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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-144

Filed: 20 September 2016

Gaston County, No. 13 JA 175

IN THE MATTER OF: C.B.

Appeal by respondent-mother from order entered 20 October 2015 by Judge John K. Greenlee in Gaston County District Court. Heard in the Court of Appeals 24 August 2016.

Jill Y. Sanchez-Myers for petitioner-appellee Gaston County Department of Health and Human Services.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Joyce L. Terres, for respondent-appellant mother.

Poyner Spruill LLP, by Daniel G. Cahill, for guardian ad litem.

ZACHARY, Judge.

Respondent-mother ("mother") appeals from the trial court's permanency planning order which ceased efforts to reunify mother with her minor child, C.B., by awarding guardianship of C.B. to mother's cousin and her cousin's husband (the guardians). For the reasons that follow, we affirm.

I. Background

On 7 August 2013, the Gaston County Department of Health and Human Services ("DHHS") filed a petition alleging that C.B. was a neglected and dependent juvenile. The petition included allegations that mother had tested positive for a controlled substance, THC, at the time of C.B.'s birth and that she had a history of substance abuse with failed attempts at treatment. DHHS further alleged that mother had pending criminal charges and that mother as well as C.B.'s father, William, had no income or lawful employment. DHHS was granted nonsecure custody of C.B. that same day.

In October 2013, DHHS placed C.B. with the guardians. Mother was in jail on felony and misdemeanor charges from 22 August 2013 until 11 October 2013. On 3 December 2013, the trial court entered a consent order adjudicating C.B. a neglected and dependent juvenile. The disposition portion of the order adopted a Mediated Case Plan for mother and William.[1] Mother's case plan, in pertinent part, required her to:

> 1. Resolve any substance abuse issues, maintain sobriety on an ongoing basis, resume participation in substance abuse treatment, comply with all treatment recommendations, and submit to random drug tests within one hour of the request or the test would be considered "dirty";
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> 2. Obtain stable employment or otherwise have sufficient income to meet C.B.'s basic needs for food, shelter, and clothing, and provide documentation of income;

[1] We note that while the order was filed on 3 December 2013, mother and William's case plans were adopted on 17 September 2013.

> 3. Maintain appropriate, safe, and stable housing for herself and C.B., and demonstrate consistent payment of rent and utilities;
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> 4. Follow any future recommendations for mental health treatment;
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> 5. Demonstrate the skills learned at parenting classes;
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> 6. Complete all requirements of probation and not participate in any criminal activities; and
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> 7. Attend supervised visits with C.B. once per week for two hours.

In addition, if mother and William remained together, both of them had to successfully complete their case plans in order for C.B. to be returned to their care.

On 10 December 2013, the trial court conducted a permanency planning hearing. Evidence introduced at the hearing revealed that mother had enrolled in a substance abuse program but failed to complete it. She also tested positive for pain medications that were not prescribed to her. Nonetheless, after finding that mother had the ability to complete her case plan, the trial court sanctioned a permanent plan of reunification.

Although the trial court conducted regular permanency planning review hearings—six in total—mother made minimal progress on her case plan. After violating the terms of her probation, mother was incarcerated in February 2014 and remained in custody until May 2014. When the first review hearing was held on 11 March 2014, DHHS reported that mother "submitted a paper from Restorative

Justice stating that she [did] not need substance abuse classes[.]" However, DHHS was unsatisfied with this recommendation because Restorative Justice had not contacted DHHS to address the department's concerns. While the record is unclear, it appears that mother attended approximately eleven substance abuse classes sponsored by Restorative Justice but never received a certificate of completion.

By the time the fourth review hearing was held on 13 January 2015, mother had refused approximately eight drug screens over a period of eleven months. DHHS reported that while mother underwent a substance abuse assessment with Outreach Management Services, she rejected its recommendation to attend Substance Abuse Intensive Outpatient Program (SAIOP) classes. After attending a psychiatric appointment, mother was diagnosed with Mood Disorder and was prescribed medication for it; however, she quit taking the medication after one dose and did not schedule any follow-up appointments.

At the fifth review hearing, which was conducted in April 2015, DHHS produced similar reports. Mother continued her pattern of refusing to submit to drug screens and she was unwilling to provide a hair follicle sample for testing. The trial court also found that mother had not, *inter alia*, addressed her pending criminal charges, completed substance abuse treatment, obtained employment, or submitted verification of appropriate housing. Despite these findings, the court sanctioned

reunification as the primary plan, with guardianship or adoption as the concurrent plan.

