IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1342

Filed: 6 September 2016

Wake County, No. 13 JT 189

IN THE MATTER OF: I.T.

Appeal by Respondent from order entered 24 September 2015 by Judge Keith O. Gregory in Wake County District Court. Heard in the Court of Appeals 15 August 2016.

Office of the Wake County Attorney, by Roger A. Askew, for Petitioner Wake County Human Services.

Mark Hayes for Respondent.

Robinson, Bradshaw & Hinson, P.A., by Ty E. Shaffer, for Guardian ad Litem.

STEPHENS, Judge.

Respondent appeals from the district court's order terminating his parental rights to his minor child, I.T. ("Iris").[1] We affirm.

Factual and Procedural Background

On 16 June 2013, Wake County Human Services ("WCHS") responded to an anonymous call, later determined to be from Respondent, that a minor child was

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C.R. App. P. 3.1(b).

wandering alone around a hotel parking lot while her mother was engaged in prostitution. When law enforcement arrived, they found two-year-old Iris alone and unsupervised outside of a locked hotel room. Although her mother could not be located, police found drug paraphernalia inside the hotel room and also discovered Iris's younger half-brother, who had been left with another hotel patron. Based on its investigation, WCHS filed a juvenile petition alleging that Iris and her half-brother were abused, neglected, and dependent juveniles.[2] The district court granted WCHS nonsecure custody on 17 June 2013. In September 2013, Respondent was incarcerated, and he remained so until 3 March 2015.

On 1 October 2013, the district court adjudicated Iris neglected based on findings that her mother was engaged in prostitution while leaving her children unattended and that Respondent acknowledged to WCHS that he was aware of these circumstances for several days before he contacted authorities, yet did nothing to remove or protect Iris during that time. The adjudication order required Respondent to, *inter alia,* enter into and comply with an Out-of-Home-Family-Services Agreement. Both children were placed with their maternal grandmother.

On 19 December 2013, the district court entered a permanency planning order which found that Respondent had made no progress toward reunification, had had no contact with Iris since the petition was filed, and had not seen Iris since January

[2] Iris's half-brother has a different, unknown father and, therefore, his juvenile proceedings are not part of this appeal.

2013. The court also found that Respondent "insist[ed] that he w[ould] not participate in any reunification services as he d[id] not believe that he had any role in his child being endangered." Additionally, Respondent's conduct at the permanency planning hearing led the district court to believe that he had either an "untreated mental health condition" or "untreated anger management issues." Based on these findings, the court concluded that "reunification efforts would be futile or inconsistent with [Iris's] health, safety and need for a safe, permanent home within a reasonable time."

On 30 June 2014, the district court entered a permanency planning order which found that Respondent still had not made any progress on his case plan. As a result, the permanent plan was changed to adoption. Iris's mother voluntarily relinquished her parental rights to Iris.

On 10 December 2014, WCHS filed a motion in the cause seeking to terminate Respondent's parental rights to Iris on the grounds of neglect, failure to make reasonable progress, failure to pay a reasonable portion of the costs of Iris' care, and willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (7) (2015). By order entered 24 September 2015, the district court terminated Respondent's parental rights to Iris on the grounds of neglect and failure to provide a reasonable portion of the costs of Iris' care. Respondent timely appealed.

Discussion

On appeal, Respondent argues that the district court erred by concluding that grounds existed for terminating his 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) (citation omitted). In this case, Respondent's parental rights were terminated, *inter alia*, on the ground of neglect. Under section 7B-1111(a)(1), a district "court may terminate the parental rights to a child upon a finding that the parent has neglected the child." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003). A neglected juvenile is one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned . . . ." N.C. Gen. Stat. § 7B-101(15) (2015).

"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) (citation omitted). However, when, as here, a child has been removed from a parent's custody such that it would be impossible to show that the child is currently being neglected by her parent, "a prior adjudication of neglect may be admitted and considered by the [district] 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). If a prior adjudication

of neglect is considered, however, the district "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 (citation omitted). Thus, even 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 [district] court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parent[].

In re Reyes, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted). A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect. *In re D.M.W.*, 173 N.C. App. 679, 688-89, 619 S.E.2d 910, 917 (2005) (Hunter, J., dissenting), *rev'd for reasons stated in dissenting opinion,* 360 N.C. 583, 635 S.E.2d 50 (2006).

In this case, respondent does not dispute the prior adjudication of Iris as a neglected juvenile. Respondent argues only that the court improperly determined that there was a probability of repetition of neglect if Iris was returned to his care. In support of this argument, he contends that the following finding of fact was not supported by the evidence at the termination hearing:

> 23. [Respondent] has refused to participate in any of the services ordered by this [c]ourt to facilitate reunification with [Iris] because he refuses to acknowledge that he played any part in her neglect.

We disagree. Social worker Melissa Mayeu testified that, before he was incarcerated in September 2013, Respondent refused to meet with her because he was avoiding a warrant for his arrest. Mayeu testified further that Respondent later told her he "was not willing to acknowledge his role in [Iris] coming into custody" and, as a result, that he "wasn't going to do anything on the case plan because it was not his fault." When Mayeu visited Respondent in prison, he refused to speak with her and cancelled subsequent meetings. This testimony supports finding of fact 23.

Moreover, Respondent does not challenge the district court's additional findings of fact that he is unable to provide Iris with a safe home, has continued to engage in criminal activity, has not seen Iris since January 2013, and has not asked WCHS about Iris's well-being. These factual findings, taken together with Respondent's failure to participate in reunification efforts, fully support the court's findings that there was a probable repetition of neglect if Iris was returned to Respondent's care. Accordingly, we conclude the court properly determined that a ground existed to terminate Respondent's parental rights.

Because termination on this ground was proper, we need not address Respondent's arguments regarding the additional ground for termination found by the district court. *See In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) ("A finding of any one of the grounds enumerated . . . will support a judge's order of termination." (citation omitted)). Accordingly, the district court's order is

AFFIRMED.

Judges DAVIS and DIETZ concur.

Report per Rule 30(e).