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NO. COA06-715

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

IN THE MATTER OF:

R.J.N. and M.J.N.

Catawba County
No. 04 J 260-261

Appeal by respondents from order filed 6 March 2006 by Judge C. Thomas Edwards in Catawba County District Court. Heard in the Court of Appeals 13 December 2006.

J. David Abernethy for petitioner-appellee Catawba County Department of Social Services.

Hartsell & Williams, P.A., by Christy E. Wilhelm, for respondent-mother.

Don Willey for respondent-father.

BRYANT, Judge.

Respondent mother (E.N.¹) and respondent father (D.N.) appeal from a 6 March 2006 order terminating their parental rights to M.J.N. (born in 1997) and R.J.N. (born in 1999). Respondents were married after the birth of their second child.

In 1998 after respondents were involved in an incident of domestic violence on New Year's Eve, Alexander County Department of Social Services (DSS) took legal custody of the children. The

¹We use initials throughout this opinion to protect the identity of the juveniles.

children were adjudicated neglected in Alexander County in January 2001. DSS retained legal custody and respondents were allowed to retain physical custody.

In October 2003, respondent mother obtained a mental health assessment in Catawba County, North Carolina. She was diagnosed with polysubstance abuse and depressive disorder and indicated that she used alcohol, crack cocaine, methadone and oxycontin. The case plan called for the children to receive extensive counseling; however, they were taken to counseling only six times from October 2003 through May 2004.

In October 2004, the children lived with their maternal grandmother in Catawba County, North Carolina and respondents moved to Virginia. That same month, Catawba County DSS filed a juvenile petition. The children were placed in a foster home on 11 March 2005 where they have since remained. On 4 April 2005 the children were adjudicated neglected.

On 31 May 2005, the Catawba County District Court found both respondents had quit their jobs. Respondent mother had drug screens on 27 April 2005 and 18 May 2005 that were positive for marijuana. The trial court ordered Catawba County DSS to continue to retain legal custody of the children. The trial court further ordered DSS was to "continue to make reasonable efforts to prevent or eliminate the need for placement of the children in foster care."

On 20 September 2005, the Catawba County District Court heard this matter. Respondent father did not attend court. At the time

of the hearing, the children were still living in foster care in Catawba County. Respondents had moved to Virginia and had visited their children two times: on 4 June and 27 August 2005. Respondent mother failed to appear at her scheduled visitation with the children on 7 September 2005. The trial court ordered that reunification efforts cease with each of the parents. On 3 November 2005, Catawba County DSS filed its motion in the cause to terminate respondents' parental rights.

On 13 December 2005, the Catawba County District Court reviewed the case. Respondents had not contacted DSS since the 20 September 2005 hearing. The trial court ordered DSS to remain the custodial guardians of the children, continue their foster care placement and have respondents schedule "one therapeutically supervised goodbye visit." At the 7 February 2006 termination hearing, neither respondent appeared. The trial court entered an order terminating respondents' parental rights. Respondents appeal.

Respondent mother contends the trial court erred in: (I) failing to establish subject matter jurisdiction (N.C. Gen. Stat. § 7B-1106); (II) failing to conduct a termination hearing within ninety days from the filing of the termination motion in the cause (N.C. Gen. Stat. § 7B-1109); (III) concluding that the termination of parental rights was in the children's best interests; and (IV) violating respondent mother's Due Process Rights under the North Carolina Constitution by relying on certain testimony. Respondent

mother and respondent father both contend the trial court erred in:
(V) finding clear and convincing evidence to terminate their
parental rights.

I

Respondent mother argues the trial court erred in failing to
establish subject matter jurisdiction pursuant to N.C. Gen. Stat.
§ 7B-1106. Specifically, respondent mother contends because no
summons issued in the cause, the trial court did not have subject
matter jurisdiction to terminate her parental rights.

Pursuant to the juvenile code, proceedings to terminate
parental rights may be initiated by petition or by motion in the
cause. See N.C. Gen. Stat. § 7B-1104 (2005). In this case, the
pleading to terminate parental rights was by motion in the cause,
rather than by petition. North Carolina General Statutes, Section
7B-1106.1 provides for notice in pending cases and requires that
notice in pending child abuse, neglect, or dependency cases include
all of the following:

- (1) The name of the minor juvenile.
- (2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.
- (3) Notice that any attorney appointed previously to represent the parent in the abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.
- (4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.

