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NO. COA13-280  
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

IN THE MATTER OF:

Robeson County  
Nos. 11 JA 226-27

T.P. and M.P.

Appeal by mother from orders filed 28 November 2012 by Judge Herbert L. Richardson in Robeson County District Court. Heard in the Court of Appeals 15 July 2013.

*J. Hal Kinlaw, Jr. for petitioner-appellee.*

*Ellis & Winters LLP, by James M. Weiss, for Guardian ad Litem.*

*Edward Eldred for respondent-appellant.*

STEELMAN, Judge.

Where the fitness of the person with whom the juvenile is placed was never contested before the trial court, the trial court was not required to make specific findings of fact as to the guardian's fitness. Where a trial court dispensed with all future review hearings, the trial court must make the findings

of fact required by N.C. Gen. Stat. § 7B-906(b).<sup>1</sup> Where a trial court's order provided for a parent to have visitation with the juvenile, the trial court was required to establish at least a minimum outline of a visitation plan which contains the time, place, and conditions of visitation.

### I. Factual and Procedural Background

On 21 August 2011, Robeson County Department of Social Services ("DSS") received a referral that K.P. ("mother") hit her thirteen-year-old daughter, T.P., with a closed fist and participated in domestic violence in T.P.'s presence. Mother allowed M.P., her eight-year-old son, to go live in his father's home. Mother refused to provide an alternative placement for T.P.

On 22 August 2011, DSS filed petitions regarding both children. M.P. did well living at his father's home and the petition regarding him was dismissed.

On 30 September 2011, the trial court adjudicated T.P. a neglected juvenile. On 5 October 2011, the trial court authorized a conditional trial home placement with mother but

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<sup>1</sup> The General Assembly recently amended the statutes dealing with juvenile proceedings, including § 7B-905(c), § 7B-906(b), and § 7B-907(b). 2013 North Carolina Laws S.L. 2013-129. As this action was filed prior to the amendments' effective date of 1 October 2013, the amendments do not apply to this case.

ordered that T.P. remain in DSS's custody. On 7 October 2011, T.P. moved back into mother's home to begin trial home placement. On 7 November 2011, the trial court entered an order declaring that it was in T.P.'s best interests to remain in custody of DSS. On 4 January 2012, DSS placed T.P. with her maternal grandmother and filed another petition that alleged that T.P. was a neglected juvenile. The petition alleged that since T.P.'s trial home placement with mother had begun on 7 October 2011: mother had been evicted from her home, mother was involved in a domestic violence incident, and mother had used crack cocaine. On 7 March 2012, the trial court adjudicated T.P. to be a dependent juvenile. On that same day, the court conducted a disposition hearing, along with a 90 day review hearing from the first disposition order. The trial court ordered that T.P. remain with her maternal grandmother.

On 21 March 2012, DSS filed a petition concerning M.P. The petition alleged that M.P. was "a different child now that he is in his father's home" and that "there are no behavior issues at school and there is no longer a hygiene problem."

On 5 September 2012, the trial court adjudicated M.P. to be a neglected juvenile and continued disposition until 26 September 2012. On 26 September 2012, the trial court entered an

order changing the goal of T.P.'s permanent plan from "reunification with the mother" to "custody with a relative." In the case of M.P., the court changed the goal of his permanent plan from "reunification with the mother" to custody with M.P.'s father.

On 28 November 2012, the trial court concluded it was in T.P.'s best interests that her legal custody be placed with her maternal grandmother.<sup>2</sup> In the case of M.P., the trial court concluded it was in M.P.'s best interests to be placed in his father's legal custody. In both cases, the trial court concluded that further reviews were unnecessary and that mother should be allowed a minimum of two hours per month visitation with each child, upon 24 hours notice.

On 21 December 2012, mother filed a motion requesting that the trial court review visitation. On the same date, mother filed notice of appeal.

## II. Sufficiency of Findings of Fact

In her first argument, mother contends that the trial court's findings of fact do not support the court's conclusions of law that it was in T.P.'s best interests to be placed in the

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<sup>2</sup> The trial court's order in case 11 JA 226 on 28 November 2012, which is clearly concerning T.P., erroneously uses M.P.'s name in finding of fact number 16. Mother does not raise this as an issue on appeal.

legal custody of her maternal grandmother and that it was in M.P.'s best interests to be placed in the legal custody of his father. We disagree.

A. Standard of Review

Mother does not dispute that the trial court's findings of fact were supported by competent evidence, so our review is limited to whether the findings of fact support the trial court's conclusions of law. *In re S.J.M.*, 184 N.C. App. 42, 47, 645 S.E.2d 798, 801 (2007), *aff'd per curiam*, 362 NC 230, 657 S.E.2d 354 (2008).

B. Analysis

Each order contains sixteen findings of fact. The first six findings of fact recite the procedural history, including visitation plans and the history of compliance by mother, with respect to each child. Finding of fact number 7 is identical in each order, and states:

7. That the Robeson County Department of Social Services has made reasonable efforts in this matter to prevent or eliminate the need for placement with the Department, to reunify this family, and to implement a permanent plan for the Child. [Mother] has been receiving foster care services since October, 2011. The oldest child was placed in the custody of the Department after [mother] physically abused her by hitting her with a closed fist. [Mother] also participated in domestic violence in the

presence of the child. [Mother] is unemployed, she does not have stable housing. [Mother] has not completed parenting classes. [Mother] has not seen a psychiatrist to address her mental health issues. [Mother] has not gone consistently to therapy. [Mother] will not complete a drug test.

