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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1127

Filed 18 June 2024

Wake County, No. 22 JA 212

IN THE MATTER OF: A.A., JR.

Appeal by respondent-mother from order entered 22 August 2023 by Judge Ashleigh Parker Dunston in District Court, Wake County. Heard in the Court of Appeals 29 May 2024.

Mary Boyce Wells for petitioner-appellee Wake County Department of Social Services.

Michelle FormyDuval Lynch for the Guardian ad Litem.

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

PER CURIAM.

Respondent-mother (“mother”) appeals from a permanency planning order on custody and visitation. For the following reasons, we affirm the trial court’s order.

I. Background

Wake County Department of Social Service (“DSS”) filed a juvenile petition, alleging that mother’s three children were abused, neglected, and dependent on

13 October 2022. A nonsecure custody order was entered by the trial court the same day removing mother's oldest child, Adam,¹ from his mother and stepfather's home and placing Adam with his father. Orders continuing nonsecure custody were entered on 17 November and 6 December 2022, concluding that it was in the best interests of Adam to remain in the custody of Wake County Health and Human Services ("WCHHS") and remain placed with his father.

On 24 February 2023, an adjudication and disposition order adjudicated Adam as neglected and abused.² The order concluded that mother was unfit and that Adam be placed in the legal custody of WCHHS. The order further gave WCHHS authorization to continue placement of Adam with his father and provided mother with supervised visitation.

Permanency planning orders were entered on 8 June and 22 August 2023. The 22 August 2023 order granted Adam's father sole legal and physical custody and granted mother with a minimum of two hours of supervised visitation per week. The order informed mother of her "right to file a motion for review for the Court to establish, modify or enforce the visitation provisions[.]" The order also stated that "WCHHS, the [Guardian ad litem ("GAL")] and counsel of record [were] relieved of further responsibility in this matter." Mother timely appealed on 19 September 2023.

¹ A pseudonym is used to protect the identity of the child.

² Mother appealed the 24 February 2024 order, but this Court affirmed the order in an unpublished per curiam opinion. See *In re K.R.*, 899 S.E.2d 408 (N.C. Ct. App. 2024) (per curiam) (unpublished).

II. Discussion

Mother contends that the trial court erred by releasing mother's attorney when the 22 August 2023 order was entered because the trial court had retained jurisdiction, keeping the case in a critical stage and triggering mother's statutory right to counsel. WCHHS and the GAL contend that mother failed to preserve her argument regarding her right to counsel by not objecting to the part of the order releasing her attorney from further responsibility. However, even assuming *arguendo* that the argument was preserved, mother's contention still fails.

A. Right to Counsel under N.C.G.S. § 7B-602

Section 7B-602 of the North Carolina General Statutes provides that if a "petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency" N.C.G.S. § 7B-602(a) (2023); *see also* N.C.G.S. § 7A-451(a)(12) ("An indigent person is entitled to services of counsel in cases where a juvenile is alleged to be abused, neglected, or dependent." (cleaned up)). In these cases, entitlement to the services of counsel "continues through any critical stage of the action or proceeding[.]" N.C.G.S. § 7A-451(b).

"When [a trial] court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first." N.C.G.S. § 7B-201(a). Jurisdiction thus "extends through all subsequent stages of the action." *In*

re K.S.D-F., 375 N.C. 626, 633 (2020) (cleaned up). For example, a trial court retains jurisdiction “to conduct periodic reviews, even after it enters an order that might be considered a final order on the merits in another context.” *In re E.H.*, 227 N.C. App. 525, 531 (2013) (citing *In re H.S.F.*, 177 N.C. App. 193, 199 (2006) (holding that the trial court retained jurisdiction to conduct periodic reviews after restoring custody to a parent)).

Particularly, “where the court finds the juvenile to be abused, neglected, or dependent, the jurisdiction of the court to modify *any order or disposition made in the case* shall continue during the minority of the juvenile[.]” N.C.G.S. § 7B-1000(b) (emphasis added). Moreover, “when a motion is filed to conduct a modification hearing under § 7B-1000 and counsel for respondent parents appointed through § 7B-602 have been released, the court shall appoint provisional counsel pursuant to § 7B-602.” N.C.G.S. § 7B-1000(d) (cleaned up).

