NO. COA08-492

NORTH CAROLINA COURT OF APPEALS

Filed: 16 September 2008

IN THE MATTER OF:
I.A.A., M.A.A.

Randolph County
Nos. 05 JT 84
07 JT 27

Appeal by respondent-mother from judgments entered 12 March 2008 by Judge Scott Etheridge in Randolph County District Court.

Heard in the Court of Appeals 26 August 2008.

Staff Attorney Erica Glass for Randolph County DSS, petitioner appellee.

Associate Legal Counsel Pamela Newell Williams, for Guardian ad Litem.

Hartsell & Williams, P.A., by Christy E. Wilhelm, for respondent-mother appellant.

McCULLOUGH, Judge.

The present appeal arises from district court orders terminating the parental rights of respondent-mother and respondent-father as to their minor children I.A.A. and M.A.A. On appeal filed by respondent-mother, we affirm the orders of the district court.

The relevant facts and procedural background are as follows: I.A.A. and M.A.A. (collectively, "the minor children") are the biological children of Jonie D. ("respondent-mother") and Jeremiah A. ("respondent-father"). Randolph County Department of Social

Services ("DSS") has been involved with this family since 2002, when respondent-mother's older two children were removed from the home due to respondent-mother's alcoholism, substance abuse, and inability to care for her children. M.A.A. was born in 2005, at which time alcohol was found in both respondent-mother's and M.A.A.'s bloodstream. On 29 March 2005, respondent-mother was observed driving a vehicle while intoxicated. She ran the vehicle off of the road and knocked over mailboxes and other property. Law enforcement found M.A.A., who was just one month old, unrestrained in the vehicle. Respondent-mother's blood alcohol concentration was determined to be 0.22.

In addition to respondent-mother's history of alcohol and substance abuse, she also has a history of domestic violence with respondent-father. On 29 March 2005, respondent-mother and respondent-father were involved in a physical altercation in which M.A.A. was the subject of a physical "tug of war" between the parents; respondent-father reported that he finally relinquished the child in order to prevent injury to her.

On 30 March 2005, DSS filed a juvenile petition alleging that M.A.A. was abused, neglected, and dependent. DSS alleged that respondent-mother drove intoxicated while M.A.A. was a passenger in the car and that respondent-mother and respondent-father engaged in domestic violence in the presence of M.A.A. DSS obtained nonsecure custody of M.A.A. On 30 March 2005, and on 3 May 2005, the trial court entered an orders continuing custody with DSS and allowing

visitation. M.A.A. was placed in a foster home with her older sister and thrived in that environment.

In May of 2005, respondent-mother underwent a psychological assessment and drug screening. She tested positive for opiates and benzodiazepines. It was recommended that she receive in-patient treatment, but she refused. Respondent-mother began treatment as an out-patient in June 2005, but repeatedly tested positive during drug screens. She was inconsistent in her therapy appointments and refused to attend paternity testing and child support meetings when they were scheduled.

Respondent-father maintained stable employment, but refused to attend domestic violence counseling. He did not attend child support meetings and did not contribute monetarily toward the care of his children. He also failed to maintain a stable household and began living with his parents.

In February of 2007, however, DSS assessed that respondent-mother and respondent-father had exhibited significant progress in complying with the agency and participating in services. Accordingly, DSS recommended that M.A.A. be returned to the custody of her parents. On 7 February 2007, custody of M.A.A. was returned to respondent-mother. On 19 February 2007, respondent-mother was stopped by law enforcement and was charged with the following offenses: driving while impaired, driving while license revoked, child not in rear seat, unsealed wine/liquor in passenger area, and open container after consuming alcohol.

On 21 February 2007, DSS filed juvenile petitions alleging that M.A.A. and I.A.A. were neglected juveniles, in that they did "not receive proper care, supervision, or discipline" from their parents or caretakers and they lived "in an environment injurious to [their] welfare." The trial court ordered that the minor children be placed in the nonsecure custody of DSS, and the minor children were placed together in a foster home.

On 18 April 2007, the trial court adjudicated the minor children neglected and ordered that the minor children remain in DSS's custody. On 11 July 2007, the trial court held a review hearing and found that "[n]either parent is actively engaged in treatment nor other services needed to reunify the minor children with them." The trial court ordered respondent-mother to comply with all requests for random drug and urine screens at the time and date requested and granted both parents visitation of the minor children for two hours per week.

