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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-396

Filed: 17 March 2020

Wake County, Nos. 17 JA 10–15

IN THE MATTER OF J.C., J.C., J.C., J.C., J.C., J.C.

Appeal by respondent-mother from order entered 31 January 2019 by Judge V.A. Davidian, III, in Wake County District Court. Heard in the Court of Appeals 18 February 2020.

Office of the Wake County Attorney, by Senior County Attorney Mary Boyce Wells, for petitioner-appellee Wake County Human Services.

Speaks Law Firm, PC, by Garron T. Michael, for respondent-appellant mother.

Alston & Bird L.L.P., by Kelsey L. Kingsbery, for appellee guardian ad litem.

BRYANT, Judge.

Where record evidence supports the challenged findings of fact, we uphold the district court’s findings of fact. Where the findings of fact support the conclusions of law and the district court did not abuse its discretion by entering its 31 January 2019 permanency planning order, we affirm the order.

IN RE: J.C., J.C., J.C., J.C., J.C., J.C.
Opinion of the Court

On 12 January 2017, the director of Wake County Human Services (hereinafter “WCHS”) filed a juvenile petition in Wake County District Court alleging that “Jane,” “Janice,” “Jeremy,” “John,” “Jason,” and “Jessica” were neglected juveniles.¹ WCHS alleged that the juveniles “d[id] not receive proper care, supervision, or discipline from the parents, guardian, custodian, or caretaker(s)” and “live[d] in an environment injurious to the children’s welfare.” WCHS had received more than fifteen reports regarding the neglect and maltreatment of the children for failure to properly supervise them, episodes of domestic violence between the parents occurring in the presence of the children, respondent-mother’s failure to properly feed and clothe the children, and an ongoing conflict which occurred between the separated father and respondent-mother when the children were transferred from respondent-mother to the father for visitation. The family’s history included eleven family assessments, four investigative assessments, and two in-home treatment services. WCHS alleged that respondent-mother had left the children alone in the home overnight without supervision or providing a way for them to get in touch with her and that respondent-mother had pending charges for misdemeanor child abuse and contributing to the delinquency of a minor.

On 12 January 2017, the district court entered an order for nonsecure custody and notice of hearing finding there was a reasonable factual basis to believe the

¹ Pseudonyms are used throughout for to protect the identity of the juveniles and for ease of reading. N.C.R. App. P. 42(b) (2019).

children were exposed to substantial risk of physical injury or sexual abuse. The court ordered that the children were to be placed in non-secure custody with WCHS.

On 4 April 2017, the district court entered a consent order on adjudication and disposition. The parties each signed the order consenting to the court's findings of fact, conclusions of law, and decretal provisions. The court made the following findings of fact. Respondent-mother resides in Raleigh. Respondent-father resides in Charleston, West Virginia. WCHS's concerns about the children's exposure to domestic violence had not been alleviated by in-home services. Respondent-mother had pending charges for misdemeanor child abuse and contributing to the delinquency of a minor. Father had pled guilty to misdemeanor child abuse and entered into a deferral agreement. During a child exchange between the parents during December 2016, the children observed a verbal and physical altercation. Respondent-mother and father are unable to transfer custody of the children peacefully. Respondent-mother has initiated domestic violence complaints against father. Father consented to a domestic violence protective order entered on 4 January 2017. The children's mental health and welfare have been negatively affected by the parents' relationship. Since WCHS filed the petition, the parents have engaged in their respective Out of Home Family Services Agreement. The court found that "[r]eturn of the children to the parent's home would be contrary to the children's health and safety." The court concluded that the children were neglected as defined

by N.C.G.S. § 7B-101(15). WCHS was ordered to continue to make reasonable efforts to eliminate the need for placement of the children outside of the home.

The district court ordered respondent-mother to comply with the following:

a. Participate in the UNC Parent Evaluation Program and follow the recommendations from that evaluation.

. . . .

f. Resolve all pending criminal charges and refrain from further criminal activity

Father was tasked with complying with his separate Out of Home Family Services Agreement. Both respondent-mother and father were individually permitted weekly supervised visitations with the children for a minimum of two hours facilitated by WCHS.

Following a permanent placement review hearing conducted 1 August 2017 pursuant to section 7B-906.1, the district court determined that custody of the children was to remain with WCHS and that the parents were to continue to comply with their respective Out of Home Family Services Agreement. The court found that father had visited with the children regularly, taken advantage of all opportunities afforded him to speak with the children over the phone, remained employed full-time, provided stable housing, and completed his psychological evaluation. The children had reported no issues with their visits with father. The court concluded that “[e]ach child w[ould] receive proper care and supervision in a safe home if placed with the

father for a trial placement” and ordered a trial placement of the children with father to be completed gradually (the eldest children first).

