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NO. COA11-1419  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

IN THE MATTER OF:

N.T.D.

Guilford County  
No. 08 JT 80

Appeal by respondent-father from order entered 17 August 2011 by Judge K. Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 14 May 2012.

*Donna Michelle Wright for petitioner-appellee Guardian ad Litem.*

*Mercedes O. Chut for appellee Guilford County Department of Social Services.*

*David A. Perez for respondent-appellant father.*

CALABRIA, Judge.

Respondent-father ("respondent") appeals from the trial court's order terminating his parental rights to the minor child, N.T.D. ("Nancy").<sup>1</sup> We affirm.

I. Background

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<sup>1</sup> Nancy is a pseudonym used to protect the identity of the minor child.

On 9 May 2008, the Guilford County Department of Social Services ("DSS") filed a juvenile petition alleging Nancy was a neglected and dependent juvenile. On that same date, the trial court entered a nonsecure custody order placing Nancy in DSS custody. After a hearing on 21 July 2008, the trial court adjudicated Nancy a dependent juvenile. In its dispositional order entered 22 September 2008, the trial court ordered respondent to enter into a case plan. Respondent failed to comply with the trial court's order.

In February 2009, respondent was incarcerated for a variety of offenses. During his incarceration, respondent did not attempt to contact DSS regarding Nancy. Respondent was eventually convicted of the offense of second degree rape in North Carolina state court and the offense of possession of a firearm by a felon in federal court.

On 25 October 2010, Nancy's mother executed a specific relinquishment of her parental rights to her aunt and uncle, who had cared for Nancy since she entered foster care. On 6 December 2010, Nancy's guardian *ad litem* ("petitioner") filed a petition to terminate respondent's parental rights alleging the following grounds for termination: (1) neglect; (2) willfully leaving the juvenile in foster care for more than twelve months

without showing reasonable progress to correct the conditions that led to removal; (3) willfully failing to pay a reasonable portion of the cost of care; and (4) dependency.

After a hearing, the trial court entered an order on 17 August 2011 concluding grounds existed to terminate respondent's parental rights on the basis of (1) neglect; (2) willfully leaving the juvenile in foster care for more than twelve months without showing reasonable progress to correct the conditions that led to removal; and (3) dependency. The trial court further concluded that termination of respondent's parental rights was in Nancy's best interests. Respondent appeals.

## II. Grounds for Termination

Respondent argues that the trial court erred in its determination that grounds existed to terminate his parental rights. We disagree.

When reviewing an order terminating parental rights, the standard of review is "whether the court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law." *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000) (internal quotations and citation omitted). "[T]he trial court's findings of fact supported by clear and convincing competent evidence are deemed

conclusive, even where some evidence supports contrary findings." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997).

In the instant case, the trial court concluded grounds existed to terminate respondent's parental rights on the basis of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2011). A neglected juvenile is defined 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). Generally, "[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) (citation omitted). However, when 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). Moreover, "[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 quotations and citation omitted).

In the instant case, the trial court entered several findings regarding petitioner's past and current neglect of Nancy, as well as findings addressing the likelihood of future neglect. Petitioner challenges several of these findings as unsupported by evidence.

In reference to past neglect, the trial court found that Nancy had been removed from respondent and her mother's care due to an allegation of domestic violence and her mother's inability to properly parent Nancy. The court additionally found that respondent failed to comply with the case plan ordered by the trial court after Nancy was taken into custody and that he exhibited hostility towards DSS and the court. These findings were supported by testimony at the termination hearing from respondent, DSS Community Social Services Technician Eric Tolbert ("Tolbert") and social worker Connie Bowman ("Bowman"). Finally, the trial court found as fact, unchallenged by

respondent, that respondent failed to consistently visit with Nancy while she was in DSS custody prior to his incarceration. These findings were sufficient to establish that respondent had previously neglected Nancy.

The trial court also found that, while he was incarcerated, respondent never contacted either DSS or petitioner. This finding was also supported by Tolbert and Bowman's testimony. Based upon petitioner's previous failures to comply with any aspect of his case plan for several years, his failure to contact DSS or petitioner during his incarceration, and his testimony during the termination hearing, the trial court found that a repetition of neglect was likely. This finding was supported by the trial court's previous findings as well as respondent's testimony.

The trial court's findings regarding respondent's past, present, and potential future neglect of Nancy were sufficient to support its conclusion that respondent's parental rights could be terminated on the basis of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). *See Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. Respondent's argument is overruled. Since we have found that the trial court properly terminated respondent's parental rights on the basis of neglect, it is unnecessary to

address his arguments on the remaining grounds found by the trial court. See *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984).

### III. Best Interests

Respondent argues that the trial court erred in concluding that it was in Nancy's best interests that respondent's parental rights be terminated. Respondent contends the Juvenile Code is intended to create procedures and measures to avoid the "unnecessary severance" of the parental relationship. See N.C. Gen. Stat. § 7B-1100(2) (2011). Respondent further contends Nancy's paternal relatives were never properly explored and considered as possible placements for Nancy. We disagree.

Once the trial court has concluded that a ground for termination exists, the court proceeds to the disposition stage, where it must determine whether termination is in the best interests of the child. N.C. Gen. Stat. § 7B-1110(a) (2011). In determining whether termination is in the best interests of the child, the trial court must consider the factors set forth in N.C. Gen. Stat. § 7B-1110(a):

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental

rights will aid in the accomplishment of the permanent plan for the juvenile.

(4) The bond between the juvenile and the parent.

(5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.

(6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2011). "We review the trial court's decision to terminate parental rights for abuse of discretion." *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are 'manifestly unsupported by reason.'" *Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006) (quoting *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980)).

In the instant case, the trial court's order contains extensive findings addressing the factors set forth in N.C. Gen. Stat. § 7B-1110(a). Moreover, contrary to petitioner's argument, the trial court also clearly considered the availability of placement with respondent's relatives as its order contains specific findings regarding these relatives. However, the trial court ultimately found that the paternal relatives were not "appropriate placements" for Nancy. The



trial court's order reflects that it considered the evidence before it and made a reasoned determination. Accordingly, we find the trial court did not abuse its discretion. This argument is overruled.

#### IV. Conclusion

The trial court's findings were supported by competent evidence and supported its conclusion that respondent's parental rights were subject to termination on the basis of neglect. The trial court did not abuse its discretion in determining that termination of respondent's parental rights was in Nancy's best interests. The trial court's order is affirmed.

Affirmed.

Judges STEELMAN and BEASLEY concur.

Report per Rule 30(e).