IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-623

Filed 16 April 2024

McDowell County, No. 22 JA 22

IN THE MATTER OF: M.M.

Appeal by Respondent-Mother from order entered 17 March 2023 by Judge Robert K. Martelle in McDowell County District Court. Heard in the Court of Appeals 18 March 2024.

McDowell County Department of Social Services, by Aaron G. Walker, for Petitioner-Appellee McDowell County Department of Social Services.

Pinto Coates Kyre & Bowers, PLLC, by Jon Ward, for Other-Appellee Guardians.

Garron T. Michael Attorney At Law, by Garron T. Michael, for Respondent-Appellant Mother.

PER CURIAM.

Respondent-Mother appeals from a permanency-planning order that eliminated reunification from the permanent plan and awarded guardianship of M.M. ("Max")[1] to his maternal aunt and uncle. We affirm.

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 42(b).

I. Background

Max was born in early March of 2022. On 16 March 2022, the McDowell County Department of Social Services ("DSS") obtained nonsecure custody of Max and filed a petition alleging him to be a neglected juvenile.

On 9 June 2022, DSS filed an amended petition alleging Max to be a neglected juvenile. This petition alleged that DSS received a report on 9 March 2022 that Max was born at thirty weeks of gestation, had tested positive for methamphetamine, and was in the neonatal intensive-care unit. Although Respondent-Mother denied use of any illegal substance, she had "several positive drug screens at admission and throughout prenatal care," and had tested positive for methamphetamine and fentanyl. Respondent-Mother left the hospital on 9 March 2022, while Max remained in the hospital's neonatal intensive-care unit.

On 11 March 2022, a social worker contacted Respondent-Mother and the putative father. Upon arriving at the putative father's home, the social worker observed the home to be without electricity or running water and saw no "baby supplies, no crib, no bassinet, no blankets, [no] clothes, etc." When the social worker spoke to Respondent-Mother, she was sitting in a truck that had a very strong odor of marijuana. Respondent-Mother denied marijuana use and became "hostile" towards the social worker, "yelling cursing and refusing to discuss" her positive drug screen. Respondent-Mother drove away from the scene in the truck.

The petition further alleged that Respondent-Mother visited the hospital on 12

March 2022 to see Max and discuss breast feeding. A physician ordered Respondent-Mother to submit to drug screens prior to being allowed to breast feed. Respondent-Mother submitted to a urine screen on 12 March 2022 and tested positive for fentanyl, opiates, and oxycodone. While Respondent-Mother had a prescription for "opiates after her c-section," she had not been prescribed fentanyl. Against the medical staff's advice, Respondent-Mother left the hospital after the positive drug screens were produced.

On 7 July 2022, the trial court entered an order adjudicating Max to be a neglected juvenile and continuing custody with DSS. Max had been placed with his maternal aunt and uncle since 22 April 2022. The trial court ordered Respondent-Mother to: submit to a comprehensive clinical assessment ("CCA") and follow all recommendations; complete and demonstrate benefit from substance-abuse treatment and parenting classes; submit to random drug screens as requested by DSS and produce negative results for all substances for which Respondent-Mother does not have a valid prescription; maintain appropriate housing, employment, and transportation; and consistently visit with Max. The trial court granted Respondent-Mother weekly supervised visitation with Max for a minimum of two hours.

Following a permanency-planning hearing on 27 October 2022, the trial court entered an order on 16 November 2022, stating that Respondent-Mother was allowed unsupervised visitation with Max at his maternal aunt's home, beginning 11 August 2022. But on 1 September 2022, the visits reverted to supervised visits at DSS

because of Respondent-Mother's inconsistent attendance and because Respondent-Mother "was showing signs of drug abuse and then screened positive in urine for methamphetamines and amphetamines."

Respondent-Mother had housing, transportation, and employment, and began parenting classes. She denied use of any illegal substances, despite testing positive for methamphetamine on 16 September 2022. Respondent-Mother submitted to a CCA, which recommended substance-abuse outpatient treatment, medication management, group and individual therapy for her mental health, and domestic-violence classes. The primary permanent plan was set as reunification, with a secondary plan of custody or guardianship.

