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NO. COA09-256

NORTH CAROLINA COURT OF APPEALS

Filed: 21 July 2009

IN THE MATTER OF:

K.W. and J.W.

Lee County
Nos. 06 J 96-97

Appeal by respondents from orders entered 18 March 2008 and 22 September 2008 by Judge George R. Murphy in Lee County District Court. Heard in the Court of Appeals 29 June 2009.

Elizabeth Myrick Boone, for petitioner-appellee Lee County Department of Social Services.

Lisa Skinner Lefler, for respondent-appellant mother.

Mary McCullers Reece, for respondent-appellant father.

Pamela Newell Williams, for appellee Guardian ad Litem.

HUNTER, Robert C. Judge.

Respondents Susan B. ("respondent-mother") and Kevin W. ("respondent-father") (collectively "respondents") appeal from the trial court's permanency planning order changing the permanent plan from reunification to adoption, and from the order terminating respondents' parental rights to K.W. and J.W. (the minor children). For the reasons discussed herein, we affirm.

Respondents are the biological parents of the minor children. Respondents never married, but have lived together in the past.

From 2003 until 16 October 2006, Lee County Department of Social Services ("DSS") received five referrals regarding the family. On 16 October 2006, DSS investigated a referral and found the home to be extremely filthy and unsafe. Also, the minor children were found to have significant developmental delays. DSS began services with respondent-mother, but respondent-father resisted DSS's involvement. Respondent-mother was given time to improve and end her relationship with respondent-father. However, respondent-mother did not comply, and on 7 December 2006, DSS filed petitions alleging that the minor children were neglected juveniles. On 6 March 2007, the minor children were adjudicated neglected.

The minor children were placed with their paternal grandmother. The paternal grandmother began having health problems and moved in with her parents. On 7 August 2007, the minor children were removed from the home and placed in foster care when it was discovered that respondent-father was having unauthorized visits with the children, that the home was chaotic, and that the children were regressing.

On 18 December 2007, the trial court held a permanency planning review hearing. In an order entered 18 March 2008, the trial court ceased reunification efforts and changed the permanent plan to adoption. On 27 March 2008, DSS filed a motion to terminate respondents' parental rights. In an order entered 22 September 2008, the trial court terminated respondent-mother's parental rights on the grounds of neglect and dependency. Respondent-father's parental rights were terminated on grounds of

neglect, abandonment, willful failure to pay support, dependency, and failure to legitimate.

Respondents appeal from the 18 March 2008 permanency planning order ceasing reunification efforts, and from the 22 September 2008 order terminating their parental rights.

I. Permanency Planning Order

On appeal, respondents assign error to the trial court's order ceasing reunification efforts and changing the permanent plan to adoption.

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). "If the trial court's findings of fact are supported by competent evidence, they are conclusive on appeal." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). An abuse of discretion occurs when the trial court's decision is "manifestly unsupported by reason." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

The purpose of a permanency planning hearing is "to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-907(a) (2007). If, at the conclusion of the hearing, the trial court allows DSS to cease reunification efforts with the parents, and the children are

not returned to the home, then

the court shall consider the following criteria and make written findings regarding those that are relevant:

- (1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;
- (2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
- (3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
- (4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
- (5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
- (6) Any other criteria the court deems necessary.

N.C. Gen. Stat. § 7B-907(b) (2007). The trial court may make any disposition authorized by N.C. Gen. Stat. § 7B-903, which provides in pertinent part:

In placing a juvenile in out-of-home care[,] . . . the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is

willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care[,] . . . the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. . . .

N.C. Gen. Stat. § 7B-903(a)(2)(c) (2007).

Respondents contend that the trial court's findings are not supported by competent evidence and that the findings do not support the conclusion of law that placement with the maternal grandfather ("Mr. B") was not in the minor children's best interests.

The trial court made the following pertinent findings of fact:

24. . . . DSS has done a home study on the maternal grandfather, [Mr. B] and made the recommendation that the home was not appropriate for the placement of the juveniles in that Mr. B still had work to do on the home to make it appropriate for the juveniles and that Mr. B continued to believe that his daughter would be able to parent the juveniles.

. . . .

28. The [c]ourt finds that although Mr. B[,] the maternal grandfather, is willing and able to provide proper care and supervision for the juveniles, the [c]ourt finds that placement with Mr. B would be contrary to the best interest of the juveniles for the following reasons: Mr. B[,] the maternal grandfather, has indicated a willingness to parent the children, but he still holds out hope that the parents will become able to parent. Prior to DSS becoming involved, Mr. B did not move forward to take care of the juveniles. Mr. B did not come forward when the juveniles were removed from [Ms. F]. The concern is that Mr. B will allow his daughter to try to parent the

children if given into his care and that there will be no stability for the juveniles.

