

NO. COA10-681

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

IN THE MATTER OF:

Wake County  
No. 08 JT 601-608

A.S., C.S., A.S.,  
K.S., A.R.

Appeal by respondent from order filed 12 March 2010 by Judge James R. Fullwood in Wake County District Court. Heard in the Court of Appeals 28 October 2010.

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

*Susan Vick, Attorney Advocate, Wake County Guardian ad Litem, for guardian ad litem.*

*Windy H. Rose for respondent-appellant.*

ELMORE, Judge.

I.

Respondent is the father of five children born to the same mother between January 1999 and September 2004. The Wake County District Court adjudicated the children as neglected juveniles on 3 December 2008. On 17 September 2009, the mother of the children signed relinquishments for the adoption of all of her children. On 23 November 2009, Wake County Human Services (petitioner) filed a motion to terminate respondent's parental rights to the children on the grounds (1) that respondent had neglected them and (2) that

respondent had left them in care outside the home for more than twelve months without showing to the satisfaction of the court that reasonable progress has been made in correcting the conditions which led to the removal of the children. The court conducted a hearing on 24 February 2010 on the motion to terminate respondent's parental rights. On 12 March 2010, the court filed an order terminating respondent's parental rights on the two grounds alleged in the motion. From this order respondent has appealed.

Respondent was married to the mother of the five children from October 1997 until 2006. The mother of the children subsequently married another man in February 2008. The children lived with their mother at all times until the filing of the juvenile petition, which resulted in the removal of the children from the mother's home on 9 September 2008. When the juvenile petition was filed, respondent was incarcerated in the Wake County Jail. As shown by the petition adjudication and disposition order, respondent stipulated that he had "only been minimally involved with his children" and that, upon his release from jail, respondent contacted petitioner several times and agreed to develop a case plan. In the same order, the court required respondent to develop a case plan and comply with referrals, complete a psychological evaluation and follow recommendations, and maintain adequate employment and housing for the stability and wellbeing of the children. The court also permitted respondent to have supervised visitation with the children for at least one hour per week.

On 17 September 2009, the court conducted a permanency planning and review hearing, which respondent attended. At the time of the hearing, respondent was incarcerated in the Wake County Jail for failure to pay child support for his children. Upon his release from the Wake County Jail, respondent had to appear in Alamance County on another criminal charge. In its order filed after the conclusion of the hearing, the court found that respondent had relocated to Northampton County, and he was thus referred on 2 January 2009 to the Northampton County Department of Social Services for case planning and case management. He completed a case plan with that agency and attended a number of sessions of recommended counseling. A visitation plan was arranged whereby respondent could visit the children every other week. He visited the children just twice, on 16 January 2009 and 27 February 2009.

The court further found in the permanency planning and review order that respondent did not produce documented evidence that he was employed, that he did not provide any child support for his children, and that he did not have a plan of care for the children. The court found that respondent believed that it would take him at least nine months after his release from incarceration to establish a stable home and employment sufficient to raise his children, whom he did want to see upon his release. The court found that it was unlikely that respondent would be able to provide appropriate care and a safe home within six months following the hearing. The court concluded that reunification efforts with respondent were futile

and inconsistent with the children's health, safety, and need for a permanent home.

Respondent did not personally attend the hearing upon the motion for termination of parental rights on 24 February 2010. Respondent's attorney appeared for the hearing and represented respondent. At the conclusion of the hearing, the court found as fact that respondent had not visited his children since the September 2009 permanency planning and review hearing, had not established a safe home, had not supported the children, and "ha[d] not acted consistently in respect to his duties as a parent." The court found that, although respondent had established a case plan, completed a mental health assessment, and attended several counseling sessions, he had not shown to the court's satisfaction that he would be able to provide a safe home to the children within a reasonable time. The court also found that respondent failed to appear for an arranged visitation with the children on 21 December 2009, that he contacted a social worker just two times between September 2009 and 24 February 2010, that he provided no evidence that he had changed his behavior of indifference to his parental responsibilities, and that it was likely that there would be a repetition of neglectful parenting if the children were returned to his care.

The court concluded that there were sufficient facts to support termination of parental rights on the grounds alleged in the petition and that it was in the children's best interest to terminate respondent's parental rights.

II.

