IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-859

No. COA21-509

Filed 20 December 2022

Pender County, Nos. 18 JA 07-08

IN THE MATTER OF: C.L.W. & C.R.W.

Appeal by Respondent-Mother from orders entered 7 May 2021 by Judge J.H. Corpening, II, in Pender County District Court. Heard in the Court of Appeals 9 February 2022.

J. Edward Yeager, Jr., for Petitioner-Appellee Pender County Department of Social Services.

Lisa Anne Wagner for Respondent-Appellant Mother.

Alston & Bird LLP, by Ryan P. Ethridge, for the Guardian ad Litem.

JACKSON, Judge.

¶ 1 Respondent-Mother appeals from the trial court's permanency planning and juvenile orders. On appeal, Respondent-Mother argues that (1) many of the findings from the trial court's permanency planning order (the "Order") are "mere recitations of testimony" and must be entirely disregarded; (2) multiple findings are unsupported by competent evidence and any remaining competent findings are insufficient to support the trial court's order; (3) the trial court's findings regarding DSS's reasonable efforts and the likelihood of the children's return home are similarly not

supported by competent evidence; and (4) the trial court failed to make the statutorily required findings of fact to waive further permanency planning review hearings. We hold that while some portions of the trial court's findings are mere recitations of testimony, absent these findings, the remaining findings are nevertheless supported by competent evidence and support the trial court's conclusions. We likewise hold that the trial court properly concluded that DSS made reasonable efforts toward reunification, and the findings supporting this conclusion were supported by competent evidence. However, we agree with Respondent-Mother that the trial court failed to make the statutorily required findings of fact to waive further review hearings and thus remand the case to the trial court solely to issue a new order with written findings consistent with N.C. Gen. Stat. § 7B-906.1(n).

I. Background

¶ 2 Respondent-Mother is the mother of three children, Charles, Colin, and Tiana.[1] Charles and Colin, who are the subject of this appeal, share the same father,[2] and their younger sister, Tiana, is the daughter of Respondent-Mother's current husband.

¶ 3 On 8 February 2018, the Pender County Department of Social Services ("DSS") filed Petitions alleging that the children were neglected and dependent juveniles. DSS received non-secured custody of the children that day. The Petitions alleged

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[1] Pseudonyms are used to protect the juveniles' privacy and for ease of reading.

[2] Charles and Colin's father is not a party to this appeal.

that the children lived in an injurious environment, and interviews with the children revealed extensive exposure to substance abuse, such that Charles and Colin could demonstrate how to roll up a dollar bill to snort drugs.

¶ 4 After a hearing held on 27 April 2018, the trial court entered an order adjudicating the children neglected. In order to progress towards reunification, the trial court ordered Respondent-Mother to maintain appropriate and stable housing and employment, complete a comprehensive clinical assessment, complete random drug screens, and attend a parenting course.

¶ 5 All of the children were initially placed with their maternal grandmother ("Grandmother"), but Tiana was subsequently moved. Although Grandmother initially lived in North Carolina, during Hurricane Florence, Grandmother and the children evacuated to Texas to stay with a family friend. Because of the unanticipated length of their stay, Charles and Colin began attending school in Texas and Grandmother also applied for a job in Texas. When attempting to move back to North Carolina, Grandmother, a nurse practitioner, could only return to her former job on a part-time basis. She subsequently decided to move permanently to Texas to pursue a better employment opportunity.

¶ 6 Because of Grandmother's move across state lines, an Interstate Compact on the Placement of Children ("ICPC") home study had to be completed for the children to return to her care. While the home study was being processed, Charles and Colin

were temporarily placed with their paternal grandparents. However, Charles was subsequently moved to a Boys and Girls Home, and Colin was separately placed in foster care. After the completion of the ICPC, the children's guardian ad litem ("GAL") recommended that Charles and Colin be placed with Grandmother in Texas. The home study found that Grandmother could financially provide for the children and had a suitable home for placement.

¶ 7 At a permanency planning hearing on 12 August 2019, the trial court ordered that Charles and Colin be placed with Grandmother. The trial court also ordered that Charles and Colin attend individual and family therapy in Texas, have calls with Respondent-Mother twice a week, and have supervised visits with Respondents once a month.

¶ 8 Grandmother brought Charles and Colin to North Carolina on a few occasions, but the children did not successfully visit with Respondent-Mother for varying reasons. Respondent-Mother also did not visit the children in Texas. Respondent-Mother told Social Worker Hansley that she was not interested in attending visits that would be supervised by Grandmother, due to her poor relationship with her mother, who she referred to as her "abuser."

