IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-160

Filed 2 January 2024

Johnston County, No. 21 JA 122

IN THE MATTER OF: S.W.

Appeal by respondents from orders entered 7 June 2022 and 9 September 2022 by Judge Joy A. Jones in Johnston County District Court. Heard in the Court of Appeals 29 November 2023.

Deputy Parent Defender, Annick Lenoir-Peek and Parent Defender, Wendy C. Sotolongo, for respondent-appellant mother.

Vitrano Law Offices, PLLC, by Sean P. Vitrano, for respondent-appellant father.

Mobley Law Office, P.A., by Marie H. Mobley, for respondent-appellee Guardian ad Litem.

Jennifer S. O'Connor for petitioner-appellee Johnston County Department of Social Services.

PER CURIAM.

Mother has one adult biological son, T.W., from a previous relationship. Together, Mother and Father (collectively "Parents") adopted six children. Four of the children, including S.W. ("Spring")[1], are minors; Spring is the youngest child.

Following adjudication hearings on 10 November 2021 and 24 March 2022, all four minor children were adjudicated to be neglected and dependent. The three older minor children were also adjudicated to be abused because Parents failed to protect them from sexual abuse by T.W. At the 20 July 2022 disposition hearing, the trial court placed Spring in the custody of Johnston County Department of Social Services ("DSS"), relieved DSS of reasonable reunification efforts with Parents, and ordered no visitation between Spring and Parents without the approval of Spring's therapist.

Parents both filed writs of *certiorari* with this Court. We accept those petitions and consider their appeals below.

I. Analysis

On appeal, Parents contest only Spring's adjudication and disposition order; they do not appeal the other children's adjudication and disposition orders. We address each issue regarding Spring's case in turn.

A. Adjudication Order

1. Findings of Fact

[1] A pseudonym

As a preliminary matter, Parents contest a number of findings of fact which refer to "the children," arguing they are overbroad and not applicable to Spring.

Even if some challenged findings of fact are not supported by evidence, "erroneous findings unnecessary to the [adjudication] determination do not constitute reversible error" if there are "ample other findings of fact" to support the determination. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006).

In this case, we need not address Parents' challenged findings of fact that are unnecessary to Spring's adjudication determination, as there are sufficient unchallenged findings to support Spring's adjudication as dependent, discussed *infra*.

2. Spring's Dependency Adjudication

Parents contest the trial court's adjudication of Spring as a dependent juvenile. Father argues both he and Mother were able to provide care and supervision to Spring, and Mother argues the findings of fact did not support a dependency adjudication for Spring.

The definition of "dependent juvenile" applicable here is "[a] juvenile in need of assistance or placement because . . . the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2022). "Under this definition, the trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406.

In this case, the trial court made fifty-five findings of fact but failed to expressly list any conclusions of law. However, Finding of Fact 55 ("[Father] and [Mother] were not able to provide proper care and did not have alternative care arrangements for the children") is more appropriately classified as a conclusion of law regarding Spring's dependency than as a finding of fact; thus, we will review Finding of Fact 55 as a conclusion of law. *See In re H.P.*, 278 N.C. App. 195, 206, 862 S.E.2d 858, 868 (2021). "We review the trial court's conclusions of law to determine if they are supported by the trial court's findings of fact, which must be founded upon competent evidence." *Id.*

Here, we conclude there are sufficient findings of fact to support this conclusion of law, and there is competent evidence to support those findings of fact. First, Parents' inability to provide care or supervision for Spring is supported by the following unchallenged Findings of Fact:

> 38. … [Parents] indicated that they had taken steps so that there would be no contact between the children and [T.W., the older biological brother]; however, the family had a "movie night" whereby [T.W.] was in the room with the other children.
>
> 41. … [The social worker] met with [Spring] and looked at [her] phone. On the phone, [the social worker] found anime porn and an OnlyFans account, with [Spring's] picture. [Spring] testified that [T.W.] had used her phone and put the account on the phone.
>
> 52. The Court finds that a pattern has emerged in that if an adopted child discloses any wrongdoing, sexual or otherwise, by [T.W.], [Parents] would place the child who

> disclosed outside of the home and leave [T.W.] in the residence with the other children. [Parents] did not take any action to correct the behavior and actions of [T.W.], who was [Mother's] biological child. The youngest adoptive child, [Spring], who has not made any disclosures, appears to be a favorite of [Parents].

These findings indicate Parents cannot provide a safe environment in which to care for Spring and they do not properly supervise Spring, thus allowing her to be exposed to T.W. and his inappropriate behavior. These findings are founded upon competent evidence from the record and hearing transcripts.

Second, the finding that Parents lacked available alternative child care arrangements is supported by Finding of Fact 43, which found that Father and Mother were "provided an opportunity to create alternative plans [after Spring's temporary safety provider was no longer willing or able to provide care for her and her sister] but were unable to do so." This finding was founded upon competent evidence from the record and hearing transcripts.

Thus, we hold there is sufficient evidence to satisfy both prongs of the "dependent juvenile" definition. Accordingly, we affirm the adjudication order.

B. Dispositional Order

1. Elimination of Reunification Efforts

Parents argue the trial court abused its discretion in eliminating reunification efforts because the evidence did not show aggravated circumstances.

Our Supreme Court has stated the following about the appropriate standard

of review in these cases:

> "The trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed for abuse of discretion." *In re A.P.W.*, 378 N.C. at 410, 861 S.E.2d at 825–26. "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). "In the rare instances when a reviewing court finds an abuse of ... discretion, the proper remedy is to vacate and remand for the trial court to exercise its discretion. The reviewing court should not substitute its own discretion for that of the trial court." *In re A.J.L.H.*, 384 N.C. 45, 48, 884 S.E.2d 687, 690 (2023).

