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NO. COA08-549

NORTH CAROLINA COURT OF APPEALS

Filed: 7 October 2008

IN THE MATTER OF:

M.J.E.M. and
A.L.E.

Harnett County
Nos. 02 J 194
04 J 46

Court of Appeals

Appeal by respondent mother from an order entered 26 February 2008 by Judge Albert A. Corbett, Jr. in Harnett County District Court. Heard in the Court of Appeals 25 August 2008.

Slip Opinion

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

Pamela Newell Williams, for Guardian ad Litem.

Sofie W. Hosford, for respondent-appellant.

JACKSON, Judge.

Mary E. ("respondent") appeals the termination of her parental rights to her son, M.J.E.M. ("M.M."), and to her daughter, A.L.E. ("A.E."). Respondent-father is not a party to this appeal. For the reasons stated below, we affirm.

On 19 March 2004, the Harnett County Department of Social Services ("DSS") filed a petition alleging that M.M. and A.E. were neglected juveniles. The children were adjudicated neglected on 18 August 2004. By its order filed 19 October 2004, the trial court

found that M.M. had committed a sexual act of misconduct by fondling his younger sister in October of 2001 and again in November of 2003, and that respondents had not supervised the children properly when those acts occurred.

Pursuant to a stipulated settlement, the trial court found as fact that:

> a. Juveniles [M.M.] and [A.E.] were not properly supervised by their parents in the family home when juvenile [M.M.] committed a sexual act of misconduct by fondling juvenile [A.E.] in October of 2001 and again when juvenile [M.M.] committed a second sexual action of misconduct by fondling juvenile [A.E.] in November of 2003.
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> . . . .
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> c. Subsequent to the foregoing, the juveniles did not receive appropriate and needed remedial care for the emotional well being of the juveniles.

The court continued custody with DSS and ordered respondent to participate in counseling sessions, children's therapy, and school meetings, as well as to cooperate with her assigned social worker in establishing a family services case plan. The court further ordered respondent to participate in a Multicultural Community Development Services ("MCDS") program.

Permanency planning review hearings were held on 12 April 2005, 9 June 2005, and 16 and 17 August 2005. The court found that during therapy sessions with Melanie G. Crumpler ("Crumpler") using play dolls, A.E. "identified the dolls with her family members and revealed considerable inappropriate sexual actions between the children and the parents." A.E. continued to discuss incidents of

inappropriate sexual contact with her mother, her father, and her brother, including: (1) watching pornographic movies; and (2) describing "'hugs' from her mother as hugs 'all over her body' including 'hugs' in the area of her genitalia . . . ."

The court further found that during therapy, M.M. related "several sexual explicit observations and activities," including: (1) putting his finger in A.E.'s rectum; (2) committing sexual acts with a seven or eight year old girl who was a neighbor; (3) watching pornography in his parents bedroom while they were in bed; (4) having sex with his older sister's friend; (5) being sodomized by two boys; and (6) having sex with a girl named Sarah. Additionally, the court found that another sibling, Ad. E., made statements that: (1) she had been sexually abused by respondent when she was three or four years old; and (2) when she was eleven, her mother had used a vibrator on her and "taught" her how to use one. Respondent denied having knowledge of any sexual abuse or committing any sexual improprieties.

Based upon the evidence presented at the 16 and 17 August 2005 review hearing, the trial court found that:

> 38. In addition to revealed sexual misconduct within the family unit, all of these children are sexualized children. It is clear to this court that all of these children have been exposed to inappropriate sexual materials . . . or have had inappropriate sexual contact upon their bodies by others. The respondent parents have caused or allowed the same to take place with the result that has affected these children and caused them to be in need of mental health treatment . . . .
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> . . . .

> 53. The professionals maintain that progress in therapy (counseling) must first involve the acceptance of one's responsibilities for the issue of misconduct. Apparently the mother has not accepted responsibility for her failure to appropriately supervise the juveniles or for her part in the circumstances which were set forth in the adjudication/dispositional findings . . . . The mother has not accepted any responsibility for the circumstances of the juveniles based upon the revelations made to the counselors. She has not demonstrated that her parental skills and abilities have been changed surrounding supervision dealing with children who are sexualized. Notwithstanding the educational subject matter made available to her by MCDS, she has not demonstrated her recognition of the sexualized circumstances surrounding the juveniles or her need to take effective measures to adequately improve her parental ability to deal with her children.

Accordingly, the court ceased visitation, released DSS from further reunification efforts, and changed the permanent plan for the juveniles to one of adoption. Respondent appealed.

