NO. COA06-600

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

IN RE: M.M., AN.E., AD.E

Harnett County
Nos. 02 J 194
04 J 46
04 J 47

Appeal by respondent-parents from judgment entered 15 September 2005 by Judge Albert A. Corbett in Harnett County District Court. Heard in the Court of Appeals 6 December 2006.

Marshall Woodall and Duncan B. McCormick, for petitioner-appellee.

Elizabeth Boone, for Guardian ad Litem.

Richard Croutharmel, for respondent-appellant-mother.

Michael Reece, for respondent-appellant-father.

ELMORE, Judge.

Mary Eakes (respondent-mother) and Sean Murray (respondent-father) (together, respondents) appeal a 15 September 2005 permanency planning order directing Harnett County Department of Social Services (petitioner) to cease reunification efforts between respondents and three juveniles, Ad.E, M.M., and An.E. In addition, the trial court ordered that the permanent plan for M.M. and An.E. be adoption. Mary Eakes is the natural mother of all

three juveniles and Sean Murray is the natural father of M.M. and An.E. The natural father of Ad.E. was not involved in these proceedings.

We note first that Ad.E. has reached the age of eighteen, thus mooting all issues as they pertain to her. Accordingly, we address only those issues that apply to M.M., age 16, and An.E., age 8.

Petitioner filed petitions alleging that the minor children were neglected juveniles on 19 March 2004. The children were adjudicated neglected on 18 August 2004 by the Juvenile Court for Harnett County. The court found that M.M. had committed a sexual act of misconduct by fondling his younger sister in October, 2001 and again in November, 2003, and that respondents had not properly supervised the children when those acts occurred.[1] Full custody was then awarded to petitioner, but with a plan for reunification with respondent-mother.

A report submitted by petitioner on 13 August 2004 states that M.M. was hospitalized on 4 February 2004 "due to homicidal and suicidal ideation. Hospital recommendations included placing M.M. in residential treatment in order to address his sexual offending behaviors." The report also states that "[a]ll three children have mental health issues and have developmental delays and/or learning disabilities."

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[1] The State charged M.M. criminally following the second molestation incident, but he was subsequently found to be incompetent to stand trial.

Since being removed from respondents' custody, neither M.M. nor An.E. has returned to respondents' home. Both are currently in foster care.

A permanency planning hearing was held before Judge Corbett on 17 August 2005. In the permanency planning order, Judge Corbett made findings of fact that filled eighteen pages of the order. Judge Corbett ordered that a plan of adoption for M.M. and An.E. be established, that petitioner be released from further efforts to reunite the children with their parents, and that visitation between the children and their parents cease. A permanency planning review hearing was set for 10 February 2006.

RESPONDENT-MOTHER

Respondent-mother first argues that the trial court committed reversible error when it ceased reunification efforts between respondent-mother and her children. We disagree.

Respondent-mother primarily objects to Findings of Fact 15bb, 15pp, and 15ss, which state, respectively:

> bb In addition to revealed sexual misconduct within the family unit, all of these children are sexualized children. It is clear to this court that all of these children have been exposed to inappropriate sexual materials (videos, magazines or other materials) or have had inappropriate sexual contact upon their bodies by others. The respondent parents have caused or allowed the same to take place with the result that has affected these children and caused them to be in need of mental health treatment as identified and discussed by Ms. Crumpler and Ms. Cardassi and as shown in the

> various reports made available to the court.
>
> . . .
>
> pp . . . [Petitioner] would be amiss if it did not follow up revelations by the juveniles of sexual misconduct actions with investigation. [Petitioner] has done that and the court approves of such actions. It is neither unfair nor unexpected in light of the known actions in these matters.
>
> . . .
>
> ss The professionals maintain that progress in therapy (counseling) must first involve the acceptance of one's responsibilities for the issue of misconduct. Apparently the mother has not accepted responsibility for her failure to appropriately supervise the juveniles or for her part in the circumstances which were set forth in the adjudication/dispositional findings (as expressed in the order). The mother has not accepted any responsibility for the circumstances of the juveniles based upon the revelations made to the counselors. She has not demonstrated that her parental skills and abilities have been changed surrounding supervision dealing with children who are sexualized. Notwithstanding the educational subject matter made available to her by MCDS, she has not demonstrated her recognition of the sexualized circumstances surrounding the juveniles or her need to take effective measures to adequately improve her parental ability to deal with her children.

