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NO. COA08-1294

NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2009

IN THE MATTER OF:

K.W.B.,  
A Minor Child.

Haywood County  
No. 07 JT 54

Appeal by respondent from orders entered 6 June 2008 and 8 August 2008 by Judge Bradley B. Letts in Haywood County District Court. Heard in the Court of Appeals 16 February 2009.

# Court of Appeals

*Ira L. Dove for petitioner-appellee Haywood County Department of Social Services.*

*Pamela Newell Williams for Guardian ad Litem.*

*Charlotte Gail Blake for respondent-mother.*

# Slip Opinion

BRYANT, Judge.

K.M.B.<sup>1</sup> ("respondent") appeals from an order entered 6 June 2008 terminating her parental rights to K.W.B. ("the juvenile"). We affirm.

## *Facts*

Respondent is the biological mother of the minor child, born in December 1998. The identity of the juvenile's father is unknown. The juvenile first came into the custody of the Haywood County Department of Social Services ("petitioner") on 15 December

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<sup>1</sup> Initials have been used throughout this opinion to protect the identity of the juvenile.

2000, and was subsequently found to be dependent due to respondent's history of substance abuse. On 28 June 2001, respondent regained custody of the juvenile until 18 September 2001 when petitioner again assumed custody after respondent was arrested for possession with intent to sell and deliver Valium. The juvenile was found to be neglected on 29 November 2001 and remained in petitioner's custody until 28 February 2002, whereupon respondent regained custody of the juvenile.

The juvenile came into petitioner's custody again on 14 April 2005 and has since remained in the custody of petitioner. That day, deputies of the Haywood County Sheriff's Office went to respondent's home to investigate allegations of drug use. The deputies found the juvenile in the home along with drug paraphernalia, a small quantity of methamphetamine, and a .22 caliber rifle. Respondent was arrested and subsequently pled guilty to possession of a firearm by a felon. Respondent was sentenced to twenty-four months of supervised probation.

On 14 September 2005, the juvenile was found to be neglected and dependent due to respondent's previous lack of supervision of the juvenile and possession of methamphetamine found in the family home. The trial court set the permanent plan for the juvenile as reunification with respondent and ordered respondent to:

- a. complete a substance abuse assessment and follow all recommendations;
- b. attend and participate in AA and NA meetings and obtain, if she does not have, a sponsor to monitor her attendance and participation at those meetings;

- c. complete a mental health assessment and follow all recommendations, including an appointment in regard to medication;
- d. seek financial assistance through mental health or the Good Samaritan Clinic for the cost of any prescribed medications;
- e. submit to a hair follicle drug screen and other random drug screens at the request of the Department of Social Services;
- f. execute any necessary consent [forms] for the Department of Social Services to monitor her compliance; and,
- g. participate in the development of a case plan with the Department of Social Services.

Initially, respondent took steps toward addressing the requirements of the trial court's order and the issues identified by petitioner. Respondent obtained a substance abuse assessment, a domestic violence assessment and a mental health assessment. Due to respondent's demonstrated progress in meeting the goals of her case plan, and the juvenile's progress in therapy, the juvenile began a trial home placement with respondent on 14 June 2006. However, the trial home placement ended on 30 November 2006, when respondent's probation was revoked due in part to positive drug screens, resulting in her incarceration from 30 November 2006 through 1 December 2007.

Petitioner continued to work toward a case plan with respondent even while she was incarcerated, attempting to address issues of substance abuse, future housing, parenting skills, mental health, and respondent's criminal matters. While incarcerated, respondent participated in the Mother Read program, Narcotics Anonymous, a Cognitive Behavioral Intervention program, the Drug

Alcohol Recovery Treatment program and the ancillary after-care substance abuse program, and the New Leash On Life prison inmate and dog obedience training program.

On 19 March 2007, the trial court entered an order in which it relieved petitioner of further reunification efforts and changed the permanent plan for the juvenile to adoption. Petitioner subsequently filed a petition to terminate respondent's parental rights to the juvenile on 27 March 2007. Petitioner alleged grounds existed to terminate respondent's parental rights to the juvenile in that: (I) respondent neglected the juvenile within the meaning of N.C. Gen. Stat. § 7B-101(15) and the neglect continued through the date of the filing of the petition; (II) respondent willfully left the juvenile in a placement outside the home for more than twelve months without showing to the satisfaction of the Court that she had made reasonable progress toward correcting those conditions which led to the removal of the juvenile; and (III) respondent, for a continuous period of six months next preceding the filing of the petition, had willfully failed to pay a reasonable portion of the cost of care for the juvenile, who had been placed in the custody of a county department of social services.

