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NO. COA06-295

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

IN THE MATTER OF:
D.W.P.

Cleveland County
No. 03 J 59

Appeal by respondent-father from order entered 18 July 2005 by Judge Larry J. Wilson in Cleveland County District Court. Heard in the Court of Appeals 2 October 2006.

Cleveland County Department of Social Services, by Charles E. Wilson, Jr., for petitioner-appellee.

Janet K. Ledbetter, for respondent-appellant.

JACKSON, Judge.

Cleveland County Department of Social Services ("DSS") filed a petition on 20 August 2003 which alleged that D.W.P. was a neglected juvenile as to both his mother and father, Randy W. ("respondent"). Following a hearing on 1 October 2003, the trial court entered an adjudication and dispositional order in which it concluded that D.W.P. was a neglected juvenile. In an order entered on 24 May 2004, the trial court relieved DSS of its reunification efforts and scheduled a permanency planning hearing for 2 June 2004. After the hearing, the trial court sanctioned a concurrent plan of reunification and adoption for D.W.P.

On 6 December 2004, DSS filed a petition to terminate the

parental rights of respondent and D.W.P.'s mother. DSS alleged respondent had: (1) neglected D.W.P. pursuant to North Carolina General Statutes, section 7B-1111(a) (1) (2005); (2) willfully left D.W.P. in foster care for more than twelve months (see North Carolina General Statutes, section 7B-1111(a)(2)); and (3) willfully failed to pay a reasonable portion of the cost of care while D.W.P. had been placed in the custody of DSS (see North Carolina General Statutes, section 7B-1111(a)(3)).

Following a hearing on 6 July 2005, the trial court found, in part:

38. That [respondent] was employed sporadically in the vinyl siding business, and acknowledged that he was not disabled and was physically able to work.
39. That, except for periods of incarceration, [respondent] was physically and financially able to earn income and provide support for the minor child. [Respondent] was able to make financial provisions for himself.
40. That [respondent] has not paid child support for the juvenile during the entire period the juvenile has been in the custody of the Cleveland County Department of Social Services.
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54. That the Court will therefore find as fact and conclude as a matter of law that the juvenile has been in the custody of the Cleveland County Department of Social Services and that [respondent], for at least six months next preceding the filing of this action, has willfully failed to pay a reasonable portion of the cost of care for the juvenile, although physically and financially able to do so.

. . . .

61. That the respondent father is presently incarcerated and will not be released until April 2006. He can not provide safe and appropriate care for the juvenile.
62. That the juvenile has very significant special needs and will require care that [respondent], beyond his current incarceration, is unable to provide.
63. That the juvenile's needs are due to the environment that he was exposed to prior to coming into the Department's custody, and environment created in part by [respondent].
64. That [respondent] has not been able to move himself past those conditions, sufficient to overcome the shortcomings of his environment and makeup to any extend [sic] upon which the Court could find that it would not be in the best interest of the juvenile to terminate the parental rights of [respondent].
65. That the Court, in its discretion, therefore finds that it is in the best interest of the minor child that the parental rights of [respondent] be terminated.

After concluding that sufficient grounds to terminate respondent's parental rights existed under each of the three statutory provisions alleged in the petition, and that it was in the best interest of D.W.P. to terminate respondent's parental rights, the trial court terminated respondent's parental rights.

Respondent appeals from the trial court's order of 18 July 2005 which terminated his parental rights to D.W.P. For the reasons stated below, the trial court's order is affirmed.

In his first argument, respondent contends the trial court's

three separate grounds for termination are in error. This argument is supported by a single assignment of error which encompasses thirty-four findings of fact and six conclusions of law. However, Rule 10 of the North Carolina Rules of Appellate Procedure requires that "[e]ach assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned." N.C. R. App. P. 10(c)(1). When an assignment of error attempts to present several separate questions of law, it is ineffectual as a broadside assignment. See *State v. McCoy*, 303 N.C. 1, 19, 277 S.E.2d 515, 529 (1981). Because respondent's supporting assignment of error for his first argument encompasses three different cognizable and specific legal reasons why the trial court allegedly erred, it is broadside and therefore ineffective. See *Isom v. Bank of America, N.A.*, ___ N.C. App. ___, ___, 628 S.E.2d 458, 464 (2006) (appeal dismissed when "broadside assignment of error encompass[e]d at least three, if not more, cognizable and specific legal reasons why the trial court erred."). Given the potential consequences of counsel's failure to assign error properly, this Court nevertheless in its discretion invokes Rule 2 of our appellate rules in order "[t]o prevent manifest injustice" and reviews the trial court's termination of respondent's parental rights. N.C. R. App. P. 2.

The trial court's decision to terminate respondent's parental rights was based in part upon the ground found in North Carolina General Statutes, section 7B-1111(a)(3), which provides that

[t]he juvenile has been placed in the custody of a county department of social services . . . and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

N.C. Gen. Stat. § 7B-1111(a) (3) (2005). The trial court found that respondent had been employed sporadically during the time in which D.W.P. was in the custody of DSS, and that respondent had acknowledged both that he was not disabled and that he was physically able to work. After finding that respondent "was physically and financially able to earn income and provide support for the minor child" and "was able to make financial provisions for himself[,]," the trial court found respondent had not paid child support since the child had been in DSS' custody. At the time of the trial court's order, the child had been in DSS' custody for more than twenty-three months. Clear, cogent and convincing evidence in the form of respondent's own testimony, and of the trial court's prior orders in the record on appeal, support these findings of fact. We hold that these findings and the others set forth in the trial court's order support its conclusion that grounds to terminate existed pursuant to section 7B-1111(a) (3). Because grounds for termination have been established under section 7B-1111(a) (3), respondent's remaining arguments regarding the additional two grounds relied upon by the trial court under section 7B-1111(a) (1) and (2) need not be addressed. See *In re Bradshaw*, 160 N.C. App. 677, 682-83, 587 S.E.2d 83, 87 (2003).

Once a statutory ground for termination of parental rights has

been established, terminating a parent's rights is within the trial court's discretion. See *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 174, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001). In the instant case, the trial court observed that D.W.P. had "very significant special needs" for which respondent was unable to provide, and which were due to an environment created in part by respondent. After finding respondent had not been able to "overcome the shortcomings of his environment and makeup to any extend [sic] upon which the Court could find that it would not be in the best interest of the juvenile to terminate" respondent's parental rights, the trial court found it was in the child's best interest to terminate respondent's parental rights. As these findings and others established by the balance of the record demonstrate, the trial court did not abuse its discretion by concluding it was in the best interests of the child that respondent's parental rights be terminated. This assignment of error is overruled, and the trial court's order is affirmed.

Affirmed.

Chief Judge MARTIN and Judges CALABRIA concur.

Report per Rule 30(e).