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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1085

Filed 18 June 2024

Montgomery County, No. 21 JA 8

IN THE MATTER OF:

A.M.D., a minor child

Appeal by respondent-mother and respondent-father from juvenile guardianship order entered 28 August 2023 by Judge John R. Nance in Montgomery County General Court of Justice, Juvenile Court Division. Heard in the Court of Appeals 30 April 2024.

North Carolina Office of the Parent Defender, by Wendy C. Sotolongo, Parent Defender and J. Lee Gilliam, Assistant Parent Defender, for the respondent-appellant-mother.

Parry Law, PLLC, by Edward Eldred, for the respondent-appellant-father.

Montgomery County DSS, by Jeannie Blake, for appellee Montgomery County DSS.

Ellis & Winters LLP, by James M. Weiss, for appellee guardian ad litem.

Van Camp, Meacham, & Newman, PLLC, by Donald L. McLamb II, for petitioner-appellee.

PER CURIAM.

Parents appeal from an order granting guardianship of their minor child A.M.D. (hereinafter referred to by the pseudonym “Adam”) to his maternal aunt and uncle (the “Blakes”). We affirm.

I. Background

On or about 31 March 2021, Adam’s mother (“Mother”) took Adam, who was six months old, to the hospital. Adam was reported to appear “unbathed and dirty” and had a “bruise under his left eye[.]” X-rays revealed that Adam had “suffered a transverse fracture of his femur with a clean break.” DSS was contacted. DSS became concerned for Adam, based on Mother’s lack of explanation for his injuries. Subsequently, DSS filed a petition alleging abuse and neglect.

On or about 8 April 2021, Adam was placed in the custody of the Blakes, upon his entry of a nonsecure custody order.

On 19 July 2021, Adam was adjudicated abused and neglected in an order and remained with the Blakes thereafter.

On 27 October 2021, after an initial disposition hearing, the trial court entered its initial disposition order, placing Adam in DSS’s “legal custody and placement discretion[.]” The trial court adopted the recommendation of the GAL in ordering “[t]hat reunification is not appropriate at this time” and that the parents “submit themselves to a capacity to parent evaluation.”

In a report prepared in May 2022, the GAL recommended that the Blakes be appointed as guardians at that hearing.

On 20 September 2022, the Blakes filed a motion to intervene, alleging that they had “assumed the status and obligation of a parent[.]” That motion was granted on 7 November 2022. The Blakes were allowed to cross-examine witnesses, testify, and present a closing argument during the permanent placement hearing, which was heard over several court dates.

On 23 August 2023, the trial court issued an order naming the Blakes as Adam’s legal guardianship. In the order, the court determined that Mother and Adam’s father (“Father”) (collectively, “Parents”) were unfit and had acted inconsistently with their constitutionally protected parental rights. Mother and Father each appealed.

II. Standard of Review

This Court reviews a trial court’s ruling on an intervention motion *de novo*. *See, e.g., In re T.H.*, 232 N.C. App. 16, 20, 753 S.E.2d 207, 211 (2014).

III. Analysis

Mother and Father both argue that the trial court erred in allowing the Blakes to intervene as a party. Mother also makes three additional arguments, which we will address in turn.

A. Intervention

First, Mother and Father each assert that the trial court improperly allowed the Blakes, as merely Adam’s “caretakers,” to intervene.

There is ambiguity in our General Statutes regarding under what

circumstances a “caretaker” may intervene. Before our General Assembly adopted provisions within the Juvenile Code regarding intervention, a trial court relied generally upon Rule 24 of our Rules of Civil Procedure when considering whether to allow a non-party to intervene. *See In re T.H.*, 232 N.C. App. 16, 21, 753 S.E.2d 207, 211 (2014). However, in 2013, our General Assembly adopted within the Juvenile Code provisions regarding intervention in an abuse, neglect, and dependency matter, codified under Section 7B-401.1. Subsection (e) of that Section as originally enacted provided in relevant part that a caretaker could be allowed to intervene:

Except as provided in G.S. 7B-1103(b), the court shall not allow any intervention by a person who is not the juvenile’s parent, guardian, custodian, or *caretaker*

N.C. Gen. Stat. § 7B-401.1(e) (2013) (emphasis added). Subsections (b) of Section 7B-401.1 was enacted to address the intervention of “parents” specifically; subsection (c), to address the intervention of a “guardian” specifically; subsection (d), to address the intervention of a “custodian” specifically; and subsection (e) to address the intervention of a “caretaker” specifically.

Subsection (e) provides that:

“caretaker shall be a party only if (i) the petition includes allegations relating to the caretaker, (ii) the caretaker has assumed the status and obligation of a parent, or (iii) the court orders that the caretaker be made a party.”

N.C. Gen. Stat. § 7B-401.1(e) (2023).

