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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-405

Filed 07 February 2023

Craven County, No. 17 JT 135

IN THE MATTER OF: S.N.B.

Appeal by respondent from order entered 30 August 2021 by Judge Walter Mills in Craven County District Court. Heard in the Court of Appeals 11 January 2023.

Bernard Bush for petitioner-appellee Craven County Department of Social Services.

Mercedes O. Chut for respondent-appellant.

Administrative Office of the Courts, by Guardian ad Litem Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem.

TYSON, Judge.

Respondent-mother (“Respondent”) appeals from an order terminating her parental rights to her child, S.N.B. (“Sue”). *See* N.C. R. App. P. 42(b) (pseudonyms used to protect the identity of children). We vacate and remand.

I. Background

Respondent gave birth to Sue on 8 November 2017. Sue tested positive for cocaine at birth. The Craven County Department of Social Services (“DSS”) filed a

petition alleging Sue was a dependent juvenile. Sue was placed in nonsecure custody. The trial court entered an order adjudicating Sue as a dependent juvenile. Respondent's three other children were in DSS custody, at the time and respondent parents had failed to progress toward reunification with them. Respondent had not complied with treatment recommendations and had admitted consuming cocaine while being pregnant with Sue.

Following a hearing, the trial court ceased reunification efforts and changed all her children's permanent plans to adoption. DSS filed petitions to terminate Respondent's parental rights on 2 August 2018. The trial court terminated Respondent's parental rights on 12 November 2019. Respondent appealed to the Supreme Court of North Carolina. *See* N.C. Gen. Stat. § 7A-27(a) (2019) (repealed by S.L. 2021-18).

Our Supreme Court vacated and remanded the order terminating Respondent's parental rights to Sue. *See In re M.J.R.B.*, 377 N.C. 453, 2021-NCSC-62, 858 S.E.2d 261 (2021). Upon remand, the original trial judge had retired and was no longer sitting on the bench. The parties agreed there would not be a new evidentiary hearing, but the newly assigned trial judge would go through the prior record and make new findings "using facts that were already presented to the Court" in the prior hearing.

The trial court terminated Respondent's parental rights to Sue by order entered 30 August 2021. Respondent appeals.

II. Jurisdiction

Jurisdiction over the termination of Respondent's parental rights lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021) (Timely appeals filed after 1 July 2021 are appealable to Court of Appeals).

III. Issue

Respondent argues the trial court erred in terminating her parental rights, because the substituted judge lacked authority to make new dispositive findings of fact based upon evidence heard by the previous judge.

IV. Substantive Findings by Substitute Judge

A. Standard of Review

“This Court reviews a trial court’s conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court’s findings of fact, and whether the findings of fact support the court’s conclusions of law.” *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015) (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) (citation and internal quotation marks omitted).

B. Analysis

Respondent argues the trial court erred in entering new findings of facts and conclusions of law without conducting a new evidentiary hearing. The Supreme Court of North Carolina recently examined this exact issue, where a substituted judge

made new factual findings and conclusions of law without conducting a new hearing, under North Carolina Rules of Civil Procedure 52 and 63. *See In re K.N.*, 381 N.C. 823, 831, 2022-NCSC-88, ¶ 24, 874 S.E.2d 594, 600 (2022). Our Supreme Court held the trial court erred and reversed the order terminating the parental rights and remanded for a new hearing. *Id.* We are bound by decisions of the Supreme Court of North Carolina. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989); *Andrews v. Haygood*, 188 N.C. App. 244, 248, 655 S.E.2d 440, 443 (2008) (citations omitted).

V. Conclusion

A substituted judge may not make new factual findings or conclusions of law under North Carolina Rules of Civil Procedure 52 and 63. *See In re K.N.*, 381 N.C. at 831, ¶ 24, 874 S.E.2d at 600. The trial court erred in entering new findings of fact and conclusions of law without conducting a new evidentiary hearing. The 30 August 2021 order terminating Respondent's parental rights is vacated and this cause is remanded for a new evidentiary hearing. *It is so ordered.*

VACATED AND REMANDED.

Judges DILLON and HAMPSON concur.

Report per Rule 30(e).