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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-33

Filed 21 November 2023

Durham County, No. 21 JA 155

IN THE MATTER OF:

I.M.J.

Appeal by respondent-mother from order entered 26 September 2022 by Judge Shamieka L. Rhinehart in Durham County District Court. Heard in the Court of Appeals 9 October 2023.

Bettyna Belly Abney for the Petitioner-Appellee Durham County Department of Social Services.

Christopher E. Rhodes, Jr. for the Guardian ad Litem.

Sydney Batch, for the Respondent-Appellant Mother.

STADING, Judge.

Respondent-mother (“Mother”) appeals from the trial court’s dispositional order adjudicating her minor child a dependent juvenile. For the reasons set forth below, we affirm the order.

I. Background

“Ivy”¹ was born to Mother and her father² in January 2021. On 5 December 2021, petitioner Durham County Department of Social Services (“DSS”) received a report that Mother arrived at the emergency room with Ivy. Hospital staff reported that Mother was acting “psychotic,” saying she was “brought . . . to the hospital to die and she knew it and she was scared[.]” Mother informed the hospital psychiatrist that she was bipolar, and the psychiatrist determined Mother needed to be involuntarily committed. A social worker arrived at the hospital to discuss potential, alternative caregivers for Ivy, but Mother would not provide one. The social worker reported that Mother “was irritable and delusional,” and began to chant about demons in the hospital. Mother’s chanting went on periodically for hours.

Hospital staff noted several concerns relating to Mother’s ability to care for Ivy at this time. The report indicated that Ivy’s hair was unkept and matted, the formula Mother brought spoiled, Ivy’s diaper was heavy with urine, her clothing was soiled, and she ate “ravenously” when nurses fed her. The nursing staff previously changed Ivy’s diaper which was soiled again but Mother would not allow them to change it a second time. The social worker was advised that Mother would be involuntarily committed, and that Ivy required an alternative placement. DSS attempted to locate

¹ The parties have stipulated to the use of this pseudonym to protect the identity of the minor child. N.C. App. P. 42(b).

² Ivy’s father is not a party to this appeal.

an alternative placement for Ivy and eventually determined that Mother's sister would be appropriate. However, before DSS could place Ivy with the sister, a DSS supervisor implemented a "12-hour hold" on Ivy due to Mother's involuntary commitment to an inpatient healthcare facility and resulting inability to make the decision to place Ivy with her sister.

On 6 December 2021, DSS took Ivy into nonsecure custody and filed a petition alleging that Ivy was neglected and dependent. The petition cited Mother's history of mental health and stated Mother neglected Ivy by "creat[ing] an environment that is injurious to the child's welfare." The petition also alleged Ivy was dependent due to Mother's hospitalization. After the hospital released Mother on 16 December 2021, DSS and Mother discussed placing Ivy with her father. On 29 December 2021, DSS completed a home study and approved the placement. However, the father was convicted of habitual impaired driving and required to serve an active prison sentence. His inability to care for the child resulted in DSS returning Ivy to foster care, and she was later placed with her paternal grandparents.

On 8 March 2022, DSS filed a supplemental petition, realleging that Ivy was neglected and dependent. The trial court held the adjudicatory hearing and entered a written order on 1 July 2022. In its order, the trial court made findings of fact consistent with the events described above, and adjudicated Ivy dependent but not neglected. The trial court held the dispositional hearing on 25 July 2022 and entered a written order on 26 September 2022. The dispositional order incorporated the

factual findings from the 1 July 2022 adjudicatory order and made additional findings that Mother participated in a Child Family Team meeting, scheduled a Parental Capacity Evaluation, was cooperating with DSS, and sought some treatment for her diagnosis of bipolar disorder. The trial court also found that Mother completed a Comprehensive Clinical Assessment (“CCA”) confirming her diagnosis as “Bipolar I Disorder and Adjustment Disorder with Depressive Mood,” and had been prescribed medication for treatment. The trial court further noted that—although Mother engaged in therapy—the therapy failed to adequately address her mental health and its impact on her ability to care for Ivy. At the dispositional hearing, Mother’s therapist, Dr. Hills testified that she met with Mother on 14 January 2022, 20 January 2022, and 3 February 2022. While Dr. Hills believed Mother made progress, the trial court found Dr. Hills did not have adequate experience in dealing with parents involved in abuse, neglect, and dependency court actions or custody issues. The trial court determined that if Mother were to continue seeing Dr. Hills, it “need[ed] to see that the counseling/therapy and treatment plan addresses the mother’s mental health issues.”

