IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1169

Filed: 16 May 2017

New Hanover County, No. 15 JA 202

IN THE MATTER OF: J.F.

Appeal by Respondent-Father from an order entered 27 September 2016 by Judge J.H. Corpening II in New Hanover County District Court. Heard in the Court of Appeals 17 April 2017.

Dean W. Hollandsworth for petitioner-appellee New Hanover County Department of Social Services.

Office of the Appellate Defender Glenn Gerding, by Assistant Appellate Defender Annick Lenoir-Peek, for respondent-appellant father.

Melanie Stewart Cranford for Guardian ad Litem appellee.

HUNTER, JR., Robert N., Judge.

Respondent appeals from a permanency planning order granting legal guardianship of his child, J.F. ("Jason")[1] to the child's maternal aunt. On appeal, Respondent asserts the trial court committed the following errors: (1) failing to make a proper inquiry of Jason's proposed guardian; (2) waiving future review hearings

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[1] We use this pseudonym to protect the juvenile's privacy and for ease of reading.

when Jason had not lived with his guardian for at least one year; (3) reciting testimony and counsel's arguments in its findings of facts, which, in turn, do not support the trial court's conclusions of law; and (4) decreasing his visitation with Jason. For the following reasons, we affirm in part and vacate and remand in part.

I. Factual and Procedural Background

On 13 August 2015, the day after Jason's birth, New Hanover County Department of Social Services ("DSS") filed a juvenile petition alleging Jason to be a neglected and dependent juvenile. DSS based the petition upon Jason's mother's "lengthy" history of alcoholism, substance abuse, and mental health issues. The petition further averred Jason's mother lived in a homeless shelter, "nominally" participated in her family services case plan with regard to another child in the custody of DSS, and was not stable enough to parent a child at that time. Also on 13 August 2015, the trial court placed Jason in nonsecure custody.

At the time of the petition, Respondent was "unsure" of paternity. On 26 August 2015, the trial court ordered paternity testing for Respondent. In September 2015, a DNA test confirmed Respondent as Jason's father.

On 23 September 2015, the New Hanover County District Court held an adjudication and disposition hearing. In an order entered 29 October 2015, the trial court adjudicated Jason as a neglected and dependent juvenile. The trial court awarded DSS custody of Jason and placed Jason with his maternal aunt, ("Anne").[2] The trial court also allowed Respondent weekly visitation. The trial court ordered Respondent to comply with DSS's case plan, participate in an assessment at Coastal Horizons, participate in random alcohol and drug screens, obtain and maintain "appropriate" housing and financial stability, and participate in parenting classes.

DSS conducted a study of Respondent's home on 26 January 2016. At that time, Respondent lived in a two-bedroom duplex with a roommate. Respondent planned to put Jason's crib in the living room. DSS requested Respondent's roommate's information, so DSS could conduct a background check. Respondent failed to provide this information to DSS.

Also in January 2016,[3] Respondent completed a drug and alcohol screen, which was "diluted" and "negative." On 16 February 2016, Respondent began parenting classes. On 29 March 2016, Respondent failed to complete a requested drug and alcohol screen. Also in March 2016,[4] Respondent started working as a painter and carpentry helper at J&L Companies.

On 5 April 2016, Respondent's urine tested positive for alcohol. On 18 April 2016, Respondent finished his Comprehensive Clinical Assessment. On 31 May 2016, Respondent's hair tested positive for cocaine and codethyline. When asked about the

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[2] We use this pseudonym to further protect Jason's identity.

[3] The record is unclear as to what day in January 2016 Respondent completed a drug screen.

[4] The record is unclear as to Respondent's exact starting date at J&L Companies.

presence of cocaine, Respondent asked DSS social worker Cory Hugus "if it was possible if he brushed up against it casually due to his roommate that lives in the home, if that would cause him to come up positive." Hugus asked Dan Shapiro, who said the amount in Respondent's test would be caused by Respondent touching cocaine "in a manner that was consistent and regular, probably also illegal." Hugus relayed Shapiro's answer to Respondent. Respondent thought his roommate may have sabotaged him and put cocaine in his food or drink.

