NO. COA08-1194

NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2009

IN THE MATTER OF:

M.X.R. Harnett County
No. 06 J 230

Appeal by respondent from order entered 24 July 2008 by Judge Reson O. Faircloth in Harnett County District Court. Heard in the Court of Appeals 16 February 2009.

E. Marshall Woodall and Duncan B. McCormick for petitioner-appellee Harnett County Department of Social Services.

Pamela Newell Williams for Guardian ad Litem.

Richard Croutharmel for respondent-mother.

BRYANT, Judge.

Respondent-mother ("respondent") appeals from an order terminating her parental rights to M.X.R[1]. We affirm.

Facts

On 3 November 2006, Harnett County Department of Social Services ("HCDSS") obtained nonsecure custody of respondent's two-week-old child, M.X.R. HCDSS subsequently filed a juvenile petition on 6 November 2006 which alleged that M.X.R. was a

[1] Initials have been used throughout this opinion to protect the identity of the juvenile.

neglected juvenile because of improper care and living in an environment injurious to the juvenile. The petition stated that M.X.R.'s two older siblings had been removed from respondent's care due to improper care of the children, unstable living arrangements, domestic violence issues, and respondent's failure to obtain treatment for diagnosed mental disorders.[2] The trial court continued non-secure custody of M.X.R. with HCDSS on 9 November 2006. On 8 December 2006, the trial court adjudicated M.X.R. to be a neglected juvenile, placed him in the custody of HCDSS with authority to place him with relatives, and adopted a plan of reunification.

On 2 February 2007, the trial court conducted a review hearing. HCDSS submitted a report which indicated respondent was complying with her case plan. Respondent had separated from M.X.R.'s father, resolving the domestic violence issues, and had obtained stable housing and employment. The trial court continued custody with HCDSS, continued the plan of reunification with respondent, and ceased reunification efforts with the father. At an 11 May 2007 review hearing, the trial court found that respondent was residing with her new boyfriend, J.L.; that she had been diagnosed with dysthymia and Post Traumatic Stress Disorder; that she was currently employed; and that she visited with M.X.R. two hours weekly. The court authorized unsupervised day visitations with respondent and continued reunifications efforts.

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[2] Respondent subsequently relinquished her rights to M.X.R.'s older sibling, P.R.; respondent's rights to Pa.R. were terminated by court order on 28 November 2006.

On 10 August 2007, the trial court continued custody with HCDSS and continued the plan of reunification with respondent.

On 25 January 2008, the trial court conducted a permanency planning review hearing. The court continued custody with HCDSS, but ceased reunification efforts with respondent, and changed the plan to adoption based on its findings that respondent had ceased to comply with the case plan by, among other things, failing to maintain employment and failing to maintain a safe living environment. On 18 February 2008, HCDSS filed a motion in the cause for termination of parental rights. The matter was heard on 23 May 2008. On 24 July 2008, the trial court entered an order terminating respondent's and respondent-father's parental rights. The trial court concluded grounds existed for termination of respondent's parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), (a)(2), (a)(3), and(a)(9). Respondent appeals.

Respondent brings forth four arguments on appeal: (I) whether the trial court lacked subject matter jurisdiction to terminate respondent's parental rights; (II) whether the trial court committed reversible error by finding and concluding grounds existed to terminate respondent's parental rights; (III) whether the trial court's conclusions of law were supported by competent evidence; and (IV) whether the trial court abused its discretion by terminating respondent's parental rights.

I

Respondent first argues the trial court lacked subject matter jurisdiction to terminate her parental rights. Specifically, respondent contends the underlying juvenile adjudication petition was defective because the person verifying the petition asserted that he was the "Director" of HCDSS when he was not, in fact, the Director. We disagree.

"A trial court's subject matter jurisdiction over all stages of a juvenile case is established when the action is initiated with the filing of a properly verified petition." *In re T.R.P.*, 360 N.C. 588, 593, 636 S.E.2d 787, 792 (2006). "[T]he petition shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing." N.C. Gen. Stat. § 7B-403(a)(2007).

We find the controlling precedent is *In re Dj.L.*, 184 N.C. App. 76, 646 S.E.2d 134 (2007). In *Dj.L.*, this Court held that the trial court had subject matter jurisdiction as long as the petition contained sufficient information from which the trial court could determine that the individual signing the petition had standing to initiate a juvenile action under N.C. Gen. Stat. § 7B-403(a). *Dj.L.*, 184 N.C. App. at 80, 646 S.E.2d at 137.

