NO. COA08-1211

NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2009

IN THE MATTER OF:
J.L.P.

Currituck County
No. 06 J 83

Appeal by respondent from order entered 18 April 2008 by Judge Eula N. Reid in Currituck County District Court. Heard in the Court of Appeals 23 February 2009.

The Twiford Law Firm, P.C., by Courtney S. Hull, for petitioner-appellee Currituck County Department of Social Services.

Susan C. Hall for respondent-appellant mother.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for guardian ad litem.

BRYANT, Judge.

Respondent-mother appeals from a 90-Day Review Order entered 18 April 2008 in Currituck County District Court which relieved DSS of reunification efforts between respondent-mother and J.L.P.[1] and granted guardianship of J.L.P. to her paternal grandparents. For the reasons stated below, we affirm the trial court.

On 12 December 2006, the Currituck County Department of Social Services ("DSS") filed a juvenile petition alleging that J.L.P. was

[1] Initials have been used throughout to protect the identity of the juvenile.

neglected in that she (1) did not receive proper care, supervision, or discipline from respondent-mother and (2) was not provided with necessary medical care. The petition alleged, among other things, that respondent-mother abused drugs, had used marijuana while pregnant, failed to seek treatment for J.L.P.'s medical conditions, left then ten-month-old J.L.P. alone in a bathtub, was unemployed, and failed to provide for other basic needs of J.L.P. In a nonsecure custody order dated the same day, the trial court granted legal custody to DSS and placed J.L.P. with her father and her paternal grandmother.

Following a hearing on 9 January 2007, the trial court continued custody with DSS and placed J.L.P. with her grandmother. Placement of J.L.P. was taken away from her father, presumably based on the trial court's discovery that the father also had substance abuse problems. Following a hearing on 6 February 2007, the trial court entered an order on 18 April 2007 adjudicating J.L.P. neglected based on the stipulations of both parents. Custody was continued with DSS and the child's placement was continued with the grandmother. The trial court also ordered both respondent-mother and father to complete individual substance abuse evaluations, continue and comply with random drug testing, and secure a stable residence for J.L.P.

The trial court conducted review hearings on 3 April 2007 and 27 July 2007 and a permanency planning hearing on 18 December 2007. In the order entered following each hearing, the court concluded that termination of parental rights was not appropriate, that the

parents were making progress towards the goal of reunification; however, "return of the minor child to the care, custody and control of her parents would be contrary to the best interest of the minor child." DSS retained custody of J.L.P., and J.L.P.'s placement remained with the grandmother and her husband. The court further ordered the parents to continue and comply with random drug testing, among other things.

Following a hearing on 18 March 2008, the trial court entered a 90-day review order on 18 April 2008. In the order, the trial court concluded that over the past year J.L.P.'s parents evidenced a strong drug addiction and continued drug use. The trial court concluded that DSS made reasonable efforts to return J.L.P. to her own home but that returning J.L.P. to her parents would be contrary to J.L.P.'s best interest. Although the court again concluded that termination of parental rights was not appropriate, it changed the permanent plan from reunification to guardianship with her paternal grandparents. The trial court relieved DSS of efforts to reunify J.L.P. with her parents and granted the grandparents guardianship based on her parents' drug addiction. On 16 May 2008, respondent-mother filed notice of appeal. Respondent-father, who participated in the trial court proceedings, does not appeal.

On appeal, respondent-mother raises the following two issues: whether the trial court erred in (I) relieving respondent-mother of reunification efforts and failing to timely hold a permanency planning hearing and (II) concluding that DSS expended reasonable

efforts, that reunification was not appropriate, and guardianship should be the permanent plan.

As an initial matter, we address the arguments of both DSS and the guardian *ad litem* ("GAL") that respondent-mother failed to timely give notice to preserve her right to appeal from the order pursuant to N.C. Gen. Stat. § 7B-507(c). However, in her notice of appeal, respondent-mother appealed to this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(3).

Under the North Carolina General Statutes, section 7B-1001(a)(3),

> In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of Appeals. Only the following juvenile matters may be appealed: . . . (3) Any initial order of disposition and the adjudication order upon which it is based.

N.C. Gen. Stat. § 7B-1001(a)(3) (2007). Moreover, under N.C. Gen. Stat. § 7B-1001(a)(4) "the following juvenile matters may be appealed: . . . (4) Any order, other than a nonsecure custody order, that changes legal custody of a juvenile." N.C. Gen. Stat. § 7B-1001(a)(4) (2007).

In *In re B.M.*, 168 N.C. App. 350, 607 S.E.2d 698 (2005), we reasoned that "[the] Respondents could have appealed from . . . the review hearing ceasing DSS's efforts to reunify the family . . . as [it] constituted [a] dispositional order[] which [was] immediately appealable under the provisions of N.C. Gen. Stat. § 7B-1001." *Id.* at 355, 607 S.E.2d at 701.