On 10 June 2016, Respondent reported to DSS that his roommate no longer lived with him. Respondent also made improvements to his home. Specifically, he furnished the home for Jason and:

> painted all the walls, all the ceilings, patched up all the holes, put in some door casings where there was none, were just open closets . . . replaced all the receptacle covers, put the little protectors in there . . . paid about $600 in payroll and $400 in materials and that's not including the hours that [he] put in, about a thousand dollars['] worth of repairs to the house to get it up to standards.

On 15 June 2016, the guardian *ad litem* visited Respondent's home. The house was clean, and Respondent had a crib, stroller, play pen, and "other age appropriate furnishings." However, Respondent's roommate's clothing and furniture were still in the home.

Respondent missed a group meeting at Coastal Horizons on 20 June 2016, but attended on 27 June 2016. On 30 June 2016, Respondent tested negative for alcohol, but positive for Oxycodone.[5, 6] On 11 July 2016, Respondent attended a group meeting at Coastal Horizons, but missed an individual session. On the same day, Respondent tested positive for alcohol and Oxycodone. Respondent missed a group meeting on 8 July 2016, but attended an individual session on 19 July 2016.

On 28 July 2016, the trial court held a subsequent permanency planning hearing. DSS's evidence tended to show the following.

DSS first called Cory Hugus, a social worker with DSS. On the morning of the hearing, Hugus conducted a home study at Respondent's residence. During the visit, she noted:

> I think [Respondent] has done a lot of work on his home. He did have appropriate sleeping arrangements for [Jason]. He has a crib or a pack-and-play. Uhm he has strollers, he has a high chair. He has many of the items that he would need for [Jason]. Uhm, we did talk with, about a couple of things. There were three fire alarms, we talked maybe an additional one by his bedroom. Uhm, and some little stuff like that. He was in the process of, he had kits to, for safety for [Jason] that he was working on putting different things in the home.

At the time of the hearing, Anne acted as Jason's guardian. Hugus discussed custody, as well as guardianship, with Anne. Hugus believed Anne was willing to provide care "as long as [Jason] needs care." Hugus and Anne discussed in "detail"

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[5] Also, in an undated screen by Coastal Horizons, Respondent tested positive for alcohol and Ethyl Glucuronide.

[6] On the Tuesday before the hearing, Respondent gave Hugus one of his pill bottles, as proof of prescription for Oxycodone.

the obligations of being a guardian for Jason. Hugus visited Anne's home, where Jason lived at the time of the hearing. Hugus described Anne's home as "appropriate." Only Anne and Jason live in the home, and the home has a play area and a private room for Jason. Hugus also found Anne's finances were adequate to provide "care and all the resources that [Jason] needs[.]"

DSS next called Anne. Anne worked full time at an electrical construction company. Her income adequately provided for hers and Jason's needs. Current on all her bills, Anne also had "some" savings. Only Jason and Anne lived in her apartment. While Anne worked during the day, Jason went to daycare. Anne was "[o]ne hundred percent" committed to providing care for Jason.

Anne and Hugus discussed visitation with Respondent. Anne understood she needed to provide visitation, and she was willing to do so. Anne also understood the obligations and duties of being Jason's guardian.

Next, Respondent testified on his own behalf. Respondent admitted he missed some meetings at Coastal Horizons, but he attended meetings at Alcoholics Anonymous to "supplement" the meetings he missed. In the eleven months prior to the hearing, Respondent only missed three visits with Jason. When he visited with Jason, the two "have a great time." Respondent provided diapers and a stuffed animal for his visits with Jason.

At the end of the hearing, the trial court granted guardianship to Anne. The trial court granted visitation "at least twice a month with the authority of [Anne] to expand that." The trial court waived further review hearings upon the one year anniversary of placement (25 September 2016) with Anne. At that date, the trial court would release the guardian *ad litem*. The trial court did not cease reunification efforts with Respondent.

