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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1131

Filed: 31 December 2020

Cabarrus County, No. 19 JA 55

IN THE MATTER OF: S.L.N.

Appeal by respondent-mother and respondent-father from order entered on or about 10 September 2019 by Judge Christy E. Wilhelm in District Court, Cabarrus County. Heard in the Court of Appeals 3 November 2020.

Hartsell & Williams, PA, by H. Jay White and E. Garrison White, for petitioner-appellee Cabarrus County Department of Human Services.

Steven S. Nelson, for respondent-appellant-mother.

Dorothy Hairston Mitchell, for respondent-appellant-father.

Law Office of D. Christopher Osborn PLLC, by Christopher C. Peace, for guardian-appellees Jason and Ashley Nelson.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

STROUD, Judge.

Respondent-parents appeal from a permanency planning hearing order which ceased reunification efforts with Sam.¹ Because the trial court's findings of fact support the conclusions of law, we affirm the order.

I. Background

Mother and Father have an extensive history with the Cabarrus County Department of Human Services ("CCDHS") dating back to an instance of domestic violence in 2012. Due to another allegation of domestic violence, CCDHS provided services starting in October 2015. Parents signed a safety plan and agreed to comply with their in-home services case plan. After the parents failed to comply with the case plan, their two children were placed with their paternal grandparents. In March of 2016 the children were adjudicated neglected, and later that year guardianship was granted to the paternal grandparents. In January 2018, following another report of domestic violence, all of their four children were adjudicated neglected and one was also adjudicated abused.

Sam is the fifth child of respondent-parents, born in April of 2019. A social worker met with parents at the hospital due to concerns regarding Father's history of domestic violence. CCDHS discussed these concerns and requested the parents inform CCDHS before Mother returned to work so a new safety plan could be

¹ Pseudonyms are used throughout the opinion.

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developed. Mother did not inform CCDHS before returning to work and was reportedly leaving Sam in the care of the maternal grandmother and maternal aunt “somewhere in South Carolina,” but was unable to provide an address for these family members. The maternal grandmother and aunt ultimately decided that they did not want to be considered for placement of Sam.

In May 2019, CCDHS filed a petition alleging Sam was neglected because he lived “in an environment injurious to the juvenile’s welfare,” and was dependent because Mother and Father are “unable to provide for the juvenile’s care or supervision and lacks an appropriate alternative child care arrangement.” Following a dispositional hearing, Sam was adjudicated neglected and dependent. The trial court based the adjudication on findings regarding parents’ lengthy history of domestic violence. The trial court found that Mother and Father failed to address the concerns regarding domestic violence and its effect on the children, their lack of candor, and their refusal to engage in treatment. The trial court ordered Sam remain in his placement with Jason and Ashley Nelson (the “Nelsons”), along with his sister.

On 22 August 2019, the trial court held a permanency planning hearing. A CCDHS social worker testified that Father: was discharged from psychological services, failed to acknowledge a need for treatment, failed to demonstrate appropriate parenting skills, and failed to demonstrate behavioral changes. The social worker testified that although Mother had completed many tasks on her case

plan, there were ongoing concerns because of her failure to implement behavioral changes. Mother continued to minimize Father's behavior and failed to acknowledge or address the concerns regarding domestic violence and its effect on the children. In the permanency planning hearing order, the trial court removed reunification as the secondary plan and established guardianship with the Nelsons as the permanent plan. Mother and Father were separately granted a minimum of one hour of supervised visitation per month. Both Mother and Father timely appealed from the trial court's permanency planning hearing order.

II. Respondent-Mother's Appeal

Mother argues, the "trial court erred and abused its discretion when it concluded that CCDHS had made reasonable efforts to reunify and had followed the statutory mandates contained in N.C. Gen. Stats. §7B-906.2," and the "trial court erred when it deprived [Mother] of a reasonable amount of time to work on the case plan it had ordered."

