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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-721

No. COA22-238

Filed 1 November 2022

Forsyth County, No. 21 JA 89

IN THE MATTER OF:

K.M.S., a minor child.

Appeal by Respondent from order entered 10 December 2021 by Judge Theodore Kazakos in Forsyth County District Court. Heard in the Court of Appeals 20 September 2022.

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

Leslie Rawls for Respondent-Appellant Mother.

K&L Gates LLP, by Leah D'Aurora Richardson, for the Guardian ad Litem.

JACKSON, Judge.

¶ 1 Respondent-Mother, the sole respondent-parent in these proceedings, appeals from the trial court's adjudication and disposition order for her minor son, Kajik.[1] After careful review, we affirm.

[1] We use pseudonyms for all the juveniles mentioned in this opinion to protect their privacy and for ease of reading. *See* N.C. R. App. P. 42(b).

I. Background

¶ 2 Kajik and his brother "Kell" were removed from their biological parents and placed into foster care with Respondent-Mother on 2 August 2019. Kajik and Kell were officially adopted by Respondent-Mother, as a single adoptive parent, on 23 April 2021. On 7 June 2021, Kell was transported to North Carolina Baptist Hospital for treatment of serious nonaccidental injuries. Kell died as a result of his injuries and his cause of death was later determined to be blunt force trauma to the head. Kajik was also sent to the hospital and diagnosed with extensive skin injuries (bruises, lacerations, scars, and burns), head injuries and swelling, a swollen left elbow, a healed right rib fracture, and a healed right arm fracture. The examining doctor determined that Kajik's injuries were consistent with severe physical child abuse. Respondent-Mother's explanations for the injuries were inconsistent with the medical findings, and she was arrested and charged with first-degree murder and felony intentional child abuse causing serious bodily injury. She is being held without bond at the Forsyth County Detention Center.

¶ 3 On 7 June 2021, the Forsyth County Department of Social Services ("FCDSS") filed a juvenile petition alleging Kajik to be an abused and neglected juvenile. FCDSS obtained non-secure custody of Kajik, and he was placed into foster care with the adoptive parents of one of his biological sisters.

¶ 4 At a pre-adjudication hearing on 10 September 2021, Respondent-Mother

requested Interstate Compact Homestudies to be completed on her mother and her brother—Kajik's adoptive maternal grandmother and uncle. FCDSS and the Guardian ad Litem opposed the request, and the trial court denied the request. FCDSS filed a second juvenile petition on 13 October 2021.

¶ 5 This matter came on for hearing on 29 November 2021. After brief testimony from an FCDSS investigator, the trial court adjudicated Kajik abused and neglected. The hearing proceeded to disposition, and the trial court heard testimony from an FCDSS investigator, a family friend, Kajik's social worker, and the Guardian ad Litem. Thereafter, the trial court ruled that reunification efforts should stop and Kajik would remain in the custody of FCDSS.

¶ 6 Respondent-Mother entered timely written notice of appeal on 10 January 2022.

II. Analysis

¶ 7 Respondent-Mother contends that the trial court failed to comply with the provisions of N.C. Gen. Stat. § 7B-903(a1) regarding relative placement. "We review statutory compliance *de novo*." *In re N.K.*, 274 N.C. App. 5, 13, 851 S.E.2d 389, 395 (2020).

¶ 8 In the section governing dispositional alternatives for abused, neglected, and dependent children, N.C. Gen. Stat. § 7B-903(a1) provides:

> 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. In placing a juvenile in out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

Id. § 7B-903(a1) (2021).

¶ 9 "Our statutes and precedents mandate a preference, *where appropriate*, to relative placements over non-relative, out-of-home placements." *In re A.N.T.*, 272 N.C. App. 19, 27, 845 S.E.2d 176, 181 (2020) (emphasis added) (internal quotation omitted).

¶ 10 The trial court made the following relevant dispositional findings of fact:

> 7. [Respondent-Mother] has identified numerous individuals that can be utilized as both placement and visitation resources for [Kajik]; however, due to potential triggers and re-traumatizing the child, the agency does not believe that utilizing these individuals would be in his best interests at this time. [Kajik] has not had any visits or contact with outside individuals who are not directly associated with this current case. The Court agrees with this assessment.
>
> . . .
>
> 24. Since the last Court date on June 11, 2021, there have not been any contact or visitation opportunities

> provided due to the reasons which brought [Kajik] into care. It has been determined to not be in his best interest to have any contact and/or visits with [Respondent-Mother] or members of her family.
>
> . . .
>
> 26. It is not in the best interest of [Kajik] to pursue placement with [Respondent-Mother's] family; he needs time to heal. [Respondent-Mother's] family lives out of state and an ICPC would need to be pursued. However, [Kajik's] family resides in NC and ongoing contact is in his best interest.
>
> 32. [FCDSS made the following reunification efforts post-petition:]
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> e) FCDSS explored identified relatives to be considered for placement.
>
> . . .
>
> 36. [Respondent-Mother], through legal counsel, requested an Interstate Compact Homestudy on maternal relatives; this motion was opposed by FCDSS; the Court denied said request as it is not in the child's best interest.