The trial court ultimately concluded that Ivy needed care and supervision Mother could not provide, DSS was making reasonable efforts to eliminate the need for Ivy to remain placed outside Mother’s home, and it was in Ivy’s best interests to remain in nonsecure custody with her paternal grandparents. The trial court ordered Mother to continue participating in mental health treatment “[t]o remediate or

remedy behaviors or conditions that led to or contributed to the child’s adjudication or to the court’s decision to remove custody of the child from” Mother. The trial court also granted Mother two hours of weekly, supervised visitation with Ivy. On 19 October 2022, Mother timely filed her notice of appeal of the dispositional order.

II. Jurisdiction

This Court has jurisdiction to hear this appeal pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2021).

III. Analysis

On appeal, Mother asserts that the trial court abused its discretion by (1) concluding it is in Ivy’s best interests to remain in custody of DSS and placed with her paternal grandparents, and (2) concluding Mother’s visits with Ivy should remain supervised. A proceeding to protect an allegedly abused, neglected, or dependent juvenile requires two hearings: (1) an adjudicatory hearing to determine if a child is abused, neglected, or dependent, and (2) a determination of the child’s placement based on the best interests of the child. *In re K.W.*, 272 N.C. App. 487, 493, 846 S.E.2d 584, 589 (2020); N.C. Gen. Stat. §§ 7B-801, 7B-901 (2021). In the matter presently before us, Mother’s challenge is limited to the trial court’s conclusions of law and disposition—not the adjudication of Ivy as dependent.

“The standard of review that applies to an assignment of error challenging a dispositional finding is whether the finding is supported by competent evidence. A finding based upon competent evidence is binding on appeal, even if there is evidence

which would support a finding to the contrary.” *In re B.W.*, 190 N.C. App. 328, 332, 665 S.E.2d 462, 465 (2008) (citation, quotation marks, and brackets omitted). “For challenged conclusions of law, we determine whether the trial court’s facts support the challenged conclusion.” *In re B.C.T.*, 265 N.C. App. 176, 185, 828 S.E.2d 50, 57 (2019). The trial court’s unchallenged dispositional findings “are deemed to be supported by the evidence and are binding on appeal.” *In re N.L.M.*, 283 N.C. App. 356, 374, 873 S.E.2d 640, 650 (2022) (internal quotation marks and citations omitted). Moreover, the trial court has broad discretion in ordering appropriate dispositional alternatives based on the best interests of the child. *In re B.W.*, 190 N.C. App. at 336, 665 S.E.2d at 467; *see* N.C. Gen. Stat. § 7B-903(a) (2021). “[T]he best interests determination during the disposition phase is a matter left to the sound discretion of the trial court.” *In re A.J.L.H.*, 384 N.C. 45, 48, 884 S.E.2d 687, 690 (2023). “We review a dispositional order only for abuse of discretion.” *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (citation omitted). “An abuse of discretion occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (citation omitted).

Likewise, when determining custody and visitation, the trial court must consider the best interests of the child. N.C. Gen. Stat. § 7B-905.1 (2021). “[A]ppellate courts review the trial court’s dispositional orders of visitation for an abuse of discretion, with an abuse of discretion having occurred only upon a showing that the trial court’s actions are manifestly unsupported by reason.” *In re L.E.W.*,

375 N.C. 124, 134, 846 S.E.2d 460, 468 (2020).

A. Custody

First, Mother argues the trial court erred in failing to return custody of Ivy to her at the dispositional hearing, and specifically challenges the trial court's first five conclusions of law. In making her argument, Mother highlights favorable evidence in the record which supports returning Ivy to her care. We note that Mother does not challenge any of the trial court's findings of fact, and therefore, they are binding on appeal. *See In re N.L.M.*, 283 N.C. App. at 374, 873 S.E.2d at 650.

The challenged dispositional conclusions state:

1. The child needs more adequate care or supervision or needs placement.
2. Durham DSS has made reasonable efforts to eliminate the need for the child to remain outside the home; however, placement outside the home is in the best interests of the child. Durham DSS should continue to make reasonable efforts to eliminate the need for the child to live outside the home.
3. It is contrary to the best interests of the child and the health and safety of the child for the child to be returned to the father's home or the mother's home at this time.
4. It is in the best interests of the child that the child, [Ivy], shall continue in the legal custody of the Durham County Department of Social Services with placement authority in that agency including the authority to place her in foster care or in an approved DSS' [sic] kinship placement. Durham DSS is authorized to consent to medical, educational (daycare), and developmental services, including emergency, routine, and evaluations.

5. It is in the best interest of the child that she continues to be placed in the court-approved placement with her paternal grandparents[.]