In 2016, though, our General Assembly amended subsection (h), by removing

the word “caretaker” out. That provision now reads in relevant part as follows:

Except as provided in G.S. 7B-1103(b) and subsection (e1)¹ of this section, the court shall not allow the intervention of a person who is not the juvenile’s parent, guardian, or custodian

N.C. Gen. Stat. § 7B-401.1(h) (2024). However, the General Assembly did not repeal subsection (c) regarding the intervention of a caretaker. Father notes, though, that the General Assembly also did *not* include within the amendment subsection (h) that excepts the provisions of subsection (e). That is, Father suggests that if the General Assembly had wanted to provide a broad avenue in which a caretaker could intervene, that body would have drafted the first clause of subsection (h) to provide that:

Except as provided in G.S. 7B01103(b) and section (e1) [dealing with foster parents] *and subsection (e)*, the court shall not allow the intervention

In any event, our General Assembly has left subsection (e) with language which allows a caretaker to be made a party if “(i) the petition includes allegations relating to the caretaker, (ii) the caretaker has assumed the status and obligation of a parent, or (iii) the court orders that the caretaker be made a party.”

No party makes any argument that (i) applies, as the petition does not contain allegations relating to the Blakes. As to (ii), Mother and Father disagree with the GAL as to whether the Blakes had assumed the status and obligation of a parent.

¹ Subsection (e1) was added to Section 7B-401.1 to allow for the intervention of a “foster parent” under certain conditions.

Regarding (iii), the parties disagree as to whether our General Assembly intended to grant a trial court some measure of discretion under the language therein – that “the court [may] order[] that the caretaker be made a party – or whether that body merely intended that the trial court may only allow a caretaker to be a party if the caretaker falls within some other intervention provision.²

We need not resolve these issues in this case. Rather, we conclude that, even assuming the trial court lacked authority to allow the Blakes to intervene, Parents have not shown how they were prejudiced by the Blakes’ intervention. *See, e.g.*, N.C. Gen. Stat. § 7B-906.1(c) (2023) (allowing the trial court to consider information from . . . “any person with whom the juvenile is placed . . . and any other person or agency that will aid in the court’s review”). Neither Parent points to any evidence offered by the Blakes which we believe made any difference in the trial court’s decision. In any event, the only witness called by the Blakes was Mrs. Blake herself. And it was appropriate for her, as a caretaker, to testify whether she was allowed to intervene or not. Further, there was substantial evidence apart from any evidence elicited by the Blakes’ attorney offered supporting the decision. Indeed, based on our review of

² For example, Section 7B-1103(a)(5) allows “[a]ny person with whom the juvenile has resided for a continuous period of 18 months” to file a petition to terminate parental rights). And Section 7B-1103(b) (2023) allows anyone who has the right to file a petition or motion to terminate the parental rights of either or both parents the right to intervene in a pending abuse, neglect, or dependency proceeding in order to petition for the termination of the rights of a parent(s)). Here, though there is evidence that Adam lived with the Blakes for 18 consecutive months, there is nothing in the record indicating that the Blakes intervened for the purpose of filing a petition to terminate the parental rights of Mother or Father.

the record, it appears that much of the evidence elicited by the Blakes' attorney had already been elicited by attorneys representing other parties. Also, Adam had already been adjudicated as abused and neglected. Apart from any evidence offered by the Blakes, evidence showed that Parents' innocent explanation as to how Adam sustained his injuries was implausible, neither Parent appreciates any risk of Father's seizures, Father continues to drive despite having seizures without having notifying NCDMV of his seizure episodes, and Parents are unfit, having acted inconsistently with their protected status as parents.

B. Mother's Additional Arguments

Mother argues that she should have been allowed to testify after stating that Adam "loves his Daddy" and that Adam "wants nothing more than to be back home." The trial court sustained the objections by counsel for the Blakes, DSS, and the GAL. Mother argues that the ruling was arbitrary, pointing to the fact that "evidence of Adam's bond with the Blakes had been freely admitted."

We conclude that the trial court did not err. While Mother was free to testify regarding the bond she perceived Adam had with his Father, given Adam's age and lack of evidence that he has or is able to verbally express his wishes concerning his living arrangement, it was not error for the trial court to disallow Mother to testify that Adam wanted to live with his Father.

Mother also argues that the trial court erred in concluding that *she* had acted inconsistently with her paramount status as Adam's parent. She notes the findings

that she had made progress while Adam was in the Blakes' care. However, we conclude that the findings support the trial court's determination. We are persuaded by our Supreme Court's holding in *In re D.W.P.*, 373 N.C. 327, 373 S.E.2d 327 (2020), where that Court sustained the termination of a mother's parental rights where the child had suffered an unexplained injury which could have been only caused by her or her boyfriend and where the mother was continuing her relationship with her boyfriend. We are also persuaded by our holding in *In re Y.Y.E.T.*, 205 N.C. App. 120, 695 S.E.2d 517 (2010), where our Court affirmed an order terminating parental rights under similar facts as those in the present case.

Finally, Mother argues that the trial court erred in finding that DSS's efforts toward seeking reunification were reasonable. *See* N.C. Gen. Stat. § 7B-101(18) (2023). We have reviewed the order and the record and conclude that DSS's efforts were reasonable in this regard. Accordingly, we affirm the order of the trial court.

AFFIRMED.

Panel consisting of Chief Judge Dillon and Judges GRIFFIN and STADING.

Report per Rule 30(e).