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NO. COA06-1057

NORTH CAROLINA COURT OF APPEALS

Filed: 20 February 2007

IN THE MATTER OF:

S.M.M.,
a minor child.

Hertford County
No. 05 J 14

Appeal by respondent-mother from order entered 6 June 2006 by Judge W. Rob Lewis, II, in Hertford County District Court. Heard in the Court of Appeals 22 January 2007.

Mitchell S. McLean for Hertford County Department of Social Services, petitioner-appellee.

Duncan B. McCormick for respondent-appellant.

McCULLOUGH, Judge.

Respondent-mother appeals a juvenile order entered by the trial court vesting legal and physical custody of S.M.M. with the maternal grandmother, appointing the maternal grandmother as guardian of S.M.M. and ceasing reunification efforts.

Respondent is the mother of S.M.M., who came under the care of the Hertford County Department of Social Services (hereinafter "DSS") on 10 June 2005. Respondent told DSS that she did not want S.M.M. and that she wanted to put the minor child up for adoption. DSS filed a juvenile petition alleging that S.M.M. is a dependent juvenile. A non-secure custody order was entered by the court on

13 June 2005 placing custody of S.M.M. with DSS. Subsequently, on 21 December 2005, the court filed an adjudication order and a disposition order adjudicating S.M.M. dependent and continuing custody with DSS and continuing placement of S.M.M. with the maternal grandmother. The court established the permanent plan as reunification.

The court conducted a permanency planning hearing on 16 March 2006. Respondent did not attend the hearing but was represented by counsel. On 6 June 2006, the court filed an order awarding legal and physical custody of S.M.M. to the maternal grandmother, appointing the grandmother as the minor child's guardian, and ceasing reunification efforts. Respondent, through counsel, filed notice of appeal on 6 June 2006. Respondent filed a second notice of appeal, this time signed by respondent as required by N.C. R. App. P. 3A, on 30 June 2006.

The findings of fact made by the court in its permanency planning order filed 6 June 2006 tend to show the following: S.M.M. has adjusted well to placement with the maternal grandmother, who has been his caretaker since 10 June 2005. S.M.M.'s physical and emotional needs are being adequately met by the maternal grandmother. Respondent has failed to cooperate with the efforts of DSS to reunify respondent and S.M.M. Respondent has not taken steps to improve her situation. Respondent has not obtained employment or suitable housing for herself and S.M.M. Instead of attending the permanency planning hearing, respondent elected to travel to Chicago with the father of the minor child. Instead of

finding a safe home for herself and S.M.M., respondent resides in an apartment with the minor child's father, who has regularly abused respondent and has beaten respondent to the point she had to be hospitalized. Respondent continues to reside with S.M.M.'s father despite the physical abuse. She has been evasive in informing DSS of the father's whereabouts. Respondent falsely stated to DSS that her mother is dying of cancer. On occasions when respondent has had overnight visitations with S.M.M., respondent has left S.M.M. with others so she could pursue her own endeavors rather than tend to S.M.M.'s needs. The maternal grandmother has to prompt respondent to visit S.M.M., and when respondent does have visitations, respondent does not properly care for the minor child. Respondent is a compulsive gambler and spends an inordinate amount of time and money playing bingo. Respondent has made no effort to provide any form of child support for S.M.M.

The court found that due to the failure of respondent to cooperate with DSS, her negative behavior, and her failure to remove herself from the abusive relationship with S.M.M.'s father, it is unlikely that reunification efforts would be successful. The court further found and concluded that it would be in the best interests of the child for S.M.M. to be placed in the legal custody of the maternal grandmother and for reunification efforts to cease. The court appointed the maternal grandmother as legal guardian of S.M.M.

The purpose of permanency planning is "to develop a plan to

achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-907(a) (2005). A trial court may order cessation of reunification efforts when the court finds as 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). "In a permanency planning hearing held pursuant to Chapter 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 findings of fact are binding on appeal if supported by competent evidence. *In re H.W.*, 163 N.C. App. 438, 443, 594 S.E.2d 211, 213, *disc. review denied*, 358 N.C. 543, 599 S.E.2d 46, *disc. review denied*, 358 N.C. 543, 603 S.E.2d 877 (2004). "[T]he trial court's conclusions of law are reviewable *de novo*." *In re Pope*, 144 N.C. App. 32, 40, 547 S.E.2d 153, 158, *aff'd*, 354 N.C. 359, 554 S.E.2d 644 (2001).

