IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1057

Filed: 15 October 2019

Beaufort County, No. 17JA62-63

IN THE MATTER OF: A.H.A & D.N.A.

Appeal by respondent-parents from judgment entered 14 June 2018 by Judge Regina R. Parker in Beaufort County District Court. Heard in the Court of Appeals 4 September 2019.

Matthew W. Jackson for petitioner-appellee Beaufort County Department of Social Services.

Joanna C. Wade for guardian ad litem.

Joyce Law Center, by Kathleen M. Joyce, for respondent-appellant mother.

Mark L. Hayes for respondent-appellant father.

INMAN, Judge.

Respondent-mother ("Mother") and respondent-father ("Father," collectively "the parents") appeal from the trial court's permanency planning order and order terminating their parental rights with regard to their two children, Danielle and

Amanda.[1] The parents argue that the trial court erred in eliminating reunification as a permanent plan following the initial permanency planning hearing, consistent with this Court's decision in *In re C.P.*, __ N.C. App. __, 812 S.E.2d 188 (2018). Mother argues separately that portions of the trial court's conclusions of law regarding reunification efforts are supported only by findings unsupported by competent evidence. After careful review, we affirm the trial court.

I. FACTUAL AND PROCEDURAL BACKGROUND

The record reflects the following:

Mother and Father have two children together, eight year-old Danielle and five year-old Amanda (collectively, "the children"). Not long after Danielle was born in 2011, the Pitt County Department of Social Services ("Pitt Social Services") responded to allegations of domestic violence, substance abuse, and neglect of her.

Pitt Social Services investigated allegations that on 21 September 2011, Father struck Mother over the head with an iron and choked her with a cord until she blacked out, and that Mother attempted to defend herself against Father by threatening him with a knife while she held Danielle. Pitt Social Services performed several assessments of the parents for the next four years.

Between June and September 2015, Pitt Social Services determined that the parents were not providing the appropriate level of care for the children and found

[1] We use the above pseudonyms to preserve the children's privacy.

strong evidence of neglect. Pitt Social Services found that the parents frequently missed medical appointments for Amanda, who was born with a club foot and a portion of her brain missing. Amanda has displayed possible seizure activity, is developmentally delayed, and has strabismus, making her cross-eyed. Pitt Social Services found that Danielle had "marks on her face" and that the parents failed to comply with substance abuse treatments.

On 17 September 2015, the parents stipulated to medical neglect of Amanda during an adjudication and disposition hearing in Pitt County, and agreed to obtain substance abuse assessments and submit to random drug screenings.

Over the course of 2016 and 2017, the Beaufort County Department of Social Services ("Beaufort Social Services") assessed multiple reports referred by Pitt Social Services due to conflicts of interest and determined that in-home protective services were needed. On 2 November 2016, Beaufort Social Services assessed a report that Mother tested positive for cocaine, was acting erratically, and did not appropriately treat one of the children at her doctor's appointment. In the same report, Beaufort Social Services also investigated reports that both Mother and one of the children had marks on their bodies consistent with a physical assault, and Mother stated that Father had assaulted her. On 6 March 2017, Beaufort Social Services investigated a report that Father struck Mother and the maternal grandmother in front of the children. There was also a report that Father sold cocaine and Mother used cocaine

and pills. On 8 March 2017, another report alleged that Mother did not feed the children, sold food stamps for drugs, and slept throughout the day while Amanda was in her care; that Father was ousted from the home;[2] and that Amanda had been in the street unattended. A month later, Beaufort Social Services investigated an allegation that Danielle had been the victim of sexual abuse shortly after an uncle and his two children moved in to the parents' home.

On 16 May 2017, Mother was arrested for violating her probation by testing positive for cocaine, failing to pay fines and supervision fees, and failing to obtain a substance abuse assessment. The following week, Mother was charged with attempting to attain property by false pretenses, forgery, and uttering a forged instrument.

