

IN THE MATTER OF: Z.M.

North Carolina Court of Appeals (1 Nov, 2011)

DOCKET NO.

No. COA11-473

ATTORNEY(S)

Senior Associate Attorney Kathleen Arundell Widelski for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services. [REDACTED] for respondent-appellant father. Everett Gaskins Hancock LLP, by James M. Hash, for the Guardian ad Litem.

JUDGMENT

Mecklenburg County No. 08 JT 770.

ELMORE, Judge.

Respondent appeals an order entered 14 February 2011, releasing the Mecklenburg County Department of Social Services (DSS) from further reunification efforts between respondent and his minor child Z.M. (the juvenile) and awarding guardianship of the juvenile to the juvenile's foster mother. After careful consideration, we reverse and remand, because the trial court failed to make specific findings of fact explaining why placement of the juvenile with his paternal aunt was not in his best interest.

On 4 November 2008, DSS filed a petition alleging that the juvenile was neglected and dependent. At that time, the juvenile's mother contacted DSS and indicated that she did not have income and could not provide for the physical needs of the juvenile. The trial court entered an order concluding that the juvenile was dependent on 8 January 2009. The court continued custody of the juvenile with DSS and set the plan of care for the juvenile as reunification with the mother. The juvenile was then placed in the care of a foster mother.

In early 2009, respondent contacted DSS and stated that he was the juvenile's father. On 18 February 2009, respondent took a paternity test, which confirmed that respondent is the juvenile's father. The trial court acknowledged respondent's paternity in a review order entered 6 April 2009.

Over the course of several permanency planning hearings from 1 October 2009 through 17 November 2010, the trial court changed the permanent plan for the juvenile from reunification with a parent to legal guardianship. On 17 November 2010, the foster mother and the juvenile's paternal aunt swore under oath that they understood the responsibilities of guardianship, and that they were each willing and able to assume those responsibilities. On 14 February 2011, the trial court entered an order awarding guardianship of the juvenile to the foster mother. Respondent now appeals.

Respondent first argues that the trial court's finding of fact number five is erroneous, because it is not supported by sufficient evidence. Specifically, respondent argues that the trial court found that only the foster mother would allow both parents to have an opportunity to have a relationship with the juvenile. Respondent contends that competent evidence supports a finding that the paternal aunt would also foster a relationship between the juvenile and his parents. We conclude that respondent's argument is misplaced.

Finding of fact number five states in part:

It appears that the foster mother has a good relationship with respondent and the juvenile's mother. The juvenile needs to have a relationship with both parents. The foster mother provides an opportunity for both parents to have a relationship with the juvenile. The paternal aunt is appropriate, but the court will not disrupt the continuity and relationship already established with the foster mother. The Court has no concerns about the paternal aunt being able to address the juvenile's needs. (Emphasis added).

Here, it is clear that finding of fact number five does not state that only placement with the foster mother would allow both parents to have a relationship with the juvenile. In fact, finding of fact number five indicates that the paternal aunt would also be an appropriate placement. This language in itself implies that the trial court believed that the paternal aunt would also foster a relationship between the juvenile and his parents, because the court had previously found that the juvenile "needs to have a relationship with both parents."

Furthermore, the trial was not required to specifically find whether the paternal aunt would also foster the juvenile's relationship with his parents. This Court has held that a court does not err when it fails to make all of the possible findings of fact which would be supported by the evidence before it. In re J.A.A., 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005). "Rather, a court must only make brief, pertinent and definite findings and conclusions about the matters in issue." *Id.* at 75, 623 S.E.2d at 51 (citation and quotations

omitted). Accordingly, we overrule respondent's first argument.

Respondent next argues the trial court failed to make sufficient findings of fact regarding whether placement of the juvenile with his paternal aunt would be contrary to the best interests of the juvenile. Specifically, respondent argues that the trial court was required to make specific findings of fact before placing the juvenile with a non-relative foster parent. We agree.

This Court has held that before granting custody of a juvenile to a non-relative foster parent, the trial court is first required to enter specific findings of fact explaining why placement with a relative was not in the best interest of the juvenile. In re L.L., 172 N.C. App. 689, 704, 616 S.E.2d 392, 401 (2005). In that case, the trial court's order was devoid of such findings, and the order was reversed and remanded for a new hearing. *Id.* Furthermore, the trial court was directed "to give first consideration to placement with the juvenile's relatives." *Id.*

Here, in rendering its order at the conclusion of the permanency planning hearing, the trial court clearly stated that it was not considering why guardianship with a relative was not in the best interest of the juvenile:

The Court will say that the Court has no issues and has no concerns about the paternal aunt providing care or concern care or any speech, therapeutic or addressing any educational needs whatsoever about you know, regarding the juvenile. If the time and or place, you know, if the time comes that he needs that.

The Court really has no concerns about either, I mean, foster parents are really it all turns on, you know, whether we have a family member whether we place the juvenile with a family member or we place the juvenile with the foster mother.

In this particular case the Court doesn't have a usual protocol, but for all purposes and the Court believes that the law somewhat goes it can go either way because the law actually gives that discretion to the judge.

Now, when the case first starts, then it must be with a family member, if that family member is deemed appropriate. We have gone two years beyond that.

Therefore, we conclude that the trial court failed to make the required specific findings of fact regarding why placement of the juvenile with his paternal aunt is not in his best interest. Accordingly, we reverse the

trial court's order and remand for further proceedings consistent with this opinion.

Reversed and remanded.

Judges BRYANT and ERVIN concur.

Report per Rule 30(e).