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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-298

Filed: 5 May 2020

Surry County, No. 15 JA 48

IN THE MATTER OF: A.G.B.

Appeal by Respondent from order entered 7 November 2018 by Judge William F. Southern, III, in Surry County District Court. Heard in the Court of Appeals 19 February 2020.

Susan Curtis Campbell for Surry County Department of Social Services.

James N. Freeman, Jr., for guardian ad litem.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for Respondent-Appellant Grandmother.

DILLON, Judge.

Respondent, the paternal grandmother of the juvenile A.G.B. (“Amy”),¹ appeals from the trial court’s permanency planning order appointing guardians for the juvenile. After careful review, we affirm.

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading. See N.C. R. App. P. 42(b)(1).

I. Background

The trial court adjudicated Amy neglected by her parents and Respondent was given trial placement while legal custody remained with Surry County Department of Social Services (“DSS”). Sometime later in 2016, the trial court awarded legal and physical custody to Respondent, who lived with her significant other, Raymond Collins.

In November 2017, DSS filed an amended petition for custody of Amy on grounds of neglect after she was taken to the hospital and tested positive for methamphetamine and was found to have bruises on her hips and back. Three months later, on 21 February 2018, Amy was again adjudicated neglected and was placed in a foster home.

In November 2018, the trial court held a permanency planning hearing. Two witnesses testified for Respondent: Kim Bowers, a human services clinician at Daymark Recovery Services, and Jamie Blum, a nurturing parent educator for The Children’s Center of Surry. The court received reports from Amy’s guardian ad litem (“GAL”) and DSS social worker as well as a Comprehensive Provider Assessment for Amy’s foster parents and prospective guardians. The transcript alone does not explicitly indicate that these reports were sworn to or admitted by the court, but the GAL attorney in this case has filed a Rule 9(b)(5) Supplement to the Printed Record

on Appeal. The supplement consists of an affidavit from the juvenile clerk who attests that she remembers swearing the GAL and social worker to the accuracy of their reports and, that after listening to the recording of the hearing, she can hear herself swearing those persons accordingly.²

In its 7 November 2018 permanency planning order, the trial court granted legal and physical custody to the foster parents and awarded visitation to Respondent. The trial court entered an amended order on 20 December 2018. Respondent timely appealed.

II. Standard of Review

“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. If the trial court’s findings of fact are supported by any competent evidence, they are conclusive on appeal.” *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004) (internal citation omitted). We review the trial court’s conclusions of law de novo. *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010).

III. Analysis

² Respondent has filed a motion to strike this supplement. We deny Respondent’s motion as we consider the supplement a narrative in the form of an affidavit.

On appeal, Respondent argues that the trial court's order is not supported by sufficient evidence because neither DSS nor the GAL presented any evidence. We disagree.

The requirement of the review hearing "is that sufficient evidence be presented to the trial court so that it can determine what is in the best interest of the child." *In re Shue*, 311 N.C. 586, 597, 319 S.E.2d 567, 574 (1984). "[N]either the parent nor the county department of social services bears the burden of proof in permanency planning hearings, and the trial court's findings of fact need only be supported by sufficient competent evidence." *In re L.M.T.*, 367 N.C. 165, 180, 752 S.E.2d 453, 462 (2013).

Respondent relies on *In re J.T.*, 252 N.C. App. 19, 796 S.E.2d 534 (2017); *In re D.Y.*, 202 N.C. App. 140, 688 S.E.2d 91 (2010); and *In re D.L.*, 166 N.C. App. 574, 603 S.E.2d 376 (2004). However, we conclude that these cases are not controlling to the issue at hand. In both *In re J.T.* and *In re D.Y.*, there was no oral testimony presented by either party; the only evidence presented was written reports from DSS and the GAL. *In re J.T.*, 252 N.C. App. at 21, 796 S.E.2d at 536; *In re D.Y.*, 202 N.C. App. at 143, 688 S.E.2d at 93. Similarly, in *In re D.L.*, the county department of social services produced no oral testimony and the respondent attempted to testify about "local rules," the Bible, and legal advice from her attorneys. 166 N.C. App. at 582,

603 S.E.2d at 382. Thus, our Court concluded that no evidence was put forth by either party supporting the permanency plan. *Id.* at 583, 603 S.E.2d at 382.

Here, unlike in those three cases, at least one party put forth witnesses whose oral testimony supports the trial court's order. In particular, Kim Bowers' testimony supported the trial court's findings of fact numbers 20, 21, 43, 44, 45, 47, and 48:

20. Ms. Brown met with Kimberly Bowers, LCSW, LCAS, at Daymark, on September 21, 2018, and October 15, 2018, but canceled the session scheduled for October 29, 2018. Ms. Brown has a session pending on November 16, 2018.³

21. Raymond Collins did not receive any recommendations or diagnoses following his Daymark assessment.

...

43. Kimberly Bowers found that Ms. Brown has below average conceptualization skills, and it is therefore a challenge for Ms. Brown [to] piece together and connect the issue of substance use, boundaries, and a child's environment, can impact the health, safety, and well-being of a child.

44. Ms. Brown and Mr. Collins have an obvious love for the minor child, but their inability for understand the connection between the main issues of the previous foster case and those of the present case is of great concern for the Court.

45. The Court hoped that conceptualization would come to fruition for Ms. Brown, but given her continued response to the Department's questions, e.g., that because she was not there and did not see a particular proven event, that she cannot say for sure what happened, underscores the Court's inability to find that the issues that led to the minor child's removal from her care, have been alleviated.

³ Evidence from DSS' Reports complements Ms. Bowers' testimony to support this finding of fact.

...

47. Ms. Brown and Mr. Collins did make progress under the case plan, but due to the fact that the essential issues that led to the events at the time of the child's removal are still very prevalent, the Court cannot find that the grandparents made adequate progress under the case plan.

48. The grandparents remained available to the Department, the Guardian ad Litem, and the Court, but failed to demonstrate the necessary behavioral changes that would allow the child to be safely returned to their home.

In sum, Respondent's argument that DSS was required to call witnesses is incorrect. Our Supreme Court has clearly stated that neither party bears the burden of proof in permanency planning hearings. Oral testimony from Respondent's witness supported the trial court's order and DSS was not required to supply its own witness. Further, the other evidence produced by the parties in the reports prepared by DSS and the GAL supported the rest of the trial court's permanency planning order. Therefore, we hold that the trial court's order is supported by sufficient evidence.

IV. Conclusion

We hold that the trial court's permanency planning order was supported by sufficient evidence. Therefore, we affirm the trial court's order.

AFFIRMED.

Judges BERGER and ARROWOOD concur.

Report per Rule 30(e).