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NO. COA10-654

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

IN THE MATTER OF:

	Cumberland County
D.G.	Nos. 09 JA 231
Rk.G.	09 JA 232
C.G.	09 JA 233
R.G.	09 JA 234
A.G.	09 JA 235
S.H.	97 JA 98

Appeal by respondent mother and respondent father from orders entered 31 December 2009 and 2 February 2010 by Judge Edward A. Pone in Cumberland County District Court. Heard in the Court of Appeals 27 October 2010.

Cumberland County Department of Social Services, by Elizabeth Kennedy-Gurnee, Staff Attorney, for petitioner-appellee.

Richard Croutharmel for respondent-appellant father.

W. Michael Spivey for respondent-appellant mother.

Beth A. Hall for guardian ad litem.

GEER, Judge.

Respondent mother and respondent father each appeal from the trial court's 31 December 2009 adjudication order and 2 February 2010 disposition order determining that all the children were neglected and two were sexually abused. Respondent mother primarily contends that the trial court erred in ordering petitioner to cease reunification efforts with her and abused its

discretion by failing to provide her with visitation with the children. We hold that the trial court's findings of fact support the court's determination that reunification efforts would be futile and that aggravating circumstances existed warranting cessation of reunification efforts. The court found, consistent with the evidence, that respondent mother failed to protect two daughters from sexual abuse despite being told of it, respondent mother was subjected to chronic and severe domestic violence in the presence of the children, and respondent mother was unable to separate herself and her children from respondent father despite the sexual abuse, domestic violence, and serious substance abuse.

Respondent father argues only that the trial court abused its discretion when it did not place the juveniles with their paternal grandmother. We hold that the trial court acted well within its discretion given its findings that the paternal grandmother is dominated by her son and did not intervene despite being aware of the aggravating circumstances. Accordingly, we affirm.

Facts

Respondent mother is the biological mother of all six of the children, D.G. ("Dennis"), Rk.G. ("Rachel"), C.G. ("Christopher"), R.G. ("Rose"), A.G. ("Amanda"), and S.H. ("Sara").¹ Respondent father is the father of all of the children except Sara. Sara's

¹The pseudonyms "Dennis," "Rachel," "Christopher," "Rose," "Amanda," and "Sara" are used throughout this opinion to protect the minors' privacy and for ease of reading.

biological father, J.H. ("Mr. Heath"),² does not live in North Carolina and is not a party to this appeal.

On 14 August 2008, the Cumberland County Department of Social Services ("DSS") received a referral alleging that the children were dirty and had inadequate clothes to wear, that there were bugs in respondents' home, and that respondents were selling their food stamps in order to pay bills and buy drugs. The report also alleged domestic violence had occurred between respondents that the children had witnessed. Social worker Kedria Cooper investigated the claims and discovered that respondent mother had taken out a protective order against respondent father. Ms. Cooper referred respondent mother for domestic violence counseling, but by 9 September 2008, respondent father had returned, and the family moved to a new address.

Although Sara lived with respondents at times, she primarily lived with her maternal grandmother ("Ms. Davis") from 2005 until November 2008, when she began residing with a family acquaintance, "Ms. Smith."³ On 25 November 2008, DSS received an additional referral reporting that respondent father had sexually abused 16-year-old Sara and may also have sexually abused five-year-old Amanda.

In March 2009, DSS conducted a safety assessment at respondent parents' home and recommended that respondent father leave the family home pending the result of a Child Medical Exam ("CME") on

²"Mr. Heath" is a pseudonym.

³"Ms. Davis" and "Ms. Smith" are pseudonyms.

Sara and Amanda. That same night, respondent father strangled respondent mother in front of the children. Respondent mother took the children and went to the maternal grandmother's home. Subsequently, when Ms. Smith refused to disclose Sara's location to DSS or bring her to her CME, law enforcement officers removed Sara from Ms. Smith's home and returned her to respondent mother's care.

In April 2009, DSS received information that respondent father was seeing respondent mother and the children. On 11 May 2009, respondent mother admitted to DSS that she and the children were again living with respondent father. On 13 May 2009, DSS filed a petition alleging that the juveniles were abused, neglected, and dependent. The petition alleged that respondent father had sexually abused Sara when she was between the ages of 11 and 14 and that Sara had informed respondent mother of the abuse, but respondent mother did not believe her. The petitions also alleged that respondent father had sexually abused Amanda and that Amanda then displayed inappropriate sexual behavior with other children. In addition to sexual abuse, the petition also alleged that acts of domestic violence occurred between respondents. The district court entered non-secure custody orders for all the children.