On 6 June 2017, Beaufort Social Services investigated another report that Amanda was home alone with Father one day after he was using cocaine; that the utilities had been deactivated for more than a week and there was no food in the home; that the maternal grandmother was residing in the home despite the restraining order against Father; and that Father committed a robbery with a BB gun. The report also indicated Mother was in jail at the time as a result of her criminal charges. That same day, a social worker made an unannounced visit to the

[2] In March of 2017, the maternal grandmother obtained a domestic violence protective order enjoining Father from imposing further threats or harm. Mother initially sought a similar order but later voluntarily dismissed her petition.

parents' home and Amanda answered the door. After about fifteen to twenty minutes of knocking, Father arrived and told the social worker that the electricity had been off for more than a week because Mother used her disability check to pay her pre-trial release bond. Mother was not home at the time because she remained in the Pitt County Detention Center. Father refused to submit to a drug test on 6 and 7 June 2017.

The social worker interviewed others within the neighborhood regarding the children's living environment and well-being. Danielle complained about a lack of food and, when asked where her Mother was, often responded that she was either asleep or not home. Mother had instructed Danielle to ask other people in the neighborhood for diapers for Amanda. Mother also attempted to sell food stamps. Law enforcement was called in the early hours of 6 June regarding a dispute involving Father and his friends. The neighbors also informed the social worker that Father and Mother attempted to rob another home the evening of 3 June.

On 19 June 2017, Beaufort Social Services filed juvenile petitions alleging the children were neglected by the parents, because they lived in an environment injurious to their welfare. Father and the children had moved out of the family home and were staying with paternal relatives in compliance with a safety plan. Father threatened to violate the safety plan, however, and remove the children from the

relatives' home, but the relatives delivered the children to Beaufort Social Services because of conflicts with Father.

While the juvenile petitions were pending, Father was arrested on 1 July 2017 for punching Mother in the face, inflicting a black eye and a bloody nose. Both parents refused a drug screen on 26 June. Mother tested positive for cocaine on 14 July 2017.

Following a hearing on 16 August 2017, the trial court adjudicated the children neglected and ordered that they remain in a foster home. The parents consented to the trial court's findings and its order. That same day, Mother tested positive for cocaine and marijuana.

After a hearing on 13 September 2017, the trial court entered a dispositional order finding that the children were at a high risk of harm due to the parents' actions. The trial court found that the parents had ongoing substance and domestic abuse issues, frequently tested positive for controlled substances, and did not have a stable place to live, causing the children to be left unsupervised for long periods of time. The trial court also took into account Amanda's special needs and the parents' lack of effort to obtain medical services for her. The trial court ordered that the children remain in foster care, with a concurrent plan of reunification and custody with a relative. The parents were allowed to continue visiting the children once a week with supervision.

The trial court ordered each of the parents to create a case plan with Beaufort Social Services; complete a psychological evaluation and follows its recommendations; complete a substance abuse assessment; attend narcotics anonymous with proof of attendance; maintain sobriety; submit to random drug screens; enroll in domestic violence therapy; complete parenting classes; attend weekly visitation with the children; obtain and maintain a stable housing environment; and attend couples counseling.

On 3 October 2017, Mother was diagnosed with mild stimulant use disorder, partner relational problems, and mild intellectual disability, with a reported IQ between 60-70. The psychologist who diagnosed Mother noted that, due to her disorders, Mother "cannot financially support herself and her children without the income of" Father; "requires firm and consistent intervention to be able to [be the] sole caretaker for her children;" and it would "prove quite difficult, but not impossible," for her to gain a "deep understanding and insight into the negative effects of interpersonal violence" between her and Father on the children. The psychologist recommended that communication with Mother be basic and straightforward, with language around the 6th grade level. The psychologist also recommended that Mother participate in substance abuse treatments, submit to random drug tests, complete parenting classes, and attend therapy.

Father was diagnosed with paranoid personality disorder and antisocial personality disorder. The evaluating psychologist concluded that, even if he received treatment, "the probability of [Father] benefitting from such services is guarded to poor."

