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NO. COA06-449

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

IN THE MATTER OF: Chatham County
R.B. No. 01 J 124

Appeal by respondent mother from order entered 24 September 2005 by Judge M. Patricia DeVine in Chatham County District Court. Heard in the Court of Appeals 18 October 2006.

Northen Blue, LLP, by Carol J. Holcomb and Samantha H. Cabe, for petitioner-appellee Orange County Department of Social Services.

Poyner & Spruill, LLP, by Bryn D. Wilson, for petitioner-appellee Guardian ad Litem.

Leslie C. Rawls, for respondent-appellant.

TYSON, Judge.

B.B. ("respondent") appeals from order entered ceasing reunification efforts with her minor child, R.B., and changing R.B.'s permanent plan to termination of parental rights and adoption. We dismiss respondent's appeal.

I. Background

Respondent gave birth to R.B. in August 1992. In 1998, respondent and R.B. relocated from Oklahoma to Hillsborough, North Carolina to care for respondent's terminally ill mother.

On 20 March 2001, R.B. was admitted to UNC Hospital's Child Psychiatric Unit for dangerous behavior. Pediatric psychiatrists

at UNC Hospital diagnosed R.B. with symptoms of ADHD, mental retardation, primordial dwarfism, developmental delays, and a language disorder. R.B. was discharged from UNC Hospital on 6 April 2001.

On 7 June 2001, R.B. was readmitted to the UNC Hospital's Child Psychiatric Unit. Hospital staff referred R.B. to the Orange County Department of Social Services. In July 2001, UNC Hospital discharged R.B. into respondent's care.

In August 2001, respondent and R.B. relocated to Chatham County. While in Chatham County, R.B. threatened to stab his school's principal with a pencil. On 1 November 2001, a delinquency petition was filed against R.B. because he had set fire to the home where respondent and he lived, which was owned by respondent's brother. Three people were present in the residence at the time of the fire.

On 15 November 2001, the trial court conducted a hearing on R.B.'s delinquency petition. The trial court placed R.B. in the non-secure custody of Chatham County Department of Social Services ("DSS"). The trial court ordered a medical evaluation for R.B.

On 10 January 2002, the trial court conducted a hearing and found R.B. needed one-on-one supervision. The trial court found respondent was unable to provide this level of care. The trial court ordered R.B. to remain in the custody of DSS. R.B. has been residing in a residential treatment center since January 2002.

On 24 January 2002, the trial court conducted a hearing and found R.B. attended a self-contained classroom and was doing

extremely well. At the hearing, respondent indicated her desire to return to Oklahoma. The trial court ordered R.B. should remain in DSS custody.

On 11 April 2002, the trial court conducted a review hearing and found that it would be contrary to R.B.'s best interest for him to return home with respondent. The trial court ordered that R.B.'s custody remain with DSS.

On 13 June 2002, the trial court conducted a review hearing and found R.B. had "done very well in school and will move to the 4th grade next fall." The trial court found respondent visited R.B. on Saturdays, but "frequently did not stay the allotted time." Respondent had not followed through on counseling for her parenting skills or mental health. The trial court found respondent was "not responding appropriately, and whether or not reunification efforts continue [should] be evaluated. . . ." The trial court ordered R.B. to remain in DSS's custody.

On 14 November 2002, the trial court conducted a review hearing and found respondent had become more reliable. The trial court allowed respondent to spend Thanksgiving with R.B. The trial court ordered R.B. to remain in DSS's custody.

On 13 February 2003, the trial court conducted a review hearing and found respondent had not followed through with her recommended therapy. Respondent had not cooperated with other DSS professionals in a consistent manner since the last court review. The trial court found, "[s]he has consistently missed appointments, and not followed the visitation rules[.]" The trial court ordered

R.B. to remain in DSS's custody. The trial court also ordered DSS was "relieved of reunification efforts with the juvenile's parents."

On 20 March 2003, respondent relocated to Oklahoma to reside with her stepmother and stepfather. She did not tell R.B. that she was leaving North Carolina. On 8 May 2003, the trial court conducted a hearing and found R.B. was "doing very well in his current setting, and his school work [was] satisfactory." The trial court found respondent had moved back to Oklahoma and did not tell R.B. of her relocation. Respondent failed to respond to service providers. The trial court found that further attempts for DSS to work with respondent were futile and not in R.B.'s best interest. The trial court ordered R.B. to remain in DSS's custody. The trial court also ordered adoption as the permanent plan for R.B. and a petition to be filed to terminate respondent's parental rights.