(5) Notice that the date, time, and place of hearing will be mailed by the moving party upon filing of the response or 30 days from the date of service if no response is filed.

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

N.C. Gen. Stat. § 7B-1106.1(b) (2005). The notice in this case contains all of the information required by N.C. Gen. Stat. § 7B-1106.1(b), tracking the actual language used in the statute, including a reference to factual allegations in support of the termination. The certificate of service attached to each notice of proceeding includes the names of all parties, including respondent mother and her counsel. Because notice was given pursuant to N.C. Gen. Stat. § 7B-1106.1, no summons was required. This assignment of error is overruled.

II

Respondent mother argues the trial court erred in failing to conduct a termination hearing within ninety days from the filing of the termination motion in the cause pursuant to N.C. Gen. Stat. § 7B-1109. We disagree.

The hearing on the termination of parental rights is to be held no later than ninety days from the filing of the petition or motion. N.C. Gen. Stat. § 7B-1109(a) (2005). However, "time limitations in the Juvenile Code are not jurisdictional in cases such as this one and do not require reversal of orders in the absence of a showing by the appellant of prejudice resulting from

the time delay." *In re C.L.C.*, 171 N.C. App. 438, 443, 615 S.E.2d 704, 707, *aff'd*, 360 N.C. 475, 628 S.E.2d 760 (2005).

The motion to terminate parental rights was filed on 3 November 2005. Each of respondents moved for an extension of time to file an answer. The trial court granted the motions and extended the time for filing a response to 6 January 2006. The hearing on the motion was conducted on 7 February 2006, which was ninety-six days after the motion was filed, and thirty-two days after the extended time for filing answer expired. Furthermore, respondent mother has not demonstrated prejudice where the trial court conducted the hearing only thirty-two days after the extended time for filing answers had expired and where respondents had moved out of state and away from their children. See *In re D.J.D.*, 171 N.C. App. 230, 243, 615 S.E.2d 26, 35 (2005) ("Since respondent moved for the continuance, adding sixty-eight days to the trial court's original [delay], he has failed to demonstrate prejudice."). This assignment of error is overruled.

III

Respondent mother argues the trial court erred in concluding that the termination of parental rights was in the children's best interests. Termination of parental rights proceeding is a two-stage process: the trial court first determines whether sufficient grounds exist under N.C. Gen. Stat. § 7B-1111 to warrant termination; if the trial court determines that any one of the grounds for termination listed in N.C. Gen. Stat. § 7B-1111 exists, the trial court may then terminate parental rights consistent with

the best interests of the child. *In re T.D.P.*, 164 N.C. App. 287, 288, 595 S.E.2d 735, 736-37 (2004), *aff'd*, 359 N.C. 405, 610 S.E.2d 199 (2005).

At disposition, the trial court found that the children had been successfully placed in the home of a foster family who provided them with a permanent home since 6 June 2005. The trial court found that the children were happy in their placement and adjusting well. Although there was a significant bond between the children and respondents, one of the children had begun to talk openly about being adopted. The trial court concluded that adoption was in the children's best interest. The substantial record evidence supports the trial court's findings and conclusions. This assignment of error is overruled.

IV

Respondent mother argues the trial court erred in violating her Due Process Rights under the North Carolina Constitution by relying on certain testimony. We disagree.

Neither party objected to the admission of any evidence at the hearing. In a civil case, an issue cannot be reviewed on appeal unless an objection is made in the trial court. *Munn v. N.C. State Univ.*, 360 N.C. 353, 626 S.E.2d 270 (2006); see *In re A.E.*, 171 N.C. App. 675, 615 S.E.2d 53 (2005) (argument not properly preserved for appellate review when party fails to object to the admission of testimony at trial court) and *In re B.D.*, 174 N.C. App. 234, 245, 620 S.E.2d 913, 920 (2005) ("[T]he plain error rule has not been expanded to civil cases in general or to child custody

cases in particular.”), *disc. rev. denied*, 360 N.C. 289, 628 S.E.2d 245 (2006). These assignments of error are dismissed.

