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NO. COA10-190

NORTH CAROLINA COURT OF APPEALS

Filed:20 July 2010

IN THE MATTER OF:

J.W., D.W., D.W., D.W., K.W.

Durham County
No. 08 J 212-16

Appeal by Respondent Mother from order entered 7 December 2009 by Judge Ann McKown in District Court, Durham County. Heard in the Court of Appeals 5 July 2010.

Deputy County Attorney Thomas W. Jordan, Jr., for petitioner-appellee Durham County Department of Social Services.

Pamela Newell, for guardian ad litem.

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender J. Lee Gilliam, for Respondent-appellant mother.

WYNN, Judge.

When a court does not prohibit a parent's visitation with a juvenile removed from the home, "the court should safeguard the parent's visitation rights by a provision in the order defining and establishing the time, place and conditions under which such visitation rights may be exercised."¹ In the present case, the trial court allowed Respondent-mother visitation with her five children, but failed to provide an adequate schedule of visitation.

¹*In re Custody of Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971).

We, therefore, remand the order for clarification of Respondent's visitation rights. Otherwise, the order is affirmed.

The Durham County Department of Social Services ("DSS") became involved with Respondent on 4 March 2008 based on an allegation that she was neglecting her five minor children, J.W., D.W., D.W., K.W., and D.W. On 10 June 2008, DSS filed a petition alleging that the juveniles were neglected in that they were not receiving proper care from their parents or lived in an environment injurious to their welfare. On 12 June 2008, the district court entered non-secure custody orders placing J.W. with her paternal grandparents and the remaining juveniles with their maternal aunt.

DSS filed a motion on 9 July 2008 alleging that the maternal aunt was not providing for the four children's care and requesting a non-secure custody order granting immediate temporary custody of the children to DSS. The trial court entered an order granting DSS non-secure custody of the four children the same day. Pursuant to several hearings conducted in July and August 2008, the trial court issued orders which continued custody of J.W. with the paternal grandparents, and continued custody of the four other children with DSS, but approved the placement of the latter with Sheila Meeks.²

Pursuant to a hearing held on 4 September 2008, the trial court entered an order on 13 October 2008 adjudicating all five juveniles dependent. The trial court ordered J.W. be placed in the temporary custody of the paternal grandparents. The trial court

²This name is spelled inconsistently in the record. According to the transcript, the witness gave her name as Sheila Meeks Cane, but stated she goes by Sheila Meeks.

ordered the remaining juveniles be placed in the legal custody of DSS, and approved their placement with Sheila Meeks. The trial court also ordered Respondent's visitation temporarily suspended, until she resumed communication with DSS and received a substance abuse evaluation.

After a review hearing on 22 January 2009, the trial court entered an order continuing the juveniles in their previously ordered placements. The matter came on for a review hearing before the trial court on 11 August and 8 September 2009. In a permanency planning order entered 7 December 2009, the trial court found that it was unlikely that the juveniles would return home in the next six months due to Respondent's "instability." The trial court concluded that it was in the juveniles' best interests that J.W be placed in the guardianship of the paternal grandparents and the remaining juveniles be placed in the guardianship of Sheila Meeks King. Respondent appeals.

On appeal, Respondent argues that the trial court erred by (I) ceasing reunification efforts with Respondent without making sufficient findings of fact; (II) not sufficiently considering the children's best interests before appointing a permanent guardian; (III) appointing a guardian who did not understand the legal significance of guardianship; and (IV) failing to establish an adequate visitation schedule.

Preliminarily, we note that "[a]ppellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and the findings

support the conclusions of law." *In re R.A.H.*, 182 N.C. App. 52, 57-58, 641 S.E.2d 404, 408 (2007) (quotation omitted).

I

Respondent first argues that the trial court, by appointing the guardians, essentially ceased reunification efforts with Respondent. Based on this premise, Respondent argues that the trial court failed to make sufficient findings pursuant to N.C. Gen. Stat. § 7B-507 to justify ceasing reunification efforts. Respondent also argues that finding of fact no. 19 is not supported by evidence in the record. We address the last claim first.

At the conclusion of a permanency planning hearing, when the trial court determines that the juvenile is not to return home,

the court shall consider the following criteria and make written findings regarding those 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;

(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;

N.C. Gen. Stat. § 7B-907(b) (2009).

In the present case, the trial court found that "[t]he children can not return home at this time, and it is unlikely that the children will return home in six months due to Derick Watford's pretrial detention, the mother's instability and Jeremy Britt not

consistently communicating with DSS or with [D.W.]."³ Respondent argues that the evidence in the record indicates that any instability at the time of the hearing would not continue for the next six months.

The trial court's findings of fact also include the following:

3. The mother is on electronic house arrest. She is unstable in her housing. She currently lives with a female friend and her friend[']s daughter. She is not on the lease agreement. The mother has not found employment although she testified she has a part time job at Biscuitville beginning today.

This finding is not challenged on appeal and is therefore binding. See *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404 (2005). Although there is evidence in the record to support Respondent's claim that her house arrest would end in three months, we do not think this sufficient to contradict the trial court's finding that Respondent's housing situation is unstable for an indefinite period. This evidence is adequate to support the trial court's finding it unlikely that the children could return home in six months.

Respondent also argues that the trial court failed to make sufficient findings pursuant to N.C. Gen. Stat. § 7B-507. At the conclusion of a permanency planning review hearing,

the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the

³Derick Watford is the father of J.W., D.W., D.W., and K.W. Genetic testing results indicated that the other juvenile, D.W., was fathered by Jeremy Britt. Neither father has appealed.

juvenile pursuant to G.S. 7B-600

. . . .

