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NO. COA09-293

NORTH CAROLINA COURT OF APPEALS

Filed: 1 September 2009

IN THE MATTER OF:
D.K.B.

Pasquotank County
No. 08 JT 62

Appeal by respondent-mother from order entered 17 December 2008, *nunc pro tunc* 25 November 2008, by Judge C. Christopher Bean in Pasquotank County District Court. Heard in the Court of Appeals 20 July 2009.

Robin E. Strickland for respondent-appellant mother.

Pamela Newell Williams for guardian ad litem.

BRYANT, Judge.

Respondent, the biological mother of D.K.B., appeals from an order entered 25 November 2008 terminating her parental rights to D.K.B. For the reasons stated herein, we affirm the order of the trial court.

FACTS

At the time of the termination proceedings, D.K.B. was thirteen years old and has since turned fourteen. D.K.B. has been diagnosed with schizophrenia, disruptive behavior disorder, attention deficit hyperactivity disorder (ADHD), mild mental

retardation (low IQ), and other disorders. To treat his psychiatric conditions, he takes approximately four to five drugs per day. At the time of the proceedings, D.K.B. was in the seventh grade and had an individualized education plan (IEP) due to his special needs. Additionally, D.K.B. had behavioral problems at school, was isolated from other students for a period of time, and has difficulty socializing and interacting with peers.

When D.K.B. was three months old, respondent left him in the care of her mother and her stepfather, who reside in Pasquotank County. After leaving D.K.B. with her mother, respondent and D.K.B.'s biological father (her husband at the time) attempted to find work with a carnival and eventually moved to the west coast. In January 1997, D.K.B.'s biological parents entered into a consent order giving primary custody to his maternal grandparents. While living on the west coast, respondent gave birth to two more children, but her parental rights to those children were terminated by a court in Eugene, Oregon in 1998 and 2000.

Respondent eventually moved to Hertford, North Carolina, remarried, and had two more children, N.M. and H.M. Despite respondent's return, D.K.B. remained in the custody of his grandparents. In 2004, N.M. and H.M. were removed from respondent's custody and were also placed with their maternal grandparents because of poor living conditions in respondent's home. Respondent was reportedly living in filthy conditions and her home lacked electricity and running water. Respondent had

another child in 2005 and voluntarily relinquished her parental rights to that child when he was two weeks old.

On 3 May 2006, Pasquotank County Department of Social Services (DSS) filed a petition alleging that D.K.B., N.M., and H.M. were neglected and dependent juveniles. The children were adjudicated dependent on 2 October 2006, and custody was awarded to DSS. D.K.B.'s grandparents were unable to provide D.K.B with adequate care because of their age and decreasing physical abilities combined with D.K.B.'s special needs. After being removed from his grandparents' custody, D.K.B. was placed in a Level III group home and remained there up to and throughout the termination proceedings. However, D.K.B.'s grandparents have maintained weekly unsupervised visits with him every Sunday from 9:00 a.m. to 5:00 p.m. at their home. N.M. and H.M. were placed together in a therapeutic foster home separate from D.K.B. Respondent's parental rights to N.M. and H.M. were terminated in June 2008.

In January 2008, respondent left her husband and went to live with a boyfriend in Suffolk, Virginia. She returned to her husband in July 2008, and the two continued to live in Hertford for a few months. In September 2008, respondent and her husband moved in with respondent's mother and stepfather. Respondent now helps to care for her mother, who has medical problems. Respondent and her husband have little income. She earns \$5.00 per hour house cleaning, working approximately three to five hours per week. She applied for a few positions at fast food restaurants but was

unsuccessful. Respondent's husband earns a couple hundred dollars per week as a self-employed freelance automotive repairman.

On 22 September 2008, DSS filed a petition to terminate respondent's parental rights to D.K.B. DSS also sought to terminate the parental rights of D.K.B.'s biological father, who was believed to be living in Santa Monica, California. DSS made attempts to locate D.K.B.'s father. The Santa Monica Police Department indicated that he was homeless but could not ascertain his whereabouts. DSS alleged the following grounds for termination: (1) neglect; (2) willfully leaving D.K.B. in foster care for more than twelve months without showing reasonable progress to correct the conditions that led to removal; (3) willfully failing to pay a reasonable portion of the cost of care for D.K.B.; (4) willful abandonment; and (5) the parental rights of the parent with respect to another child have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

On 14 October 2008, the trial court conducted a preliminary hearing and entered an order scheduling the termination of parental rights hearing for 30 October 2008. On 25 November 2008, the trial court conducted a termination hearing. During the hearing, DSS called five witnesses to testify. The first two witnesses were respondent and her husband. The third witness was Paula West, a licensed clinical social worker, who provided therapy to D.K.B. The last two witnesses were a DSS social worker, who worked with the family, and D.K.B.'s guardian *ad litem*. Respondent did not

introduce any evidence at the termination hearing. At disposition, the trial court concluded that it was in the best interest of D.K.B. to terminate respondent's parental rights. Additionally, the trial court terminated the parental rights of D.K.B.'s biological father, who did not participate in the proceedings. From the order terminating her parental rights to D.K.B., respondent appeals.

