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NO. COA07-1368

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

Court of Appeals

IN RE: K.B. and K.B.,

Minor Juveniles.

Orange County
Nos. 07 JA 39, 40, 41

Slip Opinion

Appeal by respondent-mother from order entered 20 August 2007 by Judge Beverly Scarlett in District Court, Orange County. Heard in the Court of Appeals 14 April 2008.

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

Pamela Newell Williams, for the minor children, by and through their guardian ad litem.

David A. Perez, for respondent-appellant mother.

WYNN, Judge.

A court may enter a consent order where "all parties are present, the juvenile is represented by counsel, and all other parties are either represented by counsel or have waived counsel, and sufficient findings of fact are made by the court."¹ Here, Respondent-mother argues that the trial court erred by failing to conduct an adjudicatory hearing prior to entering an order

¹ N.C. Gen. Stat. § 7B-902 (2007).

adjudicating the minor children as dependent. Because the trial court's findings of fact, as supported by the amended record, indicate that the parties consented to an adjudication of dependency, we find no merit to this argument.

However, we remand for further proceedings regarding visitation because the trial court failed to specifically provide for visitation between Respondent-mother and the minor children.

On 2 April 2007, the Orange County Department of Social Services (DSS) filed a juvenile petition alleging that the minor children were neglected. Specifically, the petition alleged that serious financial problems and suspected drug use by Respondent-mother and the father were affecting the level of care and supervision being provided to the children. On 10 April 2007, the minor children's parents, their attorneys, and DSS attended a conference resulting in the entry of a consent order. This consent order gave temporary legal and physical custody of the children to the maternal grandmother and step-grandfather ("grandparents"). Respondent-mother and the father further agreed to take drug tests, to seek drug treatment if necessary, to file Medicaid and food stamp applications, and to cooperate with DSS. The consent order also provided that Respondent-mother would have a mental health evaluation and that the minor children would receive counseling. The consent order specified that an adjudicatory hearing on the juvenile petition would be held on 7 June 2007.

On 7 June 2007, the trial court did not conduct an adjudicatory hearing as scheduled, but rather a hearing on

temporary custody. Following this hearing, the trial court entered a temporary custody order in which it found that all parties had consented to the continued custody of the grandparents. In addition, the trial court rescheduled the adjudicatory hearing for 2 August 2007.

On 2 August 2007, the trial court conducted an adjudicatory and disposition hearing. As a result of this hearing, on 20 August 2007, the trial court entered an order adjudicating the children as dependent and transferring legal custody to a paternal aunt and uncle residing in Ohio. In support of its decision, the trial court made the following findings of fact:

2. The juveniles have been out of the home since a Petition was filed alleging that Respondents were abusing drugs and were unable to care for the juveniles. On April 10, 2007, by Consent Order, the juveniles were placed in the temporary custody of the [maternal grandmother].

3. All parties agree that the Respondents are currently unable to assume custody of the juveniles due to Respondent parents need to continue drug treatment.

4. Transfer of legal custody to . . . the Paternal Aunt and Uncle provides the juveniles with more options for their needs being met. The juveniles will have access to medical care, dental care, and mental health care. They are supported by family members who can assist with their care. There are activities in which the juveniles may choose to participate. Custody to [Paternal Aunt and Uncle] will insure their care and well-being.

5. The juveniles have recently visited with their Paternal Aunt and Uncle . . . who live in Ohio and have expressed an interest and desire to live in their home.

6. [Paternal Aunt and Uncle] have agreed to facilitate visits at least once per month, and to allow frequent telephone contact, between the juveniles and their parents.

Respondent-mother appeals from the order adjudicating the minor children as dependent and transferring legal custody to the paternal aunt and uncle.

On appeal, Respondent-mother argues that the trial court: (I) lacked subject matter jurisdiction because the juvenile petitions were not properly verified; (II) erred by failing to conduct an adjudicatory hearing prior to entering an order adjudicating the minor children as dependent; (III) erred by adjudicating the minor children as dependent because the petitions do not allege dependency, the parties did not consent to such an adjudication, and the evidence was insufficient; (IV) erred by waiving further review hearings without making proper findings as required by N.C. Gen. Stat. § 7B-906(b); and (V) erred by failing to properly award her visitation.