On 21 September 2009, DSS filed a motion to amend the petition to include Amanda's specific allegations of sexual abuse. On 2 October 2009, respondent mother filed a response admitting some of the allegations in the petition, but requested that the district court dismiss the petition. On 7 October 2009, respondent father filed a response to the petition in which he also admitted some of

the allegations, but requested that the district court dismiss the petition.

The trial court conducted an adjudication hearing over four days from 17 November through 20 November 2009. The evidence presented to the trial court at the adjudication hearing included testimony from Dr. Laura Gutman, who conducted the CME on Sara and Amanda; Sara and Amanda; respondent parents; the maternal grandmother, Ms. Davis; and two social workers. The trial court rendered its adjudication order in open court on 11 December 2009 and filed its written order on 31 December 2009. The trial court concluded that all six children were neglected juveniles and that Sara and Amanda were abused children in that they had been victims of sex offenses. The court dismissed the allegations of dependency.

The court conducted a separate disposition hearing on 7 January 2010. Neither of the respondent parents attended the hearing. Although they had been at the courthouse earlier, they left together before the hearing began. At that hearing, "Ms. Perkins,"⁴ the paternal grandmother of all the children except Sara, testified that she wanted the children to be placed in her care. Ms. Perkins, however, expressed doubt about her ability to provide adequate space for all five of the children and was conflicted about whether she believed Amanda's allegation of sexual abuse or respondent father's claim of innocence.

⁴"Ms. Perkins" is a pseudonym.

The trial court entered its disposition order on 2 February 2010. The trial court concluded that returning the children to either parent would be contrary to the children's best interests and that DSS should be relieved of reunification and visitation efforts with both respondent parents. The trial court continued legal and physical custody of Sara with her father, Mr. Heath, and ordered that it was in the best interests of the other children to remain in DSS custody for placement in foster care or with other court-approved caretakers. The trial court also ordered that there be no visitation between the children and respondent parents. Respondent parents each timely appealed to this Court.

I

Respondent mother first contends that the trial court erred by ordering DSS to cease reunification efforts with her. "This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). "'An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision.'" *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002) (quoting *Chicora Country Club, Inc. v. Town of Erwin*, 128 N.C. App. 101, 109, 493 S.E.2d 797, 802 (1997), *disc. review denied*, 347 N.C. 670, 500 S.E.2d 84 (1998)).

N.C. Gen. Stat. § 7B-507(b) (2009) provides that a trial court may direct DSS to cease reunification efforts if it makes written findings of fact that:

- (1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;
- (2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7B-101;
- (3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or
- (4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

The trial court, in this case, made findings both as to N.C. Gen. Stat. § 7B-507(b) (1) and (b) (2).

Here, the trial court's findings of fact are based on competent evidence and support its conclusion that DSS should cease reunification efforts with respondent mother. In the adjudication order, the trial court found:

16. The [respondent parents] have a history of engaging in domestic violence. These acts have occurred in front of the juveniles at various and sundry times. . . . This pattern has been continuing for approximately five (5) years or more.

The incidents have become increasingly violent and have often resulted in injury to the Respondent Mother ranging from a black eye to bruising and bumps as well as a laceration requiring stitches. . . . On at least one occasion, [respondent father] struck [respondent mother] with a closed fist while she was holding one of the children. . . .

17. [Respondent father] gets drunk on a weekly basis and exposes his family to incidents of domestic violence. He would become both violent and paranoid when he was drinking. He often accused Respondent Mother of having been involved with other men and would then attack her.

. . . .

19. When [Sara] was eleven or twelve years old, she informed the Respondent Mother and others that the Respondent [father] had inappropriate sexual contact with her. The Respondent Mother sent [Sara] to live with the maternal grandmother and maternal great-grandmother. She did not believe [Sara] and she did not take any further action to protect [Sara]. [Sara] was sent from person to person over the period of the next five to six years. . . . She was continually exposed to the Respondent [father] and over the period of the next several years, the Respondent [father] continued to have inappropriate sexual contact with [Sara]. [Sara] told the Respondent Mother on more than one occasion; however, the Respondent Mother failed to take any action to protect her.

