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NO. COA05-786

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

IN THE MATTER OF:

A.D.P.,
Minor Child.

Robeson County
No. 04 J 212

Appeal by respondent from order entered 1 November 2004 by Judge John B. Carter, Jr. in District Court, Robeson County. Heard in the Court of Appeals 22 March 2006.

Jon W. Myers for respondent-appellant.

No brief filed by petitioner-appellee, Robeson County Department of Social Services.

McGEE, Judge.

Donyal Pearson (respondent) is the mother of A.D.P., a minor child. The Robeson County Department of Social Services (DSS) filed a juvenile petition on 6 May 2004, alleging that A.D.P. was a neglected juvenile. The trial court entered an order for nonsecure custody on 6 May 2004 and placed A.D.P. in the custody of DSS. The trial court entered orders on 23 June 2004 and 28 June 2004, continuing custody of A.D.P. with DSS. In an order filed 9 August 2004, the trial court adjudicated A.D.P. a neglected juvenile and awarded custody of A.D.P. to DSS.

The trial court held a review hearing on 15 September 2004, and in an order entered 1 November 2004, awarded custody of A.D.P. to his father. The trial court also ordered that "[DSS] and the [g]uardian ad litem [be] released from further responsibility in this proceeding." Respondent appeals.

I.

Respondent argues the trial court erred "by delegating its fact finding duty, incorporating written reports from outside sources as its findings of fact, and failing to formulate its own specific findings of fact." Respondent further argues the trial court's findings of fact do not support its conclusions of law and the conclusions of law do not support the trial court's order. We agree.

"In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2005). This statute requires a trial court to make "*specific findings* of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached." *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982). A trial court's findings of fact must be "sufficiently specific to enable an appellate court to review the decision and test the correctness of the judgment." *Id.* at 451, 290 S.E.2d at 657.

A trial court may properly consider all written reports and materials submitted in juvenile proceedings. *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003). However, a trial court may not "delegate its fact finding duty" or "broadly incorporate these written reports from outside sources as its findings of fact." *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004). Additionally, a trial court may not use incorporated reports "as a substitute for its own independent review." *In re M.R.D.C.*, 166 N.C. App. 693, 698, 603 S.E.2d 890, 893 (2004), *disc. review denied*, 359 N.C. 321, 611 S.E.2d 413 (2005).

In the present case, the trial court, in its five numbered findings of fact, incorporated five different reports and documents into its order. However, the trial court did not formulate any findings of fact based upon the information in the incorporated reports and documents or based upon any of the evidence presented at the hearing. Furthermore, the trial court's order does not contain any findings of fact pertaining to respondent or to the reasons for changing custody of A.D.P. from DSS to A.D.P.'s father.

Moreover, respondent argues, and we agree, that the trial court erred by failing to make appropriate findings of fact pursuant to N.C. Gen. Stat. § 7B-906(c). When a trial court reviews a custody order, N.C. Gen. Stat. § 7B-906(c) directs that a trial court must consider the following criteria and make written findings regarding those that are relevant:

- (1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and

need for a safe, permanent home within a reasonable period of time.

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.

(3) Goals of the foster care placement and the appropriateness of the foster care plan.

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.

(6) An appropriate visitation plan.

(7) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.

(8) When and if termination of parental rights should be considered.

(9) Any other criteria the court deems necessary.

N.C. Gen. Stat. § 7B-906(c) (2005).

The trial court's only attempt at compliance with this statute is its statement that "termination of parental rights should not be pursued[.]" Otherwise, the trial court did not make any findings of fact regarding the statutory criteria set forth in N.C.G.S. § 7B-906(c). While the trial court was not required to make findings regarding all of the statutory criteria, it appears that, at a minimum, those criteria under subsections (1), (5), and (6) may have been relevant. Because the trial court's findings of fact are

not sufficiently specific to enable meaningful appellate review, and because the trial court did not comply with N.C.G.S. § 7B-906(c), we vacate the trial court's order and remand the matter to the trial court to make the appropriate findings of fact. See *In re J.S.*, 165 N.C. App. at 513, 598 S.E.2d at 661. Because the trial court's findings of fact were insufficient, we do not address respondent's argument that respondent made reasonable progress toward correcting the conditions which led to the removal of A.D.P. from respondent's custody.

II.

Respondent also argues the trial court erred by failing to enter its order within thirty days of the hearing in violation of N.C. Gen. Stat. § 7B-906(d). While acknowledging settled precedent to the contrary, respondent argues that she does not need to prove specific prejudice to warrant a reversal on this ground.

N.C. Gen. Stat. § 7B-906(d) (2005) provides that a review order "must be reduced to writing, signed, and entered within 30 days of the completion of the hearing." Our Court has repeatedly held that a trial court's failure to adhere to filing deadlines set forth in various portions of the juvenile code is not reversible error without a showing of prejudice. See *In re J.L.K.*, 165 N.C. App. 311, 315-16, 598 S.E.2d 387, 390-91, *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314 (2004) (order for termination of parental rights); see also, *In re E.N.S.*, 164 N.C. App. 146, 153-54, 595 S.E.2d 167, 171-72, *disc. review denied*, 359 N.C. 189, 606 S.E.2d 903 (2004) (adjudication and disposition orders). In *In re L.L.*,

___ N.C. App. ___, 616 S.E.2d 392 (2005), our Court applied harmless error review to its determination of whether the untimely filing of a review order warranted reversal. *Id.* at ___, 616 S.E.2d at 397-98. We held that the nine-month delay between the review hearing and entry of the order was prejudicial "to [the child], the parents, [the department of social services], and the statutorily-mandated permanency planning process." *Id.* at ___, 616 S.E.2d at 398. Accordingly, a party must show prejudice to warrant a reversal of a review order for noncompliance with the time requirement set forth in N.C.G.S. § 7B-906(d). *See Id.* at ___, 616 S.E.2d at 397-98.

In the present case, the trial court filed its review order fifteen days late. Respondent does not argue that she was prejudiced and we find that respondent was not prejudiced by the *de minimis* delay in the filing of the order. Therefore, we overrule this assignment of error.

Respondent does not set forth any argument pertaining to her remaining assignments of error and we deem them abandoned pursuant to N.C.R. App. P. 28(b)(6).

Vacated and remanded.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).