IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-493

Filed: 4 December 2018

Buncombe County, No. 15 JA 37

IN THE MATTER OF: N.H.

Appeal by respondent-father from orders entered 1 and 13 February 2018 by Judge Susan M. Dotson-Smith in Buncombe County District Court. Heard in the Court of Appeals 8 November 2018.

Hanna Frost Honeycutt and Jack Densmore, for petitioner-appellee Buncombe County Department of Health and Human Services.

Mary McCullers Reece, for respondent-appellant father.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for guardian ad litem.

CALABRIA, Judge.

Respondent appeals from orders eliminating reunification as a permanent plan for his child, N.H. ("Nathan") and granting guardianship of Nathan to his cousin, S.F. ("Shannon").[1] We affirm the trial court's orders.

[1] We use pseudonyms throughout this opinion for ease of reading and to protect the juvenile's identity.

I. Factual and Procedural Background

The Buncombe County Department of Health and Human Services ("DHHS") initiated the underlying case when it filed a petition on 18 February 2015, alleging Nathan was a neglected and dependent juvenile due to domestic violence and his mother's homelessness. DHHS obtained non-secure custody of Nathan and his mother, who was only seventeen years old at the time, and placed them in the Care House in Lenoir, North Carolina. After a hearing on 19 May 2015, the trial court entered an order adjudicating Nathan to be a dependent juvenile. The court continued custody of Nathan with DSS, authorized Nathan's placement with his mother at the Care House, and granted Nathan's father ("respondent") weekly supervised visitation with Nathan. Respondent was ordered to: (1) comply with the recommendations of his comprehensive clinical assessment; (2) engage in mental health therapy; (3) comply with random drug screening; and (4) engage in parenting classes and demonstrate skills learned.

The court conducted permanency planning and review hearings on 8 July 2015 and 30 September 2015. In its order from the second hearing, the trial court found respondent and Nathan's mother had addressed the conditions that led to Nathan's removal from their care and returned custody of Nathan to them. However, the court ordered respondent and the mother to continue to participate in individual therapy and address their mental health issues until released by their providers. The court

retained jurisdiction over the juvenile case, but released DHHS of further responsibility and ceased further review hearings.

DHHS filed a new juvenile petition on 25 February 2016, alleging Nathan was a neglected and dependent juvenile. DHHS alleged respondent and the mother had engaged in domestic violence in Nathan's presence. DHHS further alleged that respondent and the mother were abusing marijuana and that the mother had smoked marijuana in the home. DHHS obtained non-secure custody of Nathan that same day.

On 3 June 2016, the trial court entered an order adjudicating Nathan to be a neglected and dependent juvenile. The court continued custody of Nathan with DHHS and granted respondent and the mother weekly supervised visitation with him. The court ordered both parents to submit to random drug screens and to complete a comprehensive clinical assessment, a substance abuse assessment, and a domestic violence assessment. Respondent was specifically ordered to engage in outpatient counseling to address issues related to anger management, substance abuse and relapse prevention, relationship issues, and improving support and coping skills.

The trial court held permanency planning and review hearings on 29 September 2016, 2 February 2017, 7 June 2017, 18 and 25 August 2017, 25 October 2017, and 6 and 7 December 2017. The court initially set the primary permanent

plan for Nathan as guardianship and set the secondary plan as reunification. The court continued with these primary and secondary plans throughout its review of the case, until it awarded guardianship of Nathan to Shannon. The trial court also authorized DHHS to place Nathan with Shannon, who is respondent's first-cousin. DHHS placed Nathan with Shannon on 9 October 2016, and he remained in her care throughout the court's review of the juvenile case. Respondent and the mother were consistently unable to show to the trial court that they were making sufficient progress toward correcting the conditions that led to Nathan's removal. In an order entered 1 February 2018, and an amended order entered 13 February 2018, the court changed the secondary permanent plan for Nathan from reunification to custody with a relative and granted guardianship of Nathan to Shannon. Respondent appeals.

II. Standard of Review

This Court reviews a permanency planning order to determine "whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law." *In re J.H.*, 244 N.C. App. 255, 268, 780 S.E.2d 228, 238 (2015) (citation and quotation marks omitted). "The trial court's findings of fact are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings." *Id.* (citation and quotation marks omitted). Unchallenged findings of fact are deemed to be supported by the evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

"The trial court's conclusions of law are reviewable *de novo* on appeal." *In re T.R.M.*, 208 N.C. App. 160, 162, 702 S.E.2d 108, 110 (2010) (citation omitted).

III. Permanency Planning Order

"At the conclusion of each permanency planning hearing, the judge shall make specific findings as to the best permanent plans to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-906.1(g) (2017). In developing a juvenile's permanent plan, the trial court must consider multiple criteria and make written findings on those criteria that are relevant, including "[w]hether it is possible for the juvenile to be placed with a parent within the next six months and, if not, why such placement is not in the juvenile's best interests." N.C. Gen. Stat. § 7B-906.1(e)(1) (2017). "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." N.C. Gen. Stat. § 7B-906.2(b) (2017). Where a trial court eliminates reunification as a permanent plan pursuant to N.C. Gen. Stat. § 7B-906.2(b),

> the court shall make written findings as to each of the following, which shall demonstrate lack of success:
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> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
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> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the

> guardian ad litem for the juvenile.
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> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
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> (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) (2017). The written findings in a trial court's order do not need to strictly adhere to the statutory requirements, but

> 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.

