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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-863

No. COA21-676-2

Filed 20 December 2022

Stokes County, Nos. 19 JA 92, 19 JT 92

IN THE MATTER OF: T.M.

Appeal by respondent from orders entered 30 July 2021 and 2 August 2021 by Judge Thomas B. Langan in Stokes County District Court. This case was originally heard in the Court of Appeals 12 July 2022. *In re T.M.*, __ N.C. App. __, 874 S.E.2d 924, 2022-NCCOA-543 (2022). Upon remand from the Supreme Court of North Carolina.

Jennifer Oakley Michaud for petitioner-appellee Stokes County Department of Social Services.

Administrative Offices of the Courts, by GAL Appellate Council James N. Freeman, Jr., for guardian ad litem.

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

TYSON, Judge.

¶ 1 The Supreme Court of North Carolina remanded this case for this Court to reconsider “respondent-mother’s appeal without reliance upon N.C.G.S. § 7B-101(18a) (2021),” a statutory subsection defining the term “relative” with respect to

a juvenile alleged to be abused, neglected, or dependent within the scope of N.C. Gen. Stat. § 7B (2021).

¶ 2 Respondent-Mother (“Respondent”) appeals from the trial court’s permanency planning order and from an order terminating her parental rights. We affirm in part, vacate in part, and remand.

I. Background

¶ 3 The facts underlying the permanency planning order and order terminating Respondent’s parental rights are more fully set forth in this Court’s prior opinion, *In re T.M.*, __ N.C. App. __, 874 S.E.2d 924, 2022-NCCPA-543 (2022).

¶ 4 “Terry” was born on 9 October 2019. *See* N.C. R. App. P. 42(b) (pseudonyms are used to protect the identity of juvenile). Respondent tested positive for Benzodiazepines, Barbiturates, Buprenorphine, and THC at Terry’s birth. Terry’s umbilical cord was also tested and found to be positive for the presence of Barbiturates, Buprenorphine, and THC. Stokes County Department of Social Services (“DSS”) received a report on 10 October 2019 about Respondent’s positive drug test result and on 16 October 2019 about Terry’s umbilical cord’s positive test result.

¶ 5 Hospital staff observed Respondent and Terry’s father fighting at the hospital and both of them were believed to be under the influence of illicit substances. While in the hospital, Terry experienced difficulties learning to feed. Respondent missed

several of Terry's feeding times, as she was smoking cigarettes outside of the hospital.

¶ 6 Terry was placed in non-secure custody upon the filing of a juvenile petition on 17 October 2019. Terry had remained hospitalized in the neonatal intensive care unit where he experienced tremors from withdrawal, was restless, and cried if he was not held. Terry was discharged from the hospital on 29 October 2019 to a foster home, where he has remained throughout the pendency of this action.

¶ 7 Respondent and Terry's father consented to Terry being adjudicated as a neglected juvenile on 21 November 2021 because of their substance abuses. Ginger and Scott Lasher, Terry's paternal grandmother and step-grandfather, expressed interest in providing a home placement for Terry. Nicole and Craig Jacobs, Respondent's step-cousin and step-cousin-in-law, also expressed interest.

¶ 8 Respondent initially did not want Terry to be placed with either the Lashers or the Jacobs. Respondent opposed the Lashers because they lived in Texas and opposed the Jacobs because they had a hostile relationship with Respondent's family. Respondent entered into a case plan with DSS with reunification as the permanent plan.

¶ 9 At the 17 July 2020 permanency planning hearing, the trial court received evidence Respondent had completed three out of nineteen possible visits with Terry between 4 November 2019 and 15 January 2020. Respondent has tested positive for illicit substances on four out of the seven DSS tests since 27 February 2020.

Respondent attended eleven of sixteen parenting classes and completed one of the two sessions required to complete her psychological evaluation.

¶ 10 Respondent failed to attend her comprehensive clinical assessment for mental health and substance abuse. The trial court found both parents had failed to make reasonable progress with their parenting plans and changed the primary permanent plan to adoption with a secondary permanent plan of reunification.

¶ 11 In August of 2020, Respondent was incarcerated for a probation violation. DSS filed a petition to terminate Respondent's parental rights on 28 September 2020. Respondent filed a motion for the court to conduct an inquiry into the suitability of Terry's placement with the Jacobs or Lasher families prior to the permanency planning hearing.

¶ 12 The trial court held the permanency planning hearing on 22 April 2021. The trial court found Respondent had refused to screen for illegal drugs from 2 October 2020 until 22 April 2021. The trial court ordered Respondent to rapid screen for controlled substances on 22 April 2021. Respondent's test was positive for THC, morphine, and methamphetamines.

¶ 13 The court again found in the permanency planning order neither parent had made reasonable progress on their case plans. The trial court found the Texas interstate compact placement of children study for the Lashers had expired. The trial court further found the Jacobs are not biologically related to Terry. The trial court

held it would be in Terry’s best interests to remain in foster care and denied Respondent’s motion for placement with a relative.

