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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-694

No. COA22-249

Filed 18 October 2022

Ashe County, No. 18 JA 18

IN THE MATTER OF: A.M.L.

Appeal by respondent-mother and respondent-father from order entered 2 December 2021 by Judge David Byrd in Ashe County District Court. Heard in the Court of Appeals 21 September 2022.

James N. Freeman, Jr., for petitioner-appellee Ashe County Department of Social Services.

Edward Eldred for respondent-mother.

Ewing Law Firm, P.C., by Robert W. Ewing, for respondent-father.

North Carolina Administrative Office of the Courts, by Matthew D. Wuncshe, for the Guardian ad Litem.

ARROWOOD, Judge.

¶ 1 Respondent-mother (“mother”) and respondent-father (“father”) (collectively “respondents”) appeal from the trial court’s order awarding guardianship of the minor child, “A.M.L.”¹, to the paternal grandparents, J.C. and M.C. (“paternal

¹ Initials are used throughout to protect the identity of the minor child.

grandparents”). For the following reasons, we affirm.

I. Background

¶ 2

A.M.L. was born on 11 November 2008. The Wilkes County Department of Social Services (“Wilkes County DSS”) received a child protective services report for A.M.L. on 19 February 2018. Wilkes County law enforcement located a padlocked Penske box truck behind the Elks Club in North Wilkesboro. The officers were able to hear movement inside the truck along with a dog barking. Upon removing the padlock, law enforcement found mother, father, A.M.L., and L.H.L.² hiding. Officers also found “syringes and spoons” and other drug paraphernalia inside the vehicle.

¶ 3

The family admitted an acquaintance would lock them in the truck each night and let them out in the morning. Once the truck was locked there was no way for the family to get out of the vehicle, instead they had to wait until the padlock was removed. According to father this was done for the family’s safety. Mother stated it was due to father’s outstanding warrants. Father was subsequently arrested for charges pending in Ashe, Surry, and Watauga Counties. That night A.M.L. was placed in a temporary safety resource with her maternal grandparents, A.B. and T.B. (“maternal grandparents”).

² L.H.L. is A.M.L.’s sister. L.H.L.’s juvenile case is on appeal with this Court under COA21-744.

¶ 4 On 5 April 2018, Wilkes County DSS filed a juvenile petition alleging A.M.L. was a neglected juvenile. Due to paternal grandmother’s employment with Wilkes County DSS, the Ashe County Department of Social Services (“Ashe County DSS”) was granted a motion to intervene on 9 April 2018. An order for nonsecure custody was issued that same day and the trial court approved placement with paternal grandparents.

¶ 5 At the 11 May 2018 adjudicatory hearing, the trial court found “mother, father[,] and minor children were living in a Penske ‘box truck’ ” they “considered . . . ‘safe’ for the family.” The trial court also found that “[t]he children have witnessed their mother and father prepare illegal substances to get high and have witnessed their parents ‘shoot up’ these substances.” Accordingly, A.M.L. was adjudicated neglected for a failure to “receive proper care, supervision, or discipline from the juvenile’s parent” and for “liv[ing] in an environment injurious” to her welfare. Placement continued with paternal grandparents.

¶ 6 Due to paternal grandparent’s request, A.M.L. was placed in a licensed foster home on 8 August 2018. Pursuant to N.C. Gen. Stat. § 7B-906.1, a review hearing was scheduled for 24 August 2018.

¶ 7 At the hearing, the trial court found mother was “fully compliant” with her case plan. Mother “passed all drug screens” and “completed parenting classes[.]” Mother had also “completed a psychological evaluation and attend[ed] counseling

with Jodi Province Counseling Services.” The trial court found mother “is making adequate progress within a reasonable period of time toward reunification” Father was incarcerated at the Ashe County Detention Center and was unable to begin his case plan. The trial court continued nonsecure custody with Ashe County DSS and approved placement of A.M.L. with maternal grandparents.

