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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1383

Filed: 19 June 2018

Tyrrell County, Nos. 16 JA 05-06

IN THE MATTER OF: S.S. & T.N.S.

Appeal by Respondent-Mother from orders entered 11 September 2017 by Judge Christopher McLendon in Tyrrell County District Court. Heard in the Court of Appeals 31 May 2018.

J. Edward Yeager, Jr., for Petitioner-Appellee Tyrrell County Department of Social Services.

Mercedes O. Chut for Respondent-Appellant mother.

William L. Gardo, II, for guardian ad litem.

DILLON, Judge.

Respondent-Mother ("Mother") appeals from permanency planning orders that ceased reunification efforts with her and awarded guardianship of her child, S.S. ("Serena"), to Serena's aunt and awarded guardianship of her child, T.N.S. ("Talia"),

to Talia's grandmother.[1] We hold the trial court erred in granting guardianship of the children without first independently verifying the guardians understood the legal significance of the appointment and had adequate resources to care for the children.

I. Background

In June 2016, the Tyrrell County Department of Social Services ("DSS") initiated the underlying juvenile case by filing petitions alleging Serena and Talia were neglected juveniles because they did not receive proper care, supervision, or discipline from Mother and lived in an environment injurious to their welfare.[2] Serena was placed with her aunt, K.S. ("Mrs. Sparks"), and Talia was placed with her grandmother, E.S. ("Mrs. Smith").

In September 2016, after a hearing on the matter, the trial court entered an adjudication order, concluding that the children were neglected juveniles. The trial court entered a disposition order that same day in which it continued custody of the children with DSS and sanctioned their placements with Mrs. Sparks and Mrs. Smith. The court initially set the permanency plan for the children as reunification and directed Mother to undergo a series of steps toward that goal. The trial court reviewed the plan on two occasions, and each time continued the plan and reunification efforts.

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[1] We use pseudonyms to protect the anonymity of the juveniles and for ease of reading. *See* N.C. R. App. P. 3.1(b) (2015).

[2] DSS also filed juvenile petitions involving the children's sisters, T.L.S. ("Tara") and T.L.S. ("Thea"), but they are not subject to the orders at issue in this appeal.

In September 2017, after a hearing on the matter, the trial court entered an order, finding that Mother had not made sufficient progress toward curing the conditions that led to the children's removal from her care and ordering that DSS be relieved from making further reunification efforts. The court changed the permanency plan for the children from reunification to guardianship with a relative and appointed Mrs. Sparks and Mrs. Smith as the respective guardians of Serena and Talia.

Mother timely appealed.

II. Analysis

Mother makes an argument concerning the trial court's decision to relieve DSS from continuing reunification efforts and two arguments concerning the trial court's decisions on guardianship issues. We address each in turn.

A. Reunification Efforts

Mother argues that the trial court erred in relieving DSS from making further efforts toward her reunification with the children, contending that the trial court's orders lack adequate findings to support its conclusion that reunification efforts would be unsuccessful or inconsistent with the children's health or safety. *See* N.C. Gen. Stat. §§ 7B-906.1, -906.2 (2017). This Court reviews the trial court's orders on this issue for "whether there is competent evidence in the record to support the

findings and whether the findings support the conclusions of law." *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010).

The trial court made findings of fact to support its conclusion Mother had not made sufficient progress to warrant continued efforts at reunification, and Mother challenges a number of those findings. While there may be merit to Mother's arguments concerning some of those findings, we conclude that there are sufficient findings which are supported by the evidence to uphold the trial court's conclusions. For instance, the trial court found essentially that Mother continued her history of drug use. This finding was supported by evidence that Mother tested positive for drugs twice in February 2017 and once in July 2017, the month prior to the hearing before the trial court. Further, there is evidence to support the trial court's finding that Mother has refused DSS access to her substance abuse treatment records in order to allow DSS to confirm whether Mother was attending court-ordered drug treatment. Therefore, we affirm the trial court's order relieving DSS from further reunification efforts.