20. . . . [Respondent parents] have consistently denied the allegations of sexual abuse and have blamed everyone from [Sara] to [Ms. Smith,] who was a caregiver for [Sara] for a short period of time.

. . . .

24. . . . [Sara] has a large amount of anger and frustration toward [respondents]. She was very forceful and adamant in her

testimony that the Respondent [father] had inappropriate sexual contact with her on numerous occasions over the years, that she told her mother and she did not do anything about it. She was equally concerned about her siblings, but especially [Amanda] in that she had noticed a change in [Amanda's] behavior. The Court finds her testimony to be credible and finds these aforementioned matters to be true and as facts in this case.

. . . .

29. In October, 2005, [respondent father] assaulted [respondent mother] by hitting her in the back of the head with a closed fist. At the time of the assault, she was holding one of the small juveniles in her arms.

30. On or about March 22, 2009, [respondent father] came home around 2:00 a.m[.] He had been drinking and was very loud. Someone had broken the windows out of the Respondent's residence and the Respondent Mother was about to leave with the juveniles in the van. [Respondent father] proceeded to choke the Respondent Mother, hit her and pushed her down. He then went on to kick her. All of this occurred while the juveniles looked on.

31. The home environment the juveniles lived in was saturated with incidents of domestic violence and alcohol and drug abuse. Additionally, at least two of the juveniles, [Sara] and [Amanda,] were subjected to acts of sexual abuse by [respondent father] while in the home.

. . . .

35. [Respondent father] testified that he tested positive for cocaine once. He denies having a drug problem. [Sara] has seen [respondents] use a white powdered substance consistent with cocaine. The Respondents have acted paranoid and otherwise impaired after this. . . .

36. The relationship between the Respondent Mother and [Sara] has been irreparably damaged by the years of neglect and abuse.

In its disposition order, the trial court "readopt[ed] the findings from the Adjudication Order" and made the following additional relevant findings of fact:

5. The Court has found that the juveniles [Sara] and [Amanda] were subjected to sexual abuse and the perpetrator in the matter was [respondent father].
6. That [Sara] had previously indicated to the Respondent Mother and to the maternal grandmother that she was being sexually abused by [respondent father] and they failed to protect her from further abuse.
7. The Court previously found and finds again on today's date that each of the juveniles have lived in a home where domestic violence was the norm. It occurred on a regular and frequent basis. They have also witnessed [respondents] abusing alcohol and illegal drugs. [Respondent father], in particular, has a long and enduring substance abuse problem which he has failed to address. He has developed a habit wherein he would come in, particularly on weekends after he had been drinking, would physically assault [respondent mother] and then, at times, would turn with sexual advances toward [Sara] and then later [Amanda]. [Respondent mother], for whatever reason, has been unable to separate herself from the individual who has abused her in a chronic and enduring fashion.
8. The Court specifically finds that the nature of the substance abuse, domestic violence and sexual abuse are aggravating circumstances in this case. The chronic and enduring nature of these occurrences increases the enormity of the abuse and neglect and adds to the injurious consequences. The Court further finds that the family is inextricably linked in

this cycle of domestic violence, substance abuse and sexual abuse. Both the maternal and paternal sides of the family were well aware of the significant history and enduring nature of the physical abuse, domestic violence and alcohol and drug abuse and did little if anything to intervene.

. . . .

11. The Court further finds that ordering any services for the Respondents would be futile. With regard to the Respondent Mother, she has neither summoned the will or [sic] the courage to separate herself from the man that has abused her as well as two of her children, and it is unlikely that she will find the will or the courage to do so in the foreseeable future. Reunification efforts with the [respondents] clearly would be futile or would be inconsistent with the juvenile's [sic] health, safety and need for a safe, permanent home within a reasonable period of time. [Respondents] have subjected the juveniles to aggravated circumstances as defined in N.C. Gen. Stat. § 7B-101.

Based on the above findings of fact, the trial court relieved DSS of reunification and visitation efforts.

Each of the trial court's findings of fact was supported by evidence presented at the adjudication and disposition hearings, including testimony by Sara and Amanda, respondent mother, the maternal grandmother, the social workers, and Dr. Gutman. This evidence and the trial court's findings of fact depict a family plagued by chronic domestic violence, sexual abuse, and substance abuse, as well as respondent mother's continuing failure to protect the children from this violence and abuse or separate herself and the children from respondent father.

