IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-605

Filed: 7 July 2020

Ashe County, No. 18-JA-19

IN THE MATTER OF: K.E.D.

Appeal by Respondent from order entered 22 March 2019 by Judge Robert C. Crumpton in Ashe County District Court. Heard in the Court of Appeals 27 May 2020.

Grier J. Hurley for Ashe County Department of Social Services.

Paul W. Freeman, Jr., for guardian ad litem.

Office of the Parent Defender, by Parent Defender Wendy C. Sotolongo and Assistant Parent Defender Jacky Brammer, for Respondent-Mother.

DILLON, Judge.

Respondent-Mother Amanda S. ("Mother") appeals from the trial court's permanency planning order awarding legal and physical custody of the minor child

K.E.D. ("Karen")[1] to the child's paternal grandparents and providing for supervised visitation for Mother.

I. Background

In April 2018, Ashe County Department of Social Services ("DSS") filed a petition alleging that Karen was neglected. At that time, Mother had alternate weekend visitation with Karen while the child's father, Andy D., ("Father"), had primary custody. The trial court adjudicated Karen neglected on 1 June 2018 based on stipulations by Father that he had been using methamphetamine and was found unresponsive while caring for Karen. Karen was placed in her paternal grandparents' home while DSS had custody.

The trial court ordered Mother to complete a case plan focusing on parenting skills and family relationships. The case plan required Mother and her boyfriend, Matthew Noble Jordan ("Noble"), to complete parenting classes and that Mother complete a substance abuse assessment and the resulting substance abuse classes. Additionally, Noble voluntarily underwent a batterer's assessment, which advised that he complete ten domestic violence classes. Mother completed her substance abuse classes, and Noble completed six out of the ten domestic violence classes.

Despite Mother's completion of classes, DSS was still concerned with Mother's progress in part due to a physical altercation at the courthouse in February 2019 and

[1] A pseudonym has been used throughout the opinion to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 42(b)(1).

her relationship with Noble. After a hearing on the matter, in March 2019, the trial court entered a permanency planning order finding that neither Mother nor Father was making adequate progress in their respective case plans, awarded legal and physical custody to Karen's paternal grandparents, and directed that efforts to reunite Karen with Mother and Father would cease. Mother appealed to our Court from the permanency planning order. Mother also filed a petition for writ of *certiorari* to review the juvenile order entered in the civil file 15-CVD-475 In the Matter of K.E.D.[2]

II. Analysis

Mother makes several arguments on appeal. We hereby grant Mother's petition for writ of *certiorari*, and thereby address each of her arguments in turn.

A. Standard of Review

"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 J.C.S.,* 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004). We review the trial court's conclusions of law *de novo*. *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010).

B. Case Plan Requirements for Mother

[2] The juvenile order filed in 15-CVD-475 is identical to the permanency planning order that is the subject of this appeal.

Mother argues that the trial court erred in ordering case plan requirements for her unrelated to Karen's adjudication. We disagree.

In the context of case plan requirements, our General Statutes provide:

> If the [trial] court finds that the best interests of the juvenile require the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care undergo treatment, it may order that individual to comply with a plan of treatment approved by the court or condition legal custody or physical placement of the juvenile with the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care upon that individual's compliance with the plan of treatment.

N.C. Gen. Stat § 7B-904(c) (2018). The trial judge is limited to ordering a parent to complete a case plan that alleviates a *direct or indirect* cause of the juvenile's removal from their home. *In re B.O.A.*, 372 N.C. 372, 381, 831 S.E.2d 305, 312 (2019).

Here, the trial court had the authority to order Mother to complete her case plan. The juvenile order adjudicating Karen neglected specifically noted Mother's substance abuse twice: by taking judicial notice of Mother and Father's custody order in 15-CVD-475 and by finding that Mother had "completed treatment for substance abuse[.]" The custody order details Mother's history of substance abuse that contributed to her loss of custody of Karen as well as her relationship with Noble. Thus, Father was not the only parent whom the trial court validly required to complete a case plan under N.C. Gen. Stat § 7B-904(c).

C. Case Plan Progress Finding

Mother argues that the trial court erred in finding that she was not making adequate progress on her case plan within a reasonable amount of time. We disagree.

N.C. Gen. Stat § 7B-906.2(d)(1) requires that at any permanency planning hearing the trial court make a written finding as to whether "the parent is making adequate progress within a reasonable period of time under the [case] plan." Mother relies on cases such as *In re A.B.*, 253 N.C. App 29, 799 S.E.2d 445 (2017) and *In re S.D.*, 243 N.C. App. 65, 776 S.E.2d 862 (2015) for her argument that perfection is not required of parents under their case plans.

While we agree that perfection is not required, the trial court was entitled to weigh any potentially conflicting evidence and come to a conclusion regarding Mother's progress. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) ("The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject.").

Although Mother completed all of her required substance abuse classes, she had other setbacks during the timeline of her case plan including failed/manipulated drug screens, concerns about her continuing relationship with Noble, and an altercation with Karen's paternal grandmother at the courthouse. This evidence is

competent, as it was attested to by a DSS social worker. We conclude that the trial court's finding that Mother was not making adequate progress on her case plan was supported by competent evidence and is therefore binding on appeal. Thus, the trial court did not err in making this finding.

