NO. COA13-147
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

IN THE MATTER OF:
A.S.
D.T.
M.S.
H.H.
M.L.

Currituck County
Nos. 11 JA 07-11

Appeal by respondent-mother from orders entered 11 October 2012 and 6 November 2012 by Judge Eula E. Reid in Currituck County District Court. Heard in the Court of Appeals 5 August 2013.

Courtney S. Hull, for petitioner-appellee Currituck County Department of Social Services.

Richard Croutharmel, for respondent-appellant mother.

MARTIN, Chief Judge.

Respondent-mother ("mother") appeals from two permanency planning and review orders. In the first order, the district court: (1) relieved the Currituck County Department of Social Services ("DSS") from further efforts toward reunification as to minor children A.S. ("Ashley"), M.S. ("Missy"), H.H. ("Hilary"),

and M.L. ("Miley");[1] (2) changed the permanent plan for these children from reunification to guardianship with a relative; and (3) appointed guardians for Hilary and Miley. The second order appointed mother's half-sister ("Ms. H.") as a guardian for Ashley and Missy, while returning to mother's custody the minor child D.T. ("Dorothy"). Mother preserved her right to appeal the cessation of reunification efforts and gave timely notice of appeal from both orders.

During the period at issue in these proceedings, mother was married to Dorothy's father ("Mr. T."), with whom she had a second child ("Monique"). Dorothy and Monique, along with Ashley, Missy, Hilary, and Miley resided with mother and Mr. T., who served as their primary caretaker while mother worked full-time. The family has a prior DSS history, dating back to 2005, which includes inappropriate discipline and domestic violence in mother's home. Previous DSS involvement resulted in two reports that required mandatory services, one report that ended with services recommended, and four reports that were closed following the investigation/assessment.

The instant proceedings began on 24 October 2010 when DSS received a Child Protective Services ("CPS") report that Mr. T.

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

had injured seven-year-old Miley by hitting her with a belt and knocking her to the ground. Miley sustained "a large, dark, bruise with a scrape" on her chin and welts down her back. DSS removed her from the home and placed her with her paternal grandparents without initiating a court proceeding. After another CPS report on 31 January 2011, DSS interviewed three-year-old Missy at her daycare and found that she had "two circular red bruises to the right side of her face between her eye and hairline." Missy disclosed that Mr. T. had "popped" her on the right side of her head for stuffing food in her mouth. During an interview with a DSS social worker at her school, six-year-old Hilary stated that Mr. T. "beat" Missy the previous evening while mother was at work, and that mother "did not respond to the marks on [Missy]'s face" when she arrived home. Hilary also claimed that Mr. T. "beats" her "all the time" with a belt or his hand.

On 1 February 2011, DSS obtained non-secure custody of Ashley, Missy, Hilary, Miley, and Dorothy, and filed petitions alleging that they were abused, neglected, and dependent juveniles. Mother and the children's four fathers, including Mr. T., stipulated to the petitions' allegations and to adjudications of neglect based thereon. Despite their

stipulations, mother and Mr. T. refused to participate in any services recommended to them by DSS. Moreover, mother continued to allow Mr. T. to supervise and physically discipline the children, and failed to recognize the improper methods of discipline utilized by Mr. T.

Beginning 22 July 2011, Ashley, Missy, and Dorothy were returned to Mr. T. and mother's home on a trial basis. Hilary joined her sisters in Mr. T. and mother's home on 17 August 2011, but Miley remained in the care of her paternal grandparents due to her fear of Mr. T.

Despite DSS's efforts towards reunification, a review order entered by the district court on 30 August 2011, and filed on 17 October 2011, found that communication between DSS and mother was "no longer reciprocal," since early August 2011. DSS was forced to make multiple contacts with mother before she would perform tasks for the children. Additionally, mother had failed to communicate information to DSS, and had misrepresented other facts. Further, DSS began to question mother's "level of parental vigilance" and ability to protect her children from future instances of inappropriate discipline by Mr. T. because Mr. T. stated that he takes no responsibility for the injuries he caused to the children. The court allowed the trial

placement to continue, but ordered "frequent announced and unannounced visitation by DSS to ensure the safety and wellbeing of the children."