Respondent-mother contends that the trial court "forced her to prove that she did not sexually abuse her children in order to continue reunification efforts." Although respondent-mother was accused of sexually abusing her daughters, including giving "hugs"

in the area of An.E.'s genitalia, the trial court's order did not turn solely on that issue. Rather, over the course of eighteen pages, the trial court stated numerous reasons that efforts to reunite the children with their parents "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).

"Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and the findings support the conclusions of law." *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004) (citations omitted). Therefore, "[i]f the trial court's findings of fact are supported by any competent evidence, they are conclusive on appeal." *Id.* (citations omitted) The reasons cited by the trial judge in the permanency planning order include extensive testimony by a number of experts who opined that all three children had been sexualized, and that the learning delays that each child experienced were likely the result of their home environment. Evidence supporting the inappropriate sexualization of the children includes admission by the children to their therapists that they watched pornographic movies, both alone and with their parents, and, more disturbingly, that the children had sexual interactions with each other and with other children. Petitioner offered competent evidence that respondents caused or allowed these activities to occur.

Although An.E. entered foster care with "developmental delays relative to speech delays, expressive language delays, social delays, and general failure of adult support from her parents for her to properly develop as a growing child," her situation appears to have improved. Since being removed to foster care, An.E. has "made significant progress both intellectually and developmentally. . . . The school officials report to the social worker that An.E. has made two years of progress in one year; when she started the 2004-2005 school year, she was on a three (3) year old level and has progressed to a beginning kindergarten level." Consequently, the trial court adopted a therapist's opinion that "An.E.'s delays are likely environmental and not organic or genetic."

The trial court made findings of fact that were properly supported by competent evidence proffered during the proceeding. These findings of fact support the conclusions of law that the plan for M.M. and An.E. should be changed to adoption.

Respondent-mother next argues that the trial court erred by suspending her visitation with her children. She contends that "the trial court did not make any specific finding that visitation between the children and their mother would not be in the children's best interests." Again, we disagree.

The trial court found as fact that An.E. had expressed to a therapist "that she desired to go home to her mother Mary so she could be hugged and touched . . . because the type of hugs her mother gave her felt good . . . ." The trial court also found as fact that during a therapy session, M.M. had "stated to the

counselor that he wanted to go home to Mary so he could 'do what I want to do.'" These findings, taken with the findings of oversexualization of the children by both parents and possible sexually inappropriate contact by respondent-mother, adequately support the trial court's conclusion of law that visitation with the parents should be ceased.

Respondent-mother notes in her brief that the Guardian ad Litem (GAL), in her last report to the trial court, stated that,

> An.E. has begun having problems separating from her mother after visits. SW Hull and SW Melinda Beasley said that An.E. cries and pouts. Mary has brought a number of gifts to the children at visits. I spoke with An.E.'s guidance counselor. There were 3 incidents in school the day after 3 visits with mom. On 2 occasions, An.E. pulled her pants all the way down and showed the boys her "privates." On the third occasion, An.E. lifted her shirt up to show the boys her "boobies."

"[I]t is the child's best interests which is our guiding beacon. Although courts should balance the parents' inherent right to maintain their family unit with the welfare of the minor child, it is the latter that should always prevail, if it is determined that the two interests are conflicting." *In re Montgomery*, 77 N.C. App. 709, 717, 336 S.E.2d 136, 141 (1985) (quoting *In re Montgomery*, 311 N.C. 101, 116, 316 S.E.2d 246, 256 (1984)). Here, the trial court had determined that it was in the children's best interest to change the children's permanent plan to adoption. The evidence cited by respondent-mother indicates that An.E.'s visitation with respondent-mother was having a negative effect on the child and was not in her best interest.

