IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-324

No. COA20-826

Filed 6 July 2021

Union County, No. 19 JA 061

IN THE MATTER OF V.A.M., Jr.

Appeal by Respondent from order entered 3 August 2020 by Judge William F. Helms, III, in Union County District Court. Heard in the Court of Appeals 11 May 2021.

Perry, Bundy, Plyler, & Long, LLP, by Ashley J. McBride and Dale Ann Plyler, for Petitioner-Appellee.

Surratt Thompson & Ceberio PLLC, by Christopher M. Watford, for Respondent-Appellant.

Parker Poe Adams & Bernstein, LLP, by Kelsey Monk and C. Kyle Musgrove, for Guardian ad Litem.

COLLINS, Judge.

¶ 1 Respondent-Mother appeals a permanency planning order entered 3 August 2020 which, *inter alia*, awarded guardianship of her son Vince[1] to his paternal grandmother, prohibited Respondent from visitation with Vince until she verified her participation in mental health services and parenting classes, required Respondent

[1] We use a pseudonym to protect the identity of the juvenile. N.C. R. App. P. 42(b).

to pay the cost of any visitation which occurred, permitted the guardian to suspend visitation in certain circumstances, barred Respondent from contacting certain members of Vince's family, ceased efforts to reunify Vince with Respondent, and relieved the Union County Department of Social Services ("Petitioner") of further responsibility in this case. Respondent argues that the trial court violated Respondent's procedural due process rights and erred by ordering certain provisions concerning supervised visitation. Respondent has failed to preserve her constitutional procedural due process argument for appellate review. Respondent's challenge to the visitation provisions of the 3 August 2020 order has been mooted by the trial court's entry of a subsequent order. Respondent's appeal is dismissed.

I. Procedural History and Factual Background

¶ 2 On 10 April 2019, Petitioner filed a juvenile petition ("First Petition") alleging that Vince was a neglected and dependent juvenile. On 10 July 2019, the trial court adjudicated Vince neglected and placed him to the custody of Petitioner. Petitioner filed second and third juvenile petitions concerning Vince, which were subsequently dismissed.[2] In the course of this case, Vince has been subjected to at least five changes in his custody and visitation arrangements.

¶ 3 Throughout the pendency of this matter, Respondent has been appointed

[2] Petitioner voluntarily dismissed the second petition in September 2019 and the third petition in April 2020.

several attorneys, but each has been permitted to withdraw. Respondent has also sought multiple continuances, some of which the trial court has granted. In particular, the trial court continued the permanency planning hearing which resulted in the order on appeal from 10 June to 15 July 2020, at Respondent's request.

¶ 4 At 9:37 am on 15 July 2020, Respondent emailed a social worker involved in the case that she could not come to court at 9:30 am as scheduled because she had worked third shift and was attending parenting class. Respondent represented that she would be in court before 1:00 pm. When the case was called at approximately 11:00 am, Respondent was not present. Counsel for Petitioner informed the trial court of Respondent's email, but the trial court elected to proceed with the permanency planning hearing in Respondent's absence.

¶ 5 In the afternoon of 15 July 2020, Respondent appeared before the trial court and stated that she did not attend court in the morning because she was working third shift and attending a parenting class. Respondent also claimed that she was working as a food delivery driver with Postmates and that she was waiting on unemployment. The trial court stated to Respondent:

> I'm really not finding your reason for not being here credible. And I would also make the observation that there, I think, have been times when your failure to show up at the court time was probably a strategic delay to delay the resolution of this case. I've given you ample opportunity to participate.

> I have done everything I could to get you to accept the services of a lawyer. . . . You have repeatedly said that you do not wish to have a lawyer, that you wish to represent yourself. And I explained to you that if you did not have a lawyer after being offered one, that you would be held to the same standards as if you did have a[] lawyer.
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> I've still given you some accommodations in spite of that; however, I do also make the finding that you understand very well the process that we're undergoing. And I think . . . I best would characterize your understanding of the process is [that] you understand it, but you don't agree with it. And . . . that's not an option.

The trial court stated that it was "not persuaded . . . that [Respondent] had any reason other than unreasonable delay to not be here."