The trial court scheduled two hearings in July and August 2015, which were continued until 22 September 2015, when the court intended to consider the appointment of guardians for C.B. On 22 September 2015, mother appeared in court and obtained a continuance until 13 October 2015 (the final hearing). After court on 22 September, mother insisted that she would "never" submit to drug screens from her social worker or anyone at DHHS. Mother refused approximately fourteen drug screens from April to September 2015. Roughly one week before the final hearing took place on 13 October 2015, mother informed DHHS that she and William had to move the next day or their apartment would be padlocked. When DHHS requested information about the move, including an address and a copy of the lease agreement, mother responded that she was moving to Gastonia and declared, "I'm done doing all that with ya'll." Neither mother nor William was in attendance at the final hearing, and both parents' attorneys moved to continue it. However, after noting that mother had "guaranteed [that she] and [William] would [attend the] hearing" and having received no explanation for mother's absence, the trial court denied the motion to continue, and conducted the hearing despite mother's absence. The court went on to hear testimony from the DHHS social worker assigned to C.B.'s case and to consider written reports from DHHS and the guardian *ad litem*. C.B. had then been in the

custody of DHHS for over two years, during which mother had missed approximately seventy-two scheduled visits with C.B.[2]

On 20 October 2015, the trial court entered an order and found, *inter alia*, that mother had "made little to no progress" on her case plan, that the conditions that led to C.B.'s removal from her care and placement in DHHS's custody continued to exist, and that it was unlikely that C.B. would return to mother's home in the next six months. Based on these findings, the court concluded that it was in C.B.'s best interest to change the permanent plan from reunification to guardianship. As a result, the trial court appointed mother's cousin and her cousin's husband as Cameron's guardians and awarded mother two hours per month of supervised visitation. The court's order effectively ceased DHHS's reunification efforts. Mother appeals.

II. Standard of Review

"Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and the findings support the conclusions of law." *In re R.A.H.*, 182 N.C. App. 52, 57-58, 641 S.E.2d 404, 408 (2007) (citation omitted). If any competent evidence supports the trial court's findings of fact, they are binding on appeal. *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). Unchallenged findings are also binding on appeal, as they "are

[2] To provide context, we note the record shows that, as a general matter, mother acted appropriately when visiting with C.B.

deemed to be supported by sufficient evidence[.]" *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). The trial court's conclusions of law, however, are subject to *de novo* review. *In re T.R.M.*, 208 N.C. App. 160, 162, 702 S.E.2d 108, 110 (2010).

III. N.C. Gen. Stat. § 7B-906.2

Mother first argues that the trial court's order fails to comply with the requirements of newly-enacted N.C. Gen. Stat. § 7B-906.2 (2015).[3] We disagree.

A trial court is required to conduct a permanency planning hearing in every case in which a child has been removed from the custody of a parent. *Id.* § 7B-906.1(a) (2015). A permanency planning hearing is conducted in order "to review the progress made in finalizing the permanent plan for the juvenile," *id.*, and its ultimate purpose is to identify those plans that will "achieve a safe, permanent home for the juvenile within a reasonable period of time." *Id.* § 7B-906.1(g).

Pursuant to N.C. Gen. Stat. § 7B-906.2(b), any court that enters a permanency planning order "shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan." Furthermore, and directly relevant here, "[r]eunification shall remain a primary or secondary plan unless the court . . . makes written findings that reunification efforts clearly would be unsuccessful or would be

[3] Section 7B-906.2 took effect on 1 October 2015 and applies to any actions filed or pending on that date. *See* 2015 N.C. Sess. Laws 136 § 18. Because the permanency planning hearing in this case was conducted on 13 October 2015, the order entered after that hearing was subject to the provisions of this new statute.

inconsistent with the juvenile's health or safety."[4] *Id.* Subsection (d) of the statute requires that the trial court to make specific written findings after a permanency planning hearing in order to show a parent's lack of success with a reunification plan, and it reads:

> At any permanency planning hearing under subsections (b) and (c) of this section, the court shall make written findings as to each of the following, which shall demonstrate lack of success:
>
> > (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) (italics added).

In this case, the trial court changed the permanent plan from reunification to guardianship and removed the concurrent plan of reunification. Mother argues that the trial court was required to maintain a secondary plan of reunification[5] because

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[4] Subsection 7B-906.2(b) also provides that reunification may be removed as a primary or secondary plan if the trial court makes findings under N.C. Gen. Stat. § 7B-901(c).

