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NO. COA02-95

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

IN THE MATTER OF:

Christopher Thomas Brown	Cabarrus County
A Minor Child.	No. 97 J 107

Appeal by respondent from order entered 15 May 2000 by Judge Randall R. Combs in Cabarrus County District Court. Heard in the Court of Appeals 10 October 2002.

Matthew F. Ginn for respondent appellant.

Cabarrus County Department of Social Services, by Kathleen Arundell Widelski, for petitioner appellee.

TIMMONS-GOODSON, Judge.

Deanna Brown ("respondent") appeals from an order of the trial court terminating her parental rights. For the reasons stated herein, we affirm the order of the trial court.

Respondent is the natural mother of the minor child at issue in the present case: Christopher Thomas Brown ("Christopher"), born 1 July 1989. On 18 July 1997, the Cabarrus County Department of Social Services ("DSS") filed a petition alleging that Christopher was a neglected child as defined by the North Carolina General Statutes and seeking a non-secure custody order. Upon reviewing

the allegations contained within the petition, the trial court issued such order that same day.

On 18 November 1997, the trial court adjudicated Christopher to be a neglected child based on the following evidence: DSS first became involved with respondent in October of 1995, when the Mecklenburg County Department of Social Services substantiated neglect of Christopher by respondent and subsequently transferred the case to Cabarrus County for treatment services. Although respondent suffered from several mental illnesses, including bipolar disorder, anxiety disorder and agoraphobia, she consistently failed to comply with necessary medical treatment and other services available to her through DSS. In April 1997, Christopher threatened a classmate at school with a knife. After this incident, Christopher was hospitalized for six weeks and diagnosed with major depression, oppositional defiant disorder and attention deficit hyperactivity disorder. Upon Christopher's release from the hospital, respondent failed to comply with recommended therapy and medication management for him, missing numerous appointments for his care. On 7 July 1997, Christopher used a knife to repeatedly strike a dresser, threatened to kill respondent's boyfriend, as well as a pet bird, and threatened a social worker from DSS. On 18 July 1997, Christopher vandalized a house and repeated his threat to kill respondent's boyfriend. Despite this behavior, respondent refused to obtain further mental health treatment for Christopher, and also refused to accompany him when DSS arranged for such treatment. Instead, respondent indicated to

social workers that she "could not handle" Christopher or his behavior and informed them that she wanted him removed from her home.

Based on the above-stated evidence, the trial court adjudicated Christopher to be a neglected child. The trial court then ordered respondent to comply with the following tasks in order to achieve reunification with Christopher: (1) complete a psychological evaluation and follow any recommendations arising from that evaluation; (2) maintain stable and suitable housing; (3) attend parenting classes; (4) visit with Christopher on a regular basis; (5) cooperate with and follow recommendations by DSS; (6) report any changes in her residential status to DSS; and (7) attend all appointments for medical management and individual therapy.

On 12 February 1999, DSS filed a motion to terminate respondent's parental rights, which motion came before the trial court on 30 September and 1 October 1999. At the hearing, the evidence presented tended to show, and the court so found, that respondent had failed to comply with the tasks outlined by the trial court in the adjudication order. Specifically, the evidence showed that respondent had only visited Christopher six times over a twenty-three month period, despite weekly visitation opportunities and available transportation services arranged through DSS. During one period, Christopher had no contact with his mother for five months. When respondent did visit Christopher, she engaged in inappropriate behavior. During one visit, for example, respondent climbed up the outside railing of a staircase

and encouraged Christopher to follow her. Respondent also told Christopher that he was "her sole reason for living."

Respondent failed to maintain stable housing, moving from one residence to another, including several homeless shelters. At the time of the hearing, respondent testified that she was currently living in a shelter for battered women. Although respondent obtained a psychological evaluation, she failed to follow the treatment plan recommended by her physician to address her mental health problems. Respondent moreover did not complete the parenting classes as ordered by the trial court.

In addition to failing to abide by the reunification plan as set forth in the order of adjudication, respondent contributed nothing to the cost of Christopher's care, despite her testimony at trial that she had been sporadically employed during the relevant time period. The evidence further showed that Christopher's behavior and general well-being improved remarkably after his placement in the care of DSS. In fact, Christopher received an award at school in May 1998 for the "most improved student," achieving superior grades and exhibiting none of his former aggressive behavior.

