IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-11

No. COA21-426

Filed 4 January 2022

Wake County, Nos. 19 JA 70-71

IN THE MATTER OF: D.B., Jr., M.B.

MINOR JUVENILES.

Appeal by Respondent-Mother from order entered 27 April 2021 by Judge V.A. Davidian in Wake County District Court. Heard in the Court of Appeals 14 December 2021.

Robert W. Ewing for Respondent-Appellant Mother.

Wake County Attorney's Office, by Mary Boyce Wells, for Petitioner-Appellee Wake County Human Services.

Christopher J. Waivers for guardian ad litem.

GRIFFIN, Judge.

¶ 1 Respondent-Mother appeals from an order awarding guardianship of her two children, Marvin and Douglas[1], to their foster parents. Mother argues that the trial

[1] We use pseudonyms to protect the anonymity of the children and for ease of reading. N.C. R. App. P. 42(b).

court's order did not remove reunification as a secondary plan, and that therefore the trial court erred by ceasing reunification efforts with Mother and dispensing with future review hearings. We hold the trial court's order did effectively remove reunification with the children's parents as a secondary plan, and therefore do not address the merits of Mother's other arguments.

I. Procedural History

¶ 2 On 22 April 2019, Wake County Human Services ("WCHS") filed petitions alleging that Marvin and Douglas were neglected juveniles. The trial court granted nonsecure custody of the children to WCHS.

¶ 3 An adjudication hearing was held in Wake County District Court on 28 May 2019. Mother signed a consent order, entered 29 May 2019, stipulating that Marvin and Douglas were neglected juveniles.

¶ 4 Permanency planning hearings were held on 17 December 2020 and 8 April 2021. On 27 April 2021, the trial court entered an order ceasing reunification efforts with the parents and granting guardianship to the children's current foster parents. Among other findings, the trial court found that "reunification efforts clearly would not be successful" and "the permanent plan of guardianship ha[d] been achieved[.]"

¶ 5 Mother timely appealed. Father voluntarily dismissed his appeal.

II. Factual Background

¶ 6 Mother does not challenge the trial court's findings of fact, which therefore are

binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." (citation omitted)). The findings of fact in the trial court's 27 April 2021 order tended to show the following:

¶ 7 On 22 January 2021, Mother was arrested and was subsequently convicted of misdemeanor assault with a deadly weapon. As of 27 April 2021, Mother also had two pending charges in Franklin County. All three of these matters related to incidents where Mother was reportedly in altercations with her boyfriend.

¶ 8 In December 2020, WCHS provided Mother with information about rental and eviction assistance programs. On 12 January 2021, Mother reported that her landlord was unwilling to renew her lease. WCHS responded the same day with housing information. On 23 March 2021, Mother reported that she was living with her mother and was seeking placement at a shelter. Mother subsequently reported and provided documentation that, as of 25 March 2021, she had been living at the Raleigh Rescue Mission.

¶ 9 On 23 March 2021, Mother reported that she was not engaged in outpatient mental health services. She stated that her lack of a stable residence was a barrier to receiving mental health services. She also reported that she was not employed but that she was seeking employment. Mother "was advised that due to COVID[-]19 all

outpatient therapy is being provided via telehealth and she only needed to complete an intake." As of 27 April 2021, Mother had not received any mental health services. Mother reported that "she plan[ned] to participate in programs designed to address her substance abuse, mental health treatment and employment instability."

¶ 10 Father is currently incarcerated, with a projected release date of 15 October 2023. He has sent cards, letters, and gifts to Marvin and Douglas. As of the 27 April 2021 order, he was regularly visiting with the children via phone calls. Father "has been available when needed to provide consent for any testing and procedures needed for his children."

¶ 11 Mother's visitation with Marvin and Douglas was suspended at the 17 December 2020 permanency planning hearing. Mother "has not been available to the [c]ourt and has been sporadically available to WCHS and the Guardian ad Litem."

¶ 12 WCHS completed thirteen to fifteen kinship assessments for Marvin's and Douglas's case, but as of 27 April 2021 was not able to approve any of these potential placements. The "placements were either unwilling or unable to provide care and supervision for the children."

¶ 13 On 8 April 2020, the children were placed in the home of their current foster parents. The home was stable, the children's needs were met there, and the children had been "doing well in their current placement[.]" The foster parents "have sought to maintain the African American culture of the children and understand how this

benefits the children." The foster parents "understand the legal significance of being awarded guardianship." They "have the financial means to meet the children's needs[.]" Marvin and Douglas "have a strong positive bond with" their foster parents, "and they want to have permanency and the certainty that would come with the permanent plan of guardianship."

¶ 14 Mother and Father are not "able to provide proper care and supervision for the children." They "have not corrected the conditions that led to the removal of the children." "[M]other has made little progress and has just started to undertake meeting her own needs and is not a fit and proper person to have visits or contact with the children."

