

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-866

Filed: 19 January 2016

Union County, 15 JA 51-52

IN THE MATTER OF: T.H. and M.B.

Appeal by mother from order entered 22 June 2015 by Judge Joseph Williams in Union County District Court. Heard in the Court of Appeals 16 December 2015.

Michael E. Casterline for respondent-appellant mother.

Perry, Bundy, Plyler & Long, LLP, by Natalie J. Broadway and Dale Ann Plyler, for petitioner-appellee.

Parker Poe Adams & Bernstein LLP, by Christopher M. Thomas and Collier R. Marsh, for guardian ad litem.

ZACHARY, Judge.

Where the evidence supported the trial court's findings of fact, which in turn supported its conclusions of law, the trial court did not abuse its discretion in adjudicating the children neglected and dependent. Where the order outlined the minimum frequency and length of the visitation and whether the visitation should be supervised, the trial court did not abuse its discretion in leaving the scheduling details of the visitation to be determined by the foster parents. Where drug abuse was one of the bases alleged in the initial petition as a reason for removal of the

children, the trial court did not abuse its discretion in ordering mother to submit to random drug screens.

I. Factual and Procedural Background

T.C. (mother) is the mother of M.B., age 15, and T.H., age 2 (the children). Mother is married to M.B.'s father, N.C. (M.B.'s father), although they are separated. T.H.'s father, N.H. (T.H.'s father), was mother's boyfriend, but they are also no longer together. Mother has had periods of homelessness and multiple health issues.

On 10 July 2014, the Union County Department of Social Services (DSS) received reports that M.B. alleged that she had been sexually abused by T.H.'s father on multiple occasions, beginning in September of 2013, when mother had left the children in the care of T.H.'s father. As a result of these allegations, T.H.'s father was arrested and charged with several sex offenses, and DSS became involved with the family. M.B.'s father declined to have M.B. placed with him, so she was placed with another family under a kinship agreement, and T.H. was placed with a foster family.

On 20 October 2014, mother entered into an in-home services agreement with DSS. Mother agreed to attend parenting classes, seek employment and stable housing, receive mental health and substance abuse assessments, follow through with recommendations, and submit to random drug screens. On 21 October 2014, mother failed to submit to a random drug screen.

Opinion of the Court

On 19 December 2014, M.B. was placed with M.B.'s father, who received Supplemental Security Income (SSI), was unemployed, and was living with his sister. On 10 March 2015, T.H.'s father was released from jail, with criminal charges pending. He declined to be considered for placement of T.H. and was unable to suggest relative placement. T.H.'s father instead suggested that custody of T.H. be awarded to the foster family with whom she had been residing.

On 17 March 2015, DSS filed petitions alleging that the children were neglected juveniles, in that they did not receive proper care, supervision, or discipline, and that they lived in an environment injurious to their welfare; the children were also alleged to be dependent juveniles, in that they needed assistance or placement because they had no parent or guardian responsible for their supervision, and that their parents were unable to provide for their care and lacked an appropriate alternative arrangement. The petitions noted M.B.'s allegations of sexual abuse, mother's history of substance abuse and lack of stable housing, mother's having left the children with T.H.'s father at various hotels, and mother's failure to meet the children's basic needs. The petitions also alleged that mother had failed to achieve some of the goals of the in-home services agreement. After the filing, the children remained in their current placement: M.B. with M.B.'s father, and T.H. with her foster family.

The hearing on adjudication was held in April of 2015. Mother, M.B.'s father, and T.H.'s father were all present and represented by counsel. DSS presented as a witness the social worker who filed the petitions, who testified regarding the state of mother's compliance with the in-home services agreement. She testified that mother had been referred for a psychological assessment, and had not followed through on the referral, and that as of the filing of the petitions in March of 2015, mother lacked stable housing or employment. The social worker further testified that M.B.'s placement with M.B.'s father was going well, that T.H. could not be placed with T.H.'s father due to his pending criminal charges, age, and the ill health of his wife, and that T.H.'s foster mother lacked legal authority to obtain medical care for her.

On 19 May 2015, the trial court entered its order on adjudication and disposition. It found that the children were neglected and dependent, and ordered M.B. to be placed with M.B.'s father, and T.H. to be placed with her foster family. The disposition granted mother supervised visitation of a minimum of one hour per week, and ordered her to complete a psychological assessment, submit to random drug screens, provide confirmation of her address, and verify her attempts at finding employment.

