

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-905

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

IN THE MATTER OF:

James Keith Williamson;
Matthew Lee Williamson; and Buncombe County
Shana Marie Williamson, Nos. 00 J 99-101

Minor Children.

Appeal by respondent from judgments entered 1 April 2001 by Judge Peter L. Roda in Buncombe County District Court. Heard in the Court of Appeals 26 March 2002.

J. Elizabeth Spradlin for respondent appellant.

Charlotte A. Wade for Buncombe County Department of Social Services, petitioner appellee.

Judy N. Randolph for Guardian ad Litem Paul Willison.

TIMMONS-GOODSON, Judge.

Mary Jo Williamson ("respondent") appeals from judgments terminating her parental rights as to three of her children. For the reasons set forth herein, we affirm the judgments of the trial court.

Respondent is the natural mother of the three children at issue in the instant appeal: James Keith Williamson ("James"), born 4 November 1985; Matthew Lee Williamson ("Matthew"), born 16 April

1987; and Shana Marie Williamson ("Shana"), born 1 October 1990, (collectively, "the minor children"). On 10 June 1997, the Haywood County District Court adjudicated the minor children to be neglected children under the Juvenile Code upon findings that respondent had, *inter alia*, smoked marijuana in the presence of the minor children, and that respondent also permitted her oldest daughter, Crystal, to use marijuana. Respondent stated that she did so "out of fear for her safety" from her husband, Keith Williamson ("Williamson"), the minor children's father, who had a history of violent behavior. At the time of the adjudicatory hearing, respondent was residing at a shelter for battered women. The court further found that the minor children had significant speech problems for which they received inadequate treatment. Respondent was present and represented by counsel at the hearing. In its adjudicatory order, the trial court also granted a motion made by the Haywood County Department of Social Services to transfer the case to Buncombe County. Custody of the minor children was thereafter transferred to the Buncombe County Department of Social Services ("DSS").

On 20 March 2000, DSS filed petitions to terminate the parental rights of Williamson and respondent. The matter came before the trial court on 11 September 2000 and was heard over the course of seven days. Respondent was present at the termination hearing and was represented by counsel. During the hearing, the trial court took notice of information contained in the court file concerning the family's history with DSS: In November 1989, child

protective services in the State of Washington investigated sexual abuse allegations involving James and Matthew. At the time, James was four years old and Matthew was two years old. According to the allegations, "James had rectal bleeding and he was attempting to put his penis in Matthew's rectum." When questioned about his behavior, James stated that "daddy showed me." Sexual abuse was not substantiated, although earlier allegations of sexual abuse by Williamson of Crystal led to her removal from the household at the age of three until the age of twelve. The family eventually relocated to North Carolina.

In January of 1997, the Haywood County Department of Social Services became involved with the Williamson family when respondent and Crystal left the family home and took up residence at a shelter for abused women. Respondent informed workers at the shelter that "there was domestic violence in the home and that the children -- that [she] and Crystal had smoked marijuana with the father in front of the other children in the home" and that "the boys were allowed to watch pornographic videos." Respondent further reported that "the father had called the police department and threatened to commit suicide."

On 27 January 1997, when police attempted to serve a warrant on Williamson for communicating threats, he "barricaded himself and the three minor children in the home." When DSS investigated, the investigator noticed that "there were a lot of large knives stuck between the wood frame and the door so the back door couldn't be opened." At an investigation on 31 January 1997, Williamson told

investigators that he feared that drug dealers wanted to kill him and his family. He told investigators that he planned to kill himself "before the drug dealers got a chance to do it, that he bought an assault rifle, and that he would put the minor children in front of him if the police stormed the house." After Williamson served a jail term for communicating threats, respondent permitted him to move back in with her and Crystal, in violation of the protection plan she had signed. There were further incidences of domestic violence between respondent and Williamson, including the arrest of Williamson for assault on 29 May 2000. In fact, visits between Williamson and his children while they were in foster care "had to be held at the Sheriff's Department due to Mr. Williamson's threatening and abusive behavior towards the social worker and Mrs. Williamson." Moreover, there was evidence that Williamson had sexually abused Shana, and that respondent knew of such abuse. As her therapist testified, Shana told her that "her mama came in the room when her daddy was having sex with her. . . . She said her mama came in the room and saw what was happening, 'that mama knew, but it must have been all right.'"

The trial court found that respondent

28. . . . has continually failed to follow the orders of this Court, failed to cooperate with the social worker for the Department, and failed to make efforts towards reunification with the children. [She] has not obtained a substance abuse assessment nor enrolled in any substance abuse treatment program although she admitted to marijuana use on several occasions, nor has she had a psychological assessment or enrolled in therapy. Further, she failed to get the necessary speech therapy for James, who has a severe speech impediment,

or for Shana. She has demonstrated for the majority of the li[ves] of th[ese] child[ren] that she is not willing to make the changes in her life necessary to provide for the safety of the minor child[ren].

