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NO. COA14-239
NORTH CAROLINA COURT OF APPEALS

Filed: 4 November 2014

IN THE MATTER OF:

A.H.

McDowell County
No. 10 JT 74

Appeal by respondent from orders entered 8 May 2013 by Judge C. Randy Poole and 6 November 2013 by Judge Robert K. Martelle in McDowell County District Court. Heard in the Court of Appeals 30 September 2014.

Megan N. Silver, for petitioner-appellee McDowell County Department of Social Services.

Administrative Office of the Courts, by Appellate Counsel Tawanda N. Foster, for Guardian ad Litem.

Mercedes O. Chut, for respondent-appellant mother.

CALABRIA, Judge.

Respondent-mother ("respondent") appeals from orders ceasing reunification efforts and terminating her parental rights to her daughter, Ann.¹ We affirm.

I. Background

Respondent is the mother of Joy, Ann, Tom, and Nick ("the children"). Respondent's husband ("the stepfather") is Ann's stepfather and the father of Ann's half-siblings. The McDowell County Department of Social Services ("DSS") first became involved with the family in 2009 based upon reports of excessive discipline. On 19 August 2010, DSS filed petitions alleging the children were abused and neglected juveniles. In the petitions, DSS alleged that a child medical examination revealed bruising and marks on Joy and Nick; that Joy and Nick indicated their father inflicted the marks for punishment; that Ann and Tom indicated that the stepfather had punched them in the chest for punishment; that respondent admitted her husband uses a belt when he punishes the children; and that respondent "did not think the mark on the children was that bad."

After a hearing on 23 September 2010, the trial court adjudicated the children abused and neglected juveniles. The court ordered respondent to, *inter alia*, "complete a

¹ The parties have stipulated to the use of pseudonyms to protect the identity of the minor children involved in this case.

psychological assessment with Dr. Peter Sansbury and follow all recommendations[.]” The children were placed in foster homes since they did not have any relatives in the area available for placement. DSS requested a home study through the Interstate Compact on the Placement of Children (“ICPC”) for the stepfather’s sister (“the aunt”), who lived in Florida.

On 30 October 2012, the court ordered respondent to submit to another parenting capacity evaluation by Dr. Sansbury. Respondent’s testing revealed a high probability that abuse in the home would reoccur and that respondent and the stepfather continued to minimize the abuse. Consequently, on 8 May 2013, the trial court entered an order which ceased reunification efforts. As part of the order, the court found that placement of the children with the aunt was not in their best interests based upon the results of the home study completed through the ICPC. The trial court ordered the permanent plan to be changed to adoption.

On 21 May 2013, DSS filed separate motions in the cause to terminate respondent’s parental rights to Ann and her half-siblings. DSS’s motion for Ann alleged that the parental rights of respondent were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (abuse and neglect), N.C. Gen. Stat. §

7B-1111(a)(2) (failure to make reasonable progress), and N.C. Gen. Stat. § 7B-1111(a)(9) (respondent's parental rights to another child were involuntarily terminated and respondent lacked a safe home). After a hearing, the trial court entered an order on 29 October 2013 terminating respondent's parental rights to Ann's half-siblings. On 6 November 2013, the trial court entered an order which concluded that all of the grounds for termination alleged by DSS with respect to Ann existed and determined that termination of respondent's parental rights was in Ann's best interests. Respondent appeals.

II. Permanency Planning Order

Respondent argues that the trial court erred by ordering DSS to cease reunification efforts. We disagree.

In any order placing a juvenile in the custody or placement responsibility of a county department of social services, . . . 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) (2013). "This Court reviews an order that ceases reunification efforts to determine whether the

trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007).

Respondent first contends that the trial court erred by making insufficient findings to support its rejection of placing the children with the aunt in Florida. However, "[p]lacement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children." N.C. Gen. Stat. § 7B-903(a)(2)(c) (2013). Pursuant to the ICPC, a juvenile cannot be placed with an out-of-state relative until "the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child." N.C. Gen. Stat. § 7B-3800, Article III(d) (2013).

In the instant case, the Florida Department of Children and Families ("DCF") did not approve of the children's placement with the aunt. DCF informed DSS via letter that it had conducted a home study of the aunt pursuant to the ICPC request. The home study, which was admitted into evidence at the permanency planning hearing, noted concerns regarding financial

stability and lack of space and concluded that the agency's "recommendation is that the children **not** [be] placed in this home and we are denying foster home licensing." Based upon this evidence, the trial court found that "[a] home study of [the aunt] through ICPC was conducted in 2011. It was denied because of financial concerns and lack of space in the home." The court concluded that it was not in the children's best interests to be placed with the aunt due to the denial of the home study, as well as the fact that the concerns identified in the denial were still present. The trial court's findings, which were supported by competent evidence from the permanency planning hearing, show that it considered whether placement with the aunt was suitable based upon the evidence at the hearing, and it properly concluded that placement with the aunt was not appropriate. This argument is overruled.

Respondent next argues the trial court did not make proper findings of fact pursuant to N.C. Gen. Stat. § 7B-907(b) (2011).² We disagree.