Mother appeals.

II. Standard of Review

“The role of this Court in reviewing a trial court’s adjudication of neglect and abuse is to determine ‘(1) whether the findings of fact are supported by ‘clear and convincing evidence,’ and (2) whether the legal conclusions are supported by the findings of fact[.]’” *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (quoting *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000)), *aff’d as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). “If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary.” *Id.*

“The district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child. . . . We review a dispositional order only for abuse of discretion.” *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008) (citing *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567, *disc. review denied*, 356 N.C. 163, 568 S.E.2d 608 (2002), *cert. denied*, 538 U.S. 982, 155 L. Ed. 2d 673 (2003)).

III. Arguments

A. Neglected Juveniles

In her first argument, mother contends that the trial court erred in adjudicating the children neglected. We disagree.

Opinion of the Court

Mother contends that the trial court's findings do not support a conclusion of neglect. Specifically, she challenges Finding of Fact 4 of the order, which reads as follows:

4. The Union County Division of Social Services has proven by clear and convincing evidence that the juveniles, [T.H.] and [M.B.], are NEGLECTED as defined in North Carolina General Statute § 7B-101(15) in that:

(A) The juveniles do not receive proper care, supervision, or discipline from the juveniles' parents;

(B) The juveniles live in an environment injurious to the juveniles' welfare, in that:

i. In July 2014 [M.B.] alleged that her mother's boyfriend, [T.H.'s father], had sexual intercourse with her several times between September 2013 and July 2014.

ii. A child protective services report was made and as a result, on August 12, 2014 a Kinship agreement was completed for [T.H.], to remain with [a foster family] during an investigation containing allegations of sexual abuse by [T.H.'s father] against the juvenile [M.B.]. Further, substance abuse, unstable housing, and prior medical follow through by [mother] were being investigated.

iii. A kinship agreement was completed on July 11, 2014 for [M.B.] to remain with [kinship placement] where she was already residing.

iv. On October 20, 2014, [mother] entered into an In Home Services Agreement with former Social Worker, Sabrina Harrison, agreeing to submit to parenting classes to address her history of instability and chronic homelessness, poor supervision of her children and neglecting to address the children's basic needs. She also

Opinion of the Court

agreed to submit to a mental/substance abuse assessment and follow all recommendations;

v. On November 24, 2014, [mother] submitted to a mental health evaluation and was diagnosed with Adjustment Disorder with Anxiety depressed mode.

vi. On December 15, 2014, [mother] submitted to a substance abuse assessment and was screened out for any treatment services at Daymark Recovery. She was referred by Daymark staff to schedule and submit to a psychological assessment with Dr. Popper. At the time the petition was filed [mother] had not followed through with the assessment.

vii. [Mother] has had a period of unstable housing and when the petition was filed her place of residence was unknown;

viii. [Mother] had attended 5 of 6 Parenting classed [sic] at the time the petition was filed;

ix. [Mother] did not submit to one of the requested drug screens;

x. On December 19, 2014, [M.B.] was placed in the home with her father, [M.B.'s father], and maternal aunt, [aunt];

xi. [T.H.]'s father, is not a placement option as he has been charged with statutory rape, sexual act/parent/custodian in regards to the child [M.B.]. Further he feels he is unable to care for her due to his age and the health of his wife who lives in his home. He had no relatives for placement of [T.H.].

Mother contends that these findings are conclusory, and are not themselves supported by other findings.

Opinion of the Court

This Court has consistently held that in order to demonstrate that a juvenile is neglected, there must evidence of “some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide ‘proper care, supervision, or discipline.’” *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (quoting *In re Thompson*, 64 N.C. App. 95, 101, 306 S.E.2d 792, 796 (1983)). Where all of the evidence supports such a finding, making a specific finding to that effect is preferable, but not necessary. *See id.* at 753, 436 S.E.2d at 902.

Even assuming, *arguendo*, that the challenged findings were more properly classified as conclusions, we hold that the evidence in the record supported the implicit findings underlying them. At trial, evidence was presented concerning the allegations against T.H.’s father, mother’s homelessness and mental and substance abuse issues, mother’s inability to provide medical care for T.H., and the difficulties in finding placement for the children. Findings based upon these facts supported a conclusion that the children were classified as juveniles who “[do] not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who [are] not provided necessary medical care; or who [are] not provided necessary remedial care; or who live[] in an environment injurious to the juvenile's welfare; . . .” N.C. Gen. Stat. § 7B-101(15) (2013). Although it is best practice to make such findings more explicit, we hold that such a conclusion was

supported by the trial court's implicit findings, which were in turn supported by the evidence.