In re J.M., 384 N.C. 584, 591, 887 S.E.2d 823, 828 (2023).

N.C. Gen. Stat. § 7B-901 states the following regarding the elimination of reunification efforts with a child's parents:

> (c) If the disposition order places a juvenile in the custody of a county [DSS], the court shall direct that reasonable efforts for reunification . . . shall not be required if the court makes *written findings of fact* pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:
>
> > (1) A court of competent jurisdiction determines or has determined that *aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile*:
> >
> > > f. *Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect*.

N.C. Gen. Stat. § 7B-901(c)(1)(f) (2022) (emphasis added). Our Supreme Court has

held that this statute "require[s] that the evidence in aggravation involve something in addition to the facts that rise to the initial adjudication of abuse and/or neglect." *In re L.N.H.*, 382 N.C. 536, 547-48, 879 S.E.2d 138, 146 (2022).

Here, the trial court made a number of findings, including that:

> [DSS] has discussed with [Parents] the possibility of reunification and the development of an Out of Home Services Agreement. [Parents] completed psychological evaluations with [a doctor], which recommended each initiate individual counseling services and engage in parenting classes. It further recommended that [Parents] understand the allegations and that [Mother] see the disclosures the children made to assist in understanding the credibility of the disclosures. [Mother] has only, since the adjudication in this matter and after the recommendation of [DSS] and the psychological evaluation, has stated she believes something happened between the children and her son, [T.W.]. [Parents] have completed parenting classes and provided certificates of completion. The family home has shown little improvement as clutter remains, smell of urine and feces, piles of items in the hallway, and heavily stained carpets. Since the adjudication hearing, [Parents] have been untruthful to [DSS] concerning the living situation of the minor child, [T.W.] The Court does not believe [Parents] can or will protect the minor children from [T.W.], as demonstrated by the children's reports that the parents were aware of the sexual abuse and did not take action, which allowed the continuation of the sexual abuse, and the parents own actions since the filing of these petitions. . . . [Though T.W. has only sexual abused the older children and not Spring], further aggravating circumstances exist in that [Parents'] actions, or failure to take action, has increased the enormity and has added to the abuse and neglect that all of the children have suffered.

We conclude that this finding and the other findings of the trial court are sufficient

to sustain the trial court's determination to cease reunification efforts.

2. Visitation

Father argues the trial court abused its discretion by denying visitation rights. Mother and Father both argue that the trial court impermissibly delegated its judicial authority to award visitation when it allowed Spring's therapist to determine future visitation between Spring and Parents.

We first address Father's claim regarding the denial of visitation. N.C. Gen. Stat. § 7B-905.1 governs visitation in abuse, neglect, and dependency cases. Specifically, Section 7B-905.1(a) articulates that the trial court may order no visitation, if in the best interests of the juvenile and their health and safety.

In this case, the trial court heard testimony from Parents, Spring, the other minor children, and officials with DSS. The trial court's findings demonstrate that it carefully weighed Spring's best interests and found no visitation was the appropriate decision. Thus, we cannot hold that denial of visitation was an abuse of discretion.

Next, we address Parents' claims regarding the delegation of judicial authority to Spring's therapist to determine visitation.

N.C. Gen. Stat. § 7B-905.1(b) provides that the director of a county's department of social services may be granted authority to "arrange, facilitate, and supervise a visitation plan expressly approved or ordered by the court." No similar delegation of authority for determining visitation is provided for in Section 7B-905.1(c), which governs juveniles "in the custody or guardianship of a relative or other

suitable person[.]" Our Court "has recognized a distinction, in the context of visitation, between a court's award of discretion to DSS and a court's award of discretion to a guardian." *In re J.M.*, 273 N.C. App. 280, 292, 847 S.E.2d 916, 923 (2020). However, our Court has not clearly articulated whether the court may award discretion to a child's therapist.

Recently in *In re N.K.*, our Court remanded a visitation order that delegated authority to a group of therapists. *In re N.K.*, 274 N.C. App. 5, 10-12, 851 S.E.2d 389, 393-94 (2020). But it was unclear if the order was remanded because of the third party to whom the trial court delegated judicial authority (a therapist, rather than a DSS director) or because the authority was delegated to a collection of people instead of a singular person. *See id.*

Additionally, in a seminal case concluding custodians may not be awarded the discretion to determine visitation, our Court explained that "[u]sually those who are involved in a controversy over the custody of a child have been unable to come to a satisfactory mutual agreement concerning custody and visitation rights." *In re Custody of Stancil Children*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971). Thus, our Court indicated this denial of discretion was a pragmatic concern meant to prevent the withholding of visitation by interested parties (i.e., those with custody or guardianship of the child). That is not a concern for therapists. Therapists are not interested parties; they are more akin to DSS directors than custodians or guardians.

Here, we conclude that the narrow circumstances of this case permit the

delegation of authority to Spring's therapist. *In re K.W.*, 272 N.C. App. 487, 497, 846 S.E.2d 584, 591 (2020) (holding that the trial court can delegate to DSS the "discretion to expand visitation, not reduce it below the minimum set by the court.". Because the trial court has already set a minimum in its order, it is not impermissibly delegating any visitation discretion to the therapist.

Accordingly, we affirm the disposition order.

AFFIRMED.

Panel consisting of Judges DILLON, MURPHY, and GORE.

Report per Rule 30(e).