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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-543

No. COA21-676

Filed 2 August 2022

Stokes County, Nos. 19 JA 92, 19 JT 92

IN THE MATTER OF: T.M.

Appeal by respondent from orders entered 30 July 2021 and 2 August 2021 by Judge Thomas B. Langan in Stokes County District Court. Heard in the Court of Appeals 12 July 2022.

Jennifer Oakley Michaud for petitioner-appellee Stokes County Department of Social Services.

Administrative Offices of the Courts, by GAL Appellate Council James N. Freeman, Jr., for guardian ad litem.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky Brammer, for respondent-appellant.

TYSON, Judge.

¶ 1 Respondent-Mother ("Respondent") appeals from the trial court's permanency planning order and from an order terminating her parental rights. We affirm in part, vacate in part, and remand.

I. Background

¶ 2 "Terry" was born on 9 October 2019. *See* N.C. R. App. P. 42(b) (pseudonyms are used to protect the identity of juvenile). Respondent tested positive for Benzodiazepines, Barbiturates, Buprenorphine, and THC at Terry's birth. Terry's umbilical cord also tested positive for the presence of Barbiturates, Buprenorphine, and THC. Stokes County Department of Social Services ("DSS") received a report on 10 October 2019 about Respondent's positive test result and on 16 October 2019 about Terry's positive test result.

¶ 3 Respondent and Terry's father, who is not a party to this appeal, were observed fighting at the hospital. Hospital staff believed both of them were under the influence of illicit substances. While in the hospital, Terry experienced difficulties learning to feed. Respondent missed several of Terry's feeding times as she was smoking cigarettes outside of the hospital.

¶ 4 Terry was placed in non-secure custody upon the filing of a juvenile petition on 17 October 2019. Terry had remained hospitalized in the neonatal intensive care unit where he had tremors from withdrawal, was restless, and cried if not held. Terry was discharged from the hospital on 29 October 2019 to a foster home, where he has remained through the pendency of this action.

¶ 5 Respondent and Terry's father consented to Terry being adjudicated as a neglected juvenile on 21 November 2021 because of their substance abuses. Ginger and Scott Lasher, Terry's paternal grandmother and step-grandfather expressed

interest in providing a home placement for Terry. Nicole and Craig Jacobs, Respondent's step-cousin and step-cousin-in-law, also expressed interest.

¶ 6 Respondent did not want Terry to be placed with either the Lashers or the Jacobs. Respondent opposed the Lashers because they lived in Texas and opposed the Jacobs because they had a hostile relationship with the family. Respondent entered into a case plan with DSS with a permanent plan for reunification.

¶ 7 At the 17 July 2020 permanency planning hearing, the trial court received evidence that Respondent had completed three out of nineteen possible visits with Terry between 4 November 2019 and 15 January 2020. Respondent tested positive for illicit substances on four out of the seven DSS tests since 27 February 2020. Respondent attended eleven of sixteen parenting classes and completed one of the two sessions to complete her psychological evaluation.

¶ 8 Respondent failed to attend her comprehensive clinical assessment for mental health and substance abuse. The trial court found the parents had failed to make reasonable progress with their parenting plans and changed the primary permanent plan to adoption with a secondary permanent plan of reunification.

¶ 9 In August of 2020, Respondent was incarcerated for a probation violation. DSS filed a petition to terminate Respondent's parental rights on 28 September 2020. Respondent filed a motion for the court to conduct an inquiry into the suitability of Terry's placement with the Jacobs or Lasher families prior to the permanency

planning hearing. The trial court held the permanency planning hearing on 22 April 2021. The trial court found Respondent had refused to screen for illegal drugs from 2 October 2020 until 22 April 2021. The trial court ordered Respondent to rapid screen for controlled substances on 22 April 2021. Respondent tested positive for THC, morphine, and methamphetamines.

¶ 10 A permanency planning order again found neither parent had made reasonable progress on their case plans. The trial court found the Texas interstate compact placement of children study had expired for the Lashers. The trial court further found the Jacobs are not biologically related to Terry. The trial court held it would be in Terry's best interests to remain in foster care and denied Respondent's motion for placement with a relative.