Respondent first contends the court erred by finding that S.M.M.'s father regularly beat respondent, that respondent exposed S.M.M. to domestic violence, and that respondent remains in a violent and physically abusive relationship with the father where the finding is not supported by competent evidence. We disagree.

The social worker in charge of the case testified that respondent and S.M.M.'s father are involved in domestic violence in

the home, that the minor child's father has "put [respondent] out" of their home, that respondent had to call the maternal grandmother in the middle of the night to come and get respondent and her children, and that court charges have been brought arising out of the domestic violence. The maternal grandmother testified that S.M.M.'s father beat the then-pregnant respondent to the point respondent was "unrecognizable in the hospital." She further testified that respondent has "been to the hospital so many times that the people know me and know who my daughter is. They fight. He beats. [Respondent is] in the hospital. They fight with the kids there." The maternal grandmother stated that when respondent and S.M.M.'s father fight, she is called to come and get respondent's three children. The maternal grandmother also testified that respondent is afraid of the father, who has tried to drown respondent. The foregoing testimony provides ample evidentiary support for the findings.

Respondent next contends the court erred by concluding as a matter of law and finding as fact that respondent did not cooperate with DSS and make reasonable efforts to improve her situation. We disagree. The social worker testified that respondent has one weekend visitation per month with S.M.M. but that the maternal grandmother has to call respondent to tell her to visit. The social worker also testified that respondent has not attempted to obtain employment, that respondent has avoided appointments arranged by DSS to help her seek employment and housing, and that respondent has continued to reside with her abusive boyfriend. The

maternal grandmother testified that she has to take S.M.M. to respondent for visitations and then pick him up afterward; that while having visitations, respondent has left S.M.M. in a house where people consume illegal drugs and alcohol; and that she has tried unsuccessfully to encourage respondent to visit S.M.M. more often. We hold this evidence supports the finding of fact and conclusion of law.

Respondent next contends the court erred by concluding that returning S.M.M. to the home would be contrary to the welfare of S.M.M., that further reunification efforts would be futile, and that the permanent plan should be changed. She argues these conclusions are not supported by adequate findings or credible evidence. We disagree.

In determining the best plan for S.M.M. at a permanency planning hearing, the court may consider the progress the parent has made in eliminating the conditions that led to the removal of S.M.M. from the home and any other changes that may have occurred since the removal of S.M.M.. *In re T.K.*, 171 N.C. App. 35, 39, 613 S.E.2d 739, 741 (2005), *aff'd per curiam*, 360 N.C. 163, 622 S.E.2d 494 (2005). Here, the findings show that S.M.M. came into the custody of DSS when respondent abandoned the minor child and asked that he be placed for adoption. Less than one year later, respondent chose not to appear at a permanency planning hearing to determine the permanent plan for S.M.M. The findings further reflect that during visitations, respondent continues to abandon S.M.M. by leaving him with others. Respondent continues to reside

in a residence and maintain a relationship where she is subjected to domestic violence. A residence where domestic violence is perpetrated is certainly not a safe place for a child. We hold these findings support the conclusion that reunification would be contrary to the best interests and welfare of S.M.M.

Respondent lastly contends the court erred by ceasing reunification efforts, awarding legal and physical custody to the grandmother, and appointing the grandmother as guardian. She argues these rulings are not supported by adequate conclusions of law, adequate findings of fact, or credible evidence.

The General Assembly has decreed that the Juvenile Code is to be "interpreted and construed" to ensure "that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time." N.C. Gen. Stat. § 7B-100(5) (2005). The courts are directed to take action "which is in the best interests of the juvenile" when "the interests of the juvenile and those of the juvenile's parents or other persons are in conflict." N.C. Gen. Stat. § 7B-1100(3) (2005). On appeal we review a trial court's decision of what is in the "best interests" of a juvenile for an abuse of discretion. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). "A judge is subject to reversal for abuse of discretion only upon a showing by a litigant that the challenged actions are manifestly unsupported by reason." *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980).

We find no abuse of discretion. The court's order demonstrates that it made a reasoned decision based upon competent evidence. The order reflects that the maternal grandmother is providing S.M.M. with a safe home in which he is flourishing. The maternal grandmother is willing to assume custody of S.M.M. and to provide him with a permanent home.

The court's order is

Affirmed.

Chief Judge MARTIN and Judge LEVINSON concur.

Report per Rule 30(e).