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NO. COA09-415

NORTH CAROLINA COURT OF APPEALS

Filed: 15 September 2009

IN THE MATTER OF:

Wake County
No. 07 JT 405

Z.T.

Appeal by respondent-father from order entered on or about 19 December 2008 by Judge Eric Chasse in District Court, Wake County. Heard in the Court of Appeals 4 August 2009.

Office of the Wake County Attorney, by Scott W. Warren, Roger A. Askew, and Mary Elizabeth Smerko, for appellee Wake County Human Services.

Thomas B. Kakassy, P.A., by Thomas B. Kakassy, for appellant respondent-father.

Pamela Newell Williams, for guardian ad litem.

STROUD, Judge.

Respondent-father appeals from an order terminating his parental rights to Z.T. For the following reasons, we affirm.

On 17 May 2007, a petition was filed alleging that Z.T. was a neglected juvenile. The petition alleged that on 5 September 2006, Wake County Human Services ("DSS") had received a report from a woman who had taken Z.T. and the child's mother "into her home because they were homeless and the mother was not taking care of" Z.T. DSS alleged that while living in the lady's home, the mother would take Z.T. "out late at night to Chavis Park to meet" with

respondent-father. DSS further alleged that the mother "had no income to provide for the care of" Z.T. and was "working the streets and the park with the baby to get money." As the parents were unable to provide a home or take care of Z.T., they placed her with a godmother on 11 September 2007. However, the placement was disrupted on 7 May 2007 when DSS received a report that the godmother was neglecting Z.T. Additionally, there were several warrants for the godmother's arrest, and she absconded with Z.T. A missing person report was filed on 14 May 2007. Z.T. was located by law enforcement, and on 17 May 2007, DSS was granted non-secure custody.

An adjudicatory hearing was held on 10 July 2007. The trial court adjudicated Z.T. a neglected juvenile, with the facts being stipulated to by the parties. The trial court granted physical and legal custody to DSS. The trial court also ordered that respondent-father comply with an Out of Home Services Agreement, which required him to:

- a) enroll in an approved parenting class;
- b) complete a mental health assessment and comply with recommendations;
- c) participate in the Men's Group for substance abuse counseling;
- d) abstain from use of alcohol and illegal use of drugs and comply with requested drug screens;
- e) maintain contact with [DSS] and attend meetings regarding the minor child;
- f) follow up with Social Security Office to obtain social security card and obtain Birth Certificate and
- g) speak with Probation Office in Wake [C]ounty to get advice on how to use prison records to obtain ID card if possible.

A review hearing was held on 4 October 2007. The trial court found that respondent-father had "not enrolled in either parenting

or anger management classes; ha[d] not secured employment; ha[d] not secured housing and ha[d] not completed the process of getting a birth certificate." The trial court ordered that respondent-father:

- a. Enroll and participate in an appropriate Substance Abuse Group
- b. Submit to Random Drug Tests
- c. Enroll and participate in the Parenting and Anger Management Groups
- d. Obtain and maintain employment
- e. Secure proper ID
- f. Obtain appropriate housing.

On 10 January 2008, the trial court held another review hearing and a permanency planning hearing. The trial court found that respondent-father had completed a "parenting group[,]" but had not otherwise complied with the trial court's prior orders.

At a review hearing on 17 April 2008, the trial court found that respondent-father had "completed parenting classes and the men's pre-treatment group[,]" his drug screens had been "clean," and he was "employed briefly and is again seeking gainful employment." However, respondent-father was still without housing.

At a placement review and permanency planning hearing on 24 July 2008, respondent-father testified that he had "moved into his fiancée's [sic] 4 bedroom home, which she leases." However, respondent-father "provided no documentation or verification of this housing." Respondent-father also testified that he was "working at Boston Market." Nevertheless, the trial court found that respondent-father had "not demonstrated that he has obtained stable housing or maintained stable employment. These problems have persisted since the inception of this matter, and it does not

appear likely that he will be able to provide a safe home within a reasonable time."

On or about 8 September 2008, DSS filed a motion to terminate respondent-father's parental rights. DSS alleged two grounds for termination:

[1.] That the father has neglected the minor child and it is likely that the neglect will continue [i]f the child is placed in his care.

