

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA14-298
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF:

Onslow County
No. 11 JT 166

M.M.M.

Appeal by respondent from order entered 16 December 2013 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 8 July 2014.

Richard A. Penley for petitioner-appellee.

Womble, Carlyle, Sandridge & Rice, LLP, by Whitney Passmore, for guardian ad litem.

Batch, Poore & Williams, PC, by Sydney Batch, for respondent-appellant.

ERVIN, Judge.

Respondent-Father Robert W. appeals from an order terminating his parental rights in his son, M.M.M.¹ On appeal, Respondent-Father contends that the trial court erred by determining that his parental rights in Mark were subject to termination on the grounds that he allowed Mark to remain in

¹M.M.M. will be referred to throughout the remainder of this opinion as "Mark," a pseudonym used for ease of reading and to protect the juvenile's privacy.

foster care for more than twelve months without making reasonable progress toward correcting the conditions that led to his removal from the home as authorized by N.C. Gen. Stat. § 7B-1111(a)(2) and that he failed to pay a reasonable portion of the cost of the care that Mark received while in foster care as authorized by N.C. Gen. Stat. § 7B-1111(a)(3). After careful consideration of Respondent-Father's challenges to the trial court's order in light of the record and the applicable law, we conclude that the trial court's order should be affirmed.

I. Factual Background

On 8 August 2011, the Onslow County Department of Social Services obtained nonsecure custody of Mark after Respondent-Mother Ashley M. left him at the hospital following his birth without making any arrangements for his care. On 20 October 2011, Mark was determined to be a neglected and dependent juvenile. At that time, Respondent-Father, whom Respondent-Mother had identified as Mark's father, was ordered to cooperate with paternity testing. On 21 March 2012, Respondent-Father submitted to paternity testing, which established to a 99.99% probability that he was Mark's father. After a permanency planning hearing held on 17 September 2012, at which the permanent plan for Mark was changed from reunification to

adoption, Respondent-Father was formally determined to be Mark's father.

On 14 December 2012, DSS filed a petition seeking to have Respondent-Father's and Respondent-Mother's parental rights in Mark terminated. After conducting a hearing on 20 August 2013, the trial court entered an order on 16 December 2013 terminating Respondent-Mother's parental rights in Mark for neglect as authorized by N.C. Gen. Stat. § 7B-1111(a)(1) and leaving Mark in foster care for more than twelve months without making reasonable progress toward rectifying the conditions that led to Mark's removal from the home as authorized by N.C. Gen. Stat. § 7B-1111(a)(2) and terminating Respondent-Father's parental rights in Mark for leaving Mark in foster care for more than twelve months without making reasonable progress in rectifying the conditions that led to Mark's removal from the home as authorized by N.C. Gen. Stat. § 7B-1111(a)(2) and for failing to pay a reasonable cost of the care that Mark had received while in foster care as authorized by N.C. Gen. Stat. § 7B-1111(a)(3). Respondent-Father noted an appeal to this Court from the trial court's order.²

II. Substantive Legal Analysis

²As a result of the fact that Respondent-Mother did not note an appeal from the trial court's order, the trial court's order represents a final determination of her parental rights in Mark.

In his brief, Respondent-Father contends that the trial court erred by finding that his parental rights in Mark were subject to termination for failing to make reasonable progress toward rectifying the conditions that led to Mark's removal from the home pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) and for failing to pay a reasonable portion of the cost of the care that Mark received while in foster care pursuant to N.C. Gen. Stat. § 7B-1111(a)(3). More specifically, Respondent-Father contends that the trial court lacked the authority to terminate his parental rights in Mark pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) because he had no involvement in the events that led to Mark's placement in DSS custody and that the trial court lacked the authority to terminate his parental rights in Mark pursuant to N.C. Gen. Stat. § 7B-1111(a)(3) because the trial court failed to make adequate findings of fact with adequate evidentiary support addressing the issue of whether he had the ability to pay a portion of the cost of Mark's care for a continuous six month period. We do not believe that Respondent-Father is entitled to relief from the trial court's order on the basis of these contentions.

A. Standard of Review

A trial court is authorized to enter an order terminating a parent's parental rights in one of his or her children in the

event that one or more of the statutory grounds for termination set out in N.C. Gen. Stat. § 7B-1111(a) exists. We review a trial court order terminating a parent's parental rights in a child for the purpose of determining whether the trial court's findings of fact are supported by clear, cogent and convincing evidence and whether the trial court's conclusions of law are supported by the relevant findings of fact. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6, *disc. review denied*, 358 N.C. 543, 599 S.E.2d 42 (2004). The trial court's conclusions of law are subject to *de novo* review. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd*, 363 N.C. 368, 677 S.E.2d 455 (2009).

