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NO. COA05-899

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

IN THE MATTER OF:

K.H.,
L.C.,
M.H.,

Minor Children.

Harnett County
Nos. 04 J 89
04 J 90
04 J 91

Appeal by respondent from orders entered 8 October 2004, 12 November 2004, and 13 January 2005 by Judge Marcia K. Stewart in Harnett County District Court. Heard in the Court of Appeals 11 September 2006.

E. Marshall Woodall for petitioner-appellee.

Michael J. Reece for respondent-appellant.

Elizabeth Boone for guardian ad litem.

GEER, Judge.

The respondent mother of the three minor children – M.H. ("Matt"), L.C. ("Lucy"), and K.H. ("Keith") – appeals orders adjudicating Matt and Lucy as abused and all three children as neglected.¹ Respondent primarily argues that the trial court erred by finding that efforts to reunify respondent and her children would be futile and by ordering, on the same day, that the Harnett

¹The pseudonyms Matt, Lucy, and Keith will be used throughout the opinion to protect the children's privacy.

County Department of Social Services ("DSS") be released from making further reunification efforts. Based upon our review of the record, we hold that the trial court's findings of fact not assigned as error on appeal support the trial court's determination that reunification is not in the best interests of the children. Further, respondent has failed to demonstrate that the trial court abused its discretion in ordering that DSS be released from further reunification efforts. Accordingly, we affirm.

Facts

On 30 April 2004, DSS filed a juvenile petition regarding respondent's children. At that time, Matt was four months old, Lucy was one year old, and Keith was two years old. DSS alleged that Matt was an abused juvenile, stating that respondent had inflicted or allowed to be inflicted on Matt serious physical injuries, including a skull fracture, old and new subdural hematomas, and old and new rib fractures. DSS stated that it had been advised that Matt was a victim of "shaken baby syndrome." DSS additionally alleged that Lucy and Keith were neglected juveniles in that they lived in an environment injurious to their welfare, citing the injuries to Matt. A non-secure custody order was entered, and the children were removed from respondent's home.

An adjudication and disposition hearing was held on 7 October 2004. Following the hearing, on 8 October 2004, a memorandum order was entered finding that Matt and Lucy were abused juveniles and that all three children were neglected. The court awarded full custody of the children to DSS, ceased visitation with respondent,

and released DSS from further efforts to reunite the children with respondent.

A permanency planning review hearing was held on 12 November 2004, and, on the same day, a Permanency Planning Order was entered. The trial court ordered that a plan of adoption be established as the permanent plan for the children, based on its findings in the prior memorandum order and on further findings that DSS had offered appropriate services, that the court had determined that further reunification efforts were futile, and that respondent had made no further progress to improve her parental abilities and skills.

On 13 January 2005, the court entered a full adjudication and dispositional order, including specific findings of fact regarding the evidence presented at the initial adjudication hearing and concluding, consistent with the memorandum order, that Matt and Lucy were abused and that all three children were neglected. The court made further, separate findings regarding the proper disposition, including a finding that "[f]urther effort on behalf of the petitioner to reunify[] the children with [respondent] is deemed futile; a return of these children to their mother would be against their welfare." The court concluded that "[t]he plan for the children should be placement with others."

I

Respondent first argues that the evidence was not sufficient to support the trial court's findings in the memorandum order and the January 2005 order that further reunification efforts would be

futile. We review a trial court's findings of fact to determine whether they are supported by competent evidence; if so, they are binding on appeal, even if there is evidence that would support a finding to the contrary. *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). When, as in this case, a respondent has not assigned error to specific findings of fact, those findings are deemed supported by competent evidence and are conclusive on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Here, the trial court found that DSS first became involved with respondent in January 2004, because she was leaving her children – an infant and two toddlers – unattended. The trial court further made extensive findings, with respect to the period from January 2004 until the children were removed from her care on 28 April 2004, regarding (1) Matt's suffering numerous severe injuries that were caused by non-accidental trauma and were consistent with shaken baby syndrome and (2) Lucy's having an abnormal hymen strongly suggestive of penetrating hymeneal trauma that required very significant force. The court noted that the mother had no plausible explanations for the injuries to Matt and Lucy and had "failed to see or recognize any distress or problems experienced by [Matt] until he stopped breathing on April 28, 2004."

The court made numerous other findings of fact regarding (1) respondent's failure to obtain proper medical care for the children even when, as one example, Matt was unable to drink formula for a

week; (2) additional less severe injuries of Keith and Matt; (3) respondent's failure to properly care for the children with respect to car seats and clothing; and (4) respondent's failure to ensure that the children were properly supervised, including leaving the children unattended or with individuals whom she knew could be violent, who might drop Matt, or whom she did not know well.

The court found: "The mother testified she didn't know anything about any injuries to her children; she wasn't there all the time. She further stated she expected people to take care of the kids." With respect to services offered as a result of the January 2004 report of improper supervision, the court found "[t]he mother failed to take free advantage of all the services made available." Finally, the court found "[t]he court has had the opportunity to observe the mother during the trial and especially during her testimony. Her attitude is not one of cooperation with those who are trying to help her and her children."

The trial court's findings of fact amply support its determination that further reunification efforts would be futile. See *In re M.J.G.*, 168 N.C. App. 638, 649, 608 S.E.2d 813, 820 (2005) (finding reunification efforts futile where the trial court found the mother failed to utilize offered services); *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (finding reunification efforts futile where respondent had not cooperated with DSS). Accordingly, this assignment of error is overruled.

II

Respondent next argues that the trial court erred by ordering

that DSS be released from further efforts to reunite the children with her on the same day that the children were adjudicated neglected and/or abused. Under North Carolina law, there is no requirement that adjudications of neglect or abuse be made separate from orders ceasing reunification efforts.

Reunification efforts may be terminated if the court makes written findings of fact that "[s]uch 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." N.C. Gen. Stat. § 7B-507(b) (1) (2005). Respondent does not suggest that the trial court failed to make the necessary findings, but rather contends that it is "fundamentally unfair and wholly at odds with the spirit of the North Carolina Juvenile Code to cease efforts to reunify a family before the efforts can truly have begun." That argument is one better presented to the General Assembly, the policymaking body for the State.

While respondent urges that the trial court should have ordered concurrent efforts to reunify the family while simultaneously developing an alternate plan should reunification fail, we review a trial court's dispositional order for abuse of discretion. See N.C. Gen. Stat. § 7B-903 (2005) (leaving dispositional alternatives to the discretion of the trial court). Based on the trial court's findings of fact in this case – binding on appeal – and our own review of the record, the trial court's disposition does not appear manifestly unreasonable and, therefore, we are compelled to affirm the trial court's order. See *State v.*

Shoemaker, 334 N.C. 252, 261, 432 S.E.2d 314, 318 (1993) (for a trial court's decision to be an abuse of discretion, it must have been "manifestly unsupported by reason").

Affirmed.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).