IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-197

Filed: 5 July 2017

Rockingham County, No. 16 JA 58

IN THE MATTER OF: C.M.D.

Appeal by respondents from order entered 31 October 2016 by Judge Christopher A. Freeman in Rockingham County District Court. Heard in the Court of Appeals 7 June 2017.

Beverly A. Smith, for petitioner-appellee.

Sydney Batch, for respondent-appellant mother.

Mark Hayes, for respondent-appellant father.

Garry S. Rice, for Appellee-Guardian ad Litem

MURPHY, Judge

Respondent-mother ("Arlene") and respondent-father ("Bret") appeal from an order adjudicating their son C.M.D. ("Charlie")[1] dependent. We reverse and remand.

I. Background

[1] Pseudonyms are used to protect the minor's identity.

Arlene was kicked out of her house by her mother upon graduating from high school, and she moved in with Bret and his parents. On 9 May 2016, Arlene gave birth to Charlie. On 13 May 2016, the Rockingham Department of Social Services ("DSS") filed a juvenile petition and requested non-secure custody of Charlie.

Arlene's mother reported that Arlene had a history of anxiety disorder, oppositional defiant disorder, borderline personality disorder, persuasive developmental disorder, and bipolar disorder. Bret is diagnosed with Asperger's syndrome. There was one alleged incident of domestic violence between respondents, noted in the disposition order but not the adjudication order, which Arlene described as a "hug like a bear" coping method to help them "both calm down."

On 7 June 2016, DSS completed a home study of the paternal grandparents and approved their home for placement. The next day, the trial court dissolved non-secure custody and returned legal custody to Arlene and Bret, with the agreement that the paternal grandparents would supervise respondent-parents' contact with Charlie at all times.

Arlene agreed to enter into an in-home family services agreement, demonstrate age appropriate parenting skills, proper supervision and care for Charlie, enroll in parenting education, and submit to a mental health assessment and medication management. Arlene and Bret also attended developmental programs through the Rockingham Pregnancy Center to develop better parenting skills and to learn to care

for Charlie. However, Arlene and Bret's need to be supervised by the paternal grandparents has hindered participation in attending parenting programs.

On 18 August 2016, Arlene submitted to a parenting capacity and psychological evaluation. She was not given a diagnosis, as her MMPI-2 clinical profile fell within a normal range. The report stated that at least some of her previous mental health diagnoses could have been "situationally based" and "also related to her unhappy, confused, and hurtful adolescence."

On 1 September 2016, the adjudication hearing for Charlie was held. At that time, DSS amended its allegations to dismiss the allegation of neglect. Wayne Hollowell ("Hollowell"), the Guardian ad Litem's attorney advocate, did not speak on the record about his position regarding the amended allegations, nor did the trial court ask him if he had any evidence to present on Charlie's behalf. The trial court then continued the dispositional hearing until 29 September 2016 in order to review the parents' psychological evaluations.

After conducting a disposition hearing, the trial court allowed Arlene unsupervised visitation with Charlie. The trial court ordered that Bret should not be left unsupervised with Charlie. Arlene and Bret each filed notices of appeal to both orders on 2 December 2016.

II. Analysis

A. Lack of Consent to the Adjudication Order

Arlene and Bret assert that the adjudication order entered by the trial court should be vacated because the trial court failed to conduct a proper adjudication hearing. We agree.

Allegations that a juvenile is abused, neglected or dependent shall be proven by clear and convincing evidence under N.C.G.S. § 7B-805 (2015). We review an order adjudicating a juvenile to be dependent for whether the findings of fact are supported by clear, cogent, and convincing evidence, and whether the findings support the conclusions of law. *In the Matter of Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984). "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." *In re T.H.T.,* 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (citing *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003)). N.C.G.S. § 7B-801(b1) (2015) requires that a consent adjudication order can only be entered by a trial court if (1) all parties are present or represented by counsel, who is present and authorized to consent; (2) the juvenile is represented by counsel; and (3) the trial court makes sufficient findings of fact.

DSS argues in its brief that Arlene and Bret have waived the right to appeal the issue of whether the juvenile court failed to follow N.C.G.S. § 7B-801(b1) (2015). In *In re J.N.S.*, this Court held respondent-mother waived appellate review of the consent order. 207 N.C. App. 670, 677-78, 704 S.E.2d 511, 516-17 (2010). There,

"respondent-mother's attorney consented, on the record, to an adjudication of neglect and dependency." *Id.* at 678, 704 S.E.2d at 517. Moreover, respondent-mother's attorney drafted the proposed consent order, which the court largely adopted in the adjudication order. *Id.* at 678, 704 S.E.2d at 517. Respondent-mother did not object to entry of the consent order. *Id.* at 678, 704 S.E.2d at 517. Accordingly, our Court overruled respondent-mother's assignment of error and held she waived appellate review of the issue. *Id.* at 678, 704 S.E.2d at 517.

