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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-231

Filed: 2 October 2018

New Hanover County, No. 16 JT 29

IN THE MATTER OF: R.S.B.

Appeal by Respondent-Mother from orders entered 2 October 2017 and 7 December 2017 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 13 September 2018.

*Jennifer G. Cooke for petitioner-appellee New Hanover County Department of Social Services.*

*Peter Wood for respondent-appellant mother.*

*Alston & Bird LLP, by Kelsey L. Kingsbery and Caitlin A. Counts, for guardian ad litem.*

HUNTER, JR., Robert N., Judge.

Respondent appeals from a permanency planning order, an order terminating her parental rights to her minor child, R.S.B. (“Rebecca”),<sup>1</sup> and an order denying her motion to reopen the case for additional evidence, pursuant to Rule 59 and 60 of the

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<sup>1</sup> We use a pseudonym to protect the juvenile’s identity and for ease of reading. See N.C. R. App. P. 3.1(b) (2017).

North Carolina Rules of Civil Procedure. For the following reasons, we dismiss her appeal.

### **I. Factual and Procedural Background**

On 1 February 2016, the New Hanover County Department of Social Services (“DSS”) filed a juvenile petition alleging Rebecca to be a neglected juvenile.<sup>2</sup> The petition alleged the following narrative. Since 31 August 2015, Respondent and DSS worked together to address, *inter alia*, the following issues: (1) substance abuse, specifically of heroin and marijuana; (2) mental health issues; (3) unemployment; and (4) lack of utilities in Respondent’s home. On 17 November 2015, DSS placed Rebecca in a kinship placement. Four days later, Respondent was involved in a car accident while under the influence of subutex, opiates, amphetamines, and marijuana.<sup>3</sup> After the accident, medical personnel recommended Respondent receive inpatient or intensive outpatient treatment. Respondent did not participate in any treatment. On 4 January 2016, Respondent tested positive for marijuana and morphine. DSS placed Rebecca in non-secure custody and continued her kinship placement. The petition also alleged Rebecca lived in an environment injurious to her welfare and did not receive proper care, supervision, or discipline.

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<sup>2</sup> The petition also alleged Rebecca’s older half-brother, Kurt, was a neglected juvenile. However, Kurt is not a subject of this appeal, and, therefore, the opinion only includes facts relevant to Rebecca.

<sup>3</sup> The petition does not include any details about the accident.

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After a hearing on 25 February 2016, the trial court entered an order adjudicating Rebecca as a neglected juvenile. The trial court granted custody to DSS and set the permanent plan as reunification. DSS continued Rebecca's kinship placement. The trial court allowed Respondent weekly visitation and ordered Respondent to do the following: (1) complete a substance abuse assessment and follow all recommendations; (2) submit to random drug screens; (3) complete a parenting education program and demonstrate learned skills; (4) complete a psychological evaluation and follow all recommendations; and (5) obtain and maintain safe and stable housing and income.

The trial court conducted review hearings on 19 May and 18 August 2016. The trial court continued the permanent plan as reunification and ordered Respondent to comply with the requirements of her case plan.

The court held another review hearing on 10 November 2016. On 12 January 2017, the trial court entered a permanency planning review order. The trial court changed the permanent plan to adoption with a concurrent plan of guardianship to a court approved caretaker.<sup>4</sup> The trial court found Respondent failed to make progress on her case plan. Specifically, Respondent failed to complete parenting classes or

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<sup>4</sup> As discussed further *infra*, in 2015, the North Carolina General Assembly created N.C. Gen. Stat. § 7B-906.2 and made it applicable to matters filed or pending on or after 1 October 2015. 2015 N.C. Sess. Law 136. N.C. Gen. Stat. § 7B-906.2(a1) states “[c]oncurrent planning shall continue until a permanent plan has been achieved.” N.C. Gen. Stat. § 7B-906.2(a1) (2017). Subsection (b) states “[a]t any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan.” N.C. Gen. Stat. § 7B-906.2(b).

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substance abuse therapy, make herself available for random drug screens, obtain stable housing, or following through with recommended psychiatric services. Additionally, Respondent missed visitations with Rebecca and lived with the significant other with whom she was in the car accident in November 2015. The trial court ordered DSS to proceed with terminating Respondent's parental rights and to continue making reasonable efforts toward reunification with Respondent.

