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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-75

No. COA20-366

Filed 16 March 2021

Pitt County, No. 18 JA 62

IN THE MATTER OF: B.T.

Appeal by Respondent from order entered 28 February 2020 by Judge Lee Teague in Pitt County District Court. Heard in the Court of Appeals 24 February 2021.

Richard Croutharmel for the Respondent-Mother.

R. Matthew Gibson for the Pitt County Department of Social Services.

Forrest Firm, P.C., by Valerie Bateman, for the Guardian ad Litem.

JACKSON, Judge.

¶ 1

Respondent-Mother (“Respondent”) appeals from the trial court’s order granting guardianship of her son Bart¹ to his foster parents, William and Maranda, and changing his primary permanent plan from reunification to guardianship. We vacate the order of the trial court and remand the matter for further proceedings.

I. Background

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

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¶ 2 Bart is one of four children of Respondent who have come into the custody of the Pitt County Department of Social Services (“the Department”). In a 7 April 2017 order, a New Jersey court granted primary custody of all four children to their paternal grandmother and ordered that neither Respondent or the children’s father be allowed unsupervised visitation with the children. At the conclusion of the April 2017 hearing, the paternal grandmother moved with the children to Pitt County, North Carolina, where her daughter, the children’s paternal aunt, lived.

¶ 3 Shortly thereafter, the Department received a report alleging substance abuse issues in the home. The report also alleged that the paternal grandmother was unable to care for the children and that the family had been non-compliant with the Department of Children and Families in New Jersey. Although this initial report was unsubstantiated, on 25 April 2018 the Department filed a petition alleging that the children were neglected and dependent juveniles. The Department was awarded non-secure custody of the children that same day. The Department filed an amended petition on 2 May 2018.

¶ 4 In the petitions, the Department alleged that Respondent and the children’s father had significant substance abuse issues and that the children were living with their parents in Pitt County despite the New Jersey order prohibiting unsupervised visitation with the children by either parent. The petitions additionally alleged that Respondent and the children had been forced to vacate the home in which they had

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been living with their parents, paternal grandmother, and paternal aunt after the aunt's landlord threatened to evict her for exceeding the number of authorized occupants in the home.

¶ 5 On 28 June 2018, the matter came on for adjudication in Pitt County District Court before the Honorable Lee Teague. Respondent and the children's father entered into a consent agreement with the Department as to the dependency allegations and the Department voluntarily dismissed the petitions as to neglect as a result. Both parents then stipulated in open court that the allegations as to dependency were true and the trial court adjudicated the children dependent and proceeded to disposition immediately. The trial court entered an order on disposition and adjudication on 19 July 2018, maintaining legal custody and placement authority with the Department while reasonable efforts were made to eliminate the need for the Department's involvement and to reunify the family and implement a permanent plan.

¶ 6 The trial court's 19 July 2018 order came up for its three-month review hearing on 20 September 2018 and the trial court maintained legal custody and placement authority with the Department. The matter then came up for its first permanency planning hearing on 13 December 2018 and the trial court again maintained legal custody and placement authority with the Department, concluding in relevant part that reunification efforts with the paternal grandmother would be inconsistent with

the children's safety, and removing her as a party. On 13 June 2019, the trial court ordered that an Interstate Compact on the Placement of Children ("ICPC")² home study be conducted on the home of Bart's paternal great aunt as a potential placement for the children.

¶ 7 After two continuances, the matter came on for a second permanency planning hearing on 1 August 2019. The trial court maintained custody and placement authority of the children with the Department and gave the Department a 28 August 2019 deadline for completion of the home study for the paternal great aunt as a placement. The court ordered the primary permanent plan for the children to be reunification with a secondary plan of custody or guardianship with a relative.

¶ 8 After two more continuances, the matter came on for a third permanency planning hearing on 9 January 2020. The trial court maintained custody and placement authority of Bart's siblings with the Department but granted guardianship of Bart to his non-relative foster parents. The trial court also ordered that the primary permanent plan for the children be changed from reunification to

² Compliance with the federal Interstate Compact on the Placement of Children ("ICPC") is a condition of the state's receipt of federal funding for foster care and adoption assistance. *See In re A.S.*, 203 N.C. App. 140, 141, 693 S.E.2d 659, 660 (2010). Under this framework, "a state is required, *inter alia*, to have a plan for foster care which 'provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.'" *Id.* (quoting 42 U.S.C. § 671(a)(19)).

guardianship with a court-approved caretaker with a secondary plan of custody with a court-approved caretaker. The court further ordered that there be no further reviews as to Bart, while retaining jurisdiction for further reviews as to his siblings.

¶ 9 Respondent entered timely written notice of appeal from the trial court’s order granting guardianship of Bart to his foster parents and changing the primary permanent plan for Bart from reunification to guardianship.

II. Standard of Review

¶ 10 North Carolina General Statute § 7B-906.1 authorizes a trial court in a permanency planning hearing to

maintain the juvenile’s placement under review or order a different placement, appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600, or order any disposition authorized by G.S. 7B-903, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-906.1(i) (2019).

