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NO. COA06±01

NORTH CAROLINA COURT OF APPEALS

Filed: 21 November 2006

IN THE MATTER OF:

N.G., A.H., and K.G.,
Minor Children.

Transylvania County
No. 04 J 41, 42, 43

Appeal by mother from order entered 27 July 2005 by Judge Robert S. Cilley in Transylvania County District Court. Heard in the Court of Appeals 23 August 2006.

H. Paul Averette for petitioner-appellee.

Michael E. Casterline for respondent-appellant mother.

John M. Kirby for appellee-guardian ad litem.

ELMORE, Judge.

This appeal arises from the district court's order, entered 27 July 2005, changing respondent mother's permanent plan with respect to her children from reunification to adoption, and ordering that the Department of Social Services (DSS) begin proceedings to terminate her parental rights. After careful review, we affirm the order of the trial court.

On 3 June 2004, DSS filed petitions alleging that N.G., A.H., and K.G. (collectively, the children) were neglected, and an order for non-secure custody was entered. The minor children were ages four years, three years, and eight months, respectively, when the

petitions were filed. Respondent was married to B.H. at that time, who was the father of A.H. and K.G. N.G.'s father did not participate and was not represented in the proceedings.

The petition alleged that respondent was overheard cursing at her children, that she was heard threatening N.G. with foster care and telling him that she did not want to care for him, that A.H.'s bottles were spoiled and dirty, and that B.H. was unable to properly care for the children while respondent was hospitalized for a drug overdose. The children were placed in their maternal aunt's home per the non-secure custody order, but were removed following a 13 September 2004 hearing in which the parties stipulated to DSS allegations of neglect in that home, as well. The children were then placed in a foster home, at which the parents were allowed supervised visitation.

A review and permanency planning hearing was scheduled and held 11 July 2005. After hearing evidence, the trial judge ordered that the permanent plan for N.G. be shifted from reunification to adoption. He also ordered that the permanent plan for A.H. and K.G. be changed from reunification to adoption with respect to respondent; his order continued their plan of reunification with their father. Finally, the trial judge ordered that visitation between respondent and the children cease and that DSS begin proceedings to terminate respondent's parental rights. It is from these orders, entered 27 July 2005, that respondent now appeals.

The *Guardian ad Litem* (GAL) in this case urges the Court to hold that there is no appealable matter currently before it. The GAL notes a recent case in which this Court stated:

> The present order . . . changed the disposition from reunification with the mother to termination of parental rights. An order that changes the permanency plan in this manner is a dispositional order that fits squarely within the statutory language of section 7B-1001. Thus, the appeal is properly before us and petitioner's motion to dismiss is denied.

In re Weiler, 158 N.C. App. 473, 477, 581 S.E.2d 134, 136-37 (2003) (internal citation omitted). However, the GAL asserts that the *Weiler* decision has found little favor, directing the Court's attention to subsequent case law. The GAL is correct; this Court has criticized *In re Weiler*, stating, "We . . . limit the holding of *Weiler* to the specific facts of that case, and decline to extend its reasoning further." *In re B.N.H.*, 170 N.C. App. 157, 162, 611 S.E.2d 888, 891 (2005). Indeed, we continue to "respectfully disagree with the holding in *Weiler*, and express our concern that an expansive interpretation and application of G.S. § 7B-1001(3) may paralyze our juvenile courts' ability to function." *Id.* at 161, 611 S.E.2d at 890-91. Nevertheless, we are bound by the reasoning of *Weiler*. In *In re B.N.H.*, we noted, "In *Weiler*, the permanency planning order on appeal changed the plan from reunification to adoption. The order on appeal here is not such an order . . . ." *Id.* at 161-62, 611 S.E.2d at 891. The case currently before us is just such an order, and, as such, it is governed by the narrow confines of the *Weiler* decision.

Respondent first contends that the trial court erred by changing the permanent plan for A.H. and K.G. to termination and adoption as to her, while maintaining a plan of reunification with the father. Because respondent offers no convincing authority for the proposition that a plan cannot be changed for one parent and not the other, this contention is without merit.

It is unclear exactly what respondent is arguing. She essentially seems to rely on two basic assertions. The first of these is that the termination of her parental rights is unnecessary. On the contrary, the court listed a number of findings leading it to the conclusion that termination was necessary, including respondent's inappropriate language and conduct in front of her children, her inability to obtain stable and appropriate housing, her lack of gainful employment and dim prospects for the attainment of such, and her refusal or inability to appear for scheduled appointments.

Her second assertion is that the trial court's order will result in her children becoming "legal orphans." Her argument seems to be that the children have little chance for adoption, and so terminating her rights will not be in their best interest. She ignores the fact that the father will remain, however, thus preventing the children from becoming "legal orphans." More importantly, neither of these lines of argument flow from respondent's assignment of error. "[The] 'scope of appellate review is limited to the issues presented by assignments of error set out in the record on appeal; where the issue presented in the

appellant's brief does not correspond to a proper assignment of error, the matter is not properly considered by the appellate court.'" *Walker v. Walker*, ___ N.C. App. ___, ___, 624 S.E.2d 639, 641 (2005) (quoting *Bustle v. Rice*, 116 N.C. App. 658, 659, 449 S.E.2d 10, 11 (1994)).

In addition, respondent cites no authority for her assignment of error. Nowhere in her brief is there any authority, or even argument, for why it is illegal to change respondent's plan to termination while maintaining the father's plan as reunification. "Assignments 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." *State v. McNeill*, 360 N.C. 231, 241, 624 S.E.2d 329, 336 (2006) (quoting N.C.R. App. P. 28(b)(6) and citing *State v. Augustine*, 359 N.C. 709, 731 n.1, 616 S.E.2d 515, 531 n.1 (2005)). Accordingly, respondent's first assignment of error fails.

Respondent next argues that the trial court erred in changing the plan for N.G. to adoption and ordering that proceedings terminating her parental rights be instituted without considering whether placement with a relative was possible. Because we find that the trial court did, in fact, consider familial placement, this argument is without merit.

It is true that N.C. Gen. Stat § 7B-907(b)(2) requires that the trial court consider "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." N.C. Gen. Stat § 7B-907(b)(2) (2005). In this case, the trial court noted that the children were not adequately cared for by their maternal aunt, with whom they had originally been placed. The possibility of alternative familial placement was addressed when the children were removed from their maternal aunt's care in a previous order entered 19 October 2004 by Judge C. Randy Pool. Judge Pool listed in his findings of fact testimony that "there are no family members who can properly care for the children." "While the permanency planning order does not contain a formal listing of the § 7B-907(b) (1)-(6) factors, expressly denominated as such, among its . . . comprehensive findings of fact, we conclude the trial court nevertheless did consider and make written findings regarding the relevant § 7B-907(b) factors." *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004). The fact that the trial court made no formal mention of the possibility of a familial placement in his own findings of fact does not lead this Court to ignore judicial findings of fact made less than a year before. Because we find that alternative familial placement was considered by the trial court, respondent's assignment of error fails. Accordingly, we affirm the district court's order.

Affirmed.

Judges McGEE and BRYANT concur.

Report per Rule 30(e).