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NO. COA08-536

NORTH CAROLINA COURT OF APPEALS

Filed: 7 October 2008

IN THE MATTER OF:

I.N.B., T.N.B.,
D.N.B., and A.S.

Robeson County
Nos. 07 JA 8,
07 JA 9,
07 JA 10,
07 JA 246

Court of Appeals

Appeal by respondents from orders entered 11 March 2008 by Judge J. Stanley Carmical in Robeson County District Court. Heard in the Court of Appeals 11 September 2008.

Slip Opinion

No brief filed for Robeson County Department of Social Services, petitioner-appellee.

Pamela Newell Williams, for Guardian ad Litem.

Annick Lenoir-Peek, for respondent-appellant mother.

Richard E. Jester, for respondent-appellant father.

JACKSON, Judge.

Concepcion B.S. ("respondent-mother") and Isaias N. Ramirez ("respondent-father") (collectively, "respondents") are the parents of four children, I.N.B. ("Isaac"), T.N.B. ("Teresa"), D.N.B. ("David"), and A.S. ("Adam").¹ On 5 July 2007, the Robeson County

¹To protect the children's privacy and for ease of reading, the pseudonyms "Isaac," "Teresa," "David," and "Adam" are being

District Court filed an order adjudicating Isaac and David as neglected juveniles and Teresa as a neglected and abused juvenile. The court placed the children in the custody of the Robeson County Department of Social Services ("DSS"). On 24 August 2007, the court filed an order adjudicating Adam as neglected and placing him in DSS's custody. Respondent-mother appealed to this Court from the 24 August 2007 order. While that appeal was pending, the trial court continued to conduct review and permanency planning hearings as to all four juveniles.

On 11 March 2008, following a permanency planning hearing on 13 February 2008, the trial court entered the order which is the subject of the present appeal. In that order, the court awarded guardianship of Isaac, Teresa, and David to a non-relative couple, Lawrence and Melanie Harvey ("the Harveys"), and guardianship of Adam to another non-relative, Bernice Williams ("Williams"). The court allowed respondent-father to have unsupervised visitation with all four children. The court allowed respondent-mother to have supervised visitation only with the youngest child, Adam. Respondents both timely filed notices of appeal from the 11 March 2008 order. They filed a joint record on appeal which was received by this Court on 13 May 2008.

On 3 June 2008, this Court filed its opinion in the appeal taken from the 24 August 2007 order adjudicating Adam as neglected

used. These pseudonyms are the same we employed in our prior opinion in this matter. See *In re A.S.*, __ N.C. App. __, __, 661 S.E.2d 313, 315 (2008).

and awarding custody to petitioner. *In re A.S.*, __ N.C. App. __, 661 S.E.2d 313 (2008). A majority of this Court upheld the adjudication of Adam as neglected. *In re A.S.*, __ N.C. App. at __, 661 S.E.2d at 321-23. All of the judges, however, agreed that the court's disposition order lacked proper findings of fact and conclusions of law. *In re A.S.*, __ N.C. App. at __, 661 S.E.2d at 325 (Tyson, J., concurring in part and dissenting in part). We vacated the disposition order and remanded the matter to the trial court for the entry of proper findings of fact and conclusions of law. *In re A.S.*, __ N.C. App. at __, 661 S.E.2d at 322-23.

Respondents contend that the order presently before us for review shares the same material deficiencies as the order in *In re A.S.* We agree.

Specifically, respondents argue that the trial court erred by (1) improperly delegating its fact-finding obligation by wholesale incorporation of documents prepared by DSS and the guardian *ad litem*, thereby leading to conflicting or inconsistent findings of fact and conclusions of law; (2) failing to indicate why respondent-father, paternal grandmother, or other relative is not an appropriate placement alternative; (3) failing to consider the progress respondents have made; (4) failing to consider the fitness of respondent-father to parent the children; and (5) failing to describe efforts made by DSS to reunite the family.

The present record on appeal contains the order from 24 August 2007 relating to Adam, the subject of *In re A.S.*, as well as the order from 8 March 2008, which is the subject of the present

appeal. Both orders issued from the same trial court. As its findings of fact in the order at issue in *In re A.S.*, the trial court incorporated by reference each of the exhibits entered by DSS and the guardian *ad litem*, including (1) DSS's court report; (2) DSS's family reunification assessment; (3) DSS's family assessment of strengths and needs; and (4) the guardian *ad litem*'s court report. The trial court then found:

That the statements set forth in the Court Report of social worker, Sheila Smith[,] are true and the statements set forth in the Court Report of guardian *ad litem*, Hope Robinson[,] are true and that it is in the best interest of the named juvenile that the recommendations of the Robeson County Department of Social Services adopted [sic] by the Court, legal and physical custody of the named juvenile remain with the Department *and change [sic] the plan from reunification to guardianship with a court approved caretaker*. Visits are going well, continue visits as long as supervised. Return to Court on August 8, 2007 for a First Review Hearing.