[These] child[ren] have] been in out-of-home placement for over three years Respondent . . . has made little progress, if any, to correct the conditions that led to the removal of the child[ren] from her care. Respondent . . . continues to reside with [Williamson], who, by [her] report . . . has a significant and chronic history of inability to control his anger.

Based on these findings, the trial court concluded that there was clear, convincing and cogent evidence that respondent had neglected her children and had failed to make reasonable progress in correcting conditions leading to the children's removal. The court thereafter determined that it was in the minor children's best interest that respondent's parental rights be terminated. From these judgments, respondent appeals.

Respondent argues that the trial court committed reversible error by finding that (1) respondent had failed to obtain a psychological evaluation, counseling, and a substance abuse assessment; and that (2) respondent had neglected her children. For the reasons stated herein, we affirm the trial court.

When reviewing a trial court's findings in a termination of parental rights proceeding, we determine whether the findings of fact were based on clear, cogent and convincing evidence, carefully considering all of the circumstances and the best interests of the child. See *In re Alleghany County v. Reber*, 75 N.C. App. 467, 472,

331 S.E.2d 256, 259 (1985), *aff'd*. 315 N.C. 382, 337 S.E.2d 851 (1986). "[W]here no exceptions are taken to the findings of fact, the only question present for review is whether the findings support the conclusions of law, and it is not incumbent upon this Court to search the record in order to determine whether the findings of fact are supported by competent evidence" *In re Pierce*, 67 N.C. App. 257, 259, 312 S.E.2d 900, 902 (1984), because they are "deemed to be supported by competent evidence and are conclusive on appeal." *In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982); see also *In re Caldwell*, 75 N.C. App. 299, 301, 330 S.E.2d 513, 515 (1985) (stating that failure to object to any of the findings of fact renders them conclusive on appeal).

Termination of parental rights is a two-step procedure established by the North Carolina General Statutes. *In re Church*, 136 N.C. App. 654, 656, 525 S.E.2d 478, 479 (2000). In the initial adjudication phase of the trial, grounds for termination must be shown by clear, convincing and cogent evidence. N.C. Gen. Stat. § 7B-1109(f) (2001); *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). The court may terminate the parental rights on the basis of several findings, and "[a] finding of any one of the . . . separately enumerated grounds is sufficient to support a termination." *In re Pierce*, 67 N.C. App. at 261, 312 S.E.2d at 903.

This includes a finding that "[t]he parent has . . . neglected the juvenile" or that "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12

months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2001). A neglected juvenile is one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who is not provided the necessary remedial care; or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15) (2001). "Upon determining that one or more of the grounds for terminating parental rights exist, the court moves to the disposition stage to determine whether it is in the best interests of the child to terminate the parental rights." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 615 (1997); see also N.C. Gen. Stat. § 7B-1110 (2001).

Respondent first assigns error to the trial court's finding that she "did not obtain either the substance abuse assessment or psychological evaluation as recommended by the Treatment Team and as ordered by this Court September 19, 1997." Respondent asserts that this finding was based upon evidence from earlier proceedings involving respondent's oldest child, Crystal. Respondent argues that this evidence was contained in a closed juvenile file, and that the earlier proceedings were irrelevant to the termination of respondent's rights over James, Matthew and Shana. Because the earlier proceedings concerning Crystal were not consolidated with the instant action, argues respondent, the trial court was not allowed to notice them or use any of the evidence for its current

findings. As noted above, failing to take exception to underlying findings makes the trial court's findings of neglect binding on this court, we therefore disagree with respondent's argument.

Section 7B-101(15) of the North Carolina General Statutes states that when determining neglect, "it is relevant whether that juvenile lives in a home where another juvenile . . . has been subjected to abuse or neglect by an adult who regularly lives in the home." N.C. Gen. Stat. § 7B-101(15). The evidence regarding Crystal was therefore relevant to the proceedings. The court may take judicial notice of the juvenile file before it. *In re Isenhour*, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73 (1991). Furthermore, "evidence of neglect by a parent . . . including an adjudication of such neglect -- is admissible in subsequent proceedings to terminate parental rights. The 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).