The court found that respondent-mother has stated that she has full-time employment and stable housing but has not provided paystubs to verify her employment/income. Respondent-mother continued to have supervised visits with the children, but the supervisors “continue to verbalize concerns regarding the mother’s ability to handle all of the children during the two-hour visits.” Respondent-mother completed her psychological evaluation, and her therapist recommended that respondent-mother continue with trauma focused counseling services. The court ordered that respondent-mother have supervised contact with the children for a minimum of two hours bi-weekly.

In a placement review and permanency planning order entered 6 February 2018, the district court found that all of the children had been placed with father and the children’s placement with father was appropriate. “[T]o return legal custody to the father [wa]s not yet in the children’s best interests because there [were] investigations regarding [respondent-mother]’s abuse of the children which are continuing.” The court suspended respondent-mother’s visitation with the children and ordered that visitation “shall remain suspended until such time as the medical evaluations of all of the children have taken place and it is confirmed by the investigating agency . . . that there is no recommendation in the CMEs[, (child

medical examination),] that restriction of contact between the mother and the children is necessary.”

In a placement review and permanency planning order entered 26 April 2018, the district court found that an investigation conducted by Chatham County DSS determined the allegations against respondent-mother were unsubstantiated, and the court ordered that respondent-mother’s visitation (a minimum of four hours every three weeks) with the three younger minor children resume immediately. However, the court ordered that respondent-mother’s visitation with the three older children not resume until the children’s therapist had sufficiently prepared them for visitation with respondent-mother. “The parties acknowledge that having the visitation take place in a therapeutically supervised setting is necessary in light of the allegations made by the older children.”

In a placement review and permanency planning order entered 20 September 2018, the district court acknowledged that a court summary prepared by members of WCHS and a Guardian ad Litem report were admitted into evidence without objection. Based on the behaviors of the children associated with resuming visitations with respondent-mother, both reports recommended that visitations with respondent-mother be suspended until such time as the therapist believe the parties are prepared. The court ordered that the children’s visitations with respondent-mother be suspended until further ordered by the court.

In a placement review and permanency planning order entered 31 January 2019 following a 19 November 2018 hearing, the district court acknowledged the admission into evidence without objection of a summary report submitted by WCHS and a report by the guardian ad litem. Both WCHS and the guardian ad litem's office recommended that the children not have visitation with respondent-mother. In its 31 January 2019 order, the court found that visitation between the children and respondent-mother was suspended until further order of the court and respondent-mother "need[ed] to continue with her therapy." The court found that respondent-father "[was] a fit and proper person to have full legal and physical custody of the minor children herein." "[P]ermanence has been achieved by reunification with the father." The court relieved WCHS of any further obligation regarding the children, released the guardian ad litem, released the parties' respective appointed counsel, and found that it was relieved of its duty to conduct periodic judicial reviews of the case. The court granted sole legal and physical custody of the minor children to respondent-father. "[Respondent-mother] shall have her visitation suspended until further orders of th[e] [c]ourt or as determined by [respondent-]father as the legal custodian" Respondent-mother appeals.

An order, other than a nonsecure custody order, which changes the legal custody of a juvenile pursuant to authority set forth in Subchapter I ("Abuse, Neglect, Dependency") of our General Statutes, Chapter 7B may be appealed to this Court.

N.C. Gen. Stat. § 7B-1001(a)(4) (2019). In its 31 January 2019 permanency planning order, the district court removed custody of the children from WCHS and granted respondent-father “sole legal and physical custody of the minor children.” Thus, respondent-mother’s appeal is properly before this Court.

On appeal, respondent-mother argues that the district court erred and committed abuse of discretion by entering a permanency planning order in which the court suspended her visitation with her children. Respondent-mother contends that the court’s findings of fact were not based on competent evidence. We disagree.

“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 P.A.*, 241 N.C. App. 53, 58, 772 S.E.2d 240, 245 (2015) (citation omitted). “The trial court’s findings of fact are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings.” *Matter of J.L.*, ___ N.C. App. ___, 826 S.E.2d 258, 265 (2019) (citation omitted). “In choosing an appropriate permanent plan under N.C. Gen. Stat. § 7B–906.1 . . . , the juvenile’s best interests are paramount. We review a trial court’s determination as to the best interest of the child for an abuse of discretion.” *In re J.K.*, 253 N.C. App. 57, 60, 799 S.E.2d 439, 441 (2017) (citation omitted).

Pursuant to General Statutes, section 7b-906.1 (“Review and permanency planning hearings”),

[a]t each hearing, the court shall consider the following criteria and make written findings regarding those that are relevant:

. . . .