Following a permanency-planning hearing on 5 January 2023, the trial court entered an order on 11 January 2023, finding that Respondent-Mother was lying to her assessors. Although Respondent-Mother had been attending group therapy, she had not completed substance-abuse outpatient treatment. The trial court found that Respondent-Mother was not making adequate progress within a reasonable time. The trial court changed the primary plan to guardianship with a secondary plan of reunification.

Following a hearing on 2 March 2023, the trial court entered an order on 17 March 2023, finding that Respondent-Mother had completed a new CCA on 11 January 2023. The trial court recommended that she receive substance-abuse treatment, wellness-and-recovery group therapy, individual therapy, and medication

management. While she claimed to have last used methamphetamine in December of 2021, Respondent-Mother had positive drug screens in April, May, and August of 2022. She had an inconclusive sample on 1 December 2022 and a negative screen later that same month. She had "only recently" started substance-abuse outpatient treatment "despite this case being nearly twelve months old."

In the 17 March 2023 order, the trial court found that efforts to reunite Max with Respondent-Mother would be clearly unsuccessful or inconsistent with Max's safety and need for a safe, permanent home within a reasonable time. The trial court further found that Respondent-Mother acted in an unfit manner and in a manner inconsistent with her constitutionally protected status as a parent. The trial court granted guardianship of Max to the maternal aunt and uncle. Respondent-Mother filed timely notice of appeal.

II. Discussion

As an initial matter, we note that the 17 March 2023 permanency-planning order effectively ceased reunification efforts despite not explicitly stating it was doing so. *See In re N.B.*, 240 N.C. App. 353, 362, 771 S.E.2d 562, 568 (2015) (holding that a permanency-planning order ceased reunification efforts despite not explicitly doing so by "(1) eliminating reunification as a goal of [the juvenile's] permanent plan, (2) establishing a permanent plan of guardianship with [the prospective guardians], and (3) transferring custody of the children from [Youth and Family Services] to their legal guardians"). The 17 March 2023 permanency-planning order eliminated

reunification as a permanent plan, established the primary permanent plan of guardianship, did not name a secondary plan, and appointed the maternal aunt and uncle as legal guardians of Max.

We review an order ceasing reunification to discern "whether there is competent evidence in the record to support the findings [of fact] and whether the findings support the conclusions of law." *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (citing *In re Eckard*, 148 N.C. App. 541, 544, 559 S.E.2d 233, 235 (2002)). Findings of fact are conclusive if supported by competent evidence. *Id.* at 41, 698 S.E.2d at 530. "Uncontested findings are likewise binding on appeal." *In re J.M.*, 384 N.C. 584, 591, 887 S.E.2d 823, 828 (2023).

"The trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed for abuse of discretion." *In re A.P.W.*, 378 N.C. 405, 410, 861 S.E.2d 819, 826 (2021). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re J.R.*, 250 N.C. App. 195, 201, 791 S.E.2d 922, 926 (2016) (quoting *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002)).

"At a permanency planning hearing, '[r]eunification shall be a primary or secondary plan unless,' *inter alia*, 'the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020) (quoting N.C. Gen. Stat. § 7B-906.2(b)). "The finding that reunification efforts clearly would

be unsuccessful or would be inconsistent with the juvenile's health or safety may be made at any permanency planning hearing, and if made, shall eliminate reunification as a plan." N.C. Gen. Stat. § 7B-906.2(b) (2023). Moreover, the trial court must make findings "which shall demonstrate the degree of success or failure toward reunification" concerning each of the following:

> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

Id. § 7B-906.2(d). The trial court must make findings under both subsections 7B-906.2(b) and 7B-906.2(d) to cease reunification efforts. *See In re A.W.*, 280 N.C. App. 162, 169–70, 867 S.E.2d 235, 241 (2021).

First, Respondent-Mother challenges findings of fact 9, 11, 13, 15, 18, and 22 "to the extent that they indicate a failure by [Respondent-Mother] to comply with her case plan." Respondent-Mother argues that the evidence demonstrates that she had either successfully completed or was engaged in each component of her case plan. We disagree.

The trial court's unchallenged findings 19 and 20 demonstrate that Respondent-Mother was not in compliance with her case plan. These unchallenged findings are binding on appeal. *See In re J.M.*, 384 N.C. at 591, 887 S.E.2d at 828.

