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NO. COA06-748

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN THE MATTER OF:

C.J.P.,
A Minor Child.

Wilson County
No. 04 J 65

Appeal by respondent from order entered 15 February 2006 by Judge William G. Stewart in Wilson County District Court. Heard in the Court of Appeals 16 April 2007.

Craft, Levin & Abney, L.L.P., by Wesley Abney, for petitioner-appellee.

Wyrick Robbins Yates & Ponton LLP, by K. Edward Greene and Alyssa M. Chen, for respondent-appellant.

GEER, Judge.

Respondent appeals an order terminating his parental rights on the grounds of willful abandonment. Because a guardian ad litem was not appointed to represent the best interests of the minor child as required by N.C. Gen. Stat. § 7B-1108(b) (2005), we reverse and remand for a new hearing.

The minor child, C.J.P., is the biological child of respondent father and petitioner mother, who were married at the time of C.J.P.'s birth. They have since divorced, and both parties have remarried. Petitioner has legal and physical custody of C.J.P., and petitioner's husband desires to adopt C.J.P.

On 25 August 2005, petitioner filed a petition to terminate respondent's parental rights based on willful abandonment. On 30

November 2005, respondent filed an answer in which he denied willfully abandoning his child. A hearing was held on 25 January 2006, following which the trial court orally found that respondent had willfully abandoned C.J.P. as set forth in N.C. Gen. Stat. § 7B-1111(a) (7) 2005 and that the best interests of C.J.P. would be served by terminating respondent's parental rights. The trial court subsequently entered a written order terminating respondent's parental rights on 15 February 2006 *nunc pro tunc* 25 January 2006.

Respondent first contends that the trial court erred by failing to appoint a guardian ad litem for C.J.P. N.C. Gen. Stat. § 7B-1108(b) provides: "If an answer or response denies any material allegation of the petition or motion [seeking termination], the court *shall* appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile[.]" (Emphasis added.)

Here, respondent denied the material allegation in the petition that he had willfully abandoned the minor child. Although appointment of a guardian ad litem was, therefore, required under N.C. Gen. Stat. § 7B-1108(b), the trial court failed to do so. Because of this omission, we are compelled to reverse and to remand for appointment of a guardian ad litem and a new hearing on the petition. See *In re J.L.S.*, 168 N.C. App. 721, 723, 608 S.E.2d 823, 824-25 (2005) (holding that failure to appoint guardian ad litem constitutes reversible error even when respondent filed untimely response); *In re Fuller*, 144 N.C. App. 620, 622-23, 548 S.E.2d 569, 571 (2001) (concluding that failure to appoint guardian

ad litem was reversible error even when respondent failed to object at termination hearing).

Petitioner argues that because this case does not involve abuse or neglect, we should hold that appointment of a guardian ad litem was discretionary with the trial court. Neither the pertinent statute nor our case law permits such a holding. Although petitioner further contends that termination of parental rights is "clearly" in C.J.P.'s best interests and that a guardian ad litem would not likely have concluded otherwise, that argument is beside the point. The requirement to appoint a guardian ad litem in N.C. Gen. Stat. § 7B-1108(b) is part of a "statutory scheme intended to preserve the best interest of the minor child," which anticipates that young children may not be able to object or participate in proceedings without representation. *Fuller*, 144 N.C. App. at 622-23, 548 S.E.2d at 571.

Here, the court heard only from C.J.P.'s mother, step-father, and father. The court received no input from anyone who had *only* C.J.P.'s interests at heart. The question of the best interests of the child is separate from the question whether grounds exist for termination of parental rights. C.J.P. was entitled to have a person representing his interests when the court made the decision whether to sever his legal relationship with his biological father. We therefore reverse and remand for appointment of a guardian ad litem for C.J.P. and a new hearing on the petition to terminate respondent's parental rights.

Reversed and remanded.

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Judges WYNN and ELMORE concur.

Report per Rule 30(e).