DSS received another CPS report on 16 November 2011, alleging that Missy was afraid to go home after school, that Hilary and Ashley were showing physical aggression toward Missy, and that mother and Mr. T. were again using a belt to discipline the children. Based on the report, the observed decline in the children's well-being, and an inability to monitor the children in the home due to mother's lack of cooperation, DSS terminated Missy, Hilary, and Ashley's trial placements on 17 November 2011. Hilary was placed in the home of her paternal grandmother; Ashley and Missy were placed with their maternal aunt, Ms. H.

Thereafter, on 8 December 2011, DSS filed a motion for a permanency planning and review hearing, asking to be relieved of further efforts toward reunification. DSS alleged that although Mr. T. had attended parenting classes, and mother was "compliant with her service plan" by completing parenting classes and beginning other services at Smart Start, and by attending visitation with the children, DSS was concerned that the skills mother learned were not being displayed during visitation, and

thus, there remained concern about mother's ability to care for her children going forward.

The district court received evidence on three days between 9 March and 21 May 2012 and entered an order on 31 May 2012, which was filed on 11 October 2012. The order ceased reunification efforts as to Ashley, Missy, Hilary, and Miley, and changed their permanent plan from reunification to guardianship with a relative or other suitable person. The order awarded guardianship of Miley to her paternal grandparents and awarded guardianship of Hilary to her paternal grandmother. Guardianship with Ms. H. was established as the permanent plan for Ashley and Missy. The court continued Dorothy's trial placement with mother and Mr. T.

In a subsequent review order entered 24 August 2012 and filed 6 November 2012, the district court awarded guardianship of Ashley and Missy to Ms. H. and returned Dorothy to mother's custody.

On appeal, mother claims the district court abused its discretion in ceasing reunification efforts and changing the permanent plan for Miley, Missy, Hilary, and Ashley from reunification to guardianship. Although mother suggests that

the court ceased reunification efforts as to Ashley and Missy in its 6 November 2012 order, the record shows that the court ceased reunification efforts and changed the permanent plan for the four children in the order entered 11 October 2012. We therefore review the court's decision to relieve DSS of further efforts based on the contents of this order.

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). "At the disposition stage, the trial court solely considers the best interests of the child." *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567 (2002) (citing *In re Dexter*, 147 N.C. App. 110, 114, 553 S.E.2d 922, 924 (2001), *disc. review denied*, 356 N.C. 163, 568 S.E.2d 608, *appeal dismissed*, 356 N.C. 163, 568 S.E.2d 609, *cert. denied*, 538 U.S. 982, 155 L. Ed. 2d 673 (2003)). "[F]acts found by the trial court are binding absent a showing of an abuse of discretion." *In re Dexter*, 147 N.C. App. at 114, 553 S.E.2d at 924-25 (citing *Adams v. Tessener*, 354 N.C. 57, 63, 550 S.E.2d

499, 503 (2001)). "As this Court has clarified, '[w]here the trial court's findings are supported by competent evidence, they are binding on appeal, even if there is evidence which would support a finding to the contrary.'" *In re K.S.*, 183 N.C. App. 315, 323, 646 S.E.2d 541, 545 (2007) (quoting *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004)). Furthermore, to the extent that mother does not challenge certain findings, they are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Mother first argues that the district court failed to make the "ultimate findings necessary to allow meaningful appellate review" of its orders. We disagree.

Under N.C.G.S. § 7B-507(b), the court may order the cessation of reasonable efforts toward reunification "if the court makes written findings of fact that . . . [s]uch 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 . . . ." N.C. Gen. Stat. § 7B-507(b)(1) (2011); *see also In re I.R.C.*, __ N.C. App. __, __, 714 S.E.2d 495, 497–98 (2011) (identifying the ultimate findings of fact required by N.C.G.S. § 7B-507(b)(1)).

In this case, the trial court properly made this "ultimate

finding" in Finding of Fact 85 and Conclusion of Law 3 of the 11 October 2012 order. We reject mother's argument that the court was also required to make "an ultimate finding that [she] and/or Mr. T. neglected the children" during the trial placement. Unlike an adjudication of grounds for termination of parental rights under N.C.G.S. § 7B-1111(a)(1), *see, e.g.*, *In re Young*, 346 N.C. 244, 247–48, 485 S.E.2d 612, 614–15 (1997), an order ceasing reunification efforts under N.C.G.S. § 7B-507(b) does not require a finding of "continuing neglect."

