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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-351

Filed: 15 November 2016

Wake County, No. 14 JT 227

IN THE MATTER OF: W.C.D.

Appeal by Respondent-Mother from order entered 25 January 2016 by Judge Monica Bousman in District Court, Wake County. Heard in the Court of Appeals 24 October 2016.

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

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for Respondent-Appellant.

K&L Gates LLP, by Erica R. Messimer, for Guardian ad Litem.

McGEE, Chief Judge.

Respondent-Mother appeals from an order terminating her parental rights as to her son, W.C.D. on the ground that she neglected him. Respondent-Mother argues the court's conclusion of law that her parental rights should be terminated on the ground that she neglected W.C.D. is not supported by the findings of fact. We affirm.

Respondent-Mother is the mother of two children, W.C.D., who was born in 2004, and a daughter ("the daughter" or "his sister") who was born in 1996. Respondent-Mother's husband, who is the father of W.C.D. (hereinafter "Father"),

legally adopted the daughter after his marriage to Respondent-Mother. The four of them lived together as a family in Raleigh. Wake County Human Services (“WCHS”) received a report on 9 April 2013, alleging that Father had been engaging in sexual activity with the daughter. Respondent-Mother entered into a safety plan with WCHS in which Respondent-Mother agreed that Father would not be in the home while the daughter was there and that Father would have no contact with the daughter. Under pressure exerted by Respondent-Mother, the daughter recanted the allegations of sexual abuse on 5 August 2013. WCHS closed its case in December 2013, and Father returned to the home.

In early 2014, Respondent-Mother came home and encountered Father and the daughter engaged in sexual activity. Respondent-Mother did not report the incident to WCHS or law enforcement. She did, however, tell Father’s brother on 15 March 2014 that she had caught Father engaging in sexual activity with the daughter. When it became apparent that Respondent-Mother would not be reporting the incident to law enforcement, Father’s brother reported the incident himself on 28 April 2014.

Father was arrested on charges of three counts of statutory rape and sexual activity by a substitute parent, and Respondent-Mother was arrested on charges of obstruction of justice and accessory after the fact to sexual activity by a substitute parent. The daughter was adjudicated as an abused and neglected juvenile on 5

August 2014,¹ and W.C.D. was adjudicated as a neglected juvenile on 9 December 2014.

Respondent-Mother was found guilty of the criminal charges against her on 1 June 2015 and was sentenced to incarceration for a minimum of 25 months and a maximum of 59 months. Father pled guilty to the charges against him, for which he was sentenced to incarceration for a minimum of 192 months and a maximum of 291 months.

The trial court conducted a permanency planning hearing on 13 July 2015 and, on 30 July 2015, filed an order directing cessation of efforts to reunify W.C.D. with Respondent-Mother. WCHS filed a motion to terminate parental rights of Respondent-Mother and Father on 6 August 2015. The court held hearings on 19 November 2015, 2 December 2015, and 9 December 2015, and filed an order on 25 January 2016 terminating the parental rights of both Respondent-Mother and Father, based upon a finding of neglect. N.C. Gen. Stat. § 7B-1111(a)(1) (2015). Respondent-Mother filed timely notice of appeal.

In termination of parental rights proceedings, the trial court decides “whether the parent’s individual conduct satisfies one or more of the statutory grounds which permit termination.” *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007). This Court reviews a termination of parental rights order to determine whether the

¹ The daughter has since reached the age of majority and is no longer subject to the jurisdiction of the juvenile court.

findings of fact are supported by clear, cogent and convincing evidence and whether the findings of fact support the adjudicatory conclusions of law. *In re S.N., X.Z.* 194 N.C. App. 142, 146, 669 S.E.2d 55, 58-59 (2008). The conclusions of law are reviewable *de novo*. *Id.* The trial court terminated Respondent-Mother's parental rights on the basis of neglect. N.C. Gen. Stat. § 7B-1111(a)(1).

In cases such as this, to determine neglect the trial court may consider the original adjudication of neglect, and must also consider evidence of changed conditions to the time of hearing in light of the evidence of prior neglect and the probability of repetition of neglect. It is not essential that there be evidence of culpable neglect following the initial adjudication.

In re Caldwell, 75 N.C. App. 299, 302, 330 S.E.2d 513, 516 (1985) (citation omitted).

“Following loss of custody, parents likely will not have extensive contact with the child; therefore, new evidence of neglect will, of course, be limited.” *In re Johnson*, 70 N.C. App. 383, 389, 320 S.E.2d 301, 306 (1984).

Respondent-Mother contends the trial court's findings of fact do not support the trial court's conclusion of law that she neglected W.C.D. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (parental rights may be terminated on the ground that the parent neglected the juvenile). A neglected juvenile is:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed

Opinion of the Court

for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2015). The trial court must consider evidence of any changed circumstances since the time of a prior adjudication and the likelihood of repetition of the neglect. *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984).

Respondent-Mother does not challenge any of the trial court's findings of fact. When a party does not challenge a finding of fact, it is presumed to be correct and supported by evidence. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982). The trial court's findings of fact show that W.C.D.'s neglect by his parents began as early as 2010 when Father began molesting the daughter in the home. When the daughter first disclosed the sexual abuse to a person outside the home in April 2013, the parents "began the process of turning [W.C.D.] against [his sister] and this alienation continued in excess of one year." Respondent-Mother successfully coerced the daughter into recanting, and as a consequence, the daughter was returned to the home where the sexual abuse resumed.

