NO. COA10-806

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

IN THE MATTER OF

W.B.

Durham County
No. 08 J 303

Appeal by respondent-mother from order entered 27 April 2010 by Judge James T. Hill in Durham County District Court. Heard in the Court of Appeals 22 November 2010.

Assistant County Attorney Cathy L. Moore for petitioner-appellee Durham County Department of Social Services.

Pamela Newell for Guardian ad litem.

Appellate Defender Staples Hughes, by Assistant Appellate Defender J. Lee Gilliam, for respondent-appellant.

BRYANT, Judge.

Because respondent-mother conceded that her parental rights to another child were terminated involuntarily by a court of competent jurisdiction and the uncontested findings of fact supported the trial court's conclusion that respondent-mother lacked the ability or willingness to establish a safe home, we affirm the trial court's conclusion that sufficient basis existed to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(9).

Respondent-mother has a long history with Durham County Department of Social Services ("DSS"). Respondent-mother was placed in the legal custody of DSS in 1997, and remained in DSS's custody until 2004 when she was terminated from continued foster care. While in DSS's custody, respondent-mother gave birth to a child, A.B. Respondent-mother's parental rights to A.B. were involuntarily terminated by a court of competent jurisdiction on 8 November 2005. On 12 November 2005, respondent-mother had a second child, B.T. In June 2006, a trial court ordered DSS to assume legal custody and placement authority of B.T.

Respondent-mother had a third child, W.B. ("Wendy")[1], in 2006. Wendy is the subject of this appeal. On 11 September 2008, respondent-mother left Wendy with a relative, but failed to pick her up at the scheduled time on 15 September 2008. When respondent-mother failed to pick up Wendy, the relative took Wendy to the home of M.L., respondent-mother's sister-in-law. Subsequently, a report was made to DSS and on 23 September 2008, DSS filed a juvenile petition alleging Wendy was a neglected and dependent juvenile. Specifically, DSS alleged:

> a. The child is neglected in that she is not receiving proper care or discipline from the parent.
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> b. The mother has prior mental health diagnosis of bi-polar disorder, PTSD, and schizophrenia and refuses treatment.
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> c. The mother is currently homeless, has no income, or means of support. She has no clothes, shoes or food for the child.

[1] A pseudonym is used to protect the identity of the child.

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> e. The child, [Wendy], has ringworms and the mother has not filled the prescription for medication to treat it. The child has bumps on her left hand, neck, back and arms, and scars on her left elbow.
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> . . . .
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> k. The child is a dependent juvenile in that the child is in need of assistance or placement because her father is unable to provide for the care or supervision and does not have an appropriate alternative child care arrangement.
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> . . . .
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> m. The father is currently incarcerated in Pasquotank Correctional Institution for a conviction of indecent liberties with a child. He was admitted on March 28, 2008, with a total term of one year and four months. . . .

A nonsecure custody order was entered on 23 September 2008 placing Wendy directly with M.L. By order entered 7 November 2008, Wendy was adjudicated dependent.

On 16 December 2009, Wendy's guardian *ad litem* filed a motion in the cause to terminate respondent-mother's parental rights. After a hearing held 25 and 26 February 2010 in Durham County District Court, the trial court made the following conclusions: (1) respondent-mother has neglected the child, the child is a neglected child within the meaning of N.C. Gen. Stat. § 7B-101(15), and there is a reasonable probability of repetition of the neglect; (2) respondent-mother has willfully left the child in a placement outside of the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which

led to the removal of the child; (3) respondent-mother is incapable of providing for the proper care and supervision of the juvenile such that the juvenile is a dependent juvenile within the meaning of N.C.G.S. § 7B-101; (4) respondent-mother has had her rights to another child involuntarily terminated by the court and continues to be unable to establish a safe home for the child; and (5) it is in the best interests of the child that respondent-mother's parental rights be terminated. Accordingly, on 27 April 2010, the trial court ordered that respondent-mother's parental rights as to Wendy be terminated. Respondent-mother appeals.

On appeal, respondent-mother raises the following issues: did the trial court err in concluding (I) that Wendy was dependent; (II) that respondent-mother failed to make reasonable progress under the circumstances; (III) that Wendy was neglected; (IV) that respondent-mother failed to establish a safe home; (V) that the termination of parental rights was in Wendy's best interests; and (VI) that termination of parental rights was appropriate, given that status of reunification efforts.

