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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-332

Filed: 20 December 2016

Sampson County, No. 12 JA 94

IN THE MATTER OF: C.A.G.

Appeal by respondent from order entered 17 December 2015 by Judge Carol A. Jones in Sampson County District Court. Heard in the Court of Appeals 21 November 2016.

Warrick, Bradshaw and Lockamy, P.A., by Frank L. Bradshaw, for petitioner-appellee Sampson County Department of Social Services.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

David A. Perez for respondent-appellant custodian.

BRYANT, Judge.

Respondent, the maternal grandmother and legal custodian of C.A.G. (“Caleb”),¹ appeals from a permanency planning order ceasing reunification efforts between her and Caleb. For the following reasons, we affirm.

With Caleb’s mother’s consent, Cumberland County District Court granted respondent sole legal and physical custody of Caleb by an order entered 13 January

¹ A pseudonym is used to protect the juvenile’s privacy and for ease of reading.

2012. Caleb resided with respondent in a single-wide trailer along with one of Caleb's uncles and numerous dogs and cats both inside and outside the home.

The family has an extensive history of involvement with social services including eight prior reports filed regarding Caleb. The Sampson County Department of Social Services ("DSS") most recently became involved with the family when a report was filed on 16 August 2012 concerning the potential abuse and neglect of Caleb. Upon arriving at the home to investigate the report, DSS observed that the trailer was cluttered and smelled of animal urine and feces. During the visit, respondent became so irate she attempted to leave the home with Caleb and ultimately had to be restrained by law enforcement.

DSS filed a juvenile petition in Sampson County District Court on 17 August 2012 alleging that Caleb was an abused and neglected juvenile. The petition included allegations that respondent held a gun to Caleb's head on one occasion, attempted to make Caleb eat dog feces as a form of punishment, hit Caleb in the head resulting in stitches on at least one occasion, and smoked marijuana in Caleb's presence. The court issued a nonsecure custody order allowing DSS to take custody of Caleb.

Respondent entered into an out-of-home service agreement on 20 February 2013 in which she agreed to complete a psychological evaluation and follow all recommendations, enroll in and complete a twenty-six-week anger management and

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domestic violence program, complete a substance abuse assessment and follow any recommendations, and submit to random drug screens.

The trial court conducted an adjudication and dispositional hearing on 19–21 March 2013, and adjudicated Caleb as an abused and neglected juvenile. The trial court found that respondent consistently exposed Caleb to her anger, name calling, racial slurs, and threats of violence. The court also found that respondent’s family has a culture of fussing, fighting, drinking, guns, drugs, and violence; that the environment in which Caleb was being raised was toxic and highly injurious to his mental, physical, and emotional well-being; and that respondent showed complete ignorance of how her actions negatively impacted the child. The court set the permanent plan as reunification and ordered no visitation between respondent and Caleb until respondent completed two consecutive and random negative drug screens and Caleb’s therapist recommended visitation.

After conducting a review hearing on 11 April 2013, the trial court entered an order continuing to order no visitation between respondent and Caleb. The court found that although respondent claimed she had not used marijuana since August 2012, respondent tested positive for marijuana in September 2012, February 2013, and March 2013. The court also found that respondent “expressed that she is not willing to take a psychological evaluation, but the [c]ourt note[d] that she has

previously stated she would not work with [DSS] but has shown some willingness since to work on her case plan.”

The trial court conducted another review hearing on 15 August 2013 and entered an order finding that respondent had completed a substance abuse assessment and psychological evaluation, but had not completed the twenty-six-week anger management and domestic violence program. The court also found that respondent had begun ongoing therapy and had submitted two negative drug screens. Therefore, the court ordered supervised visitation between respondent and Caleb on the condition that respondent continue to have negative drug screens and cooperate with DSS. The court subsequently held another review hearing on 27 February 2014 continuing the permanent plan of reunification and allowing supervised visitation between respondent and Caleb.

On 2 July 2015, DSS placed Caleb in a kinship placement with his maternal uncle where he has resided ever since. The trial court held another review hearing on 27 August and 8 October 2015. In its order entered 17 December 2015, the court found that respondent had been uncooperative with DSS since May 2015 and refused to participate in any additional services, that the conditions which led to Caleb’s removal from respondent’s home still existed, and that further reunification efforts would be futile or inconsistent with Caleb’s health and safety. The court changed the permanent plan from reunification to a dual plan of custody with a relative or other

court-appointed caretaker and adoption, and ordered DSS to cease reunification efforts with respondent. Respondent entered timely notice of appeal.

Respondent's sole argument on appeal is that the trial court erred in ceasing reunification efforts with her because the evidence and the court's findings of fact do not support its conclusion that further reunification efforts would be clearly futile or inconsistent with the juvenile's health and safety. We are not persuaded.

