NO. COA12-649
NORTH CAROLINA COURT OF APPEALS

Filed: 2 October 2012

IN RE:

C.M.S., C.R.S.

Beaufort County
Nos. 10 J 20-21

Appeal by respondent-mother from order entered 2 March 2012 by Judge Regina Parker in Beaufort County District Court. Heard in the Court of Appeals 4 September 2012.

Hassell, Singleton Mason & Jones, P.A., by Sid Hassell, Jr., for petitioner-appellees.

Rebekah W. Davis for respondent-appellant.

HUNTER, Jr., Robert N., Judge.

Respondent-mother appeals from an order terminating her parental rights to C.M.S. and C.R.S. The dispositive issue is whether the court erred by discharging the guardian ad litem for the children and conducting the termination hearing without the presence of a guardian ad litem or attorney advocate for the children. For the following reasons, we hold the court erred. We vacate the order and remand for a new hearing.

Petitioners are the juveniles' paternal uncle and his wife, who were awarded legal custody of the juveniles pursuant to an order entered during the 1 June 2009 civil non-jury session of Beaufort County District Court. Seeking to adopt the juveniles, petitioners filed a petition on 23 March 2010 to terminate the parental rights of the juveniles' natural parents. Respondent-mother, *pro se*, filed a response opposing the petition. The court thereupon appointed an attorney to represent respondent-mother in the proceeding, and the attorney filed an answer on her behalf in which she asserted the petition failed to state a claim.

The court also appointed a non-volunteer guardian ad litem for the juveniles. On 8 July 2011, the guardian ad litem filed a report with the court in which he indicated he met with the children and petitioners on 18 February 2011 and interviewed petitioners. He also stated he had reviewed court records indicating (1) the juveniles' natural father was incarcerated in the North Carolina Department of Correction serving a sentence of twenty-nine years imposed upon convictions of, *inter alia*, first degree sexual offense of a child, and (2) the respondent-mother was convicted of taking indecent liberties with a minor and was sentenced to thirty-six months of supervised probation.

He recommended termination of parental rights. He signed the report as "Attorney at Law/GAL for Juveniles."

On 2 March 2012 the court filed an order, effective 8 July 2011, discharging the guardian ad litem from further service or participation in the termination of parental rights proceedings. The court concluded that by conducting the above investigation and filing a report, the guardian ad litem had completed his duties. The guardian ad litem did not appear or participate in the termination of parental rights hearing. The court's order terminating parental rights and the transcript of the termination hearing reflect that only petitioners, petitioners' attorney, respondent-mother and respondent-mother's attorney attended the termination hearing as parties. The order and transcript do not reflect that anyone appeared representing the guardian ad litem program.

A court is required to appoint a guardian ad litem for a juvenile if an answer or response to a petition or motion for termination of parental rights denies any material allegation of the petition or motion. N.C. Gen. Stat. § 7B-1108(b) (2011). When the court appoints a non-lawyer to serve as guardian ad litem, it must also appoint a licensed attorney to assist the guardian ad litem, whose duties are listed in N.C. Gen. Stat. §

7B-601. *Id.* If the appointed guardian ad litem is an attorney, then "that person can perform the duties of both the [guardian ad litem] and the attorney advocate." *In re J.H.K.*, 365 N.C. 171, 175, 711 S.E.2d 118, 120 (2011). Accordingly, the attorney guardian ad litem "is to perform the traditional role of a lawyer 'to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; [and] to explore options with the court at the dispositional hearing.'" *Id.* at 176, 711 S.E.2d at 121 (quoting N.C. Gen. Stat. § 7B-601(a)) (alteration in original). Such representation of the juvenile is especially needed in a private termination proceeding in which a parent or parent's relative seeks to terminate the parental rights of the other parent. *See In re J.L.S.*, 168 N.C. App. 721, 723, 608 S.E.2d 823, 825 (2005).

In the case at bar, no one represented the juveniles' interests or performed the duties of a guardian ad litem at the termination hearing. No one was present to offer evidence or examine witnesses on their behalf at the adjudication hearing, or explore other options at the dispositional portion of the hearing. "[B]ecause our polar star in these proceedings is the best interests of the child, we must presume prejudice where, as

here, a child was not represented by a guardian *ad litem* at a critical stage of the termination proceedings." *In re R.A.H.*, 171 N.C. App. 427, 431, 614 S.E.2d 382, 385 (2005) (citation omitted).

We note the facts of this case are different from *In re J.H.K.*, 365 N.C. 171, 711 S.E.2d 118 (2011), in which our Supreme Court held a guardian ad litem need not be present at the termination hearing, so long as an attorney advocate makes an appearance on behalf of the juvenile. In that case, the Court held that "[t]hrough the work of its team members appointed to this case, the GAL program satisfied its out-of-court investigatory duties as well as its in-court representational duties." *Id.* at 178, 711 S.E.2d at 122. The case *sub judice* is not one in which a non-attorney guardian ad litem and an attorney advocate shared responsibility for representing the children's interests. Moreover, Petitioners, not DSS, were in sole custody of the juveniles at the time of the termination hearing. No one made an appearance on the juveniles' behalf during the hearing, which was not merely a *pro forma* proceeding, but rather the final and critical stage in determining the extent of respondent-mother's parental rights.

In short, the GAL program did not "satisf[y] . . . its in-court representational duties" in this case. *Id.*

We therefore hold the trial court erred in concluding that by filing his report, the guardian ad litem had completed his duties. We vacate the order terminating parental rights and remand to the trial court for a new termination hearing at which the juveniles are to be represented by an attorney guardian ad litem or attorney advocate.

Respondent-mother also contends that the court erred by denying her motion to dismiss the petition on the ground it failed to allege sufficient facts in accordance with N.C. Gen. Stat. § 7B-1104(6). This statute requires a petition to set forth "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." N.C. Gen. Stat. § 7B-1104(6) (2011). "While there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue." *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002). Bare recitation of the asserted grounds without supporting documents or allegations of facts is insufficient. *In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160 (1992).

We conclude the present petition is sufficient to comply with N.C. Gen. Stat. § 7B-1104(6) by stating enough facts to warrant a determination that grounds exist to terminate parental rights. The petition alleges that a hearing was held during the 1 June 2009 civil non-jury term of Beaufort County District Court, that respondent-mother was present and represented by counsel at the hearing, and that an order was entered as a result of this hearing which contained a conclusion of law that the respondent parents abused or neglected the juveniles. The petition identified the case file number and the judge who presided and entered the order. The petition further alleged that the children's father was incarcerated serving a sentence with more than twenty years remaining. It also alleged that respondents have resided at a number of different residences from May 2006 until February 2008. Furthermore, the petition asserted two statutory grounds for termination of rights and cited the statute corresponding to the asserted ground.

Because we are vacating the order and remanding for a new hearing, we need not consider the remaining argument of respondent-mother concerning the sufficiency of the findings of fact and conclusions of law supporting the court's order terminating her parental rights.

Vacated and remanded.

Judges BRYANT and BEASLEY concur.

Report per Rule 30(e).