¶ 11 The termination hearing was held on 23 April 2021. The trial court entered an order terminating the parental rights of both Respondent and Terry's father. Respondent appeals.

II. Jurisdiction

¶ 12 Jurisdiction over the termination of Respondent's parental rights lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a) (2021).

III. Issues

¶ 13 Respondent argues the trial court erred by denying her motion for relative placement.

IV. Standard of Review

¶ 14 This Court's review of a "permanency planning order entered pursuant to N.C. Gen. Stat. § 7B-906.1 is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law." *In re D.S.*, 260 N.C. App. 194, 196, 817 S.E.2d 901, 904 (2018) (internal quotation marks and citation omitted). "The trial court's conclusions of law are reviewable de novo on appeal." *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (internal quotation marks and citation omitted).

V. Relative Placement

¶ 15 Respondent appealed both the 2 August 2021 permanency planning order and the 30 July 2021 termination of parental rights order. To any extent the 2 August 2021 appeal is not properly before this Court, we allow Petitioner's petition for writ of certiorari in the exercise of our discretion. N.C. R. App. P. 21.

A. Paternal Grandmother's Priority

¶ 16 Our General Statutes provide:

> In placing a juvenile in out-of-home care under this section, *the court shall first consider* whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. *If the court finds that the relative is willing and able* to provide proper care and supervision in a safe home, then *the court shall order* placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile.

N.C. Gen. Stat. § 7B-903(a1) (2021) (emphasis supplied).

¶ 17 "This Court has held that before placing a juvenile in an out-of-home placement at a permanency planning hearing, the trial court was required to first consider placing [the juvenile] with [her relatives] unless it found that such a placement was not in [the juvenile's] best interests." *In re D.S.*, 260 N.C. App. at 197, 817 S.E.2d at 904 (citation omitted).

¶ 18 Here, the trial court failed to give the statutory priority for Terry's placement in the home with his paternal grandmother and step-grandfather. No finding of fact indicates placement with the paternal grandmother was not in Terry's best interest. As his paternal grandmother was the closest relative actively seeking placement or adoption of Terry, the trial court should have given her the statutory priority in the permanency plan. Upon remand, DSS should be directed to conduct another home review of the Lashers' residence for further consideration of their "safe home" and suitability for placing Terry with them.

¶ 19 The trial court failed to give the Lashers the priority relative placement consideration. N.C. Gen. Stat. § 7B-903(a1). The Termination of Parental Rights Order is vacated in part and remanded for due consideration to the Lashers as the nearest relatives for Terry's primary permanent placement plan.

B. The Jacobs' Asserted Priority

¶ 20 As discussed above, N.C. Gen. Stat. § 7B-903(a1) requires the court "shall first

consider" placement with a relative. *Id.* Relative is defined as "[a]n individual directly related to the juvenile by blood, marriage, or adoption, including, but not limited to, a grandparent, sibling, aunt, or uncle." N.C. Gen. Stat. § 7B-101(18a) (2021).

¶ 21 Our General Statutes do not specifically list a step-cousin as a legally recognized relative. *Id.* The Jacobs have not shown they are "individual[s] directly related to the juvenile by blood, marriage, or adoption" and do not have a legally recognized statutory priority for consideration of permanency placement of Terry. *Id.* We affirm the Termination of Parental Rights Order's findings as to the Jacobs.

VI. Conclusion

¶ 22 Respondent did not appeal any of the findings or other conclusions of law relating to the termination of her parental rights. All findings and conclusions supporting termination of her rights are affirmed.

¶ 23 The trial court's order is vacated in part and this matter is remanded for further proceedings and findings in conformity with the familial priority mandates of the statute. N.C. Gen. Stat. § 7B-903(a1). *It is so ordered.*

AFFIRMED IN PART,VACATED IN PART, AND REMANDED.

Judges INMAN and GORE concur.

Report per Rule 30(e).