NO. COA06-529

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

IN THE MATTER OF:

A.B.,
A Minor Child.

Durham County
No. 02 J 63

Appeal by respondent from judgment entered 8 November 2005 by Judge James T. Hill in Durham County District Court. Heard in the Court of Appeals 15 November 2006.

Cathy Moore, for petitioner-appellee Durham County Attorney's Office.

K. Edward Green for respondent-appellant mother.

Robert T. Newman as guardian ad litem for juvenile.

Martha McKee as guardian ad litem for respondent mother.

ELMORE, Judge.

This appeal arises from the district court's decision entered on 8 November 2005 to terminate respondent's parental rights to her daughter, A.B (the child). After careful review, we affirm the order of the trial court.

Respondent entered the legal custody of the Durham Department of Social Services (DSS) as a dependent and neglected juvenile in 1997. Respondent gave birth to the child, A.B., in 2002 while still in legal custody of DSS. Prior to giving birth, respondent was hospitalized at John Umpstead for psychiatric medication

adjustment for Bipolar Disorder. She was re-admitted after giving birth. On 10 April 2002, DSS filed a petition requesting an order of nonsecure custody, alleging that the child would be exposed to a risk of serious physical injury or abuse due to respondent's inability to provide adequate care or supervision as a result of her hospitalization for psychiatric treatment. In its petition, DSS stated that it was necessary to assume custody in order to place respondent and child together upon respondent's release from John Umpstead. There were no family members that could assist in the care of the child until respondent was released. The identity of the child's father remains unknown.

The child was placed in a therapeutic foster home and respondent joined her after being released from the hospital on 23 April 2002. The two remained together in the foster home until respondent was readmitted to John Umpstead on 27 May 2002. Respondent was then moved to a Level IV placement at Brynn Marr Hospital on 29 August 2002. The child did not qualify for placement in the hospital and was transferred to a foster home in Durham on 17 June 2002.

The trial court conducted a hearing on 22 October 2002, during which the child was adjudicated a dependent child. Disposition was continued for one month to allow DSS to set up a regular visitation schedule for respondent and child and to assess respondent's reaction to visitation. DSS arranged for visitation, but prior to a visit occurring, respondent was charged with assault and removed to the local county jail. The court suspended

respondent's visitations for one month to allow her time to stabilize her mental health and refrain from assaultive behavior. The court further ordered that the visitations take place at the discretion of the mental health professionals treating respondent.

While respondent was incarcerated, her treatment team at Brynn Marr decided that she was no longer a candidate for the program due to her combative and violent behavior. The jail did not allow its residents to take psychotropic medicines, so the treatment team strongly recommended that she be taken from the jail to a mental health center for evaluation. She was evaluated and involuntarily committed to John Umpstead's CPI Unit on 8 November 2002. Prior to this date, respondent had two visits with the child. Her visitation resumed on 27 December 2002.

Respondent progressed and stepped down to a Level III group home with Woodbridge Alternatives in Fayetteville. While at the group home, she took her medicine and did not engage in assaultive behavior. However, she was suspended from school for talking back to a teacher, cursing at her, and disrupting class.

The trial court held permanency planning hearings on 8 April 2003 and 30 September 2003, during which it ordered that respondent's parental rights not be terminated because of respondent's progress. The court ordered that DSS continue to carefully monitor her ability to parent and that if her condition declined, the plan would be changed to termination of her parental rights.

Respondent turned eighteen in November, 2003. She could not find anyone in her family or any past care takers who were willing to let her live with them, so she agreed to remain in foster care. However, due to her age she was no longer eligible to remain in the group home. She was moved to a foster home through Woodbridge Alternatives on 8 November 2003. Respondent remained at the home until 10 December 2003, when she left due to a disagreement with her foster mother. Respondent was then moved to another foster home. She continued to have behavioral problems in school. After several more incidents, respondent was discharged from Woodbridge Alternatives on 4 June 2004. Respondent then requested placement in Durham. While there, she stayed in two foster homes, a hotel, and the homes of family and friends.

At the permanency planning hearing on 27 July 2004, the trial court ordered DSS to initiate termination of parental rights within six months if respondent did not relinquish her parental rights and had not made objective progress towards independence. The court ordered that she enroll in school, find a job, or participate in a job training program; establish independent housing, demonstrate that she was able to budget her finances and sustain a household for two people; participate actively in individual or group therapy at least four times per month or as often as recommended by her therapist; and keep all of her prescriptions current and take her medicine as directed.

On 23 November 2004, DSS filed a petition to terminate respondent's parental rights, alleging, *inter alia*, that respondent failed to comply with her case plan.

In an order entered on 8 November 2005, the trial court concluded that respondent neglected the child and that there was a reasonable probability of repetition of neglect; that she willfully left the child in a placement outside the home for more than twelve months without showing that reasonable progress had been made in correcting the conditions that led to the removal of the child; and that she was incapable of providing for the child due to mental illness, which condition was reasonably probable to continue for the foreseeable future. As a result, the court ordered that respondent's parental rights be terminated. It is from this order that respondent appeals.

The standard of review is well-established:

> When reviewing an appeal from an order terminating parental rights, our standard of review is whether: (1) there is clear, cogent, and convincing evidence to support the district court's findings of fact; and (2) the findings of fact support the conclusions of law. Clear, cogent, and convincing evidence is greater than the preponderance of the evidence standard required in most civil cases, but not as stringent as the requirement of proof beyond a reasonable doubt required in criminal cases. If the decision is supported by such evidence, the district court's findings are binding on appeal even if there is evidence to the contrary.

