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NO. COA01-1066

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

IN RE:

RUSTY WHITLEY

A Minor Child

DOB: 09-27-89

Nash County

Nos. 00 J 109-10

DUSTY ANN WHITLEY

A Minor Child

DOB: 05-24-88

Appeal by respondent from order entered 15 May 2001, *nunc pro tunc* 15 March 2001, by Judge Robert A. Evans in Nash County District Court. Heard in the Court of Appeals 28 May 2002.

Staff Attorney Jayne B. Norwood, for petitioner-appellee Nash County Department of Social Services.

Judith L. Kornegay, for the Guardian Ad Litem.

Massengill & Bricio, P.L.L.C., by Francisco J. Bricio, for respondent-appellant.

HUDSON, Judge.

The facts relevant to this appeal are as follows: Dusty Ann Whitley was born on 24 May 1988, and Rusty Whitley was born on 27 September 1989. Phyllis Whitley ("respondent") is the children's mother. On 25 March 1998, respondent contacted the Nash County Department of Social Services ("DSS") and asked that the children be placed in foster care. Upon investigation by DSS, the children were removed from the home because of concerns of domestic violence

and concerns that the children were being sexually and physically abused by their father. The children were placed in non-secure custody of DSS. On 29 September 2000, *nunc pro tunc* 1 July 1999, Rusty was adjudicated to be a dependent and neglected juvenile, and Dusty was adjudicated to be a neglected juvenile. On 11 August 2000, DSS filed a petition to terminate parental rights.

On 15 May 2001, *nunc pro tunc* 15 March 2001, the trial court found that clear, cogent and convincing evidence established two grounds for termination and concluded that the parental rights of respondent should be terminated. Specifically, the trial court found (1) that respondent had willfully left the children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made toward correcting those conditions which led to their removal, N.C. Gen. Stat. § 7B-1111(a)(2); and (2) that respondent neglected the children and there was a likelihood of continued neglect if respondent's rights were not terminated, N.C. Gen. Stat. § 7B-1111(a)(1). In the disposition, the trial court determined that it was in the best interests of the children that respondent's parental rights be terminated. Respondent appeals.

Respondent argues that there was insufficient evidence to support the trial court's findings of fact and conclusion of law that termination was in the best interests of the children. Respondent, while acknowledging that she is not a perfect mother, argues that she made tremendous progress in efforts to be reunited with her children. Respondent contends she substantially complied

with the trial court's requests, including (1) visiting the children fourteen times; (2) having a drug assessment; (3) completing the recommended forty hour group treatment; (4) attending Alcoholics Anonymous meetings; (5) receiving therapy; (6) obtaining and maintaining employment and paying child support; (7) providing the children with gifts; and (8) placing money in each child's bank account, which she opened for them. Respondent asserts that she loves her children, and they love her, and "[t]he bond between the children and their mother has been completely forgotten by the Court." Accordingly, respondent argues that the trial court abused its discretion in terminating her parental rights.

After careful review of the record, briefs, and contentions of the parties, we affirm the termination of parental rights on the grounds of neglect. N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support a termination. *In re Matherly*, 149 N.C. App. 452, 453-54, 562 S.E.2d 15, 17 (2002). Here, the trial court found and concluded that there were two such grounds. The trial court based its conclusions that there were grounds under N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make progress) on findings of fact that respondent (1) "has no insight into the deep seated psychological trauma that results to a child when a parent sexually abuses the child and the sexual abuse is at least tacitly approved of by the other parent;" (2) consistently denied that the children's father

had abused the girls, told the girls she believes Rusty was lying, and that Rusty's lies were the reason they were in foster care; (3) made little progress in therapy, not confiding in her therapist and only attending therapy to get her children back; (4) failed to comply with three different case plans in some respect; (5) was unwilling to address issues in therapy that led to the children's removal because she was concerned that what she discussed would be released to the court; (6) stated that she attended parenting classes but never produced documentation of her attendance; (7) completed forty hours of substance abuse group therapy but refused to attend additional therapy because "they did not find any drugs in her system;" (8) is unwilling to address her own sexual abuse; and (9) has not demonstrated that she will be able to effectively deal with her children's problems resulting from abuse and neglect. Although we question whether these findings are supported by clear, cogent and convincing evidence, we do not address this issue because respondent has not challenged any of the trial court's findings, other than the finding that termination is in the children's best interests. See *In re Pierce*, 356 N.C. 68, 565 S.E.2d 81, 83-88 (2002) (setting forth analysis relevant to N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make progress)).

In addition to the above findings, the court made findings and conclusions that there were grounds to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) (abuse and neglect). These findings include that Dusty was "gravely affected" by the father's sexual abuse of her sister. The court further found and concluded

the following:

18. Family therapy would be beneficial to the children if Ms. Whitley had addressed her own needs appropriately in therapy, but her lack of understanding and unwillingness to substantially and substantively address her own needs makes it unlikely it would occur in the foreseeable future.
19. That Phyllis Whitley has not demonstrated that she will deal effectively with her children's problems resulting from abuse and neglect.

....

CONCLUSIONS OF LAW

2. Phyllis Whitley, mother of the children, has neglected the children within the meaning of N.C.G.S. § 7B-101(15); and there is likelihood that neglect of the children will continue if the parental rights of the mother are not terminated.
- ...
4. There are sufficient, clear, cogent and convincing facts to terminate the parental rights of the Respondent Mother, Phyllis Whitley[,] to Rusty Whitley (DOB: 09-27-89) and Dusty Ann Whitley (DOB: 05-24-88) pursuant to N.C.G.S. § 7B-1111.

These findings are fully supported by the evidence and, in turn, support the conclusion that there are grounds to terminate, on the basis of neglect, as defined by N.C. Gen. Stat. § 7b-101(15).

Once the trial court has found that grounds exist to terminate parental rights, "the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated." N.C. Gen. Stat. § 7B-1110(a). The trial court's decision to terminate parental rights at the disposition stage is discretionary. See *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). In the case *sub judice*, the trial court found and concluded, based on clear, cogent and convincing evidence, that two

grounds for termination were established. We agree that there is clear, cogent and convincing evidence to support the conclusion that there are grounds to terminate parental rights for neglect, under N.C. Gen. Stat. § 7B-1111(a)(1) and 7B-101(15). The court then exercised its discretion to decide that it was in the best interests of the child that respondent's parental rights be terminated. Based upon the facts in this case, we hold the trial court did not abuse its discretion in determining that termination was in the children's best interests. Accordingly, the order terminating respondent's parental rights is affirmed.

Affirmed.

Judges GREENE and TYSON concur.

Report per Rule 30(e).