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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-349

Filed: 18 August 2015

Cumberland County, Nos. 14 JA 12-13

IN THE MATTER OF: K.L., R.E.

Appeal by Respondent-mother from order entered 15 January 2015 by Judge Toni S. King in Cumberland County District Court. Heard in the Court of Appeals 27 July 2015.

*Christopher L. Carr for petitioner-appellee Cumberland County Department of Social Services.*

*Beth A. Hall for guardian ad litem.*

*Assistant Appellate Defender Annick Lenoir-Peek for respondent-appellant mother.*

TYSON, Judge.

Jeannette Gordon (“Respondent-mother”) appeals from a permanency planning order, which awarded legal and physical custody of her two children, K.L. and R.E., to their adult sibling. We affirm the order in part and remand in part for further proceedings consistent with this opinion.

I. Background

On 14 January 2014, Cumberland County Department of Social Services (“DSS”) filed a petition alleging that nine-year-old K.L, twelve-year-old R.E., and

their seventeen-year-old half-brother A.J. were seriously neglected, and dependent juveniles. DSS also obtained non-secure custody of the juveniles on this date. DSS identified each of the juveniles' biological fathers, but alleged their addresses were unknown.

At a hearing held on 9 June 2014, the trial court adjudicated K.L, R.E., and A.J. as neglected juveniles, pursuant to stipulations entered into by the parties. DSS voluntarily dismissed the allegations of serious neglect and dependency.

The trial court made the following findings as relevant to its determination of the juveniles being neglected:

2. In September 2013, Kiefer and Carleen Gordon, Sr. placed their two and half-year-old [sic], autistic, son, [K.G., Jr.] with his paternal grandmother, Jeanette Gordon.

3. On January 5, 2014, Kiefer and Carleen Gordon were told that Jeanette Gordon was beating [K.G., Jr.] and that they needed to come and get the child immediately; said parents travelled from Charlotte, NC immediately to retrieve their child from the Cumberland County Department of Social Services.

4. On January 6, 2014, [K.G., Jr.] was taken to Cape Fear Valley Medical Center because he had sustained multiple bruises and scratches on his face and body.

5. Upon being examined and x-rayed, health care providers found that [K.G., Jr.] had a possible skull fracture.

.....

7. Within the past few months, Jeanette Gordan [sic] stated to her adult daughter Jamilia Gordan [sic] that she did not

like her grandson, [K.G., Jr.], and that she had to slap him back to reality when someone in the family was nice to him.

8. On January 6, 2014, Jeanette Gordan [sic] admitted to the undersigned social worker that she hit [K.G., Jr.] because the child is bad, destructive, and manipulative and that she should have called the child's parents to pick him up because she was aware that she could not handle his behaviors. Jeanette Gordan [sic] admitted that she allowed herself to get "out of control".

....

11. In November 2011, CCDSS substantiated neglect concerning the juveniles because Respondent Mother Jeanette Gordan [sic] beat [A.J.] for not making her something to eat. CCDSS determined that services were needed; Respondent Mother completed services and subsequently the case was closed.

12. On January 8, 2014, [R.E.] disclosed that Respondent Mother would "whip [K.G., Jr.] real bad" in the mornings when [K.G., Jr.] woke up and [K.G., Jr.] would be "yelling really bad"; [sic] [R.E.] said he saw marks on [K.G., Jr.] after his mother hit [K.G., Jr.].

13. On January 8, 2014, Jeanette Gordan's [sic] adult children disclosed to social worker Marsh that their mother began severely physically punishing them about the time they turned six years old and continued abusing them throughout their childhood.

Based on these findings, the trial court adjudicated K.L., R.E., and A.J. as neglected, within the meaning of N.C. Gen. Stat. § 7B-101(15). The trial court based its determination on its conclusion "that the juveniles did not receive proper care, supervision, or discipline from [their] parents, guardians, custodians, or caretakers,

and the juveniles lived in the home where a juvenile has been subjected to neglect by an adult who regularly lives in the home.”

The trial court held a separate dispositional hearing on 14 July 2014. In its report to the court dated 8 July 2014, DSS alleged Respondent-mother’s four adult children confirmed she had “always been physically abusive towards them with the exception of one sibling, Natalie.” Similarly, R.E, K.L, and A.J. disclosed during interviews at the Child Advocacy Center “that [Respondent-mother] has been physically abusive toward them.”