Upon reviewing the evidence, the trial court concluded that several grounds existed upon which to terminate respondent's parental rights. Specifically, the trial court concluded that (1) respondent had neglected Christopher and that such neglect would likely continue; (2) respondent willfully failed to pay a reasonable portion of the cost of Christopher's care although

physically and financially able to do so; (3) respondent willfully left Christopher in foster care for more than twelve months without making reasonable progress in correcting the conditions that led to the child's removal; and (4) that respondent was incapable, due to her mental illness, of properly caring for Christopher, such that he was a dependent child within the meaning of the North Carolina General Statutes. Having determined that there existed sufficient grounds to support termination of respondent's parental rights, the trial court then determined that it was in the best interests of the child that respondent's parental rights be terminated. The trial court therefore entered an order terminating respondent's parental rights. Respondent appeals.

Respondent presents five assignments of error on appeal, arguing that the trial court erred in concluding that respondent (1) neglected her child; (2) failed to pay a reasonable portion of the cost of his care; (3) willfully left Christopher in foster care for more than twelve months without making reasonable progress in correcting the conditions that led to the child's removal; (4) was incapable of properly caring for her child because of mental illness; and (5) concluding that it was in the best interests of the child that respondent's parental rights be terminated. We address respondent's arguments in turn.

We note initially that termination of parental rights is a two-step procedure established by the North Carolina General Statutes. See *In re Church*, 136 N.C. App. 654, 656, 525 S.E.2d

478, 479 (2000). In the initial adjudication phase of the trial, grounds for termination must be shown by clear, convincing and cogent evidence. See N.C. Gen. Stat. § 7B-1109(f) (2001); *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). The petitioner seeking termination of parental rights has the burden of showing by clear, cogent and convincing evidence that such grounds exist. See N.C. Gen. Stat. § 7B-1109(f); *In re Ballard*, 311 N.C. 708, 716, 319 S.E.2d 227, 232 (1984). The court may terminate parental rights on the basis of several findings, and "[a] finding of any one of the . . . separately enumerated grounds is sufficient to support a termination." *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984). "Upon determining that one or more of the grounds for terminating parental rights exist, the court moves to the disposition stage to determine whether it is in the best interests of the child to terminate the parental rights." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 615 (1997); see also N.C. Gen. Stat. § 7B-1110 (2001) (outlining the disposition stage).

The appellate court's task upon review is to "determine whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur on the grounds stated in N.C. Gen. Stat. § [7B-1111]." *In re Oghenekevebe*, 123 N.C. App. 434, 435-36, 473 S.E.2d 393, 395 (1996). Where the petitioner meets its burden, and the trial court's findings of fact support any one of the statutory grounds, we should affirm the order terminating parental rights. See *In re*

Swisher, 74 N.C. App. 239, 240, 328 S.E.2d 33, 35 (1985). We therefore examine the grounds for terminating respondent's parental rights as found by the trial court, and to which respondent now assigns error.

Respondent argues that the trial court erred in finding and concluding that respondent neglected Christopher and that such neglect was likely to continue. Respondent contends that this finding was unsupported by clear, cogent and convincing evidence, in that she presented "ample evidence of significant progress" at the hearing. We disagree.

A neglected juvenile is one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who is not provided necessary medical care; . . . or who lives in an environment injurious to the juvenile's welfare" N.C. Gen. Stat. § 7B-101(15) (2001). Neglect serves as one of the bases supporting termination of parental rights. See N.C. Gen. Stat. § 7B-1111(a)(1) (2001). "[E]vidence of neglect by a parent . . . including an adjudication of such neglect -- is admissible in subsequent proceedings to terminate parental rights. The 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." *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232.

