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NO. COA08-1187

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2009

IN THE MATTER OF:

J.M.P.,  
A Minor Child.

Greene County  
No. 03 JT 43

Appeal by respondent from order entered 3 July 2008 by Judge R. Les Turner in Greene County District Court. Heard in the Court of Appeals 30 December 2008.

# Court of Appeals

*Baddour, Parker & Hine, P.C., by E.B. Borden Parker and James W. Spicer, III, for Greene County Department of Social Services, petitioner-appellee.*

*Pamela Newell Williams for guardian ad litem Patricia Kay Gibbons, for respondent-appellant father.*

# Slip Opinion

STROUD, Judge.

The father (hereinafter "respondent") of the above juvenile (hereinafter "the child") appeals from an order terminating his parental rights to the child on the grounds of neglect. We affirm.

The child was born in 2003. Approximately ten days after his birth, the child was placed in the custody of the Greene County Department of Social Services (hereinafter "DSS"). The child was adjudicated as neglected by an order signed 1 August 2003. Custody was continued with the DSS and the child remained in the custody of the DSS at the time of entry of the termination order which is the subject of this appeal.

Prior to the time of the child's birth, respondent had been residing with the child's mother and her two daughters. Respondent abused one of the two daughters by beating her with a hard object, causing an injury to the child's eye and breaking the skin on the child's buttocks, back, and legs. As a result of this beating, the two daughters were removed from the home. At the time of this incident the child's mother was pregnant with the child who is the subject of the present matter. Respondent was ultimately convicted of felony child abuse inflicting serious injury and was incarcerated in the North Carolina Department of Correction (hereinafter "DOC").

Respondent has an extensive criminal history. He was released from DOC in June 2006 after serving a sentence for driving while license revoked. He was incarcerated in DOC again in September 2006. His projected release date is 22 May 2010.

Meanwhile, on 24 November 2003 DSS filed a petition to terminate the parental rights of the parents. On 20 December 2004 the trial court entered an order terminating respondent's parental rights on the ground of neglect. Respondent appealed, and by an unpublished opinion filed 18 July 2006, this Court reversed and remanded because the order failed to contain a finding regarding the probability of repetition of neglect if the child were returned to his father's care. *In re J.M.P.*, 178 N.C. App. 561, 631 S.E.2d 893 (2006). The trial court subsequently conducted additional hearings and received additional evidence. On 3 July 2008, the

trial court entered the order that is the subject of the present appeal.

In reviewing an order terminating parental rights, this Court determines whether the findings of fact are supported by clear, cogent and convincing evidence and whether the findings of fact support the conclusions of law. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004). Respondent asserts two challenges to the order terminating his parental rights. He contends (1) the trial court abused its discretion by finding as fact and concluding as law that it is in the best interest of the child that respondent's parental rights are terminated, and (2) the trial court's findings of fact do not support its conclusion of law that respondent neglected the child and that there is a probability of repetition of that neglect. We address these contentions in inverse order.

A court may terminate parental rights if it concludes the parent neglected the juvenile within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2007). A neglected juvenile is defined by N.C. Gen. Stat. § 7B-101 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. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been

subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2007).

In making its determination, the trial court may consider evidence of neglect prior to removal of a child from custody, and "must also consider 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). In the case of a child who has not resided in the parent's home due to neglect or abuse of another child, as here, "the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case." *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

Other than the trial court's finding of fact that it is in the best interest of the child that respondent's parental rights be terminated, respondent does not assign error to any of the court's findings of fact. Those findings of fact are therefore conclusive and binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

The court's findings of fact show that respondent physically abused the child's older half-sibling, resulting in serious injury. At the time the child was born, his mother signed a protection plan promising not to allow respondent to be in the presence of the child. Respondent violated the protection plan, thereby causing

the child to be removed from the mother and placed in the custody of DSS.

The court's findings of fact also show that respondent has been incarcerated during the majority of the child's life, that respondent has displayed almost no interest in the child while he has been out of prison, and that respondent has shown interest in the child only while he has been incarcerated. When respondent was out of prison from June 2006 through September 2006, he sent nothing to the juvenile and failed to contact DSS. Respondent has not offered any support for the child. After returning to prison, respondent mailed only a letter in March 2007 and a card in May 2007 to DSS for forwarding to the child. Respondent has not taken any steps to legitimize the child although he has never denied that he is the father of the child.

The trial court found

40. That the Respondent father has neglected the juvenile as defined in [N.C. Gen. Stat.] § 7B-101(15) by not providing proper care, supervision, or discipline to the juvenile, basically abandoning the juvenile. This juvenile had lived in a home where another juvenile had been abused by this Respondent father who had also lived in the home.

41. That since the juvenile was placed in the custody of the Department of Social Services, the Respondent father has continued to neglect the juvenile by failing to provide proper care, supervision or discipline. The Respondent father has basically abandoned this juvenile except for his few inquiries and few letters.

42. That this neglect has been based on past performance of the Respondent father. The Respondent father lacks initiative toward involvement or contact with the juvenile

except when he is incarcerated by the Department of Correction.

43. That based on the Respondent father's past performance of neglect toward this juvenile and his continuing criminal activity, the Court finds that the likelihood of continued neglect will occur in the future.

We hold the foregoing findings of fact support the trial court's conclusion that the child is neglected and that the child will likely continue to be neglected by respondent in the future. We overrule this assignment of error.

We next address respondent's contention that the trial court erred by concluding it is in the best interest of the child that respondent's parental rights be terminated. Once a court concludes a ground for termination of parental rights exists, it must then decide whether termination is in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a) (2007); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). The decision is within the discretion of the trial court and is reviewed only for abuse of discretion. *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406-07 (2003). "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." *Chicora Country Club, Inc. v. Town of Erwin*, 128 N.C. App. 101, 109, 493 S.E.2d 797, 802 (1997) (citation and quotation marks omitted), *disc. review denied*, 347 N.C. 670, 500 S.E.2d 84 (1998).

Our General Assembly has provided the following factors for the trial court to consider in making this determination:

- (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(a) (2007). Here, the trial court found that the child was born in 2003, that termination of parental rights would assist in the permanent plan of adoption, that a bond between the child and respondent was nonexistent, that a normal parent-child bond existed between the prospective adoptive parents and the child, that the prospective adoptive family was the only family the child had known and the only family with whom the child had lived, and concluded therefrom that the best interest of the child would be served by termination of respondent's parental rights. The findings and conclusion reflect a rational consideration of the statutory factors. We find no abuse of discretion.

Respondent is deemed to have abandoned his other assignment of error by not bringing it forward and arguing it in his brief. N.C.R. App. P. 28(b)(6). The order terminating respondent's parental rights is affirmed.

AFFIRMED.

Judges McGEE and ELMORE concur.

Report per Rule 30(e).