The initial hearing on the petition to terminate respondent's parental rights to the juvenile was originally set for 31 May 2007 but was twice continued and began on 29 August 2007. However, upon receiving evidence that respondent had been previously diagnosed as bipolar the trial court declared a "mistrial," continuing the

matter until 3 October 2008 and appointing a Guardian ad Litem to represent respondent's interests and assist her in the termination proceedings. Numerous other continuances were entered in this matter until the case came on for an adjudicatory hearing from 7 May through 9 May 2008.

At the close of the hearing, the trial court found grounds existed for terminating respondent's parental rights to the juvenile, and continued the disposition hearing until 16 July 2008. On 6 June 2008, the trial court entered an order finding all three grounds as alleged in the termination petition. At the disposition hearing on 16 July 2008, the trial court concluded it was in the best interest of the juvenile to terminate respondent's parental rights. The trial court entered its order terminating respondent's parental rights to the juvenile on 8 August 2008. On 16 June 2008, and 18, 19 and 27 August 2008, respondent filed written notices of appeal from the trial court's adjudication and disposition orders.

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Respondent brings forth three arguments on appeal: (I) the trial court erred in finding and concluding that grounds existed to terminate respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2); (II) the trial court erred in finding and concluding that grounds existed to terminate respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1); and (III) the trial court abused its discretion by finding it in the best interest of the juvenile to terminate respondent's parental rights.

Respondent argues the trial court erred in finding grounds existed to terminate her parental rights to the juvenile pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), in that she neglected the juvenile and the neglect continued through the date of the adjudication hearing. We disagree.

“The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (quoting *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984)), *disc. review denied*, *In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). If the trial court’s findings of fact “are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.” *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). “[I]t is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony.” *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). Additionally, the trial court’s findings of fact to which an appellant does not assign error are conclusive on appeal and binding on this Court. *In re J.D.S.*, 170 N.C. App. 244, 250-51, 612 S.E.2d 350, 354-55, *cert. denied*, 360 N.C. 64, 623 S.E.2d 584 (2005).<sup>2</sup>

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<sup>2</sup> We note that although respondent assigned error to several of the trial court’s findings of fact, she has not specifically argued in her brief that those findings are not supported by the

Termination of parental rights involves a two-step process involving an adjudicatory stage and a dispositional stage. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). At the adjudicatory stage, the petitioner must show by clear, cogent and convincing evidence that a statutory ground to terminate exists. *Id.* If the trial court determines that grounds for termination exist, the trial court must proceed to the dispositional stage where it determines whether terminating parental rights is in the best interest of the juvenile. *Id.*; see also N.C. Gen. Stat. § 7B-1110(a) (2007).

Neglect, within the meaning of N.C. Gen. Stat. § 7B-101(15), is one of the grounds which can support a termination of parental rights. A neglected juvenile is defined in part as one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare . . . ." N.C. Gen. Stat. § 7B-101(15) (2007). Generally, "[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) (citation omitted). However, "[a] prior adjudication of neglect may be admitted and considered by the trial court in ruling

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evidence. Accordingly, respondent has abandoned those assignments of error, and the findings of fact are deemed binding on appeal. See, *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404 (2005) (concluding findings of fact were binding on appeal where respondent had abandoned factual assignments of error when she "failed to specifically argue in her brief that they were unsupported by evidence").

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). Where a prior adjudication of neglect is considered by the trial court, "[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 (citation omitted). "[P]arental rights may . . . 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." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citing *Ballard*, 311 N.C. at 716, 319 S.E.2d at 232).

Here, the trial court concluded neglect existed as a ground to terminate respondent's parental rights to the juvenile based in part upon prior adjudications of neglect. Additionally, because at the time of the termination proceedings the juvenile had been out of the custody of respondent for over three years, the trial court concluded the "likelihood of ongoing, continued neglect is significant in that the Respondent Mother simply has taken insufficient and inappropriate steps to enable her to properly parent [the juvenile] now or in the foreseeable future." We find the trial court's conclusions regarding neglect are supported by the following findings of fact, which are in turn either binding on this Court or supported by clear, cogent and convincing evidence:

64. Regarding her case plans with the Department, [respondent] was required to



participate in parenting classes. [Respondent] provided no proof to the Department or this Court of any parenting classes that she completed other than the Mother Read Program while in the Department of Correction[.]

. . .

71. During the initial counseling sessions Ms. Clancy[, a therapist for both respondent and the juvenile,] would see [the juvenile] on either a weekly or biweekly basis. From July 2005 through January 2006 the issues that Ms. Clancy identified and chose to address with [the juvenile] were anxiety, separation from his Mother, adjusting to his placement at Broyhill, and helping him understand his role as a child versus a child being placed in a role of responsibility akin to an adult.

. . .

75. Through the[] counseling session from January 2006 to June 2006, Ms. Clancy found that [respondent] was inconsistent with her visits and when she did attend, she was many times tardy.

. . .

