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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-663

Filed: 6 February 2018

Rutherford County, No. 09 JA 133

IN THE MATTER OF: B.M.

Appeal by Respondent-Custodians from order entered 28 February 2017 by Judge Robert Martelle in Rutherford County District Court. Heard in the Court of Appeals 21 December 2017.

Joshua G. Howell for Petitioner-Appellee Rutherford County Department of Social Services.

Leslie Rawls for the Respondent-Appellant Custodian M.C.

Edward Eldred for the Respondent-Appellant Custodian D.C.

Lee F. Taylor for guardian ad litem.

No brief filed on behalf of Respondent-Appellee Mother or Respondent-Appellee Father.

DILLON, Judge.

D.C. ("Mr. Carter") and M.C. ("Mrs. Carter") (together, "Respondents"), appeal from an order adjudicating the minor child B.E.M. ("Brenda") to be a neglected

juvenile.[1] We affirm the trial court's order in part, but vacate the portion of the order releasing the Rutherford County Department of Social Services ("DSS") from further reunification efforts.

I. Background

In 2009, DSS first became involved with Brenda, when her biological parents were found to have neglected her and her brother, and custody of Brenda and her brother was awarded to Respondents.

On 8 April 2016, DSS initiated the instant juvenile case, with the filing of a petition alleging Brenda was an abused and neglected juvenile due to conditions in Respondents' home that led to Brenda attempting suicide by hanging. DSS obtained non-secure custody of Brenda and ultimately placed her in a therapeutic foster home. On 21 April 2016, DSS filed an amended petition that added allegations that Respondents, in violation of the 2009 juvenile court order granting them custody of Brenda, had allowed Brenda to visit her biological mother while her mother's boyfriend, D.F. ("Mr. Finch"), was present, and that during some of these visits, Mr. Finch sexually abused Brenda.

In February 2017, after a hearing on the matter, the trial court entered an order adjudicating Brenda to be a neglected juvenile. The court continued custody of Brenda with DSS, relieved DSS of further reunification efforts with Respondents and

[1] We use pseudonyms throughout this opinion to protect the juvenile's privacy and for ease of reading.

with Brenda's biological parents, and set the primary permanent plan for Brenda as guardianship or custody with adoption as the secondary permanent plan. The court granted Brenda's mother supervised visitation, forbade any contact between Brenda and her father or Mr. Finch, and denied Respondents any visitation with Brenda. Respondents timely appealed.

II. Analysis

Respondents have filed a joint brief on appeal and first argue the trial court erred in concluding that Brenda was a neglected juvenile. Respondents contend that the court erred in finding their disciplinary methods were inappropriate such that she lived in an environment injurious to her health. Respondents further contend the court's adjudication of neglect cannot be supported by their desire to treat Brenda's mental health problems at home, rather than in a therapeutic placement, and without giving her a prescription medication as recommended by her doctors. These arguments are insufficient to overturn the trial court's order.

A neglected juvenile is defined in relevant part as "[a] juvenile . . . who lives in an environment injurious to the juvenile's welfare . . . ." N.C. Gen. Stat. § 7B-101(15) (2015). This Court reviews a trial court's adjudication of a child to be a neglected juvenile "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).

"If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary." *Id.* "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re K.J.D.*, 203 N.C. App. 653, 657, 692 S.E.2d 437, 441 (2010).

In support of its conclusion that Brenda is a neglected juvenile, the trial court found, in relevant part:

> 36. That the order that gave custody of the minor child to the [Respondents] specifically forbade contact between the minor child and [Mr. Finch], the Respondent Mother's then boyfriend.
>
> 37. That on multiple occasions, the [Respondents] would drop the minor child and her sibling off at the Respondent Mother's house for visitation and [Mr. Finch] would be there.
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> 38. That [D.C.] would be in the same room as [Mr. Finch] when they were dropped off at times.
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> 39. That [Mr. Finch] sexually abused the minor child multiple times over the course of a couple of years.
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> 40. That the minor child disclosed the abuse to [D.C.] at church one night.
>
> 41. That the [Respondents] contacted the police to file a report.
>
> 42. That while testifying, [D.C.] stated he does not necessarily believe the minor child, but felt he had to take the allegation seriously.

Respondents do not challenge these findings of fact, and they are thus binding on this Court on appeal. *See In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005).

We hold that the trial court's findings of Respondents' willful violation of the court order granting them custody of Brenda are sufficient to support a conclusion that Brenda lived in an environment injurious to her welfare and was thus a neglected juvenile as contemplated by the Juvenile Code. Because we hold the trial court did not err in adjudicating Brenda to be a neglected juvenile based on her living in an environment injurious to her welfare, we need not address Respondents' arguments as to other possible bases for the trial court's adjudication. *See In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984) ("In determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent."); *see also In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007) ("The purpose of abuse, neglect[,] and dependency proceedings is for the court to determine whether the juvenile should be adjudicated as having the status of abused, neglected[,] or dependent.").

