

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-276

NORTH CAROLINA COURT OF APPEALS

Filed: 15 July 2008

IN RE: D.C.,

Minor Juveniles.

New Hanover County
No. 04 J 193

Appeal by respondent-mother (mother) from order entered 21 December 2007 by Judge Shelley S. Holt in New Hanover County District Court. Heard in the Court of Appeals 16 June 2008.

Dean Hollandsworth, attorney for petitioner-appellee New Hanover County Department of Social Services.

Pamela Newell Williams, attorney for guardian ad litem for the minor children.

Wyrick Robbins Yates & Ponton LLP by K. Edward Greene and Tobias S. Hampson, attorneys for respondent-appellant mother.

ELMORE, Judge.

On 17 November 2004, the New Hanover County Department of Social Services (DSS) filed a juvenile petition alleging that the minor child D.C. and three siblings were neglected and dependent. The petition alleged that D.C., then age three, had been attacked and seriously injured by a dog that mother had allowed to live in the home for four days. The petition further alleged that mother was in the process of being evicted from the home. The petition also alleged that in addition to the four minor children named in

the juvenile petition, mother had two older children who were in the legal custody of DSS.¹

On 17 November 2004, the trial court granted DSS non-secure custody of D.C. As a result of the dog attack, D.C. sustained serious injuries requiring a lengthy hospital stay and extensive surgery including skin grafts. Due to the intensive need for medical treatment, DSS placed D.C. with a foster care family near the hospital to facilitate his ongoing outpatient care.

Following an adjudication hearing on 13 January 2005, the trial court adjudicated D.C. neglected, and the allegation of dependency was dismissed by stipulation of the parties. On 27 July 2005, the trial court allowed DSS to cease reunification efforts with mother. On 11 April 2006, the trial court changed the permanent plan to adoption. However, on 21 December 2007, the trial court entered a permanency planning order in which it changed the plan from adoption by the foster parents and instead granted D.C.'s foster parents guardianship. As the basis for its decision, the trial court found that D.C.'s physical and psychological needs could best be met by a combination of guardianship, the ability to maintain contact with his siblings, and eventual reestablishment of his relationship with his mother. Mother now appeals from this permanency planning order.

Mother's sole assignment of error on appeal is that the trial court failed to make adequate findings of fact as required by N.C.

¹ Although the juvenile petition involved three of mother's other children, the present appeal involves only D.C. An appeal is pending regarding the other children (COA08-206).

Gen. Stat. § 7B-907(b). This statute requires that the trial court consider certain specified criteria and "make written findings regarding those that are relevant" when the juvenile will not be returned home at the conclusion of a permanency planning hearing. N.C. Gen. Stat. § 7B-907(b) (2007). The trial court must consider the following:

(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.

Id. Further, this Court has held that it is reversible error for the trial court to enter a permanency planning order that continues custody with DSS without making proper findings as to the relevant statutory criteria. See *In re J.S.*, 165 N.C. App. 509, 511, 598

S.E.2d 658, 660 (2004) (reversing and remanding a permanency planning order that failed to make findings of fact required by N.C. Gen. Stat. § 7B-907(b)). The findings of fact must be “sufficiently specific to enable an appellate court to review the decision and test the correctness of the judgment.” *Id.* (quoting *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982)).

Mother contends that the trial court failed to make a specific finding of fact that D.C. could not be reunified with mother within the next six months pursuant to N.C. Gen. Stat. § 7B-907(b)(1). As we have recently held, N.C. Gen. Stat. § 7B-907(b) “does not require a permanency planning order to contain a formal listing of the § 7B-907(b)(1)-(6) factors, ‘as long as the trial court makes findings of fact on the relevant § 7B-907(b) factors’” *In re L.B.*, 181 N.C. App. 174, 190, 639 S.E.2d 23, 31 (2007) (quoting *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004), *overruled on other grounds by In re R.T.W.*, 359 N.C. 539, 614 S.E.2d 489 (2005), *superceded by statute as stated in In re T.R.P.*, 360 N.C. 588, 636 S.E.2d 787 (2006)).

In this case, the trial court specifically found that the return of D.C. to mother

would be contrary to [D.C.’s] best interest and welfare due to the continuing lack of certainty of [his] safety due to Respondent-Mother’s behaviors and the length of time it has taken for her to show progress in her own situation even in the absence of the difficulties of providing a home for her six children.