I.

In her first assignment of error, Respondent-mother contends that the trial court lacked subject matter jurisdiction because the juvenile petitions did not comply with N.C. Gen. Stat. § 7B-403(a). Specifically, Respondent-mother contends that there is no indication that the person whose signature appears in the verification section of the petitions is either the director of the DSS or an authorized representative of the director.

A trial court's subject matter jurisdiction over all stages of a juvenile case is established when the action is initiated with

the filing of a properly verified petition. *In re T.R.P.*, 360 N.C. 588, 593, 636 S.E.2d 787, 791 (2006). Section 7B-403(a) of our General Statutes requires that the juvenile petition "be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing." N.C. Gen. Stat. § 7B-403(a) (2007). As we have previously emphasized, "the best practice is to include a distinct statement that the petitioner is the director of the county department of social services or is an authorized representative of the director" *In re Dj.L.*, __ N.C. App. __, __, 646 S.E.2d 134, 137 (2007) (holding that a juvenile petition signed by the social worker and listing the social worker's address as "Youth and Family Services" contained sufficient information to demonstrate standing). However, we have upheld a trial court's jurisdiction where the petition contained sufficient information from which the trial court could determine that the individual signing the petition had standing to initiate a juvenile action under section 7B-403(a), especially where the respondent has never argued that the individual signing the petition was not authorized to do so. *Id.*

The juvenile petition form used in this case contains a verification section which includes a line for the petitioner to sign to verify the truth of the matters alleged in the petition. Directly below the signature line, there are two boxes whereby the petitioner can mark "Director" or "Authorized Representative of Director." In this case, the petitions each contain a signature, but neither of the boxes has been marked to indicate whether the

signing party is the director or an authorized representative of the director. However, the petitions list the petitioner as "Dept. of Social Services" and directly below the petitioner's signature, it specifies "Orange County Department of Social Services." Additionally, an attachment to the petitions provides significant details regarding the involvement of a DSS social worker with the family that led to the filing of the petitions. We conclude that this is sufficient information from which the trial court could determine that the person signing the petitions had standing to initiate the juvenile action. See *id.* Accordingly, this assignment of error is overruled.

II.

Respondent-mother next asserts that the trial court erred by failing to conduct an adjudicatory hearing on the allegations in the juvenile petitions. However, DSS argues that the parents consented to an adjudication of dependency, thereby eliminating the need for a hearing on adjudication.

Pursuant to section 7B-802 of our General Statutes, an adjudicatory hearing is required to determine the existence or nonexistence of the conditions alleged in a petition. N.C. Gen. Stat. § 7B-802 (2007). However, under section 7B-902, a court may enter a consent order where "all parties are present, the juvenile is represented by counsel, and all other parties are either represented by counsel or have waived counsel, and sufficient findings of fact are made by the court." *Id.* § 7B-902; see also *In re Shaw*, 152 N.C. App. 126, 129, 566 S.E.2d 744, 746 (2002)

(listing N.C. Gen. Stat. § 7B-902 as one of limited circumstances in which "[a]n adjudication of abuse, neglect or dependency in the absence of an adjudicatory hearing is permitted").

Here, in its order adjudicating the children as dependent, the trial court found that all parties, including the juveniles, were represented by counsel and present at the hearing. The trial court also specifically found that "[a]ll parties agree that the Respondents are currently unable to assume custody of the juveniles due to Respondent parents [sic] need to continue drug treatment."

Additionally, although the transcript of the hearing appears to start with the issue of disposition, DSS alleges that the beginning portion of the hearing during which the parents offered consent to adjudication of dependency was not captured by the electronic recording device. The amended record on appeal supports this argument, as it includes a certified copy of the clerk's notes from the hearing indicating that all parties were present and represented by counsel and that the parties had consented to an adjudication of dependency. The relevant entries provide as follows:

11:30:27 AM [Respondents] CONSNT ON ADJ. BUT NOT
AGREE ON DISPOSITION

....