In its Disposition Order entered 2 December 2014, the trial court made the following findings:

5. That there is a substantial history of abuse involving the Respondent Mother.

....

8. . . . On January 6, 2014, [K.G., Jr.] was taken to Cape Fear Valley Medical Center and treated for multiple bruises and scratches he received from the Respondent Mother. That the examination and x-rays revealed that [he] had a fractured rib and fractured skull. . . .

....

12. . . . That the younger three (3) siblings also communicated that they had heard the Respondent Mother physically disciplining [K.G., Jr.] and that [she] had physically disciplined the juvenile [A.J.] to the point where the hits could be heard across the home through the closed garage door. That incidents of abuse were reported during the interviews at the Child Advocacy Center.

....

15. That the Respondent Mother's inappropriate discipline went from severe spankings and whippings of her older children over the years to culminate in substantial injury to her grandson.

....

24. That the environment from which the juveniles were removed was extraordinarily hazardous and injurious. The inappropriate discipline spanned for a significant period of time.

25. That the Respondent Mother self reported [sic] that she went to a therapist and was informed services were not necessary. The Court does not find this credible.

The trial court further found that K.L. and R.E. "are doing well in their placement" with their adult sibling, Ashley Ellison, and her husband, Quinton. A.J. attained majority in November 2014, and the trial court recommended the development of a Transitional Living Plan for him.

At disposition, the trial court kept the children in the legal custody of DSS. The trial court also ordered Respondent-mother to obtain a parenting assessment and psychological evaluation, and to comply with any recommended treatment. Respondent-mother did not appeal the adjudication of neglect or the resulting dispositional order.

The trial court held a review hearing on 11 August 2014 and entered an order on 5 December 2014 finding as follows:

*Opinion of the Court*

5. That the juveniles have suffered substantial abuse and neglect.

6. That the Respondent Mother is on deferred prosecution for child abuse against her 2 ½ year old grandson . . . .

7. That the Respondent Mother completed a Parenting Class, Anger Management and she a class [sic] through Aspire.

8. That upon the Orders of the Court, the Respondent Mother went back to her therapist, Ms. Carroll; however, [she] failed to present herself in a manner to Ms. Carroll to facilitate her counseling sessions. That the Respondent Mother has lacked cooperation in counseling sessions; therefore, her therapist has not been able to produce any meaningful sessions . . . . That Ms. Carroll has refused to see [her] again until the Respondent Mother can articulate a desire for treatment and openly share during counseling sessions.

. . . .

10. That [K.L.'s father] has stable housing [in Arkansas]. He has failed to maintain consistent contact with [K.L.] throughout her adolescent years. That [he] and [K.L.] had visits in and out of the state that have gone well.

11. That all three juveniles are bonded to their adult sister, [Ms. E.]. The juveniles feel safe in her care and are doing well.

12. That Ms. E[.] has done an extraordinary job with providing care and placement for her siblings since the filing of the Petition.

13. That [K.L.] wants to continue to establish a relationship with [her] Father . . . .

14. That the juveniles blame themselves for the

Respondent Mother's actions and the abuse they endured. That separating the juveniles would have a detrimental effect on them.

15. That the Court with [sic] set a permanent plan of reunification with the Respondent Mother concurrent with custody with Relatives. The Court approves of this plan and finds this plan is consistent with the best interests of the juveniles.

16. That return of the juveniles would be contrary to the welfare and best interests of the juveniles[,] inasmuch as the juveniles are in need of more adequate care and supervision than can be provided by the Respondents at this time and the Respondents are in need of additional services.

The trial court ordered DSS to continue its efforts toward reunification and to request a home study of K.L.'s father in Arkansas through the Interstate Compact on the Placement of Children ("ICPC").

Following a hearing on 1 December 2014, the trial court entered a Permanency Planning Order on 15 January 2015. The order granted legal and physical custody of K.L. and R.E. to Ms. E. The order awarded secondary custody of K.L. to her father. The trial court established a permanent plan of custody with Ms. E. for R.E. The permanent plan for K.L. granted custody with Ms. E. and secondary custody with her father. The trial court also scheduled a Subsequent Permanency Planning Hearing for 18 February 2015. Respondent-mother filed timely notice of appeal.

