IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-9

No. COA20-264

Filed: 2 February 2021

Greene County, Nos. 19 JA 8–9

IN THE MATTER OF:

J.J. & K.J.

Appeal by respondent from orders entered 23 December 2019 and 13 January 2020 by Judge Elizabeth Heath in Greene County District Court. Heard in the Court of Appeals 17 November 2020.

Delaina Davis Boyd, E.B. Borden Parker, and Gay Parker Stanley for petitioner-appellee Greene County Department of Social Services and respondent-appellee mother.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky Brammer, for respondent-appellant father.

DIETZ, Judge.

¶ 1 Respondent appeals the trial court's review orders for his two children, which placed the children in the custody of their mother, ordered Respondent to engage in various parenting, anger management, and mental health programs, and limited Respondent's visitation with his daughter.

¶ 2 As explained below, we reject Respondent's challenges to the trial court's

findings of fact and best interest determination and affirm the portions of the review order that placed the children in the mother's custody and set the primary plan as reunification with the mother. We vacate the visitation award and remand for further proceedings based on our previous opinion in this case.

Facts and Procedural History

¶ 3 Respondent is the father of two children, Karen and Jerry.[1] Respondent and the children's mother do not live together. Before this juvenile proceeding began, Respondent had primary custody of the children, and the children's mother had weekend and holiday visitation.

¶ 4 Between 2016 and 2017, Respondent's daughter Karen began cutting herself. In early 2019, school personnel discovered Karen's self-harm. The school contacted Respondent and he came to the school, reportedly "furious," and took the children home.

¶ 5 Once home, Respondent called Karen "an idiot" for cutting herself. He referred to the cuts as "scratches" and told Karen her behavior was putting the family at risk. Respondent then burned Karen on the arm with a cigarette to "show her what real pain was like." Jerry was home during these events, and Respondent instructed both Karen and Jerry to lie to the social workers about Karen's burn.

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[1] We use pseudonyms to protect the identities of the juveniles.

¶ 6 When the children later returned to school, a Greene County Department of Social Services employee came to the school and interviewed them. Karen told DSS about the cigarette burn and what Respondent had told her about her self-harm. DSS filed a petition that same day alleging that Karen and Jerry were abused and neglected and took non-secure custody of them.

¶ 7 The trial court found that Respondent physically abused Karen in a number of ways, including the cigarette burn and another incident in which Respondent hit her in the face. The court also found that Respondent frequently lashed out in anger, breaking items around the house. The court found that Respondent justified his anger and violence based on his belief that "fear is healthy for the children" and that children should fear their father because a "man is God's representation in the home."

¶ 8 The trial court adjudicated Karen as abused and neglected and adjudicated Jerry as neglected. The trial court's disposition order continued DSS's custody of Karen and Jerry and authorized DSS to place the children with their mother. The trial court awarded Respondent weekly supervised visitation with Jerry and no visitation with Karen unless Karen expressed a desire to visit with Respondent.

¶ 9 Respondent appealed the adjudication and resulting disposition orders, and this Court affirmed the adjudications of neglect and abuse. *See In re J.J. & K.J.*, __ N.C. App. __, 843 S.E.2d 736, 2020 WL 3722434 (2020) (unpublished). The Court vacated the portion of the disposition order concerning visitation and remanded "with

instructions that the trial court either make findings that (1) Father forfeited his right to visitation with Karen or that it was not in Karen's best interest to have visitation with Father, or (2) awards visitation to Father." *Id*. at *5–6.

¶ 10 Several months later, the trial court held a review hearing. After the hearing, the trial court entered an order placing custody with the children's mother, establishing a primary plan of reunification with the mother, imposing various parenting, anger management, and mental health treatment obligations on Respondent, and awarding Respondent the same limited visitation from the initial disposition order. Respondent appealed.

Analysis

I. Custody order

¶ 11 Respondent first challenges the trial court's determination that it was in the children's best interests to be placed in their mother's custody and to establish a primary plan of reunification with the mother. Respondent argues that there was insufficient evidence to support the trial court's findings, and that those findings do not support the trial court's legal conclusions and best interests determination.

¶ 12 We examine a trial court's order following a review hearing to determine "whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law." *In re A.C.*, 247 N.C. App. 528, 532, 786 S.E.2d 728, 733 (2016) (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." *Id.* This Court reviews the trial court's conclusions of law *de novo* and reviews the ultimate determination of the child's best interests for abuse of discretion. *Id.* at 532–33, 786 S.E.2d at 733.