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7B-507 shall apply to any order entered under this section.

N.C. Gen. Stat. § 7B-907(c) (2009).

In this case, the trial court did not continue the juveniles' placement in the custody or placement authority of DSS. Indeed, the trial court explicitly relieved Durham County DSS of court ordered responsibility. Thus, N.C. Gen. Stat. § 7B-907(c) did not require the trial court to make findings pursuant to N.C. Gen. Stat. § 7B-507. *Cf. In re Padgett*, 156 N.C. App. 644, 649, 577 S.E.2d 337, 340-41 (2003) (N.C. Gen. Stat. § 7B-507 not applicable where the order granted custody to grandparents and released Pender County DSS from duties regarding the juveniles). Respondent's argument that the trial court failed to make adequate findings pursuant to N.C. Gen. Stat. § 7B-507 is without merit.

II

Respondent next contends that the trial court abused its discretion by finding that the appointment of the guardian Sheila Meeks was in the juveniles' best interests.⁴

"[W]hen the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile." N.C. Gen. Stat. § 7B-600(a) (2009). "We review a

⁴Respondent does not challenge the appointment of the paternal grandparents as guardians of J.W.

trial court's determination as to the best interest of the child for an abuse of discretion." *In re D.S.A.*, 181 N.C. App. 715, 720, 641 S.E.2d 18, 22 (2007).

While Respondent adverts to other evidence in the record, she does not challenge any of the trial court's findings of fact. In addition to the findings recited above, the trial court found:

9. [The juveniles'] needs are being met in the home of Sheila Meeks King. They have been in her home over one year. She wishes to continue to care for the children and to act as their guardian. She understands guardianship. She has the financial resources to care for the children.

The trial court further found that the juveniles would continue to benefit from ongoing mental health services and educational assistance, and that Meeks indicated a commitment to meeting the juveniles' needs.

Respondent provides no authority in support of her claim that the trial court abused its discretion under these circumstances. Instead Respondent recites the evidence presented to the trial court and invites us to reach a different conclusion. Under an abuse of discretion standard, "the purpose of the reviewing court is not to substitute its judgment in place of the decision maker." *Little v. Penn Ventilator Co.*, 317 N.C. 206, 218, 345 S.E.2d 204, 212 (1986); *see also In re E.S.*, 191 N.C. App. 568, 574, 663 S.E.2d 475, 478 (noting that under this standard, a reviewing court may not re-weigh the evidence), *disc. review denied*, 362 N.C. 681, 670 S.E.2d 231 (2008). In light of the trial court's unchallenged findings, we cannot conclude that the trial court abused its

discretion in appointing Meeks guardian to the four juveniles.

III

Respondent next argues that the trial court appointed Meeks as guardian to the juveniles without ensuring that she understood the legal significance of the obligation.

Our General Statutes provide:

If the court determines that the juvenile shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.

N.C. Gen. Stat. § 7B-907(f) (2009). "We note that neither N.C. Gen. Stat. § 7B-600(c) nor N.C. Gen. Stat. § 7B-907(f) require that the court make any specific findings in order to make the verification." *In re J.E., B.E.*, 182 N.C. App. 612, 616-17, 643 S.E.2d 70, 73, *disc. review of additional issues denied*, 361 N.C. 427, 648 S.E.2d 504, *appeal withdrawn*, 361 N.C. 693, 652 S.E.2d 645 (2007).

In this case, the trial court specifically found that Meeks understood guardianship and had the financial resources to care for juveniles. Contrary to Respondent's assertion, that finding is supported by Meeks' testimony at the hearing, in which she stated her commitment to care for juveniles unless she was ordered by a court to return them to their parents. Respondent's argument is without merit.

IV

Respondent next contends that the trial court erred when it failed to establish an adequate visitation schedule.

When a trial court places a juvenile with a guardian at a permanency planning hearing, it must make written findings addressing "the rights and responsibilities which should remain with the parents[.]" N.C. Gen. Stat. § 7B-907(b)(2) (2009). The parents' rights under this statute include visitation. *In re R.A.H.*, 182 N.C. App. at 61, 641 S.E.2d. at 410; *see also Stancil*, 10 N.C. App. at 551, 179 S.E.2d at 849 ("[A] parent's right of visitation with his or her child is a natural and legal right[.]"). "An appropriate visitation plan must provide for a minimum outline of visitation, such as the time, place, and conditions under which visitation may be exercised." *In re E.C.*, 174 N.C. App. 517, 523, 621 S.E.2d 647, 652 (2005).

In the present case, regarding visitation, the trial court ordered:

3. Visitation with the respondent mother shall be supervised visits to be supervised by Sheila Meeks, [the paternal grandparents] or their designees.

. . . .

12. The guardians shall not restrict visitation or telephone contact with either parent as a means of discipline.

Other than these two provisions, the trial court's order does not address visitation at all. Thus, the trial court failed to provide

a minimum outline of visitation.⁵ We conclude that the order must be remanded for clarification of Respondent's visitation rights. See *In re K.S.*, 183 N.C. App. 315, 331, 646 S.E.2d 541, 550 (2007).

Affirmed in part; remanded in part.

Judges ELMORE and HUNTER, Jr. concur.

Reported per Rule 30(e).

⁵Petitioner-appellee DSS concedes that the order fails to set out an appropriate plan of visitation.