On 22 October 2007, DSS moved to terminate respondent-mother and respondent-father's parental rights. Neither parent was present at the hearing on the matter, which was held on 30 January 2008; both parents, however, were represented by counsel. Following the hearing, the trial court entered orders in which it determined that grounds existed to terminate respondent-parents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111 (2007) because the minor children were dependent children, the minor children were neglected; the parental rights of respondent-mother with respect to another child had been terminated involuntarily; respondent parents

had failed to pay a reasonable portion of the cost of care for the minor children for the six months preceding the filing of DSS's motion; and respondent-father had willfully abandoned the children for at least six consecutive months immediately preceding the filing of DSS's motion. The trial court concluded that a termination of respondent-parents' parental rights would be in the children's best interests. Accordingly, the trial court terminated the parental rights of respondent-mother and respondent-father as to M.A.A. and I.A.A. Respondent-mother now appeals.

I. Subject Matter Jurisdiction

On appeal, respondent-mother first contends that the trial court lacked subject matter jurisdiction to terminate her parental rights because the Director of the Randolph County DSS did not personally verify the petition in violation of N.C. Gen. Stat. § 7B-403(a) (2007). We disagree.

A petition to terminate parental rights "may only be filed" by a person or agency given standing by N.C. Gen. Stat. § 7B-1103(a) (2007). One such agency is "[a]ny county department of social services . . . to whom custody of the juvenile has been given by a court of competent jurisdiction." N.C. Gen. Stat. § 7B-1103(a)(3). "Standing is jurisdictional in nature and '[c]onsequently, standing is a threshold issue that must be addressed, and found to exist, before the merits of [the] case are judicially resolved.'" *In re Miller*, 162 N.C. App. 355, 357, 590 S.E.2d 864, 865 (2004).

Section 7B-403 provides that "the 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). Juvenile petitions may also, however, be signed and verified by an authorized representative of the director. *In re D.L.*, 184 N.C. App. 76, 78-80, 646 S.E.2d 134, 137 (2007); *see also In re T.R.P.*, 173 N.C. App. 541, 546, 619 S.E.2d 525, 529 (2005), *aff'd and remanded*, 360 N.C. 588, 636 S.E.2d 787 (2006). Here, the juvenile petition was signed by Social Worker S.A. Green, with a check in the appropriate box to indicate that he was signing in his capacity as an authorized representative of the Director. Thus, the petition complies with the requirements of N.C. Gen. Stat. § 7B-403(a). This assignment of error is overruled.

II. Judicial Notice

Respondent-mother next contends that the trial court erred by incorporating previous court orders and reports into its termination orders.

This Court repeatedly has held that a trial court may take judicial notice of earlier proceedings in the same case. *See In re J.W., K.W.*, 173 N.C. App. 450, 455-56, 619 S.E.2d 534, 539-40 (2005), *aff'd*, 360 N.C. 361, 625 S.E.2d 780 (2006); *In re J.B.*, 172 N.C. App. 1, 16, 616 S.E.2d 264, 273 (2005); *In re Isenhour*, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73 (1991). Evidence of neglect by a parent prior to the losing custody of a child, including adjudication of neglect is admissible in subsequent proceedings to terminate parental rights. *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984).

Respondent-mother argues that the facts of this case are analogous to the facts of *In re D.L., A.L.*, 166 N.C. App. 574, 582-83, 603 S.E.2d 376, 381-82 (2004), where the petitioner presented no evidence to the trial court other than a DSS summary, which the trial court then adopted into its order. We held that the adoption of the DSS summary into the Order was insufficient to constitute competent evidence to support the trial court's findings of facts. *Id.* at 583, 603 S.E.2d at 382. Here, however, it is clear from the transcript, that in addition to taking judicial notice of the underlying files, the trial court heard the testimony of Social Worker Tasha Hall ("Hall") and conducted an independent assessment of the facts:

> THE COURT: I'm not going to find that she didn't have stable employment because she has had a job continuously with the exception of maybe a one-month period, if I am not mistaken. So I'm not finding that beyond clear, cogent, convincing evidence.
>
> * * * *
>
> [COUNSEL]: Number 9A6. Mother failed to obtain a valid driver's license.
>
> THE COURT: Okay. She did resolve the pending legal matters, so I'm not going to find that.

Thus, DSS offered competent evidence to be considered by the trial court, and there is nothing in the record to indicate the trial court failed to conduct an independent determination of the facts and evidence warranting termination of respondent's parental rights. *See J.B.*, 172 N.C. App. at 16, 616 S.E.2d at 273. Respondent-mother has neither demonstrated how she was prejudiced

by the trial court's consideration of the orders and reports from earlier proceedings in the case, nor has she pointed to any findings of fact or conclusions of law which were reached impermissibly due to a reliance on the underlying files. This assignment of error is overruled.

