

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-905

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2008

IN THE MATTER OF:
A.K., M.K., J.R.,
L.R., V.R.

Wilson County
Nos. 06 J 118-21,
08 J 35

Appeal by respondent from adjudicatory and dispositional orders entered 12 May 2008 by Judge Robert A. Evans in Wilson County District Court. Heard in the Court of Appeals 24 November 2008.

Law Office of Stephen L. Beaman, PLLC, by Stephen L. Beaman, for petitioner-appellee Wilson County Department of Social Services.

Peter Wood for respondent-appellant mother.

Womble Carlyle Sandridge & Rice, PLLC, by Lucretia D. Guia, for guardian ad litem.

BRYANT, Judge.

Respondent-mother appeals from an order adjudicating M.K. abused, neglected, and dependent and from orders adjudicating A.K., L.R., V.R., and J.R. neglected and dependent. Respondent-mother also appeals from dispositional orders ceasing reunification efforts. We affirm in part and reverse and remand in part.

Facts

North Carolina departments of social services have been

involved with respondent-mother since 1993, when she gave birth to a child after consuming cocaine just prior to the child's birth. Respondent-mother did not cooperate with her service agreement, and the child was eventually adopted by its foster parents.

The Wilson County Department of Social Services ("WCDSS") became involved with respondent-mother in 2003 after respondent-mother was arrested and jailed for shoplifting. A.K. and M.K. were present while respondent-mother committed the offense. The children were removed from respondent-mother's care and placed with respondent-mother's family. Although there were concerns that respondent-mother was abusing drugs and alcohol, drug tests were negative and the two children were eventually returned to respondent-mother's care.

In July 2005, the Nash County Department of Social Services removed A.K. and M.K. from respondent-mother's care after respondent-mother was arrested and was unable to identify any family members who would be willing to care for the children. Eventually, the children were, once again, returned to respondent-mother's care.

In August 2006, WCDSS again became involved with respondent-mother after she tested positive for cocaine following the birth of her twins, L.R. and V.R. L.R. also tested positive for cocaine. By September 2006, WCDSS concluded it was in the best interests of the children to take custody of all four children - A.K., M.K., L.R. and V.R. WCDSS obtained non-secure custody by order on 12 September 2006. On 14 September 2006, WCDSS filed petitions

alleging that the children were neglected and dependent juveniles. On 3 November 2006, the children were adjudicated as neglected and dependent juveniles. The permanent plan for the juveniles was reunification. The children were returned to respondent-mother for a trial home visit in June 2007. Custody of the children was returned to respondent-mother in November 2007.

On 31 March 2008, WCDSS filed petitions alleging that A.K., M.K., J.R., L.R. and V.R. were neglected and dependent juveniles. WCDSS also alleged that M.K. was an abused juvenile. WCDSS claimed respondent-mother had "relapsed and began using drugs and alcohol again and placed her children with others because of this." WCDSS further claimed that respondent-mother had made inappropriate child care arrangements for her children. Regarding L.R. and V.R., WCDSS alleged that respondent-mother and another person had "attacked a woman in the Wal-mart parking lot in Lumberton injuring her severely, in addition [respondent-mother] and the other person were stealing from stores." WCDSS stated that "[a]t the time these activities were going on, [respondent-mother] had [L.R. and V.R.] in the car with her." Finally, regarding M.K., WCDSS alleged that respondent-mother put the child at substantial risk of serious injury by engaging in a high-speed chase with police resulting in respondent-mother crashing her car. M.K. required transportation and treatment at Wilmed Hospital as a result of the accident. WCDSS obtained custody of the children by non-secure custody order.

An adjudicatory and dispositional hearing was held on 23 April 2008. On 12 May 2008, the trial court entered written adjudicatory

orders based upon respondent-mother's stipulation that a factual basis existed for a finding of neglect and dependency as to A.K., M.K., J.R., L.R. and V.R. The children were adjudicated neglected and dependent juveniles, and in addition, M.K was adjudicated an abused juvenile. The trial court granted custody of the juveniles to WCDSS, relieved WCDSS of reunification efforts, and changed the permanent plan for the children to adoption. Respondent-mother appeals.

On appeal, respondent-mother argues the trial court erred by: (I) accepting respondent's stipulation that the juveniles were neglected and dependent and that in addition, M.K. was an abused juvenile; (II) concluding the juveniles were neglected and dependent and that in addition, M.K. was abused because the conclusion was not supported by clear, cogent, and convincing evidence; and (III) ceasing reunification efforts.

