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NO. COA11-447
NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

IN THE MATTER OF:

B.N.H. and Z.E.H.,	Nash County
Minor Children	Nos. 10 JA 148-49

Appeal by respondent-father from order entered 15 March 2011 by Judge Anthony W. Brown in Nash County District Court. Heard in the Court of Appeals 12 September 2011.

Jayne B. Norwood, for petitioner-appellee Nash County Department of Social Services.

Windy H. Rose, for respondent-appellant father.

Parker, Poe, Adams & Bernstein L.L.P., by Mary Katherine H. Stukes, for guardian ad litem.

CALABRIA, Judge.

Respondent-father ("respondent") appeals from the trial court's adjudication and disposition order. The mother was present for the adjudication and disposition hearing but is not a party in the appeal. We affirm.

I. Background

On or about 3 June 2010, the Nash County Department of Social Services ("DSS") received a child protective services referral alleging that B.N.H. ("Bailey") and Z.E.H. ("Zeke") (collectively, "the children")[1] were abused, neglected, or dependent juveniles. The children were each sexually abused by multiple individuals while in the parents' custody. In spite of indications that one specific individual, Billy Parker ("Parker"), acted inappropriately with the children, the parents continued to allow Parker unsupervised access to the children. When DSS intervened in the matter, the parents admitted that Parker exposed the children to pornography and provided the children with sex toys. On 30 June 2010, the children were placed with their paternal grandparents.

On 20 September 2010, DSS filed petitions alleging the children were abused, neglected, and dependent. At the 6 January 2011 adjudication hearing, both parents stipulated that:

> (1) Mr. and Mrs. [ ] along with [the children] and [Parker] watched a pornographic movie involving two hermaphrodites engaging in multiple sex acts;
> (2) [Parker] told the parents that he planned to get [Bailey] a vibrator for her birthday. He gave her the vibrator for her birthday in the presence of her

[1] We use pseudonyms to protect the identity of the children and for ease of reading.

> parents. The parents later took the vibrator from the child, but continued to allow her and [Zeke] to go unsupervised to [Parker's] home and to spend the night with him.
>
> (3) The parents allowed [Zeke] to continue to go to [Parker's] home even after they became aware that [Parker] gave [Zeke] a rubber vagina which [Parker] and [the children] referred to as a "pocket pussy."
>
> (4) [Parker] told the parents that he planned to marry [Bailey]. He gave her a wedding ring. She was allowed by her parents to wear the wedding ring on a chain around her neck. Her mother admitted that she let her wear the chain around her neck with the ring on it because she, the mother, was afraid [Bailey] would lose the ring.
>
> (5) The parents were aware that [Parker] had pornography in his home and when they asked him not to show it to [the children], he told the parents, "You need to be honest with kids. It's okay for them to watch it."
>
> (6) The parents were aware that [Parker] had a surveillance camera in several places in his home, including the bathroom.
>
> (7) The last time the children went to the home, [Bailey] told her parents she did not want to go. [Zeke] wanted to go. The parents told the children to "watch out for each other."

The trial court entered an order dated 15 March 2011, concluding the children were abused, neglected, and dependent based on the parents' stipulations. In the disposition portion of the order, the trial court found that further efforts to reunify the

children with the parents would be futile and contrary to the best interests of the children. The trial court concluded that it would be in the children's best interests to have legal guardianship placed with the paternal grandparents, relieved DSS of further reunification efforts with the parents, and ordered that a permanency planning hearing be held within thirty days of the date of the hearing. Respondent appeals.

II. Award of Guardianship

Respondent argues that the trial court erred by concurrently awarding guardianship to the paternal grandparents, ceasing reunification efforts with the respondent in the disposition order and relieving DSS of further reunification efforts. We disagree.

The juvenile code authorizes the trial court to appoint a guardian for a juvenile "[i]n any case . . . when the court finds it would be in the best interests of the juvenile." N.C. Gen. Stat. § 7B-600(a) (2009). "This statute permits the trial court to appoint a guardian at any time during the juvenile proceedings, including the dispositional hearing, when it finds such appointment to be in the juvenile's best interests." *In re E.C.*, 174 N.C. App. 517, 520, 621 S.E.2d 647, 650-51 (2005). However, this Court has held that a trial court cannot award

permanent legal guardianship of a child without a permanency planning hearing. *In re D.C., C.C.*, 183 N.C. App. 344, 355-56, 644 S.E.2d 640, 646-47 (2007).

