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NO. COA13-445  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

IN THE MATTER OF: Guilford County  
Nos. 10 JT 143, 144  
J.B.W. & B.N.W.

Appeal by respondent-mother from order entered 10 January 2013 by Judge H. Thomas Jarrell, Jr. in Guilford County District Court. Heard in the Court of Appeals 28 October 2013.

*Mercedes O. Chut for petitioner-appellee Guilford County Department of Social Services.*

*Mark Hayes for respondent-appellant mother.*

*No brief filed for guardian ad litem.*

HUNTER, Robert C., Judge.

Respondent-mother appeals from the trial court's 10 January 2013 order terminating her parental rights to her children J.B.W. and B.N.W. Respondent-mother also seeks issuance of the writ of certiorari from this Court to review the trial court's 27 April 2012 permanency planning order which respondent-mother claims ceased reunification efforts with the juveniles.

Respondent-mother preserved her right to appeal the order, but failed to reference the permanency planning order in her notice of appeal to this Court. In light of the fact that certiorari is available "when the right to prosecute an appeal has been lost by failure to take timely action," N.C. R. App. P. 21(a)(1), and in light of respondent-mother's apparent desire to appeal the order, in our discretion, we hereby allow issuance of the writ. Because we agree that the trial court made insufficient findings of fact to support its order ceasing reunification efforts, we reverse both the 27 April 2012 permanency planning order and the 10 January 2013 termination of parental rights order, and we remand the case for further proceedings consistent with this opinion.

On 2 February 2010, the Guilford County Department of Social Services ("DSS") filed a petition alleging that the juveniles were neglected and dependent, based on, *inter alia*, respondent-mother's homelessness, mental illness, lack of cooperation with the investigation, and lack of a plan of care for the children. DSS was given nonsecure custody of the juveniles. In an order entered on 23 April 2010, the trial court adjudicated the juveniles neglected and dependent. The trial court maintained custody with DSS and ordered respondent-

mother to enter into a case plan with DSS and comply with its terms.

In a permanency planning order entered on 27 April 2012, the trial court changed the permanent plan for the juveniles to adoption and ordered DSS to proceed with the filing of a petition to terminate the parents' parental rights within 60 days.

On 22 May 2012, DSS filed a petition to terminate both parents' parental rights to the juveniles. As to respondent-mother, DSS alleged the following grounds for termination: (1) neglect; (2) willfully leaving the juveniles in foster care for more than twelve months without showing reasonable progress in correcting the conditions that led to removal; (3) willful failure to pay a reasonable portion of the cost of care for the juveniles; and (4) dependency. See N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6) (2011). The trial court later dismissed the petition as to the juveniles' father, and filed a new petition to terminate his parental rights on 8 November 2012.

Following a hearing, the trial court entered an order on 10 January 2013 in which it found the existence of all four grounds for termination alleged against respondent-mother. The trial court also concluded that termination of respondent-mother's

parental rights was in the juveniles' best interest.<sup>1</sup> Respondent-mother timely appealed from the order.

In her second issue on appeal, respondent-mother argues that the trial court erred in changing the permanent plan to adoption and effectively ceasing reunification efforts without making findings of fact required by N.C. Gen. Stat. § 7B-507(b)(1). Because this issue is dispositive of the matter, we address it first.

DSS disputes respondent-mother's claim that the 27 April 2012 permanency planning order ceased reunification efforts. DSS argues that because the order did not contain a finding ceasing reunification efforts, respondent-mother does not have a right to appeal the order pursuant to N.C. Gen. Stat. § 7B-1001(a)(5). Therefore, DSS argues, we should not address her claim regarding the permanency planning order. Respondent-mother argues that the order, while not explicitly ceasing reunification efforts, implicitly did so by changing the permanent plan to adoption and ordering the filing of a petition to terminate parental rights. We agree with respondent-mother.

When a trial court enters "[a]n order placing or continuing the placement of a juvenile in the custody or placement

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<sup>1</sup> The petition against the father was not part of these proceedings.

responsibility of a county department of social services," the court's order is required to, *inter alia*, "contain findings as to whether [DSS] should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease[.]" N.C. Gen. Stat. § 7B-507(a)(3) (2011).

In the instant case, the trial court found that custody of the juveniles should remain with DSS, concluded that the permanent plan for the children should be changed to adoption, and ordered DSS to proceed with filing a petition to terminate the parental rights of the parents within 60 days. Since the court ordered custody to remain with DSS, it was required by N.C. Gen. Stat. § 7B-507(a) to either find that reasonable efforts at reunification should continue or make additional findings required by N.C. Gen. Stat. § 7B-507(b) that reasonable reunification efforts should cease. It did neither.

