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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-273

No. COA21-631

Filed 19 April 2022

Graham County, No. 14-JA-24

IN THE MATTER OF:

S.F.D.

Appeal by respondent mother from order entered 2 August 2021 by Judge Kristina Earwood in District Court, Graham County. Heard in the Court of Appeals 5 April 2022.

Jane R. Thompson, for petitioner-appellee Graham County Department of Social Services.

Assistant Parent Defender J. Lee Gilliam, for respondent-appellant Mother.

Guardian ad Litem Appellate Counsel Matthew D. Wunsche, for guardian ad litem-appellee.

STROUD, Chief Judge.

¶ 1 Respondent Mother appeals from the trial court's dispositional order in a juvenile abuse, neglect, and dependency case. Because the trial court's order does not include specific and measurable steps Mother can take to achieve reunification, we remand for entry of a new order with such a plan.

I. Background

¶ 2 On 28 February 2020, Graham County Department of Social Services ("DSS") filed a juvenile petition alleging Sarah[1] was a neglected juvenile because she did "not receive proper care, supervision, or discipline" from Mother, was not provided necessary medical care, and lived "in an environment injurious to" her welfare. Sarah's father is deceased. In Exhibit A to its petition, DSS alleged Sarah has several severe medical issues that required two prior heart surgeries and that between 2015 and 2020, Mother had not followed a further recommendation for Sarah to undergo another heart surgery. Further, DSS alleged Sarah, who was thirteen years old at the time, had never been enrolled in a public school, and, despite Mother's report that she was home schooled, DSS was unable to find a home school registered in Mother's name. Finally, DSS was concerned about "on-going drug use in the home." The same day DSS filed the petition, the trial court awarded DSS nonsecure custody.

¶ 3 As later described in the uncontested Findings of Fact from the adjudication order, DSS had made initial contact with Mother, Sarah, and Mother's partner, with whom Mother and Sarah lived at the time, in February 2020. As a result of those visits, DSS learned Sarah had never attended public school as described above and was "illiterate"; Sarah was fourteen years old at the time of that finding. DSS also described Sarah as "very dirty" and noted during two home visits three days apart

[1] The parties stipulated to using the pseudonym Sarah to refer to the minor child in their briefs, and we continue to use that pseudonym to protect the child's identity.

she wore the same dirty clothes. Finally, Mother told DSS Sarah had not had any heart surgeries since 2015 and Mother did not want to authorize any more due to the risk of death. These facts align with the allegations in DSS's initial juvenile petition.

¶ 4 Following the grant of non-secure custody pursuant to that petition, several relevant events occurred in June 2020. First, on 10 June 2020, Sarah was taken to a children's hospital where she was diagnosed with severe dental and heart health problems. One treating physician said he was very concerned and had "never seen a heart like this in a child in the United States." As a result, the treating physicians recommended Sarah undergo dental rehabilitation to allow her to then have heart surgery. Without the surgery, a doctor estimated she would likely die within five to ten years, but with the surgery, which carried a 5% mortality risk, Sarah would have improved quality of life and could live for up to thirty more years.

¶ 5 In addition to Sarah's heart issues, in mid-June 2020, police responded to a domestic violence incident where Mother's partner had attacked Mother with a knife and club, requiring Mother to later receive medical treatment, and had threatened to kill Mother, her children, and her grandchildren. Mother initially filed a domestic violence protective order and initiated criminal charges, but both were later dismissed for failure to prosecute. Mother also told DSS she is bi-polar and treats her disorder with marijuana. Finally, on 23 June 2020, the trial court dismissed the

non-secure custody order because it could not "find that the allegations presented have a reasonable factual basis."

¶ 6 Following the dismissal of the non-secure custody order, Mother removed Sarah from the hospital against medical advice before her treatment could be completed. For the following months, DSS repeatedly tried to follow-up with Mother and Sarah with varying levels of success. Sarah was still not enrolled in public school and Mother had not scheduled follow-up medical appointments for Sarah to address the outstanding dental and heart problems. As of November 2020, Mother "continued to refuse to cooperate" with DSS.

¶ 7 On 21 January 2021, DSS filed an amended juvenile petition alleging the same grounds for neglect asserted in its previous petition. In Exhibit A to its petition, DSS recounted the continued lack of public schooling, the lack of medical treatment for Sarah's serious heart and dental conditions including her June 2020 discharge from the hospital against medical advice, and its ongoing concerns about drug use in the home. DSS added allegations of domestic violence based on the June 2020 incident noted above as well as other incidents Sarah had witnessed. Finally, DSS noted concerns about Mother's mental health and her self-treatment with marijuana. Following a hearing on 6 April 2021, the trial court adjudicated Sarah a neglected juvenile on 5 May 2021 based on the uncontested Findings of Fact recounted above,

gave custody and placement authority to DSS pending further disposition, and set a visitation schedule.