¶ 13 In a review hearing, the trial court has the authority "to place the child in the custody of either parent" if the court finds custody with that parent is suitable and in the child's best interests. N.C. Gen. Stat. § 7B-906.1(i); *In re Y.I.*, 262 N.C. App. 575, 577, 822 S.E.2d 501, 503 (2018). Here, evidence in the record shows that both the children's mother and her husband are employed and that the mother had resources to provide for the children. The record also shows that, while in the mother's care following the initial disposition order, the children were well cared for, receiving appropriate schooling and health treatment. Jerry's therapist also testified that Jerry trusts and feels safe with his mother, but he exhibits traits of anxiety regarding spending time with the father. Taken together, this is competent evidence to support the trial court's findings that the mother is a "fit and proper person to have custody" of the children and that placing the children in the mother's custody was in their best interests.

¶ 14 Respondent also contends that these findings, and the resulting best interests determination, should be barred because of an earlier family law order stating that the children's mother had "abandoned" the children. That reference to abandonment

is from a child custody order after the children's mother sought a domestic violence protective order against Respondent and then declined to attend a court proceeding involving custody of the children.

¶ 15 At best, this is simply evidence that might support a contrary finding by the trial court concerning the mother's fitness to be granted custody. Because there is competent evidence supporting the trial court's finding that the mother is fit to have custody, this competing evidence is irrelevant. *In re A.C.*, 247 N.C. App. at 532, 786 S.E.2d at 733. Accordingly, we reject Respondent's argument.

II. Ceasing reunification

¶ 16 Respondent next contends that the trial court impliedly ceased reunification with him without making the statutorily required findings. Ordinarily, reunification with a parent—meaning placement of the child in the home of the parent—is the default primary plan in this type of juvenile case. *See In re E.G.M.*, 230 N.C. App. 196, 211, 750 S.E.2d 857, 867 (2013). A trial court may not cease reasonable efforts to reunify a child with a parent unless the trial court determines that further efforts would be unsuccessful, inconsistent with the child's safety, or the permanent plan has been achieved. N.C. Gen. Stat. §§ 7B-906.1(d)(3), 7B-906.2(b). An order ceasing reunification, whether expressly or by implication, must make findings of fact addressing these factors. *See In re D.A.* 258 N.C. App. 247, 252–53, 811 S.E.2d 729, 733 (2018).

¶ 17 None of this case law applies here. First, the trial court's order did not cease reunification efforts with Respondent, either expressly or impliedly. To the contrary, the order contains a lengthy list of mandatory steps that Respondent must take as part of the children's plan, including anger management and parenting training, mental health assessments, and drug testing. To be sure, the order indicates that the primary plan of reunification is with the children's mother and not Respondent, but that is because the parents do not live together in the same home. Nothing in these references to reunification with the mother indicates that the trial court also was ceasing reunification with Respondent. Moreover, this was not a permanency planning hearing, the setting in which an order ceasing reunification typically occurs. This was a routine review hearing held several months after the initial adjudication and disposition and before the permanency planning hearing. *See* N.C. Gen. Stat. § 7B-906.1. Accordingly, we reject Respondent's argument that the trial court impliedly ceased reunification efforts without making the necessary findings.

III. Respondent's visitation with Karen

¶ 18 Finally, Respondent challenges the portion of the trial court's order limiting his visitation with Karen. As noted above, in a previous appeal this Court vacated the visitation order and remanded for entry of a new order. *In re J.J. & K.J.*, __ N.C. App. __, 843 S.E.2d 736, 2020 WL 3722434 (2020) (unpublished). The review order challenged in this appeal states that "visitation between the father and the juvenile

shall remain as previously ordered." Because the trial court did not have the benefit of this Court's opinion when it entered the challenged review order, Respondent contends that the visitation provision in the challenged order improperly incorporates terms that this Court previously held were erroneous. We need not address this argument and instead vacate the visitation portion of the challenged order and remand for further proceedings. If the trial court already entered a superseding visitation order on remand from the earlier appeal, this issue is moot. If it has not yet done so, when the court enters a new visitation order consistent with the mandate in our previous opinion, it will resolve any ambiguity in the meaning and scope of the provision in the challenged order.

Conclusion

¶ 19 We affirm the trial court's review hearing order except for the visitation provision. We vacate the visitation provision and remand for further proceedings on that issue.

AFFIRMED IN PART; VACATED IN PART AND REMANDED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).