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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-711

Filed: 16 June 2020

Alamance County, No. 18 JA 100

IN THE MATTER OF: N.S.

Appeal by respondent-mother from order entered 7 May 2019 by Judge Larry D. Brown, Jr., in Alamance County District Court. Heard in the Court of Appeals 27 May 2020.

Jamie L. Hamlett for petitioner-appellee Alamance County Department of Social Services.

Matthew D. Wunsche for guardian ad litem.

Steven S. Nelson for respondent-appellant mother.

ZACHARY, Judge.

Respondent-mother Jamiliah Lacey (“Respondent”) appeals from an order changing the legal custody of her minor child, N.S. (“Nathan”).¹ The order, entered 7 May 2019, eliminated reunification from the permanent plan, ceased reunification efforts, and granted guardianship of Nathan to his paternal grandmother. After careful review, we affirm.

¹ A pseudonym is used for ease of reading and to protect the juvenile’s identity.

Background

Nathan was less than 6 months old at the time of the events in question. Respondent and Nathan's father, Corey Staton, resided together in Guilford County along with Nathan and his three half-siblings, all of whom were minors.

On 25 April 2018, Nathan did not awaken for his nighttime feeding, and refused to eat even after Respondent woke him. He still would not eat the next morning. Respondent went to work and left Nathan in the care of Staton. When Respondent returned from work at approximately 7:30 p.m., Respondent's 11-year-old daughter reported that Nathan had not eaten since she came home from school around 3:30 or 4:00 p.m. Respondent said that Staton reported that Nathan "slept most of the day . . . and did not eat well." Although Nathan "seemed sleepy" and was put to bed, Respondent noticed that his "leg was 'twitching' and his hands were in fists flexed up beside his head, and were also spasming." Attempts to get Nathan "to alert to his name and follow [Respondent's] finger" resulted in "his eyes roll[ing] back in his head."

At approximately 9:30 p.m., Respondent took Nathan to the emergency department of Moses H. Cone Memorial Hospital. He was transferred to Brenner Children's Hospital, where he "was found to have extensive, multi-focal strokes with no underlying hematologic pathology, multiple intracranial hemorrhages[,] . . . a distal right radius and ulna fracture, distal femur CML fracture, left knee proximal

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tibia fracture, rib fractures[,] . . . and multiple multi-layered retinal hemorrhages extending to the periphery of the retina.”² Medical staff observed that “[n]o explanation was given for these injuries, and they were found to be highly concerning for non-accidental trauma and abusive head trauma.” Hospital personnel reported Nathan’s injuries to the Guilford County Department of Health and Human Services, but the case was transferred to the Alamance County Department of Social Services (“DSS”) due to a conflict of interest.

On 17 May 2018, Nathan was released from the hospital to the care of his paternal grandmother. On 18 May 2018, DSS filed a juvenile petition alleging that Nathan was abused, neglected, and dependent. The petition alleged, in pertinent part, that (1) one or both of Nathan’s parents “inflicted or allowed to be inflicted . . . a serious physical injury by other than accidental means”; (2) Nathan was “not provided necessary medical care,” nor did he receive proper supervision; (3) Nathan needed “assistance or placement because [he] has no parent . . . responsible for [his] care or supervision”; and (4) Respondent and Staton were “unable to provide for [his] care or supervision and lack[ed] an appropriate child care arrangement.” That same day, the trial court placed Nathan in the nonsecure custody of DSS, which placed him

² The long-lasting effects of Nathan’s injuries are alarming. He sustained broken bones that were at different stages of healing when he was taken to the hospital. The extent of the brain damage that he suffered is unknown at this time. Consequently, Nathan has been receiving developmental and physical therapy in hopes that he will eventually have full use of his limbs, and be able to talk and walk.

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in the care of his paternal grandmother.³ Staton was charged with felony child abuse and neglect.

After a hearing on 18 July 2018, the trial court adjudicated Nathan to be abused, neglected, and dependent. The trial court continued his placement with his paternal grandmother.

The trial court held permanency planning hearings on 13 November 2018 and 8 February 2019. At the conclusion of both hearings, the trial court entered orders continuing reunification as the primary permanent plan for Nathan, with adoption as the secondary plan. Nathan remained placed with his paternal grandmother.

On 14 November 2018, Staton pleaded guilty to felony child abuse. The trial court placed Staton on supervised probation for 30 months and ordered him to comply with the trial court and DSS and to participate in parenting classes.

On 3 April 2019, the trial court held a third permanency planning hearing. Respondent did not present evidence, and Staton was absent from the hearing because he had to work; DSS and Nathan's guardian *ad litem* submitted written reports to the trial court. In addition, the trial court heard the testimony of Frederick King, a DSS social worker, and Valerie Chaffin, the supervisor of the guardian *ad litem* appointed for Nathan.

³ Nathan's three half-siblings were placed in the care of their maternal grandmother in California.

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King testified, in part, that Staton blamed Respondent's 11-year-old daughter for any injuries that Nathan suffered, but that Respondent did not agree with Staton. King reported that Respondent and Staton agreed, however, that they were "the only persons that were left alone with [Nathan]," although "they didn't know how [Nathan] got hurt[.]" In addition, King testified that Respondent said that her parents and her three older children planned to relocate from California to North Carolina.

Concerning the guardianship, King testified that Nathan's paternal grandmother was "informed and understands what it means to be a guardian[.]" and that she was financially capable of meeting Nathan's needs. He also testified that Nathan's paternal grandmother was "willing to allow the parents to be actively engaged and involved" in Nathan's life. Chaffin testified to the guardian *ad litem's* report filed with the trial court, which recommended a primary permanency plan of guardianship with the paternal grandmother.

