NO. COA10-861

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

IN THE MATTER OF:
N.A.

Cumberland County
No. 07 JA 503

Appeal by respondent-mother from order entered 14 April 2010, *nunc pro tunc* 15 March 2010, by Judge John W. Dickson in Cumberland County District Court. Heard in the Court of Appeals 30 November 2010.

Elizabeth Kennedy-Gurnee, for petitioner-appellee Cumberland County Department of Social Services.

Pamela Newell, for guardian ad litem.

David A. Perez, for respondent-appellant mother.

CALABRIA, Judge.

Respondent-mother appeals a permanency planning order granting legal and physical custody and guardianship of the minor child, Nicholas,[1] to the child's paternal aunt and uncle, Mr. and Mrs. H. Respondent-father is not a party to this appeal. We affirm.

I. Background

On 6 August 2007, respondent-mother's three-year-old child,

[1] "Nicholas" is a pseudonym used to protect the identity of the minor child.

Jack,[2] was transported to Womack Army Medical Center emergency room in cardiac arrest. Respondent-mother reported to the authorities that Jack had fallen down the stairs. Jack's father was not in the home at the time of the incident. As a result of his fall, Jack sustained multiple injuries including broken ribs, a subdural hematoma with heavy bleeding, a broken right clavicle, a punctured lung, and various bruises of various colors on his face. After he was evaluated at Womack Army Medical Center, Jack was airlifted to UNC-Chapel Hill Hospital, where he was declared brain dead on 6 August 2007. Jack died on 7 August 2007.

According to doctors, Jack's injuries were not consistent with a fall and were caused by non-accidental trauma. Jack's autopsy report revealed the probable cause of death was due to blunt trauma of the head and indicated homicide was a contributing factor leading to death. Consequently, a federal criminal homicide investigation was initiated against respondent-mother.

At the time Jack was injured, his half-brother Nicholas, age 3 1/2 weeks, was also in the home. Nicholas was admitted to Womack Army Medical Center for his safety due to Jack's injuries.

On 7 August 2007, the Cumberland County Department of Social Services ("CCDSS") filed a petition alleging that Jack and Nicholas were neglected, abused, and dependent juveniles. At the 18 August 2008 adjudication and disposition hearings, respondent-mother and respondent-father both stipulated that Nicholas was neglected at

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[2] A pseudonym.

the time of the filing of CCDSS's verified petition in that the juvenile lived in a home where another juvenile died as a result of severe neglect. Based on this stipulation, Nicholas was adjudicated neglected by the trial court on 18 August 2008. The trial court further relieved CCDSS of reunification efforts with respondent-mother. Respondent-mother did not raise an objection to the trial court's order at that time.

Initially, the permanent plan for Nicholas was a concurrent plan of relative placement and/or adoption. An Interstate Compact for the Placement of Children ("ICPC") home study of a paternal aunt residing in the state of Texas was ordered. Both respondent-mother and respondent-father consented to having Nicholas placed with the paternal aunt in Texas.

The first ICPC home study request was denied on 17 November 2008 because the paternal aunt informed CCDSS that, due to personal reasons, she did not believe she could handle the placement of Nicholas in her home. Subsequently, in January 2009, the paternal aunt informed CCDSS that the personal issues preventing placement had been alleviated. The trial court found this to be true at the 16 February 2009 permanency planning review hearing. The trial court also found that the paternal aunt in Texas was interested in adopting Nicholas. Nicholas was sent to the paternal aunt's home in Texas for a trial visitation on 20 February 2009, while CCDSS awaited final written ICPC approval. On 8 June 2009, the trial court relieved CCDSS of reunification efforts with respondent-father. Although the trial court had previously

relieved CCDSS of reunification efforts with respondent-mother in its 18 August 2008 adjudication order, respondent-mother did not object to the trial court's order relieving CCDSS of reunification efforts until she objected in open court at the 20 July 2009 permanency planning review hearing.

CCDSS received written approval to place Nicholas with Mr. and Mrs. H., the paternal aunt and uncle, after the completion of a successful ICPC home study. As a result, the trial court changed the permanent plan to guardianship with relatives, yet allowed respondent-father to visit with Nicholas once a month. However, the trial court did not allow visitation for respondent-mother at that time. Consequently, respondent-mother objected to the plan.

On 15 March 2010, the trial court entered an order awarding legal and physical custody to the paternal aunt and uncle, allowing CCDSS to close its case, granting respondent-father visitation once a month or as otherwise allowed by the guardians, and granting respondent-mother visitation for one hour once a month. Respondent-mother appeals.

II. Standard of Review

This Court's review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. *In re J.V.*, ___ N.C. App. ___, ___, 679 S.E.2d 843, 845 (2009). "A trial court's findings of fact in a permanency planning order are conclusive on appeal when they are supported by competent evidence." *In re C.E.L.*, 171 N.C. App. 468, 474, 615 S.E.2d 427,

430 (2005). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman,* 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). This Court's review of a trial court's conclusions of law is limited to whether they are supported by the findings of fact. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997).

III. Statutory Compliance of Permanency Planning Order

Respondent-mother argues that the trial court erred by placing the juvenile with his paternal aunt and uncle in Texas. Specifically, respondent-mother contends that the trial court's order fails to comply with N.C. Gen. Stat. § 7B-907(f) because the evidence submitted at trial was insufficient to support the trial court's finding that the paternal aunt and uncle understood the full implications of guardianship and had adequate resources to care for their nephew. We disagree.