The trial court entered a written permanency planning order on 27 September 2016. Respondent filed notice of appeal.

II. Standard of Review

"[Appellate] review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. If the trial court's findings of fact are supported by any competent evidence, they are conclusive on appeal." *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (citations omitted). We review conclusions of law *de novo*. *Id.* at 41, 698 S.E.2d at 530.

A court's determination regarding a child's best interests is reviewed under an abuse of discretion standard. *In re J.B.*, 172 N.C. App. 1, 24, 616 S.E.2d 264, 278 (2005) (citation omitted). We also review a dispositional order of visitation for abuse of discretion. *In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007) (citations omitted). A discretionary decision will be disturbed only if it is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision. *White v. White,* 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (citation omitted).

III. Analysis

We review Respondent's contentions in four parts: (A) inquiry of the proposed guardian; (B) waiver of future review hearings; (C) contested findings of fact; and (D) decreasing Respondent's visitation.

A. Inquiry of DSS's Proposed Guardian, Anne

Respondent first contends the trial court erred by awarding guardianship to Anne without making proper verification. Respondent acknowledges the trial court made findings of fact that Anne understood the legal significance of guardianship and that she had the financial means to care for him as long as needed. Respondent argues these findings are not proper in form because they are recitations of testimony. He also challenges, as not supported by evidence, the finding that Anne has the financial resources to care for Jason. He submits there is insufficient evidence regarding Anne's expenses to permit a finding that she has the financial resources to provide for Jason without other financial assistance. We disagree.

Under N.C. Gen. Stat. § 7B-906.1(j) (2016):

> [i]f the court determines that the juvenile shall be placed in the custody of an individual other than a parent or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person being

> appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.

Id.

A trial court is not required to make specific findings of fact in order to comply with statutes requiring the trial court to verify that a guardian or custodian understands the legal significance of the role and has adequate resources, if the record contains competent evidence of the person's financial resources and understanding of the legal significance of the role. *In re J.H.*, ____ N.C. App. ____, ____, 780 S.E.2d 228, 240 (2015) (citations omitted). Thus, the form of the findings of fact does not matter, as long as the record contains evidence to support the trial court's determination. "The court may consider any evidence, including hearsay evidence . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C. Gen. Stat. § 7B-906.1(c) (2016). The evidence may include reports and a home study. *In re J.E.*, 182 N.C. App. 612, 617, 643 S.E.2d 70, 73 (2007).

Here, Hugus, the social worker, testified to the following: (1) she discussed guardianship with Anne and the obligations Anne would have in that position, including financial; (2) Anne agreed with those obligations; (3) Anne possessed adequate financial resources to provide for Jason's needs; and (4) Anne is employed full time.

Furthermore, Anne testified to the following: (1) she has been employed full time for the past two years by an electrical construction company; (2) she has adequate income to provide for her needs and those of Jason; (3) all of her bills are paid up; (4) she has money in savings; and (5) between her income and the support she receives from DSS, she has adequate resources to care for Jason until he reaches adulthood. Anne also testified (1) she was committed to providing care for Jason; (2) she was willing to participate in visitation with Respondent; and (3) she understood the duties and obligations of being a guardian.

The home study of Anne's residence shows: (1) Anne lives alone in a two-bedroom, two-bath apartment; (2) she has weekly income in the amount of $480; and (3) Jason has his own bedroom in the apartment.

