NO. COA06-254

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

IN THE MATTER OF:
D.W. and D.W.,
Minor Children.

Mecklenburg County
No. 04 J 698-99

Appeal by respondent-appellant from an order entered 14 July 2005 by Judge Louis A. Trosch, Jr. in Mecklenburg County District Court. Heard in the Court of Appeals 12 October 2006.

J. Edward Yeager, Jr. for petitioner-appellee.

Mercedes O. Chut for respondent-appellant.

Womble Carlyle Sandridge & Rice, PLLC, by Christopher G. Daniel for Guardian ad Litem.

STEELMAN, Judge.

Respondent-appellant ("appellant") appeals from an order terminating her parental rights in the minor children D.W. and D.W. For the reasons stated herein, we affirm.

The following facts are not contested. Mecklenburg County Department of Social Services, Youth and Family Services Division ("YFS") filed a petition alleging that both children were neglected and dependent juveniles on 29 August 2003. At that time, the children were placed in YFS' non-secure custody. On 4 November 2003, the children were adjudicated as neglected and dependent. On 8 July 2004, a petition to terminate parental rights was filed in Mecklenburg County District Court. YFS was unable to locate

appellant in order to serve process either in person or by mail. Service was effectuated by publication on 8, 15, and 22 October 2004 in *The Mecklenburg Times*. A hearing in the matter was scheduled for 28 January 2005. The attorney appointed to represent appellant at the hearing was not present at the scheduled hearing, and it was continued. An emergency permanency planning review hearing was held on 7 February 2005. At that time, the matter was referred to the Dependency Mediation Program and the termination of parental rights hearing was continued. Following a hearing on 5 July 2005, an order terminating parental rights was entered on 14 July 2005. From this order appellant appeals.

In her first argument, appellant contends that certain findings of fact of the trial court were not supported by clear, cogent, and convincing evidence, and further, that the court's findings do not support its conclusion that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), abuse or neglect of a minor, to terminate her parental rights. We disagree.

The termination of parental rights requires a two-step inquiry by the trial court. First, an adjudicatory hearing on termination is held where the petitioner is required to prove the existence of grounds for termination by clear, cogent, and convincing evidence. N.C. Gen. Stat. § 7B-1109(e) (2005). Second, the disposition phase requires the trial court to determine whether terminating the parental rights is in the best interests of the child. N.C. Gen. Stat. § 7B-1110(a) (2005). The grounds authorizing termination of parental rights are enumerated in N.C.

Gen. Stat. § 7B-1111. Separate hearings are not required on the two inquiries. *In re White*, 81 N.C. App. 82, 85, 344 S.E.2d 36, 38 (1986). However, the trial court must apply the correct standard of review at each stage of the hearing. *See In re Carr*, 116 N.C. App. 403, 407, 448 S.E.2d 299, 301-02 (1994).

One of the grounds supporting the termination of parental rights is neglect. N.C. Gen. Stat. § 7B-1111(a)(1) (2005). A neglected child is one who "does not receive proper care, supervision, or discipline from [their] parent,...or who is not provided necessary medical care;...remedial care; or who lives in an environment injurious to [their] welfare..." N.C. Gen. Stat. § 7B-101 (15) (2005). A prior adjudication of neglect, standing alone, is insufficient to support termination when the parent has been deprived of custody for some time prior to the trial. *In re Ballard*, 311 N.C. 708, 714, 319 S.E.2d 227, 231 (1984). If a probability of repetition of neglect can be found, however, then evidence of neglect subsequent to the prior adjudication is not required. *In re Pope*, 144 N.C. App. 32, 37, 547 S.E.2d 153, 156, *aff'd per curiam*, 354 N.C. 359, 554 S.E.2d 644 (2001).

In reviewing contested findings of fact, this Court must determine whether they are supported by clear, cogent, and convincing evidence. *In re Allen*, 58 N.C. App. 322, 325, 293 S.E.2d 607, 609 (1982). If there is sufficient evidence to support the trial court's findings of fact, they are binding on this Court even if there was conflicting evidence that would support a contrary finding. *Id.* If the trial court's findings of fact

support its conclusions of law, then they also are binding on appeal. *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397-98 (1996).

Appellant challenges the following findings of fact:

> 6. Following the adjudicatory and dispositional hearings, YFS entered into court-approved case plans with each of the respondent parents.
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> 7. In the respondent mother's case plan, Ms. Polson agreed: to complete substance abuse treatment; to obtain and maintain appropriate housing and employment; and to complete mental health treatment and parenting classes.
> ...
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> 9. Ms. Polson has had employment previously in her life but was not employed during the underlying juvenile matter.
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> 10. The respondent mother has never had housing appropriate for the minor children to be placed with her. She has been incarcerated on at least two occasions since YFS has been involved with this family.
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> 11. Ms. Polson never engaged in mental health treatment.
> ...
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> 14. The parents were initially given weekly visits with the minor children. As a result of their failure to attend those weekly visits on a regular basis, the visits were modified to be bi-weekly and then were suspended all together.
> ...
>
> 16. Neither parent has had more than sporadic contact with the YFS social workers assigned to the case.
> ...
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> 20. The court finds in its discretion that it is in the children's best interest that parental rights be terminated.

