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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-423

Filed: 19 January 2016

Henderson County, No. 11 JT 149

IN THE MATTER OF: L.D.W.

Appeal by respondents from order entered 8 December 2014 by Judge Peter Knight in Henderson County District Court. Heard in the Court of Appeals 28 December 2015.

*Deputy County Attorney Rebekah R. Price, for petitioner-appellee Henderson County Department of Social Services.*

*Womble Carlyle Sandridge & Rice, LLP, by John E. Pueschel, for Guardian ad Litem.*

*Ryan McKaig for respondent-appellant mother.*

*Mark L. Hayes for respondent-appellant father.*

McCULLOUGH, Judge.

Respondents appeal from the trial court's order terminating their parental rights to the minor child "Lilly."<sup>1</sup> We affirm.

I. Background

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<sup>1</sup> A pseudonym is used to protect the identity of the juvenile and for ease of reading.

In re: L.D.W.

*Opinion of the Court*

Respondents are the biological grandparents of Lilly. Lilly began living with respondents shortly after her birth and they subsequently adopted her. On 9 October 2011, when Lilly was seven years old, the Henderson County Department of Social Services (“DSS”) received a report that respondent-father was molesting Lilly and that he had been found in bed with Lilly while she was not wearing underwear. The Henderson County Sheriff’s Department (“the Sheriff’s Department”) investigated the report and uncovered text messages between respondent-father and a neighbor in which respondent-father described sex acts between himself and Lilly and invited the neighbor to watch.

Lilly was interviewed and disclosed that respondent-father had attempted to take pictures of her “weewee.” Respondent-father admitted to sending inappropriate text messages regarding Lilly and confessed to taking two photographs of her private area. He was arrested for two counts of indecent liberties, and respondent-mother, who admitted she was present when the pictures were taken, was arrested for aiding and abetting respondent-father’s crimes.

On 21 October 2011, Lilly was removed from respondents’ home and moved into a kinship placement pursuant to a safety agreement. On 7 November 2011, DSS filed a petition alleging that Lilly was an abused and neglected juvenile. After a hearing, the trial court adjudicated Lilly as an abused and neglected juvenile on 19 April 2012. After a disposition hearing, respondents were ordered, *inter alia*, to

In re: L.D.W.

*Opinion of the Court*

obtain mental health and sex offender risk assessments and to follow and complete any recommendations that followed from those assessments. Respondents subsequently complied with the majority of the trial court's dispositional requirements.

On 10 October 2013, the trial court entered a review order which found that “[t]he compliance and actions of the Respondent parents are not sufficient to remedy the conditions which led to the juvenile’s removal.” It further found that “[i]t is not possible (and certainly not likely) that the juvenile can safely and lawfully be returned to a parent within six months . . . .” The court changed the permanent plan from reunification to termination of parental rights and adoption and ordered DSS to take reasonable steps to implement that permanent plan.

On 17 October 2013, DSS filed a petition to terminate respondents’ parental rights. The petition alleged that respondents’ rights were subject to termination on the grounds of abuse and neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2013) and failure to make reasonable progress pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) (2013). After a hearing, the trial court entered an order terminating both respondents’ parental rights on 8 December 2014. The court concluded that respondent-mother’s rights were subject to termination based on neglect and that respondent-father’s right were subject to termination based on all three grounds

alleged in the termination petition. Respondents separately entered timely notices of appeal.

## II. Grounds for Termination

On appeal, respondents both contend that the trial court erred by concluding that their parental rights were subject to termination on the ground of neglect. 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). Under N.C. Gen Stat. § 7B-1111(a)(1), “[t]he trial 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 defined, *inter alia*, as one “who does not receive proper care, supervision, or discipline from the juvenile’s parent . . .; or who has been abandoned; . . . or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile’s welfare[.]” 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). 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, “[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 this case, it is indisputable that there had been a prior adjudication of neglect. As a result, both respondents argue that the trial court improperly determined that there was a probability of repetition of neglect if Lilly was returned to their care.

A. Respondent-father

Respondent-father contends that the prior adjudication of neglect was based upon only the risk of harm to Lilly, and that subsequent events demonstrated that she was not actually at risk. In addition, respondent-father argues that the sexual text messages were entirely initiated by his neighbor and there was no evidence that respondent-father would have acted upon them. Finally, respondent-father contends that he was making adequate progress in his therapy. In support of his argument,

respondent-father challenges several of the trial court's findings which reflect that respondent-father refused to acknowledge the seriousness of the sexually explicit text messages involving Lilly and as a result, was unable to adequately address his underlying issues in therapy.

During the termination hearing, licensed clinical social worker Colden Quick ("Quick"), who had administered respondent-father's sex offender risk assessment and treatment, testified about his concerns about respondent-father's progress during therapy. Respondent-father began group therapy with Quick in October 2012. Quick stated that respondent-father acknowledged that the sexting was inappropriate, but did not make progress into the underlying issue of why the sexting occurred. Quick explained why this was a concern:

A. [W]hether it's sexting or sexual activity or things that we do that we know that we shouldn't, we have to justify those things in our minds. So in order to do that -- for them to participate in that activity, you've got to have some justification that if I do it, and felt it was wrong, I could say that I just participated. So I use those excuses to give me permission to do things that I shouldn't, so after this I don't feel so bad.

