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NO. COA05-122

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

IN THE MATTER OF:

C.L., Jr., C.L. and C.L.

Johnston County
Nos. 03 J 132-34

Appeal by respondent-father from orders entered 4 August 2004 by Judge Resson Faircloth in Johnston County District Court. Heard in the Court of Appeals 21 September 2005.

Holland & O'Connor, by Jennifer S. O'Connor for Johnston County Department of Social Services petitioner appellee; and Attorney Advocate James D. Johnson, Jr., Guardian ad Litem.

Duncan B. McCormick for respondent-father appellant.

McCULLOUGH, Judge.

Respondent-father appeals from a juvenile adjudication order, a juvenile disposition order, and a juvenile permanency planning order. We affirm all of the challenged orders.

FACTS

Respondent-father has three minor children, all of whom have the initials "C.L.," and who are hereinafter referred to as "the children" when referred to collectively. Much of the instant appeal focuses upon findings concerning respondent's daughter, who is hereinafter referred to as "the child" or "the daughter."

On 7 April 2003 the child's mother took her to Clayton Urgent Care as a result of greenish discharge on the child's undergarments and complaints of pain while urinating. The child was examined by a physician's assistant, who observed the discharge and obtained cultures. Laboratory tests indicated that the child had gonorrhea. Respondent-father and the child's mother were advised to be tested for gonorrhea, and both tested positive. The child, who was three years of age at the time, informed her maternal grandmother that respondent-father had put his fingers inside of her, and told a mental health professional that respondent-father had hurt her. Respondent-father was charged with first-degree sexual offense in relation to the child contracting gonorrhea.

In August 2003, the Johnston County Department of Social Services (DSS) filed juvenile petitions alleging that the daughter was sexually abused and that all three of respondent-father's children were neglected and dependent. The trial court conducted an adjudication hearing on 3 September 2003, at which time respondent-father requested that adjudication against him be continued until his criminal case was resolved. The mother of the children consented to the adjudication of neglect and dependency. A disposition order placed the children in the custody of their maternal grandmother. The court also relieved DSS of further efforts towards reunification with the mother. On 24 September 2003, the trial court held a permanency planning hearing, after which the court entered a permanency planning order appointing the

maternal grandmother, with whom the children had resided since April 2003, as the guardian of the person of the minor children.

With regard to the criminal case against him, respondent-father pled guilty to the lesser charge of contributing to the delinquency of a minor on 8 April 2004. He was sentenced to two years' probation and instructed not to have any contact with the minor children. In addition, due to an unrelated probation violation respondent-father was incarcerated from April 2003 until April 2004.

On 7 July 2004, the trial court held hearings on the original juvenile petitions filed against respondent-father. In an adjudication order entered 4 August 2004, the trial court made, *inter alia*, the following findings of fact:

10. No individuals[,] other than the primary caregivers, have had unsupervised contact with the minor child or access. While the mother is the primary caregiver, she has not allowed any individual to be unsupervised with the children or access The mother did not have any digital/vaginal contact with the minor child. The court finds that the father . . . is the only individual to have had access to the minor child.

11. The court finds by clear cogent and convincing evidence, based upon the disclosure of the child that her father had hurt her and put his fingers inside of her[,] and further that the father, who was positive for gonorrhea, was the only individual to have had access to the minor child other than the mother, that the minor child . . . was sexually abused by her father . . . pursuant to [N.C. Gen. Stat. §] 7B-101(1).

The court concluded that the child was within the jurisdiction of the court as an abused, neglected, and dependent juvenile. In a disposition order entered on the same date, the trial court found

that it would be contrary to the children's health and welfare to return to the care, custody, and control of respondent-father and that it would be in the children's best interest to remain in the custody of their maternal grandmother. The court relieved DSS of further efforts to reunify respondent-father with his children. In a permanency planning order, which was also signed on 4 August 2004, the court ruled that further efforts to reunite respondent-father with his children would be futile because of the aggravating circumstance of sexual abuse and because respondent-father was hesitant to develop a family services case plan with DSS and was late to begin work on the case plan. Accordingly, the permanency planning order required reunification efforts to cease.

