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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-207

Filed: 21 August 2018

Yadkin County, No. 16 JA 7

IN THE MATTER OF: A.H.

Appeal by respondent-mother from order entered 25 October 2017 by Judge David V. Byrd in Yadkin County District Court. Heard in the Court of Appeals 26 July 2018.

J. Brett Lane for petitioner-appellee Yadkin County Human Services Agency.

Leslie Rawls for respondent-appellant mother.

Paul W. Freeman, Jr., for guardian ad litem.

ELMORE, Judge.

Respondent appeals an order awarding custody of her two-year-old daughter, A.H. ("Anna"), to Anna's maternal step-great-grandparents, Mr. and Mrs. Vito.[1] She argues the trial court abused its discretion by concluding that Anna's best interests would be served by awarding custody of her to Mr. and Mrs. Vito. We affirm.

I. Background

[1] Pseudonyms are used to protect the minor's identity. N.C. R. App. P. 3.1(b).

On 10 March 2016, the Yadkin County Human Services Agency ("YCHSA") filed a juvenile petition alleging that Anna was neglected and dependent on the basis that she lived in an environment injurious to her welfare due to her parents' history of domestic violence and substance abuse. The petition alleged that respondent admitted to using methamphetamines provided to her by her husband, Anna's father, and that the father used the drugs as well. Respondent also admitted to using a "nerve pill" and pain pills that were not prescribed to her in order to deal with the pain from injuries inflicted upon her by the father. In the month prior to the petition, the father had choked respondent at least twice, pushed and shoved her, and slammed a door into her face, bruising her nose. Respondent also admitted that two days before the petition was filed, the father had beat her when she tried to leave with Anna. The petition alleged that services had been offered and recommended to the parents since Anna's birth to address their history of substance abuse and relationship issues, and that respondent had a history with child protective services due to domestic violence, substance abuse, and unaddressed mental health issues relating to another child. YCHSA obtained nonsecure custody of Anna.

After a hearing, the district court on 25 April 2016 adjudicated Anna neglected and dependent and continued custody with YCHSA. The court also ordered respondent and the father to comply with an out-of-home family services agreement ("OHFSA"), which required them to obtain a psychological evaluation and a substance

abuse assessment and follow any recommendations, attend individual and couples counseling to address domestic violence and substance abuse issues, complete parenting classes, and obtain and maintain suitable housing. The court awarded respondent one hour of supervised visitation twice a week "contingent upon clean drug/alcohol screens" and ordered a home study of the maternal step-great-grandmother's, Mrs. Vito's, home.

After a 9 June 2016 review hearing, the trial court entered a 17 June 2016 order continuing parental reunification as the permanent plan. The court found that while respondent had complied with some portions of the OHFSA, her attendance at the required parenting classes and couples counseling was inconsistent. The court also found that Mr. and Mrs. Vito's home had been approved as a placement for Anna and concluded that "the health, safety and best interests of [Anna] would be best served by continuing custody with the YCHSA and providing for the placement of the minor child with [Mr. and Mrs. Vito]." Accordingly, YCHSA placed Anna with Mr. and Mrs. Vito.

After a 8 December 2016 hearing, the trial court entered a 5 January 2017 order continuing parental reunification as the primary plan with a secondary plan of guardianship/custody. The court found that respondent's attendance at both individual and couples counseling remained inconsistent with "dramatic variations in her willingness to participate." The court also found that respondent was having

frequent anxiety attacks for which she sought treatment at the hospital, and that respondent's counselor had concerns she may be using the visits to obtain benzodiazepines "since no other doctors [would] prescribe them to her." While the court acknowledged that respondent had made some progress on her case plan, it found the parents "[had] not adequately addressed the conditions that led to the removal of [Anna] from the home[,]" and expressed concerns regarding the parents' inconsistent attendance at marital counseling and alleged recent domestic violence incidents, and the father's inconsistent substance abuse treatment.

In a 16 March 2017 permanency planning review order, the trial court changed the primary plan to custody with a relative or approved caretaker, with a secondary plan of reunification. The court found that respondent had difficulties following through with the recommendations and requirements of the OHFSA, noting that the completed objectives "[had] taken a long amount of time." The court further found that respondent was "struggl[ing] with debilitating anxiety and suffer[ing] from 'black outs;' during which she does not remember what has occurred." The court expressed concern that, due to the parents' inconsistent behavior, long-term improvements were not being made and the issues that led to Anna's removal from the home were not adequately being remedied. The court also found that Anna was doing very well with Mr. and Mrs. Vito and that placement in their custody allows Anna routine contact with her siblings and other family members.

