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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-626

No. COA21-245-2

Filed 16 November 2021

Robeson County, No. 19 JA 237

IN THE MATTER OF:

A.L.

Appeal by respondent-mother from order entered 10 December 2020 by Judge Vanessa E. Burton in Robeson County District Court. Heard in the Court of Appeals 24 August 2021. Petition for Rehearing allowed 8 October 2021. The following opinion supersedes and replaces the prior opinion filed 7 September 2021.

J. Edward Yeager, Jr., for petitioner-appellee Robeson County Department of Social Services.

Robert C. Montgomery for guardian ad litem.

Peter Wood for respondent-appellant mother.

ZACHARY, Judge.

¶ 1 Respondent-Mother appeals from an order awarding legal guardianship of her minor child, A.L.,[1] to the child's foster parents (the "Guardians"), arguing that the trial court abused its discretion by impermissibly delegating to the Guardians the

[1] To protect the identity of the minor child, we refer to her by her initials.

court's responsibility for determining the terms of her supervised visitation. After careful review, we affirm the trial court's order.

I. Background

¶ 2 On 18 July 2019, Petitioner Robeson County Department of Social Services ("DSS") filed a juvenile petition alleging A.L. to be a neglected juvenile. The case came on for an adjudicatory hearing on 30 October 2019, and the trial court adjudicated A.L. as neglected pursuant to an order entered 21 November 2019. The trial court conducted a dispositional hearing immediately following the adjudication and ordered that A.L. be placed in the legal and physical custody of DSS while continuing to work toward reunification with Respondent-Parents.[2]

¶ 3 The matter came on for a permanency planning hearing on 9 September 2020. The trial court found that because of A.L.'s health needs, "it would be unsuccessful to attempt to continue to reunite the parents with the juvenile[.]" A.L. "needs a kidney transplant and she cannot be and will not be considered for a transplant if the plan is for reunification to her parents who have consistently failed to show significant substantial improvement in the care of their child." Therefore, the trial court changed the primary plan to guardianship, and ordered that legal and physical custody of A.L. continue with DSS.

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[2] Respondent-Father is not a party to this appeal; he passed away prior to the entry of the order that is the basis of this appeal.

¶ 4 On 12 November 2020, the trial court conducted a review hearing. By order entered 10 December 2020, the court ordered, *inter alia*:

> 1. That legal guardianship of [A.L.] shall be awarded to [the Guardians] and there shall be no need for further review in this matter.
>
> . . . .
>
> 3. That [Respondent-Parents] shall have supervised visitation with [A.L.] the first Sunday of each month from 12:00 p.m. to 2:00 p.m. [Respondent-Parents] must give a 48 hour notice of their intent to visit and if [Respondent-Parents] are more than 30 minutes late, the [Guardians] are not required to wait.

Respondent-Mother filed notice of appeal of the trial court's 10 December 2020 review order on 6 January 2021.

¶ 5 This Court issued its opinion in this case on 7 September 2021, concluding that "Respondent-Mother's appeal is premature and therefore untimely[.]" *In re A.L.* (*A.L. I*), 2021-NCCOA-452, ¶ 1. Accordingly, we dismissed her appeal without prejudice. *Id.* After the mandate issued, but within the time prescribed by N.C.R. App. P. 31, Respondent-Mother, the guardian *ad litem*, and DSS filed a joint petition for rehearing, requesting that this Court reconsider its ruling because the basis for dismissal was grounded in a misapprehension of the record. We allowed the petition for rehearing on 8 October 2021. The instant opinion therefore replaces and supersedes *A.L. I*, and we will reconsider the issues raised in the parties' briefs.

II. Jurisdiction

¶ 6 Appeal lies with this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(4) (2019).

III. Analysis

¶ 7 Respondent-Mother argues that the trial court abused its discretion by (1) failing to specify the location for Respondent-Mother's supervised visitation, and (2) failing to designate which parties would supervise the visits, thereby impermissibly delegating to the Guardians its judicial responsibility to set the terms of visitation. We disagree.

A. Standard of Review

¶ 8 "This Court reviews the trial court's dispositional orders of visitation for an abuse of discretion." *In re S.G.*, 268 N.C. App. 360, 374, 835 S.E.2d 479, 489 (2019) (citation omitted). "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." *Id.* (citation omitted).

B. Visitation

¶ 9 N.C. Gen. Stat. § 7B-905.1 governs orders in juvenile matters that address visitation:

> (a) An order that removes custody of a juvenile from a parent, guardian, or custodian 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. The court may specify in the order conditions under which visitation may be suspended.

. . . .