After a permanency planning review hearing on 4 May 2017, the trial court entered an order on 22 May 2017. The court found the following. Respondent tested positive for amphetamine and marijuana on 10 November 2016. Respondent also tested positive for amphetamine, marijuana, buprenorphine, and buprenorphine metabolite on 6 February 2017. Respondent did not attend any other requested drug screens. The housing Respondent shared with her significant other was "disrupted" which "caused [Respondent] to have an admission to Cherry Hospital for a suicide attempt in late February, 2017 to early March 2017." Respondent completed parenting classes on 3 April 2017. However, the court found Respondent continued "to need mental health treatment as evidenced by her recent psychiatric admission as well as needing substance abuse treatment, stable housing and employment." The court continued the permanent plan of adoption with a concurrent plan of reunification.

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On 6 June 2017, DSS filed a petition to terminate Respondent's parental rights to Rebecca, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), neglect, and (a)(2), failure to correct the conditions which led to Rebecca's removal. N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2017). The trial court held a termination of parental rights hearing on 28 August 2017. Respondent did not attend the hearing. At the hearing, three social workers testified to Respondent's inability to follow the requirements of her case plan.

DSS first called Erin Sowers. Sowers began working with Respondent on 9 October 2015 and established Respondent's initial case plan, which addressed mental health needs, substance abuse, and "implemented intensive family preservation[.]" Throughout her time working with Respondent the "home environment continued to get worse. The water was cut off. The electricity was cut off. The windows were busted out. Lots of animal feces and garbage throughout the house." After Respondent's car accident in November 2015, Sowers filed the petition alleging Rebecca to be a neglected juvenile because:

[Respondent] was not motivated to work her CPS ongoing case plan. She didn't have any follow through. She continued to present impaired. Her mood would change. It was difficult to talk with her. She would either be yelling at you, hysterically crying, or kind of a back and forth between the two. She continued to miss or she didn't even schedule mental health appointments. She states she had ADHD. She did not comply with her service agreement, any piece of it . . . . She continued to live in the home with no running water, no electricity, no heat. There was black mold you could see throughout the house, just on the walls, and just continued ongoing substance abuse.

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Additionally, Respondent denied having a substance abuse problem, yet she continued to have positive drug screens and could not explain why she continued to test positive.

DSS called Joelle Scholer, another social worker who worked with Respondent. Scholer took over the case from Sowers on 8 February 2016 and entered into a new case plan with Respondent. This plan included substance abuse assessments, random drug screens, a parenting education program, and a psychological evaluation. The plan also required Respondent to “provide safe, stable, hazard-free housing that met the needs of herself and her children []” and “demonstrate sufficient legal income supporting her household to pay her bills ongoing.” Respondent failed to complete the substance abuse assessment, attend one of two appointments for her psychological evaluation, pursue parenting classes in the Rocky Point area after she moved, attend several drug screenings, pass those drug screenings which she did attend, and to secure stable housing. Respondent did not engage in recommended actions for her service plan after Respondent completed the psychological evaluation. During the time Scholer worked on Respondent’s case, DSS moved Rebecca from her kinship placement to a foster home. The foster family was accommodating and changed plans whenever Respondent needed to adjust plans.

Finally, DSS called Jeny Webb. Webb began working on Respondent’s case on 17 November 2016. During a visitation on 15 June 2017, Respondent was impaired.

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Respondent “was very erratic, erratic in her speech, slurring, dropping things, not getting her words right. She was trying to help [Rebecca] get milkshake in her mouth and kind of missed her mouth[.]” Shortly after the visitation, authorities arrested Respondent. Respondent told Webb a random citizen saw Respondent “stumbling in the community so much that they were afraid she was going to be injured. So they called the police, and she had an outstanding warrant.” Respondent also failed to obtain safe housing. Over a span of seven months, Respondent provided Webb with six different addresses. Respondent went to the hospital for “self-injurious behaviors.” Rebecca remained with her foster family, who intended to adopt Rebecca. Webb believed the adoption was in Rebecca’s best interest.

