

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-818

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

In re E.H.

Wake County
No. 05 J 397

Appeal by Respondent from judgment entered 17 October 2005 by Judge Monica M. Bousman, in District Court, Wake County. Heard in the Court of Appeals 9 January 2007.

Wake County Guardian ad Litem Program, by Richard Croutharmel, for Appellee-Guardian ad Litem.

Jeffrey L. Miller, for Respondent-Appellant.

WYNN, Judge.

This appeal arises from the trial court's order adjudicating Respondent-mother's minor child, E.H., to be neglected and dependent. Because the record shows that the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and the findings of fact support the conclusions of law, we affirm the trial court's order.

We will address additional facts in our discussion of Respondent's contentions on appeal that the trial court erred by: (I) concluding that E.H. was neglected; (II) concluding that E.H. was dependent; (III) delegating its authority to grant visitation to third party; and (IV) denying Respondent's request for

continuances of the adjudication and disposition hearings and proceeding without having E.H.'s mental health and medical evaluations as required by section 7B-808 of the North Carolina General Statutes.

I.

Respondent first argues that the trial court erred by adjudicating E.H. neglected because there was no clear, cogent, and convincing evidence in the record to support the following findings of fact:

(6) That this family has a long history of noncompliance with Wake County Human Services. At the time of the petition, the Respondent was living with her mother in Wake County and was not cooperating with the social worker's attempts to make home visits. At the time of the petition, Respondent-father was living in Wake County, and visiting with the [minor child].

(7) That. . . [Respondent-mother] has serious mental health issues but will not pursue ongoing treatment. These mental health issues impact her ability to care for the [minor child] with proper supervision and discipline.

(8) That the [minor child] has serious mental health and behavior issues which have not been appropriately addressed. These mental health and behavior issues have resulted in problems at school and home.

(9) That on June 8, 2005, a new report was received stating. . . [Respondent-mother] and the Respondent were physically fighting each other at the Montessori School where . . . [Respondent-mother] worked. The Respondent-mother grabbed the [minor child's] face and shook her head vigorously. [Respondent-mother] was screaming in the [minor child's] face in front of the school building and threatened to send her back to Texas. She slung the Respondent's arm down and refused to stop the behavior even with intervention from school

administrators. During the incident, the school administrator had to physically separate the minor child and [Respondent-]mother to avoid injury to the minor child. The [minor child] did attempt to retaliate against her mother, thus increasing the risk of harm to the minor child. [Respondent-]mother was terminated from the Montessori School where she worked as a result of her fighting with her child and being out of control. The school acknowledged that staff has observed many unsettling situations between the Respondent and her mother.

(10)That while the case has been in treatment, there have been multiple reports alleging sexual abuse, inappropriate discipline and failure to provide appropriate medical care. [Respondent-mother] reported to social worker on several occasions that the minor child gets out of control[,] bites her, hits her, pulls her hair, spits at her and kicks her.

We disagree with Respondent's contentions because the record shows that these findings are supported by clear and convincing evidence. See *In re J.A.G.*, 172 N.C. App. 708, 712, 617 S.E.2d 325, 329(2005); N.C. Gen Stat.§ 7B-101(15) (stating that a neglected juvenile is one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.").

Indeed, at the adjudication hearing, the evidence showed that the social worker left several messages for Respondent but never received a return call. Moreover, when the social worker made contact with Respondent, the social worker introduced herself and

Respondent immediately yelled and stated that she would not speak with the worker, and "that [the social worker] had to go to court, that [she] better go get [an] attorney, [Respondent] was going to sue [her]." The social worker testified that the first few conversations between Respondent and her transpired in this manner. The social worker further testified that she was "unable to get into the home or have effective communication" with Respondent "by telephone to be able to assess how things were going" or know how E. H. was doing. Consequently, Wake County Human Services was unable to proceed in its investigation since Respondent would not agree to a home visit. Eventually, Respondent ended all contact with the Wake County Human Services.

