IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-932

Filed: 5 April 2016

Pamlico County, No. 13 J 12-14

IN THE MATTER OF: G.J.J., B.J., H.R.J.

Appeal by respondent-mother from order entered 14 May 2015 by Judge Karen A. Alexander in Pamlico County District Court. Heard in the Court of Appeals 8 February 2016.

White & Allen, P.A., by Brian J. Gatchel and Ramsay Tyler Archie, for petitioner-appellee Pamlico County Department of Social Services.

Poyner Spruill LLP, by Daniel G. Cahill and Christopher S. Dwight, for guardian ad litem.

Mary McCullers Reece for respondent-appellant mother.

DIETZ, Judge.

Respondent appeals from a permanency planning order awarding guardianship of her three children to relatives, granting her visitation, and waiving further review hearings. Respondent contends that the visitation order failed to establish a sufficiently specific schedule and that the record does not support the court's findings concerning waiver of further review hearings.

As explained below, we hold that the visitation portion of the order satisfies the statutory requirements because it sets out the frequency and length of

respondent's visitations, which must be supervised by the children's guardians. We likewise hold that a DSS social worker's report and testimony concerning the children's greatly improved stability and living situation with their guardians supported the court's findings concerning waiver of further hearings. Accordingly, we affirm the trial court's order.

Facts and Procedural History

On 12 July 2013, the Pamlico County Department of Social Services took non-secure custody of respondent's three children and filed juvenile petitions alleging that the children were neglected and dependent juveniles. DSS alleged that respondent admitted daily use of marijuana and that respondent's home was filthy, cluttered, and had exposed electrical wires. Two of the children were placed with their paternal grandmother and one was placed with his paternal great uncle.

After a hearing on 11 September 2013, the trial court adjudicated the children dependent based on facts stipulated by respondent and the children's fathers (one child was born to a different father than the other two). The stipulation provided in part "[t]hat the Respondent Mother['s] . . . substance abuse was so significant to make the Juveniles in need of assistance or placement; and [t]hat the Juveniles' living conditions were so unsafe and unsanitary and in need of immediate remediation to make the Juveniles in need of assistance or placement[.]" The court ordered DSS to

retain legal custody of the children, continued the kinship placements, and ordered supervised visitation with the parents.

Following a permanency planning hearing held on 30 October 2013, the trial court established reunification as the permanent plan for the children. However, at the next review hearing in May 2014, the trial court ceased reunification efforts. The court later held a permanency planning hearing and entered an order on 14 May 2015 granting guardianship of the children to relatives and waiving further reviews. Respondent appeals.

Analysis

I. Visitation

Respondent first contends that the trial court failed to properly establish a visitation schedule. For the reasons discussed below, we reject this argument.

"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 C.M.*, 230 N.C. App. 193, 194, 750 S.E.2d 541, 542 (2013). "If the trial court's findings of fact are supported by any competent evidence, they are conclusive on appeal." *In re T.P.*, 217 N.C. App. 181, 184, 718 S.E.2d 716, 718 (2011).

In 2013, the General Assembly enacted a new statute to govern visitation in abuse, neglect, and dependency cases. *See* N.C. Gen. Stat. § 7B–905.1. The statute

provides that a visitation plan "shall indicate the minimum frequency and length of visits and whether the visits shall be supervised." *Id.* § 7B–905.1(b). This Court has held that the new statutory language does not require the trial court to list the particular time, place, and conditions for the visitation in the order. *In re N.B.*, __ N.C. App. __, __, 771 S.E.2d 562, 570 (2015).

Here, the trial court's disposition order contained instructions concerning the frequency and length of visits and the need for supervision:

> During the month of January 2015, and each month thereafter, the Respondent Mother shall have three hours visitation with the Juveniles to be supervised by the respective Guardian or their designee, at a place and time or times to be determined by the respective Guardian. The Court specifically authorizes any public place as appropriate for visitation if designated by the respective Guardian. The Court is scheduling the first visitation to occur sometime during the month of January 2015 to give the therapeutic providers an opportunity to prepare the Juveniles for the visit, and to allow any party to object to the visit and have the issue of visitation reviewed by the Court if a party felt the visitation would be detrimental to the Juveniles.