In the instant case, the trial court recounted this family's long history with DSS, which began when the family lived in the State of Washington. Furthermore, the trial court found that Crystal was abused and neglected; for instance, at her adjudicatory hearing, the trial court found that Crystal and her boyfriend "were allowed to watch sexually explicit and pornographic videos." Additionally, at the minor children's neglect hearing, the court found that both parents admitted that they smoked marijuana with

Crystal in the presence of the minor children and that such drug use occurred "on an almost daily basis." As a result of these findings, respondent was ordered to undergo a psychological assessment and treatment and a drug abuse assessment and follow all recommendations made by these therapists. Respondent never obtained a psychological or drug abuse assessment. As evidence concerning Crystal's abuse was relevant to the proceedings involving James, Matthew, and Shana, the trial court did not err in considering evidence of respondent's failure to comply with the orders of the trial court imposed during Crystal's adjudicatory hearing. We therefore overrule respondent's first assignment of error.

Respondent argues in her second assignment of error that the trial court erred in concluding that respondent neglected her children. The trial court terminated respondent's parental rights on the grounds that respondent neglected the children, and that she "willfully left the minor child[ren] in foster care for more than 12 months without showing to the satisfaction of the Court that reasonable progress under the circumstances had been made in correcting the conditions which led to the removal of the minor child[ren] from [her] care." Respondent argues that there was no clear and convincing evidence that she neglected the children. We disagree.

There was clear, cogent and convincing evidence to support the trial court's findings and conclusions. The evidence showed, and the trial court found, that respondent neglected her children's

welfare, in that she failed to obtain necessary speech therapy for James, who has a severe speech impediment, or for Matthew and Shana, who also have speech difficulties. See N.C. Gen. Stat. § 7B-101(15) (defining a neglected juvenile as one who, among other criteria, "is not provided necessary remedial care"); *In re Huber*, 57 N.C. App. 453, 458, 291 S.E.2d 916, 919 (1982), *disc. review denied*, 306 N.C. 557, 294 S.E.2d 223 (1982) (adjudicating child neglected when child had treatable speech defect but mother refused necessary care). There was also ample evidence that respondent failed to adequately provide for the safety of her children. At the time of the termination hearing, respondent continued to reside with her husband, despite her own acknowledgment of domestic violence, as evidenced by his repeated episodes of violence during which the welfare of the children was endangered. For instance, after securing an apartment through the battered-women's shelter, on the condition that her husband not be informed of her whereabouts, or have contact with Crystal, respondent allowed her husband to move in with them.

Moreover, DSS presented evidence that respondent failed to protect her children from sexual abuse by Williamson. Respondent denied the sexual abuse, and her refusal to acknowledge it resulted in the termination of her visits with Shana. Respondent chose, over the best interests of her children to remain with her husband, which demonstrates that she cannot be trusted to properly care for and protect her children.

Respondent further argues that the trial court erroneously

found that she had failed to make reasonable progress based on earlier proceedings involving Crystal during which respondent waived her right to an attorney. Respondent asserts that she did not knowingly waive her right to an attorney, because she does "not read . . . very well", and that therefore, the trial court erred in finding that she had failed to make reasonable progress based on that earlier proceeding. This argument has no merit. There was no showing that respondent was incompetent. Other than her testimony that she has a learning disability and difficulty reading, there was no other evidence offered to support respondent's claim that she did not "knowingly" waive consent. Furthermore, the record shows that respondent was represented by an attorney at the adjudicatory hearing and at the termination of parental rights hearing for James, Matthew and Shana. In addition, the trial court did not base its finding that respondent had failed to make reasonable progress solely on her failure to obtain counseling -- other factors were at issue, such as her failure to protect her children.

Finally, respondent asserts that the trial court erred in terminating her parental rights without sufficient notice. Respondent argues that "she was not made aware that she was in peril of having her parental rights terminated." This argument is wholly without merit. The evidence showed that respondent was served notice on 22 May 2000; she requested an attorney at that time, and was appointed counsel on 9 June 2000. In addition, she was present in court on 22 July 1998, when the court sanctioned the

change in the minor children's permanency plan from reunification to adoption. This dispositional order included notice that if respondent followed court orders, DSS could continue to work towards reunification.

On 26 October 1998, however, the court found it in the best interests of the minor children to approve a change in the permanency plan to termination of parental rights and respondent was also in court that day. Furthermore, she was in court on 1 March 1999, when the court reiterated its sanction of the initiation of termination of parental rights, and on 19 July 1999 when the court ordered a final re-examination of the permanency planning goals, including the termination of parental rights. Finally, respondent was in court on 9 June 2000, when it was noted that "adoption should remain the permanent plan for these children." Given her presence at these hearings, we conclude that the respondent could not reasonably have been unaware that she was in peril of having her parental rights terminated.

In conclusion, we hold that the trial court did not err in terminating respondent's parental rights to James, Matthew and Shana. The trial court is therefore

Affirmed.

Judges GREENE and HUNTER concur.

Report per Rule 30(e).