NO. COA06-55

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

IN THE MATTER OF B.M.C.

Buncombe County
No. 04 J 209

Appeal by respondent from order entered 23 August 2005 by Judge Marvin P. Pope, Jr. in Buncombe County District Court. Heard in the Court of Appeals 13 September 2006.

Matthew J. Middleton for petitioner-appellee Buncombe County Department of Social Services.

Charlotte Gail Blake for respondent-appellant Sara G.

CALABRIA, Judge.

Respondent-mother Sara G.("Sara") appeals from an order of the trial court, terminating her parental rights to B.M.C. ("the minor child") on grounds that the minor child was neglected and there was a likelihood of repetition of neglect. We affirm.

On 23 July 2003 the Buncombe County Department of Social Services ("D.S.S.") received a report alleging that Michael "Mick" Mannion ("Mannion"), Sara's boyfriend, had improperly disciplined the minor child, leaving the child with bruises on her arms and legs. Sara signed a safety plan providing that Mannion would have no contact with the minor child and stating that Mannion had left Sara's home. Then, on 30 September 2003, D.S.S. received a second

report that Mannion had beaten the minor child, again leaving bruises. The report further stated that Mannion was abusing painkillers and alcohol. The case was closed on 8 March 2004 after Sara and Mannion substantially complied with their respective case plans. D.S.S. again got involved several months later after receiving a Child Protective Services ("CPS") report alleging that Mannion had come home drunk and jerked the minor child out of bed and shoved her while verbally abusing Sara. A subsequent investigation found neglect in that Mannion had injured the minor child, physically abused Sara, and admitted to drug abuse.

During the course of its investigation, D.S.S. received another report on 25 August 2004 that the minor child "had been seen engaged in sexualized behaviors, specifically 'humping' a stuffed animal." The minor child disclosed that she learned the behavior from Mannion and later told D.S.S. that Mannion had touched her inappropriately. A medical examination was conducted, and the child's condition was consistent with vaginal penetration. The examination concluded that the minor child had been sexually abused. Again, Sara agreed to a safety plan that would keep the minor child away from Mannion. Then on 16 October 2004, D.S.S. received a report alleging that Sara had violated the safety plans by allowing Mannion to have contact with the minor child. The minor child reported sleeping in the same bed with Mannion and Sara on the night of 17 October 2004.

Then, on 18 October 2004, Sara fled a meeting that was being held to determine an appropriate placement for the minor child.

Sara took the minor child with her and their whereabouts were unknown. Two days later Sara and the minor child were located at the Apple Blossom Motel where they were living with Mannion. A placement meeting was held that day, and Sara stated that she would drop a pending domestic violence restraining order against Mannion because she knew he would never hit her again. Sara stated that she did not believe Mannion had sexually abused the minor child. Mannion admitted blacking Sara's eye and admitted that he was abusing cocaine. He further admitted having regular contact with the minor child. The following day, on 21 October 2004, D.S.S. obtained non-secure custody of the minor child.

On 9 May 2005, D.S.S. filed a petition alleging grounds existed to terminate the parental rights of Sara and Robert C. ("Robert"), the biological parents of the minor child. The petition alleged the minor child was adjudicated neglected and suffered physical and sexual abuse by repeated exposure to Mannion. The petition further alleged that both parents had willfully abandoned the minor child and failed to pay a reasonable portion of the cost of care for the minor child. Sara answered the petition. Robert did not file an answer or any other responsive pleading and he is not a party to this appeal.

In July 2005, at the termination hearing in Buncombe County District Court, the trial court found, *inter alia*, that Sara had a history of untreated substance abuse, that she exposed the minor child to physical and sexual abuse by Mannion, and that she consistently violated various safety plans designed by D.S.S. to

keep the minor child safe and protected from Mannion. The court noted that the petition by D.S.S. was a culmination of events, stating that D.S.S. "has a long history with this family."

Based in part on Findings of Fact 18-23, which are uncontested, the trial court concluded in the adjudicatory phase that grounds existed to terminate Sara's parental rights since she had neglected the minor child in the past and there was a likelihood of repetition of neglect if the minor child was returned to her care and custody in that the respondent had not corrected the conditions that led to the removal of the minor child from her care and custody. Following the adjudicatory phase, the trial court moved to the dispositional phase and determined that it was in the minor child's best interests to terminate the rights of both parents. From that order, Sara appeals.

