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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-175

Filed: 15 December 2020

Mecklenburg County, No. 13 JA 441, 443

IN THE MATTER OF: A.O., S.O.

Appeal by respondent from order entered 13 November 2019 by Judge David H. Strickland in Mecklenburg County District Court. Heard in the Court of Appeals 17 November 2020.

*Senior Associate County Attorney Marc S. Gentile for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.*

*Mercedes O. Chut for respondent-appellant.*

*Parker Poe Adams & Bernstein LLP, by Katherine S. Clarke, for guardian ad litem.*

TYSON, Judge.

Respondent-mother appeals from the trial court's order granting legal and physical custody of her minor daughters, A.O. and S.O., to Respondent-father and suspending visitation and all contact between Respondent-mother and her daughters. See N.C. R. App. P 42(b) (initials used to protect the identity of children). We affirm.

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I. Background

A.O. and S.O., along with a younger-sibling M.O., were initially adjudicated dependent resulting from Respondent-mother's mental health issues and improper care and discipline. Respondent-mother was diagnosed with bi-polar disorder, depression, anxiety, obsessive compulsive disorder, and attention deficit hyperactivity disorder. Respondent-mother received treatment in a methadone clinic for an opioid addiction. The three children's paternal aunt obtained guardianship over them on 21 August 2015.

Both the paternal aunt and Respondent-mother ignored visitation parameters by allowing Respondent-mother extensive, frequent, and overnight visitation with her three children. The trial court terminated the paternal aunt's guardianship on 5 October 2016 and granted legal and physical custody of A.O., S.O., and M.O. to Respondent-mother. The three children lived with Respondent-mother and her boyfriend, D.H.

A. M.O.'s death

On 24 December 2016, two-year-old M.O. died. Her injuries included "multiple hematomas to the scalp, a fractured spine, a lacerated aorta, a lacerated liver, and hematomas under the skin on her back." Respondent-mother stated M.O. had choked on a toy, which was wholly inconsistent with her injuries.

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M.O.'s injuries were not accidental, and her death was ruled to be a homicide. An aorta tear was the immediate cause of death. Respondent-mother's boyfriend, D.H., was charged in the death and later pleaded guilty to second-degree murder.

On 28 December 2016, Mecklenburg County Youth and Family Services ("YFS") filed a juvenile petition alleging four-year-old A.O. and six-year-old S.O. were dependent and neglected and obtained nonsecure custody. The petition alleged, *inter alia*: (1) Respondent-mother has an extensive history with YFS, with primary issues involving: substance abuse, inappropriate discipline, inappropriate supervision, lack of stable housing, and inappropriate care; (2) another child, M.O., had died from: "multiple hematomas to the scalp, a fractured spine, a lacerated aorta, a lacerated liver, and hematoma under the skin on her back"; (3) Respondent-mother's explanation did not support the injuries M.O. had sustained; (4) Respondent-mother and D.H. are being questioned by Charlotte-Mecklenburg Police Department homicide detectives; (5) Respondent-mother and her boyfriend D.H. were the only caregivers for M.O. as well as A.O. and S.O.; (6) there is only placement of the children with Respondent-mother's sponsor for a short period of time; and, (7) Respondent-father has not maintained a relationship with the children, visited the children, provided financially for the children, and has not responded to YFS' contacts.

A.O. and S.O. accused D.H. of inappropriately touching them while in Respondent-mother's custody sometime between August and December of 2016.

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While D.H. was incarcerated for the murder of Respondent-mother's child, she visited him twice at jail. During the jail visits, she told D.H. she did not believe the sexual abuse allegations her surviving children asserted against him. Respondent-mother also discussed what had happened between D.H. and M.O. and whether the child's death resulted from an accident or abuse.

During the conversation, Respondent-mother also stated she could not believe D.H. had "maliciously murdered" M.O. Respondent-mother was upset with YFS and D.H.'s family for not telling her about the allegation D.H. had raped and impregnated his sister. Respondent-mother told D.H. she had made two suicide attempts since M.O.'s death. Respondent-mother detailed how her new boyfriend had "whipped her ass" and given her a bump on her forehead.

