IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-2

No. COA20-298

Filed: 19 January 2021

Cumberland County, No. 18 JA 287

IN THE MATTER OF: N.A.

Appeal by Respondent-Mother from an Order entered 26 November 2019 by Judge Luis J. Olivera in Cumberland County District Court. Heard in the Court of Appeals 17 November 2020.

James D. Dill for petitioner-appellee Cumberland County Department of Social Services.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky Brammer, for respondent-appellant mother.

Christopher J. Waivers for guardian ad litem.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Respondent-Mother (Mother) appeals from the trial court's Initial Permanency Planning Order eliminating reunification from the permanent plan. The Record before us tends to show the following:

¶ 2 On 16 June 2018, Mother gave birth to Nancy[1] while Mother was incarcerated. Nancy's biological father was also incarcerated at her birth. On 3 July 2018, the Cumberland County Department of Social Services (DSS) filed a petition alleging Nancy to be neglected and dependent. On that same day, the trial court granted DSS an Order for Nonsecure Custody. Nancy remained in DSS custody until 15 October 2018 when the trial court adjudicated Nancy as neglected and conducted a temporary dispositional hearing and continued Nancy's custody with DSS. Nancy remained in DSS custody—through additional temporary disposition hearings and orders—until a 3 September 2019 Initial Permanency Hearing (Hearing). Both Mother and Nancy's father were present and represented by counsel at the Hearing.

¶ 3 On 26 November 2019, after the Hearing, the trial court entered its written Initial Permanency Planning Order (Order). In its Order, the trial court made the following relevant Findings: Mother received Suboxone treatments for her drug addiction, relapsed in the spring of 2019, and had three different jobs in the previous six months; the "Respondent Parents" were not making adequate progress to achieve a permanent plan of reunification; the parents' visitation with Nancy had become infrequent because the parents moved out of state together; reunification with the parents was no longer appropriate and was contrary to Nancy's health and safety;

[1] The parties stipulated to this pseudonym to protect the minor child's identity.

and the parents were not fit to care for Nancy, had acted in a manner "inconsistent with their constitutionally protected status as parents," and, thus, Nancy's return to parents would be contrary to her health, safety, and welfare. Based on these Findings, the trial court concluded the primary permanent plan "should be guardianship," and the secondary permanent plan "should be custody with other suitable persons concurrent with adoption." Accordingly, the trial court ordered Nancy remain in DSS custody and relieved DSS of further reunification efforts but allowed the parents some supervised visitation.

¶ 4 Mother filed a Notice to Preserve the Right to Appeal on 19 December 2019. She then filed written Notice of Appeal from the Initial Permanency Order to this Court on 27 February 2020. Mother's appeal, pursuant to N.C. Gen. Stat. § 7A-27(b)(2) and § 7B-1001(a)(5), is properly before this Court.

Issue

¶ 5 The dispositive issue on appeal is whether the trial court erred by not including reunification in the initial permanent plan and by not making Findings on whether Nancy could return to Mother within six months pursuant to N.C. Gen. Stat. § 7B-906.1(e).

Analysis

¶ 6 Mother contends N.C. Gen. Stat. § 7B-906.2(b) required the trial court to include reunification in its initial permanent plan and N.C. Gen. Stat. § 7B-

906.1(e)(1) required the trial court to make findings, at a hearing where the juvenile was not placed with the parent, as to whether it is possible for the child to be placed with the parent within six months.[2]

¶ 7 Chapter 7B provides for, "services for the protection of juveniles by means that respect . . . the juveniles' needs for safety, continuity, and permanence." N.C. Gen. Stat. § 7B-100(3) (2017).[3] Chapter 7B also establishes the "standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents." N.C. Gen. Stat. § 7B-100(4) (2017). When a trial court removes custody of the juvenile from the parents, "there shall be a review hearing designated as a permanency planning hearing" within 12 months from the date of the initial order. N.C. Gen. Stat. § 7B-906.1(a) (2017).

¶ 8 First, a trial court must adopt concurrent permanent plans consisting of a primary and secondary plan during the permanency planning stage. N.C. Gen. Stat. §§ 7B-906.2(a)-(b) (2017). In the child's best interest, the trial court can adopt two of

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[2] Mother also argues the trial court erred by not advising her of her right to appeal the trial court's visitation determination pursuant to N.C. Gen. Stat. § 7B-905.1(d) ("[i]f the court retains jurisdiction, all parties shall be informed of the right to file a motion for review of any visitation plan entered pursuant to this section."). Because we vacate the trial court's order and remand for other issues, we do not reach this issue.