¶ 8 The next permanency planning hearing took place on 9 November 2018. The trial court found mother continued to show progress with her family services case plan and began treatment for substance abuse. Mother “completed one week detoxification at Synergy”; completed a “substance abuse assessment with Daymark Recovery Services”; “participated in intensive outpatient therapy three times weekly”; and “submitted to random drug screens” which were all negative. Father remained incarcerated. The trial court declared the best primary permanent plan was reunification and the best secondary permanent plan was either custody or guardianship to an approved caregiver. Ashe County DSS retained custody and placement continued with maternal grandparents.

¶ 9 The next permanency planning hearing was 8 March 2019. The trial court found mother was “participating in and cooperating with the plan, making adequate progress within a reasonable period of time [and] [wa]s making herself available to the court, [Ashe County DSS], and the [guardian ad litem].” Upon father’s release from incarceration in November 2018, he entered a family service case plan.

¶ 10 The trial court found father “completed a substance abuse assessment” and completed parenting classes. Father was attending substance abuse sessions up until two or three weeks prior to the hearing. Father also had “inconsistent contact” with their social worker and was “difficult to contact.” Father lost his employment, missed his court date in Surry County, and was listed “as an absconder with probation.” He was also “inconsistent with his availability with the department [and] the children’s GAL.”

¶ 11 The trial court concluded it would be in A.M.L.’s best interest for Ashe County DSS to retain nonsecure custody. The trial court also determined “a trial home visit with mother, in maternal grandparents’ home” was “in the best interest of the children.” The primary plan continued to be reunification with a concurrent secondary plan being “custody or guardianship with an approved caregiver.”

¶ 12 Legal and physical custody of A.M.L. and L.H.L. was returned to mother at the 23 August 2019 permanency planning hearing. The trial court also concluded father could “have supervised visitation at a minimum of twice per month for two hours each visit.” Further review hearings were deemed unnecessary by the trial court.

¶ 13 One year later, Ashe County DSS received a child protective services report on 6 September 2020. The report alleged mother and father were again engaged in substance abuse which their children witnessed. On 8 October 2020, Ashe County DSS filed new petitions alleging the children were abused and neglected juveniles. A

nonsecure custody order was entered that same day. Mother and father were both arrested in Surry County on 7 October 2020, based on drug-related charges, and mother was also charged with resisting a public officer. Following the hearings set on 14 and 23 October 2020, the trial court concluded nonsecure custody should continue. After spending a short amount of time at Crossnore School and Home for Children, A.M.L. was returned to paternal grandparents' home on 24 October 2020.

¶ 14 After four continuances, the adjudication and dispositional hearing took place on 26 March 2021. The trial court found by clear and convincing evidence that A.M.L. was an abused and neglected child. The trial court stated, “[t]his is the second time [the children] have been [placed] in non-secure custody of Ashe County DSS due to substance abuse by their mother and father.” The trial court also found that [A.M.L.] “suffered serious emotional damage due to her parent’s substance abuse in her presence.” Additionally, “[father] admitted to methamphetamine and marijuana use”; “[mother] admitted to marijuana use”; social worker Andrea Lawing “found drug paraphernalia in the bedroom of [the children and mother]; and that A.M.L. and L.H.L. were “slapp[ed]” by their father and feared him. Thus, L.H.L. slept with a knife in her bed for protection.

¶ 15 At the 11 June 2021 permanency planning hearing, the trial court found that both mother and father were “semi-compliant” with their family service case plans. Both mother and father entered into family service agreements on 4 December 2020.

They were each asked to submit to 21 random drug screens; mother completed eight and failed three. Mother tested positive for “amphetamine, methamphetamine[,] and oxycodone in February 2021,” and “amphetamine, methamphetamine[,] and opiates on” 8 and 21 March 2021. Father completed four drug tests and failed two. On 8 February 2021, father tested “positive for amphetamines, methamphetamine[,] and opiates”; on 22 April 2021, father tested “positive for methamphetamine and methadone”; on 26 April and 6 May 2021, father tested “positive for methadone only.” The trial court also found that mother and father each had criminal charges pending in Wilkes and Surry counties. In conclusion, the trial court found that the best primary permanent plan is custody or guardianship to an approved caregiver with a secondary plan being reunification.