In the instant case, the trial court adjudicated Christopher neglected on 18 November 1997 based on evidence that respondent failed to provide proper care for Christopher, particularly in

regard to his medical and mental health needs. Although Christopher displayed violent behavior, and even after he was hospitalized for mental health treatment, respondent failed to obtain necessary medical care for him. As a result, Christopher's violent behavior intensified to the point that respondent informed social workers that she could no longer care for the child. After Christopher was adjudicated neglected, respondent failed to cooperate with DSS, asserting that Christopher had been "kidnapped." The psychological evaluation performed on respondent indicated that she was "at moderate risk for future neglect of her son if given custody." The evaluation further stated that respondent's "unwillingness to acknowledge the extent of neglect as well as her refusal to make reasonable accommodations to [the DSS] service plan suggest she is more invested in justifying her animosity toward that agency rather than improving her parenting skills and ultimately preventing future neglect." Contrary to respondent's argument, she failed to present "ample evidence of significant progress" at the hearing.

We conclude that there was clear, cogent and convincing evidence to support the trial court's finding and conclusion that respondent neglected her child, and that such neglect was likely to continue. Although this finding and conclusion, standing alone, adequately serves as a basis for the termination of respondent's parental rights, see *Pierce*, 67 N.C. App. at 261, 312 S.E.2d at 903, we address the remaining three grounds for termination.

As further grounds for terminating respondent's parental

rights, the trial court determined that respondent "willfully failed to pay a reasonable portion of the cost of care for [Christopher] although financially and physically able to do so." In support of this conclusion, the court found that

The cost of care for Christopher Brown since his placement in care totaled \$12,054.54 from September 1997 through the date of this hearing. [Respondent] has contributed nothing towards the cost of the child's care though she has been employed sporadically during the time the child has been in care. She also could afford to take a trip to the beach during the period of time the child was in care. The mother had minimal expenses and poverty was not the reason the mother could not pay. The mother could have paid some amount greater than zero during the time the child was in care. The mother has worked at Village Pizza, Wendy's, Dollar General, Days Inn, Advance Till Payday, Krispy Kreme Donuts, Waffle House and UDI during the time the child was in care. The mother has been unwilling or unable to maintain employment for any extended period of time. The mother has resided the last four months at "Turning Point" for which she does not have to pay any rent or fees. At the time of this hearing, the Respondent-mother was attending Union Tech.

This finding was clearly supported by the evidence of record. Respondent testified that she had never paid any type of support for Christopher, despite the fact that she was sporadically employed. Respondent argues that, even if she failed to pay a reasonable portion of the cost of Christopher's care, it was not "willful," in that she suffers from mental illness. The evidence provides no support for such an argument. Although there was substantial evidence that respondent suffers from bi-polar disorder, acute anxiety disorder and agoraphobia, there was no evidence to suggest that these conditions rendered respondent

incapable of forming willful intent or otherwise prevented her from contributing some monies, however small, to the cost of Christopher's care. We conclude that the trial court properly found and concluded that respondent failed to pay a reasonable portion of the cost of her child's care. We therefore overrule this assignment of error.

The court further determined that respondent willfully left Christopher in foster care for more than twelve months without making reasonable progress in correcting the conditions which led to his removal. See N.C. Gen. Stat. § 7B-1111(a)(2) (2001). Under this section, "[a] finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children." *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995).

Respondent argues that she made substantial progress in addressing the conditions leading to Christopher's removal, and that the trial court erred in finding and concluding otherwise. Respondent refers to evidence tending to show that, at the time of the hearing, respondent was attending classes to obtain her high school equivalency degree, and was working and attending parenting classes. Respondent also asserts that the evidence showed that she had obtained stable housing and was attending counseling. Respondent contends that this evidence demonstrates that she made substantial progress in correcting the conditions leading to her child's removal, and the trial court erred in finding and concluding otherwise. We disagree.

Despite respondent's characterization of her progress as "substantial," there was clear and convincing evidence before the trial court that, at the time of the hearing, respondent had actually done little to address the problems that ultimately led to Christopher's removal. Respondent did not follow through on her medical treatment, nor did she complete the parenting classes she was ordered to attend. Respondent failed to regularly visit her son, although she was given ample opportunity to do so. Although respondent did present evidence tending to show that she was actively employed, she also testified that she had been working for less than three weeks. She moreover had attended only two parenting classes, and had been living at the shelter for little more than four months. We conclude that there was clear, cogent, and convincing evidence to support the trial court's finding and conclusion that respondent failed to make sufficient progress in correcting the conditions that led to the loss of custody of her child. See *Nolen*, 117 N.C. App. at 700, 453 S.E.2d at 224-25 (stating that, "[e]xtremely limited progress is not reasonable progress"). This assignment of error is overruled.

