NO. COA07-513

NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2007

IN RE:

Mecklenburg County
Nos. 06 JT 915-918

M.M., L.M., Q.M., and R.G.

Appeal by respondent from order entered 23 January 2007 by Judge Lisa C. Bell in Mecklenburg County District Court. Heard in the Court of Appeals on 30 July 2007.

Mecklenburg County Attorney's Office, by Tyrone C. Wade, for petitioner-appellee.

Jon W. Myers, for respondent-appellant.

Pamela Newell Williams, for guardian ad litem.

ELMORE, Judge.

Respondent-appellant (respondent) is the mother of four children, M.M., L.M., Q.M., and R.G. She appeals from an order terminating her parental rights to them on the grounds that she (1) neglected the children; (2) left them in foster care or placement outside the home for more than twelve months without showing to the court's satisfaction that, under the circumstances, she had made reasonable progress correcting those conditions which led to the removal of the children from the home; and (3) willfully failed to pay a reasonable portion of the cost of care for the children for

a continuous period of six months immediately preceding the filing of the petition.

The Mecklenburg County District Court adjudicated the juveniles as neglected and dependent on 15 July 2005 and placed them with the Mecklenburg County Department of Social Services (petitioner). On 13 February 2006, the court relieved petitioner of efforts to reunify the children with their parents and on 15 June 2006 signed a permanency planning order establishing the plan as adoption. On 8 August 2006, petitioner filed petitions to terminate the parental rights of respondent and the children's fathers. Petitioner served respondent with the petitions by certified mail and respondent signed receipts indicating that she had received the petitions. Respondent's attorney, John Ross, filed answers to the petitions on respondent's behalf on 11 September 2006. The court conducted a permanency planning review hearing on 6 November 2006, which respondent's attorney attended, but respondent did not. The court scheduled the parental rights termination hearing for 18 December 2006.

At the call of the termination petition for hearing, respondent's attorney moved to withdraw as counsel. Counsel stated to the court that he spoke to respondent after the petitions to terminate parental rights were served on respondent; that respondent failed to appear for the permanency planning hearing on 6 November 2006; that respondent failed to attend a meeting at his office a few weeks prior to the termination hearing; that respondent called his office during the week prior to the hearing,

but he could not meet with her during that week because of his schedule; and that respondent failed to appear for the termination hearing. Petitioner did not object to counsel's withdrawal. The court allowed counsel's motion to withdraw.

The court heard testimony from the social worker assigned to the children and, at the conclusion of the hearing, rendered a decision terminating respondent's parental rights to the children. The court filed a written order on 23 January 2007. Respondent timely filed notice of appeal.

Respondent first contends that the court erred by allowing counsel's motion to withdraw. As in a criminal proceeding, an indigent parent faced with termination of parental rights has the right to appointed counsel. N.C. Gen. Stat. § 7B-1101.1(a) (2005). However, we note that in a criminal proceeding, an attorney may be allowed by the court to withdraw "upon a showing of good cause." N.C. Gen. Stat. § 15A-144 (2005). The decision whether to allow counsel to withdraw is addressed to the discretion of the trial judge, whose ruling is reversible only for abuse of discretion. *Benton v. Mintz*, 97 N.C. App. 583, 587, 389 S.E.2d 410, 412 (1990). An abuse of discretion occurs when the trial court's ruling is "so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Here, respondent failed to attend the last review hearing, she failed to keep the single scheduled appointment with her lawyer, and she failed to attend the termination hearing, even though her

lawyer had told her about the hearing. When a parent fails to appear for the first hearing following the filing of a petition alleging neglect or dependency, the court is required to discharge a provisionally-appointed attorney in cases filed on or after 1 October 2005. N.C. Gen. Stat. § 7B-602(a)(1) (2005). Moreover, a parent's "inaction prior to the hearing and . . . failure to appear at the hearing constitute a waiver of [the parent's] right to counsel," and the trial court does not err by not appointing counsel in those circumstances. *In re R.R.*, ___ N.C. App. ___, ___, 638 S.E.2d 502, 507 (2006). Accordingly, we hold that the court did not abuse its discretion by allowing counsel to withdraw.