¶ 8 After the adjudication, the trial court held a disposition hearing on 26 July 2021.[2] At the disposition hearing, the trial court first heard from a pediatric cardiologist who testified about his past treatment of Sarah in June 2020, as well as her need for dental rehabilitation and a subsequent heart surgery to extend her life expectancy from "a few years" to up to forty years.

¶ 9 The DSS supervisor for Sarah's case since June 2020 also testified about: Sarah's placement with a relative once DSS took custody, her enrollment in public school for the first time once in DSS's custody, some of Sarah's medical history including Mother's involvement, and Mother's inconsistent visitation and failure to enter into a case plan with DSS to address the concerns listed above including the domestic violence and drug use. As part of that testimony, the trial court received into evidence Sarah's medical records and DSS's report.

¶ 10 The final witness at the hearing was a DSS worker who testified about Mother's disclosure that she suffers from bi-polar disorder and the concerns DSS had

[2] The disposition was not heard within 30 days of entry of the adjudication order as directed by North Carolina General Statute § 7B-905(a) (2021) "for the benefit of the respondent [M]other and the other parties."

about Mother's lack of mental health treatment or counseling. The court also received into evidence the Guardian Ad Litem ("GAL") court report.

¶ 11 Within the DSS report accepted into evidence at the dispositional hearing, DSS included a case plan that listed four action steps: (1) to address "mental/ emotional health," Mother needs to "seek mental health assessment through Appalachian Community Services (ACS) and follow recommendations"; (2) on the topic of "child characteristics," Mother needs to "comply with minor childs [sic] educational and medical needs" by "attend[ing] medical and educational appointments"; (3) under "family relationships," Mother needs to redress the domestic violence in the home with her partner by having him "enter into a case plan with agency to address domestic violence"; and (4) on visitation, Mother should "[a]ttend supervised visits by DSS on a regular basis at Graham Co. DSS and arrive on time, clean, sober and drug free." DSS also indicated Mother had twice cancelled scheduled meetings to establish the case plan. While Mother eventually met with DSS about the case plan a week before the disposition hearing, she did not agree to enter into the plan at that time.

¶ 12 Following the hearing, the trial court entered a dispositional order on 2 August 2021. The trial court took judicial notice of the entire adjudication order. Then, the trial court made Findings of Fact, by clear and convincing evidence, on Sarah's lack of public schooling, her need for medical and dental treatment as well as the risks

involved, DSS's concerns about domestic violence and Mother's mental health, and Mother's failure to enter into a case plan despite DSS's reasonable efforts.

¶ 13 Based on those Findings, the trial court entered Conclusions of Law that DSS had made reasonable efforts, that it was in Sarah's best interests that she continue in non-secure DSS custody and not be returned to the custody and care of Mother, that Mother acted inconsistently with her constitutionally protected status as a parent, and that a concurrent permanent "plan of reunification with a parent or guardianship with an appropriate person" was in Sarah's best interests.

¶ 14 As a result, the trial court established that permanent plan, awarded custody and placement discretion to DSS, specifically authorized the recommended dental and heart surgeries, and set out actions for Mother. Specifically, the trial court set out the following plan for Mother:

> 9. That the Respondent Mother shall continue to have her visitation of two hours minimum per week, plus additional visitation as the Department can arrange, and shall be able to attend the surgeries . . . unless it is medically recommended that the visitation cease, in which case the medical documentation shall supersede this provision.
> 10. That the Respondent Mother shall make contact with her social worker and shall attend all scheduled Child and Family Team meetings on time, as well as Permanency Planning Action Team meetings.
> 11. That the Respondent Mother shall be available at least once a month to receive home visits from the social worker.

Mother gave written notice of appeal of the trial court's dispositional order on 12 August 2021.

II. Analysis

¶ 15 Mother's only argument on appeal is that "the disposition order should be remanded for entry of an adequate plan for reunification efforts." (Capitalization altered.) After asserting reunification as the default goal in juvenile cases, Mother argues a plan to reach that goal is necessary because "[a] goal without a concrete plan of action is ineffectual." Mother continues by contending the "action steps in the plan should address the issues that brought the child into custody and must be adequate to show DSS' efforts at reunification are reasonable." Finally, Mother argues the "instant dispositional order did not include any action steps by which reunification could be achieved."

¶ 16 "The district court has broad discretion to fashion a disposition . . . based upon the best interests of the child." *In re L.Z.A.*, 249 N.C. App. 628, 641, 792 S.E.2d 160, 170 (2016) (quoting *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008)) (alteration in original). As such, we review a trial court's dispositional orders for abuse of discretion. *In re A.P.W.*, 378 N.C. 405, 2021-NCSC-93, ¶ 15. "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." *Id.* (quoting *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020)). "[A] finding that the trial judge failed to comply with

the statute . . . will establish an abuse of discretion." *Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992).