Between March and June 2003, respondent met Kevin Blocker ("Blocker") on the internet and respondent relocated to Illinois to live with him. In June 2003, respondent made arrangements to travel to North Carolina for a "final visit" with R.B. On 19 June 2003, respondent, Blocker, and Blocker's son arrived in North Carolina. Respondent visited R.B. and told him she would never return to North Carolina.

On 11 September 2003, the trial court conducted a hearing and found respondent had come "for a closing visit, and brought another child with her." The trial court found, "[respondent] told [R.B.]

she would see him when he was eighteen[.]” The trial court also found DSS had filed a petition to terminate respondent’s parental rights and was attempting to serve respondent at her address in Oklahoma. The trial court ordered R.B. to remain in DSS’s custody.

On 11 March 2004, the trial court conducted a hearing and found DSS had made reasonable efforts to work toward the permanent plan of adoption. The permanent plan continued to be adoption. In September 2004, respondent returned to North Carolina for a court date on an unrelated matter and arranged for R.B. to stay with her and Blocker overnight at a hotel. On 30 November 2004, the trial court conducted a hearing and ordered that the permanent plan for R.B. be adoption, concurrent with the possibility of reunification with respondent.

On 22 September 2005, the trial court entered a custody order after a permanency planning review. The trial court found: (1) the “best plan of care for the juvenile to achieve a safe, permanent home is adoption, and that plan can be achieved within a reasonable period of time” and (2) “[a] proceeding to terminate the parental rights of Respondent Father and Respondent Mother is necessary to achieve the permanent plan of adoption.” The trial court entered an order concluding R.B.’s best interest required DSS’s custody to continue. Respondent appeals.

II. Issues

Respondent assigned six errors on appeal in the record. Respondent’s brief asserts two of these assignments as follows: (1) the trial court erred when it ordered respondent should only

have supervised contact with her minor child and (2) the trial court erred when it relieved DSS of reunification efforts and changed the permanent plan to termination of parental rights and adoption. Respondent neither argues nor cites any authority for the other four assignments of error. These assignments of error are deemed abandoned. N.C.R. App. P. 28(a) (2006).

III. Standard of Review

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) (citation omitted). "The trial court's 'conclusions of law are reviewable *de novo* on appeal.'" *In re D.M.M.*, ___ N.C. App. ___, ___, 633 S.E.2d 715, 716 (2006) (quoting *Starco, Inc. v. AMG Bonding and Ins. Servs.*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996)).

IV. Constitutional Error not Preserved

Respondent's sole argument in her brief asserts the trial court violated her due process rights in determining R.B.'s best interest required cessation of reunification efforts with her. Respondent failed to raise this issue at the permanency planning review hearing.

A constitutional issue not raised before the trial court will generally not be considered for the first time on appeal. *State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982) (“[A] constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal.”); see *State v. Benson*, 323 N.C. 318, 322, 372 S.E.2d 517, 519 (1988) (“Defendant may not swap horses after trial in order to obtain a thoroughbred upon appeal.”). Respondent’s due process argument and her sole argument on appeal is not properly before us.

V. Failure to Assign Error

Respondent also failed to properly assign error to this argument on appeal. “[T]he 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). Respondent failed to assign any error to her due process argument. Alternatively on this basis, her sole argument is not properly before us.

Respondent also failed to assign error to any of the trial court’s findings of fact. When the trial court’s findings of fact are not excepted to on appeal, they are not reviewable. *Brown v. Board of Education*, 269 N.C. 667, 670, 153 S.E.2d 335, 338 (1967); see *Dealers Specialities, Inc. v. Neighborhood Housing Services, Inc.*, 305 N.C. 633, 635-36, 291 S.E.2d 137, 139 (1982) (when appellant has failed to take a valid exception to the findings of fact, the court’s findings of fact are presumed to be supported by competent evidence, and are binding on appeal).

Substantial evidence in the record supports the trial court's findings of fact. The trial court's findings of fact are binding on respondent's appeal. The findings of fact properly support the trial court's conclusions of law and its order that: (1) respondent shall not be permitted to have contact with R.B., except under the supervision and guidelines set out by the residential treatment center and DSS and (2) DSS is relieved of reunification efforts.

VI. Conclusion

Respondent failed to argue any of her assignments of error on appeal. Respondent also failed to argue constitutional due process violations at the trial court, and cannot argue them for the first time on appeal. Respondent also failed to properly assign any error to due process violations on appeal. Respondent's sole argument is not properly before us. Respondent's appeal is dismissed.

Dismissed.

Judges BRYANT and LEVINSON concur.

Report per Rule 30(e).