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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1236

Filed: 5 November 2019

Guilford County, Nos. 16 JA 147, 204

IN THE MATTER OF: C.W. & P.H.

Appeal by Respondent-Mother from order entered 28 March 2018 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 3 October 2019.

*Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.*

*Surratt Thompson & Ceberio PLLC, by Christopher M. Watford, for respondent-appellant mother.*

*No brief filed for guardian ad litem*

MURPHY, Judge.

Respondent-Mother (“Nana”)<sup>1</sup>, the mother of juveniles Sally and Paloma, appeals from the trial court’s order removing reunification as a permanent plan and ceasing reunification efforts. The trial court’s findings of fact are supported by

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<sup>1</sup> We use pseudonyms for all relevant persons throughout this opinion to protect the juveniles’ identities and for ease of reading.

competent evidence, and those findings of fact support the trial court's conclusions of law. We affirm the trial court's order.

**BACKGROUND**

On 22 February 2016, the Guilford County Department of Health and Human Services ("DHHS") filed a petition alleging that Sally was an abused, neglected, and dependent juvenile. In its petition, DHHS stated that both Sally's father and Nana had been arrested and charged with human trafficking and prostitution of a minor. After Nana and the father were arrested, Sally and Paloma went to stay with their maternal great grandmother, Claudette. DHHS subsequently learned that Paloma had been sexually abused by her fifteen-year-old uncle and that Claudette was aware of the abuse but did not report it. On 18 February 2016, Claudette allowed Nana to call Paloma from jail and admonish her for disclosing the abuse. At the time the petition was filed, Claudette was in the process of being evicted from her home. DHHS subsequently obtained nonsecure custody of Sally, and Paloma went to live with her biological father, Wilfred.

The petition was heard in Guilford County District Court on 6 April 2016. Nana both consented to an adjudication concluding Sally was an abused, neglected, and dependent juvenile and stipulated to facts that would support that adjudication. On 5 May 2016, the trial court entered its written adjudication and disposition order. Nana was ordered to comply with her case plan, which required her to maintain

consistent housing; obtain verifiable employment; participate in parenting skills classes; and complete mental health and substance abuse assessments and comply with any resulting recommendations. Sally remained in DHHS custody and Nana was awarded a minimum of two one-hour visits with her each week.

On 14 April 2016, DHHS filed a petition alleging that Paloma was a neglected and dependent juvenile. In addition to allegations similar to those included in Sally's petition, DHHS also alleged Wilfred was a drug dealer and that he stayed with family members who were also drug dealers and drug users. DHHS obtained nonsecure custody of Paloma and placed her in foster care.

Paloma's petition was heard on 8 February 2017. On 10 March 2017, the trial court entered an order adjudicating Paloma as an abused, neglected, and dependent juvenile. Nana was ordered to comply with her previously-established case plan and her visitations with Paloma were suspended. Sally and Paloma's cases were then combined, and a permanency planning hearing was held on 9 February 2018.

On 28 March 2018, the trial court entered its permanency planning review order that resulted from the February hearing. The trial court found that Nana had not made reasonable progress on her case plan. The primary permanent plan was changed to adoption with a secondary concurrent plan of guardianship. Although DHHS did not file a petition or motion to terminate Nana's parental rights within

180 days<sup>2</sup> of the entry of the permanency planning order, Nana filed a proper *Notice to Preserve the Record for Appeal* and timely noticed her appeal. See N.C.G.S. § 7B-1001(a)(5) (2017).<sup>3</sup>

### ANALYSIS

“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) (internal citations omitted). “An abuse of discretion occurs when the trial court’s ruling is so arbitrary that 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) (internal citation omitted), *aff’d*, 362 N.C. 229, 657 S.E.2d 355 (2008). Unchallenged findings of fact are binding on appeal, *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982), and we review the trial court’s conclusions of law de novo. *In re D.H.*, 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006).

At a permanency planning hearing, prior to ordering a cessation of reunification efforts, the trial court must make written findings “that reunification

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<sup>2</sup> In its order, the trial court ordered DHHS to file termination petitions within 60 days. The record does not reflect whether DHHS has been found to be in contempt of the order.