On appeal, this Court affirmed the permanency planning review order. *In re M.M., An.E., Ad.E.*, 182 N.C. App. 529, 642 S.E.2d 549, *disc. rev. denied, cert. denied*, 361 N.C. 428, 648 S.E.2d 507 (2007). One of the conclusions reached by this Court was that the findings of fact made by the trial court in the permanency planning order and cited previously herein were properly supported by competent evidence. *Id.*, 2007 N.C. App. LEXIS 685, *7 (2007).

On 14 October 2005, DSS filed a motion to terminate respondent's parental rights. DSS alleged three grounds for termination: (1) that respondent had abused the juveniles pursuant to North Carolina General Statutes, section 7B-1111(a)(1); (2) that respondent had neglected the juveniles pursuant to North Carolina

General Statutes, section 7B-1111(a)(1); and (3) that respondent had willfully left the juveniles in foster care for more than twelve months without showing that reasonable progress under the circumstances had been made in correcting those conditions that led to the removal of the juveniles, pursuant to North Carolina General Statutes, section 7B-1111(a)(2)(2005).

Hearings were held on the motion to terminate respondent's parental rights on 5 October 2007, 2 November 2007, and 13 and 14 December 2007. The trial court concluded that respondent had neglected the juveniles pursuant to section 7B-1111(a)(1), and willfully had left the juveniles in foster care for more than twelve months without showing reasonable progress under the circumstances in correcting those conditions that led to the removal of the children from her custody, pursuant to section 7B-1111(a)(2). The trial court further concluded that it was in the juveniles' best interests that respondent's parental rights be terminated. Accordingly, the trial court terminated respondent's parental rights. Respondent appeals.

Respondent first argues that the trial court erred by finding that grounds existed pursuant to section 7B-1111 to terminate her parental rights. She also argues that the trial court's findings of fact are not supported by competent evidence of record. We disagree.

Section 7B-1111 of the North Carolina General Statutes provides the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is

sufficient to support a termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) (citing *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984)). "The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D., D.M.D., S.J.D., J.M.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citing *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. rev. denied*, 353 N.C. 374, 547 S.E.2d 9 (2001)).

A "neglected juvenile" is defined by statute as:

> [a] juvenile 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). "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) (citing *In re Ballard*, 311 N.C. 708, 716, 319 S.E.2d 227, 232 (1984)). However, "a prior adjudication of neglect may be admitted and considered by the trial court in ruling 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).

In the case *sub judice*, the juveniles were adjudicated neglected juveniles on 19 October 2004 based upon a stipulated

settlement. The court found that M.M. had committed a sexual act of misconduct by fondling A.E. in October of 2001, and then again in November of 2003. The court further found that the juveniles did not receive appropriate remedial care.

On 15 September 2005, the trial court entered a permanency planning review order making detailed findings regarding the sexual misconduct, inappropriate sexual contact, and sexualization of the juveniles. In the 26 February 2008 termination order, the trial court adopted many of these findings. The trial court specifically adopted and re-affirmed a finding that respondent "either created or allowed a family atmosphere of sexual improprieties to exist in [her] home so as to contribute to the sexualization of the juveniles to include the sexual misconduct acts of [M.M.] and the acts of each child's sexualization . . . ." Respondent assigns error to this finding on appeal. However, in her prior appeal from the permanency planning review order, this Court specifically found that the findings were supported by competent evidence. *See In re M.M.*, 182 N.C. App. 529, 642 S.E.2d 549, 2007 N.C. App. LEXIS 685, *7 (2007). "The doctrine of collateral estoppel operates to preclude parties 'from retrying fully litigated issues that were decided in any prior determination and were necessary to the prior determination.'" *In re Wheeler*, 87 N.C. App. 189, 194, 360 S.E.2d 458, 461 (1987) (quoting *King v. Grindstaff*, 284 N.C. 348, 356, 200 S.E.2d 799, 805 (1973)). Therefore, respondent is estopped from challenging this finding on appeal.

Respondent contends that DSS failed to prove neglect continued to exist at the time of the termination hearing. She contends that the evidence demonstrated her efforts to comply with her case plan and to achieve reunification with the juveniles. However, the trial court made the following findings:

> 52. The mother did not testify; however, her denial of any acts of misconduct has been expressed to the court by DSS witnesses as well as her witnesses . . . .
>
> 53. The professionals maintain that progress in therapy (counseling) must first involve the acceptance of one's responsibilities for the issue of misconduct. The mother has not accepted responsibility for her failure to appropriately supervise the juveniles or for her part in the circumstances which were set forth in the adjudication/dispositional findings (as expressed in the order). She has not accepted responsibility for the circumstances of the juveniles based upon the revelations made to the counselors. She has not demonstrated that her parental skills and abilities have been changed surrounding supervision dealing with children who are sexualized. Notwithstanding the educational subject matter made available to her by MCDS, she has not demonstrated her recognition of the sexualized circumstances surrounding the juveniles or her need to take effective measures to adequately improve her parental ability to deal with her children.