- (2) Reports on visitation that has occurred and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1.

N.C. Gen. Stat. § 7B-906.1(d)(2) (2019). Pursuant to section 7B-905.1 (“Visitation”), “[a]n 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 visitation that is in the best interests of the juvenile consistent with the juvenile’s health and safety, including no visitation.” N.C. Gen. Stat. § 7B-905.1(a) (2019).

Respondent-mother notes that in its 31 January 2019 placement review and permanency planning order, the district court made sixteen findings of fact. Only five of the court’s findings “contain language pertaining to the suspension of [respondent-mother]’s visitation”—numbers 5, 7, 9, 12, and 13. Respondent-mother challenges all five findings of fact. We address them in sequence.

Respondent-mother first challenges finding of fact 5. In pertinent part, respondent-mother challenges

5. It is in the best interest of the children that this Court relieve Wake County Human Services of any further obligations as permanence has been achieved, to wit:

. . . .

- the older children are still triggered into regression over mention and discussions about their mother and Wake County involvement/visits may trigger the children.

Respondent-mother contends this grouping of older children

incorporates Jessica, the oldest of the six children, as experiencing regression and being triggered by visits or even the mention of her mother. However, the testimony provided to the court by Jessica's GAL . . . specifically confirmed that there were 'not safety concerns with regard to [Jessica] seeing her mother.' . . . Moreover, the email provided by Jessica's therapist . . . made no mention of any such issues or the triggering of any type of regression.

However, even accepting respondent-mother's argument that there were no safety concerns as to Jessica seeing her mother, we note that respondent-mother does not challenge this finding as to the remaining two of the three older children. Moreover, the WCHS court summary admitted into evidence and considered for the 31 January 2019 review hearing and permanency planning order states that when Jessica was informed that visits with respondent-mother would resume, Jessica indicated that she did not wish to see respondent-mother. And subsequently, "her behavior began to decline": "[s]he would get angrier quicker with the younger children for several weeks, but has since improved in that area." Thus, the record provides competent evidence to support the district court's findings of fact 5, and this finding is binding on appeal. *See J.L.*, ___ N.C. App. at ___, 826 S.E.2d at 265.

Respondent-mother next challenges finding of fact 7.

7. Visitation has been suspended for the mother until further orders of this [c]ourt. This is in the children's best

interest. There is information the children are having issues including regression which correlate with resumption of visitation with the mother. These behaviors have decreased as the distance from the last visitation increase[d]. Mention of the mother triggers regression. No visitation should occur until the children have had at least 6 months of therapy with their new therapists (or June 2019). After which, therapeutic, supervised visitations may occur in West Virginia under the guidance and supervision of the children's therapists. If recommended by the individual therapists, the mother and the children may need to engage in reunification therapy.

Respondent-mother contends that the district court's finding amounts to a "generalization of regression in response to contact with [respondent-mother] [which] was not true for all children based on the evidence presented" Respondent-mother further contends that "the court's finding that no visitation should occur until the children had at least six months of therapy with their current providers was not based on any professional or therapeutic recommendation made to the court."

To the contrary, the court summary prepared by WCHS for the 19 November 2018 hearing stated that the behaviors of the children—including tantrums, defecating and urinating on the floor, and masturbating in front of others—became more prevalent around the time that visits with respondent-mother resumed and improved after the visitations ceased. The three eldest children refused to see respondent-mother. In the course of an investigation into sexual abuse by respondent-mother upon her eldest children in Chatham County, WCHS received "written reports from the CME recommend[ing] that the children have no contact

with [respondent-mother].” WCHS recommended “[t]hat visits with [respondent-mother] be suspended, per the CME [(child medical examination)] recommendations, until such time as the children’s therapist[s] and [respondent-mother]’s therapist feel that it is appropriate to resume them.” We also note that the court’s order states that the children be in counseling for *at least* six months and “[i]f recommended by the individual therapists, the mother and the children may need to engage in reunification therapy.” Thus, the record contains sufficient evidence to support the district court’s finding of “regression [in the children’s behavior] which correlate[s] with resumption of visitation with the mother” and its order that the children should engage in therapy for at least six months before therapeutic, supervised visitations may be considered with the recommendation of the children’s individual therapist. Therefore, finding of fact 7 is binding on appeal. *See id.*

Respondent-mother next challenges finding of fact 9.

9. The return of the children to the full legal and physical custody of the father would be in the children’s best interests. Visitation with the mother being suspended in in [sic] their best interest due to the on-going investigation of abuse by the mother and the need for the children to get established with their new therapists.

