IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-141

Filed: 15 October 2019

Orange County, Nos. 17 JA 34-35

IN THE MATTER OF: S.B., Z.O.

Appeal by respondent-mother from order entered 9 November 2018 by Judge Joseph Moody Buckner in Orange County District Court. Heard in the Court of Appeals 19 September 2019.

Stephenson & Fleming, LLP, by Angenette Stephenson, for petitioner-appellee Orange County Department of Social Services.

Dorothy Hairston Mitchell for respondent-appellant mother.

Parker, Poe, Adams & Bernstein, L.L.P., by Mary Katherine H. Stukes, for guardian ad litem.

ARROWOOD, Judge.

Respondent-mother appeals from the trial court's orders granting legal guardianship of her sons S.B. ("Sonny") and Z.O. ("Zion") (collectively, "the children")[1] to their maternal aunt ("Aunt"). For the following reasons, we affirm.

I. Background

[1] A pseudonym is used to protect the juveniles' privacy and for ease of reading.

Respondent-mother is the biological mother of Sonny and Zion, born on 10 December 2007 and 2 November 2011 respectively. Orange County Department of Social Services ("OCDSS") has been involved with issues related to the care, health, and safety of respondent-mother's children since 2011. OCDSS first formally interviewed the children in 2017 after receiving a report from Truancy Court about Sonny's numerous unexcused absences and tardiness at school and amid concerns of respondent-mother's substance abuse at home around the children.

On 15 May 2017, OCDSS filed juvenile petitions alleging that Sonny and Zion were neglected and dependent. Orders for non-secure custody were filed the same day. The children were adjudicated neglected and dependent at a hearing on 6 July 2017. At a review hearing on 21 September 2017, the trial court determined it was in the children's best interest to remain in OCDSS custody and provided thirteen recommendations. These recommendations included respondent-mother having supervised weekly visitation, participating in weekly therapy to address mental health issues, and taking steps to address her substance abuse problems, such as enrollment in various programs and submitting to random drug screens.

The trial court entered an order for unlicensed placement on 6 October 2017 so that the children could be placed with Aunt. Review hearings were held in September and December of 2017. On 15 March 2018, a permanency planning hearing was held. At this hearing, the trial court determined that Aunt's guardianship would be the

primary plan and reunification with respondent-mother would be the secondary plan for the children. **[R p 113, 115]**

The final permanency planning hearing was held on 18 October 2018. The children's social worker Eliza Gibson testified at this hearing and recommended guardianship of the children to Aunt. Ms. Gibson testified that she had discussed with Aunt the legal responsibilities associated with guardianship. She further testified that during their discussion Aunt indicated that she understood these responsibilities. Aunt was present at the hearing but did not testify. On 9 November 2018, the trial court entered an order awarding legal guardianship to Aunt, terminating OCDSS custody, and relieving the guardian *ad litem*. Respondent-mother entered a notice of appeal.

II. Discussion

On appeal, respondent-mother argues the trial court erred by: (1) removing reunification from the permanent plan and granting guardianship to Aunt without making all the required statutory findings under N.C. Gen. Stat. §§ 7B-906.1, 906.2 (2017), and (2) relying on insufficient evidence in its finding that Aunt understood the legal significance of being appointed as the children's guardian and that Aunt would have adequate resources to care for the children. We address each argument in turn.

A. Compliance with the Required Statutory Findings for Orders of Guardianship and Removal of Reunification from the Permanent Plan

Respondent-mother first argues that, in a permanency planning order where reunification of a child with his parent was not a primary or secondary plan, the trial court was required to include explicit findings of fact directly referencing the relevant criterion in N.C. Gen. Stat. §§ 7B-906.1(d)(3) and 906.2(b) regarding whether reunification efforts would be unsuccessful or inconsistent with the children's health and safety. Respondent-mother contends that the trial court was required to "first show how reunification was no longer a viable option before deciding whether or not it was appropriate to eliminate reunification by making another plan the only plan, and actually implementing that other plan." We disagree.

"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. The trial court's conclusions of law are reviewable *de novo* on appeal." *Matter of I.K.*, __ N.C. App. __, __, 818 S.E.2d 359, 362 (2018) (internal quotation marks and citations omitted).