Respondent mother nonetheless contends that the trial court improperly determined that reunification efforts would clearly be futile. She acknowledges that the trial court found as the basis for this determination that respondent mother had "neither summoned the will or [sic] the courage to separate herself from the man that has abused her as well as two of her children, and it is unlikely that she will find the will or the courage to do so in the foreseeable future." She argues, however, that while district court judges are often called on to predict behavior, the court could not, in this case, predict how she would behave after actually receiving supportive services to aid her in breaking the domestic violence cycle. She asserts that she should have been "afforded at least the opportunity to remedy the conditions that lead [sic] to removal of her children."

The trial court was, however, confronted with testimony of serious instances of domestic violence occurring over five years or more, respondent mother's false testimony that the domestic violence ended in 2007, her minimization of any domestic violence, and her claim that she is actually to blame for the violence because she caused respondent father to hit her. Significantly, even after the trial court had adjudicated her children to be neglected and abused, she testified at the disposition hearing that she had no plans to separate from respondent father.

While respondent mother's discussion on appeal of battered woman syndrome may accurately describe her situation, the trial court was not addressing the culpability of respondent mother, but

whether efforts to reunify respondent mother with her children, such as domestic violence services, had a reasonable possibility of succeeding in a reasonable period of time. Given the evidence before the trial court and the court's opportunity to observe respondent mother while she testified, the court's finding that reunification efforts would be futile as to respondent mother is not manifestly unreasonable.

With respect to the aggravating circumstances, respondent mother does not dispute that they exist, but argues that the substance abuse, domestic violence, and sexual abuse should not affect her ability to attempt to reunify with her children because the circumstances involved behavior by only respondent father. The first flaw in respondent mother's reasoning is that she announced in the disposition hearing that she had no intention of separating from respondent father, meaning that she was willing to continue to subject the children to the aggravating circumstances if they lived with her.

Further, respondent mother did not protect the children from the sexual abuse and domestic violence. She knew that respondent father was sexually abusing Sara, but took no action; she discontinued domestic violence proceedings and returned to respondent father's home; and she did so knowing that respondent father had, on multiple occasions, physically abused her in front of the children. The trial court was, therefore, entitled to conclude that respondent mother had subjected her children to the aggravating circumstances. See *In re R.B.B.*, 187 N.C. App. 639,

645, 654 S.E.2d 514, 519 (2007) (holding trial court properly concluded reunification efforts would be dangerous because, in part, respondent mother continued to leave children in care of her physically abusive boyfriend), *disc. review denied*, 362 N.C. 235, 659 S.E.2d 738 (2008).

Accordingly, we hold that the trial court properly concluded, based on the evidence presented and its findings of fact, that it was in the children's best interests to cease reunification efforts with respondent mother.

II

Respondent mother next argues that the trial court abused its discretion by ordering that she not have visitation with the children. In the dispositional order, the trial court provided "[t]hat there shall be absolutely no visitation between [respondent parents] and the juveniles."

Under N.C. Gen. Stat. § 7B-905(c) (2009):

Any dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, or under which the juvenile's placement is continued outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety.

A trial court's dispositional order must address the issue of visitation. See *In re E.C.*, 174 N.C. App. 517, 522, 621 S.E.2d 647, 651 (2005) ("The trial court maintains the responsibility to ensure that an appropriate visitation plan is established within the dispositional order."). "If a court finds that visitation would not be in the best interest and welfare of the child, the

court may deny the parent visitation rights." *In re C.M. & M.H.M.*, ___ N.C. App. ___, ___, 678 S.E.2d 794, 802 (2009). "This Court reviews the trial court's dispositional orders of visitation for an abuse of discretion." *In re C.M.*, 183 N.C. App. at 215, 644 S.E.2d at 595.

A number of the trial court's findings supported this denial of visitation. After describing the "chronic and enduring nature" of the substance abuse, domestic violence, and sexual abuse and finding that "the family is inextricably linked in this cycle of domestic violence, substance abuse, and sexual abuse," the court found that the family "would be constant reminders of the abuse and the environment" from which the children came. The court further found that "it would be in the best interest of these juveniles to have a clean and even break so that they may have some small opportunity to grow up in an environment that is free of drugs and alcohol, as well as free from physical and sexual abuse." Given these findings and the aggravating circumstances, the trial court did not abuse its discretion in determining that respondent mother should not have visitation.

