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NO. COA05-503

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

IN RE: J.G., M.A., W.C. JR., and A.A.

Iredell County
Nos. 03 J 203, 205, 206, 207

Respondents appeal from order entered 24 June 2004 by Judge James Honeycutt in the District Court in Iredell County. Heard in the Court of Appeals 2 November 2005.

Keith S. Smith, for petitioner-appellee Iredell County Department of Social Services.

Holly M. Groce, for appellee Guardian ad Litem.

Jon W. Myers, for respondent-appellant mother.

Gary C. Rhodes, for respondent-appellant father.

HUDSON, Judge.

On 29 October 2003, the Iredell County Department of Social Services ("DSS") filed petitions alleging that minor children J.G., M.A., W.C., and A.A. were neglected. In January 2004, the trial court adjudicated the children as neglected and ordered that they be placed in the legal and physical custody of DSS. At a review hearing on 1 June 2004, the court changed the initial plan of reunification to guardianship of J.G. and M.A. with relatives and to termination of parental rights ("TPR") and adoption for A.A. and W.C. Respondent mother appeals as to all of the children and respondent father appeals as to his two children, W.C. and J.G.

For the reasons discussed below, we dismiss respondent father's appeal and affirm the decision of the trial court as to respondent mother.

The record shows that around 7:00 p.m. on 24 October 2003, the father of E.S., who is not the subject of this appeal, found E.S. and the four children who are the subject of this appeal home alone at respondent mother's house. He called the Statesville Police Department, who contacted DSS. A DSS social worker arrived at the home around 8:00 p.m. and when respondent mother had not returned home by 10:00 p.m., the social worker placed the children with an aunt and uncle. Respondent mother called the social worker around 4:30 a.m. and said that she had gone out to borrow money for food and that her car had broken down. The following day, respondent mother signed a safety plan with DSS agreeing to leave the children with relatives until risk could be removed from the home. DSS then filed a petition alleging the children were neglected, in that they did not receive proper care, supervision, or discipline from respondents and that they lived in an environment injurious to their welfare. DSS alleged that respondent mother had left the children home alone with minimal food, did not inquire into their whereabouts until 4:30 a.m., had neglected the children in the past, and had past positive drug screen tests.

On 20 January 2004, respondent mother and father stipulated that the children were neglected based upon the facts alleged in the petition. The trial court thus entered an adjudication and disposition order finding all of the children to be neglected as

alleged. The court ordered that respondent mother attend parenting classes, undergo a psychological evaluation, have a substance abuse assessment, and complete all treatment recommendations; it ordered respondent father to enter a family services case plan and to follow through with its objectives. The court also ordered that the plan of care be a concurrent plan of reunification with parents and guardianship with relatives.

The court conducted a review hearing on 1 June 2004 and found that respondent mother had not followed through with her family services case plan, in that she did not follow the recommendations of her assessments, had not seen her counselor, had been inconsistent in seeing her substance abuse therapist and her psychiatrist, had refused or failed to submit to drug screens, was in child support arrears, and had failed to maintain stable housing. The court also found that respondent mother's visitations with the children had been disruptive and that she did not accept responsibility for the current status of her children. Regarding respondent father, the court found that he had failed to maintain stable employment and housing, was in child support arrears, had failed to enter into a family services case plan, had failed to complete domestic violence counseling, and had failed to visit with his children. The court ordered that reunification efforts with respondent parents cease and that the plan for M.A. and J.G. was guardianship with relatives and that the plan for W.C. and A.A. was TPR and adoption.

We first note that respondent mother appeals pursuant to N.C.

Gen. Stat. § 7B-1001 (2004), which provides that any "final order" in a juvenile matter may be appealed. *Id.* It provides that a final order includes "[a]ny order of disposition after an adjudication of abuse, neglect or dependency." N.C. Gen. Stat. § 7B-1001 (3). Although this statute has recently been amended, the amended version applies only to petitions or actions filed on or after 1 October 2005. Because the petition here was filed prior to this date, we apply the statute in effect at the time of filing, and related case law.

This Court has previously held that an order changing the disposition from reunification to TPR "fits squarely within the statutory language of 7B-1001." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 136-37 (2003). *Cf.*, *In re L.D.B.* ___, N.C. App.___, ___, 626 S.E.2d 697, ____ (2006); *In re B.N.H.* 170 N.C. App. 157, 161, 611 S.E.2d 888, 890, *disc. review denied*, 359 N.C. 632, 615 S.E.2d 865 (2005) (both dismissing as interlocutory appeals brought under N.C. Gen. Stat. § 7B-1001 which were from initial permanency planning orders, did not change the plan from reunification to adoption, and repeated previous directives of the court). Here, as in *Weiler*, respondent mother appeals from a subsequent review order changing the plan from reunification to TPR for two of the children, and thus we conclude that her appeal is properly before us pursuant to N.C. Gen. Stat. § 7B-1001 (3).