I

Respondent-mother first argues the trial court erred by accepting a stipulation that A.K., M.K., J.R., L.R. and V.R. were neglected and dependent juveniles, and that in addition M.K. was an abused juvenile. Respondent-mother contends that she did not consent to the stipulations. Respondent-mother further asserts that "under N.C.G.S. 7B-902, a stipulation which amounts to a consent judgment may not be enforced unless all parties are present." Respondent-mother thus argues that the judgment was not valid because not all of the juveniles' fathers were present.

Respondent-mother accordingly argues that because the stipulations were ineffective, there was insufficient evidence to support the trial court's findings of fact, and the judgment must be reversed. We disagree.

"Stipulations are judicial admissions and are therefore binding in every sense, preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish an admitted fact." *In re I.S.*, 170 N.C. App. 78, 86, 611 S.E.2d 467, 472 (2005) (citations omitted). "'In the absence of express authority, an attorney generally has no power, by stipulation, agreement, or otherwise, to waive or surrender the substantial legal rights of his client'" *Bryant v. Thalhimer Bros.*, 113 N.C. App. 1, 14, 437 S.E.2d 519, 527 (1993) (quoting *Bailey v. McGill*, 247 N.C. 286, 100 S.E.2d 860 (1957)), *appeal dismissed and disc. rev. denied*, 336 N.C. 71, 445 S.E.2d 29 (1994).

Here, we conclude that the stipulations were entered with respondent-mother's consent. At the hearing, the following discussion occurred between Andrew R. Boyd, who was respondent-mother's counsel, and the court regarding respondent-mother's stipulation:

MR. BOYD: Judge, we're willing to stipulate that there's a factual basis for the Court to find that [M.K.], uh, a-abuse, neglect and dependency, uh, existed, and as far as the rest of the children go, there would no [sic] neglect and dependency. Um, to-to stipulate that all of the facts are exactly as they appeared in the report, um, I don't think we're willing to do that, but there is definitely - we'll stipulate as to factual

basis for the Court to find. . .

. . .

THE COURT: Alright. Now, Mr. Boyd, um as to the, uh, minor child, [M.K.], um, you said your client is stipulating to, uh, facts sufficient for the Court to find or sustain the petition as to the allegations of abuse, neglect and dependency, is that correct?

MR. BOYD: That's correct.

THE COURT: Alright. Now, you made some reference about not all the facts or whatever, but I-I-I guess I need you to be clear with me what - what is - it exactly is that your client is stipulating to, and if she has some problem with the petition.

. . .

MR. BOYD: She is, uh, stipulating, Judge, that there's a factual basis for the Court to find . . . as it is. I mean, I - there are - when we go through it, there's little nit-picky things here or there, but, for the most part, Judge, she stipulates that there - -.

THE COURT: Well, does she understand that my order will, um, uh, basically find that she stipulated to, uh, the facts as stated in the petition, uh, that I will find that there's clear and convincing evidence based on the stipulation to find these facts?

MR. BOYD: Yes, Your Honor.

THE COURT: Okay.

. . .

THE COURT: -- she's stipulating to all three of the, uh, allegations in the Petition - -

MR. BOYD: (clears throat) That's correct.

THE COURT: -- um, and stipulating that I can find these facts by clear and convincing evidence, and sustain the petitions of abuse, neglect and dependency as to the minor child, [M.K.].

MR. BOYD: That's correct.

THE COURT: And as to the other children, she's stipulating to neglect and dependency --.

MR. BOYD: That's correct.

THE COURT: -- uh, based on the facts as, uh, outlined in those petitions.

MR. BOYD: That's correct.

THE COURT: And she understands what a stipulation is, and she understands you - and you explained to her the legal effect of the stipulation.

MR. BOYD: Yes, sir.

THE COURT: And does she have any questions of the Court at this time about her stipulation?

. . .

MR. BOYD: Okay. She understands that, Judge.

Based on the record before us, it is evident that respondent-mother was present when her counsel offered the stipulations. Furthermore, the Court inquired into the full extent of the stipulation and whether respondent-mother understood the full legal ramifications of the stipulations. Counsel answered in the affirmative, and respondent-mother did not object or otherwise voice any disagreement. Thus, it appears that respondent-mother agreed to the stipulations entered into by her attorney. Therefore, this assignment of error is overruled.

II

Having determined that respondent-mother's stipulation was valid, we next consider whether the court erred by entering an

order of adjudication based upon respondent-mother's stipulation to an adjudication of neglect and dependency as to A.K., M.K., J.R., L.R. and V.R., and an adjudication of abuse as to M.K.