77. Through this process [respondent] had [also] seen Susan Marks for an assessment. Ms. Marks had recommended that [respondent] obtain counseling and referred her to Robin King [a nurse practitioner]. Ms Marks' assessment of [respondent] found that she had Bipolar Disorder, as well as an Anxiety Disorder.

. . .

80. [T]he trial home placement [of the juvenile] began in June 2006. Ms. Clancy was supposed to see [the juvenile] biweekly; however she only saw [the juvenile] a few times over the summer, on June 16, 2006 and August 16, 2006. [Respondent] did not bring the child to counseling. . . . Ms. Clancy did find however, in dealing with [respondent,] that she exhibited depreciable and noticeable signs of depression and mood swings.

. . .

96. While placed with [respondent, the juvenile] would act and was concerned about attempting to ensure [respondent] was able to get out of bed, eat properly, and [the juvenile] remained concerned about the care that was provided to [a younger sibling].

97. The concern [the juvenile] showed both for [respondent and the younger sibling] was inappropriate and beyond the boundaries of a child of [the juvenile's] age and would be only found in a caregiver or parental role. It was inappropriate for [the juvenile] to be concerned regarding such large and weighty issues based upon [the juvenile's] age.

. . .

108. [Respondent has] provided no documentation that she is currently seeing a physician or any other mental health provider regarding her issues related to her Bipolar Disorder, related to her Depression Disorder, and related to her Anxiety Disorder.

109. [Respondent] has provided no documentation that she receives or takes any medicines prescribed at this time. [Respondent] has asserted that she no longer needs to take any medicines.

. . .

120. [Respondent] no longer attends any Alcoholic's Anonymous meetings, she no longer attends any Narcotics Anonymous meetings, and she has not done so since she was released from the Department of Correction[] on December 1, 2007.

. . .

124. [Respondent] has not seen any mental health professionals; either psychiatrists, psychologists, counselors, or any other mental health professionals, since she was released from the Department of Correction[] on December 1, 2007.

. . .

127. [Respondent] testified that, except for some cleaning and recent painting of houses . . . , she has remained throughout the Department's involvement with [the juvenile] unemployed. . . . [F]or approximately the last ten years, she has had no considerable employment outside of the home.

. . .

129. [Respondent] brought no proof to the Court of applying at the Employment Security Commission since being released from Prison on December 1, 2007, nor has she brought any copy or provided to the Court any names of any locations or employers that she has provided job applications to.

. . .

141. In addition to failing to follow through with any treatment while not in the Department of Correction[, respondent] did not follow through in providing documentation of following through with any domestic violence treatment that was [previously] recommended .

. . .

Therefore, we hold the trial court's order terminating respondent's parental rights on the basis of neglect was fully supported by the record. In light of our holding with respect to the ground of termination based upon neglect, we need not address respondent's arguments regarding the remaining grounds for termination found by the trial court. N.C. Gen. Stat. § 7B-1111(a) (2007) ("The court may terminate the parental rights upon a finding of one or more of the following[.]"); *In re D.B.*, 186 N.C. App. 556, 561, 652 S.E.2d 56, 60 (2007) ("Where a trial court concludes that parental rights should be terminated pursuant to several of the statutory grounds, the order of termination will be affirmed if the court's conclusion with respect to any one of the statutory

grounds is supported by valid findings of fact."), *aff'd per curiam*, 362 N.C. 345, 661 S.E.2d 734 (2008).

III

Respondent next argues the trial court erred in concluding it was in the best interest of the juvenile to terminate respondent's parental rights. Respondent contends the trial court abused its discretion in terminating her parental rights due to her close bond with the juvenile and current lack of substance abuse or depressive symptoms. We disagree

At the disposition phase of proceedings to terminate parental rights, the trial court is required to "determine whether terminating the parent's rights is in the juvenile's best interest" in light of the following considerations:

- (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). Respondent does not specifically argue the trial court failed to consider the six factors enumerated in N.C. Gen. Stat. § 7B-1110(a) and our review of the record shows the trial court made a proper consideration of

all six factors. Further, in the disposition order terminating respondent's parental rights to the juvenile, the trial court found the juvenile's bond with respondent was "very unhealthy." The trial court also found that the juvenile's mental health improvement was directly related to the length of time the juvenile had been out of the home, and that the longer the juvenile is away from respondent, the more the juvenile heals. Based upon these findings we cannot say the trial court's decision is manifestly unsupported by reason. While respondent may have been making some progress in addressing the issues relating to her neglect of the juvenile, her actions do not demonstrate a consistent commitment to correcting the conditions which previously led to her neglect of the juvenile. We thus find no abuse of discretion in the trial court's conclusion that termination of respondent's parental rights is in the juvenile's best interest and affirm the orders terminating respondent's parental rights to the juvenile.

Affirmed.

Judges HUNTER (Robert C.) and CALABRIA concur.

Report per Rule 30(e).