¶ 16 The final permanency planning review hearing is the subject of this appeal and was held on 29 October 2021. The trial court found that both mother and father were “not compliant” with their case plans. Mother’s case plan included: “mental health services, medication management, psychological assessment, substance use assessment, random drug screens, detoxification and rehabilitation.” Mother completed a substance use assessment at Daymark Recovery Services in February 2021 and “was diagnosed with amphetamine type substance use disorder, and opioid use disorder.” She was scheduled to return for a follow up appointment

but failed to do so. Mother also failed to complete a detoxification or rehabilitation program.

¶ 17 On 18 February 2021, mother completed “a psychological evaluation with Carol Pulley at Clearview Testing in Elkin, N[orth] C[arolina].” Mother was diagnosed with generalized anxiety disorder, major depressive disorder, substance use disorder, and paranoid personality disorder. Mother was recommended to attend “individual therapy, cognitive behavioral therapy, interpersonal therapy, medication management, and small group activities[,]” which she failed to do. Mother “receive[d] Supplemental Security Income due to her diagnosis” of multiple sclerosis. Mother was also diagnosed with Hepatitis B and C from intravenous drug use.

¶ 18 Father also failed to attend any recommended therapy or outpatient services. Father’s case plan included: “mental health services, medication management, psychological assessment, substance use assessment, random drug screens, and the need to provide the basic needs of the children.” Father also completed a substance use assessment at Daymark Recovery Services and was diagnosed with “severe opioid use, severe daily alcohol use, unspecified anxiety disorder, [and] seizures due to drug withdrawal” After father’s psychological assessment he “was diagnosed with Bipolar I disorder, generalized anxiety disorder, post-traumatic stress disorder, [and] substance use disorder” Father stated he was employed but failed to provide

proof. The trial court found that both mother and father were “not making adequate progress within a reasonable period of time.”

¶ 19 At the conclusion of the permanency planning hearing, the trial court found “by clear and convincing evidence that the mother and father [were] unfit and have acted inconsistently with their constitutionally protected status as a parent as to the minor child, [A.M.L.]” The trial court ceased reunification efforts and guardianship was awarded to paternal grandparents. A permanency planning review hearing was calendared for 25 March 2022. Father and mother timely appealed.

II. Discussion

¶ 20 Essentially, respondents assert that the trial court erred by failing to establish a concurrent plan at the 29 October 2021 permanency planning hearing. Respondent-father contends the trial court order must be vacated due to its failure to follow the statutory mandate set by N.C. Gen. Stat. § 7B-906.2(a1) (2021). Respondent-mother asserts the trial court’s order must be reversed because as a “primary plan[,]” guardianship has not been achieved. Respondents assert that the scheduling of a subsequent permanency planning review hearing indicates that a final custody determination has not been achieved, thus, it was error for the trial court to fail to establish a concurrent plan. We find this argument is without merit.

¶ 21 Respondents do not challenge the trial court’s findings of fact, thus they are “binding on appeal.” *In re J.A.K.*, 258 N.C. App. 262, 268, 812 S.E.2d 716, 720 (2018)

(citations omitted). Questions of statutory interpretation are reviewed *de novo*. *State v. Rieger*, 267 N.C. App. 647, 649, 833 S.E.2d 699, 700 (2019) (citations omitted).

¶ 22 Our Supreme Court “has long held that [t]he basic rule of [statutory construction] is to ascertain and effectuate the intent of the legislative body.” *In re B.L.H.*, 376 N.C. 118, 122, 852 S.E.2d 91, 94 (2020) (citations and internal quotation marks omitted). “Legislative purpose is first ascertained from the plain words of the statute.” *Id.* (citations omitted). “Furthermore, a statute must be considered as a whole and construed, if possible, so that none of its provisions shall be rendered useless or redundant[.]” *Id.* (citations and internal quotation marks omitted).

