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NO. COA11-1433  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

IN THE MATTER OF:

S.L.

Buncombe County  
No. 09 JA 187

Appeal by respondent from orders entered 8 July and 11 August 2011 by Judge Andrea F. Dray in Buncombe County District Court. Heard in the Court of Appeals 12 June 2012.

*Charlotte W. Nallan, for petitioner-appellee Buncombe County Department of Social Services.*

*Leslie Rawls, for respondent-appellant mother.*

*M. Carridy Bender, for guardian ad litem.*

MARTIN, Chief Judge.

Respondent appeals from permanency planning review orders ending reunification efforts and granting guardianship of S.L. to her foster parents. After careful review, we affirm.

In April 2009, the Buncombe County Department of Social Services (DSS) filed a petition alleging that two-month-old S.L. was a dependent juvenile. When she was born, S.L. was placed

with a family ("Mr. and Mrs. W.") through Angels Watch. DSS's petition alleged that the Angels Watch placement was ending; that respondent was incapable of providing care for S.L. due to her serious mental health issues; and that the putative father was unable to provide care because he was living with his parents, who had refused to allow him to care for S.L. in their home. The petition specifically alleged that respondent was "disabled due to mental health reasons," that "when she was giving birth to the minor child she was verbally aggressive and . . . experiencing auditory hallucinations," and that "she was subsequently placed in Copestone Psychiatric Facility."

In June 2009, the trial court entered an order for nonsecure custody, placing S.L. in the custody of DSS. Because respondent was unable to provide a caretaker for S.L., S.L. remained with Mr. and Mrs. W., who became her foster parents. S.L. was adjudicated dependent based on respondent's stipulation that the allegations in DSS's petition were true, and at the disposition hearing, the trial court ordered that respondent participate in mental health services, comply with medication management appointments, and participate in the Intensive Family Visitation program.

Respondent began visitation with S.L. under the supervision

of the maternal grandmother the weekend of 26 September 2009. However, after visitation, S.L. was returned to her foster parents' care ill, and no mention was made to the foster parents that she was sick. Thus, respondent's next visit was canceled.

Thereafter, respondent began exhibiting more mental health issues, including a conversation with the foster mother in which respondent disclosed that there was a "poltergeist" in her apartment. Respondent began complaining of "severe headaches, paranoia, hallucination[s], and blurred vision." It was determined that, due to a packaging error, respondent was undermedicated and therefore unstable. By 12 October 2009, respondent was cleared to renew visitation, but by November 2009, respondent's symptoms recurred, and she was admitted to Copestone Psychiatric Facility. Due to her mental health issues and noncompliance with her mental health treatment, visitation with S.L. was suspended.

In November 2010, she and S.L. began sessions together with a child therapist. By 5 January 2011, respondent was attending therapy and medication evaluations, was cooperative, and was making progress.

A permanency planning and review hearing was held on 2 June 2011. At that time, S.L. had been in foster care for 26 months.

Visitation was again suspended, this time due to S.L.'s negative reactions to visitation. The trial court found that respondent's extensive mental health issues indicated she would be unable to maintain stabilization for long periods of time and that respondent's current stability was in question because she was beginning to exhibit the same behaviors which had previously led to her hospitalization. The trial court thus found that it was unlikely that S.L. would be able to return to respondent's home within the next six months and concluded that further efforts at reunification would be futile. Accordingly, the trial court ceased reunification efforts and changed the permanent plan for S.L. to guardianship with a concurrent plan of reunification. The order was entered on 8 July 2011. Another permanency planning and review hearing was held on 1 July 2011. At the hearing, the court granted guardianship of S.L. to Mr. and Mrs. W. The order was entered 11 August 2011.

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Although respondent provided timely notice of appeal from the trial court's 11 August 2011 order granting guardianship to Mr. and Mrs. W., respondent failed to provide timely notice of appeal from the trial court's 8 July 2011 order ceasing reunification efforts. Respondent seeks review of the 8 July

2011 order by writ of certiorari. In our discretion, we allow the petition. See N.C.R. App. P. 21.

On appeal, respondent contends the trial court erred by ceasing reunification efforts because its findings of fact were based on incompetent evidence. As a result, respondent contends the trial court's order establishing guardianship, which rests on the purportedly invalid order ceasing reunification efforts, should be reversed. We disagree.

