

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

NO. COA04-1689

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

IN RE: K.C.

Buncombe County
No. 03 J 268

Appeal by respondent from orders entered 12 April 2004 by Judge Rebecca B. Knight and 14 June 2004 by Judge Peter L. Roda in Buncombe County District Court. Heard in the Court of Appeals 13 September 2005.

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

Michael N. Tousey for Guardian ad Litem.

David Childers for respondent-appellant.

CALABRIA, Judge.

T.C. ("respondent") appeals two orders of the district court. The adjudication and disposition order denied relative placement of K.C. ("K.C.") with the maternal grandmother, and the initial permanency planning order changed the permanent plan for K.C. from reunification to adoption. We affirm.

I. Facts

On 13 October 2003, respondent gave birth to K.C. ("K.C.") in her 34th week of pregnancy, and K.C. weighed only two kilograms (approximately 4.5 pounds). K.C.'s biological father's name is

T.B. The day after K.C. was born, the Buncombe County Department of Social Services ("D.S.S.") received a report from the hospital regarding K.C.'s birth. D.S.S. was involved with this family because respondent also has an older child, M.C. ("M.C."), and respondent's parents (the "maternal grandparents") initially had custody of M.C. until D.S.S. removed M.C. from their custody because of their history of domestic violence. At the time K.C. was born, respondent lived with the maternal grandparents. D.S.S. determined that K.C. could not continue to live in the maternal grandparents' home. Under a protective plan, respondent and K.C. went to live with T.B.'s parents (the "paternal grandparents"). However, T.B. was prohibited from contact with K.C. because of his history of violence. While respondent cared for K.C. at the paternal grandparents' home, K.C. suffered hypothermia and failure to thrive. K.C. was readmitted to the hospital when she was nine days old because her weight had fallen below her birth weight.

The hospital restored K.C. to her birth weight and released her on 31 October 2003. At that point, respondent decided she "needed a break" and left K.C. with the paternal grandmother. The paternal grandmother failed to take K.C. to a doctor's appointment on 4 November 2004. The following day, the paternal grandmother took K.C. to the doctor, and K.C. was readmitted to the hospital because her weight had again fallen below her birth weight.

On 6 November 2003, respondent and D.S.S. entered into a new protection plan for K.C. Under the new plan, T.B. was still not permitted contact with K.C., but respondent violated the plan and

allowed T.B. to spend the night in the hospital room with K.C. Respondent then left the hospital and said she would return in a day or two. While respondent was at the hospital, the hospital staff expressed concerns that respondent normally slept or talked on the phone and had to be prompted to feed, change, and clean K.C. When K.C. was again ready to be released, her doctor refused to discharge her from the hospital until appropriate placement was found for her.

D.S.S. then filed its initial juvenile petition regarding K.C. The trial court granted D.S.S. non-secure custody of K.C., and on 14 November 2003, K.C. was placed in a foster home. An adjudication and disposition hearing was subsequently held in this matter, and the trial court entered an order on 12 April 2004 adjudicating K.C. as neglected and directing that K.C. remain in the custody of D.S.S. The permanent plan for K.C., however, remained reunification. Subsequently, an initial permanency planning hearing was held, and in an order entered 14 June 2004, the trial court changed the plan to adoption. Respondent appeals from both orders of the trial court.

II. Appeal from Order of 12 April 2004

We initially note that respondent attempts to challenge the sufficiency of the evidence supporting the trial court's findings in its 12 April 2004 adjudication order. However, because respondent did not assign error to the sufficiency of the evidence, respondent's argument is beyond the scope of issues for review on appeal. N.C. R. App. P. 10(a) (2005) (stating, "Except as

otherwise provided herein, the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with Rule 10.") We, therefore, consider only respondent's assignment of error questioning whether "the trial court's order of 12 April 2004 contain[ed] adequate findings of facts and conclusions of law to support the trial court's failure to make relative placement with the maternal grandparents." Because the sufficiency of the evidence has not been assigned as error, our review is limited to whether the trial court's findings support its conclusion of law, see *Matter of Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997), and whether its conclusion supports its disposition. *In re Everette*, 133 N.C. App. 84, 85, 514 S.E.2d 523, 525 (1999).

Respondent does not challenge the adjudication of K.C. as neglected, therefore, we only consider the dispositional phase. North Carolina General Statutes § 7B-903(a)(2)(c) (2003) states that one dispositional alternative for a neglected juvenile is that "[i]n the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may . . . [p]lace the juvenile in the custody of the department of social services in the county of the juvenile's residence[.]" The statute further states,

In placing a juvenile in out-of-home care under this section, the 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[.]

Id. The trial court made, *inter alia*, the following findings in the dispositional phase:

5. That [D.S.S.] recommended the following as in the best interests of [K.C.]: . . . [t]hat visits with the maternal grandmother . . . end as the primary plan is reunification and due to the Child Protective history with [the maternal grandmother] placement is not an option.

. . .
11. That [the maternal grandmother] testified and the Court finds as facts that she knew that domestic violence was going on between [respondent and T.B.] and she still let [T.B.] live at the home. That the minor child, [K.C.], if placed in the home of [the maternal grandmother] would have a high risk of exposure to domestic violence and her medical needs not being met. Therefore the Court will not sanction placement with [the maternal grandmother]. . . .

12. That it is in the best interest of the minor child that her custody remains with the Buncombe County Department of Social Services[.]