¶ 6 On 3 August 2020, the trial court entered[3] a permanency planning order appointing Vince's paternal grandmother as his guardian, prohibiting Respondent's visitation with Vince until she provided proof of her participation in mental health services and parenting classes, requiring Respondent to pay the costs of any visitation, permitting the guardian to suspend visitation, ceasing reunification efforts, relieving Petitioner of further responsibility in the matter, and prohibiting Respondent from contacting the paternal grandmother or Vince's father. The trial court also specifically found that

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[3] While the trial court rendered its order in open court on 15 July 2020, the record reflects that the order was not filed in writing by the clerk, and was therefore not entered, until 3 August 2020. *See Watson v. Price*, 211 N.C. App. 369, 370, 712 S.E.2d 154, 155 (2011) ("[A]n order is likewise entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.").

> [s]ometime after 2:00 p.m. on the day of [the] hearing, [Respondent] came to the courthouse and to the courtroom where the hearing was scheduled. She had not, in fact, worked third shift as she had conveyed to DSS, and gave no good cause for her failure to attend the hearing as scheduled.

¶ 7 In pro se motions seeking to vacate the permanency planning order and hold a new hearing, Respondent stated:

> I was subpoena[ed] to attend Juvenile court on July 15, 2020 at 9:00AM EST. I was not going to make court in time, so I reached out to Union County Social Worker Crystal Harris via email at 9:37AM EST explaining why I was not able to attend until 1:00PM EST. Crystal responded at 10:21AM EST stating my hearing starts at 11:00AM EST. I told her I will have to be there at 1:00PM EST due to working third shift and attending a mandatory parenting class at noon.

¶ 8 Respondent subsequently filed a notice of appeal from the trial court's 3 August 2020 order.

II. Discussion

A. 15 July 2020 Permanency Planning Hearing

¶ 9 Respondent first argues that the trial court violated her procedural due process rights by failing to either continue the 15 July 2020 permanency planning hearing or make other accommodations to receive Respondent's input.

¶ 10 To preserve an issue for appeal, a party "must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the

context." N.C. R. App. P. 10(a)(1). "[E]ven constitutional challenges are subject to the same strictures of Rule 10(a)(1)." *State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 305 (2019) (citations omitted).

¶ 11 Before the trial court, Respondent never raised the issue of her procedural due process rights. In both her email to the social worker and her later appearance before the trial court on 15 July 2020, Respondent offered no legal argument as to why the hearing should be continued or held open. In her post-hearing motion to dismiss the juvenile petition Respondent argued that Petitioner, not the trial court, had violated her constitutional rights. Respondent also filed post-hearing motions seeking to vacate the trial court's order and to extend the permanency planning hearing. In these motions, however, Respondent only generally asserted that the matter "needs to be heard again" and that the trial court was required "to allow a fair, unbiased hearing which [it] did not abide by."

¶ 12 In these circumstances, Respondent has failed to "present[] to the trial court a timely request, objection, or motion, stating the specific" procedural due process grounds for the ruling she desired, *see* N.C. R. App. P. 10(a)(1), and this issue is not preserved for appellate review.

¶ 13 We recognize that Respondent was proceeding pro se at the time of the 15 July 2020 permanency planning hearing. Nonetheless, our courts have consistently held that the Rules of Appellate Procedure "apply to everyone—whether acting *pro se* or

being represented by all of the five largest law firms in the state." *Bledsoe v. Cnty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999) (per curiam). Moreover, Respondent has been assigned counsel on multiple occasions yet chose to represent herself, most recently signing a waiver of her right to counsel on 5 February 2020.

B. Challenges to Visitation Provisions

¶ 14 Respondent next raises two challenges to the visitation provisions of the 3 August 2020 permanency planning order. First, Respondent argues that the trial court erred by directing Respondent to pay the costs of supervised visitation because the trial court's findings concerning Respondent's financial status were unsupported by competent evidence. Second, Respondent argues that the trial court's order must be reversed because it impermissibly allows the guardian to determine when Respondent may visit Vince and or to suspend visitation.

¶ 15 In its 3 August 2020 permanency planning order, the trial court ordered that

> [Respondent] shall not be allowed to have visitation with [Vince] until such [time] that she provides [the guardian] verification that she is engaged in Mental Health services and Parenting classes. At such time that [Respondent] provides valid proof of said participation she shall be allowed a minimum of one time per month supervised visitation at the Mecklenburg County supervised visitation center.
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> If [Respondent] does exercise visitation at the visitation center she shall behave appropriately and follow the restrictions of the visitation center. If her behavior is inappropriate, [the guardian] may suspend the visitation

> until such time that the juvenile's therapist deems it appropriate for her to resume her visitation.
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> [Respondent] shall be responsible for paying the cost associated with the services at the visitation center.

