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NO. COA11-1071  
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

IN THE MATTER OF:  
T.J.

Wayne County  
No. 09 JT 110

Appeal by Respondent-father from order entered 20 June 2011 by Judge Timothy I. Finan in Wayne County District Court. Heard in the Court of Appeals 3 January 2012.

*Wayne County Department of Social Services, by James W. Spicer, III, for Petitioner-Appellee.*

*Mary McCullers Reece, for Respondent-Appellant.*

*Pamela Newell, for Guardian ad Litem.*

BEASLEY, Judge.

Respondent-father appeals from an order terminating his parental rights to T.J.<sup>1</sup> After careful review, we reverse.

On 17 August 2009, Wayne County Department of Social Services ("DSS") filed a petition alleging that T.J. was a neglected and dependent juvenile. DSS stated that on 15 August

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<sup>1</sup> To protect the privacy of the victim, his initials are used in this opinion.

2009, T.J.'s mother was stopped for a traffic violation. The mother, knowing she had outstanding warrants, jumped out of her car and ran, leaving T.J. behind in the car. On the date the petition was filed, T.J.'s mother's whereabouts were unknown.

An adjudicatory hearing was held on 1 October 2009. At the time of the hearing, Respondent-father was incarcerated in Jacksonville, Florida. Thus, Respondent-father did not appear at the hearing, but was represented by counsel. Respondent-mother, without admitting any of the specific allegations made in the petition, admitted that T.J. was a neglected and dependent juvenile, and the juvenile was adjudicated as such.

On 24 January 2011, DSS filed a motion to terminate Respondent-father's parental rights. At the time the petition was filed, the mother was deceased, and Respondent-father remained incarcerated in Florida. DSS alleged that Respondent-father had:

neglected the juvenile in that he has provided nothing for the juvenile since the juvenile has been in custody. In addition, grounds exist in that the juvenile has been in the custody of the Wayne County Department of Social Services for more than one year and the father has taken no steps to have the juvenile removed from the custody of the Department of Social Services.

A hearing on the petition was held on 19 May 2011. Respondent-father remained incarcerated in Florida at the time of the hearing. On 20 June 2011, the trial court entered an order terminating Respondent-father's parental rights on the grounds that Respondent-father "ha[d] neglected the juvenile and continues to neglect the juvenile." Respondent-father appeals.

Respondent-father argues that the trial court erred in its conclusion that grounds existed to terminate his parental rights due to neglect. We agree.

N.C. Gen. Stat. § 7B-1111 (2011) sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citing *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000)).

"Neglected juvenile" is defined in N.C. Gen. Stat. § 7B-101(15) 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). "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). Where, as here, the child has been removed from the parent's custody before the termination hearing, and the Petitioner presents evidence of prior neglect, then "[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). This is especially true where the parent has not had custody of the child for quite some time. *Id.* at 714, 319 S.E.2d at 231. "A parent's incarceration may be relevant to whether his child is neglected; however, [i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision." *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 730 (2007) (internal quotation marks and citation omitted).

Here, Respondent-father had no involvement with the events that led to T.J.'s removal. Respondent-father had been incarcerated prior to and since the filing of the petition which alleged that T.J. was neglected and dependent, and he did not have custody of the juvenile at the time of the termination hearing. Nevertheless, the trial court found as fact that, at the time of his arrest, "respondent-father was not employed and was not taking care of the juvenile." The burden, therefore, was on DSS to show a reasonable probability that neglect would most likely be repeated if T.J. were returned to Respondent-father's care. *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232.

The trial court found as fact:

20. That the respondent father did provide Christmas gifts for the juvenile through the social worker, Rhonda Baker, a week before Christmas in 2010, and also took steps for the juvenile to receive gifts through the Angel Tree Foundation.

. . . .

32. That the father of the juvenile has requested to be present for hearings by telephone and that request has been denied.

33. That the father has sent letters directly to the Court.

34. That the father sent a Thank You letter to the care giver of the juvenile in December.

35. That the father has maintained consistent contact with the Department of Social Services and has been present via telephone for CART meetings.

36. That the father's release date could be as early as December 31, 2011, if the father continues to accumulate good behavior time in prison.

37. That the respondent father is presently taking "modality classes" with focus on parenting, anger management, victim impact and substance abuse in order to help inmates transition from prison to society.

38. That the father's plan upon his release from prison in Florida is to live at the Salvation Army Residential Corrections Program in Jacksonville, Florida, where he can receive post-release room and board, employment guidance and life skill training.

39. That the respondent father loves the juvenile and wants to have custody of the juvenile once the respondent father is released from prison and transitions back into society.

In addition to the above findings of fact, the record included numerous letters written by Respondent-father which were addressed to his attorney, the Wayne County Clerk of Court, and the trial judge. In these letters, Respondent-father: (1) offered and sought placement options for the juvenile with relatives while he was incarcerated; (2) consistently and repeatedly inquired into his child's well-being; (3) sought to participate in court hearings; and (4) detailed his efforts to

comply with court recommendations and secure an early release from incarceration for good behavior.

Upon careful review of the evidence, we hold that the record and the trial court's findings of fact do not support the conclusion that Respondent-father was neglecting the juvenile at the time of the hearing or that any purported previous neglect was likely to recur. In turn, the trial court's findings of fact do not support its conclusion that grounds existed to terminate Respondent-father's parental rights due to neglect. Accordingly, we reverse the trial court's order. In light of this ruling, we do not address Respondent-father's remaining arguments on appeal.

Reversed.

Judges STEPHENS and STROUD concur.

Report per Rule 30(e).