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NO. COA09-594

NORTH CAROLINA COURT OF APPEALS

Filed: 1 September 2009

IN THE MATTER OF:

A.M.G.

Randolph County  
No. 06 JT 230

Appeal by respondent-mother from order entered 19 March 2009 by Judge Michael A. Sabiston in Randolph County District Court. Heard in the Court of Appeals 4 August 2009.

*Erica Glass for petitioner-appellee, Randolph County Department of Social Services.*

*Pamela Newell Williams for respondent-appellee, Guardian ad Litem.*

*Ryan McKaig for respondent-appellant, mother.*

ERVIN, Judge.

Katie P. (Respondent-Mother) appeals from an order terminating her parental rights in her daughter, A.M.G. (Anna)<sup>1</sup>. After careful consideration of the briefs and the record in the light of the applicable law, we affirm the trial court's order.

On 1 December 2006, the Randolph County Department of Health and Human Services (DSS) received reports alleging that Anna, who was an infant at that time, and her three-year-old brother, C.R.

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<sup>1</sup> "Anna" is a pseudonym used to protect the privacy of the juvenile and for ease of reading.

(Cody),<sup>2</sup> were neglected. As a result, a social worker went to Respondent-Mother's home. Upon arriving at that location after dark, the social worker found the children alone and hungry. In light of these discoveries, DSS obtained non-secure custody of Anna.

On 4 December 2006, DSS filed a juvenile petition alleging that Anna was a neglected juvenile. In its petition, DSS alleged that there was minimal food and infant formula in the home and that the children lived in a "chronically neglected environment with open full trash bags, trash on the floor to include dirty diapers, burned out cigarettes, wrappers, and plastic bottles."

On 31 January 2007, Judge James P. Hill, Jr., conducted an adjudication and disposition hearing for the purposes of addressing the issues raised by the DSS petition. In an order entered on 27 February 2007, Judge Hill determined that Anna was a neglected and dependent juvenile. As a result, Judge Hill ordered that Anna remain in DSS custody and required Respondent-Mother to: (1) submit to a psychological evaluation; (2) successfully complete parenting classes; (3) maintain clean and stable housing; (4)

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<sup>2</sup> "Cody" is also a pseudonym and is used for the same reasons set out above with respect to Anna. In addition to the proceedings involving Anna, DSS instituted such proceedings involving Cody as well. Although the trial court found in various orders that Cody was a neglected juvenile and that DSS had established grounds sufficient to support termination of Respondent-Mother's parental rights in Cody, the trial court ultimately concluded that termination of Respondent-Mother's parental rights in Cody would not be in Cody's best interests and declined to sever the parent-child relationship between Respondent-Mother and Cody. The trial court's determination as to Cody is not before this court in this appeal.

maintain employment; (5) attend domestic violence counseling; and (6) pay child support. The district court subsequently held a number of review hearings for various purposes, including evaluating Respondent-Mother's progress in complying with the requirements of her case plan.

On 7 November 2007, Judge Hill conducted a permanency planning hearing as required by N.C. Gen. Stat. § 7B-907. By means of an order entered 14 January 2008, Judge Hill found that Anna was doing well in her current placement. Judge Hill also found that Respondent-Mother had been staying with the mother of a friend in Randleman and that she was currently residing with a friend in Asheboro. Judge Hill further found that Respondent-Mother reported working at Wendy's in Randleman, working for an elderly woman, signing up for employment with Ablest Staffing Services, and babysitting two children. Judge Hill determined that Respondent-Mother had not completed domestic violence or parenting classes, but had obtained a psychological evaluation. Judge Hill further found that Respondent-Mother had visited with Anna on a regular basis and brought her food, clothes and toys on those occasions. As a result, Judge Hill concluded that it was in the best interests of the child for reunification efforts with Respondent-Mother to continue, leading him to order Respondent-Mother to attend all domestic violence and parenting classes, establish and maintain a clean and stable home, maintain stable employment in order to provide support for herself and the child, and inform the social worker of any changes in her employment.

