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NO. COA12-53
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

IN THE MATTER OF:

K.R.H., D.W.H.,
C.D.H., and D.J.H.

Mecklenburg County
Nos. 09 JT 65-68

Appeal by respondent-mother and respondent-father from order entered 12 December 2011 by Judge Louis A. Trosch, Jr. in Mecklenburg County District Court. Heard in the Court of Appeals 14 May 2012.

Twyla Hollingsworth-Richardson for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Pamela Newell for petitioner-appellee Guardian ad Litem.

Leslie C. Rawls for respondent-appellant mother.

James E. Tanner, III for respondent-appellant father.

CALABRIA, Judge.

Respondent-father and respondent-mother (collectively "respondents") appeal the trial court's order terminating their parental rights to their four children, K.R.H. ("Kim"), D.W.H.

("David"), C.D.H. ("Cherie"), and D.J.H. ("Donald") (collectively "the children").¹ We affirm.

I. Background

Respondents are the parents of Kim, born August 2004, David, born January 2002, Cherie, born November 2000, and Donald, born August 1999. Over the course of their relationship, there were several episodes of domestic violence between respondents, including violent altercations in the presence of the children.

On 5 February 2009, the Mecklenburg County Department of Social Services, Division of Youth and Family Services ("YFS") filed a petition alleging that Kim, David, Cherie and Donald were neglected and dependent juveniles. YFS alleged that respondents (1) had engaged in physical altercations in front of the children; (2) had agreed in April 2008 to submit to domestic violence assessments and follow the recommendations from those assessments; and (3) as of January 2009, respondents had not followed through with receiving the treatment recommended by their respective assessments. The trial court ordered YFS to take nonsecure custody of the children. YFS placed the children

¹ The children have been given pseudonyms in order to protect their identities and for ease of reading.

with two family friends, the Smiths.² Respondents were granted supervised visits with the children at a YFS facility.

On 2 April 2009, the trial court adjudicated the children neglected and dependent juveniles. The trial court ordered respondent-father to, *inter alia*: (1) complete and comply with the recommendations from a F.I.R.S.T. (Families in Recovery to Stay Together) assessment; (2) resolve any substance abuse or alcohol issues; (3) complete and comply with the recommendations from a domestic violence assessment; (4) complete parenting classes; and (5) provide a safe and appropriate home for his children. Respondent-mother was ordered to comply with a similar case plan.

Respondent-mother failed to comply with several aspects of her case plan, and her visitation with the children was ceased in November 2009. After successfully completing his F.I.R.S.T. assessment, respondent-father was permitted to have unsupervised visits with the children. However, respondent-father was instructed not to take the children to see respondent-mother when he had visitation. During an unsupervised visit on 3 April 2009, respondent-father took the children to a hotel room where respondent-mother was present. As a result, respondent-father's

² A pseudonym.

visits with the children were changed back to supervised visits at YFS facilities.

After respondent-father made sufficient progress on his case plan, Kim, David, and Donald were transitioned from the Smiths' home to respondent-father's home in October 2010. Cherie elected to stay with the Smiths.

After a permanency planning hearing on 8 December 2010, the trial court returned legal custody of Kim, David, and Donald to respondent-father and awarded guardianship of Cherie to the Smiths. However, YFS was ordered to "stay involved in their case for purposes of another review [hearing]."

On 19 January 2011, YFS received a report that respondent-mother spent the weekend in respondent-father's home while the children were present. Respondent-father admitted to YFS that he allowed respondent-mother to stay in his home for about thirty hours. As a result, YFS filed a "Motion in the Cause to Reassume Custody" of Kim, David, and Donald. YFS took non-secure custody of Kim, David, and Donald on 2 February 2011 and placed them with the Smiths.

The trial court held a hearing on 22 March 2011 and entered an "Order on Amended Motion in the Cause to Reassume Custody and Permanency Planning Hearing Order" that same day. The trial

court found that respondent-father's "testimony clearly showed [that] he continues to struggle in putting the needs of his children before his own needs or the needs of the [respondent-mother]." In its order, the trial court changed the permanent plan for the children from reunification to termination of parental rights and adoption.

On 1 June 2011, YFS filed a petition to terminate the parental rights of respondents to Kim, David and Donald on the grounds of neglect and failure to make reasonable progress pursuant to N.C. Gen. Stat. § 7B-1111 (a) (1)&(2). YFS also sought to terminate respondent-mother's parental rights on the grounds of her failure to pay a reasonable portion of costs of the children's care pursuant to N.C. Gen. Stat. § 7B-1111(a)(3). On 22 June 2011, Cherie's guardian *ad litem* ("GAL") filed a petition to terminate respondents' parental rights as to Cherie on the grounds of neglect and failure to make reasonable progress. However, no summons was issued to the Smiths as guardians of Cherie after the GAL's petition was filed.

The termination petitions were consolidated for hearing. On 12 December 2011, the trial court entered an order terminating respondents' parental rights on the grounds of neglect and failure to make reasonable progress. The trial

court's order also concluded that it was in the best interests of all four children to terminate respondents' parental rights. Respondent-mother and respondent-father each appeal.

