

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-927

Filed: 5 May 2015

Buncombe County, Nos. 13 JA 254-55

IN THE MATTER OF:

J.W. and K.M.

Appeal by respondent from orders entered 8 and 22 May 2014 by Judge Susan Dotson-Smith in Buncombe County District Court. Heard in the Court of Appeals 17 February 2015.

Hanna Honeycutt for petitioner-appellee Buncombe County Department of Social Services.

Sydney Batch for respondent-appellant mother.

Amanda Armstrong for guardian ad litem.

DIETZ, Judge.

Respondent, the mother of J.W. and K.M., appeals from orders adjudicating her children neglected and placing them in the custody of the Department of Social Services.

Respondent's lead argument is one we see with increasing frequency in this Court: that the trial court's fact findings are infirm because they are "cut-and-pasted" directly from the juvenile petition. This argument stems from language in a series of

this Court's decisions holding that fact findings "must be more than a recitation of allegations."

As explained below, we clarify today that it is not *per se* reversible error for a trial court's findings of fact to mirror the wording of a party's pleading. It is a long-standing tradition in this State for trial judges to "rely upon counsel to assist in order preparation." *In re A.B.*, ___ N.C. App. ___, ___, 768 S.E.2d 573, 579 (2015). It is no surprise that parties preparing proposed orders might borrow wording from their earlier submissions. We will not impose on our colleagues in the trial division an obligation to comb through those proposed orders to eliminate unoriginal prose.

Instead, as we previously have held on many occasions, when examining whether a trial court's fact findings are sufficient, we will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case. If we are confident the trial court did so, it is irrelevant whether those findings appear cut-and-pasted from a party's earlier pleading or submission. We thus reject Respondent's argument that the trial court's order is infirm because it "regurgitated" the same wording used in the juvenile petition.

We also reject Respondent's remaining arguments concerning custody, visitation, and the denial of reunification, all of which are controlled by well-settled law from this Court. Accordingly, we affirm the trial court's orders adjudicating the

juveniles neglected and the dispositional orders placing the juveniles in the custody of the Buncombe County Department of Social Services.

Facts and Procedural History

On 10 September 2013, Buncombe County Department of Social Services (DSS) filed petitions alleging that J.W. and K.M. were neglected juveniles. DSS recounted Respondent's history with Child Protective Services which dated back to 2004, and which included issues with drug abuse and domestic violence. DSS's latest involvement with Respondent stemmed from a report by Child Protective Services in February 2013. The report stated that Respondent had been raped and assaulted by K.M.'s father. Respondent took out a Domestic Violence Protective Order against the father, but failed to prosecute the case and allowed the father contact with the minor children. The report further alleged that Respondent was suicidal and was abusing a prescription painkiller.

Child Protective Services also found that the father had physically assaulted Respondent during her pregnancy with K.M., and that Respondent was afraid of the father. The agency created a safety plan which provided that Respondent would abide by the Domestic Violence Protective Order and that the father's contact with the juveniles would occur only at a visitation center.

On 7 March 2013, Respondent placed the juveniles in kinship arrangements after she admitted to violating the provisions of the Domestic Violence Protective

Order and stated that she was unable to care for the juveniles. Respondent received mental health counseling and help for her domestic violence issues. On 11 July 2013, Respondent was granted sole physical and legal custody of J.W. Respondent also was granted unsupervised visitation with K.M. However, on 8 August 2013, Respondent sent a letter to her social worker stating she no longer wished to participate in voluntary services and requested that DSS take custody of her children. According to DSS, Respondent indicated she did not want her children at that time, that she believed K.M. should be adopted by his kinship care providers, and that J.W. should stay in kinship care until he was five so that Respondent could get her “life in order.” The father was released from jail at the end of August 2013. Following his release, Respondent reported that he was leaving her threatening messages on Facebook, and that somebody had tampered with the brakes on her car.

DSS filed another juvenile petition regarding K.M. on 3 January 2014, this time adding an allegation that K.M. was dependent. DSS alleged that there had been ongoing difficulties between Respondent and the juveniles’ kinship providers since the filing of the August 2013 petitions. Specifically, on 2 January 2014, K.M. was taken to a hospital due to breathing issues. While at the hospital, Respondent threatened K.M.’s kinship provider, stating “I will kick your ass.” K.M. was discharged from the hospital on 3 January 2014. Following his release, Respondent was unwilling to allow K.M. to be discharged to his kinship providers and stated that

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she wanted him moved to another kinship placement. DSS concluded that it was in K.M.'s interests to remain in his placement, noting that his kinship providers had provided a safe and appropriate placement, and further that it was unsafe for K.M. to return to Respondent's care.

The trial court held adjudicatory hearings on 25 through 28 February 2014. The trial court adjudicated the juveniles as neglected and entered an interim dispositional order granting custody to DSS and providing for their continued placement with their kinship providers. Respondent was granted supervised visitation.