2:04:34 PM [DSS COUNSEL] TELLS JUDGE THEY HAVE
CONSENT FOR DEPENDANCY [SIC]
GIVES HER ADJ. REPORT TO READ AND
DISPOSITION REPORT- TELLS HER THAT THERE
IS A DISPUTE ABOUT RECOMMENDATIONS
(PLACEMENT OF CHILDREN)

The trial court's findings of fact, as supported by the clerks's notations, indicate that the parties consented to an adjudication of dependency, and Respondent-mother has cited no evidence to the contrary. Accordingly, Respondent-mother's argument that the trial court failed to conduct a proper adjudicatory hearing is without merit, and this assignment of error is overruled.

III.

Respondent-mother also contends that the trial court erred by adjudicating the children as dependent because the juvenile petition alleged only neglect and there is insufficient evidence to support a determination of dependency. However, the basis for each of these arguments is that there was no valid consent to the dependency adjudication. As we have concluded above that the trial court properly adjudicated the children as dependent upon the Respondent-mother's and the father's consent, these assignments of error are also overruled.

IV.

Respondent-mother next argues that the trial court erred by waiving future review hearings without making the findings required by N.C. Gen. Stat. § 7B-906(b). Section 7B-906 requires the trial court to conduct a review hearing "within 90 days from the date of the dispositional hearing" and a subsequent review hearing six months thereafter. N.C. Gen. Stat. § 7B-906(a) (2007). The trial court may waive future review hearings if it makes certain findings specified in N.C. Gen. Stat. § 7B-906(b). *Id.* § 7B-906(b).

Respondent-mother contends that the trial court failed to comply with the statutory requirements for waiving future review hearings. In support of her argument, Respondent-mother directs this Court to the following finding in the trial court's order: "Custody may be modified upon a showing of a material and substantial change in circumstances. This court shall retain jurisdiction to hear any motion to modify filed by either parent." Respondent-mother argues that this statement indicates the trial court's intention to waive future review hearings. We disagree.

This statement merely informs the Respondent-mother and the father that they may seek to modify custody in the event that there is a substantial change in circumstances. It does not express an intent by the trial court to waive the review hearings required by the statute. In addition, Respondent-mother does not assert, nor does the record before us reflect, that the required review hearings were not conducted. Because we conclude that the trial court did not intend to waive review hearings, we need not address Respondent-mother's contention that the trial court failed to make the statutory findings required by N.C. Gen. Stat. § 7B-906(b). This assignment of error is overruled.

V.

In her final assignment of error, Respondent-mother contends that the trial court erred by failing to properly award her visitation. We agree.

N.C. Gen. Stat. § 7B-905(c) provides in pertinent part:

Any dispositional order under which a juvenile is removed from the custody of a parent,

guardian, custodian, or caretaker, or under which the juvenile's placement is continued outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety.

N.C. Gen. Stat. § 7B-905(c) (2007). Further, we have held that "the court should safeguard the parent's visitation rights by a provision in the order defining and establishing the time, place and conditions under which such visitation rights may be exercised." *In re Custody of Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971). Additionally, "the trial court maintains the responsibility to ensure that an appropriate visitation plan is established within the dispositional order, and cannot leave the question of visitation to the discretion of the appointed guardian." *In re C.P.*, 181 N.C. App. 698, 705, 641 S.E.2d 13, 18 (2007) (internal quotations omitted). Here, the trial court made the following finding of fact with respect to visitation:

6. [Aunt and Uncle] have agreed to facilitate visits at least once per month, and to allow frequent telephone contact, between the juveniles and their parents.

With the exception of this finding, the trial court's order includes no other directions or decree as to visitation. We agree with Respondent-mother that the finding appears to delegate the visitation to the discretion of the aunt and uncle. Because the trial court failed to specifically provide for visitation between Respondent-mother and the minor children, we remand for further proceedings regarding visitation.

Affirmed in part, remanded in part.

Judges MCCULLOUGH and BRYANT concur.

Report per Rule 30(e).