[5] Mother does not argue that the adoption of only one permanent plan was error. Instead, her argument is limited to asserting that the court erroneously removed reunification as a permanent plan.

its order did not include any findings that "reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." N.C. Gen. Stat. § 7B-906.2(b). She further argues, as detailed below, that the court failed to make all of the findings required by subsection 7B-906.2(d).

Although mother is correct that the trial court's order did not include findings using the exact language of subsection 7B-906.2(b), our Supreme Court has held that the use of specific statutory language in the permanency planning context is not always required. *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013). When discussing an order that ceased reunification efforts, our Supreme Court explained that

> [w]hile trial courts are advised that use of the actual statutory language would be the best practice, . . . [N.C. Gen. Stat. § 7B-507(b)] [6] does not demand a verbatim recitation of its language as was required by the Court of Appeals in this case. Put differently, the order must make clear that the trial court considered the evidence in light of whether reunification 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. The trial court's written findings *must address the statute's concerns, but need not quote its exact language*.

[6] The *In re L.M.T.* Court addressed the cessation of reunification efforts under N.C. Gen. Stat. § 7B-507(b)(1), repealed by S.L. 2015-136 § 7, effective 1 October 2015, which provided: "[T]he 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." The current, equivalent requirements for ceasing reunification efforts are found in N.C. Gen. Stat. § 7B-906.1(d)(3), which is discussed below.

Id. at 167-68, 752 S.E.2d at 455 (emphasis added) (quotation marks omitted). The Court went on to state by way of "example" that

> the trial court's finding that the environment that the Respondent Mother and her husband have created is injurious indicates that further reunification efforts would be inconsistent with the juveniles' health and safety. Likewise, the trial court's findings of fact related to respondent's drug abuse, participation in domestic violence, deception of the court, and repeated failures at creating an acceptable and safe living environment certainly suggest that reunification efforts would be futile. Moreover, these findings clearly support the trial court's conclusion[] that return of the juveniles is contrary to the welfare and best interest of the juveniles[.]

Id. at 169, 752 S.E.2d at 456 (citation, quotation marks, ellipses, and brackets omitted).

Here, the trial court made the following findings, all of which substantiated the court's determination that reunification was no longer in C.B.'s interest and established the trial court's consideration of the factors listed in subsection 7B-906.2(b):

> 12. That . . . [m]other has not completed substance abuse treatment or complied with random drug screens. . . .
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> 13. That . . . mother spoke with Social Worker Reynolds last week and stated that . . . Respondent/parents need[ed] to move in a hurry in order to prevent their apartment being padlocked by the Sheriff's Office. . . . [M]other did not provide Social [sic] Reynolds with a new address.
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> 14. . . . [M]other has made little to no progress towards her case plan during this review period. She has attended

> eighteen (18) out of twenty-eight (28) visitations with [C.B.]
>
> 15. . . . [M]other . . . refused a hair follicle drug screen on [2 June] 2015.
> . . .
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> 23. That the conditions that led to the custody of [C.B.] by . . . [DHHS] and removal from the home of the Respondent/parents continue to exist and return of [C.B.] to the home of the parents would be contrary to the welfare of [C.B.].
>
> 24. Respondent/parents have the ability to complete their case plans, but have made little to no progress, thus a plan of guardianship . . . is the best plan to achieve a safe, permanent home for [C.B.] within a reasonable time period.
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> 25. That it is unlikely based on the evidence presented, and the lack of progress in the case plan that [C.B.] would be able to return to the home of the Respondent/Parents in the next six months.

Significantly, the trial court considered the reports and addenda submitted by DHHS, which were adopted into the findings of fact "as if set forth verbatim [t]herein." Those documents revealed, *inter alia*, that mother: refused approximately fourteen drug screens between April and October 2015; submitted to two drug screens that showed diluted samples; repeatedly stated "that she is not in need of substance abuse classes despite assessments that have stated otherwise"; expressed to DHHS that she felt no responsibility "for anything that has occurred with [C.B.] being taken into custody"; remained essentially unemployed with no stable housing; refused to

provide information regarding her current residence; did not complete recommended mental health therapy and was unwilling to take prescribed medication; and failed to notify DHHS that she was charged with misdemeanor larceny in May 2015.