Respondents next argue the trial court erred by entering a dispositional order that failed to provide for visitation or to make the findings of fact required to deny them visitation with Brenda. We disagree.

"An order that removes custody of a juvenile from a parent, guardian, or custodian 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). The order must establish an adequate visitation plan for the custodian "'in the absence of findings that the [custodian] has forfeited their right to visitation or that it is in the child's best interest to deny visitation." *In re T.H.*, 232 N.C. App. 16, 34, 753 S.E.2d 207, 219 (2014) (internal marks omitted). An order denying visitation to a respondent is reviewed only for abuse of discretion, *see In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007), and the trial court's ruling "will not be disturbed absent clear evidence that the decision was manifestly unsupported by reason." *In re N.B.*, 167 N.C. App. 305, 311, 605 S.E.2d 488, 492 (2004).

Here, the trial court specifically concluded: "9. That it is not appropriate for the minor child to have custody with [Respondents] at this time." Given the court's conclusion that custody of Brenda should remain with DSS; its lack of any conclusion to grant custody of Brenda to her mother or father; and the location of this conclusion immediately after the court's conclusion that Brenda's mother could have visitation, but her father could not; we believe the use of the word "custody" in dispositional conclusion number 9 is a clerical error and the court meant to say "visitation." This

interpretation is further supported by the trial court's ultimate decree that "the minor child shall not have any visitation with [Respondents]."

In support of its decision to not permit visitation with Respondents the trial court made numerous findings of fact including that: (1) there had not been previous visitation with Respondents since the entry of the non-secure custody order; (2) Brenda was actively participating in therapy and had not engaged in any concerning behaviors since starting therapy; (3) Brenda refused to return to Respondents' home and wished to remain with her current foster parents; (4) Respondents attempted to develop a case plan with DSS, but could not come to an agreement; (5) Respondents insist that Brenda admit she lied and that she accept responsibility for her behaviors that led them to discipline her; (6) Respondents knowingly violated a prior court order by dropping Brenda off at her mother's home for visitation while Mr. Finch was present; (7) Mr. Carter does not believe Brenda's allegations that Mr. Finch sexually abused her; (8) Respondents never spoke with Brenda's therapist about addressing her behaviors; and (9) Respondents do not believe Brenda's suicide attempt was genuine, but that it was instead an elaborate scheme to get out of their house and live somewhere else. These findings are unchallenged by Respondents and are thus binding on appeal. Based on these findings, we cannot say the trial court's decision to prohibit visitation between Brenda and Respondents is manifestly unsupported by reason; and we overrule this argument.

Respondents' final argument on appeal is that the trial court erred in eliminating reunification as a permanent plan for Brenda in its initial disposition order because the court did not make the findings necessary to do so pursuant to N.C. Gen. Stat. § 7B-901(c) (2015). We agree.

In its order from an initial disposition hearing, a trial court may order that reunification efforts are not required only if it finds that:

> (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.
> 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.
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> (2) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent.
>
> (3) A court of competent jurisdiction has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent; (ii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; (iv) has committed sexual abuse against

> the child or another child of the parent; or (v) has been required to register as a sex offender on any government-administered registry.

N.C. Gen. Stat. § 7B-901(c) (2015). Only the first subdivision of 7B-901(c) is applicable in this case, and the trial court's order does not contain the requisite findings to support a decision to order that reunification efforts are not required.

However, in an apparent attempt to expedite the resolution of Brenda's juvenile case, the hearing below was noticed as both an initial adjudication and disposition hearing and a permanency planning hearing. The trial court did not receive any objection to its holding of a permanency planning hearing in conjunction with the adjudication and disposition hearing and thus applied the requirements of N.C. Gen. Stat. § 7B-906.2 to determine whether reunification should remain a permanent plan for Brenda. *See* N.C. Gen. Stat. § 7B-906.2(b) (2015) ("Reunification shall remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c) *or* makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety.") (emphasis added). Nonetheless, this Court has recently repudiated this approach, holding there is "no merit in the argument that the clear command of N.C.G.S. § 7B-901(c) may be eluded in favor of the more lenient requirements of N.C.G.S. § 7B-906.2(b) simply by combining dispositional and permanency planning matters in a single order." *In re*

J.M., ___ N.C. App. ___, ___, 804 S.E.2d 830, 841 (2017). Accordingly, we vacate the portion of the trial court's order releasing DSS from further reunification efforts. *Id.*

AFFIRMED IN PART; VACATED IN PART.

Judges HUNTER, JR., and MURPHY concur.

Report per Rule 30(e).