NO. COA06-213

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

IN RE:
A.D.W. and B.R.W.,
Minor Children.

Randolph County
No. 04 J 206
93 J 123

Respondent appeals from order entered 4 October 2005 by Judge Lee W. Gavin in the District Court in Randolph County. Heard in the Court of Appeals 20 September 2006.

David A. Perez, for petitioner-appellee Randolph County Department of Social Services.

Womble, Carlyle, Sandridge & Rice, PLLC, by Alison Y. Ashe-Card, for petitioner-appellee Guardian ad Litem.

Richard Croutharmel, for respondent-appellant.

HUDSON, Judge.

In October 2004, the Randolph County Department of Social Services ("DSS") filed a petition alleging neglect and dependency of minor children A.D.W. and B.R.W by their mother, respondent. In a March 2005 order, the trial court found both children to be dependent and ordered legal custody with DSS and physical placement with the children's paternal grandmother. The court held a permanency planning hearing on 15 September 2005 and on 4

October 2005 ordered that the paternal grandmother have permanent guardianship of the children, that this be the permanent plan, and that future hearings be waived. Respondent mother appeals. For the reasons discussed below, we dismiss in part and affirm in part.

The record reveals that in 1993, DSS filed a petition alleging neglect, in that respondent refused to allow B.R.W. to receive a rabies vaccination after being bitten by a potentially rabid dog. DSS dismissed the petition after B.R.W.'s parents allowed the vaccination. In 1995, the Guilford County DSS filed a petition alleging neglect of B.R.W. and A.D.W., substantiated neglect due to respondent's drug abuse, and removed the children from the home but eventually returned them to respondent's care. In 2004, DSS received a referral alleging neglect of B.R.W. and A.D.W., based on respondent's drug abuse and the children's failure to attend school. The court adjudicated the children dependent and they were placed in the physical care of their paternal grandmother, Elva Overcash. Respondent tested positive for cocaine in January and February 2005, tested negative on five occasions in February, March and April 2005, and refused to submit to a drug screen in May 2005. During the four years before the neglect referral, B.R.W. had not attended public school and A.D.W. had only a year of formal public education;

although respondent intended to home school the children, she did not do so on any sustained basis. In the six weeks before the investigation, the children reported that they had slept in approximately six to ten different locations, sometimes being left in the care of adults they did not know. While the children were in DSS custody and placed with Ms. Overcash, respondent visited with the children. In June 2005, respondent ended a visit early and advised DSS that she did not desire further visitation. However, in August 2005, respondent contacted DSS and requested that visitation be reestablished. At the time of the permanency planning hearing in September 2005, visitation had not been reestablished.

Respondent first argues that the trial court erred in failing to make adequate findings regarding her right to visitation and in failing to order visitation with the children. We dismiss these arguments as moot.

At the 15 September 2005 permanency planning hearing, the trial court did not order visitation, but advised respondent to contact DSS. On 27 September 2005, respondent filed motions for review in regard to each juvenile, requesting that the court re-examine the issue of visitation. When the trial court reduced its permanency planning order to writing on 4 October 2005, it did not address these motions. Respondent contends that the

trial court violated its duty to address visitation and improperly delegated its authority to DSS. *In re E.C.*, 174 N.C. App. 517, 522, 621 S.E.2d 647, 651 (2005). However, on 13 October 2005, the trial court held a hearing pursuant to respondent's motions for review and ordered visitation; the court entered its order on 16 November 2005. The record on appeal, settled on 9 February 2006, does not include the 16 November 2005 order. On 20 April 2006, appellee DSS filed a motion to supplement the record on appeal, which this Court denied. On 17 May 2006, appellee DSS filed a motion to take judicial notice and to strike arguments as moot and provided a certified copy of the trial court's 16 November 2005 order. This Court may take judicial notice of such orders. *In re Stratton*, 159 N.C. App. 461, 463, 583 S.E.2d 323, 324 (2003).

> [O]ur Supreme Court has held [that] consideration of matters outside the record is especially appropriate where it would disclose that the question presented has become moot, or academic. A case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. Further, whenever, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law.

Id. (internal citations and quotation marks omitted). In her brief, respondent requests that this Court remand to the trial court for entry of a visitation order. However, as the court ordered visitation in its 16 November 2005 order, we conclude that "the relief sought has been granted," and we dismiss the issue as moot.

Respondent also contends that the trial court erred in ordering that the matter be closed and future review hearings waived. We disagree. N.C. Gen. Stat. § 7B-906(b)(2005) allows the court to waive the holding of periodic review hearings if it finds that "[t]he juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year." *Id.* Although N.C. Gen. Stat. § 7B-906(b) requires additional findings before the court may waive review hearings, respondent has not argued any of these in her brief and thus we limit our discussion accordingly. Respondent does not dispute the court's finding that the children had been in the care of Ms. Overcash since at least 8 October 2004, but contends that the children had not "resided with a relative . . . for a period of at least one year," when the hearing was held on 15 September 2005. However, the court did not enter this order until 4 October 2005 and specifically ordered that

> unless any party files a Motion herein on or before October 8, 2005, this matter shall be closed and there shall be no further hearings in this matter. On October 8, 2005, if the Court hears no further Motions, all parties and their respective Counsel shall be released.

Thus, the Court did not waive the hearings until an effective date of 8 October 2005, and, as discussed above, the court held a further review hearing on 13 October 2005. We overrule this assignment of error.

Finally, respondent argues that the trial court's finding of fact number 12 is unsupported by the evidence. We disagree. N.C. Gen. Stat. § 7B-600(c)(2005) states that:

> If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile.

Id. N.C. Gen. Stat. §§ 7B-906(g) and 7B-907(f) also require the court to make such verification if it places a juvenile "in the custody of an individual other than the parents or appoints an individual guardian of the person." *Id.* Here, the court made the following finding:

> 12. The Court has verified that Ms. Overcash understands the legal significance of the appointment of guardianship and has adequate resources to care appropriately for the minor child. (sic) Ms. Overcash has been

> maintaining the children in her household for almost one full year.

N.C. Gen. Stat. § 7B-600(c) does not require that the court make any specific findings in order to make the required verification. Thus, any finding the trial court makes regarding verification is conclusive on appeal if supported by competent evidence. *See In re Eckard*, 144 N.C. App. 187, 197, 547 S.E.2d 835, 842 (2001). Here, the record contains evidence that the children were doing well in school and in their placement, that Ms. Overcash was involved in their counseling and set appropriate boundaries for them, that the children wished to remain with their grandmother, and that DSS and the children's therapist recommended that the court award guardianship to Ms. Overcash. At the hearing, respondent's attorney elicited testimony from B.R.W. that there were seven people living in the three bedroom home and that he and his sister slept on couches in the living room. Although it may be ideal for the children to have their own beds, or even their own rooms, these conveniences are not necessary to establish that Ms. Overcash was capable of adequately providing for the children or that she understood the legal significance of being appointed guardian of the children. We overrule this assignment of error.

Dismissed in part, affirmed in part.

Judges HUNTER and CALABRIA concur.

Report per Rule 30(e).