In re A.D.L., J.S.L., C.L.L., 169 N.C. App. 701, 710, 612 S.E.2d 639, 645 (2005) (citations and quotations omitted).

Respondent first contends that the trial court erred in that its findings of fact were not based on clear, cogent, and convincing evidence that she neglected the child within the meaning of N.C. Gen. Stat. § 7B-101(15), and that such neglect existed at the time of the termination hearing. Respondent argues that because she did not have custody of the child at the time of the hearing she could not be found to have neglected the child. However, in *In re Ballard*, our Supreme Court adopted the following reasoning of the Court of Appeals of Indiana:

> In most termination cases, as in this case, the children have been removed from the parents' custody before the termination hearing. It would be impossible to show that the children were currently neglected by their parents under these circumstances. To hold the State to such a burden of proof would make termination of parental rights impossible. We agree that the parents' fitness to care for their children should be determined as of the time of the hearing. The trial court must consider evidence of changed conditions. However, this evidence of changed conditions must be considered in light of the history of neglect by the parents and the probability of a repetition of neglect.

311 N.C. 708, 714, 319 S.E.2d 227, 231 (1984) (quoting *In re Wardship of Bender*, 170 Ind. App. 274, 285, 352 N.E. 2d 797, 804 (1976)).

In re Ballard further held that "the determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *Id.* at 715, S.E.2d at 232.

Our statutes define a neglected juvenile, in pertinent part, as one "who does not receive proper care, supervision, or

discipline from the juvenile's parent. . . ." N.C. Gen. Stat. § 7B-101(15) (2006). It is unnecessary for a juvenile to suffer actual injury or impairment as a result of the parent's failure to provide "proper care, supervision, or discipline;" a "substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline" will suffice. *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (quotations and citations omitted).

Evidence was presented at trial showing that respondent had no stable, independent housing; that she had no job and was not in school; that she had very little money or resources; and that she is unclear on what resources would be necessary to properly care for the child. Particularly noteworthy is the trial court's finding of fact No. 28, which addresses respondent's instability, and to which respondent did not assign error. Findings of fact to which no error is assigned "are presumed to be supported by competent evidence and are binding on appeal." *In re A.S.*, ___ N.C. App. ___, ___, 640 S.E.2d 817 (2007) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)). "The inability to maintain secure living arrangements is relevant to a determination of whether there is a substantial risk of injury to the juvenile." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (citation omitted). This evidence constitutes clear, cogent, and convincing evidence to support the trial court's findings of fact. Likewise, the trial court's findings of fact support its conclusion of law that respondent has neglected the

child and that there is a reasonable probability of repetition of that neglect.

Having found a legitimate basis for the trial court's termination of respondent's parental rights, we need not address respondent's additional assignments of error regarding the trial court's other grounds for termination. "The finding of any one of the grounds is sufficient to order termination." *In re C.L.C., K.T.R., A.M.R., E.A.R.*, 171 N.C. App. 438, 447, 615 S.E.2d 704, 709 (2005) (quoting *Owenby v. Young*, 357 N.C. 142, 145, 579 S.E.2d 264, 267 (2003)).

Respondent next argues that the trial court abused its discretion by holding that the child's best interests were served by terminating respondent's rights. "After an adjudication that one or more grounds for terminating a parent's rights exist, 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).[1] Even "upon a finding that grounds exist to authorize termination, the trial court is never required to terminate parental rights under any circumstances, but is merely given the discretion to do so." *Bost v. Van Nortwick*, 117 N.C. App. 1, 7, 449 S.E.2d 911, 914 (1994) (quoting *In re Tyson*, 76 N.C. App. 411,

[1] We note petitioner's argument that the previous version of the statute, N.C. Gen. Stat. § 7B-1110(a) (1999), applies because the petition was filed prior to the 2005 amendment's enactment. However, this statute deals with the best interests analysis a court must perform "*[a]fter* an adjudication that one or more grounds for terminating a parent's rights exist." N.C. Gen. Stat. § 7B-1110(a) (2005) (emphasis added). The adjudication did not take place until after the 2005 amendment went into effect.

419, 333 S.E.2d 554, 559 (1985)). "The trial court has discretion to terminate parental rights if it finds termination would be in the best interest of the juvenile. The standard for appellate review of the trial court's decision to terminate parental rights is abuse of discretion." *In re M.N.C.*, 176 N.C. App. 114, 123, 625 S.E.2d 627, 633 (2006) (citations omitted).

Respondent suggests that the trial court erred in failing to make the findings required by N.C. Gen. Stat. § 7B-1110(a) (2005), specifically:

> (1) The age of the juvenile.
> (2) The likelihood of adoption of the juvenile.
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
> (4) The bond between the juvenile and the parent.
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2005).

The trial court noted the child's age in finding of fact No. 1; the likelihood of adoption in finding of fact No. 24; the permanent plan of adoption in findings of fact Nos. 24 and 25; the bond between respondent and the child in findings of fact Nos. 21 and 26; and the quality of the relationship between the child and proposed adoptive parents in finding of fact No. 24. Contrary to respondent's contention, the trial court addressed all of the required factors. Moreover, the record shows every indication that

the child will be best served by adoption. The trial court did not abuse its discretion.

Respondent's remaining contentions, that the trial court erred in its admission of testimony regarding DSS records and its taking judicial notice of respondent's courtroom demeanor, are without merit. Moreover, even if this court were persuaded by respondent's arguments, any error would be non-prejudicial. Accordingly, we decline to further examine these contentions.

Having conducted a thorough review of the record on appeal, we can discern no error. We therefore affirm the trial court's order.

Affirmed.

Judges HUNTER and MCCULLOUGH concur.

Report per Rule 30(e).