¶ 14 At the conclusion of a hearing on the termination petition on 23 April 2021, the trial court entered an order terminating the parental rights of both Respondent and Terry’s father. Respondent appeals. Terry’s father did not appeal and the termination order is final against him.

¶ 15 Reviewing Respondent’s appeal, this Court affirmed the trial court’s decision denying placement of Terry with the Jacobs, holding that step-cousins were not within the scope of N.C. Gen. Stat § 7B-101(18a) (2021). This Court further held that the trial court erred in failing to give the Lashers relative priority placement consideration, and vacated and remanded the order for the trial court to afford that consideration with respect to the Lashers.

¶ 16 Upon remand from our Supreme Court, we review Respondent’s appeal without reliance on N.C. Gen. Stat. § 7B-101(18a) (2021).

II. Issues

¶ 17 Respondent argues the trial court erred by denying her motion for relative placement.

III. Standard of Review

¶ 18 This Court’s “review of a permanency planning order entered pursuant to N.C. Gen. Stat. § 7B-906.1 is limited to whether . . . competent evidence in the record . . .

support[s] the findings and whether the findings support the conclusions of law.” *In re D.S.*, 260 N.C. App. 194, 196, 817 S.E.2d 901, 904 (2018) (citation and internal quotation marks 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) (internal quotation marks and citation omitted).

IV. Relative Placement

A. Paternal Grandmother’s Priority

¶ 19 This Court has previously held, independent of Section 7B-101(18A), that the trial court had failed to give the statutory priority for Terry’s placement in the home with his paternal grandmother and step-grandfather. No finding of fact or conclusion indicates placement with the paternal grandmother is not in Terry’s best interest. As Terry’s paternal grandmother, she was the closest relative actively seeking placement or adoption. The trial court should have given her the statutory priority for Terry’s placement in the permanency plan. Upon remand, DSS is directed to conduct another home review of the Lashers’ residence for further consideration of their “safe home” and suitability for placing Terry with them.

¶ 20 This Court previously held the trial court failed to give the Lashers the priority relative placement consideration under N.C. Gen. Stat. § 7B-903(a1) (2021). The Termination of Parental Rights Order was vacated in part and remanded for due consideration to the Lashers as Terry’s nearest relatives for permanent placement

plan.

B. The Jacobs' Asserted Priority

¶ 21 Respondent argues the trial court erred by denying the Jacobs' relative placement. The record does not disclose whether Respondent is related to Mrs. Jacobs solely by marriage or is a biological relative. Our General Statutes provide:

In placing a juvenile in out-of-home care under this section, [this] court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile.

N.C. Gen. Stat. § 7B-903(a1).

¶ 22 N.C. Gen. Stat. § 7B-903(a1) requires the court “shall first consider” placement with a relative if they are “willing and able to provide proper care and supervision of the juvenile in a safe home.” *Id.* Respondent, DSS, and the Guardian ad litem all concede there is no definition of “relative” in our General Statutes.

¶ 23 Black's Law Dictionary defines “relative” as “[a] person connected with another by blood or affinity; a person who is kin with another.” *Relative, Black's Law Dictionary* (11th ed. 2019). Respondent seeks an expansive view of the term “relative” to include the child of her stepmother's sister. Respondent points to several other secondary sources to support her position, none of which is binding upon this Court.

¶ 24 Our Supreme Court has held: “the trial court should make findings of fact addressing ‘the competing goals of (1) preserving the ties between the children and *their biological relatives*; and (2) achieving permanence for the children as offered by their prospective adoptive family.” *In re S.D.C.*, 373 N.C. 285, 290, 837 S.E.2d 854, 858 (2020) (citation omitted) (emphasis supplied). Our Supreme Court has specifically pointed to the “ties between children and their biological relatives.” *Id.* The Jacobs’ are not biological relatives, by contrast, the Lashers include the mother of Terrys’ biological father. Respondent’s argument is overruled. We affirm the Termination of Parental Rights Order’s findings regarding excluding placement with the Jacobs.

V. Conclusion

Respondent failed to appeal any of the findings or other conclusions of law relating to the termination of her parental rights. All findings and conclusions supporting termination of her rights are affirmed. Father did not appeal and the termination order is final to his parental rights.

¶ 25 The trial court’s order is vacated in part and this matter is remanded for further proceedings and findings in conformity with the familial priority mandates of the statute, N.C. Gen. Stat. § 7B-903(a1), and our Supreme Court’s decision in the case of *In re S.D.C.*, 373 N.C. at 290, 837 S.E.2d at 858. *It is so ordered.*

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

IN RE T.M.

2022-NCCOA-863

Opinion of the Court

Judge INMAN and GORE concur.

Report per Rule 30(e).