Here, on 18 March 2008, the trial court conducted a ninety-day review hearing. At the conclusion of the hearing, the trial court ordered that J.L.P.'s guardianship be awarded to her grandparents and that DSS be relieved of custody. In its 18 April 2008 order entered following the hearing, the trial court also ordered that DSS cease reunification efforts. On 24 April 2008, respondent-mother filed a Notice of Objection (Cessation of Reasonable Efforts) pursuant to N.C. Gen. Stat. § 7B-507(c). On 16 May 2008, respondent-mother filed a notice of appeal to the Court of Appeals from the 90-Day Court Ordered Review Order pursuant to N.C. Gen. Stat. § 7B-1001(a)(3). We hold that whether under N.C.G.S. § 7B-1001(a)(3) or (4) respondent-mother's appeal is properly before this Court.

I

Respondent-mother first questions whether the trial court erred in failing to schedule a permanency planning hearing within thirty days of the trial court's order which ceased reunification. Respondent-mother contends that she was prejudiced because the trial court ordered that J.L.P.'s grandparents could allow visitation with J.L.P. in their discretion and the trial court was obligated to ensure visitation. We disagree.

First, we consider whether the trial court erred in failing to schedule a permanency planning hearing after the 18 March 2008 review hearing. Under North Carolina General Statutes, section 7B-907,

> [i]n any case where custody is removed from a parent . . . the judge shall conduct a review

> hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing . . . . The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile.

N.C. Gen. Stat. § 7B-907(a) (2007).

Under the North Carolina General Statutes, section 7B-507(c),

> At any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent, guardian, or custodian or that parent, guardian, or custodian's counsel may give notice to preserve the parent, guardian, or custodian's right to appeal the finding and order in accordance with G.S. 7B-1001(a)(5).

N.C. Gen. Stat. § 7B-507(c) (2007).

Here, on 12 December 2006, the trial court granted DSS an immediate non-secure custody order for J.L.P. On 18 December 2007, the trial court held a twelve-month permanency planning review hearing. In its order following the December hearing, the trial court stated that the case would be reviewed on 18 March 2008. On 18 March 2008, the trial court held a review hearing and, on 18 April 2008, entered an order which changed J.L.P.'s permanent plan from reunification to granting J.L.P.'s grandparents her guardianship. A six-month review of the matter was scheduled for September 2008.

We hold that the trial court acted in accordance with the permanency planning requirements as set forth under N.C. Gen. Stat. § 7B-907(a); therefore, we need not address respondent-mother's remaining arguments on this issue. Accordingly, respondent-mother's assignment of error is overruled.

II

Second, respondent-mother argues that the trial court erred when it concluded that DSS had expended reasonable efforts, reunification was not appropriate, and guardianship should be the permanent plan. We disagree.

"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 J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004) (citation omitted). "If the trial court's findings of fact are supported by any competent evidence, they are conclusive on appeal." *Id.* at 106-107, 595 S.E.2d at 161 (citation omitted). Where findings of fact are not challenged they are conclusive on appeal, and "we are left to determine whether the trial court's findings support its conclusion of law." *See In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001) (citation omitted).

Under the North Carolina General Statutes, section 7B-907(b),

> [a]t any permanency planning review, the court shall consider information from . . . [any] person or agency which will aid it in the court's review. . . . At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

> (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;
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> . . .
>
> (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;

N.C. Gen. Stat. § 7B-907(b)(1),(2), and (5) (2007).

After an adjudicatory hearing in which a trial court determines that a juvenile is abused, neglected, or dependent by clear and convincing evidence, "[t]he trial court will then hold a dispositional hearing and has broad discretion to craft a disposition designed to serve the juvenile's best interests." *In re R.B.B.*, 187 N.C. App. 639, 643, 654 S.E.2d 514, 517 (2007).

Here, respondent-mother challenges several of the trial court's conclusions of law but in her brief does not challenge the trial court's findings of fact. Therefore, the trial court's findings are conclusive and we only determine whether those findings support the trial court's conclusions of law. *Beaseley*, 147 N.C. App. at 405, 555 S.E.2d at 647.

We first turn to the trial court's conclusion that "[r]easonable efforts have been made to prevent or eliminate the need for removal of the child from the home and removal was

necessary to protect the safety and health of the child[,]" and "[r]easonable efforts have been made to return the child to her own home . . . ."

In its 18 April 2008 order, the trial court made the following unchallenged findings of fact:

> 23. The Department of Social Services has offered the following services to the family:
> a. Transporation provided.
> b. Relative placement has been implemented
> c. Medicaid is provided.
> d. Support to the family through case management.
> e. A referral was made for substance abuse assessments, therapy and random drug screening provided.
> f. Daycare Services
> g. Supervision of visitation.