D. Finding as to Whether Mother was "Acting in a Manner Inconsistent with the Health or Safety of the Juvenile" (N.C. Gen. Stat § 7B-906.2(d)(4))

Mother argues that the trial court erred by not making any specific finding as to whether she was "acting in a manner inconsistent with the health or safety of the juvenile" as required by N.C. Gen. Stat § 7B-906.2(d)(4). We disagree.

Though Section 7B-906.2(d) seems to direct the trial court to make an explicit finding regarding whether a parent is acting inconsistent with the health and safety of the juvenile, our Supreme Court has recognized that

> While trial courts are advised that use of the actual statutory language [in permanency planning orders] would be the best practice, the statute does not demand a verbatim recitation of its language . . . The trial court's written findings must address the statute's concerns, but need not quote its exact language.

In re L.M.T., 367 N.C. 165, 167-68, 752 S.E.2d 453, 455 (2013). Following direction from our Supreme Court, we "consider whether the trial court's findings of fact address the *substance* of the statutory requirements." *Id*. at 166, 752 S.E.2d at 454 (emphasis added).

The trial court addressed the substance of Section 7B-906.2(d)(4) in its findings of fact 43 and 44:

> 43. The Court finds that reunification efforts clearly would be unsuccessful and are inconsistent with [Karen's] health, safety and need for a safe, permanent home within a reasonable period of time.
>
> 44. The Court finds by clear and convincing evidence that [Mother and Father] are unfit and have acted inconsistent with their constitutionally protected status as a parent. . . . [Mother] remains in her relationship with [Noble,] there is continued concern of domestic violence and he has not completed ten classes of Stay Kalm although he has had seven months to do so. [Karen] only wants supervised visits with her mother.

We conclude that the trial court adequately addressed the concerns of the statute even if it did not use the exact statutory language in its findings.

E. Compliance with N.C. Gen. Stat § 7B-911

Finally, Mother argues that the trial court erred because the permanency planning order does not comply with N.C. Gen. Stat § 7B-911. We disagree.

The relevant portions of N.C. Gen. Stat § 7B-911 provide:

> (a) Upon placing custody with a parent or other appropriate person, the court shall determine whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and *50-13.7*.
> . . .
> (c) When entering an order under this section, the court shall satisfy the following:
>
> > (1) Make findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered

> pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7.

N.C. Gen. Stat § 7B-911(a), (c)(1) (emphasis added). Mother specifically points us to N.C. Gen. Stat § 50-13.7 (2018), which provides that a custody order can be modified at any time upon "a showing of changed circumstances[.]" She argues that the trial court was required to find that there was a substantial change in circumstances necessitating a change in the custody order.

Our Court has previously concluded that "entry of a permanency planning order is governed by N.C. Gen. Stat § 7B-906.1[.]" *In re J.S.*, 250 N.C. App. 370, 373, 792 S.E.2d 861, 864 (2016). While the trial court's permanency planning order specifically states that it is put forth subject to Section 7B-906.1, we must consider that the trial court filed an identical order in the underlying civil case (15-CVD-475). A trial court is permitted to do so. *In re A.S.*, 182 N.C. App. 139, 142, 641 S.E.2d 400, 403 (2007). However, entering the permanency planning order in the civil case renders it subject to the substantial change in circumstances analysis. *See* N.C. Gen. Stat. § 7B-911(c)(1) (requiring the court to make "findings and conclusions that support modification of that order pursuant to G.S. 50-13.7.").

In *Raynor v. Odom*, our Court asked whether "the properly supported legal conclusion of the trial court that the natural mother is an unfit parent satisf[ies] the statutory requirement of finding a change in circumstances pursuant to G.S. 50-13.7

and 50-13.5." 124 N.C. App. 724, 733, 478 S.E.2d 655, 661 (1996). Our Court concluded that a finding of unfitness did satisfy the requirement that the court make a finding of a substantial change in circumstances, because the standard for the former is much higher. *Id.* at 734, 478 S.E.2d at 661; *accord Slawek v. Slawek*, COA09-1682, 2010 N.C. App. LEXIS 1592 (Aug. 17, 2010) (unpublished).

Mother is correct that the trial court's permanency planning order did not *expressly* find that there had been a substantial change in circumstances. However, the trial court did find that Mother "[is] unfit and [has] acted inconsistent with [her] constitutionally protected status as a parent." This finding qualifies as a substantial change in circumstances from Mother and Father's previous custody order where the trial court found that Mother "is a fit and proper person to have visitation with the minor child." As in *Raynor*, the court's subsequent finding of unfitness satisfies the statutory requirement of a finding of a substantial change in circumstances. *See* 124 N.C. App. at 734, 478 S.E.2d at 661.

III. Conclusion

For the reasons stated above, we conclude that the trial court did not err in its permanency planning order.

AFFIRMED.

Judges ZACHARY and BROOK concur.

Report per Rule 30(e).