In the instant case, the evidence before the trial court tended to show that YFS became involved with the children on 21 March 2003, when allegations of substance abuse by the parents, medical neglect of the children, poor parenting skills, maternal mental health issues, and paternal criminal activity were made. The children were removed from appellant's custody upon her refusal to accept social services assistance to address these allegations. A court-approved case plan was entered into between appellant and YFS with the goal of reuniting her with her children. Appellant signed the case plan. The case plan required that assessments for substance abuse, domestic violence, and mental health, as well as parenting classes would be completed by appellant. Appellant also agreed in the case plan to obtain legal, stable employment, and safe, appropriate housing. Mental health treatment was later required by the case plan when appellant displayed anxiety and anger issues. There was no evidence presented at the termination of parental rights hearing, however, that she ever engaged in any mental health treatment. There was no evidence that appellant had employment at any time during the adjudication and neglect or termination proceedings. Appellant's own witness could not identify any employment held by appellant during the time that YFS had custody of the children. Appellant did not have any housing of her own during the time that YFS had custody of the children. She was often homeless, living in motels, or living temporarily with relatives. Appellant did not visit with her children regularly or consistently. When she did take advantage of scheduled visits,

they were often for less than the allotted time. Appellant's contact with YFS was sporadic, with the agency having to resort to service of process by publication for the termination proceeding when it could not locate appellant.

We hold that there was clear, cogent, and convincing evidence presented that supported the trial court's findings of fact. These findings sufficiently support the trial court's conclusion that the termination of parental rights was proper due to neglect. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2005). If the minor children were returned to appellant's custody, there would be a probability of repetition of neglect.

Because we conclude that statutory grounds for the termination of appellant's parental rights exist pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), we need not discuss appellant's further arguments regarding termination. *In re O.C. & O.B.*, 171 N.C. App. 457, 467, 615 S.E.2d 391, 397 (2005). This argument is without merit.

In her second argument, appellant contends that during the termination of parental rights hearing, the trial court erroneously took judicial notice of the underlying adjudication and neglect court files of the minor children. We disagree.

This Court has uniformly held that a trial court in juvenile proceedings may consider all written reports and materials submitted in connection with the proceedings, and in fact, may take judicial notice of prior proceedings in the same cause without the files being offered into evidence. *In re M.N.C.*, __ N.C. App. __, __, 625 S.E.2d 627, 632 (2006); *In re Ivey*, 156 N.C. App. 398, 402,

576 S.E.2d 386, 390 (2003). Further, in a bench trial, the trial court is presumed to have disregarded any incompetent evidence. *In re Huff*, 140 N.C. App. 288, 298, 536 S.E.2d 838, 845 (2000).

In the instant case, the trial court took judicial notice of the underlying adjudication and neglect court files of the minor children. These written reports were properly considered by the trial court in connection with the proceeding to terminate parental rights. The trial court is presumed to have disregarded any incompetent evidence. This assignment of error is without merit.

In her third argument, appellant contends that the trial court held the termination of parental rights hearing beyond the statutorily prescribed period of ninety days without any written continuances or just reason for delay. We disagree.

The termination of parental rights hearing must be held within ninety days of filing of the petition to terminate parental rights. N.C. Gen. Stat. § 7B-1109(a) (2005). However, a delay in holding the hearing beyond ninety days is not reversible error unless the appellant has established prejudice as a result of the delay. *E.g., In re S.W.*, __ N.C. __, __, 625 S.E.2d 594, 596 (2006).

In the instant case, the petition to terminate parental rights was filed on 8 July 2004. YFS attempted to locate the mother but was unsuccessful and had to resort to service of process by publication. The termination of parental rights hearing was scheduled for 28 January 2005, but was continued when appellant's attorney failed to appear. As a result, an emergency permanency planning hearing was held on 7 February 2005 and the case was

referred to the dependency mediation program. Mediation took place on 29 April 2005 between the foster parents and biological relatives. Appellant failed to appear at the mediation. After mediation, the termination of parental rights hearing was again scheduled for 5 July 2005. Appellant also failed to appear for that hearing. Under the circumstances, we discern no prejudice to appellant as a result of the termination of parental rights hearing being held more than ninety days after the filing of the petition to terminate parental rights. Appellant's and her attorney's failures to appear at the proceedings were the causes of the delay. Appellant cannot be the cause of the delay of the hearing and then complain about the delay on appeal. Accordingly, this assignment of error is without merit.

Other assignments of error set forth in the record but not argued in appellant's brief are deemed abandoned. N.C. R. App. P. 28(b)(6) (2006).

The order of the trial court terminating appellant's parental rights is affirmed.

AFFIRMED.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).