On 22 November 2017, the first and only permanency planning hearing was held with only the parents' attorneys in attendance. Beaufort Social Services sought an order to cease reunification efforts based on evidence that the parents were not adequately following their case plans or curtailing their drug use. As of the date of the hearing, Mother had not followed the recommendation of the psychological evaluation; completed a substance abuse assessment nor maintained sobriety; attended narcotics anonymous; completed any therapy or counseling; or established a sufficient living environment. Mother still had pending criminal charges and only visited the children sporadically, in one instance missing an appointment because she did not want to take a drug test. Father had not progressed in any of his court-ordered responsibilities and failed to attend weekly visitation sessions with the children.

By written order entered the same day, the trial court eliminated reunification as part of the permanent plan for the children, ordered that Beaufort Social Services cease reunification efforts, and established a concurrent permanent plan of adoption

and guardianship by a court-approved caretaker. The order included findings adopting Beaufort Social Services' evidentiary summary submitted at the hearing.

On 11 December 2017, Beaufort Social Services filed petitions to terminate Mother's and Father's parental rights, alleging neglect and dependency pursuant to Sections 7B-1111(a)(1) and (6) of our General Statutes. Following a termination hearing on 6 June 2018, the trial court entered an order on 14 June 2018 terminating Mother's and Father's parental rights. The trial court found that neither Mother nor Father made changes in their circumstances to further the possibility of reunification with the children. The parents were not abiding by their legal responsibilities and had been living in different hotels since November 2017. The trial court also found that Mother was arrested in May 2018 for cocaine possession while she was on probation for uttering forged documents. Finding no alternative family placement, the trial court ordered Beaufort Social Services to move forward with a plan to seek adoption of the children.

The parents timely appealed the order eliminating reunification as a plan and ceasing reunification efforts and the order terminating their parental rights.

II. ANALYSIS

A. Parents' Appeal: Eliminating Reunification

The parents argue that the trial court erred in eliminating reunification from the permanent plan following its 22 November 2017 hearing. They contend that the

trial court was obligated to include reunification, pursuant to N.C. Gen. Stat. § 7B-906.2(b), in light of this Court's precedent.

Because "one of the essential aims, if not the essential aim," of the Juvenile Code is "to reunite the parent[s] and the child[ren]," *In re T.W.*, __ N.C. App. __, __, 796 S.E.2d 792, 794 (2016), if the trial court wants to eliminate reunification as a plan, Chapter 7B expressly provides for when and how the trial court may do so. After the initial disposition hearing:

> If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in [N.C. Gen. Stat. §] 7B-101 shall not be required if the court makes [statutorily-prescribed] written findings of fact . . ., unless the court concludes that there is compelling evidence warranting continued reunification efforts[.]

N.C. Gen. Stat. § 7B-901(c) (2017). Unless one of the " narrow set[s] of circumstances" is met, the trial court's authority to cease reunification efforts under Section 7B-901(c) "has no application beyond the '[i]nitial dispositional hearing.' " *In re T.W.*, __ N.C. App. at __, 796 S.E.2d at 794 (quotations and citation omitted).

One of the responsibilities of the trial court under Chapter 7B is to adopt primary and secondary plans, *i.e.*, concurrent plans. N.C. Gen. Stat. §§ 7B-906.2(a), (b) (2017). There are six statutory plans that the trial court may choose from, including reunification as defined in Section 7B-101. *Id.* § 7B-906.2(a). Section 7B-906.2 provides:

> 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 [Section] 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) (2017) (emphasis added).

In a prior published decision interpreting Section 7B-906.2(b), *In re C.P.*, this Court reasoned that "[t]he statutory requirement that 'reunification shall remain' a plan presupposes the existence of a prior concurrent plan which included reunification." __ N.C. App. __, __, 812 S.E.2d 188, 191 (2018). Based on that analysis, this Court held that "reunification must be part of an initial permanent plan" and the trial court can only eliminate reunification following subsequent permanency planning hearings. *Id.*; *see also In re M.T.-L.Y.*, __ N.C. App. __, __, 829 S.E.2d 496, 503 (2019) (holding that, following *In re C.P.*, "a trial court is only at liberty to remove reunification from the concurrent plan during *subsequent* permanency planning hearings." (emphasis in original)).

