NO. COA05-1565

NORTH CAROLINA COURT OF APPEALS

Filed: 20 June 2006

IN THE MATTER OF:
L.B.

Harnett County
No. 04 J 128

Appeals by respondent mother and respondent father from order entered 14 July 2005 by Judge Resson O. Faircloth in Harnett County District Court. Heard in the Court of Appeals 8 June 2006.

E. Marshall Woodall and Duncan B. McCormick, for petitioner-appellee Harnett County Department of Social Services.

Elizabeth Myrick Boone, for petitioner-appellee Guardian ad Litem.

Annick Lenoir-Peek, for respondent mother-appellant.

Susan J. Hall, for respondent father-appellant.

TYSON, Judge.

J.O. ("respondent mother") and A.B. ("respondent father") appeal from order entered ceasing reunification efforts with their minor child, L.B., and changing L.B.'s permanent plan to adoption. We affirm.

I. Background

In 1999, respondents moved to the United States illegally from Mexico. Respondents initially left L.B. in Mexico with her maternal grandmother. In 2003, L.B. was brought to the United States illegally to live with her parents and four siblings.

Respondent mother took L.B. to a hospital for injuries related to a fall on 8 July 2004. Due to significant bruising on L.B.'s face, arm, back, and legs, a "busted lip," and lack of proper child care arrangement, hospital staff contacted the Harnett County Department of Social Services ("DSS"), who filed a petition alleging neglect. During a forensic examination, L.B. stated her mother, father, and brother had caused the bruises. A medical examination revealed twenty separate injuries consistent with non-accidental trauma. L.B. was placed in foster care, where she has remained since July 2004.

L.B. was adjudicated abused and neglected on 22 October 2004. The court held a dispositional hearing on 12 November 2004. DSS scheduled visitation for respondents on Thursdays from 2:00 p.m. until 3:00 p.m.

A permanency planning hearing was held on 13 May 2005, and the court entered a permanency planning review order on 14 July 2005. The court found L.B. had adjusted well to her foster home and had made progress in school. L.B. told the social worker she had "unhappy feelings" about respondents. L.B.'s guardian *ad litem* reported respondent father's work schedule interfered with visitation. DSS's report states:

> Ms. Ocampo [regularly] comes each week for visitation. She usually brings her son A.B. with her. Due to A.B. being present she cannot give undivided attention to L.B. Usually the social worker prompts or suggests to L.B.'s mother to participate with L.B., ie "come sit by L.B.," or "L.B. come over here near Mom and talk to her about school." Most of the visit is spent with no verbal interaction between L.B. and her parent or

> parents. . . . It is interesting to note, L.B. tends to be more open to her mother who was found to be the abuser than she does to her father. L.B. tends to exhibit passive aggressive behavior [sheepish grin] when she rejects her father by not talking to him or [by] refusing to have physical contact with him.
>
> Mr. Bahena states he loves his little girl and wants her to come home to live with him; however, his actions do not appear to match his words. Since the first of the year, Mr. Bahena visited January 20, 2005. This was his first visit since November 18, 2004. His further visit was February 10, 2005. Last court session was February 11, 2005, he was present. No further visits until March 31, 2005 with L.B. [sic] He did attend the permanency planning meeting March 16, 2005 and stated at that meeting he was going to make visiting L.B. a priority. March 31, 2005 was the last visitation he attended to this writing.

The court made the following specific findings of fact: (1)"the parents had not followed through on activities set forth in the Family Services Case Plan;" (2) "DSS made parental referrals to Lee-Harnett Mental Health Center and Tri County for available mental health counseling and psychological treatment. The parents failed to seek services at these facilities;" (3) "[t]he juvenile and her parents are illegal aliens and do not qualify for Medicaid or some other assistance due to this illegal status;" (4) respondents "have failed to consistently participate in the program at the Multicultural Community Development Services ("MCDS") Family Support Center. Notwithstanding encouragement by the social worker, they have not made themselves available in a timely manner;" (5) respondents "had participated in eight hours of Assessments;" (6) "neither parent has paid any support for the

juvenile;" (7) respondents "have four other children living in their home, and all parties, social workers, guardian ad litem, and other service providers agree that these other children are well cared for;" (8) "L.B. was identified as a 'target child' by Dr. Sharon Cooper, and this factor combined with the ongoing failure of the parents to appropriately bond with the juvenile make this an area of ongoing concern for the DSS and GAL;" (9) "[t]here appears to be no relatives who will agree to take the child into their respective home;" (10) DSS "has worked with the parents since the removal of the child in July, 2004 - nearly 10 months. The parents have made no appreciable progress in improving their parental skills and responsibilities with this juvenile;" (11) "[i]t appears to the court that a continuation of efforts by DSS to extend the services currently offered to the parents would be useless;" (12) "[i]t is not anticipated that the child will be returned to the parents within the next six (6) months;" and (13) "[i]t is in the best interest of the juvenile that her custody remain with DSS for care and placement."

