NO. COA09-746

NORTH CAROLINA COURT OF APPEALS

Filed: 3 November 2009

IN THE MATTER OF:

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| J.M.D., A.T.N., K.D.W., III, A.D.J.-L.D. | Greene County Nos. 07 JA 35-38 |

Appeal by Respondent-mother from orders entered 30 March 2009 by Judge R. Les Turner in District Court, Greene County. Heard in the Court of Appeals 12 October 2009.

*James W. Spicer, III, for petitioner-appellee Greene County Department of Social Services.*

*Pamela Newell Williams for guardian ad litem.*

*Lisa Skinner Lefler for respondent-appellant mother.*

WYNN, Judge.

Respondent-mother appeals from a permanency planning order entered as to one of her four children, J.M.D.[1] She argues that the trial court's findings of fact and conclusions of law were insufficient to support its order. We agree and therefore reverse and remand the permanency planning order as to J.M.D.

[1] Although Respondent-mother entered notice of appeal from the orders as to all four children, on 31 August 2009, this Court allowed respondent mother's motion to withdraw her appeal from the orders entered as to three of the children. Thus, this appeal addresses only the appeal from the order entered as to J.M.D.

The Greene County Department of Social Services ("DSS") became involved with Respondent-mother in July of 2007 after receiving a child protective services report. DSS found Respondent-mother's home in "disarray", with trash, including soiled diapers, scattered throughout the home. Respondent-mother had also been diagnosed with mental health issues, including bipolar disorder, schizoaffective disorder, post-traumatic stress disorder, and obsessive compulsive disorder, and had missed several appointments with her therapist and doctor. Respondent-mother also failed to obtain proper medical care for the children, including treatment for J.M.D.'s asthma. On one occasion, J.M.D.'s oldest sibling, who was six years old at the time, called 9-1-1 because no adult was home with the four children. After DSS became aware of their condition, the children were placed in non-secure custody with their godparents.

On 18 October 2007, DSS filed petitions alleging that all four children were neglected based on the conditions observed in Respondent-mother's home and Respondent-mother's unaddressed mental health issues. On 25 October 2007, Respondent-mother entered into a consent agreement with DSS in which she agreed to receive mental health services and follow all recommendations for further treatment, maintain a suitable residence, attend parenting and nurturing classes, attend supervised visitation, and allow DSS the authority to arrange and provide services for the children.

On 17 December 2007, the children were adjudicated neglected. Throughout 2008, the district court continued the children in DSS

custody. In February of 2008, DSS placed J.M.D. with his father, K.W., although J.M.D. remained in DSS custody. At a special hearing on 24 November 2008, the court ordered temporary custody of J.M.D. to be placed with K.W. On 16 February 2009, the matter came on for a permanency planning hearing.

After considering the evidence, including testimony from Respondent-mother, K.W., and other witnesses, the trial court entered permanency planning orders as to all four children on 30 March 2009. The trial court concluded that J.M.D.'s best interests would be served by placing him in K.W.'s custody and adopted a permanent plan of custody with K.W. The trial court also relieved DSS and the guardian *ad litem* of further monitoring responsibility and continued visitation as previously ordered, but directed the parties to provide a visitation schedule. On 3 April 2009, Respondent-mother entered written notice of appeal.

Respondent-mother's sole argument on appeal is that the trial court failed to make sufficient findings of fact pursuant to N.C. Gen. Stat. §§ 7B-507(b) and 7B-907 (2007) to support the legal conclusions in its permanency planning order as to J.M.D. We disagree with respect to N.C. Gen. Stat. § 7B-507, but agree that the trial court failed to make sufficient findings pursuant to N.C. Gen Stat. § 7B-907.

We first note that Respondent-mother's contention that the trial court was required to make a finding pursuant to N.C. Gen. Stat. § 7B-507(b)(1)(2007) is incorrect. "The clear language of section 7B-507 . . . states such a finding must be made in any

order 'placing or continuing the placement of a juvenile in the custody or placement responsibility of [DSS].'" *In re Padgett*, 156 N.C. App. 644, 649, 577 S.E.2d 337, 341 (2003)(quoting N.C. Gen. Stat. § 7B-507). Here, to the contrary, the trial court removed J.M.D. from DSS custody and placed him in K.W.'s custody. Accordingly, we disagree with Respondent-mother's contention that the trial court was required to make a finding consistent with N.C. Gen. Stat. § 7B-507.

