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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-866

Filed: 21 March 2017

Orange County, No. 16 JA 15

IN THE MATTER OF: M.B.

Appeal by respondent-mother from order entered 31 May 2016 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 27 February 2017.

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

*Parker Poe Adams & Bernstein LLP, by William L. Esser IV, for guardian ad litem.*

*Jeffrey William Gillette for respondent-appellant mother.*

McCULLOUGH, Judge.

Respondent-mother appeals from an order of the juvenile court which, *inter alia*, adjudicated her daughter “Megan”<sup>1</sup> to be dependent, maintained Megan in the legal custody of petitioner Orange County Department of Social Services (“DSS”), and

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<sup>1</sup> We use this pseudonym to protect the juvenile’s privacy and for ease of reading.

relieved DSS of further reunification efforts. We reverse the order in part and remand for further proceedings.

I. Background

On 12 February 2016, DSS filed a juvenile petition seeking an adjudication that newborn Megan was neglected and dependent. The petition alleged that Megan was born during respondent-mother's involuntary commitment for a "psychotic disorder" during which respondent-mother had "declined all medical and pre-natal care from the time of her admission." Although her involuntary commitment extended beyond Megan's scheduled discharge from the hospital, respondent-mother "refused to make a plan of care for the baby." Respondent-father, who is not married to respondent-mother, acknowledged his own inability to care for Megan due to his lack of experience with infant children and his living conditions. In addition to noting respondents' failure to identify an alternative placement option for their child, DSS alleged that they each had a history of mental illness and that their relationship had been marked by domestic violence. Based on these allegations, the trial court placed Megan in non-secure custody on 12 February 2016.

By consent order entered 16 February 2016, respondents were each granted supervised visitation with Megan. On 3 March 2016, DSS filed a "Motion to Review Visitation," alleging that respondent-mother had "refused to hand the baby back to the social worker or supervisor[]" following a visit on 29 February 2016 and had

“made veiled threats to the social worker and supervisor about wanting to fight and kill them for taking her baby.” DSS reported that respondent-mother “has a history of aggression, violence, and making threats . . . and has physically assaulted her own mother on at least two occasions[,]” and that she “had thoughts of killing and hurting the baby prior to giving birth[.]” After a hearing on 3 March 2016, the court temporarily suspended respondent-mother’s visitation pending her participation in mental health services through STEPP Clinic, her compliance with her medication regimen, and her adherence to any other recommended treatment.

The trial court held a hearing on the petition on 18 April 2016. By order entered 31 May 2016, the court adjudicated Megan a dependent juvenile and awarded legal custody and placement authority to DSS. The court ordered that DSS “shall not continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile[]” and “relieved [DSS] of reunification efforts” with regard to both respondents. The order provided that respondent-mother would have “[n]o visitation” with Megan.

## II. Discussion

On appeal, respondent-mother claims the trial court erred by relieving DSS of reunification efforts as part of its initial disposition following Megan’s adjudication of dependency.<sup>2</sup> We agree.

Subsection (c) of N.C. Gen. Stat. § 7B-901 (2015) “permits the trial court to cease reunification efforts at an initial disposition hearing under certain circumstances.” *In re G.T.*, \_\_ N.C. App. \_\_, \_\_, 791 S.E.2d 274, 278 (2016); *see also* N.C. Gen. Stat. § 7B-100(4) (2015) (establishing a general policy in favor of “the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents”). In pertinent part, it provides that the court at an initial disposition hearing shall “direct that reasonable efforts for reunification . . . shall not be required if the court makes written findings of fact pertaining to any of the following[]:”

- (1) A court of competent jurisdiction has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:
  - a. Sexual abuse.
  - b. Chronic physical or emotional abuse.

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<sup>2</sup> Respondent-mother has filed an untimely reply brief accompanied by a motion to deem the brief timely filed. Under N.C. R. App. P. 28(h), an appellant may file a reply brief within fourteen days of being served with an appellee’s brief. Respondent-mother was served with the appellee’s brief of the guardian ad litem (“GAL”) on 3 November 2016, and with DSS’s brief on 21 November 2016. “For whatever reason,” she did not file her reply brief until 22 December 2016. In our discretion, her motion is denied.