On appeal, Sara argues that the trial court erred in concluding that her parental rights should be terminated based on neglect. Sara initially argues that she timely and substantially complied with court-ordered services and that insufficient evidence exists to support the trial court's findings and conclusions that grounds exist to terminate her parental rights. Termination of parental rights is a two-step process that requires this Court to apply two separate standards of review. There is an adjudicatory phase, governed by N.C. Gen. Stat. § 7B-1109(e) (2005), followed by a dispositional phase, governed by N.C. Gen. Stat. § 7B-1110 (2005). Findings made by the trial court in the adjudicatory phase must be supported by clear, cogent, and convincing evidence, and

the findings must support a conclusion that at least one statutory ground for termination of parental rights exists. *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406 (2003). "Clear, cogent and convincing evidence describes an evidentiary standard stricter than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt." *The N.C. State Bar v. Sheffield*, 73 N.C. App. 349, 354, 326 S.E.2d 320, 323 (1985). In the dispositional phase, the trial court considers the best interests of the child. We review this determination for an abuse of discretion. *Shermer*, 156 N.C. App. at 285, 576 S.E.2d at 407. Reversal for abuse of discretion is limited to instances where the appellant can show the judge's decision is "manifestly unsupported by reason." *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980).

Sara challenges several findings of fact, arguing that they are not supported by clear, cogent, and convincing evidence. Specifically, Sara points to Findings of Fact 29, 34, and 35. Sara first objects to Finding 35, which states in relevant part:

> [Sara] has neglected the minor child, as specified above, and there is a reasonable probability that she would continue to neglect the minor child if she were placed back in her care in that she has not corrected those conditions that brought the minor child into the [D.S.S.]'s custody. She has a history of untreated substance abuse, and has maintained a relationship with [Mannion] who has physically abused her and has physically and sexually abused the minor child, although she has stated that they are currently separated. . . . [Sara] had failed to take advantage of services offered, and for the services she has completed, she has shown no improvement in her parenting skills or her ability to protect the

> minor child. . . . [Sara]'s compliance with the court's orders were not timely and she has failed to substantially comply with many of the court's orders for services that were necessary for reunification.

This finding is supported by clear, cogent, and convincing evidence since there was unchallenged evidence that Sara had neglected the minor child in the past by violating safety agreements with D.S.S. and repeatedly subjecting the minor child to Mannion's abuse. Sara does not challenge the trial court's Findings 18-23 on appeal, thus they are binding. "Where no exception[1] is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). These findings establish that she entered into various safety agreements with D.S.S., violated the agreements, and continued to expose the minor child to Mannion. The unchallenged findings further establish Sara fled with the minor child from the 18 October 2004 D.S.S. staffing to determine the minor child's placement, and that she abused drugs.

At the time Sara's parental rights were terminated, the trial court also found that she had obtained a substance abuse assessment but had not undergone the 20-30 hours of counseling recommended. She testified that her parenting classes were not helpful, raising the possibility that she would not change her approach to raising

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[1] Although our courts no longer refer to "exceptions" as such, *Koufman* remains good law and has been repeatedly cited in recent years.

the minor child. Further, the record shows Sara was given an opportunity to regain custody of the minor child by following recommendations D.S.S. gave her in November 2004. These recommendations formed the basis of the trial court's 21 February 2005 order, which required Sara to: get a substance abuse assessment and obtain any necessary treatment, attend domestic violence counseling, obtain a psychological assessment, obtain and maintain stable housing, attend parenting classes, attend treatment team meetings, and regularly call the social worker to report her progress. As previously stated, Sara failed to obtain her required substance abuse counseling. She waited until June to obtain her substance abuse assessment and waited until July to obtain her psychological assessment. Sara argues that she was not given sufficient time to complete these services since the 21 February 2005 order was not mailed to her attorney until 22 March 2005. However, Sara was in court with her attorney during the 21 February hearing and received notice of the order at that time. The fact that Sara waited until June to begin taking appropriate steps to comply with the court's order provides clear, cogent, and convincing evidence to support the trial court's findings that she failed to take advantage of D.S.S. recommendations and failed to timely and substantially comply with the court order. Accordingly, this assignment of error is overruled.