[2.] That the father has willfully left his child in placement outside the home for more than 12 months without showing to satisfaction of the Court that reasonable progress has been made in correcting the conditions which led to the removal of the child.

A hearing was held on the motion to terminate respondent-father's parental rights on 9 December 2008. The trial court concluded that grounds existed to terminate respondent-father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2). The court further concluded that it was in Z.T.'s best interest that respondent-father's parental rights be terminated. Accordingly, on or about 19 December 2008, the trial court terminated respondent-father's parental rights. Respondent-father appeals from the order terminating his parental rights.

Respondent-father argues that "[t]he trial court erred in finding that there is a reasonable probability that neglect would continue in the future, were the child to be placed in the care of the respondent, and in so concluding, when the evidence suggests otherwise." Respondent-father contends that "after a slow start, [he] did in fact make substantial progress; in obtaining 'legal' and legitimate identification; in counseling groups; in maintaining

visitation and a bond with his daughter; in complying with drug testing and staying clean from the beginning; and yes, in housing and employment[.]” Furthermore, respondent-father contends that his “poverty was responsible for most or all of the noncompliance with his case plan remaining at the time of termination” and that “[t]here is not a scintilla of evidence in the record . . . [that he] willfully ‘failed to obtain’ housing or employment.” Respondent-father claims that

he was never terminated for cause; he never quit a job; he was never evicted for any reason save that of finances; he never engaged in drug-seeking behavior or any other habit or practice which would have sapped his finances; he never acted or failed to act in any way which would lead to the inference that he was placing his own needs above those of his child.

Thus, respondent-father contends that the trial court’s findings that he failed to maintain stable employment and housing are inappropriate. Respondent-father goes on to argue that because grounds did not exist to terminate his parental rights, “[t]he trial court erred in terminating” his parental rights. We disagree.

Here, “[t]he 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) (citation omitted). N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. See N.C. Gen. Stat. § 7B-1111 (2007). In the instant case, the

trial court concluded that grounds existed to terminate respondent-father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), which allows termination "upon a finding" that "[t]he parent has abused or neglected the juvenile." N.C. Gen. Stat. § 7B-1111(a)(1). A "[n]eglected juvenile" is:

[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). Generally, "[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) (citation omitted). However, "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). Where a prior adjudication of neglect is considered by the trial court, "[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." *Id.* at 715, 319 S.E.2d at 232 (citation omitted). Thus, where

there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of

repetition of neglect if the juvenile were returned to her parents.

In re Reyes, 136 N.C. App. 812, 814-15, 526 S.E.2d 499, 501 (2000) (citation omitted).

In the case *sub judice*, Z.T. was adjudicated neglected on 19 July 2007 because of, *inter alia*, respondent-father's lack of employment or suitable housing; thus, respondent-father was ordered at a review hearing to "[o]btain and *maintain* employment" and "[o]btain appropriate housing." However, in the termination order the trial court found that respondent-father failed to comply:

13. That at the time of the adjudication he was homeless and reported that he remained without a home in November, 2007, and in January, 2008.

14. That in February, 2008, the father reported that he stayed temporarily at 118 Camden Street in Raleigh, NC, and in March, 2008, he reported that he was living in a boarding home. At a permanency planning meeting in March, 2008, he declined a referral to the Raleigh Rescue Mission, and stated that he didn't want to go live where addicts lived and that there was no privacy. He preferred a referral to Oxford House, where he would have more privacy.

15. That in July, 2008, he told the social worker for [DSS] that he was living at 220 Snow Street, a homeless shelter in Raleigh, then testified in Court on July 24, 2008, that he was living with his "fiancé" at 5902 Wolfe Street, Raleigh, NC. He was not on the lease.

16. That in October, 2008, he told the social worker that he had been living at 20 Mayo Street since August 1, 2008, with a new friend that he met in Moore Square in Raleigh. At first the friend stated that the accommodations would be temporary, then later stated that [respondent-father] could stay until he found better housing. The [guardian ad litem] and social worker verified that the

father lived there in his friend's one bedroom home where [respondent-father] sleeps on an air mattress and is not on the lease.

. . . .