From the adjudication order, the disposition order, and the permanency planning order, respondent-father now appeals.

STANDARD OF REVIEW

____ In juvenile cases, as in all cases, this Court's standard of review is whether there is evidentiary support for the trial court's findings and whether the trial court's conclusions are supported by its findings and applicable law. See *In re D.J.D.*, ____ N.C. App. __, __, 615 S.E.2d 26, 32 (2005). The evidentiary support required for a juvenile adjudication order is clear and convincing evidence, and this Court must test properly challenged findings by the trial court against this standard. See N.C. Gen. Stat. § 7B-805 (2003); *In re Allen*, 58 N.C. App. 322, 325, 293 S.E.2d 607, 609 (1982). Clear and convincing evidence is evidence which should fully convince. *In re Smith*, 146 N.C. App. 302, 304,

552 S.E.2d 184, 186 (2001). Even under this heightened standard, "[t]he trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom." *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985). Upon an adjudication of abuse, neglect, or dependency and an appropriate determination of the best interests of the child, the dispositional alternatives are left within the discretion of the trial court, and are not reversible absent an abuse of discretion. See N.C. Gen. Stat. § 7B-903 (2003). This Court reviews a permanency planning order for whether the findings required by statute have been made, whether the findings and the law support the trial court's conclusions, and whether the trial court has abused its discretion with respect to dispositional issues. See N.C. Gen. Stat. § 7B-907 (2003).

I.

____ In his first set of arguments on appeal, respondent-father challenges the trial court's determinations concerning sexual abuse. Specifically, he contends that (A) the trial court's determination is based upon an erroneous finding that he was the only individual, apart from the mother, to have unsupervised contact with his daughter, and (B) that the evidence at the hearing did not support findings and conclusions of sexual abuse by respondent-father. These contentions lack merit.

A.

____ With respect to the finding as to unsupervised contact, respondent-father argues that this finding of fact is erroneous

because the mother testified that the children had spent a weekend at her sister's house sometime in February 2003, and it was not clear who had access to the child during this visit. However, the evidence presented to the trial court tended to show that the child could not have contracted gonorrhea in February 2003.

Dr. Vivian Everett, an expert in pediatrics and child abuse, testified that gonorrhea is primarily transmitted through sexual contact, and the only other way to contract gonorrhea is during the birth process, which usually presents itself as conjunctivitis long before the age of three. Dr. Everett further testified that the incubation period for showing signs of gonorrhea, such as vaginal discharge, is typically from two to seven days from the initial sexual contact.

The mother testified she first noticed that the daughter had vaginal discharge two days prior to taking the child for a medical examination. On 7 April 2003 the daughter was examined at Clayton Urgent Care & Family Clinic where the presence of vaginal discharge was observed. Laboratory tests determined that the daughter had contracted gonorrhea. The mother indicated that apart from the one weekend in February 2003 when the children stayed with their aunt the only individuals who had unsupervised contact with the daughter during that time period were her and respondent-father. The mother testified that she never had sexual contact with the daughter.

Accordingly, the clear, cogent, and convincing evidence presented to the trial court tended to show that the child would not have contracted gonorrhea during her weekend stay with her aunt

in February 2003 and that respondent-father, who himself had gonorrhea, was the only person, other than the mother, who had unsupervised contact with the child during the five-day period during which she most likely contracted this sexually transmitted disease. Thus, the challenged finding with respect to unsupervised contact must be affirmed.

B.

Likewise, the trial court's conclusion with respect to sexual abuse is amply supported by the evidence. In addition to the circumstances discussed above, the child indicated that respondent-father had put his fingers inside of her and had hurt her, and respondent-father pled guilty to committing a sexual crime against his daughter. Thus, the trial court's conclusion that respondent-father sexually abused his daughter must be affirmed.