In *In re K.P.*, this Court held respondent-mother did not waive appellate review regarding a consent order. ___ N.C. App. ___, ___, 790 S.E.2d 744, 749 (2016). In that case, the record lacked evidence "that a consent agreement had been reached for adjudication or that a consent order had been drafted." *Id.* at 749. Additionally, although counsel and the court mentioned "consent" several times at the hearing, the transcript did not clearly evince respondent-mother consented to the adjudication. *Id.* at 749.

The case *sub judice* is more factually similar to *K.P.* than *J.N.S.* The record fails to disclose who wrote the proposed consent order. The adjudication order states "the allegations of the amended Juvenile Petition have been proven by clear and convincing evidence" and "[t]he findings of fact are attached hereto and labeled 'Additional Findings of Facts[ ]' . . . ." Thus, it appears the court's findings are from the juvenile petition, which is drafted by DSS, not Respondents' attorneys.

Furthermore, unlike in *J.N.S.*, Respondents, themselves, did not explicitly consent on the record. We hold that Arlene and Bret did not waive their right to appellate review and that we can address this issue on the merits.

In the present case, all parties were present at the 29 September 2016 adjudication hearing. However, the trial court did not ask if counsel had the authority to consent, nor whether their clients actually gave consent. No inquiry was made of Hollowell as to whether he consented to the entry of the amended allegation or whether he consented to Charlie being adjudicated dependent. The trial court further failed to ask respondent-parents' attorneys if they were authorized to consent on their clients' behalves and whether they consented to the allegations being adopted as the trial court's findings of fact. While the trial court finds that the parties "did not resist the allegations of the amended Juvenile petition," the trial court's procedural error cannot be overridden by such a statement.

B. Lack of Proper Findings

Further issues with the adjudicatory order arise from the trial court adopting petitioner's amended allegations as evidence during the adjudication hearing. It is not proper for a trial court to simply accept allegations as evidence, but must instead "through 'processes of logical reasoning,' based on the evidentiary facts before it, 'find the ultimate facts essential to support the conclusions of law.'" *In re O.W.,* 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (citing *In re* Harton, 156 N.C. App. 655 660,

577 S.E.2d 334, 337 (2003)). Moreover, "the trial court's findings must consist of more than a recitation of the allegations." *In re O.W.* at 702, 596 S.E.2d 851, 853 (2004) (citing *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002)). Here, because the trial court wholly incorporated the amended allegations into its order and did not consider any additional evidence or testimony, there was no proper evidence to support the conclusion of law that Charlie was dependent.

Under N.C.G.S. § 7B-807(a) (2013), stipulations must be either: (1) reduced to writing, signed by each party stipulating to them, and submitted to the court; or (2) read into the record and followed by an oral statement of agreement from each party that is stipulating to the facts. The record must show that a client has given express authority for her attorney to enter stipulations on her behalf. *Bailey v. McGill*, 247 N.C. 286, 298, 100 S.E.2d 860, 870 (1957) (citing *Bizzell v. Equipment Co.*, 182 N.C. 92, 102, 108 S.E. 439, 440 (1921)). Here, the parties did not stipulate to the amended allegations, no stipulated findings of fact were read into the record, and the "additional findings of fact" attached to the order were not signed by the parties. Additionally, there is no indication that the attorneys were authorized to stipulate on their clients' behalves.

Furthermore, in order to adjudicate a child dependent under N.C.G.S. § 7B-101(9) (2016), a two-prong test must be completed. First, the trial court must find that the child's parent, guardian, or custodian is unable to provide proper care or

supervision for the minor child. Second, the trial court must also make adequate findings that the parent, guardian or custodian lacks an appropriate child care arrangement. In the instant case, no competent evidence was introduced that Arlene was unable to care for Charlie or that she lacked an appropriate alternative child care arrangement, as there was no testimony and there were no reports admitted into evidence.

Even if the "additional findings of facts" that were incorporated by the court were added in a valid fashion, these findings fail to pass the first prong of the test. They mention Arlene's history of mental illness, but also find that she was mentally stable and needed no further treatment or medication. There was no evidence or findings of fact that give rise to Arlene or Bret's inability to care for Charlie. A prior diagnosis of personality disorder, standing alone, is insufficient to establish that a parent is unable to care for her minor children, *In re Q.H.,* 228 N.C. App. 568, 749 S.E.2d 111 (2013), and similarly, Arlene's prior psychological diagnoses, standing alone, are not sufficient to establish she cannot care for her minor children. There was no evidence to determine if either Arlene's or Bret's' actions and behaviors had a direct and negative effect on the minor child or if their actions rose to the statutory definition of dependency. The adjudication order must be vacated as conclusion of law number two, finding Charlie dependent, is not supported by competent evidence.

III. Conclusion

The adjudication order came from an improperly held adjudicatory hearing, did not meet the requirements of N.C.G.S. § 7B-802 or N.C.G.S. § 7B-801(b1), and the trial court lacked competent evidence in adjudicating Charlie dependent. The adjudication order and the resulting dispositional order are reversed and remanded.

REVERSED AND REMANDED.

Judges Hunter, Jr. and Davis concur.

Report per Rule 30(e).