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NO. COA07-1547

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

IN THE MATTER OF:

K.T. and
C.T.,
Minor Children.

Buncombe County
Nos. 98 J 104
05 J 245

Court of Appeals

Appeal by respondent from judgments entered 4 October 2007 by Judge Rebecca B. Knight in Buncombe County District Court. Heard in the Court of Appeals 14 April 2008.

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

Slip Opinion

Jerry W. Miller for Guardian ad Litem.

Thomas B. Kakassy for respondent-appellant.

BRYANT, Judge.

Respondent appeals the judgments terminating her parental rights as to her daughters, K.T.¹ and C.T. For the reasons stated herein, we affirm the trial court's judgments.

Facts and Procedural History

Respondent is the mother of C.D., R.D., K.T. and C.T. H.T., Jr., (the father) is the stepfather of K.T. and the legal father of

¹Initials have been used throughout to protect the identities of the juveniles.

C.T. The Buncombe County Department of Social Services (DSS) has been involved with respondent and her children for almost ten years. DSS substantiated reports of neglect in 1997, and in 1998, DSS filed petitions alleging that C.D., R.D. and K.T. were neglected juveniles.² The trial court adjudicated the children neglected and they were voluntarily placed with their maternal grandmother. The children were subsequently reunified with respondent and the father, in August of 1999. In 2005, C.D., R.D., K.T. and C.T. were adjudicated neglected and guardianship of the four children was granted to the maternal aunt. As relates to the instant case, in July of 2006, DSS filed separate petitions alleging that K.T. and C.T. were abused and neglected juveniles. The petitions alleged that K.T. and C.T. were exposed to drug use in the aunt's home and that the aunt allowed respondent access to the children in violation of a court order. K.T. and C.T. were adjudicated neglected juveniles and placed in foster care.

In 2007, DSS filed separate motions to terminate the parental rights of respondent as to K.T. and C.T. DSS alleged that grounds existed to terminate respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) (neglect); N.C. Gen. Stat. § 7B-1111 (a)(3) (failure to pay a reasonable portion of the cost of care for the child); and N.C. Gen. Stat. § 7B-1111(a)(7) (abandonment). The trial court concluded that grounds for termination of respondent's parental rights existed under N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(3). The trial court further concluded that it was in the minor

² C.T., the youngest sibling, was born in 2001.

children's best interest to terminate respondent's parental rights. The trial court's orders terminated the parental rights of respondent and the father, H.T., Jr. Respondent appeals.

Respondent contends the trial court erred by: (I) finding and concluding sufficient grounds existed to terminate her parental rights on the basis of failing to correct conditions which led to the removal of her children; (II) finding and concluding sufficient grounds existed to terminate her parental rights on the basis of her failure to provide a reasonable portion of the cost of care for the children; and (III) concluding termination of Respondent's parental rights was in the best interest of the children. For the following reasons, we affirm the order of the trial court.

Standard of Review

Termination of parental rights involves a two-stage process. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). At the adjudicatory stage, "the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002). "If the trial court determines that grounds for termination exist, it proceeds to the dispositional stage, and must consider whether terminating parental rights is in the best interests of the child." *Id.* at 98, 564 S.E.2d at 602. The trial

court's decision to terminate parental rights is reviewed under an abuse of discretion standard. *Id.*

I & II

Respondent first contends the trial court erred by finding and concluding that sufficient grounds existed to terminate her parental rights based upon a finding that K.T. and C.T. were neglected within the meaning of N.C. Gen. Stat. § 7B-101(15).

A neglected juvenile is defined in part as "[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent[.]" N.C.G.S. § 7B-101(15) (2007). To prove neglect in a termination case, there must be clear and convincing evidence (1) the juvenile is neglected within the meaning of N.C.G.S. 7B-101(15), and (2) "the juvenile has sustained 'some physical, mental, or emotional impairment . . . or [there is] a substantial risk of such impairment'" as a consequence of the neglect. *In re Reyes*, 136 N.C. App. 812, 814-15, 526 S.E.2d 499, 501 (2000) (quoting *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993)).

"A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). "[A] prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect." *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984).

If the child has been removed from the parents' custody before the termination hearing, and the petitioner presents evidence of prior neglect, including an adjudication of such neglect, then "[t]he 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.* at 715, 319 S.E.2d at 232. Thus, where "there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to [his or] her parents." *Reyes*, 136 N.C. App. at 815, 526 S.E.2d at 501.

When, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, a trial court may find that grounds for termination exist upon a showing of a "history of neglect by the parent and the probability of a repetition of neglect." *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003). With respect to respondent, the trial court found that K.T. and C.T. had previously been adjudicated neglected, and there was a probability of future neglect if they were returned to respondent's custody.

To support its conclusion that respondent neglected K.T. and C.T., the trial court made the following findings:

17. In addition to the minor child, the Respondent Mother has three other children, none of whom are in her care or custody, and she has neglected each of her children

throughout their lives. The Department has a long history with the Respondent Mother dating back to at least 1995. The earliest reports concern the two older siblings[], C.D. and R.D. The minor child's sibling, K.T., was born in June 1997 and, prior to that child's birth, the Department received six (6) reports of Respondent Mother's alleged sexual abuse and neglect of the two oldest children and, although the Department did not substantiate any of these allegations upon investigation into those matters, the Department was nonetheless concerned about this family.

18. On October 29, 1997, the Department substantiated neglect against the Respondent Mother for not providing [] C.D. R.D. and K.T. proper care and supervision and for exposing the minor children to an environment injurious to their welfare, in that the Respondent Mother had sex with a sixteen-year-old male foster child in her care, exposed the minor children to domestic violence, used the minor children to shoplift merchandise for which the Respondent Mother was arrested, and left the minor children alone and unsupervised. The Department provided in-home services to the Respondent Mother. The Respondent Mother was incarcerated three times at the time of the filing of the original Juvenile Petition and Summons on March 27, 1998. The Department did not obtain non-secure custody of the minor child's siblings at that time, as the minor children were placed voluntarily in a safe kinship placement with the maternal grandmother, Carolyn [F].

19. At adjudication and disposition hearing for the original juvenile petition on August 25, 1998, the Court found by clear, cogent and convincing evidence that [] C.D., R.D. and K.T. were neglected juveniles in that they did not receive the proper care or supervision, and lived in an environment injurious to their welfare as a result of the Respondent Mother's drug use, her poor supervision of the minor child's siblings, and her criminal activities. Specifically, the minor child's siblings were with the Respondent Mother when she was arrested for shoplifting, assault, and writing worthless checks. [The children] were living in a house that was unsanitary due to poor

cleaning practices and animal waste from five cats that were left in the house. The Respondent Mother has a history of having intimate relations with minors. She had sexual relations with a sixteen-year-old foster child, C.C. who was in her care. [R.M.] was sixteen (16) years old when the Respondent Mother became pregnant with [] K.T. The Respondent Mother left the minor children's care to the maternal grandmother, Carolyn [F.], and other caretakers, and the Respondent Mother did not follow through with medical and dental care for the children.

26. [In 2001,] the Respondent Mother gave birth to the minor child. The minor child is not the biological daughter of the Respondent Mother's then-husband, H. [T.], Jr. From 1999 through 2005, the Department continued to substantiate reports regarding the sexual abuse and neglect of the minor child and her siblings and, in response, the Department continued to execute safety agreements and to provide services to the family. In 2001, the minor child's oldest siblings, C.D. and R.D., disclosed that they had been sexually abused by the now-deceased step-grandfather, H. [T.], Sr., who used dildos and fingers to sexually abuse the minor children and also watched pornographic movies with them. The Department substantiated this report. The step-grandfather did not sexually abuse [] K.T., as he had no access to her. K.T. was not present in the home of Respondent Mother and Respondent Legal Father, but was residing with the Maternal Aunt, Sharon [C.], at that time. With regard to the sexual abuse and neglect of the minor child, in 2006, the minor child disclosed that the Respondent Legal Father had inappropriately touched her in a sexual manner. The Department substantiated sex abuse of the minor child against the Respondent Legal Father and neglect against the Respondent Mother, as the Respondent Mother had knowledge of the sexual abuse, but took no steps to protect the minor child.

. . .