Respondent next contends that she was denied her right to effective assistance of counsel by counsel's withdrawal from the case. "The right to counsel [in a parental rights termination proceeding] includes the right to effective assistance of counsel." *In re Oghenekevebe*, 123 N.C. App. 434, 436, 473 S.E.2d 393, 396 (1996) (quotation and citation omitted). However, a party's right to counsel may be waived by failure to appear at the termination hearing. *In re R.R.*, __ N.C. App. at ___, 638 S.E.2d at 507. This Court will not uphold a claim of ineffective assistance of counsel if the asserted ineffectiveness is a product of the client's own actions or lack of cooperation. *See In re Bishop*, 92 N.C. App. 662, 666-67, 375 S.E.2d 676, 679-80 (1989) (holding that when "the lack of preparation for trial is due to a party's own actions, the trial court does not err in denying a motion to continue," and does not deprive the party of effective assistance of counsel). This

assignment of error is overruled.

By her next assignments of error, respondent challenges the court's conclusions that three grounds exist to terminate her parental rights. Termination of parental rights requires proof by clear, cogent, and convincing evidence that a statutory ground to terminate rights exists. *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). The court's determination of the existence of a ground is a conclusion of law. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675-76 (1997). "Our review of a trial court's conclusions of law is limited to whether they are supported by the findings of fact." *Id.* at 511, 491 S.E.2d at 676 (citation omitted).

We first address the court's conclusion of law that respondent neglected the child, a ground for termination of parental rights established by N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is defined as 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; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2005). When determining whether a child is neglected at the time of the termination hearing, the court considers evidence of neglect by a parent prior to losing custody of a child, including an adjudication of such neglect, and "any evidence of changed conditions in light of the evidence of

prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (citation omitted).

The court found that after the children were removed from the home, domestic violence continued to occur between respondent and the father of the younger children. Respondent continued to have a relationship with this man despite the domestic violence, much of which occurred in the presence of the juveniles. Respondent "has a dependency on the father and others to meet her needs such that she poses a significant risk to the well[-]being of her children and this risk is substantial if not guaranteed." The court concluded that the neglect which was in existence at the time of the original petition is likely to continue into the foreseeable future given the long history of domestic violence in this case and the failure of the parents "to address even minimally the issues of domestic violence . . . ."

These findings are supported by clear, cogent, and convincing evidence. The social worker testified that petitioner first received calls regarding domestic violence between respondent and the father on 5 August 2002. Petitioner subsequently received three other referrals regarding domestic violence before the children were removed from the home in July, 2005. On 1 November 2005, the social worker observed that respondent's eye was purple and black. Respondent related that on 30 October 2005 the father had pulled her by the hair into a car and punched her in the left side of her face. The social worker helped respondent obtain a

domestic violence protective order. The social worker later learned that respondent had resumed a relationship with the father, who never completed a domestic violence program as required by his case plan. This repetition of the cycle of domestic violence occurs in part because respondent "has a hard time maintaining independence on her own." Respondent has a history of unemployment and inability to maintain housing. The social worker last spoke with respondent by telephone on 13 December 2006, a few days before the termination hearing. She told respondent about the termination hearing. Respondent failed to appear for the termination hearing.

We hold that the court properly concluded that respondent neglected the children. Having determined that at least one ground for termination of rights exists, we need not consider the other grounds found by the trial court. *See In re R.R.*, ___ N.C. App. at ___, 638 S.E.2d at 505 ("A single ground for termination is all that is required for proper termination.") (citation omitted).

By the final assignment of error argued in her brief, respondent contends that the court erred and abused its discretion by concluding that the best interests of the children would be served by termination of respondent's parental rights. She argues that this conclusion is not supported by findings of fact based upon clear, cogent, and convincing evidence.

"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)

(citations omitted). The court is to take "[a]ction which is in the best interests of the juvenile" when "the interests of the juvenile and those of the juvenile's parents or other persons are in conflict." N.C. Gen. Stat. § 7B-1100(3) (2005). The court's decision to terminate parental rights is reviewable only for abuse of discretion. *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 174 (2001).

Respondent has failed to show any abuse of discretion. The court's findings of fact show that the children experienced emotional and physical trauma and witnessed acts of domestic violence while in respondent's care. The oldest child had pulled out her eyebrows and eyelashes because of anxiety. Since being in foster care and undergoing therapy, her eyebrows are slowly beginning to grow back. Another child is now receiving medical services and is doing well. All of the children are now in stable homes.

The order terminating respondent's parental rights is affirmed.

Affirmed.

Judges MCGEE and TYSON concur.

Report per Rule 30(e).