NO. COA08-114

NORTH CAROLINA COURT OF APPEALS

Filed: 17 June 2008

IN THE MATTER OF:

N.R. and Z.R., Minor Children.	Harnett County Nos. 06 J 214-15

Appeal by respondent-mother from order entered 25 October 2007 by Judge Albert A. Corbett, Jr. in Harnett County District Court. Heard in the Court of Appeals 27 May 2008.

E. Marshall Woodall and Duncan B. McCormick for Petitioner-Appellee Harnett County Department of Social Services.

Robin E. Strickland for Respondent-Appellant Mother.

Pamela Newell Williams for Respondent-Appellee Guardian ad Litem.

ARROWOOD, Judge.

S.W. (Respondent) is the biological mother of three minor children, N.R., Z.R. and J.J., living in Harnett County, North Carolina. The Harnett County Department of Social Services (Petitioner) first became involved with Respondent and her children in 2004, when Respondent began using Petitioner's prevention services due to inappropriate disciplining and mental health issues. In 2006, Petitioner became aware that Respondent was not following through with the services and was not receiving mental health treatment, leading Petitioner to file juvenile petitions

alleging the three children were neglected and dependent juveniles on 3 October 2006. On 26 January 2007, Respondent stipulated that the children were dependent juveniles. The trial court subsequently entered an adjudication order finding the children to be dependant on 9 February 2007.

On 2 March 2007, the trial court held a disposition hearing on the initial petitions and, by order entered 11 June 2007, the trial court awarded legal custody of the children to Petitioner, ordered Petitioner to continue reunification efforts with Respondent for all three children, and authorized Petitioner to place N.R. and Z.R. in the home of R.N., their paternal grandmother. Respondent was given supervised visitation with the children and ordered to comply with her Family Services Agreement which was to be updated to include weekly individual mental health therapy sessions.

This matter came up for a permanency planning hearing on 17 August 2007. At the hearing the trial court heard evidence from the placement social worker assigned to this case, Respondent, and the paternal grandmother of N.R. and Z.R. In its order entered 25 October 2007, the trial court adopted a permanent plan of guardianship for N.R. and Z.R., appointing their paternal grandparents as guardians. The trial court also continued the plan of reunification of J.J. with Respondent, leaving custody of J.J. with Petitioner. Respondent appeals.

Respondent first argues the trial court erred in granting continued nonsecure custody to DSS when the original custody orders were invalid. Respondent contends the original custody orders did

not comply with N.C. Gen. Stat. § 7B-508 because the signatures authorizing nonsecure custody were invalid. We first note that Respondent's argument is misplaced as the validity of a nonsecure custody order does not effect the trial court's subject matter jurisdiction in a neglect or dependency proceeding. It is well established that subject matter jurisdiction over a juvenile abuse, neglect or dependency proceeding attaches with the filing of a properly verified petition, not the entry of a nonsecure custody order. *In re T.R.P.*, 360 N.C. 588, 593, 636 S.E.2d 787, 792 (2006) ("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.").

Furthermore, the nonsecure custody orders at issue are not invalid as Respondent contends. N.C. Gen. Stat. § 7B-508 (2007) provides:

> All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7B-501, 7B-503, and 7B-504 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

Here, the orders for nonsecure custody were entered by Magistrate Judge E.A. Miller. In filling out the orders, Magistrate Judge Miller listed the name and the title of the person authorizing the entry of the order by telephone (Judge R. Faircloth), the signature and the title of the official entering the order (E.A. Miller -

Magistrate), and the hour and the date of the authorization (10-2-06 at 5:10 AM). The orders for nonsecure custody comply with the requirements of N.C. Gen. Stat. § 7B-508.