II. Standard of Review

"The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child." *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004) (internal quotations and citation omitted). "Findings of fact to which a respondent did not object are conclusive on appeal." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003).

III. Respondent-father

On appeal, respondent-father argues (1) that the trial court erred in entering the termination order when Cherie's judicially appointed guardians were not issued a summons pursuant to N.C. Gen. Stat. § 7B-1106 upon the filing of the petitions to terminate; and (2) that the trial court erred in determining that grounds existed to terminate his parental

rights. Respondent-father does not contest the trial court's conclusion that termination was in the best interests of the children.

A. Summons to Guardians

Respondent-father contends that the trial court erred by entering its termination order when Cherie's permanent guardians were not issued a summons after the GAL's termination petition was filed. We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1106(a),

upon the filing of the [TPR] petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(2) Any person who has been judicially appointed as guardian of the person of the juvenile.

N.C. Gen. Stat. § 7B-1106(a) (2011). In the instant case, the Smiths were not issued a summons after the petition to terminate respondents' rights to Cherie was filed, as required by the statute. However, this did not impact the trial court's authority to enter its order, as "the summons is not the vehicle by which a court obtains subject matter jurisdiction over a case, and failure to follow the preferred procedures with respect to the summons does not deprive the court of subject

matter jurisdiction." *In re K.J.L.*, 363 N.C. 343, 346, 677 S.E.2d 835, 837 (2009). Instead, "the summons affects jurisdiction over the person" *Id.* at 347, 677 S.E.2d at 837. Consequently, respondent-father may not challenge on appeal the trial court's failure to issue a summons to Cherie's guardians, since he was not the party aggrieved by this failure. See *In re J.B.*, 172 N.C. App. 1, 8, 616 S.E.2d 264, 268-69 (2005) (Respondent-mother could not challenge the issuance of a summons to the GAL's attorney advocate rather than the GAL because she was not a party aggrieved by the allegedly improper issuance of the summons.). This argument is overruled.

B. Grounds for Termination

Respondent-father argues that the trial court erred by finding that his parental rights to the children could be terminated on the grounds of neglect. We disagree.

A trial court may terminate parental rights based on a finding that the parent has neglected the juvenile. 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, "a prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect." *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). Where a prior adjudication of neglect is considered by the trial court, "[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." *Id.* at 715, 319 S.E.2d at 232 (citation omitted). Thus, where

there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to [his or] her parents.

In re Reyes, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted).

In the instant case, respondent-father contends the trial court erred in concluding that he neglected his children because there was no evidence of any current physical, mental or emotional impairment. However, the trial court supported its conclusion that respondent-father neglected his children with findings that emphasized his inability to extinguish his relationship with respondent-mother and the negative impacts that continuing the relationship had on the children. The trial court also found that the children had repeatedly voiced concerns that respondent-father would be unable to keep them safe from respondent-mother. Specifically, the trial court found that "[t]he juveniles have expressed fears, behavior[] outbursts, and problems associated with contact with the respondent mother. To this day neither respondent is willing to acknowledge how these incidents have impacted [Kim, David, and Donald]." The trial court also found that despite respondent-father's knowledge of the negative impact of respondents' relationship on the children, he continued to have contact with respondent-mother in the presence of the children and showed no ability to cease this contact.

The trial court's findings reflect that respondent-father failed to demonstrate he could provide a safe and appropriate home for his children; that he continued to struggle with putting his children's needs before his own or respondent-mother's needs; and that he disregarded his children's fear of respondent-mother. Based on these findings, the trial court properly concluded there was a significant probability of a repetition of neglect if the children were returned to respondent-father. Thus, the trial court properly found that respondent-father's parental rights could be terminated on the ground of neglect. This argument is overruled.

Since we have found that the trial court properly terminated respondent-father's parental rights on the basis of neglect, it is unnecessary to address his argument on the remaining ground found by the trial court. *See In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984) (A finding of one statutory ground is sufficient to support the termination of parental rights.).

IV. Respondent-mother

Respondent-mother's appellate counsel has filed a no-merit brief pursuant to N.C.R. App. P. 3.1(d) stating that, after a conscientious and thorough review of the record on appeal, she

has concluded there is no issue on which we might grant relief to her client. Pursuant to North Carolina Rule of Appellate Procedure 3.1(d), she requests this Court conduct an independent examination of the case. Counsel directs our attention to the following potential issues: that the trial court erred in concluding that grounds existed to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(2).

After carefully reviewing the transcript and record, we are unable to find any possible prejudicial error in the trial court's order. The trial court's findings of fact support at least one ground for termination, and the trial court did not abuse its discretion in determining that termination is in the best interests of the children. Thus, we affirm the trial court's order terminating respondent-mother's parental rights.

V. Conclusion

The trial court's failure to issue a summons to Cherie's guardians did not affect the trial court's authority to enter the termination order. The trial court properly found that respondent-father's parental rights could be terminated on the basis of neglect. The trial court did not err in terminating

respondents' parental rights to the children, and its order is affirmed.

Affirmed.

Judges STEELMAN and BEASLEY concur.

Report per Rule 30(e).