NO. COA06-831

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IN THE MATTER OF: N.S.

Lee County
No. 05 J 66

Appeal by Respondent from order entered 13 January 2006 by Judge George R. Murphy in District Court, Lee County. Heard in the Court of Appeals 16 January 2007.

Beverly D. Basden, P.C., by Beverly D. Basden, for Petitioner-Appellee.

Leslie R. Nydick for Respondent-Appellant.

McGEE, Judge.

Respondent A.S., mother of dependent juvenile N.S., appeals from an order of the trial court relieving Petitioner Lee County Department of Social Services (DSS) of further efforts toward reunification and awarding guardianship of N.S. to N.S.'s maternal grandmother, D.M.

DSS obtained non-secure custody of N.S. and filed a petition on 23 August 2005 alleging that N.S. was a dependent juvenile, in that Respondent was "unable to provide for [N.S.'s] care or supervision and lacks an appropriate alternative child care arrangement." The trial court entered an order on 30 August 2005, placing N.S. in the non-secure custody of D.M. and appointing a

guardian ad litem to represent Respondent. The trial court found that Respondent failed to attend a substance abuse assessment scheduled by DSS, to obtain employment or housing, or to comply with DSS's "request to make a self-referral to Sandhills Mental Health[.]"

After granting a series of continuances at the request of the parties, the trial court held a hearing on the petition on 22 November 2005. Respondent, her counsel, and her guardian ad litem were present at the hearing.

DSS caseworker Diane Suave testified to the following at the adjudicatory stage of the hearing. N.S. was born in mid-May 2005 with cocaine in her system and six digits on each hand. DSS received a referral on the child and began its investigation the following day. Based on its initial investigation, DSS determined that N.S. would be able to live with Respondent and decided to "put services in place . . . to keep [N.S.] in the home with [Respondent]." Respondent and N.S. were released from the hospital when N.S. was five days old. Respondent went to her sister's house, contacted D.M., and asked her to come pick up N.S. and take care of N.S. N.S. had been with D.M. for all but two days since leaving the hospital.

In the six months of Suave's involvement with her case, Respondent had refused to cooperate with DSS. Suave described the incident which led to DSS seeking non-secure custody of the child in August of 2005:

> [O]n August 8th[,] [Respondent] removed [N.S.] from [D.M.'s] home. And it was raining and

> [Respondent] walked across town with [N.S.] in the rain. And when the social worker talked with [Respondent] and the police located [N.S.], it was deemed that it was an appropriate place for [N.S.] with [Respondent] at the sister's home. By the time I went over there to follow up on this, [Respondent] had given [N.S.] to a female cousin and she would not cooperate as to giving me the name of the cousin, the address, or a telephone number. And a period of two weeks went by before I could even assess the safety of [N.S.], during which time, . . . [D.M.] . . . did not even know where [N.S.] was.

Suave noted that Respondent failed to attend two appointments for a substance abuse assessment.

Both Respondent's counsel and the guardian ad litem for Respondent stipulated to N.S.'s status as a dependent juvenile, as alleged by DSS in its petition.

At disposition, DSS submitted a written report to the trial court, which included information from Lee County Child Support Enforcement that Respondent had six additional children who did not reside with her, and that she was in arrears with her child support obligation. In addition to reiterating Respondent's refusal to participate in the development of a case plan or substance abuse treatment, and her failure to obtain housing or employment, the report noted that Respondent had failed to provide D.M. "with basic needs such as diapers, wipes, clothes, etc." for N.S.'s care. DSS asked the trial court to award guardianship of N.S. to D.M., based on Respondent's failure to "cooperate[] in any way" with its attempt to work with her.

Respondent testified at disposition, claiming she missed her first scheduled substance abuse assessment because she overslept.

She missed the second appointment because DSS mailed the paperwork to the wrong address. Although DSS claimed to have made an appointment for her to attend parenting classes, Respondent denied receiving the paperwork regarding the appointment. When she asked DSS employees for housing assistance, she was told she "would have to find a job first." Respondent applied for several jobs but was unable to get any potential employers to call her back.

