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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-635

Filed: 2 June 2020

Onslow County, Nos. 11 JA 218; 18 JA 7

IN THE MATTER OF: J.T., M.T.

Appeal by Respondent-Father from order entered 25 March 2019 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 28 April 2020.

No brief filed by Petitioner-Appellee Onslow County Department of Social Services.

Teague Campbell Dennis & Gorham, LLP, by Stephanie L. Gumm, for Guardian ad Litem.

Dorothy Hairston Mitchell for Respondent-Appellant-Father.

COLLINS, Judge.

Father appeals from the trial court's order adjudicating his minor children, "Jori" and "Mikel"¹ (collectively "the children"), dependent and neglected and placing them in the legal and physical custody of their maternal grandparents, who reside in

¹ Pseudonyms are used throughout the opinion to protect the identities of the children. See N.C. R. App. P. 3.1(b).

South Carolina. Because the trial court failed to comply with the provisions of the Interstate Compact on the Placement of Children (“ICPC”) in ordering an out-of-state placement for the children, we vacate the order in part and remand for further proceedings. *See* N.C. Gen. Stat. §§ 7B-903(a1), 7B-3800, art. III (2019). We affirm the trial court’s order insofar as it denies visitation to Father. *See* N.C. Gen. Stat. § 7B-905.1(a) (2019).

I. Background

Jori was born in May 2011 and adjudicated neglected in December 2011 in Onslow County District Court, in file number 11 JA 218. She was returned to Mother’s custody in October 2012 upon Mother’s completion of court-ordered services. Because Father had failed to complete his services, the trial court limited his contact with Jori to supervised visitation, conditioned upon him “be[ing] sober and drug free when visiting the juvenile.” Mother gave birth to Mikel in October 2012.

On 19 January 2018, the Onslow County Department of Social Services (“DSS”) filed a juvenile petition alleging the children were neglected and dependent. The petition alleged that Mother and Father (collectively, “respondents”) had a child protective services (“CPS”) history dating back to 2011 due to issues of mental health, domestic violence, housing instability, and improper discipline. The petition further alleged the following: DSS received a new CPS report on 16 November 2017 that Jori had been seen eating out of the trash; that Mother had slept with different men with

the children present in the home; that Mother had violated two safety assessments by allowing her new boyfriend to be in the home with the children and by leaving the children in Father's unsupervised care for the weekend of 13 January 2018; that the children had been "found on Marine Boulevard in Jacksonville" in the middle of the night after Father left them with their paternal uncle; and that the uncle was not an appropriate supervisor of the children, as he had his own history of CPS involvement, substance abuse, and domestic violence. The trial court entered an order on 19 January 2018 ordering DSS to take the children into nonsecure custody.

On 30 January 2018, the trial court entered an order placing the children in the nonsecure custody of their maternal grandparents in South Carolina.

After being continued several times, the adjudication and disposition hearing was held on 12 February 2019. At the time of the hearing, Father had relocated to Florida. Neither Mother nor Father attended the hearing, but each was represented by counsel. The maternal grandparents were present for the hearing.

In its Juvenile Adjudication and Disposition Order ("Order") entered on 25 March 2019, the trial court adjudicated the children dependent and neglected, as defined by N.C. Gen. Stat. § 7B-101(9) and (15), respectively. The trial court granted full custody of the children to their maternal grandparents and waived further review hearings but retained jurisdiction over the case. Concluding that it was not in the

juveniles' best interests to award visitation to Father at that time, the trial court denied visitation to Father and ordered the following:

Should [Father] wish to modify this order, he shall address his mental health issues fully including therapy and medication management and appropriate treatment for his anger management and PTSD, and he shall abstain from smoking marijuana. At such time, he may motion the court for a change in the visitation order.

Father timely filed notice of appeal.²

II. Discussion

A. Interstate Compact on the Placement of Children

Father first argues, and the Guardian ad Litem agrees, that the trial court erred by placing the children in the custody of their maternal grandparents in South Carolina without a showing by DSS that the ICPC's requirements for an out-of-state placement were satisfied.

Among the dispositional alternatives authorized by N.C. Gen. Stat. § 7B-903 for a juvenile adjudicated abused, neglected, or dependent, the trial court may “[p]lace the juvenile in the custody of a . . . relative . . . or some other suitable person.” N.C. Gen. Stat. § 7B-903(a)(4) (2019). The statute further provides, however, that “[p]lacement of a juvenile with a relative out of this State must be in accordance with

² Mother is not a party to this appeal.

the Interstate Compact on the Placement of Children.” N.C. Gen. Stat. § 7B-903(a1) (2019).

We have previously described the ICPC’s requirements as follows:

Under the ICPC, a “child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.” In other words, a child cannot be placed with an out-of-state relative until favorable completion of an ICPC home study.

In re L.L., 172 N.C. App. 689, 702, 616 S.E.2d 392, 400 (2005) (quoting N.C. Gen. Stat. § 7B-3800, art. III(d)).

