



standing to participate in this proceeding, and that DSS had no duty to attempt to reunify Helen and Respondent-Grandmother. After careful consideration of Respondent-Grandmother's challenges to the trial court's order in light of the record and the applicable law, we conclude that the trial court's order should be reversed and that this case should be remanded to the Orange County District Court for further proceedings not inconsistent with this opinion.

#### I. Factual Background

On 17 August 2006, DSS filed a petition alleging that Helen was a neglected and dependent juvenile on the grounds that both of Helen's parents were mentally disabled, had an extensive history of illegal drug use, and had engaged in acts of domestic violence in Helen's presence. On 21 November 2006, Chief Judge Joseph Moody Buckner entered an order finding Helen to be a dependent juvenile and placing her in the custody of DSS.

On 16 August 2007, the trial court conducted a permanency planning hearing. At the conclusion of that proceeding, the trial court entered an order appointing Helen's paternal grandparents as her guardians, relieving DSS and the guardian *ad litem* of further responsibility for supervising and protecting Helen, and closing the case.

On 13 February 2009, DSS filed a second petition alleging that Helen was an abused, neglected, and dependent juvenile on the grounds that Helen had been allowed unsupervised visits with her mother in violation of the applicable DSS safety plan. During the visit, the mother, who had been drinking to excess, choked Helen and locked her out of the apartment. On 9 June 2009, Judge Patricia DeVine entered an order finding Helen to be an abused, neglected, and dependent juvenile and providing that the paternal grandparents would continue to serve as Helen's guardians.

On 8 January 2010, Helen's paternal grandfather passed away. After the conclusion of a review hearing held on 20 May 2010, Judge Buckner entered an order on 11 June 2010 concluding that "[t]he juvenile is currently in the guardianship of" Respondent-Grandmother, that Respondent-Grandmother "is a fit and proper person to have custody of" Helen, and that the case should be "closed to further court review."

On 30 July 2010, DSS filed a third petition alleging that Helen was a neglected and dependent juvenile. According to the allegations set out in the 30 July 2010 petition, Respondent-Grandmother was harboring her grandson in the home even though she was aware that he was not supposed to be within one mile of Helen's residence. In addition, DSS alleged that the grandson

had assaulted another family member in the home and that Helen's aunt had suffered a seizure stemming from an overdose of methadone in Helen's presence. DSS obtained nonsecure custody of Helen on the same date.

On 12 November 2010, the trial court entered an order finding that Helen was a neglected juvenile based on proceedings that occurred at a 21 October 2010 hearing. After holding a dispositional hearing on 4 November 2010, the trial court determined that reunification efforts with Helen's biological parents should cease, that Helen should remain in DSS custody, and that a permanency planning hearing would be held on 18 November 2010.

On 18 November 2010, the trial court held a hearing for the purpose of determining whether efforts to reunify Helen and Respondent-Grandmother should occur, whether Respondent-Grandmother had standing to participate in this proceeding, and whether DSS should be required to seek the termination of Respondent-Grandmother's guardianship. At that time, the trial court ordered DSS to file a motion seeking the termination of Respondent-Grandmother's status as Helen's guardian and set the issues relating to Respondent-Grandmother's status for hearing on 16 December 2010. On 15 February 2011, the trial court entered an order indicating that the issue of whether

guardianship or custody with a relative was pending, that a plan consisting of custody or guardianship with Respondent-Grandmother or termination of parental rights coupled with adoption was appropriate, and that Helen should remain in DSS custody.<sup>2</sup>

On 16 December 2010, the trial court held a hearing for the purpose of considering DSS's motion to terminate Respondent-Grandmother's guardianship. On 21 December 2010, Respondent-Grandmother filed a Notice to Preserve Right of Appeal in which she stated that an order had been entered in open court terminating her guardianship, changing the permanent plan from reunification to adoption, and determining that any effort to reunify Respondent-Grandmother with Helen should cease.<sup>3</sup> On 15 February 2011, the trial court entered an Order on Motion to Terminate Guardianship in which it concluded that no guardianship existed at the time that Helen was taken into DSS custody, that Respondent-Grandmother was Helen's custodian rather than Helen's guardian, that there was no need to terminate a non-existent guardianship, that Respondent-

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<sup>2</sup> The trial court entered an amended and corrected order on 15 April 2011 making additional findings of fact and concluding that Respondent-Grandmother would not benefit from the provision of additional services by DSS.

<sup>3</sup> The transcript of the 16 December 2010 hearing does not reflect the entry of an order like that described in Respondent-Grandmother's filing.

Grandmother had no standing to participate in the present proceeding, that DSS had no duty to attempt to reunify Helen and Respondent-Grandmother, and that Respondent-Grandmother was not entitled to have unsupervised visitation with Helen. Respondent-Grandmother noted an appeal to this Court from the trial court's order.

## II. Legal Analysis

### A. Guardianship

On appeal, Respondent-Grandmother argues that the trial court erred by finding she was not Helen's guardian. In reaching a contrary conclusion, the trial court found that the 11 June 2010 review order granted custody of Helen to Respondent-Grandmother, implicitly making Respondent-Grandmother Helen's custodian rather than her guardian. Respondent-Grandmother's challenge to this aspect of the trial court's order has merit.