Given the extensive record considered by the court, as well as the two-year-long history of the case, the court's findings demonstrated that it considered the concerns raised by subsection 7B-906.2(b). For example, the court's findings regarding mother's inconsistent visitation with C.B. and her repeated refusals to submit to drug screens fully supported the finding that mother had made little to no progress on her case plan. These findings, in turn, supported the court's ultimate finding of fact that "it is unlikely . . . that [C.B.] would be able to return to [mother's] home . . . in the next six months[,]" and indicated that further "reunification efforts clearly would be unsuccessful." N.C. Gen. Stat. § 7B-906.2(b). Moreover, the findings related to mother's impending eviction and failure to address her substance abuse problem suggested that a continued plan of reunification "would be inconsistent with [C.B.'s] health or safety." *Id.*

Indeed, while the trial court could have been more explicit in employing the statutory language to justify its decision to cease reunification efforts, the record is replete with instances of mother's inability and unwillingness to progress in her case plan, the requirements of which bore directly on the potential success of reunification and C.B.'s ultimate welfare. The dissent credits mother with making "progress" in

treatment of her substance abuse problem and acquisition of housing, but her limited progression in those areas was marked by an equal regression in them. For instance, although mother maintained an appropriate home for nearly a year, the trial court's findings showed that she was evicted from it in October 2015. Mother then refused to provide DHHS with a new address and declared, "I'm done doing all that with ya'll." In addition, C.B. had been removed from mother's care at birth due to her drug use, yet mother failed to successfully address her substance abuse problem after his removal. Although mother completed a parenting-skills program, the record belies any claim that she consistently demonstrated those skills as C.B.'s custody case progressed. It appears that mother never advanced beyond supervised visitation with C.B. at DHHS's facility. All things considered, the above-mentioned findings embraced the substance of subsection 7B-906.2(b). In turn, these findings supported the trial court's conclusions that "[r]eturning to [mother's] home [was] contrary to [C.B.'s] welfare" and that "it [was] in [C.B.'s] . . . best interest . . . that the Court appoint" guardians for him.

Nonetheless, mother argues that the court's order does not contain all of the findings required by subsection 7B-906.2(d). Specifically, she contends that the order did not include findings regarding her availability to the court, DHHS, and the guardian *ad litem*, or findings as to whether she was acting in a manner inconsistent with C.B.'s health or safety. *See id.* § 7B-906.2(d)(3)-(4). Contrary to mother's

assertion, the trial court's findings adequately addressed the concerns of subdivisions 7B-906.2(d)(3) and (4).

As an initial matter, mother concedes that the trial court's order included findings regarding her lack of progress and refusal to cooperate with various aspects of her case plan, including her failure to complete substance abuse treatment and her refusal to submit to required drug screens. *See id.* § 7B-906.2(d)(1)-(2).

As to the remaining required findings, the court's order stated that mother missed numerous scheduled visitations with C.B., refused to provide DHHS with her new address, and failed to attend the final permanency planning review hearing. The court also incorporated into its findings the reports of DHHS and the guardian *ad litem*, which further detailed mother's mostly unsuccessful interactions with, and sometimes avoidant behavior toward, those entities. Consequently, the trial court's findings were sufficient to show that it considered "[w]hether the parent remains available to the court, the department and the guardian *ad litem* for the juvenile." N.C. Gen. Stat. § 7B-906.2(d)(3) (2015) (italics added).

In addition, the court found that mother had "made little to no progress toward her case plan," such that, despite C.B. being placed in DHHS custody for approximately twenty-five months, the conditions that led to his removal "continue[d] to exist[]" and it was unlikely he would be able to return home in the next six months due to this lack of progress. Part of mother's lack of progress was due to her failure

to address her substance abuse issues. The trial court's findings on these issues showed that mother was continuing to act contrary to C.B.'s welfare. N.C. Gen. Stat. § 7B-906.2(d)(4) (2015). Thus, the court's order complied with the requirements of subsections 7B-906.2(b) and (d).

IV. N.C. Gen. Stat. § 7B-906.1

Mother next argues that the trial court erred by failing to make the findings required by N.C. Gen. Stat. § 7B-906.1 (2015) after it changed the permanent plan to guardianship. We disagree, and hold that the trial court's order demonstrated consideration of and compliance with the relevant requirements of section 7B-906.1.

Pursuant to subsection 7B-906.1(d), at each permanency planning hearing, the court must consider the following criteria and make written findings that are relevant to, *inter alia*:

> (3) Whether efforts to reunite the juvenile with either parent clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time. The court shall consider efforts to reunite regardless of whether the juvenile resided with the parent, guardian, or custodian at the time of removal. If the court determines efforts would be futile or inconsistent, the court shall consider a permanent plan of care for the juvenile.