In the instant case, the juvenile petition was signed by Kenneth Roper. He checked the box indicating that he was "Director" rather than the box indicating that he was the "Authorized Representative of Director." It is undisputed that Kenneth Roper is not the Director of HCDSS. However, the affidavit as to the status of the minor child was signed and verified by

Kenneth Roper and indicates that he was a "HCDSS-Social Worker." Moreover, in the verification section of the petition, "Harnett County Department of Social Services" is typed below the "Director" and "Authorized Representative of Director" boxes. The address, "311 Cornelius Harnett Blvd, Lillington, NC", is the address for HCDSS. We conclude that the petition "contained sufficient information from which the trial court could determine that [Kenneth Roper] had standing to initiate an action under section 7B-403(a)." *Dj.L.*, 184 N.C. App. at 80, 646 S.E.2d at 137.

II

Respondent argues the trial court erred in finding and concluding that grounds existed to terminate her parental rights. Specifically, respondent challenges the following findings of fact made by the court justifying the termination of her parental rights:

> 17. At a psychological evaluation the mother was diagnosed with Dysthymia (depression) and prolonged post traumatic stress disorder. The mother participated in therapy sessions with Dr. Sandlin until October 3, 2007, when he became sick and was unable to continue. She began seeing Dr. Sandlin on or about July 18, 2005. She had maintained periodic compliance with therapy treatment. The mother failed to arrange for therapy with other providers; she objected to a female therapist. Excel (the provider) arranged sessions with another therapist; however, the mother did not attend although encouraged by the social worker. She did participate in a screening with Ms. Amy Brown at Sandhills Mental Health Center on or about January 14, 2008, attended an intake appointment on February 27, 2008 but did not attend another session until approximately May 7, 2008.
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> . . .

> 19. From February 2007 to the present, the mother has lived in a home on 202 West "J" Street, Erwin, NC with her boyfriend. The couple engaged in acts of domestic violence during August 2007, (the boyfriend slapped her around and broke windows) and they separated for some time but are now resuming their relationship.
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> 20. The mother has not maintained regular and stable employment; at the time of the permanency planning review on January 25, 2008, she had paid $100 in support of the juvenile.
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> 26. During the six months period, the mother paid a total of $100.00 and the father paid $0.
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> 30. During the aforesaid six (6) months period, the mother paid the sums of $100.00 for the child. In addition, the mother gave or made available some clothes, some diapers and toys. The mother's cash payment constitutes approximately 2.5% of the costs of the expenses incurred by DSS for the juvenile during the six months period. The mother has failed to pay a reasonable portion of the cost of the care of the juvenile.

Termination of parental rights cases involve two separate components. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). In the adjudicatory stage, the burden is on the petitioner to prove that at least one ground for termination exists by clear, cogent, and convincing evidence. N.C. Gen. Stat. § 7B-1109 (2007); *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908. This Court reviews the adjudicatory stage to determine "whether the trial court's findings of fact are based on clear, cogent, and convincing evidence and whether those findings support the trial

court's conclusion that grounds for termination exist pursuant to N.C. Gen. Stat. § 7B-1111." *In re C.W.*, 182 N.C. App. 214, 219, 641 S.E.2d 725, 729 (2007)(citations omitted). A finding of any one of the grounds enumerated in N.C. Gen. Stat. § 7B-1111 is sufficient to terminate respondent's parental rights. *In re Yocum*, 158 N.C. App. 198, 204, 580 S.E.2d 399, 403-04 (2003), *aff'd*, 357 N.C. 568, 597 S.E.2d 674 (2003).

A court may terminate parental rights upon finding that the "parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home." N.C. Gen. Stat. § 7B-1111(a)(9)(2007).

Here, the trial court found that respondent's parental rights to another juvenile, Pa.R., were terminated on 28 November 2006. Respondent does not dispute this fact; however, she does argue that the only finding made relating to her home at the time of the termination hearing was finding of fact number 19, and said finding is insufficient to support the conclusion that she lacks the ability or the willingness to establish a safe home for M.X.R.