During the adjudication stage of a proceeding to terminate rights, the trial court determines whether there is clear, cogent, and convincing evidence to show the existence of at least one statutory ground for termination pursuant to N.C. Gen. Stat. § 7B-1111. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004). If the trial court determines the existence of a ground, it then proceeds to the dispositional stage and considers whether terminating parental rights is in the child's best interest. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001).

We review the trial court's order to determine whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law. *In re Shepard*, 162 N.C. App. at 221, 591 S.E.2d at 6. We are bound by the trial judge's findings of fact "where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984) (citations omitted). We review conclusions of law *de novo*. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006).

III.

Respondent contends that the trial court erred by concluding that his parental rights should be terminated based upon neglect and the probability of repetition of neglect. A neglected juvenile is defined as one

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) (2009). "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). If the child is removed from the parent before the termination hearing, 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).

Respondent argues that since neglect was not alleged against him in the initial neglect petition, his parental rights could not be terminated based upon a probability of repetition of neglect. He also argues there is no finding that the children would be neglected if they were placed in his care. We find respondent's arguments unpersuasive.

A parent's neglect of a child may be manifested in many different ways. It may be manifested by a parent's failure to provide physical necessities, financial support, love, affection, and personal contact. *In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982). It may be manifested by the parent's failure to

maintain a permanent residence and the parent's minimal contact with the child and the Department of Social Services after the child is removed from the home. *In re Safriet*, 112 N.C. App. 747, 753, 436 S.E.2d 898, 902 (1993). It may be manifested by the parent's failure to visit the child or to request visitations. *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003).

The court's findings and the evidence show that, since September 2009, respondent has not visited his children, has not maintained a stable home, has not supported his children, and has not maintained stable employment. He contacted the social worker only two times between September 2009 and the 24 February 2010 termination hearing, and visited his children only twice after they were removed from the mother's home. Further evidence of respondent "not being there" for his children is his failure to appear at the hearing to terminate his parental rights.

The record also shows that, while living with their mother, the children suffered from lack of cleanliness, untreated yeast infections, urinary problems, emotional issues, sexual issues, and other health issues. The record does not show that respondent did anything to address these issues while his children were living with their mother. "It is settled law that nonfeasance as well as malfeasance by a parent can constitute neglect." *In re Adcock*, 69 N.C. App. 222, 224, 316 S.E.2d 347, 348 (1984) (citation omitted).

In summary, the court's findings and the record show that respondent neglected the children before they were removed from the mother's home and that he has continued to neglect them after they

were removed from the home. Given this history of neglect, it is probable that the neglect would be repeated if the children were returned to respondent.

III.

Respondent next contends that the trial court erred by finding and concluding that his parental rights should be terminated based upon his willfully leaving the children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made in correcting the conditions which led to the removal of the children. Because we need not review every ground for termination found by the trial court if we can uphold, as we have done, termination of rights on one ground, we need not consider any arguments related to another ground found by the trial court. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005). This contention is dismissed.

IV.

Respondent last argues that the trial court erred by determining that the best interests of the children would be served by terminating his parental rights. Respondent argues that severance of his parental rights was not necessary to give the children permanency.

After determining that a ground exists for terminating parental rights, the trial court is required to consider whether termination of parental rights is in the juvenile's best interest. N.C. Gen. Stat. § 7B-1110(a) (2009). In making this determination the court is 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.

*Id.* We review the trial court's decision to terminate parental rights for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). "The children's best interests are paramount, not the rights of the parent." *In re Smith*, 56 N.C. App. 142, 150, 287 S.E.2d 440, 445 (1982).

Our review of the trial court's order discloses that the court made findings of fact as to the ages of the children, the permanent plan of adoption, and the likelihood of their adoption by maternal relatives with whom they are residing, thriving, and forming strong bonds. The court also found that their academic and health needs are being met, that they are residing in loving and stable homes, and that they no longer need therapy. The court further found that the two oldest children know respondent as their father but neither look to him for parental guidance and support, nor ask to see him. The next two oldest children had some involvement with respondent when they were very young, but they do not have a strong bond with

him and do not ask to see him. The youngest child has had no relationship or involvement with respondent.

We conclude these findings reflect a reasoned decision. We find no abuse of discretion.

V.

We affirm the order terminating respondent's parental rights.  
Affirmed.

Judges JACKSON and THIGPEN concur.

Report per Rule 30(e).