IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-316

No. COA 21-499

Filed 3 May 2022

Forsyth County, No. 20J102

IN THE MATTER OF: N.M.M., a minor juvenile.

Appeal by Respondents from order entered 29 April 2021 by Judge Denise S. Hartsfield in Forsyth County District Court. Heard in the Court of Appeals 22 March 2022.

Forsyth County Department of Social Services, by Deputy County Attorney Theresa A. Boucher, for Petitioner-Appellee.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky L. Brammer, for Respondent-Appellant Father.

David A. Perez for Respondent-Appellant Mother.

Parker Poe Adams & Bernstein LLP, by Matthew J. Carpenter, for guardian ad litem.

GRIFFIN, Judge.

¶ 1 Respondents Father and Mother (together, "Parents") appeal from an order denying them visitation with their child, N.M.M. ("Nia").[1] Parents contend the dispositional order must be reversed because the trial court failed to make required findings in denying them visitation rights. The Forsyth County Department of Social Services ("FCDSS") has filed a motion to dismiss Father's appeal. Father has also submitted a petition for writ of certiorari in the event we were to find his notice of appeal untimely. We deny FCDSS's motion to dismiss and affirm the trial court's order.

I. Factual and Procedural History

¶ 2 On 1 April 2020, Nia was born to Parents. Nia lived with Parents at Father's mother's house in Winston-Salem. While Father's mother, brother, and cousin also lived in the house, Parents were Nia's sole caretakers. During the first two months of Nia's life, she had regular appointments with her pediatrician and was reported to be in a "normal state of health[.]"

¶ 3 On 15 June 2020, when Nia was two months old, Father played video games while Nia sat in a bouncy seat and drank from a bottle propped up on blankets. Nia began to "cough and choke" and Father "picked her up, patted her back, and put her

[1] A pseudonym, stipulated by the parties, is used for protection of the minor child and ease of reading. *See* N.C. R. App. P. 42(b).

back in the bouncy seat." Father then went back to playing his video game. Nia "began to cough up more milk and milk came out of her nose." When Father again picked Nia up and patted her back, he stated that "she sighed and her arms went limp[.]" Father began performing CPR on Nia and then yelled for his mother to call 911. Nia was transported to the hospital by ambulance.

¶ 4 Dr. Sarah Northrop, a child abuse pediatrician, performed an examination of Nia and met with Parents. Dr. Northrop's examination revealed that Nia's injuries included brain bleeding, "two broken arms, a broken leg and multiple [rib] fractures of undetermined origin." It was determined that Nia's rib fractures were not a result of Father performing CPR because "they were healing when [the doctors] found them[,]" and Dr. Northrop opined that the rib fractures had occurred "10-14 days prior to her admission to the hospital[.]" Dr. Northrop found Nia's condition to be "highly consistent with abusive head trauma and physical abuse." Parents provided no explanation for Nia's injuries. Nia has remained hospitalized since this incident occurred.

¶ 5 On 8 July 2020, FCDSS filed a petition alleging that Nia was an abused, neglected, and dependent child and obtained nonsecure custody of Nia. Parents then began drug screening that on two occasions returned positive results for cocaine and marijuana.

¶ 6 Between 24 July 2020 and 25 March 2021, Parents visited Nia in the hospital

36 times. During this time, Nia was "diagnosed with a Herpes lesion on her lip . . . presumed to have been contracted by her parents, who are her only visitors, kissing the child on the mouth." Additionally, Parents "were observed on multiple occasions deviating from Covid 19 precautions by removing their masks while visiting with [Nia]."

¶ 7 On 7 April 2021, the trial court held an adjudication hearing on the petition. Parents presented no evidence contrary to FCDSS's evidence and presented no explanation for Nia's injuries. At the end of the adjudication hearing, the trial court found Nia to be abused and neglected and proceeded immediately to a dispositional hearing. During the dispositional hearing, when asked about visitation with Nia, the trial court judge responded: "No. No. I mean, no. Why? We don't need anyone contaminating the Virginia Area." On 29 April 2021, the trial court entered an order ceasing reunification efforts with Parents and terminated their visitation rights with Nia. Additionally, the trial court ordered Nia to be moved to Lake Taylor Transitional Hospital in Norfolk, Virginia.

¶ 8 The certificate of service for the order shows that it was served on the parties on 6 May 2021. Mother filed written notice of appeal on 1 June 2021. Father filed written notice of appeal on 3 June 2021. On 3 January 2022, FCDSS filed a motion to dismiss Father's appeal.

