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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-12

No. COA21-435

Filed 4 January 2022

Forsyth County, No. 20-JA-176

IN THE MATTER OF: K.T.B., Jr.

Appeal by Respondent-Appellant Mother from an order entered 9 April 2021 by Judge Theodore Kazakos in Forsyth County District Court. Heard in the Court of Appeals 15 December 2021.

Melissa Starr Livesay, Assistant County Attorney, for Petitioner-Appellee Forsyth County Department of Social Services.

Sean P. Vitrano for the Respondent-Appellant Mother.

Office of the Guardian ad Litem, by GAL Appellate Counsel Matthew D. Wunsche, for the Guardian ad Litem.

JACKSON, Judge.

¶ 1

Respondent Mother (“Mother”) appeals from the trial court’s order adjudicating her minor child, Kevin,¹ abused pursuant to N.C. Gen. Stat. § 7B-101(1) and neglected pursuant to N.C. Gen. Stat. § 7B-101(15), and ordering that the child

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).

remain in the custody of the Forsyth County Department of Social Services (“DSS”). After an independent and careful review, we affirm.

I. Factual and Procedural Background

¶ 2

On 31 October 2020, DSS received a Child Protective Services (“CPS”) report that three-month-old Kevin was at the Emergency Department with a right leg fracture that his parents could not adequately explain. Imaging done while Kevin was in the hospital revealed that he had an acute metaphyseal fracture of the distal right tibia, an acute metaphyseal fracture of the distal right fibula, a subacute distal left tibial fracture, a subacute distal left fibula fracture, a largely healed posterior left 10th fracture, a likely subacute distal right humeral metaphyseal fracture, three unhealed parietal bone skull fractures with a one millimeter depression of the dominant fracture, and a two millimeter extra-axial collection overlying the posterior right frontal lobe favoring extra-axial hemorrhage.

¶ 3

During the investigation, neither of Kevin’s parents could adequately explain his injuries. They disclosed two short falls, but neither could explain his fractures and multiple injuries. Both parents denied hitting, shaking, or intentionally harming Kevin, but both parents also admitted that Kevin had “sustained serious injuries as the result of non-accidental trauma.”

¶ 4

On 4 November 2020, DSS filed a petition alleging that Kevin was abused and neglected. The trial court entered an order granting DSS nonsecure custody the same

day.

¶ 5

On 8 March 2021, the petition came on for adjudication before the Honorable Theodore Kazakos in Forsyth County District Court. After hearing testimony and considering the evidence, the trial court adjudicated Kevin abused and neglected in open court and immediately proceeded to disposition. The trial court ordered that Kevin remain in the custody of DSS and that DSS continue to allow each parent three hours of supervised visitation with Kevin per week. The trial court also laid out a series of requirements for each parent should either wish to achieve reunification with the child. The trial court's order on adjudication and disposition set the case for an initial permanency planning and review hearing on 9 June 2021.

¶ 6

Mother timely appealed. Father did not appeal.

II. Jurisdiction

¶ 7

An appeal of right from an order entered in the district court upon an initial order of disposition and the adjudication order upon which that order is based properly lies directly with this Court. N.C. Gen. Stat. §§ 7A-27(b)(2), 7B-1001(a3) (2019); N.C. R. App. P. 3.1(b).

III. Standard of Review

¶ 8

This Court reviews a trial court's adjudication of a child as an abused or neglected juvenile to determine "(1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported

by the findings of fact.” *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citations omitted). The Court reviews conclusions of law *de novo*, considering the matter anew and freely applying its judgment. *In re K.L.*, 272 N.C. App 30, 36, 845 S.E.2d 182, 189 (2020). However, an appellate court’s review of the sufficiency of the evidence is limited to those findings of fact specifically assigned as error. *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E. 2d 403, 404 (2005). Where, as in this case, none of the findings of fact have been challenged, all findings are presumed to have been based on clear and convincing evidence. *Id.*

¶ 9

“The standard of review of the dispositional stage is whether the trial court abused its discretion.” *In re D.R.B.*, 182 N.C. App. 733, 735, 643 S.E.2d 77, 79 (2007). “An abuse of discretion is established only upon a showing that a court’s actions are manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.” *In re Z.T.W.*, 238 N.C. App. 365, 370, 767 S.E.2d 660, 664-65 (2014) (internal marks and citation omitted).

IV. Analysis

¶ 10

Mother’s counsel filed a no-merit brief pursuant to Rule 3.1(e). In the thirty-two page brief, counsel addressed both the adjudication and dispositional sections of the trial court’s order. He stated that he had examined the findings of fact and conclusions of law in a good faith effort to find issues that could arguably support an appeal, but further stated why, after careful review, counsel believed these issues

each lacked merit. This no-merit brief sets out the evidence and findings of fact that support the trial court's adjudication and disposition order in great detail. The GAL counsel and counsel for DSS agree that this appeal has no merit.

¶ 11 Counsel advised Mother in writing on 7 September 2021 of her right to file written arguments with the Court and has provided her with a copy of the documents pertinent to her appeal, including the transcript, record on appeal, and counsel's brief. It has now been more than ninety days and Mother has not filed a *pro se* brief or anything additional with this Court.

¶ 12 We have carefully and independently reviewed the issues identified by counsel in his no-merit brief as well as the entire record in accordance with Rule 3.1(e) and *In re L.E.M.*, 372 N.C. 396, 831 S.E.2d 341 (2019). Having undertaken and completed this review, we are satisfied that the trial court's 9 April 2021 order is supported by clear, cogent, and convincing evidence and based on proper legal grounds. The determinations that the minor was both abused and neglected are well supported. Further, the trial court's dispositional order that the child remain in the non-secure custody of DSS and the court's requirements of the parents should they wish reunification with the child are consistent with the purposes and functions of dispositional hearings.

III. Conclusion

¶ 13 For these reasons, we affirm the trial court's 9 April 2021 order.

IN RE K.T.B., JR.

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Opinion of the Court

AFFIRMED.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).