Respondent concedes that the trial court designated a minimum frequency of supervised visitation per month but argues the trial court impermissibly delegated its judicial authority to the guardians when the court did not address "where, when, and in whose presence [respondent] could visit her children."

Respondent relies on *In re J.D.R.*, ___ N.C. App. ___, 768 S.E.2d 172 (2015) to support her argument, but that case is readily distinguishable. In *J.D.R.*, the Court

rejected a visitation plan that "delegate[d] to Father substantial discretion over other kinds of visitation, such as Mother having lunch with the Child at school. [The order] also provide[d] a number of future, conditional expansions of Mother's visitation rights that effectively [we]re contingent on Father deciding that Mother ha[d] complied with the trial court's directives." *Id.* at ___, 768 S.E.2d at 179–80. This Court held that "the trial court impermissibly delegated its judicial function to Father in determining Mother's visitation plan" and remanded the case for further findings of fact and conclusions of law. *Id.* at ___, 768 S.E.2d at 180.

Here, unlike *J.D.R.,* the trial court did not delegate to anyone discretion over the kind, frequency, or length of visitation. The trial court granted respondent three hours of supervised visitation each month in a public location. To be sure, the specific location for these visitations and the time when they will take place will be established by the children's guardians. But that is permissible under the new statute and is not the sort of delegation of "judicial functions" that occurred in *J.D.R.* *See* N.C. Gen. Stat. § 7B–905.1(b); *In re N.B.*, __ N.C. App. at __, 771 S.E.2d at 570. Accordingly, we affirm the trial court's visitation order.

II. Waiver of Further Review Hearings

Respondent next challenges the sufficiency of the trial court's findings supporting its determination to waive further review hearings under N.C. Gen. Stat.

§ 7B–906.1(n). A trial court may waive further review hearings if it finds by clear, cogent, and convincing evidence each of the following:

> (1) The juvenile has resided in the placement for a period of at least one year.
>
> (2) The placement is stable and continuation of the placement is in the juvenile's best interests.
>
> (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months.
>
> (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion.
>
> (5) The court order has designated the relative or other suitable person as the juvenile's permanent custodian or guardian of the person.

N.C. Gen. Stat. § 7B-906.1(n). Respondent does not contend the trial court failed to make the necessary findings required by N.C. Gen. Stat. § 7B–906.1(n)(1)–(5). Rather, respondent argues that the court's finding that "[n]either the Juveniles' best interests nor any party's rights require that review hearings be held every six months" is not supported by clear, cogent, and convincing evidence. *See id.* § 7B–906.1(n)(3). We disagree.

In a 14 November 2014 affidavit, a social worker explained that the children were "thriving" in their current placements, each of which had lasted over a year at the time of the permanency planning hearing. The same affidavit states that H.R.J.

was progressing in her therapy, which was designed to address the effects of respondent's neglect; that, according to B.J.'s psychologist, B.J. had made "excellent" behavioral progress since moving in with his placement; and that G.J.J. had bonded with his placement family. The social worker also testified that the children's placements were stable and meeting all of their needs.

This evidence demonstrates that, as of the date of the permanency planning hearing, the children were all experiencing stability and improved overall well-being in their current placements. In contrast, the social worker's affidavit stated that the risk of respondent neglecting the children "remain[ed] high" due to her drug use, inability to properly supervise the children, and unsuitable housing. The affidavit also explained that "[t]he issues affecting the safety and welfare [of the children] have remained the same for the last 5 years[.]"

Given the improved stability and well-being of the children in their current placements and the significant, continued risks of neglect by respondent, there is sufficient evidence in the record to support the trial court's finding that the children's best interests do not require further regularly scheduled review hearings.

Respondent also argues that her rights as a parent required additional hearings because of the "uncertainty of the visitation provisions." As discussed above, the visitation plan is appropriate. Moreover, respondent retains the right to move for

review if necessary; ending the scheduled review hearings does not preclude her from doing so.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges ELMORE and GEER concur.

Report per Rule 30(e).