

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-807

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

IN THE MATTER OF:

T.L.T., J.W.T., Jr., and Rockingham County A.M.T.
Nos. 08 JT 136-38

Appeal by respondent-father from orders entered 6 January 2010 and 6 May 2010 by Judge James A. Grogan in Rockingham County District Court. Heard in the Court of Appeals 30 November 2010.

No brief filed on behalf of petitioner-appellee.

Lucas & Ellis, PLLC, by Anna S. Lucas, for respondent-appellant father.

Pamela Newell for guardian ad litem.

HUNTER, Robert C., Judge.

Respondent-father appeals from the trial court's permanency planning order changing the permanent plan from reunification to adoption, and the order terminating his parental rights to his minor children, T.L.T., J.W.T., Jr., and A.M.T.¹ After careful review, we affirm the trial court's orders.

Background

¹ Initials will be used to protect the anonymity of the minor children.

Rockingham Department of Social Services ("DSS") began providing services to the family in August 2007 after receiving reports concerning domestic violence between the parents. In January 2008, the parents separated and DSS closed its case because there were no further allegations of domestic violence. However, the parents subsequently reunited, and the allegations of domestic violence resumed.

On 24 August 2008, there was an altercation between the parents in which the mother threatened respondent-father with a box cutter and scratched his arm. The minor children were placed in the custody of DSS on 27 August 2008. On that same day, DSS filed a juvenile petition alleging that the minor children were neglected due to the parents' history of domestic violence. The minor children were adjudicated neglected on 23 October 2008.

A review hearing was held on 30 July 2009, and the trial court ordered a trial home placement with the mother. DSS filed an *ex parte* motion for an emergency hearing regarding the trial home placement after the mother reported respondent-father, who was living in the home had threatened her and the children. The trial court held a hearing on the *ex parte* motion on 14 August 2009. By order entered 17 August 2009, the trial court terminated the trial home placement and resumed separate, supervised visits with the parents.

The trial court held a permanency planning review hearing on 19 November and 15 December 2009. The trial court ceased reunification efforts with the parents and changed the permanent

plan to adoption. On 28 December 2009, respondent-father filed notice to preserve the right of appeal from the permanency planning order.

On 5 January 2010, DSS filed a petition to terminate the parents' parental rights. The termination hearing was held on 25 March 2010. On 6 May 2010, the trial court entered an order terminating the parents' parental rights. Respondent-father appeals from the permanency planning order ceasing reunification efforts and from the order terminating his parental rights.²

Discussion

Respondent-father argues that the permanency planning order and the termination of parental rights order must be reversed because the children's guardian *ad litem* ("GAL") was not present at the permanency planning hearing when the trial court ceased reunification efforts and changed the permanent plan to adoption.

The Juvenile Code provides that "[w]hen in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile." N.C. Gen. Stat. § 7B-601(a) (2009).

The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; to conduct follow-up investigations to insure that the orders of the court are being

² The mother has not appealed from the trial court's orders.

properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

Id.

In this case, the following exchange occurred, indicating the GAL was initially present at the permanency planning hearing, but had to leave early:

BY THE COURT: Any evidence on behalf of the Guardian ad Litem?

[GAL ATTORNEY]: Your Honor, the volunteer Guardian ad Litem, Harriet Bishop, had to leave earlier, but has prepared a report. With permission of counsel, I'd ask to tender that at this time. I think that Mr. Panosh, Mr. Reaves, and Ms. Walker all indicated to me that they would be content if she left. They didn't have any questions for her. I don't know if that's still correct, but that was my understanding.

Thereafter, the trial judge asked the attorneys, including respondent-father's attorney, and they each indicated that there were no objections to the GAL leaving early. The trial court then admitted the GAL's report into evidence.

Not only was the GAL initially present at the permanency planning hearing, she appeared at the adjudication and disposition hearings, the 29 January 2009 review hearing, the 30 July 2009 review hearing, and the termination of parental rights hearing. In addition to appearing at the hearings, the GAL provided reports to the court. Furthermore, the GAL attorney was present to represent the interests of the children during the entire permanency planning hearing. We find the record clearly shows that the duties of the

GAL were carried out under N.C. Gen. Stat. § 7B-601(a). Accordingly, we conclude respondent-father's arguments are without merit.

Respondent-father next argues that the trial court abused its discretion in denying his motion to continue the termination of parental rights hearing.

The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-803 (2009). "A trial court's decision regarding a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation." *In re J.B.*, 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005) (internal citation omitted).

Here, respondent-father did not appear at the termination of parental rights hearing. His attorney stated that respondent-father's neighbor called the attorney's office and indicated respondent-father had pneumonia and could not come to court. On that basis, respondent-father's attorney requested a continuance. DSS's attorney opposed the continuance, arguing if respondent-father had pneumonia or something of that nature, then he would

have gone to a doctor and would have some evidence to support why he could not appear in court. Likewise, the GAL attorney advocate opposed the motion, arguing respondent-father should be required to provide proof of his illness to the court.

Given that respondent-father's attorney did not speak directly with his client and simply stated that respondent-father's neighbor indicated that respondent-father had pneumonia, without further verification or proof, we conclude respondent-father did not demonstrate sufficient grounds for continuing the case. Accordingly, we hold the trial court did not abuse its discretion in denying respondent-father's motion to continue.

Affirmed.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).