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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-391

No. COA21-646

Filed 7 June 2022

Randolph County, Nos. 19 JT 43–46

IN THE MATTER OF: N.C.F., Z.A.F., D.N.F.F., C.M.F., 4 MINOR CHILDREN.

Appeal by respondent-father from order entered 15 June 2021 by Judge Scott Etheridge in Randolph County District Court. Heard in the Court of Appeals 11 May 2022.

Lauren Vaughan for petitioner-appellee Randolph County Department of Social Services.

Robert C. Montgomery for guardian ad litem.

Peter Wood for respondent-appellant father.

ZACHARY, Judge.

¶ 1 Respondent-Father appeals from the trial court's order terminating his parental rights. Respondent-Father argues that "the trial court abused its discretion when it declined to hold a hearing on [Respondent-Father]'s need for a Rule 17 guardian *ad litem*" to assist him during the termination proceedings. After careful review, we affirm.

Background

¶ 2 Respondent-Father and Respondent-Mother are the parents of four children: "Craig," "Darlene," "Zelda," and "Nancy,"[1] born in 2005, 2008, 2011, and 2013, respectively. In 2010, Respondent-Father suffered a traumatic brain injury during a work-related accident, leaving him with short-term memory loss. Respondent-Father receives Social Security disability benefits, which he successfully manages without a representative payee.

¶ 3 On 23 April 2019, Petitioner-Appellee Randolph County Department of Social Services ("DSS") filed petitions with the Randolph County District Court alleging that the four children were neglected and dependent juveniles. That same day, the trial court entered orders granting DSS nonsecure custody of the children.

¶ 4 On 24 September 2019, the trial court entered an order continuing DSS's nonsecure custody of the children. Based on its interactions with Respondent-Father at a hearing on 29 May 2019, the trial court made the following findings of fact regarding Respondent-Father's competency:

> 63. [Respondent-]Father receives a disability check for [a] traumatic brain injury that he sustained years ago. [Respondent-]Father stated he [has] trouble remembering things.
>
> 64. [Respondent-]Father was able to express to the Court that he was in court regarding custody of the minor children and that he wanted to have custody back of his

[1] For ease of reading and to protect the minor children's identities, we adopt the pseudonyms used by the parties on appeal.

> children.
>
> 65. He said his [memory] loss would not affect his ability to contact and communicate with his attorney.
>
> 66. No party made a Motion to have a Rule 17 [guardian *ad litem*] appointed for [Respondent-]Father. Also, the Court did not on [its] own motion have a Rule 17 [guardian *ad litem*] appointed based on the information provided.

¶ 5 On 24 February 2020, Respondent-Father underwent a court-ordered psychological evaluation. The evaluation revealed that Respondent-Father's short-term verbal memory was "in the impaired range when compared to same-age peers[,]" and that he "displayed substantial deficits in the ability to retain information." However, the evaluation also indicated that Respondent-Father's "short-term auditory memory [wa]s intact[,]" and that he "d[id] not appear to have [a] substantial general cognitive deficit."

¶ 6 Thereafter, on 14 October 2020, the trial court entered an order adjudicating the children to be neglected and dependent juveniles. Concerning the appointment of a guardian *ad litem* for Respondent-Father, the court found in its order:

> 16. [DSS] was made aware by [Respondent-]Father that he was in a work[-]related accident and was working for a mobile home company and setting up a double[-]wide when his head was lodged between the two sections of the home. He reported that he was diagnosed with a traumatic brain injury. He reported that he has memory loss from this accident. . . . This was addressed by the Court on May 29, 2019 at which time [Respondent-]Father advised he's not sure if he's on disability due to the brain injury or his back. He advised the brain injury affects his memory, dates,

> sometimes he forgets appointments, and he has lost day planners and recorders. [Respondent-]Father advised if something is repetitive it stays with him longer and he has never been declared incompetent by a court.
>
> 17. This information has previously been presented to the Court, and the Court did not find that there was sufficient information that a Rule 17 [guardian *ad litem*] was needed for [Respondent-]Father.