On 2 October 2017, the trial court entered an order terminating Respondent’s parental rights to Rebecca on the ground of neglect. *See* N.C. Gen. Stat. § 7B-1111(a)(1). The trial court found termination of Respondent’s parental rights was in Rebecca’s best interest.

On 9 October 2017, Respondent filed a “Rule 59 & 60 Motion to Reopen Case for Additional Evidence[.]” (All capitalized in original). In her motion, Respondent asserted the following. She missed the termination hearing court date because she was confused by multiple appointments scheduled during the week of the hearing. Respondent mistakenly thought she had a doctor’s appointment on the scheduled court date, and believed the court date was later in the week. Had she attended the

hearing, she would have testified she did not want her parental rights terminated. Respondent “would have presented the following additional favorable evidence: (1) Documentation of completion of parenting classes, (2) Documentation of progress from Coastal Horizons Center, (3) Proof of employment, (4) Proof of clean drug screen, (5) and other relevant and favorable testimony.”

The court held a hearing on Respondent’s motion on 2 November 2017. In an order entered 7 December 2017, the trial court denied Respondent’s motion. The trial court determined Respondent’s “failure to exercise proper care with her case is not a valid excuse for her absence from the termination hearing.” On 15 December 2017, Respondent filed written notice of appeal from both the order terminating her parental rights and the order denying her Rule 59 and 60 motion.

## **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 (citation omitted).

## **III. Analysis**

### **A. The Permanency Planning Order**



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On 25 April 2018, Respondent filed a petition for writ of *certiorari*, seeking review of the 12 January 2017 permanency planning order along with her termination of parental rights appeal.<sup>5</sup> She argues the order implicitly ceased reunification efforts.

A petition for writ of *certiorari* must demonstrate merit or that some error was probably committed at the trial level. See *State v. Bishop*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 805 S.E.2d 367, 369 (2017) (citation omitted); *State v. Rouson*, 226 N.C. App. 562, 563-64, 741 S.E.2d 470, 471 (2013) (citation omitted). The decision to issue a writ is discretionary, and, thus, “the Court of Appeals may choose to grant such a writ to review some issues that are meritorious but not others for which a[n appellant] has failed to show good or sufficient cause.” *State v. Ross*, 369 N.C. 393, 400, 794 S.E.2d 289, 293 (2016) (citation omitted).

Pursuant to N.C. Gen. Stat. § 7B-1001, this Court shall review:

the order eliminating reunification as a permanent plan together with an appeal of the termination of parental rights order if all of the following apply:

1. A motion or petition to terminate the parent’s rights is heard and granted.
2. The order terminating parental rights is appealed in a proper and timely manner.
3. The order eliminating reunification as a permanent plan is identified as an issue in the record on appeal of

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<sup>5</sup> As discussed *infra*, Respondent does not bring forth any appellate argument as to the order terminating her parental rights.

the termination of parental rights.

N.C. Gen. Stat. § 7B-1001(a)(5)a (2017). Respondent did not identify the 12 January 2017 order as an issue in the record on appeal and, thus, did not properly preserve her right to appeal the order. *See id.*

In support of her petition, Respondent contends the trial court erred by implicitly ceasing reunification efforts in the 12 January 2017 permanency planning order without making the requisite findings under N.C. Gen. Stat. § 7B-906.2 (2017). Section 906.2 requires at a permanency planning hearing, the trial court “shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan.” N.C. Gen. Stat. § 7B-906.2(b). “Reunification shall remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety.” *Id.*

While reunification remained the secondary plan in this case, Respondent argues “[c]hanging the permanent plan to adoption in any custody case . . . has the *de facto* effect of ceasing reunification efforts[.]” Respondent contends the trial court also implicitly directed DSS to cease reasonable efforts toward reunification by directing DSS to file a petition to terminate parental rights. Respondent relies on several of this Court’s cases, all decided prior to the enactment of N.C. Gen. Stat. § 7B-906.2 on 1 October 2015. 2015 N.C. Sess. Laws 136. *See also In re N.B.*, 240 N.C.

