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NO. COA11-458
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

IN THE MATTER OF:

Greene County
No. 10 JA 27

M.S.H., Jr.

Appeal by respondent from orders entered 7 December 2010 and 11 January 2011 by Judge R. Les Turner in Greene County District Court. Heard in the Court of Appeals 15 August 2011.

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

Pamela Newell, GAL Appellate Counsel, for guardian ad litem, appellee.

Peter Wood for respondent-appellant.

THIGPEN, Judge.

Respondent appeals from adjudication and disposition orders in which the trial court adjudicated M.S.H. as neglected and awarded custody to the Greene County Department of Social Services (hereinafter "Petitioner"). We must decide whether the trial court (I) abused its discretion by denying Respondent's

motion to continue the adjudication hearing and (II) erred in concluding M.S.H. was a neglected juvenile. After a complete review of the record on appeal, we affirm the orders of the trial court.

Respondent is the mother of M.S.H., who was born prematurely in early August 2010. Respondent has an extensive history with the Departments of Social Services in Greene, Lenoir, and Wayne counties. On 16 August 2010, Petitioner filed a juvenile petition alleging that M.S.H. was a neglected juvenile because M.S.H. "lives in an environment injurious to the juvenile's welfare." The trial court granted nonsecure custody of M.S.H. to Petitioner on the same date. After a hearing on 15 November 2010, the trial court entered an order on 7 December 2010 adjudicating M.S.H. as neglected. Following the dispositional hearing, the trial court entered an order on 19 January 2011 awarding custody to Petitioner and bi-weekly visitation to Respondent. Respondent appeals from the adjudication and disposition orders.

I. Motion to Continue

Respondent first contends the trial court erred by denying her motion to continue the adjudication hearing. We disagree.

Regarding the continuation of a hearing in a juvenile matter, N.C. Gen. Stat. § 7B-803 (2009) states:

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 interests 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 interests of the juvenile.

"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. 1, 10, 616 S.E.2d 264, 270 (2005) (citation omitted). "Before ruling on a motion for a continuance, the judge should hear the evidence, pro and con, consider it judicially, along with whether the moving party has acted with diligence and in good faith and then rule with a view to promoting substantial justice." *In re Safriet*, 112 N.C. App. 747, 751, 436 S.E.2d 898, 901 (1993). The trial court's decision whether or not to continue the hearing is discretionary and will not be disturbed on appeal in the absence of a showing of an abuse of discretion. *J.B.*, 172 N.C. App. at 10, 616 S.E.2d at 270. A ruling that is "manifestly unsupported by reason" is an abuse of discretion and

subject to reversal. *Safriet*, 112 N.C. App. at 751, 436 S.E.2d at 901.

In this case, the record shows the adjudication hearing was initially scheduled for 4 October 2010. Upon Respondent's motion, the court continued the adjudication hearing until 15 November 2010. At the hearing on 15 November 2010, Respondent's counsel informed the trial court that Respondent was not present because it was counsel's "understanding that this case is going to be continued" because a toxicology report concerning M.S.H.'s deceased half sibling had not been received, and the removal of M.S.H. was based somewhat upon the death of the half sibling. Consequently, Respondent's counsel had directed Respondent not to attend the hearing. Petitioner's counsel explained that he was ready to proceed and that the toxicology report would not be needed because he was not relying upon evidence of the death of the half sibling in seeking the adjudication, but upon evidence of Respondent's neglect of M.S.H. and four other children. The social worker who worked with Respondent advised the court that she had spoken with Respondent, who told her that she could not take off from work to attend the hearing because she was in the probationary period of her new job. The trial court then declared, "Based on the information provided to the Court, the

Motion to Continue is respectfully denied and the Court will proceed with the first witness."

Nothing in the record indicates that the trial court requested or needed additional information to determine the best interest of M.S.H, or that more time was needed for expeditious discovery. N.C. Gen. Stat. § 7B-803. Therefore, the question is whether the facts of this case support the conclusion that extraordinary circumstances necessitating a continuance were present. *Id.* Our reading of the allegations of the petition reveals that the death of M.S.H's half sibling was just one basis for seeking an adjudication of M.S.H. as neglected and that the overall focus of the petition was Respondent's long history of neglecting her children dating back to the year 2000. As noted above, Respondent's counsel told the trial court that she was unprepared for the hearing because she was expecting it to be continued again, an assumption she made at her peril. Respondent's counsel also informed the trial court that she last spoke with Respondent approximately one week and a half before the scheduled hearing. "Where the lack of preparation for trial is due to a party's own actions, the trial court does not err in denying a motion to continue." *In re Bishop*, 92 N.C. App. 662, 666, 375 S.E.2d 676, 679 (1989) (citations omitted).

