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NO. COA11-346
NORTH CAROLINA COURT OF APPEALS

Filed: 20 September 2011

IN THE MATTER OF:

K.M.B. & M.M.B.

Guilford County
Nos. 08 JT 458
09 JT 430

Appeal by guardian ad litem from order entered 24 November 2010 by Judge Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 6 September 2011.

Mercedes O. Chut, for appellee Guilford County Department of Social Services.

Donna Michelle Wright, for appellant guardian ad litem.

MARTIN, Chief Judge.

The guardian ad litem appeals from the trial court's order dismissing her motion alleging the Guilford County Department of Social Services ("DSS") abused its discretion in the adoption selection process involving the minor children. After careful consideration, we affirm the order of the trial court.

The minor children K.M.B. and M.M.B. are subjects of juvenile cases which resulted in the termination of their parents' parental rights. K.M.B. has been in the custody of DSS since 2 September 2008, and the order terminating parental rights in her case was entered on 2 November 2009. M.M.B. has been in the custody of DSS since 10 September 2009, and the order terminating parental rights in her case was entered on 8 April 2010.

The adoption selection process for K.M.B. began on 23 October 2009 and for M.M.B. on 26 February 2010. The process involved the evaluation of multiple prospective adoptive families by DSS workers and, on 11 May 2010, a meeting by a DSS adoption selection committee. The committee considered four prospective families, including the two families with whom K.M.B. and M.M.B. had been residing separately. The guardian ad litem participated in the meeting and discussion, but did not vote in the selection. Three DSS workers voted for one family and three for another family. Neither of those families was a family with whom the children then resided. The facilitator cast the deciding vote in favor of the W. family. The result of the committee meeting was reported to the Director of DSS, Robert Williams. Director Williams undertook his own evaluation

and changed the selection to the C. family, which had been fostering K.M.B.

On 25 June 2010, DSS filed an adoption notification for both children with service on the guardian ad litem. On 29 June 2010, the guardian ad litem filed a motion alleging abuse of discretion on the part of DSS pursuant to N.C.G.S. § 7B-908(f) and seeking transfer of the adoption proceeding to the district court. After the matter was transferred to the district court, on 9 August 2010, the guardian ad litem filed a second motion for abuse of discretion, seeking to overturn the decision of Director Williams.

The matter came on for hearing on 25 October 2010. Testimony was taken from numerous DSS employees, including most of the attendees of the adoption selection committee meeting, and from Director Williams. The trial court determined that Director Williams had not abused his discretion in his selection of the adoptive family and allowed DSS's motion to dismiss the guardian ad litem's motion for abuse of discretion. The guardian ad litem appeals.

On appeal, the guardian ad litem contends the trial court erred in dismissing her motion because the director of DSS

abused his discretion by choosing a different set of adoptive parents from those chosen by the adoption selection committee without any showing that the committee did not comply with internal policy guidelines. The guardian ad litem argues that her role in safeguarding the best interests of the minor children was circumvented when the director conducted an independent review without seeking her input or hearing her concerns. She asserts that, if the director can unilaterally overturn a decision by the committee after failing to participate in the adoption selection committee meeting, his reliance on his own investigation constitutes an abuse of his power. We disagree with these assertions.

The director of social services has a duty “[t]o investigate cases for adoption and to supervise adoptive placements.” N.C. Gen. Stat. § 108A-14(a)(6) (2009). Under the Juvenile Code, “[t]he process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency.” N.C. Gen. Stat. § 7B-908(f) (2009). The guardian ad litem may file a motion alleging abuse of discretion in the adoption selection process within ten days of service of a written adoption notification. *Id.* A discretionary decision

is granted great deference and will not be overturned unless "it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). In general, "[w]hile a trial court's findings of fact are binding if supported by sufficient evidence, its conclusions of law are reviewable *de novo* on appeal." *Starco, Inc. v. AMG Bonding & Ins. Servs.*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996). We adopt this standard for reviewing the trial court's ruling the guardian ad litem's motion.

The trial court made numerous findings of fact regarding the adoption selection process. The following findings specifically relate to Director Williams' involvement after being informed about the adoption placement selection committee's decision:

38. On or about May 20, 2010, DSS Director Robert Williams requested the DSS files, child profiles, the four home studies, and pre-placement assessments for each of the four adoptive families. DSS Director Robert Williams received and reviewed all of those requested materials. DSS Director Robert Williams also took those materials home with him for the weekend. DSS Director Robert Williams did review and consider those materials during the weekend.

39. On May 24, 2010, DSS Director Robert Williams held an Executive Review Meeting to

discuss the [minor] children with DSS Supervisor Turner, Pam Watkins, Program Manager, and Rosetta Darden, Permanency Officer, who was the deciding vote at the adoption selection placement committee on May 11, 2010. DSS Director Robert Williams stated he had reviewed the TDM notes, child profiles, the home studies, and the pre-placement assessments presented, and did not feel there was enough information to support the decision that the adoption selection placement committee made and was therefore overturning the decision.

