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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-484

Filed 06 June 2023

Robeson County, No. 21 JA 144

IN THE MATTER OF: C.P.

Appeal by respondent-mother from orders entered 4 March 2022 by Judge Brooke L. Clark in Robeson County District Court. Heard in the Court of Appeals 15 May 2023.

J. Edward Yeager, Jr., for Petitioner-Appellee Robeson County Department of Social Services.

Smith, Anderson, Blount, Dorsett, Mitchell, & Jernigan, L.L.P., by Andrew M. Benton, for Guardian ad Litem.

Vitrano Law Offices, PLLC, by Sean P. Vitrano, for Respondent-Appellant-Mother.

PER CURIAM.

Respondent-Mother appeals from the trial court's orders adjudicating C.P. ("Cora")¹ as an abused and neglected juvenile and continuing custody of Cora with the Robeson County Department of Social Services ("DSS"). Respondent-Mother's

¹ Pseudonyms are used to protect the juvenile's identity and for ease of reading.

sole argument on appeal is the trial court erred in eliminating reunification efforts as an initial disposition. Because the trial court's findings of fact are insufficient to support ceasing reunification under N.C. Gen. Stat. § 7B-901(c), we vacate the relevant portions of the disposition order and remand for further findings.

I. Factual & Procedural Background

On 22 June 2021, Respondent-Mother and Cora's father ("Mr. P.") sought emergency medical services when four-month-old Cora began choking while feeding. At the hospital, Respondent-Mother reported that Mr. P. had been feeding Cora when she began choking, Respondent-Mother hit her on the back in an attempt to clear her airway, and Mr. P. provided a prescribed breathing treatment. When Cora still struggled to breathe, Respondent-Mother called 911. Mr. P. provided conflicting information, reporting it was Respondent-Mother who was feeding Cora at the time of the incident and who provided the breathing treatment. Both parents reported that the bruising seen on Cora's legs was a result of preliminary treatment from emergency medical services. Initial scans at the hospital showed bleeding in Cora's brain, which the doctor believed could have been caused by non-accidental trauma, including Shaken Baby Syndrome.

Cora was transferred to UNC Chapel Hill for additional evaluation and treatment, where she was placed on a ventilator. Subsequent testing revealed bilateral hematomas, retinal hemorrhages "that could not have resulted from one fall or incident," and confirmed a diagnosis of Shaken Baby Syndrome. Cora was also

deemed “severely malnourished,” and Respondent-Mother reported she had only given Cora water the previous four days.

Inspection of Respondent-Mother and Mr. P.’s home revealed an environment unsafe for Cora: broken windows were patched with rusted metal; there were holes in the floor; dog excrement was noted throughout the home, and six dogs were being housed in two cages inside the home; soiled diapers and other trash was scattered throughout the home and in the yard; and no clean diapers, formula, or bottles were observed in the home. Although Respondent-Mother reported Cora had no prior health concerns, Cora had been admitted to a breathing treatment clinic two months prior, and her pediatrician prescribed a nebulizer and breathing treatments for her wheezing.

Neither parent was able to provide an appropriate temporary placement resource. Subsequent collateral contacts indicated Respondent-Mother had developmental delays as well as several untreated mental health issues, including bipolar disorder and schizophrenia; she had previously exhibited abusive behavior with a young family member; and a family member reported that Cora had fallen out of her stroller while in a car seat under Respondent-Mother’s supervision.

On 24 June 2021, Respondent-Mother and Mr. P. were arrested for felony child abuse and held on a \$5 million bond. They were subsequently charged with felony child abuse inflicting serious physical injury and felony child abuse inflicting serious bodily injury. On 29 June 2021, DSS filed a juvenile petition alleging Cora was an

abused, neglected, and dependent juvenile and obtained nonsecure custody of Cora.

On 13 July 2021, Cora was discharged from the hospital and placed into the care of a licensed foster parent. Cora's foster placement required specific training for Cora's care, as she required a feeding tube with feedings every four hours, medication administered five times each day, weekly physical therapy, and weekly feeding therapy. Cora also required numerous follow-up appointments with a variety of specialists, and was referred for additional therapies, including occupational and speech therapy. Cora was referred to a dietician and gained weight, but she still struggled to eat or drink, and any attempts required careful monitoring. There was an initial concern that Cora might be blind, but the damage on her retinas healed. Cora's doctors did not rule out future surgeries to remediate other complications from her injuries and found she required leg braces to assist with her mobility.

Respondent-Mother entered into a case plan with DSS on 4 August 2021, with requirements addressing her mental health, parenting skills, housing, and Cora's specific needs resulting from her injuries. However, Respondent-Mother's incarceration prevented her from making progress towards her goals. During a September 2021 meeting with a social worker, Respondent-Mother acknowledged she had ongoing mental health issues and had been hospitalized for her mental health in the past. Respondent-Mother's criminal attorney informed DSS that she had been deemed incapable of proceeding to trial, and she was to be transferred to a psychiatric hospital.

