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NO. COA14-747
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF:

L.B-M.

Orange County
No. 12 JT 98

Appeal by respondent mother from order entered 16 April 2014 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 9 December 2014.

Holcomb & Cabe, L.L.P., by Samantha H. Cabe and Carol J. Holcomb, for petitioner-appellee Orange County Department of Social Services.

Mark L. Hayes for respondent-appellant mother.

Ellis & Winters LLP, by Kelly Margolis Dagger, for guardian ad litem.

DILLON, Judge.

Respondent mother appeals from the trial court's order terminating her parental rights to the juvenile Lynn.¹ Respondent argues the trial court abused its discretion by

¹ A pseudonym.

failing to inquire into whether it was necessary to appoint her a guardian ad litem ("GAL"). We affirm.

Respondent grew up in foster care and has a history of both substance abuse and mental health problems. Lynn is her fourth child, and the other three children were all adopted after Respondent either relinquished her parental rights or her rights were terminated.

In October of 2012, the Orange County Department of Social Services ("DSS") received reports that Lynn was missing and that Respondent had stolen her father's car. When the car was recovered, Respondent appeared to be high on crack cocaine.

On 2 November 2012, DSS filed a petition alleging Lynn was neglected and dependent, and the trial court entered a non-secure custody order.

In an order entered 13 November 2012, Respondent consented to an adjudication of dependency. The allegation of neglect was left open. Lynn remained in foster care, and Respondent was provided with supervised visitation. Respondent also agreed to a substance abuse evaluation, random drug screens, parent-child therapy, and psychiatric evaluation and treatment.

On 5 June 2013, the trial court entered a permanency planning order changing the permanent plan for Lynn to adoption

and ordered DSS to cease reunification efforts. In its order, the trial court found that Lynn had been placed outside the home for six of the most recent twenty-two months, that Respondent had not participated in treatment services long enough to make any progress, and that Respondent had abruptly left North Carolina to go live in Pennsylvania.

On 12 June 2013, DSS filed a motion to terminate Respondent's parental rights. As grounds for termination, DSS alleged neglect, dependency, and that Respondent's rights to another child had previously been involuntarily terminated. N.C. Gen. Stat. § 7B-1111(a)(1), (6), (9) (2013). After hearings on the matter, on 6 April 2014, the trial court entered an order terminating Respondent's parental rights. The trial court concluded all three grounds to terminate Respondent's parental rights existed as alleged in the petition. Respondent appeals.

In her sole argument on appeal, Respondent contends the trial court abused its discretion by failing to conduct an inquiry into whether it was necessary to appoint her a guardian ad litem ("GAL"). We disagree.

"On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, Rule 17." N.C. Gen. Stat. § 7B-1101.1(c) (2013).² An incompetent adult:

[L]acks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

N.C. Gen. Stat. § 35A-1101(7) (2013). Competency is a separate issue from a parent's ability to provide proper care and supervision for her children. *In re A.H.*, 183 N.C. App. 609, 615, 644 S.E.2d 635, 639 (2007).

"A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise

² The statute was amended in 2013 to delete language permitting appointment of guardians ad litem for parents who have "diminished capacity[,]" and this change applied "to actions filed or pending on or after" 1 October 2013. 2013 N.C. Sess. Laws 129, Sects. 32, 41. The petition to terminate Respondent's parental rights was filed in 12 June 2013 but was still "pending" on 1 October 2013, as the order terminating Respondent's parental rights was not filed until 6 April 2014, following hearings on 21 November 2013 and 20 February 2014. Therefore, the 2013 amendment is applicable and the statute now only allows appointment of a GAL for "incompetent" parents.

a substantial question as to whether the litigant is *non compos mentis*." *In re J.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d 45, 49 (2005) (citation omitted). "Whether the circumstances . . . are sufficient to raise a substantial question as to the party's competency is a matter to be initially determined in the sound discretion of the trial judge." *Id.* (citation and quotation marks omitted). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *In re A.R.D.*, 204 N.C. App. 500, 504, 694 S.E.2d 508, 511 (citation and quotation marks omitted), *aff'd per curiam*, 364 N.C. 596, 704 S.E.2d 510 (2010).

Previously, a trial court was required to appoint a GAL when the petition alleged dependency as a ground to terminate the parent's rights. *In re J.D.*, 164 N.C. App. 176, 180, 605 S.E.2d 643, 645, *disc. review denied*, 358 N.C. 732, 601 S.E.2d 531 (2004). A dependency allegation no longer automatically triggers appointment of a GAL, although allegations of mental health problems may still require the trial court to inquire into appointment of a GAL. *In re N.A.L.*, 193 N.C. App. 114, 118-19, 666 S.E.2d 768, 771-72 (2008).

Respondent argues that the allegations in the termination of parental rights motion, testimony regarding her long history of substance abuse and mental health issues, and her own behavior and testimony at trial show that she was incompetent and the trial court abused its discretion in not inquiring into and appointing her a GAL for the termination of parental rights hearing.

We do not believe that the trial court abused its discretion by terminating Respondent's parental rights without inquiring into her competency. At the February 2014 termination hearing, Respondent's counsel did not request appointment of a GAL, and Respondent testified on her own behalf. Even though evidence was presented as to Respondent's history of drug abuse and mental health issues, the record showed that she was competent to manage her own affairs. It was apparent from Respondent's testimony that she understood her own diagnoses, the names of her therapists, and the medications she was taking and the reasons for taking each of them. She knew the results of her most recent drug screens and the approximate date of her last positive drug test. Respondent was also able to articulate the treatment steps she had taken to address her mental health issues and her objections to the termination of her parental

rights. She also was able to obtain housing, execute a lease, discussed her current living situation, brought a cell-phone recorded video of her home for court review, described the steps to request a home-study, and arranged for transportation to attend her treatment appointments. Given the nature of her testimony and the other evidence presented at the termination hearing, we conclude the trial court did not abuse its discretion by failing to inquire into whether Respondent needed a GAL.

We also are not convinced by Respondent's argument that DSS's allegations that she was "incapable of providing for the proper care and supervision of the juvenile[,]" in showing dependency, along with the allegations of mental illness and substances abuse, established that she was incompetent and required a GAL. If Respondent's argument was correct, then the trial court would be *required* to appoint a GAL every time dependency, along with allegations of mental illness and substance abuse, was alleged as grounds to terminate parental rights. The focus in competency is whether the parent can manage their own affairs, *etc.*, see N.C. Gen. Stat. § 35A-1101(7), but, in contrast, the focus for termination of parental rights based on neglect, dependency, *etc.* is the parent's

capacity to provide proper care and supervision to the child. See N.C. Gen. Stat. § 7B-1111. Pursuant to N.C. Gen. Stat. § 7B-1101.1(c), the trial court has discretion to inquire into and determine whether appointment of a GAL for a parent is necessary by looking at the specific circumstances, the demeanor of the parent in court, and facts before it regarding each individual parent. Here, the facts show that Respondent was capable of handling her own affairs, see N.C. Gen. Stat. § 35A-1101(7), and the trial court did not abuse its discretion by failing to inquire into whether Respondent needed a GAL. Respondent's arguments are overruled.

Accordingly, we affirm the order terminating Respondent's parental rights.

AFFIRMED.

Judge STROUD and Judge DIETZ concur.

Report per Rule 30(e).