¶ 7 On 19 March 2021, DSS filed petitions to terminate Respondent-Father's and Respondent-Mother's parental rights. The consolidated matters came on for hearing on 28 April 2021 in Randolph County District Court. At the start of the hearing, the following exchange took place between the trial court, Respondent-Father's counsel, and counsel for DSS regarding Respondent-Father's need for the assistance of a guardian *ad litem* during the termination proceedings:

> [COUNSEL FOR DSS:] The other issue is that at some point th[ere] was a question of whether he needed a Rule 17 [guardian *ad litem*]. It's already been ruled he hasn't. I don't have any evidence or information that that has changed and that his situation has changed, so I did just want the Court to address that quickly if there's any issues or concerns that he may need a Rule 17 [guardian *ad litem*].
>
> [COUNSEL FOR RESPONDENT-FATHER]: I don't think so, Your Honor. He seemed -- I mean he can be asked the questions, but I think he understands what's going on.
>
> THE COURT: Yeah, as his attorney, if you tell me he can help you out and communicate with you effectively, I'm fine.
>
> [COUNSEL FOR RESPONDENT-FATHER]: Yes, Your Honor.

THE COURT: Okay.

¶ 8 On 15 June 2021, the trial court entered an order terminating Respondent-Father's and Respondent-Mother's parental rights. Respondent-Father filed his written notice of appeal on 12 July 2021.[2]

Discussion

¶ 9 Respondent-Father's sole argument on appeal is that the trial court abused its discretion by declining to hold a hearing to determine Respondent-Father's need for the appointment of a Rule 17 guardian *ad litem*.

I. Standard of Review

¶ 10 A trial court's "decisions concerning both the appointment of a guardian *ad litem* and the extent to which an inquiry concerning a parent's competence should be conducted are reviewed on appeal using an abuse of discretion standard." *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015). "An abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Id.* (citation and internal quotation marks omitted). Substantial deference is afforded the trial court's decision, given that the court "actually interacts with the litigant whose competence is alleged to be in question and has, for that reason, a much better basis for assessing the

[2] Respondent-Mother did not appeal from the order terminating her parental rights. Consequently, she is not a party to this appeal.

litigant's mental condition than that available to the members of an appellate court, who are limited to reviewing a cold, written record." *Id.* at 108, 772 S.E.2d at 456.

II. Analysis

¶ 11 The Juvenile Code governs a parent's entitlement to the appointment of a guardian *ad litem* in a termination of parental rights proceeding. Section 7B-1101.1(c) provides that "[o]n motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with" N.C. Gen. Stat. § 1A-1, Rule 17. N.C. Gen. Stat. § 7B-1101.1(c) (2021).

¶ 12 Rule 17 of the North Carolina Rules of Civil Procedure provides, in relevant part:

> In actions or special proceedings when any of the defendants are . . . incompetent persons, . . . they must defend by general or testamentary guardian, if they have any within this State or by guardian ad litem appointed as hereinafter provided; and if they have no known general or testamentary guardian in the State, and any of them have been summoned, the court in which said action or special proceeding is pending, upon motion of any of the parties, may appoint some discreet person to act as guardian ad litem, to defend in behalf of such . . . incompetent persons . . . .

Id. § 1A-1, Rule 17(b)(2).

¶ 13 A trial court determines whether an adult is incompetent and in need of a Rule 17 guardian *ad litem* pursuant to Chapter 35A of our General Statutes. *See In re J.A.A.*, 175 N.C. App. 66, 71, 623 S.E.2d 45, 48 (2005); *see also* N.C. Gen. Stat. § 35A-

1102. An "incompetent adult" is defined as an adult "who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition." N.C. Gen. Stat. § 35A-1101(7).

¶ 14 "[T]he duties of a [guardian *ad litem*] under Rule 17 appointed solely for purposes of assisting a parent during a particular juvenile proceeding are . . . limited." *In re Q.B.*, 375 N.C. 826, 836, 850 S.E.2d 898, 904 (2020). Nonetheless, "[t]he trial court should always keep in mind that the appointment of a guardian *ad litem* will divest the parent of [his or her] fundamental right to conduct his or her litigation according to [his or her] own judgment and inclination." *J.A.A.*, 175 N.C. App. at 71, 623 S.E.2d at 48.

¶ 15 Our Supreme Court has addressed when a trial court should *sua sponte* "inquire into a parent's competence to determine whether it is necessary to appoint a guardian *ad litem* for that parent" in a termination proceeding, as permitted by the provisions of N.C. Gen. Stat. § 7B-1101.1(c). *T.L.H.*, 368 N.C. at 102, 772 S.E.2d at 452. In *T.L.H.*, the trial court terminated the respondent-mother's parental rights without conducting an inquiry as to whether she was entitled to the appointment of a Rule 17 guardian *ad litem*, despite the respondent-mother's documented "mental health complications." *Id.* at 103, 772 S.E.2d at 453.

