IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-291

Filed: 18 August 2015

Beaufort County, Nos. 12 JA 34–35; 13 JA 13

IN THE MATTER OF: N.R.C., N.F.C., N.K.R.

Appeal by respondent-mother from orders entered 4 February 2014 by Judge Darrell B. Cayton, Jr., and 17 October 2014 by Judge Christopher McLendon in Beaufort County District Court. Heard in the Court of Appeals 13 July 2015.

Matthew W. Jackson, for petitioner-appellee Beaufort County Department of Social Services.

Sydney Batch, for respondent-appellant mother.

CALABRIA, Judge.

The mother of the minor children ("Respondent") appeals from orders of the trial court ceasing efforts toward reunification and terminating her parental rights to N.R.C. ("Nathan"), N.F.C. ("Nicole"), and N.K.R. ("Noah").[1] We dismiss her appeal in part and otherwise affirm.

On 27 April 2012, the Beaufort County Department of Social Services ("BCDSS") filed petitions seeking an adjudication of neglect for two-year-old Nathan and four-year-old Nicole (collectively, "the children") and obtained nonsecure

[1] We adopt the pseudonyms used by the parties on appeal to protect the juveniles' identities.

custody. The petitions alleged, *inter alia*, that Respondent had been arrested in the presence of the children on 23 April 2012 and charged with felony conspiracy to sell or deliver heroin, felony possession of heroin, and possession of drug paraphernalia. BCDSS recited its history with Respondent and the children, which included six child protective services reports since 2007 involving domestic violence between Respondent and the children's father ("Mr. W."),[2] recurrent substance abuse by Respondent, and Respondent's failure to adequately address Nicole's autism. Prior to Respondent's arrest on 23 April 2012, her lease was terminated after police found heroin, cocaine, and drug paraphernalia in her home while delivering warrants for failing to appear to answer criminal charges. Respondent also tested positive for opiates on 4 April 2012. Although Mr. W. did not live with Respondent and the children, the petitions noted that he and Respondent "both admit to instances of domestic violence" and that he had multiple convictions for drug crimes and two separate counts of assault on a female.

Respondent and Mr. W. signed "Stipulations of Fact for Adjudication" consistent with BCDSS's allegations and acknowledged that Nathan and Nicole "resided in an environment injurious to their welfare." *See* N.C. Gen. Stat. 7B–101(15) (2013). The trial court adjudicated the children as neglected on 12 July

[2] Although Nathan and Nicole were born out of wedlock, Mr. W.'s paternity of Nicole was established by court order prior to the institution of these proceedings. Mr. W.'s paternity of Nathan was established by genetic testing in January 2013.

2012 and continued custody with BCDSS. The court ordered Respondent to complete the requirements of her Out of Home Family Services Agreement.

The trial court held a permanency planning hearing for Nathan and Nicole on 31 May 2013 and entered an order ceasing efforts toward reunification with Respondent as to these children on 27 August 2013.[3] The order included a finding that Respondent "concurs in the specific recommendations" and "proposed case plan" in the reports filed by BCDSS and the guardian ad litem, both of which recommended ceasing reunification efforts as to Respondent.

In March 2013, before the permanency planning hearing for Nathan and Nicole, Respondent gave birth to Noah. Two days later, BCDSS filed a juvenile petition alleging that Noah was neglected and obtained nonsecure custody of the newborn child. The petition alleged that Noah's father ("Mr. R.") had three pending criminal charges that included assault on a female against Respondent as well as prior convictions for indecent liberties with a minor, failure to register as a sex offender, felony drug possession, and two counts of assault on a female. Although Respondent had obtained a domestic violence protective order against Mr. R., the petition alleged ongoing contact between them. BCDSS also cited Respondent's history of substance abuse and related criminal convictions; her failure to establish

[3] The record on appeal includes an incomplete version of this order. Although pages 2 and 4 of the order are missing, it appears otherwise identical to the order included in the supplement to the record filed by BCDSS.

housing appropriate for Nathan and Nicole since their adjudication as neglected juveniles in July 2012; her limited income from Social Security Disability; and her lack of a driver's license or vehicle. On 27 August 2013, pursuant to "Stipulations of Fact for Adjudication" signed by Respondent and Mr. R. on 31 May 2013, the trial court adjudicated Noah as neglected and continued his placement in BCDSS custody.