Respondent claimed that she had lived with N.S. for two months at her sister's residence and was visited weekly by the DSS caseworker. D.M. had agreed to keep N.S. for Respondent until she could "get [her]self together and get . . . a place to stay." Respondent told the trial court that she obtained employment cleaning houses for three people. She began cleaning two of the houses the week prior to the hearing and had not yet been paid. She was supposed to clean the third house the day after the hearing. She last had full-time employment in September 2004. She had not used drugs for "two or three months" and had passed two drug tests.

The trial court adjudicated N.S. a dependent juvenile as alleged in the petition filed 23 August 2005. In its dispositional order, the trial court found that DSS had made reasonable efforts toward reunification and that further time or efforts toward reunification would be "futile given [Respondent's] past history and failure to progress in this case." The trial court ceased reunification efforts and granted guardianship of N.S. to D.M.

On appeal, Respondent mistakenly asserts that the trial court

failed to appoint a guardian ad litem to represent her in the dependency proceedings. The record and transcript plainly reflect that the trial court appointed Respondent's guardian ad litem on 30 August 2005, and that the guardian ad litem appeared at the dependency hearing. This assignment of error is frivolous.

Respondent next challenges the trial court's conclusions that DSS made reasonable efforts toward reunification and that Respondent failed to make progress toward reunification. She argues that DSS knew of her drug addiction but "did not assist [her] in any aspect of her case plan" or "follow through" with her when she missed appointments and otherwise failed to take independent action. Respondent further faults the trial court for merely parroting "the words and reasoning of the DSS attorney" in its dispositional order, rather than undertaking an independent evaluation of the evidence.

The determination that grounds exist to cease reunification efforts is a legal conclusion subject to *de novo* review. *See In re Weiler*, 158 N.C. App. 473, 477-79, 581 S.E.2d 134, 137-38 (2003). However, because Respondent does not challenge the evidence supporting the trial court's individual findings of fact, its findings are deemed to be supported by competent evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Appellate review is limited to a determination of whether the underlying findings of fact support the trial court's conclusions of law. *In re M.J.G.*, 168 N.C. App. 638, 643, 608 S.E.2d 813, 816 (2005).

N.C. Gen. Stat. § 7B-507(a)(2) (2005) requires any order that establishes or continues a juvenile's placement in DSS custody to include "findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile[.]" The Juvenile Code defines "reasonable efforts" as "[t]he diligent use of . . . reunification services by a department of social services" when reunification "is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-101(18) (2005). Under N.C. Gen. Stat. § 7B-507(b)(1) (2005), a trial court may cease DSS's efforts to reunify the juvenile with a respondent parent "if the [trial] court makes written findings of fact that . . . [s]uch efforts clearly 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[.]" The statute also provides that, "[i]n determining reasonable efforts to be made with respect to a juvenile . . ., the juvenile's health and safety shall be the paramount concern." N.C. Gen. Stat. § 7B-507(d) (2005).

In its dispositional order, the trial court entered the following findings and conclusions in support of its decision to relieve DSS of further reunification efforts and to award guardianship of [N.S.] with D.M.:

> 1. . . . [N.S.] . . . has been found to be dependent.
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> 2. [DSS] filed a juvenile petition of dependency on August 23, 2005 when . . . [DSS] received information that [N.S.] had been living with the maternal grandmother and had been removed from the maternal grandmother's

care by [Respondent] on August 8, 2005. [Respondent] walked across town in the rain with [N.S.] and left [N.S.] with a cousin. The cousin returned [N.S.] to the maternal grandmother. [Respondent] has a drug abuse problem and failed to enter into drug treatment and failed to attend appointments at DSS regarding drug assessments and screens.

3. [Respondent] would leave [N.S.] with her mother and then go and get [N.S.] when she knew the social worker was making a visit. She refused to participate in the development of a case plan when asked to do so.

4. [DSS] has been involved with [Respondent] previously. [Respondent] has seven children, including [N.S.], and none of those children reside with her.

5. [N.S.] tested positive for cocaine at birth. She had six digits on each hand. The extra digits were removed before she left the hospital.