Lastly, exercising jurisdiction is distinct from having or retaining jurisdiction. *See In re M.I.W.*, 365 N.C. 374, 379 (2012). “Exercising jurisdiction . . . requires putting the court’s jurisdiction into action by holding hearings, entering substantive orders or decrees, or making substantive decisions on the issues[.]” whereas having or retaining jurisdiction “is simply a state of being that requires, and in some cases allows, no substantive action from the court.” *Id.* (citation omitted).

Here, the trial court retained jurisdiction over the case after it entered its 22 August 2023 order.³ Mother claims that because she maintained the right to file a motion to modify and thus “invoke the trial court’s jurisdiction at any time,” the case remained in a critical stage. But the trial Court was “simply [in] a state of being” until put “into action” by, e.g., mother’s actual exercise of that right. *See In re M.I.W.*, 365 N.C. at 379. Until then, “no substantive action from the court” is necessary. *Id.* Indeed, jurisdiction “extends through all subsequent stages of the action[,]” *In re K.S.D-F.*, 375 N.C. at 633, but the entitlement of counsel extends only to the stages deemed critical. *See* N.C.G.S. § 7A-451(b). And in the case *sub judice*, it cannot be said that the matter was in a critical stage when mother merely maintained the right to invoke the trial court’s jurisdiction; the trial court was not actively exercising its jurisdiction.

As discussed above, N.C.G.S. § 7B-1000 supports this reasoning because it considers a respondent parent’s counsel being released but then reappointed again under N.C.G.S. § 7B-602 after “a motion is filed to conduct a modification hearing” N.C.G.S. § 7B-1000(d). Mother contends that because N.C.G.S. §§ 905.1(d), 906.1(n) do not include a reappointment provision, “the General Assembly did not contemplate the release of counsel where a party has the right to file a motion for review” under those statutes. However, N.C.G.S. § 7B-1000 applies to “any order

³ All parties agree that the trial court retained jurisdiction following the order.

or disposition made in the case,” so the reappointment of counsel situation also applies to motions for review of visitation orders. *See* N.C.G.S. § 7B-1000(b)–(d); *see also In re J.N.L.*, No. COA07-1224, 2008 WL 711698, at *5 (N.C. Ct. App. Mar. 18, 2008) (unpublished) (explaining that a visitation plan made pursuant to N.C.G.S. § 7B-905.1 was subject to “review if respondent file[d] a motion in the cause pursuant to N.C.[G.S.] § 7B-1000[.]”). Accordingly, the trial court did not err by releasing mother’s attorney while retaining jurisdiction because the trial court was not exercising its jurisdiction and thus the case was not in a critical stage.⁴

Lastly, mother contends that even if the case moved into a non-critical stage after the 22 August 2023 order was entered, the trial court abused its discretion by not providing mother with notice of her attorney’s release. We disagree. To support her contention, mother cites *In re K.M.W.*, 376 N.C. 195, 209 (2020). In that case, our Supreme Court concluded “that the trial court erred by allowing [respondent-mother’s attorney’s] motion to withdraw from his representation of respondent-mother and permitting respondent-mother to represent herself at [a] termination hearing without ensuring that she had knowingly and voluntarily waived her right to the assistance of counsel.” But those facts are inapposite to the ones here. In this

⁴ Although the trial court released counsel from the case in the August 2023 order, mother’s attorney still had a duty to assist mother in filing the notice of appeal, *see* N.C.G.S. § 7B-1001(b)–(c), and assisting appellate counsel with the preparation and service of the proposed record on appeal. *See* N.C.R. App. P. 3.1(h). And in accordance with those duties, mother’s attorney signed the notice of appeal, and the appeal was perfected. Thus, no disruption or harm to mother’s representation occurred.

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case, mother's attorney represented her during the hearing that led to the 22 August 2023 order and continued representing her until appeal was noticed. Moreover, mother was appointed appellate counsel just fifteen days after her notice of appeal was filed. Accordingly, the trial court did not abuse its discretion by not providing mother with notice of her attorney's release in its order.

III. Conclusion

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

AFFIRMED.

Before a panel consisting of Chief Judge DILLON and Judges ARROWOOD and HAMPSON.

Report per Rule 30(e).