DSS initially removed Ivy from Mother's custody following Mother's involuntary commitment stemming from a manic episode relating to her bipolar diagnosis. The trial court found that Mother "has a serious mental health diagnosis" with "a history of psychiatric hospitalizations, and she has little insight regarding her diagnosis of bipolar and its symptoms." The trial court considered both the events leading up to the involuntary commitment and the steps Mother took to address the court's concerns. The findings show, prior to the hospitalization, Mother had difficulty caring for Ivy. When Mother and Ivy arrived at the hospital on 5 December 2021 Ivy's diaper was soiled, her hair was matted, and her formula had gone bad. Moreover, Mother's mental illness made it difficult to cooperate with DSS and arrange childcare for Ivy prior to Mother's commitment. Mother "did not want family to be notified" of her hospitalization and rejected proposed kinship placements when speaking to social workers. As such, the trial court also found that Mother's mental health "impaired her ability to properly supervise, care for[,] or protect" Ivy.

Despite the resulting custody determination, the trial court's findings show that it considered Mother's progress following her involuntary commitment. The trial court found that Mother participated in the initial Child and Family Team meeting, scheduled a Parental Capacity Evaluation, and, through at least 24 February 2022, maintained her prescribed medications. It also found that Mother had maintained

stable housing and income. However, the trial court determined that Mother's therapeutic treatment following her hospitalization did not adequately "remediate or remedy behaviors or conditions that led to or contributed to [Ivy's] adjudication or to the court's decision to remove custody of [Ivy] from the mother[.]"

The trial court considered Dr. Hills's testimony that Mother had "a lot of clarity and a kind of acceptance" regarding the current situation. The trial court found that "Dr. Hills has little to no experience with providing individual counseling to parents involved in A[buse]/N[eglect]/D[ependency] court actions or custody issues." The trial court ultimately determined that, while Mother had engaged in therapy, the treatment did not properly address Mother's mental health issues. The trial court also found Ivy was doing well in her placement with her grandparents. Based on the foregoing dispositional findings and adjudicatory findings incorporated into the dispositional order, the trial court produced the challenged conclusions of law.

As Mother notes, there is favorable evidence in the record that could support a disposition returning Ivy to Mother's care, however our Court does not reweigh dispositional evidence on appeal. *See In re N.B.*, 240 N.C. App. 353, 359, 771 S.E.2d 562, 566 (2015) ("It is the province of the fact-finder to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom." (internal quotation marks and citations omitted)). Nor does Mother challenge the trial court's findings of fact supporting the ordered disposition. *See In re B.W.*, 190 N.C. App. at

336, 665 S.E.2d at 467.

Given the “broad discretion” granted to the trial court in this context, and considering its findings of fact, discussed at-length above, which undergird the challenged conclusions of law, we cannot say that “the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (citation omitted). Accordingly, the trial court did not abuse its discretion when it concluded it was in Ivy’s best interests to remain with her paternal grandparents while Mother sought additional mental health treatment and worked with DSS to “remediate or remedy [the] behaviors or conditions that led to or contributed to [Ivy’s] adjudication [and] to the court’s decision to remove custody of” Ivy from Mother. *See id.*

B. Visitation

Mother next argues that the trial court erred by abusing its discretion when it ordered that Mother’s visitations should be supervised. Mother contends that the trial court’s seventh conclusion of law is “not based on competent evidence” and asserts visitation should have been unsupervised. The challenged conclusion states “[v]isitation with the respondent mother and the child shall be two (2) hours weekly; supervised by Durham DSS or a designee at Durham DSS or in the community.” Here, Mother references competing evidence supporting an alternate outcome. However, she does not challenge any dispositional finding of fact, and consequently those findings are binding on appeal. *See In re N.L.M.*, 283 N.C. App. at 374, 873

S.E.2d at 650. In this circumstance, we review the trial court's dispositional order of visitation for an abuse of discretion. *In re K.W.*, 272 N.C. App. at 495, 846 S.E.2d at 590 (citation omitted).

As discussed *supra*, the trial court produced findings of fact supporting the conclusions of law resulting in the custody determination of the disposition order. Such findings likewise support the challenged conclusion of law detailing the terms of visitation. Pertinent to this challenged conclusion of law, the findings provided that at the time of Mother's manic episode at the hospital, Ivy's diaper had not been changed frequently enough, her bottle was dirty, her formula was not refrigerated and "had gone bad," and her hair was "matted upon arriving to the hospital." Additionally, the trial court's order contained findings that Mother had prior psychiatric hospitalizations for which she was prescribed medications, but she had ceased to take them. The foregoing unchallenged findings, among other relevant findings, underlie the trial court's conclusion of law ordering supervised visitation. Here, the trial court's decision to order supervised visitation, rather than unsupervised visitation, does not show a determination "so arbitrary that it could not have been the result of a reasoned decision." *Id.*

IV. Conclusion

The trial court did not abuse its discretion in arriving at the challenged conclusions of law regarding Ivy's custody and Mother's visitation. The dispositional order is affirmed.

IN RE: I.M.J.

Opinion of the Court

AFFIRMED.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).