## II. Standard of Review

“Allegations of neglect must be proven by clear and convincing evidence. In a non-jury neglect adjudication, the trial court’s findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (citations omitted). “The trial court’s conclusions of law are reviewable *de novo* on appeal.” *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citations and internal quotation marks omitted).

### III. Analysis

#### A. Sufficiency of Findings under N.C. Gen. Stat. §§ 7B-906.1(d), (e)

Respondent-mother argues the trial court failed to make certain findings of fact required by N.C. Gen. Stat. §§ 7B-906.1(d)(3) and (e)(1). She contends the trial court ceased efforts to reunify her with K.L. and R.E. without a finding that such efforts “would be futile or inconsistent with the juvenile[s]’ safety and need for a safe, permanent home within a reasonable period of time.” N.C. Gen. Stat. § 7B-906.1(d)(3) (2013). We disagree.

The Permanency Planning Order changed the juveniles’ permanent plan to custody with Ms. E., but it did not cease reunification efforts. To the contrary, the trial court made the following findings related to reunification:

That [DSS] has been making reasonable efforts to eliminate the need for continued placement of the juveniles outside of the home and to reunify the juveniles with the Respondents, in accordance with N.C. Gen. Stat. § 7B-507.



That these efforts include, but are not limited to: locating suitable placement for the juveniles; monitoring the juveniles' placement, to include monthly visits; facilitating visitation for the Respondents; supervising visitation; referrals for services for the Respondents; ongoing case management services; and ensuring that the needs of the juveniles are being met. *That these efforts should continue.*

(emphasis supplied).

The Permanency Planning Order continued Respondent-mother's weekly visitation with K.L. and R.E., and stated its "previous orders, not inconsistent with this order, shall remain in effect." A previous review order entered 5 December 2014 directed DSS to "continue to make reasonable efforts towards reunification[.]" The trial court also scheduled a subsequent permanency planning hearing, pursuant to N.C. Gen. Stat. § 7B-906.1(e), on 18 February 2015.

The trial court's previous 5 December 2014 order found DSS should continue to make reasonable efforts to reunify the juveniles with Respondent-mother. No additional findings under N.C. Gen. Stat. § 7B-906.1(d)(1) were required. Respondent-mother failed to show the trial court's Permanency Planning Order ceased reunification efforts. This argument is overruled.

Respondent-mother also argues the trial court failed to make adequate findings regarding "[w]hether it is possible for the juvenile[s] to be placed with a parent within the next six months and, if not, why such placement is not within the juvenile[s'] best interests." N.C. Gen. Stat. § 7B-906.1(e)(1) (2013); *see In re Everett*,

161 N.C. App. 475, 480, 588 S.E.2d 579, 583 (2003) (“The court must explain why . . . the juvenile will not be returning home within six months[.]”).

Respondent-mother contends no evidence shows that returning K.L. and R.E. to her home within six months was either impossible or contrary to their best interests. In support of this argument, Respondent-mother asserts she had completed everything the trial court, DSS, and the guardian ad litem had asked her to do to address the concerns regarding inappropriate discipline.

The findings of fact in a permanency planning order “must address the statute’s concerns, but need not quote its exact language.” *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013). We believe the trial court made minimally sufficient findings to comply with N.C. Gen. Stat. § 7B-906.1(e)(1). These findings include the following:

16. That return of the juveniles would be contrary to the welfare and best interests of the juveniles inasmuch as the juveniles are in need of more adequate care and supervision than can be provided by [Respondent-mother] at this time and [Respondent-mother is] in need of additional services.

The evidence before the trial court supports these findings. Respondent-mother’s psychological assessment recommended that she participate in “family counseling . . . before unsupervised visitation occurs” and that the juveniles’ “therapist should determine that the children are comfortable enough to meet with Ms. Gordon for family therapy.”