A. Ceasing Reunification

Mother does not specifically challenge any of the trial court's findings of fact as unsupported by the evidence but argues, "CCDHS made no efforts to reunify Sam with her despite the trial court's orders at Sam's disposition hearing." At the 25 July 2019 disposition hearing, the trial court ordered CCDHS to "continue to make reasonable efforts to eliminate the need for placement." At the 22 August 2019

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permanency planning hearing, the social worker assigned to Sam's case testified that she had not provided direct parenting education, did not schedule appointments for Mother for parenting education, and did not assist in making any initial appointments for services. Mother argues this was a violation of North Carolina General Statute §7B-906.2(b) which states,

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 (2017).²

“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). “An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could

² North Carolina General Statute § 7B-906.2 was amended, effective 1 October 2019. See N.C. Gen. Stat. § 7B-906.2 (2019). The order appealed in this case was dated 10 September 2019.

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) (quoting *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002)), *aff’d per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008). “Unchallenged findings of fact are deemed to be supported by the evidence and are binding on appeal.” *In re J.K.*, 253 N.C. App. 57, 60, 799 S.E.2d 439, 441 (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) (2019). If the trial court removes reunification from the permanent plan, it must make written findings as to:

- (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 and safety of the juvenile.

N.C. Gen. Stat. § 7B-906.2(d) (2019).

To the extent that Mother’s argument takes issue with the disposition order, she did not appeal from that order, and this part of her argument is not properly before this Court. In addition, because Mother has not challenged any facts as

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unsupported by the evidence, they are binding on appeal. *In re J.K.*, 253 N.C. App.

at 60, 799 S.E.2d at 441. Here the trial court found the following facts:

11. This hearing is being heard within 12 months after the date of the initial order removing custody from a parent/guardian/custodian or caretaker.

12. The parents, guardians or custodians were informed 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.

13. While the mother has made some progress on the services previously ordered, this progress made is insufficient for the court to be assured that the juvenile could safely return to her care. The mother's progress is as follows:

a. On May 19, 2018, [Mother] completed a psychological evaluation and a parenting capacity evaluation with Nazareth Child and Family Connection. On June 6, 2018, CCDHS received the psychological evaluation report. The recommendations were that [Mother] attend parenting classes, women's empowerment classes (or any course that addresses domestic violence), life skill's class, and family therapy with her other children. While [Mother] has completed parenting classes, women's empowerment classes, and life skills classes, [Mother] has failed to demonstrate a behavior change. [Mother] has not attended family therapy with her other children due to it not yet being recommended by the children's individual therapist.

b. On July 17, 2018, [Mother] completed the 12-week Domestic Violence Life Skills Course at Genesis. [Mother] has reported to CCDHS that moving forward she intends to continue

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her relationship with [Father]. This is of concern to CCDHS given the extensive violent history between [Mother] and [Father] and the submissive behavior observed by several CCDHS staff members and service providers. It is imperative that [Mother] demonstrate a sustained behavioral change in making decisions based on the children's needs, acknowledging the past trauma the children endured, and cessation of excuses for why [Father] acted as he has at certain times.

c. [Mother] does not acknowledge the trauma that her other children have disclosed and how this has affected them. [Mother] continues to either minimizing or making excuses for [Father's] behavior. [Mother] doesn't have the ability to protect the children from future harm if she is unable to acknowledge previous trauma. Additionally, upon completion of parenting education, as previously reported, the parenting instructor reported concerns with [Mother] regressing to more submissive behaviors previously observed.

d. [Mother] was not invited to attend any medical appointments during this reporting period.

e. On August 9, 2019, [Mother] completed a drug screen at Genesis per CCDHS. The results were negative for all substances.

f. [Mother] is scheduled to visit with [Sam], Tuesdays from 3:30 p.m. to 4:30 p.m. As previously reported, [Mother] refused to visit with [Sam] from date he entered CCDHS custody until June 11, 2019. [Mother] appeared distant and emotionally detached during her first couple of visits with [Sam], as she hardly interacted with him and left him in the car seat carrier for the majority of the visits. [Mother's] interactions with [Sam]

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have improved during this reporting period, as she now holds [Sam] for the majority of each visit, talks to him, and shows him pictures of his siblings.

g. [Mother] and [Father] currently reside together at 1330 Samuel Adams Cr. SW, Concord, NC. [Mother] rents another apartment, and [Father] stated [Mother] earns enough money to pay for both apartments and that [Mother] has the other apartment as a front. CCDHS has not been able to assess the home that is not a front.

h. [Mother] reported that she was beginning new employment at Nail Palace and Spa. [Mother] has not provided CCDHS with employment verification, but testified to her employment and income in court.

i. [Mother] has not been requested to sign any releases of information during this reporting period.

j. [Mother] has not maintained sufficient biweekly contact with CCDHS. [Mother] rarely makes contact with CCDHS outside of her face-to-face supervised visits. There were multiple occasions in which visitation time was lost because [Mother] wanted to speak with CCDHS staff prior to the start of visits rather than contacting CCDHS during other business hours as she has been advised. [Mother] regularly fails to return phone calls and text messages when contacted by CCDHS.

k. [Mother] utilizes her own means of transportation to get to and from visits and other appointments.