II. Analysis

A. Jurisdiction

¶ 9 In its motion to dismiss Father's appeal, FCDSS alleges that Father's appeal was untimely because it was filed outside the thirty-day period prescribed by North Carolina law. In response, Father argues that his filing was not untimely because the thirty-day period did not begin until service of the order was made upon the parties. In the alternative, Father filed a petition for writ of certiorari asking us to review the merits of his case in the event this Court finds his notice of appeal untimely.

¶ 10 "Any party entitled to an appeal under N.C.G.S. § 7B-1001(a) and (a1) may take appeal by filing notice of appeal with the clerk of superior court and serving copies of the notice on all other parties in the time and manner set out in N.C.G.S. § 7B-1001(b) and (c)." N.C. R. App. P. 3.1(b). Parties filing notice of appeal are required to do so "within 30 days after entry and *service of the order* in accordance with G.S. 1A-1, Rule 58." N.C. Gen. Stat. § 7B-1001(b) (2021) (emphasis added).

¶ 11 The trial court entered the order on 29 April 2021. However, the order was not served on the parties until 6 May 2021 and Father filed his notice of appeal on 3 June 2021, which was within the required thirty-day period. Therefore, we hold that Father's appeal was timely and deny FCDSS's motion to dismiss. Father's PWC is dismissed as moot.

B. Disposition

¶ 12 Parents argue the trial court erred in denying visitation with Nia because the court did not make the explicit finding that it was not in Nia's best interest and the trial court judge abused its discretion by exhibiting a personal bias against Parents. For the reasons explained below, we disagree.

¶ 13 We review a trial court's order denying visitation for abuse of discretion. *See Matter of J.L.*, 264 N.C. App. 408, 421, 826 S.E.2d 258, 268 (2019). "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." *Matter of A.P.W.*, 378 N.C. 405, 2021-NCSC-93, ¶ 15 (citation omitted). Unchallenged findings of fact are binding for purposes of appellate review. *See In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

¶ 14 N.C. Gen Stat. § 7B-905.1(a) states: "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." N.C. Gen. Stat. § 7B-905.1(a) (2021). In interpreting this statute, this Court has upheld an order depriving visitation where the findings of fact did not expressly state that visitation was not in the best interest of the child, but the findings established visitation was "not desirable" and the parent acted "in a manner inconsistent with the health and safety of the juvenile." *Matter of T.W.*, 250 N.C. App. 68, 78, 796

S.E.2d 792, 798 (2016). In upholding the denial of visitation, this Court stated:

> The permanency planning order includes findings of fact, made "upon clear, cogent and convincing evidence" and in light of "the best interest of the child," that both supervised and unsupervised visitation between Mother and Thomas are "not desirable." The court made additional findings that Mother was awaiting trial on criminal charges for her alleged sexual abuse of Thomas, that she was "noncompliant with mental health treatment and substance abuse treatment services," and that she was "acting in a manner inconsistent with the health and safety of the juvenile." The court received evidence that Mother remained subject to a no contact order in her criminal case and had disrupted [Youth and Family Service]'s attempt to develop a visitation plan for her, subject to the resolution of her criminal case, at the most recent [Child and Family Team] meeting. We hold that the court made the necessary findings to deny visitation to Mother and that it acted well within its discretion in doing so.

Id.

¶ 15 Parents have not challenged any of the trial court's findings of fact. Therefore, these findings are binding on appeal. *See H.S.F.*, 182 N.C. App. at 742, 645 S.E.2d at 384. The trial court made the following findings "by clear and convincing evidence on Disposition:"

> 1. [Nia] has been continuously hospitalized since June 15, 2020. Her prognosis is Extremely Grim. She is [in a] very tenuous condition and has on occasion been assessed for brain death. She is dependent on a ventilator for respiration. She is dependent on a G-tube for feeding. [Nia] has a tracheotomy. Her condition has not improved since her initial hospitalization.

2. If [Nia] survives, she will never be able to walk, talk, or breathe on her own. She will require G[-]tube feeding, a ventilator for respiration and total care upon discharge from the hospital.

3. During her hospitalization, [Nia] has been diagnosed with a Herpes lesion on her lip. This is presumed to have been contracted by her parents, who are her only visitors, kissing the child on the mouth.

4. [Parents] were observed on multiple occasions deviating from Covid 19 precautions by removing their masks while visiting with Nia in order to take pictures with the child and then posting such on social media. [Nia] is highly vulnerable to infection of any kind and such behaviors on the part of her parents [was] potentially life threatening to [Nia].

. . .

6. Based upon the multiple injuries to [Nia] and the various stages of healing[,] [Nia] was physically abused by her only caretakers [Parents]on more than one occasion leading up to her hospitalization at 2 months of age. This meets the criteria for chronic physical abuse and torture.

. . .

33. Mother continues to have no explanation as to how [Nia] sustained her injuries, which occurred at different times due to the differences in healing of fractures and the old and new blood found in her brain.