After several continuances, the trial court conducted another permanency planning hearing on 10 September 2008. In an order entered on 29 September 2008, the trial court found that Respondent-Mother informed the social worker in January 2008 that she lived on Danny Bell Road in Asheboro; that the social worker attempted a home visit on 4 February 2008, but no one answered the door; and that Respondent-Mother informed the social worker on 7 February 2008 that she lived on George York Road in Randleman. The trial court also found that the social worker had unsuccessfully attempted to schedule visits with Respondent-Mother at the Randleman house; that the social worker attempted to conduct an unannounced visit at the Randleman house on 21 February 2008, but Respondent-Mother refused to allow the social worker to enter the home; that the social worker attempted to conduct home visits on 7 March 2008 and 9 April 2008, but no one answered the door; and that, at the time of an unsuccessful 2 May 2008 home visit, the social worker observed, by looking in a window, flies and bees flying around, dirty dishes in the sink, the refrigerator door ajar, and food wrappers and a dirty plate on the floor of a bedroom. The trial court further found in the 29 September 2008 order that, in May 2008, Respondent-Mother informed the social worker that she was pregnant and living with her cousin on Arrow Street in Ramseur; that, in June 2008, Respondent-Mother informed the social worker that she was living on Pine Knoll Street in Liberty; that the social worker was able to confirm that Respondent-Mother was renting a room at a boarding house in Liberty

at that time; that Respondent-Mother had given birth to her third child on 23 July 2008<sup>3</sup> and was living with the baby's putative paternal grandparents<sup>4</sup> on Danny Bell Road in Asheboro; and that Respondent-Mother had obtained a Section 8 voucher, but had not procured independent housing as of 4 September 2008. The trial court further found, with respect to employment-related issues, that Respondent-Mother cleaned homes from December 2007 until the first of May 2008; that Respondent-Mother gave the social worker a name and telephone number that could be used to verify her employment; that the social worker left messages for the alleged employer on 5 February 2008 and 7 March 2008, but never heard from the alleged employer; and that Respondent-Mother was currently unemployed, but had applied for Work First benefits on 25 August 2008. The trial court also found that Respondent-Mother had been charged with misdemeanor larceny, shoplifting and resisting arrest in Guilford County and with four counts of driving while license revoked, worthless check, three counts of misdemeanor larceny, two counts of possession of stolen goods, giving fictitious information to an officer, and violating the terms and conditions of probation

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<sup>3</sup> The trial court found that Respondent-Mother had entered into a safety plan with DSS regarding her newborn child and that the safety plan provided that Respondent-Mother would not be alone with the child.

<sup>4</sup> At the request of Respondent-Mother, DSS completed a background check on the newborn's putative father and ascertained that he had been charged with misdemeanor larceny in Randolph County and with shoplifting in Guilford County; that he had been convicted of possession of drug paraphernalia in 2007 and of felonious possession of a counterfeit controlled substance with the intent to sell or deliver in 2005.

on two occasions in Randolph County. Based upon these extensive findings relating to Respondent-Mother's conduct and circumstances, the trial court concluded that efforts toward reunifying Respondent Mother with Anna should cease and that Anna's permanent plan should be modified to be adoption.

On 15 October 2008, DSS filed a "Motion in the Cause to Terminate Parental Rights" alleging that Respondent-Mother had neglected Anna, N.C. Gen. Stat. § 7B-1111(a)(1); that Respondent-Mother had willfully left Anna in foster care for more than twelve months without making reasonable progress under the circumstances, N.C. Gen. Stat. § 7B-1111(a)(2); that Respondent-Mother had failed to pay a reasonable portion of the cost of Anna's care, N.C. Gen. Stat. § 7B-1111(a)(3); and that Anna was a dependent juvenile and Respondent Mother was incapable of providing for her care, N.C. Gen. Stat. § 7B-111(a)(6). After proper notice and a hearing, the trial court entered an order on 19 March 2009 in which it found by clear, cogent, and convincing evidence that grounds to terminate Respondent-Mother's parental rights in Anna existed under N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2) and (a)(6). The trial court further concluded, in the exercise of its discretion, that it was in Anna's best interest that Respondent-Mother's parental rights be terminated.<sup>5</sup> Respondent-mother has appealed to this Court from the trial court's termination order, contending that the trial court erred by finding that sufficient grounds to terminate her parental

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<sup>5</sup> The trial court also terminated the parental rights of Anna's father, who has not sought appellate review of the trial court's termination order.

rights in Anna existed and that the trial court abused its discretion when it found that terminating Respondent-Mother's parental rights in Anna would be in Anna's best interest.

