

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-87

Filed: 2 August 2016

Orange County, Nos. 15 JA 37–38

IN THE MATTER OF: K.C. & W.G.

Appeal by respondent from orders entered 26 October 2015 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 5 July 2016.

Richard Croutharmel for respondent-appellant.

Holcomb & Cabe, LLP, by Samantha H. Cabe, for petitioner-appellee Orange County Department of Social Services.

Administrative Office of the Courts, by Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

ELMORE, Judge.

Respondent, the mother of the juveniles K.C. (Karen) and W.G. (Walter),¹ appeals from orders (1) awarding custody of Karen to her paternal grandparents, and (2) placing Walter in the guardianship of his paternal aunt and uncle. After careful review, we vacate and remand.

I. Background

On 28 April 2015, the Orange County Department of Social Services (DSS) filed a petition alleging that Walter was an abused, neglected, and dependent juvenile,

¹ We use these pseudonyms to protect the identities of the minor children and to promote ease of reading.

and a separate petition alleging that Karen was a neglected and dependent juvenile. DSS alleged that it received a report that Walter had been taken to the hospital by a family friend after she discovered marks and bruises on his body. Respondent reported that her babysitter's boyfriend had fallen while holding Walter. Walter "was observed to have bruising from the mid-back area to the bottom of the buttocks and bruising from the left hip to the right hip. [Walter] had abrasions on both cheeks and deeper abrasions on the nose, lip, and forehead." The bruises were reportedly less than twenty-four hours old. The hospital report cast doubt on respondent's claims regarding the cause of the bruising. Respondent stayed with Walter at the hospital, but reportedly "slept most of the time and was not attentive to [Walter's] needs."

DSS further alleged that Walter was staying with a family friend in Sanford, and resided with respondent "sporadically." Karen had been residing with a family in Durham for about a month, but there was very little interaction between respondent and the family, and there was no plan in place regarding the child. DSS claimed that the juveniles were "left by mother with baby-sitters who are known drug users and live in a 'crack house.'" DSS further claimed that respondent had a history of cocaine abuse, she prostituted herself for drugs and money, and she was living with a man who was reportedly using drugs. DSS asserted that the juveniles had no stability and were at high risk of harm if left in respondent's custody.

DSS obtained non-secure custody of the juveniles. On 9 July 2015, the trial court adjudicated both juveniles neglected and dependent. Karen was placed with her paternal grandparents, while Walter was placed with his paternal aunt and uncle. On 26 October 2015, the court entered permanency planning review orders. The trial court awarded custody of Karen to her paternal grandparents and granted respondent visitation rights. The trial court then closed the juvenile matter and transferred the case to a Chapter 50 civil custody action. In a separate order, the trial court ceased reunification efforts between Walter and respondent, changed the permanent plan for Walter to guardianship with a relative, and granted guardianship of Walter to his paternal aunt and uncle. Respondent appeals from both orders.

II. Discussion

Respondent first argues that the trial court erred by holding a permanency planning review hearing without providing her with the statutorily required notice that the court intended to conduct such a hearing. We agree.

“In any [juvenile] case where custody is removed from a parent, guardian, or custodian, the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter.” N.C. Gen. Stat. § 7B-906.1(a) (2015). In addition, “a review hearing designated as a permanency planning hearing” must be held “[w]ithin 12 months of the date of the initial order removing custody.” *Id.* “The purpose of a permanency

planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time.’” *In re D.C.*, 183 N.C. App. 344, 355, 644 S.E.2d 640, 646 (2007) (citing former N.C. Gen. Stat. § 7B-907(a) (2005)). By statute, a parent is entitled to fifteen days’ notice of a permanency planning hearing. N.C. Gen. Stat. § 7B-906.1(b) (2015).²

In this case, after the dispositional hearings the trial court scheduled a “Custody Review” for Karen and Walter on 6 August 2015. The same “Review” hearings were continued to 1 October 2015. DSS notified respondent on 23 September 2015 that a “Permanency Planning hearing” for Karen and Walter would be conducted on 1 October 2015. At the beginning of the hearing, respondent’s counsel objected to the holding of the permanency planning review hearing. Counsel argued that she had received “no notice that this was changed to a permanency planning hearing,” she had not received reports from DSS or the guardian *ad litem*, and therefore, she was not prepared to proceed. The trial court responded as follows:

THE COURT: What I’m gonna [sic] do is I’m going to hear it, but I’m not going to commit today to anything regarding a permanent plan. I’m just saying that now. You know—

[RESPONDENT’S COUNSEL]: Thank you. That would be sufficient.

THE COURT: —I don’t know what I’m going to feel once I read it. But right now, I’m not making any commitment. Okay.

² The former N.C. Gen. Stat. § 7B-907(a) also required fifteen days’ notice of a permanency planning hearing.

At the conclusion of the hearing, however, the trial court found that “it’s in the best interest of the minor children for this hearing to be a permanency planning hearing.”

The record shows that respondent received only eight days’ notice that the 1 October 2015 hearing would be a permanency planning review hearing. Counsel objected to the hearing on the basis of the lack of notice, and thus respondent did not waive the lack of notice. *See In re J.S.*, 165 N.C. App. 509, 514, 598 S.E.2d 658, 662 (2004) (stating that a party waives its right to notice under section 7B-907(a) by attending the hearing in which the permanent plan is created, participating in the hearing, and failing to object to the lack of notice). Therefore, respondent was not afforded adequate notice of the 1 October 2015 hearing and its purpose.

III. Conclusion

We must vacate the 26 October 2015 permanency planning review orders and remand the matter for proper permanency planning hearings after providing respondent with the requisite notice. *See In re D.C.*, 183 N.C. App. at 356, 644 S.E.2d at 646–47 (reversing a permanency planning review order where, among other reasons, respondent was not provided with “statutorily required notice that the trial court would consider a permanent plan for [the juvenile]”). Because we vacate the orders, it is not necessary for us to address the additional issues presented by respondent on appeal.

VACATED AND REMANDED.

IN RE K.C. & W.G.

Opinion of the Court

Judges HUNTER, JR. and McCULLOUGH concur.