1. Whether Reunification Efforts Would Be Unsuccessful or Inconsistent with the Children's Health and Safety

At each permanency planning hearing, the trial court "shall consider the [ ] criteria [of N.C. Gen. Stat. § 7B-906.1(d)] and make written findings regarding those that are relevant[.]" N.C. Gen. Stat. § 7B-906.1(d) (2017). In the instant case, the relevant criterion at issue is "[w]hether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile's health or

safety and need for a safe, permanent home within a reasonable period of time." N.C. Gen. Stat. § 7B-906.1(d)(3).

A trial court's determination that reunification will clearly be unsuccessful or inconsistent with the juvenile's health, safety, or need for stability within a reasonable time "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) (citation and internal quotation marks omitted). "[T]he order must make clear that the trial court considered the evidence in light of . . . [this criterion.] 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) (internal citations omitted) (referencing same criterion in N.C. Gen. Stat. § 7B-507(b) regarding placement of children with county departments of social services).

Respondent-mother argues that, "There are no findings that support that [r]espondent-[m]other's lack of progress on her case plan show that she had reached a point where further efforts would be futile and there are no findings that show that her lack of progress has affected the children's safety." We disagree.

The trial court made numerous factual findings to support the conclusion that further efforts to reunite the children with respondent-mother would be unsuccessful. These include, among others:

> 21. On November 3, 2017, Respondent mother told the social worker that her therapist only calls her to check

in. Upon verification of this information, it was learned that Respondent mother's last session was September 18, 2017 due to Respondent mother's lack of motivation to change and she did [sic] take responsibility for issues that led to OCDSS custody.

22. Respondent mother was ordered to complete a psychological evaluation with parental competency upon sixty (60) days sobriety, but she did not complete the evaluation. During the case, Respondent mother either tested positive or refused requested screens.

23. Respondent mother's therapist, Mr. Daye, diagnosed Respondent mother with alcohol dependence. In June 2017, she entered Freedom House detox, but she did not follow up with scheduling a follow up appointment with Freedom House for recommended treatment. During this month, she also tested positive for cocaine and marijuana.

24. In September 2017, Respondent mother was screened for Family Treatment Court (FTC); however, she was found ineligible because she failed to acknowledge any substance use issues and did not want to engage in treatment.

25. Respondent mother subsequently contacted the FTC Case Manager about participation after she reported some clean time, but she did not attend the December 4, 2017 session. Her referral was due to close [in] February 2018, but OCDSS requested that she be allowed to participate in FTC and she attended the February 26, 2018 session.

26. On May 7, 2018 Respondent mother was terminated unsuccessfully from FTC due to missed screenings, failing to acknowledge a substance use problem, lack of engagement in treatment, and behavior detrimental to the FTC program.

27. Respondent mother was recommended to continue substance abuse support groups at Freedom House, but she did not continue to attend after her discharge from FTC until July 31, 2018. She has since attended six group sessions.

28. Respondent mother's drug screens have been mostly not completed or positive for substances. After termination from FTC, Respondent mother was referred to 8 screens, with 6 not completed, one clean, and results pending at the time of hearing. Respondent mother has specifically requested screens three times which precludes her from referral.

29. Respondent mother was referred to parenting classes with Linda Boldin to whom she was referred by Truancy Court. Although she was supposed to attend weekly classes, Respondent mother stopped meeting with Ms. Boldin in September 2017. After multiple referrals, Respondent mother completed a condensed 1.5-hour sessions instead of six sessions with Ms. Boldin in April 2018. In working with Ms. Boldin, Respondent mother did not take responsibility for agency custody nor acknowledge the progress she needed to make for reunification with the juveniles.

30. Respondent mother has attended [Sonny's] MTSS meetings at his school during the academic school year. Respondent mother has trouble acknowledging the need for behavior interventions which causes some tension with the school at some meetings.

These findings show that respondent-mother is still struggling with a substance abuse problem and has failed to make significant strides to acknowledge her problem or improve her situation. Caretakers with substance abuse issues pose a threat to the safety of children in their care. In fact, respondent-mother's behavior

has impacted the children's health and safety in the past. Zion tested positive for marijuana at birth, and respondent-mother has previously left both children in the car unsupervised, leading to a misdemeanor child abuse charge.