After a 21 September 2017 review hearing, the trial court entered a 25 October 2017 order awarding Mr. and Mrs. Vito custody of Anna and ceasing further review hearings. The court found the parents had not made adequate progress on their case plans within a reasonable period of time, indicating barriers to achieving reunification including the parents' ongoing financial hardships, the father's failure to complete his substance abuse treatment, and respondent's ongoing physical and mental health complications and her recent period of non-compliance in her substance abuse treatment program. The court found that respondent's attendance at her individual outpatient therapy continued to be inconsistent, and that she had missed a significant number of her awarded visitations with Anna, including three of the last six, and had not taken advantage of the additional visitation offered by Mr. and Mrs. Vito. Therefore, the court concluded, it would be contrary to Anna's health, safety, welfare, and best interests to be returned home at this time or within the next six months, and that it was in Anna's best interests that custody be awarded to Mr. and Mrs. Vito. Respondent appeals this order.

II. Discussion

"Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and the findings support the conclusions of law." *In re C.P.*, ___ N.C. App. ___, ___, 801 S.E.2d 647, 651 (2017) (citation omitted). But where, as here, findings are unchallenged on appeal, our

review is further limited to whether those findings supported the trial court's conclusions. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). "We review a trial court's determination as to the best interest of the child for an abuse of discretion." *In re C.P.*, ___ N.C. App. at ___, 801 S.E.2d at 651 (quoting *In re J.H.*, 244 N.C. App. 255, 267, 780 S.E.2d 228, 239 (2015)). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason . . . [or] upon a showing that [the trial court's decision] was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (internal citation omitted).

Respondent asserts the trial court abused its discretion in awarding custody of Anna to Mr. and Mrs. Vito because it failed to consider (1) the progress she made on her case plan and her resolution of the issues which led to Anna's removal from the home, and (2) the advanced ages of Mr. and Mrs. Vito and their continuing ability to provide care. We disagree.

N.C. Gen. Stat. § 7B-906.1 (2017) governs review and permanency planning hearings. "At each [review] hearing, the court shall consider information from the parents, the juvenile, the guardian, any person providing care for the juvenile, the custodian or agency with custody, the guardian ad litem, and any other person or agency that will aid in the court's review." *Id.* § 7B-906.1(c). "At the conclusion of each permanency planning hearing, the judge shall make specific findings as to the

best permanent plans to achieve a safe, permanent home for the juvenile within a reasonable period of time." *Id.* § 7B-906.1(g). The trial court may maintain the child's placement, order a different placement, "or order any disposition authorized by G.S. 7B-903, including the authority to place the child in the custody of . . . any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile." *Id.* § 7B-906.1(i). "The district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child." *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008) (citation omitted).

Here, the trial court made the following pertinent findings of fact:

> 6. [Anna] is currently placed with her maternal great-grandparents, [Mr. and Mrs. Vito]. She has bonded with the [Vitos], her needs are being met, and she is doing well in this placement. The [Vitos] have indicated that they are willing and able to take custody of [Anna].
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> 7. . . . [Respondent] is not employed and is on disability. She is currently on probation for felony drug charges and has been ordered to complete 100 hours of community service which she began on May 11, 2017. However, her progress was largely stagnant until the second week of August. [Respondent] entered into an [OHFSA] on April 7, 2016. She is participating in group therapy at Addiction Recovery Medical Services but, on July 13, 2017, her group therapy requirements were reduced from one group therapy session per week to two group therapy sessions per month per [respondent's] request. She has had an intermittent period of noncompliance in this program but has been in compliance since August, 2017. [Respondent] had a clinical assessment performed on January 4, 2017,

through Easter Seals UPC and had a treatment recommendation of outpatient, individual therapy. [Respondent] attended an appointment on June 8, 2017, but canceled several appointments following that date. Her last attended appointment was on September 8, 2017. [Respondent] enrolled in the Nurturing Parents Program through the Children's Center of Yadkin on December 11, 2016. It was recommended that she complete 24 sessions of the Nurturing Parenting program, however, the program requires only 16 sessions to receive a certificate of completion. [Respondent] received a certificate of completion on December 6, 2016. [Respondent] has not had exclusive custody of any of her three children beyond three months of age.

8. . . . [The father] entered into an OHFSA on April 7, 2016. On June 5, 2016, [the father] provided the YCHSA with verification that he had started substance abuse treatment with the Justis Group but he has not completed the program. . . .

9. The parents are currently entitled to visitation as follows: weekly, for four hours, supervised by the YCHSA or its designee and contingent upon the respondents not being incarcerated and clean drug/alcohol screenings. . . . [Respondent] and [the] father have missed a significant portion of the visitations . . . made available to them. Since this hearing was continued on September 7, 2017, the parents have missed three of their possible six visits with [Anna]. Furthermore, the [Vitos] have offered additional extended visitation to the parents but the parents have not participated in any such additional extended visitation.

. . . .