Unchallenged finding of fact 20 sets out the components of Respondent-Mother's case plan, which required her to: submit to a CCA and follow all recommendations; complete and demonstrate benefit from substance-abuse treatment and parenting classes; submit to random drug screens and produce negative results for all substances for which Respondent-Mother does not have a valid prescription; maintain appropriate housing, employment, and transportation; and consistently visit with Max.

Unchallenged findings 19 and 20 establish that although Respondent-Mother had housing, transportation, and employment, and had been visiting with Max, she had not successfully complied with or completed the majority of the components of her case plan. Respondent-Mother had most recently submitted to a CCA on 11 January 2023, and the trial court recommended she receive substance-abuse treatment, wellness-and-recovery group therapy, individual therapy, and medication management. But Respondent-Mother had "only recently started to attend [substance-abuse outpatient intensive treatment] classes despite this case being nearly twelve months old."

Moreover, in finding 19, the trial court found that Respondent-Mother had "consistently" lied to her assessor for the CCA, claiming she last used methamphetamine in December 2021 and not disclosing her use of fentanyl. Respondent-Mother tested positive for methamphetamine and fentanyl in October and December 2021; positive for methamphetamine in January 2022; positive for

methamphetamine three times in March 2022; and positive for methamphetamine in April and September of 2022. In addition, Respondent-Mother had not completed parenting classes. Based on the foregoing, Respondent-Mother's challenges to findings of fact 9, 11, 13, 15, 18, and 22 are without merit, as competent evidence shows that Respondent-Mother failed to comply with her case plan. *See In re P.O.*, 207 N.C. App. at 41, 698 S.E.2d at 530.

Next, Respondent-Mother argues that the trial court erroneously eliminated reunification as a permanent plan. She contends that while the trial court made the required findings under subsection 7B-906.2(d), those findings either are unsupported by the evidence or weigh in favor of Respondent-Mother. We disagree.

Again, in order to cease reunification efforts subsection 7B-906.2(d) requires the trial court to make findings concerning the following:

> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C. Gen. Stat. § 7B-906.2(d).

Here, the trial court made findings tracking the statutory language of subsection 7B-906.2(d) in finding of fact 22:

> [Respondent-Mother is] not making adequate progress

> within a reasonable period of time under the plan. [Respondent-Mother has] not made any substantial progress on [her] case plan[] and [she has] not been honest [about her] drug use. [Respondent-Mother is] not actively participating in or cooperating with the plan, the Department, and the Guardian ad Litem for the juvenile. [Respondent-Mother] remain[s] available to the court, the Department, and the Guardian ad Litem for the juvenile. In the past the [Respondent-Mother] ha[s] acted in a manner inconsistent with the health or safety of the juvenile but [is] not currently.

The trial court's findings related to subsections 7B-906.2(d)(3) and (4) are favorable to Respondent-Mother. These findings provide that Respondent-Mother remained available to the trial court, DSS, and Max's guardian ad litem, and that Respondent-Mother was not currently acting in a manner inconsistent with the health or safety of Max.

The trial court's findings related to subsections 7B-906.2(d)(1) and (2), however, do not favor Respondent-Mother. These findings are supported by the unchallenged findings discussed above and establish that Respondent-Mother was not making adequate progress with her case plan, despite Max being in DSS custody for nearly one year. The unchallenged findings also show that Respondent-Mother was not cooperating with the case plan at the time of the permanency-planning hearing.

These findings are consistent with the trial court's ultimate finding that efforts to reunite Max with Respondent-Mother would be unsuccessful or inconsistent with Max's safety, so the trial court's ultimate finding was not "so arbitrary that it could

not have been the result of a reasoned decision." *See In re J.R.*, 250 N.C. App. at 201, 791 S.E.2d at 926. Therefore, the trial court's cessation of reunification efforts is sufficiently supported and not an abuse of discretion. *See id.* at 201, 791 S.E.2d at 926. Accordingly, we affirm the trial court's 17 March 2023 permanency-planning order ceasing reunification efforts.

III. Conclusion

The trial court's 17 March 2023 permanency-planning order is affirmed.

AFFIRMED.

Panel consisting of:
Judges ZACHARY, CARPENTER, and THOMPSON.

Report per Rule 30(e).