Contrary to DSS's assertion, the lack of a finding regarding cessation of reunification efforts does not preclude this Court's review of the issue. In *In re J.N.S.*, 207 N.C. App. 670, 681, 704 S.E.2d 511, 518 (2010), we held that where a

trial court failed to make any findings regarding reasonable efforts at reunification, the "trial court's directive to DSS to file a petition to terminate respondent-mother's parental rights implicitly also directed DSS to cease reasonable efforts at reunification." We explained:

Although the trial court failed to make any findings regarding reasonable efforts at reunification, the language of the disposition order indicates that the trial court effectively determined that reunification efforts between respondent-mother and the minor children should cease when it ordered DSS to file a petition to terminate respondent-mother's parental rights. As our Supreme Court has stated, "[t]he cessation of reunification efforts is a natural and appropriate result of a court's order initiating a termination of parental rights." The *Brake* Court stressed that

[i]t would be a vain effort, at best, for a court to enter an order that had the effect of directing DSS to undertake to terminate the family unit while at the same time ordering that it continue its efforts to reunite the family. In fact, *such an order would tend to be both internally inconsistent and self-contradictory.*

*Id.* at 680-81, 704 S.E.2d at 518 (quoting *In re Brake*, 347 N.C. 339, 341, 493 S.E.2d 418, 420 (1997)) (internal citations omitted); see also *In re A.P.W.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 741

S.E.2d 388, 390 (2013) (finding that the trial court implicitly ceased reunification efforts where it changed the permanent plan for the juveniles from reunification to adoption and ordered DSS to proceed with filing a petition to terminate parental rights).

Like *J.N.S.* and *A.P.W.*, the trial court in the instant case directed DSS to file a petition to terminate parental rights. Moreover, the trial court here changed the permanent plan to adoption, and respondent-mother preserved her right to appeal pursuant to N.C. Gen. Stat. § 7B-507(c). These findings indicate that the trial court intended to cease reunification efforts.

The language used in the trial court's previous permanency planning orders also supports this position. Prior to the 27 April 2012 order, the permanent plan for the juveniles had been reunification with a concurrent plan of adoption. And, in the vast majority of the orders, the trial court specifically ordered DSS to continue with reasonable efforts towards reunification. By way of contrast, the 27 April 2012 order did not mention the continuation of reunification efforts, in addition to changing the permanent plan and ordering the filing of a termination petition. Based on the foregoing, we hold that the trial court's 27 April 2012 order implicitly ceased

reunification efforts.

We also agree that the trial court erred by failing to make necessary findings of fact pursuant to N.C. Gen. Stat. § 7B-507(b). In order to cease reunification efforts with a parent, the trial court must comply with N.C. Gen. Stat. § 7B-507(b), which provides the following, in pertinent part:

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:

- (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[.]

N.C. Gen. Stat. § 7B-507(b) (2011). We have held that N.C. Gen. Stat. § 7B-507(b)(1) requires the trial court to "ultimately find . . . that: (1) attempted reunification efforts would be futile, or (2) reunification would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *In re I.R.C.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 714 S.E.2d 495, 498 (2011). In *I.R.C.*, we reversed and remanded the trial court's order ceasing reunification



efforts where it failed to make the ultimate finding required by N.C. Gen. Stat. § 7B-507(b). *Id.* at \_\_\_, 714 S.E.2d at 499; see *A.P.W.*, \_\_\_ N.C. App. at \_\_\_, 741 S.E.2d at 392 (reversing and remanding the trial court's order implicitly ceasing reunification efforts where the trial court failed to make a finding pursuant to N.C. Gen. Stat. § 7B-507(b)). Here, the trial court's order does not contain any of the findings required by this statute. Therefore, we must reverse the trial court's 27 April 2012 permanency planning order, which implicitly ceased reunification efforts, and the subsequent order terminating respondent-mother's parental rights, and remand this case to the trial court for further proceedings.

Respondent-mother's remaining two arguments on appeal pertain to the trial court's subsequent termination of her parental rights. Because we are reversing the order terminating respondent-mother's parental rights, we need not address these arguments. Though we do not address the issue of the guardian ad litem, we suggest the trial court hold a hearing to determine whether the guardian ad litem is appropriate.

Reversed and remanded.

Judges CALABRIA and HUNTER, JR. concur.

Report per Rule 30(e).