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NO. COA13-508
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

IN THE MATTER OF:

T.R.C.

Guilford County
No. 10 JT 628

Appeal by respondent-father from order entered 30 January 2013 by Judge Sherry F. Alloway in Guilford County District Court. Heard in the Court of Appeals 30 October 2013.

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

W. Michael Spivey, for respondent-appellant father.

No brief filed, for Guardian ad litem.

MARTIN, Chief Judge.

Respondent-father appeals from the trial court's order terminating his parental rights to minor child T.R.C. ("Thomas").¹ We affirm the trial court's order.

On 2 August 2010, Guilford County Department of Social Services ("DSS") received a report alleging that Thomas's mother

¹ A pseudonym is used to protect the privacy of the juvenile.

was homeless and had moved from shelter to shelter throughout her pregnancy. The report also alleged a history of domestic violence between the mother and her boyfriend, R.C. When Thomas was conceived, the mother was married to L.L.; however, R.C. was believed to be his biological father.

On 20 September 2010, DSS filed a juvenile petition alleging Thomas was neglected and dependent. This matter was heard on 27 October 2010. The mother, L.L., and R.C. consented to entry of an order adjudicating Thomas dependent.

The trial court conducted a review hearing on 26 January 2011. By the time of the hearing, paternity testing revealed that neither L.L. nor R.C. were Thomas's biological father. The mother identified father and a paternity test was administered on 14 January 2011. The paternity test confirmed that father is Thomas's biological father. He entered into a case plan with DSS in February 2011.

The trial court conducted a permanency planning review hearing on 20 January 2012. The permanent plan was reunification with a concurrent plan of adoption. For two reasons DSS requested that the trial court change the permanent plan to adoption: (1) the length of time that Thomas had been in foster care, and (2) his parents have not followed through on

their case plans. The trial court changed the permanent plan to adoption with a concurrent plan of reunification and ordered DSS to file a petition to terminate parental rights.

On 20 March 2012, DSS filed a petition to terminate father's parental rights alleging the following grounds: (1) neglect; (2) failure to pay cost of care; (3) failure to legitimate; and (4) dependency. See N.C. Gen. Stat. § 7B-1111(a) (2011). The termination hearing was on 4 December 2012. Father was not present at the hearing; however, his attorney and guardian *ad litem* were present. The trial court terminated father's parental rights based on neglect and failure to legitimate. The court determined that termination of father's parental rights was in the best interest of Thomas, and entered an order terminating his rights. Father appeals.

The issues before the Court are whether (1) the trial court had personal jurisdiction over father; (2) father's termination hearing was fundamentally fair; and (3) the trial court erred in terminating father's parental rights.

When we review a termination of parental rights case we consider whether the findings of fact are "supported by clear, cogent and convincing evidence and whether these findings, in

turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child." *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (citation and internal quotation marks omitted), *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004).

Father argues, based on this Court's decision in *In re P.D.R.*, ___ N.C. App. ___, 737 S.E.2d 152 (2012), that the trial court lacked jurisdiction over him because he was served by publication while his guardian *ad litem*, whose role of substitution or assistance was not defined, was personally served. Specifically, father contends that unless the guardian *ad litem's* role was one of substitution, the guardian *ad litem* could not accept service of process on father's behalf.

We conclude that the role of the guardian *ad litem* in this case is irrelevant to the trial court's personal jurisdiction over father. The purpose of serving a summons is to establish personal jurisdiction over a party. *In re K.J.L.*, 363 N.C. 343, 348, 677 S.E.2d 835, 838 (2009), *appeal after remand*, 206 N.C. App. 530, 698 S.E.2d 150 (2010). Any deficiency of service, however, is waived if it is not timely raised. N.C. Gen. Stat.

§ 1A-1, Rule 12(h) (2011). For example, “[e]ven without a summons, a court may properly obtain personal jurisdiction over a party who consents or makes a general appearance . . . by filing an answer or appearing at a hearing without objecting to personal jurisdiction.” *In re K.J.L.*, 363 N.C. at 346, 677 S.E.2d at 837. Father made a general appearance at the termination hearing through his attorney who was present, cross-examined the witness, said that father was aware of the hearing, and most importantly did not object to the trial court’s personal jurisdiction. Therefore, father has waived any objection to personal jurisdiction.

