

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-130

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

IN THE MATTER OF:

A.M.Z.

Johnston County
No. 04 J 163

Appeal by respondent from order entered 19 September 2005 by Judge Addie Rawls in Johnston County District Court. Heard in the Court of Appeals 18 September 2006.

Holland & O'Connor, by Jennifer S. O'Connor, for petitioner-appellee Johnston County Department of Social Services.

Elizabeth Myrick Boone, for Guardian ad Litem.

Winifred H. Dillon, for respondent-mother-appellant.

JACKSON, Judge.

A.M.Z. is the child of Mary Alice T. ("Respondent") and Liborio I. who have never married. Johnston County Department of Social Services ("JCDSS") became involved with respondent and A.M.Z. on 10 September 2004 and substantiated neglect on the part of respondent.

Respondent mother has a lengthy history of involvement with social services, as she has been involved in at least nine investigations with at least six substantiations by departments of

social services in multiple counties. In February of 2004, JCDSS was involved in an investigation with respondent when she fled to another county and used an alias to avoid JCDSS and law enforcement due to outstanding warrants. At the time, respondent had ten children who did not receive remedial care and were not in school. It was during this time that five of respondent's children and a grandchild living with her died in a house fire while in her custody. The remaining five children were injured seriously and, after extensive treatment, continue to suffer illness from smoke inhalation as well as other psychological and physical disabilities. The surviving children were taken into foster care by Onslow County Department of Social Services ("OCDSS") where they have remained since September of 2004.¹ Initially, the five children were placed into custody due to respondent's incarceration. However, an ongoing investigation by OCDSS revealed that her daughters were being sexually abused by their brothers and by their mother's male friend, later identified by the daughters as Liborio I.

While her five older children were in foster care through OCDSS, respondent returned to Johnston County and continued her relationship with Liborio I. She became pregnant with A.M.Z. but did not notify any of her social workers about the pregnancy. At the time of A.M.Z.'s birth, respondent had not completed her case plan with OCDSS and had an ongoing case with OCDSS. OCDSS allowed

¹Respondent's five children who are in foster care through OCDSS are not a part of the instant appeal.

only supervised visits between respondent and her sons, and did not allow any visitation between respondent and her daughters. Based upon this history, JCDSS assumed custody of baby A.M.Z. due to a substantial risk of injury or abuse.

In an order filed 22 December 2004, the trial court adjudicated A.M.Z. neglected and dependent. Respondent was not present, but consented to the adjudication through her attorney. JCDSS established a case plan with respondent in which she agreed to complete Family Pride parenting classes, complete OCDSS's home study, complete a psychological evaluation and follow all recommendations, complete counseling through Harbor domestic violence groups, attend visitations with her children as allowed, attend all mental health appointments and take prescribed medications, attend family therapy as recommended by OCDSS, and maintain employment and stable housing. A permanency planning order was entered on 23 February 2005 which continued custody of A.M.Z. with JCDSS and continued reunification efforts with both parents. On 27 April 2005, a permanency planning review order was entered which continued custody of A.M.Z. with JCDSS and continued reunification efforts only with respondent.

A permanency planning review hearing was held on 8 August 2005, at which respondent appeared, but Liborio I. did not. After considering testimony from social workers from JCDSS and OCDSS, as well as counselors for respondent, the court found that respondent: had been terminated from the Family Pride Parenting program without completing the program due to lack of attendance even though she

had been involved with it for more than twelve months; stopped attending mental health therapy even though her counselor recommended continued therapy; did not address stress management as recommended by her psychological evaluation; had not consistently maintained employment; had not made any progress on her case with OCDSS for her five older children in the last eighteen months; and that even after domestic violence classes, she resumed her relationship with Liborio I., who had been involved in domestic violence disputes with her.

The court also found that respondent, while aware that Liborio I. had been identified by her daughters as being the perpetrator of sexual abuse against them, resumed her relationship with him and was in fact living with him at the time of the hearing. The court found that respondent lied to her case workers about resuming this relationship and only after she was confronted by the workers did she admit they had been living together for one to two months. The court found that respondent refused to move to Onslow County where her other five children were located despite efforts by OCDSS and JCDSS to assist her in reunification with those children, and that respondent requested that OCDSS keep her five children in foster care for another year so that OCDSS could work with Liborio I. and respondent could continue her relationship with him. The court found that respondent was aware that A.M.Z.'s father, Liborio I., had not addressed any of the issues that led to the removal of A.M.Z. including parenting and domestic violence issues. The court also specifically found that respondent's continued relationship

with Liborio I. was a risk to all of her minor children and that respondent had a overall lack of understanding of the significant needs of the minor children.

After the hearing on 8 August 2005, the trial court entered an order permitting JCDSS to cease reunification efforts with respondent and change the permanent plan for A.M.Z. to adoption. From this order respondent appeals.