¶ 9 After their move to Texas, Respondent-Mother's communications with Charles and Colin became inconsistent and infrequent. Although she occasionally attended virtual therapy with the children, these sessions ceased after two no-show

appointments from Respondent-Mother. Respondent-Mother did not send Charles and Colin gifts, missed many of their scheduled calls, failed to pick up the phone when they called her, and fell behind in her child support payments. She also did not inquire about Charles and Colin's education or medical or mental health. However, Respondent-Mother remained active in Tiana's life, regularly visiting Tiana, sending her gifts, and co-parenting with Tiana's foster parents.

¶ 10 A permanency planning review hearing was held on 29 January 2021, and the trial court heard testimony from Respondent-Mother, Social Worker Hansley, Grandmother, and Charles. As a result of this hearing, the trial court ordered Charles and Colin to be placed in the guardianship of Grandmother. Grandmother was ordered to arrange visitation if she and the children traveled to North Carolina, and Respondent-Mother was also allowed monthly supervised visitation in Texas. The trial court also waived further reviews. The trial court's written findings are elaborated as needed in our discussion below.

¶ 11 The trial court's written permanency planning and juvenile orders were entered on 7 May 2021. Respondent Mother timely appealed both of the orders pursuant to N.C. Gen. Stat. §§ 7B-1001(a)(4) and 7A-27(b)(2) (2021).

II. Discussion

¶ 12 Respondent-Mother argues that (1) the trial court failed to make findings of fact based on competent evidence and its competent findings are insufficient to

support its conclusions of law; (2) the trial court's findings regarding DSS's reasonable efforts and the likelihood of the children's return home are not supported by competent evidence; and (3) trial court failed to make the required statutory findings under N.C. Gen. Stat. § 7B-906.1(n) to waive further review. We address each argument in turn.

A. Standard of Review

¶ 13 Our "review of a permanency planning review order is limited to whether there is competent evidence in the record to support the findings of fact and whether the findings support the conclusions of law. The trial court's findings of fact are conclusive on appeal if supported by any competent evidence." *In re A.P.W.*, 378 N.C. 405, 410, 2021-NCSC-93 ¶ 14 (internal marks and citation omitted). The trial court alone has the duty to determine witness credibility, the weight given to testimony, and the reasonable inferences drawn from evidence, *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020), and this Court will not reweigh evidence on appeal, *In re A.J.T.*, 374 N.C. 504, 510, 843 S.E.2d 192, 196 (2020).

¶ 14 Conclusions of law are reviewed *de novo*. *In re D.H.,* 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006) (citation omitted). A trial court's statutory compliance is also reviewed *de novo*. *In re N.K.*, 274 N.C. App. 5, 13, 851 S.E.2d 389, 395 (2020).

B. Challenged Findings of Fact

¶ 15 Respondent-Mother argues that the trial court failed to make findings of fact

based on competent evidence and its remaining competent findings are insufficient to support its conclusions of law. More specifically, Respondent-Mother argues that (1) many of the findings are "mere recitations of testimony" and must be entirely disregarded; (2) multiple findings are unsupported by competent evidence and any remaining competent findings are insufficient to support the trial court's order; and (3) the trial court's findings regarding DSS's reasonable efforts and the likelihood of the children's return home are similarly not supported by competent evidence. While we agree that some portions of the trial court's findings are mere recitations of testimony, we hold that, absent these findings, the remaining findings are nevertheless supported by competent evidence and support the trial court's determinations. We likewise hold that the trial court properly concluded that DSS made reasonable efforts toward reunification, and the findings supporting this conclusion were supported by competent evidence.

1. Findings Mirroring Witness Testimony

¶ 16 The Juvenile Code provides that adjudication orders "shall be in writing and shall contain appropriate findings of fact and conclusions of law." N.C. Gen. Stat. § 7B-807(b) (2021). These factual findings "must be the specific ultimate facts[,] sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence." *In re H.P.*, 278 N.C. App. 195, 202, 2021-NCCOA-299 ¶ 23 (internal marks and citation omitted). On appeal, the role of this Court is

to examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case. *See In re J.W.*, 241 N.C. App. 44, 48-49, 772 S.E.2d 249, 253 (2015). *See also In re H.J.A.*, 223 N.C. App. 413, 418, 735 S.E.2d 359, 363 (2012) ("Evidentiary facts are those subsidiary facts required to prove the ultimate facts. Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts." (internal quotation and citation omitted)).