Respondent raises three issues on appeal: whether the trial court erred by (I) making adjudicatory findings of fact numbers 18, 40, and 43; (II) concluding that it was in D.K.B.'s best interest to terminate respondent's parental rights; and (III) abusing its discretion when it terminated respondent's parental rights.

I

In respondent's first argument, she challenges only three of the forty-four findings of fact made by the trial court. However, we will not address respondent's argument as to these findings because the remaining unchallenged findings of fact are sufficient to support grounds for termination. Although respondent assigned error to several other findings of fact, respondent did not argue any of them in her brief. Because respondent has not challenged the remaining findings of fact in her brief, we must deem these assignments of error abandoned. *See In re Bishop*, 92 N.C. App. 662, 664, 375 S.E.2d 676, 678 (1989) (citing N.C.R. App. P. 28(b)(5)). The remaining unchallenged findings of fact are binding

on appeal. See *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003).

The standard of review in termination of parental rights cases on appeal is "whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004) (quoting *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984)).

Proceedings to terminate parental rights are conducted in two parts: (1) the adjudication stage, governed by N.C. Gen. Stat. § 7B-1109, and (2) the disposition stage, governed by N.C. Gen. Stat. § 7B-1110. *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003). In the adjudication stage, the burden is on the petitioner and all findings by the trial court are to be based on clear, cogent, and convincing evidence. *In re S.W.*, 187 N.C. App. 505, 506, 653 S.E.2d 425, 425-26 (2007). The trial court shall adjudicate the existence or nonexistence of the circumstances under G.S. 7B-1111 which authorize the termination of parental rights. N.C. Gen. Stat. § 7B-1109(e) (2007). Pursuant to N.C. Gen. Stat. § 7B-1111(a) (2007), a trial court may terminate parental rights upon a finding of one of the ten enumerated grounds. "A single ground . . . is sufficient to support an order terminating parental rights." *In re J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006).

Here, the trial court found that five grounds existed to terminate respondent's parental rights to D.K.B.: (1) neglect; (2)

willfully leaving D.K.B. in foster care for over twelve months without showing reasonable progress in correcting the conditions which led to the removal; (3) willfully failing to pay a reasonable portion of the cost of care for D.K.B.; (4) willful abandonment; and (5) the parental rights of the parent with respect to another child have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

Under N.C. Gen. Stat. § 7B-1111(a)(2), the court may terminate a person's parental rights if

[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile.

N.C. Gen. Stat. § 7B-1111(a)(2) (2007).

The trial court made the following relevant findings of fact:

27. Custody of [D.K.B.] was removed from [his grandparents] in 2006 because, although the grandparents were always very willing to provide care and had the best intentions about maintaining custody of [D.K.B.], the age and decreasing physical abilities of the grandparents, combined with the many special needs of [D.K.B.] resulted in the [grandparents] no longer having the ability to care for [D.K.B.]
28. The respondent became pregnant by another male prior to separating from her husband . . . in December 2007. Respondent[] resided with her boyfriend . . . and her boyfriend's mother . . . in Suffolk, Virginia, from January 2008 until July 2008. On July 6th, 2008, [respondent] left her boyfriend in Suffolk, Virginia, partly because he insisted that

[respondent] find employment ([respondent] was unemployed the entire time she resided with her boyfriend in Suffolk, Virginia).

29. During the period of time [respondent] was living with her boyfriend in Suffolk, Virginia (from January through the beginning of July 2008) she had absolutely no contact with her son, [D.K.B.]; this, in spite of the fact that she could have had weekly contact with her son, [D.K.B.], during his Sunday visits at the home of [his grandparents].

. . .

34. Respondent[] has presented no evidence that her conditions have improved at all since [D.K.B.] was removed from the care of [his grandparents] by the Pasquotank County Department of Social Services in 2006.

The trial court's findings of fact do not indicate whether, during the two years after D.K.B. was taken from his grandparents, respondent took steps to find alternate suitable caretakers. Respondent left D.K.B. in the care of his maternal grandparents so that she could go to the west coast with her husband at the time to work with a carnival. Respondent returned to North Carolina, and since DSS took custody of D.K.B., respondent has not had any employment except for cleaning houses every Friday for three to five hours earning \$5.00 an hour. Respondent testified that she applied for jobs with fast food restaurants but was unable to obtain any employment. The trial court found that respondent did not present any evidence that conditions have improved since D.K.B. was removed from his grandparents' care.

Based on the trial court's unchallenged findings of facts, the trial court properly concluded that respondent willfully left D.K.B. in foster care for over twelve months without making reasonable progress in correcting the conditions that led to the removal of D.K.B. Therefore, we hold that the trial court had clear, cogent, and convincing evidence to determine that grounds pursuant to N.C. Gen. Stat. § 7B-1111(a) existed to terminate respondent's parental rights. Accordingly, this assignment of error is overruled.

II & III

Next, respondent argues that the trial court erred and abused its discretion in terminating respondent's parental rights to D.K.B. We disagree.