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) (alteration in original) (quoting *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004)). 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) (quoting *In re Norris*, 65 N.C. App. 268, 275, 310 S.E.2d 25, 29 (1983)). "This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007) (citations omitted).

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Section 7B-906.2 of our General Statutes provides that at any permanency planning hearing, the trial court

shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety.

N.C. Gen. Stat. § 7B-906.2(b) (2015). At each permanency planning review hearing, the trial court must consider certain statutory criteria and make written findings regarding those that are relevant. N.C. Gen. Stat. § 7B-906.1(d) (2015). These factors include, in pertinent part, “[w]hether efforts to reunite the juvenile with either parent clearly would be futile or inconsistent with the juvenile’s safety and need for a safe, permanent home within a reasonable period of time.” *Id.* § 7B-906.1(d)(3). Despite its statutory designation as a “finding,” the determination that further reunification efforts would be clearly futile “is in the nature of a conclusion of law that must be supported by adequate findings of fact.” *In re J.H.*, ___ N.C. App. ___, ___, 780 S.E.2d 228, 243 (2015) (quoting *In re E.G.M.*, 230 N.C. App. 196, 209, 750 S.E.2d 857, 867 (2013)).

Here, the trial court made the following relevant findings of fact:

12. That [respondent] has been uncooperative since May of 2015 and has refused to participate in any additional services.

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16. That it is not likely that the Juvenile will be returned home within the next six (6) months.

17. That the current permanent plan for this Juvenile is reunification.

18. That the best plan of care to achieve a safe, permanent home for the Juvenile within a reasonable period of time is a dual plan of (i) custody with a relative or other court appointed caretaker and (ii) adoption.

19. That [DSS] has made reasonable efforts in this matter to prevent or eliminate the need for placement of the Juvenile with [DSS] and to reunify this family.

20. That [DSS] is no longer required to make reasonable efforts in this matter to reunify this family pursuant to N.C. Gen. Stat. 7B-507^[2] as those efforts would clearly be futile or would be inconsistent with the Juvenile's health and safety, and need for a safe, permanent home within a reasonable time.

21. That the Court finds that the conditions which led to the removal of the Juvenile from the Juvenile's home still exist[] and that a return of the Juvenile to said home would be contrary to the welfare of the Juvenile.

Respondent challenges Findings of Fact Nos. 12 and 16 as not being supported by the evidence. Respondent admits that there is support for Finding of Fact No. 12

² Respondent notes that it appears the trial court decided the issue of cessation of reunification efforts pursuant to N.C. Gen. Stat. § 7B-507, which was repealed effective 1 October 2015. *See* 2015 N.C. Sess. Laws 136 § 7. Section 7B-906.1 took effect on 1 October 2015 and applies to any actions filed or pending on that date. *See* 2015 N.C. Sess. Laws 136 § 18. Because the permanency planning hearing in this case was conducted on 8 October 2015, the order entered after that hearing was subject to the provisions of this new statute. However, respondent admits N.C. Gen. Stat. § 7B-906.1 contains similar provisions as the repealed statute, and does not argue the court failed to make the proper findings pursuant to the statute or that the order should be reversed based on this error.

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in the DSS Court Report, but argues that the report was written weeks before the 8 October 2015 hearing, and that it is not clear from the transcript and record whether the trial court even considered the report. However, the social worker specifically prepared the report for the permanency planning hearing which began on 27 August and continued on 8 October 2015, and the trial transcript clearly shows the report was admitted into evidence without objection during the social worker's testimony at the 8 October 2015 hearing.

The DSS Court Report is competent evidence to support Findings of Fact Nos. 12 and 16. The court report states that although respondent has made some progress on her case plan, "she has not satisfied the requirements to the extent that custody should be returned to her." The report also states that respondent has been uncooperative with DSS since 11 May 2015, has refused to sign any additional service agreements or participate in any additional services including counseling, continues to struggle to manage her anger, and continues to exhibit concerning behavior during her interactions with Caleb. It further states that respondent's inappropriate behavior demonstrates that the therapy she did participate in has not been effective and that she continues to ignore Caleb's best interests. Additionally, the social worker testified at the hearing that respondent still demonstrates a lack of stable mood and a tendency towards anger and exhibits animosity toward Caleb since he was placed with his maternal uncle.

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This is competent evidence to support the trial court's findings that respondent has been uncooperative with DSS since May 2015 and that it is not likely that Caleb will be returned home within the next six months. These findings in turn support the trial court's conclusion that efforts to reunify Caleb with respondent would clearly be futile and inconsistent with Caleb's health and safety and need for a safe, permanent home within a reasonable time. Accordingly, we affirm the trial court's order ceasing reunification efforts with respondent.

AFFIRMED.

Judges MCCULLOUGH and TYSON concur.

Report per Rule 30(e).