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NO. COA02-360

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

IN THE MATTER OF:

LATRECE LACEY and  
LACAROL LACEY,

Juveniles.

Rowan County  
Nos. 87 J 85  
88 J 62

Appeal by respondent, Dewella Rene Lacey Hunter, from order entered 8 August 2001 by Judge Ted Blanton in Rowan County District Court. Heard in the Court of Appeals 21 October 2002.

*No brief filed by petitioner-appellee, Rowan County Department of Social Services.*

*Carlton, Rhodes, & Carlton, by Gary C. Rhodes, for respondent-appellant.*

HUDSON, Judge.

Dewella Rene Lacey Hunter ("respondent") adopted the two minor children, LaTrece Nicole Lacey ("LaTrece"), born 5 June 1987, and LaCarol Jessica Lacey ("LaCarol"), born 2 December 1987, prior to her marriage to Herbert Monte Hunter ("Hunter"). By order dated 20 October 1999, the two children were removed from respondent's home after LaTrece became pregnant with a child fathered by Hunter. The two children were adjudicated on 20 March 2000 to be abused and neglected. Hunter was subsequently convicted of two counts of statutory rape and one count of statutory sexual offense. Hunter

is serving an active sentence with an expected release date of 12 October 2027. Respondent was also convicted of felony child abuse on 8 February 2001. She is serving an active sentence with an expected release date of 30 November 2005.

On 4 May 2001 the Rowan County Department of Social Services (DSS) filed a petition to terminate respondent's parental rights. After hearing testimony on 23 July 2001 and reviewing the court's files, the court entered an order terminating respondent's parental rights on the grounds respondent abused and neglected the juveniles by failing to protect them from sexual abuse by Hunter. Respondent gave oral notice of appeal.

Respondent contends that the court erroneously terminated her parental rights based solely upon a finding of conditions of neglect which were not found to exist at the time of the termination hearing.

A parent's parental rights may be terminated upon a finding by the court that the parent has abused or neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2001). A juvenile is considered neglected if the juvenile is not receiving proper care, supervision or discipline from the juvenile's parent, is not receiving proper medical care, or is residing in an environment injurious to the juvenile's welfare. N.C. Gen. Stat. § 7B-101(15) (2001). To terminate parental rights on the ground of neglect, the court must find, based upon clear and convincing evidence, that at the time of the termination hearing (1) the juvenile has not received proper care, supervision or discipline from the parent and (2) the

juvenile has sustained some physical, mental, or emotional impairment, or has incurred a substantial risk of such impairment, as a consequence. *In re Reyes*, 136 N.C. App. 812, 814-15, 526 S.E.2d 499, 501 (2000). In the absence of evidence of neglect at the time of the termination hearing, the court may nonetheless terminate rights if there has been a prior adjudication of neglect and it finds by clear and convincing evidence that repetition of neglect is probable if the child is returned to the parent. *Id.* at 815, 526 S.E.2d at 501. The court must consider all relevant circumstances or events which existed or occurred before and after the prior adjudication of neglect. *In re Ballard*, 311 N.C. 708, 716, 319 S.E.2d 227, 232-33 (1984).

In the case at bar, the court took judicial notice, without objection by respondent, of prior court reports and orders entered in this matter. These reports show that respondent had a prior history of involvement with the DSS beginning on 2 May 1996. Three substantiations for improper discipline and physical abuse were made at or about that time. Within one year after the children were returned to her custody on 25 January 1999, both children were sexually assaulted by respondent's husband. Respondent knew, or should have known, of the sexual activity. Hunter told her early in 1999 that he might do something sexually to the girls and he suggested that he should relocate to another residence. Respondent resisted this suggestion. As early as May 1999, respondent knew that LaTrece had stopped having her menstrual period. Despite LaTrece's visible weight gain and distended abdomen, respondent

continued to deny the possibility that LaTrece might be pregnant. When LaTrece's pregnancy was officially diagnosed in October 1999, respondent showed little emotion or concern.

During a family assessment meeting with the children at the DSS office on 16 February 2000, respondent and the girls became extremely upset with each other. Respondent's accusations that the foster parents were turning the children against her caused LaTrece to leave the room crying. The children have repeatedly stated that they do not wish to return to respondent's custody and that they wish to be adopted by the foster parents.

Between court hearings on 20 March 2000 and 31 July 2000, respondent changed her residence and failed to inform the DSS of her whereabouts. As of 8 January 2001, respondent still had not revealed her location to the DSS despite repeated attempts by the DSS to contact her. When asked for information, respondent gave evasive answers.

At the time of the termination hearing, respondent was incarcerated, thereby rendering her unable to provide proper care, discipline, and supervision of the children. By the time respondent is released from prison in late 2005, LaTrece will be eighteen years old and LaCarol will be nearly eighteen years old.

The foregoing constitutes clear and convincing evidence that at the time of the termination hearing, the children were neglected and that there is a probability of repetition of neglect.

We affirm the order terminating respondent's parental rights.

Affirmed.

Chief Judge EAGLES and Judge MCCULLOUGH concur.

Report per Rule 30(e).