28. On May 12, 2005, the Department received and later substantiated neglect of [C.T.] and her three older siblings as a result of drug

use and domestic violence between the Respondent Mother, her live-in boyfriend, B, and her husband H. [T.] Jr., who also resided in the home. The minor child had resided in the home continuously since her birth. She did not attend daycare and was exposed to drug use and domestic violence in the home on a full-time basis. The minor child's oldest sibling, R.D., told the social worker, with tears in her eyes, that the minor child saw everything going on in the house and cried when the Respondent Mother, the Respondent Legal Father, and Mr. B argued. The minor child's second-oldest sibling, C.D. witnessed the Respondent Mother in a room while Mr. B. smoked "ice" (methamphetamine). Both [] C.D. and R.D. saw the "ice," which they described as "crystals like sugar," and also saw drug paraphernalia, including aluminum foil, glass pipes, and lighters in the room shared by the Respondent Mother and Mr. B. According to the minor child's two oldest siblings, they call the drug "ice" because that is what the Respondent Mother, the Respondent Legal Father and Mr. B call it. The Respondent Legal Father showed the minor child's two oldest siblings how to make the drug using sugar, supposedly as part of a "joke" he was playing on Mr. B. Mr. B. threatened to "whip" [] R.D. and put his finger in close proximity to her face and told her he would hurt her if he did not get "ice." . . .

The trial court also found that the minor children were removed from the home and placed with the aunt. However, in July of 2006, DSS discovered that respondent and H.T., Jr. were residing with the aunt in violation of prior court orders, and that the aunt, respondent and H.T., Jr. continued to expose the minor children to drug use. In addition to the findings set out above, the trial court made numerous other findings regarding reports substantiated by DSS of abuse and neglect of the minor children, respondent's failure to make any progress towards remedying the conditions that led to the removal of the children, and respondent's continued

exposure of the children to domestic violence and drug abuse. Respondent fails to challenge these findings; accordingly, they are presumed to be correct and supported by competent evidence. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982).

Respondent, however, challenges findings of fact 69, 70 and 71 as to C.T. The same findings as to K.T. are likewise challenged and designated as numbers 65, 66 and 67.

69. [65.] The Respondent Mother has failed to comply with most of the Court-ordered services necessary for reunification. She has had many years to address her criminal activity, her drug use and abuse, her victimization from domestic violence, and her poor parenting skills. The Respondent Mother has allowed the minor child to live with the Maternal Aunt for most of the minor child's life, while failing to provide any support for the minor child and committing food stamps fraud by continuing to claim the minor child on her food stamps. The Respondent Mother has been incarcerated on and off for a significant portion of the minor child's life and was only recently released January 30, 2007. Since her release from custody, the mother has made progress in improving her situation. She resided with her grandparents [] in their mobile home [] during the time she was on intensive probation, which ended in May 2007. It is not known where she has lived since that date. She has been employed . . . doing landscaping and detailing vehicles, she obtained a fulltime job August 4, 2007[.] The Respondent Mother earns \$7.50 per hour for thirty to forty hours per week The Respondent Mother's only living expense is \$50 per week that she gives to her grandparents for groceries.

70. [66.] The Respondent Mother has completed intensive outpatient drug treatment as one of the conditions of drug court. Intensive outpatient treatment was three days per week for three hours per day. She is currently in the Aftercare program and attends drug treatment six hours per week. She will complete Aftercare program in five weeks. The

Respondent Mother also attends AA/NA meetings five times per week. She receives up to four drug tests per week. The Respondent Mother moved out of her grandparents' home in May 2007 when her three months of intensive probation ended. She testified in this hearing that she lived with her grandparents until August 21, but her testimony was not credible.

71. [67.] The Respondent Mother has maintained contact with the Department and attends child and family team meetings for her children. She understands the prior recommendation for reunification included the substance abuse treatment, a psychological evaluation, complete a domestic violence program, and successfully complete anger management. . . . She has not had a psychological evaluation and has not completed domestic violence or anger management programs. While the Department was relieved of the responsibility to actively pursue services for the mother, the Department was ordered to make any referrals for services or provide services they had available if requested by the Respondent Mother. The Respondent Mother understood she could contact the Department for referrals, but she did not do so because she was able to access the services she wanted without referrals from the Department.

A review of the record and transcript shows that each of the trial court's findings is based upon competent evidence, including orders entered in the case and testimony from K.T.'s and C.T.'s counselor Gail Azar, social workers Julia Hoffert and Andrea Biffle, respondent and respondent's grandparents. Respondent's main argument is that the trial court ignored her "significant progress" and "successful rehabilitation effort," and, therefore, it erred in concluding there was the probability of a repetition of neglect. Indeed, respondent admits that "in the past, [she] has both

voluntarily engaged in and has been exposed to situations and actions which have hurt her and her children."