40. DSS Director Robert Williams, after deliberating over all the information, decided to reject the Adoption Placement Selection Committee's recommendation as to which family should be selected to adopt the juveniles, and decided that the [C.] foster family was in the best interest as an adoptive home for the juveniles.

41. In making his decision that it was in the best interest of the juveniles for the [C.] foster family to be the adoptive home for the juveniles, DSS Director Robert Williams, who holds a Master's [sic] of Science in Social Work (MSSW) Degree from the University of Texas in Austin and has 35 years' experience in the social services field, determined that all four of the adoptive families under consideration were acceptable as permanent homes for the juveniles, but that the [C.] family had one additional positive attribute that the other three families did not have, and that positive attribute was that the juvenile [K.M.B.] was placed with the [C.] foster family shortly after her birth, had been living in their home for two years, and had developed a very strong bond with both of the [C.] foster parents whom she referred to as "Mom" and "Dad." DSS Director Robert

Williams reasoned that although the juvenile [M.M.B.] had been living in the home of the [W.] foster family since her birth, that period of time was shorter in duration as compared to the two years the juvenile [K.M.B.] had lived with the [C.] foster family. DSS Director Robert Williams also reasoned that the older age of the juvenile [K.M.B.], coupled with the longer period of time the juvenile [K.M.B.] was with the [C.] foster family, resulted in a stronger bond between [K.M.B.] and the [C.] foster family as compared to the bond that existed between the juvenile [M.M.B.] and the [W.] foster family. The stronger bond between [K.M.B.] and the [C.] foster family was the deciding factor for DSS Director Robert Williams' decision of the [C.] foster family over the other three potential adoptive families as the adoptive family that was in the best interest of the juveniles.

42. DSS Director Robert Williams determined that there was not anything the DSS staff did not do that they should have done with respect to the adoption selection process for the juveniles. According to DSS Director Robert Williams, the members of the adoption selection committee and he "can all be fair and still disagree." The decision as to which of the four prospective families would be chosen to adopt the juveniles was a difficult and painful one for DSS Director Robert Williams to make. However, the Director made the decision of the [C. family] based on his review of all the files, home studies, profiles, and pre-placement assessments, plus discussing the matter with DSS Supervisor Turner, Rosetta Darden and Pam Watkins, which led him to conclude that adoption by the [C. family] was in the best interest of the juveniles.

Based on the findings, the trial court concluded:

44. The decision of DSS Director Robert Williams to reject the recommendation by the adoption selection placement committee, and to instead select the [C.] foster family as the adoptive home for the juveniles, was the result of a reasoned deliberation, was not whimsical or arbitrary, and did not constitute an abuse of discretion. DSS Director Robert Williams had the statutory authority pursuant to N.C.G.S. § 7B-908(f) and § 108A-14(6)(13) to reject the recommendation of the adoption placement committee and make the final decision of the adoptive placement.

The guardian ad litem does not contest any of the findings of fact by the trial court; therefore, the findings are deemed supported by competent evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

We conclude the trial court's ruling that Director Williams did not abuse his discretion is amply supported by the findings of fact listed above as well as other findings made by the court. As head of the county DSS agency, Director Williams has authority pursuant to statute to use his discretion to determine the adoptive family for the minor children. Director Williams testified that he is not bound by the recommendation of the adoption placement selection committee or by any individual regarding an adoptive family. Director Williams exercised his authority by being involved in the adoption selection process, receiving information about the committee's meeting and ultimate

decision, and undertaking his own review of the case. He considered information about both juveniles and about each of the prospective families. In court, he described his reasoning behind the decision to select a family other than the one chosen by the committee and his reasoning is reflected in the trial court's findings of fact. We find nothing in the overall process or the director's decision making which indicates a decision "so arbitrary that it could not have been the result of a reasoned decision." *White*, 312 N.C. at 777, 324 S.E.2d at 833. Thus, the trial court did not err in determining that Director Williams did not commit an abuse of discretion when he chose a family to adopt the juveniles.

Moreover, given the findings of fact, we find the guardian ad litem's contention that her role was undermined by the director's independent review to be without merit. She argues that, since Director Williams did not participate in the adoption committee meeting where she aired her concerns and failed to contact her or ask for input during his review, he circumvented her role in ensuring that the best interests of the children were taken into account. However, the trial court determined that the guardian ad litem was involved throughout the adoption planning process and was provided with all the

information she requested, that the guardian ad litem and Director Williams spoke several times throughout the process, and that Director Williams was made aware that the guardian ad litem would appeal from any decision selecting the C. family as the adoptive family. It is clear from this that the guardian ad litem had an active role in the planning process and that Director Williams was well-informed about all aspects of the process, including the guardian ad litem's thoughts on the matter. The fact that the guardian ad litem would have made a different choice from the director is of no moment where the discretion lies solely with the director in the adoption selection process.

Accordingly, we affirm the order of the trial court dismissing the guardian ad litem's motion for abuse of discretion.

Affirmed.

Judges STEELMAN and McCULLOUGH concur.

Report per Rule 30(e).