NO. COA12-743
NORTH CAROLINA COURT OF APPEALS

Filed: 18 December 2012

IN THE MATTER OF:

L.M.T.	Cumberland County
A.M.T.	Nos. 09 JT 432-33

Appeal by respondent mother from order entered 5 March 2012 by Judge Edward A. Pone in Cumberland County District Court. Heard in the Court of Appeals 19 November 2012.

Christopher L. Carr for petitioner-appellee Cumberland County Department of Social Services.

J. Thomas Diepenbrock for respondent-appellant mother.

Beth A. Hall for guardian ad litem.

STROUD, Judge.

Respondent mother appeals from the trial court's order terminating her parental rights to the juveniles L.M.T. ("Linda") and A.M.T. ("Andrew").[1] Respondent challenges the findings of fact in a prior permanency planning order ceasing

[1] To protect the privacy of the minor children and for ease of reading we will refer to them by pseudonym.

reunification efforts and the order terminating her parental rights. We reverse the orders ceasing reunification efforts and terminating respondent's parental rights.

On 25 March 2009, the Cumberland County Department of Social Services ("DSS") received a referral alleging that Linda and Andrew were neglected. Respondent had a history of drug use, unemployment, and mental instability, and had frequently left the juveniles with various caretakers. On 29 July 2009, DSS filed a petition alleging the juveniles were neglected and dependent. On 9 December 2009, the trial court entered an order adjudicating the juveniles dependent and dismissing the neglect allegation. In the dispositional order, the trial court established a permanent plan of reunification with respondent and ordered DSS to continue to make reasonable efforts toward reunification.

The juveniles' permanent plan remained reunification until the trial court entered a permanency planning order on 19 October 2010. In that order, the trial court changed the permanent plan to placement with court-approved caretakers and a concurrent plan of adoption, and relieved DSS from making further efforts toward reunification. Respondent entered

written notice of her objection to the order ceasing reunification efforts.

On 29 July 2011, DSS filed a petition to terminate respondent's parental rights, as well as the parental rights of the juveniles' father, who is not a party to this appeal. After a 12 December 2011 termination hearing, the trial court entered an order terminating respondent's parental rights on 5 March 2012. Respondent gave notice of appeal from the termination order.

At the outset, we must first address a motion to dismiss the appeal jointly filed by DSS and the guardian ad litem ("GAL"). In that motion, DSS and the GAL argue that respondent failed to give proper notice of appeal from the permanency planning order because respondent's notice of appeal cites only the trial court's termination of parental rights order. This argument is misplaced.

Chapter 7B establishes a specific procedure to permit a parent to obtain review of an order ceasing reunification efforts during an appeal from a subsequent termination of parental rights order. N.C. Gen. Stat. § 7B-1001(5)(a) (2011). The parent may obtain review if: (1) the parent's rights are subsequently terminated; (2) the parent gives valid notice of

appeal from the termination order; and (3) the order ceasing reunification efforts is identified as an issue in the record on appeal in the appeal from the termination order. *Id.* Here, respondent's rights were terminated, she gave proper and timely notice of appeal from the order terminating her parental rights, and she identified the order ceasing reunification efforts as a proposed issue in the record on appeal. We also note respondent filed written notice of her objection to the order ceasing reunification efforts. Accordingly, we hold that respondent complied with the statutory procedure to preserve her right to raise issues related to the order ceasing reunification efforts and we deny the motion to dismiss.

On appeal, respondent first contends the trial court failed to make sufficient findings to cease reunification efforts pursuant to N.C. Gen. Stat. § 7B-507(b) (2011) in the 19 October 2010 permanency planning order. We agree.

The statute provides:

> In any order placing a juvenile in the custody or placement responsibility of a county department of social services . . . the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease *if the court makes written findings of fact* that:
>
> (1) Such efforts clearly would be

> futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;
>
> (2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7B-101;
>
> (3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or
>
> (4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

N.C. Gen. Stat. § 7B-507(b) (emphasis added).

"When a trial court is required to make findings of fact, it must make the findings of fact specially." *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003). "The trial court may not simply recite allegations, but must through processes of logical reasoning from the evidentiary facts find the ultimate facts essential to support the conclusions of law." *Id.* (citation and quotation marks omitted). In an order ceasing

reunification efforts, it is not sufficient for a trial court to make findings of fact that could support the findings required by N.C. Gen. Stat. § 7B-507(b)(1). *In re I.R.C.*, ___ N.C. App. ___, ___, 714 S.E.2d 495, 499 (2011). Instead, the order must contain written findings directly addressing the relevant factors listed in the statute. *Id.*

In this case, the trial court's order ceasing reunification efforts does not contain sufficient findings addressing the relevant statutory factors. Although the trial court made numerous and detailed findings addressing respondent's troubled case history, it made no finding explicitly linking those facts with any of the factors listed in N.C. Gen. Stat. § 7B-507, including the futility of further reunification efforts or that further efforts would be inconsistent with the juveniles' health, safety, and need for a safe, permanent home. N.C. Gen. Stat. § 7B-507(b)(1). Accordingly, we must conclude that the order contains insufficient findings of fact pursuant to N.C. Gen. Stat. § 7B-507(b) and must be reversed. *In re Weiler*, 158 N.C. App. 473, 480, 581 S.E.2d 134, 138 (2003).

In their joint brief, DSS and the juvenile's guardian ad litem concede the trial court failed to make sufficient findings of fact as required by the statute, and explained by this Court

in *In re I.R.C.*, but urge this Court to excuse the order as "consistent with the language and intent" of the statute. We, however, are bound by our prior resolution of this issue in *In re I.R.C. In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). Accordingly, we reverse the trial court's 19 October 2010 permanency planning order and the 5 March 2012 order terminating respondent's parental rights and, because we find sufficient evidence in the record to support the required findings, we remand for additional findings. Because we reverse both orders, we need not address respondent's other arguments.

REVERSED and REMANDED.

Judges ELMORE and STEELMAN concur.

Report per Rule 30(e).