III. Analysis

A. Standard of Review

¶ 15 "This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007) (citations omitted). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re N.G.*, 186 N.C. App. 1, 10–11, 650 S.E.2d 45, 51 (2007) (citation and internal quotation marks

omitted). "The trial court may only order the cessation of reunification efforts when it finds facts based upon credible evidence presented at the hearing that support its conclusion of law to cease reunification efforts." *Id.* at 10, 650 S.E.2d at 51 (citation and internal quotation marks omitted).

B. The Trial Court's Order Removed Reunification as a Secondary Plan

¶ 16 Mother argues that the trial court's order "did not remove reunification with the parents as a secondary plan", because it did not include any findings of fact or conclusion of law that expressly removed reunification. We disagree.

¶ 17 "Concurrent planning shall continue until a permanent plan is or has been achieved." N.C. Gen. Stat. § 7B-906.2(a1) (2019). In pertinent part, the Juvenile Code provides that

> [r]eunification shall be a primary or secondary plan unless [1] the court made findings under . . . [N.C. Gen. Stat. §] 7B-906.1(d)(3), [2] the permanent plan is or has been achieved in accordance with subsection (a1) of this section, or [3] the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety.

N.C. Gen. Stat. § 7B-906.2(b) (2019). Findings under N.C. Gen. Stat. § 7B-906.1(d)(3) concern "[w]hether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time." N.C. Gen. Stat. § 7B-906.1(d)(3) (2019).

¶ 18 Here, concurrent planning was no longer necessary. The court found that (1) the permanent plan of guardianship had been achieved, and (2) reunification efforts clearly would not be successful. *See* N.C. Gen. Stat. § 7B-906.2(b) (allowing cessation of concurrent planning when the court makes findings that "the permanent plan . . . has been achieved" or "that reunification efforts clearly would be unsuccessful").

¶ 19 The trial court's conclusions of law expressly eliminated reunification efforts. The court held that "WCHS is relieved of the obligation to make further efforts towards reunification." The court also held that "further efforts towards reunification are inconsistent with the children's need for a safe, permanent home within a reasonable time and [are] not in the best interests of the children[.]" The court concluded that Mother and Father "continue to act in a manner inconsistent with their Constitutionally protected status as parents and are not fit and proper parents to have custody of the children." The court waived all further regularly scheduled reviews. These conclusions of law clearly ended the efforts to reunify Marvin and Douglas with their parents.

¶ 20 The court did not name any secondary plan in its 27 April 2021 order. Had the court wished to establish a secondary plan, it would have needed to specify such a plan. Given that concurrent planning was no longer necessary, the court's silence as to any secondary plan and its express suspension of reunification efforts indicate that the trial court effectively removed reunification as a secondary plan. *See In re D.A.*,

258 N.C. App. 247, 253, 811 S.E.2d 729, 733 (2018) ("While the trial court's order may not have explicitly ceased reunification efforts, these actions show its effect, in fact and in law, was to waive further review and cease reunification efforts.").

¶ 21 Mother argues that "[N.C. Gen. Stat.] § 7B-906.2(a1) does not limit a trial court from maintaining concurrent planning even after a permanent plan has been achieved." We agree that the trial court was not *required* to eliminate concurrent planning, but, as discussed *supra*, we conclude that the trial court did in fact eliminate the secondary plan and made the requisite findings to do so.

¶ 22 Mother also argues that this case is analogous to *In re C.S.L.B.*, 254 N.C. App. 395, 829 S.E.2d 492 (2017), where the secondary plan remained reunification with a parent despite achievement of the permanent plan. *In re C.S.L.B.* does not support Mother's contention that the trial court did not eliminate reunification with the parents as a secondary plan. Unlike the court in *In re C.S.L.B.*, here the trial court did not state that reunification was the secondary plan. *Id.* at 397, 829 S.E.2d at 494 (holding the trial court did not eliminate reunification as a secondary plan where "the trial court *specifically found* that '[t]he best plan of care for the juveniles . . . is a primary permanent plan of guardianship . . . *with a secondary plan of reunification*'" (emphasis added)). If anything, *In re C.S.L.B.* demonstrates that the trial court needed to expressly state that reunification was the secondary plan if the trial court wished to reach such a conclusion.

C. Mother's Remaining Arguments Are Moot

¶ 23 Mother's other arguments on appeal are contingent on the above argument. Namely, Mother argues that, because reunification with the parents remained the secondary plan, the trial court erred by (1) ceasing reunification efforts with Mother, and (2) dispensing with future review hearings. Because we hold that the trial court did in fact remove reunification with the parents as the secondary plan, we need not address the merits of these remaining arguments.

IV. Conclusion

¶ 24 For the foregoing reasons, we affirm the order of the trial court.

AFFIRMED.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).