¶ 11 “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 J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004). Although generally speaking, “[w]e review a trial court’s determination as to the best interest of the child for an abuse of discretion[,]” *In re D.S.A.*, 181 N.C. App. 715, 720, 641 S.E.2d 18, 22 (2007), we have also held that “[t]he . . . best interest

determination[] [is] [a] conclusion[] of law[,]” *In re Helms*, 127 N.C. App. 505, 510-11, 491 S.E.2d 672, 675-76 (1997). While “conclusions of law are reviewable *de novo* on appeal[,]” *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (internal marks and citation omitted), “[a]n abuse of discretion is a decision manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision[,]” *In re J.L.*, 264 N.C. App. 408, 415, 826 S.E.2d 258, 264 (2019). (citation omitted).

III. Analysis

¶ 12 In her sole argument on appeal, Respondent contends that the trial court abused its discretion by determining that it was in Bart’s best interest to be permanently placed with his non-relative foster parents without first making specific findings of fact that it was contrary to Bart’s best interest to be placed with his paternal great aunt, a relative who was seeking custody. We agree. We hold that the trial court’s failure to make specific findings demonstrating its compliance with the relative placement priority mandated by N.C. Gen. Stat. § 7B-903(a1) requires that we vacate the permanency planning order and remand this matter to the trial court.

¶ 13 North Carolina’s General Statutes “contain several provisions which direct a juvenile court to consider placement with a relative as a first priority.” *In re A.S.*, 203 N.C. App. 140, 141-42, 693 S.E.2d 659, 660 (2010). One example is N.C. Gen. Stat. § 7B-903(a1), which provides:

In placing a juvenile in out-of-home care . . . , the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

N.C. Gen. Stat. § 7B-903(a1) (2019). Our Court has held that this provision mandates that “[t]he district court ‘*shall first consider* whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home,’ in determining ‘out-of-home’ care for a juvenile.” *In re A.N.T.*, 845 S.E.2d 176, 178-79 (N.C. Ct. App. 2020) (quoting N.C. Gen. Stat. § 7B-903(a1) (emphasis in original)). *See also In re D.S.*, 260 N.C. App. 194, 197, 817 S.E.2d 901, 904 (2018) (“The use of the word ‘shall’ in the statute shows the General Assembly’s intent for this requirement to be mandatory.”). Thus, under the relative placement priority established by N.C. Gen. Stat. § 7B-903(a1), we have held that the “[f]ailure to make specific findings of fact explaining [why] the placement with [a] relative is not in the juvenile’s best interest will result in remand.” *In re A.S.*, 203 N.C. App. at 141-42, 693 S.E.2d at 660.

¶ 14

In the present case, the trial court made the following findings of fact related to whether permanent placement with Bart's non-relative foster parents was in Bart's best interest:

6. [The paternal great aunt] has also been identified as a potential caregiver for [Bart]. An ICPC home study was conducted on the home of [the paternal great aunt] in Pennsylvania. The home study was conducted for the placement of two of the Juveniles; [Bart and his brother]. The home was approved for placement of those two specific Juveniles. The Court does not however, find that placement of the Juvenile[s] in Pennsylvania would be in their best interest.

...

8. The Court further finds that the Juveniles are placed as follows: The Juvenile, [Bart], currently remains in the foster placement of William and Maranda [L.] The Juvenile has been in this placement since January 14, 2019. This is the Juvenile's 7th placement. The Juvenile previously resided in the relative placement of Bernice [S.] from October 12, 2018 to January 13, 2019. The Juvenile was transitioned out her his [sic] relative placement due to his caretaker being unable to handle his behaviors. The juvenile has also resided in an additional relative placement with [his paternal aunt].

9. The Juvenile, [Bart], is currently stable behaviorally.

10. The Juvenile, [Bart], is not yet school age. He attends Grace's Child Care Center in Winterville, NC.

...

21. The Juveniles are current with well-child checks as well as dental and vision checks. The Juveniles have no outstanding medical need.

...

24. The four Juveniles are bonded with each other. The Juveniles have regular sibling visitation. Despite multiple moves the Juveniles' placement providers work together independently of the Department to provide additional times for the Juveniles to spend time together.

25. The best interest of the Juveniles does not allow the Court to separate the Juveniles by relocating one of the children to Pennsylvania or by relocating all of the Juveniles to Pennsylvania uprooting them from the homes that they are doing well in and their educational settings in which they are also improving in.

26. The Juveniles have been in the custody of the Department of Social Services for an extensive period of time.

27. The Juveniles have stability in their current placements. If the Juveniles are moved to Pennsylvania their stability is unknown.

...

64. It is in the best interest of the Juveniles that the primary permanent plan for the Juveniles shall be changed to guardianship with a Court approved caretaker with a secondary plan of custody with a Court approved caretaker.

65. Pursuant to N.C.G.S. §7B-903, the Court designates William and Maranda [L.] as the Juvenile, [Bart's] guardians.

66. Pursuant to N.C.G.S. §7B-906.1, William and Maranda [L.] appeared before the Court and understand[] the legal significance of the appointment and has adequate resources to care appropriately for the Juvenile, [Bart]. The juvenile, [Bart] has resided in [their] home ... for longer than six months.