III

Respondent father makes a single argument on appeal. He contends that the trial court abused its discretion by continuing custody of the children with DSS rather than placing the children with their paternal grandmother. N.C. Gen. Stat. § 7B-903(a)(2)(c) (2009) provides that when a court places a child into out-of-home care:

the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile.

We review a trial court's determination regarding the best interests of a child for an abuse of discretion. *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567, *appeal dismissed and disc. review denied*, 356 N.C. 163, 568 S.E.2d 608, 609 (2002), *cert. denied sub nom. Harris-Pittman v. Nash County Dep't of Soc. Servs.*, 538 U.S. 982, 155 L. Ed. 2d 673, 123 S. Ct. 1799 (2003).

In this case, the trial court made specific findings explaining why it believed that placing the children with a relative, including their paternal grandmother, was not in the children's best interests. The trial court found that the family – referring not only to respondent parents but also to the extended family – "is inextricably linked in this cycle of domestic violence, substance abuse and sexual abuse. Both the maternal and paternal sides of the family were well aware of the significant history and enduring nature of the physical abuse, domestic violence and alcohol and drug abuse and did little if anything to intervene." The court further observed that respondent father "is extraordinarily domineering when it comes to individuals of the female persuasion. This exists not only with his wife, *but with his mother* as well as others." (Emphasis added.)

After discussing Amanda's testimony regarding the abuse, the court then found that "[i]n as much [as] the family in this case is inextricably linked and would be constant reminders of the abuse and the environment from which she has come, . . . it would not be in [Amanda's] best interest or any of the other juveniles' best interest to be placed in relative placement." The court stressed that it did

not make this decision lightly; family is preferable placement in most cases. However, there are rare occasions, and this is one, that to return the juveniles to the family would ultimately cause more harm than good. In this particular case, the Court finds that it would be in the best interest of these juveniles to have a clean and even break so that they may have some small opportunity to grow up in an environment that is free of drugs and alcohol, as well as free from physical and sexual abuse. The Court finds that return of the juveniles to the Respondents or any family known to the Court at this time would be contrary to the welfare and best interest of the juveniles.

These findings are all supported by the testimony of several witnesses, including respondent mother, respondent father, the children, the social workers, and both grandmothers. Although respondent father points to testimony and draws inferences from the evidence in favor of his position, the trial court was entitled to give greater weight to other evidence. Additionally, the paternal grandmother's testimony was not completely consistent regarding her desire to be a placement option for the children. While she initially testified on direct examination that she was willing to care for all of the children, she later clarified that she lacked adequate space in her home for all five of respondent father's

biological children. The paternal grandmother also indicated that she had difficulty reconciling Amanda's claims of abuse with respondent father's claims of innocence.

Respondent father cites *In re L.L.*, 172 N.C. App. 689, 616 S.E.2d 392 (2005), in support of his contention that the trial court erred in not placing the children with their paternal grandmother. In *In re L.L.*, the trial court placed the juvenile with foster parents instead of placing her with relatives who were willing and able to care for her, even though DSS, the parents of the child, and the child's guardian *ad litem* all stipulated to placement with the relatives. *Id.* at 700, 616 S.E.2d at 399. This Court held that "the trial court was required to first consider placing [the juvenile] with [her relatives] unless it found that such a placement was not in [the juvenile's] best interests." *Id.* at 703, 616 S.E.2d at 400. Since the trial court had failed to make findings of fact regarding why the relative placement was not in the child's best interests, the Court reversed and remanded for further findings of fact. *Id.* at 703-04, 616 S.E.2d at 400-401.

In contrast, here, the trial court specifically found that the relatives on both the maternal and paternal sides knew of the abuse suffered by the children and failed to intervene and that the paternal grandmother had not demonstrated that she would keep the children away from their father. Additionally, the trial court made a specific finding that placement with any relative, including the paternal grandmother, was not in the children's best interests. Therefore, *In re L.L.* is not controlling in this matter.

We conclude that the trial court acted within its discretion in declining to place the children with the paternal grandmother. Consequently, we affirm the trial court's order.

Affirmed.

Judges ROBERT C. HUNTER and CALABRIA concur.

Report per Rule 30(e).