The parents rely on *In re C.P.*'s holding and contend that the permanency planning order and the order terminating their parental rights should be vacated

because the trial court erroneously eliminated reunification following the first and only permanency planning hearing. We disagree.

Here, in its initial dispositional order, the trial court ordered that "[t]he permanent plan shall be reunification with a concurrent plan of custody to a relative." It was not until the permanency planning order two months later, on 22 November 2017, that the trial court eliminated reunification from the permanent plan.[3] Because there was a "prior concurrent plan" of reunification in place at the dispositional phase, the trial court did not err in eliminating reunification from the permanent plan in its permanency planning order.[4]

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[3] Although we held in *In re M.T.-L.Y.* that the trial court erred by not including reunification in its first permanency planning order, __ N.C. App. at __, 829 S.E.2d at 503, the trial court there did not create a prior concurrent plan like the trial court did here.

[4] Effective 1 October 2019, the General Assembly amended several provisions of Chapter 7B of our General Statutes, including Sections 7B-906.2 and 7B-906.1. Section 7B-906.2, as amended, in pertinent and emphasized part, provides:

> (b) At any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. *Reunification shall be a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or G.S. 7B-906.1(d)(3), the permanent plan is or has been achieved in accordance with subsection (a1) of this section, or the court* makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety. *The finding that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety may be made at any permanency planning hearing.* Unless permanence has been achieved, 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.
>
> (c) *Unless reunification efforts were previously ceased, at each*

B. Mother's Appeal: Reunification Efforts

Mother argues[5] that the trial court's order ceasing reunification efforts should be vacated because the following conclusions of law are not supported by competent evidence[6]:

> [I]t is impossible that the children could return home in the next six (6) months; . . .
>
> reunification efforts with the parents are futile[;] . . .
>
> the appropriate plan for the juveniles is adoption with a

> *permanency planning hearing the court shall make a finding about whether the reunification efforts of the county department of social services were reasonable*. In every subsequent permanency planning hearing held pursuant to G.S. 7B-906.1, the court shall make written findings about the efforts the county department of social services has made toward the primary permanent plan and any secondary permanent plans in effect prior to the hearing. The court shall make a conclusion about whether efforts to finalize the permanent plan were reasonable to timely achieve permanence for the juvenile.

Act of June 21, 2019, ch. 33, sec. 11, 2019 N.C. Sess. Laws __ (emphasis added).

The General Assembly amended Section 7B-906.1 by deleting the provision that "[t]he judge shall inform the parent, guardian, or custodian that failure or refusal to cooperate with the plan may result in an order of the court in a subsequent permanency planning hearing that reunification efforts may cease." Act of June 21, 2019, ch. 33, sec. 10, 2019 N.C. Sess. Laws __.

These amendments effectively abrogate this Court's holding in *In re C.P.* that (1) unless there is a concurrent plan before the first permanency planning hearing, the trial court must include reunification in its permanent plan; and (2) because "reunification" and "reunification efforts" are bifurcated concepts, the trial court can eliminate one and maintain the other, or vice versa. We need not determine whether the General Assembly's revisions to Chapter 7B apply retroactively because, at the time of this writing, they have not yet come into effect and would not change the outcome of this decision.

[5] Father's brief argues only that the trial court erred in eliminating reunification as prohibited by *In re C.P.*

[6] We analyze separately whether the trial court properly ceased reunification efforts and whether the trial court properly eliminated reunification from the permanent plan because *In re C.P.* held that the two are separate and distinct concepts. *See* __ N.C. App. at __, 812 S.E.2d at 190-91, 191 n.3 (holding that the trial court erred in not including reunification in the initial permanent plan but affirming its decision to cease reunification efforts (citing *In re H.L.*, __ N.C. App. __, __, 807 S.E.2d 685, 693 (2017)).