The trial court held a full dispositional hearing on 10 April 2014. The court awarded non-secure custody to DSS, with placement to be continued with the children's kinship care providers. Respondent again was granted supervised visitation. Respondent timely appealed from these orders.

Analysis

I. Adjudication of Neglect

Respondent first challenges the trial court's adjudication of neglect with respect to her two children. Specifically, Respondent contends that the trial court failed to make proper findings of fact and that the findings, even if proper, are not supported by clear and convincing evidence.

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“The role of this Court in reviewing a trial court’s adjudication of neglect and abuse is to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact.” *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007), *aff’d as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008) (internal quotation marks omitted).

At an adjudicatory hearing, “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.” *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (internal quotation marks omitted). These findings “must be more than a recitation of allegations. They must be the specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence.” *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (internal quotation marks omitted).

A. Wording of the Trial Court’s Findings

Respondent first argues that the trial court’s fact findings are improper because the court simply “regurgitated” the allegations in the juvenile petitions. Respondent accurately notes that nearly every fact finding in the trial court’s orders is copied verbatim from a corresponding allegation in the juvenile petitions. Respondent asserts that “[i]t is blatantly obvious that the trial court failed to craft

ultimate findings of facts as evidenced by its ‘cut-and-paste’ process of drafting its order.”

We do not agree that findings by the trial court are insufficient simply because they are similar, or even identical, to the wording of the juvenile petition. The cases on which Respondent relies for this proposition do not prohibit “cut-and-pasted” findings, but instead prohibit findings that do not actually *find* any facts. For example, *In re Anderson* concerned an order stating only that “the grounds *alleged* for terminating the parental rights are as follows . . .” 151 N.C. App. at 97, 564 S.E.2d at 602. This Court held that “[a]s indicated by the word ‘alleged,’ the findings are not the ‘ultimate facts’ required by Rule 52(a) to support the trial court’s conclusions of law.” *Id.* Similarly, *In re O.W.* involved a series of findings that simply stated what witnesses had said. As this Court observed, this type of finding “is not even really a finding of fact as it merely recites the testimony that was given.” 164 N.C. App. at 703, 596 S.E.2d at 854.

To the extent our previous decisions created any confusion, we clarify today that it is not *per se* reversible error for a trial court’s fact findings to mirror the wording of a petition or other pleading prepared by a party. Instead, this Court will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case. If we are confident the trial court

did so, it is irrelevant whether those findings are taken verbatim from an earlier pleading.

This holding is compelled not only by our existing precedent, but also by the reality of how trial court orders are prepared in our State. As this Court recently observed, “initial drafts of most court orders in cases in which the parties are represented by counsel are drafted by counsel for a party. . . . District Court judges have little or no support staff to assist with order preparation, so the judges have no choice but to rely upon counsel to assist in order preparation.” *In re A.B.*, ___ N.C. App. at ___, 768 S.E.2d at 579. In light of this reality, it would impose an impossible burden on trial court judges if we were to hold that any findings “cut-and-pasted” from a party’s pleading automatically warranted reversal of the order. If a trial court, after carefully considering the evidence, finds that the facts are exactly as alleged in a party’s pleading, there is nothing wrong with repeating those same words in an order. The purpose of trial court orders is to do justice, not foster creative writing.

In this case, we readily conclude that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to support its conclusions of law. The trial court heard four days of witness testimony before reaching its decision to adjudicate the juveniles as neglected. The court found that Respondent took out a Domestic Violence Protective Order against the father after he physically assaulted her while she was pregnant; that Respondent

failed to enforce that protective order and that she allowed the father contact with the juveniles; that Respondent had a history of substance abuse and domestic violence; that Respondent indicated that she no longer wished to participate in her case plan; and that there were ongoing difficulties between Respondent and the children's kinship providers. The court also made the ultimate fact finding that the juveniles were neglected because they did not receive proper care, supervision, or discipline; they were not provided with necessary medical care; and they lived in an environment injurious to their welfare.

Although many of these findings in the court's orders appear to be "cut-and-pasted" from wording in the juvenile petitions, the findings are based on evidence presented to the court. In light of the entire record and the transcript of the proceedings, we are confident that the trial court's findings are the result of its own independent, reasoned decision. Accordingly, we reject Respondent's argument that the trial court's orders are erroneous because they contain language cut-and-pasted from the juvenile petitions.

B. Evidence Supporting Finding of Neglect

Respondent next argues that, even if the trial court's findings of neglect are sufficient on their face, those findings are not supported by the record. We disagree.

A neglected juvenile is a "juvenile who does not receive proper care, supervision, or discipline . . . or who is not provided necessary remedial care; or who

lives in an environment injurious to the juvenile's welfare.” N.C. Gen. Stat. § 7B-101(15) (2013). In addition, there must be “some physical, mental, or emotional impairment of the juvenile *or a substantial risk of such impairment.*” *In re A.B.*, 179 N.C. App. 605, 613, 635 S.E.2d 11, 17 (2006) (internal quotation marks omitted). In determining whether a child is neglected, domestic violence in the home contributes to an injurious environment. *See In re K.D.*, 178 N.C. App. 322, 328, 631 S.E.2d 150, 155 (2006).

