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NO. COA09-697

NORTH CAROLINA COURT OF APPEALS

Filed: 20 October 2009

IN THE MATTER OF:

M.N.N.G.
T.L.T.
J.L.T.
O.L.T.

Guilford County
Nos. 06 JT 116-118
06 JT 575

Appeal by respondent from order entered 12 March 2009 by Judge Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 5 October 2009.

Mercedes O. Chut, for petitioner-appellee Guilford County Department of Social Services.

Smith, James, Rowlett & Cohen L.L.P., by Margaret Rowlett, for appellee Guardian ad Litem.

Richard E. Jester, for respondent-appellant mother.

MARTIN, Chief Judge.

Respondent mother appeals from the trial court's order terminating her parental rights to M.N.N.G., T.L.T., J.L.T, and O.L.T. She challenges each of the three grounds found to support termination. For the reasons stated below we affirm the order of the trial court.

Respondent is the mother of the four minor children involved in this case. Respondent remains married to D.D.S., who is the legal father of the children. Reginald G. is M.N.N.G.'s biological

father, and Timothy T. ("Mr. T."), respondent's boyfriend, is the biological father of T.L.T., J.L.T., and O.L.T. None of the fathers have appealed from the order terminating their parental rights.

Guilford County Department of Social Services ("DSS") first became involved with this family in November 2005 upon reports of neglect. Respondent and Mr. T. were living together at the time. On 11 January 2006, an order was signed granting DSS non-secure custody of M.N.N.G., T.L.T., and J.L.T. On 12 January 2006, a juvenile petition alleging neglect and dependency was issued. The petition specifically stated the following: (1) that the two older children were sent to school with poor hygiene; (2) they had a poor school attendance record; (3) a home visit conducted by DSS revealed that the family had no food and the youngest child was being fed tea mixed with water instead of formula; (4) neither respondent nor Mr. T. were employed; (5) Mr. T. was verbally abusive toward the social worker and her supervisor during the investigation; (6) and the children were not given necessary medical care on a consistent basis.

Respondent entered into an initial case plan with DSS on 2 February 2006. The plan required respondent to (1) submit to random drug tests, (2) complete a substance abuse assessment and follow all recommendations, (3) maintain employment for a minimum of six months, (4) provide proof of job searches weekly to DSS, (5) cooperate with child support and stay current with payments, (6) complete a psychological/parenting evaluation and follow all

recommendations, (7) complete a domestic violence program and follow all recommendations, (8) maintain appropriate housing and allow DSS to make home visits, (9) sign all necessary releases of information, (10) participate in individual therapy and follow all recommendations, and (11) provide truthful information regarding her relationship with Mr. T. On 17 February 2006, all parties stipulated to an adjudication of neglect and dependency. In its order filed 27 February 2006, the trial court gave DSS legal custody of M.N.N.G., T.L.T., and J.L.T.; ordered respondent to cooperate with the conditions of her case plan; and allowed respondent to have supervised visitation.

A review hearing was held on 10 May 2006. Respondent was found to be in partial compliance with her case plan, but the trial court found respondent had not enrolled in the domestic violence program or obtained appropriate housing. Additionally, the trial court found that respondent continued to live with Mr. T., who had not yet addressed his domestic violence issues. The court noted that respondent had been observed with a bruise over her right eye in April.

In July 2006, O.L.T. was born to respondent. Mr. T. is the biological father. On 31 July 2006, DSS filed a juvenile petition alleging O.L.T. to be neglected and dependent. The petition alleged the following: (1) respondent had tested positive for cocaine twice while pregnant with O.L.T.; (2) she had not completed her domestic violence program; (3) she had not maintained stable and appropriate housing; (4) she had not cooperated with intensive

family preservation services; (5) she had not paid child support for the other three children; (6) and despite being offered housing referrals, she had chosen not to accept an apartment that was available. Further, DSS related its concerns regarding respondent's continued relationship with Mr. T. In an order filed 3 August 2006, DSS was granted non-secure custody of O.L.T.

An order adjudicating O.L.T. neglected and dependent was entered on 21 August 2006. The trial court based this decision on the allegations listed in the juvenile petition. The trial court gave legal and physical custody of O.L.T. to DSS, ordered DSS to continue with reunification efforts, and ordered respondent to comply with her case plan. From 9 August 2006 to 1 August 2007, the trial court held five Permanency Planning Review Hearings. At each of these hearings, it was found that respondent had yet to secure stable, independent housing. The trial court additionally found at a number of these hearings that respondent continued her relationship with Mr. T. despite his non-compliance with and unwillingness to receive domestic violence counseling. At the 1 August 2007 hearing, respondent even admitted she had resumed her relationship with Mr. T. As of the 1 August 2007 hearing, respondent had also failed to pay the court ordered child support for two months. As a result of respondent's failure to comply with critical components of her case plan, the trial court, in its Permanency Planning Review Order filed 16 August 2007, changed the permanent plan to a concurrent plan of reunification and termination of parental rights.