The Court finds that it is contrary to the welfare of the juvenile named and it is not possible for the juveniles to be returned home immediately or within the next six months in full legal custody of their parents and that it is not in the best interest of the juvenile to return home because of the parents['] inability to provide for the care and supervision of the juvenile and the parents['] failure to make reasonable progress in correcting those conditions that led to the removal of the juvenile from their custody.

In re A.S., __ N.C. App. at __, 661 S.E.2d at 321 (emphasis in original). Based on these findings, the trial court's conclusion recited that:

The Court finds as fact that it would be contrary to the welfare of the named juvenile for their [sic] to be a continuation in or

return to the juvenile's own home and that if [sic] such action would be contrary to the juvenile's best interest; that the Robeson County Department of Social Services has made reasonable efforts to prevent or eliminate the need for placement for the juvenile as set forth in the court report of the Department of Social Services should [sic] continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, and the juvenile's placement and care are the responsibility of the Robeson County Department of Social Services and that agency is to provide and arrange for the foster care or other placement, including relative placement if appropriate, deemed to be in the best interest of the juvenile.

In re A.S., __ N.C. App. at __, 661 S.E.2d at 321 (emphasis in original).

The present order is almost identical to the order in *In re A.S.* As its findings of fact, the court again incorporated by reference (1) DSS's court report; (2) DSS's family assessment of strengths and needs; and (3) the guardian *ad litem*'s court report. Much like *A.S.*, the trial court then found

[t]hat the statements set forth in the Court Report of social worker, Sheila Smith[,] are true[,] and the statements set forth in the Court Report of guardian ad litem, Hope Robinson[,] are true[,] and that it is in the best interest of the named juveniles that the recommendations of the Robeson County Department of Social Services [sic] adopted by the Court, legal guardianship of the above named juveniles, [Isaac, Teresa, and David] are [sic] hereby awarded to [the Harveys] and legal guardianship of [Adam] is hereby awarded to non-relative, [Williams]. That Robeson County Department of Social Services is to monitor the case until it returns to Court on March 12, 2008.

The Court finds that it is contrary to the welfare of the juveniles named and it is not possible for the juveniles to be returned home

immediately or within the next six months in full legal custody of their parents[,] and that it is not in the best interest of the juveniles to return home because of the parents['] inability to provide for the care and supervision of the juveniles and the parents['] failure to make reasonable progress in correcting those conditions that led to the removal of the juveniles from their custody.

(Emphasis added).

Furthermore, as in *In re A.S.*, the trial court in the case *sub judice* made the same findings as to the reasonable efforts of DSS to prevent or eliminate the need for placement of the juveniles. The court also made the same finding that DSS should continue to make reasonable efforts to prevent or eliminate the need for placement of the juveniles and to provide and arrange for foster care of the juveniles, including relative placement. Upon review of the substantially identical orders, we conclude that the present order suffers from the same deficiencies as the order at issue in *In re A.S.*

"All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). The trial court "must[,] through 'processes of logical reasoning from the evidentiary facts[,]'" find the ultimate facts essential to support the conclusions of law." *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003) (quoting *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002)). Although it is proper for the trial court to consider written reports and materials, "the trial

court should not broadly incorporate these written reports from outside sources as its findings of fact." *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004). "Thus, although the trial court may properly incorporate various reports into its order, it may not use these as a substitute for its own independent review." *In re M.R.D.C.*, 166 N.C. App. 693, 698, 603 S.E.2d 890, 893 (2004), *disc. rev. denied*, 359 N.C. 321, 611 S.E.2d 413 (2005). See also *In re Shue*, 63 N.C. App. 76, 79, 303 S.E.2d 636, 638 (1983).

We noted in *In re A.S.* that although the trial court could incorporate the reports by reference into its order, the trial court still was required to make its own findings of fact based upon the reports and any testimonial evidence received. *In re A.S.*, ___ N.C. App. at ___, 661 S.E.2d at 322. We stated that "[t]he trial court's bare finding that 'the statements set forth' in the reports 'are true' does not tell this Court upon which assertions in those reports the trial court was relying." *Id.*

Again, we conclude that the present order suffers from the same material deficiencies as those found in *In re A.S.* We therefore vacate the order and remand for further findings of fact and conclusions of law.

Respondents also contend that the trial court erred by granting legal guardianship of Adam to the foster parent while the appeal of the adjudication and disposition order was pending in this Court. North Carolina General Statutes, section 7B-1003(b) provides that, pending disposition of an appeal, the trial court may continue to exercise jurisdiction, conduct hearings, and enter

orders affecting the custody or placement of the juvenile. See N.C. Gen. Stat. § 7B-1003(b) (2007). An exception exists for proceedings to terminate parental rights, but that exception is inapplicable to the case *sub judice*. Accordingly, this contention is overruled.

Vacated and Remanded.

Judges McCULLOUGH and STEPHENS concur.

Report per Rule 30(e).