Respondent argues that "E.A. Miller" is not a valid signature because it does not include Magistrate Miller's full legal name. In support of her argument, respondent cites to our opinions in *In re A.J.H.-R.*, ___ N.C. App. ___, 645 S.E.2d 791 (2007) (holding that where a person signing a juvenile petition purports to sign as "Director," the purported signatures "[Director] by MH" and "[Director] by MHenderson" are insufficient to confer subject matter jurisdiction upon the trial court), and *In re S.E.P.*, ___ N.C. App. ___, 646 S.E.2d 617 (2007) (holding that where a person signing a juvenile petition purports to sign as "Director," the purported signature "[Director] by Pam Frazier" is insufficient to confer subject matter jurisdiction upon the trial court). However, *A.J.H.-R.* and *S.E.P.* both involved a person verifying a juvenile petition by signing on behalf of the County Department of Social Services and indicating that they were the Director when they were not. No such error occurs here. Respondent's further reliance on current and repealed provisions of the Notary Public Act is wholly without merit and unsupported by any applicable law. These assignments of error are overruled.

Respondent next argues the trial court erred in ordering a guardianship of the minor juveniles because the trial court lacked subject matter jurisdiction over this matter. Respondent contends the juvenile petitions were not properly verified because the

signature of the magistrate before whom the petitions were sworn is not valid. Again, Respondent relies on inapplicable provisions of the Notary Public Act in support of her argument. The Magistrate's handwritten signature of "E.A. Miller" is sufficient to attest to the proper verification of the juvenile petitions in this case. These assignments of error are overruled.

Respondent also argues the trial court erred in granting guardianship of the minor children to their paternal grandparents, when the permanent plan for the children had been reunification with Respondent and reasonable efforts had not been ceased. Respondent contends the trial court erred in failing to make findings under N.C. Gen. Stat. § 7B-507(a) or (b) as to Petitioner's need to make reasonable efforts to prevent the need of placement of the juvenile outside of the home.

A court may appoint a guardian of the person for a juvenile under N.C. Gen. Stat. § 7B-600 (2007), prior to entering a permanent placement plan for the child under N.C. Gen. Stat. § 7B-907, and without ceasing reunification efforts under N.C. Gen. Stat. § 7B-507(b). *See In re E.C.*, 174 N.C. App. 517, 521, 621 S.E.2d 647, 651 (2005). "Only where guardianship is the permanent plan for the juvenile may a court not terminate the guardianship or reintegrate the minor into a parent's home, absent a finding that the relationship between the juvenile and the guardian is no longer in the juvenile's best interest, the guardian is unfit, negligent, or unable to continue." *Id.* (citing N.C. Gen. Stat. § 7B-600(b)).

While Respondent is correct that the trial court changed the permanent plan of the minor children to guardianship, the trial court was not required to make any findings under N.C. Gen. Stat. § 7B-507(a) or (b). The provisions of N.C. Gen. Stat. § 7B-507(a) and (b) only apply to orders "placing [or continuing the placement of] a juvenile in the custody or placement responsibility of a county department of social services[.]" N.C. Gen. Stat. § 7B-507(a),(b) (2007). Likewise, the permanency planning statute, N.C. Gen. Stat. § 7B-907(c) (2007), provides only that, "[i]f the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7B-507 shall apply to any order entered under this section."

Here, the trial court changed the permanent plan of N.R. and Z.R. to guardianship with the children's paternal grandparents. The court did not place or continue the placement of custody of the children with a county department of social services and thus N.C. Gen. Stat. § 7B-507(a) and (b) do not apply to the trial court's order. "[S]ection 7B-507 was not applicable, and the trial court did not err" in failing to make findings thereunder. *In re Padgett*, 156 N.C. App. 644, 649, 577 S.E.2d 337, 341 (2003). This assignment of error is overruled.

Respondent additionally argues the trial court erred in making its findings of fact numbered 7, 23, 25 and 26 because they are not supported by competent evidence. "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 S.J.M.*, ___ N.C. App. ___, ___, 645 S.E.2d 798, 801 (2007), *aff'd per curiam*, 362 N.C. 230, 657 S.E.2d 354 (2008) (internal quotation marks and citation omitted). If supported by competent evidence, the trial court's findings of fact in a disposition order following a permanency planning hearing are conclusive on appeal. *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). However, we review *de novo* the trial court's conclusions of law and for an abuse of discretion with respect to its dispositional conclusions. *See In re D.H.*, 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006).

In finding of fact number seven, the trial court found:

> [A] social worker helped to arrange with the Sandhills Mental Health Center for a therapist to see the [respondent] on a weekly basis for counseling (individual therapy) as recommended in her psychological evaluation. The [respondent] attended one session on July 6, 2007 but cancelled the next appointment and has not returned. [Respondent] failed to tell the social worker the truth about her attendance at those sessions.