There was testimony presented during the adjudicatory phase that in August 2007, respondent and her boyfriend engaged in acts of domestic violence. Respondent first reported that her boyfriend slapped her, broke windows, and verbally abused her. Respondent advised HCDSS that she would obtain a protective order, but changed her story a few days later and failed to obtain a protective order.

At the termination hearing, respondent admitted that "there was

a lot of pushing and there was a lot of yelling and screaming" between her and her boyfriend in August 2007. Accordingly, we conclude that finding of fact number 19 is based on clear, cogent, and convincing evidence. Moreover, the trial court made the following findings of fact, which are not challenged by respondent:

> 18. The mother participated in Parents as Teachers Program on a regular basis up through July 2007; however, she failed to attend or participate regularly thereafter. She did not attend after November 2, 2007. The mother completed some of the assignments made through the program but failed on others. She did not follow through on recommendations as to help with money management and budgeting.
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> 21. [In] the dispositional order, the mother was allowed supervised visits with the juvenile with the caretakers serving as supervisors of visitation. The provision for supervised visitation was continued at the February 2, 2007 court hearing. At the May 11, 2007 hearing, the mother's visitation was appreciably increased with limited unsupervised day visitation. At the August 10, 2007 hearing, the unsupervised visitation was increased to five (5) [hours] per week with authority to increase to overnight visits. At least some of those unsupervised visits were in the mother's home. During home visits, the social worker and the Parents as Teachers representatives noted that several others were also visiting the home while the juvenile was present and their presence was constituting a problem for the parental visitation. Unsupervised visitation was terminated when the mother's electrical service was turned off (may have been illegally re-connected) and report was received by DSS that the respondent father was visiting the mother while the juvenile was present (violation of the visiting arrangement).

A finding of fact that is not challenged by a properly briefed assignment of error is binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

We believe these findings are sufficient to support the trial court's conclusion that respondent lacks the ability or the willingness to establish a safe home for M.X.R. The evidence tended to show that after initially complying with her case plan, respondent stopped making progress on the reunification plan. We, therefore, conclude that the trial court did not err in concluding that grounds exist to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(9). "[W]here we determine the trial court properly concluded that one ground exists to support the termination of parental rights, we need not address the remaining grounds." *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 663 (2003).

III

Respondent next argues that the trial court abused its discretion by concluding that it was in M.X.R.'s best interest to terminate her parental rights. We disagree.

After the trial court has determined that a ground for termination exists, the court moves on to the disposition stage, where it must determine whether termination is in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a) (2007). The determination of whether termination is in the best interest of the minor child is governed by N.C. Gen. Stat. § 7B-1110, which states that the trial court shall consider the following factors:

> (1) The age of the juvenile.
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> (2) The likelihood of adoption of the juvenile.
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> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
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> (4) The bond between the juvenile and the parent.
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> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
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> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a). The decision of the trial court regarding best interests is within its discretion and will not be overturned absent an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

Here, the trial court made the following findings:

> 34. The juvenile herein was placed in the home of the mother's relatives (aunt and uncle) who also have in their home an older sibling (juvenile Pa.R), whom the couple has adopted. The juvenile herein has adjusted well to this home, having been placed their [sic] continually since December 13, 2006 (a total of eighteen months or nearly 95% of his life). The juvenile has a good relationship or bond with the caretakers and considers them as his parents. The placement is a pre-adoptive placement for the juvenile. The caretakers have a natural child and all juveniles in the home have a good relationship.
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> 35. The juvenile continues to visit with the mother on a supervised basis pursuant to an agreement with the caretakers. The child has a good relationship with the mother as well as with the juvenile [Pa.R] who lives in this home.

> . . .
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> 37. The juvenile is healthy. The likelihood that the juvenile will be adopted is good. The juvenile is in need of a stable and safe home. The present caretakers have afforded such home for the juvenile.
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> 38. Termination of the rights of the respondent parents will assist in obtaining a safe and stable home for the juvenile.

We conclude that the trial court considered the relevant statutory factors, and its decision was properly based on sufficient findings. The trial court did not abuse its discretion in determining that it was in M.X.R.'s best interest to terminate respondent's parental rights. The order of the trial court is affirmed.

Affirmed.

Judges HUNTER (Robert C.) and CALABRIA concur.

Report per Rule 30(e).