Sara next objects to Finding of Fact 29, which states:

> [Sara], in her testimony, blamed [Mannion] for all of her problems[;] specifically she blamed him for abusing her and the minor child. [Sara] testified a number of times that she

> was angry that [Mannion] had caused her all of these problems, but that he was not being held responsible and she had lost everything because of him, citing specifically that she lost a "trailer full of furniture." [Sara] did not exhibit any understanding that her decisions to remain with [Mannion] and her substance abuse problems contributed to the reason the minor child was removed from her care and custody.

At the termination hearing, Sara testified, "I have lost everything because of [Mannion], and that's including my daughter." She further testified that she did not understand why Gail Azar, a counselor treating the minor child, recommended the child not be in contact with Sara since Mannion was no longer around. This serves as clear, cogent, and convincing evidence supporting the trial court's conclusion that Sara did not "exhibit any understanding that her decisions to remain with Mr. Mannion and her substance abuse problems contributed to the reason the minor child was removed from her care and custody." Thus, we hold this assignment of error is without merit.

Sara next objects to Finding of Fact 34, which relates to statements made by her to Dr. Michael Grandis, a psychologist who had performed an evaluation on Sara on 7 July 2005. That finding states, in relevant part:

> 34. . . . Further, [Sara] stated in the psychological evaluation that she was unaware that the minor child had been sexually abused by [Mannion] until after the minor child was placed in foster care. [Sara] also denied during the psychological evaluation that there had been [any] domestic violence between her and [Mannion] when they lived together. Since the psychological evaluation was done on July 7, 2005, or eleven days prior to this hearing, the fact that [Sara] is denying factual

> information in this case indicates that [Sara] has failed to correct the conditions that led to the removal of the minor child from [Sara]'s care and custody, and indicates that [Sara] is unable to provide minimally appropriate care for the minor child, or that she would be able to provide for the care of the minor child in a safe manner.

Sara's claim of error with respect to Finding 34 is contradicted by her testimony under oath during the termination of parental rights proceedings. During the proceedings, she testified in the following manner regarding a child medical evaluation conducted on 15 September 2004:

> Q . . .[A]t that point in time, she did make statements that [Mannion], who she refers to as "Daddy," hit you; that he touches her PP; that she exhibited how he touched her PP, well, with his hands, maybe putting PP on her PP as she called it; isn't that correct?
> A That's correct.
> Q You were aware of that?
> A Yes I was.

D.S.S. did not take custody of the minor child until 21 October 2004, more than one month after the medical evaluation where Sara admittedly learned of the minor child's suffering sexual abuse by Mannion. Sara's testimony itself provides clear, cogent, and convincing evidence sufficient to support the trial court's finding.

Since we have determined that the challenged findings are supported by clear, cogent, and convincing evidence, we next determine whether these findings support the trial court's conclusion that Sara neglected the minor child. North Carolina

General Statute § 7B-101(15)(2005) defines a "neglected juvenile" as:

> A juvenile who does not receive proper care, supervision, or discipline from the juvenile's caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. . . .

Id. A trial court may consider a prior adjudication of neglect when ruling on a later motion to terminate parental rights, but a prior adjudication, standing alone, will not suffice when the natural parent has been deprived of custody of the child for a significant period of time prior to the termination hearing. *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). In such a case, the trial court "must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *Id.*, 311 N.C. at 715, 319 S.E.2d at 232.

The trial court's findings in the case *sub judice* establish that Sara violated numerous safety plans with D.S.S. and continually exposed her child to Mannion, despite knowledge that he had physically and sexually abused the minor child. They further show that Sara, after she was deprived of custody of the minor child, did not comply with D.S.S. recommendations and only belatedly began to comply with a court order requiring her to take steps to improve her parenting skills to ensure her child's safety. We hold these findings support the trial court's conclusion that the minor child should be adjudicated neglected.

Since Sara has not challenged the trial court's dispositional order, we need not review it here. Sara has failed to argue her remaining assignments of error on appeal, and we deem them abandoned pursuant to N.C. R. App. P. 28(b)(6) (2006).

Affirmed.

Judges GEER and JACKSON concur.

Report per Rule 30(e).