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NO. COA11-379
NORTH CAROLINA COURT OF APPEALS

Filed: 20 September 2011

IN THE MATTER OF:

D.A.H., B.A.H.,
and E.H.

Catawba County
Nos. 08 JA 47-49

Appeal by Mother from order entered 4 February 2011 by Judge L. Suzanne Owsley in Catawba County District Court. Heard in the Court of Appeals 29 August 2011.

Lauren Vaughan, for petitioner-appellee Catawba County Department of Social Services.

Womble Carlyle Sandridge & Rice PLLC, by Jessica L. Gorczynski, for guardian ad litem.

Joyce L. Terres, for appellant mother.

STEELMAN, Judge.

The trial court properly concluded that B.A.H. was an abused juvenile. Each of the trial court's findings of fact challenged on appeal is supported by competent evidence in the record. The trial court did not abuse its discretion in directing that reunification efforts with Mother be ceased.

I. Factual and Procedural Background

In the fall of 2010, Mother and her three children, D.A.H., B.A.H., and E.H., lived with the father of one of the children (Father). On 2 December 2010, the Catawba County Department of Social Services (DSS) filed a petition alleging B.A.H. was an abused juvenile because Father had repeatedly hit B.A.H. with a leather belt for not finishing his homework. DSS also alleged that all three children were neglected juveniles in that they lived in an environment injurious to their welfare and did not receive proper care, supervision, or discipline. DSS took non-secure custody of the three children and placed them in foster care.

At a hearing on 24 January 2011, Mother stipulated to the facts alleged in the juvenile petition. On 4 February 2011, the trial court entered a consolidated adjudication and disposition order concluding that B.A.H. was an abused juvenile and that all three children were neglected juveniles. The trial court continued custody of the children with DSS, granted Mother monthly supervised visitation, and ordered that reunification efforts with Mother be ceased.

Mother appeals this order.

II. Ruling that B.A.H. was an Abused Juvenile

In her first argument, Mother contends that the trial court erred in concluding that B.A.H. was an abused juvenile. We disagree.

Appellate review of a trial court's order in an abuse, neglect, or dependency proceeding "entails a determination of (1) whether the findings of fact are supported by 'clear and convincing evidence,' and (2) whether the legal conclusions are supported by the findings of fact[.]" *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (internal citations omitted). An abused juvenile is defined, *inter alia*, as one whose parent "[i]nfllicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means[.]" N.C. Gen. Stat. § 7B-101(1)(a) (2009).

In finding of fact 6, the trial court found the following:

On or about November 30, 2010, [Father] repeatedly hit [B.A.H.] with a leather belt for not finishing his homework. The minor child has marks and bruises on his back from the base of the neck to the top of his pant line and on the top of his right shoulder. [Mother] was in the shower during the incident but she walked into the room and saw [Father] swing the belt one time, hitting the child on the top of the back but below the neck. [Mother] did not physically intervene but she did tell [Father] to stop and sat next to the child on the couch. [Mother] did not report the incident and

tried to protect [Father] by initially stating to the Department and law enforcement that [B.A.H.] had fallen. [Mother] did not disclose the beating until the children disclosed the incident.

Mother does not challenge this finding of fact and it is thus binding upon this Court on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). We hold that Father's repeated beating of B.A.H. with a belt, leaving marks and bruising which were still visible two days later, supported the trial court's conclusion that B.A.H. is an abused juvenile. See *In re L.T.R. & J.M.R.*, 181 N.C. App. 376, 383, 639 S.E.2d 122, 126 (2007).

III. Challenged Findings of Fact

In her second argument, Mother contends that several of the trial court's findings of fact are not supported by competent evidence. We disagree.

In finding of fact 33, the trial court found:

33. The Court recognizes that there has been no specific competent evidence presented to show that [Mother] had advance knowledge that [Father] was going to beat [B.A.H.] on this specific date. However, the Court cannot ignore [B.A.H.'s] statements that such beatings had happened before and "a lot." The Court cannot ignore a three-year history of involvement with this family, with significant serious domestic violence in the home, which was [sic] and about which she in fact lied in the past.

Mother contends that B.A.H. never made a statement that he had been beaten "a lot." However, the transcript of the interview of B.A.H. conducted by the nurse practitioner in conjunction with her physical examination of him clearly supports the trial court's finding:

[Nurse]: Has [Father] hit you before?

[B.A.H.]: Yes.

[Nurse]: Does he hit you a lot?

[B.A.H.]: Yes.