We conclude this evidence supports the trial court's determination that Anne understood the legal consequences of guardianship and possessed adequate resources to care for Jason. *Compare In re N.B.*, ___ N.C. App. ___, ___, 771 S.E.2d 562, 568 (2015) (holding the trial court complied with N.C. Gen. Stat. § 7B-906.1 when guardians testified regarding their willingness to be responsible for the juveniles until they turned 18, there was a report stating the guardians were willing and able to provide care, and the social worker spoke "in depth" with the guardians about the requirements and responsibilities of being guardians), *with In re P.A.*, ___, N.C. App. ___, ___, 772 S.E.2d 240, 245-48 (2015) (holding the court lacked evidence to verify guardianship when the only evidence was an unsworn answer confirming the guardian had the ability to support the juvenile), *and In re J.H.*, ___ N.C. App. at ___, 780 S.E.2d at 239-40 (holding the court lacked evidence to verify guardianship when the only evidence was a guardian *ad litem* report stating the juvenile had no financial or material needs, but the proposed guardians did not testify at the hearing and neither DSS nor the guardian *ad litem* reported the proposed guardians were aware of the legal significance of guardianship). Accordingly, we overrule this assignment of error.

B. Waiver of Future Review Hearings

Respondent next contends the trial court erred by waiving future review hearings. We agree.

A court is permitted to waive periodic review hearings if it:

> finds by clear, cogent, and convincing evidence each of the following:
>
> (1) The juvenile has resided in the placement for a period of at least one year.
>
> (2) The placement is stable and continuation of the placement is in the juvenile's best interests.
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> (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months.
>
> (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion.

> (5) The court order has designated the relative or other suitable person as the juvenile's permanent custodian or guardian of the person.

N.C. Gen. Stat. § 7B-906.1(n) (2016). Failure to make findings of fact satisfying each of the criteria is reversible error. *In re P.A.*, ___ N.C. App. ___, ___, 772 S.E.2d 240, 249 (2015).

Respondent argues at the time of the hearing, Jason had not resided with Anne for at least one year, and, thus, the first criterion was not satisfied. He also argues the trial court erred by failing to state the standard of proof it utilized in its findings of fact in support of waiver of further hearings.

The guardian *ad litem* and Petitioner both acknowledge at the time of the hearing, Jason had not been placed with Anne for the requisite period. However, the guardian *ad litem* and Petitioner argue at the time of the entry of the order on 27 September 2016, Jason resided with Anne for more than one year (one year and two days). We are not persuaded by this argument.

As a general principle, findings of fact are to be made based upon evidence of record at the time of a hearing. *See In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003) (citation omitted) ("All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing."). Since the evidence of record at the time of the permanency planning hearing showed Jason resided with Anne for less than one year, since 25 September 2015, it was impossible for the trial court to find that he had been residing with Anne for more than one year at the time of the hearing on 28 July 2016. *See In re P.A.*, ___ N.C. App. at ____, 772 S.E.2d at 248-49 (concluding that it would have been "impossible" for the court to find that a child had been residing with the placement for one year at the time of the hearing when the child had only been placed for 60 days at that time).

Petitioner and guardian *ad litem* cite to *In re J.H.*, ___ N.C. App. ___, 780 S.E.2d 228 and *In re A.S.*, No. COA16-472, 2016 WL 7102724 (unpublished) (N.C. Ct. App. Dec. 6, 2016) in support of their argument. In *In re J.H.*, after holding the trial court lacked jurisdiction to enter the permanency planning order, this Court stated:

> [a]nd it would have been impossible for the trial court to make a finding as to the first criterion, because James had not resided with his maternal grandparents for at least one year at the time of the 8 January 2015 hearing *or at the time the trial court entered its 23 February 2015 permanency planning order.*

___ N.C. App. at ___, 780 S.E.2d at 244 (emphasis added). Petitioner and guardian *ad litem* cite *In re A.S.* for the proposition that the trial court's oral rulings at a 21 July 2015 hearing did not constitute the trial court's final ruling. 2016 WL 7102724, at *2. After the 21 July 2015 hearing, the trial court reopened the hearing on 8 December 2015, and entered an order on 2 February 2016. *Id.*

First, regarding *In re A.S.*, this Court explicitly stated "the operative time from which to measure N.C. Gen. Stat. § 7B-906.1(n)(1)'s one-year requirement was 8

December 2015, the date on which the permanency planning hearing concluded." 2016 WL 7102724, at *2. Thus, our holding is in line with *In re A.S.* Next, regarding *In re J.H.*, we hold the language cited by Petitioner and guardian *ad litem* is unbinding dicta, as this Court had already remanded the order on another issue. Additionally, *In re A.S.* contradicts *In re P.A.* When two cases at this Court contradict, we are bound by the first opinion, *In re P.A.* *In re R.T.W.*, 359 N.C. 539, 542, n. 3, 614 S.E.2d 489, 491, n.3 (2005), *superseded by statute on other grounds, as recognized in In re M.I.W.*, 365 N.C. 374, 722 S.E.2d 469 (2012) (citation omitted).