In the only subsequent visit with D.H., Respondent-mother reported her new boyfriend had been locked up for assaulting her and she was no longer with him. Respondent-mother stated she had visited D.H. for closure, but did not believe anyone regarding M.O.'s death.

B. Adjudication and Disposition

The trial court adjudicated A.O. and S.O. as neglected and dependent juveniles on 20 March 2017. After a hearing on 19 April 2017, the trial court entered its disposition order on 9 May 2017. The trial court ordered continued physical custody of A.O. and S.O. with YFS; allowed Respondent-mother and Respondent-father

continued supervised visitation; directed Respondent-father and Respondent-mother to comply with the out-of-town family services agreement, ordered Respondent-father and Respondent-mother to complete a parental capacity evaluation; and, for Respondent-father to meet with his physician to determine if there are any non-marijuana ways to treat his medical issues. Respondent-mother sought services at Monarch Behavioral Health on 8 March 2017.

C. Respondent-mother's case plan

Respondent-mother's case plan directed her to obtain and maintain appropriate and stable income and housing, advise YFS of any people she brought into contact with the juveniles, maintain reasonable contact with the juveniles and her assigned YFS case worker, complete parenting education, engage in substance abuse treatment, and engage in mental health treatment.

By the time of the 16 August 2017 permanency planning hearing, Respondent-mother had: (1) completed the parenting classes; (2) cooperated with the random drug screens and produced negative results; (3) maintained consistent communication with YFS; (4) weekly supervised visits with A.O. and S.O. where she acted appropriately with both children; (5) secured proper housing; (6) complied with psychiatric treatment recommendations; and, (7) continued to be employed.

After the 1 December 2017 permanency planning hearing, Respondent-mother had found a new job and provided YFS with documentation of income. She had lost

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her apartment and was living in a motel, but had applied to the Charlotte Housing Authority for housing. The trial court further found Respondent-mother had continued to submit to random drug screens and tested negative, communicated regularly with YFS, and was receiving mental health services and taking prescribed medication from Monarch.

On 4 April 2018, Respondent-mother completed her Personal Comprehensive Evaluation. Respondent-mother was diagnosed with generalized anxiety disorder and an unspecified personality disorder. Respondent-mother was recommended to participate in psychotherapy.

Respondent-mother informed YFS she was injured and had lost her job. The trial court found she continued to comply with her case plan, but had displayed inappropriate behavior with A.O. and S.O. on visits including, *inter alia*, altercations with YFS staff and the foster mother, and had performed traumatizing inspections of A.O. and S.O.'s private areas during supervised visits.

At the 6 December 2018 permanency planning hearing, the trial court ceased reunification efforts with Respondent-mother. In April 2019, Respondent-mother's visitation was suspended for failure to comply with the mental health and substance abuse components of her case plan. The trial court found Respondent-mother was not be making reasonable progress on her case plan.

D. Respondent-father's case plan

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On 27 February 2017, YFS submitted a case plan to the Respondent-father of A.O. and S.O. Respondent-father had made little progress during early 2017, resulting in two letters from YFS regarding his non-compliance. In mid-July 2017 the Department of Human Services of Delaware County, Pennsylvania (“DHS”), completed Respondent-father’s home study. Respondent-father was living in a three-bedroom house with his two-year-old son. DHS found the home contained inadequate bedroom furnishings. DHS further found Respondent-father’s fourteen-year-old son was residing in foster care, with an open case since 2015. Respondent-father had relinquished his parental rights to this child in August 2015. Respondent-father had incurred “several General Protective Services investigations” regarding his fourteen-year-old child.

Respondent-father gradually provided information to YFS and attended hearings in 2017 and 2018. In 2019, YFS requested a home study on Respondent-father. In 2019, Respondent-father provided a facially-valid medical marijuana card. Respondent-father was unable to complete a parental capacity evaluation because S.O. and A.O. did not reside in Delaware County, Pennsylvania.

A YFS social worker visited Respondent-father’s home on 18 July 2018. She observed the home was physically appropriate, the children’s room was adequate, but observed little food at the home. When questioned by the YFS social worker, Respondent-father told her he spends seventy-five dollars a week on food.