¶ 17 "According to well-established North Carolina law, recitations of the testimony of each witness do not constitute findings of fact by the trial judge." *In re A.C.*, 378 N.C. 377, 383, 2021-NCSC-91 ¶ 11 (cleaned up). Therefore, findings that consist only of witness testimony, such as findings that the witness "testified" or "stated," do not constitute findings of fact at all. *See In re A.E.*, 379 N.C. 177, 185, 2021-NCSC-130 ¶¶ 17-18. *See also In re A.C.*, 378 N.C. at 384, 2021-NCSC-91 at ¶ 12 (holding that findings merely reciting witness statements, exemplified by the words "testified," "contends," or "indicated," were not factual findings and must be disregarded). However, "there is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes." *In re A.E.*, 379 N.C. at 185, 2021-NCSC-130 at ¶ 18 (cleaned up).

¶ 18 Therefore, on appeal, this Court must disregard findings where the trial court

merely recites testimony without indicating whether it deemed the testimony credible or not, *In re N.D.A.,* at 75, 833 S.E.2d at 772, just as we are compelled to disregard findings or portions of findings unsupported by competent evidence. However, if we are confident that the trial court used logical reasoning to reach its findings, we may not disregard entire findings simply because they contain recitations of witness testimony or are taken verbatim from an earlier pleading.

¶ 19 Respondent-Mother challenges Findings of Fact 9, 10, 11, 12, 13, 18, 19, 20, 21, and 22 from the trial court's permanency planning order, arguing that they merely "summarize" witness testimony and therefore must be disregarded.

¶ 20 We disagree with Respondent-Mother that these findings merely "summarize" witness testimony. Though similar to the argument that "mere recitations" of testimony must be disregarded for failing to pass on the credibility of said testimony, Respondent-Mother attempts to expand this rule, essentially asking us to hold that where portions of findings merely recite testimony, but other portions do not, the entire finding is thereby a "summary" of testimony, and thus the entire finding must be disregarded. However, while we are compelled to disregard the *portions* of findings that are unsupported or merely recite testimony, we may not disregard the portions that *are* supported where we are confident that the trial court used logical reasoning to make those findings.

¶ 21 Here, while we agree that a handful of statements in the trial court's findings

are unsupported for merely stating, *inter alia*, that "[the witness] testified" or "[the therapist] reported," we nevertheless hold that, omitting these statements, the remainder of the trial court's findings are supported by competent evidence, and those supported findings amply support the trial court's conclusions.

¶ 22 For example, one of the challenged findings, Finding of Fact 11, states in relevant part as follows:

> 11. The Social Worker testified that Respondent Mother had another child that was in the custody of the PCDSS, [Tiana], who is 4 years old . . . . [Tiana] was removed from her parent's home with [Charles and Colin] back in 2018. Custody of that child returned to Respondent mother and her father in September 2020. In the case with that child, Respondent mother visited regularly, participated in shared parenting with the Foster Parents, bought birthday and Christmas gifts for the child and maintained telephone contact with that child; however, she did not do the same for the minor children, [Charles and Colin.]

We agree with Respondent-Mother that the first sentence of this finding, beginning "[t]he Social Worker testified" is not a finding of fact, but a mere recitation of testimony. However, the remainder of Finding of Fact 11, while supported by Social Worker Hansley's testimony, is not simply a recitation of that testimony, but contains findings ultimately made by the trial court and resolving a material dispute regarding Respondent-Mother's differential treatment of her children and efforts

toward their reunification.[3]

¶ 23 Similarly, Finding of Fact 13 states:

> 13. That Respondent mother has not consistently visited with the minor children in this matter and when she did, the visits were confrontational between her and the oldest child, [Charles]. Social Worker testified that when the children first came into the care of PCSS, Respondent mother would say things to upset [Charles] during the visits. Social Worker would have to intervene and redirect the oldest child and Respondent mother. That after the children were placed with their grandmother in Texas, Respondent mother refused to have or maintain contact with her mother and refused to do shared parenting with her mother. She is behind in child support payments.

Again, we agree that the sentence beginning "Social Worker testified" is not a finding of fact, but a mere recitation of testimony. However, the remainder of Finding of Fact 13 contains findings ultimately made by the trial court and these findings are supported by Social Worker Hansley's testimony and in part by Respondent-Mother's own testimony.

¶ 24 Therefore, while we must disregard portions of the findings contested by Respondent-Mother, ample portions of these findings remain to support the trial court's order. Because Finding of Fact 10 was, in its entirety, a recitation of testimony, it has been entirely disregarded. However, in addition to the supported

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[3] In her testimony, Respondent-Mother denied treating Tiana any differently from Charles and Colin. However, the trial court did not credit this testimony.

portions of findings 11 and 13, the remaining portions of the findings challenged by Respondent-Mother are as follows:

> 9. Respondent mother was involved in Family Therapy via skype and/or video with [her Therapist,] a Licensed Professional Counselor through the Texas State Board of Examiners . . . . Progress of therapy was shown through the Therapist's notes and/or letters that were signed and notarized without objection. . . . Respondent mother attended therapy on 6/1/20 and 7/15/20 but was a no show again on 7/22/20 and did not give an explanation to the Therapist as to why she did not attend the session. Per the Therapist, it is her policy to cancel sessions after two (2) no show appointments. Therapy was then cancelled and there has been no contact between the Therapist and Respondent Mother since the last session on July 15, 2020. . . .
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> 12. . . . The grandmother was also very supportive of her daughter.
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> 18. . . . Respondent mother has not sent gifts, Christmas presents or even called on a regular basis. The parents have not contacted [Grandmother], the schools, medical providers or anyone else for updates on the children's progress regarding their education, medical or mental health. . . . [Grandmother] did not bring the boys for a Christmas visit in 2020 because she had to have surgery and could not travel for six (6) weeks.
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> 19. . . . [Grandmother] works as a Registered Nurse and her Financial Affidavit was introduced into evidence. [Grandmother] understands the difference between custody and guardianship and is willing to accept the responsibility of Guardianship. . . . She would also be open to allowing another 3rd party to supervise the visits, which

> is what she and the Social Worker suggested to Respondent mother previously.
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> 20. . . . [Charles's] mother started lying to him and his brother and trying to turn them against their grandmother. The letters written by [Charles] and his brother were introduced into evidence. He and his brother want to remain with their grandmother. . . . [Respondent-Mother] told him in October that he [sic] was going to send him a birthday gift and that he has yet to see it. Respondent mother was abusive, both verbally and physically and that [Colin] received most of the physical abuse and [Charles] got the verbal abuse. [Respondent-Mother] beat [Colin] with a HDMI cord leaving bruises on him. . . .
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> 21. . . . [Respondent-Mother] constantly referred to her mother during the Hearing as an "Abuser" and "Liar". [Respondent-Mother] and her husband are ready to have the children returned to them. Her husband received $10,000.00 in advance of a job that he will be completing. They have also received extra money from stimulus payments, tax returns and had "tons of money".
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> 22. . . . In fact, [Respondent-Mother] has Christmas gifts for them from this past Christmas and the gifts are waiting for them on their beds in their rooms at her house. She completed her Parenting Class on March 6, 2019 and had the Certificate for that[.]

¶ 25 Because these findings are amply supported by testimony from the permanency planning hearing, we reject Respondent-Mother's argument that they are unsupported by competent evidence.

¶ 26 Further, in its oral rendering of the judgment, the trial court expressed the following:

> [T]oday [Respondent-Mother] [] said she owns her mistakes, she owns her problems. Well, no, she doesn't. She does not own them. She clearly doesn't. Even today, pointing the fingers at everybody else in the world and . . . where we are is a horrible relationship between a mother and her children. For a fifteen-year-old to say in his testimony, "My mother is a liar. If she said the sky was blue, I would walk outside and check." For him to write, "I do not want to live with my God-awful mother."
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> Well, you know, that – we've come to that over time because of her lack of contact and, for lack of a better way to put it, in a – I'll say an apparent lack of interest. She says she loves her boys, but if you look at it through the lens of . . . these boys, two eyes and their ears, she's turned her back on them. I don't know how I can reunify that.
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> . . .
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> There's a reality check here, and this relationship has deteriorated so far as . . . I don't see a way to repair that. I know making [Charles] come to Pender County, trying to make him go to therapy is not a solution. It is . . . an intentional infliction of trauma if I did that. It would inflict trauma on this young man that he may never recover from. So . . . I'm not going to do that. Guardianship is granted to grandmother.

¶ 27 Altogether, despite some recitation of testimony, we are confident that the trial court used logical reasoning to reach its findings after receiving the competent evidence in the Record and testimony from the permanency planning hearing. *See In re J.N.J.*, 2022-NCCOA-785 ¶ 23.

2. Other Challenged Findings

¶ 28 The following relevant findings were not challenged by Respondent-Mother,

are supported by competent evidence, and are therefore binding on appeal:

> 8. That Respondent Mother remains at her home in Kelly, NC with her husband and daughter. She has been there since December 2019. She has complied with all drug screen requests since the last Court Hearing and according to Cape Side Psychiatry and Addiction Care 101, all screens have been negative. She remains self employed and is no longer on probation; however, she refuses to communicate with her mother in an effort to visit or co-parent the minor children.
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> . . .
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> 15. That the minor children have a set Duo Video chat visit with Respondent mother on Thursdays at 5pm PST and she is scheduled to call the boys on Tuesdays and Saturdays. Respondent Mother does not maintain consistent contact with the minor boys. Sometimes the boys will call a Family Friend . . . to see if he can get Respondent mother to answer their calls or call them back. Social Worker also scheduled Duo visits between the boys and their sister on the days that they are scheduled to visit with their mother.
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> 16. That on December 19[,] 2019, the boys and [Grandmother] traveled to North Carolina for their visit with their mother. The Social Worker attempted to arrange a visit between the children and Respondent Mother whereby [Grandmother] could supervise the visit; however, Respondent Mother did not want her mother to supervise her visit. Social Worker set the visit up for Friday[,] December 20, 2019 so she could supervise the visit, but on the day of the visit, Respondent mother said she was sick and unable to visit. She was aware that they were here just for the weekend. . . .
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> 17. That Respondent Father visited with the boys in July 2018, December 2019 and June 2020. He maintains contact with the minor children and their grandmother.