B. Guardianship

Mother argues that the trial court failed to assure the guardians' fitness to support the children. Specifically, Mother contends that the trial court erred in appointing Mrs. Sparks and Mrs. Smith as guardians for Serena and Talia, respectively, because the court failed to make the requisite inquiry into the

guardians' understanding of the legal significance of their appointments and whether they have adequate resources to care for the children. We agree that there was insufficient evidence to support the trial court's findings that Mrs. Sparks and Mrs. Smith had adequate resources to continue caring for the children. Accordingly, we vacate the portions of the trial court's orders concerning guardianship and remand the matter for further proceedings consistent with this opinion.

"Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and [whether] the findings support the conclusions of law." *In re R.A.H.*, 182 N.C. App. 52, 57-58, 641 S.E.2d 404, 408 (2007). Before a trial court may appoint a guardian of the person for a juvenile in a Chapter 7B case, the court must "verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile." N.C. Gen. Stat. § 7B-600(c) (2017); *see also* N.C. Gen. Stat. § 7B-906.1(j) (2017) (requiring an identical verification when appointing a guardian of a person for a juvenile as part of the juvenile's permanency plan). "[T]he trial court need not make detailed findings of evidentiary facts or extensive findings regarding the guardian's situation and resources, . . . [but] some evidence of the guardian's 'resources' is necessary as a practical matter, since the trial court cannot make any determination of adequacy without evidence." *In re P.A.*, 241 N.C. App. 53, 61-62, 772 S.E.2d 240, 246 (2015).

Moreover, "[t]he trial court has the responsibility to make an *independent determination*, based upon facts in the particular case, that the resources available to the potential guardian are in fact 'adequate[.]' " *Id.* at 65, 772 S.E.2d at 248 (emphasis added).

In support of its conclusion that the guardians understood the legal significance of their appointments and had adequate resources to care for the children, the court found:

> 22. [Mrs. Sparks/Mrs. Smith] understands the legal significance of becoming the child's legal guardian. Specifically, she understands that she will be responsible for the child's care, custody and control. She is a fit and proper person to serve as this child's guardian. She has the financial capacity for this child. The Juvenile's current caretaker [Mrs. Sparks/Mrs. Smith], is a suitable person to care for the safety and well-being of the Juvenile.

The only evidentiary support for this finding comes from the testimony of a DSS social worker, when questioned by the attorney for the guardian ad litem:

> Q. As far as you know, are the guardians willing to supervise visitation?
>
> A. Yes, ma'am.
>
> Q. And they understand the financial expectations that they—if they take guardianship?
>
> A. Yes, ma'am.
>
> Q. And they're able to meet these girls' needs and are willing to?

A. Yes, ma'am.

Although there was no objection to the social worker's testimony and it is thus competent evidence, the testimony is merely the social worker's opinion and it is insufficient to allow the trial court to conduct the required independent analysis. Both DSS and the guardian ad litem submitted reports into evidence at trial. Nevertheless, the reports do not cover the guardians' resources to care for the children, but rather focus on the family's history, risks of harm to the children, efforts toward reunification, and current status of the children.

Alternatively, DSS and the guardian ad litem argue other unchallenged findings of fact in the trial court's order support the court's conclusion. These findings of fact, however, do not address the guardians' understandings or resources and instead merely detail the children's: (1) history with the guardians; (2) transition into the guardians' homes; (3) medical care and mental health therapy; and (4) educational status.

We hold the evidence before the trial court is insufficient to support its conclusions regarding the guardians' understandings and resources. The trial court effectively substituted the judgment of the social worker for its own. This did not satisfy the requirement that it conduct an independent analysis of the guardians' understandings of the legal significance of their appointments and their resources to care for the children. There is no evidence of what the social worker considered to be

adequate resources to care for the children or what the resources of the guardians were, apart from the fact that they had been caretakers for the children during the pendency of the juvenile case. Such evidence is not sufficient to show a caretaker's ability to care going forward. The court's conclusion rests on nothing more than the social worker's conclusory opinion. *See In re P.A.*, 241 N.C. App. at 65, 772 S.E.2d at 248; *see also In re J.H.*, 244 N.C. App. 255, 271, 780 S.E.2d 228, 240 (2015) (vacating a permanency planning hearing appointing a guardian for the juvenile where the court's findings were only supported by conclusory evidence tangential to the trial court's determination pursuant to sections 7B-600(c) and 7B-906.1(j)). Accordingly, we must vacate the orders awarding guardianship of Serena and Talia to Mrs. Sparks and Mrs. Smith.