- c. Torture.
- d. Abandonment.
- e. Chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile.
- f. *Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect. . . .*

N.C. Gen. Stat. § 7B-901(c) (2015) (emphasis added).

The trial court’s order includes a finding that “[r]espondent parents [sic] mental illness meets the requirements of 7B-901(c)(1)(f).” As we have recently held, however, the determination contemplated by subdivision (c)(1) “must have already been made by a trial court – either at a previously-held adjudication hearing or some other hearing in the same juvenile case, or at a collateral proceeding in the trial court[]” in order to support a decision to forego reunification efforts as part of an initial disposition. *In re G.T.*, \_\_ N.C. App. at \_\_, 791 S.E.2d at 279. “[I]n order to give effect to the term ‘has determined[]’ ” in N.C. Gen. Stat. § 7B-901(c)(1), we explained in *G.T.*, “it must refer to a prior court order.” *Id.* We further note that the court did not adjudicate Megan to be abused or neglected or make findings of particular acts of “abuse or neglect” by respondent-mother. N.C. Gen. Stat. § 7B-901(c)(1)(f). The court’s conclusory invocation of N.C. Gen. Stat. § 7B-901(c)(1)(f) with

regard to respondent-mother's mental illness cannot sustain its decision to forego reunification efforts.

The GAL and DSS argue that the trial court's decision to cease reunification efforts "was clearly appropriate under N.C.G.S. § 7B-906.1(d)(3)," which allows the cessation of such efforts if the court finds that they "clearly would be futile or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time." N.C. Gen. Stat. § 7B-906.1(d)(3) (2015). By its own terms, however, N.C. Gen. Stat. § 7B-906.1 governs only "[r]eview and permanency planning hearings" and not the "[i]nitial dispositional hearing" under N.C. Gen. Stat. § 7B-901. Therefore, we reverse the court's order insofar as it relieves DSS of reasonable efforts to reunify Megan with respondent-mother. *In re G.T.*, \_\_ N.C. App. at \_\_, 791 S.E.2d at 279.

Respondent-mother next claims the trial court erred by denying her any visitation with Megan without finding that such visitation would be contrary to the best interest of the child. We again find merit to her argument.

Under N.C. Gen. Stat. § 7B-905.1(a), "[a]n order that removes custody of a juvenile from a parent . . . or that continues the juvenile's placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile's health and safety." N.C. Gen. Stat. § 7B-905.1(a) (2015). A parent is entitled to visitation with her child "in the absence of findings

that a parent has forfeited her right to visitation or that it is in the child's best interest to deny visitation[.]” *In re C.P.*, 181 N.C. App. 698, 706, 641 S.E.2d 13, 18 (2007) (citing *In re Custody of Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971)).

In the case *sub judice*, the court decreed that respondent-mother would have “[n]o visitation” with Megan but made no findings that respondent-mother had forfeited her right to such visits or that it was in Megan’s best interest to deny visitation to her mother. As this Court has explained,

even if the trial court determines that visitation would be inappropriate in a particular case or that a parent has forfeited his or her right to visitation, it must still address that issue in its dispositional order and either adopt a visitation plan or *specifically determine* that such a plan would be inappropriate in light of the specific facts under consideration.

*In re K.C.*, 199 N.C. App. 557, 562, 681 S.E.2d 559, 563 (2009) (emphasis added); *see also In re M.H.B.*, 192 N.C. App. 258, 267, 664 S.E.2d 583, 588 (2008). Accordingly, we reverse this portion of the trial court’s order and remand either for entry of additional findings of fact supporting the denial of visitation to respondent-mother or for entry of an appropriate visitation schedule consistent with N.C. Gen. Stat. § 7B-905.1(b).

### III. Conclusion

IN RE: M.B.

*Opinion of the Court*

For the reasons discussed, we reverse the portions of the trial court's order that relieve DSS of reunification efforts and deny respondent-mother visitation. The case is remanded to the trial court.

REVERSED IN PART AND REMANDED.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).