IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1355

Filed: 17 May 2016

Mecklenburg County, Nos. 12 JA 661-663

IN THE MATTER OF: M.G., C.C-G., L.C-G.

Appeal by respondent from orders entered 4 August 2015 and 10 September 2015 by Judge Kimberly Best-Staton in Mecklenburg County District Court. Heard in the Court of Appeals 14 April 2016.

Mecklenburg County Department of Social Services, Youth and Family Services, by Christopher C. Peace, for petitioner-appellee DSS.

Womble Carlyle Sandridge & Rice, LLP, by Theresa M. Sprain, for appellee guardian ad litem.

Ewing Law Firm, P.C., by Robert W. Ewing, for respondent-appellant mother.

ZACHARY, Judge.

Where the trial court entered findings of fact supported by the evidence, and these findings supported its conclusions of law, the trial court did not err in placing the minor children in the guardianship of their paternal grandmother. Where no findings of fact or conclusions of law supported its order, the trial court abused its discretion in ordering mother to pay monthly child support.

I. Factual and Procedural Background

L.G. (mother) is the mother of three minor children: M.G., C.C-G., and L.C-G. M.G.'s father is a man from El Salvador whose location is presently unknown. C.C. (father) is the father of C.C-G. and L.C-G. (the minor children). At the time of the filing of the petitions at issue, father resided in Mountainview Correctional Facility in Spruce Pine. On 17 October 2012, Mecklenburg County Department of Social Services, Division of Youth and Family Services (DSS), filed an amended petition alleging that the three children were neglected and dependent, and that M.G. was also abused. These allegations stemmed from evidence that mother, by her own admission, purposely burned M.G. with a lighter for misbehaving and allowed him, at age 6, to play with lighters. Prior to adjudication, mother was criminally convicted of misdemeanor child abuse of M.G. The three children were initially placed in DSS custody. A plan of therapeutic foster custody was recommended. Due to M.G.'s extreme behavior, it was recommended that he live apart from his half-siblings, who were placed in the care of their maternal grandmother, Ms. G., on 3 June 2013.

On 14 June 2013, the trial court entered its adjudication and disposition, finding all three children neglected and dependent, and additionally finding M.G. abused. The trial court determined that returning the three children to their parents' legal and physical custody was not in their best interest, and recommended a plan of reunification, with an alternative plan of guardianship. Subsequently, however, DSS expressed concern about the placement of C.C-G. and L.C-G. with Ms. G. A DSS

report, dated 23 January 2014, observed that there was "some concern about [Ms. G.]'s ability to handle the kids with her busy work schedule." The report also indicated that Ms. G. would call mother and "ask her to watch the kids on days that are not her approved visitation days." In addition, DSS noted that Ms. G. "complains about how caring for the kids is a hardship on her, but she will not communicate this to [DSS] when asked." The report stated that "[t]here have been ongoing concerns and seeking another placement option is strongly being considered."

At a hearing on 28 January 2014, the trial court ordered that visitation between the minor children and their paternal grandmother, Ms. B., be expanded, and that no disparaging remarks be made by the parents or relatives about each other. DSS had previously conducted a home study in Ms. B.'s home, and found it "approved as appropriate." Despite this order, however, a DSS report observed that "[t]ension between paternal grandmother, [Ms. B.]'s family and [mother] continues. Since the [28 January 2014] hearing there has been mounting animosity between the two sides." On 29 July 2014, the trial court entered a show cause order against mother for not allowing the minor children to visit Ms. B.

The minor children began court-authorized trial home placement with mother on 11 February 2014. They remained in trial home placement with mother until shortly after a hearing on 28 April 2015, when evidence was presented that mother was facing deportation based on her illegal status. The trial court ordered that if

mother were deported, the minor children would be placed with their paternal relatives. In view of the ongoing deportation proceedings, mother was fitted with an ankle monitor by the United States Department of Homeland Security. Shortly after the 28 April 2015 hearing, however, mother cut off the ankle monitor, signed a purported power of attorney allowing Ms. G. to act on her behalf with respect to the minor children, and fled.

On 9 June 2015, the trial court held an emergency hearing. Mother was not in attendance. Additional evidence was heard, and the trial court entered an order granting Ms. B. guardianship of the minor children (the emergency order).

At a subsequent hearing on 4 August 2015, DSS presented Ms. B.'s statement, concerning a prior visit by the minor children, that "[Ms. G.] told [mother] not to give me anything that belonged to the children. So when [the children arrived], they had only the clothes they had on." DSS presented evidence that "mother and/or [Ms. G.]" kept the minor children's belongings, rather than sending them to Ms. B. along with the children. Subsequent to this hearing, the trial court entered an order on 10 September 2015 (the permanency planning order), placing the minor children under Ms. B's guardianship, granting mother limited visitation, authorizing Ms. B. to terminate mother's visitation due to misconduct, ordering mother to pay $200 in monthly child support, and barring Ms. G. from any contact with the minor children.