The juvenile petition was heard on 9 February 2022. At the start of the hearing, Respondent-Mother's attorney requested the trial court appoint a guardian ad litem for her client. After a brief inquiry—where Respondent-Mother was unable to identify her attorney, explain her attorney's role in the proceedings, or recall the year—the court determined Respondent-Mother was incompetent and required a guardian ad litem. After a recess, Respondent-Mother, through her guardian ad litem and attorney, consented to an adjudication of abuse and neglect, though she neither admitted nor denied the allegations in the petition. DSS dismissed the allegations of dependency, and the trial court adjudicated Cora an abused and neglected juvenile based on the allegations in the petition. The matter proceeded to disposition, and at the close of evidence, DSS requested termination of reunification efforts based upon aggravated circumstances pursuant to N.C. Gen. Stat. § 7B-901(c).

On 4 March 2022, the trial court entered its written adjudication order and disposition order. In its orders, the trial court, *inter alia*, concluded it was in Cora's best interests that DSS retain custody, and reunification efforts with Respondent-Mother be ceased.² Respondent-Mother timely appealed from the orders.

II. Jurisdiction

This Court has jurisdiction to address Respondent-Mother's appeal pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021).

² The trial court also relieved DSS of efforts to reunify Cora with Mr. P., but Mr. P. is not a party to this appeal.

III. Issue

The sole issue on appeal is whether the trial court abused its discretion by ordering DSS cease reunification efforts with Respondent-Mother at the initial disposition hearing.

IV. Standard of Review

“This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court’s conclusions, and whether the trial court abused its discretion with respect to disposition.” *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007) (citations omitted). “An abuse of discretion occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020) (citations omitted).

V. Analysis

Respondent-Mother contends the trial court abused its discretion in ordering the cessation of reunification efforts at the initial disposition hearing. Specifically, Respondent-Mother argues our Supreme Court “require[s] acts or conduct beyond the acts or conduct constituting the abuse or neglect” to uphold the termination of reunification efforts pursuant to N.C. Gen. Stat. § 7B-901(c)(1)(f). We agree.

A trial court may cease reunification efforts at the initial disposition hearing following an adjudication of abuse, neglect, or dependency upon written findings,

indicating, *inter alia*:

(1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of . . .

. . . .

f. [a]ny other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

. . . .

(3) A court of competent jurisdiction determines or has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent; (ii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; [or] (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent[.]

N.C. Gen. Stat. § 7B-901(c)(1)(f), (c)(3) (2021).

Here, the trial court ceased reunification efforts pursuant to N.C. Gen. Stat. § 7B-901(c)(1)(f), finding:

15. That since this incident occurred the minor child suffered severe injuries such that the court is going to find by clear, cogent and convincing evidence that aggravated circumstances exist because the parents have either committed or encouraged the commission of or allowed the continuation of any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect pursuant to 7B-9[01(c)](1)(f).

16. The Beacon Team indicated that the extent of hemorrhages and [sic] combination with new intracranial

bleeding that it was suspected repetitive shaking or shaking in impact, resulting in repetitive rotational forces on the head as being the cause of hemorrhages they saw when the[y] examined the minor child. . . .

17. That due to the injuries that the child sustained she is having developmental delays.

. . . .

19. Respondent Mother has stated to [DSS] that [Mr. P.] would spank the child and that [Mr. P.] is the one who shook the child.

20. [Mr. P.] denies any physical abuse of the child or that she had been shaken in an attempt to hurt her. However, [Mr. P.] admits to shaking the child because he believed she was choking.

21. According to the report from the Beacon Team the injuries the child sustained would have been the result of multiple incidents of shaking and not due to one isolated incident.

Respondent-Mother challenges two of these findings. Respondent-Mother first contends finding of fact 21 is not supported by the evidence. We agree. As Respondent-Mother asserts, the Beacon Team report does not indicate Cora's injuries were "the result of multiple incidents of shaking." Rather, the report indicates Cora did not have a history of trauma, there was no medical explanation for the brain hemorrhages, and the injuries were probably caused by trauma to the head, likely from abuse. Cora's ophthalmologist concluded the hemorrhages found in "multiple retinal layers" were the result of "repetitive shaking or shaking and impact resulting in repetitive rotational forces on the head," as detailed in finding of fact 16. Indeed,

the report specifically noted the evaluators were “unable to time or date the injuries based on the medical findings alone[,]” and there was “a high level of concern” for abuse. Nonetheless, further information needed “to be obtained by law enforcement and [DSS] to confirm the history provided to the medical team[,]” and a “final” determination regarding the likelihood of abuse depended upon that information and further medical evaluation.

