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NO. COA07-917

NORTH CAROLINA COURT OF APPEALS

Filed: 18 December 2007

IN THE MATTER OF: I.S.E.G.,  
T.I.D., A.R.D.,

Dare County  
No. 06 J 77

Appeal by respondent-mother from order entered 3 May 2007 by Judge Amber Davis in Dare County District Court. Heard in the Court of Appeals 26 November 2007.

*Sharp, Michael, Outten & Graham L.L.P., by Steven D. Michael, for Dare County Department of Social Services, petitioner-appellee.*

*Duncan B. McCormick for respondent-appellant.*

*Pamela Newell Williams for the Guardian ad Litem.*

MARTIN, Chief Judge.

Respondent-mother ("mother") appeals the order terminating her parental rights to her minor children, I.S.E.G., T.I.D., and A.R.D. On 7 May 2004, the Dare County Department of Social Services ("DSS") filed amended juvenile petitions alleging that I.S.E.G. and T.I.D. were abused, neglected, and dependent as to mother and their respective biological fathers. The petitions alleged that I.S.E.G. and T.I.D. had been exposed to the violent behavior of mother's husband ("husband"), who was also I.S.E.G.'s biological father. More specifically, the petition alleged that husband had assaulted

mother on two occasions, once breaking her hand, and had set fire to both the home of the maternal grandmother of the children, where mother and the children were living, as well as the home of one of mother's friends. Husband's actions resulted in criminal charges against him including assault and arson. The petition further alleged that husband had a criminal history which included drug, robbery, and assault offenses. With respect to mother, the petition alleged that she suffered from bipolar disorder, attention deficit hyperactivity disorder, and major aggressive disorder, and that she had not been receiving treatment in recent months.

In response to the juvenile petition, the trial court granted DSS nonsecure custody of I.S.E.G. and T.I.D. On 7 June 2004, the trial court held an adjudication and disposition hearing and adjudicated I.S.E.G. and T.I.D. as neglected. In its adjudication order, the trial court found that the parties had stipulated that the allegations in the juvenile petition regarding neglect were true.

In its disposition order, the trial court placed the children with their maternal grandmother, gave the parents supervised visitation, ordered the parents to comply with the DSS case plan, and ordered mother to comply with a plan of prenatal care for her unborn child. In addition, the trial court ordered mother to comply with the recommendations of DSS that she attend therapy for her mental health issues, submit to random drug screens, cooperate and maintain weekly contact with DSS, make her home available for

a DSS visit, attend weekly sessions of a domestic violence program, and find suitable housing.

On 14 September 2004, DSS filed a juvenile petition alleging that mother's newborn child, A.R.D., was neglected and dependent. On 25 October 2004, the trial court adjudicated A.R.D. as dependent and placed him with his siblings in the maternal grandmother's home.

Between September 2004 and May 2005 the trial court reviewed the cases on five occasions. Following a review hearing on 23 May 2005, the trial court found that the children were doing well in the placement with their maternal grandmother. Regarding mother's compliance with the case plan, the trial court found that mother had refused to take a drug test on two occasions, had not attended the domestic violence counseling group, had attended only two therapy sessions since January 2005, had no means of transportation, she and husband were facing eviction from their residence, she was pregnant, and she had "not received adequate prenatal care in the past and cannot meet the needs of her own health since she is a severe diabetic." On the basis of these findings, the trial court ordered DSS to cease reunification efforts and ordered that mother should have no visitation with the children.

Following the next review by the trial court in July 2005, the trial court again found that mother had made no progress on her case plan and that she had criminal charges pending for selling alcohol to a minor, possession of an open container, and consuming

alcohol in the passenger area of a vehicle. The trial court further found that "[mother] is presently pregnant and should not be consuming alcohol. . . . All of [mother's] children have had medical issues, low birth [weight] and developmental issues due to her non-compliance with prenatal care and her diabetes." Also in its order, the trial court found that mother later had suffered a miscarriage with the pregnancy and the infant had died.

During the trial court's reviews in July and August of 2005, the trial court found that the children had to be removed from the maternal grandmother's home and placed in foster care due to a domestic violence incident between maternal grandmother and her new husband and due to a decline in the level of care the grandmother was providing to the children. In its order from the August 2005 review, the trial court approved the DSS recommendation that the permanent plan be changed to termination of parental rights and adoption of the children.