Accordingly, we vacate the portion of the order waiving further review hearings. Because we conclude the finding cannot stand on this basis, we need not consider Respondent's argument concerning a statement as to the standard of proof.

C. Contested Findings of Fact

Respondent next contends Findings of Fact Numbers 2, 3, 4, and 6 are insufficient to support the conclusions of law because the findings recite testimony of witnesses and arguments of counsel. We agree the findings contain impermissible recitations of testimony and arguments, but we nevertheless affirm the trial court's grant of guardianship.

"In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon . . . ." N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2016). Thus, the trial court must, through "processes of logical reasoning," based on the evidentiary facts before it, "find the ultimate facts essential to support the conclusions of law." *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003) (quotation marks and citation omitted). The findings of fact must be "sufficiently specific to enable an appellate court to review the decision and test the correctness of the judgment." *Quick v. Quick,* 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982) (citation omitted). Recitations of the evidence do not constitute findings of fact because they do not reflect a conscious determination by the trial court as to what the true facts are. *In re M.R.D.C.*, 166 N.C. App. 693, 699, 603 S.E.2d 890, 894 (2004) (citation omitted). "[I]t is axiomatic that the arguments of counsel are not evidence." *State v. Collins,* 345 N.C. 170, 173, 478 S.E.2d 191, 193 (1996) (citations omitted).

Even when findings of fact are improper, reversible error does not result if other proper findings support the trial court's conclusions of law and decision. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240-41 (2006) (citation omitted) (holding when ample other findings support a trial court's determination, an erroneous finding is not reversible error).

A duly-appointed guardian for a juvenile (1) operates under the court's supervision, (2) has the care, custody, and control of the juvenile, (3) may represent the juvenile in legal actions, (4) may consent to certain actions on the part of the juvenile in lieu of the parent, and (5) may consent to any necessary remedial, psychological, medical or surgical treatment of the juvenile. N.C. Gen. Stat. § 7B-600(a) (2016). The trial court may appoint a guardian for the juvenile if it determines it would be in the juvenile's best interests. *Id.* Conversely, the trial court may subsequently terminate the guardianship if it determines the relationship is no longer in the juvenile's best interests. N.C. Gen. Stat. § 7B-600(b) (2016).

Respondent argues Findings of Fact Numbers 2, 3, 4, and 6 are mere recitations of testimony and arguments of counsel.

The contested findings are as follows:

> 2. Cory Hugus, social worker with the New Hanover County Department of Social Services testified as to the accuracy and authenticity of the Court Report dated July 28, 2016 that was accepted into evidence and considered by the Court, along with the Comprehensive Clinical Assessments of [Respondent] and [Jason's mother] and drug screens for [Respondent]. Ms. Hugus testified that the Department's recommendations [are] to cease efforts with the Respondent-Parents and that the Court grant legal guardianship of the Juvenile to the maternal aunt, [Anne]. The Respondent-Mother is alleged to be living in California and has not been in contact with the Department or engaged in any services. The Department received written notice that [Jason's mother] was terminated from Port Human Services Program on March 15, 2016 due to not returning to reengage in services. She had begun treatment at Helping Hand of Wilmington but she did not engage in treatment. [Respondent] was inconsistent with his participation at Coastal Horizons and had various positive drug screens; January 2016 negative, diluted; 4/5/2016 alcohol positive; 5/31/2016 Hair screen – cocaine positive and alcohol negative; 6/30/2016 alcohol negative and positive for oxycodone. [Respondent] stated at the time that he had a prescription for oxycodone. Ms.

