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NO. COA09-897

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

IN THE MATTER OF:

M.L.B.,
A Minor Child.

Surry County
No. 08 JA 127

Appeal by Respondent-Mother from order entered 15 April 2009 by Judge Angela B. Puckett in District Court, Surry County. Heard in the Court of Appeals 9 November 2009.

H. Lee Merritt for Surry County Department of Social Services, Petitioner-Appellee.

Janet K. Ledbetter for Respondent-Appellant-Mother.

Pamela Newell Williams for Guardian ad Litem to Minor Child, Respondent-Appellee.

McGEE, Judge.

R.W. (Respondent-Mother) is the biological mother of the minor child M.L.B. and is married to J.W., M.L.B.'s stepfather. In December 2008, Respondent-Mother, J.W., M.L.B., M.L.B.'s older brother and younger cousin were living together in Surry County, North Carolina. The Surry County Department of Social Services (Petitioner) filed a juvenile petition on 5 December 2008, alleging M.L.B. was a neglected juvenile. Petitioner alleged that on 2 December 2008, M.L.B.'s cousin appeared to be under the influence of mood-altering medication, tested positive for

benzodiazepine, and had not received any medical care. Petitioner further alleged Respondent-Mother admitted giving several medications to the cousin, including some prescribed to another child in the home. The trial court granted custody of M.L.B. to Petitioner and subsequently approved placement of M.L.B. with her biological father, M.B., who lived in Jacksonville, Florida.

After a hearing on 22 January 2009, the trial court entered adjudication and disposition orders on 10 February 2009. The trial court found M.L.B. was a neglected juvenile, continued custody of M.L.B. with Petitioner, and sanctioned placement of M.L.B. with her father in Jacksonville, Florida. The trial court held a review hearing on 5 March 2009 and entered orders on 15 April 2009. The trial court found that Respondent-Mother was incarcerated for a conviction involving misappropriation of funds, and that it had concerns for Respondent-Mother's emotional health and ability to parent M.L.B. Further, the trial court found it was in the best interest of M.L.B. that she be placed in the custody of her father; that M.L.B.'s case should be closed, divesting the trial court of any continuing jurisdiction in the matter; and that a civil custody order be entered. The trial court caused a civil custody order to be entered in a new case file, number 09-CVD-705, and it awarded custody of M.L.B. to her father and provided for visitation with Respondent-Mother. Respondent-Mother appeals.

Respondent-Mother first argues the trial court erred in entering its review order of 15 April 2009 terminating its jurisdiction over the juvenile case and entering a civil custody

order, because the review order lacked findings of fact mandated by N.C. Gen. Stat. § 7B-906(b). We disagree.

The North Carolina Juvenile Code provides that, "[i]n any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter." N.C. Gen. Stat. 7B-906(a) (2007). Pursuant to N.C. Gen. Stat. § 7B-906, the trial court may waive the holding of the required review hearings if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

N.C. Gen. Stat. § 7B-906(b) (2007). When entering an order waiving the requirement of future review hearings, a trial court's "[f]ailure to find all of these criteria constitutes reversible error." *In re L.B.*, 184 N.C. App. 442, 447, 646 S.E.2d 411, 413 (2007) (citing *In re R.A.H.*, 182 N.C. App. 52, 62, 641 S.E.2d 404,

410 (2007)). However, N.C. Gen. Stat. § 7B-906 further provides that when the trial court restores custody of a juvenile to "a parent, guardian, custodian, or caretaker the court *shall* be relieved of the duty to conduct periodic judicial reviews of the placement." N.C. Gen. Stat. § 7B-906(d) (2007) (emphasis added).

Thus, when the trial court returned custody of M.L.B. to her father, the trial court was relieved of its duty to conduct periodic reviews of the placement. See *In re H.S.F.*, 177 N.C. App. 193, 199, 628 S.E.2d 416, 420 (2006) (holding the trial court may, but is not required to, terminate its jurisdiction over a juvenile case where the trial court restores custody of the juvenile to a parent (citing *In re Shue*, 311 N.C. 586, 319 S.E.2d 567 (1984))).

Respondent-Mother also argues the trial court erred in entering the review order terminating its jurisdiction over the juvenile case and entering a civil custody order because the review order lacked findings of fact mandated by N.C. Gen. Stat. § 7B-911. We agree in part.

Pursuant to N.C. Gen. Stat. § 7B-911(c), the trial court may enter a civil custody order and terminate the court's jurisdiction in the juvenile proceeding if:

(1) In the civil custody order the court makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7; and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile

proceeding, the court finds:

a. That there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and

b. That at least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, *though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed.*

N.C. Gen. Stat. § 7B-911(c) (2007) (emphasis added). Respondent-Mother argues the trial court's order does not include the necessary findings that there is no need for continued State intervention on behalf of M.L.B., that six months had passed since the placement of M.L.B. with the father, and that this placement was the permanent plan for M.L.B.