From the emergency order and the permanency planning order, mother appeals.

II. Award of Guardianship

In her first argument, mother contends that the trial court erred in awarding guardianship to the minor children's paternal grandmother. We disagree.

A. Standard of Review

"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 192-93 (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)).

B. Analysis

In the permanency planning order, the trial court referred to the results of the 9 June 2015 Emergency Review Hearing, which mother did not attend, and at which the goal for the minor children was changed from reunification to guardianship with their paternal grandmother, Ms. B. In contrast, mother notes that DSS had recommended that it was in the minor children's best interest to have custody awarded to either the maternal grandmother or maternal second cousin. Mother

further indicates that the trial court's findings of fact in the permanency planning order did not explicitly state whether the best interest of the children was better served by placing them with their maternal or paternal family, did not address the DSS recommendation, and did not explain the court's reasoning in declining to follow the DSS recommendation. Mother maintains that this was error.

"[A] custody order is fatally defective where it fails to make detailed findings of fact from which an appellate court can determine that the order is in the best interest of the child[.]" *Dixon v. Dixon*, 67 N.C. App. 73, 76-77, 312 S.E.2d 669, 672 (1982). "A custody order will also be vacated where the findings of fact are too meager to support the award." *Id.* "Although a custody order need not, and should not, include findings as to each piece of evidence presented at trial, it must resolve the material, disputed issues raised by the evidence." *Carpenter v. Carpenter*, 225 N.C. App. 269, 273, 737 S.E.2d 783, 787 (2013).

In the instant case, in the permanency planning order, the trial court entered the following relevant findings of fact:

> 6. [Ms. B.] was asked the questions listed in N.C.G.S. § 78-600 on 9 June 2015. [Ms. B.] is ready, willing, and able to serve as the Guardian of the children. She has the means and ability to serve as their Guardian. She understands the duties and responsibilities of serving as their Guardian. The children were transitioned to her home on 15 June 2015.
>
> 7. The children were sent to the home of the paternal grandmother, [Ms. B.] with no clothes, toiletries, or

> personal items. The Mother and maternal relative/caregiver, [Ms. G.], refused to send the children with any of their belongings on the day of the transition and have continued to refuse to provide any of the children's belongings since.
>
> 8. The Mother has not provided financially for the children since their transition to the home of the paternal grandmother, [Ms. B.]. [Mother] is employed.
>
> . . .
>
> 10. The Father, [father], is incarcerated in state prison until 19 March 2019. He favors placement of his children in the guardianship of [Ms. B.], his mother.
>
> 11. It is not possible for the children to be placed with either parent within a reasonable period of time.
>
> 12. The permanent plan for the children is Guardianship with the paternal grandmother, [Ms. B.].
>
> 13. The children are in a safe, stable, and appropriate home with [Ms. B.].
>
> 14. [DSS] has made reasonable efforts to implement the permanent plan for the children.
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> 15. It is in the best interests of the children that they be placed in the Guardianship of the paternal grandmother, [Ms. B.], pursuant to N.C.G.S. § 7B-600(a).

Based on its findings, the trial court entered the following relevant conclusions of law:

> 2. The permanent plan for the children is Guardianship with the paternal grandmother, [Ms. B.].
>
> 3. [DSS] has made reasonable efforts to achieve the

> permanent plan in this case.
>
> 4. The paternal grandmother, [Ms. B.], understands the duties and responsibilities of Guardianship and has the financial resources to provide for the children's care.
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> 5. It is in the best interests of the children that they be placed in the Guardianship of the paternal grandmother, [Ms. B.], pursuant to N.C.G.S. § 7B-600(a).
>
> 6. Visitation between the children and the Mother is in their best interest. The visitation schedule developed for the Mother at the CFT meeting on 7 July 2015 and introduced into evidence at this hearing is adopted, as amended by this Order.
>
> 7. Visitation between the children and the Father is in their best interest. The visitation schedule developed for the Father at the CFT meeting on 7 July. 2015 is adopted.
>
> 8. Visitation between the children and their half-brother, [M.G.], is in their best interest. The sibling visitation schedule developed at the CFT meeting on 7 July 2015 is adopted, as amended by this Order.
>
> 9. Guardianship Review Hearings shall be held pursuant to N.C.G.S. § 7B-906.1 until the children have been in placement with the paternal grandmother, [Ms. B.], for twelve months.