C. Visitation

Mother argues that the trial court erred in delegating the authority to schedule visitations to the appointed guardians. The trial court's delegation appears to comply with the statutory requirements of subsections 7B-905.1(a) and (c) of the North Carolina General Statutes. (2015). Further, our Court has upheld similar delegations in prior case law. *See In re N.B.*, 240 N.C. App. 353, 363-65, 771 S.E.2d 562, 569-70 (2015). However, since we have vacated the portion of the order appointing Mrs. Sparks and Mrs. Smith as guardians, we vacate this portion of the trial court's order, as well, to be heard anew upon reconsideration of the guardians' fitness.

III. Conclusion

We affirm the portion of the trial court's order allowing DSS to cease reunification efforts between Mother and the two children. However, we vacate the trial court's appointment of Mrs. Sparks and Mrs. Smith as guardians, and remand for further proceedings consistent with this opinion. On remand, the trial court is free to hear additional evidence and make new findings regarding the fitness of Mrs. Sparks and Mrs. Smith.

AFFIRMED IN PART. VACATED AND REMANDED IN PART.

Judge BERGER concurs.

Judge DAVIS concurs by separate opinion.

Report per Rule 30(e).

DAVIS, Judge, concurring.

I concur with the majority's result but write separately to emphasize the fact that the verification requirement of N.C. Gen. Stat. § 7B-906.1(j) contains two discrete prongs, which must be analyzed separately.

N.C. Gen. Stat. § 7B-906.1(j) provides as follows:

> If the court determines that the juvenile shall be placed in the custody of an individual other than a parent or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile *understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.*

N.C. Gen. Stat. § 7B-906.1(j) (2017) (emphasis added).

We have consistently held that "possessing an understanding of the 'legal significance' of guardianship is not necessarily the same thing as having 'adequate resources' to serve as a guardian." *In re P.A.*, 241 N.C. App. 53, 60, 772 S.E.2d 240, 246 (2015); *see also In re E.M.*, __ N.C. App. __, __, 790 S.E.2d 863, 872 (2016) (holding that guardian's testimony was sufficient to demonstrate that guardians had adequate resources to care for child but was insufficient to demonstrate an understanding of legal significance of taking custody of child). Thus, we must conduct a separate analysis of each issue.

First, with respect to the "adequate resources" analysis, this Court has held that evidence is insufficient to meet the verification requirement as to the adequacy of a proposed guardian's resources where the only evidence of the guardian's resources is a social worker's bare statement that the resources are adequate. Instead, this Court has consistently required a more searching inquiry by the trial court into the adequacy of the guardian's financial resources. *See, e.g.*, *In re J.H.*, 244 N.C. App. 255, 271, 780 S.E.2d 228, 240 (2015) (findings that grandparents had met child's "well-being needs" and that child had "no current financial or material needs" were "insufficient to support a finding that . . . grandparents ha[d] adequate resources . . . ." (quotation marks omitted)); *P.A.*, 241 N.C. App. at 61-62, 772 S.E.2d at 246 ("[S]ome evidence of the guardian's 'resources' is necessary as a practical matter, since the trial court cannot make any determination of adequacy without evidence.").

Here, as the majority correctly observes, the trial court did not have evidence of the guardians' resources beyond a blanket statement that they understood the financial expectations of the placement. Therefore, the trial court was unable to make its own determination — as required — that the resources were adequate.

Second, with regard to the "legal significance" analysis, we have held that "[e]vidence sufficient to support a factual finding that a potential guardian understands the legal significance of guardianship can include, *inter alia*, testimony

from the potential guardian of a desire to take guardianship of the child, the signing of a guardianship agreement acknowledging an understanding of the legal relationship, and testimony from a social worker that the potential guardian was willing to assume legal guardianship." *E.M.*, __ N.C. App. at __, 790 S.E.2d at 872.

Here, however, the social worker was never expressly asked — and thus, no testimony was elicited — about the guardians' awareness of the legal significance of the placement. Instead, as the majority notes, the social worker merely offered brief testimony that the guardians were able and willing to "meet these girls' needs . . . ." Furthermore, the record is devoid of any indication that the guardians signed a guardianship form stating their understanding of the legal significance of the placement. Thus, as the majority correctly holds, the social worker's testimony did not constitute sufficient evidence to support the trial court's verification that the guardians understood the legal significance of the placement.