N.C. Gen. Stat. § 7B-906.1(d)(3). Accordingly, in the context of permanency planning hearings, the findings required for cessation of reunification efforts under subdivision

7B-906.1(d)(3) are substantially similar to those required for the removal of reunification from the juvenile's permanent plan under subsection 7B-906.2(b).[7]

Mother contends that the trial court failed to find that "efforts to reunite [C.B.] with [her] were futile or were inconsistent with his safety and need for a safe, permanent home within a reasonable period[.]" The essence of this argument is that the trial court was required to use specific statutory wording.

However, as previously explained, the trial court made a number of findings that "address the statute's concerns[.]" *L.M.T.*, 367 N.C. at 168, 752 S.E.2d at 455. Specifically, the court found that mother had "made little to no progress" on her case

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[7] While addressing whether the provisions of subdivision 7B-906.1(d)(3) or subsection 7B-906.2(b) applied to an order that ceased reunification efforts (the relevant permanency planning hearing was conducted on 27 August 2015 but the order was not entered until 8 October 2015), this Court recently stated that "[p]rior to 1 October 2015, the provisions of [subdivision] 7B-906.1(d)(3) applied to [permanency planning review] orders and required a factual finding that 'efforts to reunite the juvenile . . . clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.' N.C. Gen. Stat. § 7B-906.1(d)(3) (2013)." *In re E.M.*, No. COA16-30, 2016 WL 4366814, at *4, __ N.C. App. __, __, __ S.E.2d __, __ (2016) (emphasis omitted). In that "both subsection 7B-906.1(d) and subsection 7B-906.2(b) provide guidance for the district court's action at a [permanency planning review] 'hearing[,]' " the Court concluded that subdivision 7B-906.1(d)(3) applied to the order—which did not vary from the ruling announced in open court—at issue because the *review hearing* was held in August 2015 and it would be nonsensical to apply subsection 7B-906.2(b)'s criteria when it was not in effect at the time evidence was presented to the trial court.

In re E.M.'s holding suggests that permanency planning actions that are pending after 1 October 2015 (and the orders entered in relation to those hearings) are subject *only* to the cease-reunification analysis provided in subsection 7B-906.2.(b), i.e., whether "reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." However, subdivision 7B-906.1(d)(3) has not been repealed. Inasmuch as section 7B-906.1 applies to criteria to be considered at permanency planning hearings and review hearings while section 7B-906.2 applies to the permanent and concurrent plans that result from those hearings, it appears that our General Assembly has imposed two distinct—albeit substantially similar—requirements to the findings contained in orders that cease reunification efforts. In any event, as explained herein, the trial court's order satisfied the provisions of both subdivision 7B-906.1(d)(3) and subsection 7B-906.2(b).

plan, despite her ability to do so, and that the conditions which led to C.B.'s removal more than two years earlier "continue[d] to exist." It further found that "return of [C.B.] to the home of [mother] would be contrary to the welfare of [C.B.]" and that it was unlikely C.B. would be able to return home in the next six months. These and other findings sufficiently fulfilled the concerns addressed by subdivision 7B-906.1(d)(3). *See In re N.B.*, ___ N.C. App. ___, ___, 771 S.E.2d 562, 569 (2015) (concluding that the trial court's findings, which included references to the respondent-mother's refusal to both accept responsibility for her actions and attend to her substance abuse issues, adequately met the concerns addressed by subdivision 7B-906.1(d)(3)); *In re H.D.*, ___ N.C. App. ___, ___, 768 S.E.2d 860, 864 (2015) (findings showing that the juveniles would "be unable to go home within six months" due the respondent-mother's pending criminal charges, refusal to submit to drug screens, failure to attend visits, and failure to complete her case plan were sufficient to support a determination that continued reunification efforts would be futile).

V. Verification of Guardianship

Mother also contends that the trial court erred by awarding guardianship of C.B. to mother's cousin and her cousin's husband without verifying that they understood the legal significance of guardianship. Yet our review of the record and the court's order reveals that the court properly determined that the guardians understood the legal significance of C.B.'s placement in their care.

N.C. Gen. Stat. § 7B-600(c) (2015) provides: "If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile." N.C. Gen. Stat. § 7B-906.1(j) (2015) similarly provides:

> If the court determines that the juvenile shall be placed in the custody of an individual other than a parent or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.