DSS agreed family therapy was necessary before returning the juveniles to Respondent-mother's care. DSS informed the trial court K.L. and R.E. were attending therapy at Light House Biblical Counseling and their therapist believed "that the children are not ready to engage in family therapy at this time" as "[i]t is unclear if the[y] can be truthful and honest with their mother." Respondent-mother's argument is overruled.

B. Verification of Custodian under N.C. Gen. Stat. § 7B-906.1(j)

Respondent-mother argues the trial court erred by awarding custody of the juveniles to Ms. E. without verifying that she had the financial means to serve as their custodian, pursuant to N.C. Gen. Stat. § 7B-906.1(j). Subsection (j) requires the court to "verify that the person receiving custody . . . of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile" when placing the juvenile in the custody of a non-parent. N.C. Gen. Stat. § 7B-906.1(j) (2013).

This Court held the trial court need not "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). However, some competent evidence of record must support a determination by the trial court of the custodian's fitness under N.C. Gen. Stat. § 7B-906.1(j). *See In re P.A.*, \_\_ N.C. App. \_\_, \_\_, 772 S.E.2d 240, 245-46, 2015 N.C. App. LEXIS 367, \*15

(May 5, 2015) (addressing verification of guardian's resources under subsection (j) and N.C. Gen. Stat. § 7B-600(c)).

At the time of the permanency planning hearing, K.L. and R.E. had been in a successful placement with Ms. E. and her husband for ten and one-half months. Ms. E. supervised Respondent-mother's visitation with the juveniles. The trial court found Ms. E. was doing "an extraordinary job with providing care and placement for her siblings since the filing of the petition" in January 2014.

In her written report, the guardian ad litem ("GAL") advised the trial court that the juveniles "need a safe, stable, and nurturing home environment" and recommended granting legal and physical custody to Ms. E. The GAL program supervisor testified K.L. and R.E. "very much enjoy living with their sister" and Ms. E. is a "very appropriate" caretaker.

DSS's report found continued placement with Ms. E. is in the best interests of the juveniles. The report also stated Ms. E. is "providing and willing to continue to provide a safe and stable environment for [K.L. and R.E.] until such time as the[y] reach the age of majority." The DSS social worker testified R.E., K.L., and A.J. are "doing great" living with Ms. E. and recommended R.E. continue to be placed with her. DSS recommended placing K.L. with her father, as "he is the legal parent, and he is able to care for [her]." K.L.'s father testified he had no concerns "at all" with K.L. being placed with Ms. E. and told the trial court, "I would like [K.L.] to be with

her sister if she can't be with me.” The trial court announced its finding in open court that Ms. E. “has provided a structured environment and has met all the needs” of the juveniles.

Although the trial court could have made more explicit findings under N.C. Gen. Stat. § 7B-906.1(j), the record evidence and findings establish sufficient verification by the trial court to support the award of custody to Ms. E. *See In re J.E.*, 182 N.C. App. at 617, 643 S.E.2d at 73.

C. Evidence to Support Findings of Fact

Respondent-mother argues several of the trial court's findings of fact are unsupported by the evidence presented at the hearing.

A permanency planning hearing is dispositional in nature. *See In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). The trial court is not bound by formal rules of evidence and “may properly consider all written reports and materials submitted in connection with said proceedings.” *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003) (internal quotation marks omitted). The trial court may also “take judicial notice of earlier proceedings in the same case.” *In re W.L.M.*, 181 N.C. App. 518, 523, 640 S.E.2d 439, 442 (2007) (citations omitted).

The trial court received into evidence the written reports prepared by DSS and the GAL. The trial court found the contents of their reports to be credible and incorporated them by reference into its order, based on the sworn testimony of the

DSS social worker and the GAL program supervisor. The Permanency Planning Order also incorporates by reference the findings contained in the trial court's previous orders.

Respondent-mother argues the trial court's repeated findings "that the juveniles have suffered substantial abuse" is unsupported by the evidence, because DSS did not allege or seek an adjudication of abuse in its 14 January 2014 petition. Based on her objection to the "repeated findings" of abuse, it appears Respondent-mother seeks to have this Court strike not only the finding in the Permanency Planning Order but similar findings in the 2 December 2014 Disposition Order and the Judicial Review Order entered on 5 December 2014.