Based on these findings, the trial court concluded "[t]hat it is in the best interests of the minor child that her custody remains with [D.S.S.]"

"All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). "When a trial court is required to make findings of fact, it must make the findings of fact specially." *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003). The trial court is not permitted to "simply 'recite allegations,' but must through 'processes of

logical reasoning from the evidentiary facts' find the ultimate facts essential to support the conclusions of law." *Id.* (citations and quotation marks omitted).

In accordance with these standards, we hold that the trial court's findings support its conclusion, and its conclusion supports its failure to place K.C. with the maternal grandparents under the statutory guidelines of N.C. Gen. Stat. § 7B-903(a)(2)(c). The trial court made specific findings that if K.C. were to live with the maternal grandparents, she would be subjected to "a high risk of exposure to domestic violence and her medical needs not being met." This finding answers the question of whether the maternal grandparents were "able to provide proper care and supervision of the juvenile in a safe home." See N.C. Gen. Stat. § 7B-903(a)(2)(c). The trial court also found that "it is in [K.C.'s] best interest . . . that her custody remains with [D.S.S.]" These findings comply with N.C. Gen. Stat. § 7B-903(a)(2)(c) and support the trial court's conclusion that "it is in the best interests of the minor child that her custody remains with [D.S.S.]" *Cf. In re L.L.*, __ N.C. App. __, __, 616 S.E.2d 392, 401 (2005) (describing findings that were insufficient to support a denial of relative placement.) The conclusion, in turn, supports the trial court's denial of relative placement with the maternal grandparents. Accordingly, we reject respondent's first assignment of error.

III. Appeal from Order of 14 June 2004

Although respondent has failed to assign as error the sufficiency of the evidence supporting the findings, she again attempts to challenge the sufficiency of the evidence on appeal. As stated previously, arguments not assigned as error are beyond the scope of the appeal, and we do not address them. See N.C. R. App. P. 10(a) (2005). Respondent properly assigned as error that "the trial court committed reversible error at the [28 April 2004] hearing and in its resulting order by changing the permanent plan from reunification to adoption without adequate findings of facts or conclusions of law to support that change in the permanent plan." We, accordingly, address this argument.

Our legislature has stated that 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) (2003). "In a permanency planning hearing held pursuant to Chapter 7B, the trial court can only order the cessation of reunification efforts when it finds facts based upon credible evidence presented at the hearing that support its conclusion of law to cease reunification efforts." *In re Weiler*, 158 N.C. App. at 477, 581 S.E.2d at 137.

By statute, the trial court may cease reunification efforts as follows:

(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) (2003).

In this case, the trial court found:

17. That [D.S.S.] asked for a change of the permanent plan to adoption.

18. That the Court finds that it is in the best interest of the minor child that the permanent plan be changed from reunification to adoption.

19. That it is not possible to return the minor child to the home of either parent within the next six months.

20. That the best plan to achieve a safe, permanent home for the minor child within a reasonable period of time should be changed from reunification to adoption. Efforts to place the child in the home of either parent clearly would be futile or be inconsistent with the child's [] health, safety, and need for a safe, permanent home within a reasonable period of time.

. . .
24. That the conditions that led to the custody of the minor child by the Buncombe County Department of Social Services and removal from the home continue to exist and that the return of the minor child to the home would be contrary to the welfare of the minor child.

25. That [D.S.S.] made reasonable efforts to prevent removal of the minor child from the home, but removal was necessary to protect the safety and health of the child.

Based upon these findings, the trial court concluded, *inter alia*:

2. That pursuant to [N.C. Gen. Stat. § 7B-507], [D.S.S.] has made reasonable efforts in this matter to prevent or eliminate the need for placement with the Department and to implement a permanent plan for the minor child; however, under the circumstances, it was neither possible or reasonable to prevent

the removal of the child from the home and assure the child's safety, and [D.S.S.] has made reasonable efforts to return the minor child to the home.

The trial court's findings comply with the mandates of N.C. Gen. Stat. § 7B-507(b) (2003) and support the applicable conclusion of law. *Cf. In re Everett*, 161 N.C. App. 475, 479-80, 588 S.E.2d 579, 582-83 (2003) (examining findings that fail to comply with § 7B-507(b)). The trial court specifically found that "the conditions that led to the custody of the minor child by [D.S.S.] and removal from the home continue to exist and that the return of the minor child to the home would be contrary to the welfare of the minor child" and that "efforts to place the child in the home of either parent clearly would be futile or be inconsistent with the child's health, safety, and need for a safe, permanent home within a reasonable period of time." These findings support the trial court's conclusion of law, which support the trial court's disposition, and we reject respondent's assignment of error.

IV. Visitation Rights of Respondent and the Maternal Grandmother

Respondent next assigns as error that "the trial court committ[ed] reversible error by ending visitation rights with K.C. of the Respondent-mother and the maternal grandmother because there are no findings of fact or conclusions of law to support this action." Respondent fails to argue her assignment of error, and only states that the order is "contrary to reunification [and] the denial or visitation should be set aside." Because respondent has failed to argue her assignment or error on appeal, it is abandoned pursuant to N.C. R. App. P. 28(b)(6).

V. Abandonment of Other Assignments of Error

Because respondent has failed to raise her remaining assignment of error on appeal, we deem it abandoned pursuant to N.C. R. App. P. 28(b)(6).

Affirmed.

Judges WYNN and LEVINSON concur.

Report per Rule 30(e).