NO. COA09-374

NORTH CAROLINA COURT OF APPEALS

Filed: 15 September 2009

IN THE MATTER OF: Onslow County
J.L. No. 05 JA 202

Appeal by respondent-father from an order entered 22 December 2008, *nunc pro tunc* 29 October 2008, by Judge Henry L. Stevens IV in Onslow County District Court. Heard in the Court of Appeals 10 August 2009.

M. Lynn Smith, for petitioner-appellee Onslow County Department of Social Services.

Lisa Skinner Lefler, for respondent-appellant.

Alston & Bird, LLP, by Lisa Byun Forman, for the Guardian ad Litem.

CALABRIA, Judge.

Respondent-father ("respondent") appeals from an order entered 22 December 2008 terminating his parental rights to J.L. J.L.'s mother's parental rights were also terminated, however, she is not a party to this appeal. We affirm.

On 28 June 2005, the Onslow County Department of Social Services ("DSS") filed a petition alleging that J.L. was a neglected juvenile. DSS stated that it began investigating J.L.'s family when, at J.L.'s birth, both J.L. and her mother tested

positive for marijuana. DSS alleged that, on 12 June 2005, J.L.'s mother left the residence that she shared with respondent and took J.L. with her. DSS claimed that respondent permitted the mother to leave the residence with J.L., although he believed at the time that she was in need of mental health treatment. Prior to departing, the mother bit respondent, and told him that "God had revealed to her the [respondent] was cheating on her and having sex with someone else." Additionally, respondent admitted that, prior to her departure, he learned that the mother was talking to herself, throwing dishes, and had called the police to report that J.L. had been poisoned. After leaving respondent's residence, the mother stayed with her family until 19 June 2005, at which time she sought shelter at the Onslow Women's Center. DSS alleged that respondent failed to determine the safety or location of J.L. On 22 June 2005, the mother was involuntarily committed to Cherry Hospital, and J.L. was placed with a maternal aunt. On 8 September 2005, the trial court adjudicated J.L. a neglected juvenile.

On 29 March 2006, DSS filed a second petition alleging that J.L. was a neglected juvenile. DSS alleged that the maternal aunt provided a urine sample, which she stated would prove positive for cocaine, and she admitted to using crack cocaine. An inspection of the juvenile's residence revealed "dirty bottles lying within reach of the child and old food all over the premises. The child was observed eating food off the floor. The juvenile ha[d] no separate bed to sleep in at the residence." DSS took emergency custody of the child. DSS stated that neither the respondent, the mother, or

the maternal aunt were suitable placement alternatives for the juvenile. DSS noted that respondent had not complied with the court's orders and DSS recommendations, and had "previously stated he is unable to care for the child." J.L. was adjudicated neglected for a second time on 20 April 2006.

On 6 March 2007, the trial court ordered the case plan be changed to "Termination of Parental Rights/Adoption." On 22 February 2008, DSS filed a petition to terminate respondent's and the mother's parental rights. Regarding the respondent, DSS alleged:

> a. . . . [respondent] has done little or nothing to rectify the situation that led to this adjudication of neglect. During the involvement with [DSS], the respondent father has made minimal progress.
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> b. That the respondent father has willfully left the minor child in a placement outside the home for more than twelve months. The juvenile has been residing [] outside the home since June 22, 2005. That the respondent father admitted to not being able to care for the minor child. The juvenile petition filed June 28, 2005 listed several specific recommendations for the father as well as the disposition Order entered September 8, 2005. That the respondent father has never regained physical custody of the minor child, and has failed to comply with the recommendations of [DSS]. That the respondent father has withheld his presence, love, care and opportunity to display filial affection to the minor child and willfully has neglected to lend support and maintenance to the minor child.
>
> c. That the respondent father has admitted to smoking marijuana in the past.

DSS further stated that J.L. was "thriving in her current placement, and all of her needs are currently being met. That said

placement is interested in becoming a permanent home for [J.L.]." Accordingly, DSS sought termination of respondent's and the mother's parental rights.

A hearing was held on the petition to terminate parental rights on 29 October 2008. The mother did not respond to the petition to terminate her parental rights, did not appear at the hearing, and the trial court concluded that grounds existed to terminate her parental rights. Regarding the respondent, the trial court concluded that petitioner had "proven by clear, cogent and convincing evidence the grounds alleged in the petition as set forth herein to terminate [respondent's] parental rights." The court further concluded that it was in J.L.'s best interests to terminate respondent's and the mother's parental rights. Accordingly, on 22 December 2008, *nunc pro tunc* 29 October 2008, the trial court terminated respondent's and the mother's parental rights. Respondent appeals.

Respondent first argues the trial court erred in finding that grounds exist pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate his parental rights. We disagree.

N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. N.C. Gen. Stat. § 7B-1111 (2007). 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). "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.*, 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)).

In the case *sub judice*, the trial court concluded that grounds exist pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate respondent's parental rights. This Court has stated:

> [T]o find grounds to terminate a parent's rights under G.S. § 7B-1111(a)(2), the trial court must perform a two part analysis. The trial court must determine by clear, cogent and convincing evidence that a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and, further, that as of the time of the hearing, as demonstrated by clear, cogent and convincing evidence, the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.

In re O.C., 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005) (internal citations omitted). The trial court made numerous findings of fact to support its determination that respondent's parental rights should be terminated on this ground.