A termination of parental rights proceeding is conducted in two phases: (1) an adjudication phase that is governed by N.C. Gen. Stat. § 7B-1109 and (2) a disposition phase that is governed by N.C. Gen. Stat. § 7B-1110. See *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 5, *disc. review denied*, 358 N.C. 543, 599 S.E.2d 42 (2004). During the adjudication stage, the petitioner has the burden of demonstrating by clear, cogent, and convincing evidence that one or more of the statutory grounds for termination set forth in N.C. Gen. Stat. § 7B-1111 exist. *Id.* The standard of review applied in evaluating challenges to the trial court's decisions at the adjudication phase of a termination proceeding 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 trial court's legal conclusions. See *In re Oghenekevebe*, 123 N.C. App. 434, 439-41, 473 S.E.2d 393, 397-99 (1996). If the petitioner satisfies its burden of proving the existence of at least one ground for termination, the trial court proceeds to the disposition phase, at which it considers whether termination of the parent's parental rights is in the best interests of the child. N.C. Gen. Stat. § 7B-1110(a); *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406 (2003). If the trial court determines, in the exercise of its sound discretion, that it would be in the child's best interest to

terminate the parent's parental rights, it may do so. *Shermer*, 156 N.C. App. 285, 576 S.E.2d at 406-07.

In order to establish grounds for terminating a parent's parental rights on the grounds of neglect, there must be clear, cogent, and convincing evidence that (1) the juvenile is neglected within the meaning of N.C. Gen. Stat. § 7B-101(15) "and [that] (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, 815, 526 S.E.2d 499, 501 (2000) (quoting *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (internal quotations omitted)). In the event that the child has been removed from the parents' custody before the hearing on the termination petition 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." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (citation omitted). As a result, in cases, such as this one, where the juvenile has been in DSS custody for a considerable period of time prior to the filing of the termination petition, a trial court may predicate a finding that grounds for termination exist on the basis of neglect in the event that there is a "history of neglect by the parent and the probability of a repetition of neglect." *Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407.



In this case, the trial court found that Anna had previously been adjudicated to be a neglected juvenile and that there was a probability of future neglect if she was returned to Respondent-Mother's care. In support of this conclusion, the trial court made the following findings of fact:

7. That the Court takes judicial notice of the underlying juvenile file (06 JA 230). The evidence presented to the Court is sufficient to support the allegations of the Motion and sufficient to find grounds for termination of parental rights on the Father and the Mother.
8. That the Mother is not a fit and proper person to have custody of the minor child in that:
  - a. The Mother has neglected the minor child as defined by the North Carolina General Statute § 7B-101 in that she has:
    1. Not obtained and maintained stable employment. The Mother has not obtained employment since May, 2008. Prior to May 2008, the Mother's employment history was sporadic and unverified. The Mother was employed at K&W from January 8, 2007 to March 24, 2007. The Mother reported to Randolph County Department of Social Services social worker Meghan Kology on April 10, 2007 that she worked at the BP gas station. Mother reported on April 24, 2007 to Ms. Kology that she no longer worked at BP gas station but that she was cleaning homes for Vickie White. On May 15, 2007, the Mother reported that she worked at McDonald's in Randleman, North Carolina, and this job ended July, 2007. The Mother reported to Ms. Kology that she

worked for an elderly woman from August 2007 to September 2007. The Mother reported to Ms. Kology that she worked at Wendy's Restaurant in Randleman, North Carolina in August, 2007. In October, 2007, the Mother reported that she was registered with Ablest Staffing and that she had obtained a job through this agency. Subsequently, the Mother reported that she worked as a babysitter for Mr. Ramirez from October 31, 2007 to December 2007. The Mother reported she worked from December 2007 to May 2008 cleaning homes. No written verification [] from any of the Mother's employers was ever provided to Ms. Kology to confirm her employment with any agency or individual.

