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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-472

Filed: 6 December 2016

Wake County, No. 14 JA 177

IN THE MATTER OF: A.S.

Appeal by respondent-mother from order entered 2 February 2016 by Judge Keith Gregory in Wake County District Court. Heard in the Court of Appeals 21 November 2016.

Office of the Wake County Attorney, by Roger A. Askew, for petitioner-appellee Wake County Human Services.

Jeffrey William Gillette for respondent-appellant mother.

Ellis & Winters LLP, by Kelly Margolis Dagger and Christopher W. Jackson, for guardian ad litem.

McCULLOUGH, Judge.

Respondent-mother appeals from an order granting guardianship of A.S. ("Abby")[1] to the maternal grandmother and waiving further review hearings. The father is not a party to this appeal. For the following reasons, we affirm the trial court's order.

I. Background

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading.

On 20 July 2014, Wake County Human Services ("WCHS") received a report that Abby was neglected. The next day, WCHS filed a petition alleging that Abby was a neglected juvenile. WCHS obtained nonsecure custody the same day, and it placed custody with the maternal grandmother shortly thereafter. At the time WCHS filed the petition, the parents were living with Abby in a home that had been converted from a barn. WCHS found the home to be "in deplorable condition" and not appropriate for a child. Abby had an untreated head lice condition and did not appear to have been bathed in several days. Following a hearing, the trial court entered an order on 26 August 2014 adjudicating Abby neglected and ordering respondent-mother to comply with an out-of-home services plan. Respondent-mother's plan required her to submit to substance abuse and psychological evaluations and follow any recommendations, to obtain and maintain employment and appropriate housing, to attend parenting classes, and to apply skills learned in parenting classes during scheduled visits with Abby.

Prior to a 20-21 July 2015 permanency planning hearing, WCHS submitted a report recommending, *inter alia*, that reunification efforts with the respondent-mother cease and that another review hearing date be set. The Guardian ad Litem also submitted a report, which recommended granting guardianship to the maternal grandmother and waiving further review hearings. At the end of the 20-21 July 2015 permanency planning hearing, the trial court indicated it would change Abby's

permanent plan to guardianship with the maternal grandmother and waive further review hearings.

On 13 November 2015, the trial court entered an order that reopened and continued the July 2015 hearing in order to hear evidence regarding Abby's potential affiliation with the Lumbee tribe. The permanency planning hearing resumed on 8 December 2015. After hearing evidence and arguments from counsel, the trial court announced that it would enter an order awarding guardianship to the maternal grandmother and waive further review hearings. On 2 February 2016, the trial court entered its order granting legal guardianship to the maternal grandmother and waiving further review hearings. Respondent-mother filed notice of appeal on 22 February 2016.

II. Discussion

Before this Court, respondent-mother first contends that the trial court erred in waiving further review hearings because Abby had not yet been in placement with the maternal grandmother for at least a year. We disagree.

N.C. Gen. Stat. § 7B-906.1(n) allows a trial court to waive further periodic review hearings if it finds, in part, that "[t]he juvenile has resided in the placement for a period of at least one year." N.C. Gen. Stat. § 7B-906.1(n)(1) (2015). N.C. Gen. Stat. § 7B-906.1(n)(1)'s one-year requirement is measured from the time the

permanency planning hearing is held to determine whether to waive further review hearings. *In re P.A.*, __ N.C. App. __, __, 772 S.E.2d 240, 249 (2015).

In the trial court's 2 February 2016 permanency planning order, the court found that "[t]he child has resided with her maternal grandparents for 17 months and is doing very well." Respondent-mother does not contest the fact that, as of the 8 December 2015 hearing, Abby had resided with the maternal grandmother for seventeen months. Rather, respondent-mother contends that the trial court waived further review hearings via an oral ruling on 21 July 2015, and that Abby had not resided with the maternal grandmother for at least one year as of that time.

While the trial court may have indicated on 21 July 2015 that it would waive further review hearings, that indication did not constitute a final ruling, as evidenced by the fact that the trial court did not enter an order making the required findings at that time. *See, e.g.*, *In re V.A.*, 221 N.C. App. 637, 642, 727 S.E.2d 901, 905 (2012) ("This Court has previously held that a trial court must make *written* findings of fact to satisfy each of the five enumerated factors in [N.C. Gen. Stat. § 7B-906.1(n)]." (emphasis in original) (internal quotation marks and citation omitted)). Furthermore, the permanency planning hearing did not conclude on 21 July 2015, but instead concluded on 8 December 2015 after the hearing had been reopened. Thus, the operative time from which to measure N.C. Gen. Stat. § 7B-906.1(n)(1)'s one-year requirement was 8 December 2015, the date on which the permanency

planning hearing concluded. The trial court correctly found that, measured from that date, Abby had been placed with the maternal grandmother for the preceding seventeen months. As a result, respondent-mother's contention is without merit.

