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NO. COA09-392

NORTH CAROLINA COURT OF APPEALS

Filed: 4 August 2009

IN THE MATTERS OF:

J.A.A. and G.Q.C.

Wilkes County
Nos. 07 JA 80, 81

Appeal by respondent from order filed 19 November 2008 by Judge Jeanie R. Houston in Wilkes County District Court. Heard in the Court of Appeals 13 July 2009.

Paul W. Freeman, Jr., for petitioner-appellee Wilkes County Department of Social Services.

Tracie M. Jordan, for appellee Guardian ad Litem.

Carol Ann Bauer, for respondent-appellant.

Steelman, Judge.

The trial court did not abuse its discretion in denying respondent's first motion to continue the permanency planning hearing.

I. Factual and Procedural Background

On 13 February 2007, Mary E. Absher (respondent), mother of the children, was arrested for resisting a public officer and failing to surrender her operator's license. Respondent's erratic behavior caused concerns that her mental health prevented her from being able to properly care for the children. The children were placed with relatives until respondent was released from jail and

spoke with Wilkes County Department of Social Services (DSS). Respondent submitted to a mental health assessment following a recommendation from DSS; however, she did not seek follow-up treatment and was uncooperative with DSS, causing DSS to surmise that her mental condition was deteriorating. DSS received two reports of neglect on 8 May 2007 involving erratic behavior by respondent and lack of supervision of the youngest child, who was four years old. DSS filed juvenile petitions on 8 May 2007 alleging that the children were neglected because they were living in an environment injurious to their welfare. DSS was granted non-secure custody.¹

After an adjudication hearing was held in late June and early July 2007, the trial court adjudicated the children neglected by order filed 21 August 2007. J.A.A. was placed with her stepfather (an older sibling's father), and G.Q.C. was placed with his maternal grandmother. The court granted DSS legal and physical custody of the children, with authority to place the children in foster care or other placements. The court allowed respondent to have twice monthly supervised visits with the children and additional unsupervised visits with J.A.A. as allowed by her caretaker.

A review hearing was held on 18 February 2008. In an order filed 7 March 2008, the trial court approved of J.A.A.'s continued

¹ The juvenile petitions included a third child, also initialed J.A.A., who turned eighteen during the pendency of this case. He is not included in the trial court's order filed 19 November 2008 and is not involved in this appeal.

placement with her stepfather and G.Q.C.'s placement with a paternal aunt and uncle. The plan remained reunification. Respondent was ordered not to contact G.Q.C.'s caretakers without permission from DSS. She was further ordered not to go near any residence where G.Q.C. was staying or near any of the children's schools, healthcare providers, or other service providers without permission from the court.

On 9 April 2008, DSS filed a motion to show cause seeking to hold respondent in contempt for violating court orders prohibiting her from going to G.Q.C.'s school. The trial court issued a show cause order, which ordered that visitation between respondent and G.Q.C. be ceased temporarily. On 24 April 2008, the matter was continued due to concerns about respondent's competency to proceed. The court ordered respondent to submit to a forensic evaluation. On 3 July 2008, the guardian *ad litem* filed a motion to show cause alleging that respondent had failed to obtain a forensic evaluation as ordered by the trial court.

A hearing was held on 8 August 2008 at which the trial court allowed motions by respondent's attorney and guardian *ad litem* to withdraw. The court appointed a new attorney and a new guardian *ad litem* for respondent, and set a permanency planning review hearing for 30 September 2008. The court ordered that respondent not have any visitation with G.Q.C., but visitation with J.A.A. was allowed.

In advance of the permanency planning hearing, the children's guardian *ad litem* filed a report recommending guardianship of

J.A.A. by her stepfather and guardianship of G.Q.C. by his paternal aunt and uncle.

At the start of the 30 September 2008 permanency planning hearing, respondent's attorney informed the trial court that respondent had a medical condition, which would likely prevent her from being able to understand or participate in the proceedings. Respondent had gone to a hospital emergency room the previous night with an allergic reaction to medication. On the day of the hearing, she fell in the parking lot of the courthouse, and her attorney stated:

[respondent] is really unable to concentrate and even read these documents that are before her and that she is not in a position where she can understand and respond to these documents at this time or be able to proceed in a hearing to assist me and the types of questions I need to ask or if needed to testify, Your Honor.

Respondent's guardian *ad litem* stated that although a continuance would not necessarily be in respondent's best interest, he was not certain of her ability to proceed. DSS, the children's guardian *ad litem*, and the attorney for one of the fathers objected to a continuance. The attorney for DSS argued that the reason respondent had a guardian *ad litem*, and the reason for DSS's involvement in the first place, was due to respondent's mental illness and her inability to understand her case. He argued that even if the case were continued, respondent's ability to understand and assist in the case would not likely improve. The trial court denied the motion to continue the hearing.

