NO. COA08-766

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

IN RE: K.T.B., JR.

Moore County
No. 06 JT 01

Appeal by respondent-father from order entered 17 April 2008 by Judge Scott C. Etheridge in Moore County District Court. Heard in the Court of Appeals 29 September 2008.

R. Ward Medlin, Assistant County Attorney, for petitioner-appellee Moore County Department of Social Services.

Pamela Newell Williams, N.C. Administrative Office of the Courts Associate Legal Counsel, for appellee guardian ad litem.

Rebekah W. Davis, for respondent-appellant.

MARTIN, Chief Judge.

The record shows that respondent-father ("respondent") and K.T.B.'s mother were unmarried and already had another child together ("R.P.") when K.T.B. was born. Respondent physically abused R.P., and R.P. was adjudicated abused by respondent and neglected by the mother in November 2005. R.P. was fourteen months old at the time of the abuse, and respondent was ordered not to have any further contact with him. Respondent and the mother also

did not have stable housing. As a result, R.P. was placed with his maternal aunt ("C.P.").

K.T.B. was born prematurely in December 2005 and remained hospitalized for several weeks after his birth due to his fragile health. On 3 January 2006, the Moore County Department of Social Services ("DSS") filed a petition alleging that K.T.B. was neglected based on the allegation that respondent had abused R.P., that respondent and the mother had not adequately cared for K.T.B. while he was hospitalized, and that respondent and the mother had made no progress toward reunification with R.P. Respondent and the mother did not have stable housing. In January 2006, K.T.B. left the hospital in DSS custody and was also placed in C.P.'s care, together with R.P.

On 12 January 2006, pursuant to a permanent plan of reunification, respondent and the mother entered into a family services agreement with DSS in which they agreed to: (1) complete mental health assessments, including substance abuse and anger management; (2) follow all recommendations by the mental health care provider; and (3) attend and participate in parenting classes.

Respondent did not attend non-secure custody hearings held on 4, 9, and 18 January 2006, but did begin attending the custody hearings in February 2006. At those hearings, the court found that the conditions that created the need for DSS to remove K.T.B. from the home continued to exist and that it was in K.T.B.'s best interest to remain with C.P.

In a report submitted 8 March 2006, the guardian *ad litem* noted that respondent and the mother still did not have a permanent home and that K.T.B. was thriving in his foster home. On 8 March 2006, respondent and the mother stipulated that K.T.B. was dependent because they had no stable housing, and K.T.B. remained with C.P. On 9 October 2006, DSS recommended that the permanent plan for K.T.B be changed from reunification to adoption.

In an order dated 18 October 2006, the permanent plan for K.T.B. was changed from reunification to adoption by C.P. On 22 November 2006, the court ordered DSS to initiate termination of parental rights proceedings against respondent and the mother. On 11 June 2007, the mother relinquished her parental rights.

On 31 August 2007, DSS filed a petition to terminate respondent's parental rights. In the petition, DSS alleged: (1) that respondent had left K.T.B. in foster care for a continuous period of six months prior to the filing of the petition; (2) that respondent had willfully failed to pay a reasonable portion of the cost of childcare during that time; (3) that K.T.B. was born out of wedlock and respondent had not legitimated K.T.B. or provided him with substantial financial support or care; and (4) that respondent had willfully abandoned K.T.B. for six consecutive months prior to the filing of the petition.

On 14 February 2008, DSS amended the petition to allege: (1) that respondent had left K.T.B. in foster care for more than twelve months without showing reasonable progress; (2) that respondent had failed to secure and maintain stable housing; (3) that respondent

had failed to make any progress to improve the home or eliminate abuse and neglect; (4) that respondent had signed an agreement to get substance abuse and anger management training, but had failed to complete those courses; and (5) that respondent had failed to communicate with DSS to discuss K.T.B.'s needs. On 12 March 2008, respondent filed an answer to the petition and denied the allegations.

The hearing of the petition to terminate respondent's parental rights was held on 19 March 2008. At the hearing, social worker Wendell Coker testified for DSS. Without objection, the trial court took judicial notice of the prior court orders and findings of fact entered in the case. Coker first came into contact with the case when he became a social worker supervisor in March 2006 and supervised two other social workers who worked on the case. Coker testified that respondent did not maintain stable housing or complete anger management classes, as required by the family case services plan, but did complete a parenting class in February 2006. Respondent also refused to provide a permanent address so that DSS could visit his home. Respondent worked for two or three weeks at a restaurant but never provided financial support for K.T.B.

Respondent was incarcerated for most of 2006 and all of 2007. Respondent was provided with a once-a-week visitation schedule with K.T.B. Respondent missed visitation and did not schedule make-up visits. Respondent also did not maintain regular contact with DSS or the guardian *ad litem*, nor did he call DSS to make inquiries

about K.T.B, except for a short period of time in 2006. DSS had not heard from respondent at all in 2007, except on one occasion about one month before the termination hearing, respondent sent a letter to DSS.

Respondent testified on his own behalf. He could not recall whether he attended weekly court sessions, nor could he recall the exact dates when he was incarcerated in 2006. Respondent acknowledged that he had not completed anger management or substance abuse counseling. Respondent also acknowledged that although he had worked at a restaurant and did other odd jobs, he never made financial contributions to K.T.B. because he did not have enough money to support himself. Respondent testified that he did not contact DSS because he did not have the address.