12. Currently, the barriers to achieving the permanent plans are as follows: [the father] continues to have ongoing financial hardships, lacks a valid driver's license, and has not completed his substance abuse treatment. [Respondent] continues to have ongoing financial

hardships, continues to have ongoing physical and mental health complications, and has had a period of non-compliance in her substance abuse treatment program.

13. The Court has given priority to placement of the minor child with a relative who is able to provide proper care and supervision in a "safe home." To that end, the minor child has been placed with her great-grandparents, [Mr. and Mrs. Vito].

14. The YCHSA and the GAL recommend that custody of the minor child be awarded to [Mr. and Mrs. Vito] and that the YCHSA and the GAL be released of further efforts in this matter as the respondents have not adequately addressed the conditions that led to removal of the minor child from the home. The Court has given bona fide consideration to these recommendations and is [in] agreement based upon the facts and evidence, as well as the reasoning and findings contained herein.

15. Facts supporting not returning the minor child home immediately include those enumerated above.

16. It is unlikely that the minor child could return to the home now or within the next six months for the reasons stated herein.

. . . .

20. Pursuant to N.C. Gen. Stat. § 7B-906.2, the Court finds that: (1) the parents have not made adequate progress under the current plans; (2) the parents' cooperation with the plan, YCHSA, and the GAL has been limited; (3) the parents have remained available to the Court, the YCHSA, and the GAL; and (4) the parents are acting in a manner that is inconsistent with the health or safety of the juvenile in that they have not made substantial progress on their respective OHFSAs.

21. Pursuant to N.C. Gen. Stat. § 7B-906.1(n), the Court

> finds by clear, cogent, and convincing evidence that: (1) the juvenile has resided in the current placement for a period of at least one year; (2) the placement is stable and continuation of the placement is in the juvenile's best interests; (3) neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months; (4) all parties are aware that the matter may be brought before the Court for review at any time by the filing of a motion for review or on the Court's own motion; (5) this Order designates [Mr. and Mrs. Vito] as the juvenile's permanent custodian.

These unchallenged findings show the trial court considered respondent's and the father's case plan progress but simply determined they failed to make substantial progress within a reasonable time and that Anna's return to their home was contrary to her "health, safety, welfare, and . . . best interests[.]" Anna was removed from the home due to the parents' substance abuse and domestic violence. Contrary to respondent's assertion, the trial court's findings establish she has not resolved these issues. Respondent had a recent period of noncompliance with her substance abuse treatment and had only been back in compliance as of August 2017, one month before the hearing. Respondent also did not consistently attend her mandated counseling, which was meant to address her domestic violence issues.

Additionally, because respondent continued living with the father, his case plan progress was relevant in determining the best permanent plan for Anna in order "to achieve a safe, permanent home . . . within a reasonable period of time." N.C. Gen. Stat. § 7B-906.1(g). Eighteen months after Anna was taken into custody, the

father had yet to complete his substance abuse treatment and therefore failed to address his substance abuse issues, one of the conditions which led to Anna's removal. Further, the findings show the trial court made N.C. Gen. Stat. § 7B-906.1(j)'s requisite verifications in order to award custody to a nonparent. It found that Mr. and Mrs. Vito understood their duties and obligations of taking custody of Anna and were financially able to appropriately care for her.

Respondent also argues the court failed to consider how Mr. and Mrs. Vito's ages, then seventy and sixty-six years old respectively, may undermine their abilities to care for Anna. However, as respondent concedes on appeal, no evidence was presented regarding any diminished capacity of Mr. and Mrs. Vito to care for Anna. To the contrary, Mr. Vito testified he did not think age impaired their abilities to care for Anna at the time of the hearing and that they would make an appropriate plan of care if needed. The court found that Anna was "doing very well" in her placement with Mr. and Mrs. Vito, that she had bonded with them, and that her needs were being met.

These and the other unchallenged findings demonstrate the trial court's determination that custody with Mr. and Mrs. Vito was in Anna's best interests was not manifestly unsupported by reason or so arbitrary that it could not have been the

result of a reasoned decision. Accordingly, we hold the trial court did not abuse its discretion in awarding custody of Anna to Mr. and Mrs. Vito.[2]

III. Conclusion

Because respondent has failed to demonstrate the trial court abused its discretion in awarding custody of Anna to Mr. and Mrs. Vito, we affirm its order.

AFFIRMED.

Judges DAVIS and ZACHARY concur.

Report per Rule 30(e).

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[2] The trial court inadvertently released the GAL and YCHSA "from further efforts in this matter." However, because reunification remains part of the permanent plan, we direct the trial court to clarify that the GAL and YCHSA "shall continue to perform services in this matter." *See In re A.A.S.*, ___ N.C. App. ___, ___, 812 S.E.2d 875, 881 (2018) ("During concurrent planning, DSS is required to continue making reasonable reunification efforts until reunification is eliminated as a permanent plan." (citing N.C. Gen. Stat. § 7B-906.2(b) (2017)).