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NO. COA09-186

NORTH CAROLINA COURT OF APPEALS

Filed: 7 July 2009

IN THE MATTER OF:

S.J.F.P.,  
Minor Child

Harnett County  
No. 06 J 141

Appeal by respondent from order entered 21 November 2008 by Judge Resson O. Faircloth, II in Harnett County District Court. Heard in the Court of Appeals 22 June 2009.

*Donald E. Harrop, Jr. for petitioner-appellee.*

*Christy E. Wilhelm for respondent-appellant.*

MARTIN, Chief Judge.

L.P. ("respondent") appeals from the order terminating her parental rights to the minor child, S.J.F.P. For the reasons discussed herein, we affirm the trial court's order.

Respondent is the biological mother of S.J.F.P. Before S.J.F.P. was toilet-trained and weaned from a bottle, respondent left him with his paternal aunt, Christine Williams ("petitioner"). When respondent dropped S.J.F.P. off with petitioner she "wasn't in a mental or a financial state . . . to take care of [him]." Petitioner was to "watch him" until respondent could "better" herself. Respondent did not return for S.J.F.P. Her "life just

kept going down and down and didn't never get back up and it just kept going down."

Petitioner's brother was S.J.F.P.'s biological father. On 4 May 2006, S.J.F.P.'s father died. On 5 June 2006, petitioner filed a petition to terminate respondent's parental rights. An amended petition was filed 31 August 2007. Petitioner alleged grounds existed to terminate respondent's parental rights as follows:

N.C. Gen. Stat. 7B-1111(a) (1)-- The mother has neglected the juvenile. When the juvenile was approximately one year old, she delivered the juvenile to the Petitioner. Since that time, she has not visited, has paid no support, has sent no cards or presents, has not called concerning the welfare of the child, and has had absolutely no role in the minor child's life.

N.C. Gen. Stat. 7B-1111(a) (7)-- The mother has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of this Petition. As stated above, the mother has not visited the child in a number of years, has paid no support, has sent no cards or presents, has not inquired about the health, education, or general welfare of the minor child and has had no contact with him.

On 17 October 2008, a hearing was held in this matter. The trial court found that grounds existed for the termination of respondent's parental rights, and the order terminating her parental rights was filed on 21 November 2008. Respondent appeals.

We first address respondent's contention that the trial court lacked subject matter jurisdiction in this action because the summons was not served upon the juvenile in accordance with N.C.G.S. § 7B-1106(a) and Rule 4(j) of the North Carolina Rules of Civil Procedure. We note that, although respondent states that the

trial court lacked subject matter jurisdiction, the argument presented in her brief involves personal jurisdiction. Specifically, respondent argues that failure to serve the juvenile's guardian ad litem removed the trial court's personal jurisdiction over the juvenile.

Our Supreme Court recently held that "summons-related deficiencies implicate personal jurisdiction rather than subject matter jurisdiction." *In re J.T.*, 363 N.C. 1, 2, 672 S.E.2d 17 (2009). "Objections to a court's exercise of personal (in personam) jurisdiction . . . must be raised by the parties themselves and can be waived in a number of ways." *J.T.*, at 4, 672 S.E.2d at 18. "[A]ny form of general appearance 'waives all defects and irregularities in the process and gives the court jurisdiction of the answering party even though there may have been no service of summons.'" *Id.* (quoting *Harmon v. Harmon*, 245 N.C. 83, 86, 95 S.E.2d 355, 359 (1956)).

In this case, a summons was issued in the name of the juvenile and petitioner accepted service on his behalf. The guardian ad litem was not served; however, the guardian ad litem appeared at the termination hearing, presented a report, and testified. The guardian ad litem made no objection to the trial court's exercise of personal jurisdiction over S.J.F.P. The guardian ad litem's full participation in the termination proceedings, without objection, constituted a general appearance and served to waive any objections that might have been made. *Id.* at 4, 672 S.E.2d at 19. We therefore conclude that the trial court acquired and properly

exercised personal jurisdiction over the juvenile. This assignment of error is overruled.

We next address respondent's contention that the trial court erred in failing to conduct the termination hearing within ninety days of the filing of the termination petition, thus violating N.C.G.S. § 7B-1109(a).

Failure of the trial court to timely hold the termination hearing after the filing of the termination petition need only be reversed when the appellant demonstrates prejudice as a result of the delay. *In re S.W.*, 175 N.C. App. 719, 722, 625 S.E.2d 594, 596, *disc. review denied*, 360 N.C. 534, 635 S.E.2d 59 (2006). To show prejudice, respondent must show that any delay "had a probable impact on the outcome of the proceeding." *In re D.B.*, 186 N.C. App. 556, 560, 652 S.E.2d 56, 59 (2007) (internal quotation marks omitted), *aff'd per curiam*, 362 N.C. 345, 661 S.E.2d 734 (2008).