We begin by noting that respondent has included twenty-eight assignments of error in the record on appeal, however she has presented arguments as to only three of them in her brief. Therefore, those assignments of error for which no argument has been presented are deemed abandoned. N.C. R. App. P. 28(b)(6) (2006).

Respondent first contends a portion of the trial court's finding of fact number three is not supported by sufficient evidence. Specifically, respondent challenges the finding that "The Onslow County DSS has substantiated [Liborio I.] as sexually abusing [respondent's] older daughter. [Liborio I.] has failed to addressed [sic] any sex offender issues as well."

Rule 10 of our appellate rules of procedure provides that "the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10." N.C. R. App. P. 10(a) (2006). In addition, following each question presented by an appellant in their brief, they must reference the specific assignment of error which pertains to the question presented and subsequent argument. N.C. R. App. P.

28(b)(6) (2006). "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." *Id.*

Respondent's assignment of error number five, to which this portion of respondent's appeal is noted to pertain to, states "With respect to paragraph 3 of the court's 'Findings', those findings contained therein which are findings of fact and which relate to Respondent mother, are not supported by competent evidence." Thus, by virtue of her assignment of error number three, respondent challenged only those findings contained in finding of fact three which relate to her. Her assignment of error does not in any way also challenge the findings which are found in paragraph three of the trial court's order which pertain to Liborio I. Therefore, the findings of fact which respondent failed to challenge in her assignment of error are deemed to be supported by competent evidence and are binding on appeal. *In re L.A.B.*, __ N.C. App. __, __, 631 S.E.2d 61, 64 (2006) (quoting *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

Accordingly, as respondent has presented an argument which was not properly preserved and is outside the scope of her assignment of error, we dismiss this assignment of error. We also note that respondent has failed to present any argument in her brief challenging the specific findings of fact which relate to her, thus all of those findings are deemed binding on appeal. See N.C. R. App. P. 28(b)(6) (2006).

Respondent next contends the trial court's conclusions of law that "[i]t is not in the juvenile[']s best interest to return to the custody of either parent" and "[t]he best plan to achieve a safe, permanent home within a reasonable period of time is: adoption[,] " are not supported by the evidence or the court's findings of fact.

On appeal,

All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing. If the trial court's findings of fact are supported by competent evidence, they are conclusive on appeal. 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) (internal citations omitted). However, we review a trial court's conclusions of law *de novo*. *In re D.H.*, __ N.C. App. __, __, 629 S.E.2d 920, 922 (2006) (quoting *Starco, Inc. v. AMG Bonding and Ins. Services*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996)). Respondent assigned error to the trial court's findings found only in paragraphs three through ten, twelve, fourteen, and nineteen of the permanency planning review order, however she failed to present arguments in her brief in support of those assignments of error. Thus they are deemed abandoned, and are binding on appeal. N.C. R. App. P. 28(b)(6) (2006). Also, respondent failed to assign error to the trial court's remaining five findings of fact, therefore

these findings are deemed conclusive and also are binding on appeal. See *In re L.A.B.*, __ N.C. App. at __, 631 S.E.2d at 64; N.C. R. App. P. 28(b)(6) (2006).

"The purpose of the permanency planning hearing shall be 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 that reunification efforts with a child's parents cease 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 the instant case, DSS repeatedly attempted to work with respondent, however their efforts were hampered by respondent's continued noncompliance and lack of participation in meeting the goals of her family services case plan. Respondent was terminated from the Family Pride Parenting program due to her lack of attendance over a course of twelve months, and she unilaterally decided to stop attending her recommended mental health therapy. In addition to failing to maintain consistent employment, respondent also continued to maintain a relationship with Liborio I., A.M.Z.'s father. Not only did respondent and Liborio I. have a history of domestic violence, but sexual abuse allegations against Liborio I. by one of respondent's older daughters had been substantiated. The court specifically found that respondent "has placed her relationship with [Liborio I.] over that of her minor

children which places this child at risk of harm." The court also found

that due to the mother's inability to address the issues, which led, not only to this juvenile's removal, but her older five children's removal by the Onslow County DSS, who has been working with the mother for the last eighteen months, this minor child would be placed at risk of harm if returned to the mother's care immediately or within the next six months.

Therefore, based upon the trial court's findings of fact, which are deemed conclusive on appeal, we hold the trial court did not err in concluding that it is not in the best interest of A.M.Z. that she be returned to respondent's custody at the present time. We also hold the trial court did not err in ordering that reunification efforts with respondent cease and that the permanent plan for A.M.Z. be changed to that of adoption. The findings of fact support the trial court's conclusions of law, and thus respondent's assignment of error is overruled.

Affirmed.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).