"The authority of [a] guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority." N.C. Gen. Stat. § 7B-600(a). As a result of the fact that Helen has not been emancipated or attained the age of majority, any guardianship created by prior orders would, in the ordinary

course of events, continue until the guardian-ward relationship was terminated by order of the court.

In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with [N.C. Gen. Stat. §] 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties.

N.C. Gen. Stat. § 7B-600(b). According to Respondent-Grandmother, the trial court's failure to make the findings required by N.C. Gen. Stat. § 7B-600(b) indicates that she was never properly removed as Helen's guardian and that the trial court erred by concluding that Respondent-Grandmother was Helen's custodian rather than her guardian at the time that Helen was taken into DSS custody. In response, DSS contends that the 10 June 2010 order awarding custody of Helen to Respondent-Grandmother implicitly terminated the existing guardianship and that the findings required by N.C. Gen. Stat. § 7B-600(b) did not need to be made as a precondition for the termination of Respondent-Grandmother's guardianship because

guardianship had never been adopted as Helen's permanent plan. See *In re J.D.C.*, 174 N.C. App. 157, 162, 620 S.E.2d 49, 52 (2005) (holding that N.C. Gen. Stat. § 7B-600(b) was inapplicable to a case in which the court had not determined that guardianship was the permanent plan for the juvenile pursuant to N.C. Gen. Stat. § 7B-907). We do not find this contention persuasive given the facts of this case.

In this case, the court held a permanency planning hearing, made the paternal grandparents Helen's guardians, relieved DSS and the guardian *ad litem* of further responsibility for supervising Helen, and closed the case in 2007. As a result, we conclude that the trial court had, in fact, established guardianship with the paternal grandparents as the permanent plan; that Respondent-Grandmother's guardianship of Helen could not be terminated in the absence of compliance with N.C. Gen. Stat. § 7B-600(b); and that the 10 June 2010 order did not terminate Respondent-Grandmother's guardianship of Helen given the absence of the required findings. Thus, the trial court erred by concluding that Respondent-Mother was not Helen's guardian at the time that Helen was taken into DSS custody.

#### B. Standing and Reunification

Secondly, Respondent-Grandmother argues that the trial court erred by concluding she had no legal standing in the



proceeding and that DSS had no duty to make reasonable efforts to reunify Helen with her. We agree.

At the time that a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, the court is required to conduct a permanency planning hearing pursuant to N.C. Gen. Stat. § 7B-907 and may combine this proceeding with a review hearing held pursuant to N.C. Gen. Stat. § 7B-906. N.C. Gen. Stat. § 7B-907(a). At the conclusion of the required permanency planning hearing, the court must consider the following criteria and make written findings regarding such of these criteria as are relevant to the case in question:

- (1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;
- (2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
- (3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
- (4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another

permanent living arrangement and why;

- (5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
- (6) Any other criteria the court deems necessary.

N.C. Gen. Stat. § 7B-907(b). "[T]he judge shall [also] make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-907(c). In the event that the trial court determines that the juvenile should remain in DSS custody, the provisions of N.C. Gen. Stat. § 7B-507 requiring DSS to make reasonable efforts at reunification also become applicable. *Id.* In order to appropriately end otherwise-required reunification efforts, the trial court must make written findings of fact to the effect that such efforts would clearly be futile or inconsistent with the juvenile's health, safety, and need for a safe and permanent home within a reasonable period of time. See N.C. Gen. Stat. §§ 7B-507(b) and 7B-906(c).

According to the undisputed information in the record, Helen was taken from Respondent-Grandmother's custody by DSS on 30 July 2010. As a result, regardless of whether Respondent-Grandmother was Helen's guardian or Helen's custodian, the trial

court was required to conduct further proceedings to determine whether Helen could be returned to Respondent-Grandmother's home. Although the trial court held a number of hearings after Helen was taken into DSS custody, it never made specific findings addressing the issues delineated in the relevant statutory provisions.<sup>4</sup> Thus, the trial court erred by concluding that Respondent-Grandmother lacked standing to participate in this proceeding and that DSS had no obligation to make reasonable efforts to reunify Helen and Respondent-Grandmother. In addition, given that the trial court's order effectively ended any attempt to reunify Helen and Respondent-Grandmother without making the statutorily-required findings of fact, the trial court's order was affected by an error of law for this reason as well.

### III. Conclusion

Thus, the trial court erred by concluding that Respondent-Grandmother was not Helen's guardian at the time that Helen was taken into DSS custody, by finding that Respondent-Grandmother

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<sup>4</sup> Although both DSS and the guardian *ad litem* argue that, despite the absence of findings couched in the relevant statutory language, the trial court did make the findings of fact necessary to support ending any efforts at reunifying Helen with Respondent-Grandmother, we do not find this argument persuasive given the trial court's explicit statement that DSS had "no legal duty to attempt to reunite [Helen] with" Respondent-Grandmother given that Respondent-Grandmother "has no legal standing in this proceeding."

lacked standing to participate in this proceeding, and by authorizing DSS to refrain from attempting to reunify Helen with Respondent-Grandmother. As a result, the trial court's order should be, and hereby is, reversed, and this case is remanded to the Orange County District Court for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).