Respondent did not assign error to finding of fact number 52. Thus, this finding of fact is deemed supported by competent evidence and is conclusive on appeal. *See In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003).

Regarding finding of fact number 53, sufficient competent evidence exists to support the trial court's finding. Although respondent did not testify at the hearing, there was plenary

evidence regarding her failure to take responsibility for the sexual misconduct or the circumstances of the juveniles. Both Crumpler and Sara Crook ("Crook"), a DSS social worker, testified that respondent was told that she would not be able to participate in A.E.'s therapy until she accepted responsibility for the abuse and neglect of A.E. Nevertheless, Crook testified that respondent denied inappropriately touching A.E. or possessing pornography in the home. Crook further testified that respondent "often stated" that while M.M.'s sexual abuse of A.E. did happen in 2001, "she didn't think it happened the second time [in 2003]" Additionally, Chester Michael Martin ("Martin") of Biblical Counseling Services, who provided counseling services to respondent, testified that she never admitted to engaging in the sexual acts revealed to him by Crumpler.

There also was sufficient evidence in the record to support the finding that respondent failed to improve her parenting skills regarding children who are sexualized. Crook testified that respondent "did not seem to have a grasp" on parenting concepts and was unable to demonstrate the skills taught to her in her parenting classes. Crook stated that during visitation she "often let inappropriate behavior by the children go basically ignored." Crook recounted that there were times the children were aggressive with each other and respondent failed to redirect them. Crook further recounted that:

> There were times when [A.E.] was rough housing and had on a skirt and her skirt would come up and her panties would be showing and [respondent] did nothing to make [A.E.] cover

> herself, which would have been very important in a situation where there had been sex abuse in the family.

Finally, Denise Lee ("Lee"), another DSS social worker, testified that respondent would not "intervene such as when [A.E.] would pull up her dress and [A.E.] would laugh about it – [respondent] would laugh and wouldn't say put your dress down. It was always [M.M.] saying put your dress [down], I don't like that."

Based upon the clear, cogent and convincing evidence in the record and accordant findings, the trial court was free to conclude that respondent neglected the juveniles, and that there was a probability of repetition of neglect. *See In re P.M.*, 169 N.C. App. 423, 426, 610 S.E.2d 403, 406 (2005) (affirming adjudication of neglect when mother failed to take responsibility for harm that befell her children as a result of her conduct). Accordingly, we hold that sufficient grounds existed for termination of respondent's parental rights pursuant to North Carolina General Statutes, section 7B-1111(a)(1).

Because grounds exist to support the trial court's order, the remaining ground found by the trial court to support termination need not be reviewed by this Court. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

Finally, respondent argues that the trial court erred in concluding that it was in the best interests of the juveniles to terminate her parental rights. We disagree.

"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 [juvenile's] best interests." *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). Factors to consider in determining the juvenile's best interests include: (1) the age of the juvenile; (2) the likelihood of adoption; (3) the impact on the accomplishment of the permanent plan; (4) the bond between the juvenile and the parent; (5) the relationship between the juvenile and a proposed adoptive parent or other permanent placement; and (6) any other relevant consideration. N.C. Gen. Stat. § 7B-1110(a) (2005). The court is to take action "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). As a discretionary decision, the trial court's disposition order will not be disturbed unless it could not have been the product of a reasoned decision. *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387, *aff'd*, 360 N.C. 165, 622 S.E.2d 495 (2005) (per curiam).

In making its determination to terminate respondent's parental rights, the trial court made the following findings of fact following the best interests phase of the hearing:

> 55. The current placement of juvenile [A.E.] is in a pre-adoptive home and the juvenile has adjusted well to her placement in this home. She has bonded well and developed a good relationship with the foster parents. . . .
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> 56. Juvenile [M.M.] is in a foster home where he has made significant progress intellectually and behaviorally. He is bonded with the foster parent who has expressed a desire to continue a relationship with him into adulthood.

> 57. The juveniles are both in need of a stable environment and have both progressed in the foster care environments in which they have been placed.
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> 58. Termination of the rights of the respondent[-mother] will assist in achieving the stability which is needed by the juveniles.
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> 59. A continuation of the care of the juveniles as offered by the foster home in which they are located would continue a stable and safe environment. The juveniles' care and best interest can be provided for them through the care of the foster parents and hopefully an adoption by them.

Based upon the findings of fact made by the trial court after an extensive termination hearing, we can discern no abuse of discretion. Accordingly, we affirm.

Affirmed.

Judges McCULLOUGH and STEPHENS concur.

Report per Rule 30(e).