Mother also contends that the trial court misstated the length of its involvement with the family in finding of fact 33. Mother concedes that the court initially became involved with the family on 28 February 2008, after Mother's former husband murdered an unrelated child. The children were adjudicated neglected and dependent juveniles in an order entered 3 June 2008, but they were ultimately returned to Mother's care and custody on 13 July 2009. There was no further DSS or court involvement with the family until this petition was filed on 2 December 2010. Mother is correct in noting that the court has been actively involved with the family for a total of only approximately eighteen months over the past three years. However, the precise amount of time during which the court and

DSS have been actively involved with the family has little bearing on the trial court's ultimate conclusions, and any error in that calculation was not prejudicial.

Mother further argues that the trial court erred in stating in finding of fact 33 that there was "significant serious domestic violence in the home, which was [sic] and about which she in fact lied in the past." We note that Mother stipulated to the beating of B.A.H. by Father, and to the fact that she "did not report the incident and tried to protect [Father] by initially stating to the Department and law enforcement that [B.A.H.] had fallen." Additionally, during the investigation by DSS into the 2008 incident, Mother initially reported that her former husband had hit her and the children and that he forced her to have sex with him, but she later denied that her former husband engaged in that behavior. We hold that the trial court's finding regarding domestic violence in the home was supported by competent evidence.

In finding of fact 34, the trial court found:

34. Furthermore, this Court cannot ignore the numerous findings of fact, based on [Mother's] own statements to the Court and to professionals who have talked to her throughout the course of this litigation, that she has grown up in a culture of violence and believed she had a duty to her husband and partner and that that duty

superseded her duty to protect her children.

Mother argues there is no evidence that she made these statements or held this belief. However, in 2008, Mother stated that she first observed domestic violence from her former husband ten years earlier when they were dating and living in Mexico, and that she was taught by her family to not respond to domestic violence and to stay with her former husband despite the violence. Mother lied about her former husband's acts of violence toward her and her children in 2008.

In addition, Mother did not report the beating of B.A.H. by Father in 2010, and initially lied about how B.A.H. was injured to protect Father. We hold that competent evidence before the trial court supported finding of fact 34.

Mother next challenges findings of fact 9, 10, 17, 18, and 35. These findings of fact, *inter alia*, pertain to prior incidents of domestic violence and abuse of the children. Mother contends that there is no evidence of prior occasions in which the children were abused or witnessed the abuse of others. We note that Mother stipulated to the fact that D.A.H. and E.H. witnessed Father's beating of B.A.H. Further, during his interview with the nurse examining him shortly after the

beating, B.A.H. stated that Father also hit D.A.H., but that he did not hit E.H., who is Father's biological son.

Additionally, during the investigation into the 2008 incident involving Mother's former husband, Mother reported that her former husband hit her and that she witnessed her former husband, on more than one occasion, hit D.A.H. and B.A.H. with sufficient force to leave bruises on the children. We hold that the trial court's findings of fact regarding prior incidents of domestic violence and abuse of the children were supported by competent evidence.

Mother finally challenges finding of fact 36, which states:

36. [Mother] has been offered and in fact engaged in all of the services that this Court knows of in this community to address her perceptions of violence in her home and the importance of addressing that and protecting her children and keeping them safe from harm. Those services have clearly not been successful. There are no other services available to this Court to ensure that this pattern will not continue, and these children deserve to be safe.

At the disposition hearing, the social worker testified that Mother had previously participated in various parenting classes, intensive home services, domestic violence counseling and classes, and individual and family counseling. Despite receiving these extensive services in the past, Mother still

tried to cover-up Father's beating of B.A.H. and stated that she did not believe Father had previously beaten the children. Further, Mother makes no argument that there is some other specific service that would be useful to her in dealing with her domestic violence issues. We hold that this finding of fact was supported by competent evidence in the record.

These arguments are without merit.

IV. Futility of Reunification Efforts

In her final argument, Mother contends that the trial court's findings of fact are insufficient to show that reunification is futile or inconsistent with the children's need for a safe and permanent home and do not support its conclusion that reunification efforts with her should cease. We disagree.

A trial court may order the cessation of efforts to eliminate the need for placement of a juvenile if it makes findings of fact that "[s]uch 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[.]" N.C. Gen. Stat. § 7B-507(b)(1) (2009). "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) (citations omitted).

In the instant case, the trial court's findings of fact discussed above support its conclusion to cease reunification efforts. Mother argues that the trial court's order is based on a "fearful conjecture that these children will be killed at the hands of some unknown assailant" and that it is too early for the court to conclude that reasonable efforts are futile. While the seriousness of Father's beating of B.A.H. in 2010 does not rise to the level of the 2008 incident wherein Mother's former husband killed an unrelated child, the trial court is not required to wait until a child has been killed to cease reunification efforts. Given Mother's failure to protect her children from the domestic violence in her home, we cannot say that the trial court's conclusion to cease reunification efforts constitutes an abuse of discretion. Accordingly, the trial court's order is affirmed.

AFFIRMED.

Chief Judge MARTIN and Judge MCCULLOUGH concur.

Report per Rule 30(e).