Our review of the record reveals the trial court had clear, cogent, and convincing evidence to determine that the children had been subjected to a history of neglect and were likely to be similarly neglected in the future, and that the findings are sufficient to show neglect. Here, the trial court found that respondent had made progress by maintaining stable employment and by maintaining her sobriety after her release from prison in January 2007. The trial court, however, found that respondent's participation in drug treatment was a condition of her "Post Judgment Conviction." Despite such progress, the trial court found that respondent had failed to address other issues that have been pervasive in respondent's life, such as poor parenting, victimization from domestic violence and her criminal activity. Respondent failed to obtain, as ordered by the court, a psychological evaluation, attend domestic violence classes, and attend anger management classes, all of which were essential to respondent's reunification with her children.

We, therefore, conclude the trial court had clear, cogent, and convincing evidence to determine that K.T. and C.T. have been subjected to a history of neglect and were likely to be similarly neglected in the future, and that the findings are sufficient to show neglect. We further conclude that these findings of fact support the trial court's conclusion that grounds existed to terminate respondent's parental rights under N.C. Gen. Stat. §

7B-1111(a) (1). *See, e.g., In re Davis*, 116 N.C. App. 409, 414, 448 S.E.2d 303, 306 (the parents' failure to "obtain[] continued counseling, a stable home, stable employment, and [attend] parenting classes" was sufficient to show a probability that neglect would be repeated if the child was returned to the care of the parents), *disc. review denied*, 338 N.C. 516, 452 S.E.2d 808 (1994); *In re Johnson*, 70 N.C. App. 383, 389, 320 S.E.2d 301, 305-06 (1984) (improper care during a trial placement, a failure to make lifestyle changes, and sporadic attendance at counseling sessions constituted evidence of neglect). Because we hold that the trial court properly found and concluded that grounds existed to terminate respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a) (1), we do not address the other grounds for termination. *See In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984) (a finding of one statutory ground is sufficient to support the termination of parental rights).

III

We next turn to respondent's argument that the trial court abused its discretion in concluding during the dispositional stage that the termination of respondent's parental rights was in the best interests of K.T. and C.T. Respondent challenges the trial court's reliance on its finding that respondent misled her probation officer and its reliance on respondent's inability to comprehend the mental and emotional health of the children.

In determining whether terminating the parent's rights is in the juvenile's best interest, the court shall consider the following:

- (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 (2007).

Here, the trial court made the following findings of fact as to C.T. to support the court's determination that it was in the best interests of the child to terminate respondent's parental rights. Again, the trial court made similar findings as to K.T.

3. The Respondent Mother lived with her grandparents most of the time after her release from prison in January, 2007 until she completed intensive probation in May, 2007. The Respondent Mother then moved to an unknown location. The Respondent Mother did not testify truthfully in this hearing about her living arrangements since May 2007 and that is a serious barrier to reunification.

4. The respondent Mother has misled her probation officer by causing her to believe the Respondent Mother resided with her grandparents after May 2007 until last week. The probation officer has not received any reports of violation of probation of the Respondent Mother. The Respondent Mother

violated the condition of probation that she live with her grandparents.

. . .

6. The minor child began therapy with Gail Azar in September, 2006. She was a very troubled child who was sexually acting out, oppositional, fought, hit and lashed out [at] others. She was very angry, had limited social skills (ate with her hands and not utensils) and was very afraid of men. The minor child would not go near her foster father or foster brother. She has been diagnosed with Posttraumatic Stress Disorder as a result of exposure to domestic violence; sexual abuse by [] H. [T.]; disclosure of sexual abuse to her mother who did not take steps to protect her; frequent moves and fear of people. The minor child exhibited many features of an attachment disorder in part due to her multiple caretakers. Her sibling [] provide[s] a lot of care for the minor child[.]

7. The minor child came into foster care without appropriate skills to interact with other people, she was often very reclusive, did a lot of huddling, would assume a fetal position, and would comfort herself using such devices as thumb sucking. The minor child has made significant process in foster care and responded well to her weekly therapy. While it is unknown if she will have long-term effects from the extreme neglect she suffered, she is beginning to form attachments. It is imperative that the minor child achieve permanence immediately so that she can progress with her emotional development. The minor child does continue to have ups and downs in her current placement and may need to have a higher level of care in order to stabilize her behaviors, but at this time her foster parents are committed to providing care for the minor child.

8. A significant factor in determining the best interests of the minor child is the Respondent Mother's plea of guilty to Habitual Felon and other offenses and the status of the post judgment conviction. If sentenced in

August 2008, the statutory minimum is 44 months (the Respondent Mother is not eligible for minimum sentence because of her criminal record) and the maximum is 210 months. The evidence in this hearing establishes a finding that the Respondent Mother is not in compliance with her probation and that her probation officer is unaware of the violation. Regardless, it appears that even though[] the Respondent Mother has maintained her sobriety, there is a serious likelihood that judgment may be entered against the Respondent Mother.