Once grounds for termination are established at the adjudication phase, a trial court will proceed to the dispositional stage where the court shall issue an order terminating a respondent's parental rights unless it determines that the best interests of the child require otherwise. *In re J.A.P.*, 189 N.C. App. 683, 693, 659 S.E.2d 14, 21 (2008) (citation omitted). Under North Carolina General Statutes, section 7B-1110 – Determination of best interests of the juvenile – a trial court is required to consider the following factors in determining whether termination of parental rights is in the juvenile'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).

We review this determination for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 564 S.E.2d 599 (2002). "Abuse of discretion exists when 'the challenged actions are manifestly unsupported by reason.'" *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004) (quoting *Blankenship v. Town & Country Ford, Inc.*, 155 N.C. App. 161, 165, 574 S.E.2d 132, 134 (2002)).

Respondent contends that the trial court abused its discretion by concluding that it was in D.K.B.'s best interest to terminate her parental rights to D.K.B. – arguing that termination did not aid in a permanent plan for D.K.B. or increase the likelihood that he will be adopted. Respondent asserts that at the time of the termination D.K.B. had no prospective adoptive parents and refused to consent to adoption, and that the trial court contradicted itself by acknowledging the importance of respondent maintaining a relationship with D.K.B. and assuring respondent that she would be allowed visitation, while having no ability to order visitation following termination.

Respondent cites *In re J.A.O.*, 166 N.C. App. 222, 601 S.E.2d 226 (2004) (Bryant, J., concurring), as an example of this Court's reversal of a trial court order terminating parental rights on the basis that the termination was not in the best interest of the

child. J.A.O was fourteen years old with a history of verbal and physical aggression and threatening behavior. He had been diagnosed with several disorders, including bipolar disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, borderline intellectual functioning, non-insulin dependent diabetes mellitus, and hypertension. *Id.* at 227-28, 601 S.E.2d at 230. As a result of his special needs, J.A.O. had been in foster care since the age of eighteen months, shuffled through nineteen different treatment centers, and had no prospective adoptive parents including his foster family at the time of the termination of parental rights proceedings. *Id.* At the adjudication hearing, the respondent presented strong evidence in support of her argument against termination of parental rights. J.A.O.'s guardian *ad litem* argued at both the adjudication and disposition hearings that it was unlikely another family would come forward for the child, making J.A.O. a legal orphan. *Id.* at 226, 601 S.E.2d at 229. Significantly, evidence presented to the trial court showed that the respondent had made substantial progress in correcting those conditions that led to the filing of the petition for termination of parental rights. *Id.* at 224, 601 S.E.2d at 228. Further, prior to J.A.O.'s transfer to a hospital six hours away from the respondent, the respondent visited J.A.O. frequently. *Id.* In reviewing the challenged findings and conclusions of the trial court, we held that "balancing the minimal possibilities of adoptive placement against the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural

relatives may ultimately bring, we must conclude that termination would only cast [J.A.O.] further adrift." *Id.* at 228, 601 S.E.2d at 230 (alteration in original) (citation omitted). For those reasons, we reversed the order of the trial court. *Id.*

Notwithstanding some factual similarity, the instant case is distinguishable from J.A.O. Here, the trial court made the following *unchallenged* findings of fact¹:

14. [D.K.B.] is in need of, and deserves, permanency. [D.K.B.] deserves love, stability and a permanent family who can instill acceptable social values and morals which will help him to grow and mature into a productive youth, teenager, young adult, and adult.

15. The likelihood of adoption of [D.K.B.] is unknown Terminating the parental rights of [respondent-mother] . . . would be a major step towards permanency for [D.K.B.] and legally clear him for adoption.

. . . .

18. [Respondent-mother] has taken no significant action, completed no significant task, and, by her physical absence, has demonstrated no willingness to work towards reunification. She has willfully left the child[] in placements outside the home for more than 12 months without showing reasonable progress in correcting the conditions which led to the removal of the child[]. This lack of reasonable progress extends back over a period of at least two years.

. . . .

¹ "As Respondent did not challenge any of the trial court's findings of fact, these findings are binding on appeal." *In re J.A.P.*, 189 N.C. App. at 693, 659 S.E.2d at 21 (citation omitted).

20. The minor child needs adequate care in a clean, safe and healthy environment that provides structure and constructive discipline – the termination of parental rights of the [respondent-mother] is a step forward in meeting the needs of the minor child.
21. [Respondent-mother] in this matter ha[s] failed to provide anything positive in the life of [D.K.B.]
22. This child needs permanence.

Once grounds for termination of parental rights are established in the adjudication phase, the trial court shall issue an order terminating a respondent's parental rights unless it determines that the best interest of the child requires otherwise. *In re J.A.P.*, 189 N.C. App. at 693, 659 S.E.2d at 21. These uncontested findings, including the finding that termination of parental rights would be a major step towards permanency for D.K.B. and legally clear him for adoption, support the trial court's ruling that termination of respondent's parental rights was in the best interest of D.K.B. Therefore, the trial court did not abuse it's discretion. Accordingly, these assignments of error are overruled.

AFFIRMED.

Judges WYNN and STEELMAN concur.

Report per Rule 30(e).