After a review and permanency planning hearing on 23 August 2013, the trial court ordered BCDSS to cease reunification efforts as to Noah. Subsequently, Respondent gave notice to preserve her right to appeal the order. Although her notice purported to apply to ceasing reunification efforts for all three of her children, the court had already ordered BCDSS to cease reunification efforts as to Nathan and Nicole with her consent in 12 JA 34–35 at the hearing held on 31 May 2013.

On 17 January 2014, BCDSS filed petitions to terminate the parental rights of Respondent, Mr. W., and Mr. R. After hearing evidence on 30 May 2014, the trial court entered orders terminating Respondent's, Mr. W.'s, and Mr. R.'s parental rights on 17 October 2014. As to each child, the court adjudicated grounds to terminate Respondent's, Mr. W.'s, and Mr. R.'s parental rights based on neglect and dependency under N.C. Gen. Stat. §§ 7B–1111(a)(1), 7B–1111(a)(6) (2013). The trial court also concluded that Respondent willfully left Nathan and Nicole in foster care

for more than twelve months without making reasonable progress to correct the conditions that led to their removal from her home. *See* N.C. Gen. Stat. § 7B–1111(a)(2). Additionally, the court concluded that the termination of Respondent's, Mr. W.'s, and Mr. R.'s parental rights was in the children's best interests. Respondent appeals.

Respondent confines her appeal to challenging the orders that ceased BCDSS's efforts toward reunification. *See* N.C. Gen. Stat. § 7B–1001(a)(5)(a) (2013) (authorizing appeal from order ceasing reunification efforts "together with an appeal of the termination of parental rights order"). She "concedes that the trial court had sufficient evidence to cease reunification efforts with her" and does not appear to challenge the trial court's decision for BCDSS to cease reunification efforts. Rather, Respondent "contends that the trial court erred in failing to order legal custody or guardianship with a relative as the sole or primary permanent plan for the minor children[,]" inasmuch as her cousin in Virginia, Ms. Bryant, was "willing and able to care for all three siblings on a permanent basis." Respondent further challenges the trial court's determination that BCDSS made reasonable efforts to implement the permanent plan for the children under N.C. Gen. Stat. §

7B–907(b)(5) (2011),[4] given BCDSS's failure to promptly assess Ms. Bryant's suitability as a relative placement.

Our "review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law." *In re J.V. & M.V.*, 198 N.C. App. 108, 112, 679 S.E.2d 843, 845 (2009) (citation omitted) (internal quotation marks omitted). The trial court's findings of fact "are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings." *In re L.T.R. & J.M.R.*, 181 N.C. App. 376, 381, 639 S.E.2d 122, 125 (2007) (citations omitted) (internal quotation marks omitted). In choosing an appropriate permanent plan under N.C. Gen. Stat. § 7B–906.1 (2013), the juvenile's best interests are paramount, not the rights of the parent. *In re T.K.*, 171 N.C. App. 35, 39, 613 S.E.2d 739, 741, *aff'd*, 360 N.C. 163, 163, 622 S.E.2d 494, 494 (2005). "We review a trial court's determination as to the best interests of the child for an abuse of discretion." *In re D.S.A.*, 181 N.C. App. 715, 720, 641 S.E.2d 18, 22 (2007) (citations omitted).

Respondent's Appeal in 12 JA 34–35

[4] Effective 1 October 2013, N.C. Gen. Stat. § 7B–907 was repealed and replaced by current statute N.C. Gen. Stat. § 906.1. 2013 N.C. Sess. Laws 129 §§ 25–26, 41. We apply the statute in existence in August 2013.

A portion of Respondent's arguments on appeal address an order that is not properly before this Court. To the extent Respondent challenges the findings and conclusions found in the trial court's 4 February 2014 permanency planning review order in 12 JA 34–35, we are constrained to hold that the order is not appealable. After a hearing held 31 May 2013, the trial court entered an order on 27 August 2013 ceasing reunification efforts as to Nathan and Nicole. The permanency planning review included a finding that Respondent concurred in BCDSS ceasing reunification efforts as to these children. In addition, Respondent never provided this Court with a stenographic transcript of the 31 May 2013 permanency planning hearing. Furthermore, Respondent never filed notice of her intent to appeal and she makes no arguments on appeal regarding the 27 August 2013 order that actually ceased reunification in 12 JA 34–35. Accordingly, as her purported appeal in 12 JA 34–35 is taken from a non-appealable interlocutory order entered 4 February 2014, we dismiss Respondent's appeal in pertinent part. *See* N.C. Gen. Stat. § 7B–1001(a).

