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NO. COA14-868
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF: Robeson County
L.M. No. 2 JA 07

Appeal by respondent mother from order filed 20 May 2014 by Judge John B. Carter, Jr., in Robeson County District Court. Heard in the Court of Appeals 2 December 2014.

J. Hal Kinlaw, Jr., for petitioner-appellee Robeson County Department of Social Services.

Ryan McKaig for respondent-appellant mother.

Kilpatrick Townsend & Stockton LLP, by Susan H. Boyles and Elizabeth L. Winters, for guardian ad litem.

McCULLOUGH, Judge.

Respondent mother appeals from an order awarding legal guardianship of her son L.M. ("Lance")¹ to foster parents. We affirm in part and vacate and remand in part.

I. Background

¹A pseudonym is used to protect the identity of the juvenile and for ease of reading.

Although the record indicates that Robeson County Department of Social Services ("DSS") has been involved with respondent's family off and on since 1992, Lance's case began on 10 January 2002 when DSS filed a juvenile petition alleging Lance was a neglected juvenile in that he lived in an environment injurious to his welfare. Pending a hearing on the petition, Lance was removed from respondent's home and placed in the nonsecure custody of DSS. Lance was four years old at the time.

Following a 20 February 2002 adjudication and disposition hearing, on 22 March 2002, the trial court filed an order adjudicating Lance a neglected juvenile and awarding custody to DSS, who was to arrange foster care or other placement. The permanent plan for Lance was set for reunification.

At the recommendation of DSS, on 27 May 2004, Lance began a trial placement with respondent. However, on 12 July 2004, DSS filed a juvenile petition alleging Lance was a neglected juvenile based on the suspected abuse of another child in respondent's home. Lance was removed from respondent's home at that time, but was later allowed to return when the trial court dismissed the petition on 28 July 2004.

On 5 September 2008, DSS filed another juvenile petition alleging Lance was a neglected juvenile on the basis that he was living in an unsuitable environment. Lance was again removed from the home and placed with foster parents. Following an adjudication and disposition hearing on 17 December 2008, on 16 January 2009, the trial court filed an order adjudicating Lance neglected and awarding custody of Lance to DSS for foster placement.

On 19 January 2011, the trial court issued a permanency planning review order returning Lance to respondent's home for another trial placement. However, the trial placement was terminated shortly thereafter and Lance was removed from respondent's home and returned to foster placement. Following further proceedings on 18 May 2011, the trial court adjudicated Lance a neglected juvenile and changed the permanent plan from reunification to guardianship. The trial court filed adjudication and disposition orders on 20 July 2011.

On 19 March 2014, the case came on for a permanency planning hearing in Robeson County District Court. Following the hearing, the trial court, the Honorable John B. Carter, Jr., entered an order awarding guardianship of Lance to his foster

parents. Respondent appeals from the order awarding guardianship of Lance to his foster parents.

II. Discussion

"Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and the findings support the conclusions of law." *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004) (citing *In re Eckard*, 148 N.C. App. 541, 544, 559 S.E.2d 233, 235, *disc. review denied*, 356 N.C. 163, 568 S.E.2d 192 (2002)). "If the trial court's findings of fact are supported by any competent evidence, they are conclusive on appeal." *Id.* (citing *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003)).

In her first argument on appeal, respondent contends the trial court erred in creating a guardianship without a proper verification of the appointed guardians, the foster parents. Specifically, respondent contends the foster parents should have been questioned about their understanding of a guardian's responsibilities and their willingness and ability to fulfill those responsibilities.

The Juvenile Code, Chapter 7B of the North Carolina General Statutes, authorizes the appointment of a guardian for a

juvenile “[i]n any case . . . when the court finds it would be in the best interests of the juvenile[.]” N.C. Gen. Stat. § 7B-600(a) (2013). Yet, “[i]f the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile.” N.C. Gen. Stat. § 7B-600(c); see also N.C. Gen. Stat. § 7B-906.1(j) (2013). As respondent acknowledges in her brief, this Court has previously recognized that the Juvenile Code does not “require that the court make any specific findings in order to make the verification.” *In re J.E.*, 182 N.C. App. 612, 617, 643 S.E.2d 70, 73 (2007). It is sufficient that the court receives and considers evidence that the guardians understand the legal significance of the guardianship. *Id.*

In the present case, testimony at the permanency planning hearing showed that except for a brief trial placement with respondent, Lance, who was sixteen years old at the time of the hearing, had resided with the foster parents since the age of nine. All accounts seemed to indicate that Lance was doing well in the foster home. The foster father testified he had been working to get Lance off of medication and he had taken Lance on

several trips, including an extended trip to Canada. The foster father indicated that those efforts had been successful, as Lance was no longer taking medication, was performing well in school, and was active in church. The foster father further testified that he had encouraged Lance to go into the military and law enforcement; and was actively working with Lance and supporting him financially to reach those goals. The DSS caseworker indicated that the foster father was willing to accept guardianship and when the foster father was directly questioned whether he was willing to continue to provide care to Lance, the foster father replied "I want to take guardianship of him."