We first note that as the trial court awarded custody of M.L.B. to a parent, the trial court was not required to find that at least six months had passed since the trial court had made a determination that M.L.B.'s placement with the father was the permanent plan for M.L.B. N.C. Gen. Stat. § 7B-911(c) (2) (b). Next, we must agree with Respondent-Mother that the trial court's order does not include a finding of fact specifically stating there is not a need for continued State intervention on behalf of M.L.B. as required by N.C. Gen. Stat. § 7B-911(c) (2) (a).

This Court has upheld the entry of a civil custody order and termination of the trial court's jurisdiction over the juvenile

proceeding where the court failed to specifically state the requirement of N.C. Gen. Stat. § 7B-911(c)(2)(a) that "there [was] not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding[.]" *In re A.S. & S.S.*, 182 N.C. App. 139, 641 S.E.2d 400 (2007). However, in *In re A.S. & S.S.*, the trial court found the respondent parents were able to coordinate visitations between themselves, that DSS wished "to be relieved of further involvement in this case[,]" that the parents both had "suitable homes for visitation and/or custody of [the] . . . children[,]" that the mother was "capable of properly supervising and disciplining the . . . children and keeping them safe while in her care and custody." The trial court concluded that involvement by DSS and the guardian *ad litem* appointed to represent the juvenile was no longer necessary. *In re A.S. & S.S.*, 182 N.C. App. at 144, 641 S.E.2d at 404.

In light of these findings, which tended to show both parents were capable of looking after the children involved, were capable of coordinating child care and visitation, and that each had suitable homes for custody or visitation, the trial court determined there was no longer any need for DSS or guardian *ad litem* involvement. Though concluding that DSS and guardian *ad litem* involvement is no longer necessary is not the same as finding that "there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding[.]" our Court in *In re A.S. & S.S.* found enough in the trial court's order, when viewed in its entirety, to support the finding required by

N.C. Gen. Stat. § 7B-911(c)(2)(a).

In this case, the trial court made the following relevant findings of fact and conclusions of law:

(4B) [Respondent-Mother] is presently serving a 6 to 8 month active term of imprisonment in the North Carolina Department of Correction[]. Upon her release from prison, she will be placed on intensive probation and has been ordered, as part of her probation, to pay restitution for the funds which she misappropriated. At this time, it has not been determined when she will be released from the North Carolina Department of Correction[].

. . . . The court has concerns about [Respondent-Mother's] emotional health and also her ability to properly parent her children.

[The father] . . . lives in Jacksonville, Florida; and [M.L.B.] has been placed in his care since early December 2008. He has expressed a desire to have custody of [M.L.B.] placed with him and he is able to provide appropriate care and supervision for [M.L.B.]. [M.L.B.] is enrolled in school in Jacksonville, Florida, and is receiving counseling and other services.

. . . .

(5) The court finds that [Petitioner] has made reasonable efforts to reunify [M.L.B.] with the parent(s) as is set forth in the above-mentioned reports.

(6) The court finds it is not in the best interest of the child and it is contrary to the child's welfare to be returned to the home of [Respondent-Mother].

. . . .

(8) The court concludes as a matter of law that there has been a substantial change of circumstances affecting the welfare of the child/children that would warrant a change of custody.

. . . .

(13) [Petitioner] is relieved of further responsibility in this matter. The guardian ad litem is hereby discharged.

We hold that these findings of fact and conclusions of law are not sufficient to meet the requirements of N.C. Gen. Stat. § 7B-911(c)(2)(a). Unlike the findings and conclusions in *In re A.S. & S.S.*, which indicated progress had been made by the respondent-mother, the findings in the present case cannot be viewed as supporting a conclusion that continued State intervention in the matter was no longer needed. According to the trial court's findings, Respondent-Mother was incarcerated at the time of the 5 March 2009 review hearing. The trial court expressed its concerns "about [Respondent-Mother's] emotional health and also her ability to properly parent her children." The trial court made no findings indicating Respondent-Mother would be able to work with the father to coordinate visitation, nor that Respondent-Mother would be emotionally, psychologically, or financially able to appropriately manage visitation with M.L.B. without further State guidance. The findings of fact in this case raise concerns about Respondent-Mother's ability to appropriately protect the welfare of M.L.B. absent State guidance.

Further, the trial court's directive that "[Petitioner] is relieved of further responsibility in this matter[,]" and that "[t]he guardian ad litem is hereby discharged" is not equivalent to finding, as was done in *In re A.S. & S.S.*, that "[DSS] and . . . GAL involvement is *no longer necessary* in this matter." *In*

re *A.S. & S.S.*, 182 N.C. App. at 144, 641 S.E.2d at 404 (emphasis added). Accordingly, we vacate that portion of the 15 April 2009 review order divesting the trial court of jurisdiction in the matter, and further vacate the resulting 15 April 2009 civil custody order. The matter is remanded to the trial court, which continues to have jurisdiction over the matter. The trial court has discretion in how to proceed, but if the trial court again decides to terminate its jurisdiction over the matter, it must comply with all statutory requirements, including N.C. Gen. Stat. § 7B-911(c)(2)(a).

Vacated and remanded.

Judges GEER and HUNTER, JR. concur.

Report per Rule 30(e).