This Court has consistently held that a trial court may not enter an order of adjudication based on one parent's stipulation to the grounds alleged in the petition. See *In re J.R.*, 163 N.C. App. 201, 592 S.E.2d 746 (2004) (father's consent to facts as alleged in petition insufficient for adjudication of neglect without the mother present); *In re Shaw*, 152 N.C. App. 126, 130, 566 S.E.2d 744, 746-47 (2002) (mother's consent to adjudication in absence of the father was insufficient basis for adjudication); *In re Thrift*, 137 N.C. App. 559, 563, 528 S.E.2d 394, 397 (2000) (father's stipulation in absence of the mother was insufficient to support order of adjudication). "As mandated by statute, a trial court may enter a consent order or judgment only 'when all parties are present.'" *In re J.R.*, 163 N.C. App. at 202, 592 S.E.2d at 747 (emphasis added) (quoting N.C.G.S. § 7B-902 (2003)). "Consistently, this Court has held that the consent of one parent to a finding of neglect does not give rise to a valid consent judgment in the absence of the other parent." *Id.* (citing *In re Shaw*, 152 N.C. App. at 130, 566 S.E.2d at 746-47; *In re Thrift*, 137 N.C. App. at 563, 528 S.E.2d at 397).

In the instant case, the trial court made the following finding in each order of adjudication:

2. The Court finds the following specific facts:

A. Upon the call of the case the

parties and all counsel announced to the Court that an agreement had been reached pursuant to which the Mother stipulated and agreed that the Court could enter an order of adjudication of neglect and dependency as to said party. . . .

The adjudication orders for each child contained substantially the same finding. The trial court also found "based on clear, cogent and convincing evidence" the juveniles were "subjected to neglect and dependency[.]" No testimonial evidence in support of the petitions was submitted by DSS.

We note that the father of M.K. was present, and thus there was no violation of N.C. Gen. Stat. § 7B-902 as to M.K, and the adjudication of abuse, neglect and dependency stands. However, the fathers of A.K., L.R., V.R. and J.R. were not present. Because all parties were not present with respect to A.K., L.R., V.R. and J.R., an order of adjudication based solely on respondent-mother's stipulation that grounds existed to adjudicate the children as neglected and dependent could not be entered. Therefore, the adjudication and disposition orders for A.K., L.R., V.R., and J.R. must be reversed. See *Thrift*, 137 N.C. App. at 563, 528 S.E.2d at 397; *Brundage v. Foye*, 118 N.C. App. 138, 141, 454 S.E.2d 669, 670 (holding that where a consent judgment is entered against two parties with the consent of only one, the trial court must set the consent judgment aside as to both parties).

II

Respondent-mother next argues the trial court erred by ceasing reunification efforts. Respondent-mother contends the court failed

to make the required statutory findings mandated by N.C. Gen. Stat. § 7B-507(b) (1). We disagree.

North Carolina General Statute section 7B-507(b) states that:

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) (2007). The trial court may "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. 473, 477, 581 S.E.2d 134, 137 (2003). This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition. *Id.* at 477-78, 581 S.E.2d at 137; see also N.C.G.S. § 7B-507. "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002)

(citations and quotations omitted).

Because we have determined the adjudications and dispositions as to A.K., L.R., V.R. and J.R. were in error and should be reversed, we must only determine whether the disposition as to M.K. was in error. In the instant case, the trial court made the findings required by N.C. Gen. Stat. § 7B-507(b)(1) prior to ordering the cessation of reunification efforts between respondent-mother and M.K. The court made the following findings:

It is not in the best interest of the juvenile to return home due to [respondent-mother]'s inability to maintain sobriety. [Respondent-mother] has an extensive history of substance use. [Respondent-mother] was sober for several months but relapsed. [Respondent-mother] is not able to provide a safe environment . . . for her children to live in. [Respondent-mother] has an extensive history of substance abuse.

. . .

[Respondent-mother] is not able to provide her children with a stable and safe environment.

Although the trial court's findings do not track the language of N.C. Gen. Stat. § 7B-507(b), its findings and conclusions of law satisfy the statutory requirements. See *In re M.J.G.*, 168 N.C. App. 638, 649, 608 S.E.2d 813, 820 (2005) (holding findings and conclusion sufficient to uphold order ceasing reunification efforts even though statutory language was not specifically used). Thus, we conclude that the trial court's findings support its conclusion of law that efforts to reunify respondent with M.K. should cease and that the permanent plan should be adoption. Therefore, the dispositional order ceasing reunification efforts between M.K. and

respondent-mother is affirmed.

Accordingly, we affirm the adjudication of abuse, neglect and dependency as to M.K., and the dispositional order ceasing reunification efforts. We reverse and remand the adjudicatory orders of A.K., L.R., V.R. and J.R..

Affirmed in part, reversed and remanded in part.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).