On 21 November 2006, DSS filed a petition to terminate the parental rights of mother and the respective fathers of the minor children. On 3 May 2007, the trial court entered an order terminating mother's and the fathers' parental rights. Mother now appeals the termination.

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In her first assignment of error, mother challenges several of the trial court's findings of fact in the termination order as constituting mere recitations of findings from prior orders in the case. We agree that the fourteen findings of fact challenged by

mother reiterate the findings from the many court orders entered during the lengthy history of this case. However, in its seventy-nine page termination order, these findings merely provide detailed background information regarding the circumstances and proceedings that led to the filing of the termination petition, and it was not error for the court to make them. See *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (“[E]vidence of neglect by a parent prior to losing custody of a child - including an adjudication of such neglect - is admissible in subsequent proceedings to terminate parental rights.”). Moreover, the trial court entered separate findings not challenged by mother that are sufficient to support the trial court’s termination as discussed in the next section of this opinion. Consequently, this assignment of error is overruled.

In her next assignment of error, mother contends that the trial court erroneously terminated her parental rights on the basis of neglect pursuant to N.C.G.S. § 7B-1111(a)(1). For the purposes of this statutory ground, “neglected juvenile” is defined as follows:

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) (2005); see also N.C. Gen. Stat. § 7B-1111(a)(1) (2005). Furthermore, this Court has held:

In deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child at the time of the termination proceeding. . . . Termination may not . . . be based solely on past conditions that no longer exist. Nevertheless, when . . . a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, . . . a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect.

*In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citations omitted) (internal quotation marks omitted).

Mother argues that the trial court must be reversed because its findings are inadequate to support a conclusion of neglect. Although mother assigned error to many of the court's findings of fact, she abandoned them when she failed to argue them in her brief. N.C.R. App. P. 28(b)(6) (2007). With respect to these findings of fact, because mother abandoned her exception to them, "they are presumed to be correct and supported by the evidence." *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982). Based upon the unchallenged findings of fact, the court's conclusion of neglect can be affirmed. The following findings support the court's determination of neglect:

70. [Mother] has demonstrated a pattern of instability since the Department became involved in May of [2004]. She has changed residences frequently and not made the Department aware of her numerous addresses. She has not provided any funds for the children. She has not called to inquire about the care or welfare of her children since May of 2005. [Mother] did call and leave messages that she wanted a visit with the children after the hearing on January 3, 2007 when [the

social worker] agreed to discuss it with the therapist. However, after a review of the Court Orders, it was determined that the Court Orders from August 10, 2005 stated that there was to be no visitation. During the one phone conversation and the messages she left, [mother] did not ask how the children were doing. . . .

71. . . . [Mother] last attended a Permanency Planning Team meeting at the Dare County Department of Social Services on August 16, 2005 and at that time when asked if she had any input, she stated that "it didn't matter." [Mother] did not attend the Permanency Planning Team meeting in August of 2006 since the Department was not informed by [mother] of her current address. All other invitations to the Permanency Planning Team meetings were not returned by the postal service. [Mother] did have her attorney fax a letter that [mother] could not make the Permanency Planning Team meeting on February 20, 2007. The letter did not give a reason why she could not attend.

72. During the past year, [mother] has not had a stable place to live. She lived with her mother in Elizabeth City for a period of time . . . .

73. On November 29, 2006, [mother] was incarcerated in Pasquotank County jail and had not made arrangements to attend the Court hearing.

74. From August of 2005 until January of 2007, [mother] did not request any visitation or contact with the children.

75. [Mother] has an extensive criminal history, including the following convictions:

Pasquotank County: January 12, 2006 - Communicating Threats - guilty; January 13, 2006 - M. Assault with a Deadly Weapon - guilty special conditions - submit to warrant less [sic] searches, drug screens, not use, possess[, ]or control any illegal controlled substances or alcohol, no contact directly or indirectly with victim; November 13, 2006 -

Misdemeanor probation violation - revoked for 45 days; November 9, 2006, Driving While Licence Revoked - guilty.