Mother next argues that the district court's findings do not support its conclusion that reunification efforts should cease. Contrary to mother's assertions, the court's findings are not "mere regurgitations" of testimony but affirmative statements as to the conduct of mother, Mr. T., and others; the behavior and disclosures of the minor children; the observations of DSS social workers, the children's guardian ad litem ("GAL"), and various service providers; and the inferences drawn by the court in its capacity as finder of fact. The fact that the court credited the testimony of certain witnesses or quoted language from the DSS report is a far cry from the act of simply reciting what each witness "testified" in lieu of finding the facts. *See In re Green*, 67 N.C. App. 501, 505 n.1, 313 S.E.2d

193, 195 n.1 (1984); *see also In re R.A.H.*, 182 N.C. App. 52, 60, 641 S.E.2d 404, 409 (2007) ("[DSS] reports constitute competent evidence, and the trial court properly relied upon them in reaching its finding of fact.").

Mother further argues that the court failed to draw a rational link between its evidentiary findings and its ultimate finding that further reunification efforts would be futile or inconsistent with the need for a safe permanent placement within a reasonable time. We disagree. The court's findings reflect Miley's ongoing anxiety and fear of returning to mother's home; the deterioration of Missy, Hilary, and Ashley's well-being during the trial placement; the inability of DSS to effectively monitor the trial placement due to mother's lack of communication and refusal to cooperate with DSS or the GAL; the substantiation of an injurious environment by DSS based on the CPS report received on 16 November 2011, based in part on forensic interviews with Ashley, Missy, and Hilary; the improvement in the three children's demeanor and behavior after the trial placement was terminated; and mother's continued unwillingness to accept responsibility for the adjudication of neglect or the termination of the trial placement. While mother focuses on the court's failure to resolve whether Mr. T. engaged

in corporal punishment during the trial placement as alleged in the 16 November 2011 CPS report, both social worker Hurd and the CPS investigator made clear during their testimony that DSS's substantiation of injurious environment was not dependent on such a finding.

Equally unavailing is mother's claim that the court's approval of Dorothy and Monique's ongoing presence in her home is irreconcilable with its decision to cease reunification efforts as to the older children. Though Dorothy was adjudicated neglected in June 2011, the record reflects that she "receive[d] a great deal of attention and affection," which was "somewhat disproportionate to that of the other children" and was treated differently in the home than Mr. T.'s step-daughters. In its 11 October 2012 order, the court found Dorothy to be a "healthy, happy baby" who "has a bond with both of her parents and seems to be at no risk of harm[.]" Likewise, Monique was not yet born when DSS filed the juvenile petitions in February 2011, and was not deemed by DSS to be at risk of harm. Rather than arbitrariness or irrationality, the court's disposition bespeaks a thoughtful assessment of each child's individual circumstances.

Mother also takes exception to certain of the court's

enumerated findings of fact, or portions thereof. In Finding of Fact 77h, she casts the finding of a "significant threat of danger to these children" as "based on the mere speculation of the social workers" who believed that Missy's behavior problems at school were a result of Missy's return to mother's home, and mother and Mr. T. had "resumed inappropriate discipline of the children." However, testimony given at trial provides support for Finding of Fact 77h. DSS described how Missy exhibited self-destructive behaviors such as screaming, crying, kicking, and urinating on herself multiple times a day. Furthermore, the children expressed their fear of returning home and Missy recounted how "mommy and daddy beat them with the belt" during the trial placement. Therefore, Finding of Fact 77h is supported by competent evidence, and it is binding on appeal, even if there is evidence which would support a finding to the contrary. *See In re J.S.*, 165 N.C. App. at 511, 598 S.E.2d at 660.

Additionally, the 11 October 2012 order contains extensive findings, unchallenged by mother, evincing the risk posed to the four girls by a return to mother's home—specifically, Findings of Fact 26, 28, 31-33, 39-45, 71, and 74a. Since mother has not challenged these findings, they are binding on appeal. *See*

Koufman, 330 N.C at 97, 408 S.E.2d at 731.

