IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-688

Filed: 6 December 2016

Davidson County, Nos. 15 JT 28-29

IN THE MATTER OF: T.A.T., R.W.T., minor juveniles.

Appeal by respondent from orders entered 9 May 2016 by Judge Carlton Terry in Davidson County District Court. Heard in the Court of Appeals 7 November 2016.

*Christopher M. Watford, Assistant County Attorney, for petitioner-appellee Davidson County Department of Social Services.*

*Glenn Gerding, Appellate Defender, by Annick Lenoir-Peek, Assistant Appellate Defender, for respondent-appellant mother.*

*Laura Bodenheimer for guardian ad litem.*

DAVIS, Judge.

T.N. ("Respondent") appeals from orders terminating her parental rights to her twin boys T.A.T. ("Timmy") and R.W.T. ("Robby"), who were born in April 2007.[1] The juveniles' father relinquished his parental rights in April 2015 and is not a party to this appeal. After careful review, we affirm.

**Factual Background**

[1] Pseudonyms and initials are used throughout this opinion to protect the identities of the minor children and for ease of reading. N.C. R. App. P. 3.1(b).

On 1 February 2015, Respondent and her boyfriend, R.B., were arrested on multiple felony charges including breaking and entering, larceny, and heroin possession. They were detained in the Davidson County Detention Center under secured bonds. During a search of the couple's home on 1 February 2015, a law enforcement officer observed broken windows and a back door that "appeared to have been kicked in[.]" The couple's bedroom was strewn with garbage and overturned furniture and had a "hole in the wall where it appeared someone had been thrown into the sheetrock." The bedroom also contained used syringes, stolen property (including a shotgun), "garbage bags full of propane bottles," and "partial packs of diapers thrown across the room."

On 13 February 2015, the trial court placed Timmy and Robby in the nonsecure custody of the Davidson County Department of Social Services ("DSS") upon DSS's filing of juvenile petitions alleging that the twins and Respondent's five-month-old baby, R.D.B.,[2] were neglected and dependent juveniles. In addition to the circumstances described above, the petitions cited prior substance abuse by the parents and a child protective services ("CPS") history with the family dating back to 2007. DSS further alleged that a woman known to Respondent simply as "Karen" was found to be living with Respondent and R.B. and caring for the children. When asked about Karen's use of heroin, Respondent told the social worker that "she is not

[2] R.D.B. was placed in the guardianship of his paternal grandmother in February 2016.

bad off." The petitions noted that Timmy and Robby had been placed with their maternal great uncle and aunt after Respondent's mother was rejected as a placement option due to her own CPS history and possible current drug use.

After a hearing on 29 April 2015, the trial court adjudicated Timmy and Robby neglected and dependent juveniles by order entered 2 June 2015. In its subsequent dispositional order entered 16 June 2015, the trial court found that Respondent's employment with Lightnin Rodz Tree Service had been verified and that Respondent was thus "able to pay child support and should provide financial support for the . . . children." The court also ordered Respondent to obtain substance abuse and mental health assessments and to comply with all treatment recommendations, refrain from criminal activity and drug use, submit to random drug screens, complete parenting classes, and obtain and maintain suitable housing and income.

At a permanency planning hearing on 26 August 2015, the trial court relieved DSS of its obligation to make further reunification efforts, finding that such efforts "would be futile and/or contrary to the minor children's health, safety and need for a safe, permanent home within a reasonable period of time . . . ." The court recounted Respondent's lack of progress with her case plan, irregular attendance at visitation, and failure to "pay child support to support the well being of her children." The court changed the permanent plan for Timmy and Robby to adoption and ordered

Respondent to "pay child support pursuant to the North Carolina Child Support Guidelines."

On 29 October 2015, DSS filed petitions to terminate Respondent's parental rights to Timmy and Robby. These petitions were heard on 31 March 2016 before the Honorable Carlton Terry in Davidson County District Court. On 9 May 2016, the trial court issued orders terminating Respondent's rights to Timmy and Robby. As grounds for termination, the court concluded that Respondent had (1) neglected the children and was likely to repeat the neglect if they were returned to her care; and (2) willfully failed to pay a reasonable portion of the children's cost of care for the continuous six-month period immediately preceding DSS's filing of the petitions on 29 October 2015. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (3); N.C. Gen. Stat. § 7B-101(15) (2015).

In each termination order, the trial court also addressed the factors set forth in N.C. Gen. Stat. § 7B-1110 and determined that terminating Respondent's parental rights was in the children's best interests. *See* N.C. Gen. Stat. § 7B-1110(a) (2015). Respondent filed a timely notice of appeal from the termination orders.

**Analysis**

Counsel for Respondent has filed a no-merit brief on her behalf pursuant to N.C. R. App. P. 3.1(d). Counsel states that after conducting "a conscientious and thorough review of the Record on Appeal and all material in the underlying case

files[,]" counsel has identified "no issue of merit on which to base an argument for relief" on appeal. Counsel asks that this Court conduct an independent examination of the case for possible error pursuant to Rule 3.1(d). Counsel further shows that she complied with the requirements of Rule 3.1(d) by sending a letter to Respondent on 1 August 2016 advising her of her right to file written arguments in support of her appeal and by providing her with the materials necessary to do so. Counsel attached to the letter a copy of the record, the transcripts, and the brief filed by counsel. Respondent has not submitted written arguments of her own.

After conducting a thorough review of the record, we are unable to identify any basis for determining that the trial court committed reversible error. The trial court's orders being appealed include findings of fact by clear, cogent, and convincing evidence to support at least one statutory ground for termination. *See In re Clark*, 159 N.C. App. 75, 78 n.3, 582 S.E.2d 657, 659 n.3 (2003) (stating that if "an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds" found by the trial court). Specifically, the court made detailed findings regarding Respondent's employment and the financial cost of caring for the twins during the relevant period from 29 April 2015 to 29 October 2015, *see* N.C. Gen. Stat. § 7B-1111(a)(3), and further found as follows:

> Even if this Court established a reasonable portion of the cost of care of [each] minor child at a *de minimus* amount

> of $3.60 per month (the cost of one single school lunch), this Court would find that [Respondent] still failed to pay anything toward the care of the minor child despite being court-ordered to pay support and despite having the ability to pay some amount greater than zero, and that [Respondent] used those funds available to her for other purposes . . . and as such, has willfully failed to support [each] child.

This finding is consistent with our prior caselaw. *See In re Huff*, 140 N.C. App. 288, 293, 536 S.E.2d 838, 842 (2000) ("hold[ing] that the trial court did not err in concluding that the parents were able to pay some amount above zero"), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). The court's findings also reflect due consideration of the dispositional factors in N.C. Gen. Stat. § 7B-1110(a) and a valid exercise of its discretion in assessing the best interests of the minor children.

**Conclusion**

For the reasons stated above, we affirm the trial court's orders.

AFFIRMED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).