The corresponding assignments of error are overruled.

II.

Respondent-father next contends that the trial court erred by "making blanket findings of fact incorporating [DSS] court reports in its disposition and permanency planning review orders." As respondent-father properly notes, this Court has held that "a cursory two page order [that] . . . did not incorporate any prior orders or findings of fact from those orders [and] . . . [i]nstead . . . incorporated a court report from DSS and a mental health report . . . as a finding of fact" failed to make sufficient findings to permit meaningful appellate review. *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004). However, the

present case is significantly different in that, although the trial court incorporated DSS reports, the court also made its own findings concerning respondent-father's unresponsive attitude towards developing and acting upon a family case plan, respondent-father's sexual abuse of his daughter, and the success of the children's placement with the maternal grandmother.

"In juvenile proceedings, it is permissible for trial courts to consider all written reports and materials submitted in connection with those proceedings." *Id.*; N.C. Gen. Stat. § 7B-907(b) (2003). Further, the trial court's decision to incorporate such materials into its order is not fatal to the order so long as the court has "not simply 'recite[d] allegations,'" and has instead "[gone] through '"processes of logical reasoning from the evidentiary facts'" [and] f[ound] the ultimate facts essential to support the conclusions of law." *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003).

In the instant case, the trial court's findings were sufficient on their own, and we decline to reverse merely because the trial court also incorporated DSS reports into its orders. The corresponding assignments of error are overruled.

III.

____ Respondent-father next contends that the trial court erred by relieving DSS of further efforts to reunify him with his children. Specifically, respondent-father challenges: (A) the trial court's finding that he had not been receptive to developing a family case plan, and (B) the propriety of the trial court's ruling that DSS

should be relieved of further reunification efforts. These contentions lack merit.

A.

With respect to respondent-father's receptivity to developing a family case plan, the evidence tended to show that, despite his awareness of DSS's involvement in the case, respondent-father did not contact DSS until 17 June 2004, shortly before a scheduled hearing. Further, although DSS was finally able to discuss and develop a family services case plan with respondent-father on 17 June 2004, he was still hesitant to initiate services despite the insistence and flexibility exerted by the social worker handling his case and the numerous rehabilitative and educational requirements he still had to undertake. For example, respondent-father did not make efforts in furtherance of his case plan goals until just before the adjudicatory hearing, was initially unwilling to permit DSS to visit him in his home to develop a case plan, and told a DSS social worker to call before making a scheduled home visit because he might not be there. Thus, the finding that respondent-father had not been receptive to developing a family case plan must be affirmed.

B.

Section 7B-507(b) of the General Statutes provides that a trial court may direct reunification efforts to cease where, *inter alia*,

- 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;
- 2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7B-101.

N.C. Gen. Stat. § 7B-507(b) (2003). With respect to subsection (1), this Court has held that a trial court may relieve DSS of further efforts towards reunification when the child has been placed outside of the home for fifteen of the preceding twenty-two months. *In re Dula*, 143 N.C. App. 16, 19, 544 S.E.2d 591, 593-94, *aff'd*, 354 N.C. 356, 554 S.E.2d 336 (2001). Further, the "aggravated circumstances" referred to in subsection (2) are further defined to include sexual abuse. N.C. Gen. Stat. § 7B-101(2) (2003)

In the instant case, respondent-father's children had been residing with their maternal grandmother for more than fourteen months. Moreover, the trial court had already found, based on clear and convincing evidence, that respondent-father had sexually abused the daughter. As such, we discern no error in the trial court's decision to relieve DSS of further efforts to reunify respondent-father with his children.

The corresponding assignments of error are overruled.

IV.

We have carefully reviewed the remaining assignments of error brought forward in respondent's brief and have concluded that they lack merit. They are, therefore, overruled.

The trial court's orders are

Affirmed.

Judges McGEE and JACKSON concur.

Report per Rule 30(e).