We hold these findings were sufficient to conclude that "[r]easonable efforts have been made to prevent or eliminate the need for removal of the child from the home" and "[r]easonable efforts have been made to return the child to her own home . . . ."

We next consider whether there were sufficient findings on which to conclude that "[r]eturn of the minor child to the care, custody, and control of her parents would be contrary to the best interest of the minor child."

We note the following unchallenged findings of fact:

> 22. [Respondent-Mother]'s present circumstances and progress or lack of progress are as follows:
> • One positive drug test for morphine (no prescription) 2/27/07
> On 02/12/07 prescribed Vicodin (15 tablets, 1 every 6 hours)

- Refusal on 03/22/07, negative results: 04/03/07, 05/17/07 and 07/18/07
- Hair Drug Analysis covering 3 mons. (Sept. Oct. and Nov.) results were negative.
  Urine test given on 12/13/07 ~ did not comply
  12/18/07 Judge ordered urine test ~ extremely high for Amphetamines {2347.0}
  Two test [sic] requested in January [2008] ~ did not comply
  One test requested in February with transportation provided ~ did not comply.
  02/28/08 urine test results were negative.
- Treatment services began at Albermarle Mental Health on April 24, 2007. Deborah Spence, therapist reported [respondent-mother] continues to be seen on a regular basis for Individual Therapy and Couples Therapy.
- She has not missed any visitation. Demonstrates appropriate behavior and parenting during the 2 hours per week supervised visitation.
- Unemployed
- Pregnant with limited prenatal care, if any.

. . .

24. These parents have had over a year to stabilize their lives. We are at the 15th month of custody and the parents still have a strong drug addiction. Because of continued drug usage the original risk to this child continues to exist. J.L.P. was adjudicated neglected because of her mother's poor judgment in caring for her emotional, medical and physical needs. The parent's judgment in their decision making and in their parenting could continuously be greatly compromised by their use of drugs. They have not sustained improvement long enough to assure [J.L.P.'s] safety. On December 12, 2007, [respondent-mother] denied her pregnancy. On December 18,

> 2007, she tested positive for Amphetamines and on January 9, 2008, she acknowledged being pregnant. Her prenatal care has not been appropriate for the child that she is now carrying. As far as we know, she has had no prenatal care. [The father] has been unable to maintain employment and therefore may become homeless in the immediate future. J.L.P.['s] health, safety, and well-being would be jeopardized if returned to the home at this time. The best plan of care to achieve a safe, permanent home for J.L.P. after this reasonable period of time is to change the plan of reunification to guardianship with the grandparents. . . .
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> . . .
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> 30. The Court asked the parents if they would be willing to provide a urine sample and they agreed. The Court instructed the parents to follow the probation officers to their office and return after they complied with the testing. Upon [] their return, the probation officer informed the Court that the parents attempted to provide a sample but were unable to do so on demand.

The trial court also made findings that the father had drug screens that were positive for marijuana on 13 and 17 December 2007 and that the father did not comply with two drug tests requested in January 2008. Additionally, the court found that respondent-mother and the father lived together, that their telephone was disconnected, that they received an eviction notice in February 2008, and that both parents were unemployed.

We hold these findings sufficient to support the trial court's conclusion that "[r]eturn of the minor child to the care, custody, and control of her parents would be contrary to the best interest of the minor child."

Last, respondent-mother argues that the trial court erred in concluding that "[i]t would be in the best interest of the minor child that guardianship be granted to the paternal grandparents . . . ."

We note the following unchallenged findings of fact:

> 17. [J.L.P.] resides with her paternal grandmother [] and step-grandfather []. She has a very close relationship with both grandparents and appears to be a very happy little girl. J.L.P. has a loving personality. She is well cared for by her grandparents and her needs are being met. J.L.P. attends day care where she develops socialization skills.
>
> . . .
>
> 25. The parental grandparents [], have had placement of the child since DSS was granted custody in December, 2006. [The grandparents] are willing and able to continue taking care of J.L.P. should the Court sanction the change in the permanent plan from reunification with the parents to guardianship with the grandparents. [The grandparents] understand the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.
>
> 33. It would be in the best interest of the minor child that guardianship be granted to the paternal grandparents, []. Return of the minor child to the care, custody and control of her parents would be contrary to the best interest of the minor child.

Based on these findings, we hold the trial court had sufficient grounds on which to conclude that "[i]t would be in the best interest of the minor child that guardianship be granted to the paternal grandparents . . . ." Accordingly, this assignment of

error is overruled, and the judgment of the trial court is affirmed.

Affirmed.

Judges, HUNTER (Robert C.) and CALABRIA concur.

Report per Rule 30(e).