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NO. COA09-832

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

IN THE MATTER OF:

Z.D.H.

Guilford County
No. 08 JT 311

Appeal by Respondent-Father from order entered 22 April 2009 by Judge Sherry Alloway in District Court, Guilford County. Heard in the Court of Appeals 10 November 2009.

Mercedes O. Chut, for Guilford County Department of Social Services, Petitioner-Appellee.

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

Lucas & Ellis, PLLC, by Anna S. Lucas, for Respondent-Father, Appellant.

McGEE, Judge.

Respondent-Father (Respondent) appeals from the trial court's order terminating his parental rights as father of Z.D.H., the minor child, based on neglect and failure to pay the reasonable cost of care for six months prior to the filing of the petition. Respondent challenges both grounds for termination as being unsupported by clear, cogent and convincing evidence. We affirm the order of the trial court.

When Z.D.H. was born in early 2008, she tested positive for both marijuana and cocaine. Z.D.H.'s mother likewise tested

positive for both drugs. Z.D.H. was taken into custody by the Guilford County Department of Social Services (DSS), and on 16 April 2008, DSS filed a juvenile petition alleging neglect and dependency. The mother's parental rights to three other children had previously been terminated due to her drug use and criminal activity.

Z.D.H.'s mother initially named E.J. as the father of Z.D.H. She later identified Respondent as Z.D.H.'s possible father, and at the 30 April 2008 hearing on need for continued non-secure custody, Respondent appeared and the trial court ordered a DNA paternity test. The test was performed on 29 May 2008, and on 12 June 2008, DSS sent a letter to Respondent that the test results showed him to be Z.D.H.'s father with a 99.98 percent probability.

The trial court adjudicated Z.D.H. dependent on 13 June 2008. Respondent gave several addresses at which he could be reached, including a residence in Greensboro where he stated he had been living for six months. He was unable to explain why mail from DSS addressed to that residence had been returned. He also gave conflicting information about whether he knew E.J., the person initially identified as Z.D.H.'s father. The trial court ordered Respondent to enter into and comply with a case plan, and to submit to three consecutive, negative drug screens prior to having visitation with Z.D.H.

Respondent entered into a case plan with DSS on 17 June 2008, which required him to: (1) maintain suitable housing; (2) cooperate with a home study; (3) obtain stable employment; (4) cooperate with

announced and unannounced home visits; (5) cooperate with child support enforcement; (6) comply with random drug screens; (7) not receive any new infractions on his criminal record; (8) attend weekly supervised visits with the child; (9) remain in regular contact with DSS; and (10) complete a parenting evaluation.

At a permanency planning review hearing held on 13 August 2008, the trial court found that Respondent had not been able to submit three consecutive negative drug screens and was therefore unable to visit with Z.D.H. Further, he had not secured stable independent housing, he had not obtained stable employment, he had not maintained contact with DSS, and he had tested positive for cocaine on 13 June and 18 June 2008. While Respondent had not committed any new criminal offenses, he had charges pending for felony fleeing and eluding arrest, felony possession of cocaine, and misdemeanor possession of marijuana. Respondent had completed a parenting evaluation on 29 July 2008. Respondent requested that his sister, M.L., who lives in Georgia, be considered as a placement option for Z.D.H. Based upon that request, DSS contacted M.L. and began the process of obtaining a home study of her home.

The trial court ordered DSS to pursue adoption as the plan for Z.D.H. and ordered DSS to file a petition for termination of parental rights. The parents were ordered to comply with their case plans and to submit three consecutive negative drug screens before being allowed to visit with Z.D.H.

DSS filed a petition to terminate both parents' parental rights on 13 October 2008. DSS alleged as grounds for termination

of Respondent's parental rights: (1) neglect, N.C. Gen. Stat. § 7B-1111(a)(1); (2) wilful failure to pay for a reasonable portion of the cost of care of Z.D.H. for a continuous period of six months, N.C. Gen. Stat. § 7B-1111(a)(3); (3) failure to establish paternity or legitimate Z.D.H. prior to the filing of the petition, N.C. Gen. Stat. § 7B-1111(a)(5); and (4) wilful abandonment of Z.D.H. for at least six consecutive months prior to the filing of the petition, N.C. Gen. Stat. § 7B-1111(a)(7).

The termination of parental rights hearing was held on 24 and 25 March 2009. The trial court found that Respondent was not in compliance with many of the objectives of his case plan. Regarding housing, Respondent had lived at three different locations since the beginning of the case. At his third residence, DSS was unable to conduct a home study due to Respondent's lack of availability. Respondent moved from the third residence, but refused to tell DSS his new address. The trial court found that as of the hearing date, Respondent's "address is unknown and he does not have stable housing." The trial court found that Respondent never provided DSS with any proof of employment or income, and provided none to the trial court. All of Respondent's drug screens were positive, yet he never completed a substance abuse assessment as required after a positive screen. Further, Respondent failed to maintain regular contact with DSS. Although Respondent maintained some contact, the trial court found that he failed to inform DSS when he moved and, therefore, was not in substantial compliance with this objective. Finally, while Respondent did complete a parenting assessment, he

did not follow through with any of the recommendations and, therefore, was not in substantial compliance with that objective.

Based on Respondent's failure to comply with his case plan, the trial court found that he had not "alleviated the conditions which led to the juvenile's removal from the home," nor was he "able or willing to provide a safe and stable home for the child." The trial court concluded that Z.D.H. was neglected, "and there is a reasonable probability that such neglect will continue for the foreseeable future."