Respondent-mother contends that the WCHS director testified that the report of sexual abuse by respondent-mother was unsubstantiated after an investigation. Moreover, WCHS’s suspension of visits between the children and respondent-mother was not related to respondent-mother’s conduct.

Per the record, allegations of sexual abuse against respondent-mother were reported and investigated by authorities in Chatham County. The case was closed in April 2017. However, an investigation into allegations of sexual abuse by respondent-mother was being conducted by the Raleigh Police Department at the time of the 19 November 2018 placement review and permanency planning hearing. Thus, the record provides competent evidence to support the district court's finding of fact 9, and this finding is binding on appeal. *See id.*

Next, respondent-mother challenges finding of fact 12.

12. [Respondent-mother] needs to continue with her therapy. However, the court is concerned she is only "going through the motions" and is not accepting her role in the situation concerning the trauma that occurred to the children. She is not complying with the recommendations from her psychological evaluation. Therefore, a more in depth therapeutic counselor will, over time, aide her in working with the children's counselor to work towards supervised visitations with the children in the future.

Respondent-mother contends that there is insufficient evidence to support the finding that she needs to continue with her therapy. More specifically, respondent-mother contends that there is no evidence she did not accept her role in the situation concerning her children's trauma, that she was "going through the motions," or that she was not complying with the recommendations from her psychological evaluations. In support of her argument, respondent-mother points out that WCHS did not communicate with respondent-mother's therapist during the seven months leading up to the 19 November 2018 permanency planning hearing.

Per the record, respondent-mother's psychological evaluation (conducted in July 2017) indicated that she exhibited posttraumatic stress disorder with dissociative symptoms. The psychologist's impressions were based on reports reflecting a history of childhood sexual abuse, as well as "multiple and serious episodes of domestic violence" during her relationship with father. It was recommended that she be provided trauma-based counseling services with a Dialectical Behavioral Therapy (DBT) approach. As stated in the court summary prepared by WCHS,

[respondent-mother] is only seeing her therapist on an as needed basis. She states that her therapist feels that she no longer needs to be seen regularly, but is continuing as needed due to the continued involvement of the court. WCHS remains concerned that the therapy [respondent-mother] engaged in did not occur at frequency recommended by her psychological [sic], nor did it address past trauma [respondent-mother] has endured. WCHS also has no indication that [respondent-mother] ever engaged in a DBT therapy component, as was recommended by her psychological evaluation.

We hold the record provides sufficient evidence to support the district court's finding that "[respondent-mother] needs to continue with her therapy," and thus, finding of fact 12 is binding on appeal. *See id.*

Lastly, respondent-mother challenges finding of fact 13.

13. The minor children have no desire to see their mother at this time. Emails from the children's therapists were introduced into evidence over the objection of the mother confirming the wishes of the children and corroborating the information provided by the GAL and

Wake County Human Services. The mother insisted that the children change therapists and is not unhappy with the reports from the new therapists. Although the children have not been with the new therapists long, the emails corroborate the consistent theme and desire of the children.

Respondent-mother contends that the district court correctly found that the “children have not been with their therapist for long,” but based on the lack of information or opinions expressed in the collective emails, there was insufficient basis to find the children lacked desire to see respondent-mother.

During the 19 November 2018 placement review and permanency planning hearing, WCHS Human Services Senior Practitioner Shannon McCall provided the following testimony on cross-examination:

Q. In regards to the visits you stated that the younger three children . . . , the visits [with respondent-mother] went well?

A. They did.

Q. And they haven’t reported any issue with their therapist through the child-family evaluation and subsequently the investigation that was completed? They didn’t report any concerns with regards to their relationship with their mother, have they? Correct?

A. They did report that they were afraid of her previous boyfriend being back in the picture. In regards to her physically or actually hurting them, they didn’t report any concerns through that I can recall. *But they did express that they didn’t want to see her.*

(emphasis added). Thus, the record provides competent evidence to support the district court’s finding of fact, and finding of fact 13 is binding on appeal. *See id.*

We overrule each challenge to the district court's findings of fact and hold that the district court's findings support its conclusion. "It is in the best interests of the children that their visitation with their mother remain suspended" Moreover, the district court's order that respondent-mother have visitation suspended until further order of the court or as determined by the children's legal custodian after the children have been in counseling for at least six months and the children's therapists agree the children are ready for therapeutic, supervised visitation in a controlled setting, is within the court's discretion. *See J.K.*, 253 N.C. App. at 60, 799 S.E.2d at 441. Accordingly, the district court's 31 January 2019 order is

AFFIRMED.

Chief Judge McGEE and Judge HAMPSON concur.

Report per Rule 30(e).