Finally, the trial court found that respondent was incapable, as a result of mental illness, of properly caring for and supervising Christopher, such that he was a dependent child within the meaning of section 7B-101(9) of our General Statutes, and that there was a reasonable probability that such incapability would continue for the foreseeable future. See N.C. Gen. Stat. § 7B-1111(a)(6) (2001). Such incapability by a parent to properly care

for a child may arise as a result of mental illness. See *id.* A dependent juvenile is one "in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2001).

There was clear and convincing evidence that respondent was unable to properly care for Christopher in part due to her mental illness and, more specifically, her failure to comply with medical and mental health treatment. The evidence before the trial court tended to show that respondent was hospitalized in 1994 for psychiatric reasons. Her treating physician noted that she was "extremely dysfunctional" with "extremely poor coping skills and ego functions." Respondent's anxiety and panic attacks at that time rendered her incapable of caring for Christopher, working, driving, or attending school. In 1996, respondent was diagnosed with post-traumatic stress disorder and panic disorder with agoraphobia. In 1997, respondent reported that she was often too anxious to leave her home. In her psychiatric evaluation performed in September of 1998, respondent stated that she always carried a knife for personal protection, and that her panic episodes had increased in frequency. This evaluation concluded that respondent's condition, and respondent's resistance to appropriate treatment, presented a moderate risk for future neglect of Christopher. Throughout the years, respondent sporadically sought

assistance for her mental illness, but consistently failed to follow through with outpatient treatment. Respondent's failure to abide by the conditions of her medical treatment resulted in a worsening of her symptoms, to the point that respondent was often too anxious to visit Christopher. We conclude that there was clear and convincing evidence that respondent's mental illness rendered her incapable of properly caring for her child. We therefore overrule this assignment of error.

Finally, respondent contends that the trial court erred in concluding that it was in the best interests of the child to terminate her parental rights. We do not agree. The trial court found, and the evidence showed that

When [Christopher] initially came into care, his behavior was disobedient, [he] used inappropriate language, got up in the middle of the night and wandered through the house, rummaged through drawers[,] etc. and would have running fits through the house. He did not know how to bathe himself, blow his nose, or perform any personal hygiene functions. The child was sent home from school on average 2-3 times per week for uncontrollable behavior. He had to be escorted to his class, and was not allowed to [ride] the bus.

The evidence further showed that

Since placement in care, [Christopher] has shown marked improvement. He plays with friends, his fears [have] decreased, his [attention deficit hyperactivity disorder] has decreased, his anxiety has decreased, his hygiene has improved, he has learned to follow rules and has had no instances of aggression in a substantial length of time. In May 1998, the child received an award for "most improved student." He has been consistently on the AB honor roll.

The court moreover found that Christopher needed "safety, security

and structure in his environment and an appropriate and consistent treatment regarding rewards and consequences," none of which his mother was capable of providing. We conclude that the trial court did not abuse its discretion in concluding that it was in Christopher's best interests that respondent's parental rights be terminated.

A petition for termination of parental rights must be carefully considered in light of all the circumstances and with the children's best interests firmly in mind. "Although severing parental ties is a harsh judicial remedy, the best interests of the children must be considered paramount." *In re Adcock*, 69 N.C. App. 222, 227, 316 S.E.2d 347, 350 (1984). In the case at bar, Christopher has made remarkable progress in the care of DSS, developing from a violent, aggressive child whose constant disruptions at school led to his removal therefrom, to a superior student with no or few behavioral incidents. While the decision to terminate parental rights should never be lightly made, it is not in the best interests of a neglected or dependent child to require that he languish indefinitely in foster care in the dim hope of eventual reunification with a parent. The order of the trial court terminating respondent's parental rights as to Christopher Thomas Brown is hereby affirmed.

Affirmed.

Judges HUDSON and CAMPBELL concur.

Report per Rule 30(e).