The trial court has the discretion to place a juvenile in the care and custody of a relative as guardian of the juvenile. N.C. Gen. Stat. § 7B-903(a)(2)(b) and N.C. Gen. Stat. § 7B-600(a) (2009). Once the court determines guardianship with a relative as the permanent plan for the juvenile, the court must then make findings in accordance with N.C. Gen. Stat. § 7B-907. *See* N.C. Gen. Stat. § 7B-600(b).

Subsection (f) of N.C. Gen. Stat. § 7B-907 requires the court to "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). This Court has previously held that this statute does not "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 (2007) (emphasis added).

When the trial court makes the required verification at a permanency planning review hearing, the court is required to "consider information from the parent, the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review." N.C. Gen. Stat. § 7B-907(b) (2009). The trial court may also "consider any evidence, including hearsay evidence . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." *Id.*

In the trial court's 15 March 2010 permanency planning order, the trial court found the following fact: "11. That Mr. and Mrs. [H.] understand the legal significance of the placement or appointment of guardianship; understand the nature of guardianship and have adequate and sufficient resources to care appropriately for the juvenile." Respondent-mother argues that this finding was not supported by any competent evidence presented at the permanency planning hearing. However, we find the record contains sufficient evidence to support the trial court's verification that Mr. and

Mrs. H., Nicholas's paternal aunt and uncle, understood the legal significance of their appointment as guardians of Nicholas and that they would have adequate resources to appropriately care for the child.

In its order appointing the paternal aunt and uncle as guardians, the trial court stated it had reviewed the record, court reports, and testimony in the case. In addition, the trial court readopted the findings from previous orders entered in the instant case, including the permanency planning review orders, court review orders, and the adjudication and disposition orders. Thus, the evidence before the trial court consisted of hearing testimony, multiple court reports by both the guardian *ad litem* for Nicholas and CCDSS, as well as all previous unchallenged findings contained in the numerous court orders entered in the instant case.

Both a CCDSS court report and a permanency planning review order explained the dismissal of a previous ICPC home study of the paternal aunt and uncle. During the previous home study, the paternal aunt indicated that, as a result of personal issues, she was unable to adequately handle the placement of the child in her home at that time. Subsequently, these personal issues were alleviated and a new home study was conducted. CCDSS social worker Felicia Robinson testified that the results of the new ICPC home study in the state of Texas were favorable. According to a CCDSS court report, the completed ICPC home study revealed that the paternal aunt and uncle had the ability to meet the physical, medical, and emotional needs of the child. The record also stated

on multiple occasions that the paternal aunt and uncle were willing to adopt the minor child if adoption became the permanent plan. Finally, the CCDSS court report, prepared for the 15 March 2010 permanency planning review hearing, indicated that after more than one year of a trial placement in the home of Mr. and Mrs. H., Nicholas was doing well and there were no concerns or other placement needs.

Therefore, we find that the record in the instant case reflects that the trial court was presented with competent evidence to support its finding of fact that the paternal aunt and uncle understood the nature and legal significance of the placement or appointment of guardianship, and also that they have adequate and sufficient resources to care for the juvenile. Accordingly, based on its consideration of this evidence, we conclude that the court's verification adequately complied with N.C. Gen. Stat. § 7B-907(f). This argument is overruled.

IV. Cessation of Reunification Efforts

Respondent-mother further contends that the trial court erred in granting custody and guardianship of the juvenile to Mr. and Mrs. H. because reunification between the minor child and respondent-mother was never properly attempted. Respondent-mother has failed to properly preserve her right to appeal this issue.

The procedure for ordering cessation of reunification efforts is defined by statute and has been explained by this Court:

> In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a

> dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:
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> > (1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time.

In re Weiler, 158 N.C. App. 473, 478, 581 S.E.2d 134, 137 (2003) (quoting N.C. Gen. Stat. § 7B-507(b)(2001)). Respondent-mother argues that the trial court's order relieving CCDSS of reunification efforts with respondent-mother at the 18 August 2008 dispositional hearing was premature, as the trial court did not make the required findings of fact. However, respondent-mother failed to raise any objection to the order until eleven months later at the 20 July 2009 permanency planning review hearing.

> Pursuant to N.C. Gen. Stat. § 7B-507(c), "any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent . . . may give notice to preserve the parent['s] right to appeal the finding and order in accordance with G.S. 7B-1001(a)(5)." N.C. Gen. Stat. § 7B-507(c) (2007). "Notice may be given in open court or in writing within 10 days of the hearing at which the court orders the efforts to reunify the family to cease." *Id.*

In re S.C.R., ___ N.C. App. ___, ___, 679 S.E.2d 905, 908 (2009). Further, such orders may be appealed pursuant to N.C. Gen. Stat. § 7B-1001(a)(5) only if the parent has "properly preserved" his or her rights by giving timely notice according to N.C. Gen. Stat. § 7B-507(c). *See* N.C. Gen. Stat. § 7B-1001(a)(5). Because respondent-mother in this case failed to timely object to the order

ceasing reunification efforts with respondent-mother, she has waived her right to appeal this issue. This argument is overruled.

V. Conclusion

The trial court was presented with competent evidence to support its finding of fact that the paternal aunt and uncle understand the nature and legal significance of the placement or appointment of guardianship and have adequate and sufficient resources to care appropriately for the juvenile. Additionally, respondent-mother failed to properly preserve her right to appeal the trial court's order relieving CCDSS of reunification efforts with respondent-mother. Thus, we affirm the permanency planning order granting legal and physical custody and guardianship of the minor child, Nicholas, to the child's paternal aunt and uncle.

Affirmed.

Judges HUNTER, Robert C. and ELMORE concur.

Report per Rule 30(e).