The trial court further found that Respondent had the ability to pay some portion of Z.D.H.'s cost of care, but that he provided no provisions for her or otherwise paid any money toward the cost of care. After the termination petition was filed, Respondent did send gifts and clothing to Z.D.H. The trial court also found that Respondent did establish paternity judicially prior to the filing of the termination petition. Although Respondent had named his sister M.L. as a placement option, the home study done by the Georgia authorities was denied on the basis of a discrepancy concerning her income.

The trial court found neglect and failure to pay a reasonable portion of Z.D.H.'s cost of care as grounds for termination of Respondent's parental rights. The trial court determined that termination of both parents' parental rights was in the best interests of Z.D.H., and ordered that their parental rights be terminated. From the order entered, Respondent appeals.

Respondent contends the trial court erred in finding the

existence of two grounds for termination. He points out that there is no prior adjudication of neglect in this case, and he argues that since he never had care or custody of Z.D.H., no prior neglect has been shown. He claims this failure to show prior neglect is sufficient to defeat the ground of neglect as a basis for terminating his parental rights. He also challenges the ground of wilful failure to pay a reasonable cost of care of Z.D.H. Respondent argues that the petition was filed before a period of six months passed from the time he was identified as Z.D.H.'s father. We find that the trial court properly found at least one ground for termination as required by N.C. Gen. Stat. § 7B-1111(a) (2007).

Termination of parental rights cases involves two separate stages. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). In the adjudicatory stage, the burden is on the petitioner to prove that at least one ground for termination exists by clear, cogent, and convincing evidence. N.C. Gen. Stat. § 7B-1109 (2007); *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908. Review by the appellate courts is limited to determining whether clear and convincing evidence exists to support the findings of fact, and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000). Once the trial court has determined that a ground for termination exists, it moves on 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). The decision of the

trial court regarding best interests is within the discretion of the trial court and will not be overturned absent an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). Abuse of discretion occurs when the trial court's challenged actions are "'manifestly unsupported by reason.'" *In re R.B.B.*, 187 N.C. App. 639, 648, 654 S.E.2d 514, 521 (2007), *disc. review denied*, 362 N.C. 235, 659 S.E.2d 738 (2008) (citation omitted).

The trial court may terminate parental rights where:

The 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 in relevant part as: "A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent[.]" N.C. Gen. Stat. § 7B-101(15) (2007). Although evidence of a prior adjudication of neglect is admissible, it is not necessary and, in fact, may only be considered under certain circumstances. *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984); *see also In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001) ("Although prior adjudications of neglect may be admitted and considered by the trial court, they will rarely be sufficient, standing alone, to support a termination of parental rights, since the petitioner must establish that neglect exists at the time of the hearing.") (citation omitted). "The determinative factors must be the best interests of the child and the fitness of

the parent to care for the child *at the time of the termination proceeding.*" *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. Therefore, Respondent's argument that the trial court could not terminate Respondent's parental rights based upon a finding of neglect without any prior adjudication of neglect is without merit.

Neglect exists where a parent has failed 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 amount of time. *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984). In considering whether a child is neglected, the trial court may also consider evidence of the parent's success or failure in providing "the personal contact, love, and affection that inheres in the parental relationship." *In re APA*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982).

[W]e re-emphasized the fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody, to wit, that the best interest of the child is the polar star. The fact that a parent does provide love, affection and concern, although it may be relevant, should not be determinative, in that the court could still find the child to be neglected within the meaning of our neglect and termination statutes. Where the evidence shows that a parent has failed *or is unable* to adequately provide for his child's physical and economic needs . . . by reason of willful conduct on the part of the parent, and it appears that the parent will not or is not able to correct those inadequate conditions within a reasonable time, the court may appropriately conclude that the child is neglected. In determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent. Therefore, the fact that the parent loves or

is concerned about his child will not necessarily prevent the court from making a determination that the child is neglected. "[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[.]"

Montgomery, 311 N.C. at 109, 316 S.E.2d at 251-52 (internal citation omitted) (emphasis added).

In the present case, the trial court's findings of fact relevant to the ground of neglect include Respondent's failure to maintain stable, independent housing, failure to maintain stable employment, Respondent's repeated positive drug screens indicating continued use of illegal drugs, failure to submit to a substance abuse assessment, failure to maintain contact with DSS, and failure to comply with parenting evaluation recommendations. Respondent does not specifically challenge any of the findings of fact in his brief. Findings of fact not challenged are deemed supported by competent evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991); *see also In re S.N.H. & L.J.H.*, 177 N.C. App. 82, 83, 627 S.E.2d 510, 512 (2006).

We find that the trial court's findings of fact fully support the conclusion of neglect as a basis for termination of Respondent's parental rights. *Huff*, 140 N.C. App. at 291, 536 S.E.2d at 840. Respondent was unable to show that he could maintain stable housing and employment, remain drug-free, and comply with basic aspects of his case plan such as maintaining contact with DSS and following the recommendations of his parenting evaluation. The trial court found that there was no bond between

Respondent and Z.D.H., because Respondent had not attended any of the regular weekly visits with the child provided for in his case plan due to his failure to remain drug-free. This failure evinces a lack of parental involvement or affection for Z.D.H. Although Respondent has never physically cared for Z.D.H. since her birth, Respondent's lack of opportunity to connect with and care for Z.D.H. was due to his inability or unwillingness to comply with his case plan. Respondent failed to demonstrate that he could provide for Z.D.H.'s physical and economic needs at the time of the termination hearing. *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. We hold the trial court did not err in terminating Respondent's parental rights based upon a finding of neglect. This argument is without merit.

In that we find 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 ground for termination. N.C. Gen. Stat. § 7B-1111(a). The trial court's order terminating Respondent's parental rights is hereby affirmed.

Affirmed.

Judges GEER and HUNTER, JR. concur.

Report per Rule 30(e).