Neither statute "require[s] that the court make any specific findings in order to make the verification." *In re J.E.*, 182 N.C. App. 612, 617, 643 S.E.2d 70, 73 (2007).[8] The trial court "may consider any evidence . . . that [it] finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C. Gen. Stat. § 7B-906.1(c) (2015). To aid in its review of a guardianship appointment, the trial court "shall consider information from the parents, the juvenile, the guardian, any person providing care for the juvenile, the

[8] *In re J.E.* was decided under a previous version of the statute, N.C. Gen. Stat. § 7B-907(f), with similar language to that of N.C. Gen. Stat. § 7B-906.1(j). This Court has continued to apply the holding of *In re J.E.* to the analysis of cases involving the new statute. *See, e.g., N.B.*, ___ N.C. App. at ___, 771 S.E.2d at 568.

custodian or agency with custody, the guardian *ad litem*, and any other person or agency[.]" *Id.* (italics added). In sum, "[i]t is sufficient that the court receives and considers evidence that the guardians understand the legal significance of the guardianship." *N.B.*, ___ N.C. App. at ___, 771 S.E.2d at 568.

The trial court made the following finding of fact in its permanency planning order: "That [the guardians] are aware of the duties and responsibilities of the Guardians of the Person and are willing to become Guardians of the Person for [C.B.]" Mother argues that this finding did not adequately reflect that the guardians understood the legal significance of their appointment and that, even if the finding were considered adequate for this purpose, it was not supported by competent evidence. However, we conclude that the trial court's order complied with the requirements of subsections 7B-906.1(j) and 7B-600(c).

The order shows that the trial court received into evidence the DHHS "Permanency Planning Review Report" and adopted the report into its "Findings of Fact, as if set forth verbatim . . . ." Mother does not challenge the trial court's incorporation of the DHHS report into its order. According to the report, DHHS conducted a guardianship conference with the guardians. The DHHS report indicated that the guardians "underst[oo]d the legal significance" of guardianship, "underst[oo]d the nature of guardianship[,]" and "ha[d] . . . sufficient resources to care appropriately for [C.B.]." Thus, the incorporated report provided competent evidence

to support the trial court's finding that the guardians were aware of their duties and responsibilities. In turn, this finding was sufficient to support a verification that the guardians understood the legal significance of guardianship as required by subsections 7B-906.1(j) and 7B-600(c). *See J.E.*, 182 N.C. App. at 617, 643 S.E.2d at 73 (order appointing guardians, which showed that the court received into evidence a DSS home study detailing the guardians' awareness of their responsibilities, adequately complied with verification requirements, including the condition that the guardians understand the legal significance of guardianship).

VI. N.C. Gen. Stat. § 7B-906.1(e)

In her final argument, mother maintains that the trial court's order failed to comply with the requirements of N.C. Gen. Stat. § 7B-906.1(e) (2015). Once again, we disagree.

> At any permanency planning hearing where the juvenile is not placed with a parent, the court shall additionally consider the following criteria and make written findings regarding those that are relevant:
>
> . . .
>
> > (2) Where the juvenile's placement with a parent is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established and, if so, the rights and responsibilities that should remain with the parents.

N.C. Gen. Stat. § 7B-906.1(e)(2). Mother contends that the trial court's order failed to delineate "the rights and responsibilities that should remain with the parents." *Id.*

This Court recently addressed a nearly identical argument in *In re E.M.* WL 4366814, at *8, __ N.C. App. at __, __ S.E.2d at __. There, the trial court's permanency planning order—which granted legal custody of the juvenile to his paternal cousins—provided, in pertinent part, that the "paternal cousins shall 'have the care, custody, and control of the juvenile' and 'have the authority to consent to any necessary remedial, psychological, medical or surgical treatment for the juvenile.' " *Id.* On appeal, the respondent-mother insisted that the trial court's order failed to comply with subdivision 7B-906.1(e)(2) because it did not establish the "rights and responsibilities that remain[ed] with [her], *other than to establish visitation rights*." *Id.* (emphasis added). In rejecting this argument, the *In re E.M.* Court "refused to read the court's order so narrowly[,]" noting that the order "specifie[d] the actions required for [the respondent-mother] to regain custody in the future" and stated "that if she wants visitation in addition to weekly visitation supervised by the custodians, she must pay for it." *Id.*

Here, the trial court's order established the following:

> The Guardians of the Person appointed herein:
>
> a) Shall operate under the supervision of the court without bond and shall file only such reports as the court shall require.

> b) Shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court.
>
> c) May consent to certain actions on the part of the juvenile in place of the parents including, (i) marriage, (ii) enlisting in the armed forces, (iii) enrollment in school.
>
> d) May also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile.
>
> . . .
>
> Respondent/parents shall have a minimum of two (2) hours monthly [visitation] supervised by the placement. . . . The Respondent/parents shall sign [an] attendance notebook at each visitation.