On 17 April 2008, the trial court filed an order terminating respondent's parental rights. The trial court made extensive findings of fact and concluded: (1) that respondent had abandoned K.T.B. for at least six months prior to the filing of the petition; (2) that respondent was incapable of providing proper care and supervision such that K.T.B. was dependent; (3) that respondent had willfully failed to pay any money for the use and benefit of K.T.B.; and (4) that respondent had allowed K.T.B. to remain in continuous foster care custody for more than twelve months without showing reasonable progress toward correcting the conditions that led to foster custody. The trial court also concluded that it was in K.T.B.'s best interest that respondent's parental rights be terminated.

Respondent assigns error to a number of the trial court's findings of fact, contending they are not supported by clear and convincing evidence. In termination of parental rights cases, a trial court's findings of fact must be supported by "clear, cogent, and convincing" evidence. *See In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). This standard is "greater than the preponderance of the evidence standard required in most civil cases, but not as stringent as the requirement of proof beyond a reasonable doubt required in criminal cases." *In re Montgomery*, 311 N.C. 101, 109-10, 316 S.E.2d 246, 252 (1984).

We have carefully reviewed those findings of fact challenged by respondent which were argued in his brief, and we conclude the record contains clear and convincing evidence to support them. The trial court took judicial notice of all of the prior orders entered in this matter, without objection by respondent. Contrary to respondent's assertions that, in doing so, the trial court abdicated its fact finding responsibilities, "[i]n juvenile proceedings, trial courts may properly consider all written reports and materials submitted in connection with said proceedings." *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003) (internal quotation marks omitted). In the present case, the prior orders establish that respondent did not attend nonsecure custody hearings in January 2006, missed scheduled visits with K.T.B., and that those visits he had with K.T.B. were sporadic, in support of Findings of Fact 15 and 19. Indeed, respondent acknowledged in his

testimony that he was incarcerated in January and February 2006, and that he missed three or four visits before his visitation rights were terminated.

Court summaries also demonstrated that respondent and the mother did not have a permanent address and moved in and out of Moore County frequently. Social worker supervisor Coker testified that a social worker met with respondent on 8 and 9 February 2006, and that respondent did not want DSS employees to visit his home and "refused to give the address where he was living at." This evidence supports the trial court's Findings of Fact 17 and 25.

Though respondent challenges Findings of Fact 20 and 44 relating to his failure to complete multiple classes and assessments, including a mental health assessment, a substance abuse assessment, and a domestic violence assessment, he concedes that he failed to complete these classes and assessments. While he challenges Finding of Fact 21 and 23 that he failed to provide financial support for K.T.B. when he was capable of doing so, respondent concedes that he was employed at a restaurant for several weeks and did other odd jobs, such as cutting grass.

Respondent also assigns error to the trial court's Finding of Fact 24 "[t]hat notwithstanding the professed love [respondent] contends he has for the child, he continues to engage in activities which result in his incarceration." However, as respondent acknowledged in his brief and in his testimony, respondent was in jail for most of 2006 and 2007 on several different charges. We believe respondent's frequent incarceration in the two years

following K.T.B.'s birth supports the finding that respondent "continue[d] to engage in activities which result[ed] in his incarceration."

Respondent next challenges Findings of Fact 26 and 42, which relate to respondent's failure to maintain contact with DSS and K.T.B.:

> 26. That [respondent] has failed to maintain contact with [DSS] although he testified he knew how to contact [DSS] and his former social worker Wanda Feldt.
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> . . . .
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> 42. That [respondent] has failed to contact [DSS], has failed to make inquiry as to his child, has failed [to] make recommendations for his child, has failed to provide financial support or provide gifts or cards to the child absent providing articles of clothing on two occasions.

Coker testified that respondent did not make contact with DSS throughout 2007. However, about a month prior to the March 2008 termination hearing, respondent wrote a letter to his social worker which demonstrated that he did know how to contact DSS. In summary, we conclude that each of the findings to which respondent assigns error and argues in his brief is supported by clear and convincing evidence, and respondent's assignments of error to the contrary are overruled.

Respondent next contends the trial court erred in each of its conclusions of law with respect to the existence of grounds to terminate his parental rights. In the adjudicatory stage, the burden is on the petitioner to prove that grounds for termination

exist by "clear, cogent, and convincing evidence." *See* N.C. Gen. Stat. § 7B-1109(f) (2007); *see also In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Review in the appellate courts is limited to determining whether clear and convincing evidence exists to support the findings of fact and whether the findings of fact support the conclusions of law. *See In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

Although, in the present case, the trial court concluded that, pursuant to N.C.G.S. § 7B-1111(a)(2), (3), (6), and (7), to terminate respondent's parental rights, the existence of any one of the statutory grounds is sufficient to sustain the order. *See In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 407 (2008) ("[A] court need only determine that one statutory ground exists in order to move the dispositional stage.") (citing N.C. Gen. Stat. § 7B-1111(a)). Thus, we consider first whether the trial court's conclusion that the ground provided in N.C.G.S. § 7B-1111(a)(7) that respondent willfully abandoned K.T.B. for at least six months prior to the filing of the petition is supported by its findings of fact.

On 31 August 2007, DSS filed the petition to terminate respondent's parental rights. The trial court's findings establish that respondent was incarcerated for all of 2007, that he failed to contact DSS or the guardian *ad litem*, and that he failed to provide any financial support for K.T.B. These findings, each supported by clear and convincing evidence, support the conclusion that

respondent willfully abandoned K.T.B. during the six months preceding the filing of the petition. *See* N.C. Gen. Stat. § 7B-1111(a)(7) (2007). Therefore, we need not consider whether the findings are sufficient to support any of the other statutory grounds found by the trial court and we affirm the order terminating respondent's parental rights.

Affirmed.

Judges ELMORE and STEELMAN concur.

Report per Rule 30(e).