9. Both children are in desperate need of permanent placement and finality for the balance of their minority. It is not possible or acceptable for the children to wait an additional twelve months to find out if the Respondent Mother will be physically available to care for the children.

10. The mother's "physical availability" is not the primary concern. At this time, there is no evidence the Respondent Mother comprehends the seriousness of the children's mental health and emotional status and her inability to do so is an absolute bar to reunification.

11. There are no suitable adults in the minor child's immediate family to provide a safe home for the minor child, and there is no possibility that the minor child will be able to return to her parents, her Maternal Aunt, her putative biological father, any unnamed or unknown biological fathers, any surviving grandparent or any maternal relatives. Efforts to place the minor child in the home of any of these identified people would clearly be futile or inconsistent with the minor child's health, safety, and need for a safe, permanent home within a reasonable amount of time, and it is futile and contrary to the best interests and the welfare of the minor child to attempt to return the child to any of these person's care of custody. It is in the minor child's best interests to terminate the Respondent Mother's, the Respondent [H. T.'s], the putative biological father's, and any unnamed and unknown biological father's parental rights to the minor child and to release her for adoption.

A. Misleading the Probation Officer

Respondent first challenges the trial court's reliance on respondent misleading her probation officer about living with her grandparents and the possibility of a probation violation. Here, the trial court heard testimony from respondent that she lived with her grandparents for approximately seven months. The trial court also heard testimony from the grandmother that respondent had not been living with them for the past seven months, that respondent lived with them "[s]ome nights when she first got out[,] and that she had stayed with them for a total amount of less than thirty nights. In addition, the grandfather testified that respondent moved out after her three-month intense probation. When a trial judge sits as "both judge and juror," as he or she does in a non-jury proceeding, it is that judge's duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom. *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984). "If different inferences may be drawn from the evidence, the trial judge must determine which inferences shall be drawn and which shall be rejected." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365-66 (2000). We conclude that the trial court properly determined the credibility of respondent and made findings accordingly.

B. Comprehending the Children's Mental and Emotional Health

Respondent also challenges the trial court's reliance on respondent's failure to comprehend the seriousness of her children's mental and emotional health. In making the determination of whether to terminate the parent's rights, "[t]he best interest of the children is the polar star by which the discretion of the court is guided." *Bost v. Van Nortwick*, 117 N.C. App. 1, 8, 449 S.E.2d 911, 915 (1994) (internal citations and quotations omitted), *appeal dismissed*, 340 N.C. 109, 458 S.E.2d 183 (1995).

The evidence presented to the trial court demonstrated that DSS has been involved with K.T. and C.T. since 1998 and 2005 respectively; that the children have been exposed to drug use, domestic violence and sexual abuse; and that respondent knew about the sexual abuse of C.T. and did nothing. Respondent, however, testified that she gave proper care to C.T. and did not neglect her.

Nevertheless, the children's counselor, Ms. Azar, testified that K.T. had been diagnosed with adjustment disorder, anxiety and depression; that she had made "very, very significant progress" and had formed a strong bond with their foster mother. Ms. Azar further testified that C.T. had oppositional behaviors, sexual acting out behaviors and aggression; that C.T.'s sexual acting out is now "almost non-existent in the foster home." When asked about placing K.T. and C.T. back with respondent since she "has remained clean and participated in some service[s]," Ms. Azar responded, "It goes way beyond just [] being sober or being clean . . . it goes

into [] really deep, deep areas of understanding children's needs, meeting their needs, putting their needs before the parent's [] and so I truly believe that these children would be much better off [with] people [who] will appreciate this and [] be able to work with them so that these children can bond, can move forward and continue their progress." This evidence goes directly to the trial court's finding that respondent would not be emotionally capable of parenting these children at any time in the foreseeable future.³

Based upon the trial court's findings which reflect a rational reasoning process, we conclude that the trial court did not abuse its discretion in its determination that terminating the parental rights of respondent was in the best interests of the children.

Accordingly, we affirm the trial court's orders terminating respondent's parental rights to her two children.

Affirmed.

Judges WYNN and MCCULLOUGH concur.

Report per Rule 30(e).

³ The trial court found, "[T]here is no evidence that Respondent Mother comprehends the seriousness of the children's mental health and emotional status and her inability to do so is an absolute bar to reunification."