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App. 353, 362, 771 S.E.2d 562, 568 (2015) (stating the order effectively ceased reunification efforts by (1) eliminating reunification as a goal of the permanent plan, (2) establishing a permanent plan of guardianship, and (3) transferring custody to the guardians); *In re A.E.C.*, 239 N.C. App. 36, 41-42, 768 S.E.2d 166, 170 (2015) (holding an order changing the permanent plan to adoption and ordering DSS to file a petition to terminate parental rights implicitly ceased reunification with the respondent-father); and *In re A.P.W.*, 225 N.C. App. 534, 537-38, 741 S.E.2d 388, 390-91 (2013) (holding the trial court's order changing the permanent plan to adoption and directing DSS to terminate parental rights implicitly ceased reunification efforts).

Under the current framework of N.C. Gen. Stat. § 7B-906.2, the trial court is required to:

adopt one or more of the following permanent plans the court finds is in the juvenile's best interest:

- (1) Reunification as defined by G.S. 7B-101.
- (2) Adoption under Article 3 of Chapter 48 of the General Statutes.
- (3) Guardianship pursuant to G.S. 7B-600(b).
- .....
- (6) Reinstatement of parental rights pursuant to G.S. 7B-1114.

N.C. Gen. Stat. § 7B-906.2(a). The statute further requires the trial court to order DSS “to make efforts toward finalizing the primary and secondary permanent plans[.]” N.C. Gen. Stat. § 7B-906.2(b).

This Court recently addressed Respondent’s argument under the new statutory framework established by N.C. Gen. Stat. § 7B-906.2 in *In re A.A.S.*, \_\_\_ N.C. App. \_\_\_, 812 S.E.2d 875 (2018). In *A.A.S.*, the respondent-mother argued although reunification remained the secondary plan, the trial court implicitly eliminated reunification as a permanent plan by ordering DSS to file a petition for termination of her parental rights. The respondent-mother asserted “it is self-contradictory to commence termination of parental rights and continue to work towards reunification.” *Id.* at \_\_\_, 812 S.E.2d at 880. This Court rejected the respondent-mother’s argument, stating “[t]he text of N.C.G.S. § 7B-906.2 clearly contemplates the use of multiple, concurrent plans including reunification and adoption. During concurrent planning, DSS is required to continue making reasonable reunification efforts until reunification is eliminated as a permanent plan.” *Id.* at \_\_\_, 812 S.E.2d at 881 (citing N.C. Gen. Stat. § 7B-906.2(b)). Therefore, this Court held “[u]nder the new statutory framework of concurrent planning,” the order changing the permanent plan to adoption with a concurrent plan of reunification and ordering DSS to proceed with terminating the respondent-mother’s parental rights “did not explicitly or implicitly eliminate reunification as a permanent

plan.” *Id.* at \_\_\_, 812 S.E.2d at 881. This Court specifically highlighted the respondent-mother’s misguided reliance on cases decided prior to the enactment of N.C. Gen. Stat. § 7B-906.2. *Id.* at \_\_\_, 812 S.E.2d at 880.

Here, as in *A.A.S.*, the 12 January 2017 order changed the permanent plan to adoption with a concurrent plan of reunification. The court ordered DSS to proceed with a termination of parental rights action. The court also specifically ordered DSS to continue to provide reasonable efforts toward reunification of Rebecca with Respondent. Thus, “[u]nder the new statutory framework of concurrent planning,” the 12 January 2017 order did not explicitly or implicitly eliminate reunification as a permanent plan and cease reunification efforts. *Id.* at \_\_\_, 812 S.E.2d at 881. Because Respondent’s argument lacks merit, there is no “good and sufficient cause” to grant her petition for writ of *certiorari*. Accordingly, in our discretion, we deny Respondent’s petition for writ of *certiorari* and, consequently, dismiss this portion of her appeal.

#### **B. Other Issues on Appeal**

Respondent did not raise any issues on appeal as to the order terminating her parental rights or the order denying her Rule 59 and 60 motion. Accordingly, we dismiss her appeal on these issues. *See* N.C. R App. P. 28(a) (2017) (“Issues not presented and discussed in a party’s brief are deemed abandoned.”).

#### **IV. Conclusion**

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For the foregoing reasons, we dismiss Respondent's appeal.

DISMISSED.

Chief Judge MCGEE and Judge ARROWOOD concur.

Report per Rule 30(e).