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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-103

Filed: 19 June 2018

Wake County, No. 15 JT 163

IN THE MATTER OF: J.R.

Appeal by respondent-mother from order entered 28 September 2017 by Judge Monica M. Bousman in Wake County District Court. Heard in the Court of Appeals 5 June 2018.

Wake County Attorney's Office, by Mary Boyce Wells, for petitioner-appellee Wake County Human Services.

Keith Karlsson for Guardian ad Litem.

Vitrano Law Offices, PLLC, by Sean P. Vitrano for respondent-appellant mother.

ARROWOOD, Judge.

Respondent-mother appeals from order terminating her parental rights as to her minor child, J.R. ("James").[1] For the reasons stated herein, we affirm the order of the trial court.

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[1] Pseudonyms have been used to protect the identity of the minor child. *See* N.C.R. App. P. 3.1(b) (2018).

I. Background

In June 2014, Franklin County Social Services became involved with respondent-mother and James when Wake Med Behavioral Health Hospital admitted respondent-mother and diagnosed her with delusional disorder, chronic mood disorder, anger issues, and depression. On 16 July 2014, Franklin County Social Services completed a safety assessment for James. Respondent-mother agreed to attend therapy and to take medication as prescribed.

In August 2014, respondent-mother moved to Wake County and the case transferred to Wake County Human Services ("WCHS"). Respondent-mother entered into an in-home service agreement with WCHS on 12 August 2014, agreeing to obtain a mental health evaluation, attend therapy, and take her medications.

In January 2015, WCHS received reports of domestic violence between respondent-mother and her boyfriend ("W.N.") that resulted in respondent-mother's arrest for assault. In May 2015, WCHS received a second report of domestic violence between respondent-mother and W.N., which took place at respondent-mother's home in front of James. After this incident, respondent-mother and W.N. were not permitted to be alone with James, and James was placed with his maternal grandmother. Subsequently, maternal grandmother violated WCHS' safety plan for James by leaving him alone with respondent-mother and W.N.

On 22 May 2015, WCHS filed a petition alleging that James was a neglected juvenile from January to May 2015. The petition alleged James lived in an environment injurious to his welfare because respondent-mother exposed him to domestic violence, did not take her medication, and did not comply with her home services plan. WCHS obtained non-secure custody of James, and the trial court appointed a guardian ad litem for James.

Respondent-mother moved for the trial court to appoint her a parental guardian ad litem. The trial court addressed this motion at a pre-adjudication hearing on 30 June 2015. Judge Monica M. Bousman denied the request and ruled respondent-mother did not qualify for the appointment of a guardian ad litem.

Following a 12-13 August 2015 hearing, the trial court adjudicated James a neglected juvenile. The trial court ordered respondent-mother to enter into and comply with an out of home services agreement that required respondent-mother to: (1) enter into a visitation agreement, (2) obtain and maintain safe and stable housing that is free of violence and appropriate for herself and James, (3) complete a psychological evaluation, a psychiatric evaluation, and a substance abuse assessment, and comply with the recommendations, (4) complete parenting classes and demonstrate lessons she learned therein through her interactions with James, (5) participate in a community support team and follow all recommendations, (6) complete a domestic violence perpetrator assessment and participate in any

recommended treatment, and (7) maintain regular contact with the social worker assigned to the case.

On 3 November 2015, the trial court reviewed this matter. At the time, respondent-mother was incarcerated on charges of trespassing, resist/delay/obstruct, and damage to real property. Respondent-mother did not attend the second placement review and permanency planning hearing on 2 May 2016. On 24 April 2017, the trial court held a third placement review hearing. The trial court found respondent-mother had not demonstrated sufficient progress in visits with James to be able to move towards a lesser level of supervision. It also found that respondent-mother had not completed a domestic violence assessment or treatment, and that respondent-mother refused drug screens on 13 and 14 October 2016 and reported using marijuana. Respondent-mother tested positive for marijuana on 24 October 2016.

On 28 June 2016, WCHS moved to terminate respondent-mother's parental rights. The petition alleged the following grounds for termination: (1) the parents neglected James within the meaning of N.C. Gen. Stat. § 7B-101(15), and it was probable that there would be a repetition of the neglect if the child were returned; (2) the parents willfully left James in foster care for more than twelve months without demonstrating they made reasonable progress to correct the conditions which led to the removal of the children (N.C. Gen. Stat. § 7B-1111(a)(2)); and (3) parents willfully

failed to pay a reasonable portion of the cost of care for the minor children while they were in the custody of DSS even though physically and financially able to pay a reasonable portion (N.C. Gen. Stat. § 7B-1111(a)(3)).[2] Respondent-mother retained counsel, and filed an answer on 13 April 2017.

On 30 June 2017, the matter came on for hearing before Judge Monica M. Bousman. Respondent-mother moved to dismiss the motion on grounds that the hearing was held more than a year past the motion's filing date, in violation of N.C. Gen. Stat. § 7B-1109(a). The trial court denied the motion.