67. The Juvenile, [Bart], has resided with the [L.s] for over one year, the placement is stable, continuing in the placement would be in the juveniles [sic] best interest, neither the juveniles [sic] interest nor rights of any party require review hearings, all parties are aware they may motion the matter on, and the court has designated the [L.s] as the permanent guardian[s] of the juvenile.

¶ 15 Based on these findings, the trial court concluded in relevant part as follows:

5. Pursuant to N.C.G.S. §7B-903, the Court designates William and Maranda [L.] as the Juvenile, [Bart's] guardians.

6. Pursuant to N.C.G.S. §7B-906.1, William and Maranda [L.] appeared before the Court and understands [sic] the legal significance of the appointment and has [sic] adequate resources to care appropriately for the juvenile, [Bart].

...

8. The Court has the authority pursuant to N.C.G.S. §7B and the best interest of the Juveniles would be served for the Court to hereby

ORDER, ADJUDGE AND DECREE THAT:

...

4. Guardianship of the Juvenile, [Bart], date of birth February 27, 2016 shall be granted to William and Maranda [L.]

5. William and Maranda [L.] shall be authorized to consent to and authorize any routine and/or emergency medical, psychological, psychiatric, education and remedial services or other evaluations that are in the best interest of the Juvenile, [Bart].

6. William and Maranda [L.] shall continue to be

authorized to consent for out of state or school outings deemed appropriate for the Juvenile, [Bart].

...

32. The primary permanent plan for the Juveniles shall be changed to guardianship with a Court approved caretaker with a secondary plan of custody with a Court approved caretaker.

¶ 16 We hold that remand in this matter is required under N.C. Gen. Stat. § 7B-903(a1) because the trial court failed to make any specific findings that Bart’s permanent placement with his paternal great aunt in Pennsylvania was contrary to his best interest. *See In re A.S.*, 203 N.C. App. at 141-42, 693 S.E.2d at 660 (holding that “[f]ailure to make specific findings of fact explaining the placement with the relative is not in the juvenile’s best interest will result in remand”).

¶ 17 Here, the trial court made no specific findings explaining why placement with his paternal aunt was not in Bart’s best interest. The trial court focused exclusively on the stability of Bart’s current placement and weighed the known, relative stability of this placement against the unknown stability of any placement in Pennsylvania with Bart’s paternal great aunt. The trial court appears to have been understandably concerned by the disruption in Bart’s life that inevitably resulted from his placement changing six times in his first three years of life. Yet, the law is clear in this case that under N.C. Gen. Stat. § 7B-903(a1), Bart’s non-relative foster parents and his paternal great aunt were not on equal footing as potential permanent placements.

The trial court correctly found *first* “whether a relative . . . [was] willing and able to provide proper care and supervision of the juvenile in a safe home[.]” N.C. Gen. Stat. § 7B-903(a1) (2019), by finding that the paternal great aunt “ha[d] also been identified as a potential caregiver for [Bart]”; that “[a]n ICPC home study was conducted on the home of [the paternal great aunt] in Pennsylvania”; and that “[t]he home was approved for placement of those two specific Juveniles.” The trial court then “found,” as follows: “The Court does not however, find that placement of the Juvenile[s] in Pennsylvania would be in their best interest[.]” But N.C. Gen. Stat. § 7B-903(a1) required the trial court to find, affirmatively, that permanent placement with Bart’s paternal great aunt was contrary to his best interest before summarily concluding the same.

¶ 18 The facts related to the stability of Bart’s placement with his foster parents and his bond with his siblings in North Carolina did not support the trial court’s conclusory finding that it was not in Bart’s best interest to be placed with his paternal great aunt, outside of North Carolina. The statutory language of N.C. Gen. Stat. § 7B-903(a1) unambiguously gives placements of children with their relatives priority over placements with non-relatives.

¶ 19 The trial court’s conclusory finding that it was not in Bart’s best interest to be placed with the paternal great aunt was therefore essentially an erroneous conclusion of law. *See In re Helms*, 127 N.C. App. at 510, 491 S.E.2d at 675 (“[D]etermination[s]

requiring the exercise of judgment . . . or the application of legal principles . . . [are] more properly classified [as] conclusion[s] of law[.]”). The trial court’s failure to make specific findings that placement with Bart’s paternal great aunt was not in his best interest requires that the permanency planning order be vacated, and the case remanded. *See In re A.S.*, 203 N.C. App. at 141-42, 693 S.E.2d at 660.

IV. Conclusion

¶ 20 Because the trial court failed to make specific findings that it was not in the minor’s best interest to be placed with a willing and available relative when faced with competing potential placements, one with a relative and one with non-relatives, the court’s permanency planning order must be vacated, and the case remanded. On remand, the trial court may hear additional evidence, or may enter a new order based on the existing evidence containing specific findings to support its conclusion regarding the placement of Bart.

VACATED AND REMANDED.

Judges DILLON and INMAN concur.

Report per Rule 30(e).