In *D.C.*, this Court noted that the trial court could cease reunification efforts in a dispositional order, but if this was done "the court shall direct that a permanency planning hearing as required by N.C. Gen. Stat. § 7B-907 be held within 30 calendar days after the date of the hearing...." *Id.* at 355, 644 S.E.2d at 646 (citing N.C. Gen. Stat. § 7B-507 (2005)). "The purpose of a permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." *Id.* (citing N.C. Gen. Stat. § 7B-907(a) (2005)). After a permanency planning hearing has concluded, "the trial court 'may appoint a guardian of the person for the juvenile....'" *Id.* (citing N.C. Gen. Stat. § 7B-907(c)). This Court recognized that N.C. Gen. Stat. §§ 7B-507 and 907 "do not permit the trial court to enter a permanent plan for a juvenile during disposition" and that a respondent must have "statutorily required notice that the trial court would consider a permanent plan" for the child. *Id.* at 356, 644 S.E.2d at 646-47.

In the instant case, the trial court (1) adjudicated the children abused, neglected and dependent, (2) awarded legal guardianship to the paternal grandparents, (3) found reunification efforts would be futile and contrary to the children's best interests and (4) relieved DSS of further reunification efforts with the parents. The trial court found that it was in the children's best interests that legal guardianship be placed with the paternal grandparents. Before appointing the grandparents as guardians, the trial court determined the grandparents had cared for the children for about six months, understood the legal ramifications of assuming guardianship, and were willing to assume guardianship. The trial court then found that the grandparents were willing to assume the responsibilities of caring for the children. Accordingly, we hold that the trial court complied with N.C. Gen. Stat. § 7B-600 by awarding legal guardianship to the paternal grandparents in the disposition order. In accordance with *D.C.*, the trial court properly ordered the permanency planning hearing was to be scheduled within thirty days.

Respondent correctly contends that the trial court could not award permanent guardianship without a permanency planning hearing and notice to the parents. *See D.C.* at 355-56, 644

S.E.2d at 646-47. In the instant case, respondent was not given notice that the trial court would consider permanent guardianship because the trial court did not grant permanent guardianship. Instead, the court stated that the "most appropriate permanent plan is guardianship." Furthermore, a permanency planning hearing was scheduled for 3 February 2011, a date within thirty days, to establish a permanent plan for the children.

The trial court properly complied with statutory requirements before ceasing reunification efforts and granting legal guardianship to the children's paternal grandparents. Therefore, we hold that the order ceasing reunification efforts and granting legal guardianship to the children's paternal grandparents was proper.

III. Reunification

Respondent also contends the trial court erred in ceasing reunification efforts without making findings of fact, supported by sufficient evidence, as required by N.C. Gen. Stat. § 7B-507. We disagree.

An order ceasing reunification efforts shall include a written finding of fact addressing at least one of four statutory requirements, including:

> (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[.]

N.C. Gen. Stat. § 7B-507(b) (2009). An aggravated circumstance is "[a]ny circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse." N.C. Gen. Stat. § 7B-101(2) (2009). "[T]he trial court can only order the cessation of reunification efforts when it finds facts based upon credible evidence presented at the hearing that support its conclusion of law to cease reunification efforts." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003).

In the instant case, the trial court found:

> Further efforts to reunify the children with the parents, in light of the total lack of judgment demonstrated by the parents in the face of numerous indicators that their children were being sexually abused by a third party would be contrary to the best interests of the children and would be futile.

This finding directly addresses the first and second prongs of N.C. Gen. Stat. § 7B-507(b). As to the first prong, the court found that continued efforts for reunification would be contrary to the best interests of the children and would be futile. As to the second prong, the court found the respondents exposed the children to sexual abuse. Respondent's partial stipulation to the allegations in the petitions, including the allegation that the parents continued to allow the children to have contact with Parker in spite of his inappropriate sexual behavior, supports the trial court's findings. Accordingly, we hold that respondent's argument is overruled.

IV. Conclusion

The trial court did not err in ceasing reunification efforts with respondent nor in awarding legal guardianship to the children's paternal grandparents until the permanency planning hearing. In ceasing reunification efforts with respondent, the trial court made the required findings of fact in compliance with N.C. Gen. Stat. § 7B-507(b). We affirm.

Affirmed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).