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NO. COA05-1263

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

IN RE:

C.M.H., B.N.H.,
& S.W.A.

Harnett County
No. 95 J 106-7; 96 J 134

Appeals by respondent mother and respondent father from order entered 20 April 2005 by Judge Marcia K. Stewart in Harnett County District Court. Heard in the Court of Appeals 11 April 2006.

Sofie W. Hosford for respondent-mother appellant.

Lisa Skinner Lefler for respondent-father appellant.

E. Marshall Woodall for petitioner-appellee Harnett County Department of Social Services.

Elizabeth Boone for appellee Guardian ad Litem.

ELMORE, Judge.

T.H. (respondent mother) and R.A. (respondent father) (collectively, respondents) appeal an order of the trial court adjudicating their natural children, C.M.H., B.N.H., and S.W.A., to be neglected juveniles and C.M.H. to be an abused juvenile. The Harnett County Department of Social Services (petitioner) filed petitions on 7 December 2004 alleging abuse and neglect of the juveniles. An adjudication and disposition hearing was held on 21 January 2005 and 11 February 2005. The trial court considered the

testimony of three social workers, two probation officers, a police officer, B.N.H., and respondent mother. The evidence established the following: In August of 2004 C.M.H. was hospitalized at Holly Hill, a mental health facility, due to suicidal thoughts. The discharge instructions for C.M.H. were that she complete follow-up outpatient treatment at Lee-Harnett Mental Health. Respondents took C.M.H. to only two of her follow-up visits and then missed the next visit and failed to schedule any further appointments. On 26 November 2004 petitioner received a report that respondent mother and C.M.H. had been in a physical fight. Following the fight, respondent mother went outside and got the attention of a police officer nearby. The officer decided to transport C.M.H. to Good Hope Hospital after C.M.H. stated that she wanted to kill herself. C.M.H. was involuntarily committed to the hospital.

Respondent father was on probation for a conviction of obtaining property by false pretenses until his probation was revoked and sentence activated on 20 January 2005. Respondent father had tested positive for cocaine on five separate drug tests prior to the time his probation was revoked. Respondent mother tested positive for cocaine in December of 2004, at the time she was treated at the hospital for an overdose on C.M.H.'s sleeping pills. Probation officers who inspected the home periodically discovered roaches in the kitchen cabinets and very little substantial food in the house. Also, on several occasions the three children were left alone in the home until late at night

without supervision. C.M.H. told the Guardian *ad Litem* that her parents would go into the bathroom and use crack.

The court found, *ex mero motu*, that the abuse alleged in the petition was emotional abuse of C.M.H. rather than physical abuse. The court then ordered that the allegations in the petition be amended to conform to the evidence presented. The court concluded, *inter alia*, that further efforts to reunite the juveniles with respondents would be futile and that it was in the best interest of the juveniles that custody be granted to petitioner.

On appeal, respondents first assign error to the trial court's motion to amend the petition to change the allegation of abuse from physical abuse to emotional abuse. Respondents assert the amendment of the petition denied them notice of the allegations prior to trial. Rule 15 of the North Carolina Rules of Civil Procedure permits amendments of the pleadings to conform to the evidence presented at trial. See N.C. Gen. Stat. § 1A-1, Rule 15(b) (2005). The trial judge's decision to amend the pleadings is reviewed for an abuse of discretion.¹ See *Auman v. Easter*, 36 N.C. App. 551, 555, 244 S.E.2d 728, 730, *disc. review denied*, 295 N.C. 548, 248 S.E.2d 725 (1978). The party objecting to the amendment has the burden of showing material prejudice. *Id.* Also relevant

¹ The fact that the trial court amended the petition on its own motion, instead of upon a motion by petitioner, is insignificant. Respondents do not challenge the trial court's authority to do so. Moreover, the trial court has the inherent authority under North Carolina Rule of Civil Procedure 15 to amend the pleadings. See, e.g., *Fox v. Fox*, 103 N.C. App. 13, 23, 404 S.E.2d 354, 359 (1991) (although not stated in the text of the Rule, the trial court has authority under Rule 59 to amend a judgment on its own initiative).

to our consideration is whether respondents were denied notice of the substance of the amended allegations and an opportunity to defend them. See *In re Krauss*, 102 N.C. App. 112, 117, 401 S.E.2d 123, 126 (1991) (amendment to petition not in error where respondent failed to show that he was denied a chance to be heard on the substance of the amendments).

Respondents point out that, although Rule 15(b) permits amendments to the pleadings, it also permits the party objecting to request a continuance. Thus, respondents assert, the trial judge's ruling to amend the pleadings after the evidence was presented denied them a fair trial because they could not seek a continuance at that point. We must note, however, that Rule 15(b) provides that a party may object during trial to the presentation of evidence not within the issues raised in the pleadings and that the trial court may grant a continuance to allow the objecting party to defend this evidence. See N.C. Gen. Stat. § 1A-1, Rule 15(b) (2005). Thus, respondents had the opportunity to object at trial and request a continuance if any evidence raised new issues. Yet neither of respondents objected or requested additional time to prepare a response.

Moreover, the record reveals that respondents already had notice of the substance of the amended allegations. The original petition alleged the facts of the physical fight between respondent mother and C.M.H. in November of 2004 resulting in C.M.H. telling a police officer that she wanted to kill herself; the failure of respondents to transport C.M.H. to outpatient follow-up treatment

at Lee-Harnett Mental Health; and the behavioral problems of C.M.H. indicating that continued treatment at Lee-Harnett Mental Health following C.M.H.'s commitment was necessary for C.M.H.'s mental health. Respondents have simply failed to show an abuse of discretion by the trial court.