Hugus testified that [Respondent] stated that his roommate used cocaine and he could have gotten it on his skin or his roommate could have sabotaged him and put it in his food. The home study for [Respondent] was denied due to safety issues. Ms. Hugus testified that she has discussed assuming legal guardianship of the Juvenile with his maternal aunt, [Anne] and she acknowledged that she understands the duties of guardianship and has the financial means to care for the Juvenile and will care for the Juvenile as long as needed. [Anne]'s home is very appropriate for the Juvenile and he will be in placement with [Anne] for one year next week. The Department has exhausted all reasonable efforts with both Respondent-Parents and it would be in the best interest for legal guardianship of the Juvenile be granted to his maternal aunt, [Anne].

3. [Anne], maternal aunt and placement provider, testified that she understands the legal significance of assuming legal guardianship of the Juvenile and has the financial means to care for the Juvenile. [Anne] testified that she is current on all her financial obligations. [Anne] testified that the Juvenile visits with her siblings and she is open for providing visitation to the Respondent-Father. She has not communicated with him directly during the course of this matter.

4. [Respondent] testified that he had a Comprehensive Clinical Assessment with Level I outpatient treatment recommendations and is current with Coastal Horizons for group and individual therapy and attends AA meetings to supplement meetings missed at Coastal Horizons. He has trouble with missing classes due to transportation issues. [Respondent] testified that his roommate has moved out of the house and his sister might reside in the home. His sister is an over the road long distance truck drive[r] and can assist him financially in the home. [Respondent] testified that there is no smoking in the home now and he has painted, patched and replaced receptacle cover[s] and has made over $1,000 in repairs to

refurbish the home for his son. [Respondent] testified that the Department and the Guardian ad Litem were to come see his home after repairs were made and have not done so. [Respondent] has completed parenting classes and submitted his certificate of completion into evidence. [Respondent] testified that he does not consume any alcohol prior to visitation and his last DWI was 8 years ago. [Respondent] testified that he attends visitation weekly and enjoys his visits with his son. [Respondent] testified that he is self-employed as a painter and counsel submitted a copy of his advertisement for his company along with pictures of his house to show improvement and repairs made as well as toys, clothes, diapers and furniture purchased for his son and a picture of [Jason] taken during a visit. In addition, [Respondent] submitted character references from his parents, landlord and employer into evidence. Medical documentation of his spinal issues also was accepted into evidence and photos of his oxycodone prescription bottle. [Respondent] testified that he can abstain from drinking alcohol and is able to care for his child. He testified he has family support that would also help him and he would follow any court orders related to the mother and restriction on her contact with the child. When cross-examined, he had difficulty answering questions about Alcoholic Anonymous meetings.

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6. Counsel for the Respondent-Father . . . requested that the Court not cease efforts and continue a primary plan of reunification with the Respondent-Father, or maintain reunification as a concurrent plan. At the very least to consider custody over guardianship, with a request of increased minimum visitation, due to [Respondent]'s continued progress and perceived bond between him and his son. Counsel stated that the case had not yet been open for one year and that [Respondent] was not the reason that the Juvenile came into custody, [Respondent] was the non-removal and non-offending parent and has a constitutionally protected right to parent this child. After

> paternity was established the only issue noted at the time of removal was [Respondent]'s housing and prior DWI charges from 10+ year prior despite his testimony. Counsel stated that [Respondent] has complied with his case plan; has housing and visitation continues to go well and [Respondent] is continuing to bond with the child. Counsel stated that the paternal grandparents will move here for one year along with his sister to help support him and his son, [Jason]. Counsel requested that the Court continue reunification efforts with the Respondent-Father or in the alternative that the Court award custody of the Juvenile to the maternal aunt and not guardianship. Counsel requested that visitation remain at two hours per week.

