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NO. COA11-895
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

IN THE MATTER OF:

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|------|----------------|
| | Wake County |
| D.B. | Nos. 09 JT 821 |
| S.B. | 09 JT 822 |

Appeal by respondent from order entered 2 May 2011 by Judge Monica M. Bousman in Wake County District Court. Heard in the Court of Appeals 21 November 2011.

Office of the Wake County Attorney, by Deputy County Attorney Roger A. Askew, for petitioner-appellee.

Jon W. Myers for respondent-appellant.

North Carolina Administrative Office of the Courts, by Appellate Counsel Pamela Newell, for guardian ad litem.

GEER, Judge.

Respondent mother appeals from the order terminating her parental rights as to her minor children, D.B. ("Don") and S.B. ("Sara").¹ On appeal, respondent mother contends only that the trial court abused its discretion by finding that the best

¹The pseudonyms "Don" and "Sara" are used throughout this opinion to protect the minors' privacy and for ease of reading.

interests of the children would be served by termination of her parental rights. Respondent mother primarily argues that the trial court should have given greater consideration to the fact that she had recently obtained treatment for her mental illness -- the underlying cause of the issues giving rise to the motion to terminate her parental rights -- and because of this breakthrough, she should have been given more time to reunite with her children. Given the trial court's findings of fact (not challenged on appeal), we cannot conclude that a short inpatient hospitalization two weeks before the termination of parental rights hearing ("TPR hearing") rendered the trial court's best interests determination manifestly unreasonable. We, therefore, affirm.

Facts

Respondent mother left Don and Sara with a friend on 15 September 2009 and did not return. She contacted the friend on 17 September 2009 but gave no indication she intended to retrieve the children. When the friend was unable to continue to take care of the children, Wake County Human Services ("WCHS") filed a petition on 18 September 2009, alleging that Don and Sara were neglected and dependent juveniles.

The family had an extensive child protective services history with concerns regarding domestic violence, substance

abuse, and instability. Respondent mother had a long history of substance abuse -- she had entered multiple treatment programs but never completed them. Don and Sara had seen their mother smoking "weed" less than a week before the petition was filed. The children's father had not played an active role in their lives. He was aware of respondent mother's substance abuse and left the children with her anyway.² At the time of the filing of the petition, both children were in need of medical treatment.

After a hearing on 3 November 2009, the trial court entered an order on 3 December 2009 adjudicating Don and Sara neglected and dependent based on respondent mother's stipulation. The trial court ordered respondent mother to obtain and maintain housing sufficient for herself and the children; obtain and maintain employment sufficient to meet the needs of herself and the children; follow all recommendations of her substance abuse assessment; satisfactorily complete a drug treatment program and follow all recommendations; complete the Positive Parenting Group provided by WCHS (or similar program provided by a drug treatment program); and maintain regular contact with WCHS, notifying the agency of any change of circumstances within five business days.

²Respondent father has not challenged the termination of his parental rights and is not a party to this appeal.

In June 2010, respondent mother moved to Detroit, Michigan, where she remained until shortly before the TPR hearing on 17 March 2011. Respondent mother testified that she moved due to domestic violence, but she elected to leave North Carolina three months before her alleged abuser was expected to be released from jail. Although respondent mother admitted that she had previously been assaulted by the abuser in September 2009, she had not sought a domestic violence protective order at any time. She had undergone domestic violence counseling at one time, but she did not think it was helpful.

In an order filed 1 October 2010, following a permanency planning hearing on 7 September 2010, the trial court ceased reunification efforts, finding that respondent mother had not visited the children since June 2010 and had acknowledged marijuana use before leaving. The trial court suspended visitation for both parents after finding they both had left the State of North Carolina. The trial court changed the permanent plan for Don and Sara to adoption.

On 23 December 2010, WCHS filed a petition to terminate both parents' rights. WCHS alleged the following grounds for termination as to each parent: (1) neglect; (2) willfully leaving Don and Sara in foster care for more than 12 months without showing reasonable progress to correct the conditions

that led to removal; (3) willful failure to pay a reasonable portion of the cost of care for the children; and (4) willful abandonment. See N.C. Gen. Stat. §§ 7B-1111(a)(1)-(3), (7) (2009). The trial court conducted a TPR hearing on 17 and 31 March 2011 and, in an order dated 2 May 2011, terminated the parental rights of both parents.

The trial court found the following facts with respect to respondent mother. Respondent mother had not obtained stable housing at any time during the course of the proceedings; she had lived with friends or been homeless. At the time of the TPR hearing, she was moving between the homes of two different friends. Respondent mother had obtained temporary employment but did not maintain it. Indeed, the longest period of time she had ever maintained employment was for one year. Although WCHS had incurred expenses of \$400.00 per month for each child, respondent mother had paid nothing towards the cost of care for her children. Further, respondent mother did not maintain contact with the social worker assigned to her children.

Respondent mother had never participated in a parenting program, and she did not complete the two substance abuse programs she had entered in North Carolina and in Michigan. Respondent mother had participated in a psychological evaluation on 27 January 2010, which resulted in recommendations that

included, among others, that respondent mother see a psychiatrist for medication to address disordered thinking and mood swings, that she participate in mental health therapy and substance abuse counseling, that she attend NA meetings three to five times per week, and that she participate in parenting education.

Although respondent mother "recently" went to The Healing Place for Women, she also left that program without completing it. She testified that she re-enrolled in a substance abuse program in March 2011. She had not participated in 12-step meetings and had not participated in any mental health therapy, despite acknowledging that her mental health condition contributed to her substance abuse.