DSS filed a Petition to Terminate Parental Rights on 3 October 2007. The hearing was continued on 18 March 2008 due to lack of available court time. It was again continued on 29 April 2008 due to service problems with the fathers. On 22 April 2008, respondent relinquished her parental rights under the mistaken impression that she would still have contact with the children through an open adoption. DSS informed her that there would not be an open adoption and allowed respondent to revoke her relinquishment. Due to the relinquishment by respondent and service issues with respect to the fathers, DSS voluntarily dismissed the petition without prejudice on 16 July 2008.

From 24 October 2007 to 15 October 2008 the trial court conducted four additional Permanency Planning Review Hearings. From these hearings, the trial court determined that respondent had still not secured independent housing and, as of the 30 January 2008 hearing, was not paying child support. Additionally, respondent continued to maintain her relationship with Mr. T., even having another child with him in July 2008, though he was not making any efforts to reunify with his children.

DSS filed a second petition to terminate parental rights on 5 September 2008. That petition alleged three grounds with regard to respondent: (1) neglect (N.C.G.S. § 7B-1111(a)(1)); (2) willfully leaving the children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress has been made under the circumstances in correcting those conditions which led to the removal of the children (N.C.G.S. § 7B-

1111(a)(2)); and (3) willful failure to pay cost of care for the juveniles although physically and financially able to do so (N.C.G.S. § 7B-1111(a)(3)). Respondent filed an answer on 25 November 2008 denying the material allegations of the petition. The matter was noticed for hearing on 6 January 2009 but was continued until 3 February 2009 to allow respondent additional time to obtain housing.

The termination hearing was held on 3 February 2009 and 10 February 2009. At the conclusion of the evidence, the trial court determined that DSS had proven all three grounds for termination pertinent to respondent by clear, cogent, and convincing evidence and that termination of her parental rights is in the best interests of the children. The court ordered that respondent's parental rights be terminated in its written order filed 12 March 2009.

In her first argument, respondent contends the trial court erred in concluding that DSS proved each of the three grounds for termination. N.C.G.S. § 7B-1111(a) establishes the grounds for termination of parental rights. N.C. Gen. Stat. § 7B-1111(a) (2007). In the adjudicatory stage of a termination proceeding, the burden is on the petitioner to prove that any one of the grounds for termination exists by clear, cogent, and convincing evidence. N.C. Gen. Stat. § 7B-1109(f) (2007); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Thus, appellate review of this stage is limited to determining whether "the court's findings

of fact are based upon clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Allred*, 122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996) (citing *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133, *reh'g denied*, 306 N.C. 565 (1982), *appeal dismissed by Moore v. Guilford Cty. Dept. of Soc. Services*, 459 U.S. 1139, 74 L. Ed. 2d 987 (1983)). If a finding of fact is not challenged by the respondent, it is "presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Likewise, findings that are properly assigned as error but against which no argument is made are binding on appeal. N.C.R. App. P. 28(b)(6) (2009) (amended October 1, 2009); *See, e.g., Eakes v. Eakes*, ___ N.C.App. ___, ___, 669 S.E.2d 891, 896 (2008) ("Although plaintiff assigned error to findings of fact numbers 12, 13, and 18, she has failed to argue in her brief that they are not supported by competent evidence. These findings are therefore binding on appeal."). Once the trial court has determined that a ground for termination exists, the court moves to the disposition stage where it must determine whether termination is in the best interests of the child. N.C. Gen. Stat. § 7B-1110(a) (2007).

Though the trial court, in the present case, concluded that respondent's parental rights should be terminated pursuant to N.C.G.S. 7B-1111(a)(1), (2), and (3), "[a] single ground . . . is sufficient to support an order terminating parental rights." *In re J.M.W., E.S.J.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006). Thus, we first consider respondent's argument as to the

trial court's conclusion that respondent's parental rights should be terminated pursuant to N.C.G.S. § 7B-1111(a)(1). This statute provides that the trial court may terminate parental rights where "[t]he parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101." N.C. Gen. Stat. § 7B-1111(a)(1) (2007). A neglected juvenile is defined as:

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). In determining neglect, the court must consider "the fitness of the parent to care for the child at the time of the termination proceeding." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (emphasis in original). Although evidence of a prior adjudication of neglect is admissible, "[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.*

Relevant to the determination of probability of repetition of neglect is whether the parent has "made any meaningful progress in eliminating the conditions that led to the removal of [the] children." *In re Leftwich*, 135 N.C. App. 67, 72, 518 S.E.2d 799,

803 (1999). Neglect exists where a parent has failed in the past to meet the child's "physical and economic needs . . . and it appears that the parent will not or [cannot] correct those inadequate conditions within a reasonable time." *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984).