> concurrent plan of guardianship to a court-approved relative; . . .
>
> BCDSS has made reasonable efforts aimed at reunification and in eliminating the need to remove the juveniles from the parents' custody[.]

Mother references a multitude of the court's findings of fact and contends that, because they are not supported by competent evidence or are incomplete, the above conclusions of law are erroneous. We disagree.

"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).

Mother's main point of contention is that the trial court's findings do not sufficiently take into account her diminished mental capacity. Mother relies on her psychological evaluation recommending that Beaufort Social Services speak to her regarding her responsibilities at an elementary level. She points to the testimony of the Beaufort Social Services social worker assigned to the children's case, Shakeria Lomax ("Lomax"). At the 22 November permanency planning hearing, Lomax had the following colloquy with Mother's trial counsel on cross-examination:

> [COUNSEL:] So have you set up any programs for a low-functioning adult?
> [LOMAX:] I've tried setting her up for what we need her to

> do: therapy, parenting, and all the services that I would speak with her about, she agrees to, so—
> [COUNSEL:] But aren't those services just the same old services you do for any parent that comes into the system?
> [LOMAX:] Not all of the services. We do send a lot of our parents for parenting. But not all of our parents have substance abuse issues, so not all parents have to take those therapies.
> [COUNSEL:] I'm just trying to learn what services are available for low-functioning parents that [Beaufort Social Services] offers.
> [LOMAX:] So, I don't know of any services that are available for low-functioning parents.
> [COUNSEL:] And have you ever talked to anybody in the Department about that, the fact that you don't know of any?
> [LOMAX:] I have not.
> [COUNSEL:] Have you ever had any training with regard to that?
> [LOMAX:] I have not.

Mother further cites portions of the psychologist's recommendations for handling Mother's disorders:

> Due to [Mother's] intellectual limitations, engaging [her] in deep understanding and insight as to the negative effects of interpersonal violence on children, will prove quite difficult, but not impossible. . . . At this time it is improbable that [Mother] is capable of sole care taking of her children. However, with successful intervention within the family, it is possible she will be able to caretake [sic] for her children.

In essence, Mother contends that, if Lomax adjusted her services with respect to Mother's intellectual limitations, Mother would have understood her obligations and performed adequately to achieve reunification with the children. Mother argues

that because the trial court's findings do not contemplate those circumstances, several of its findings are erroneous.[7] Contrary to Mother's assertion, however, the record shows that the trial court did acknowledge Mother's medical issues, that Lomax and Beaufort Social Services reasonably accommodated Mother, and that Mother did in fact comprehend her responsibilities.

In the permanency planning order, the trial court referenced Mother's medical diagnoses, summarizing the result of her psychological evaluation. The trial court expressly acknowledged Mother's disorders, what they meant for the safety and well-being of the children, and the recommendations the psychologist listed, such as parenting classes, therapy, and drug testing. The trial court then found that Mother failed to comply with those recommendations and had not maintained sobriety.

In its summary report expressly adopted by the trial court, Beaufort Social Services described a case plan developed with Mother to provide steps for her to attain reunification with the children. While Lomax was preparing the case plan with the parents, Mother asked Lomax to find a parenting class for her and Father. Lomax then reserved appointment dates so the parents could comply with court orders that they obtain substance abuse assessments, therapy and counseling sessions, parenting classes, and visitation schedules—and even informed them that

[7] To the extent Mother argues that her disabilities were "not given sufficient weight by the trial court," we point out that "[i]t is not the function of this Court to reweigh the evidence on appeal." *In re T.H. & M.H.*, __ N.C. App. __, __, __ S.E.2d __, __ (2019) (COA18-926) (quotations marks and citation).

she would transport them if need be. In response, Mother requested transportation for her and Father to attend the parenting classes, but neither parent showed up when Lomax arrived to provide transportation. Mother told Lomax that she did not need transportation for her substance abuse assessments, but she failed to make any efforts to attend. Lomax also testified that she provided transportation for Mother for her weekly visitation meetings with the children, with Mother only intermittently following through on those opportunities. On 26 October 2017, Mother chose not to visit the children when Lomax told her that she first had to perform a drug test. Furthermore, Lomax tried to transport the parents to their therapy sessions, but they refused on this front as well.

