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NO. COA06-1432

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN THE MATTER OF:

A.C.,  
A Minor Child.

Chatham County  
No. 06 JA 18

Appeal by respondent-mother from order entered 17 August 2006 by Judge M. Patricia DeVine in Chatham County District Court. Heard in the Court of Appeals 9 April 2007.

*No brief for petitioner-appellee Chatham County Department of Social Services.*

*Rebekah W. Davis for respondent-appellant mother.*

BRYANT, Judge.

On 27 March 2006, the Chatham County Department of Social Services (DSS) filed a petition alleging that A.C. was a neglected juvenile because he was living in an environment injurious to his welfare and did not receive proper care, supervision or discipline from respondent-mother. DSS claimed that respondent-mother was an alcoholic and used drugs. DSS further alleged that respondent-mother and A.C. had a volatile relationship and she kicked A.C. out of the home each time he disclosed her drug, alcohol or domestic violence issues. When the petition was filed, A.C. had been living with a friend's family (hereinafter referred to with the pseudonym "the Smiths") for approximately two weeks and the family did not

know how to contact respondent-mother. The district court entered a nonsecure custody order and DSS took custody of A.C. On 10 July 2006, *nunc pro tunc* 11 May 2006, the district court adjudicated A.C. a neglected juvenile.

On 13 July 2006, the trial court held a custody review hearing pursuant to N.C. Gen. Stat. § 7B-906. A.C.'s father appeared at the hearing. Prior to the filing of the petition, A.C. and his father had no contact for many years. The father drove from Florida, his place of residence, to appear at the hearing. He stated that he wanted to assume custody of A.C., but respected the fact that he and A.C. needed to develop a relationship first. The court noted that the father was "willing to move slowly and allow [A.C.] to remain in North Carolina indefinitely." The court continued custody with DSS but placed A.C. with the Smiths.

On 27 July 2006, the trial court held another custody review hearing. The court found as fact that A.C. was living with the Smiths and that the placement was meeting his needs. However, rather than continue custody with DSS, the trial court granted temporary legal custody to A.C.'s father. Additionally, the court ordered, with the consent of A.C.'s father, that A.C. should continue to live with the Smiths. The court granted the Smiths authority to register A.C. in school, gave them access to his medical records, and gave them the power to make decisions regarding school-related issues and medical needs. Also, in its conclusions of law, although the court had placed A.C. with the Smiths and granted custody to his father, the court stated that

"placement and care" of A.C. was the "responsibility" of DSS, and that DSS should provide and arrange for foster care and placement for A.C. Respondent-mother appeals.

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On appeal, respondent-mother argues that the court erred by granting the father temporary legal custody, placing A.C. with the Smiths, and giving placement responsibility to DSS. Respondent-mother contends that this was not a disposition authorized by N.C. Gen. Stat. § 7B-903. Respondent-mother asserts that "[i]t is impossible for three different entities to have custody" of A.C. Furthermore, respondent-mother contends that the order is unclear as to who has physical custody of A.C.

After careful review of the record, we reverse and remand. The district court's order was entered pursuant to N.C. Gen. Stat. § 7B-906. N.C. Gen. Stat. § 7B-906(a) provides that a court has a duty to conduct periodic review hearings in any case where custody is removed from a parent, guardian, custodian, or caretaker. N.C. Gen. Stat. § 7B-906(d) further provides that:

The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. . . .

N.C. Gen. Stat. § 7B-906(d) (2005). "N.C. Gen. Stat. § 7B-903

specifies the alternatives [that] shall be available to any court exercising jurisdiction and provides that the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile . . . ." *In re H.S.F.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 628 S.E.2d 416, 421 (2006) (internal quotations omitted). The dispositional alternatives provided by N.C. Gen. Stat. § 7B-903 are limited to the following:

(1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:

a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence[.] . . . If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a

hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home. . . .

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile . . . .

N.C. Gen. Stat. § 7B-903(a) (2005).

Here, the district court granted A.C.'s father "temporary legal custody," but placed A.C. with the Smiths with the father's "consent." This disposition is similar to a disposition that this Court found to be unauthorized in *H.S.F.*, \_\_\_ N.C. App. at \_\_\_, 628 S.E.2d at 421-23. In *H.S.F.*, the district court's disposition gave the respondent-mother primary physical custody of the juvenile, but provided that physical placement of the juvenile was to be with the maternal grandfather. *Id.* at \_\_\_, 628 S.E.2d at 421-22. This Court reversed the trial court's order, concluding that:

[t]his is not a disposition permitted by N.C. Gen. Stat. § 7B-903. Nothing in that statute permits a court to grant physical custody to a parent, but order "physical placement" to be with another person. *Except when custody has been granted to DSS, the statute anticipates that any person with whom the child is "placed" shall be given custody.*

*Id.* at \_\_\_, 628 S.E.2d at 422 (emphasis added). Similarly, here, the trial court placed A.C. in one household, with the Smiths, but granted custody to another, A.C.'s father. Furthermore, although A.C.'s father was granted legal custody, the Smiths were given authority to make decisions regarding A.C.'s health and education. See *Diehl v. Diehl*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 630 S.E.2d 25, 27 (2006)

("[O]ur case law employs the term 'legal custody' to refer generally to the right and responsibility to make decisions with important and long-term implications for a child's best interest and welfare."). It is entirely unclear what power remained with DSS, despite the district court's statement that DSS had responsibility for his placement and care. Therefore, as in *H.S.F.*, we likewise conclude that the disposition ordered by the district court is not a disposition authorized by statute.

Because we find this issue dispositive of this case on appeal, we need not consider respondent-mother's remaining arguments. Accordingly, we reverse and remand for a disposition authorized by statute.

Reversed and remanded.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).