The trial court found that "the respondent father willfully left the minor child in a placement outside the home for more than twelve months," and that the juvenile had been residing outside the home since 22 June 2005. Clear, cogent, and convincing evidence supports this finding. At the first adjudication hearing, in September 2005, respondent stated that he was unable to care for J.L. and that he allowed J.L. to be placed outside the home with

her maternal aunt. By the permanency planning hearing, in March 2007, J.L. remained outside the home and the trial court stated that it was "especially concerned that [respondent] did nothing to remove his child from foster care on March 29, 2006." Even further, respondent testified that J.L. began living outside the home sometime in June 2005. The termination hearing was held on 29 October 2008, more than three years later. Thus, clear, cogent, and convincing evidence exists to support the trial court's finding that respondent willfully left J.L. in placement outside the home for over twelve months as required by N.C. Gen. Stat. § 7B-1111(a)(2).

The trial court also found that respondent "has not made enough progress in greater than twelve months to have a home where this child can be returned." This Court has held that where the progress made by a parent is extremely limited, an order terminating parental rights will be upheld on appeal. *In re B.S.D.S.*, 163 N.C. App. 540, 545-46, 594 S.E.2d 89, 93 (2004). As the interests of the child must take precedence, extremely limited progress is not reasonable progress as required under N.C. Gen. Stat. § 7B-1111(a)(2), regardless of any "good intentions" of the parent. *Id.*

The trial court recognized that respondent made some efforts to rectify his situation and meet aspects of his case plan. For example, respondent testified he obtained stable employment and that he provided child support. However, respondent admitted that he did not complete all the items identified in his case plan with

DSS. Respondent did not take parenting classes, did not participate in drug or alcohol assessments or screenings and did not obtain his own housing. Furthermore, despite the trial court's order that he refrain from drug or alcohol use in the presence of J.L., respondent testified that on at least two occasions, DSS detected an odor of alcohol on respondent while he visited with his daughter.

Thus, clear, cogent, and convincing evidence exists to support the trial court' s findings that:

> [R]espondent father has done little or nothing to rectify the situation that led to this adjudication of neglect.
>
> [T]he Court has previously laid out specific things that the respondent father must do to rectify the situation…and [respondent] has failed to fully comply with the recommendations of the Onslow County Department of Social Services.
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> [H]e has continued to have issues with alcohol as recently as March of this year as well as being able to keep utilities on at his home.

Respondent's minimal progress was not enough to preclude termination of his parental rights.

Respondent contends that he was compliant except for one part of the case plan. Specifically, he was ordered to obtain a driver's license, but he failed to comply because he could not afford the required fees and insurance. As parental rights may not be terminated because of poverty, respondent contends that his failure to have a license cannot provide grounds on which the court bases termination. This argument is without merit.

DSS never disputed the fact that respondent failed to comply with the order to obtain a driver's license because he was financially unable to do so. Yet, the fact that he was financially unable to comply with one order does not discredit the trial court's conclusion that termination is proper since respondent failed to satisfy a majority of the conditions in the remaining orders that were part of his case plan. The trial court's findings adequately support the conclusion that respondent's parental rights should be terminated on the basis of his failure to make reasonable progress to correct the conditions that led to the removal of his child.

Respondent next argues that the trial court erred in concluding termination of respondent's parental rights is in J.L.'s best interests. Respondent contends he has not done anything to justify the trial court's severing of his relationship with J.L. and that the trial court overlooked J.L.'s right to a familial relationship with her father because there exists a good placement alternative. We disagree.

Once the trial court has determined that grounds exist to terminate parental rights, the trial court then moves to the dispositional phase where it considers whether termination is in the best interests of the child. N.C. Gen. Stat. § 7B-1110(a) (2007); *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). In making this determination, the trial court must 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 relevant consideration.

N.C. Gen. Stat. § 7B-1110 (2007). Wide discretion is vested in the trial judge at this stage of the proceeding, and the decision of the trial judge should not be upset on appeal absent a clear showing of abuse of discretion. *In re Custody of Pitts*, 2 N.C. App. 211, 212, 162 S.E.2d 524, 525 (1968). Based on the wide range of discretion given to the trial judge, as well as the sufficiency of the evidence and findings of fact, the trial court did not abuse its discretion in concluding that termination of respondent's parental rights was in the best interests of his child.

The trial court considered the factors set forth in N.C. Gen. Stat. § 7B-1110 in making its determination. The trial court recognized that J.L. was almost four years old at the time of the termination hearing, that she has been residing with her current caretaker since 25 January 2007, and that she is thriving in her current placement. The trial court also found that J.L.'s caretaker was meeting all of her needs and that J.L. had bonded and formed an excellent relationship with her caretaker. Further, the trial court found that J.L.'s caretaker's home was a permanent home for J.L. and her caretaker was interested in pursuing adoption.

The trial court also properly considered respondent and J.L.'s

relationship. The trial court recognized that respondent "clearly loves the child and has visited with the child during this process." However, "[t]he welfare or best interest of the child is always to be treated as the paramount consideration, to which even parental love must yield." *Wilson v. Wilson*, 269 N.C. 676, 678, 153 S.E.2d 349, 351 (1967). As the best interests of J.L. were the polar star, the trial court was entitled to give greater weight to other facts that it found, including: (1) that respondent has done little or nothing to rectify the situation that led to the adjudication of neglect; (2) that respondent continues to have issues with alcohol as well as the ability to maintain a stable home; and (3) that respondent has failed to fully comply with the orders of the trial court and the recommendations of DSS. *Id. In re C.L.C.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709-10 (2005). It was the trial court's decision to determine the degree of respondent's progress and whether these facts outweighed respondent's bond with his child. *In re C.L.C.*, 171 N.C. App. at 448, 615 S.E.2d at 710. Accordingly, we hold that the trial court did not abuse its discretion in concluding that termination was in the best interests of the child. *Id.*

Affirmed.

Judges McGEE and JACKSON concur.

Report per Rule 30(e).