Standard of Review

Termination of parental rights involves a two-stage process. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). At the adjudicatory stage, "the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602

(2002) (citation omitted). "If the trial court determines that grounds for termination exist, it proceeds to the dispositional stage, and must consider whether terminating parental rights is in the best interests of the child." *Id.* at 98, 564 S.E.2d at 602 (citation omitted). On appeal, the trial court's decision to terminate parental rights is reviewed under an abuse of discretion standard. *Id.* The trial court's findings of fact, if supported by clear and convincing evidence, are binding. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). Unchallenged findings of fact are also binding. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003).

IV

We first consider respondent-mother's contention that during the adjudicatory phase of the hearing, the trial court erred in concluding she was unable to establish a safe home. While she concedes that her parental rights to Wendy's sibling A.B. were previously terminated, respondent-mother argues that there were no findings to indicate she was unable to provide a safe home. We disagree.

Under North Carolina General Statutes, section 7B-1111(a), "[t]he court may terminate the parental rights upon a finding [that] . . . [t]he parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home." N.C. Gen. Stat. § 7B-1111(a)(9) (2009). Termination of parental rights under N.C. Gen.

Stat. § 7B-1111(a)(9) "necessitates findings regarding two separate elements: (1) involuntary termination of parental rights as to another child, and (2) inability or unwillingness to establish a safe home." *In re L.A.B.*, 178 N.C. App. 295, 299, 631 S.E.2d 61, 64 (2006). A safe home is "[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect." N.C. Gen. Stat. § 7B-101(19) (2009).

In *In re V.L.B.*, 168 N.C. App. 679, 608 S.E.2d 787, *disc. review denied*, 359 N.C. 633, 614 S.E.2d 924 (2005), a trial court terminated the respondents' parental rights to a juvenile pursuant to N.C.G.S. § 7B-1111(a)(9). The respondents contested whether a conclusion that they were unable to provide a safe home was supported by clear, cogent, and convincing evidence.

> [However,] [a]ccording to [the] respondent-mother's psychological evaluation, she suffered from "chronic mental health problems[,]" specifically depression, high levels of anxiety and tension, a low frustration tolerance, poor impulse control, and anger management difficulties, all of which would significantly affect her ability to concentrate and attend to the needs of [the juvenile]. Moreover, her belief that she did not need mental health treatment and her failure to pursue treatment compounded her problems. Furthermore, at the time of the hearing, [the] respondent-mother had been, and intended to continue, personally caring for [the] respondent-father, who . . . suffered from "chronic mental illness[,]" memory problems, and type II diabetes, which necessitated that he receive "round-the-clock care" and greatly impaired his ability to care for [the juvenile].

Id. at 684, 608 S.E.2d at 791. We held that this evidence constituted clear, cogent, and convincing evidence to support the

trial court's conclusion that the respondents lacked the ability to establish a safe home for the juvenile. *Id.*

Here, the trial court made the following unchallenged findings of fact:

> 9. In the Adjudication [of Dependency] Order and the subsequent Review Orders, [respondent-mother] was ordered to obtain a Psychological Evaluation and follow any recommended treatment. [Respondent-mother] obtained a Mental Health Evaluation in February 2009 with Kristopher Clounch, Ph.D. through the Criminal Justice Resource Center - Court Services. He was supervised by David Vandervusse, Ph.D. The Evaluation diagnosed [respondent-mother] with BiPolar Disorder, Post Traumatic Stress Disorder and assigned a Global Assessment of Function Score (GAF Score) of 40. The Evaluation recommended that [respondent-mother] receive a psychiatric evaluation for psychotropic medication and comply with any medication regime and recommendations; that she participate in weekly individual or group therapy to address her PTSD[.]
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> . . .
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> 11. David Vandervusse, Ph.D. testified that GAF Scores are scaled between 0 and 100. The GAF Score of 40 assigned by Dr. Clounch suggested significant coping problems for [respondent-mother] in many life domains . . . . He testified that most adults function with scores between 70-80. He testified further that a person diagnosed with Bi-Polar Disorder needs to be in an ongoing relationship with a psychiatrist to monitor medication and to determine the state of current activity of the disorder of the patient. When it is active, Bi-polar Disorder can affect an individual's judgment. PTSD can also affect a person's judgment. [Respondent-mother] has not been in regular therapy or received any medication management.
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> . . .
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> 19. The child has been diagnosed with PTSD and Reactive Attachment Disorder. She receives