In her final arguments, respondent-mother contends that the trial court did not find sufficient findings of fact under N.C. Gen. Stat. § 7B-907 to support the children's permanent plan and abused its discretion by adopting a plan of adoption for M.M. and An.E. Again, we disagree.

Section 7B-907(b) of the North Carolina General Statutes requires a trial court to make written findings regarding certain criteria as specified in the statute. N.C. Gen. Stat. § 7B-907(b) (2005). Although respondent-mother correctly asserts that the trial court did not include a formal listing or expressly name the criteria set forth in N.C. Gen. Stat. § 7B-907(b), the trial court was not required to make such an explicit finding. *J.C.S.*, 164 N.C. App. at 106, 595 S.E.2d at 161. So "long as the trial court makes findings of fact on the relevant § 7B-907(b) factors and does not simply recite allegations, but rather through processes of logical reasoning from the evidentiary facts finds the ultimate facts essential to support the conclusions of law," the statutory requirement is met. *Id.* (citations and quotations omitted).

Earlier, we discussed the trial court's numerous findings of fact, and we now hold that they meet the criteria set forth in N.C. Gen. Stat. § 7B-907(b) to support the change of permanent plan to adoption. Finding of fact 15 includes 56 separate sub-findings in "consider[ation of] the criteria set forth in N.C. Gen. 7B-907 . . . ." Throughout finding of fact 15, the trial court addressed each of the criteria listed in section 7B-907(b), and did so through processes of logical reasoning as required by *J.C.S.* The order

incorporates testimony from various experts, reports from counselors, therapists, and the GAL. This is not a simple recitation of allegations; it is a thoughtful digest.

North Carolina General Statute § 7B-907(b) also requires that if the trial court determines that adoption should be pursued, it must make written findings regarding whether any barriers to a juvenile's adoption exist. N.C. Gen. Stat. § 7B-907(b) (2005). As respondent-mother indicates in her brief, some barriers to adoption may exist with these two children due to their sexualization, developmental delays, and, in the case of M.M., potential sexual deviancy. However, the trial court made adequate findings of fact with respect to barriers to adoption. The trial court indicated that both M.M. and An.E. were improving. In finding of fact 15v, the trial court recited a counselor's recent testimony that, "M.M. is now in a structured placement and doing very well and is involved in sports and that [the counselor] believes his IQ has probably been raised by 10 points from this environment." The trial court also found that although M.M. is in special education classes due to his delays, "he is being mainstreamed in science and social studies. He will be attending the 9th grade this coming school year and will pursue an occupational course of study." An.E. has also improved considerably, making two years' worth of academic progress in only one year.

Accordingly, we overrule respondent-mother's final arguments and turn now to respondent-father's brief.

RESPONDENT-FATHER

Respondent-father first argues that findings of fact 15tt, 15ww, 15xx, and 15zz were not supported by clear, cogent, and convincing evidence. The findings of fact to which respondent-father objects read as follows:

> tt The father . . . has not accepted responsibility for the sexualized circumstances surrounding the juveniles; he has not participated in any therapy. Except for his involvement with MCDS (educational instruction) he has not participated in a plan to strengthen or improve his parenting skills.
>
> ww A return of any of the juveniles to the home of the parents would be contrary to their welfare. It is not probable that the juveniles will be returned within the next six (6) months.
>
> xx For the reasons stated above, [petitioner] should be released from further efforts to extend services to the parents on a plan of reunification for any of the juveniles.
>
> zz The permanent plan for juvenile M.M. and An.E. should be adoption.

Respondent-father argues that finding 15tt is not supported by the evidence, and that the other three findings do not "take into account [his] good faith attempt to comply with the case plan" and "the education and improvements made by the Respondents in compliance with their court-ordered case plan." We disagree.