DSS asserts finding of fact 21 is supported by other evidence, including summarized statements from Cora’s doctors in the juvenile petition, which Respondent-Mother did not contest at adjudication, and social worker testimony at the disposition hearing. Both the juvenile petition and the testimony social worker cited by DSS appear to reference the Beacon Team report; however, absent clear language establishing multiple incidents in the report, we find this argument unavailing. Accordingly, we disregard finding of fact 21. *See In re C.M.*, 183 N.C. App. at 213, 644 S.E.2d at 594.

Respondent-Mother also challenges the trial court’s ultimate finding in finding of fact 15. She contends the court’s finding “relied exclusively on the nature and severity of the injuries sustained by Cora as a direct and proximate result of the abuse[,]” but subsection (c)(1)(f) “requires more.” In an attempt to counter Respondent-Mother’s prior challenge to finding of fact 21, DSS appears to concede this point: “regardless of the issue raised by [Respondent-Mother], the social worker also testified that the basis of [DSS’s] recommendation was based on the ‘severity of

the injuries that [Cora] sustained’ and not whether she was abused once or more than once.” As to Respondent-Mother’s argument concerning finding of fact 15, DSS suggests that the criminal charges and the “severe and life-altering” injuries Cora suffered are “sufficient aggravating circumstances” to support ceasing reunification efforts. Cora’s guardian ad litem attempts to classify “even a single incident of shaking” as “an ‘other act’ [under N.C. Gen. Stat. 7B-901(c)(1)(f),] in addition to the continuing neglect clearly established by the record.”

Guilford County Department of Social Services recently presented a similar argument in *In re L.N.H.*, contending that the respondent-mother’s conduct—burning the soles of the child’s feet and leaving the child alone outside—“‘increased the enormity’ and ‘added to the injurious consequences’ of evidence supporting the court’s adjudications of abuse and neglect within the meaning of [N.C. Gen. Stat. §] 7B-901(c)(1)(f).” 382 N.C. 536, 547, 879 S.E.2d 138, 146 (2022). Our Supreme Court concluded this argument was fundamentally defective because it relied “upon evidence necessary to support the trial court’s adjudication of abuse and neglect to show the existence of conduct that exacerbated the consequences of that abuse and neglect.” *Id.* at 547, 879 S.E.2d at 146. Thus, even though the child suffered severe injuries because of the respondent-mother’s conduct, subsection (c)(1)(f) required “that the evidence in aggravation involve something *in addition to* the facts that rise to the initial adjudication of abuse and/or neglect.” *Id.* at 548, 879 S.E.2d at 146. (citations omitted) (emphasis added).

As in *L.N.H.*, Cora’s injuries that resulted from the conduct supporting the adjudication of abuse and neglect in this case—though “severe and life-altering”—are insufficient to support ceasing reunification efforts under N.C. Gen. Stat. § 7B-901(c)(1)(f). *See id.* at 547–48, 879 S.E.2d at 146; *see also* N.C. Gen. Stat. § 7B-901(c)(1)(f).

Nevertheless, *L.N.H.* also provides that when a parent has been criminally charged as a result of the events underlying an adjudication of abuse or neglect, a trial court may cease reunification efforts pursuant to N.C. Gen. Stat. § 7B-901(c)(3)(iii). *In re L.N.H.*, 382 N.C. at 548, 879 S.E.2d at 147. As with subsection (c)(1)(f), the trial court must make findings to support the cessation of reunification efforts under subsection (c)(3)(iii). N.C. Gen. Stat. § 7B-901(c).

Here, the trial court did find that Respondent-Mother was charged with felony child abuse; however, “the trial court did not make the findings necessary to permit the cessation of reunification efforts with [R]espondent-[M]other based upon [N.C. Gen. Stat.] § 7B-901(c)(3)(iii)[.]” *See In re L.N.H.*, 382 N.C. at 548, 879 S.E.2d at 179; *see also* N.C. Gen. Stat. § 7B-901(c). We note that in light of the ample evidence in the record that Respondent-Mother “committed a felony assault resulting in serious bodily injury to the child,” the trial court could have made such a finding. *See In re L.N.H.*, 382 N.C. at 548, 879 S.E.2d at 147. Accordingly, we vacate the portions of the trial court’s order ceasing reunification based upon a finding of aggravated circumstances and remand the matter for the trial court to enter “appropriate

findings addressing the issue of whether efforts to reunify [Respondent-Mother] with [Cora] should be ceased pursuant to [N.C. Gen. Stat.] § 7B-901(c).” *See id.* at 548, 879 S.E.2d at 147.

VI. Conclusion

Because the trial court did not make a written finding as statutorily required under N.C. Gen. Stat. § 7B-901(c) to support its cessation of reunification efforts at the initial disposition hearing, we vacate the portions of the disposition order ceasing reunification efforts, and we remand the matter to the trial court to allow for the entry of appropriate findings.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Before a panel consisting of Judges COLLINS, CARPENTER, and WOOD.

Report per Rule 30(e).