This argument is without merit.

B. Dependent Juveniles

In her second argument, mother contends that the trial court erred in adjudicating the children dependent. We disagree.

Mother argues that the trial court's findings do not support a conclusion of neglect. Specifically, she challenges Finding of Fact 5 of the order, which reads as follows:

5. The Union County Division of Social Services has proven by clear and convincing evidence that the juveniles, [T.H.] and [M.B.], are DEPENDENT and in need of assistance as defined in North Carolina General Statute § 7B-101(9) in that:

(A) The Juveniles' parents are unable to provide for the care or supervision of the Juveniles and lack an appropriate alternative childcare arrangement, without the intervention of DSS.

i. The parties stipulate that the neglect allegations above support a finding of Dependency.

ii. The caretaker, [T.H.'s foster mother], does not have legal authority to obtain medical care for the child, nor any other care requiring legal authority for [T.H.]. This placement is not legally secure without court intervention.

iii. At the time the petition was filed [mother] had failed to submit to Daymark Recovery's recommendation to submit to a psychological assessment;

Opinion of the Court

iv. [Mother] has not secured stable housing or employment during DSS involvement, which has also impaired her ability to provide adequate care and supervision for her children;

v. There are no appropriate alternative child care arrangements for the child without DSS intervention and the Court's involvement;

Under North Carolina law, a dependent juvenile is a juvenile:

in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-101(9) (2013). In its order, the trial court relied upon the second of these factors, determining that mother's instability rendered her unable to provide for the care of the children, and that she lacked an appropriate alternative child care arrangement. T.H.'s father was not appropriate for T.H.'s placement due to his pending charges and his age, and her foster family lacked legal authority to handle her care; no alternative placement existed. M.B. was already placed with M.B.'s father as a result of DSS intervention, and we have previously observed that "[t]his Court has never held that if DSS places the child with a relative, an appropriate alternative child care arrangement exists[.]" *In re L.H.*, 210 N.C. App. 355, 365, 708 S.E.2d 191, 198 (2011).

Opinion of the Court

Mother also asserts that there is no indication in the record that the parties stipulated that the neglect allegations support a determination of dependency. Assuming that this is the case, as long as the other findings support such a conclusion, we will not overturn it on the basis of one erroneous finding.

Because these findings, which are supported by the evidence at trial, support the conclusion that mother was unable to provide for the children, and that no alternatives to the children's placement existed, we hold that they support the trial court's conclusion that the children were dependent juveniles.

This argument is without merit.

C. Visitation

In her third argument, mother contends that the trial court erred in improperly permitting foster parents to have discretion over mother's visitation with T.H. We disagree.

Mother notes that, with respect to T.H., the disposition granted visitation to mother, but permitted T.H.'s foster parents to dictate the details of those visits. Mother contends that it was error for the trial court to delegate this function, alleging that a visitation plan must contain a minimum degree of detail.

The trial court's order, as concerned visitation, stated as follows:

4. Visitation shall take place as follows: [Mother] shall have visitation supervised by [the foster parents] with the juveniles, [T.H.] and [M.B.]. This shall occur a minimum of one hour per week.

Opinion of the Court

Mother maintains that this was an insufficient degree of detail, citing the decision of this Court in *In re E.C.*, 174 N.C. App. 517, 621 S.E.2d 647 (2005). In *E.C.*, as in this case, the trial court ordered that the mother's visitation would be at the discretion of the child's legal guardian. This Court remanded for an appropriate visitation plan which would provide "a minimum outline of visitation, such as the time, place, and conditions under which visitation may be exercised." *Id.* at 523, 621 S.E.2d at 652. Mother also cites more recent decisions, such as *In re W.V.*, 204 N.C. App. 290, 295, 693 S.E.2d 383, 387 (2010), which rely on the holding in *E.C.*

Mother's reliance on *E.C.* is misplaced. *E.C.* was based on a previous version of N.C. Gen. Stat. § 7B-905(c). This statute, repealed in 2013, read as follows:

Any dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, or under which the juvenile's placement is continued outside the home *shall provide for appropriate visitation* as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court. If the director subsequently makes a good faith determination that the visitation plan may not be in the best interests of the juvenile or consistent with the juvenile's health and safety, the director may temporarily suspend all or part of the visitation plan. The director shall not be subjected to any motion to show cause for this suspension, but shall expeditiously file a motion for review.

