. Stat. § 7B-1109(e). At the adjudication stage, the trial court must make findings of fact which must be supported by clear, cogent and convincing evidence. N.C. Gen. Stat. § 7B-1109(f). If the petitioner produces sufficient evidence to show grounds exist to terminate the parental rights at the adjudication stage, then the trial court assesses at the disposition stage whether terminating the parental rights would be in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a).

In this appeal, Respondent contends that (I) Findings of Fact Numbers 8, 10, 14, 15, 18, 19, 21, and 22 are not supported by clear, cogent, and convincing evidence; and (II) the findings of fact do not support the conclusion that grounds exist to terminate her parental rights. We address the pertinent facts in the discussion of these issues.

I.

Respondent argues that the trial court's Findings of Fact Numbers 8, 10, 14, 15, 18, 19, 21, and 22, in whole or in part, are not supported by clear, cogent, and convincing evidence. First, Respondent contends that the trial court improperly considered reports of the social worker and guardian *ad litem* which were not incorporated in all of the previous trial court orders. She contends that without all of the reports, the previous orders, standing alone, would not provide clear, cogent, and convincing evidence to support the trial court's findings.

It is well established that "[a]s to the court file generally, a court may take judicial notice of earlier proceedings in the same cause." *In re Byrd*, 72 N.C. App. 277, 279, 324 S.E.2d 273, 276 (1985). Moreover, in a termination of parental rights hearing, "the trial court must admit and consider all evidence of relevant circumstances or events which existed or occurred either before or after the prior adjudication of neglect." *In re Ballard*, 311 N.C. 708, 716, 319 S.E.2d 227, 232-233 (1984). Since the prior orders, the social worker's summary reports, and the guardian *ad litem*'s reports were relevant and a part of the same proceedings, the trial court properly considered them.

Respondent further challenges parts of Findings of Fact Numbers 8 and 21 on the grounds that no evidence supported the findings that S.M.S. was allowed to observe or experience sexual contact between the Respondent and her male companions while sleeping with them. Respondent also challenges a similar finding in Finding of Fact Number 18.

However, evidence from the DSS and GAL reports substantiated S.M.S. had been allowed to sleep with Respondent and her boyfriend, and was exposed to sexual activity. The record also shows evidence that S.M.S. "continued to act out sexually, and to disclose sexual activity of her mother." Suffice it to say, the record provides sufficient evidence to show that S.M.S. was exposed to and observed numerous instances of sexual activity between her mother and various males.

Likewise this evidence supports Finding of Fact Number 10 which states that at the review hearings, the court found that "because of her own sexual abuse and the sexual behavior she witnessed while in her mother's custody, the minor child had, at various times, acted out in a sexual manner which was highly inappropriate for a child of her young age."

We further find evidence in the record to support the trial court's Findings of Fact Numbers 14, 15, 19, and 22 regarding documented history of sexual offenses of Respondent's son and/or that he was a sexual abuser. Respondent contends that DSS reports providing evidence supporting these findings were not admissible. Because Respondent did not challenge the admissibility of these reports at trial, she may not do so for the first time on appeal. *See Hearndon v. Hearndon,* 132 N.C. App. 98, 510 S.E.2d 183 (1999).

II.

Respondent also argues that the trial court erred because its findings of fact do not support its conclusions of law to terminate her parental rights. We find the evidence sufficient to support the trial court's conclusion based on N.C. Gen. Stat. § 7B-1111(a)(2) (2005) that,

> b) [Respondent-mother] has willfully left the minor child in foster care for more than twelve (12) months without showing to the satisfaction of the Court that reasonable progress under the circumstances has been made in correcting the conditions which led to the removal of the child, and that poverty is not the sole reason that she has been unable to make such progress.

Under section 7B-1111(a)(2), we must determine whether there was "clear, cogent, and convincing evidence that (1) [respondent] willfully left the juvenile in foster care for more than twelve months, and (2) that . . . respondent had failed to make reasonable progress in correcting the conditions that led to the juvenile's removal from the home." *In re Baker*, 158 N.C. App. 491, 494, 581 S.E.2d 144, 146 (2003) (internal quotations and citations omitted). As to willfulness, "[a] parent's willfulness in leaving a child in foster care may be established by evidence that the parents possessed the ability to make reasonable progress, but were unwilling to make an effort." *Id.* at 494, 581 S.E.2d at 146 (internal quotations and citations omitted). Moreover, this Court has held "[e]xtremely limited progress is not reasonable progress." *In re B.S.D.S.*, 163 N.C. App. 540, 545, 594 S.E.2d 89, 93 (2004)(citation omitted).

Here, S.M.S. was initially removed from Respondent's custody on grounds that she was "exposed to a substantial risk of physical injury or sexual abuse because the parent has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection." The trial court found that the family had domestic violence and drug use in the home; S.M.S. had been exposed to adult sexual activity; and Respondent was unable to make alternative child care arrangements for S.M.S.

The trial court made several findings of fact which were unchallenged by the Respondent, and are therefore binding on this

Court. See *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). For example: (1) Respondent's "lack of judgment in raising her daughter is overwhelming as is the absence of basic parenting skills"; and (2)during visits between Respondent and S.M.S., S.M.S. "would act out sexually more than she normally did in the foster home."

Since a valid finding on one statutorily enumerated ground is sufficient to support an order terminating parental rights, we affirm the termination of Respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) (2005). *In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986).

Affirmed.

Judges STEELMAN and JACKSON concur.

Report per rule 30(e).