Mother takes issue with Findings of Fact 77, 79a, and 84 regarding her lack of cooperation and failure to communicate with DSS. Rather than deny the abundant evidence supporting these findings, she argues that the district court failed to link her conduct to the welfare of her children. She also cites the lack of a court order requiring her to notify DSS of significant events affecting the children. Even a casual review of the 11 October 2012 order shows a clear line between mother's obduracy and DSS's inability to monitor the trial placement and ensure that the children were receiving the appropriate services. Moreover, notwithstanding the court's approval of a trial placement in mother's home, DSS at all times retained legal custody of the children with "placement discretion and . . . the authority to provide and authorize necessary medical, dental, psychological, psychiatric, educational and assessment services." The suggestion that mother was free to obstruct or ignore DSS during the trial placement is without merit.

Also without merit is mother's objection to the portion of Findings of Fact 77i and 85 stating that (1) her "behaviors remain largely unchanged[;]" (2) she was incapable of applying the parenting skills she learned over the long term and was

unable to protect the children; and (3) further reunification "efforts would clearly be futile[.]"[2] The findings were supported by Hurd's testimony and written report, as well as by mother's history of involvement with DSS, her continued refusal to acknowledge any misconduct by Mr. T. or herself, and the termination of the trial placement in November 2011. They also represent reasonable conclusions drawn by the court based on the additional uncontested findings it included in Paragraph 85, to wit:

> To date, [mother] has refused to cooperate with efforts to assess family needs, and the household is unpredictable. Trial placement disrupted. [Mother] has not demonstrated the ability to protect the children in the past under similar circumstances and does not believe the disclosures made by the children. [She] does not display concern for the experience of [the] children; does not believe that Mr. T. would cause harm to the children; and does not consider the children to be believable if they make disclosure about home life.

The court drew the same conclusions in Paragraph 77i. The court further found "no reason to believe that . . . [mother's] level of cooperation with [DSS] will increase," inasmuch as she remained "pre-occupied with blaming other people for [her] problems and inappropriate behaviors," had "demonstrate[d]

[2]Although mother also cites Finding of Fact 78, this finding simply recounts DSS's recommendations to the court.

little insight[,] and [was] simply not moving forward."

Mother points out that she had completed all the requirements of her case plan. The court acknowledged these efforts, finding that she and Mr. T. had "completed every program listed in the case plan; and voluntarily continued services . . . through . . . Smart Start." However, mere completion of the services prescribed in a case plan does not preclude the ceasing of reunification efforts if those services do not yield positive changes in the parent. *See In re Y.Y.E.T.*, 205 N.C. App. 120, 131, 695 S.E.2d 517, 524 (2010) (explaining that a parent's "case plan is not just a checklist" and that "parents must demonstrate acknowledgement and understanding of why the juvenile entered DSS custody as well as changed behaviors"), *disc. review denied*, 364 N.C. 434, 703 S.E.2d 150 (2010); *see also In re T.R.M.*, 208 N.C. App. 160, 163–64, 702 S.E.2d 108, 110–11 (2010) (upholding cessation of reunification efforts pursuant to N.C.G.S. § 7B-507(b)(1), despite findings that "the mother has been generally compliant and concerned about her son's welfare" and "has gone through the motions of complying with the DSS service agreements including parenting classes").

Notwithstanding the services utilized by mother, the

children's behavior and emotional well-being deteriorated in her care during the trial placement and immediately improved upon their removal by DSS. Although multiple service providers testified to the skills developed by mother during their programs, none could attest to the day-to-day experiences of the children in her home. Both DSS and the GAL reported that it was all but impossible to monitor the children in mother's home due to her noncooperation. Hurd explained that trial placements are "a time for parents to demonstrate skills acquisitions that they've learned through different resources that they've been paired with. We just really didn't see that in this case." In light of mother's testimony that she had "stopped trying to make [DSS] happy," that "[n]obody can tell [her] what to do," and that she had not done anything improper, we cannot say that the court's inferences about the futility of further reunification efforts were unreasonable.

Mother next argues that her separation from Mr. T. and his departure from her home "ended any concern that inappropriate discipline of the children would continue." We disagree.