We note first that respondent, in her argument challenging this ground for termination, has taken exception to various findings of fact as unsupported by sufficient evidence. However, she has failed to bring forth arguments as to many of these findings in her brief. Consequently, these findings are binding on appeal. N.C.R. App. P. 28(b)(6) (2009) (amended October 1, 2009). Moreover, those findings that are properly argued are not essential to our review of the trial court's finding that respondent neglected her children pursuant to N.C.G.S. § 7B-1111(a)(1). Accordingly, our review is limited to determining whether those findings that are binding on appeal support the trial court's conclusions. *In re Allred*, 122 N.C. App. at 565, 471 S.E.2d at 86; *see Koufman*, 330 N.C. at 97, 408 S.E.2d at 731; *see also* N.C.R. App. 28(b)(6) (2009) (amended October 1, 2009).

These findings show that in three years since the children were adjudicated neglected and dependent respondent did not secure stable and independent housing. In fact, at the time of the termination order, respondent still had not secured appropriate housing. Her inability to do so has prevented her from having unsupervised visitation with her children where she would have the opportunity to demonstrate appropriate parenting skills. The

findings additionally show that respondent has been unable to maintain consistent employment. Finally, the findings indicate respondent continues to make poor decisions with regard to Mr. T. Though the evidence shows she made efforts to complete her domestic violence program, Mr. T. showed substantial unwillingness to cooperate with DSS regarding his case plan and his domestic violence program requirements. Despite this fact, respondent continued to have a relationship with Mr. T. and was even found staying in a hotel room with him a month before the termination hearing was held. It is uncontroverted that respondent's unsuitable housing situation and her volatile relationship with Mr. T. were conditions that led to the children's removal from the home. Accordingly, the above facts are sufficient to show that respondent has not made meaningful progress in correcting the conditions that led to the removal of the children. See *In re Davis*, 116 N.C. App. 409, 414, 448 S.E.2d 303, 306 (holding the parents did "not correct[] the environment that is 'injurious to [Brittany]'s welfare[]'" when they failed to "obtain[] continued counseling, a stable home, stable employment, and parenting classes"), *review denied*, 338 N.C. 516, 452 S.E.2d 808 (1994).

In her second argument, respondent asserts that her parental rights were terminated solely on account of her poverty, violating her fundamental right to make child rearing decisions for her children. *Troxel v. Granville*, 530 U.S. 57, 72-73, 147 L. Ed. 2d 49, 61 (2000). In support of this argument, she alleges that the trial court terminated her rights exclusively because she could not

find adequate housing, which was a direct result of her poverty. We note first that respondent failed to raise this constitutional argument to the trial court and has therefore not properly presented the issue to this Court. N.C.R. App. P. 10(b)(1); *Dep't of Transp. v. Haywood Oil Co.*, __ N.C. App. __, __, 673 S.E.2d 712, 718 (2009). However, we will review this assignment of error on the merits to "prevent manifest injustice." N.C.R. App. P. 2.

While it is true that respondent's parental rights may not be terminated if the only reason she is unable to care for her children is her poverty, see N.C. Gen. Stat. § 7B-1111(a)(2) (2007), the trial court did not base its conclusion of neglect on respondent's poverty. The record indicates that respondent's inability to find housing was not the exclusive result of her low income. In fact, the record indicates she was offered housing on one occasion but turned it down due to its location. On another occasion she was turned down for housing due to Mr. T.'s criminal background. Additionally, the trial court decided to terminate respondent's parental rights based on her relationship with Mr. T. This reason has no connection with respondent's poverty. Instead, it focuses on respondent's poor decision to continue to live in an abusive environment and her failure to be truthful about this relationship. Accordingly, her argument has no merit.

Respondent has been afforded ample time to show that she is able to maintain a safe, stable environment for the children, and she has been unable to make the progress necessary to make this happen. The trial court's findings are sufficient to support the

conclusion that respondent neglected her children. Since we conclude the trial court properly terminated respondent's parental rights based on at least one ground, we need not address respondent's arguments regarding the remaining two grounds for termination. *In re Swisher*, 74 N.C. App. 239, 246, 328, S.E.2d 33, 37 (1985). The order of the trial court terminating respondent's parental rights is hereby affirmed.

Affirmed.

Judges ELMORE and BEASLEY concur.

Report per Rule 30(e).