Next, respondents challenge the trial court's finding that C.M.H., B.N.H., and S.W.A. are neglected juveniles. A neglected juvenile is defined as:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in a an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2005). This Court's review of a trial court's finding of neglect or abuse involves determining "(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 Pittman*, 149 N.C. App. 756, 763-64, 561 S.E.2d 560, 566, *disc. review denied*, 356 N.C. 163, 568 S.E.2d 608 (2002) (internal quotations omitted). Significantly here, respondent mother did not assign error to any of the trial court's specific findings regarding neglect; she assigns error only to the general finding that the juveniles were neglected.² These

² Respondent father excepts to the finding that he demonstrated a lack of parental responsibility. But this finding is amply supported by the competent evidence underlying the remaining findings left unchallenged.

unchallenged findings, then, are deemed to be supported by competent evidence. See *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The following findings of the trial court were not separately assigned as error:

8. All Juveniles have not received proper care, supervision and discipline from their parents when

a. Respondent Mother engage in a fight as mentioned above with Juvenile [C.M.H.] in the presents of the other juveniles;

b. The Parents failed to seek and obtain appropriate and timely medical and/or remedial services and treatment for the juveniles, to include mental health treatment for [C.M.H.], dental attention for all the juveniles, and optometric services for [B.N.H.] and [S.W.A.], when the family had Medicaid benefits available for the juveniles.

c. The Parents engaged in the use of illegal drugs to the extent that they both were addicted to the use thereof and failed to be employed on a full time basis;

d. The Parents failed to use their income for proper housing and support of their household to the extent of having the family needs furnished by others;

e. The Parents failed to keep their home in a sanitary condition, failed to maintain stable housing for the family unit, and failed to maintain adequate food supplies in the home when the family had food stamp benefits available for the family unit;

f. The Parents allowed the juveniles to be home alone late at night and without any adult being present;

g. The Father engaged in criminal activity resulting in a probationary sentence and later violated the terms of his probation (to include larceny and the storing of stolen property in the family home) causing incarceration in the State's Prison System.

Said activity has robbed the juveniles of their father's parental presence.

9. As a result of the foregoing, the juveniles have been allowed to live in an environment which has been injurious to their welfare.

The findings stated *supra* establish that respondents have failed to maintain stable housing and a sanitary home environment; have used illegal drugs in the home; have failed to seek necessary medical treatment for the children; and have failed to properly supervise the children. These findings of fact are conclusive on appeal, see *In re Isenhour*, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73 (1991) (findings of fact supported by competent evidence are conclusive on appeal), and the findings support the conclusion of neglect.

Respondents argue nonetheless that the trial court failed to consider evidence of changed circumstances and the probability of repetition of neglect. Specifically, respondent mother points out the testimony that she had obtained a job in the past month and a two-bedroom mobile home. But the record also contains evidence that respondents were not following the case plan outlined by petitioner. In particular, respondent mother failed to obtain a substance abuse assessment; the children have not been examined by a physician in over a year; the children have reported being locked out of the home for hours while their parents used illegal drugs; and respondents have not maintained stable employment. As such, petitioner presented evidence of a likelihood of repetition of neglect in the future. See *In re Shermer*, 156 N.C. App. 281, 287-88, 576 S.E.2d 403, 407-08 (2003) (evidence that parent has or has

not completed various parts of the case plan is relevant to consideration of probability of repetition of neglect).

Next, respondent mother contends the trial court erred in concluding that she abused C.M.H. because petitioner failed to present clear, cogent and convincing evidence that she created or allowed serious emotional damage to C.M.H. An abused juvenile is defined in pertinent part as:

Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

. . .

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others[.]

N.C. Gen. Stat. § 7B-101(1)(e) (2005). Neither of respondents assign error to any of the specific findings of fact concerning emotional abuse; respondent mother assigns error only to the general finding of abuse. As such, the following findings not excepted to are deemed to be supported by competent evidence:

7. Juvenile [C.M.H.] is an emotionally abused juvenile as defined by statute when

a. The Respondent Mother engaged in a fight with the juvenile and caused the juvenile to be thrown across the bed and then upon the floor in such manner that the incident caused the Juvenile to become so upset as to threaten suicide to a police officer resulting in the hospitalization of the juvenile in Holly Hill Hospital which is a mental hospital;

b. The Respondent Parents failed to follow up with appropriate and timely mental health treatment for said Juvenile after she was hospitalized at a mental health hospital by

failing to keep appointments after the Juvenile's discharge from the hospital and failing to take sufficient interest in the Juvenile's mental health condition to know and understand the Juvenile's needs, thus allowing the juvenile to suffer serious emotional damage which exacerbated her emotional well-being and problems.

The competent evidence establishes that the fight between C.M.H. and her mother resulted in C.M.H. being hospitalized for suicide threats; that respondents failed to transport C.M.H. to follow-up mental health services and failed to schedule the necessary visits; and that C.M.H. was hospitalized twice for suicidal idealizations arising out of her home life. The unchallenged findings in the trial court's order support its conclusion that C.M.H. was an emotionally abused juvenile.

Respondents have abandoned their remaining assignments of error in the record. Respondent father lists two additional assignments of error and respondent mother lists one additional assignment of error; however, these assignments are not addressed or argued in the briefs. As such, they are abandoned pursuant to our Rules of Appellate Procedure. See N.C.R. App. P. 28(b)(6).

We affirm the order of adjudication entered by the trial court.

Affirmed

Judges WYNN and LEVINSON concur.

Report per Rule 30(e).