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NO. COA13-538
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

IN THE MATTER OF:

E.G., Jr. Mecklenburg County
No. 12 JA 378

Appeal by respondent-father from order entered 27 February 2013 by Judge Elizabeth Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 17 September 2013.

Senior Associate Attorney Twyla Hollingsworth-Richardson for Mecklenburg County Department of Social Services, Youth & Family Services, petitioner-appellee.

Doughton Rich Blancato PLLC by William A. Blancato for guardian ad litem.

Hunt Law Group, P.C. by James A. Hunt for father, respondent-appellant.

STROUD, Judge.

Respondent-father appeals from the trial court's order adjudicating E.G., Jr. ("Edgar") abused and neglected.¹ We reverse and remand the trial court's order for further findings of fact.

¹ We will refer to the juvenile by pseudonym to protect his privacy and for ease of reading.

After spending the night in respondent-father's care, four-month old Edgar presented at Levine Children's Hospital on 14 June 2012 with multiple skull fractures and a subacute fracture to his posterior left rib. Dr. Lauren Piper, Edgar's attending physician, testified that Edgar's injuries were "consistent with inflicted trauma" and "not accidental in nature." When interviewed by police, respondent-father gave several different stories to explain how Edgar sustained the injuries. Respondent-father eventually admitted he handled Edgar "improperly." He was subsequently charged with felony child abuse.

On 15 June 2012, Mecklenburg County Department of Social Services, Youth and Family Services (YFS) filed a juvenile petition alleging Edgar was an abused and neglected juvenile. The matter came on for hearing at the 26-28 November 2012 session of District Court, Mecklenburg County. By order entered 27 February 2013, Edgar was adjudicated abused and neglected. The trial court ordered that custody of Edgar remain with YFS. The trial court also ordered no contact between respondent-father and Edgar. Respondent-father appeals.

Respondent-father contends the trial court did not have jurisdiction over the adjudicatory and dispositional hearings

because the juvenile petition was not signed and verified as required by law. Specifically, respondent-father contends the petition was not signed by the director of the Mecklenburg County Department of Social Services, nor was it properly verified since the director did not personally appear before the notary and sign or acknowledge signing her name before the notary. Respondent-father acknowledges that the petition is signed and verified by LaDell Josey, but asserts "[t]here is no indication from the petition who LaDell Josey is, beyond being somehow affiliated with Youth and Family Services."

We find the case of *In re D.D.F.*, 187 N.C. App. 388, 654 S.E.2d 1 (2007) instructive in the present case. In *D.D.F.*, this Court stated:

Juvenile petitions must be drawn by the director of DSS, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing. N.C. Gen. Stat. § 7B-101(10) provides that the word director as used in N.C. Gen. Stat. § 7B-403 includes the director's representative as authorized in G.S. 108A-14. N.C. Gen. Stat. § 108A-14(a)(11) gives the director the duty and responsibility to assess reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes. N.C. Gen. Stat. § 108A-14(b) provides that the director may delegate to one or more members of his staff the authority to act as his representative.

The director may limit the delegated authority of his representative to specific tasks or areas of expertise. In light of the role of social services caseworkers as specifically designated by statute, where the record demonstrates that a DSS caseworker is assigned to the child's case and there is no indication whatsoever that the caseworker was not an authorized representative of the director or that she was acting outside of her authority, the DSS caseworker is an authorized representative of the director for purposes of filing a petition under N.C. Gen. Stat. § 7B-403.

Id. at 392-93, 654 S.E.2d at 3-4 (citations, quotation marks, and brackets omitted). This Court found that the record disclosed that the social worker who signed the petition was assigned to the juvenile's case at its inception, and that the social worker "was charged with the duty and responsibility under N.C. Gen. Stat. § 108A-14(a)(11) to investigate the allegations of neglect of [the child] and 'to take appropriate action to protect such [child] pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B.'" *Id.* at 393, 654 S.E.2d at 4 (quoting N.C. Gen. Stat. § 108A-14(a)(11)). The Court noted that action to protect the juvenile included filing a petition for adjudication. *Id.* The Court held the fact that the petition did not state that the social worker was an "authorized representative" of the director did not create a jurisdictional defect. *Id.*

