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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-768

Filed: 19 May 2020

Surry County, No. 19 JA 11

IN THE MATTER OF: B.G.M.

Appeal by respondent from order entered 14 May 2019 by Judge William F. Southern, III, in Surry County District Court. Heard in the Court of Appeals 19 February 2020.

Campbell Law Group, P.L.L.C., by Susan Curtis Campbell, for petitioner-appellee Surry County Department of Social Services.

Surratt Thompson & Ceberio PLLC, by Christopher M. Watford, for respondent-appellant.

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

DIETZ, Judge.

Respondent appeals a dispositional order in this juvenile neglect case, arguing that the trial court erred when it “implicitly” ceased reunification efforts between him and his daughter. As explained below, the order is ambiguous with respect to Respondent and we therefore cannot engage in meaningful appellate review. We vacate the order and remand the matter for a new dispositional hearing.

Facts and Procedural History

Respondent's daughter, "Betty,"¹ was born on 27 January 2019. Petitioner Surry County Department of Social Services had a history of involvement with other children of Betty's mother. On 12 February 2019, law enforcement went to the home of Respondent and Betty's mother after the mother told a DSS social worker that she had miscarried. At first, Respondent and the mother told law enforcement the same story about the miscarriage. After the officers saw some used diapers in the trash, the mother admitted that she had given birth to Betty at home so that DSS would not take Betty away. The officers found Betty living with one of the mother's friends.

DSS filed a juvenile petition alleging Betty was a neglected juvenile, and the trial court granted nonsecure custody to DSS. After a hearing, the trial court entered an adjudication order on 14 May 2019 finding Betty to be a neglected juvenile. The trial court also entered a dispositional order continuing DSS's custody of Betty and ordering a "permanent plan of care" of "reunification with the Respondent Mother and a concurrent plan of termination of parental rights and adoption." Respondent appealed. Betty's mother is not a party to this appeal.

Analysis

I. Petition for a writ of certiorari

Respondent has filed a petition for a writ of certiorari because his notice of

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

appeal incorrectly identifies the orders from which he intended to appeal. *See* N.C. R. App. P. 3(d). He explains that he intended to appeal the “initial order of disposition and the adjudication order upon which it is based” in accordance with section 7B-1001(a)(4) of the Juvenile Code. However, Respondent’s notice of appeal states he is appealing from the “Order eliminating reunification” pursuant “to N.C.G.S. 7B-1001(a)(5)(b),” which permits appeals from permanency planning orders eliminating reunification as a permanent plan.

We agree that Respondent’s notice of appeal is technically defective. But “a mistake in designating the judgment” under Rule 3(d) “should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be fairly inferred from the notice and the appellee is not misled by the mistake.” *Phelps Staffing, LLC v. S.C. Phelps, Inc.*, 217 N.C. App. 403, 410, 720 S.E.2d 785, 791 (2011).

Here, the only appealable orders entered in this case are the adjudication order and the initial disposition order. The latter establishes a “permanent plan” of “reunification with the Respondent Mother” without mentioning Respondent. Thus, it can be “fairly inferred” from Respondent’s notice challenging the order “eliminating reunification” that he intended to appeal the dispositional order that, he contends, implicitly eliminated reunification efforts with respect to him. *Id.* DSS addressed all issues briefed by Respondent regarding this order, showing that it was not misled by the mistake in the notice of appeal. Accordingly, we reach the merits of Respondent’s

arguments concerning the initial disposition order and dismiss Respondent's petition for a writ of certiorari as moot.

II. Disposition order

We review dispositional orders for abuse of discretion, which occurs when “the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008).

Here, the challenged order continues DSS’s custody of Betty and declares that “[t]he permanent plan of care is changed to reunification with the Respondent Mother.” Because the trial court’s “permanent plan” references the mother only, Respondent contends that the trial court “implicitly ceased reunification efforts” between him and Betty. Thus, he argues: (1) that the trial court erred in eliminating reunification with Respondent as a permanent plan at the initial disposition phase; and (2) that the trial court failed to enter required findings of fact before ceasing reunification efforts with Respondent.

Although one *could* read the order as “implicitly” ceasing reunification with Respondent, that is not the only reasonable interpretation. The order provides, for example, that Respondent “shall not have visitations with the minor child” and “shall proceed to complete a drug screen,” which suggest that the court might have intended to address the permanent plan with respect to Respondent in a future proceeding.

Thus, a more accurate assertion is that there is some ambiguity in the order with respect to Respondent.

Under the Juvenile Code, a trial court reviews a juvenile petition in three phases, beginning with adjudication, followed by initial disposition, and then any number of review or permanency planning hearings the court requires. N.C. Gen. Stat. § 7B-900 *et. seq.* The rules vary for ceasing reunification efforts with a parent depending on what phase the proceeding has reached.

At the initial dispositional phase, the trial court “shall direct that reasonable efforts for reunification . . . shall not be required” if the court enters written findings of fact on certain enumerated factors. *Id.* § 7B-901(c). Then, the court “shall schedule a permanency planning hearing within 30 days to address the permanent plans.” *Id.* § 7B-901(d). To eliminate reunification as a permanent plan, the trial court *must* do so at a permanency planning hearing after giving the parties reasonable notice and an opportunity to prepare and present evidence.² *See id.* §§ 7B-901(d), 7B-906.2(a)–(b).

Here, during a combined hearing, the trial court adjudicated Betty as neglected and, addressing the parties, asked “[a]nd anything on disposition?” The court later concluded the hearing by indicating it would enter a permanent plan, without saying

² In some cases, so long as the parent receives proper notice and does not object, this Court has affirmed a trial court order that combined the initial disposition hearing with a permanency planning hearing. *In re T.H.*, 232 N.C. App. 16, 28, 753 S.E.2d 207, 215–16 (2014). However, there is no indication that this occurred here.

which parent it applied to, “[w]ith primary being reunification concurrent with adoption.” The court’s written order following the hearing only mentions a permanent plan of reunification with respect to the mother. It is unclear whether the trial court intended to exclude Respondent or whether the trial court even contemplated a permanent plan for Respondent.

To be sure, there are facts in this record that arguably would permit the trial court to dispense with initial reunification efforts under Section 7B-901(c) and the court made findings on those factors. For example, Respondent is listed on the Responsible Individual’s List for sexually abusing the mother’s oldest child and nephew; Respondent has a current charge of obstruction of justice for lying to police about Betty’s birth; and Betty was born without receiving any medical care. *See* N.C. Gen. Stat. § 7B-901(c)(1). However, the statute provides the trial court “shall” order that reunification efforts “shall not be required” if it makes these findings. *Id.* § 7B-901(c). The trial court did not expressly do so here.

In sum, because the challenged order is ambiguous with respect to Respondent, we cannot conduct meaningful appellate review to determine whether the trial court abused its discretion. Respondent also argues that the record on appeal does not indicate that the trial court heard testimony and evidence specifically on the question of initial disposition. We resolve both these issues by vacating the trial court’s dispositional order because of the existing ambiguity and remanding for a new

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dispositional hearing, where the trial court can receive any evidence necessary for entry of a new order.

Conclusion

We vacate the dispositional order with respect to Respondent and remand the matter to the trial court for a new dispositional hearing.

VACATED AND REMANDED.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).