Q. Why is justification a concern of a therapist or a treating professional?

A. If I can justify something that I'm going to do, then I'm probably going to do it because I have in my head permission. There are some rules that I've set up that allow me to act in a particular manner. When you have individuals that act out against children and adolescents sexually [inaudible] and part of that cycle is deciding how

In re: L.D.W.

*Opinion of the Court*

they are going to do this and then they do it and then afterwards then they use the excuses as a justification for why they've done what they've done and move back into the world. So it is cyclical.

Q. When you say----

A. When you have those kinds of distortions, you really have to address those things. Because they may not be sexual, they may be something illegal, but you have to look at and address those things.

[Pause.]

Q. So as of this date in [respondent-father]'s therapy, you would say that he has not met his treatment goals?

A. No.

Q. And that he's not even started the underlying treatment goal?

A. No.

It is clear from this testimony that Quick's goal was not to make respondent-father understand that the sexting was inappropriate, but rather to determine and treat the underlying reasons which led to respondent-father being willing to engage in sexual fantasies that involved his daughter in the first place. Quick testified that respondent-father had made no progress towards this goal. Instead, both Quick and the social worker assigned to this case testified that respondent-father continually placed all of the blame for the sexting on his neighbor. This testimony supported the trial court's challenged findings that respondent-father "has yet to make any progress regarding his individual needs," "has failed to admit that he has any mental health

In re: L.D.W.

*Opinion of the Court*

needs relating to [Lilly] which merits therapy or counseling,” and “has admitted to the wrongdoing of the sexting and the inclusion of the juvenile in the sexual fantasies, but not as anything other than a mere mistake made by him, and he has not addressed the underlying causes.” These findings, which were based on testimony given after respondent-father had already been in therapy for almost two years, supported the trial court’s conclusion that “there is a reasonable probability that such . . . neglect would recur if the juvenile were placed with [respondent-father].” Respondent-father’s inability, after lengthy treatment, to address or even acknowledge the underlying issues which led to him being willing to engage in discussion of sexual fantasies involving his daughter provided an adequate basis for the court to reach this conclusion. Since we have determined that the trial court properly terminated respondent-father’s parental rights to Lilly on the grounds of neglect, it is unnecessary to address his arguments regarding the remaining grounds found by the trial court. *See In re P.L.P.*, 173 N.C. App. 1, 9, 618 S.E.2d 241, 246 (2005), *aff’d per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

B. Respondent-mother

Respondent-mother concedes that there was a prior adjudication of neglect, but contends that there was not sufficient evidence to support a determination that the neglect would be repeated if Lilly was returned to her. Respondent-mother asserts that the evidence at the hearing demonstrated that she understood “the seriousness



In re: L.D.W.

*Opinion of the Court*

of the conduct committed by her husband” and that “she was determined to see that it was never repeated . . . .”

However, while respondent-mother, like respondent-father, substantially complied with the non-therapeutic requirements from the trial court’s original disposition order, the trial court’s findings, which were supported by testimony given at the hearing, demonstrate that she failed to grasp the seriousness of respondent-father’s behavior and the danger it posed to Lilly. Both the social worker and Quick provided evidence that respondent-mother placed the blame for the sexting entirely on her neighbor. The social worker testified that respondent-mother initially told her “that the neighbor was blackmailing the father and was tricking him and that boys will be boys, and it was difficult for him to say no to something like that” and that respondent-mother’s position on the matter had not changed. Quick similarly testified that respondent-mother’s first reaction to the text messages was that “[b]oys will be boys” and that she never wavered from her position that the sexting was entirely the fault of her neighbor. Respondent-mother’s own testimony also showed her dismissive attitude towards the sexting. She stated that “[the neighbor]’s the one that initiated that” and that respondent-father was “just trying to make her laugh or whatever they were doing.” Quick testified that respondent-mother’s attitude reflected “some naivete and some distortions about men and their relationships with women.”

In re: L.D.W.

*Opinion of the Court*

Respondent-mother's inability to understand the seriousness of respondent-father's actions led to her steadfast refusal to separate from him, making it impossible for Lilly to return to her home. As noted above, respondent-father has failed to address the underlying issues that caused him to include Lilly in his sexual messages with his neighbor, such that it would not be appropriate for her to return to his care. Thus, respondent-mother cannot provide Lilly with a safe home so long as she lives with respondent-father. Furthermore, the social worker testified at the termination hearing that respondent-mother refused to separate from respondent-father and that she saw no reason to alter her living arrangements after thirty-five years with him. Consequently, the trial court properly concluded that respondent-mother's parental rights were subject to termination based on neglect.

III. Conclusion

The trial court made sufficient findings of fact, supported by evidence adduced at the termination hearing, to support its conclusion that Lilly had previously been neglected and that there was a probability of repetition of neglect if Lilly was returned to respondents' care. Accordingly, the court properly concluded that both respondents' parental rights were subject to termination on the basis of neglect. The trial court's order is affirmed.

AFFIRMED.

Judges INMAN and ZACHARY concur.

In re: L.D.W.

*Opinion of the Court*

Report per Rule 30(e).