[3] The General Assembly enacted amendments to Chapter 7B effective 1 October 2019. However, because the Initial Permanency Hearing took place before the amendments took effect, we apply the statutes as enacted and in effect on 3 September 2019.

the six statutory plans, including adoption, guardianship, reinstatement of parental rights, and reunification. N.C. Gen. Stat. § 7B-906.2(a) (2017). When deciding which plans to impose, Chapter 7B instructs the trial court as follows:

> At any permanency planning hearing, the 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 [N.C. Gen. Stat. §] 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. The court shall order the county department of social services to make efforts toward finalizing the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile.

Id. § 7B-906.2(b).

¶ 9 Our precedent—at least as it pertains to the statute in effect at the time of the 3 September 2019 hearing in this case—requires trial courts to include reunification as either a primary or secondary plan when the trial court determines the permanent plan for the first time. *In re M.T.-L.Y.*, 265 N.C. App. 454, 461-63, 829 S.E.2d 496, 502-03 (2019) (citing *In re C.P.*, 258 N.C. App. 241, 812 S.E.2d 188 (2018)). In the case of *In re C.P.*, the respondent-mother appealed the trial court's award of permanent guardianship of her child following the initial permanency planning hearing. *Id.* at 242-43, 812 S.E.2d at 189-90. The trial court held joint adjudicatory, initial disposition, and initial permanency planning hearings—a practice we held was appropriate. However, we also held, "reunification must be part of an initial

permanent plan." *Id.* at 245, 812 S.E.2d at 191. We explained: "[t]he statutory requirement that 'reunification shall remain' a plan presupposes the existence of a *prior concurrent plan which included reunification*." *Id.* (emphasis added). Indeed, this was the case even though the trial court had found the respondent-mother "presents a risk to the health and safety of the juvenile" and "reunification efforts . . . would be futile." *Id.* Moreover, *In re C.P.* controls even when the facts of a particular case do not include a joint adjudicatory, initial disposition, and initial permanency plan hearing. *In re M.T.-L.Y.*, 265 N.C. App. at 463-64, 829 S.E.2d at 503 ("that 'reunification must be part of an initial permanent plan' is not limited by its other procedural circumstances."). Therefore, at *any* permanent plan hearing where there has been no prior concurrent plan that included reunification, the trial court must include reunification in the permanent plan. *Id.*

¶ 10 Here, the trial court found Mother was not a "fit and proper person[] for the care, custody, or control of the juvenile" and reunification was no longer appropriate. However, there was no prior concurrent plan before the 3 September Hearing. Thus, as in *In re C.P.* and *In re M.T.-L.Y.*, the trial court was required to include reunification as part of the initial permanent plan when there had been no prior concurrent plan that included reunification. Accordingly, we must vacate the trial court's Order and remand with instructions to include reunification as either a primary or secondary plan. *Id.; In re C.P.,* 258 N.C. App. at 246, 812 S.E.2d at 192.

¶ 11 Next, N.C. Gen. Stat. § 7B-906.1(e)(1) requires the trial court, in any proceeding where the juvenile is not returned to the parent, to make findings as to "[w]hether it is possible for the juvenile to be placed with a parent within the next six months, and if not, why such placement is not in the juvenile's best interests." N.C. Gen. Stat. § 7B-906.1(e)(1) (2017). Again, *In re C.P.* provides binding precedent requiring the trial court to include such findings in a permanent plan where the child is not returned to the parent. 258 N.C. App. at 245-46, 812 S.E.2d at 191-92. There we addressed this specific issue and held, although the trial court made findings regarding the parent's shortcomings as a parent, "the court erred in not finding the key issues of whether it is possible for the child to be returned to her within six months . . . ." *Id.* at 246, 812 S.E.2d at 192.

¶ 12 Here, DSS and the guardian ad litem concede the trial court did not include any such finding. Therefore, the trial court erred in not including such a finding. *Id.* Accordingly, on remand, the trial court must include a finding on this issue if Nancy is not returned to Mother.

Conclusion

¶ 13 For the foregoing reasons, we vacate the trial court's Initial Permanency Planning Order and remand to the trial court to include reunification in the initial permanency plan and a finding on the issue of whether Nancy could return to Mother within six months.

VACATED AND REMANDED.

Chief Judge STROUD and Judge TYSON concur.

Report per Rule 30(e).