> (c) If the juvenile is placed or continued in the custody or guardianship of a relative or other suitable person, any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised. The court may authorize additional visitation as agreed upon by the respondent and custodian or guardian.

N.C. Gen. Stat. § 7B-905.1(a), (c).

¶ 10 Prior to the 2013 enactment of § 7B-905.1, an earlier version of the statute governing dispositional orders in juvenile matters, N.C. Gen. Stat. § 7B-905, included a specific provision covering visitation. *See* An Act to Make Various Changes to the Juvenile Code Pursuant to Revisions Proposed by the Court Improvement Project, S.L. 2013-129, §§ 23–24, 2013 N.C. Sess. Laws 305, 315–17. This Court determined that the prior version of § 7B-905 required that "[a]n appropriate visitation plan must provide for a minimum outline of visitation, such as the time, place, and conditions under which visitation may be exercised." *In re E.C.*, 174 N.C. App. 517, 523, 621 S.E.2d 647, 652 (2005), *superseded by statute as recognized by In re N.B.*, 240 N.C. App. 353, 364, 771 S.E.2d 562, 569–70 (2015).

¶ 11 Our General Assembly's 2013 amendment of § 7B-905 and enactment of § 7B-905.1 "remove[d] the language requiring that the plan be 'expressly approved by the court,' " and instead "only requires the order to account for 'the minimum frequency and length of visits and whether the visits shall be supervised.' " *N.B.*, 240 N.C. App.

at 364, 771 S.E.2d at 570 (citations omitted). This Court in *N.B.* concluded that, by excluding from the newly enacted § 7B-905.1 the pertinent language that was in the former § 7B-905(c), "the General Assembly intended to eliminate any requirement that the trial court include in its order the particular time or place for such visitations but only require the trial court to provide a framework for such visitations." *Id.* "Therefore, *In re E.C.* has been abrogated by the statutory amendment to the extent that it holds that a trial court *must* provide for the time, place, and conditions of visitation in an order allowing visitation." *Id.*

¶ 12 Thus, under the current statute governing provisions for visitation, the trial court need only "specify the minimum frequency and length of the visits and whether the visits shall be supervised." N.C. Gen. Stat. § 7B-905.1(c).

¶ 13 In the instant case, the trial court's order provided the following regarding visitation:

> 3. That [Respondent-Parents] shall have supervised visitation with [A.L.] the first Sunday of each month from 12:00 p.m. to 2:00 p.m. [Respondent-Parents] must give a 48 hour notice of their intent to visit and if [Respondent-Parents] are more than 30 minutes late, the [Guardians] are not required to wait.

¶ 14 The visitation provisions of the case at bar are similar to those reviewed by this Court in *N.B.*, in which the trial court ordered the following:

> - Mother's visitation shall be supervised by the family therapist . . . in a therapeutic setting.

- Mother is entitled to at least one visitation session per month for a minimum of one hour.
- Sessions may be longer and/or more frequent if the therapist recommends.
- Mother is responsible for contacting the family therapist at least once per month to participate in scheduling visitation appointments.
- Mother shall respond to messages from the therapist within 48 hours (2 days).

240 N.C. App. at 363–64, 771 S.E.2d at 569.

¶ 15 This Court rejected the respondent-mother's argument that the terms were "too vague and ill-defined." *Id.* at 363, 771 S.E.2d at 569. Rather, our Court concluded that the trial court complied with the statutory requirements of § 7B-905.1 when it "accounted for the minimum frequency and length of the visitation (one hour, once per month) and provided for the visitations to be supervised by the family therapist . . . . The trial court left it to [the m]other to coordinate with [the therapist] regarding these visits." *Id.* at 365, 771 S.E.2d at 570.

¶ 16 Here, the trial court met its statutory burden by providing a basic outline of the requirements of Respondent-Mother's supervised visitation, supplying the frequency of the visits (once per month), the duration of the visits (two hours), and the time (12:00 p.m. to 2:00 p.m.) and day (first Sunday of each month) of the visits. Although the trial court did not specify where the supervised visitation was to occur or designate who would supervise the visits, the court was not required to do so. And

in the event of conflict, the trial court's order explicitly provided that "the parties [were] aware that the matter may be brought before the court for review at any time by the filing of a motion for review . . . ." Thus, we conclude that the trial court complied with the statutory requirements of N.C. Gen. Stat. § 7B-905.1 by providing the essential framework for the exercise of Respondent-Mother's supervised visitation.

IV. Conclusion

¶ 17 For the foregoing reasons, we conclude that the trial court did not abuse its discretion in setting the terms of Respondent-Mother's supervised visitation. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges MURPHY and GORE concur.

Report per Rule 30(e).