Respondent-mother next contends that the trial court abused its discretion when it cross-examined respondent-mother from the bench. Again, we disagree.

"The trial court's broad discretionary power to control the trial and to question witnesses to clarify testimony will not be disturbed absent a manifest abuse of discretion." *State v. Rios*, 169 N.C. App. 270, 281, 610 S.E.2d 764, 772, *appeal dismissed and disc. review denied*, 360 N.C. 75, 623 S.E.2d 37 (2005). A trial court "may interrogate witnesses, whether called by itself or by a party." N.C. R. Evid. 614(b) (2015). "The court properly uses this authority when it questions witnesses in order to clarify witnesses' testimony, to enable the court to rule on the admissibility of certain evidence and exhibits, and to promote a better understanding of the testimony." *Rios*, 169 N.C. App. at 281-82, 610 S.E.2d at 772.

In the present case, the trial court questioned respondent-mother about several matters, including: her attendance record at drug treatment classes; her conversations with law enforcement after she had been contacted by Abby's father, against whom she had a protective order; details of her current living situation; and whether she felt her mother was concerned about her drug use. Respondent-mother contends that she had not previously testified regarding these matters, and that the

trial court's inquiries were therefore not limited to clarifying prior testimony. Respondent-mother further contends that the trial court's line of questioning showed a lack of impartiality. While our review of the transcript reveals that respondent-mother had, in fact, testified regarding these matters during her testimony on 20-21 July 2015, respondent-mother nevertheless fails to demonstrate a reversible abuse of discretion where the trial court conducts such an inquiry during a permanency planning hearing, which occurs without a jury.

"The law imposes on the trial judge the duty of absolute impartiality." *Nowell v. Neal*, 249 N.C. 516, 520, 107 S.E.2d 107, 110 (1959). "However, the danger of impartiality is relevant primarily in a jury trial. . . . In a bench proceeding . . . there is no danger in the trial court suggesting an opinion as to the weight of the evidence or the credibility of certain witness[es] as the trial court is the ultimate arbiter of such issues." *In re L.B.*, 184 N.C. App. 442, 451, 646 S.E.2d 411, 416 (2007). Respondent-mother has not shown that the trial court abused its discretion in engaging in this line of questioning, or that respondent-mother was prejudiced thereby. Respondent-mother's contention is without merit.

Respondent-mother next contends that the trial court abused its discretion when it refused to allow respondent-mother's counsel to cross-examine a WCHS social worker regarding a report she had submitted to the court on 1 December 2015, prior to the permanency planning and review hearing being reopened on 8 December 2015.

"[T]he extent of cross-examination is within the discretion of the trial court." *Jones v. Rochelle*, 125 N.C. App. 82, 85, 479 S.E.2d 231, 233, *disc. review denied*, 346 N.C. 178, 486 S.E.2d 205 (1997). "Absent a showing of an abuse of discretion or that prejudicial error has resulted, the trial court's ruling will not be disturbed on review." *Id.* (internal quotation marks and citation omitted).

At the reopened hearing on 8 December 2015, respondent-mother's counsel attempted to cross-examine WCHS's social worker regarding why she had recommended that the maternal grandmother be awarded guardianship of Abby. At that point, the following exchange occurred:

> [ABBY'S ATTORNEY ADVOCATE]: Judge, at this point I will object not only -- well, mainly my objection is we've already had this evidence. This is the same evidence from July 20th. The reopening was for Your Honor to be able to hear about the Lumbee tribe, not to rehash whether guardianship or custody is the most appropriate plan.
>
> THE COURT: And I actually respect that. I thought that was the purpose, we were simply going to address the issue about the Lumbee issue . . . . That's the purpose of this [hearing,] correct?
>
> [RESPONDENT'S-MOTHER COUNSEL]: Well, that's the County's purpose. But when we had that discussion, Your Honor, I asked that we have the opportunity to be heard for my client's position, too.
>
> THE COURT: Well, respectfully, I think we're simply addressing -- I think the issue was whether or not the Lumbee issue, that I thought that was what we are here for today.