¶ 29 However, Respondent-Mother argues the following findings, or portions thereof, are unsupported by competent evidence:

> 7. That both children continue to do well in the home with their grandmother and she is meeting all of their needs. . . . Family Therapy began in February 2020.
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> . . .
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> 23. That it is unlikely that the children will be returned to the home of either parent immediately or within the next six (6) months. Respondent mother has not consistently maintained contact with the children. She does not call the boys regularly nor does she answer the phone when they call her. She has not sent them gifts, as promised. She does not call the boys nor their grandmother to get progress reports concerning their education, medical nor mental health. When encouraged to contact her mother to check on the boys, Respondent mother refused to do so and advised the Social Worker that she does not have a healthy relationship with her mother. Family Therapy has not been productive, and Respondent Mother has not been consistent when it comes to mending and building her relationship with her oldest two children. . . .
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> 25. That the Court finds that the conditions which led to the removal of the minor children from the home of the parents still exist and the return of the minor children to the home of the parents would be contrary to the health, safety, welfare and best interest of the said children.
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> 26. That there are no children in the home from which the minor children were removed.
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> . . .
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> 28. That it is not in the best interest, health, safety or

> welfare of the minor children to return them to the home of the parents. Respondent Father is not able to care for the children. Respondent mother has not put forth the effort to work towards Reunification with the minor children and their relationship remains strained. Respondent mother's lack of interest in the minor children is apparent and she has turned her back on them. Returning the children to the custody of the mother would be an intentional infliction of trauma on them.
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> 29. That the best concurrent plan of care to achieve a safe, permanent home for the minor children within a reasonable time shall remain: A primary plan of Guardianship with a concurrent secondary plan of Reunification and the Court finds this to be the best plan to achieve a safe, permanent home for the minor children within a reasonable time period.
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> 30. That the parents have acted inconsistently with their constitutionally protected status as a parent and it is in the best interest, health, safety and welfare of the minor children that Guardianship be granted to their maternal grandmother.

¶ 30 With respect to Finding of Fact 7, Respondent-Mother argues that the portion "Family Therapy began in February 2020" is unsupported by competent evidence, and that Family Therapy actually began in March 2020. Respondent-Mother also argues that Finding of Fact 26 is unsupported, because Tiana was returned to Respondent-Mother's home in September 2020 and this finding directly contradicts a portion of Finding of Fact 11, which finds that Tiana was returned in September of 2020. However, because we do not review challenged findings that are unnecessary to support a trial court's determination, we need not address these minor

discrepancies. *See In re S.R.F.*, 376 N.C. 647, 654, 656, 2021-NCSC-5 ¶ 16 (2020). *See also In re C.J.,* 373 N.C. 260, 262, 837 S.E.2d 859, 860 (2020) (declining to review challenged findings unnecessary to support the grounds for adjudication).

¶ 31 With regard to Finding of Fact 30, we hold that Respondent-Mother has waived her constitutional argument. Our Supreme Court has held that a respondent-parent who fails to raise a constitutional argument in the trial court despite having an opportunity to do so waives it on appeal. *In re J.N.*, 381 N.C. 131, 133-34, 2022-NCSC-52 ¶¶ 9-10. Here, the trial court afforded all parties an opportunity to present closing arguments at the conclusion of the permanency planning hearing. Although DSS argued that Respondent-Mother had acted inconsistently with her parental rights, Respondent-Mother did not make any argument that awarding guardianship to Grandmother was a violation of her constitutional rights. Accordingly, Respondent-Mother has waived this argument.

¶ 32 Respondent-Mother argues that Finding of Fact 25, stating in part that "the conditions which led to the removal of the minor children from the home of the parents still exist," was unsupported by competent evidence because the basis for Charles and Colin's removal in the Petition was "substance abuse and [Respondent-Mother's] refusal to cooperate with DSS[,]" both of which she has made ample progress on. Moreover, Respondent-Mother argues that "[c]learly DSS would not have returned custody of [Respondent-Mother's] four-year-old daughter had the

conditions that led to the children's removal from the home not been resolved."