<sup>3</sup> This statute was amended effective 1 January 2019. See 2017 N.C. Sess. Laws 41. However, the amendments do not affect this appeal.

efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." N.C.G.S. § 7B-906.2(b) (2017). This determination "is in the nature of a conclusion of law that must be supported by adequate findings of fact." *In re J.H.*, 244 N.C. App. 255, 276, 780 S.E.2d 228, 243 (2015) (quoting *In re E.G.M.*, 230 N.C. App. 196, 209, 750 S.E.2d 857, 867 (2013)). Nana concedes that "the [trial court] did make an 'ultimate' finding of fact and a conclusion of law that complied with the statutory language that authorizes the cessation of reunification efforts." However, Nana argues that the trial court erred by ceasing reunification efforts because its findings of fact lack evidentiary support and its conclusions of law are not supported by its findings of fact. We disagree.

#### **A. The Trial Court's Findings of Fact**

Nana first challenges Finding of Fact 25, which states that she "continued to minimize her behavior's impact on the juveniles." There was conflicting evidence before the trial court regarding this issue, namely written court reports from the DHHS and the Guardian ad Litem, which were received into evidence without objection during the permanency planning hearing. *See* N.C.G.S. § 7B-906.1(c) (2017) ("The [trial] court may consider any evidence, including hearsay evidence as defined in [N.C.]G.S. 8C-1, Rule 801, or testimony or evidence from any person that is not a party, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition."). When presented with

conflicting evidence, it is the trial court's responsibility—and not ours—to weigh conflicting testimony. *In re J.C.*, 236 N.C. App. 558, 562, 783 S.E.2d 202, 205 (2014); *see also In re Whichard*, 8 N.C. App. 154, 160, 174 S.E.2d 281, 285 (1970) (“As the trier of the facts, the [trial] court ha[s] the duty to determine the weight and credibility to be given to the evidence presented, and [it] could believe or disbelieve the testimony of any witness.”).

In challenging Finding of Fact 25, Nana notes that she testified at the hearing, “I understand now how my behavior affected my daughter. And not just my behavior but the environment that I was living in how it affected my daughter.” While Nana accurately recounts her testimony, there was also conflicting evidence before the trial court in the report submitted by DHHS, which stated that Nana “has continued to minimize her behavior’s impact on her children.” Moreover, even after she completed the Parent Assessment Training and Education (“PATE”) program in August 2016, competent evidence shows Nana still did not appear to understand how her behavior impacted her children. Nana completed no other parenting therapy after that date, so the trial court was free to determine that this was still an issue, despite her testimony to the contrary. The trial court acted within its discretion in making Finding of Fact 25, which is supported by competent evidence, and Nana’s argument to the contrary is overruled.

Nana next challenges Finding of Fact 28, which lists the services DHHS had provided Nana:

28. The Department offered the following services to reunite the juveniles with a parent: DNA testing, diligent searches, foster care case management, team meetings, visitation, parenting evaluation and training, substance abuse assessment. The Court has suspended all parental visitation.

The portions of this finding that apply to Nana<sup>4</sup> are fully supported by the unchallenged statements in DHHS's court report. Moreover, Nana appears to acknowledge in her brief that the contents of this finding are accurate, but she argues it is lacking because it does not "explain" how some of the items "actually related to reunification" and does not discuss what efforts DHHS made while she was imprisoned. Neither of these arguments show that what the trial court actually found was unsupported by competent evidence.

Nana also argues the trial court erred in Finding of Fact 38, stating Nana is "not available to the Court. [She] is incarcerated and has not been available on a regular basis to speak with the social worker, although some telephone contact has occurred." We agree with Nana that the first challenged sentence is unsupported by evidence. Nana appeared at the permanency planning hearing by telephone from federal prison, which is the most that could be expected of her given her incarceration

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<sup>4</sup> DNA testing, for instance, necessarily applied only to determining the identity of the children's respective fathers.

at the time. However, the trial court's finding that Nana did not speak to her DHHS social worker regularly is supported by DHHS's unchallenged court report.