2. Not obtained and maintained stable and appropriate housing. The Mother has had ten different residences since December 1, 2006. The Mother lived at [] East View Drive, Asheboro, NC from December 1, 2006 to May 2007. From June 2007 to November, 2007, the Mother reported to Randolph County Department of Social Services social worker Meghan Kology that she lived at [] East Presnell Street, Asheboro, North Carolina. From November 2007 to January 2008, the Mother reported she lived on Wainman Avenue, Asheboro, North Carolina. From January 2008 to February 2008, the Mother reported that she lived at [] Danny Bell Road, Lot 13, Asheboro, N[orth] C[arolina]. From February 2008 to April 2008, the Mother lived at [] George York Road, Randleman, North Carolina. From April

2008, the Mother lived at [] Darrow Street, Lot 183 in Ramseur, North Carolina. In June 2008, the Mother was residing at [] Pine Knoll Street, Liberty, North Carolina. As of July 25, 2008, the Mother resided at [] Danny Bell Road, Lot 1, Asheboro, N[orth] C[arolina]. On November 20, 2008, the Mother moved to 1602 Humble Street Apartment 2, Asheboro, North Carolina.

. . . .

10. That there is a likelihood that neglect will continue if the minor child is returned to the parents.

On appeal, Respondent challenges Finding of Fact Nos 8 and 10 as lacking adequate evidentiary support.<sup>6</sup>

A thorough review of the evidentiary record shows that Finding of Fact Nos. 8 and 10 are supported by competent evidence, including prior orders entered in this proceeding of which the trial court took judicial notice and testimony from social worker Meghan Kology (Kology). At the termination hearing, Kology specifically listed the jobs at which Respondent-Mother claimed to have worked and the homes in which Respondent-Mother claimed to have lived since the child came into DSS custody in December 2006.

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<sup>6</sup> As we understand Respondent-Mother's argument, she has challenged the sufficiency of the trial court's overall finding of neglect rather than challenging the sufficiency of the evidence to support the more specific statements of fact set out in the trial court's order under Finding of Fact No. 8. For that reason, the real issue raised by Respondent-Mother's challenge to Finding of Fact Nos. 8 and 10 is whether the more specific factual findings contained in the trial court's order, including the unchallenged specific factual statements set out in Finding of Fact No. 8, support the trial court's more general determinations set out in Finding of Fact Nos. 8 and 10.

Kology also testified that she attempted home visits at many of the residences that Respondent-Mother claimed to have occupied and attempted to verify Respondent-Mother's employment claims. As a result, the record contains ample evidence tending to support the trial court's findings of fact relating to Respondent-Mother's housing and employment history, which, in turn, support the trial court's determination that Anna was a neglected juvenile and that she was at risk of future neglect in the event that she was returned to the care of Respondent-Mother.

Respondent-Mother asserts that the testimony of social worker Marc Lewis (Lewis) and the Guardian *ad litem's* court report show that she had "successfully addressed concerns about stable employment and housing." In essence, Respondent-Mother contends that, given Lewis' testimony and the *Guardian ad litem's* report, the evidence overwhelmingly demonstrated that she had complied with all requirements placed upon her by the district court during the course of its supervision over Anna and her family and that this fact undermined the trial court's decision to find that Respondent-Mother's parental rights in Anna were subject to termination on the basis of neglect. A careful analysis of the record establishes that Respondent-Mother's reliance on Lewis' testimony and the *Guardian ad litem's* court report is misplaced.

Lewis testified that he began working with Respondent-Mother's family in mid-September 2008; that the family consisted of Respondent-Mother, the newborn's father, and the newborn; that the Respondent-Mother's treatment plan required her to obtain stable

housing and employment, a requirement which could be complied with through participation in Work First; and that Respondent-Mother had secured housing and was participating in Work First pursuant to this plan. At the time that he testified that Respondent-Mother had complied with the treatment plan, Lewis was referring to the treatment plan regarding the newborn rather than the plan regarding Anna. Thus, it is not at all clear that the comments from Lewis upon which Respondent-Mother relies bear any relation to the trial court's finding that Respondent-Mother's parental rights in Anna were subject to termination on the grounds of neglect.

Furthermore, although Anna's Guardian *ad litem* stated in her 11 February 2009 court report that "[t]he mother has completed all that was required of her by DSS" and that "[s]teps to begin the process to reunite this family should be the focus of DSS effort,"<sup>7</sup> the trial court is required by North Carolina law to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984). This Court has no authority to reweigh the evidence and conclude that the trial court incorrectly determined the credibility of various witnesses or the weight that should be given to particular portions of the evidentiary record. For that reason, given the evidence in the record, the trial court was free to conclude, as it did, that

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<sup>7</sup> The Guardian *ad litem* appellate counsel has urged this Court to affirm the trial court's termination order.