Notwithstanding our dismissal of the appeal in 12 JA 34–35, we note that the 27 August 2013 order ceasing reunification efforts as to Nathan and Nicole includes the following findings of fact and conclusions of law:

> 8. In accordance with [N.C. Gen. Stat. §] 7B–907(a)(2), the court makes the following factual findings related to whether legal guardianship or custody with a relative . . . should be established, and if so what rights and

responsibilities should remain with the parents: two relatives have recently been brought forth as possible alternatives to continued foster care. [Mr. W.] nominated his sister . . . and a home study is under way. Mother proffered her cousin, [Ms.] Bryant, who resides in Virginia. Ms. Bryant, when contacted by telephone, indicated she was willing to be considered as a placement for the children, whom she has never met. [Nathan] and [Nicole] have now been in the same foster home for a year, and have forged a strong bond with their foster mother. BCDSS believes it would be detrimental to the children to disturb this placement, and all the supportive services now in place around it, to place the children with someone they do not know at all.

9. . . . [W]hile BCDSS should be relieved of reunification efforts with mother today, the possibility remains that a suitable relative with a substantial, positive relationship to the children may be found for permanent placement. If so, adoption may not be necessary to achieve permanence. The rights of each parent remain intact.

. . . .

CONCLUSIONS OF LAW . . . .

1. . . . It is impossible that the children could be returned to either parent within the next six months. Further efforts aimed at reunification with mother would be inconsistent with the juveniles' health, safety, and need for a safe permanent home within a reasonable period of time.

. . . .

3. . . . The best plan of care to achieve a safe permanent home within a reasonable time is: to cease efforts aimed at reunification with mother, seek a permanent relative placement, and if one cannot be located, proceed to clear the children for adoption.

The trial court ordered BCDSS to take the following actions, aimed at achieving permanence for the child: seek a relative with a substantial, positive relationship to the children as a permanent placement resource, and if such cannot be located, proceed to clear the children for adoption. Since Nicole was diagnosed with autism and Nathan had developmental delays and anger issues, the trial court concluded that it would be contrary to their best interests to disrupt their established foster care placement by moving them to another state into the home of a relative whom they had never met. Moreover, consistent with the court's obligation under N.C. Gen. Stat. § 7B–903(a)(2)(c) (2013), the order established a primary permanent plan for these children of placement with an appropriate relative. Finally, Respondent made no mention of Ms. Bryant as a potential placement at the May 2014 termination hearing. Therefore, the trial court properly concluded the foster care placement was in the best interests of the children and did not abuse its discretion.

Respondent's Appeal in 13 JA 13

The 4 February 2014 order ceasing reunification as to Noah in 13 JA 13 includes the following findings of fact and conclusions of law:

> 7. In accordance with [N.C. Gen. Stat. §] 7B–907(a)(2), the court makes the following factual findings related to whether legal guardianship or custody with a relative . . . should be established, and if so, what rights and responsibilities should remain with the parents: [Ms.] Bryant, a relative of [Respondent], appeared and testified that while she has never met this child she would be willing to keep him in her home and would continue to

run her home day care, which cares for at least 8 children over 2 shifts daily. [Noah] has been in the same foster home for four months, and has forged a strong bond with his foster mother, [Ms.] Ricks, who testified about the child's need for structure and consistency. Ms. Ricks testified that she is committed to providing a stable and loving home for this child.

8. In accordance with [N.C. Gen. Stat. §] 7B–907(a)(3), the court makes the following factual findings related to whether or not adoption should be pursued, and if so, what barriers to adoption may exist: while BCDSS should be relieved of reunification efforts with both parents today, the possibility remains that a suitable relative may be found for permanent placement. If so, adoption may not be necessary to achieve permanence.

9. . . . The child is thriving in [Ms.] Ricks' home . . . .

