IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-922

Filed: 26 March 2019

Wayne County, Nos. 17 JA 62, 18 CVD 1105

IN THE MATTER OF: J.C.-B.

Appeal by respondent-mother from orders entered 7 June 2018 by Judge Ericka Y. James in Wayne County District Court. Heard in the Court of Appeals 26 February 2019.

Baddour, Parker, & Hine, P.C., by E.B. Borden Parker, for petitioner-appellee Wayne County Department of Social Services.

White & Allen, P.A., by Delaina Davis Boyd for appellee-intervenor grandmother.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender J. Lee Gilliam, for respondent-appellant mother.

Poyner Spruill LLP, by John M. Durnovich and Christopher S. Dwight, for guardian ad litem.

DIETZ, Judge.

Respondent appeals from a permanency planning order and corresponding order terminating juvenile jurisdiction and transferring this matter to a civil custody proceeding. On appeal, the appellees filed a joint brief conceding error and requesting

that this Court vacate the trial court's orders and remand for further proceedings. As explained below, we agree with the parties that the challenged orders must be vacated and this matter remanded.

Facts and Procedural History

Respondent is the mother of Jacob, a juvenile.[1] On 24 April 2017, when Jacob was thirteen years old, Respondent was hospitalized for an attempted suicide.

On 26 April 2017, the Wayne County Department of Social Services filed a petition alleging that Jacob was neglected and dependent. DSS took custody of Jacob and placed him with his maternal grandmother.

On 3 August 2017, the trial court held its initial adjudication hearing, adjudicated Jacob neglected and dependent, and set a permanent plan of reunification while continuing placement of Jacob with his maternal grandmother. In a series of review hearings, the trial court found that Respondent continued to make at least some progress toward reunification.

On 21 March 2018, the maternal grandmother moved to intervene in the juvenile case. The trial court heard the motion on 5 April 2018. At the hearing, both Respondent and the maternal grandmother testified, but their testimony primarily concerned the request to intervene and the court heard no other evidence.

[1] We use a pseudonym to protect the juvenile's identity.

On 7 June 2018, the trial court entered orders from the 5 April 2018 hearing. The court permitted the maternal grandmother's request to intervene, granted permanent custody of Jacob to the maternal grandmother, ceased reunification efforts with Respondent, and terminated the juvenile court's jurisdiction, transferring the matter to a civil custody proceeding. Respondent timely appealed.

Analysis

On appeal, Respondent argues that the trial court erred by permitting the maternal grandmother to intervene; by entering a permanency planning order without hearing testimonial evidence; by ceasing reunification efforts and awarding permanent custody without adequate findings; and by terminating juvenile jurisdiction and transferring the case to a civil custody proceeding.

The Wayne County Department of Social Services, the guardian ad litem, and the maternal grandmother filed a short, joint appellee brief in which they concede that the trial court erred by failing to hear testimonial evidence before entering the permanency planning order. They assert that they "do not oppose remanding to the trial court for a new permanency planning hearing." They also assert that "[b]ecause Appellees concede that a new permanency planning hearing is appropriate, the Court need not reach [Respondent's] remaining arguments."

We agree with the parties that we must vacate and remand the permanency planning order. Under N.C. Gen. Stat. § 7B-906.1(c), the trial court must conduct a

hearing before entering a permanency planning order. This Court has held that the language of the statute requires live testimony at the hearing; the court cannot rely solely on "the written reports of DSS and the guardian ad litem, prior court orders, and oral arguments by the attorneys involved in the case." *In re D.Y.*, 202 N.C. App. 140, 143, 688 S.E.2d 91, 93 (2010). Accordingly, we vacate the trial court's permanency planning order and the corresponding order terminating juvenile court jurisdiction, and we remand this case for further proceedings.

Because we vacate these orders and remand, we need not address Respondent's arguments concerning the lack of findings in the orders or the court's decision to terminate juvenile jurisdiction, as those issues may be mooted by evidence introduced at the hearing on remand and the trial court's resulting findings and conclusions. Thus, those issues are not appropriate for appellate review at this time. *In re J.V.*, 198 N.C. App. 108, 117 n.6, 679 S.E.2d 843, 848 n.6 (2009).

But we will address Respondent's argument concerning intervention because that argument raises a legal question likely to recur on remand and which this Court can resolve on the existing record. Respondent contends, correctly, that the provision permitting intervention in these proceedings, N.C. Gen. Stat. § 7B-401.1(h), does not permit the maternal grandmother to intervene. That provision contains a limited set of persons who may intervene, and the maternal grandmother does not fall within any of the enumerated categories:

> (h) Intervention.--Except as provided in G.S. 7B-1103(b) and subsection (e1) of this section, the court shall not allow intervention by a person who is not the juvenile's parent, guardian, or custodian, but may allow intervention by another county department of social services that has an interest in the proceeding.

N.C. Gen. Stat. § 7B-401.1(h).

Respondent acknowledges that there is a separate provision, N.C. Gen. Stat. § 7B-401.1(e), that permits a "caretaker" to be a party to the proceeding if "the court orders that the caretaker be made a party":

> (e) Caretaker.--A caretaker shall be a party only if (i) the petition includes allegations relating to the caretaker, (ii) the caretaker has assumed the status and obligation of a parent, or (iii) the court orders that the caretaker be made a party.

N.C. Gen. Stat. § 7B-401.1(e).

Respondent contends that the trial court lacks authority to join the maternal grandmother under subsection (e) because the "specific provision forbidding intervention by a caretaker found in subsection (h) controls vis à vis the more general provision regarding making a caretaker a party at the beginning of the case found in subsection (e)." The flaw in this argument is the assertion that N.C. Gen. Stat. § 7B-401.1(e) only permits the court to make the caretaker a party "at the beginning of the case." That is not what the statute says. Subsection (e) permits a caretaker to be made a party to the proceeding if the criteria in romanettes (i) and (ii) are satisfied and the court orders the caretaker to be made a party under romanette (iii). Accordingly, on remand, although the trial court may not grant the maternal grandmother's request

to intervene under N.C. Gen. Stat. § 7B-401.1(h), the court may order the maternal grandmother to be made a party if the court determines that the criteria of N.C. Gen. Stat. § 7B-401.1(e) are satisfied.

Conclusion

For the reasons stated above, we vacate the trial court's orders and remand this case for further proceedings.

VACATED AND REMANDED.

Chief Judge McGEE and Judge DAVIS concur.

Judge Davis concurred in this opinion prior to 25 March 2019.

Report per Rule 30(e).