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NO. COA06-353

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

IN THE MATTER OF:  
D.C., Jr.

Rutherford County  
No. 04 J 07

Appeal by respondents from order entered 5 November 2006 by Judge Laura A. Powell in Rutherford County District Court. Heard in the Court of Appeals 18 October 2006.

*Rutherford County Department of Social Services, by Bradley Greenway, for petitioner-appellee.*

*Michael E. Casterline, for respondent-mother.*

*Carol Ann Bauer, for respondent-father.*

*Womble Carlyle Sandridge & Rice, PLLC, by Elizabeth D. Tucker, for Guardian ad Litem.*

*Lee F. Taylor, for Guardian ad Litem.*

LEVINSON, Judge.

Respondents (mother and father) appeal from the trial court's permanency planning order awarding legal custody and guardianship of D.C. to Gregory and Tawanna Swafford.<sup>1</sup> For the reasons stated herein, we reverse and remand.

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<sup>1</sup> While Swafford is also spelled "Swofford" in certain places of the record, we use Swafford as designated by the trial court in the order on appeal.

The pertinent facts may be summarized as follows: In January 2004, Rutherford County Department of Social Services (DSS) filed a petition alleging that D.C. was a neglected juvenile. At the time the petition was filed, D.C. and his older half-sister, J.B., were not living with their mother and father. Rather, the juveniles were living with relatives, Tawanna and Greg Swafford. When J.B. was 13 years old and still living with her mother, J.B. was sexually abused by Joe Stafford, who was her mother's boyfriend at the time. J.B. conceived a child, and a paternity test proved that Stafford was the father. Stafford pled guilty to first degree sex offense and was sentenced to eight years imprisonment.

In April 2004, D.C. was adjudicated neglected based upon allegations, *inter alia*, that D.C. lived in an environment "of sexual perversity . . . to the calculated neglect of the basic rights of [D.C.] to cleanliness, nutrition, protection and fostering of good and wholesome values." DSS took custody of D.C., and the agency was relieved of reunification efforts with respect to mother and father. DSS was directed to pursue relative guardianship or adoption of D.C. and J.B., with "particular consideration" to be given to Tawanna and Greg Swafford. In July 2004, legal guardianship of J.B. was awarded to the Swaffords. DSS filed a petition to terminate the parental rights of mother and father as to D.C., but the court ruled against termination in November 2004. D.C. continued to live with Greg and Tawanna Swafford, and was living with them when a permanency planning hearing was held in October 2005.

Casey Hill, a social worker for DSS, testified that D.C. wished to continue living with the Swaffords. At the time of this hearing, the half-sister, J.B., was not living with the Swaffords; she had established independent living arrangements by that time. D.C.'s older half-brother, J.B., who was 20 years old at the time of the hearing, continued to reside in the Swaffords' home. At one time, D.C. made an allegation that he was sexually molested by J.B. J.B. received counseling related to this allegation, and his therapist subsequently concluded that it was acceptable for D.C. and J.B. to live in the same home. Hill further testified that Tawanna Swafford is related to D.C.'s mother. In May 2005, DSS held a meeting with Tawanna and Greg Swafford to discuss concerns related to Joe Stafford getting out of prison, and the need to supervise his presence around D.C.

Tawanna Swafford testified that she and her husband, Greg, have been married for three years, and that they share their home with D.C. and J.B. Swafford also testified that she and her husband are employed and support the household. They also support D.C. with the assistance of a child support check and occasional assistance from social security monies that DSS holds in trust for D.C. Swafford further testified that Stafford is her uncle, and that she is not sure whether he would engage in sexual abuse again.

In a 31 October 2005 order, the trial court incorporated by reference the information and recommendations contained in prior DSS and Guardian Ad Litem reports. In addition, by utilizing a

largely boilerplate form order containing only "X" marks and the insertion of names, the trial court found, in relevant part, that:

. . . continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest and that the Rutherford County Department of Social Services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile(s) as set forth in the court report of the Department of Social Services which is incorporated herein by reference.

The trial court concluded that:

. . . the parent(s) is/are not presently able to provide adequately for the care and custody of the named juvenile(s), but that relative(s) Gregory and Tawanna Swafford are able to provide and are willing to accept and provide for the care, custody and control of the named juvenile and are willing to accept and provide for legal guardianship of the named juvenile, and that it is in the best interests of the named juvenile(s) at his/her/their care, custody and control and legal guardianship be awarded to Gregory and Tawanna Swafford.

From this order, mother and father both appeal, asserting that the trial court erred by entering a permanency planning order that does not comply with the statutory requirements of N.C. Gen. Stat. § 7B-907 (2005). We agree.

The goal of the 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) (2005). If a juvenile is not returned home at the conclusion of a permanency planning hearing, the trial court must consider certain specified criteria and "make written findings regarding those that are relevant." N.C. Gen. Stat. § 7B-907(b) (2005). These factors include, in pertinent part:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established[.]

G.S. §§ 7B-907(b) (1) and (2).

This Court has ruled in accordance with G.S. § 7B-907 that "a trial court is required to conduct a permanency planning hearing in every case where custody of a child has been removed from a parent within twelve months of the date of the original custody order." *In re Harton*, 156 N.C. App. 655, 658, 577 S.E.2d 334, 336 (2003) (citing *In Re Dula*, 143 N.C. App. 16, 18, 544 S.E.2d 591, 593 (2001)). "Section 7B-907(b) requires a trial court to make written findings on all of the relevant criteria as provided in the statute." *Id.* at 660, 577 S.E.2d at 337.

A permanency planning order need not "contain a formal listing of the G.S. § 7B-907(b) (1)-(6) factors, expressly denominated as such . . . [as long as the trial court makes] written findings regarding the relevant G.S. § 7B-907(b) factors [.]" *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004). However, in its order:

the trial court must, through 'processes of logical reasoning,' based on the evidentiary facts before it, 'find the ultimate facts essential to support the conclusions of law.' The resulting findings of fact must be 'sufficiently specific to enable an appellate court to review the decision and test the correctness of the judgment.'

*In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d, 658, 660 (2004) (quoting *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003), and *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982)). Therefore, while "it is permissible for trial courts to consider all written reports and materials submitted in connection with [juvenile proceedings]. . . the trial court may not delegate its fact finding duty." *In re J.S.*, 165 N.C. App. at 511, 598 S.E.2d at 660. "Consequently, the trial court should not broadly incorporate these written reports from outside sources as its findings of fact." *Id.*

In the instant case, the broad incorporation by reference of two orders from outside sources, coupled with the conclusory, boilerplate language of the subject order, does not sufficiently address the factors enumerated in G.S. § 7B-907(b). Therefore, as the trial court's findings are not sufficiently specific to comply with the statutory requirements, we reverse the subject order and remand the matter to the trial court for proceedings not inconsistent with this opinion.

Reversed and remanded.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).