This portion of the trial court's order clearly sets out the rights and responsibilities of the guardians as well as mother's visitation schedule—she has the right to monthly visitation and the responsibility to document her attendance at each visit. Given the detailed findings as to the guardians' rights and responsibilities, it appears that no other rights and responsibilities, apart from documented visitation, remain with mother. The order in *In re E.M.*, which established only the respondent-mother's visitation rights, created a substantially similar situation. As such, the above-cited portion of the trial court's order was sufficient to comply with the requirements of subdivision 7B-906.1(e)(2).

VII. Conclusion

Based on the foregoing analysis, we conclude that: (1) the trial court's order included sufficient findings of fact addressing the relevant concerns of sections 7B-906.1 and 7B-906.2; (2) the trial court's order, which incorporated the DHHS permanency planning report, established that the guardians understood the legal significance of guardianship; and (3) the trial court's order sets out the rights and responsibilities of both the guardians and C.B.'s mother with sufficient particularity.

As our Supreme Court has recognized, our Juvenile Code's statutory safeguards must "be applied practically so that the best interests of the child—the polar star in controversies over child neglect and custody—are the paramount concern." *L.M.T.*, 367 N.C. at 173, 752 S.E.2d at 458. The most practical and important concern in this case is simple: C.B.'s need for permanence in his young life. At twenty-eight days old, he was removed from his parents' care. Nearly twenty-five months after that removal, and seven permanency planning hearings later, the trial court ceased reunification efforts with C.B.'s parents and sanctioned the plan of guardianship. The court considered a voluminous record and found that it demonstrated mother's inability and unwillingness to comply with her case plan. Because those findings complied with all of the relevant statutory provisions and supported the trial court's conclusions that it was in C.B's best interest to appoint guardians and cease reunification efforts, we affirm the permanency planning order in its entirety.

AFFIRMED.

Judge BRYANT concurs.

Judge TYSON dissents by separate opinion.

Report per Rule 30(e).

No. COA16-144 – *In re: C.B.*

TYSON, Judge, dissenting.

The majority's opinion affirms the trial court's order, which ceased reunification efforts to reunite C.B. and mother, and changed the child's permanent plan from reunification to guardianship without an alternative plan. The majority's opinion holds the trial court's findings of fact sufficiently addressed the express requirements of N.C. Gen. Stat. § 7B-906.1 and § 7B-906.2. Because their opinion does not address the trial court's failure to adjudicate the entirety of the competent evidence according to the required burden of proof as required by those statutes, I respectfully dissent.

I. Requirements of N.C. Gen. Stat. § 7B-906.2

N.C. Gen. Stat. § 7B-906.2 took effect on 1 October 2015 and applies to any actions filed or pending on that date. 2015 N.C. Sess. Laws 136 § 18. The permanency planning hearing in the instant case was conducted on 13 October 2015. The permanency planning order entered after that hearing is subject to the provisions of this new statute.

N.C. Gen. Stat. § 7B-906.2(b) requires:

> At any permanency planning hearing, the court *shall* adopt concurrent permanent plans and *shall* identify the primary plan and secondary plan. Reunification *shall* remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c) *or makes written findings that reunification efforts clearly would be unsuccessful or would*

> *be inconsistent with the juvenile's health or safety.* The court *shall* order the county department of social services to make efforts toward finalizing the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile.

N.C. Gen. Stat. § 7B-906.2(b) (2015) (emphasis supplied).

The statute requires the court to establish both a primary and a secondary plan for a child. The statute also requires that one of the two plans be reunification, unless the court makes one of the two types of specific findings set forth in the statute. *Id.* Reunification as a goal is not required if the court makes supported findings of aggravated circumstances under G.S. 7B-901(c), which is not relevant to the present case. Reunification "shall" continue as a primary or a secondary goal under the statute, unless the trial court "makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." N.C. Gen. Stat. § 7B-906.2(b).

While the use of specific statutory language is not required, the trial court's findings must "address the statute's concerns." *In re L.M.T.*, 367 N.C. 165, 167-68, 752 S.E.2d 453, 455 (2013). The statute's text contains the mandatory use of "shall" throughout, and proper "finding of facts must be sufficiently specific for an appellate court to review the decision and test the correctness of the judgment." *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658 (2004) (citing *Quick v. Quick,* 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982)).