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17. It is not possible for the juvenile to be placed with his mother in the next six months. While, [Mother] is

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actively participating with her plan, there are concerns with the lengthy history with this family that resulted in legal guardianship of [Mother's] other four children being granted to relatives and licensed foster parents on June 27, 2019, the current lack of demonstrated behavioral changes, the lack of acknowledgement of the trauma her children have experienced, and the continuation of a relationship with [Father] despite his lack of compliance.

18. There are concerns with past violent behaviors directed towards [Mother] from [Father] and coupled with [Mother's] inability to protect herself, much less her child, from [Father's] violent behaviors.

19. In [Mother's] psychological evaluation, there was an unquestionable minimization of [Father's] violent behavior and in [Father's] psychological evaluation there was a definite lack of personal responsibility for violent behaviors towards [Mother] and his other child. After reviewing both psychological evaluations and observing [Mother's] continued relationship with [Father], there are concerns that the pattern of domestic violence will continue. This is supported by service providers' concern of [Mother's] observable submissive behaviors; [Mother's] behavior in court on June 27, 2019; and [Mother's] continued minimization of [Father's] behavior.

20. Conditions that led to [Sam's] removal are still of concern.

21. [Mother] is not acting in a manner that is consistent with . . . [Sam's] health and safety, is not making adequate progress under the plan within a reasonable period of time, is not remaining available to the court, CCDHS and the GAL and is not actively participating in or cooperating with the plan, CCDHS and the GAL.

22. Efforts to reunify [Sam] with [Mother] would be clearly unsuccessful or inconsistent with [Sam's] safety and need for a safe, permanent home within a reason period of time.

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....

29. On July 25, 2019, the Court directed CCDHS to provide continued services for the Mother and Father allowing Mother and Father another opportunity to comply and show a behavior change.

30. The Court finds that given Mother and Fathers' acts during the August 9, 2019, CFT meeting, that Mother and Father are disrespectful and became confrontational and aggressive. They did not and have not shown a behavior change. It is futile for CCDHS to continue to provide services to either parent.

31. This is the first time [Mother] imitated and mimicked the behaviors and acts of [Father]. She also continued to minimize [Father's] behaviors.

32. The Court has found and noted that during the Social Workers testimony, Mother and Father were laughing and smiling, which is a cause of concern as this does not show they are taking this matter seriously and that their attitude has not changed.

33. The acts of [Mother] and [Father] are very distressing to the Court given the tender personality and the age of the juvenile.

34. Mother and Father have not only failed to progress in their prior continued case plans, but have not attempted to complete any services since this child was born.

35. The most appropriate primary permanent plan ought to be legal guardianship. Concurrent planning is not required when a permanent plan is achieved.

36. Given that the juvenile is unlikely to return the care of his mother and father within the next six months,

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then legal guardianship should be granted to Mr. and Mrs. Jason and Ashley Nelson and the juvenile should remain in his current placement.

.....

51. CCDHS made reasonable efforts to implement a permanent plan for the juvenile and prevent or eliminate the need for placement of the juvenile. The efforts and services offered to reunite the juvenile with either parent are as follows:

a. Both Primary and Secondary Permanent Plans:

- i. On May 14, 2019, CCDHS made telephone contact with foster parents regarding visitation.
- ii. On May 21, 2019, CCDHS made telephone contact with foster parents regarding visitation.
- iii. On May 28, 2019, CCDHS made telephone contact with foster parents regarding visitation.
- iv. On May 30, 2019, CCDHS conducted a home visit with [Sam] at his foster parent's residence.
- v. On June 4, 2019, CCDHS made telephone contact with foster parents regarding visitation.
- vi. On June 4, 2019, CCDHS made telephone contact with [Mother] regarding visitation.
- vii. On June 4, 2019, CCDHS facilitated an office visit with [Mother] and, [Father] regarding visitation and to address [Mother] and [Father's] concerns.
- viii. On June 4, 2019, CCDHS supervised a visit between [Sam] and his four siblings.
- ix. On June 11, 2019, CCDHS made telephone contact with the foster parents regarding the upcoming court date.

