NO. COA06-739

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

IN THE MATTER OF:

N. O.
A. O.
La. O.
S. O.
Lu. O.

Onslow County
Nos. 03 J 261-265

Appeal by respondent from order entered 17 October 2005 by Judge William M. Cameron, III, in District Court, Onslow County. Heard in the Court of Appeals 19 February 2007.

James W. Joyner, for Onslow County Department of Social Services, petitioner-appellee.

Winifred H. Dillon, for respondent-appellant.

WYNN, Judge.

Respondent, the mother of five children -- two boys and three girls -- appeals from an order entered on 17 October 2005, changing the permanent plan for the two boys from reunification to termination of parental rights/adoption. Because the trial court's findings show that the two boys have special mental health needs and aggressive behaviors that Respondent, who has special needs of her own, is unable or unwilling to ameliorate, we uphold the trial court's order.

The underlying facts tend to show that all of the children were initially adjudicated as neglected juveniles by an order

entered 7 October 2003. The court allowed the children to remain in Respondent's custody, but on 11 February 2004, the children were removed from her custody when she was arrested and incarcerated on criminal charges. Since that time the children have been in the custody of the Onslow County Department of Social Services (DSS).

On 14 December 2004, the court entered an order concluding that the return of the juveniles to their parents at that time would be contrary to their best interests. On 10 June 2005, the court entered an order relieving DSS of reunification efforts as to the three girls but decreeing that the plan for the boys remain reunification. However, following a permanency planning hearing on 30 September 2005, the court entered an order on 17 October 2005, changing the permanent plan for the two boys from reunification to termination of parental rights/adoption. Respondent appeals from the 17 October 2005 order, contending that the order changing the permanent plan to termination of parental rights and adoption is not supported by the findings of fact and conclusions of law. We disagree.

The underlying goal of the North Carolina Juvenile Code is to serve the best interest of the child. *In re Brake*, 347 N.C. 339, 341, 493 S.E.2d 418, 420 (1997). Consistent with this goal, the General Assembly has decreed that the Juvenile Code is to be "interpreted and construed" to ensure "that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a

reasonable amount of time." N.C. Gen. Stat. § 7B-100(5) (2003). In a situation in which a juvenile has been removed from a parent's custody, the court may enter an order directing that reunification efforts cease if efforts to reunify "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) (2003). "In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern." N.C. Gen. Stat. § 7B-507(d) (2003). Review of a trial court's determination regarding the best interests of a juvenile is under an abuse of discretion standard. *In re J.B.*, 172 N.C. App. 1, 24, 616 S.E.2d 264, 278 (2005).

With these principles in mind, we examine the order from which the appeal is taken and the prior orders entered by the court, as they provide a more complete history of the events leading up to the order under review. By an order filed 7 October 2003, the juveniles were adjudicated as neglected. In that order the court found that Respondent and her children had been residing in Onslow County since February 2003 and that the children had not been enrolled in school. The two boys were both diagnosed with attention deficit hyperactivity disorder (ADHD) and as being mildly mentally retarded. A.O. additionally was diagnosed with oppositional defiant disorder (ODD) and prescribed medication for the condition. Noting the entire family needed intensive psychotherapy, the court ordered Respondent to have the boys

undergo a mental health evaluation and to follow the recommendations of the mental health professionals. The court also ordered Respondent personally to undergo a mental health evaluation and follow treatment recommendations. The children were allowed to remain in Respondent's custody at that time.

However, following Respondent's arrest and incarceration on unspecified criminal charges on 11 February 2004, the children were removed from Respondent's custody on 12 February 2004. On 10 June 2005, the court filed an order in which it found DSS had to cease telephone contact between Respondent and the two boys because the boys had significant behavioral problems after talking with their mother. N.O. had traumatic flashbacks to a house fire in which five of his siblings died: he ran around the group home where he was residing and frantically screamed for all of the other children to get out of the house because of an imagined fire. N.O. has also attempted to jump out of a van while it was in motion, and he has been suspended from school several times due to aggressive and threatening behavior. N.O. was enrolled in an intensive six-month residential treatment program designed to help children with multiple mental health issues and made significant progress while at this placement. In addition, A.O. has been physically aggressive with the other children and staff of the group home. A.O. has cried inconsolably after talking with his mother, primarily because his mother failed to deliver on a promise he could resume residing with her.

The court's findings in this order further show that

Respondent, herself, has significant mental health issues. She suffers from major depression and at times "disassociates in order to deal with reality," thereby raising concerns as to whether she could deal with her children's immediate needs. Moreover, A.O. was in a group home due to sexually aggressive behavior, and N.O. was in a specialized facility due to violent and threatening behaviors. The three sisters are at a high risk of victimization by their brothers and have alleged that their brothers sexually molested them.

In the order that is the subject of the present appeal, the court found that between the time visitations with the female children resumed on 19 January 2005 and the hearing, Respondent had missed thirteen scheduled visits. Respondent also missed seven therapy sessions with the children. These missed sessions added to the behavior problems of all five children. Respondent also failed to attend any scheduled therapy sessions since May 2005 to address her own problems with depression.

Furthermore, Respondent resumed her relationship with a man whom the girls identified as having sexually molested them. Respondent downplayed the social worker's concerns about her resumption of the relationship by stating they were "only allegations of fondling," and no criminal charges had been filed.

Finally, Respondent's home in Johnston County failed to obtain approval during a home study. Respondent refused to move back to Onslow County so as to facilitate counseling and visitation sessions. On 9 August 2005, Respondent notified DSS that she would

no longer be visiting the children. Respondent did not attend the permanency planning hearing, stating she could not travel "due to pink eye." The court further found that the boys, N.O. and A.O., remained in Level II group homes due to aggressive behaviors. The siblings are unable to reside together "due to the sexually aggressive behaviors and allegations."

These findings are sufficient to uphold the trial court's decision to change the permanent plan for the two boys. Accordingly, we hold that the trial court's findings of fact support its conclusion that it is in the best interest of the children to pursue termination of parental rights and adoption. Thus, the 17 October 2005 order is,

Affirmed.

Judges ELMORE and GEER concur.

Report per Rule 30(e).