¶ 23 N.C. Gen. Stat. § 7B-906.2(a) in pertinent part provides:

- (a) At any permanency planning hearing pursuant to G.S. 7B-906.1, the court shall adopt one or more of the following permanent plans the court finds is in the juvenile’s best interest:
 - (1) Reunification as defined by G.S. 7B-101.
 - (2) Adoption under Article 3 of Chapter 48 of the General Statutes.
 - (3) Guardianship pursuant to G.S. 7B-600(b).
 - (4) Custody to a relative or other suitable person.
 - (5) Another Planned Permanent Living Arrangement (APPLA) pursuant to G.S. 7B-912.
 - (6) Reinstatement of parental rights pursuant to G.S. 7B-1114.
 - (a1) *Concurrent planning shall continue until a permanent plan is or has been achieved.*

N.C. Gen. Stat. § 7B-906.2(a) (2021) (emphasis added). As indicated above, the trial court conducted a permanency planning hearing on 11 June 2021. At this hearing,

the trial court found that both mother and father were “semi-compliant” with their family service case plans. Accordingly, the trial court made the following conclusions of law:

5. That the best primary permanent plan to achieve a safe permanent home for the child, [A.M.L.], within a reasonable period of time is custody or guardianship to an approved caregiver.
6. That the best secondary permanent plan of care to achieve a safe permanent home for the child, [A.M.L.], within a reasonable period of time is reunification.

Thus, pursuant to N.C. Gen. Stat. § 7B-906.2(a), the trial court has the authority “in the juvenile’s best interest” to appoint guardianship to an approved caregiver. As guardianship is one of the permanent plans provided by N.C. Gen. Stat. § 7B-906.2(a), permanence was achieved when the trial court awarded guardianship to paternal grandparents.

¶ 24 Respondents contend the trial court scheduling a permanency planning review hearing for 25 March 2022 illustrates the trial court’s error in failing to establish permanence for A.M.L. This “failure” to establish permanence, according to respondents, indicate that the trial court should have established a concurrent plan at the 29 October 2021 permanency planning hearing.

Respondents rely on N.C. Gen. Stat. § 7B-906.2(a1). However, as Ashe County DSS and the guardian ad litem correctly point out, the trial court was unable to waive future permanency planning hearings pursuant to N.C. Gen. Stat. § 7B-906.1(k), (n)

(2021). This statute states, in pertinent part: “[i]f at any time a juvenile has been removed from a parent and legal custody is awarded to either parent or findings are made in accordance with subsection (n) of this section, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.” N.C. Gen. Stat. § 7B-906.1(k). N.C. Gen. Stat. § 7B-906.1(n) provides:

- (n) Notwithstanding other provisions of this Article, the court may waive the holding of hearings required by this section, may require written reports to the court by the agency or person holding custody in lieu of permanency planning hearings, or order that permanency planning hearings be held less often than every six months if the court finds by clear, cogent, and convincing evidence each of the following:
 - (1) The juvenile has resided in the placement for a period of at least one year or the juvenile has resided in the placement for at least six consecutive months and the court enters a consent order pursuant to G.S. 7B-801(b1).
 - (2) The placement is stable and continuation of the placement is in the juvenile’s best interests.
 - (3) Neither the juvenile’s best interests nor the rights of any party require that permanency planning hearings be held every six months.
 - (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of motion for review or on the court’s own motion.
 - (5) The court order has designated the relative or other suitable person as the juvenile’s permanent custodian or guardian of the person.

N.C. Gen. Stat. § 7B-906.1(n). The trial court clearly did not intend to waive future hearings as they did not include the requisite findings of fact in its order. Also, doing

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so would have been incorrect as A.M.L. did not reside with paternal grandparents for six consecutive months prior to the hearing.

¶ 25 We find that the trial court has fully complied with the requirements of the requisite statutes and that the respondents' arguments are without merit.

III. Conclusion

For the foregoing reasons, we affirm the trial court's order.

AFFIRMED.

Judges HAMPSON and GORE concur.

Report per Rule 30(e).