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NO. COA12-334
NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2012

IN THE MATTER OF:

A.S.R.

Greene County

No. 10 JT 28

Appeal by respondent father from order entered 20 December 2011 by Judge R. Les Turner in Greene County District Court.

Heard in the Court of Appeals 20 August 2012.

Baddour, Parker & Hine, P.C., by James W. Spicer III, for petitioner-appellee Greene County Department of Social Services.

Pamela Newell for the guardian ad litem.

Windy H. Rose for respondent-appellant father.

BRYANT, Judge.

Where the trial court's findings are insufficient to support a conclusion that respondent father neglected his minor child within the meaning of N.C. Gen. Stat. § 7B-101(15), we reverse the order of the trial court.

Facts and Procedural History

The record shows that on 20 July 2010, the Greene County Department of Social Services ("DSS") took non-secure custody of the juvenile, Alice¹, shortly after her birth, and filed a petition alleging the juvenile was neglected. On 23 July 2010, the trial court entered an order, dismissing the non-secure custody order. That same day, DSS filed an amended juvenile petition alleging that Alice was a neglected juvenile. The trial court entered a new non-secure custody order and continued non-secured custody on 30 July, 16 August, and 22 September 2010.

Alice was adjudicated neglected by order entered 15 November 2010, and an amended order entered 14 March 2011. By order entered 15 April 2011, the trial court set the permanent plan for Alice as adoption, and relieved DSS of any further obligations to reunify Alice with her parents. That same day, DSS filed a petition to terminate the parental rights of respondent father and Alice's mother based on neglect. The trial court held separate hearings to terminate the parental rights of the mother and respondent father, and entered its

¹ A pseudonym has been used throughout to protect the identity of the juvenile.

order terminating respondent father's parental rights on 20 December 2011. Respondent father appeals.²

Respondent father advances the following arguments on appeal: (I) DSS's petition did not contain sufficient allegations to put respondent father on notice as to the acts, omissions or conditions at issue as grounds for the termination of his parental rights; (II) the trial court failed to articulate the grounds for termination of respondent father's parental rights in its order; and (III) the trial court failed to address the probability of repetition of neglect if respondent father was given custody of Alice.

I

We first address respondent father's argument that the petition to terminate his parental rights did not contain sufficient allegations to put respondent father on notice as to the acts, omissions or conditions at issue as grounds for the termination of his parental rights. However, respondent father did not raise this issue in a motion filed before the trial court pursuant to Rule 12(b)(6), and has thus failed to preserve the issue for appeal. *In re H.L.A.D.*, 184 N.C. App. 381, 392,

² The parental rights of the juvenile's mother have also been terminated, but she is not a party to this appeal.

646 S.E.2d 425, 433-34 (2007), *aff'd per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008) ("The Rules of Civil Procedure apply to proceedings for termination of parental rights[,] *In re McKinney*, 158 N.C. App. 441, 444, 581 S.E.2d 793, 795 (2003), and a Rule 12(b)(6) motion may not be made for the first time on appeal.")

II

Next, respondent father argues the trial court erred in terminating his parental rights because it failed to specifically articulate the grounds for termination. We disagree.

Section 7B-1111(a) of the North Carolina General Statutes sets out the grounds for terminating parental rights. "A finding of any one of the separately enumerated grounds is sufficient to support a termination." *In re A.J.M.P.*, 205 N.C. App. 144, 148, 695 S.E.2d 156, 158-59 (2010) (citation omitted).

In its order terminating respondent's parental rights, the trial court made the following finding of fact:

37. That the respondent father has neglected the juvenile in that he has not provided a place for the juvenile to live, has not followed through with the orders of the Court to see if there was a possibility of the juvenile being placed with the respondent father.

The court then concluded:

2. That the grounds exist to terminate the parental rights of the respondent father . . . with respect to the juvenile, [Alice], as set out above.

We emphasize that the better practice is for the trial court to specifically articulate which grounds it concludes exist to terminate parental rights. Nonetheless, we hold the trial court's order sufficiently establishes that it is terminating respondent father's parental rights based on the ground of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2011) ("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."). Respondent father's argument is overruled.

III

Respondent father lastly argues the trial court erred in terminating his parental rights based on neglect because it did not address the probability of repetition of neglect if A.S.R. was placed in his custody. We agree.

"The standard for review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in

turn, support the conclusions of law." *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). A trial court may terminate parental rights based on a finding that the parent has neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2011). 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) (2011). "In deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child 'at the time of the termination proceeding.'" *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citation omitted).

Where . . . a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect. This is because requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.

In re Shermer, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citations omitted). If the juvenile is removed from the custody of the parent before the termination hearing, "[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). After considering evidence of changed conditions, the trial court may then "find that grounds for termination exist upon a showing of a 'history of neglect by the parent and the probability of a repetition of neglect.'" *L.O.K.*, 174 N.C. App. at 435, 621 S.E.2d at 242 (quoting *Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407).

Here, although the record establishes that A.S.R. was previously adjudicated neglected, the trial court does not include a finding of fact to that effect in its order. Additionally, the trial court makes no finding regarding the probability of repetition of neglect if respondent father were given custody of A.S.R. Thus, it appears the trial court based its conclusion that grounds exist to terminate respondent father's parental rights solely upon neglect at the time of the hearing. However, the trial court's lone finding on the basis

for respondent father's neglect states that he "has neglected the juvenile in that he has not provided a place for the juvenile to live, [and] has not followed through with the orders of the Court to see if there was a possibility of the juvenile being placed with the respondent father." This finding is insufficient to support a conclusion that respondent father neglected A.S.R. within the meaning of N.C.G.S. § 7B-101(15). Accordingly, we reverse the trial court's order terminating respondent father's parental rights.

Reversed.

Judges Hunter, Jr., Robert N., and Beasley concur.

Report per Rule 30(e).