Here, DSS completed a home study when Mr. B indicated that he would like to be considered as a placement alternative. Also, Mr. B testified at the permanency planning hearing. He testified that he owned the home from which the minor children were removed. Mr. B knew that the home was filthy and that there were issues of domestic violence in the home, and he suspected that respondents were using drugs. Furthermore, Mr. B testified that he had offered himself as secondary placement and that his desire and what he considered "ideal" would be for respondents to "get themselves straightened out and . . . raise their children." Mr. B indicated that he might allow respondent-mother to parent the minor children if she was showing him some progress. We find there was competent evidence, from the DSS report and Mr. B's testimony, to support the trial court's findings of fact. Additionally, the trial court's findings of fact support its conclusion that placement with Mr. B was contrary to the best interests of the minor children. The trial court did not abuse its discretion, and this assignment of error is overruled.

II. Grounds for Termination

The trial court found grounds existed to terminate respondent-father's parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), (3), (5), (6), and (7). On appeal, respondent-father argues the trial court erred in finding and concluding that grounds existed to terminate his parental rights.

The statutory grounds for terminating parental rights are set

forth in N.C. Gen. Stat. § 7B-1111 (2007). A finding of any one of the 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). 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 Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9-10 (2001).

In the present case, the trial court determined that numerous statutory grounds existed to supported the termination of respondent-father's parental rights, including, *inter alia*, that the minor children were "neglected juveniles within the meaning of G.S. 7B-101." N.C. Gen. Stat. § 7B-1111(a)(1). Section 7B-101 defines a "neglected juvenile" in pertinent part 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).

To prove neglect in a termination case, there must be clear and convincing evidence (1) the juvenile is neglected within the meaning of Section 7B-101(15), and (2) "the juvenile has sustained 'some physical, mental, or emotional impairment . . . or [there is] a substantial risk of such impairment'" as a consequence of the

neglect. *In re Reyes*, 136 N.C. App. 812, 814, 526 S.E.2d 499, 501 (2000) (alteration in original) (quoting *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993)). "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). "[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). However, "[t]ermination of parental rights for neglect may not be based solely on past conditions which no longer exist." *Young*, 346 N.C. at 248, 485 S.E.2d at 615. If the child has been removed from the parents' custody before the termination hearing, and the petitioner presents evidence of prior neglect, including an adjudication of such neglect, then "[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." *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. When, as here, the children have not been in the custody of the parents for a significant period of time prior to the termination hearing, a trial court may find that grounds for termination exist upon a showing of a "history of neglect by the parent and the probability of a repetition of neglect." *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003).

In support of its conclusion that respondent-father's parental

rights should be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), the trial court entered the following pertinent findings of fact:

11. The most recent involvement of [DSS] with this family began . . . October 16, 2006. This was the fifth referral in three years. It was reported that [respondents] used inappropriate discipline, improper supervision, that the house was filthy, and that there was domestic violence in the house. When the social worker visited the home it was found to be extremely filthy with an offensive odor. There was trash and debris strewn about the house. The children were found to have developmental delays.

. . . .

18. The juveniles were adjudicated neglected on March 6, 2007. [Respondents] were directed to work with [DSS]. They were to comply with the family case plan and the orders of the court.

. . . .

21. [Respondents] were not to have visitation unless there were negative drug screens. [Respondent-mother's] last visitation with the children was May 23, 2007. The last visit by [respondent-father] was October 8, 2007. [Respondent-father's] last visits were based upon a negative drug test taken at a time that he requested. Subsequent tests were either refused or tested positive.

22. [Respondent-father] had a substance abuse screening on June 19, 2007 and was referred to out patient treatment for cocaine dependency. He did not move forward at that time with any treatment. He did attend a 45 day program in the summer of 2008 and claims to be drug free at the time of this hearing.

. . . .

26. A permanency planning hearing was held on September 18, 2007. It was recommended that reunification efforts cease due to

[respondents'] failure to progress in correcting those things that caused the children to come into custody. [Respondent-father] had pending criminal matters. The social worker had to use [respondent-father's] girl friend's [sic] number to try to contact him and this made contact difficult. [Respondent-father] had provided a negative drug screen and asserted that he had a reasonable living arrangement at his girlfriend's home. The [c]ourt continued reunification efforts.

27. A permanency planning hearing was held on December 18, 2007 where the [c]ourt determined[,] pursuant to N.C.G.S. 7B-907[,] that it was not possible for the children to be returned home in that [respondents] had not completed those matters ordered by the [c]ourt. [Respondent-father] had tested positive for marijuana and visitation was not taking place with either parent. Neither parent had stable housing. Neither was testing negative for drugs. The plan became adoption. It was found at that time that it was not in the children's best interest to continue visitation and visitation between the children and [respondents] ceased.

. . . .

30. [Respondent-father] states that he is now employed and is working every week since April. He makes \$400 to \$500 per week. He does not pay any rent to his grandparents but has installed a washing machine which they purchased. [Respondent-father] stated that he resides with his grandparents. He does not attend NA/AA and states that he does not need to do so because he went to Bethel and now has no drug problem. He stated that if he isn't doing drugs then he has no problem with drugs.