The court concluded "[t]he child's plan of care and placement should be changed to one of adoption." Respondents appeal.

II. Issues

Respondent mother argues the trial court erred by changing L.B.'s case plan from reunification to adoption because the findings of fact and conclusions of law are not supported by competent evidence. Respondent father argues the trial court erred when it concluded L.B.'s case plan should be changed to adoption

because the findings of fact do not support the conclusions of law. Respondent father also argues the trial court erred when it failed to reduce its order to writing within the thirty days required by statute.

Respondent father abandoned his assignments of error numbered 1, 3, 4, 6, 7, 8, 11, 12, 13, 23, and 30. Respondent mother abandoned her assignments of error numbered 1, 2, and 3. N.C. R. App. P. 28(b)(6) (2005) provides, "[a]ssignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned."

III. Standard of Review

> All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing. If the trial court's findings of fact are supported by competent evidence, they are conclusive on appeal. In a permanency planning hearing held pursuant to N.C. Gen. Stat. ch. 7B, the 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).

The trial court's "conclusions of law are reviewable *de novo* on appeal." *Starco, Inc. v. AMG Bonding and Ins. Services*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996).

IV. Permanent Plan

Respondents argue the trial court erred when it concluded L.B.'s case plan should be changed to adoption and assert the

findings of fact do not support the conclusions of law and neither are supported by competent evidence.

This Court stated in *In re Harton*, under N.C. Gen. Stat. § 7B-907, "a trial court is required to conduct a permanency planning hearing in every case where custody of a child has been removed from a parent within twelve months of the date of the original custody order." 156 N.C. App. 655, 658, 577 S.E.2d 334, 336 (2003). Also, "[s]ection 7B-907(b) requires a trial court to make written findings on all of the relevant criteria as provided in the statute." *Id.* at 660, 577 S.E.2d at 337.

N.C. Gen. Stat. § 7B-507 (2005) provides that a court may cease reunification efforts with the parents if the court finds further "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."

A. N.C. Gen. Stat. § 7b-907

N.C. Gen. Stat. § 7B-907 (2005) provides:

> (b) At any permanency planning review, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

> (1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;
>
> (2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
>
> (3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
>
> (4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
>
> (5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
>
> (6) Any other criteria the court deems necessary.

The trial court's order contains findings of fact in accordance with the six requirements of the statute.

1. Juvenile's Return Home

The trial court found DSS had worked with respondents for ten months. The trial court also found respondents "appear to be just going through the motion of participating in the reunification plan. It appears to the court that a continuation of efforts by DSS to extend the services currently offered to the parents would be useless." The trial court also found respondents failed to make

progress on the plan and concluded it was in L.B.'s best interest to change the plan to adoption.

Regarding L.B.'s possible return home, the trial court found substantial progress on the part of respondents would not be made within a reasonable time, and "[i]t is not anticipated that the child will be returned to the parents within the next six (6) months."

2. Legal Guardianship with a Relative

The trial court found "[t]here appears to be no relatives who will agree to take the child into their respective home."

3. Adoption

The trial court found that adoption should be pursued and that respondents objected to the change in the plan to adoption.

4. Current Placement

Because the trial court found that L.B. is not likely to return to respondents' home in the next six months, the trial court considered whether L.B. should remain in her current placement. N.C. Gen. Stat. § 7B-907(b)(4). The trial court found L.B. "is doing well in her present placement, is in good health, is progressing in her school endeavors and is improving in her relationships with others."

5. Reasonable Efforts and Other Relevant Criteria

The trial court found DSS "has made reasonable efforts in carrying out the plan of the court and in attempting to prevent the continued need for placement of this child in foster care; however, the failure of the parents to make appropriate progress on the plan

of reunification has precluded those efforts." The court also found DSS "has exercised reasonable efforts to make appropriate permanent plans for this child's care and placement."

The trial court considered other relevant criteria including that "the child was adjudicated abused and neglected in that the juvenile was physically injured by the respondent mother and was allowed to live in an environment injurious to her welfare and did not receive proper care, supervision and discipline from her parents."