Opinion of the Court

In re E.C., 174 N.C. App. at 521-22, 621 S.E.2d at 651 (quoting N.C. Gen. Stat. § 7B-905(c) (2003)) (emphasis added). This statute was replaced by N.C. Gen. Stat. § 7B-905.1, which requires only that “[i]f the juvenile is placed or continued in the custody or guardianship of a relative or other suitable person, any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised.” N.C. Gen. Stat. § 7B-905.1(c) (2013). Further, we have since recognized the abrogation of *E.C.*:

However, since our decision in *In re E.C.*, G.S. 7B-905(c) was amended (in 2013) to remove the language requiring that the plan be “expressly approved by the court[,]” and a new statute governing visitation in dispositional orders was enacted, G.S. 7B-905.1(b),(c), which only requires the order to account for “the minimum frequency and length of visits and whether the visits shall be supervised.” *See* 2013 N.C. Sess. Laws 129, Sects. 23, 24 (June 19, 2013). These changes became effective 1 October 2013 *before* the trial court's August 2014 order and are applicable to the present case. By enacting G.S. 7B-905.1 and by not including the language that was in former G.S. 7B-905(c), we believe that the General Assembly intended to eliminate any requirement that the trial court include in its order the particular time or place for such visitations but only require the trial court to provide a framework for such visitations. Therefore, *In re E.C.* has been abrogated by the statutory amendment to the extent that it holds that a trial court *must* provide for the time, place, and conditions of visitation in an order allowing visitation.

In re N.B., ___ N.C. App. ___, ___, 771 S.E.2d 562, 570 (2015).

In *N.B.*, we upheld the trial court’s order concerning visitation, stating:

Here, the trial court accounted for the minimum frequency

Opinion of the Court

and length of the visitation (one hour, once per month) and provided for the visitations to be supervised by the family therapist (Dr. Masiello). The trial court left it to Mother to coordinate with Dr. Masiello regarding these visits. We hold that the trial court's order meets these minimum requirements for visitation, and this argument is overruled.

Id. As in *N.B.*, the order in the instant case specified the minimum frequency and length of the visitation (one hour, once per week) and provided for the visitation to be supervised by T.H.'s foster parents. We hold, as we did in *N.B.*, that this order meets the minimum requirements for visitation, and that the trial court did not abuse its discretion in permitting T.H.'s foster parents to determine the details of the visitation.

This argument is without merit.

D. Drug Screening

In her fourth argument, mother contends that the trial court erred in ordering her to submit to random drug screens. We disagree.

After a juvenile has been adjudicated abused, neglected, or dependent:

the court may determine whether the best interests of the juvenile require that the parent . . . entrusted with the juvenile's care undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent[.]

N.C. Gen. Stat. § 7B-904(c) (2013). If the court finds that such treatment is in the juvenile's best interests, it may compel a plan of treatment, or condition custody or placement on treatment. *Id.*

Mother argues that there were no findings indicating that, at the time of the hearing, she was abusing drugs. She asserts that, therefore, the trial court erred in ordering her to submit to random drug screenings.

We acknowledge that, at the time of the hearing, there was no evidence of present drug abuse. However, the allegations of drug abuse, and mother's failure to submit to a drug screen as required by her in-home services agreement, were among the features of the initial petition which lead to the removal of the children from mother's custody in the first place. Ordering her to submit to further drug screens "is reasonably related to aiding [mother] in remedying the conditions which led to the children's removal[.]" *In re A.R.*, 227 N.C. App. 518, 522, 742 S.E.2d 629, 632 (2013). Because this order was reasonably related to remedying the initial conditions which led to the removal of the children, we hold that the trial court did not abuse its discretion in ordering mother to submit to random drug screens.

This argument is without merit.

IV. Conclusion

For the reasons discussed above, we affirm the trial court's order adjudicating the children neglected and dependent, leaving the scheduling details of the visitation

IN RE T.H. AND M.B.

Opinion of the Court

to be determined by the foster parents, and ordering mother to submit to random drug screens.

AFFIRMED.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).