Findings of fact numbers 8-14 identify the exhibits admitted into evidence. Finding of fact number 15 states:

15. That the Court finds that return of this Child to the home of the mother would be contrary to the welfare of the said Child. [Mother] doesn't have stable housing, she is not employed, and she refuses to cooperate with the psychological evaluations or the recommendations of DSS.

The order pertaining to T.P. contains an additional statement in finding of fact number 15 that DSS "has been working with [mother] for over a year with limited progress." Finding of fact number 16 in each order states that it is in the best interests of T.P. for legal custody to be awarded to her maternal grandmother, and in the best interests of M.P. for legal custody to be awarded to his father.

Mother contends that the trial court's findings of fact are not sufficient to support the conclusions of law that it was in the best interests of the children to place them in the custody of T.P.'s maternal grandmother and M.P.'s father. She asserts that the trial court should have made findings of fact as to the

fitness of the people to whom custody was awarded. In support of her contention she cites to N.C. Gen. Stat. § 7B-907(b) and *In re L.B.*, 181 N.C. App. 174, 191-92, 639 S.E.2d 23, 31-32 (2007).

N.C. Gen. Stat. § 7B-907(b) provides:

(b) At any permanency planning review, the court shall 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. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. At the conclusion of the hearing, if the juvenile is not returned 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;

(3) Where the juvenile's return home is unlikely within six months, whether adoption

should be pursued and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

N.C. Gen. Stat. § 907(b) (2011). We find nothing in the foregoing statute, or in *L.B.*, that states the court must specifically make a finding of fact that the relative to whom custody is awarded be a fit and proper person to have custody of the juvenile.

We hold that the instant case is similar to that of *In re H.S.F.*, 182 N.C. App. 739, 645 S.E.2d 383, (2007). In *H.S.F.*, the child was removed from the mother and custody was awarded to the child's biological father. *Id.* at 740-741, 645 S.E.2d at 383-84. Mother contended that the court's findings of fact did not support the conclusion of law that it was in the child's best interests to place the child with the father. *Id.* at 742-43, 645 S.E.2d at 384-85. The trial court did not make an



express finding that the father was a fit and proper person to have custody of the child. *Id.* We noted that the father's fitness and ability to provide proper care and supervision was never contested or made an issue in the trial court. *Id.* However, the trial court made findings of fact as to mother's unfitness and inability to provide proper care. *Id.* The same situation is present in the instant case. Mother does not contend, and we are unable to find, any evidence in the record to suggest that either the maternal grandmother or M.P.'s father was unfit to care for the children. Mother candidly concedes that the trial court's findings of fact do support the court's conclusion that the children should not be returned to her home. We hold that the trial court's findings of fact support its conclusions of law that it is in the best interests of the children for them to be placed in the custody of T.P.'s maternal grandmother and M.P.'s father.

This argument is without merit.

### III. Dispensing with Future Review Hearings

In her second argument, mother contends that the trial court erred by waiving further review hearings without making the findings of fact mandated by N.C. Gen. Stat. § 7B-906(b):

- (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) (2011). Mother argues that based upon the uncontroverted evidence before the trial court that it could not have made a finding pursuant to subsection (1) that either child has been residing with or in the custody of the maternal grandmother or father for at least one year. We agree.

DSS and the children's guardian *ad litem* concede that the court failed to make the required findings of fact and agree that this case should be remanded to the trial court to enter the required findings of fact in accordance with N.C. Gen. Stat. § 7B-906(b). We remand this matter to the trial court for the entry of additional findings of fact addressing all five factors required by N.C. Gen. Stat. § 7B-906(b).

IV. Visitation Provisions

In her third argument, mother contends that the trial court's orders do not contain an appropriate minimum outline of her visitation plan with the juveniles because it is not sufficiently detailed as to the time, place, and conditions under which visitation may be exercised. We agree.

DSS concedes that the orders do not assign the time, day, or place for the visits and that the matter should be remanded for the making of appropriate findings. The guardian *ad litem* concedes that the order "is not a model of clarity" but contends it is evident from the transcript of the hearing that the court intended to establish a visitation plan. We hold that such a plan is not contained within the written order.

Each order contains the following provision with respect to visitation: "That [mother] is allowed a minimum of 2 hours per month visitation with the child [T.P. or M.P.]. [Mother] is to give a 24 hour notice as to whether or not she will be able to visit." These provisions of the order do not constitute a visitation plan. "The trial court maintains the responsibility to ensure that an appropriate visitation plan is established within the dispositional order." *In re E.C.*, 174 N.C. App. 517, 522, 621 S.E.2d 647, 651 (2005). While the trial court may

delegate the responsibility of arranging, facilitating, and supervising a visitation plan to DSS, that plan must be "expressly approved by the court." N.C. Gen. Stat. § 7B-905(c). The appropriate visitation plan must include "the time, place and conditions under which such visitation rights may be exercised." *In re Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971).

We remand this issue to the trial court to establish a minimum outline for a visitation plan that contains the time, place, and conditions of visitation.

#### V. Conclusion

We affirm the sufficiency of the trial court's findings of fact to support its conclusion that T.P. be placed in the custody of her maternal grandmother and that M.P. be placed in the custody of his father. We vacate the portion of the trial court's order dispensing with further review hearings and remand for additional findings of fact. We also vacate the visitation provisions of the trial court's order and remand for entry of provisions containing the specific time, place, and conditions of visitation.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.

Chief Judge MARTIN and Judge DILLON concur.

Report per Rule 30(e).