Subsequently, based on the evidence and testimony presented, the trial court concluded: (a) respondent-mother neglected James, and it was probable there would be a repetition of the neglect if the child were returned to her care; (b) respondent-mother willfully left the child in foster care for more than twelve months without showing, to the court's satisfaction, that reasonable progress had been made to correct the conditions that led to the removal of the child; and (c) respondent-mother's conduct demonstrates she would not promote the healthy and orderly, physical and emotional well-being of James. Based upon these findings, the trial court determined the termination of respondent-mother's parental rights was in James' best interests. Accordingly, the trial court terminated respondent-mother's parental rights.

Respondent-mother appeals.

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[2] The motion named two putative fathers, W.N. and J.L.R. W.N. was excluded by genetic marker testing. J.L.R.'s parental rights were terminated on 8 December 2016.

II. Discussion

The sole issue on appeal is whether the trial court abused its discretion when it did not conduct an inquiry into respondent-mother's competency on 30 June 2017 or 27-28 July 2017, and did not appoint a guardian ad litem pursuant to N.C. Gen. Stat. § 7B-1101.1 (2017).

Under N.C. Gen. Stat. § 7B-1101.1, "the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, Rule 17." N.C. Gen. Stat. § 7B-1101.1(c). An incompetent adult is defined as one:

> who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

N.C. Gen. Stat. § 35A-1101(7) (2017).

"A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*." *In re J.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d 45, 49 (2005) (citation omitted). "[T]rial court decisions concerning both the appointment of a guardian *ad litem* and the extent to which an inquiry concerning a parent's competence should be conducted are reviewed on appeal using an abuse of discretion standard." *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (citation omitted). An "[a]buse of discretion

results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis,* 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted). Such a deferential standard is appropriate in this context,

> given that the trial judge, unlike the members of a reviewing court, actually interacts with the litigant whose competence is alleged to be in question and has, for that reason, a much better basis for assessing the litigant's mental condition than that available to the members of an appellate court, who are limited to reviewing a cold, written record.

In re T.L.H., 368 N.C. at 108, 772 S.E.2d at 456.

In *In re T.L.H.*, our Supreme Court specifically rejected "the proposition that a trial court must inquire into the necessity for the appointment of a parental guardian ad litem solely because the parent has diagnosable mental health problems." *Id.* at 110, 772 S.E.2d at 457. Instead, the Court provided the following guidance for appellate review:

> Although the nature and extent of such diagnoses is exceedingly important to the proper resolution of a competency determination, the same can also be said of the information that members of the trial judiciary glean from the manner in which the individual behaves in the courtroom, the lucidity with which the litigant is able to express himself or herself, the extent to which the litigant's behavior and comments shed light upon his or her understanding of the situation in which he or she is involved, the extent to which the litigant is able to assist his or her counsel or address other important issues, and numerous other factors.

Id. at 108, 772 S.E.2d at 456. If there is "an appreciable amount of evidence" that a litigant "whose mental condition is at issue is not incompetent," we only hold that the trial court abused its discretion by inquiring into that litigant's competence in the "most extreme instances." *Id.* at 108-109, 772 S.E.2d at 456 (citation omitted).

The record reflects that respondent-mother had mental health issues and was resistant to treatment, but it does not reflect that she was incapable of managing her own affairs. Respondent-mother was involved in her defense at the hearing. She attempted to address the court on whether the timing of the proceeding prejudiced her case, and repeatedly attempted to respond for herself instead of allowing her attorney to speak during the hearing. Her responses reflected her understanding of the proceedings before her. Additionally, her counsel at the termination hearing never raised respondent-mother's competency as an issue before the trial court, and instead argued respondent-mother had made significant progress in her mental health and had "been following up on her med management."

Although the termination order noted respondent-mother's mental health issues, its focus was on respondent-mother's unwillingness to make necessary changes to regain custody of James. The trial court found that she refused: to complete domestic violence counseling, even though domestic violence was a major reason that James was removed from her care; to consistently comply with her recommended mental health recommendations; and to comply with substance abuse

treatment. Additionally, although respondent-mother consistently attended visitations, she failed to demonstrate "sufficient progress or stability to move from supervised visits to a less restrictive level of observation such as monitored or unsupervised." None of the evidence tended to show that her unwillingness to make necessary changes stemmed from her mental health issues. As a result, the trial court's termination decision rested on considerations other than the fact that respondent-mother appears to have suffered from one or more diagnosable mental health conditions.

We also note that respondent-mother appeared before the judge who presided over the termination proceeding throughout this case, including the 30 June 2015 hearing on respondent-mother's motion for a guardian ad litem. Despite the judge's familiarity with the case and repeated interactions with respondent-mother, including her observation that "throughout the three days of [the] hearing" respondent-mother was "fidgety, unable to sit still, and unable to remain at counsel table with her attorney, . . . repeatedly [going] in and out of the courtroom as the hearing proceeded[,]" she saw no need to question respondent-mother's competence at the termination hearing.

After a careful review of the record pursuant to the standard in *In re T.L.H.*, we hold there was sufficient evidence of respondent-mother's competency that the trial court did not abuse its discretion when it failed to conduct a competence inquiry

before proceeding with the termination hearing. The record indicates respondent-mother was aware of, and able to appropriately participate in, the trial court's proceedings and her history of mental illness was not the sole basis for the termination of her parental rights. Therefore, we affirm the trial court's order terminating respondent-mother's parental rights.

AFFIRMED.

Judges CALABRIA and MURPHY concur.

Report per Rule 30(e).