Respondent contends the delay in conducting the termination hearing resulted in prejudice to her by further distancing her from S.J.F.P. Respondent could have sought judicial assistance in seeing S.J.F.P., but did not do so. We find that the delay provided respondent with an opportunity to correct her lack of involvement with S.J.F.P., and respondent failed to take full advantage of that opportunity. Accordingly, respondent has failed to show prejudice and this assignment of error is overruled.

We now turn to respondent's argument that the trial court's findings of fact are not supported by clear, cogent, and convincing

evidence; and that the trial court's conclusions of law are not supported by the findings of fact.

A termination of parental rights proceeding is conducted in two phases: (1) adjudication and (2) disposition. See *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). In the adjudication phase, the petitioner has the burden of proving by clear, cogent, and convincing evidence that one or more of the statutory grounds for termination under N.C.G.S. § 7B-1111(a) exists. *Id.* "The standard of appellate review of the trial court's conclusion that grounds exist for termination of parental rights is whether the trial judge's findings of fact are supported by clear, cogent, and convincing evidence, and whether these findings support its conclusions of law." *In re Nesbitt*, 147 N.C. App. 349, 351, 555 S.E.2d 659, 661 (2001). Findings of fact supported by competent evidence are binding on appeal, even where there is evidence which supports contrary findings. See *In re Mills*, 152 N.C. App. 1, 6, 567 S.E.2d 166, 169 (2002), *cert. denied*, 356 N.C. 672, 577 S.E.2d 627 (2003).

Respondent challenges the following findings of fact made by the trial court:

11. The minor child resided with the Petitioner for a period of at least two years prior to the filing of this Petition. In fact, the child has lived with the Petitioner since shortly after his birth.

12. The minor child came to live with the Petitioner while he was still in diapers. Since that time, the Petitioner has raised him essentially on her own. She has been responsible for his support, both financially and emotionally. She has taken care of his

medical needs and seen that he attends school on a regular basis. She has been responsible to [sic] take care of his educational needs and has provided for his day care.

13. The minor child calls her "mother[.]"

14. The Petitioner lives in an appropriate home where the juvenile has his own room. He has been described as an intelligent young man and there was no testimony that he is a behavior problem in any way[.]

15. The Respondent Mother has not provided any financial support for this child to the Petitioner. She admitted that she has not paid any money towards his support. She also admitted that she has not paid any money for his day care[.]

16. The Respondent Mother has not attended to any of the child's educational needs and has not been to his school. She does not know who his teachers are this year and has not made any contact with the Petitioner or the child's teachers to inquire about his schooling.

17. The Respondent has not provided for the child's emotional needs, nor has she provided him the love and affection that one would expect of a parent. She has not visited the child in a number of years except when he would go to visit his sisters or other family members[.]

18. It is in the best interests of this child for the rights of the mother to be terminated. He is in a stable and secure location. He is progressing emotionally and socially. The Guardian Ad Litem report was introduced into evidence and she testified[.] By her evidence, the minor child wants to remain with the Petitioner and considers her home to be his home. It is the intention of the Petitioner to adopt this child[.]

Here, the evidence tended to show that S.J.F.P. was eleven years old at the time of the termination hearing. He came to live with petitioner when he was still in diapers, and petitioner has

been responsible for taking care of S.J.F.P.'s needs since that time. Although, respondent's mother and daughters often visited with S.J.F.P. and provided gifts and cards, the evidence did not show that respondent did. Instead, respondent would see S.J.F.P. around town. Respondent testified that she did not know who S.J.F.P.'s teachers were and she never visited the school. Furthermore, respondent admitted that she never paid any support for S.J.F.P. because petitioner never asked. Accordingly, we find that the trial court's findings of fact are based on clear, cogent, and convincing evidence.

Having determined that the findings of fact are supported by clear, cogent, and convincing evidence, we now address whether those findings support the trial court's conclusions of law.

The trial court concluded:

2. Grounds exist for the termination of the Respondent Mother's parental rights. Namely, the mother has neglected the juvenile and that said neglect has continued to this day. Additionally, the mother has willfully abandoned the juvenile for at least six months immediately proceeding the filing of the Petition and even to this day.