. . . .

34. There is a great likelihood that the conditions in which the children were forced to live would continue if the children were returned to either parent because neither admits to the problems that they experience and because no parent has established suitable housing on their own since the children were

taken from their care.

. . . .

40. The [c]ourt finds as a fact that grounds for termination of parental rights of [respondent-father] exist in that [respondent-father] is incapable of providing for the proper care and supervision of the juveniles and that there is a reasonable probability that such will continue for the foreseeable future in that he has not established a suitable residence for the juveniles and has not admitted to the drug problem even though going through a 45 day program.

41. The [c]ourt finds as a fact that grounds for termination of parental rights of [respondent-father] exist in that [respondent-father] has neglected the juveniles[,] resulting in their removal as defined in NCGS 7B-101 and that this neglect is likely to continue for an indefinite period in that [respondent-father] has not established suitable residence for the children since they entered foster care.

Respondent-father assigns error to only findings 22 and 41 cited above. Respondent-father does not challenge any of the other above findings, and they are presumed to be correct and supported by competent evidence. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982). Furthermore, a careful review of the record and transcript shows that the trial court's findings are based upon competent evidence. Findings of fact supported by competent evidence are binding on appeal, even where there is evidence which supports contrary findings. *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). The prior adjudication established the existence of prior neglect. Respondent-father's failure to obtain appropriate

housing, his lack of diligence in seeking continued substance abuse treatment, and his failure to admit his substance abuse problems support the trial court's determination that there is a reasonable probability of repeated neglect in the future. Therefore, we hold that the trial court's findings of fact are based on clear, cogent, and convincing evidence. We further hold that the findings support the trial court's conclusion that grounds existed to terminate respondent-father's parental rights under N.C. Gen. Stat. § 7B-1111 (a) (1). Having concluded that one ground for termination of parental rights exists, we need not address the additional grounds found by the trial court. See *In re Brim*, 139 N.C. App. 733, 743, 535 S.E.2d 367, 373 (2000).

The trial court found grounds existed to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a) (1), and (6). Respondent-mother does not assign error to any of the trial court's findings of fact in the termination order, nor does she challenge any of the grounds for termination of her parental rights. Accordingly, the grounds for termination of respondent-mother's parental rights are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

III. Best Interests

Finally, respondents argue that the trial court abused its discretion by determining that it was in the minor children's best interests to terminate respondents' parental rights.

Once statutory grounds for termination have been established, the trial court is required to "determine whether terminating the

parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2007). In making this determination, the trial court is required to consider the following:

- (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)(1)-(6) (2007). The trial court's decision to terminate parental rights is subject to reversal only where it is "manifestly unsupported by reason." *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980).

Here, the trial court made the following relevant findings of fact:

23. The juveniles have been away from [respondents] most of their lives. Initially the children were placed with the paternal grandmother but her health made it impossible to continue to care for the juveniles. The juveniles lived with her at her parent's home for a period of time but were moved when it was determined that [respondent-father] was making unauthorized visits to the home.

. . . .

32. The [c]ourt finds that K.W. has been in foster care since December 7, 2006 for a total of 20 months. He is 5 years old. He is doing

well and has adjusted to the foster home. He is no longer receiving intensive case management from the Center for Behavioral Health.

33. The [c]ourt finds that J.W. has been in foster care since December 7, 2006. J.W. is 3 years old. He has adjusted well to the foster family and appears as a happy child. He can now vocalize his needs rather than use hand gestures[.]

. . . .

45. Having determined that there are sufficient grounds to terminate the parental rights of [respondents], the [c]ourt proceeded to conduct a dispositional hearing on the issue of whether it is in the minor children's best interest for the parental rights of [respondents] to be terminated. The [c]ourt addresses the best interest of the juveniles and finds as fact from testimony and reports provided by [DSS] and the Guardian ad Litem that after being placed in foster care the juveniles have improved in hygiene and in attitude. The juveniles appear happy in their placements.

46. [J.W.] is now speaking in full sentences. He is up to the "H" in the alphabet. In November 2007 [J.W.] only spoke a few words. He communicated with gestures.

47. [K.W.] has been receiving services for ADD and RAD (Reactive Attachment Disorder) and is taking medication for ADD again. [K.W.] is now learning to read and can spell simple words, he is very enthusiastic about his school work. He has been prescribed anxiety medication which has helped curb his nervousness.

48. The juveniles are doing well.

Based upon these findings, we conclude that the trial court made a reasoned decision and did not abuse its discretion in determining that terminating respondents' parental rights was in the best interests of the minor children.

Respondents have not argued their remaining assignments of error; consequently, they are deemed abandoned. N.C.R. App. P. 28(b)(6).

We affirm the trial court's order ceasing reunification efforts and changing the permanent plan to adoption. Additionally, we affirm the trial court's order terminating respondents' parental rights to the minor children.

Affirmed.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).