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Respondent-father visited with A.O. and S.O. in his home from 28 June 2019 to 20 August 2019. At the 24 September 2019 planning hearing, Respondent-father was awarded legal and physical custody. Respondent-mother's visitation with and having any contact with her daughters was suspended. Respondent-mother appeals.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(4) (2019).

III. Issues

Respondent-mother argues the trial court's conclusions are not supported by findings that are based upon clear and convincing evidence. She also argues the trial court abused its discretion by placing A.O. and S.O. in the physical and legal custody of Respondent-father.

IV. Findings of Fact

A. Standard of Review

"Allegations of neglect must be proven by clear and convincing evidence. In a non-jury neglect adjudication, the trial court's findings of fact [if] supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings." *In re M.K.*, 241 N.C. App. 467, 470, 773 S.E.2d 535, 537-38 (2015) (citations omitted). "The trial court's conclusions of law are reviewable *de*



*novo* on appeal.” *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citations and internal quotation marks omitted).

B. Analysis

The trial court properly received into evidence the written reports prepared by YFS and the guardian *ad litem*. The trial court found the contents of their reports to be credible and incorporated them by reference into its order, based upon the sworn testimony of the YFS social worker and the guardian *ad litem* program supervisor. The trial court took judicial notice of the underlying file in this matter.

Respondent-mother argues several of the trial court’s findings of fact are unsupported by the evidence presented at the hearing. A permanency planning hearing is dispositional in nature. *See In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). The trial court is not bound by the formal rules of evidence and “may properly consider all written reports and materials submitted in connection with said proceedings.” *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003) (citations and internal quotation marks omitted). A trial court may “take judicial notice of earlier proceedings in the same case.” *In re W.L.M. & B.J.M.*, 181 N.C. App. 518, 523, 640 S.E.2d 439, 442 (2007) (citations omitted).

Respondent-mother’s challenged findings contained in the 13 November 2019 order appealed from are similar to the findings in the 9 September 2019 order and in

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the earlier disposition order. Respondent-mother had a statutory right to appeal the disposition order, but she failed to do so. *See* N.C. Gen. Stat. § 7B-1001.

The trial court found Respondent-mother had not complied with court orders regarding visitation and contact with A.O. and S.O., did not report allegations of sexual abuse to authorities, and continued to conduct herself at visits in a manner that caused additional problems for A.O. and S.O.

The trial court continued to deny Respondent-mother's visitation and disallowed contact between Respondent-mother and A.O. and S.O. Respondent-mother is free to continue working on her case plan to restore visitation and contact. Presuming without deciding, suspending all visitation and ordering no contact amounts to a *de facto* termination of Respondent-mother's parental rights, in violation of Chapter 7B of our General Statutes, Respondent-mother has not presented nor advanced any arguments to support this issue. This issue is abandoned. N.C. R. App. P. 28(a) ("Issues not presented and discussed in a party's brief are deemed abandoned.").

The findings were supported by competent evidence submitted by YFS and the guardian *ad litem*. The trial court found this report to be credible and took judicial notice in its order. Competent record evidence supports the contested findings. Respondent-mother's arguments are overruled and abandoned.

V. Legal and Physical Custody with Father

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Respondent-mother argues the trial court abused its discretion by awarding legal and physical custody of A.O. and S.O. to Respondent-father. Respondent-mother does not cite any authority to assert the trial court abused its discretion by awarding legal and physical custody to Respondent-father. “Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.” N.C. R. App. P. 28(b)(6). Respondent-mother’s argument is dismissed.

VI. Conclusion

The trial court’s findings are supported by clear and convincing evidence and those findings support the trial court’s conclusion to award legal and physical custody to Respondent-father. The trial court did not abuse its discretion when it concluded A.O.’s and S.O.’s best interest to award legal and physical custody to Respondent-father and in suspending Respondent-mother’s visitation. The trial court’s order is affirmed. *It is so ordered.*

AFFIRMED.

Judges STROUD and HAMPSON concur.

Report per Rule 30(e).