> individual therapy at her Day Care and Intensive In Home Therapy with the caretaker. She has a GAF Score of 35 which suggests the child has some significant special needs. [Respondent-mother] has not been invited to participate in the Family Therapy sessions with the child by the therapist. The child often acts out when her visits end with her mother. [Respondent-mother] believes the child is unhappy, struggling with the "terrible threes" and misses her mother.
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> . . .
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> 21. [Respondent-mother] has not engaged in mental health treatment for herself; she is at a significant risk for mood swings without treatment. Both Bi-Polar Disorder and PTSD can affect one's judgment and both are managed with medication and therapy.
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> 22. The child requires a greater level of care because of her mental health issues. She continues to have difficulty with transitions, separation and attachment. Children of bi-polar parents are at an increased risk of being bi-polar even if not living with the parent affected by bi-polar disorder. Greater consistency in care of children at risk somewhat lessens the risk. [Respondent-mother] has not exhibited consistency of care in the past.

We hold that the findings regarding respondent-mother's bipolar disorder and PTSD, respondent-mother's lack of treatment and therapy, in addition to Wendy's mental health issues, constitute clear, cogent, and convincing evidence supporting the trial court's conclusion that respondent-mother lacked the ability to establish a home where Wendy is not at substantial risk of physical or emotional abuse or neglect. *See id.* at 684-85, 608 S.E.2d at 791. Thus, the trial court did not err in concluding that grounds exist to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(9). "[W]here we determine

the trial court properly concluded that one ground exists to support the termination of parental rights, we need not address the remaining grounds." *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 663 (2003) (citation omitted).

V

Respondent-mother next contends that the trial court erred during the dispositional phase in concluding that termination of her parental rights was in the best interests of Wendy. We disagree.

"We review the trial court's decision to terminate parental rights for abuse of discretion." *In re Anderson*, 151 N.C. App. at 98, 564 S.E.2d at 602. "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason." *Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006) (citation and internal quotations omitted).

The determination of whether termination is in the best interests of the minor child is governed by N.C. Gen. Stat. § 7B-1110, which states that the trial court shall consider the following factors:

> (1) The age of the juvenile.
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> (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.

In this case, the trial court made the following findings relevant to the best interests determination:

> 25. The caretaker [M.L.] desires to adopt the child; she has a history of stable employment with Wal-Mart for nine years and Durham Public Schools for 13 years. She has maintained housing for the child despite having to relocate when her income was reduced.
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> . . .
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> 27. The caretaker participates in [Wendy's] therapy and is willing to continue it for as long as [Wendy] needs therapy.
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> . . .
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> 29. The child is three years old and this action will aid in the achievement of the permanent plan of adoption.
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> 30. There is a bond between the caretaker and the child; there is a bond between the child and [respondent-mother]. The child's need for permanence is a more compelling need and interest than the bond between [respondent-mother] and the child.
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> . . .
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> 33. When balancing the interests of the parent with termination, the child is three years old and has lived half of that with a stable family; she is living with cousins and can continue to see them.

Respondent-mother takes issue with findings of fact 30 and 33. Respondent-mother contends finding of fact 30 is not supported by evidence because M.L.'s potential adoption does not demonstrate permanence or stability. It appears this contention is based on

the fact M.L. moved twice during the eight month period preceding the termination hearing. However, M.L. testified that she downsized her household and made financial adjustments in order to care for Wendy.

Respondent-mother further contends finding of fact 33 is not supported by the evidence because Wendy has not lived half her life with a stable family. Wendy was placed with M.L. when she was almost two years old. At the time of the termination hearing, Wendy had been with M.L. for approximately one year and five months. This is nearly half the life of this young child. Therefore, we hold that the trial court did not abuse its discretion in concluding that termination of respondent-mother's parental rights to Wendy was in Wendy's best interest. Accordingly, respondent-mother's argument is overruled.

Affirmed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).