¶ 16 Holding that the trial court did not abuse its discretion by declining to conduct such an inquiry, the *T.L.H.* Court emphasized the importance of "the information that members of the trial judiciary glean from the manner in which the individual behaves in the courtroom," such as

> the lucidity with which the litigant is able to express himself or herself, the extent to which the litigant's behavior and comments shed light upon his or her understanding of the situation in which he or she is involved, the extent to which the litigant is able to assist his or her counsel or address other important issues, and numerous other factors.

Id. at 108, 772 S.E.2d at 456.

¶ 17 The Court thus concluded that when the record on appeal "contains an appreciable amount of evidence tending to show that the litigant whose mental condition is at issue is not incompetent, the trial court should not, except in the most extreme instances, be held . . . to have abused its discretion by failing to inquire into that litigant's competence." *Id.* at 108–09, 772 S.E.2d at 456.

¶ 18 Here, the record "contains an appreciable amount of evidence tending to show that" Respondent-Father was not incompetent. *Id.* In its 24 September 2019 order, the trial court noted that the previous trial court "did not on [its] own motion have a Rule 17 [guardian *ad litem*] appointed[,]" and that "[n]o party made a Motion to have a Rule 17 [guardian *ad litem*] appointed for [Respondent-]Father." After this initial determination, the trial court had "sufficient opportunit[ies] to continue to observe

[Respondent-]Father's capacity to understand the nature of the proceedings" during the numerous hearings related to this matter. *Q.B.*, 375 N.C. at 834, 850 S.E.2d at 903. On 28 April 2021, the court ultimately concluded that an inquiry into Respondent-Father's competency was unnecessary because "[t]here [wa]s no new evidence that [Respondent-Father] need[ed] a Rule 17" guardian *ad litem*.

¶ 19 Respondent-Father's interactions with the trial court and the results of his psychological evaluation tended to show that he was not incompetent. At the 29 May 2019 hearing, Respondent-Father informed the court that "his [memory] loss would not affect his ability to contact and communicate with his attorney[,]" which his attorney confirmed at the termination hearing on 28 April 2021. Respondent-Father further articulated to the court "that he was in court regarding custody of the minor children and that he wanted to have custody back of his children." Respondent-Father also informed the trial court at the 14 August 2019 hearing that "he has never been declared incompetent by a court." These statements suggest that Respondent-Father was "able to assist his . . . counsel or address other important issues" and that he had an "understanding of the situation in which he . . . [wa]s involved[.]" *T.L.H.*, 368 N.C. at 108, 772 S.E.2d at 456. Respondent-Father, rather than a representative payee, receives and manages his Social Security disability benefits, and he testified that he would use that money to care for his children if they were returned to him. Such evidence indicates that Respondent-Father had "sufficient capacity to manage [his]

own affairs" and that he was able to "communicate important decisions concerning [his] . . . family[.]" N.C. Gen. Stat. § 35A-1101(7). Furthermore, the psychological evaluation revealed that Respondent-Father "d[id] not appear to have [a] substantial general cognitive deficit[,]" and that Respondent-Father "report[ed] that he has never experienced significant mental health issues."

¶ 20 Thus, Respondent-Father's statements and behavior before the trial court, as well as his psychological evaluation, did not tend to show he was incompetent, in that he had "sufficient capacity to manage [his] own affairs" and to "communicate important decisions concerning [his] . . . family[.]" *Id.* Most significantly, Respondent-Father "demonstrated a reasonable understanding of the proceedings" and was "able to assist his counsel" in defense of the DSS actions. *T.L.H.*, 368 N.C. at 108–09, 772 S.E.2d at 457.

¶ 21 Accordingly, giving the trial court's decision the substantial deference it is due, we conclude that the court did not abuse its discretion by declining to conduct a hearing to determine Respondent-Father's need for the appointment of a Rule 17 guardian *ad litem* to assist him during the termination proceedings. *See id.*

Conclusion

¶ 22 For the foregoing reasons, we affirm the trial court's order terminating Respondent-Father's parental rights.

AFFIRMED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).