IV. Grounds for Termination of Parental Rights

Respondent-mother next argues that adjudicatory findings of fact number 10(a),(b),(c) and (d) were not based on competent evidence in the record. We disagree.

"In a non-jury neglect adjudication, the trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997).

In finding of fact 10(a)(1), the trial court found that respondent-mother failed to complete an updated substance abuse assessment. This finding is supported by the testimony of Hall, that respondent-mother obtained a substance abuse assessment in March of 2007 from an independent agency rather than the agency to which she was referred by DSS. Moreover, Hall testified that respondent-mother was asked to submit to random drug screens on 15 May 2007 and 20 June 2007, but respondent-mother did not comply. On 3 July 2007, respondent-mother failed to submit to a random drug screen at the time requested. When she did finally submit to the test, the results showed that her urine had been diluted and her hair screen tested positive for cocaine, benzoylecgonine, and

cocaethylene. Thus, there is clear and convincing competent evidence in the record to support this finding.

Next, in finding of fact 10(a)(4), the trial court found that respondent-mother had failed to consistently visit the minor children. Respondent-mother contends that the court failed to consider the reasons that respondent-mother failed to make such visits, including health problems, her work schedule, and court appearances. Irrespective of respondent-mother's purported justifications for not visiting her two minor children, the record contains Hall's uncontroverted testimony that respondent-mother had only attended six of thirty-eight scheduled visits with the minor children since April of 2007. Moreover, Hall testified that DSS attempted to accommodate respondent-mother's scheduling requests on two to three separate occasions, yet respondent-mother still failed to visit her children. Thus, there is clear and convincing competent evidence in the record to support this finding.

Next, in finding of fact 10(b), the trial court found that respondent-mother had failed to pay court ordered child support. This finding is supported by Hall's uncontroverted testimony that respondent-mother was ordered to pay $102 for the care of I.A.A. on 1 September 2007. Hall testified that as of the 30 January 2008 hearing, respondent-mother had not made any payments. Thus, there is clear and convincing competent evidence in the record to support this finding.

Next, respondent-mother contends that there was no competent evidence in the record to support the trial court's finding that

the minor children are dependent within the meaning of N.C. Gen. Stat. § 7B-101(15) (2007) because there was no evidence that respondent-mother was unable to provide an appropriate alternative child care arrangement for the children. Given the evidence of respondent-mother's untreated substance abuse problem coupled with evidence that respondent-father had willfully abandoned the minor children for the six months preceding the filing of DSS's motion, there was clear, cogent, and convincing evidence in the record to support the trial court's finding that the minor children were dependent withing the meaning of N.C. Gen. Stat. § 7B-101(9).

Respondent-mother next contends that the trial court's findings of fact do not support its conclusion that respondent-mother's parental rights should be terminated. We disagree.

As previously discussed, the trial court found several separate grounds pursuant to N.C. Gen. Stat. § 7B-1111 to support the termination of respondent-mother's parental rights, including a finding that the minor children were neglected. N.C. Gen. Stat. § 7B-101(15) defines a neglected juvenile as a juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent. This Court has held that the trial court must find neglect to exist at the time of the termination hearing and that there is a probability of repetition of neglect. *In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232.

Here, the evidence of record shows that just twelve days after M.A.A. was returned to respondent-mother's home, on 19 February 2007, respondent-mother was criminally charged with driving while

licensed revoked, child not in rear seat, unsealed wine/liquor in passenger area, and open container after consuming alcohol. Moreover, as previously discussed, there was clear, cogent, and convincing evidence in the record that respondent-mother had not obtained treatment for her substance abuse issue and that she failed to consistently visit the minor children since their placement in foster care. These findings demonstrate that respondent-mother could not safely and appropriately provide for the proper care and supervision of the minor children. As such, these findings support the trial court's conclusion that the minor children were neglected juveniles. Pursuant to N.C. Gen. Stat. § 7B-1111, this finding of neglect, standing alone, supports its conclusion that there were grounds to terminate respondent-mother's parental rights.

V. Dispositional Phase

Respondent-mother also contends that the trial court erred in finding that it is in the best interest of the minor children to terminate respondent-mother's parental rights. We disagree.