¶ 33 With regard to Respondent-Mother's argument about the "conditions for removal" finding, we first note that this is unlike a termination of parental rights action under N.C. Gen. Stat. § 7B-1111(a)(2), where the trial court can only terminate parental rights under this provision after finding that "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2) (2021). No such finding about "conditions for removal" is statutorily required to support a permanency planning order with an award of guardianship. *See* N.C. Gen. Stat. § 7B-906.1(d), (e) (2021).

¶ 34 However, this is not to say the conditions that led to the children's removal should not be considered, as the trial court must look at the progress the respondent-parents have made in eliminating the conditions that led to removal in order to determine whether it is possible for the children to return home within six months of the permanency planning hearing. *In re J.V.*, 198 N.C. App. 108, 112, 679 S.E.2d 843, 845 (2005); *In re T.K.*, 171 N.C. App. 35, 39, 613 S.E.2d 739, 741 (2005), *aff'd per curium*, 360 N.C. 163, 622 S.E.2d 494 (2005). Nevertheless, despite the fact that a respondent-parent's progress in eliminating the conditions that led to removal must be considered, such progress does not guarantee that the children will be returned

home. *See, e.g.*, *In re T.K.*, 171 N.C. App. at 39, 613 S.E.2d at 741 (upholding the trial court's finding that while the mother had made progress, the progress was insufficient to assure the trial court that the children could safely return home).

¶ 35 Furthermore, the children cannot be returned home to the respondent-parents unless the trial court specifically finds that the children will receive proper care and supervision in a safe home. N.C. Gen. Stat. § 7B-903.1(c) (2021). *See id.* § 7B-906.1 ("If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7B-903.1 shall apply to any order entered under this section."). *See also id.* § 7B-101(19) (defining "safe home" as a "home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect"). Consequently, the interests of the children are paramount, and if placement with a parent is found to not be in the children's best interest, the court is required to place them elsewhere. *See In re T.K.*, 171 N.C. App. at 39, 613 S.E.2d at 741 (holding that "if the interest of the parent conflicts with the welfare of the child, the latter should prevail[,]" because at the permanency planning stage, "the child's best interests are paramount, not the rights of the parent").

¶ 36 Here, although Respondent-Mother argues that the conditions which led to Charles and Colin's removal no longer existed because she exhibited significant progress with her substance abuse and cooperation with her case plan, the trial court

nonetheless found that it was not possible for the children to be returned to Respondent-Mother's home in the next six months, and it was not in the children's best interest, health, or safety to return to Respondent-Mother's care. Even accepting Respondent-Mother's argument that the "conditions of removal" finding was not supported by competent evidence because she had addressed the substance abuse concerns that initially led to Charles and Colin's removal,[4] disregarding this finding, alone, would not support a reversal of the trial court's order.

¶ 37 In Finding of Fact 23, the trial court found that it was not possible for the children to be returned to Respondent-Mother's home in the next six months. Though more properly categorized as a conclusion of law, this conclusion must be left undisturbed as it is supported by adequate findings. In this same finding, the trial court found that, in the years they had been removed from her care, Respondent-Mother failed to communicate with the children consistently, did not inquire about their education or health, and had "not been consistent when it comes to mending and building" her relationship with Charles and Colin. Additionally, in Finding of Fact 28, the trial court found that her relationship with the children had deteriorated

[4] We note briefly that Respondent-Mother's narrow view of "conditions of removal" is contrary to our Supreme Court's broader view that the "conditions of removal" encompasses not only those conditions alleged in the Petition or found in the Order on adjudication, but also "include[s] all of the factors that directly or indirectly contributed to causing the juvenile's removal from the parental home." *In re B.O.A.*, 372 N.C. 372, 381-2, 831 S.E.2d 305, 312 (2019).

due to her lack of effort towards reunification, her "lack of interest in the minor children is apparent and she has turned her back on them[,]" and "[r]eturning the children to the custody of the mother would be an intentional infliction of trauma on them." All of these findings are supported by competent evidence from the Record, including letters from the children, as well as testimony from Social Worker Hansley, Grandmother, and Charles, all of whom testified to Respondent-Mother's inconsistent and, at times, indifferent behavior towards Charles and Colin. In fact, after highlighting their unstable relationship, Social Worker Hansley specifically testified that due to the amount of strain, the relationship between the children and Respondent-Mother could not be fixed "within the next six months."

¶ 38 Further, in order for Charles and Colin to be returned to Respondent-Mother, the trial court would be required to find that the children would receive proper care and supervision in a safe home. The trial court did not make such a finding, instead finding that returning Charles and Colin to Respondent-Mother's care would intentionally inflict trauma upon them, despite Respondent-Mother's contention that she could provide a safe and stable home.