Social worker Angela Hawkins (Hawkins) testified regarding efforts to work with respondent since May 2007 when the children came into DSS custody. At mid-day, the court recessed for lunch. When court reconvened, respondent's attorney renewed her motion to continue and stated that respondent had been advised by a mental health nurse that she should seek treatment at an emergency room. The attorney also noted that respondent's face appeared to be more swollen and puffy than in the morning. The trial judge asked if the nurse advised treatment for an allergic reaction or for a mental health issue. Respondent's attorney was not certain of the answer but stated she thought there was a mixed answer to that question. The drug that respondent was taking was an experimental drug for a mental health condition. Soon thereafter, respondent was taken by ambulance to a medical center. Respondent's attorney again renewed her motion to continue. The children's guardian *ad litem* objected to delaying the hearing on behalf of J.A.A., who was at the courthouse and wanted the matter heard because she had already missed many days of school. The trial court continued the matter.

Court reconvened on 28 October 2008, and DSS presented further evidence from Hawkins, as well as a mental health assessment of respondent conducted since the previous hearing. Respondent testified. By order filed 19 November 2008, the trial court awarded legal and physical custody of J.A.A. to her stepfather, and legal and physical custody of G.Q.C. to his paternal aunt and uncle.

Respondent appeals.

II. Analysis

In her only argument, respondent contends that the trial court erred in denying her motion to continue made at the beginning of the 30 September 2008 hearing. We disagree.

The Juvenile Code provides:

The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interest of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interest of the juvenile.

N.C. Gen. Stat. § 7B-803 (2007). A trial court's decision to grant or deny a continuance is reviewed for an abuse of discretion. *In re J.B.*, 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005) (citing *In re Humphrey*, 156 N.C. App. 533, 538, 577 S.E.2d 421, 425 (2003)). A ruling on a motion to continue will not be overturned on appeal unless it is "manifestly unsupported by reason." *In re Safriet*, 112 N.C. App. 747, 751, 436 S.E.2d 898, 901 (1993) (quoting *Freeman v. Monroe*, 92 N.C. App. 99, 101, 373 S.E.2d 443, 444 (1988)). "Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation." *In re J.B.*, 172 N.C. App. at 10, 616 S.E.2d at 270. Generally, the denial of a motion to continue is sufficient grounds for the granting of a new trial only when "defendant is able to show that the denial was erroneous and

that [she] suffered prejudice as a result of the error." *State v. Rogers*, 352 N.C. 119, 124, 529 S.E.2d 671, 675 (2000).

We first note that respondent makes no contention that she was seeking a continuance so the trial court might "receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interest of the juvenile" nor that a continuance was needed "to allow for a reasonable time for the parties to conduct expeditious discovery." N.C. Gen. Stat. § 7B-803 (2007). Her only contention seems to be that her "physical and mental condition" in the courtroom constituted an extraordinary circumstance.

Respondent's condition at the start of the hearing did not rise to the level of extraordinary circumstances such that the trial court was required to grant a continuance. Despite respondent's medical condition, she was present in the courtroom and represented by an attorney as well as by her guardian *ad litem*. Respondent submitted no medical evidence or testimony at that time which would support her contention that she was unable to participate. As the attorney for DSS pointed out to the trial court, "the reason that [respondent] has a Guardian ad Litem, the reason that we have the children in the first place, is because of the fact that it is well documented that [respondent] suffers from a significant mental illness." After the lunch recess, the court did continue the hearing, when it appeared that respondent's condition had worsened.

Even assuming *arguendo* that the hearing should have been continued when respondent originally made her motion to continue, respondent has not shown that she suffered prejudice as a result of the denial of her first motion. Respondent has offered no evidence other than the statement, "Ms. Absher was prejudiced in that the court saw her at her worst [sic] while being vulnerable and helpless." The only testimony taken in the morning session was that of social worker Hawkins, and only part of her testimony was taken. At the 28 October hearing, respondent was given a full opportunity to complete her cross-examination of Hawkins. Respondent was also able to testify and participate without any apparent difficulty, and she was given a full and fair opportunity to present evidence.

We hold the trial court did not abuse its discretion, and no prejudice was suffered by respondent as a result of the trial court's denial of respondent's motion to continue the hearing when it was first presented.

This argument is without merit.

AFFIRMED.

Judges WYNN and BRYANT concur.

Report per Rule 30(e).