With regard to finding 15tt, the trial court heard adequate evidence to support this finding of fact. A social worker reported that respondent-father had not cooperated with the agency; he had not attended a 28 May 2004 child mental health evaluation, and did

not respond to petitioner's efforts to contact him. In addition, he did not participate in a psychological examination or therapy.

With regard to the other three findings of fact, respondent-father argues that because the trial court heard evidence of changed conditions with respect to respondents, "it was error for the court not to acknowledge [respondent-father]'s efforts as a changed circumstance in determining the plan for the minor children."

Respondent-father's 5 April 2004 case plan required him to:

> report to child support and begin paying child support, maintain a stable home and job, go to mental health and have a full assessment completed and follow all recommendation[s], sign release forms, cooperate with the agency, participate in a psychological evaluation, and complete parenting and anger management classes.

However, "[d]ue to his lack of involvement and court order, the agency sent [respondent-father] a letter on 10/26/04 stating that he needed to contact the agency if he wished to pursue reunifications efforts, and he never contacted the agency." Respondent-father cites the following three changed circumstances: (1) he does not have to pay child support because the children are receiving social security income; (2) he has maintained a stable home with respondent-mother; and (3) he participated in parenting and anger management classes. Although respondent-father is not obligated to pay child support, this can hardly be considered a relevant changed circumstance because respondent-father did nothing to bring about this change. Respondent-father's maintenance of a stable home is undermined by a lack of substantiation of his

income. Finally, we acknowledge that respondent-father did participate in a number of classes offered by Multicultural Community Development Services (MCDS), including parenting education, anger management education, stress management education, child abuse and neglect, emotional/developmental education, sexual abuse education, domestic violence education, financial/budgeting education, and human nutrition. Nevertheless, the trial court was not obligated to give that changed circumstance such weight as to overcome the other negative factors.

Respondent-father relies on a 2003 case holding that "[a] trial court must . . . consider any evidence of changed conditions." *In re Eckard*, 148 N.C. App. 541, 546, 559 S.E.2d 233, 236 (2002), *disc. review denied*, 356 N.C. 163, 568 S.E.2d 192 (2002) (citing *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). However, this case is easily distinguished from the case at hand. In *Eckard*, "there was overwhelming evidence of changed conditions with respect to [the mother] which we previously held did not support the findings and conclusions by the trial court in its order ceasing reunification efforts." *Id.* In addition, the juvenile's father had been identified for the first time through paternity testing and established a relationship with the juvenile. *Id.* The trial court in *Eckard* dismissed the changed condition of locating the child's father because he had made "a late appearance." *Id.* Here, the evidence of changed conditions is relatively minor. The trial court considers "any evidence of changed conditions in light of the evidence of prior neglect and

the probability of a repetition of neglect." *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *Id*. The trial court found as fact that respondent-father had taken MCDS classes and had been declared ready for reunification with M.M. and An.E. Therefore, the trial court did consider the changed conditions, but, in light of the substantial evidence of prior neglect and testimony about the probability of future neglect, the trial court held that it was in the best interests of the children to change the permanent plan to adoption.

Finally, respondent-father asserts that the trial court erred by concluding as a matter of law that "[t]he plan for M.M. and An.E. should be changed to adoption"; "[i]t is in the best interests of juveniles M.M. and An.E. for their custody to remain with the Petitioner for placement as mentioned in the findings"; "[v]isitation with the parents should be ceased"; petitioner "exercised reasonable efforts in extending services and assistance on a plan of reunification and to eliminate the need for continued placement," but the children's circumstances and parents "prevented the success of said plan"; and "[r]equests of [petitioner] in the social worker's report should be allowed." Respondent-father argues that the evidence does not support these conclusions of law. Again, we disagree.

As discussed above, the trial court reviewed a considerable amount of evidence regarding the children's sexualization in the

parents' home and their significant progress after leaving the home. There is also documentation of the efforts made by petitioner and its agents to help respondents improve their parenting skills so that the family could be reunited. Accordingly, we overrule this final argument.

Affirmed.

Judges HUNTER and MCCULLOUGH concur.

Report per Rule 30(e).