The record on appeal contains no indication that DSS requested an ICPC home study of the maternal grandparents or received a favorable report from South Carolina authorities. Accordingly, we vacate the portion of the trial court’s order awarding custody of the children to their out-of-state grandparents and remand for further proceedings consistent with the requirements of the ICPC. *See In re J.D.M.-J.*, 260 N.C. App. 56, 61, 817 S.E.2d 755, 759 (2018).

B. Visitation

Father also argues that the trial court erred by denying him visitation with the children under N.C. Gen. Stat. § 7B-905.1, because the evidence and the findings of fact do not support the trial court’s conclusion that allowing him to visit the children would be contrary to their best interests.

At the time of the instant proceeding, N.C. Gen. Stat. § 7B-905.1(a) provided that “[a]n order that removes custody of a juvenile from a parent . . . or that continues the juvenile’s placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile’s health and safety.” N.C. Gen. Stat. § 7B-905.1(a) (2019).³ In applying this provision, the trial court’s order

must establish an adequate visitation plan for the parent “[i]n the absence of findings that the parent has forfeited their right to visitation *or that it is in the child’s best interest to deny visitation*[.]” We review an order denying visitation to a respondent-parent only for abuse of discretion.

In re T.W., 250 N.C. App. 68, 77-78, 796 S.E.2d 792, 798 (2016) (quoting *In re T.H.*, 232 N.C. App. 16, 34, 753 S.E.2d 207, 219 (2014)); *see also In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007) (“This Court reviews the trial court’s dispositional orders of visitation for an abuse of discretion.”). “A ruling committed to a trial court’s discretion is to be accorded great deference and will be upset only upon a showing that it 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).

³ Effective 1 October 2019, this provision was amended to provide as follows: “An order that removes custody of a juvenile from a parent . . . 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*.” An Act to Make Revisions to the Juvenile Code Pursuant to Recommendations by the Court Improvements Program (CIP), S.L. 2019-33, §§ 9, 17 <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-33.pdf> (emphasis added).

In this case, the trial court expressly concluded that “it is not in the [children’s] best interest to award visitation to [Father] at this time.” The Order includes the following findings of fact pertinent to this determination:

12. . . .

. . . .

- b. The respondents have a [CPS] history dating back to 2011 and [DSS] has worked with the family on concerns of domestic violence, mental health, improper discipline and unstable housing. [Jori] was adjudged to be a neglected juvenile . . . in 2011 . . . [and] was returned to the custody of [Mother] [Father] failed to complete his services and was allowed to have supervised contact only with [Jori]. [Father] has not completed the services which led to [Jori’s] removal from his care in 2011.

. . . .

1. The respondents have repeated many of the same issues that the Court attempted to address with the family in 2011. In 2011, [Father] failed to abide by provisions for supervised visitation; [the respondents] engaged in domestic violence; [the respondents] denied having mental health issues and failed to seek treatment for the same. These issues continue to be ongoing with both [respondents]. Both [respondents] deny these issues and refuse to work with [DSS] to appropriately address these issues.

. . . .

17. A report was received by [DSS] on 16 November 2017 stating [Mother] assaulted [Father] outside of his home. The juveniles were inside of the home at the time and did not witness the incident. [Mother] was arrested due to the incident and the juveniles were left in the unsupervised care of [Father]. . . . While with [Father], the juveniles were left in the care of their paternal uncle who fell asleep. During this time, the juveniles were able [to] leave the home and were thereafter found by a concerned citizen and law enforcement

. . . .

19. [Father] has a history of domestic discord with [Mother]. Even after the end of their relationship, [the respondents] continued to engage in domestic related issues that required police presence. [Father] has a previous diagnosis of mood disorder but is not currently engaged in treatment and admitted to being in a mental health facility for five days while residing in Florida. [He] disclosed his father also suffered from mental health issues that resulted in him committing suicide. [Father's] moods go from calm to being escalated quickly but also return to calm quickly. [Father] also uses marijuana daily to self-medicate, and this may affect his moods. Social worker spoke with PRIDE who stated [Father] was discharged December 5, 2018 due to him relocating to Florida.

20. . . . [Father] did attend his appointment at PRIDE for his Comprehensive Clinical Assessment, [sic] [he] needs to contact PRIDE for future therapy appointments. [Father] stated he now resides in Florida where he has stable housing and employment. . . . He fails to understand that he needs to alleviate the conditions of neglect by completing services. The maternal grandmother stated [Father] has kept contact with the children via FaceTime, he sends clothing and money periodically for the children.

21. It appears as if [Father] . . . is not committed to

reaping the benefits of the services [DSS] is attempting to provide. [Father] in his assessments is not being truthful; rather, he is only giving answers that he thinks would benefit him and make [Mother] look bad. [Father] was not truthful in his behavioral assessment from 20 June 2018. . . . [Father] indicated th[at h]e is not troubled by psychiatric problems and that receiving treatment or counseling is not at all important. However, he continues to exhibit explosive behavior and has continued to harass [Mother]. [Father] continues to have documented mental health diagnoses that go untreated. Due to these reasons, it is not in the best interests of the juveniles to have visitation with [Father] at the present time.

