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NO. COA14-694  
NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

IN THE MATTER OF: Catawba County  
Nos. 08 JA 231-32  
D.M. & D.S.

Appeal by respondent father from orders entered 12 March 2014 and 2 April 2014 by Judge Mark L. Killian in Catawba County District Court.<sup>1</sup> Heard in the Court of Appeals 10 November 2014.

*Lauren Vaughan for Catawba County Department of Social Services, petitioner-appellee.*

*Poyner Spruill LLP, by Caroline P. Mackie and Carrie V. McMillan, for guardian ad litem.*

*Levine & Stewart, by James E. Tanner, III, for respondent-appellant.*

McCULLOUGH, Judge.

Respondent father appeals from an order terminating his parental rights to sons D.M. (hereinafter "David") born in

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<sup>1</sup>The adjudication order signed by the court indicates the date of signing as 12 March 2013 while the file stamp indicates filing on 12 March 2014. Given that the hearing occurred subsequent to 12 March 2013, we treat the signature date as an inadvertent clerical error.

December 2004 and D.S. (hereinafter "Douglas")<sup>2</sup> born in January 2007. The boys' mother relinquished them for adoption on 29 April 2013. For the following reasons, we affirm.

I. Background

The court originally adjudicated the boys as neglected juveniles on or about 22 September 2008. They were returned to their mother's home, and on or about 14 December 2012, the court adjudicated them as neglected juveniles for a second time. After respondent father revoked his relinquishment for adoption on 3 May 2013, the Catawba County Department of Social Services ("DSS") filed a motion in the cause to terminate the parental rights of respondent father on 21 June 2013. The court held an adjudication hearing on 3 February 2014, and on 12 March 2014 filed an order concluding (1) respondent neglected the children and the probability of repetition of neglect if they were to be returned to their father's care is substantial; and (2) respondent willfully left the minor children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress has been made in correcting the conditions resulting in the removal of the children. The court filed a disposition order terminating respondent's

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<sup>2</sup>Pseudonyms are used to protect the identities of the juveniles and promote ease of reading.

parental rights on 2 April 2014. Respondent father gave notice of appeal from the adjudication and disposition orders on 10 April 2014.

## II. Discussion

We review an adjudication order in a termination of parental rights proceeding to determine whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the conclusions of law are supported by the findings of fact. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6, *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). We conduct *de novo* review of the court's conclusions of law. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009). We need not address every ground adjudicated by the court if we determine one ground is supported by the findings of fact. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

Respondent father challenges conclusion of law number 2, wherein the court stated:

The Respondent Father [D.R.M.] has neglected the minor children [David] and [Douglas] within the meaning of N.C. Gen. Stat. [§] 7B-101(1). Such neglect is ongoing and has continued through the date of these proceedings. The probability that these

children would again be neglected, if not abused, were they returned to the Father's care, is substantial. By failing to comply with the recommendations for treatment to address the sexual dysfunction to which his children have been exposed, by failing to establish a safe and stable home for his children separate from [the children's mother] or any other known or alleged sexual offender, and by failing to comply with the other directives of this Court, [respondent father] has failed to address the conditions which led to his children's adjudication on December 12, 2012 as neglected juveniles.

Respondent father contends the evidence at trial was insufficient to support a finding or conclusion that his neglect of the children was ongoing and likely to be repeated.

For termination of parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to occur, the trial court must conclude that the parent has abused or neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2013). A parent neglects a child by failing to provide proper care, supervision, discipline or a safe environment or by abandoning the child. N.C. Gen. Stat. § 7B-101(15) (2013). "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). The court must consider evidence of any changed circumstances since the time of a prior adjudication and the probability that the

neglect will be repeated if the child is returned to the parent's care. *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). In determining this probability, the court "must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case." *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

The historical facts narrated in the court's findings of fact show that these children were previously adjudicated as neglected juveniles in 2008 based upon, *inter alia*, their lack of stable and appropriate housing, exposure to domestic violence, and lack of proper care or supervision. Back in 2008 respondent father resided with the children and their mother intermittently and engaged in episodes of domestic violence with the mother. The children were returned to their mother and respondent father on 3 May 2010. Exactly one year later, the children were placed in foster care again. The children have continuously been in foster care since that date.