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- x. On June 11, 2019, CCDHS made telephone contact with [Mother] regarding visitation and home study.
- xi. On June 11, 2019, CCDHS facilitated an office visit with [Mother] and [Father] regarding visitation.
- xii. On June 11, 2019, CCDHS supervised visitation between [Father] and [Sam].
- xiii. On June 11, 2019, CCDHS supervised visitation between [Mother] and [Sam].
- xiv. On June 12, 2019, CCDHS attempted to make contact with [Mother] regarding visitation but received no response.
- xv. On June 14, 2019, CCDHS attempted to make contact with [Mother] regarding visitation but received no response.
- xvi. On June 18, 2019, CCDHS conducted a home visit with [Sam] at his foster parent's residence.
- xvii. On June 18, 2019, CCDHS supervised visitation between [Father] and [Sam].
- xviii. On June 18, 2019, CCDHS supervised visitation between [Mother] and [Sam].
- xix. On June 25, 2019, CCDHS made telephone contact with the foster parents regarding visitation.
- xx. On June 25, 2019, CCDHS made telephone contact with [Mother] regarding visitation.
- xxi. On June 26, 2019, CCDHS attempted to make contact with [Mother].
regarding court but received no response.
- xxii. On June 26, 2019, CCDHS attempted to make contact with [Father] regarding court but received no response.
- XXIII. On July 2, 2019, CCDHS attempted to make contact with [Mother] regarding visitation but received no response.

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xxiv. On July 2, 2019, CCDHS attempted to make contact with [Father] regarding visitation but received no response.

xxv. On July 2, 2019, CCDHS made telephone contact with the foster parents regarding travel for [Sam].

xxvi. On July 2, 2019, CCDHS supervised visitation between [Father] and [Sam].

xxvii. On July 2, 2019, CCDHS supervised visitation between [Mother] and [Sam].

xxviii. On July 2, 2019, CCDHS facilitated an office visit with [Father] and [Mother] regarding travel for [Sam].

xxix. On July 3, 2019, CCDHS made contact with Elaine Habenicht and Andre Sanders with the guardian ad litem program regarding travel for [Sam].

xxx. On July 9, 2019, CCDHS supervised visitation between [Father] and [Sam].

xxxi. On July 9, 2019, CCDHS supervised visitation between [Mother] and [Sam].

xxxii. On July 12, 2019, CCDHS attempted to make telephone contact with [Mother] regarding [Sam's] travel, visitation, and PPR meeting but received no response.

xxxiii. On July 12, 2019, CCDHS attempted to make telephone contact with [Father] regarding [Sam's] travel, visitation, and PPR meeting but received no response.

xxxiv. On July 29, 2019, CCDHS made telephone contact with the foster parents regarding [Sam's] well check.

xxxv. On July 30, 2019, CCDHS conducted a home visit with [Sam] at his foster parent's residence.

xxxvi. On July 30, 2019, CCDHS supervised visitation between [Father] and [Sam].

xxxvii. On July 30, 2019, CCDHS supervised visitation between [Mother] and [Sam].

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xxxviii. On July 30, 2019, CCDHS facilitated an office visit with [Mother] regarding court, her case plan, and concerns.

The trial court concluded in relevant part:

3. CCDHS has made reasonable efforts to implement a permanent plan for the juvenile and prevent and/or eliminate the need for the juvenile's placement.

The trial court's findings of fact support the court's conclusions that CCDHS made reasonable efforts, and the trial court did not abuse its discretion with respect to disposition.

B. Compliance with Case Plan

Mother argues, "It is evident that the trial court failed to properly consider '[w]hether the parent is making adequate progress within a reasonable period of time under [Sam's] plan.'" N.C. Gen. Stat. § 7B-906.2 (d) (1)." (Alterations in original.) But Mother does not challenge any of the trial court's findings of fact or conclusions of law. As shown above, the trial court's order carefully considered mother's compliance with her case plan dating back to 2018 and her continuing failure to address father's domestic violence and the impacts it has on her children. This argument is overruled.