¶ 17 DSS first argues Mother does not provide support for her contention the court must order a specific case plan at an initial disposition hearing because all her authorities address permanency planning orders. As a premise in that argument, DSS contends the hearing held before the trial court was an initial disposition hearing and did not involve a permanency planning hearing as well. Trial courts can decide to hold dispositional and permanency planning hearings on the same day. *See In re C.P.*, 258 N.C. App. 241, 244, 812 S.E.2d 188, 191 (2018) ("The General Assembly has not proscribed conducting adjudications, dispositional, and permanency planning hearings on the same day, and the trial court did not err in hearing these matters."). While the record contains evidence to support DSS's position that the trial court only held an initial disposition hearing, the trial court included a permanent plan in its order: "2. That the permanent plan for the juvenile is established as a concurrent plan of reunification with a parent or guardianship with an appropriate person." Because the trial court included a permanent plan, we conclude the hearing was a combined dispositional and permanency planning hearing.

¶ 18 Mother does not challenge any of the initial disposition hearing components of the trial court's order, so we focus on the permanency planning parts. Under North Carolina General Statute § 7B-906.2, the trial court must make written findings that

evaluate the progress of reunification at any permanency planning hearing where reunification is still an option:

> (c) Unless reunification efforts were previously ceased, at each permanency planning hearing the court shall make a finding about whether the reunification efforts of the county department of social services were reasonable. In every subsequent permanency planning hearing held pursuant to G.S. 7B-906.1, the court shall make written findings about the efforts the county department of social services has made toward the primary permanent plan and any secondary permanent plans in effect prior to the hearing. The court shall make a conclusion about whether efforts to finalize the permanent plan were reasonable to timely achieve permanence for the juvenile.
> (d) At any permanency planning hearing under subsections (b) and (c) of this section, the court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification:
>
> > (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
> > (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
> > (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
> > (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C. Gen. Stat. § 7B-906.2(c)–(d).

¶ 19 Given a trial court must make findings on reasonable efforts by DSS and progress by the parent in the reunification plan, the trial court needs means to measure those efforts and that progress at subsequent permanency planning

hearings. *In re S.D.*, 276 N.C. App. 309, 2021-NCCOA-93, ¶ 57 (explaining findings under § 7B-906.2(d) must "demonstrate the degree of success or failure toward reunification" or the trial court has committed reversible error (quoting *In re J.H.*, 373 N.C. at 268, 837 S.E.2d at 850)).

¶ 20 To ensure those means of evaluation, the trial court must provide parents with a specific plan to measure their degree of success or failure towards reunification. The parents' service plan also provides a benchmark for DSS's reasonable efforts: "Unless permanence has been achieved, the court shall order the county department of social services to make efforts toward finalizing the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile." N.C. Gen. Stat. § 7B-906.2(b). Thus, in a situation where reunification is a permanent plan, DSS's reasonable efforts align with the services parents must take advantage of in their reunification plan.

¶ 21 "The North Carolina statutes do not include a definitive listing of the services which may be provided as a part of 'reasonable efforts,'" and thus as part of the parents' specific plan towards reunification. *In re D.M.*, 211 N.C. App. 382, 386, 712 S.E.2d 355, 357 (2011); *see also* N.C. Gen. Stat. § 7B-101(18) (defining "reasonable efforts" as "[t]he diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of

time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile."). But our caselaw provides guidance.

¶ 22 In general, the trial court should address conditions that "directly *or indirectly* contributed to causing the juvenile's removal from the parental home." *See In re B.O.A.*, 372 N.C. 372, 381–82, 831 S.E.2d 305, 311–12 (2019) (emphasis added) (reviewing the trial judge's "authority" in an abuse, neglect, or dependency proceeding in the context of interpreting the meaning of "conditions of removal" as that term is used in the termination of parental rights provision in North Carolina General Statute § 7B-1111(a)(2)).