¶ 39 Additionally, in the latter part of Finding of Fact 25, the trial court found that the return of the minor children to the home of the parents would be contrary to the health, safety, welfare and best interest of the said children." We likewise leave this finding, which is more appropriately categorized as a conclusion of law, undisturbed

as well as the similar "best interest" determinations from Findings of Fact 28 and 30. The determination of the children's best interest is in the trial court's discretion, which may only be reviewed for an abuse of discretion. *In re B.C.T.*, 265 N.C. App. 176, 185, 828 S.E.2d 50, 57 (2019). "A trial court's determination will remain undisturbed under an abuse of discretion standard so long as that determination is not manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re A.M.*, 377 N.C. 220, 226, 2021-NCSC-42 ¶ 18 (cleaned up).

¶ 40 Here, in addition to the supported findings regarding the children's strained relationship with Respondent-Mother, the trial court specifically found that Respondent-Mother lied to Charles and Colin, "trying to turn them against their grandmother"; that Respondent-Mother verbally and physically abused the children; and that the children both "want[ed] to remain with their grandmother." Charles also testified that he "feel[s] like [he's] in a stable home" with Grandmother and that he is safe, happy, and healthy in his current placement. While a child's preference is not controlling on a trial court, "[a]s a juvenile ages, the trial court should afford more weight to his wishes." *In re A.K.O.*, 375 N.C. 698, 706, 850 S.E.2d 891, 896 (2020). Although Colin was only 10 years old at the time of the hearing and did not testify, Charles was 15 years old when he testified to much of the above, and his testimony as well as his handwritten letter in the Record are competent evidence to support the

trial court's findings. Based on all of the court's supported findings,[5] we hold this conclusion is supported by appropriate findings of fact and the trial court did not abuse its discretion when determining the children's best interests.

¶ 41 Though we commend Respondent-Mother's progress in battling her substance abuse issues, as explained previously, her progress does not ensure that the child will be returned home. *See In re T.K.*, 171 N.C. App. at 39, 613 S.E.2d at 741. Here, although the trial court acknowledged that Respondent-Mother "has complied with all drug screen requests since the last Court Hearing and according to Cape Side Psychiatry and Addiction Care 101"; "all screens have been negative"; and Respondent-Mother "remains self employed and is no longer on probation"; in the same finding, the trial court also found that Respondent-Mother still "refuse[d] to communicate with her mother in an effort to visit or co-parent the minor children." Consequently, in considering her progress, the trial court ultimately found that Respondent-Mother was not putting enough effort towards reunification, and we cannot reweigh evidence in her favor on appeal.

¶ 42 Lastly, despite pointing out that Respondent-Mother's daughter was returned to her care and arguing that this "clearly" meant the conditions that led to the

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[5] Though not argued in detail by Respondent-Mother, we briefly note that these same findings also support the trial court's conclusion from Finding of Fact 29 that "the best concurrent plan of care to achieve a safe, permanent home for the minor children" was Guardianship with Grandmother with a secondary plan of reunification.

children's removal had been resolved, the trial court was not so persuaded. In fact, the trial court specifically compared Charles and Colin's case to their sister's, finding that while Tiana was removed at the same time as Charles and Colin in 2018, but then subsequently returned to Respondent-Mother's care in 2020, "[i]n the case with [her daughter], Respondent mother visited regularly, participated in shared parenting with the Foster Parents, bought birthday and Christmas gifts for the child and maintained telephone contact with that child; however, she did not do the same for the minor children, [Charles and Colin.]"

3. Findings on DSS's Reasonable Efforts

¶ 43 "Our General Assembly requires social service agencies to undertake reasonable, not exhaustive, efforts towards reunification." *In re A.A.S.*, 258 N.C. App. 422, 430, 812 S.E.2d 875, 882 (2018). "'Reasonable efforts' is defined as the diligent use of preventative or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time." *In re S.D.*, 276 N.C. App. 309, 321, 2021-NCCOA-93 ¶ 47. At permanency planning hearings, the trial court must assess whether DSS's efforts to reunify were reasonable unless reunification was ceased in a previous order. N.C. Gen. Stat. § 7B-906.2(c) (2021).

¶ 44 Respondent-Mother argues the trial court's findings that DSS made reasonable efforts to reunify, and Charles and Colin were not likely to return home in six months,

are not supported by competent evidence. Specifically, Respondent-Mother argues that while DSS took "some steps" to reunify the family, social services nevertheless "failed to provide meaningful assistance regarding a principal issue – in this case, choice of placement for Charles and Colin." Further, Respondent-Mother challenges the trial court's decision to place Charles and Colin with Grandmother, arguing that this placement was not reasonable.