III. Respondent-Father's Appeal

Father argues the "trial court erred when it ceased reunification efforts with the Respondent-Father when there were insufficient findings of fact to support its

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conclusion of law,” and the “trial court erred when it granted guardianship of Sam when there were insufficient findings of fact to support its conclusion of law.”

A. Ceasing Reunification

“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. at 213, 644 S.E.2d at 594. “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. at 10- 11, 650 S.E.2d at 51 (quoting *In re Robinson*, 151 N.C. App. at 737, 567 S.E.2d at 229).

Father argues that the trial court’s findings “are littered with inconsistencies:”

In Finding of Fact No. 27, for example, the trial court found that [Father] “. . . is not actively participating in or cooperating with the plan . . .” Yet, in Finding of Fact No. 23, the trial court also found the exact opposite, *i.e.*, that [Father] “is actively participating in his plan . . .” Moreover, in Finding of Fact No. 27, the trial court found that [Father] “is not making adequate progress under the plan within a reasonable period time . . .” But earlier, in Finding of Fact No. 15, the trial court contradictorily found that [Father] “has made some progress on the services previously ordered . . .” According to the trial court, examples of this progress include: (1) completing a psychological evaluation and a parenting capacity evaluation; (2) completing a substance abuse assessment with a CCDHS-approved provider; (3) completing a drug screening, which was negative for all substances; (4)

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attending weekly visitations with Sam every Tuesday from 11 June 2019 until the permanency planning hearing on 22 August 2019; (5) holding, feeding, and changing Sam during each visit; and (6) using his own transportation, at his own expense, to attend scheduled visits and appointments. The trial court also noted [Father's] progress in maintaining his composure during meetings, court hearings, and general interactions with CCDHS staff.

(Alterations in original) (citations omitted.)

The trial court's findings are not inconsistent but show that while Father has made some progress, that progress was "insufficient for the court to be assured that [Sam] could safely return to his care:"

15. While the father has made some progress on the services previously ordered, this progress made is insufficient for the court to be assured that the juvenile could safely return to his care. The father's progress is as follows:

a. On July 2, 2018, [Father] completed a psychological evaluation and a parenting capacity evaluation with Nazareth Child and Family Connection. On July 9, 2018, CCDHS received the psychological evaluation report. The recommendations were that [Father] attend relationship counseling with [Mother], substance abuse assessment and follow all recommendations, parenting classes, and individual therapy. On April 2, 2019, [Father] completed a mental health appointment with Patricia Board at Genesis, at which time [Father] met the DSM 5 Criteria for Narcissistic Personality Disorder. Ms. Board met with [Father] again on April 9, 2019 to begin treatment recommendations, but [Father] was discharged from services due to

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clearly stating on several occasions throughout each session that he was not willing to be openminded or to consider change. Cognitive Behavior Therapy sessions are not effective for clients resistant to change of which [Father] advised. On August 9, 2019, [Father] participated in a CFT meeting and repeatedly refused to acknowledge his need for treatment. [Father] repeatedly stated that he was not a narcissist and was only diagnosed as such because Ms. Board is “found with” and paid for by CCDHS. [Father] stated he completed 4 online test which indicated he was not narcissistic, and stated he would like to get another assessment completed by an agency that is not paid for by CCDHS. CCDHS advised [Father] to provide the name of the provider he would like to utilize in order for CCDHS to be able to provide the necessary background and history for the assessment to be valid and accurate. As of this date, [Father] has not provided the requested information. [Father] ended the meeting by stating he was not going to listen to anything anyone from CCDHS had to say and that he would be “appealing all of this shit.”

b. [Father] has completed a substance abuse assessment with a CCDHS approved provider.

c. On August 9, 2019, [Father] completed a drug screen at Genesis per CCDHS. The results were negative for all substances.

d. [Father] has reported that he intends to continue a relationship with [Mother]. This is of concern given the extensive violent history between [Father] and [Mother]. It is also of concern since [Father] has been observed minimizing his behaviors and blaming [Mother] for said behaviors. It is imperative,