After the trial court finds grounds exist to terminate parental rights, the trial court must consider the following six factors to determine, in its discretion, whether termination of the parent's rights is in the minor child's best interest:

> (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, as previously discussed, the trial court properly concluded that grounds existed to terminate respondent-mother's parental rights under N.C. Gen. Stat. § 7B-1111. It is apparent from the record that after hearing the testimony of Hall and the minor children's foster mother, the trial court then considered all of the statutorily mandated factors and conducted an independent determination that it was in the best interests of the minor children to terminate respondent-mother's parental rights:

> THE COURT: Yes, ma'am. And pursuant to [7B-1110], if you will find that the likelihood of adoption of the juveniles is high, that the foster mother appeared and indicated to the Court the desire and likelihood of adopting the children. That they will--number three, that TPR will aid in the accomplishment of the permanent plan for the juvenile. Also, just make sure that I considered one through six of [7B-1110] and specifically as to number five, **I note that no correspondence whatsoever has been forthcoming from the father. That the mother's lack of visitation since--was it April?**
>
> SPEAKER: Yes.

> THE COURT: April of '07. **And her failure to appear here at today's hearing, and in addition to the fact that she has had another child--her rights to another child terminated indicates a lack of quality relationship between the juvenile and the biological parents**. Number six. I can't think of anything off the top of my head. So, I'll find it's in the juveniles' best interest that they be terminated. Okay.

We conclude that the trial court did not abuse its discretion in determining that it was in the best interest of the minor children that respondent-mother's parental rights be terminated. This assignment of error is overruled.

VI. Timeliness of Hearing

In her next assignment of error, respondent-mother contends the termination orders should be reversed because of the delay between petitioner's motion to terminate on 22 October 2007 and the termination hearing on 30 January 2008. We disagree.

N.C. Gen. Stat. § 7B-1109(a) requires that the termination hearing be conducted "no later than 90 days from the filing of the petition or motion unless the judge . . . orders that it be held at a later time." In addition to showing that the trial court failed to meet the timeliness requirement of the statute, respondent-mother must show that she was prejudiced by that delay. *In re S.W.*, 175 N.C. App. 719, 625 S.E.2d 594, 596, *disc. review denied*, 360 N.C. 534, 635 S.E.2d 59 (2006).

Respondent-mother is correct that the hearing in this matter did not comply with the statute, as the delay was outside of the 90-day requirement. However, respondent-mother fails to establish

that this delay rises to the level of prejudicial delay. While respondent-mother argues that the delay resulted in prejudice by "distancing her from her children," Hall testified that respondent-mother was scheduled to visit with the minor children on Tuesdays from 10:00 a.m. to 12:00 p.m. and that she only visited with the children during six out of thirty-eight scheduled visits. Thus, it is clear that respondent-mother's own actions--not the delay--caused the damage of which she now complains. This assignment of error is overruled.

VII. Timeliness of Filing

By her next assignment of error, respondent-mother contends that the trial court's orders should be vacated because the termination orders were not filed within 30 days of the hearing, as required by N.C. Gen. Stat. §§ 7B-1109(e) and 7B-1110(a). We disagree. While it is true that the hearing concluded on 30 January 2008 and the orders were not filed until 12 March 2008, which was outside of the statutory deadline, respondent-mother has failed to demonstrate that she was prejudiced by this delay. As such, the late entry of the order in this case does not warrant reversal. *See In re C.J.B.*, 171 N.C. App. 132, 134-35, 614 S.E.2d 368, 369-70 (2005). This assignment of error is overruled.

VIII. Hearsay Evidence

By her final assignment of error, respondent-mother contends that the trial court violated respondent-mother's Due Process Rights under the United States and North Carolina Constitutions by considering guardian *ad litem* and court reports presented by DSS,

which respondent-mother contends were impermissible hearsay. We disagree.

N.C. Gen. Stat. § 7B-901 provides, in part:

> The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. **The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.**

Id. (emphasis added).

Here, at the dispositional hearing, the trial court considered reports of DSS and the guardian *ad litem*, along with the factors set forth in N.C. Gen. Stat. § 7B-1110(a), in deciding whether the termination of respondent-mother's parental rights was in the best interest of the minor children. Consideration of such reports was proper under N.C. Gen. Stat. § 7B-901. This assignment of error is overruled.

For the foregoing reasons, we hold that trial court did not err in terminating respondent-mother's parental rights.

Affirmed.

Judges McGEE and STROUD concur.

Report per Rule 30(e).