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NO. COA05-491

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

IN THE MATTERS OF:  
M.I.S. and  
S.M.S.

Cabarrus County  
Nos. 03 J 92-93

Appeal by respondents from an order entered 30 November 2004 by Judge Donna H. Johnson in Cabarrus County District Court. Heard in the Court of Appeals 28 November 2005.

*Kathleen Arundell Widelski, for petitioner-appellee Cabarrus County Department of Social Services, and Victoria Bost, Guardian Ad Litem.*

*Robert T. Newman, Sr., for respondent-appellant Michael Sellers.*

*Carol Ann Bauer, for respondent-appellant Carrie Sellers.*

JACKSON, Judge.

On 3 May 2003, the Cabarrus County Department of Social Services ("DSS") filed a petition alleging that M.I.S. and S.M.S. were neglected juveniles. DSS alleged there was domestic violence in the home; the children were not fed and were acting out sexually; Michael Sellers was using drugs and had a history of mental illness; M.I.S. had been left in his crib for long periods of time with no interaction, and; M.I.S. had been found covered in feces and urine. DSS assumed custody of the children by non-secure

custody order.

On 23 June 2003, respondents entered into a consent order, stipulating that the children were neglected. The permanent plan for the children at the time was reunification. Respondent father agreed to: (1) submit to psychological testing and follow through with treatment recommendations; (2) submit to substance abuse assessment and follow through with treatment recommendations; (3) take an approved parenting course; (4) maintain stable employment for three to six months without interruption; (5) maintain stable housing for three to six months and not be late on any rent or utilities payment; (6) maintain weekly contact with DSS and report changes in residence or employment; (7) abide by a DSS visitation plan; and (8) submit to an assessment with New Options for Violent Actions or a comparable agency. Respondent mother agreed to: (1) submit to psychological testing and follow through with treatment recommendations; (2) take an approved parenting course; (3) maintain stable employment for three to six months without interruption; (4) maintain stable housing for three to six months and not be late on any rent or utilities payment; (5) maintain weekly contact with DSS and report changes in residence or employment; (6) abide by a DSS visitation plan; and (7) participate in a weekly support group for domestic violence.

On 15 July 2004, DSS filed a motion to terminate respondents' parental rights. DSS alleged that: (1) that respondents had willfully left the children in foster care for more than twelve months without showing to the satisfaction of the court that

reasonable progress under the circumstances had been made to correcting the conditions which led to the children's removal; (2) that the children had been in the custody of DSS for six months and respondents had failed to pay a reasonable portion of the cost of child care; (3) that respondents had neglected the children as defined by North Carolina General Statutes, section 7B-101(15); and (4) that respondent father was incapable of providing for the proper care and supervision of the children such that they were dependent juveniles and there was a reasonable probability that such incapability would continue for the foreseeable future. Accordingly, DSS argued that it was in the best interest of the children that respondents' parental rights be terminated.

On 19 and 20 October 2004, hearings were held on the motion to terminate respondents' parental rights. The trial court found that respondent father had: (1) failed to obtain stable housing; (2) failed to complete anger management classes; (3) failed to complete substance abuse treatment; and (4) had completed a parenting class, but was unable to articulate a plan to protect his children from sexual abuse. The trial court found that respondent mother had: 1) failed to obtain stable housing; (2) failed to maintain stable employment; (3) failed to complete her domestic violence therapy group; and (4) had completed a parenting class, but was unable to articulate a plan to protect her children from sexual abuse. Thus, the trial court concluded that grounds existed pursuant to North Carolina General Statutes, section 7B-1111(a)(1), (2), and (3) to terminate respondents' parental rights. The court further

concluded that it was in the children's best interest that respondents' parental rights be terminated, noting the condition the children were in when taken into DSS custody and the fact that they had been in the same foster home since two days after they had come into DSS care, and had bonded with their foster parents. Accordingly, respondents' parental rights were terminated. Respondents appeal.

Respondent father first argues that the trial court erred by finding that there were grounds to support the termination of his parental rights. We disagree.

North Carolina General Statutes, section 7B-1111 sets forth the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support a termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "[T]he party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997) (citing former N.C. Gen. Stat. §§ 7A-289.30(d) and (e), now codified as N.C. Gen. Stat. §§ 7B-1109(e) and (f)).

In the case *sub judice*, the trial court concluded that respondent father willfully had left the children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances had been made to correct the conditions which led to their removal. See N.C. Gen. Stat. § 7B-1111(a)(2). We find sufficient evidence in

the record to support the trial court's findings. DSS took custody of the children after reports of domestic violence, substance abuse by respondent father, and a history of the family living in their car and being evicted. Respondent father stipulated to the adjudication order of neglect. The case plan developed for respondent father sought to address the issues that led to the children's removal. The case plan included tasks such as respondent father submitting to a substance abuse assessment, obtaining stable housing, and attending anger management classes. However, the evidence shows that respondent father failed to comply with this case plan. At the time of the hearing, respondent father still did not have a permanent residence and was living with friends. He also could not provide verification that he had completed substance abuse treatment or anger management counseling. Thus, there was clear, cogent and convincing evidence in the record to support the trial court's findings and conclusion that respondent father had not made sufficient progress towards correcting the conditions that led to the children's removal.

Since grounds exist pursuant to North Carolina General Statutes, section 7B-1111(a)(2) to support the trial court's order, the remaining grounds found by the trial court to support termination need not be reviewed by the Court. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

Respondent father next argues that the trial court failed to state affirmatively the standard of proof used in the termination proceeding. Pursuant to North Carolina General Statutes, section

7B-1109(f) (2004), the trial court is required to state affirmatively in its order that the findings of fact adduced from the adjudicatory hearing were based upon clear, cogent, and convincing evidence. See *In re Church*, 136 N.C. App. 654, 657, 525 S.E.2d 478, 480 (2000). Here, the court stated in the order that it "makes the following Findings of Fact based on clear, cogent and convincing evidence." As this was a non-bifurcated hearing, we conclude this statement was sufficient and there was no error.

Finally, both respondents argue the trial court erred in determining that termination of their parental rights was in the best interests of the children.

After careful review of the record, briefs, and contentions of the parties, we affirm. Once the trial court has found that grounds exist to terminate parental rights, "the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated." N.C. Gen. Stat. § 7B-1110(a) (2004). The trial court's decision to terminate parental rights at the disposition stage is discretionary. See *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984).

Here, the trial court found that M.I.S. had come into DSS custody with unmet medical needs, neither parent had sought treatment, and as a result surgery was required. The court also noted that S.M.S. had exhibited sexualized behavior, and a medical examination revealed prior anal penetration. As a result, S.M.S.

would need mental health therapy from caregivers who would be able to protect her from sexual abuse. However, although respondent mother previously had accused her stepfather of sexually assaulting her, she had requested that he be allowed at visitation with S.M.S. Thus, based on these findings, and based on respondents' failure to fully address the court ordered plans for reunification, we conclude that the trial court did not abuse its discretion in determining that termination was in the children's best interest. Accordingly, the order terminating respondent's parental rights is affirmed.

Affirmed.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).