Respondent mother first argues that several of the trial court's findings of fact are not supported by competent evidence. In her brief, respondent challenges twelve specific findings of

fact, but she did not assign error to eight of these. These unchallenged findings of fact are binding on appeal. *See In re Moore,* 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982). One of the four challenged findings of fact, number ten, pertains only to respondent father. Thus, we review the following three challenged findings of fact as to respondent mother:

> 5. The Respondent Mother has refused to participate in drug screens requested of her by the DSS. Further, despite having some income from employment and tax refunds, the mother has accumulated child support arrearages and has yet to pay a fee to the Carolina Child Program which prevents her from completing further work with the program.
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> 7. The mother has consistently denied responsibility for failing to complete her family services case plan, was often evasive and non-responsive to questions posted to her and otherwise did not satisfy the court that she takes any responsibility for her present status or that she is willing to take timely corrective action.
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> 8. Visitations with the Respondent Mother have been disruptive to the extent that the visit had to be terminated early. The mother admits to missing one to two visits because she was ill.

On appeal, we review orders from juvenile neglect proceedings to determine whether there is competent evidence in the record to support the findings and, in turn, whether the findings support the conclusions of law. *In re Eckard.*, 148 N.C. App. 541, 544, 559 S.E.2d 233, 235, *disc. review denied,* 356 N.C. 163, 568 S.E.2d 192 (2002). Where there is some evidence to support the trial court's findings, we are bound by such findings even if the evidence might sustain findings to the contrary. N.C. Gen. Stat. § 1A-1, Rule 52

(2003); *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 252-53 (1984). "In a nonjury trial, it is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000).

Respondent mother asserts that in making its findings the trial court improperly relied on written reports by DSS and the Guardian ad Litem ("GAL"), without taking testimony by the authors, and that thus they are not supported by competent evidence. We disagree. This Court has previously rejected the argument that "the trial court erred in basing its decision on facts in a DSS court summary and a guardian ad litem report which were not admitted into evidence during the planning review hearing." *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 389-90 (2003). As noted by the *Ivey* court, N.C. Gen. Stat. § 7B-901 states that "[t]he dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile." *Id.* at 402, 576 S.E.2d at 390. After considering this and other relevant statutes, the Court in *Ivey* concluded that the statutes "lead to but one conclusion: In juvenile proceedings, trial courts may properly consider all written reports and materials submitted in connection with said proceedings." *Id.* (citing *In re Shue*, 63 N.C. App. 76, 79, 303 S.E.2d 636, 638 (1983).

Respondent mother acknowledges that such materials may be

submitted, but argues that the trial court may not delegate its fact-finding duties. In support of this argument, she cites *In re Harton,* 156 N.C. App. 655, 577 S.E.2d 334 (2003), and *In re D.L.,* 166 N.C. App. 574, 603 S.E.2d 376 (2004). In *D.L.* the Court held that a written summary by DSS could not form the sole basis for the trial court's findings of facts. 166 N.C. App. At 582-83, 603 S.E.2d at 382. Here, unlike in *D.L.*, the Court also considered the GAL report, and more importantly, respondent mother's own testimony. In *Harton*, this Court concluded that the trial court failed to find the ultimate facts because it made a single finding of evidentiary fact and merely adopted the DSS and GAL reports as its remaining findings; the Court remanded for specific findings. 156 N.C. App. at 660, 577 S.E.2d at 337. After a careful review of the record, we conclude that although the trial court based some of the challenged findings on the written reports, it also considered respondent's testimony, and did not merely adopt the written reports as its findings, as in *Harton.* We conclude that the challenged findings are supported by competent evidence.

In her other arguments, respondent mother essentially re-argues her contention that the findings were not supported by competent evidence. She contends that because the findings are not supported by competent evidence, the court could not properly base its conclusions of law on such findings. Similarly, she argues that there was "absolutely no evidence from which the trial court could make any of the statutorily required findings of fact." Because we conclude that the findings of fact are adequately

supported by competent evidence, we overrule these assignments of error as well.

We now turn to respondent father's appeal, which we must dismiss because of numerous violations of the rules of appellate procedure. It is well-established that our rules of appellate procedure are mandatory and "failure to follow these rules will subject an appeal to dismissal." *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999). Our Supreme Court recently reiterated that it is not the role of this Court to "create an appeal for an appellant." *Viar v. N.C. DOT*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (2005). Here, respondent father failed to state the grounds for appellate review in his brief, as required by Rule 28(b)(4) (2004). As evidenced in our discussion of the grounds for review of respondent mother's appeal, this issue is of particular import in an appeal of a juvenile order. Respondent father also failed to comply with Rule 28(b)(6) (2004), which requires that each question raised in the brief be followed by "a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal." *Id.* Furthermore, respondent father failed to assign error to specific findings of fact. *See* N.C. R. App. P. 10(c)(2003). "On appeal from a judgment containing findings of fact and conclusions of law, the appellant must except and assign error separately to each finding or conclusion that he or she contends is not supported by the evidence, then state which assignments support which questions in the brief." *Concrete Serv.*

Corp. v. Investors Group, Inc., 79 N.C. App. 678, 40 S.E.2d 755 (1986) (citing rules 10 and 28). Because of these violations of the rules, we conclude that we must dismiss respondent father's appeal.

Affirmed as to respondent mother; dismissed as to respondent father.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).