The trial court also examined Lomax at the 22 November hearing regarding Lomax's efforts to achieve Mother's case plan:

> [COURT:] So, I take it, even with low-functioning folks that you've dealt with, you still require some effort on their part; is that right?
> [LOMAX:] Yes.
> [COURT:] You can't do it for them?
> [LOMAX:] No.
> [COURT:] You can assist, but you can't do it without some effort on the [part] of the parents; is that correct?
> [LOMAX:] Yes.

Moreover, in response to Mother's counsel asking Lomax what steps she made to adapt her services to Mother's medical issues, Lomax testified that "I can't make any steps, if she is not putting forward any steps to attend any sessions, any therapy, or

anything."

"Our General Assembly requires social service agencies to undertake reasonable, not *exhaustive*, efforts towards reunification." *In re A.A.S.*, __ N.C. App. __, __, 812 S.E.2d 875, 882 (2018) (emphasis added). Based on our review of the record, we hold that there is ample evidence that the trial court was attentive to Mother's intellectual disorders and that Lomax and Beaufort Social Services acted reasonably and effectuated reasonable efforts in attempting to reunite Mother with the children. While Mother raises an important issue regarding to what degree social service workers should accommodate a parent's mental or physical disabilities, the evidence here tends to show—notwithstanding her psychological difficulties—Mother willfully avoided her responsibilities and rebuffed available resources. Beaufort Social Services followed the psychologist's recommendations, Lomax actively communicated with Mother concerning her case plan and repeatedly tried to help by transporting her to her appointments, but Mother consistently refused. The trial court took note of Mother's medical diagnoses and heard testimony that she was not making any effort to facilitate the reunification process. Mother refused multiple drug tests and, at times when she did comply with them, she tested positive for controlled substances. We therefore are unpersuaded by Mother's argument and hold that the trial court's findings that relate to Mother's disabilities are supported by competent evidence.

Mother also argues that some of the trial court's findings are contradicted by other findings or evidence in the record. Mother first takes issue with finding 38, which provides that Beaufort Social Services "has not identified any appropriate relative willing to care for the children." She argues that it conflicts with other findings that list the children's paternal grandfather, who was residing in Virginia, as a possible "placement option." But finding 38 states that, at the time of the order, no *appropriate* relative was willing to take the children. The trial court found that the grandfather was not licensed as a foster parent as required by Virginia law and that Beaufort Social Services was still waiting for his consent to conduct a home study. *See In re J.D.M.-J.*, __ N.C. App. __, __, 817 S.E.2d 755, 759 (2018) ("[A] child cannot be placed with an out-of-state relative until favorable completion of an [Interstate Compact on the Placement of Children] home study." (citation omitted)). Accordingly, the trial court's finding that no appropriate alternative family arrangement was available is not contradicted by its other findings.

Mother also argues that findings 17(g) and 22 stating she missed the majority of her visits with the children are contradicted by Lomax's testimony and Beaufort Social Services' court summary that she attended 13 out of 20 visitation opportunities. Mother is correct. But because the trial court's remaining findings support its conclusions of law and decision that reunification efforts should be ceased, these two erroneous findings do not merit reversal. *In re P.T.W.*, __ N.C. App. __, __,

794 S.E.2d 843, 852 (2016) (citing *In re K.S.*, 183 N.C. App. 315, 329-30, 646 S.E.2d 541, 549 (2007)).

In sum, we hold that the trial court's conclusions of law and decision ceasing reunifications efforts are supported by competent evidence and sufficient findings of fact. The trial court's decision was not "so arbitrary it could not have been the result of a reasoned decision." *In re N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007).

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's decision to eliminate reunification from the permanent plan, its determination that reunification efforts should cease, and its termination of parental rights order.

AFFIRMED.

Judge BERGER concurs in the result only.

Judge MURPHY concurs.

Report per Rule 30(e).