Because the evidence before the trial court did not present extraordinary circumstances warranting a continuance, we cannot conclude that the trial court's denial of Respondent's motion to continue was "manifestly unsupported by reason." Thus, we find no abuse of discretion.

II. Adjudication of M.S.H. as a Neglected Juvenile

Respondent next contends that the trial court erred by concluding that M.S.H. was a neglected juvenile. Specifically, Respondent argues the trial court erroneously relied upon evidence of Respondent's prior neglect of her other children. We disagree.

The allegations in a petition alleging that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence. N.C. Gen. Stat. § 7B-805 (2009). In reviewing an adjudication order, we determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact. *In re Pittman*, 149 N.C. App. 756, 763-64, 561 S.E.2d 560, 566, *appeal dismissed and disc. review denied*, 356 N.C. 163, 568 S.E.2d 608-09 (2002), *cert. denied*, 538 U.S. 982, 123 S. Ct. 1799, 155 L. Ed. 2d 673 (2003). "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) (citations omitted).

A neglected juvenile is defined as:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. *In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.*

N.C. Gen. Stat. § 7B-101(15) (2009) (emphasis added). For a court to determine that a child who has never lived with a parent is neglected, "the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case." *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

Regarding Respondent's neglect of her other children, the trial court found as fact, *inter alia*, that: (1) on 16 July 2001, the Greene County Juvenile Court adjudicated one of Respondent's children as neglected, with Respondent's consent, after the child sustained second degree burns from drinking hot grease which had been left in his favorite cup by Respondent; (2) Respondent failed to obtain immediate professional medical treatment for the burned child, who ultimately had to be airlifted to the UNC Burn Center in Chapel Hill and was subsequently placed with a paternal aunt; (3) on 17 August 2006, the Lenoir County District Court filed an order, with Respondent's consent, adjudicating three of her other children as neglected after Respondent left the children unattended, and while she was gone, one child was severely burned by hot water when she attempted to remove a container of hot dogs cooked in water from a microwave oven; (4) on 26 February 2007, the Lenoir County Juvenile Court filed an order in which it found that Respondent had no home for herself and her children and had not complied with prior orders of the court; thus, the court appointed the maternal grandmother as guardian of the three children; (5) on 3 July 2010, one of Respondent's sons died while Respondent was in a motel room with the deceased child and

two of her other sons and the father of one of the boys; and (6) although Respondent had taken the deceased child to the emergency room on two prior occasions, she failed to take the child for follow-up medical appointments and failed to provide the medical care ordered by the physicians.

The trial court also made the following findings of fact with regard to M.S.H.:

43. That prior to the release of [M.S.H.] from the hospital, the Court placed the nonsecure custody of the juvenile with the Greene County Department of Social Services.

44. That at the time of the release of [M.S.H.] from the hospital, the mother of the juvenile had not indicated to the Greene County Department of Social Services where she would live other than in Snow Hill, NC.

45. That subsequent to the release of [M.S.H.] from the hospital, the mother has informed the Department of Social Services where she was living in Snow Hill and representatives from the Department of Social Services visited the home. The home was clean, but there was nothing there for a baby.

46. That the mother indicated that she still had clothing from [her deceased son] and that she would go to WIC for other things she needed for [M.S.H.].

. . .

49. That [M.S.H.'s] mother . . . has not visited with [M.S.H.] since the juvenile was placed in the custody of the Greene County

Department of Social Services although she has been offered many opportunities to visit. She has been offered the opportunity to participate in sibling visits and has declined. One reason given to the social worker was that [Respondent] knew that the Greene County Department of Social Services would take her child, when in fact, [M.S.H.] was already in the custody of the Greene County Department of Social Services.

50. That neither [Respondent] nor the reputed father will tell the Department of Social Services where they live.

51. That the Department of Social Services has offered to work with [Respondent] . . . in trying to reunify [M.S.H.] with a parent and [Respondent] ha[s] refused to cooperate with the Department of Social Services and reunification efforts have been unsuccessful.

Respondent does not challenge any of the foregoing findings of fact as being unsupported by evidence. These findings, therefore, are binding. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. These findings demonstrate a long history of Respondent's persistent neglect of her children, Respondent's lack of effort in seeking reunification with M.S.H., and a substantial risk of neglect of M.S.H. Thus, we hold these findings of fact support the trial court's conclusion of law adjudicating M.S.H. as a neglected juvenile.

AFFIRMED.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(e).