Findings of Fact 54 and 77e–f reflect that mother advised DSS soon after the termination of the trial placement that she was separating from Mr. T. and that she had driven him to

Elizabeth City. However, a few days later, she advised DSS that Mr. T. was returning to the home, and they would not be separating. Then, on 28 December 2011, mother notified DSS that the separation would proceed and that Mr. T. was moving to New Jersey. Yet, when social worker Hurd made an unannounced visit to the home on 9 January 2012, Mr. T. answered the door and refused to allow her inside. Mother testified that Mr. T. had just stopped in for Dorothy's birthday, that they had signed a separation agreement, and that he had not lived in the home since December 2011. However, the notarized copy of their separation agreement introduced at the hearing was dated 2 April 2012, almost four months later.

Additionally, during her testimony, mother made it clear that she did not believe it necessary to protect the children from Mr. T., but took the action in order to placate DSS. She also blamed DSS for the end of her marriage with Mr. T., testifying, "we didn't have any problems in our marriage before this involvement with DSS." Under these circumstances, there is no indication that their purported arrangement would hold. Thus, we are not persuaded that mother's separation from Mr. T. invalidates the district court's decision to cease reunification efforts.

Finally, mother challenges the court's Findings of Fact 82 and 83 that it was in the best interests of the four older children to remain in a placement outside the home, and that their best interests were no longer served by the permanent plan of reunification. Having reviewed the court's findings in support of its decision to cease reunification efforts, we further find no abuse of discretion in the court's assessment of the best interests of the children. *See In re D.S.A.*, 181 N.C. App. 715, 720, 641 S.E.2d 18, 22 (2007) (reviewing best interest determinations for abuse of discretion). The court's conclusions are consistent with the recommendations of DSS and the GAL. We note that Finding of Fact 104 addresses each of the relevant permanency planning factors in N.C.G.S. § 7B-907(b). Mother's argument is overruled.

Mother also challenges the district court's entry of a permanent plan of guardianship with a relative for Miley, Missy, Hilary, and Ashley and its appointment of the paternal grandparents and maternal aunt as guardians. Insofar as mother objects to the changing of the permanent plan from reunification to guardianship in the 11 October 2012 order, the permanency planning statute expressly authorizes the court to "appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600

or make any disposition authorized by G.S. 7B-903" after making "findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-907(c) (2011). A district court has broad discretion to determine a juvenile's best interests, *in re D.S.A.*, 181 N.C. App. at 720, 641 S.E.2d at 22, and an authorized disposition based thereon "will not be disturbed absent clear evidence that the decision was manifestly unsupported by reason." *In re N.B.*, 167 N.C. App. 305, 311, 605 S.E.2d 488, 492 (2004) (citing *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002)). We note that N.C.G.S. § 7B-903(a) prioritizes placements with a family member, a priority that extends to subsequent review hearings under N.C.G.S. § 7B-906. *See In re L.L.*, 172 N.C. App. 689, 703, 616 S.E.2d 392, 400 (2005).

We find no abuse of the court's discretion in identifying guardianship with a relative as "the best plan of care to achieve a safe, permanent home for the minor child[ren] within a reasonable period of time." To the contrary, the court's conclusion followed naturally from its detailed account of the case history, including Miley's traumatic experience in mother's home, the behavioral and emotional decline sustained by Missy,

Hilary, and Ashley during the unsuccessful trial placement, and each child's marked improvement in the care of their prospective guardians. Both DSS and the GAL also concurred in this change to the permanent plan.

We further discern no abuse of the court's discretion in the appointing of the respective guardians for the minor children. The court's findings and the hearing evidence reflect that Miley's grandparents, Missy's grandmother, and Ms. H. were all willing and able to provide loving, safe, and permanent homes for the children and understood the responsibilities of guardianship. *See* N.C. Gen. Stat. § 7B-600(c) (2011). By all accounts, the children were happy and doing well in these placements and were receiving all necessary services.

The district court did not abuse its discretion in ceasing reunification efforts, changing the permanent plan from reunification to guardianship with relatives, and appointing guardians for the minor children. Accordingly, we affirm the court's orders.

Affirmed.

Judges STEELMAN and DILLON concur.

Report per Rule 30(e).