22. The social worker attempted to provide [Father] with a list of items that he needs to complete to begin the process of reunification. [Father] told the social worker that he would not complete all the items on the list. He indicated that he would have stable housing and employment but refused to follow the recommendations from his mental health assessment, attend parenting classes for cooperative parenting and divorce, attend anger management, and complet[e] a substance abuse assessment.

23. . . . [Father] has been resistant in his case plan goals, has violated terms of his original visitation order, and has allowed the juveniles to see and know of his use of marijuana.

To the extent that Father does not except to these findings, they are binding on appeal.⁴ *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

⁴ The statement at the conclusion of Finding 21, that “it is not in the best interests of the juveniles to have visitation with [Father] at the present time,” is in the nature of a conclusion of law and must thus be supported by the trial court’s remaining findings of fact. *See In re J.R.S.*, 258 N.C. App. 612, 617, 813 S.E.2d 283, 286 (2018).

Contrary to Father’s assertion, the trial court may deny visitation to a parent under N.C. Gen. Stat. § 7B-905.1(a) without finding that such visitation would threaten the child’s health or safety. *See In re T.H.*, 232 N.C. App. 16, 34, 753 S.E.2d 207, 219 (2014) (affirming parent’s right to visitation “[i]n the absence of findings that the parent has forfeited their right to visitation or that it is in the child’s best interest to deny visitation” (citation omitted) (alteration in original)). The statute requires the court to award such “appropriate visitation” as “may be in the best interests of the juvenile *consistent with* the juvenile’s health and safety.” N.C. Gen. Stat. § 7B-905.1(a) (emphasis added). This quoted language does not preclude a court from determining, in its discretion, that visitation would be contrary to a child’s best interests irrespective of any risk to the child’s health or safety. Instead, it requires the court to ensure that any visitation awarded is also consistent with the health and safety of the child. *Cf. In re C.P.*, 181 N.C. App. 698, 705, 641 S.E.2d 13, 18 (2007) (remanding to address respondent-mother’s right to visitation in the absence of “any findings or conclusions that state—or even suggest—such visitation would not be in the best interests of N.P. and L.P. *or would be otherwise inconsistent with their health and safety*” (emphasis added)).

Nor are we persuaded by Father’s argument that the trial court improperly based its visitation decision on “speculative hearsay evidence . . . that, on a *single occasion*, [he] allegedly smoked marijuana while speaking with Jori and Mikel via

FaceTime.” In its written report submitted for purposes of disposition, DSS cited two occasions, 20 July 2018 and 20 September 2018, when the maternal grandmother reported that Father appeared to be smoking marijuana while engaged in “video chat” with the children via FaceTime. When the grandmother objected to Father “smoking weed” in front of the children, Father replied that “it’s legal in Florida.” The DSS social worker testified that the grandmother discontinued the children’s FaceTime with Father for this reason. The grandmother’s allegations, while hearsay, are consistent with Father’s own self-reports of daily marijuana use. Moreover, the trial court is authorized by statute to consider hearsay evidence in selecting an appropriate disposition for a juvenile adjudicated abused, neglected, or dependent. N.C. Gen. Stat. § 7B-901(a) (2019).

We conclude that the evidence and the trial court’s findings are sufficient to support the trial court’s determination that it is in the children’s best interests to deny visitation to Father. The findings show that Father violated conditions of his supervised visitation with Jori, which resulted in the children being found wandering the street in the middle of the night. The findings further show that Father has a longstanding record of domestic violence, substance abuse, and mental health diagnoses for which he has refused treatment. His mental health issues render him emotionally volatile and subject to explosive outbursts. Father has also openly and unrepentantly smoked marijuana in front of the children while speaking to them on

FaceTime. The trial court acted within its discretion in denying Father visitation until such time as he addressed these concerns. *Cf. In re C.M.*, 183 N.C. App. at 215, 644 S.E.2d at 595 (affirming denial of visitation with C.M. where the trial court found respondent-mother had failed to comply with her case plan for an older sibling, resulting in termination of her parental rights in that child, and had shown “lack of progress in working with DSS to parent C.M.”). We note that the trial court retained jurisdiction in the cause and invited Father to file a motion to reinstate his visitation once he had done so. *See* N.C. Gen. Stat. §§ 7B-201(a), 7B-1000(b) (2019).

III. Conclusion

For the reasons discussed above, we vacate the portion of the trial court’s order awarding custody of the children to their maternal grandparents and remand for entry of a new disposition consistent with the requirements of the ICPC. In all other respects, the order is affirmed.

VACATED AND REMANDED IN PART; AFFIRMED IN PART.

Judges STROUD and INMAN concur.

Report per Rule 30(e).