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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-290

Filed: 19 September 2017

Mecklenburg County, No. 15 JA 612

IN THE MATTER OF: D.S.

Appeal by respondent-father from order entered 20 December 2016 by Judge Louis A. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 31 August 2017.

*Associate County Attorney Marc S. Gentile for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.*

*David A. Perez for respondent-appellant father.*

*Stephen M. Schoeberle for guardian ad litem.*

INMAN, Judge.

Respondent-father (“Father”) appeals from an order granting guardianship of his minor child, D.S. (“Diana”) to M.G. (“Ms. Green”).<sup>1</sup> We vacate the order because the trial court did not properly verify that Ms. Green has adequate resources to care appropriately for Diana.

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<sup>1</sup> Pseudonyms are used throughout to protect the juvenile’s privacy and for ease of reading.

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On 9 November 2015, the Mecklenburg County Department of Social Services, Division of Youth and Family Services (“YFS”) obtained non-secure custody of Diana and filed a petition alleging she was a neglected and dependent juvenile. YFS alleged that Father and Diana’s mother had engaged in domestic violence in Diana’s presence, that the mother admitted to using crack cocaine, and that Father was engaged in drug trafficking and procuring or promoting prostitution.

After a two-day hearing in February 2016, the trial court entered an adjudication and disposition order. The court adjudicated Diana to be a neglected and dependent juvenile and continued custody of her with YFS. The court granted Father and the mother supervised visitation with Diana and ordered them to comply with their out-of-home family services agreements. The primary permanent plan for Diana was set as reunification with a parent, and the secondary permanent plan was set as guardianship.

The trial court conducted review hearings on 3 May 2016 and 3 August 2016. Following those hearings, the court entered orders continuing custody of Diana with YFS, directing Father and the mother to work on their service agreements, establishing a detailed visitation agreement for Father and the mother, and retaining the primary and secondary plans for Diana as reunification and guardianship.

After a 29 November 2016 permanency planning hearing, the trial court entered an order finding that neither Father nor the mother had been making

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adequate progress on the goals set forth in their respective service agreements. The court set the sole permanent plan for Diana as guardianship, appointed Ms. Green as her guardian, and entered a detailed visitation plan for Father and the mother. Father timely appealed from the court's order.

After Father filed the record on appeal in this matter, the guardian ad litem ("GAL") filed in this Court a motion to dismiss Father's appeal. The GAL argued the appeal should be dismissed because the GAL and YFS had filed with the trial court a motion pursuant to Rule 60 of the North Carolina Rules of Civil Procedure to correct errors in the guardianship order due to the trial court's failure to verify that Ms. Green has adequate resources to care appropriately for Diana. The trial court entered an order on 22 March 2017, stating that if it had jurisdiction it would grant the Rule 60 motion, reopen evidence to consider additional evidence regarding the guardian's resources, and modify the guardianship order with additional findings based on the new evidence. This Court denied the motion by order entered 11 April 2017.<sup>2</sup>

"Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and [whether] the findings support the conclusions of law." *In re R.A.H.*, 182 N.C. App. 52, 57-58, 641 S.E.2d 404, 408 (2007) (quotation marks and citation omitted). Before a trial court may

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<sup>2</sup> YFS and the GAL have renewed their arguments to dismiss Father's appeal in their appellee briefs. However, the prior motion was not decided by this panel and we are bound by the previous decision on this issue. See *N.C. Nat. Bank v. Va. Carolina Builders*, 307 N.C. 563, 567, 299 S.E.2d 629, 631-32 (1983).

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appoint a guardian of the person for a juvenile in a Chapter 7B case, the court must “verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile.” N.C. Gen. Stat. § 7B-600(c) (2015); *see also* N.C. Gen. Stat. § 7B-906.1(j) (2015) (requiring an identical verification when appointing a guardian of a person for a juvenile as part of the juvenile’s permanent plan). “[T]he trial court need not make detailed findings of evidentiary facts or extensive findings regarding the guardian’s situation and resources . . . . [But] some evidence of the guardian’s ‘resources’ is necessary as a practical matter, since the trial court cannot make any determination of adequacy without evidence.” *In re P.A.*, 241 N.C. App. 53, 61-62, 772 S.E.2d 240, 246 (2015).

Here, the trial court found:

17. [Ms. Green] stands ready and able to accept the guardianship of the juvenile(s). [Ms. Green] understands the legal significance of the appointment and has adequate resources to care appropriately for the juvenile.

18. . . . Prior to coming into custody, juvenile had been in the care of [Ms. Green]. That time combined with the current amount of time (post-custody) juvenile has been with [Ms. Green] is over a year. [Ms. Green] has always been able to financially meet the needs of the juvenile. She is employed and has the ability to continue to meet the financial needs of the juvenile.

The only evidence at trial in support of these findings came from the trial court’s direct inquiry of Ms. Green:

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Q. The recommendation from the Department of Social Services is that I name you the guardian of [Diana] today. You understand? You've talked to them about that?

A. Yes. . . .

Q. All right. You understand that if I name you guardian for [Diana], you would be responsible for her up until -- at least up until her eighteenth birthday with regard to her general welfare, so her food, clothing, shelter, her educational needs, her medical needs, any therapeutic needs that she has. You would be responsible for all those things. . . .

A. Yes.

. . . .

Q. And do you have any questions about what it means to be a guardian?

A. No, sir. He explained everything to me.

Q. And are you financially and otherwise ready, willing, and able to assume that role for [Diana]?

A. Yes, sir. I am.

Q. All right. And that is something that you are requesting today?

A. Yes, sir.

Thus, the only evidence that Ms. Green will have adequate resources to care appropriately for Diana is Ms. Green's own opinion of those resources, which is insufficient to support the court's finding. *See In re P.A.*, 241 N.C. App. at 65, 772 S.E.2d at 248. Such appropriate evidence includes a proposed guardian's

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employment and income, debts, living arrangements, estimates of the their bills and expenses, the medical and financial needs of the child, and other facts relevant to the guardian's financial capability to meet the needs of the child. *See, e.g., In re E.M.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 790 S.E.2d 863, 872 (2016) (holding sufficient evidence of adequate resources existed where there was evidence introduced concerning the guardians' housing, living arrangements, employment status and history, and family support structure, as well as evidence that the "medical, dental, vision, and developmental needs" of the child were being met); *In re C.P., C.P., J.C., J.T.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 801 S.E.2d 647, 652-53 (2017) (holding sufficient evidence of adequate resources where evidence was introduced showing academic and behavioral improvement by the child, the child and guardian's living arrangements, and the guardian's employment history).

Because the trial court's finding that Ms. Green has adequate resources to care appropriately for Diana is not supported by the evidence at the permanency planning hearing, we vacate the court's order and remand for further proceedings consistent with this opinion.

Because we vacate the court's order and remand for further proceedings, we need not address Father's argument that the trial court failed to make necessary findings regarding the rights and responsibilities that remained with Father during the guardianship.

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VACATED AND REMANDED.

Chief Judge MCGEE and Judge DIETZ concur.

Report per Rule 30(e).