This Court has explained:

> The purpose of the requirement that the court make findings of those specific facts which support its ultimate disposition of the case is to allow a reviewing court to determine from the record whether the judgment – and the legal conclusions which underlie it – represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead "to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system." *Montgomery v. Montgomery*, 32 N.C. App. 154, 158, 231 S.E.2d 26, 29 (1977); *see, e.g., Crosby v. Crosby*, 272 N.C. 235, 158 S.E.2d 77 (1967).

Coble v. Coble, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (1980).

In determining whether reunification should continue as a plan, the trial court's findings of fact failed to reflect adjudication of all the evidence, but instead focused entirely on a "cut and paste" of mother's alleged failures from the petition. The burden of proof rests upon the petitioner by clear, cogent, and convincing evidence. Competent record evidence of progress by the mother is not addressed in the trial court's conclusions or order to permit a determination of whether reunification efforts "clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." N.C. Gen. Stat. § 7B-906.2(b).

The majority concedes that mother's participation in the Restorative Justice Substance Abuse program demonstrates her progress. The majority also agrees the record is unclear as to why DHHS refused to credit mother with her participation in

the program, and that the exact nature of the "paper" mother received from Restorative Justice is unclear. Mother also showed progress through her maintenance of safe and stable housing for over one year, her completion of parenting skills classes, and consistent visitation without reports of inappropriate behavior. She also appeared at all scheduled court hearings, except the one which order is appealed from.

Despite clear evidence of mother's progress with parenting skills, substance abuse, housing, and appropriate visitation, the trial court failed to adjudicate how DHHS had met its burden and how the evidence supported the legal conclusion that mother had "not made any progress" towards her case plan. We all agree the evidence in the record clearly shows progress made by mother to reunify with her child. The order does not adjudicate the evidence before the court or support the conclusion that continued reunification efforts "clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety," as required by N.C. Gen. Stat. § 7B-906.2(b) to overcome the *mandatory* alternative plan of reunification to continue. The trial court's findings wholly fail to reference her progress.

The trial court also failed to satisfy the requirements of N.C. Gen. Stat. § 7B-906.2(d). The court set forth broad findings as to mother's failure to make significant progress on her case plan and her supposed refusal to sufficiently cooperate with its requirements.

The court ignored competent and admitted evidence of mother's conduct, which demonstrated her progress under the case plan. Moreover, the court failed to address, credit, or adjudicate ongoing efforts by mother to achieve reunification, including her regular attendance at permanency planning hearings, participation in child and family team meetings, her participation in mental health therapy, and her consistent and proper visitation with C.B. None of these actions by mother are "inconsistent with the juvenile's health and safety," and, if adjudicated, tends to support a contrary conclusion to "a lack of success" on the part of mother. N.C. Gen. Stat. § 7B-906.2(d) (2015).

II. Requirements of N.C. Gen. Stat. § 7B-906.1

The majority notes the findings required for cessation of reunification efforts under subdivision 7B-906.1(d)(3) are substantially similar to those required for the removal of reunification from the juvenile's permanent plan under subsection 7B-906.2(b). As discussed above, the trial court failed to make findings to satisfy the statutes.

The trial court made findings that mother had "made little to no progress" on her case plan, despite her ability to do so, and that the conditions which led to C.B.'s removal more than two years prior "continue[d] to exist." Such broadside findings of fact may be a sufficient basis for legal conclusions where a parent has done virtually

nothing or has made minimal progress, but not here. *See J.S.*, 165 N.C. App. at 511, 598 S.E.2d at 660.

Mother's actions warrant detailed finding of facts and adjudication by the trial court to support its conclusion. The trial court was statutorily required to address mother's successful completion of parenting skills classes and the Restorative Justice substance abuse program. The trial court was required to adjudicate the properly admitted evidence and make findings on mother's extended maintenance of stable housing, her ongoing proper visitation and bonding with C.B., her lack of transportation, poverty, the impacts of incarceration, and her efforts to seek and maintain employment, improve parenting skills, and address substance abuse.

Based upon its finding that mother had made little to no progress on her case plan, the court further found that "return of [C.B.] to the home of [mother] would be contrary to the welfare of [C.B.]," and that it was unlikely C.B. would be able to return home in the next six months.

Without the trial court's adjudication of the pertinent and admitted evidence in its finding of facts, this Court is unable to determine whether the trial court's conclusions were properly supported. The trial court's order lacks the statutorily required adjudication and findings on the admitted evidence in accordance with the applicable burden of proof, and fails to comply with the statutory requirements of N.C. Gen. Stat. § 7B-906.1(d)(3). I respectfully dissent.