Despite Respondent's contentions, Wake County Human Services presented incident upon incident of failed attempts to work with her; however, Respondent was resistant or non-cooperative. Based on the evidence presented at the hearing, we conclude there was clear, cogent, and convincing evidence to support trial court's finding that Respondent had a long history of noncompliance with DSS.

As it relates to Finding of Fact number 7, the evidence presented at the hearing revealed that Respondent had a long history of mental illness. This history included Respondent's two involuntary commitments to Dorothea Dix Hospital within a two-year period as a result of her threats to harm E.H. Furthermore, Dr. Robert Aiello diagnosed Respondent with Personality Disorder, NOS (Not Otherwise Specified). Respondent's psychological evaluations

indicated that her personality placed "her at risk for strong emotional reactions to her circumstances and impulsive decisions." Dr. Aiello recommended individual counseling to address Respondent's issues; however, Respondent only received treatment from a women's center. After carefully reviewing the record on appeal, we conclude that there was clear, cogent, and convincing evidence that Respondent had unaddressed mental issues which impacted her ability to properly supervise and discipline E.H.

With regard to Finding of Fact number eight, the evidence presented at the hearing reveals that E.H. had extreme difficulties focusing and working independently in school. The social worker was concerned that E.H. may possibly have attention deficit-hyperactivity disorder, bipolar disorder, adjustment disorder, and psychotic features. Additionally, E.H.'s first grade teacher testified that E.H. had difficulties focusing on her academics and wanted to discuss "going to the hospital" or "she has this ailment" or "she's very sick, she doesn't feel good" or "she can't focus" because she is on antibiotics.

The record shows that Respondent terminated E.H.'s mental health therapy, despite the difficulties she had controlling the minor child's behavior, and despite the concerns of E.H.'s therapist and DSS. In addition, E.H.'s school guidance counselor testified that E.H. was not performing on grade level. The school contacted Respondent to obtain consent to conduct a school based evaluation to address E.H.'s behavior exhibited at school, but Respondent refused. Respondent also revoked consent to allow DSS

to complete an additional assessment by UNC Maltreatment and Trauma Team. Thus, the record shows there was clear, cogent, and convincing evidence to support the trial court's finding that E.H. had serious mental health and behavioral issues that have resulted in problems at home and at school that Respondent refused to appropriately address. As it relates to Finding of Fact number 9, the school administrator testified at the hearing on 9 June, 2005, she saw Respondent with her hands around the minor child's head, shaking her head, and screaming at her. When the administrator approached Respondent and E.H., she ordered Respondent to stop, but Respondent looked up and continued to yell at E.H. During this confrontation, Respondent told E.H., "I'm going to call - I'm going to call and they're going to take you away. They're going to take you away." The administrator testified that she prevented E.H. from chasing after Respondent and asked Respondent to go into the building.

Finally, as it relates to Finding of Fact number 10, Respondent reported the incident of sexual abuse not only to the Wake County Human Services, but also to E.H.'s first grade teacher and guidance counselor. When Respondent informed the guidance counselor of the abuse, the counselor informed Respondent that she was bound by law to report the allegations to DSS ("Child Protective Services"). In addition, the trial court heard testimony from the social worker that supported its finding that Respondent used inappropriate discipline with E.H. We conclude

that this is clear, cogent, and convincing evidence to support the trial court's Finding of Fact number 10.

In sum, we conclude the trial court's findings of fact are supported by clear, cogent, and convincing evidence and those findings of fact support the trial court's conclusion that E.H. was neglected as defined by section 7B-101(15) of the North Carolina General Statutes.

II.

Respondent next argues that the trial court erred by adjudicating E.H. dependent. North Carolina law defines a dependent juvenile as: "[a] juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2005). "Under this definition, the trial court must address . . . (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). Moreover, "allegations in a petition alleging . . . dependency shall be proven by clear and convincing evidence." N.C. Gen. Stat. § 7B-805 (2005).