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at this time, that [Father] demonstrate a sustained behavioral change. CCDHS has concerns regarding [Father's] continuous lack of accountability and his demonstration of aggressive and manipulative behaviors, as evidenced by his behaviors observed in court, the testimony provided by Genesis clinician, Patricia Board, in court on June 27, 2019, and [Father's] actions and comments in a CFT meeting on August 9, 2019 which were observed by multiple CCDHS staff including a social worker, social work supervisor, program manager, and CFT facilitator. [Father] became progressively aggressive during the meeting and escalated each time CCDHS staff made a comment regarding concerns that he did not agree with. He appeared agitated, began making personal derogatory statements against parties in the meeting, and made a threatening comment that "you do not know who you are messing with." [Father] had a strong focus on power, control, and submission, as he made several comments about refusing to submit to CCDHS and social work supervisor, Rachel Willert, having too much power and control and needs to be fired.

e. [Father] has completed a parenting course, but has failed to demonstrate a behavior change regarding his parenting skills. [Father] continues to demonstrate a lack of understanding of child development and how to appropriately meet the needs of his child. During supervised visits, [Father] appears to walk through a mental check list of steps in how to interact with [Sam] regardless of [Sam's] current needs. For example, on August 6, 2019, [Father] insisted that [Sam] needed a bottle despite the fact that [Sam] did not fuss, whine, or make any other indications

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that he was hungry. [Father] continued to wake [Sam] throughout the feeding until he finished the bottle. There are continuous concerns regarding [Father's] previous interactions with his other children in which he would becoming quickly frustrated when the children fussed and did not listen. [Father's] lack of understanding of child development was discussed at length in court on June 27, 2019, with specific concern regarding [Father] asking his oldest child to chew up food for his toddler. However, [Father] demonstrated the same behavior by chewing up the toddler's food again in the very next visit.

f. [Father] was not invited to attend any medical appointments during this reporting period.

g. [Father] is scheduled to visit with [Sam] every Tuesday from 2:30 p.m. to 3:30 p.m. As previously reported, [Father] refused to visit with [Sam] from date he entered CCDHS custody until June 11, 2019. During the visits [Father] has attended with [Sam], [Father] changed [Sam's] diaper and fed him during each visit. [Father] held [Sam] during each visit, and placed him appropriately in the car seat carrier or baby swing when necessary.

h. [Father] and [Mother] currently reside together at . . . Concord, NC. [Mother] rents another apartment, and [Father] stated [Mother] earns enough money to pay for both apartments and that [Mother] has the other apartment as a front. CCDHS has not been able to assess the home that is not a front.

i. [Father] has reported to CCDHS that he is currently working "here and there" to earn money, as well as working on and selling vehicles. [Father] has not provided proof of employment or income.

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j. [Father] has not been asked to sign any releases of information during this reporting period.

k. [Father] has not contacted CCDHS, other than during face-to-face supervised visits. There were multiple occasions in which visitation time was lost because [Father] wanted to speak with CCDHS staff prior to the start of visits rather than contacting CCDHS during other business hours as he has been advised. [Father] has not returned any of CCDHS's phone calls or text messages since [Sam] has entered CCDHS custody.

l. [Father] utilizes his own transportation to visits and scheduled appointments.

.....

23. It is not possible for the juvenile to be placed with his father in the next six months. While [Father] is actively participating with his plan, there are concerns with the lengthy history with this family that resulted in legal guardianship of [Father's] other four children being granted to relatives and licensed foster parents on June 27, 2019, the current lack of demonstrated behavioral changes, the lack of compliance and completion of a case plan, and past violent behaviors and a reluctance to acknowledge ownership of past behaviors.

24. There are concerns regarding [Father's] mental health and his minimization of symptoms. [Father] reported, during the psychological evaluation, significant emotional distress, specifically anxiety and problems related to anxiety, such as intrusive ideations and nightmares, but appeared to be minimizing the impact it had on him. CCDHS has observed [Father] display concerning behavior and displaying concerning behavior and mannerism that support the information reported during [Father's] psychological evaluation. This is of grave concern as [Father's] volatile behavior is increasing while [Mother] is falling back into a submissive pattern. At a

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meeting with Joyce Sellers from Genesis, on February 27, 2019, when CCDHS attempted to discuss past and current behaviors that are of concern, [Father] was observed to become upset and fidget in his seat. At one point, [Father] shut down and placed the responsibility of responding to CCDHS, on [Mother]. CCDHS observed that [Father] would not acknowledge past behavior, minimize the seriousness of the behavior, or respond “it’s not like that anymore.”