Mother asserts that these findings and conclusions "did not address the children's stability, the benefits of the children all residing together, and the support system for the children, all of which were presented to the trial court." She further contends that the trial court "did not resolve the issue as to whether the maternal or the paternal relatives would best promote the stability, maintenance of the family

unit, and support system for the children[,]" but rather that it "simply granted guardianship to the paternal grandmother without any explanation as to why it decided to rule against the reasons the children's guardian, [DSS], as wells as, [sic] the respondent mother proffered as to why it was in the children's best interest to grant their guardianship to the maternal relatives." Despite mother's contentions, however, the trial court was not required to do what she claims it failed to do.

The trial court was obligated to make detailed findings concerning the best interest of the minor children, and to reach conclusions of law based upon those findings. In the instant case, it did so, noting the presence and safety of the minor children in the home of Ms. B., the fact that Ms. B. understood the duties and responsibilities of guardianship, the failure of mother and Ms. G. to provide anything for the minor children on their move to Ms. B., the failure of mother to provide financially for the minor children, and the impossibility of placement with mother or father. Based on these findings, the trial court concluded that placement with Ms. B. was in the best interest of the minor children.

Further, mother's assertion that the trial court was obligated to follow the recommendation of DSS is baseless. "'North Carolina caselaw is replete with situations where the trial court declines to follow a DSS recommendation.'" *In re K.S.*, 183 N.C. App. 315, 324, 646 S.E.2d 541, 546 (2007) (quoting *In re Rholetter,* 162 N.C. App. 653, 664, 592 S.E.2d 237, 244 (2004)). The recommendation of DSS is a

valuable resource for the trial court to consider, but it is not so binding as to require us to reverse the trial court's decision.

Mother's contentions amount to little more than assertions that the evidence in favor of her position was not lent sufficient weight by the trial court. "It is not the function of this Court to reweigh the evidence on appeal." *Sauls v. Sauls*, ___ N.C. App. ___, ___, 763 S.E.2d 328, 330 (2014) (quoting *Garrett v. Burris,* 224 N.C. App. 32, 38, 735 S.E.2d 414, 418 (2012), *aff'd per curiam,* 366 N.C. 551, 742 S.E.2d 803 (2013)). Our standard of review is not based upon what evidence the trial court should have considered, but whether its findings of fact were based upon the evidence before it, and whether its conclusions of law were based upon those findings. We hold that the trial court's findings and conclusions had an appropriate basis.

This argument is without merit.

III. Child Support

In her second argument, mother contends that the trial court erred in ordering her to pay $200 in monthly child support. We agree.

A. Standard of Review

"Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a determination of whether there was a clear abuse of discretion." *Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d 834, 837 (2002). "A trial court may be reversed for abuse of discretion only

upon a showing that its actions are manifestly unsupported by reason . . . [or] upon a showing that [the trial court's decision] was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

B. Analysis

In the permanency planning order, the trial court also ordered mother to pay $200 in monthly child support. Mother contends that no findings of fact or conclusions of law supported this instruction.

Mother was not present at the 4 August 2015 hearing that led to the permanency planning order. In that order, the trial court noted that, following its previous hearing on 28 April 2015, mother changed her employment, quit the home where she was living with the children, and left the children in the care of her relative, Ms. G. Mother refused to disclose her present place of residence or where she was employed, although the trial court found that she was employed.

Chapter 7B of the North Carolina General Statutes provides that:

> [W]hen legal custody of a juvenile is vested in someone other than the juvenile's parent, . . . the court may order that the parent pay a reasonable sum that will cover, in whole or in part, the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

N.C. Gen. Stat. § 7B-904(d) (2015). The cited statutory provision, N.C. Gen. Stat. § 50-13.4, stipulates that:

> The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

N.C. Gen. Stat. § 50-13.4(c) (2015).

These statutes make clear that an order requiring payment of child support by a non-custodial parent must be supported by findings, based upon evidence concerning, *inter alia*, the ability of the parent to contribute to the support of the child. In the order in the instant case, there appears no foundation upon which a monthly child support payment of $200 can be based, and therefore the determination of this amount was manifestly unsupported by reason. As such, the trial court abused its discretion in ordering the payment of $200 in monthly child support. We reverse this portion of the order, and remand it to the trial court. The trial court shall enter

an appropriate order on this matter, supported by substantial evidence, findings of fact, and conclusions of law.

IV. Conclusion

Because the trial court's findings of fact were based upon the evidence in the record, and its conclusions of law were in turn based upon its findings, we hold that the trial court did not err in ordering that Ms. B. be appointed guardian of the minor children. However, because the trial court's order did not state an adequate basis upon which it could order mother to pay $200 in monthly child support, we reverse that portion of the order, and remand this matter to the trial court, with instructions to enter an order supported by substantial evidence, findings of fact, and conclusions of law.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Chief Judge McGEE and Judge DILLON concur.

Report per Rule 30(e).