NO. COA01-802

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

IN RE: K.M.A.	Davidson County No. 00 J 41
IN RE: S.L.A.	Davidson County No. 00 J 42

Appeal by respondents from order entered 5 February 2001 by Judge Martin J. Gottholm in Davidson County District Court. Heard in the Court of Appeals 18 February 2002.

Doris C. Gamblin, for petitioner-appellee, Davidson County Department of Social Services.

Joetta McQueen, for respondent-appellant, Stephanie Dolby Adams.

Scott B. Lewis, for respondent-appellant, Glen Adams.

Hunton & Williams, by Jason S. Thomas, as guardian ad litem-appellee for minor children, K.M.A. and S.L.A.

EAGLES, Chief Judge.

On 11 February 2000, Davidson County Department of Social Services (DSS) filled two petitions alleging that K.M.A. and S.L.A. (the children) were sexually abused and neglected. DSS filed supplemental petitions on 2 May 2000. Judge Cathey entered ex-parte orders for nonsecure custody on 2 May 2000. After a hearing on 9 May 2000, Judge Cathey ordered continued custody with DSS and

granted supervised visitation at DSS for the mother, Stephanie Adams.

Additional hearings occurred on 29 June 2000 and 5 July 2000. As a result of these hearings, Judge Cathey adjudicated the children to be abused and neglected and ordered custody to remain with DSS. A written adjudication order was signed on 11 September 2000. On 10 October 2000, the trial court entered its first disposition order. That order gave legal and physical custody of the children to DSS and granted Mrs. Adams up to two hours of supervised visitation per week. Under the paragraph for "other" comments, the trial court stated that the plan of care for the children should be a "concurrent plan of reunification with the mother and guardianship with relatives."

On 5 February 2001, the Honorable Martin J. Gottholm presided over a review hearing. The review order reiterated most of the provisions of the first disposition order entered 10 October 2000. However, the review order modified the plan of care. In the "other" comments section, the trial court stated that the plan of care for the children should be "concurrently reunification with the mother and TPR [termination of parental rights] and adoption." From this order and the modification of the plan of care therein, respondents appeal.

Respondents contend that the trial court was without statutory authority to modify the plan of care for the children and that there was insufficient evidence to support the trial court's modification of the plan of care. We disagree.

In a hearing for review of a custody order, the trial court may appoint a guardian or order placement for the juvenile with parents, relatives, or continue placement under review. Courts may also provide for a different placement in the best interest of the juvenile. N.C.G.S. § 7B-906. In addition, the trial court shall consider, if relevant, "when and if termination of parental rights should be considered." N.C.G.S. § 7B-906(c)(8). The provisions of N.C.G.S. § 7B-507 shall apply to any order entered pursuant to Section 7B-906. N.C.G.S. §§ 7B-905(c), -906(f). Section 7B-507 authorizes the trial court to fashion a concurrent plan for a juvenile. N.C.G.S. § 7B-507(d). "The trial court is required at a review hearing to evaluate '[w]hen and if termination of parental rights should be considered.'" *In re LaRue*, 113 N.C. App. 807, 810, 440 S.E.2d 301, 303 (1994); N.C.G.S. § 7B-906(c)(8).

In the 10 October 2000 dispositional order, the trial court set out a "a concurrent plan of reunification with the mother and guardianship with relatives." Between 10 October 2000 and 5 February 2001, DSS contacted five of the children's relatives about serving as guardians. Two of the relatives refused and three failed to respond to the DSS inquiry. In light of this evidence, the trial court removed the "guardianship with relatives" provision and replaced it with a "TPR and adoption" alternative.

Respondents characterize this review order as an "order by the trial court setting forth a permanent plan of care" for the children. Respondents mischaracterize Judge Gottholm's order. The trial court did not enter a permanent plan nor has the trial court

held a permanency hearing. The trial court's 5 February 2000 review hearing was merely a review of the 10 October 2000 custody order. Evidence presented by DSS indicated that the "guardianship with relatives" goal was not feasible. Accordingly, Judge Gottholm removed the "guardianship with relatives" option and substituted "TPR and adoption" as an alternative to "reunification with mother." This modification provided notice of an alternative placement that the court may consider at a permanency planning hearing should reunification prove to be not in the best interest of the children.

For the foregoing reasons, we hold that the respondents' assignment of error is without merit. Accordingly, the order of the trial court is affirmed.

Affirmed.

Judges McCULLOUGH and BIGGS concur.

Report per Rule 30(e).