¶ 16 We must first determine whether Respondent's challenges to these provisions are moot. "A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Roberts v. Madison Cnty. Realtors Ass'n*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996) (citation omitted). "Whenever during the course of litigation it develops that . . . the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain an action merely to determine abstract propositions of law." *Simeon v. Hardin*, 339 N.C. 358, 370, 451 S.E.2d 858, 866 (1994) (citation omitted).

¶ 17 In a 31 December 2020 order,[4] the trial court ordered that no visitation occur

[4] The 31 December 2020 order was not initially included in the record on appeal, which was docketed on 16 November 2020. The Guardian ad Litem filed a "Motion to Submit a Rule 11(C) Supplement to the Record," and a second corrected version of that motion, seeking to incorporate the 31 December 2020 order into the record. Respondent did not file a response. Rule 11 does not apply in the current situation but we treat the Guardian ad Litem's motion as a motion to add additional portions of the trial court record to the record on appeal, pursuant to N.C. R. App. P. 9(a)(5)(b), and grant the motion. *See* N.C. R. App. P. 9(a)(5)(b) ("On motion of any party or on its own initiative, the appellate court may order additional portions of a trial court record or transcript sent up and added to the record on appeal.").

until the trial court reconsidered the issue.[5] This eliminated the visitation provisions of the 3 August 2020 order, and a decision on Respondent's challenges to those provisions would amount to a determination "which, when rendered, cannot have any practical effect on the existing controversy." *Roberts*, 344 N.C. at 398-99, 474 S.E.2d at 787 (citation omitted).

¶ 18 Respondent argues that this Court should nevertheless review these issues because they are capable of repetition, yet evading review. An issue is

> "capable of repetition, yet evading review," when the underlying conduct upon which the relevant claim rests is necessarily of such limited duration that the relevant claim cannot be fully litigated prior to its cessation and the same complaining party is likely to be subject to the same allegedly unlawful action in the future.

Chavez v. McFadden, 374 N.C. 458, 467-68, 843 S.E.2d 139, 147 (2020) (citations omitted). In this case, Respondent complains of the visitation provisions ordered by the trial court in the 3 August 2020 order. Respondent has not shown that she is "likely to be subject to the same allegedly unlawful action in the future." *See id.* Respondent speculatively argues that "there is nothing preventing the trial court"

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[5] "As a general rule, once a party gives notice of appeal, such appeal divests the trial court of its jurisdiction[.]" *RPR & Assocs., Inc. v. Univ. of N.C. Chapel Hill*, 153 N.C. App. 342, 346, 570 S.E.2d 510, 513 (2002) (citations omitted). During an appeal of an order entered during an abuse, neglect, or dependency proceeding, however, the trial court generally continues to exercise jurisdiction, may conduct further hearings, and may "[e]nter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile." N.C. Gen. Stat. § 7B-1003 (2020).

from reimposing the challenged visitation provisions. But because the trial court maintains broad discretion in crafting a visitation plan for the juvenile, *see* N.G. Gen. Stat. § 7B-905.1, Respondent cannot show that the trial court is *likely* to impose the same allegedly unlawful visitation provisions as this case proceeds.

¶ 19 Respondent also argues that this Court should address her challenges to the visitation provisions in the 3 August 2020 order because they implicate the public interest.

> A court may consider a case that is technically moot if it "involves a matter of public interest, is of general importance, and deserves prompt resolution." However, this is a very limited exception that our appellate courts have applied only in those cases involving clear and significant issues of public interest.

Anderson v. N.C. State Bd. of Elections, 248 N.C. App. 1, 13, 788 S.E.2d 179, 188 (2016) (citations omitted).

¶ 20 Respondent contends that the "limits of a guardian's power, their role in interacting with a parent, and what authority properly remains with a court" must be resolved "clearly and with a universal application." The need for clarity and uniform application applies to numerous legal questions that would otherwise be moot. Respondent has not shown that the specific issues she presses rise to the level of such general importance as to merit immediate review.

¶ 21 Because the "questions originally in controversy between the parties are no

longer at issue," *Simeon*, 339 N.C. at 370, 451 S.E.2d at 866, we dismiss Respondent's arguments concerning the visitation provisions in the 3 August 2020 order as moot.

III. Conclusion

¶ 22 Because Respondent failed to preserve her constitutional challenge to the 15 July 2020 permanency planning hearing and subsequent order for appellate review, we dismiss those arguments. Because Respondent's challenges to the visitation provisions of the trial court's permanency planning order are moot, we dismiss those arguments as well.

DISMISSED.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).