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NO. COA06-972

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IN THE MATTER OF:

Catawba County
No. 04 J 112-16

C.E.R., A.M.R., J.E.I.,
A.R.I. and S.N.I.,

Minor children

Appeal by respondent from order entered 1 March 2006 by Judge C. Thomas Edwards in Catawba County District Court. Heard in the Court of Appeals 22 January 2007.

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

Christopher G. Daniel for guardian ad litem, appellee.

Michael E. Casterline for respondent-appellant.

MARTIN, Chief Judge.

Respondent, the mother of five minor children, appeals from an order terminating her parental rights to them.

Petitioner, Catawba County Department of Social Services, filed a juvenile petition on 17 May 2004 alleging the children were abused, neglected and dependent. The children were adjudicated to be dependent and neglected and were placed in the custody of petitioner on 24 August 2004. On 24 October 2005 petitioner filed the instant petition to terminate respondent's parental rights. As

grounds for termination of respondent's rights, petitioner alleged that respondent (1) neglected the children; and (2) willfully left the children in foster care or placement outside the home for more than twelve months without making reasonable progress in correcting the conditions which led to the removal of the children. The court held a hearing upon the petition on 7 February 2006, at the conclusion of which the court rendered an order terminating respondent's parental rights on the grounds alleged in the petition. The court entered written adjudicatory and dispositional orders on 1 March 2006. Respondent filed notice of appeal on 3 March 2006.

Respondent brings forward three assignments of error.

First, respondent contends the court erred in terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(1) on the ground of neglect because petitioner only presented evidence of past neglect and not current conditions and the court failed to find that neglect would be likely to continue.

One's parental rights to a juvenile may be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) if one has abused or neglected the juvenile. A neglected juvenile is one who "does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or 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" N.C. Gen. Stat. § 7B-101(15) (2005). Termination of one's parental rights on the ground of

neglect must be based on conditions in existence at the time of the termination hearing and may not be based solely upon conditions existent in the past. *In re Ballard*, 311 N.C. 708, 714-16, 319 S.E.2d 227, 231-32 (1984). Notwithstanding, the petitioner need not present evidence of neglect subsequent to the prior adjudication of neglect if "the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to the parent." *In re Pope*, 144 N.C. App. 32, 37, 547 S.E.2d 153, 157, *aff'd*, 354 N.C. 359, 554 S.E.2d 644 (2001).

Here, the record shows the court stated in open court that "neglect existed and continues to exist and the probably [sic] of repetition is great." By finding of fact number 19 in the adjudicatory order, the court stated the following:

19. That based on the evidence presented the court finds that the facts alleged in the Motion are true by clear, cogent and convincing evidence, and that these facts constitute neglect. The evidence presented also supports a strong likelihood that neglect would continue if the children were returned to the home of the parents at this time or any time in the foreseeable future.

We conclude the foregoing is an adequate finding of "probability of repetition of neglect" sufficient to support termination of parental rights on the ground of neglect.

Respondent next contends that the court erred in concluding respondent had willfully left the children in foster care and failed to make reasonable progress in correcting the conditions that led to the removal of the children from her custody.

The court's findings of fact show that respondent has a history of child protective services investigations from 1997, 2000, 2001, and 2003. Since the children were removed from her custody in August 2004 on the ground of neglect, respondent has exhibited "chronic apathy and inaction. . . ." She "made minimal steps to comply with her case plans dated October of 2004 and April of 2005." She missed several visits with the children. She failed to attend a psychological evaluation concerning one of the children. She has not completed a parenting class. She has failed to maintain a stable long term residence, thereby continuing a pattern of moving from residence to residence established before the children were removed from her custody. Respondent has often changed her telephone number thereby making it difficult for petitioner to contact her. We conclude these findings support the court's conclusion.

Respondent lastly contends that the court erred in concluding that it is in the best interests of the children that her parental rights be terminated. She argues the court failed to consider the bond between respondent and the children.

"The trial court has discretion, if it finds that at least one of the statutory grounds exists, to terminate parental rights upon a finding that it would be in the child's best interests." *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). The trial court's decision to terminate parental rights during the dispositional stage is reviewed for abuse of discretion. *Id.* Accordingly, the court's decision will not be disturbed unless it

"is so arbitrary that it could not have been the result of a reasoned decision." *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387, *aff'd*, 360 N.C. 165, 622 S.E.2d 495 (2005).

We discern no abuse of discretion. "[T]he fact that the parent loves or is concerned about his child will not necessarily prevent the court from making a determination that the child is neglected." *In re Montgomery*, 311 N.C. 101, 109, 316 S.E. 2d 246, 252 (1984). The court found in the dispositional order that an adoptive family has been located which will accept all five children and that the children are adjusting well to placement with this family. The court further found that while respondent and the children have a relationship, respondent and the children's father "seriously neglected them while the children were living [with] them, and the mother has often displayed apathy and indifference about meeting goals necessary to reunify with the children. She also has often been unable to attend to the emotional needs of all of the children during visits she attended." The court also noted in the adjudicatory order that at the time the children were removed from the home, they were "grossly behind on medical checkups and immunizations." The home was in "deplorable condition, including old and decaying food, soiled diapers and underwear, and feces and roaches on the floor. The stench in the home was so severe that the children were ridiculed at school by classmates and school personnel had to disinfect services [sic] with which the children were in contact."

The order is

Affirmed.

Judges McGEE and HUNTER concur.

Report per Rule 30(e).