Respondent-Mother's persistent pattern of changing residences and jobs demonstrated an unstable lifestyle that created a substantial risk that the neglect from which Anna had previously suffered would recur.

At bottom, the mere fact that a particular witness testified that Respondent-Mother was in compliance with her case plan concerning another juvenile or that a specific party, such as the Guardian *ad litem*, did not believe that Respondent-Mother's parental rights in Anna should be terminated does not detract from the fact that the record contained sufficient evidence to support the trial court's finding that Respondent-Mother had failed to obtain and maintain proper housing and gainful employment and that these deficiencies indicated that there was a serious risk that Anna would be subject to future neglect. We hold, therefore, that the trial court's findings of fact are supported by clear, cogent, and convincing evidence and that these findings support the trial court's conclusion that Respondent-Mother's parental rights in Anna were subject to termination on the basis of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). Given our determination that the trial court properly concluded that Respondent-Mother's parental rights in Anna were subject to termination on the grounds of neglect, we need not address Respondent-Mothers's challenge to the appropriateness of the trial court's determination that Respondent-Mother's parental rights in Anna were subject to termination on other grounds as well. See *Shermer*, 156 N.C. App. at 285, 576 S.E.2d at 406.

Respondent-Mother also contends that the trial court erred by concluding that the termination of her parental rights in Anna was in Anna's best interest pursuant to N.C. Gen. Stat. § 7B-1110. In making this statutorily-required "best interests" determination, the trial court is required to consider:

- (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. In concluding that terminating Respondent-Mother's parental rights was in Anna's best interest, the trial court made the following findings of fact:

16. The minor child continues to reside in the same placement that she has been in since December 21, 2006, over two years. The minor child is bonded with her foster family.
17. That the minor child continues to be at the same daycare that she has been in since December 2006, and she is doing well in daycare.
- . . . .
20. That minor child's foster mother Jamyle Acevedo testified under oath in open court. She is a full-time teacher and she has a nine-year old son. She has a

three bedroom home. The minor child has lived in Ms. Acevedo's home since she was seven months old. Ms. Acevedo informed the Court that the minor child is a wonderful child and she is bonded with her family. The minor child will be well cared for in Ms. Acevedo's home.

Although Respondent-Mother does not claim that these findings of fact lack adequate evidentiary support, she does argue that they demonstrate that the trial court employed an impermissible legal standard in making its termination decision. In challenging the trial court's dispositional decision, Respondent-Mother argues that "[t]he trial court made clear that it was terminating [Respondent-Mother's] rights [in] Anna but not [] Cody on the basis that Anna's foster parents wanted to adopt her and that Cody's foster parents did not want to adopt him," that "the law favors placing a child with a natural parent over a non-parent," that "the trial court based its determination on the existence of adoptive parents and the belief that those parents would better care for the child than" Respondent-Mother, and that "this is not the appropriate test."

As a result of Respondent-Mother's failure to challenge the adequacy of the evidentiary record to support the trial court's findings of fact on the dispositional issue, those findings are deemed binding for purposes of appellate review. *See In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005) (concluding respondent had abandoned assignments of error directed to certain findings of fact when she "failed to specifically argue in her brief that they were unsupported by evidence"). Furthermore, given that the trial court's unchallenged findings reflect a rational



reasoning process, we conclude that the trial court did not abuse its discretion in determining that terminating the parental rights of respondent was in Anna's best interest.

Contrary to the fundamental assumption underlying Respondent-Mother's argument, the record contains sufficient evidence, which the trial court elected to credit, tending to show that Respondent-Mother had failed to obtain and maintain stable housing and employment over a considerable period of time. Given the trial court's finding that Respondent-Mother had failed to obtain and maintain stable housing and employment and the fact that Anna's foster parents had provided her with a stable and loving home environment and were willing to adopt her, we see nothing in the reasoning process employed by the trial court which indicates that the trial court relied on any impermissible consideration or otherwise erred in concluding that Anna's best interest would be served by the terminating of Respondent-Mother's parental rights. Thus, the trial court did not err at the dispositional stage of this termination proceeding.

As a result, for the reasons set forth above, we conclude that the trial court's order terminating Respondent-Mother's parental rights in Anna is free from prejudicial error. For that reason, the trial court's order should be, and hereby is, affirmed.

AFFIRMED.

Judges Stephens and Stroud concur.

Report per Rule 30(e).