3. It is in the best interests of the minor child for the parental rights of the mother to be terminated.

Respondent first challenges the conclusion that grounds exist to terminate her parental rights pursuant to N.C.G.S. § 7B-1111(a)(1). Section 7B-1111(a)(1) provides for termination of parental rights where "[t]he parent has abused or neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2007). The juvenile "shall be deemed to be . . . neglected if the court finds the

juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-101." *Id.* A neglected juvenile is defined as follows:

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) (2007). Neglect must exist at the time of the termination hearing. See *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 729 (2007). However, where "the parent has been separated from the child for an extended period of time, the petitioner must show that the parent has neglected the child in the past and that the parent is likely to neglect the child in the future." *Id.* This Court has stated that "[a]n individual's lack of parental concern for his child is simply an alternate way of stating that the individual has failed to exercise proper care, supervision, and discipline as to that child." *In re Williamson*, 91 N.C. App. 668, 675, 373 S.E.2d 317, 320 (1988) (internal quotation marks omitted). Moreover, "on the question of neglect, the trial judge may consider . . . a parent's complete failure to provide the personal contact, love, and affection that inheres in the parental relationship." *In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982).

Next, respondent challenges the conclusion that grounds exist to terminate her parental rights pursuant to N.C.G.S. § 7B-1111(a)(7). Section 7B-1111(a)(7) provides that parental rights



may be terminated if the parent "has willfully abandoned the juvenile for at least six (6) consecutive months immediately preceding the filing of the petition or motion." N.C. Gen. Stat. § 7B-1111(a)(7) (2007). "Abandonment implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child." *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986). "It has been held that if a parent withholds his presence, his love, his care, the opportunity to display filial affection, and wilfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child." *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962).

Bearing these principles in mind, we believe the trial court's findings of fact are sufficient to support its conclusion that grounds exist to terminate respondent's parental rights pursuant to N.C.G.S. §§ 7B-1111(a)(1) and (7). Therefore, we conclude that the trial court did not err.

Lastly, respondent challenges the conclusion that it is in the best interests of S.J.F.P. for her parental rights to be terminated.

Once 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 interests of

the minor child is governed by N.C.G.S. § 7B-1110, which states that the trial court shall consider the following factors:

- (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 other relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2007). The standard for appellate review of the trial court's decision to terminate parental rights is abuse of discretion. *In re Brim*, 139 N.C. App. 733, 745, 535 S.E.2d 367, 374 (2000). "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 child's best interests." *Nesbitt*, 147 N.C. App. at 352, 555 S.E.2d at 662. "A trial court may be reversed for abuse of discretion only upon a showing that its actions are 'manifestly unsupported by reason.'" *Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006) (quoting *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980)).

In this case, the guardian ad litem testified that petitioner raised S.J.F.P and provides a stable environment for him. She further testified that S.J.F.P. "enjoys seeing [respondent] around

town but he . . . did not express any sort of familial relationship with her more than an acquaintance." The trial court found S.J.F.P. is in a stable and secure location, he is progressing emotionally and socially, and that petitioner wishes to adopt him. We conclude that the trial court did not abuse its discretion in determining that it was in S.J.F.P.'s best interests to terminate respondent's parental rights.

Respondent further argues that the trial court erred in entering the order terminating her parental rights because neither a previous court order, nor any allegation in the petition, justified interference with her constitutional rights to the minor child, S.J.F.P.

Respondent correctly notes that "our courts have accorded full constitutional protection to family relationships." *In re Webb*, 70 N.C. App. 345, 350, 320 S.E.2d 306, 309 (1984) (Becton, J., dissenting), *aff'd per curiam*, 313 N.C. 322, 327 S.E.2d 879 (1985). "However, conduct inconsistent with the parent's protected status . . . would result in application of the 'best interest of the child' test without offending the Due Process Clause. Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy." *Price v. Howard*, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997).

Here, petitioner alleged grounds existed to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) (neglect) and (7) (abandonment). The grounds for termination of parental rights set forth in N.C.G.S. § 7B-1111

cites conduct which is inconsistent with a parent's protected status. This assignment of error is overruled.

Finally, respondent contends that the trial court erred in considering evidence related to allegations not contained in the petition. Specifically, respondent contends that the trial court's findings of fact were based upon hearsay, irrelevant statements, and other inadmissible evidence.

This Court has stated that in a nonjury trial or hearing, "it will be presumed that the judge disregarded any incompetent evidence that may have been admitted unless it affirmatively appears that he was influenced thereby." *Stanback v. Stanback*, 31 N.C. App. 174, 180, 229 S.E.2d 693, 696 (1976), *disc. review denied*, 291 N.C. 712, 232 S.E.2d 205 (1977) (citation omitted). Furthermore, "[w]here there is competent evidence to support the court's findings, the admission of incompetent evidence is not prejudicial." *In re McMillon*, 143 N.C. App. 402, 411, 546 S.E.2d 169, 175, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001) (citation omitted). In this case, there is ample competent evidence to support the trial court's findings. Thus, we find no prejudice and overrule this assignment of error.

For the foregoing reasons, the court's order is  
Affirmed.

Judges HUNTER and ELMORE concur.

Report per Rule 30(e).