Furthermore, the trial court expressly found that "[i]t is not possible for the juveniles to be placed with a parent within the next six months. Such placement is not in the juveniles' best interest because Respondent mother has not successfully engaged in reunification services[.]" It further found that "[r]espondent parents have acted inconsistently with their protected status as parents" and that "[t]he juveniles should remain in the current placement because it is currently meeting their needs and in their best interest." Respondent-mother correctly notes that the former finding more directly addresses N.C. Gen. Stat. § 7B-906.1(e) (listing criteria additional to N.C. Gen. Stat. § 906.1(d) when placement is not with a child's parent), and argues that this finding cannot be used to satisfy N.C. Gen. Stat. § 7B-906.1(d)(3) because it "[did] not address any time beyond [six months]" and should have "relate[d] specifically to [N.C. Gen. Stat.] § 906.1(d)(3)[.]" Pursuant to *In re L.M.T.*, we see no reason why the trial court's findings of fact, taken as a whole, cannot sufficiently address the concerns of multiple statutory criteria without more explicit reference to each. The trial court's findings as to why reunification would be unsuccessful within the next six months also address the likelihood of success for attempts at reunification beyond that time.

The trial court made numerous factual findings tending to show that: (a) allowing more time for further efforts by respondent-mother towards reunification would be unsuccessful, and (b) respondent-mother's lack of personal progress towards sobriety and failure to acknowledge the role her substance abuse problem has played in the children's current situation would threaten their future health and safety. Therefore, the trial court fulfilled the statutory requirement of N.C. Gen. Stat. § 7B-906.1(d)(3).

2. Removing Reunification as Secondary Plan

Next, respondent-mother argues that the trial court erred by removing reunification from the plan at the final permanency planning hearing in violation of N.C. Gen. Stat. § 7B-906.2 (2017). This argument is without merit.

Concurrent planning is required only "until a permanent plan has been achieved." N.C. Gen. Stat. § 7B-906.2(a1). The trial court established the primary plan of Aunt's guardianship as the permanent plan in its 9 November 2018 order, stating that, "The permanent plan has been achieved. Pursuant to [N.C. Gen. Stat.] § 7B-906.2(a1), concurrent planning is no longer required." Because the trial court established a permanent plan for the children, there was no need to include a secondary plan of reunification in its order. *See Matter of D.A.*, __ N.C. App. __, __, 811 S.E.2d 729, 733 (2018) ("[A] permanent order, without further scheduled hearings, effectively ceases reunification efforts."); *Matter of I.A.*, __ N.C. App. __, 812

S.E.2d 730, 2018 WL 1802404, at*3 (2018) (unpublished) (stating that reunification efforts may cease when the permanent plan has been achieved so long as there are statutory findings).

Respondent-mother next contends that reunification should have remained a goal because the trial court failed to make any written findings under N.C. Gen. Stat. § 7B-906.2(b).

> 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 [N.C. Gen. Stat. §] 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) (emphasis added).

Section 7B-906.2(d) of the General Statutes describes what those written findings should include:

> At any permanency planning hearing under [N.C. Gen. Stat. § 7B-906.2(b), (c)], 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).

Despite respondent-mother's contention to the contrary, the trial court made explicit findings mirroring the language of N.C. Gen. Stat. § 7B-906.2(d):

> Pursuant to [N.C. Gen. Stat.] § 7B-906.2(d), the following demonstrate a lack of success:
>
> a. Respondent mother is not making adequate progress within a reasonable period of time under her plan. Respondent fathers do not have the present ability or desire for custody of either juvenile.
>
> b. Respondent parents have demonstrated some level of cooperation with the plan, the department, and the juveniles' Guardian ad Litem.
>
> c. Respondent parents remain available to the Court, OCDSS, and the juveniles' Guardian ad Litem.
>
> d. Respondent parents' lack of engagement with reunification services is inconsistent with the health or safety of the juvenile.

The trial court's written findings fulfill the relevant statutory requirements and establish that reunification would be inconsistent with the health or safety of the children. As mentioned *supra* section 1, the trial court noted plenty of evidence in its

findings to support this conclusion. Therefore, because the trial court made the requisite statutory findings, it did not err in ordering a permanent plan ceasing reunification efforts with respondent-mother.

B. Sufficiency of Evidence for Guardianship Order

Finally, respondent-mother argues that the trial court erred in granting guardianship of the children to Aunt by relying on insufficient evidence that Aunt understood the legal significance of being appointed guardian and would have adequate resources to care for the children. We disagree.

> Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and [whether] the findings support the conclusions of law. Before a trial court may appoint a guardian of the person for a juvenile in a Chapter 7B case, the court must 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. [T]he trial court need not make detailed findings of evidentiary facts or extensive findings regarding the guardian's situation and resources, . . . [but] some evidence of the guardian's resources is necessary as a practical matter, since the trial court cannot make any determination of adequacy without evidence. The court may consider any evidence, including hearsay evidence . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

Matter of N.H., __ N.C. App. __, __, 804 S.E.2d 841, 843 (2017) (alterations in original) (internal quotation marks and citations omitted).