Respondent mother left Detroit and returned to Raleigh on 24 February 2011. She was hospitalized toward the end of February at Holly Hill Hospital, where she stayed until 5 March 2011. According to respondent mother, she began medication for her mental health on 4 March 2011.

Based on these findings of fact, the trial court found that grounds existed to terminate respondent mother's parental rights, including (1) neglect, (2) willfully leaving the children in foster care for more than 12 months without making reasonable progress under the circumstances in correcting the

conditions that led to the removal of the children, and (3) willful failing to pay a reasonable portion of the cost of the care of the children.

With respect to whether termination of parental rights was in the best interests of the children, the court found that Don was almost seven years old and Sara was five years old. The children's permanent plan was adoption, and termination of parental rights would aid in accomplishing that plan. A prospective adoptive home had been identified with a family that the children had known for several years, and the probability of adoption was high. While the court acknowledged that the children love their mother and she loves them, the court found that the bond between the children and their mother was not an appropriate parent/child bond. Don knew his mother could not meet his daily needs. Finally, the court found that "both children are in need of a place to call 'home'."

Based on these findings, the court concluded that termination of respondent mother's parental rights was in the best interests of the children. Respondent mother timely appealed to this Court.

Discussion

Termination of parental rights involves a two-stage process. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d

906, 908 (2001). At the adjudicatory stage, "the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002). Findings of fact supported by competent evidence are binding on appeal even if evidence has been presented contradicting those findings. *In re N.B., I.B., A.F.*, 195 N.C. App. 113, 116, 670 S.E.2d 923, 925 (2009). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

"If the trial court determines that grounds for termination exist, it proceeds to the dispositional stage, and must consider whether terminating parental rights is in the best interests of the child." *In re Anderson*, 151 N.C. App. at 98, 564 S.E.2d at 602. The trial court's decision to terminate parental rights is reviewed under an abuse of discretion standard. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001).

Respondent mother does not challenge the adjudicatory phase of the TPR proceedings or the findings of fact supporting the conclusion that grounds existed to terminate respondent mother's parental rights. Further, with respect to the dispositional

stage, respondent mother does not dispute that the trial court made the findings of fact required by N.C. Gen. Stat. § 7B-1110(a) (2009).

Respondent mother, however, points to her Holly Hill hospitalization, describing it as "life-changing" and a breakthrough that led to her obtaining employment for 25 hours per week at a K&W Cafeteria and to her being drug free and no longer overwhelmed. Respondent mother argues that "[i]t is this breakthrough which would allow this family to reunite within a reasonable period of time with [respondent mother] meeting the children's emotional and physical needs." This "breakthrough" occurred, however, two months after WCHS had filed the TPR petition and only two weeks before the TPR hearing.

While we hope respondent mother will continue to make progress, this progress was a long time coming and of only a very limited duration by the time of the TPR hearing. We cannot conclude that it was manifestly unreasonable for the trial court to conclude that this development was too little, too late, and too uncertain to warrant further delaying the children's obtaining a permanent plan of care given the children's age, the nature of the relationship between the children and their mother, and the availability of adoption to provide the children with "a place to call 'home'." At the disposition stage, the

trial court's focus is on the best interests of the child and not on the circumstances relating to the parents. See *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251 (1984) ("[T]he fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody [is] that the best interest of the child is the polar star").

Respondent mother also challenges the trial court's findings related to "[t]he bond between the juvenile[s] and the parent." N.C. Gen. Stat. § 7B-1110(a)(4). Specifically, the trial court found:

61. That the children know and love their mother, and she loves them.

62. That the bond between the children and their mother is not an appropriate parent/child bond.

Respondent mother claims, however, that any inappropriate parent/child bond was due to WCHS' denial of respondent mother's request for telephone contact with her children while she was in Michigan. She contends that the trial court's disposition -- that the best interests of the children were served by terminating her parental rights -- was an abuse of discretion given "[t]he State severed her bond with the children" and therefore "unfairly tipped the scales in favor" of termination.

We believe respondent mother has misconstrued the trial court's finding that the bond she had with the children was "not

an appropriate parent/child bond." The trial court was not referring to the lack of contact between respondent mother and the children, but rather the nature of that bond -- whether it was a parent-child relationship.

In findings that respondent mother does not challenge, the trial court found that while respondent mother's visits with her children went "well" overall, on one occasion when respondent mother asked the children not to throw out their juice boxes, one of the children asked: "'Why? Because you want to smoke something?'" In addition, although a social worker informed respondent mother that Don needed to work on his reading skills and suggested that Don read to his mother during visits, respondent mother did not encourage him to do so when Don did not want to read. Finally, even though Don is just six, almost seven, years old, he "knows his mother cannot meet his daily needs."

These findings support the trial court's determination that even though there is a loving bond, there "is not an appropriate parent/child bond," and termination of parental rights was in the best interests of the children. See *In re C.L.C., K.T.R., A.M.R., E.A.R.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709 (2005) (finding that the trial court was entitled to determine whether "other factors" outweighed the presence of a bond

between mother and child), *aff'd per curiam and disc. review improvidently allowed*, 360 N.C. 475, 628 S.E.2d 760 (2006). Accordingly, we affirm the order of the trial court terminating respondent mother's parental rights to Don and Sara.

Affirmed.

Judges STEELMAN and ROBERT N. HUNTER, JR. concur.

Report per Rule 30(e).