In re L.M.T., 367 N.C. 165, 167-68, 752 S.E.2d 453, 455 (2013) (quotation marks omitted).

A. Findings Supported by the Evidence

Respondent first argues the trial court's finding that it was not possible for Nathan to be returned to respondent's home within six months is not supported by the evidence, because the evidence showed that respondent was addressing the issues set forth in his case plan. Although the trial court's findings of fact show that respondent was actively engaged in addressing some of the issues set forth in his case plan, the court's findings also establish that respondent had not demonstrated

meaningful progress toward addressing the issues outlined in his case plan. These findings include:

> 22. The respondent father provided SW Martin with the times of year that he could provide body hair for a hair follicle test, as allowed by his beliefs. The Department communicated with Keystone Labs and an armpit hair follicle sample was collected on September 14, 2017. The results were positive for marijuana.
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> 24. On October 11, 2017 SW Martin contacted the respondent father's therapist, Nell Corry and she reported that she had had four sessions with the respondent father and she felt that his interest in services was genuine. Mrs. Corry reported that it was clear that the respondent father is focused on regaining custody of the minor child. Mrs. Corry indicated that they had addressed the respondent father's marijuana use to self-medicate and that they were discussing appropriate methods for coping with the respondent father's trauma that do not involve use of illegal substances.
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> 25. On September 28, 2017 SWS Belsito and SW Martin met with the respondent father, at his request. He indicated that he felt that the Child and Family Team ("CFT") meetings are ineffective. The respondent father presented the paperwork he collected from the case and the minor child's previous foster care case. The respondent father stated that he does not understand why his marijuana use is impacting reunification because he used marijuana throughout the previous foster care case. SWS Belsito presented the multiple negative drug screens that the respondent father produced during the previous foster care case. SWS Belsito explained that the respondent father needs to be fully compliant with his case plan to move forward with unsupervised visits. SWS Belsito also explained the Department's concern regarding the

respondent father's concerning behavior. SWS Belsito and SW Martin informed the respondent father than unless his drug screens are negative for illegal substances and he demonstrates the use of appropriate coping skills to address his mental health needs, there will continue to be concerns with moving forward towards reunification. The respondent father made comments eluding [sic] to his new therapist's approval of his marijuana use. SWS Belsito and SW Martin also referenced the length of time the minor child has been in care and described the Department's responsibility to seek permanence for the minor child in a reasonable time frame.

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29. The Department has provided the respondent parents with gas cards every month to assist financially with the cost of travel for visits with the minor child. The respondent parents both consistently voice financial strain and regularly remind SW Martin that they cope with limited income. The respondent father has consistently reported that he is employed. . . . There have been several occasions in which financial support has been provided to the respondent parents by the Department and Helpmate, but they have cancelled their visit with the minor child, stating that they were unable to afford the gas to get to the visit.

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39. The respondent father tested positive for marijuana use on September 14, 2017 and November 16, 2017. The respondent father is not engaged in treatment to address his marijuana use.

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46. The respondent parents have been dishonest with the Court and the Department throughout the life of this case. The dishonesty of respondent mother and respondent

> father creates a barrier to reunification.
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> 67. Pursuant to N.C.G.S. § 7B-906.2, the Department is hereby relieved of further reasonable efforts toward reunification with the respondent parents, as reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable time, and would not be in the minor child's best interest, due to the respondent parents' substance abuse, mental health, and domestic violence issues.

Respondent has not challenged these findings of fact and they are binding on appeal. *Koufman v. Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. Although respondent has challenged other findings by the trial court, those challenged findings are unnecessary to support our holding and respondent is not prejudiced by any error in those findings. *See In re A.C.*, 247 N.C. App. 528, 533, 786 S.E.2d 728, 733 (2016) ("erroneous findings that are unnecessary to support the trial court's conclusions of law may be disregarded as harmless").

The unchallenged evidentiary findings show respondent had failed to make any progress toward addressing his substance abuse problems, a key component of his service plan, and was not on track to make substantial progress in the near future. We thus hold the trial court's ultimate finding that Nathan could not be returned to respondent's home within six months is fully supported by the court's evidentiary findings, and we overrule this argument.

B. Cessation of Reunification Efforts

Respondent also argues that the trial court erred in eliminating reunification as a permanent plan for Nathan when it appointed Shannon as his guardian, because the court failed to make the requisite findings required by N.C. Gen. Stat. § 7B-906.2(d). Respondent further contends that the evidence and findings indicated he was making progress on his case plan and was not acting in a manner inconsistent with Nathan's health or safety. We disagree.

Although not specifically couched in the language of N.C. Gen. Stat. § 7B-906.2(d), the trial court's findings of fact are sufficient to embrace the substance of the statute. *See L.M.T.*, 367 N.C. at 169, 752 S.E.2d at 456. The court's findings establish that respondent's failure to address his substance abuse problems has been an intentional undertaking on his part over the 18-plus months Nathan had been in the custody of DHHS. Respondent's actions demonstrate a lack of adequate progress within a reasonable time under the plan, a lack of active participation in or cooperation with the plan, and that he has been acting in a manner inconsistent with Nathan's health and safety. Additionally, respondent's dishonesty with the trial court and DHHS throughout the life of the case establishes that he has not been "available" to the court or DHHS. Accordingly, we hold the trial court's findings of fact support its decision to eliminate reunification as a permanent plan.

Respondent has not otherwise challenged the trial court's permanency planning order. Therefore, we affirm the order.

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).