6. [Respondent] has refused to submit to drug tests. She gave excuses such as oversleeping for why she missed appointments. She blames DSS [for] not finding her a place to live or helping her to get a job.

7. [Respondent] states that she is seeking employment but is hampered because she doesn't have a car. She stated first that she had a job cleaning houses for three people then when questioned further admitted that she has not started one of the houses yet and just started the job last week. Her testimony about employment is not credible.

8. [Respondent] has not provided for [N.S.] since [N.S.] was born.

9. . . . [R]espondent . . . is unable or unwilling to care for [N.S.]. She has no job, no child care and nowhere to live. She has only had [N.S.] for two full days since [N.S.] was born. She has six other children, none of which live with her.

. . .

> 11. The [Trial] Court determines by the greater weight of the evidence that it is in [N.S.'s] best interest to have the maternal grandmother . . . be granted guardianship. This will allow for permanency in [N.S.'s] life.

In making its findings, the trial court expressly considered the "facts and recommendations set forth in [DSS's] disposition report" in addition to the testimony at the hearing. *See* N.C. Gen. Stat. § 7B-901 (2005). The trial court made the following conclusions of law:

> 2. [DSS] has exercised reasonable efforts since the filing of the Petition to reunify the family. [Respondent] has failed to progress and still has no job, no child care and nowhere to live. To allow additional time for the mother to obtain a residence is futile based upon her past history.
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> 3. It is contrary to [N.S.'s] best interest that [N.S.] be returned to the legal custody and care of . . . [R]espondent . . . .

We believe the trial court's uncontested findings support a determination that DSS made reasonable efforts toward reunification, and that any additional efforts toward reunification would be futile. The findings reflect Respondent's complete refusal to work with DSS to remedy her substance abuse and lack of employment or housing. She declined to participate in the development of a case plan. She concealed N.S.'s whereabouts from the DSS case worker, failed to attend substance abuse assessments arranged by DSS, and failed to obtain housing or employment. Moreover, the findings reflect DSS's prior involvement with Respondent and her failure to satisfy her support obligation toward her six other children, none of whom live with her. Because

Respondent showed no willingness to work with DSS and made no independent progress toward correcting the issues surrounding N.S.'s dependency, the trial court did not err in ceasing reunification efforts under N.C.G.S. § 7B-507(b). *See In re M.J.G.*, 168 N.C. App. at 649-50, 608 S.E.2d at 820 (upholding a finding that reunification efforts were futile based on the respondent's refusal of services); *see also In re D.J.D.*, 171 N.C. App. 230, 237-38, 615 S.E.2d 26, 31-32 (2005) (upholding a finding that reunification efforts were futile based on the respondent's non-cooperation with DSS).

To the extent Respondent challenges the trial court's findings and conclusions as "an echo of the words and reasoning of the DSS attorney[,]" we find no merit to her claim. A trial court is free to adopt terminology used by counsel, provided that it fulfills its duty to affirmatively find the facts and reach the conclusions of law that support its order. *See In re J.B.*, 172 N.C. App. 1, 25-26, 616 S.E.2d 264, 279 (2005) (holding that a trial court may direct a petitioner's counsel to draft an order containing the trial court's findings of fact and conclusions of law); *cf. also In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003) (noting that a "trial court may not simply 'recite allegations,' but must . . . find the ultimate facts essential to support the conclusions of law."). In this case, the trial court did not merely report the arguments of DSS's counsel. Rather, it made the determination urged by counsel that further efforts toward reunification would be futile in light of Respondent's lack of

progress. Although Respondent correctly notes that counsel's arguments are not evidence, *see In re D.L., A.L.*, 166 N.C. App. 574, 582, 603 S.E.2d 376, 382 (2004), the trial court's findings were supported by the hearing testimony and the report submitted by DSS at disposition.

The record on appeal includes additional assignments of error not addressed by Respondent in her brief to this Court. We deem them abandoned. N.C.R. App. P. 28(b)(6).

Affirmed.

Chief Judge MARTIN and Judge HUNTER concur.

Report per Rule 30(e).