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NO. COA05-1437

NORTH CAROLINA COURT OF APPEALS

Filed: 19 September 2006

IN THE MATTER OF:

J.P.H.,
A.A.D.,
Minor children,

DEPARTMENT OF SOCIAL SERVICES
Petitioner,

Davidson County
No. 04 J 113, 114

LAKESHA MARIE DELUCA,
Respondent-Mother

Appeal by respondent mother from judgment entered 31 May 2005 by Judge Mary F. Covington in Davidson County Superior Court. Heard in the Court of Appeals 14 August 2006.

Charles E. Frye III, for petitioner Davidson County Department of Social Services, and Laura B. Beck, Guardian ad Litem Attorney Advocate for appellees.

Susan J. Hall for respondent-appellant.

MARTIN, Chief Judge.

Respondent-mother appeals from adjudication and disposition orders adjudicating minor child J.P.H. a neglected and abused juvenile and A.A.D. a neglected juvenile, and ordering the Davidson County Department of Social Services ("D.S.S.") to cease reunification efforts. For the reasons set forth below, we affirm.

On 1 May 2004, respondent and her boyfriend (now husband), Justin Burris, brought J.P.H. to the Emergency Room of the

Lexington Memorial Hospital. His vital signs were unstable and his pulse rate was low. After having been stabilized and intubated, J.P.H. was transferred to the Wake Forest University Baptist Medical Center and admitted to the Pediatric Intensive Care Unit. X-rays revealed that the child had two fractured ribs, sternal trauma, and two broken fingers, which were in different stages of healing. His body temperature was 91.3 degrees, he was bleeding internally, and had hemorrhages in both eyes.

On 4 May 2004, petitioner Davidson County Department of Social Services removed J.P.H. and his brother, A.A.D., from respondent's care and filed for protective custody. Pending further hearings, physical custody of A.A.D. was placed with his father, and physical custody of J.P.H. was placed with maternal relatives.

An adjudication and dispositional hearing was held on 4 October 2004. Dr. Sarah H. Sinal, Professor of Pediatrics and Family Medicine at the Wake Forest University School of Medicine, offered expert testimony on behalf of DSS. She had assumed care of J.P.H. following his admission to the hospital. In Dr. Sinal's opinion, the combination of rib fractures, bilateral subdural hematomas, brain infarction and retinal hemorrhages which she observed were consistent with a diagnosis of battered child syndrome and shaken baby syndrome, indicating severe child abuse. She further opined that the history provided by respondent-mother and Mr. Burris did not adequately explain the child's injuries. Given the injuries, Dr. Sinal was of the opinion that J.P.H. would never be a normal child.

The trial court adjudicated J.P.H. an abused and neglected juvenile and A.A.D. a neglected juvenile, as defined by N.C.G.S. § 7B-101(5) and § 7B-101(1). The court proceed to a disposition hearing and concluded that the best interest of the minor children would be served by their custody remaining with D.S.S. and that D.S.S was relieved of the obligation to continue reasonable efforts to reunify the children with respondent. The court also ordered that Mr. Burris have no contact with the children. Respondent-mother appeals.

While the respondent's appeal was pending before this Court, the respondent mother stipulated to some of the DSS charges in a subsequent hearing on a different matter. DSS filed a Motion to Dismiss Appeal, contending that the respondent's subsequent stipulations had rendered the appeal moot.

At the outset, we note that D.S.S. has moved to dismiss the instant appeal. D.S.S. avers that it filed a juvenile petition on 19 September 2005 alleging neglect by respondent-mother of a third juvenile, J.L.B., who was born on 18 September 2005. The petition was based on the allegation that respondent-mother had tested positive for marijuana use when she entered the hospital for J.L.B.'s birth. D.S.S. asserts that respondent-mother, in that proceeding, had stipulated that J.L.B. is a neglected and dependent juvenile and that such stipulation was based, in part, on facts established, and found by the trial court, in the proceeding from which respondent-mother now appeals. Thus, D.S.S. contends,

respondent-mother's stipulation may be equated with a stipulation that the trial court's findings in this case were accurate, rendering the appeal moot and any ruling by this Court merely a determination of abstract propositions of law.