¶ 23 Our case law has also listed numerous services that can constitute reasonable efforts and thus provide a plan on which parents can be evaluated. *See In re S.D.*, ¶¶ 48–49, 61 (evaluating DSS's reasonable efforts in areas including housing and then bringing up housing again when discussing parent's compliance with reunification efforts). For example, in *In re J.H.*, our Supreme Court found the trial court did not abuse its discretion in making findings that the parent had "completed a mental health assessment, signed the requisite release forms, and maintained, at the time of the hearing, an appropriate home" but had failed to find and maintain employment for six months or to make appropriate progress with parenting coaching. 373 N.C. at

268–70, 837 S.E.2d at 851–52. This Court has also previously recognized a federal regulation with a "nonexclusive list of services which may satisfy the 'reasonable efforts' requirement": "crisis counseling, individual and family counseling, services to unmarried parents, mental health counseling, drug and alcohol abuse counseling, homemaker services, day care, emergency shelters, vocational counseling, emergency caretaker, and 'other services which the agency identifies as necessary and appropriate.'" *In re D.M.*, 211 N.C. App. at 386, 712 S.E.2d at 357 (quoting *In re Helms*, 127 N.C. App. 505, 512 n.3, 491 S.E.2d 672, 677 n.3 (1997)).

¶ 24 These cases address DSS's reasonable efforts, which align with plans for parents, so they provide examples of adequate case plans for reunification as well. While these examples provide guidance, a trial court's ordered measures should be tailored to the case at hand. *In re B.O.A.*, 372 N.C. at 381–82, 831 S.E.2d at 311–12 (explaining case plan should focus on what led to government intervention).

¶ 25 Here, the trial court order did not include a sufficiently specific or measurable plan for Mother's reunification efforts. The trial court ordered Mother to do three things:

> 9. That the Respondent Mother shall continue to have her visitation of two hours minimum per week, plus additional visitation as the Department can arrange, and shall be able to attend the surgeries . . . unless it is medically recommended that the visitation cease, in which case the medical documentation shall supersede this provision.
> 10. That the Respondent Mother shall make contact with

> her social worker and shall attend all scheduled Child and Family Team meetings on time, as well as Permanency Planning Action Team meetings.
> 11. That the Respondent Mother shall be available at least once a month to receive home visits from the social worker.

While visitation is important, it is not the same thing as setting out a plan for Mother to receive services to address the direct and indirect causes of the neglect adjudication and thereby make progress toward reunification. The second action step to make contact with a social worker and attend meetings is too general and also does not address the particular facts that led to government intervention here. Finally, while the requirement that Mother receive home visits corresponds with one reason for the neglect findings, i.e., Sarah being "very dirty" on past home visits, it does not address the many other reasons for the neglect adjudication including Mother providing for Sarah's medical and educational needs, Mother's mental health issues, and the domestic violence between Mother and her partner.

¶ 26 While a trial court need not make a plan for a parent to achieve reunification efforts in certain scenarios, none of those apply here. A trial court need not include reunification as a primary or secondary plan if "the court made written findings under G.S. 7B-901(c) or G.S. 7B-906.1(d)(3)" or if "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). Here, however, the trial court's order lists reunification as one of the concurrent plans, and the trial court did

not make any of the findings necessary to eliminate reunification as a primary or secondary plan. As such, the trial court still needed to include in its order a case plan with specific and measurable steps for Mother and DSS.

¶ 27 The DSS case plan in the record highlights the trial court's error in not including a reunification plan for Mother. The disposition order noted DSS's court report was admitted into evidence at the dispositional hearing. Within its report, DSS included a case plan for Mother. The case plan listed as action steps: (1) to address "mental/ emotional health," Mother needs to "seek mental health assessment through Appalachian Community Services (ACS) and follow recommendations"; (2) on the topic of "child characteristics," Mother needs to "comply with minor childs [sic] educational and medical needs" by "attend[ing] medical and educational appointments"; (3) under "family relationships," Mother needs to redress the domestic violence in the home with her partner by having him "enter into a case plan with agency to address domestic violence"; and (4) on visitation, Mother should "[a]ttend supervised visits by DSS on a regular basis at Graham Co. DSS and arrive on time, clean, sober and drug free." That case plan addressed the reasons for the neglect adjudication and Sarah's removal from her Mother's care, so the trial court could have ordered Mother to comply with those provisions within DSS's case plan. *See* N.C. Gen. Stat. § 7B-906.2(b) ("Unless permanence has been achieved, the court shall order the county department of social services to make efforts toward finalizing

the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile."). On appeal, DSS also contends that the trial court did not need to include any plan in its order due to Mother's consistent refusal to cooperate with DSS's prior efforts to work with Mother. It is true that Mother may continue to fail to comply with DSS's efforts to work with her, but her prior failure does not eliminate the need for the trial court to order a case plan. And while the trial court has discretion to enter a specific and measurable case plan different from the one included in the DSS report, it failed to follow the statutory requirement to include a case plan. *In re B.O.A.*, 372 N.C. at 381–82, 831 S.E.2d at 311–12.

III. Conclusion

¶ 28 Because the trial court has failed to set out a specific and measurable case plan against which DSS's reasonable efforts and Mother's progress towards reunification can be measured, the trial court abused its discretion. We remand for entry of a specific and measurable case plan.

VACATED AND REMANDED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).