"[I]f a juvenile is not returned home at the conclusion of a permanency planning hearing, the trial court must consider

² N.C. Gen. Stat. § 7B-907 was in effect when the court held its permanency planning hearing in March 2013; however, this section was repealed and replaced by N.C. Gen. Stat. § 7B-906.1 (2013) effective 1 October 2013.

certain specified criteria and "make written findings regarding those that are relevant." N.C. Gen. Stat. § 7B-907(b). These criteria include whether custody with a relative or some other suitable person should be established, the rights and responsibilities that should remain with the parents, and whether the children should remain in their current placement or be placed in another permanent living arrangement. N.C. Gen. Stat. § 7B-907(b)(2) and (4) (2011). In the instant case, the trial court complied with these statutory requirements by finding: (1) legal guardianship or custody with a relative or some other suitable person should not be established at this time because there are no relatives appropriate to serve; (2) placement of the children with the aunt would not be in their best interests; (3) the children should remain in their current placement; (4) custody with DSS was in the best interests of the children; and (5) visitation was no longer in the children's best interests. These findings were supported by the evidence presented during the permanency planning hearing. This argument is overruled.

Finally, respondent contends that the trial court's findings were insufficient to support the cessation of reunification efforts.

The trial court's findings and the evidence at the hearing demonstrate that (1) respondent's Child Abuse Potential Inventory test revealed a high probability of physical abuse in the home reoccurring in the next six months to a year; (2) respondent continued to minimize the abuse despite pictures which showed how seriously the children were injured; (3) respondent's prognosis for improvement of parenting abilities was guarded; and (4) respondent's inability to adjust her thinking and expectations to appropriately parent, all of which would not be resolved within the immediate future. These findings and evidence demonstrated that respondent would be unable to provide a safe, permanent home for the children within a reasonable amount of time. Based upon its findings and the evidence presented at the hearing, the trial court did not abuse its discretion in ordering that reunification efforts should cease. This argument is overruled.

III. Termination of Parental Rights

Respondent contends the trial court erred in concluding that grounds existed to terminate her parental rights. We disagree.

"The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear,

cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child." *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004) (internal quotations and citations omitted).

N.C. Gen. Stat. § 7B-1111(a)(9) provides that a trial court may terminate parental rights upon finding that "[t]he parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home." N.C. Gen. Stat. § 7B-1111(a)(9) (2013). Thus, termination pursuant to this ground "necessitates findings regarding two separate elements: (1) involuntary termination of parental rights as to another child, and (2) inability or unwillingness to establish a safe home." *In re L.A.B.*, 178 N.C. App. 295, 299, 631 S.E.2d 61, 64 (2006).

Respondent does not dispute that she had her parental rights involuntarily terminated with respect to another child by a court of competent jurisdiction. Rather, respondent challenges the court's conclusion that she was unable to provide

a safe home. A safe home is "[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect." N.C. Gen. Stat. § 7B-101(19) (2013). Respondent argues that the court did not take into account her current circumstances, which include her separation from her husband and compliance with her case plan.

The trial court's findings indicate that it considered respondent's progress but determined the progress was insufficient. The trial court found that respondent had completed the tasks in her case plan and had "physically separated" from the stepfather. The findings, however, also show: (1) respondent denied domestic violence occurred between her and the stepfather despite the stepfather admitting the acts; (2) respondent continues to believe that Ann was not in danger in the stepfather's care despite his plea of no contest to felony child abuse in August 2011; (3) respondent believes that the stepfather's discipline of Joy was appropriate because she was not seriously injured; and (4) respondent blames DSS for the minor children's behaviors and mental health issues. The court further found that despite the services utilized by respondent, there was no significant change in respondent's

understanding of the problems that led to the removal of Ann and her half-siblings.

These findings are supported by evidence from the termination hearing. Respondent testified that the children were not in danger while in her or the stepfather's care; that the children's injuries were not serious; that her children's behavior was "fine" until they went into foster care; and that the stepfather's yelling and hitting was not a problem because he did not do it often. In addition, a social worker testified that while working with the family, respondent did not acknowledge the seriousness of the children's abuse, the domestic violence between her and the stepfather, or her children's behavioral problems before entering foster care. Finally, Dr. Sansbury, who evaluated respondent in October 2010, September 2011, and December 2012, testified that respondent can be impulsive, excitable, and has trouble providing structure, which can significantly affect her ability to parent. He further testified "[respondent] continues to score extremely high on [the rigidity] scale, so there's been no shifting of attitude [] or adjustment of her expectations for her children." During his interview of respondent, she "continued to be in

denial" regarding the incident between Joy and the stepfather, and she told Dr. Sansbury, "we were once the perfect family."

This evidence fully supported the trial court's finding that respondent lacked the ability to establish a safe home for Ann. Therefore, the trial court properly concluded grounds existed to terminate respondent's rights under N.C. Gen. Stat. § 7B-1111(a)(9). Since we have concluded that the trial court properly terminated respondent's rights on this ground, it is unnecessary to address her arguments regarding the remaining grounds for termination. See *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984) (a finding of one statutory ground is sufficient to support the termination of parental rights). This argument is overruled.

IV. Conclusion

The trial court's order ceasing reunification was supported by adequate findings of fact. The trial court's findings supported its conclusion that respondent's parental rights should be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(9). The trial court's orders are affirmed.

Affirmed.

Judges STEELMAN and McCULLOUGH concur.

Report per Rule 30(e).