. . .

40. Father Moore continues to have no explanation as to how [Nia] sustained her injuries, which occurred at different times due to the differences in healing of the fractures and

> the old and new blood found in her brain.
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> . . .
>
> 43. Due to the ongoing issues with improper mask wearing, FCDSS has requested that the parents refrain from any phone usage during visits, including but not limited to picture taking. The parents had been taking their masks down and taking pictures with [Nia], while holding her, or would turn their backs to the [FCDSS] social worker or hospital staff and pull down their masks for pictures, even though they have been warned by staff and the [FCDSS] social worker to not do that. FCDSS has offered to take pictures instead to ensure that the masks are being worn correctly by Mr. and Mrs. Moore and not causing harm to [Nia] or the care team as pictures and videos online show both parents at large community gatherings, bars/nightclubs without masks and not following social distancing guidelines. Due to Nia's medically fragile state, [FCDSS] is trying to limit the exposure to potential COVID risks by requiring them to wear their masks correctly, during the entire visit.

¶ 16 Based upon these findings, we cannot conclude that the court's denial of visitation to Parents was "so arbitrary that it could not have been the result of a reasoned decision." *A.P.W.*, 2021-NCSC-93, ¶ 15. The statute indicates no requirement that the court expressly find that visitation be in the best interest of the child. The statute requires only that visitation be "consistent with the juvenile's health and safety, including no visitation." *See* N.C. Gen Stat. § 7B-905.1(a). The court's findings were sufficient to conclude it was in Nia's best interest that visitation be denied. Similar to *T.W.*, where this Court found that visitation was "not desirable"

and that the parent acted "in a manner inconsistent with the health and safety of the juvenile[,]" the court here clearly determined that visitation was not appropriate under the circumstances based on the findings of physical abuse that Nia incurred by Parents, the extent of the injuries that Parents caused the then two-month-old child, and the continued risk that Parents posed to Nia by not following hospital protocol.

¶ 17 Parents contend that the trial court further abused its discretion by exhibiting a personal bias against them during the hearing. The remark by the trial court judge that Parents would "contaminate the Virginia area" was objectively inappropriate. However, the statement has no legal effect on the outcome of this appeal because the trial court's decision to deny visitation was sufficiently supported by the findings and, considering the totality of the record, we are not convinced that the findings were tainted by personal animosity toward Parents.

¶ 18 Alternatively, Father contends the dispositional order must be reversed "because the trial court impermissibly delegated its fact-finding to [FCDSS]." Father supports this contention by citing *In re J.R.S.*, 258 N.C. App. 612, 813 S.E.2d 283 (2018), and *In re J.S.*, 165 N.C. App. 509, 598 S.E.2d 658 (2004). While Father correctly utilizes these cases to demonstrate that trial courts are not permitted to broadly incorporate outside reports as findings of fact, these cases are distinguishable from the case at hand. In *J.R.S.*, the trial court's only finding of fact supporting "that it would not be in the children's best interest to be returned to Grandmother and

Grandfather" was a finding of fact that merely stated the court "received [] copies of the court summaries from [DSS] and the GAL, adopts and incorporates those reports along with attachments as findings of fact." *J.R.S.*, 258 N.C. App. at 617, 813 S.E.2d at 286. Similarly, in *J.S.*, the trial court, in its "cursory two page order . . . incorporated a court report from DSS and a mental health report on the oldest boy as a finding of fact." *J.S.*, 165 N.C. App. at 511, 598 S.E.2d at 660.

¶ 19 This Court has held

> that it is not *per se* reversible error for a trial court's fact findings to mirror the wording of a petition or other pleading prepared by a party. Instead, this Court will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case. If we are confident the trial court did so, it is irrelevant whether those findings are taken verbatim from an earlier pleading.

In re J.W., 241 N.C. App. 44, 48–49, 772 S.E.2d 249, 253 (2015).

¶ 20 Here, the trial court did not broadly incorporate outside court reports as findings of fact. Rather, the trial court, in its twenty-page order, utilized information from outside court reports and findings corroborated by evidence and testimony presented during the hearing in making its findings. In addition, unlike in *J.R.S.* and *J.S.*, where the trial court utilized blanket language that the outside reports were incorporated as findings of fact, the trial court did not use any broad language

incorporating findings of fact but, as shown by the cited findings above, included specific pieces of information gathered from outside court reports, as well as evidence and testimony presented during the hearing. While the trial court order does "mirror the wording" of several outside reports presented to the court, the record indicates that the court "through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case." *Id.*

III. Conclusion

¶ 21 For the reasons stated above, we affirm the trial court's order.

AFFIRMED.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).