Here, Respondent maintains that the evidence did not indicate that she was unable to provide E.H. with care or supervision because of Respondent's mental illness. However, the evidence

reveals numerous instances of Respondent's inability to provide for the care and supervision of E.H. Additionally, Respondent's own testimony showed that E.H. was difficult to control and that she used improper methods of discipline. This evidence supported the trial court's findings of fact which, in turn, supported the trial court's conclusion of law that E.H. was dependent. Accordingly, Respondent's assignment of error is rejected.

III.

Respondent next argues that the trial court erred by delegating its judicial power of determining visitation to Wake County Human Services and allowing it to dictate the rules and schedule for visitation. We disagree.

North Carolina law requires that where a juvenile is removed from the custody of a parent under a dispositional order, the trial court,

. . . shall provide the appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.

N.C. Gen Stat. § 7B-905(c) (2005). Thus, under section 7B-905, the General Assembly authorized the trial court to allow the county department of social services to have discretion over visitation when it has custody of the minor child.

Here, in Findings of Fact number 27, the trial court found that the court summary prepared by the Wake County Human Services

dated August 17, 2005, was for dispositional purposes only and found it to be "credible and factually sufficient evidence to support the disposition herein." Additionally, this document was introduced into evidence without objection by any of the parties. The document contained the rules and a schedule for visitation. In the order, the trial court instructed Respondent to comply with the rules of visitation set in this document. Furthermore, the trial court set out rules for visitation within the order. The record reflects that Respondent was to resume the visitation plan already in place.

Thus, the trial court, within the authority set forth under section 7B-905 of the North Carolina General Statutes, allowed the county department of social services to set up the rules of visitation. We recognize that this Court has previously vacated orders that gave the appointed guardian discretion over whether the non-custodial parent may visit the child. *In re E.C.*, ___ N.C. App. ___, 621 S.E.2d 647 (2005); *In re Custody of Stancil*, 10 N.C. App. 545, 179 S.E.2d 844 (1971). In this case, however, the trial court approved and ordered visitation in compliance with rules set by a county department of social services, which is permitted under section 7B-905(c) of the North Carolina General Statutes. We, therefore, reject Respondent's assignment of error.

IV.

Respondent last argues that the trial court erred when it denied the motions for continuance of the adjudication and disposition hearing. We disagree.

It is well-established that:

A motion to continue is addressed to the court's sound discretion and will not be disturbed on appeal in the absence of abuse of discretion. Continuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it. The chief consideration is whether granting or denying a continuance will further substantial justice.

In re Humphrey, 156 N.C. App. 533, 538, 577 S.E.2d 421, 425 (2003) (citation omitted).

As grounds for the continuance, Respondent argued that: (1) E.H. was scheduled for additional evaluations; (2) Respondent received E.H.'s psychological evaluation the morning of 17 August 2005; and (3) Respondent was concerned with ability to cross-examine the paternal aunt from Texas on the statements found in the psychological evaluation. The trial court found that the hearing would last for a series of days, and, thus, Respondent's counsel would have sufficient time to review the psychological evaluation. Moreover, the trial court informed counsel that the paternal aunt's testimony would be stricken if the parties were unable to complete the testimony within a day. As we can discern no abuse of the trial court's discretion in denying Respondent's motion for a continuation, we uphold the trial court's decision.

Likewise, we can find no abuse of the trial court's discretion in denying Respondent's second motion for a continuance of the adjudication hearing. Respondent filed a motion for a continuance of the adjudication hearing arguing that there were additional evaluations scheduled for E.H and that these evaluations were

needed in order to proceed with the hearing. However, the trial court found that the information contained in the forensic evaluation was not necessary for the adjudication hearing. We cannot discern that the trial court abused its discretion when it denied Respondent's second motion to continue the adjudication hearing.

We have reviewed the Respondent's remaining arguments and have determined that they are without merit.

Affirmed.

Judges HUNTER and STEELMAN concur.

Report per Rule 30(e).