Likewise in this case, the record discloses that LaDell Josey was Edgar's social worker. The box labeled "Relationship to Above Named Child" on the "Affidavit as to Status of Minor Child" form indicates LaDell Josey is Edgar's social worker. Furthermore, the 9 August 2012 "Initial (7-Day) Order" also indicates that LaDell Josey is the social worker in this case. As the social worker in this case, Josey had a duty to take action to protect Edgar and it was proper for Josey to sign the juvenile petition. See *In re D.D.F.*, 187 N.C. App. at 392-93, 654 S.E.2d at 3-4; accord *In re Dj.L.*, 184 N.C. App. 76, 79-80, 646 S.E.2d 134, 137 (2007) (holding that the petition was not invalid where the juvenile's social worker signed the petition and listed her address as "Youth and Family Services"). Accordingly, this argument is overruled.

Respondent-father next contends the trial court violated N.C. Gen. Stat. § 7B-905(c) by failing to adopt an appropriate visitation plan without making necessary findings. We agree and remand for additional findings.

"Any dispositional order under which a juvenile is removed from the custody of a parent . . . shall provide for appropriate visitation as may be in the best interests of the juvenile and

consistent with the juvenile's health and safety." N.C. Gen. Stat. § 7B-905(c) (2011).

If the court finds that the parent has by conduct forfeited the right of visitation or if the court finds that the exercise of the right of visitation would be detrimental to the best interest and welfare of the child, the court may, in its discretion, deny a parent the right of visitation with, or access to, the child; but the court may not delegate this authority to the custodian. If the trial court does not make such findings, the court should safeguard the parent's visitation rights by a provision in the order defining and establishing the time, place and conditions under which such visitation rights may be exercised.

In re M.H.B., 192 N.C. App. 258, 267, 664 S.E.2d 583, 588 (2008) (citations, quotation marks, and brackets omitted). "[E]ven if the trial court determines that visitation would be inappropriate in a particular case or that a parent has forfeited his or her right to visitation, it must still address that issue in its dispositional order and either adopt a visitation plan or *specifically* determine that such a plan would be inappropriate in light of the specific facts under consideration." *In re K.C.*, 199 N.C. App. 557, 562, 681 S.E.2d 559, 563 (2009) (emphasis added).

Although the trial court clearly decided not to award respondent-father visitation, it simply failed to make a finding

that such visitation would not be in Edgar's best interest or that respondent-father had forfeited his right to visitation. This finding was an ultimate finding of fact necessary to support the trial court's decision to deny respondent-father visitation. *See id.*

There was overwhelming evidence in the record to support such a finding, but "[w]hen a trial court is required to make findings of fact, it must find the facts specially." *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003) (citations omitted). This Court cannot simply imply findings into the dispositional order, even if the trial court made such findings in a later permanency planning order. Additionally, there was no evidence that respondent-father *specifically* waived visitation or invited this error. *Cf. In re K.C.*, 199 N.C. App. at 562-63, 681 S.E.2d at 563-64 (holding that the respondent-mother invited the trial court's failure to make findings as to visitation when she refused to work with DSS on reunification and specifically refused visitation when it was offered).² Therefore, as required by N.C. Gen. Stat. § 7B-905(c), we must

² Appellees argue that there was no evidence that respondent-father requested visitation at the hearing, but as they acknowledge, his attorney's closing argument was inaudible and the content of the argument was not recorded. Therefore, we do not know for certain what, if anything, respondent-father's attorney said about visitation.

reverse the trial court's order and remand to make a finding of fact as to whether visitation with respondent-father is in the best interest of the children, whether he has forfeited visitation, or-if the trial court does not make either of these findings-to arrange a visitation schedule. See *In re M.H.B.*, 192 N.C. App. at 267, 664 S.E.2d at 588; N.C. Gen. Stat. § 7B-905(c).

For the foregoing reasons, the trial court's order is reversed and remanded.

REVERSED and REMANDED.

Judges MCGEE and BRYANT concur.

Report per Rule 30(e).