B. N.C. Gen. Stat. § 7B-507

N.C. Gen. Stat. § 7b-507(b) (2005) provides:

> In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:
>
> (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;

If the court determines the juvenile is not to be returned home, the court must make the following written findings:

> (1) the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;
>
> (2) whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this

> section that such efforts are not required or shall cease;
>
> (3) whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;
>
> (4) the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and
>
> (5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

Id.

The trial court made findings of fact regarding all of the statutory factors found in N.C. Gen. Stat. § 7B-507(b). Based upon its findings of fact, the trial court concluded, "[p]lacement of the child with parents would be contrary to the child's welfare." The court also concluded, "[i]t is in the best interest of the juvenile for her custody to remain with [DSS] for placement as mentioned in the findings;" and "the child's plan of care and placement should be changed to one of adoption."

The trial court may "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. at 477, 581 S.E.2d at 137. Here, the trial court's findings of fact and conclusions of law were based in part upon the court reports from

the social worker and the guardian *ad litem* and direct testimonies from DSS social worker Virginia Rouse ("Ms. Rouse") and MCDS director Robert Green ("Mr. Green").

Ms. Rouse testified that respondents "have attended MCDS" but "have not fully complied with that program." Ms. Rouse also testified that DSS referred respondents to counseling "to work on their relationship and different problems. They have failed to comply with that. . . They have not gone." According to Ms. Rouse respondents have failed to pay child support.

Mr. Green testified he observed respondents with L.B. and "there was an absence of a healthy closeness and responsiveness. There was a lack of ability as far as nurturing [L.B.]." One of the cross examiners asked Mr. Green, "I believe part of the problem you've had in being able to make an adequate assessment of this has been that they haven't been real cooperative, isn't it?" Mr. Green responded, "That's correct, sir. There have been times where the family actually called and canceled the classes because they were unable to make it, and that is correct, sir."

The trial court's findings of fact "are supported by [credible] evidence," and the findings of fact support the conclusions of law. *Id.* These assignments of error are overruled.

V. Order in Writing

Respondent father argues the trial court erred when it failed to reduce its order to writing, sign, and enter it within the time prescribed by statute.

N.C. Gen. Stat. § 7B-907 mandates, "[a]ny [permanency planning order] shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing."

Regarding the late filing of termination orders, this court has held a delay of the entry of order of six months was highly "prejudicial to respondent-mother, the minors, and the foster parent." *In re L.E.B., K.T.B.*, 169 N.C. App. 375, 380, 610 S.E.2d 424, 427, *disc. rev. denied*, 359 N.C. 632, 616 S.E.2d 538 (2005).

> Respondent-mother, the minors, and the foster parent did not receive an immediate, final decision in a life altering situation for all parties. Respondent-mother could not appeal until "entry of the order." If adoption becomes the ordered permanent plan for the minors, the foster parent must wait even longer to commence the adoption proceedings. The minors are prevented from settling into a permanent family environment until the order is entered and the time for any appeals has expired.

Id. at 379, 610 S.E.2d at 426-27.

This Court has found "the need to show prejudice in order to warrant reversal is highest the fewer number of days the delay exists. And the longer the delay in entry of the order beyond the thirty day deadline, the more likely prejudice will be readily apparent." *In re C.J.B., M.J.B.*, 171 N.C. App. 132, 135, 614 S.E.2d 368, 370 (2005).

Here, the trial court heard evidence on 13 May 2005 and entered its order on 14 July 2005. In open court on 13 May 2005, the trial court changed the plan from reunification to adoption. After the hearing, DSS's attorney drafted and circulated a proposed order. Respondent mother's attorney drafted a proposed counter

order. The parties' attorneys failed to agree upon the findings of fact. On 6 July 2005, DSS's attorney moved the trial court to conduct a hearing on 8 July 2005 to resolve differences and make findings of fact. The court conducted a hearing on 8 July 2005, and the trial court signed and entered the permanency planning review order on 14 July 2005.

Respondent father failed to show how the thirty-two day delay beyond the thirty days statutory maximum prejudiced him. While "this Court does not condone the late entry of orders beyond the required statutory periods in any action," in light of respondent's failure to show any prejudice, this assignment of error is overruled. *In re K.D.L*, _ N.C. App. _, _, 627 S.E.2d 221, 224 (2006).

VI. Conclusion

The trial court's findings of fact "are supported by competent evidence," and the findings of fact support the conclusions of law. *In re Weiler*, 158 N.C. App. at 477, 581 S.E.2d at 137. Respondent father has failed to argue or show any prejudice from the trial court's failure to reduce its order to writing and file within the statutory thirty days time frame. The trial court's order is affirmed.

Affirmed.

Judges MCCULLOUGH and HUDSON concur.

Report per Rule 30(e).