For the following reasons, we deny the motion to dismiss this appeal. First, we note that respondent-mother has raised issues in this appeal relating to procedural errors in the trial court which, if found to be meritorious, would not be mooted by the stipulation entered in the later proceeding involving J.L.B. In addition, we do not view respondent-mother's stipulations as a "new, independent adjudication of the neglect issue . . . [that would cause] any resolution of the issues raised in this appeal [to] . . . have no practical effect on the existing controversy," and become moot. *In Re N.B.*, 163 N.C. App. 182, 183, 592 S.E.2d 597, 598 (2004) (citation omitted). Respondent-mother's stipulations in the subsequent action acknowledge the adjudication and disposition orders in the instant appeal, but do not amount to an admission of the truth of the trial court's findings of fact nor the accuracy of its conclusions of law. Thus, the stipulations may not be considered admissions of fact rendering this appeal moot.

We acknowledge that, in determining whether a parent has neglected a juvenile, a *prior* adjudication of neglect involving that parent is a relevant factor to consider, and the trial judge is afforded some discretion in determining the weight to be given such evidence. *In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994) (emphasis added); see also N.C. Gen. Stat. § 7B-

101(15) (2003). Although a subsequent adjudication of neglect might be relevant to a trial court, it cannot be considered here. Our standard of review is confined to the findings of fact and conclusions of law of the trial court from which the issues on appeal originate. The appellate court cannot consider arguments based upon issues which were not presented or adjudicated by the trial tribunal. See *Crouch v. Crouch*, 14 N.C. App. 49, 51, 187 S.E.2d 348, 350, cert. denied, 281 N.C. 314, 188 S.E.2d 897 (1972). Thus, we proceed to consider respondent-mother's appeal on its merits.

Respondent-mother presents four arguments in support of thirty-nine of the forty-four assignments of error contained in the record on appeal. We will not consider nor discuss the remaining assignments of error. N.C. R. App. P. 28(a).

In her first argument, respondent-mother contends the trial court failed to state, in its order, that the allegations in the petition were proven by clear, cogent and convincing evidence, as required by N.C.G.S. §§ 7B-805 and 7B-807 (2005). Thus, citing *In re O.W.*, 164 N.C. App. 699, 596 S.E. 2d 851 (2004), and *In re Wheeler*, 87 N.C. App. 189, 360 S.E.2d 458 (1987), she contends the order of adjudication is erroneous as a matter of law. However, there is no requirement as to where or how such a recital of the standard of proof should be included, and a trial court's statement that it reached its conclusions through clear, cogent and convincing evidence is sufficient to meet the requirement of N.C.G.S. § 7B-807. *In re J.D.S.*, 170 N.C. App. 244, 252-53, 612

S.E.2d 350, 356 (2005). The trial court specifically prefaced its findings on the record by stating that it had determined its facts and the following conclusions of law "on clear, cogent and convincing evidence." Accordingly, we overrule this argument.

Next, respondent argues the trial court erred by failing to enter its adjudication and disposition orders within thirty days of the completion of the hearing as required by N.C.G.S. §§ 7B-807 and 7B-905(a) (2005). However, in order to require reversal of a trial court's order for failure to enter it within the thirty-day requirement, an appellant must demonstrate prejudice caused by the delay. *In Re L.E.B, K.T.N.*, 169 N.C. App. 375, 378-79, 610 S.E.2d 424, 426 (2005).

Respondent-mother contends she suffered prejudice because of (1) harm to the children (2) violation of her due process rights and (3) delay in permanent placement. However, the record reflects that the mother's visits, strictly supervised by court order, were more problematic for the children than was their placement with their father and other relatives. With respect to permanent placement of the children, a permanency planning hearing was held within 30 days of the adjudication hearing and the court ordered permanent plans for each. These permanent plans were placed into effect at the next hearing. Respondent-mother has not appealed from either order. Thus, respondent-mother has shown no harm to the children resulting from the delay in entering the adjudication and neglect orders. Though she asserted a violation of her due process rights, respondent-mother has provided neither argument nor

authority in support of her assertion, and, therefore, we do not consider her bare assertion. *Bursell v. General Elec. Co.*, 172 N.C. App. 73, 77, 616 S.E.2d 342, 345-46 (2005).

By her third and fourth arguments, respondent-mother asserts the trial court abused its discretion in finding that she had neglected and/or abused the children since there was insufficient evidence for the trial court to make such determinations. We reject these arguments as well.

Both arguments are predicated on respondent-mother's first argument, i.e., that the trial court erred in not stating the standard of proof it utilized in arriving at its factual findings, which we have already rejected for the reasons stated earlier. Moreover, we have reviewed the evidence and conclude the record manifestly supports the trial court's findings of fact, which, in turn, support its conclusions of abuse and neglect.

Affirmed.

Judges HUNTER and McCULLOUGH concur.

Report per Rule 30(e).