Nana also challenges Finding of Fact 51, which lists the "efforts to achieve reunification" made by DHHS. We agree with Nana that the trial court's finding that DHHS provided "[s]upervised visits with mother" as to Paloma was unsupported by the evidence; Nana's visitation had been suspended in the court's dispositional order following Paloma's adjudication as an abused, neglected, and dependent juvenile. However, the rest of the services listed were supported by DHHS's court report, and Nana appears to concede in her brief that the listed services are accurate.

Much like her previous arguments, Nana's argument here focuses on what was not found by the trial court: that DHHS did not provide her with a "jail case plan," that Nana completed multiple classes during her incarceration, and the paucity of correspondence from DHHS to Nana. As before, Nana's discussion of what was not found by the trial court does not provide a basis for concluding that the information in the finding was unsupported by credible evidence. Other than the reference to visitation with Paloma, this finding is supported by competent evidence and remains binding.

### **B. The Trial Court's Ultimate Conclusion**

Nana's remaining challenges relate to the trial court's ultimate decision to cease reunification efforts. Nana argues that the court erred by finding that she had:



“not made reasonable progress on [her] case plan or towards reunification[;]” that she was “acting in a manner inconsistent with the health and safety of the juveniles[;]” and that “[e]fforts to reunite the juveniles with [Nana] would clearly be unsuccessful and inconsistent with the juvenile[s]’ health and safety[.]” Finally, Nana challenges the trial court’s conclusion that “[r]eunification efforts should cease.”

The crux of Nana’s argument is that DHHS failed to offer sufficient reunification services while she was incarcerated. She contends that she completed the classes she was able to while incarcerated and should not be held at fault for not complying with portions of her case plan that were impossible to complete during that time. Nana’s argument is largely premised upon her belief that her purported “commitment to change” warranted continuing reunification efforts.

The trial court’s order shows that it considered all of the evidence presented by Nana in reaching its decision to cease reunification efforts. Unchallenged findings of fact show that Nana “did complete classes” while awaiting trial, that she was making efforts to engage in multiple types of services while in prison, that she was attempting to obtain employment in prison, and that she sent letters and drawings to her children throughout her incarceration. The trial court also found that Nana testified at the hearing about her own mistreatment during childhood, which led to her minimizing what happened to her children, and that she stated that she would not place her children in harm’s way again. Given these findings, it is clear that the trial

court properly considered all of the circumstances in reaching its conclusion. As demonstrated by unchallenged Finding of Fact 34, the trial court did not find these circumstances dispositive:

34. The [c]ourt finds that the environment from which these two juveniles were removed was one where sexual abuse and sexual misconduct were prevalent. . . . That it is . . . apparent that [Nana] was likely a victim of sexual abuse as that was the norm of her family, and that she associated herself with men, the fathers of her two children among others, who were inculcated into that pattern of sexual abuse. . . . Even notwithstanding all of those factors, as this [c]ourt convenes today, [Nana] . . . [is] not available to parent [her] children[.] . . . These parents have acted in a manner inconsistent with their constitutionally protected status as parents.

In addition to Finding of Fact 34, there are also unchallenged findings showing that, despite entering into a case plan on 24 March 2016, Nana made no meaningful progress on her plan in the months before she was incarcerated in November 2016. At the time of the permanency planning hearing, the children had each been in DHHS custody for about two years and Nana was to remain incarcerated for at least six more months before she could begin to resume her case plan in earnest.

In sum, the trial court's findings of fact demonstrate that, before deciding to cease reunification efforts, it weighed the progress Nana had made in the two-plus years after the juveniles were removed from her custody, including before and after she was incarcerated, her ongoing prison sentence, and the effect that sentence would have on her ability to complete her case plan. The trial court gave appropriate

consideration to Nana's progress in prison but found that her progress was insufficient under the circumstances. The trial court's conclusion was supported by its findings of fact and does not amount to an abuse of discretion.

**CONCLUSION**

The trial court's order ceasing reunification efforts was not an abuse of discretion. The conclusion that reunification would clearly be unsuccessful and inconsistent with Sally and Paloma's health and safety is supported by the trial court's findings of fact, which are supported by credible evidence.

AFFIRMED.

Chief Judge MCGEE and Judge COLLINS concur.

Report per Rule 30(e).