Here, the social worker testified at the hearing that Respondent attended the therapy session on 6 July 2007 and has not attended another. Respondent did briefly visit with her therapist on 9 August 2007, but it was not a scheduled therapy session. The social worker further testified that Respondent indicated her therapist was leaving the Sandhills Mental Health Center, but upon speaking with the therapist, the social worker learned this was not true. This finding of fact is supported by competent evidence of record.

In finding of fact number twenty-three, the trial court found:

> Except as herein changed, the court adopts the recommendations of the [petitioner] as appear in its respective report to the court.

The pertinent recommendations made by Petitioner in its report to the trial court prepared for the 17 August 2007 permanency planning hearing include: (1) that the permanent plan for N.R. and Z.R. be guardianship with the paternal grandparents; (2) that Respondent should have supervised visits with N.R. and Z.R. "as arranged and supervised" by the paternal grandparents; and (3) that Respondent should return to her weekly therapy sessions and continue to take her medication as prescribed. Respondent makes no specific challenge to any of the recommendations other than to contend they are not supported by findings of fact or sufficient evidence. The recommendations of Petitioner are completely subsumed by the trial court's findings of fact number twenty-five and twenty-six; and unchallenged finding of fact number eighteen. As such, Respondent's arguments will be addressed in her arguments addressing findings of fact number twenty-five and twenty-six. *See In re L.A.B.*, 178 N.C. App. 295, 298, 631 S.E.2d 61, 64 (2006) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." (internal quotation marks and citation omitted)).

In finding of fact number twenty-five the trial court found:

> It is in the best interests of juveniles [N.R.] and [Z.R.] for their grandparents above mentioned to be appointed their guardians. Said grandparents are fit and proper to be

> appointed as the guardians of the person of said children.

This finding of fact is a mixed dispositional conclusion and finding of fact. In light of the evidence of record, we discern no abuse of discretion in the trial court's decision to not return the children to respondent at this time. However, based on our discussion below, we hold the trial court erred in finding the grandparents were "fit and proper" to be appointed as the guardians of the children because no verification was made of the grandparents resources to care for the children or of their understanding of the ramifications of the significance of guardianship.

In finding of fact number twenty-six the trial court found:

> A return of the children to their parents would be contrary to their respective welfare for the reasons of the foregoing findings. [Respondent] should first complete the parenting classes, participate in mental health therapy and follow the recommendations as mentioned above and together with Mr. J establish their ability to financially meet the needs of their children.

Again, this finding of fact is a dispositional conclusion mixed with multiple findings of fact. The trial court did err in holding respondent should complete her parenting classes as petitioner's report states that she had completed all the parenting classes and had even been observed practicing some of the parenting skills she had learned. However, evidence presented at the hearing clearly indicated that respondent had difficulty maintaining her attendance at her mental heath therapy sessions and that she and Mr. J were

not financially able to adequately provide for the children. Respondent had only recently begun working and evidence was presented that Respondent had lost electricity, water and telephone service, ostensibly for non-payment. Based on the evidence of record, we discern no abuse of discretion in the trial court's decision to not return the children to Respondent at this time and its findings are supported by competent evidence of record.

Respondent further argues the trial court erred in granting a guardianship of the minor children without making the requisite findings of fact under N.C. Gen. Stat. § 7B-600 or 7B-907. The purpose of a permanency planning hearing is to determine "a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-907(a) (2007). A trial court may appoint a guardian of the person for the juvenile "when the court finds it would be in the best interests of the juvenile[.]" N.C. Gen. Stat. § 7B-600(a) (2007). Generally, we review a trial court's decision regarding a child's best interests for an abuse of discretion. *In re D.S.A.*, 181 N.C. App. 715, 720, 641 S.E.2d 18, 22 (2007). However, at the conclusion of a permanency planning hearing, whenever a trial court does not return the juvenile to her home, the court must consider the following criteria and make written findings regarding any relevant factors:

> (1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;
>
> (2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or

> some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
>
> (3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
>
> (4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
>
> (5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
>
> (6) Any other criteria the court deems necessary.