25. While [Father] has seemingly made some effort to maintain his composure, he has continued to demonstrate in meetings, during court testimony, and general interactions with staff an overall need to have control and power over any situation. When not given that control, [Father] quickly escalates to aggressive and threatening behaviors.

26. There are concerns regarding the authenticity of [Father] and [Mother’s] current interactions with CCDHS, engagement in visits, and demonstrated behaviors after CCDHS observed [Father] make a comment to [Mother] on July 2, 2019 that “we have to think about what will look good to the court.”

27. [Father] is not making adequate progress under the plan within a reasonable period of time, is not acting in a manner that is consistent with [Sam’s siblings] health and safety, is not remaining available to the court, CCDHS and the GAL, and is not actively participating in or cooperating with the plan, CCDHS and the GAL.

28. Efforts to reunify [Sam] with [Father] would be clearly unsuccessful or inconsistent with [Sam’s] safety and need for a safe, permanent home within a reasonable period of time.

29. On July 25, 2019, the Court directed CCDHS to provide continued services for the Mother and Father

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allowing Mother and Father another opportunity to comply and show a behavior change.

The trial court concluded in relevant part:

5. The father has not made adequate progress within a reasonable period of time under the plan. The father has not actively participating in or cooperating with the plan, CCDHS, and the guardian ad litem for the juvenile. The father has not been available to the court, CCDHS, and the guardian ad litem for the juvenile. The father has not been acting in a manner consistent with the health or safety of the juvenile.

....

7. Efforts to reunite the juvenile with either parent would clearly be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time.

We disagree with Father that the trial court's findings "are littered with inconsistencies." The trial court's findings of fact support the court's conclusions, and the trial court did not abuse its discretion with respect to disposition.

B. Guardianship

Father makes two arguments regarding guardianship. First, he contends the "trial court did not make any findings that [he] was unfit or acted in a manner inconsistent with his constitutional rights as Sam's father," and "[t]here was no competent evidence of record verifying the Nelson's[sic] understood the legal significance of guardianship."

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CCDHS and the guardian ad litem both argue Father did not raise his first argument before the trial court, so it should be dismissed. Father argues the trial court did not make any findings to support its conclusion that he “acted inconsistently with [his] constitutionally protected status and rights.” We conclude this situation is analogous to *In re R.P.* where this Court concluded an almost identical situation did not result in waiver:

We note that respondent failed to raise any constitutional issue before the trial court. We have held that a parent’s right to findings regarding her constitutionally protected status is waived if the parent does not raise the issue before the trial court. *See In re T.P.*, 217 N.C. App. 181, 186, 718 S.E.2d 716, 719 (2011) (holding that mother “waived review of this issue on appeal” based on the doctrine that “[c]onstitutional issues not raised and passed upon at trial will not be considered for the first time on appeal”) (citation omitted). We decline to find waiver here, however, because we conclude that respondent was not afforded the opportunity to raise an objection at the permanency planning review hearing.

The purpose of a permanency planning hearing is to develop a plan “to achieve a safe, permanent home for the juvenile within a reasonable period of time.”

In re R.P., 252 N.C. App. 301, 304-05, 798 S.E.2d 428, 430-31 (2017).

“[P]arents have a constitutionally protected right to the custody, care and control of their child, absent a showing of unfitness to care for the child.” “[A] parent may lose the constitutionally protected paramount right to child custody if the parent’s conduct is inconsistent with this presumption or if the parent fails to shoulder the responsibilities that are attendant to rearing a child.” Prior to granting guardianship of a child to a nonparent, a district court must “clearly address whether [the]

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respondent is unfit as a parent or if [his] conduct has been inconsistent with [his] constitutionally protected status as a parent[.]” “[A] trial court’s determination that a parent’s conduct is inconsistent with his or her constitutionally protected status must be supported by clear and convincing evidence.”

Id. at 304, 798 S.E.2d at 430 (alterations in original) (citations omitted).