V

Both respondents contend the trial court erred in finding clear and convincing evidence to terminate their parental rights. We disagree. Specifically, respondents challenge the trial court’s findings and conclusions as to each of the three grounds for terminating their parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a): neglect; incapacity to provide for the proper care and supervision of the children; and willful abandonment. We review and uphold the trial court’s findings and conclusion only as to neglect.

“On appeal, our standard of review for the termination of parental rights is whether the court’s findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law.” *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003) (citations, alteration, and internal quotation marks omitted). This Court has noted that “it is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony.” *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). Accordingly, “the presumption is in favor of the correctness of the proceedings in the trial court, and the burden is on the appellant to show error.” *In re Moore*, 306 N.C. 394, 403, 293 S.E.2d 127, 132 (1982) (citations omitted). The trial court’s conclusions of

law are reviewable *de novo*. See *Starco, Inc. v. AMG Bonding & Ins. Servs., Inc.*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996).

A neglected juvenile is one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who has been abandoned." N.C. Gen. Stat. § 7B-101(15) (2005). "Abandonment has been defined as wilful neglect and refusal to perform the natural and legal obligations of parental care and support." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003). A conclusion of neglect may also be supported in "less tangible" ways including: "evidence of sporadic contact between parents and children" and their "complete failure to provide personal contact, love, and affection" to their children. *In re Pierce*, 67 N.C. App. 257, 263, 312 S.E.2d 900, 904 (1984) (citation omitted).

Respondents' children were adjudicated neglected based on respondents' repeated acts of domestic violence, substance abuse and lack of parental involvement. A thorough examination of the record indicates respondents engaged in ongoing substance abuse and at least thirteen documented incidents of domestic violence for a period of seven years. These occurrences have taken place in North Carolina (Alexander and Catawba counties), in Virginia, and are summarized as follows: The trial court found respondents chronically abused alcohol and drugs from 1998 to 2005. The trial court found respondent father lost his job in 2004 due to testing positive for marijuana. The trial court specifically found that respondent mother tested positive for marijuana in March, April and

May 2005 and that she did not comply with requested drug screens in June and July 2005.

With respect to domestic violence, the trial court found that respondents were involved in at least three separate incidents while living in Alexander County - one for which respondent father was jailed and one which involved an attempted stabbing by respondent mother. While respondents lived in Virginia, respondent mother alleged respondent father raped her. Also, respondent mother was arrested multiple times for domestic violence and respondent father was reported dragging M.J.N. by the neck. From 2003 to 2005, while respondents lived in Catawba County, the couple was involved in multiple incidents of domestic violence; one which rose to the level of respondent father threatening to kill respondent mother.

At the TPR hearing, the Catawba County DSS social worker testified that respondent father failed to contact DSS after he and respondent mother last visited the children on 27 August 2005; respondent father failed to obtain a domestic violence assessment despite a long history and ongoing occurrences of domestic violence with respondent mother; and respondent father did not attend any parenting classes. Further, the DSS social worker testified that respondent mother allowed respondent father to live with her even though he had not received any domestic violence treatment and that thereafter an incident of domestic violence ensued between them. The trial court heard testimony regarding respondent mother's abandonment of the children as evidenced by her relocation to

Virginia and testimony regarding how respondent mother upset the children by failing to appear at her scheduled visitation in September 2005. Respondent mother failed to attend the hearing on the motion to terminate parental rights. Failure to attend the termination hearing may be considered by the court. *In re As.L.G.*, 173 N.C. App. 551, 619 S.E.2d 561 (2005). The evidence before the trial court as to the neglect of both respondents was uncontradicted, clear, and convincing, and supported the trial court's findings of fact in the TPR order.

Because the record before us supports the trial court's determination of neglect as to both respondents, we decline to address respondent's remaining arguments regarding the statutory grounds for termination of parental rights. N.C. Gen. Stat. § 7B-1111(a) (2005); *In re Shermer*, 156 N.C. App. 281, 284, 576 S.E.2d 403, 406 (2003); see also *In re Clark*, 159 N.C. App. 75, 78 n.3, 582 S.E.2d 657, 659 n.3 (2003) (citation omitted) (where the trial court finds multiple grounds on which to base a termination of parental rights, and "an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds."). These assignments of error are overruled.

Affirmed.

Judges MCGEE and ELMORE concur.

Report per Rule 30(e).