The purpose of a permanency planning hearing is to "develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-907(a) (2011). To achieve this goal, a trial court may order DSS to cease reunification efforts with a parent pursuant to N.C.G.S. § 7B-507(b), which provides the following:

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable

period of time.

N.C. Gen. Stat. § 7B-507(b) (2011). “Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and [whether] the findings support the conclusions of law.” *In re J.V.*, 198 N.C. App. 108, 112, 679 S.E.2d 843, 845 (2009) (alteration in original) (quoting *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004), *overruled on other grounds by In re R.T.W.*, 359 N.C. 539, 614 S.E.2d 489 (2005)). “If the trial court’s findings of fact are supported by any competent evidence, they are conclusive on appeal.” *In re J.C.S.*, 164 N.C. App. at 106, 595 S.E.2d at 166.

At the permanency planning review hearing, the trial court admitted testimony from Gail Azar concerning “somatic experiencing.” Azar, who the parties stipulated was an expert in child therapy, testified that she was a “certified somatic experiencing practitioner dealing with trauma that’s trapped in the body.” Based on Azar’s testimony concerning somatic experiencing, the trial court found that S.L. had been exposed to traumatic experiences while with respondent, S.L.’s body had absorbed the trauma, and respondent’s voice set off a memory of those events that were expressed in S.L.’s sleep.

Respondent contends that the trial court erred by admitting the testimony and relying on the testimony to make findings of fact because somatic experiencing is not an accepted scientific methodology for evaluating or diagnosing sleep problems or identifying past trauma. However, even assuming *arguendo* that the admission of this testimony and the resulting findings based on the testimony were erroneous, we conclude there were sufficient remaining findings to support the trial court's conclusion that reunification efforts should cease.

The trial court found as fact: (1) respondent had repeatedly attempted to intimidate the guardian ad litem and Child and Family Team members with her "aggressive tone and body language," giving the guardian ad litem ongoing concern as to respondent's judgment and mental stability; (2) respondent's "extensive mental health history indicates she cannot maintain mental health stabilization for long periods of time[;]" (3) respondent "has an extensive history of in-patient/out-patient mental health treatment including the need for ongoing mental health community support or targeted case management[;]" (4) respondent's "current mental health stability is questionable, as she is beginning to exhibit behaviors that she had prior to her last hospitalization, though she denies that anything is

currently wrong[;]" (5) respondent has a history of non-compliance with participation in therapy and treatment, leading to further concerns about her stability; (6) respondent went one year without visitation, primarily due to her inability to maintain mental health treatment; (7) respondent changed mental health providers multiple times and refused to sign releases to allow her providers to communicate with each other concerning her treatment during that time period; (8) despite respondent having been advised that her relationship with the father was a barrier to reunification, she continued to have a relationship with him; (9) there are currently open investigations concerning Child Protective Services reports regarding S.L.'s younger sibling, including an allegation that respondent was outside her apartment complex with the child, had a knife, and was hallucinating; (10) although respondent and the father signed a safety assessment regarding the sibling agreeing that the father would have no contact with the child, they failed to comply; (11) while holding S.L. during a Child and Family Team meeting, respondent "began yelling uncontrollably," and S.L. had to be removed from her; and (12) respondent exhibited resentment and anger toward the foster parents, and S.L.'s therapist expressed concern that the anger and resentment could be transferred to



S.L.

Respondent does not challenge these findings of fact, and they are therefore binding on appeal. See *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (stating that unchallenged findings are presumed supported by competent evidence and are binding on appeal); see also *In re S.N.H.*, 177 N.C. App. 82, 83, 627 S.E.2d 510, 512 (2006). We conclude these findings support the trial court's conclusion that reunification efforts would be futile and contrary to S.L.'s health, safety, and need for a safe, permanent home within a reasonable period of time. Therefore, we conclude that the trial court did not err by ceasing reunification efforts and subsequently appointing Mr. and Mrs. W. as guardians for S.L. Accordingly, we affirm.

Affirmed.

Judges HUNTER and STEPHENS concur.

Report per Rule 30(e).