1. Aunt's Understanding

Respondent-mother argues that the trial court's finding that Aunt understood the legal significance of guardianship is not supported by adequate evidence. We disagree.

"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-600(c) (2017).

> 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 [N.C. Gen. Stat. §] 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.*

N.C. Gen. Stat. § 7B-906.1(j) (emphasis added).

In its order, the trial court made the following finding concerning Aunt:

> 45. [Aunt] was present in Court. The Court verified that [Aunt] understands that she is being appointed as guardian of the juveniles, understand [sic] the legal significance of the appointment, and will have adequate resources to care appropriately for the juveniles.

Respondent-mother contends this finding is not supported by actual evidence. While Aunt was present at the hearing, she did not testify. An OCDSS social worker

assigned to the children's case testified that:

> [Aunt] has always said she'll care for the children as long as needed. She wants to keep them in their family, she knows they're doing really well with her, she loves them very much. And, of course, we often talk about the fact that we both wish they could be with their mother but that if they can't, you know, this is a really good placement for them and so she's been really consistent of her commitment to the children.

The trial court also admitted the OCDSS court summary into evidence, which states the following:

> [Aunt], proposed guardian for [the children], has been informed of the legal significance of guardianship. [Aunt] is aware that guardianship means she will be responsible for the care, custody, and control of [the children], who will remain in their [sic] care, or she may arrange a suitable placement for [the children].
>
> [Aunt] has demonstrated an understanding that she may represent [the children] in legal actions before any concert and they [sic] may consent to certain actions on the part of [the children] in place of the parent including (i) marriage, (ii) enlisting in the Armed Forces, and (iii) enrollment in school. [Aunt] is aware that they [sic] may consent to any necessary remedial, psychological, medical, or surgical treatment for [the children].
>
> [Aunt] is aware that the role of guardian is permanent.

Respondent-mother argues that there is no way to assess Aunt's actual understanding from the testimony or court summary provided by the social worker. Respondent-mother contends that the only way for the trial court to determine Aunt's understanding was to hear testimony from her at the hearing. Though this may have

been best practice, testimony by Aunt was not necessary for the trial court to find that she understood the legal implications of guardianship.

> At each hearing, the court shall consider information from the parents, the juvenile, the guardian, any person providing care for the juvenile, the custodian or agency with custody, the guardian ad litem, and any other person or agency that will aid in the court's review. The court may consider any evidence, including hearsay evidence . . ., 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.

N.C. Gen. Stat. § 7B-906.1(c). The testimony of the social worker and the court summary were relevant and reliable evidence.

N.C. Gen. Stat. § 7B-906.1(j) states that the trial court "shall verify" that the guardian "understands the legal significance of the placement or appointment[.]" It does not say that the guardian must demonstrate to the trial court a practical application of this understanding prior to or during the hearing. Therefore, the trial court did not err in finding that Aunt understood the legal significance of her appointment.

2. Aunt's Resources

Respondent-mother further argues that the trial court's finding that Aunt will have adequate resources to care for the children is unsupported by evidence. We disagree.

In its order, the trial court found:

> 46. There is sufficient household income and resources to care appropriately for the juveniles. [Aunt] has cared for the juvenile's [sic] since September 29, 2017, and she is aware of the financial commitment of providing for their care. She is employed part-time, and she receives financial and material support from her family, including Respondent mother. She is aware of her eligibility for child support from Respondent parents.
>
> 47. The juveniles' eligibility for Medicaid will continue with an award of guardianship to [Aunt] to cover the medical, dental, and mental health services.

When asked if Aunt has the ability to meet the children's needs, the OCDSS social worker testified as follows regarding Aunt's financial situation:

> Yes. In fact, she has been, you know, providing for them very well over the past year. As a kinship provider, she does not get a board payment, unfortunately. She gets financial support from her family. [Respondent-mother] provides for the children as well, and so, all of their needs have been able to be met really within their family system.

Because there was evidence in the record that Aunt understood her financial responsibilities, had income from a part-time job, and had financial support from family members, respondent-mother's argument is unsupported. The trial court did not err in finding that Aunt had adequate financial resources to care for the children.

III. Conclusion

For the reasons discussed, we affirm.

AFFIRMED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).