¶ 11 In its brief, the Guardian ad Litem "acknowledge[d] and agree[d] that the trial court failed to make the required factual findings regarding whether there were one or more relatives willing and able to provide proper care and supervision in a safe home." The Guardian ad Litem therefore contends that the case should be remanded for the trial court to make the required factual findings. We disagree.

¶ 12 The crux of this case is the statutory mandate in N.C. Gen. Stat. § 7B-903(a1). Relatives are given priority consideration per the plain language of the statute. *See*

In re A.N.T., 272 N.C. App. at 27, 845 S.E.2d at 181. However, as is true with all juvenile proceedings, the best interest of the child is the lodestar that guides our courts in fulfilling the purpose of the Juvenile Code and providing protection, safety, continuity, and permanence for the children of North Carolina. *In re R.R.N.*, 368 N.C. 167, 171, 775 S.E.2d 656, 660 (2015). If the trial court determines that placement of the child with the relative is not in the child's best interest, it must make specific findings of fact explaining that decision. *Matter of D.S.*, 260 N.C. App. 194, 197, 817 S.E.2d 901, 904 (2018).

¶ 13 Here, the trial court's findings of fact show that it did consider the placement of Kajik with Respondent-Mother's relatives, and it made specific findings about why that placement would be contrary to his best interests. The trial court's findings discuss how Kajik's exposure to Respondent-Mother's relatives poses a risk of re-traumatizing Kajik and that he needs time to heal. The trial court further found that Kajik has had no contact, visitation or otherwise, with these relatives since his foster home placement. Further these relatives live in Florida, whereas the individuals that Kajik is living with now, whom he views as his family, are in North Carolina. The trial court then made the ultimate finding that it is not in Kajik's best interests for him to have contact with, or for the court to further explore placement with, Respondent-Mother's family.

¶ 14 The unique facts of this case support the trial court's findings that it is contrary

to Kajik's best interests to pursue placement with Respondent-Mother's family in Florida. The evidence before the trial court at the dispositional phase was that Kajik and his brother were adopted by Respondent-Mother approximately 45 days before Kell died and Kajik was removed from Respondent-Mother's care with severe, non-accidental injuries. Accordingly, the relatives identified by Respondent-Mother as potential placement options were only legal relatives of Kajik for a period of less than two months before his removal from Respondent-Mother's home. These relatives live in Florida, and Kajik has had little to no contact with them. Kajik is currently placed in a foster home with one of his biological siblings, and he identifies his foster parents as "mom" and "dad."

¶ 15 The trial court heard testimony that the FCDSS does not believe that it is in Kajik's best interests to pursue placement with Respondent-Mother's relatives in Florida:

> [b]ecause of his connection, mental and emotional connection with them to [Respondent-Mother] . . . yes, during therapy sessions, those are things that he has shared with his therapist, and they are working with him through that to help him understand that he has a sense of safety and no one from [Respondent-Mother's] family nor [Respondent-Mother] can have access to him.

¶ 16 Kajik's Guardian ad Litem testified that all focus at the current time needed to be on Kajik's support team, and on the family that he identifies as his own at this time, "which is his foster family and his sister." The Guardian ad Litem testified that

Respondent-Mother's family is not a part of Kajik's support system.

¶ 17 As the evidence from the dispositional hearing demonstrates, Kajik's placement with Respondent-Mother's relatives is not appropriate. *See In re A.N.T.*, 272 N.C. App. at 27, 845 S.E.2d at 181. Further, as discussed above, the trial court's findings show that it properly considered the option of relative placement, and addressed the testimony presented by FCDSS and the Guardian ad Litem in coming to its final determination, thereby satisfying the mandate in N.C. Gen. Stat. § 7B-903(a1).

III. Conclusion

¶ 18 Accordingly, for the aforementioned reasons, we affirm the order of the trial court.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).