We strike the parts of the findings prefaced by the words "testified", "alleges", "contends", "argues", or similar language to indicate the finding is a recitation of evidence or argument of counsel. Thus, we strike all of Finding of Fact Number 6 from the record and several portions of Findings of Fact Numbers 2, 3, and 4.

We must now determine whether the remaining parts of Findings of Fact Numbers 2, 3, 4 and the other findings support the trial court's conclusions of law. The remaining findings show Respondent was inconsistent in his substance abuse treatment and tested positive at drug screens for various substances. A home study of Respondent's residence was denied due to safety issues. Respondent completed parenting classes, but missed some classes due to transportation issues. Respondent's responses to questions suggested to the trial court that he is not familiar with Alcoholics Anonymous meetings, has delayed participation in services, and has shown inconsistency with his case compliance. Additionally, Respondent's explanation for testing positive for alcohol and other controlled substances was not credible.

Furthermore, the remaining findings show Jason is "thriving" in his placement with Anne. Anne's home is "very appropriate" for Jason, and the one year anniversary of Jason in Anne's home was within the next week. Jason's placement with Anne was "stable."

The trial court further found DSS made reasonable efforts to implement the permanent plan of reunification with Respondent and legal guardianship with a relative is in the best interest of the child, as Respondent and Jason's mother have acted inconsistently with their constitutionally protected status as parents.

Although the redacted findings are sparse, we conclude the remaining findings suffice to support the trial court's determination to grant legal guardianship to Anne. The remaining findings demonstrate as of the time of the hearing, Respondent was not able or ready to provide the child with a safe home, while Anne could so provide. Accordingly, we strike Finding of Fact Number 6 and portions of Findings of Fact Numbers 2, 3, and 4. However, we affirm the trial court's grant of guardianship.

D. Respondent's Decreased Visitation

Respondent lastly contends the trial court abused its discretion by decreasing his visitation without making findings of fact to explain why it is in the child's best interest.

"An order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile's placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile's health and safety." N.C. Gen. Stat. § 7B-905.1(a) (2016).

Here, the trial court allowed visitation by Respondent for a minimum of one hour twice a month, which could be expanded upon agreement of the parties or upon motion by any party.

Respondent argues the trial court reduced his visitation without any explanation and without supporting findings of fact. In his brief, Respondent highlights a DSS report from February 2016, which showed Respondent's visits with Jason were going well.

The trial court found Respondent did not consistently participate in treatment programs and tested positive for alcohol and drugs several times. Additionally, Respondent's home was not safe enough for a home study. Thus, some reason supports the trial court's decision. Although we may have made a different decision, we cannot hold the trial court abused its discretion by decreasing Respondent's visitation with Jason. Accordingly, we overrule this assignment of error.[7]

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[7] In support of his last assignment of error, Respondent asserts, in passing, "[t]his Court has addressed situations where the visitation order was insufficient or delegated judicial discretion to a party." However, Respondent does not specifically argue the trial court committed this error. Instead, Respondent asserts the trial court did not make findings to support its conclusion that decreasing Respondent's visitation was in Jason's best interest. In 2013, the General Assembly enacted a new

IV. Conclusion

We vacate the portion of the order waiving further review hearings and remand for further proceedings. We affirm the remainder of the order.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).

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statute to govern visitation in abuse, neglect, and dependency cases. N.C. Gen. Stat. § 7B-905.1. Under this statute, a visitation plan "shall indicate the minimum frequency and length of visits and whether the visits shall be supervised." *Id.* Here, the trial court's order stated:

> [t]hat visitation for the Respondent-Parents shall be supervised by [Anne] at a minimum of one hour twice a month. Should either parent arrive to the visit and appear impaired the visitation shall be cancelled. Expansion of visitation may be allowed and if there is a dispute over this, a motion for review may be filed by any party.

[R. 146]

The trial court accounted for the minimum frequency and length of visitation (one hour, twice a month) and provided for the visitations to be supervised by Anne. Thus, our holding would be no different had Respondent properly presented this assignment of error on appeal.