Although this finding does not specifically reference a six-month period, other findings in the trial court’s detailed order clearly

demonstrate that not only would a return to mother not be possible, but that granting legal guardianship of D.C. to his foster parents of three years was in D.C.'s best interest. These findings include the following

7. Kimball Jane Sargent, therapist for [D.C.] has been seeing him since January of 2006, approximately one to two times per month. He suffers from anxiety and is struggling with questions of the permanence of his placement. He has problems related to sleeping that could be related to his Attention Deficit Hyperactivity Disorder or to the head trauma suffered in the attack by the dog in 2004. He is also diagnosed with Post Traumatic Stress Disorder. His biggest fears are encountering his mother and losing his safe place, which he has identified as the foster home in which he lives. When he is anxious, he exhibits self-injurious behavior, such as picking at his scalp grafts and making them bleed and pulling out the remaining hair on the portions of his scalp not affected by the dog attack. [D.C.] has bonded with the family that he has lived with for the past three years and fears being taken away from them. Ms. Sargent does recommend contact for [D.C.] with his siblings and she would like to supervise this contact and would like also to be involved with the reestablishment of contact with his mother, by first having contact by letters which could lead to a visit in her office, which is a non-threatening environment for him. In the therapist's opinion, if [D.C.] does not get some measure of permanence in his placement today, he will likely exhibit continues sleep difficulties, advanced hyperactivity and acting out.

* * *

10. [D.C.] has bonded with the foster family he has stayed with for the past three years, Douglas and Kristin Brandsen, and their six year old adopted daughter, who all live in the home. He is considered a member of their family and calls the Brandsens, "Dad and Mom" and their daughter "sister." He has asked about when they will be able to adopt him and

is anxious when he perceives that he may go back to Wilmington to be with his biological family. Visits with his closest in age brother, [D.C.H.] average once per month and the attempt at an overnight visit was not entirely successful due to some acting out by [D.C.H.] and demands by him for toys and general defiance. Day visits have been more successful. A visit last year with his sisters led to a bad reaction, self-abusive behavior, pulling out of his hair and hallucinations. He is afraid of seeing his biological mother and of coming back to Wilmington. The foster parents are willing to become legal guardians of [D.C.] and to facilitate visitation with his siblings and biological mother.

11. The Department and the Guardian ad Litem both recommended on this date to change the permanent plan for [D.C.] from adoption to legal guardianship with the Brandsens, his foster parents. This changes in plan is approved by the Court and is found as a fact to be the plan most likely to bring about a safe permanent home for the Juvenile within a reasonable period of time. Adoption had been the plan since the hearing of July 14, 2005 and a Termination of Parental Rights Petition on [D.C. and three siblings] was filed on September 12, 2006, however such petition was voluntarily dismissed on October 1, 2007 in light of the granting of guardianship of the [two of the siblings] to relatives by the Court Order from the hearing that was completed on May 7, 2007. Legal guardianship for [D.C.] will enable him to continue contact with his biological family, which may not have been an option if the permanent plan of adoption remained in place. As noted by the Court in Paragraph 6 of these Findings of Fact, each of [D.C.'s] siblings desires to maintain a relationship with their brother and [DC's] therapist supports such contact. In addition, the Respondent-Mother desires to reestablish her relationship with [D.C.] and his therapist also supports and is willing to facilitate a plan to achieve this goal. [D.C.'s] physical and psychological issues can best be met by the combined support of his biological family and his appointed guardians;

therefore the change in plan is in the best interests of [D.C.]

12. The Brandsens, having been foster parents for nine years and adoptive parents of a six year old girl, are cognizant of the differences between being foster parents and legal guardians and of the significance of a legal guardianship being granted to them and possess the adequate resources to care appropriately for [D.C.] He is also the recipient of financial assistance in the form of SSI, as verified by his therapist.

13. The Juvenile, [D.C.] has resided with the Brandsens for approximately three years; the placement is stable and the continuation of such placement is in [D.C.'s] best interests; it is not in the best interest of [D.C.], nor any other party to hold review hearings every six months, in fact, the lack of permanence that such hearings would imply could seriously impair [D.C.'s] mental health as the evidence leads the Court to find that he is prone to self-injurious behavior and acting out when the permanence he has found with the Brandsens is threatened; all parties to this matter are represented by counsel and are aware that they may bring this matter to the Court's attention at any time by way of filing of a motion for review; and this Order will establish the Brandsens as guardians of the person of [D.C.]

These findings clearly demonstrate that the trial court thoroughly considered all relevant criteria listed in N.C. Gen. Stat. § 7B-907(b). In particular, we conclude that these findings support the trial court's determination that the return of D.C. to his mother in the next six months is not in his best interest. See N.C. Gen. Stat. § 7B-907(b)(1) (2007). Consequently, mother's assignment of error is overruled.

Affirmed.

Chief Judge MARTIN and Judge ARROWOOD concur.

Report per Rule 30(e).