Father also argues that the termination hearing was not a fundamentally fair proceeding because the trial court failed to adequately inquire of father’s attorney and guardian *ad litem* to determine what efforts they made to assist father in attending the hearing. We disagree with this argument.

For this argument father relies on *In re S.N.W.*, 204 N.C. App. 556, 698 S.E.2d 76 (2010), which addresses an ineffective assistance of counsel case. While father does not expressly argue, he seems to imply, that the duty of a court to inquire into an attorney’s effort to reach his client should be extended to include a guardian *ad litem*. We are not convinced by this

implication. Furthermore, at the start of the hearing, the trial court asked father's attorney if he was present. Father was not present, but his attorney stated that he was present at the last permanency planning hearing in the underlying case and knew about the upcoming termination hearing.

Also, as discussed above, father's attorney and guardian *ad litem* were both present at the hearing. His attorney cross-examined the witness and made arguments against terminating his parental rights. Thus, we find father's argument that he was denied a fair proceeding is without merit.

Next, father argues that the trial court erred in terminating his parental rights because clear, cogent, and convincing evidence does not support the trial court's findings of fact or conclusions of law. We disagree with this argument.

We note that the trial court terminated father's parental rights on two grounds, (1) neglect, and (2) failure to legitimate. We address only the trial court's conclusion to terminate parental rights based on neglect because a finding of one statutory ground under N.C.G.S. § 7B-1111(a) is sufficient to support the termination of parental rights. See *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003).

A trial court may terminate parental rights based on a finding that a parent has neglected a juvenile. N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is one who "does not receive proper care, supervision, or discipline" from a parent or caretaker, or "who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15) (2011). "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). However, when a parent has not had custody of a child

for a significant period of time prior to the termination hearing, 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 those circumstances, a trial court may 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.

In re L.O.K., 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005)
(citations and internal quotation marks omitted).

In the present case, it was proper for the trial court to consider father's neglect of Thomas in the past, at the time of the hearing, and the likelihood of neglect in the future. To

decide the issue of neglect, the trial court made the following pertinent findings of fact:

13a. The biological father has neglected the juvenile and continues to do so as of the filing date of this Petition, such that the juvenile is a neglected juvenile within the meaning of G.S. 7B-101(15). Further, there is a reasonable probability that such neglect will continue for the foreseeable future. The biological father does not have stable housing or employment. The biological father is currently in violation of his probation because he tested positive [for marijuana on] May 4, 2011; February 8, 2012; March 8, 2012; and he failed to report on July 11, 2011. It is likely that the neglect of the juvenile will continue for the foreseeable future. . . .

. . . .

17. Based on the biological father's lack of progress with his case plan and correcting the conditions that led to the minor child's removal from the home it is apparent that he is not willing to make the necessary changes to become a fit parent. The biological father's lack of consistency is evidence that there is a reasonable probability such neglect will continue for the foreseeable future.

18. Therefore, the minor child[] [is a] neglected and dependent juvenile[] within the meaning of G.S. 7B-101(9) and (15). And since the biological father of [Thomas], [father], is unwilling to address his issues, there is a reasonable probability that [Thomas's] neglect and dependency will continue for the foreseeable future.

The trial court also set forth father's case plan objectives and his progress on the plan in its findings of fact, which further supports the conclusion that he neglected his child by: failing to appear at counseling with Thomas, failing to reschedule a counseling session, having difficulty paying rent, and having his electricity turned off.

The trial court's findings of fact are supported by clear, cogent, and convincing evidence. The social worker testified that father continued to test positive for marijuana and had not completed any substance abuse treatment program, was resistant to working on his case plan, and had just recently obtained housing. She further testified that father's sporadic visits with Thomas were suspended in September 2012 because he missed two consecutive visits despite calling to say he would come to the visits. She also testified that father had not contacted Thomas's foster parents in three months.

The trial court's findings of fact, which are supported by clear and convincing evidence, support its conclusion that Thomas was neglected and that he would likely be neglected in the future. Furthermore, the trial court did not abuse its discretion in terminating father's parental rights. Accordingly, the trial court's order is affirmed.

Affirmed.

Judges GEER and STROUD concur.

Report per Rule 30(e).