Moreover, Lance's foster father, along with the judge presiding over the permanency planning hearing, executed a form on 19 March 2014 which indicates the foster father appeared before the court and "acknowledged to assume the responsibility of [Lance] . . . without the assistance of [DSS.]" In doing so, the foster father acknowledged that DSS was released of all responsibility related to Lance and that he willingly accepted all responsibility of Lance.

We hold that, based upon the consideration of the above evidence, the trial court performed the required verification of the foster father. Thus, respondent's argument as it relates to the foster father is overruled.

Although there was sufficient evidence to verify Lance's foster father as a suitable guardian, we hold there was insufficient evidence that Lance's foster mother understood and accepted the responsibilities of guardianship.

As DSS concedes, the foster mother did not testify and did not sign a guardianship form. Nevertheless, DSS asserts the court's award of guardianship to both foster parents should stand under this Court's decision in *In re J.E.* We disagree. In *In re J.E.*, this Court held the trial court adequately complied with the verification requirement when it received into evidence and considered home studies showing the juveniles' maternal grandparents were aware of and committed to the responsibilities of raising the juveniles. 182 N.C. App. at 617, 643 S.E.2d at 73. Upon review of *In re J.E.*, we find it significant that the home studies before the trial court in *In re J.E.* referred to the "grandparents." *Id.* In the present case, the evidence before the trial court tended to relate to the foster father's role in raising Lance and his desire to continue doing so; there was no evidence that the foster mother accepted responsibility for Lance. Thus, we hold the trial court did not properly verify the foster mother.

In the second issue on appeal, respondent contends the trial court erred in determining that guardianship with the foster parents was in Lance's best interests.

In response, the guardian ad litem first asserts that respondent cannot challenge the determination that guardianship was in Lance's best interest because she did not challenge trial court's 20 July 2011 disposition order changing the permanent plan for Lance from reunification to guardianship following the termination of Lance's trial placement with respondent. While we acknowledge there may be merit to the guardian ad litem's assertion, for arguments sake, we address respondent's argument and hold the trial court did not err in the best interests determination.

"Whenever the trial court is determining the best interest of a child, any evidence which is competent and relevant to a showing of the best interest of that child must be heard and considered by the trial court" *In re Shue*, 311 N.C. 586, 597, 319 S.E.2d 567, 574 (1984). The decision of the trial court regarding best interests of a juvenile is within the trial court's discretion and will not be overturned absent an abuse of discretion. See *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

In this case, respondent points to evidence that she obtained employment, found stable housing, developed a positive relationship with Lance, and that Lance desired to return to her custody; respondent then argues "[i]n light of [her] efforts and improvements and [Lance's] wishes, and in light of the Juvenile Code's preference for reunification with biological relatives, it was error for the trial court to determine that guardianship with foster parents was in the best interest of [Lance]."

While we agree with respondent that the evidence shows she has made progress, the evidence is not conclusive in the trial court's best interests analysis. There is also evidence to support the trial court's findings that Lance has been in the home of the foster parents for an extended period of time, that "[the foster father] has been actively involved in [Lance's] life[,] " "[t]hat the current plan for [Lance] is guardianship with a court approved caretaker[,] " and "[t]hat the return of [Lance] to the home of [respondent] would be contrary to the welfare of [Lance]."

Moreover, it is clear from the transcript of the 19 March 2014 permanency planning hearing that the trial court weighed respondent's progress in the best interests determination. In

announcing its decision in open court, the trial court explained,

[t]he Court does find that [respondent] has made improvement in her life. [Respondent] does have adequate housing and employment and has personally done well at her individual life, but the Court does find that [respondent] does not adequately appreciate the needs of both children and would not be able to adequately care for them as they attend - as they progress toward adulthood. The Court, therefore, finds that it would be in [Lance's] best interest that guardianship be granted to [the foster father] The Court will continue supervised visits.

The court then reiterated to Lance,

I understand that [Lance] would like to return home, but it's clear to the Court that there are certain needs that will not be met in your mother's home and the - not that she doesn't desire to try to meet those needs, but the Court is of the opinion that she's not able to adequately address them, and that failure or inability will prevent . . . you from reaching all the goals that you want to reach in life.

Based on the trial court's findings and the evidence presented, we hold the trial court did not abuse its discretion in determining that guardianship with the foster parents was in Lance's best interest.

III. Conclusion

For the reasons discussed above, we affirm the order of guardianship for the foster father and vacate and remand the order of guardianship for the foster mother.

Affirmed in part, vacated and remanded in part.

Judges CALABRIA and STROUD concur.