Respondent-mother had a statutory right to appeal the Disposition Order but failed to do so. N.C. Gen. Stat. § 7B-1001(a)(3) (2013). The Judicial Review Order is not an appealable order under N.C. Gen. Stat. § 7B-1001(a). Therefore, only the findings in the Permanency Planning Order are properly before this Court.

It is true that K.L. and R.E. were neither alleged nor adjudicated to be "[a]bused juveniles" under N.C. Gen. Stat. § 7B-101(1). Respondent-mother's unsupported argument is that the trial court was precluded from making a dispositional finding that K.L. and R.E. also "suffered . . . abuse" in her home. *See* N.C.R. App. P. 28(b)(6) ("The body of the argument . . . shall contain citations of the authorities upon which the appellant relies.").

Competent record evidence supports the contested finding. The trial court's initial Disposition Order found K.L., R.E., and A.J. had reported "incidents of abuse" by Respondent-mother during interviews in the Child Advocacy Center. This finding was based on the Court Report for Dispositional Hearing submitted by DSS. The trial court found this report to be credible and incorporated it by reference into its order.

The Disposition Order included additional findings that Respondent-mother had a "substantial history of abuse" that "went from severe spankings and whippings of her older children over the years to culminate in substantial injury to her grandson." The trial court's subsequent Judicial Review Order also contained a finding "[t]hat the juveniles have suffered substantial abuse and neglect."

Respondent-mother also challenges the trial court's finding that she is "in need of additional services." Respondent-mother acknowledges certain additional services were recommended in her court-ordered psychological evaluation, but notes the Permanency Planning Order does not order her to obtain any additional services or specify what services are needed.

The trial court's initial Disposition Order required Respondent-mother to obtain a parenting assessment and psychological evaluation, and "follow through with any recommendations contained therein[.]" Respondent-mother obtained a psychological evaluation and parenting assessment through Cumberland County Communicare, which was filed with the trial court on 25 November 2014.

The evaluators recommended Respondent-mother: (1) connect with the local TEACCH Autism program; and (2) participate in family counseling with K.L. and R.E. upon a determination by the juveniles' therapist that they are prepared to meet with Respondent-mother in this setting. Respondent-mother testified she had completed her psychological evaluation, but she did not purport to have followed through with either of the recommended services. The Permanency Planning Order explicitly stated the trial court's "previous orders, not inconsistent with this order, shall remain in effect." Respondent-mother's argument is overruled.

D. Impeded the Bond with Father

Respondent-mother argues the trial court's finding that her actions "may have impeded the bond between" K.L. and her father is not supported by any evidence. While no evidence supports this finding, we conclude this finding had no impact on the trial court's conclusions of law. Respondent-mother has failed to show any prejudice as a result of this finding. This argument provides no ground for relief on appeal. See *In re Clark*, 202 N.C. App. 151, 171, 688 S.E.2d 484, 496 (2010); *In re Estate of Mullins*, 182 N.C. App. 667, 670-71, 643 S.E.2d 599, 601 (2007).

E. Sufficiency of Visitation Award under N.C. Gen. Stat. § 7B-905.1(c)

Respondent-mother argues the visitation plan, entered by the trial court under N.C. Gen. Stat. § 7B-905.1(c), fails to specify the frequency of her visitation with the juveniles. This claim has merit.



N.C. Gen. Stat. § 7B-905.1(c) requires “any order providing for visitation [to] specify the minimum frequency and length of visits” awarded to the parent. N.C. Gen. Stat. § 7B-905.1(c) (2013). The Permanency Planning Order grants Respondent-mother “three (3) hours of supervised visitation . . . and additional times as mutually agreed upon by the parties.” The order fails to establish the minimum frequency and length of Respondent-mother’s visits with the juveniles. We remand to the trial court to “specify the minimum frequency and length of visits” in the visitation plan. *Id. See also In re T.H.*, \_\_ N.C. App. \_\_, \_\_, 753 S.E.2d 207, 216 (2014).

IV. Conclusion

We remand to the trial court for entry of a visitation award in accordance with N.C. Gen. Stat. § 7B-905.1(c). In all other respects, the order is affirmed.

AFFIRMED IN PART; REMANDED IN PART.

Judges GEER and STROUD concur.

Report per Rule 30(e).