Dare County: January 26, 2007 - Felony possession with intent to sell/deliver cocaine - guilty - fine \$300.00, restitution \$200.00, costs \$232.50, supervised probation; September 12, 2006 - Misdemeanor Sell/Give MTBV/U-Wn to under 21 - guilty; September 12, 2006 - Possess open container/cons alcohol psg area - guilty; March 22, 2006 - Misdemeanor Possession Drug Paraphernalia - guilty; February 21, 2006 - Felony Flee/Elude Arrest with Motor Vehicle (F) - guilty; and September 14, 2006, - Misdemeanor Simple Assault - guilty.

. . . .

77. [Mother] is currently charged with Felony Possession Schedule II Controlled Substance in Pasquotank County. She was served on June 12, 2006 and she was indicted by the Grand Jury. She is currently still on probation awaiting trial on this new charge. A conviction on this charge would likely result in a violation of her probation and an active period of incarceration.

With respect to mother's progress on the case plan, the trial court made the following findings:

87. . . . [Mother and husband] never maintained appropriate or stable housing; they have moved frequently and lived with individuals who used illegal drugs; they did not keep the Department informed of where they were living. . . . They failed to attend counseling regularly and failed to provide verification and documented no progress; lived in residences where controlled substances were kept; failed to maintain regular employment; exposed the children to individuals involved in criminal activities; failed to keep [DSS] informed of their whereabouts; and continued to be involved in criminal behaviors.

. . . .



89. [Mother and husband] have not received needed services. During 2004 and 2005, . . . [mother] only went to therapy three times. The couple refused to take drug tests . . . . [Mother and husband] never provided any written verification of attendance at any of their meetings. [Mother and husband] allowed [an individual] to live with them who was charged with a gun and drug offense while in [their] residence. Although it has been reported that [mother] attended mental health counseling, the Department has received no verification of this information or of any progress she has made.

. . . .

93. [Mother] testified at this hearing stating that she was currently seeing a therapist at Albemarle Mental Health and therapy began five months ago. She reports attending four times in five months. In 2006, she was incarcerated and was sent to Raleigh for safe keeping and then returned to the Albemarle District Jail. She was incarcerated for approximately 50 days. She reported that she lived with her mother for a time and left her mother's home because they "had a conflict in lifestyle." She reports that she is presently residing with her brother. [Mother] acknowledged that she was convicted of assault in September of 2005 and in September of 2006 for assaults on other females.

. . . .

95. The parents have not demonstrated a pattern of stability, moving from place to place and living in the homes of others. Historically, they have always lived in the homes of others, never having housing of their own and have resided with individuals which made placement of the children unlikely. They have not at any time established a safe or suitable home for placement of the children.

96. The parents have failed to demonstrate interest in the welfare or well being of the children, having not maintained contact with the Department for over two years and on the rare occasions when contact

occurred, they did not inquire about the well being of the children.

These findings show a history of neglect and the probability of repetition of neglect sufficient to constitute a ground for termination of parental rights. Mother's failure to comply with the case plan in any significant way for a period of almost three years, her failure to seek adequate mental health treatment, her failure to address significant issues of domestic violence and substance abuse, her continuing involvement in criminal activities, and her failure to maintain any stable housing or employment not only evidence past neglect but also adequately support the trial court's conclusion that the children would be subject to neglect if they were placed in mother's care. See *In re Davis*, 116 N.C. App. 409, 414, 448 S.E.2d 303, 306 (1994) (holding the parents' failure to "obtain[] continued counseling, a stable home, stable employment, and [attend] parenting classes" was sufficient to show a probability that neglect would be repeated if the child were returned to the care of the parents). Accordingly, we affirm the trial court's conclusion that there were grounds for termination on the basis of neglect pursuant to N.C.G.S. § 7B-1111(a)(1).

Because we conclude that the grounds for termination have been established under N.C.G.S. § 7B-1111(a)(1), we do not address mother's remaining argument regarding the additional ground relied upon by the trial court under N.C.G.S. § 7B-1111(a)(2). *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984) (holding that a finding based upon one statutory ground is sufficient to support the termination of parental rights).

Affirmed.

Judges McCULLOUGH and BRYANT concur.

Report per Rule 30(e).