Father argues “the only findings of fact that could conceivably support this conclusion are set forth in Finding of Fact No. 23:”

23. It is not possible for the juvenile to be placed with his father in the next six months. While [Father] is actively participating with his plan, there are concerns with the lengthy history with this family that resulted in legal guardianship of [Father’s] other four children being granted to relatives and licensed foster parents on June 27, 2019, the current lack of demonstrated behavioral changes, the lack of compliance and completion of a case plan, and past violent behaviors and a reluctance to acknowledge ownership of past behaviors.

Father argues his “‘lengthy history’ with CCDHS and his losing custody of his other four children is irrelevant to whether [he] is a fit parent of Sam.” Father also argues “there is no evidence to suggest that [Father’s] behavioral and psychological issues have any effect on his ability to be a father to Sam,” and “the trial court actually found that [he] ‘is actively participating in his plan . . .’ and ‘has made some progress on the services previously ordered . . .’” (Alterations in original.)

The trial court’s findings support its conclusion that Father is “unfit, ha[s] neglected the child’s welfare, and acted inconsistently with [his] constitutionally

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protected status and rights.” Even though Father “made some progress on the services previously ordered,” the trial court noted in Finding of Fact 15 that “[Father] has completed a parenting course, but failed to demonstrate a behavior change regarding his parenting skills. [Father] continues to demonstrate a lack of understanding of child development and how to appropriately meet the needs of his child.” The seriousness of Father’s mental health issues was addressed by the trial court:

24. There are concerns regarding [Father’s] mental health and his minimization of symptoms. [Father] reported, during the psychological evaluation, significant emotional distress, specifically anxiety and problems related to anxiety, such as intrusive ideations and nightmares, but appeared to be minimizing the impact it had on him. CCDHS has observed [Father] display concerning behavior and mannerisms that support the information reported during [Father’s] psychological evaluation. This is of grave concern as [Father’s] volatile behavior is increasing

The trial court also found that Father’s confrontational and aggressive behavior at a 9 August 2019 child and family team meeting demonstrated a continued lack of change in behavior. The trial court was also justified in considering Father’s history with CCDHS and his other children. *See In re I.K.*, ___ N.C. App. ___, ___, 848 S.E.2d 13, 21 (2020) (“While a trial court may not solely ‘rely on prior events to find [facts relevant to the current state of matters in issue at a permanency planning hearing], it may certainly consider facts at issue in light of prior events.” (alteration in

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original) (quoting *In re A.C.*, 247 N.C. App. 528, 535, 786 S.E.2d 728, 735 (2016))). We conclude the trial court made appropriate findings which are supported by clear and convincing evidence that Father has acted inconsistently with his constitutionally protected status. This argument is overruled.

Father's second argument is that "[t]here was no competent evidence of record verifying that the Nelsons understood the legal significance of guardianship and had adequate resources to care for Sam." We disagree.

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."

In re N.H., 255 N.C. App. 501, 503, 804 S.E.2d 841, 843 (2017) (alterations in original) (citations omitted). "We review a trial court's determination as to the best interest of the child for an abuse of discretion. Questions of statutory interpretation are questions of law, which are reviewed de novo by an appellate court." *In re J.H.*, 244 N.C. App. 255, 269, 780 S.E.2d 228, 238 (2015) (citations omitted).

Father's brief acknowledges that the trial court received into evidence a financial affidavit prepared by the Nelsons, and acknowledges "the court may have

had sufficient evidence to support the finding of fact that the Nelsons were meeting Sam's financial needs[.]” Therefore we only consider whether the Nelsons “underst[ood] the legal significance of the appointment.” *In re N.H.*, 255 N.C. App. at 503, 804 S.E.2d at 843.

Mr. Nelson testified that he understood the nature of guardianship and he and his wife were willing to do it:

Q. You understand the nature of what guardianship means?

A. We do.

Q. And that's something that you guys are willing to take on?

A. Without a doubt.

Neither parents asked Mr. Nelson any questions following his testimony. In addition, the Nelson's were already guardians of one of Sam's siblings. We conclude there was no abuse of discretion in appointing the Nelsons as Sam's guardians.

IV. Conclusion

The trial court's findings of fact support its conclusions of law, and the trial court did not abuse its discretion with respect to disposition or guardianship.

AFFIRMED.

Judge BRYANT and ARROWOOD concur.

Report per Rule 30(e).