Respondent-Mother testified at trial:

A. Okay. Okay. I walked in and – well, okay. I saw my daughter on top of my husband, and they were naked.

Q. At that point, you still – you didn't report it to the police, did you?

Opinion of the Court

A. No.

Q. At some point you contacted [your husband's] brother; did you not?

A. Yes.

Q. And [your husband's] brother asked you to contact the police; did he not?

A. Yes.

Q. And you didn't do that?

A. No.

Despite Respondent-Mother's admissions, "[t]he parents repeatedly lied to [W.C.D.] about [the daughter's] allegations. These lies and their claims of innocence were part of [a] deliberate attempt to undermine [W.C.D.'s] relationship with his sister and had a detrimental effect on [him]." W.C.D. testified Respondent-Mother told him she was going to jail because his sister had "lied and said [Respondent-Mother and Father were] cutting [the daughter], but they're not." W.C.D. testified at the termination hearing that he now understood that Respondent-Mother and Father were lying to him, and that Father had raped his sister, stating "they tricked me into hating my sister' and 'I don't think I can live with them again.'" W.C.D. testified he wanted to be adopted by his aunt and uncle and wanted nothing to do with Respondent-Mother because of the effects her lying had on him and that it damaged his relationship with his sister. The trial court found Respondent-Mother "still does

Opinion of the Court

not take responsibility” for not protecting the daughter after being told Father was abusing the daughter, and that Respondent-Mother “should not have allowed [Father] anywhere around the children because of the reported sexual abuse[.]” Respondent-Mother “does not have insight into her role and responsibility in the abuse of [the daughter] and the neglect of [W.C.D.]”

When testifying about her criminal trial, Respondent-Mother suggested that the daughter was negatively affected, not because the daughter had to testify and endure the trial, but because Respondent-Mother was not with the daughter “to hold her hand th[r]ough the process[.]” The trial court found:

This is further evidence that [Respondent-Mother] does not accept her responsibility in choosing not to believe [the daughter], encouraging her to recant, allowing [Father] to move back into the residence, leaving him alone with [the daughter and W.C.D.], and not reporting that she walked in on [Father] and [the daughter] while they were naked.

The trial court found that “[n]othing in [Respondent-Mother’s] testimony indicates that her therapy has assisted her in developing appropriate parenting skills and will ensure [W.C.D.’s] safety.”

[Respondent-Mother] is still not taking responsibility for her actions in getting [the daughter] to recant and her actions to hide evidence of [Father] sexually abusing [the daughter] despite witnessing the abuse firsthand. [Respondent-Mother] admitted at this hearing that she made “bad decisions” but does not comprehend the seriousness of her responsibility and the negative consequences to [W.C.D.]. [Respondent-Mother] does not appear to understand the magnitude of the abuse and

neglect suffered by both of her children while in her care.

The findings of fact further show that Respondent-Mother was abused physically and sexually as a child, and that, because of this childhood trauma, her parenting abilities were affected “in that she often confused discipline with abuse and therefore under disciplined her children” and “she had difficulty being assertive in relationships with adults and her children.” Respondent-Mother “has a long history of relationships with physically abusive men[.]” “[W]ithout successful treatment [Respondent-Mother] is at an elevated risk of continuing a life-long pattern of abusive relationships and [W.C.D.] is at risk for future neglect.” Respondent-Mother “does not have insight into her role and responsibility in the abuse of [the daughter] and the neglect of [W.C.D.]” Respondent-Mother “has not demonstrated that she has benefitted from parenting classes[.]” and “has failed to demonstrate that she understands the trauma that [W.C.D.] has been through.” As an example, on or about 30 November 2015, Respondent-Mother had a telephone conversation with W.C.D. in which Respondent-Mother sought to question W.C.D. about testimony he gave in court. W.C.D. “ran from the phone, and laid down on the bathroom floor crying.” The trial court found that Respondent-Mother “showed poor judgment in asking this question without thinking through the detrimental effect that it had on [W.C.D.]” that W.C.D. was upset with Respondent-Mother and Father, stating “they tricked me into hating my sister” and he feels he cannot live with them again; and that

W.C.D. had asked about having a restraining order entered to prevent Respondent-Mother from coming to his current home.

The findings of fact further indicate that, because Respondent-Mother also was a victim of sexual abuse as a child, she needs to undergo non-offenders sex abuse treatment for at least one year, but which will not be available to her until after she is released from incarceration in December 2016. If Respondent-Mother does not successfully complete this treatment, she “is at an elevated risk of continuing a life-long pattern of abusive relationships and [W.C.D.] is at risk for future neglect.” Because neither Respondent-Mother nor Father has addressed the issues identified in prior orders or complied with court orders, there is “a high likelihood of a repetition of neglect.” Their conduct “has been such as to demonstrate that they will not promote the healthy and orderly, physical and emotional well-being of [W.C.D.]”

Respondent-Mother does not challenge the foregoing findings of fact; therefore, they are deemed supported by evidence and are binding on appeal. *In re C.B., J.B., Th.B., & T.B.*, 180 N.C. App. 221, 223, 636 S.E.2d 336, 337 (2006). We conclude these findings show Respondent-Mother failed to provide proper care, supervision or discipline of W.C.D., that she contributed to the emotional trauma from which he is still recovering, and that there is a strong probability that the neglect will be repeated. *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232.

AFFIRMED.

IN RE: W.C.D.

Opinion of the Court

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).