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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-160

Filed: 20 June 2017

Wake County, No. 14-JT-363

IN THE MATTER OF:

N.A.P.

Appeal by respondent from order entered 23 November 2016 by Judge Monica M. Bousman in Wake County, District Court. Heard in the Court of Appeals 6 June 2017.

Wake County Attorney's Office, by Mary Boyce Wells, for petitioner-appellee Wake County Human Services.

Lisa Anne Wagner, for respondent-appellant-father.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

STROUD, Judge.

Respondent appeals order terminating his parental rights. We affirm the order.

I. Background

On 5 November 2014, Wake County Human Services (“WCHS”) filed a petition alleging Noah¹ was an abused and neglected juvenile due to the actions of his mother who ultimately relinquished her parental rights so that Noah could be adopted. Prior to Noah’s birth and until the time of the termination hearing, respondent, Noah’s father, has remained incarcerated. Respondent is also a registered sex offender due to his conviction for indecent liberties with a child. Noah was adjudicated neglected, and on 23 November 2016, the district court terminated respondent’s parental rights. Respondent appeals.

II. Ineffective Assistance of Counsel

Respondent first contends that he received ineffective assistance of counsel during the adjudication phase of this case which ultimately led to the termination of his rights. Respondent’s arguments about his counsel are based upon his claim that his counsel should have arranged for him to establish paternity or legitimize Noah at an earlier point in the proceedings. One of the grounds upon which the trial court terminated respondent’s rights was North Carolina General Statute § 7B-1111(a)(5), for failing to establish paternity or legitimate Noah. But the trial court also terminated respondent’s rights both for neglect under North Carolina General Statute § 7B-1111(a)(1) and failure to make reasonable progress pursuant to North Carolina General Statute § 7B-1111(a)(2). Thus, even if respondent’s counsel should

¹ A pseudonym will be used to protect the identity of the minor involved.

have arranged for testing and legitimation sooner, since the trial court need only have one proper ground to terminate, we need not consider this issue on appeal if termination for another reason was proper. *See In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93–94 (2004) (“Having concluded that at least one ground for termination of parental rights existed, we need not address the additional ground[s] . . . found by the trial court.”). Based upon our ruling upon the other grounds, as discussed below, there is no need for us to address ineffective assistance of counsel.

III. Termination of Parental Rights

Respondent’s only other argument on appeal is that the trial court erred in finding any ground for termination.

A proceeding to terminate parental rights is a two step process with an adjudicatory stage and a dispositional stage. A different standard of review applies to each stage. In the adjudicatory stage, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that one of the grounds for termination of parental rights set forth in N.C. Gen. Stat. § 7B–1111(a) exists. The standard for appellate review is whether the trial court’s findings of fact are supported by clear, cogent, and convincing evidence and whether those findings of fact support its conclusions of law. Clear, cogent, and convincing describes an evidentiary standard stricter than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt.

If the petitioner meets its burden of proving at least one ground for termination of parental rights exists under N.C. Gen. Stat. § 7B–1111(a), the court proceeds to the dispositional phase and determines whether termination of parental rights is in the best interests of the child. The standard of review of the dispositional stage is whether the

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trial court abused its discretion in terminating parental rights.

In re C.C., 173 N.C. App. 375, 380-81, 618 S.E.2d 813, 817 (2005) (citations and quotation marks omitted). Respondent here does not challenge the dispositional determination that it was in Noah's best interests that his rights be terminated, but only the adjudicatory determination that there was a valid ground upon which to terminate his parental rights.

One of the grounds the district court based its decision to terminate respondent's parental rights upon was North Carolina General Statute § 7B-1111(a)(1) for neglect.

A neglected juvenile is defined in N.C. Gen. Stat. § 7B-101(15) 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.

Thus, neglect is more than a parent's failure to provide physical necessities and can include the total failure to provide love, support, affection, and personal contact.

In re C.L.S., ___ N.C. App. ___, ___, 781 S.E.2d 680, 682, *aff'd per curiam sub nom.*

Matter of C.L.S., ___ N.C. ___, 791 S.E.2d 457 (2016) (citation, quotation marks, and brackets omitted).

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When a parent is incarcerated prior to the termination, and thus physically unavailable to care for a child, our courts have determined that

incarceration alone does not negate a father's neglect of his child because the sacrifices which parenthood often requires are not forfeited when the parent is in custody. Thus, while incarceration may limit a parent's ability to show affection, it is not an excuse for a parent's failure to show interest in a child's welfare by whatever means available[.]

Id. at ___, 781 S.E.2d at 682 (citation, quotation marks, ellipses, and brackets omitted). Furthermore,

[w]here a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect because requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.

Id. at ___, 781 S.E.2d at 682 (citation and quotation marks omitted).

Here, while it is true that the reason WCHS became involved with Noah was due to Noah's mother's actions, it is also true that up until the point of the termination hearing respondent has been incarcerated for the entirety of Noah's life. The trial court made many findings of fact which respondent does not challenge on appeal which are also relevant to the trial court's determination of whether respondent has shown interest in Noah's welfare and the possibility that he would be unable to care for Noah when he is released. Specifically, respondent has a long criminal history

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with convictions including indecent liberties with a child and assault on Noah's mother. He has never met Noah. Noah's mother testified that respondent raped her which resulted in Noah's conception and while this is not an established fact, her testimony was not rebutted. Respondent initially denied paternity of Noah, despite the fact that he argues on appeal that his counsel should have moved more quickly to have paternity testing done. When respondent met with his attorney regarding Noah he was "often pre-occupied" with his pending criminal charges rather than Noah. Respondent had a psychological evaluation and was diagnosed with "Rule Out Anti-Social Personality Disorder" which includes characteristics such as a failure to conform to "lawful behavior" and an aggressive history with others. During respondent's most recent period of incarceration, he was involved in a fight. Respondent has no housing or sufficient income and had no prospects of being able to provide those things until his incarceration ends, which was scheduled to be a minimum of "an additional year and a half" after the termination hearing. Prior to respondent's most recent period of incarceration, in 2013, he lived in a men's homeless shelter. Respondent did not intend to participate in a sex offender evaluation even when available to him since he believes that it is not required and he fails to give "due consideration of the benefit such treatment could serve in his ability to parent" Noah. Furthermore, though Noah's best interests are not at issue on appeal we note that Noah has been with his foster family since the age of six weeks and at the time

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of the hearing he was two years old. Noah is “extremely bonded and attached” to his foster family who plans to adopt him. We conclude that the trial court did not err in determining respondent had neglected Noah and in ultimately terminating his parental rights. *See id.* at ___, 781 S.E.2d at 682. Because the district court properly terminated respondent’s rights upon one ground we need not address respondent’s arguments as to the other grounds found by the district court. *See In re B.S.D.S.*, 163 N.C. App. at 546, 594 S.E.2d at 93–94. This argument is overruled.

III. Conclusion

We affirm the termination of respondent’s parental rights.

AFFIRMED.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).