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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-167

Filed: 18 August 2015

Transylvania County, Nos. 11 JA 6, 14 JA 19-20

IN THE MATTER OF: A.W., B.W., & J.W, Minor Children.

Appeal by respondent-father from order entered 25 September 2014 by Judge T. Mack Brittain in District Court, Transylvania County. Heard in the Court of Appeals 27 July 2015.

No brief for petitioner-appellee Transylvania County Department of Social Services.

David A. Perez, for respondent-appellant-father.

Lee F. Taylor, for guardian ad litem.

STROUD, Judge.

Respondent, the father of the juveniles, Abe, Bob, and Jon, appeals from an order adjudicating the juveniles as neglected and dependent. After careful review, we affirm.

I. Background

On 2 June 2014, Transylvania County Department of Social Services (“DSS”) filed petitions alleging that Abe, Bob, and Jon were neglected and dependent

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juveniles. On 25 September 2014, the trial court entered an order adjudicating the juveniles as neglected and dependent. Respondent-father appeals.

II. North Carolina General Statute § 7B-601(a)

Respondent argues that “the trial court violated the statutory requirements of N.C. Gen. Stat. § 7B-601(a) by conducting the adjudicatory and dispositional hearing without a properly appointed attorney advocate and with no assistance from, and without the presence of, a guardian ad litem.” (Original in all caps.) We review whether the trial court violated a statutory requirement under *de novo* review. *State v. Spence*, ___ N.C. App. ___, ___, 764 S.E.2d 670, 681 (2014) (“This Court reviewed the appeal *de novo* because the defendant alleged a statutory violation[.]”).

When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. . . . In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile’s legal rights throughout the proceeding.

N.C. Gen. Stat. § 7B-601(a) (2013). On 3 July 2014, Lee Bradley was appointed as the GAL program staff, Laura Jensen was appointed as the GAL volunteer, and Richard Tanker was appointed as the attorney advocate. The record and transcript before us conflict as to whether Ms. Bradley was present at the hearing, and undoubtedly Ms. Jensen was not present; but even assuming Ms. Bradley was not present, Ms. Lee Taylor was present as the attorney advocate. “Although the GAL’s presence at the abuse and neglect hearing may be preferable, the language of the

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statute does not mandate the nonlawyer volunteer's attendance. Ultimately, the GAL and the attorney advocate work as a team to represent the juvenile." *In re A.N.L.*, 213 N.C. App. 266, 269, 714 S.E.2d 189, 192 (2011) (citations, quotation marks, and brackets omitted). In addition, Ms. Taylor noted "[t]he Guardian ad Litem has not been able to have any contact with the children or the father."

While the reason for Ms. Taylor's presence as attorney advocate at the hearing instead of Mr. Tanker's is not clear from the record, she did nonetheless appear in the capacity of attorney advocate at the hearing. At the very beginning of the hearing, the trial court noted that "[w]e already had the required pre-trial, or prehearing[,]" and DSS's attorney confirmed that "I believe that we have had the pre-adjudication hearing[,]" and upon the trial court's inquiry, defendant's attorney noted only that "I just want to note for the record my objection to proceeding without my client present." It is obvious that the trial court and counsel were referring to the pre-adjudication hearing which is required by North Carolina General Statute § 7B-800.1, which provides:

(a) Prior to the adjudicatory hearing, the court shall consider the following:

(1) Retention or release of provisional counsel.

.....

(6) Any pretrial motions, including (i) appointment of a guardian ad litem in accordance with G.S. 7B-602, (ii) discovery motions in accordance with G.S. 7B-700, (iii) amendment of the petition in accordance with G.S. 7B-800, or (iv) any motion for a continuance of the adjudicatory hearing in accordance with G.S. 7B-803.

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(7) Any other issue that can be properly addressed as a preliminary matter.

N.C. Gen. Stat. § 7B-800.1(a) (2013).

It seems apparent from the transcript discussion regarding the pre-adjudication hearing that respondent's issues regarding the GAL and attorney advocate were addressed at that hearing to the extent necessary. Furthermore, respondent does not argue that Ms. Taylor failed to fulfill the duties of the GAL program "to protect and promote the best interests of the juvenile[s]." N.C. Gen. Stat. § 7B-601(a). The transcript demonstrates that Ms. Taylor actively participated in the hearing by examining witnesses and arguing on behalf of the juveniles; therefore, we conclude that the trial court ensured the statutory requirements of North Carolina General Statute § 7B-601(a) were complied with at the hearing. *See A.N.L.*, 213 N.C. App. at 269-70, 714 S.E.2d at 192 ("In the instant case, the record indicates that Autumn was adequately represented by the GAL Program pursuant to N.C. Gen. Stat. § 7B-601(a). Taylor was present as the attorney advocate during both portions of the proceedings, and actively participated by questioning witnesses and offering recommendations for adjudication and disposition. The content of Taylor's questions sufficiently demonstrated that the GAL Program had actively investigated the case prior to the hearing. Moreover, while the GAL Program did not submit a report into evidence, Taylor affirmatively stated to the trial court that a GAL report was not available only due to the newness of the case and assured the court that the GAL

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Program was actively working on the case. In light of this record, we hold that the GAL Program satisfied its duties under N.C. Gen. Stat. § 7B-601(a) in the instant case.” (quotation marks omitted). Lastly, we also note that here, after the petitions were filed, the juveniles remained in placement with respondent. An investigator for DSS testified that both respondent and the juveniles were uncooperative with DSS; he stated he was able to meet with the children, but one child cursed at him, and the other child “refused to speak to anyone from DSS.” Thereafter, the investigator was not allowed to see the children, and respondent refused to return his phone calls. Accordingly, the reason for any lack of contact between the GAL and the children appears to lie squarely on respondent. This argument is overruled.

III. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Judges GEER and TYSON concur.

Report per Rule 30(e).