18. That in January, 2008, the father reported to the social worker that he was working for a temporary agency ("Labor Finders") but was not clear about when he worked and provided no verification of employment.

19. That in April, 2008, the father reported to social worker that he was working at Yancey's, a restaurant in downtown Raleigh, but provided no verification. Later in April, 2008, he was not working. In May, 2008, he reported that he was again working for a temp agency, and in June, 2008, he reported that he was doing private subcontractor work for which he advertised on "Craig's List." The social worker asked him for written verification, but he did not do so.

20. That in August, 2008, he reported that he was working at the Fayetteville Street Bar, and in October, 2008, stated that he had been out of work for a couple of weeks due to business being slow.

21. That in December, 2008, he provided social worker with 3 pay stubs from Capitol City Club of Raleigh, NC showing that he earned \$7.25 per hour and gross income of \$826.00 over the period from October 2, 2008 to November 25, 2008.

Respondent-father does not challenge the above findings of fact, and therefore these findings are deemed to be supported by sufficient evidence and are binding on appeal. See N.C.R. App. P. 28(b)(6); *Pascoe v. Pascoe*, 183 N.C. App. 648, 650, 645 S.E.2d 156, 157 (2007) ("Findings of fact to which no error is assigned are presumed to be supported by competent evidence and are binding on appeal." (citation and quotation marks omitted)). Though

respondent-father does challenge findings of fact 12, 17, 23, 31, 32, and 33, they need not be considered, see *Black Horse Run Ppty. Owners Assoc. v. Kaleel*, 88 N.C. App. 83, 86, 362 S.E.2d 619, 622 (1987) ("Where there are sufficient findings of fact based on competent evidence to support the trial court's conclusions of law, the judgment will not be disturbed because of other erroneous findings which do not affect the conclusions." (citations omitted)), *cert. denied*, 321 N.C. 742, 366 S.E.2d 856 (1988), as the unchallenged findings establish neglect in that respondent-father failed to "maintain" stable housing or employment. See N.C. Gen. Stat. § 7B-101(15); Black's Law Dictionary 973 (8th ed. 2004) (defining "maintain" as "[t]o continue (something)" or "[t]o continue in possession of (property, etc.)"). From the time that Z.T. was adjudicated neglected until the termination of respondent-father's parental rights, respondent-father lived in at least five different places, only one of which might arguably be a suitable home for a child, and at times was homeless. Respondent-father had at least six different jobs and was at times unemployed. Thus, we conclude that due to respondent-father's failure to *maintain* stable employment and suitable housing, the trial court could properly conclude that respondent-father neglected Z.T., and that there was likely to be a repetition of neglect should Z.T. be returned to respondent-father's care. See N.C. Gen. Stat. § 7B-101(15). Accordingly, sufficient grounds existed for termination of respondent-father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). See N.C. Gen. Stat. § 7B-1111(a)(1).

We next consider whether the trial court erred in concluding that it was in the best interests of Z.T. to terminate respondent-father's parental rights. "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." *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001) (citations omitted). As a discretionary decision, the trial court's disposition order will not be disturbed unless it could not have been the product of reasoning. *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387 (citation omitted), *aff'd per curiam*, 360 N.C. 165, 622 S.E.2d 495 (2005).

Factors to consider in determining the juvenile's best interests are:

- (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). In the instant case, the trial court's dispositional order reveals that the trial court considered the factors required by N.C. Gen. Stat. § 7B-1110(a) as the trial court found unchallenged that (1) "the child is . . . old[;]" (2) "[t]he foster mother has stated that she is willing to adopt the minor child. The child's mother signed a relinquishment

specifically so that the foster parent could adopt the child[;] (3) "the permanent plan in this matter is adoption and termination of the father's parental rights will aid in the accomplishment of the permanent plan[;] (4) "the minor child has demonstrated that she has an affection for her father, but the child . . . has not lived with her father for 26 months (since she was three months old)[;] and (5) "the minor child is thriving in the home of her foster mother, with whom she has formed a strong bond and looks to for parental guidance and support." Pursuant to the unchallenged findings, we discern no abuse of discretion in the trial court's determination that it was in the best interests of Z.T. that respondent-father's parental rights be terminated. These arguments are overruled, and thus we affirm.

AFFIRMED.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).