> [FATHER'S COUNSEL]: That was my understanding . . . .
>
> THE COURT: That we were here for that issue, so respectfully, I'll sustain that objection. Thank you.

Respondent-mother has not contested the trial court's discretion in limiting the scope of the 8 December 2015 hearing. Given the limited scope of the hearing, the trial court did not abuse its discretion in limiting cross-examination to the issue for which the hearing was held. However, despite its statement that the 8 December hearing was limited solely to the issue of whether Abby would be considered a member of the Lumbee tribe, certain findings in the trial court's 2 February 2016 order incorporated unrelated information from the social worker's 1 December 2015 report. Specifically, respondent-mother points to portions of three findings in the court's order that were derived from the social worker's report:

> 6. . . . [Respondent-mother] admitted to using pills from September 19 through September 21, 2015. As a result, [respondent-mother] was incarcerated for a period of time.
>
> 7. [Respondent-mother] resides in Harnett County, NC with her husband . . . . They live in a small camper on the property of [the husband's] parents. [Respondent-mother] acknowledges that the camper is an inappropriate home for the child and continues to seek a long-term residence although she remains unemployed.
>
> 8. [The husband] has a driving while impaired charge pending in Sampson County, NC.

"The trial court's findings of fact are conclusive if they are supported by competent evidence, even though there may be evidence to the contrary." *Heating & Air Conditioning Assocs., Inc. v. Myerly*, 29 N.C. App. 85, 89, 223 S.E.2d 545, 548, *appeal dismissed and disc. review denied*, 290 N.C. 94, 225 S.E.2d 323 (1976). Given that the trial court did not allow the social worker to be subjected to cross-examination prior to using evidence from her report in support of its findings of fact, it is difficult to determine on appeal whether that evidence was in fact competent. However, assuming-without deciding-that the challenged findings should be disregarded because they were erroneously supported by incompetent evidence, the remaining unchallenged findings amply support the trial court's decision to grant legal guardianship to the maternal grandmother.[2] *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("When, however, ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.").

N.C. Gen. Stat. § 7B-600 "permits the trial court to appoint a guardian at any time during the juvenile proceedings . . . when it finds such appointment to be in the juvenile's best interests." *In re E.C.*, 174 N.C. App. 517, 520, 621 S.E.2d 647, 650-51 (2005). The trial court has broad discretion in determining the juvenile's best interests, and such determination "will not be disturbed absent clear evidence that

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[2] Respondent-mother's argument as to this issue does not implicate the trial court's decision to waive further review hearings.

the decision was manifestly unsupported by reason." *In re N.B.*, 167 N.C. App. 305, 311, 605 S.E.2d 488, 492 (2004).

In its order awarding guardianship to the maternal grandmother, the trial court found, in pertinent part:

> 4. WCHS referred [respondent-mother] to a women's group for a substance abuse assessment in March 2015. [Respondent-mother] never completed the group and had to re-enroll in June 2015. She missed the first class and again failed to complete the curriculum.
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> 5. WCHS referred [respondent-mother] to a Positive Parenting Group in April 2015. [Respondent-mother] failed to complete the program.
>
> 6. [Respondent-mother] failed to submit to a random drug screen in June 2015. . . .
>
> . . . .
>
> 9. [Respondent-mother] continues to have unresolved issues of substance abuse and unstable housing. She has not made adequate progress in a reasonable period of time. The child needs more adequate care and supervision than [respondent-mother] can provide and return of the child to [respondent-mother] would be contrary to the child's health and safety.
>
> . . . .
>
> 15. The child has resided with her maternal grandparents for 17 months and is doing very well. Her speech continues to improve and vocabulary continues to increase. Her needs are being met and the placement is appropriate.
>
> 16. . . . [T]he child's maternal grandmother[] has the

> financial and community resources to provide proper care and supervision to the child. [She] has adequate monthly income to support the child's needs and understands the legal significance of guardianship.

These findings of fact are unchallenged and, thus, are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). These findings support the trial court's conclusion that it was in Abby's best interests that guardianship be awarded to the maternal grandmother. As a result, the trial court's permanency planning order is affirmed.

AFFIRMED.

Judges BYRANT and TYSON concur.

Report per Rule 30(e).