B. Grounds for Termination

According to N.C. Gen. Stat. § 7B-1111(a)(3), a trial court is authorized to terminate a parent's parental rights in a child in the event that the parent, "for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so." N.C. Gen. Stat. § 7B-1111(a)(3). In order to terminate a parent's parental rights in a child pursuant to N.C. Gen. Stat. § 7B-1111(a)(3), the trial court must find that the parent has the ability to pay, *In re Ballard*,

311 N.C. 708, 716-17, 391 S.E.2d 227, 233 (1984), with this showing having been made in the event that the petitioner establishes that the parent has the ability "to pay some amount greater than zero during the relevant time period." *In re T.D.P.*, 164 N.C. App. 287, 291, 595 S.E.2d 735, 738 (2004), *aff'd*, 359 N.C. 405, 610 S.E.2d 199 (2005).

In his brief, Respondent-Father argues that the trial court simply recited the statutory language of N.C. Gen. Stat. § 7B-1111(a)(3) instead of making independent findings of fact identifying the evidence upon which it relied in determining that he failed to pay a reasonable portion of the cost of Mark's care. In addition, Respondent-Father argues that DSS failed to establish that he failed to pay a reasonable portion of the cost of care that Mark received while in DSS custody for a continuous period of six months prior to the filing of the termination petition or that he had the ability to make support payments during the relevant time period. We are not persuaded by Respondent-Father's arguments.

In Finding of Fact No. 20, the trial court found as a fact that:

pursuant to N.C. [Gen. Stat. §] 7B-1111(a)(3), [Mark] has been in placement in the custody of the Onslow County Department of Social Services for a continuous period of six months preceding the filing of the petition to terminate the parental rights of

[Respondent-Father] and that [Respondent-Father] has willfully failed for such period of time to pay a reasonable portion of the cost of care for the juvenile, although physically and financially able to do so as he was able bodied to seek out employment and become employed.

Admittedly, the language utilized in Finding of Fact No. 20 largely tracks that in which N.C. Gen. Stat. § 7B-1111(a)(3) is couched. However, Finding of Fact No. 20, which also states that Respondent-Father "was able bodied to seek out employment and become employed," does contain an explanation for the trial court's determination that Respondent-Father had the ability to pay a portion of the cost of the care that Mark received while in DSS custody. In addition, the trial court stated in Finding of Fact Nos. 19(g) and 19(h), respectively, that Respondent-Father had failed to provide any financial support for Mark while he remained in foster care and that Respondent-Father never established independent housing or employment for himself so Mark could be placed in his care even though he did not suffer from any physical impairment sufficient to prevent him from becoming gainfully employed. As a result, we conclude that the trial court's findings of fact adequately support its determination that Respondent-Father's parental rights in Mark were subject to termination for failing to pay a reasonable

portion of the cost of Mark's care pursuant to N.C. Gen. Stat. § 7B-1111(a)(3).

In addition, the trial court's findings of fact concerning the extent to which Respondent-Father had the ability to pay some portion of the cost of the care that Mark received after being taken into DSS custody during the six month period immediately preceding the filing of the termination petition are adequately supported by the record evidence. At the termination hearing, Respondent-Father testified that, even though he did not make any support payments or pay any other bills during the relevant period of time, he lived on and off with his girlfriend and relatives while "[w]orking here and there" and "somewhat" supporting himself. Although Respondent-Father claimed at one point that he was not "doing anything else to make money at that time," a social worker testified that Respondent-Father was working "off and on." Finally, Respondent-Father, who was twenty-five years old at the time of the termination hearing, admitted that he was able-bodied and had no disabilities or physical deformities that would have prevented him from seeking and finding employment. The record does not contain any definitive indication that the conditions described in Respondent-Father's testimony and that of other witnesses were not true throughout the entire six month period prior to the

filing of the termination petition. As a result, since the trial court's findings of fact adequately support its determination that Respondent-Father's parental rights in Mark were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(3) and since the relevant findings of fact had adequate record support, we conclude that the trial court did not err by determining that Respondent-Father's parental rights in Mark were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(3).³

III. Conclusion

Thus, for the reasons set forth above, we conclude that Respondent-Father is not entitled to relief from the trial court's order on the basis of either of the contentions advanced in his brief. As a result, the trial court's order should be, and hereby is, affirmed.

AFFIRMED.

Judges MCGEE and STEELMAN concur.

³In view of fact that we have concluded that the trial court did not err by determining that Respondent-Father's parental rights in Mark were subject to termination based upon his failure to pay a reasonable portion of the cost of the care that Mark received while in foster care as authorized by N.C. Gen. Stat. § 7B-1111(a)(3), we need not examine the validity of Respondent-Father's challenge to the trial court's determination that his parental rights in Mark were subject to termination based upon his decision to leave Mark in foster care for twelve months without making reasonable progress in rectifying the conditions that led to Mark's removal from the home. *In re Parker*, 90 N.C. App. 423, 424, 368 S.E.2d 879, 880 (1988).

Report per Rule 30(e).