10. In accordance with [N.C. Gen. Stat. §] 7B[]–907(a)(5), the court makes the following factual findings related to whether or not BCDSS has made reasonable efforts to implement the permanent plan for the child: the social worker has continued to monitor the parents['] participation in treatment, provide supervised visitation, and monitored the child's progress.

. . . .

3. BCDSS has made reasonable efforts aimed at reunification or towards achieving a plan of permanence articulated by this Court. The best plan of care to achieve a safe permanent home within a reasonable time is: cease efforts aimed at reunification with both parents, seek a permanent relative placement, and if one cannot be located, proceed to clear for adoption.

In accordance with the permanent plan, the trial court specifically ordered BCDSS to "complete the ICPC[5] for [Ms. Bryant] in Virginia and continue to evaluate the mother's cousin as a permanent relative placement."

Under N.C. Gen. Stat. § 7B–907(b)(2), the trial court was required to make findings as to "whether legal guardianship or custody with a relative . . . should be established[.]" Finding 7 meets this requirement. We find no merit in Respondent's assertion that the court erred by establishing adoption as an alternative permanent plan for Noah secondary to the primary plan of placement with a relative. As we have previously noted,

> N.C. Gen. Stat. § 7B–903 provides that in placing a juvenile outside of the home, "the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home." However, the statute further provides that the court is not bound to place the child with such relative, if "the court finds that the placement is contrary to the best interests of the juvenile."

In re D.S.A. at 719–20, 641 S.E.2d at 22 (quoting N.C. Gen. Stat. § 7B–903(a)(2)(c) (2005)). "Placement of a juvenile with a relative outside [North Carolina] must be in accordance with the Interstate Compact on the Placement of Children." N.C. Gen. Stat. § 7B–903(a)(2)(c). At the time of the permanency planning hearing, Ms. Bryant had never met Noah and had not been investigated as a potential

[5] The Interstate Compact on the Placement of Children. *See* N.C. Gen. Stat. § 7B–3800 (2013).

placement. Five-month-old Noah had resided with the foster parents since leaving the hospital at two days of age, was thriving in their care, and they wanted to adopt him. Under these circumstances, the trial court properly determined that the secondary plan of adoption was in Noah's best interests. Therefore, the trial court did not abuse its discretion.

We further find no error in the trial court's conclusion that "BCDSS has made reasonable efforts aimed at reunification or towards achieving a plan of permanence articulated by this court" under N.C. Gen. Stat. § 7B–907(b)(2). On 31 May 2013, the trial court ordered BCDSS to continue reunification efforts as to Noah, and BCDSS had directed its efforts accordingly. BCDSS ceased efforts only after the permanency planning hearing on 23 August 2013, when the trial court ordered BCDSS to cease reunification efforts and seek a permanent placement for Noah. The fact that BCDSS had not ordered an ICPC study for Ms. Bryant at the time of the 31 May 2013 hearing did not constitute a lack of reasonable efforts toward the reunification plan. Nor was Respondent prejudiced by BCDSS's purported delay in seeking the ICPC study,[6] since the order ceasing reunification efforts on 4 February

[6] BCDSS filed a supplement to the record on appeal pursuant to N.C. R. App. P. 9(b)(5) (2015), which includes its ICPC request, dated 16 September 2013, seeking a home study of Ms. Bryant from the Virginia Department of Social Services ("Virginia DSS"). Also included is an "Interstate Placement Transmittal" from Virginia DSS denying the ICPC request based on Ms. Bryant's notice to Virginia DSS on 11 November 2013 that she no longer wished to be considered as a placement option. Respondent has moved to strike these documents, inasmuch as they did not exist at the time of the 23 August 2013 permanency planning hearing and were not subsequently

2014 established placement with a relative as Noah's primary permanent plan and directed BCDSS to pursue an ICPC placement with Ms. Bryant. Respondent's argument is overruled.

Conclusion

To the extent Respondent appeals from the trial court's order entered 4 February 2014 in 12 JA 34–35, her appeal is dismissed. We affirm the order ceasing reunification efforts in 13 JA 13 and the orders terminating Respondent's parental rights as to each of the three children.

DISMISSED IN PART; AFFIRMED IN PART.

Chief Judge McGEE and Judge HUNTER, JR. concur.

Report per Rule 30(e).

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introduced into evidence in the trial court. We grant Respondent's motion and disregard these documents for purposes of our review.