Addressing the remainder of Respondent-mother's argument, however, we conclude that the trial court failed to make adequate findings addressing the criteria set out in N.C. Gen. Stat. § 7B-907(b)(2007).

At any permanency planning in which a juvenile is not returned home, the trial court must make written findings concerning the following criteria 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;
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> (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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> (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;
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> (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).

This Court has "not required trial courts to specifically identify the factors set forth in section 7B-907(b), provided that the record demonstrates that the factors were taken into account." *In re T.R.M.*, 188 N.C. App. 773, 779, 656 S.E.2d 626, 630 (2008). However, "[w]hen a trial court is required to make findings of fact, it must 'find the facts specially.'" *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003)(quoting N.C. Gen. Stat. § 1A-1, Rule 52 (a)(1)(2001)).

In this case, the trial court neglected to make findings that reflect the criteria indicated in the statute, including whether J.M.D. could be immediately returned to Respondent-mother's home. In fact, the bulk of the trial court's findings of fact indicate that, by the time of the permanency planning hearing, Respondent-mother had corrected the conditions that led to J.M.D.'s removal from her care:

> 4. That [Respondent-mother] gave birth to [a son] on January 19, 2009. The baby is healthy and apparently doing well.
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> . . .
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> 7. That the father of the newborn is [Respondent-mother's fiancé], who has been

supporting [Respondent-mother] until she returns to work. [J.M.D.'s godparents] have helped the mother financially when they can.

8. That the mother hopes to return to work the first week of February.

9. That [Respondent-mother] continues to see her therapist, Joyce Monney.

10. That Joyce Monney reports that [Respondent-mother] is doing well at this time and that she has kept her appointments regularly since August, 2008.

11. That Joyce Monney reports that [Respondent-mother] has a strong support system with the father of the new baby, [the godparents] and her church family.

12. That [Respondent-mother] receives [medical] evaluations from Dr. Jonnalagdea at ECU Psychiatric. The mother has been prescribed Prozac, Risperdal and Trazadone. The Court did not receive any information as to the scheduled appointment on February 10, 2009, with Dr. Jonnalagdea.

13. That [Respondent-mother] has completed the Parental Nurturing Program.

14. That [Respondent-mother] has obtained and maintained her own housing since July, 2008, where she lives in a 3 bedroom double-wide mobile home. The rent on the mobile home is $550.00 per month. Her electric bill is $85.00 per month and her water bill is $25.00 per month.

. . .

16. The home appears clean with no apparent structural hazards.

. . .

18. [Respondent-mother] says that she has job prospects at Ambleside.

19. That [Respondent-mother's fiancé] is 39 years old and works for UPS Service.

> . . .
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> 27. That [Respondent-mother] has been consistently seeking therapy since August, 2008, and appears to be gaining stability in her life since the summer of 2008.

Further, the closest the trial court came to addressing the criteria indicated in the statute appears to be findings of fact numbers 25 and 28:

> 25. That [Respondent-mother] has moved frequently with unstable living arrangements until July 2008, and has since remained in the same home in Hookerton. [Respondent-mother] has been unemployed or irregularly employed and has received substantial financial assistance from [her fiancé] and [J.M.D.'s godparents].
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> . . .
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> 28. That [Respondent-mother] did not have consistency or stability prior to July, 2008, for which she is not bearing the financial burden. This is a concern for the Court with regard to the best interest of the juvenile and the total and complete ability of the mother to effectively parent the juvenile.

Even findings 25 and 28, however, do not directly address the criteria outlined in the statute, including whether J.M.D. could be returned to Respondent-mother's home in the next six months. Findings 25 and 28 are also specifically addressed to Respondent-mother's condition more than six months prior to the permanency planning hearing, not the six months following the hearing. As such, when these findings are considered along with the trial court's findings describing Respondent-mother's improved conditions, we conclude that the trial court failed to make sufficient findings to support its order pursuant to N.C. Gen.

Stat. § 7B-907. *See In re Weiler*, 158 N.C. App. 473, 581 S.E.2d 134 (2003). Accordingly, we reverse and remand the trial court's order as to J.M.D.

Reversed and Remanded.

Judges STEEMAN and ERVIN concur.

Reported per Rule 30(e).