N.C. Gen. Stat. § 7B-907(b) (2007). Additionally, "[i]f the court appoints an individual guardian of the person . . ., the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile." N.C. Gen. Stat. § 7B-600(c) (2007); *see also* N.C. Gen. Stat. § 7B-907(f) (2007) (requiring the trial court to "verify that the person . . . being appointed as guardian of the juvenile understands the legal significance of the . . . appointment and will have adequate resources to care appropriately for the juvenile").

Here, the trial court made the following pertinent findings of fact:

> 14. [Petitioner] has expressed the following concerns about the financial stability of

[Respondent] and Mr. J. On one occasion when the social worker visited the home, there was no electricity. On another occasion during a supervised visit by the child in the home by another DSS worker, there was no water. This was due to non-payment of their water bill, though the worker was told that the landlord had turned off the water to fix some plumbing problems. There is also no working home phone. Perhaps now that [Respondent] is working she will be able to contribute to the household income to help pay the bills.

. . . .

19. Visitation for [respondent] and Mr. J should remain on a supervised basis. The visits should be scheduled by DSS in a written plan after consultation with the GAL as many times per week as can be agreed upon by the caretakers, [respondent] and Mr. J to include at least once per week (the court recognizes that two (2) children may be residing with their paternal grandmother, Ms. N and the youngest child with another caretaker). Ms. N and her husband should be approved as supervisors of visitation for the children residing with them.

. . . .

22. DSS is recommending that [Mr. and Mrs. N] be appointed guardians of juveniles [N.R.] and [Z.R.]. This recommendation is based on the observation and belief that the parents (especially [respondent]) are unable to parent all three children together. Mrs. N explains the older two juveniles are a handful. The juveniles are in the home of the N's, their paternal grandparents who have appropriately and adequately extended care and supervision to the juveniles.

23. Except as herein changed, the court adopts the recommendations of the [petitioner] as appear in its respective report to the court.

. . . .

25. It is in the best interests of juveniles [N.R.] and [Z.R.] for their grandparents above mentioned to be appointed their guardians.

> Said grandparents are fit and proper to be appointed as the guardians of the person of said children.
>
> 26. A return of the children to their parents would be contrary to their respective welfare for the reasons of the foregoing findings. [Respondent] should first complete the parenting classes, participate in mental health therapy and follow the recommendations as mentioned above and together with Mr. J establish their ability to financially meet the needs of their children.
>
> 27. The petitioner has made reasonable efforts in carrying out the plan of the court and in attempting to prevent the continued need for placement of these children in foster care.
>
> 28. The petitioner has made reasonable efforts to formulate a permanent plan of care for these children.

These findings are sufficient to comply with the requirements of N.C. Gen. Stat. § 7B-907(b). We hold the trial court considered the relevant criteria and factors of N.C. Gen. Stat. § 7B-907(b) before deciding to not return the minor children to their home.

However, there is no evidence in the record that the trial court verified that Mrs. N and her husband understood the legal significance of their appointment as guardians of N.R. and Z.R. or that they would have adequate resources to appropriately care for the children. The only evidence regarding the N's and their appointment as guardians came from the testimony of Mrs. N wherein she stated she has "a lot of support" to help her take care of the children and she is prepared to keep them "as long as [her] health holds up[.]" Mr. N did not testify at the hearing, and petitioner's report contains no supportive findings on this issue. Evidence was presented of how well the children were doing in their

placement with their grandparents, but this is insufficient to meet the requirements of N.C. Gen. Stat. § 7B-600(c). The only findings regarding the paternal grandparents involve the appropriate care they have given the children and that they are "fit and proper" to be appointed guardians. The trial court made no findings of fact as to the N's understanding of the ramifications of being named guardians of the children or of their resources to care for the children. Accordingly, we affirm the decision of the trial court to change the permanent plan of N.R. and Z.R. to one of guardianship. We must, however, reverse the appointment of Mr. and Mrs. N as the guardians of the children and remand for the appointment of guardians for N.R. and Z.R. after proper verification by the trial court under N.C. Gen. Stat. § 7B-600(c).

Affirmed in part, reversed and remanded in part.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).