¶ 45 The trial court made the following finding regarding DSS's reasonable efforts:

> 24. That the PCDSS has made reasonable efforts in this matter to prevent or eliminate the need for placement with the PCDSS, to reunify the family and develop and implement a permanent plan for the children in that the Department has attempted to work with the parents prior to the filing of the Petitions; however, under the circumstances, it was neither possible nor reasonable to prevent the removal of the children from the home of the parents. Face to face contact with the children, parents, caretakers and foster parents; PCDSS has aided in visits between the children and the parents; the PCDSS has scheduled and completed drug screens and attempted to assist the parents in obtaining the required evaluations; Social Worker located placement for [Colin] in February of 2019; contacted potential foster parents regarding possible placements, schools, etc; attended IEP meeting; ICPC packet completed; scheduled and requested drug screens; contacted Coastal Horizons; scheduled and attended CFT and PPR meetings; contacted PPO for Respondent Mother on updates on progress; contacted therapist [B.] Carr regarding family therapy; spoke to maternal grandmother regarding Guardianship of the children; made medical and dental appointments for minor children and contacted Coastal Horizons requested copy of mental health evaluations; Social Worker followed up on progress of

> Respondent Mother's therapy; Requested and scheduled drug screens; Followed progress of Family Therapy in Texas, traveled to Texas to visit the boys and grandmother; monthly contact and Duo visits with the boys; Visited Respondent Mother's home; Attempted to schedule Thanksgiving and Christmas visits between the boys and parents; Encouraged Respondent mother to send gifts/cards to children and communicate with her mother in an effort to co-parent.

¶ 46 First, we note that the first few lines of this finding, that "the PCDSS has made reasonable efforts in this matter to prevent or eliminate the need for placement with the PCDSS, to reunify the family and develop and implement a permanent plan for the children[,]" is more appropriately categorized as a conclusion of law. Nevertheless, we hold that this conclusion is supported by all of the findings that follow within Finding of Fact 24 describing DSS's efforts to reunify the family, and these findings are adequately supported by competent evidence. Social Worker Hansley testified to her actions above and the Record also reflects her extensive involvement.

¶ 47 Respondent-Mother's argument that this finding is not supported stems mainly from her contention that placement with Grandmother in Texas was, in her view, unreasonable to support reunification with Respondent-Mother in North Carolina due to the geographic distance and her rocky relationship with Grandmother. However, as explained above, the trial court found that returning Charles and Colin to Respondent-Mother's care would be an intentional infliction of

trauma upon them, and the children wished to remain with Grandmother. Despite opportunity to do so and encouragement from social services, Respondent-Mother failed to consistently communicate with or show affection to her children. She frequently missed their scheduled calls and failed to pick up the phone when they called her. She did not send them birthday or Christmas gifts or cards, even after promising the children she would. She adamantly refused to communicate with Grandmother in any effort to co-parent, failed to inquire about her children's health or education, and did not stay in touch with Charles and Colin. In light of these supported findings regarding Respondent-Mother's failures to progress toward reunification, we may not reweigh the evidence as requested by Respondent-Mother.

C. Required Statutory Findings

¶ 48 We agree with Respondent-Mother, DSS, and the GAL that the trial court failed to make the statutorily required findings of fact to waive further review hearings.

¶ 49 The trial court may waive further permanency planning review hearings if it finds by clear, cogent, and convincing evidence that

> (1) The juvenile has resided in the placement for a period of at least one year or the juvenile has resided in the placement for at least six consecutive months and the court enters a consent order pursuant to G.S. 7B-801(b1).
>
> (2) The placement is stable and continuation of the placement is in the juvenile's best interests.

> (3) Neither the juvenile's best interests nor the rights of any party require that permanency planning 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) (2021).

¶ 50 "Our statutes and cases require the trial court to address all five criteria," and "failure to do so is reversible error." *In re K.L.*, 254 N.C. App. 269, 284, 802 S.E.2d 588, 598 (2017) (citation omitted). Here, the trial court did not make specific findings regarding the first, second, third, or fourth criterion. Although portions of these findings could potentially be inferred from other findings in the court's order, "[i]t is not the role of the appellate court to try to interpret the intent of the trial court." *In re K.L.*, 254 N.C. App. 269, 285, 802 S.E.2d 588, 598 (2017) (internal marks omitted).

III. Conclusion

¶ 51 Because we hold the trial court failed to make the statutorily required findings of fact to waive further review hearings, we remand this case to the trial court solely to issue a new order with written findings consistent with N.C. Gen. Stat. § 7B-906.1(n). The remainder of the trial court's Order is affirmed.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).