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NO. COA13-683  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

IN THE MATTER OF:

R.C., O.T.G., and M.N.G.                      Wake County  
Nos. 11 JT 322-24

Appeal by respondent-mother from order entered 14 March 2013 by Judge Margaret Eagles in Wake County District Court. Heard in the Court of Appeals 28 October 2013.

*Office of the Wake County Attorney, by Roger A. Askew, for petitioner-appellee Wake County Human Services.*

*Michael E. Casterline for respondent-appellant mother.*

*GAL Attorney Advocate David F. Hord IV for guardian ad litem.*

HUNTER, JR., Robert N., Judge.

Respondent appeals from an order terminating her parental rights to her minor children, R.C., O.T.G., and M.N.G. ("the juveniles"). Because the trial court did not abuse its discretion when it conducted the termination proceedings without

holding a hearing to determine whether a guardian ad litem should have been appointed for respondent, we affirm.

On 8 December 2011, Wake County Human Services ("WCHS") filed a juvenile petition alleging that all three juveniles were neglected due to respondent's substance abuse, lack of stable housing, improper supervision of the juveniles, and general lifestyle that was not conducive to raising children. Respondent had a history of involvement with WCHS dating back to 2003, and has five other children who are not involved in the underlying matter. WCHS took non-secure custody of the juveniles that same day.

After a hearing on the petition on 11 January 2012, the trial court entered an order adjudicating the juveniles neglected. The court continued custody of the juveniles with WCHS and directed respondent to take several steps to regain custody, which included obtaining a substance abuse assessment and following through with any recommendations made as a result of the assessment. Respondent, however, failed to make significant progress in correcting the conditions which led to the removal of the juveniles from her care. By order entered 22 October 2012, the trial court directed WCHS to cease reunification efforts with respondent and WCHS filed a motion to

terminate respondent's parental rights to the juveniles the next day.

After a hearing on 18 February 2013, the trial court entered an order terminating respondent's parental rights to the juveniles on 14 March 2013. The court concluded grounds existed to terminate respondent's parental rights in that she neglected the juveniles pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2011) and was incapable of providing for the proper care and supervision of the juveniles, such that they were dependent pursuant to N.C. Gen. Stat. § 7B-1111(a)(6) (2011). Respondent filed timely notice of appeal.

Respondent's sole argument on appeal is that the trial court abused its discretion when it conducted the termination proceedings without holding a hearing to determine whether a guardian ad litem should have been appointed for her. We disagree.

A trial court may, on its own motion, appoint a guardian ad litem for a parent in proceedings to terminate parental rights "if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest."

N.C. Gen. Stat. § 7B-1101.1(c) (2011).<sup>1</sup> Our General Assembly has defined an incompetent adult as

an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

N.C. Gen. Stat. § 35A-1101(7) (2011). With respect to diminished capacity, this Court has noted:

The phrase "diminished capacity," . . . is used primarily in the criminal law context and is defined as "[a]n impaired mental condition—short of insanity—that is caused by intoxication, trauma, or disease and that prevents a person from having the mental state necessary to be held responsible for a crime." However, our Court has also defined "diminished capacity" in the juvenile context as a "lack of 'ability to perform mentally.'"

*In re M.H.B.*, 192 N.C. App. 258, 262, 664 S.E.2d 583, 585–86 (2008) (citations omitted). "In other words, a person with diminished capacity is not incompetent, but may have some limitations that impair their ability to function." *In re P.D.R.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 737 S.E.2d 152, 158 (2012).

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<sup>1</sup> *But see* 2013 N.C. Sess. Laws ch. 129, § 32 (modifying N.C. Gen. Stat. § 7B-1101.1(c) for actions filed or pending on or after 1 October 2013, such that a guardian ad litem may only be appointed for a parent who is incompetent).

"A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*." *In re J.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d 45, 49 (2005); *see also In re N.A.L.*, 193 N.C. App. 114, 118-19, 666 S.E.2d 768, 771-72 (2008) (holding that the trial court abused its discretion by failing to conduct an inquiry as to the mother's competency and her need for a guardian ad litem when the court's order found that the mother had a Full Scale IQ of 74 and suffered from a personality disorder). "Whether the circumstances are sufficient to raise a substantial question as to the party's competency is a matter to be initially determined in the sound discretion of the trial judge." *In re N.A.L.*, 193 N.C. App. at 118, 666 S.E.2d at 771 (quotation marks and citation omitted). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Here, respondent contends that her history of instability and ongoing substance abuse, coupled with WCHS's allegations of

her neglect of the juveniles and her incapacity to provide appropriate care and supervision of the juveniles, constitute circumstances which raised a substantial question as to whether she should have been appointed a guardian ad litem. Respondent has not, however, shown these same circumstances established a lack of capacity to manage her own affairs or to make or communicate important decisions, or that she had a mental condition which impaired her ability to act in her own interest during the termination proceedings. Although the motion to terminate respondent's parental rights alleges she was incapable of providing for the proper care and supervision of the juveniles, the motion does not allege that the incapability was due to some mental defect, mental illness, or lack of understanding. Respondent did not request appointment of a guardian ad litem during the termination proceedings and testified on her own behalf at the hearing. There is nothing in the transcript to suggest respondent's substance abuse resulted in a diminished capacity or rendered her incompetent to participate in the proceedings. Accordingly, we hold the trial court did not abuse its discretion when it failed to inquire on its own motion as to whether respondent needed a guardian ad litem in the termination proceedings. See *In re S.R.*, 207 N.C.

App. 102, 108-09, 698 S.E.2d 535, 540-41 (concluding the trial court did not abuse its discretion in not appointing a guardian ad litem *sua sponte* for the mother where, even though the mother suffered from substance abuse and mental health issues, there was no indication that she was incompetent or had a diminished capacity), *disc. review denied*, 364 N.C. 620, 705 S.E.2d 371 (2010).

Respondent does not otherwise challenge the trial court's findings of fact or conclusions of law. Accordingly, we affirm the trial court's order terminating respondent's parental rights to her minor children, R.C., O.T.G., and M.N.G.

Affirmed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).