During the adjudicatory hearing in this case, social worker Karina Pizarro testified that Respondent took out a Domestic Violence Protective Order against the father after he strangled and attempted to rape her and that Respondent admitted to having contact with the father despite the protective order. She also stated that Respondent was afraid to enforce the protective order, that Respondent went back and forth about where she wanted her children placed multiple times, that Respondent stated that she could not care for the children because she was having a rough time and did not have any money, and that Respondent has a history of problems with her children requiring intervention by DSS.

Social worker Rachel Crandall testified that Respondent sent her a letter indicating that she no longer wanted to participate in her case plan services and that she wished for the children to be placed in foster care. She also testified about ongoing difficulties between Respondent and her children’s kinship providers and that

Respondent often expressed her desire to remove the children from their kinship placements only to quickly change her mind again. Crandall also stated that Respondent behaved inappropriately during some of her visits with her children.

Respondent testified to her prior involvement with DSS due to domestic violence and her past substance abuse treatment and mental health treatment. She also admitted that the father physically assaulted her while she was pregnant and, importantly, that she had contact with the father and allowed him contact with the children despite the protective order being in place to prevent any contact for her own safety and the safety of her children. This testimony, taken together, is sufficient to support the trial court's findings of neglect.

II. Visitation Order

Respondent next argues that the trial court erred in its visitation order because the visitation plan did not include the frequency and length of visits as required by N.C. Gen. Stat. § 7B-905.1. We disagree.

Section 7B-905.1 provides that, “[i]f the juvenile is placed or continued in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved or ordered by the court. The plan shall indicate the minimum frequency and length of visits and whether the visits shall be supervised.” N.C. Gen. Stat. § 7B-905.1(b) (2013).

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The court's dispositional order for J.W. grants Respondent "weekly, supervised visits with the minor child, supervised by a social worker at the Buncombe County Department of Social Services or the Haywood County Department of Social Services." The order also states that "all prior orders of the Court should remain in full force and effect, unless specifically modified by this order." In an interim order entered 8 May 2014, the court ordered that Respondent "shall have two hours of supervised visitation with [J.W.] per week" at a specified McDonald's restaurant supervised by DSS. Reading the two orders together, the visitation order for J.W. provides for weekly two hour visits supervised by DSS. Thus, the visitation order properly complies with N.C. Gen. Stat. § 7B-905.1.

The dispositional order for K.M. also states that "all prior orders of the Court should remain in full force and effect, unless specifically modified by this order" and orders that "the Child and Family Team shall have discretion to allow the respondent mother to have unsupervised visits at the Department." The interim order entered 8 May 2014 granted Respondent "a maximum of one hour of supervised visitation with [K.M.] per week" to be "supervised by the Department or another appropriate adult approved by the Department and shall occur at a time mutually agreeable to the parties." Viewing the two orders together, the court granted Respondent one hour of supervised visitation per week with the possibility of unsupervised visits to be

decided by the Child and Family Team, of which Respondent is a member. Thus, the order complies with the statutory mandate in setting Respondent's visitation.

III. Award of Non-Secure Custody

Respondent next argues that the trial court erred in awarding DSS non-secure custody of the juveniles at the dispositional hearing. Respondent contends that, although the statute allows for the court to grant "custody" to DSS, the statute does not provide for "non-secure custody." We disagree.

N.C. Gen. Stat. § 7B-903 provides the various dispositional alternatives available to the trial court. Under the statute, if the court determines the juvenile needs more adequate care or supervision, "the court may . . . [p]lace the juvenile in the custody of the department of social services." N.C. Gen. Stat. § 7B-903(a)(2)(c) (2013). The use of the term "non-secure custody" merely distinguishes the custody from "secure custody," in which the juvenile is placed in a detention facility or other government-supervised confinement. Respondent does not provide any reason why the children should have been placed in secure custody, and there is none. Accordingly, we reject this argument.

IV. Denial of Reunification

Finally, Respondent argues that the trial court erred by failing to return the children to her custody because she completed her case plan and has the financial means to provide for the children. We disagree.

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“The district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child. . . . We review a dispositional order only for abuse of discretion.” *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008).

The trial court found that Respondent behaved inappropriately at several visits with the children and that Respondent appeared to be under the influence of drugs or alcohol during one of the visits. The court also found that Respondent “has been unable to consistently care for herself or any of her children” and that the conditions leading to the removal of the children continue to exist. These findings are supported by evidence presented during the hearing and support the trial court’s conclusion that the children should remain in the custody of DSS. Therefore, the court did not abuse its discretion in declining to return the children to Respondent’s custody at the dispositional hearing.

Conclusion

For the reasons discussed above, we affirm the trial court’s orders adjudicating the juveniles neglected and the dispositional orders placing the juveniles in the custody of the Buncombe County Department of Social Services.

AFFIRMED.

Judges BRYANT and CALABRIA concur.