The findings of fact further show that when four-year-old Douglas re-entered foster care in May 2011, he "exhibited unusual sexualized behaviors, which included asking his foster mother whether she was going to 'do the sexy' when they passed a

bathroom." Douglas proceeded to demonstrate, by "using physical rocking and grinding gestures and using sound effects" what it meant "to 'do the sexy.'" He described engaging in oral sex with his biological mother. Douglas also demonstrated "doing the sexy" to Dr. Jennifer Cappelletty, who completed a comprehensive family assessment of the children and their parents in the fall of 2011. The child revealed that he learned to "do sexy" when his mother, who would be naked, showed him how. He stated that she would put her mouth on his penis and tell him to "eat her wee wee." Douglas stated that respondent father observed this activity at least once. However, at the fall 2011 evaluation by Dr. Cappelletty, respondent father reported he believed the child's mother was "completely innocent and that [Douglas] had a heck of an imagination."

Douglas and David have three older half-siblings, one of whom (hereinafter referred to as "Carl") had been adjudicated delinquent and had confessed to sexually abusing the two other half-siblings. Notwithstanding, respondent father allowed Carl to continue to reside in his home through at least September 2012. After coming into foster care the second time, David reported that Carl had also sexually molested him and that

respondent father had failed to protect him from the sexual abuse.

Following the December 2012 adjudication, respondent father was ordered to: (1) complete a psychosexual evaluation and comply with recommendations; (2) submit to random drug screens; (3) refrain from using illegal or controlled substances unless prescribed to him; (4) complete a substance abuse assessment and follow recommendations; (5) attend individual therapy as recommended; and (6) maintain stable housing and employment. Respondent father completed a psychosexual evaluation in early 2013 during which he revealed to the evaluator that he had a lengthy history of substance abuse. He denied engaging in any substance abuse at the time of the evaluation. He also stated to the evaluator that he "was unsure about the allegations of sexual abuse of his children" by their mother.

The evaluator concluded, and the court found, that respondent father suffers from generalized anxiety disorder and obsessive compulsive personality disorder with dependent and histrionic features, which is "a longstanding and enmeshed pattern of behavior which would require long-term treatment to address." In the opinion of the evaluator, and found by the court as fact, respondent father "directly or indirectly

contributed to the hypersexual and injurious environment in which his children resided and would require extensive treatment to acknowledge and address that role." In order for respondent father even to be considered for therapeutic reunification with his children, he would need to separate from their mother and have no contact with her, participate in weekly therapy sessions with a therapist experienced in treating sexual behavior issues, seek full time employment to demonstrate the capacity to provide for his children, complete a psychiatric consultation and follow recommendations, and abstain from all substance use.

Although names of treatment providers were given to respondent father in April 2013, he took no steps to pursue treatment until November 2013, when he attended an intake appointment with one of the recommended providers. The provider asked respondent father to return to the provider's office to sign releases of information but respondent father never returned. Respondent father also failed to take steps to seek or obtain a psychiatric evaluation. He has not obtained or maintained stable employment for any extended period of time. Respondent father continued to reside with the children's mother until after the motion to terminate parental rights was filed in June 2013. At the time of the termination hearing, respondent

father indicated that the mother was moving back into his apartment and that he would be moving to live with family in Charlotte.

The court concluded its findings of fact by stating the following:

36. After the nearly three years since his children entered care the second time, [respondent father] has stated and the Court finds that if the Court were to give him his children today, he would have no home to which to take them.

37. [Respondent father] has admitted and the Court finds that the only positive step he has taken toward reunification with his children was to separate from [their mother], after the filing of the TPR motion.

38. [Respondent father] has stated, and the Court finds, that rather than heeding the directives of the Court and the recommendations of Mr. Gilbert, he "listened to other people" and has therefore not made any discernible progress toward reunification with his children.

39. The Court finds, based on [respondent father's] testimony today, that he does not demonstrate any insight into or accept any responsibility for the inappropriate sexual activity and hypersexualized environment to which his children have been exposed.

At the time of the parental rights termination hearing, respondent father was incarcerated, serving sentences based upon incidents occurring after the children were taken into DSS

custody on 3 May 2011. He is more than \$30,000 in arrears for child support owing to his children, including the two at bar.

In his brief, respondent father does not argue that any of the foregoing findings of fact are unsupported by evidence. Findings of fact which are unchallenged are presumed to be supported by competent evidence and are binding on appeal. *Mussa v. Palmer-Mussa*, 366 N.C. 185, 191, 731 S.E.2d 404, 409 (2012). We hold the court's findings of fact support the court's conclusion of law that respondent father has neglected the children, that the neglect is ongoing, and that the neglect is likely to be repeated if the children were returned to respondent father. Having upheld this ground, we need not consider the second ground adjudicated by the court.

Respondent father does not challenge the disposition order. We accordingly affirm the adjudication and disposition orders.

Affirmed.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).