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NO. COA13-572
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

IN THE MATTER OF:

A.N.V.	Wake County
O.N.V.	Nos. 12 JT 31-32

Appeal by respondent-mother from order entered 28 February 2013 by Judge Margaret Eagles in Wake County District Court. Heard in the Court of Appeals 28 October 2013.

Office of the Wake County Attorney, by Roger A. Askew, for petitioner-appellee Wake County Human Services.

Administrative Office of the Courts, by Appellate Counsel Tawanda N. Foster, for guardian ad litem.

Duncan B. McCormick, for respondent-appellant mother.

CALABRIA, Judge.

Respondent-mother ("respondent") appeals the trial court's order terminating her parental rights to her minor children Alice and Oliver¹ (collectively "the children"). Respondent-

¹ The parties have stipulated to the use of these pseudonyms for the children.

father did not appeal the trial court's order and thus is not a party to this appeal. We affirm.

On 15 July 2010, Wake County Human Services ("WCHS") received a report that the children's father had sexually abused Alice, who was his adopted daughter. WCHS and law enforcement conducted an investigation and confirmed the report. However, the abuse was not criminally prosecuted due to respondent's mental health issues, inconsistent statements, and the possibility that she had coached Alice. WCHS began in-home services with the family and instituted a safety plan, which included a provision that Alice would not have any contact with her father. Although respondent and her husband initially separated, they eventually reconciled.

In May 2011, the parents violated the safety plan when the father was present with the children in respondent's home. WCHS placed the children in a safety resource and provided intensive in-home services. Upon completion of these services, the children were returned to respondent's custody.

On 13 January 2012, respondent again violated the safety plan by leaving the father unsupervised with Alice at his home while respondent took a shower. During this time, the father sexually abused Alice. Alice disclosed the sexual abuse to

respondent the next day, but respondent did not report the abuse to WCHS until 25 January 2012.

On 31 January 2012, WCHS filed a juvenile petition alleging that the children were abused and neglected juveniles. WCHS obtained nonsecure custody of the children and placed them with relatives. In April 2012, respondent sent WCHS a disclosure letter in which she admitted that she believed her husband had abused Alice and that she made a mistake when she allowed him to have contact with Alice in violation of the safety plan. Respondent indicated that her relationship with her husband was over.

On 18 May 2012, the trial court entered a consent order which adjudicated Alice as an abused juvenile and both children as neglected juveniles. The trial court's order required respondent to continue various forms of therapy and educational courses and to resolve her pending criminal charges stemming from her husband's sexual abuse of Alice. Respondent's visitation was limited to supervised visits and phone calls.

Prior to a permanency planning hearing in August 2012, WCHS discovered that respondent had participated in approximately 175 collect phone calls with the father while he was in jail on pending sexual abuse charges. These conversations included

discussions about their relationship, the possibility of reuniting in the future, and techniques for misleading WCHS so that respondent could regain custody of the children. Many of these phone conversations occurred after respondent had sent the April 2012 disclosure letter to WCHS.

On 31 August 2012, WCHS filed a motion in the cause to terminate the parents' parental rights. The termination motion alleged that both children were neglected and that Alice was abused. After a termination hearing, the trial court entered an order terminating both parents' parental rights to Alice and Oliver on 28 February 2013. Respondent appeals.

Respondent's sole argument on appeal is that the trial court erred in finding grounds existed to terminate her parental rights. We disagree.

"The standard for 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." *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). "[F]indings of fact made by the trial court . . . are conclusive on appeal if there is evidence to support them." *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007) (internal quotations and citation omitted). "[W]here no exception is taken to a finding of fact

by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal[.]'" *In re S.D.J.*, 192 N.C. App. 478, 486, 665 S.E.2d 818, 824 (2008) (quoting *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

In the instant case, the trial court terminated respondent's parental rights to both of her children on the basis of neglect pursuant to 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 lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15) (2011).

"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). 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). When 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. 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).

In the instant case, it is undisputed that the children had previously been adjudicated neglected juveniles in a consent order entered 18 May 2012. However, respondent contends that the trial court erred in concluding that this neglect likely would be repeated if the children were returned to her custody.

Respondent first challenges either all or part of the trial court's findings of fact 10, 30, 31, and 33. However, even assuming, *arguendo*, that the disputed portions of the cited findings were erroneous, the trial court's remaining findings of fact support its conclusion that the children would again be neglected if they were returned to respondent. The unchallenged findings in the trial court's order demonstrate that respondent had an extensive history of failing to comply with her case plan. Specifically, respondent (1) repeatedly violated the

safety plan established by WCHS by allowing contact between Alice and her husband; (2) failed to promptly report Alice's 14 January 2013 disclosure of sexual abuse and her husband's confession to that abuse to the proper authorities; and (3) engaged in a series of clandestine phone conversations with her husband while he was in jail, where the couple discussed misleading WCHS so that respondent could regain custody of the children and reunify with her husband after his release. A significant number of these conversations occurred after respondent provided WCHS with her disclosure letter in which she expressed remorse regarding Alice's sexual abuse and indicated that her relationship with her husband had ended.

Respondent contends that the circumstances surrounding her relationship with the children had changed because she made progress on her case plan by attending therapy and support groups for individuals with mental health problems and by completing a parenting class. However, the trial court's findings reflect that it considered respondent's progress, but still determined that it was outweighed by respondent's prior statements and conduct. The trial court is clearly authorized to weigh such evidence in evaluating the likelihood of repetition of neglect. See *In re Oghenekevebe*, 123 N.C. App.

434, 439, 473 S.E.2d 393, 397 (1996) ("When the trial court is the trier of fact, the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate."). Ultimately, the trial court's findings, which were based upon respondent's extensive history of failing to separate herself from the individual who had repeatedly sexually abused her daughter, were sufficient to support its conclusion that respondent would likely repeat her neglect of the children if they were returned to her care. Accordingly, the trial court properly terminated respondent's parental rights on the basis of neglect. This argument is overruled.

Since we have concluded that the trial court correctly terminated respondent's parental rights to both children on the basis of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), we do not address respondent's remaining argument regarding the additional ground which was found to support termination of her rights to Alice. See *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (a finding of any statutory ground is sufficient to support the termination of parental rights). The trial court's order terminating respondent's parental rights is affirmed.

Affirmed.

Chief Judge MARTIN and Judge HUNTER, JR., Robert N. concur.

Report per Rule 30(e).