By order entered 7 May 2019, the trial court changed Nathan's primary permanent plan from reunification to guardianship, and granted guardianship of Nathan to his paternal grandmother. Having achieved Nathan's primary permanent plan, the trial court declined to establish a secondary plan, *see* N.C. Gen. Stat. § 7B-906.2(a1) (2019), and ordered "[t]hat reunification efforts shall cease as such efforts clearly would be unsuccessful and inconsistent with [Nathan's] health and safety."

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Respondent filed timely notice of appeal. Staton did not appeal.

Discussion

On appeal, Respondent argues that: (1) “the trial court erred and abused its discretion in ceasing efforts, removing reunification from the permanent plan[,] and granting guardianship without making proper findings”; and (2) the trial court erred in admitting an altered affidavit to verify that Nathan’s paternal grandmother had the financial resources to care for Nathan. We address each issue in turn.

I. Standard of Review

It is well settled that “[t]his Court’s 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. Findings supported by competent evidence, as well as any uncontested findings, are binding on appeal.” *In re D.A.*, ___ N.C. App. ___, ___, 822 S.E.2d 664, 667 (2018) (citations omitted); *see also In re P.A.*, 241 N.C. App. 53, 61-62, 772 S.E.2d 240, 246 (2015) (applying this standard to review the trial court’s determination that legal guardianship should be granted to a non-parent). Conclusions of law are reviewed de novo. *Id.*

II. Ceasing Reunification Efforts

Respondent contends that “[i]f the trial court had properly considered” the four statutory criteria set forth in N.C. Gen. Stat. § 7B-906.2(d), “it certainly would have required DSS to continue the exercise of reasonable efforts to reunify Nathan” with

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Respondent. She asserts that the trial court “[c]learly . . . failed to reasonably consider important testimony and other evidence which, if considered, would have produced a different result.” Specifically, Respondent takes issue with the trial court’s “finding or conclusion” that she was “acting in a manner inconsistent with the health and safety” of Nathan because “she ha[d] not reported how the child was injured and d[id] not believe the other parent or her oldest child could have inflicted the injuries, despite there not being any other caretakers and [Staton] pleading guilty to abusing the child.” We disagree.

The Juvenile Code prescribes “a sequential process for abuse, neglect, or dependency cases [T]he provisions in Chapter 7B establish one continuous juvenile case with several interrelated stages, not a series of discrete proceedings[.]” *In re T.R.P.*, 360 N.C. 588, 593, 636 S.E.2d 787, 791-92 (2006). Chapter 7B of our General Statutes provides that “[a]t any permanency planning hearing, the [trial] court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan.” N.C. Gen. Stat. § 7B-906.2(b). Reunification is one of the statutorily authorized permanent plans. *Id.* § 7B-906.2(a). “Concurrent planning shall continue until a permanent plan is or has been achieved.” *Id.* § 7B-906.2(a1).

Unless reunification efforts have ceased, at each permanency planning hearing,

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the [trial] court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification:

- (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.

Id. § 7B-906.2(d). Reunification must remain either a primary or secondary plan unless the case falls within the parameters of certain exceptions. *See id.* § 7B-906.2(b). One such exception is where “the [trial] court . . . makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety.” *Id.*

In the case at bar, it is evident that the trial court considered and complied with the requirements of § 7B-906.2(d) in determining that further reunification efforts clearly would be unsuccessful and inconsistent with Nathan’s health and safety. The trial court found, *inter alia*:

101. That [Respondent] is *not making adequate progress* within a reasonable period of time under the plan.

102. That [Respondent] is actively participating in and cooperating with the plan, [DSS] and the guardian ad litem.

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103. That [Respondent] remains available to the court, [DSS], and the guardian ad litem for [Nathan].

104. That [Respondent] is acting in a manner *inconsistent with the health and safety of [Nathan]* in that she has not reported how the child was injured and does not believe the other parent or her oldest child could have inflicted the injuries, despite there not being any other caretakers and [Staton] pleading guilty to abusing the child.

(Emphases added). These unchallenged findings of fact mirror the language of § 7B-906.2(d). The trial court then concluded

[t]hat reunification efforts shall cease as such efforts clearly would be unsuccessful and inconsistent with [Nathan's] health and safety as the father has failed to consistently and meaningfully participate in substance abuse treatment, even though he has access to treatment, neither parent has demonstrated the ability to keep the child safe, the parents' [sic] minimize the significance of the issues resulting in [Nathan's] removal and the child is young and has limited protective capacity; it would create a substantial risk of harm if he was returned to the care of the parents.

Accordingly, the trial court eliminated reunification as a plan, and ceased reunification efforts “as such efforts clearly would be unsuccessful and inconsistent with [Nathan's] health and safety.”

Nonetheless, Respondent contends that the facts of this case are analogous to those of *In re D.A.*, in which the trial court erroneously determined “that [the respondent-father] acted inconsistently with his constitutionally protected status as a parent[,]” and granted custody of the minor child to his foster parents. 258 N.C.

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App. 247, 249, 811 S.E.2d 729, 731 (2018). Although Respondent argues that the trial court failed to comply with the provisions of § 7B-906.2(d), and particularly neglected to properly consider § 7B-906.2(d)(4), she conflates the finding necessary to eliminate reunification as part of the permanent plan (whether the parent is acting in a manner inconsistent with the health or safety of the juvenile) with the finding necessary to award custody to a non-parent (whether the parent is acting in a manner inconsistent with her constitutionally protected status as a parent). *Compare id.* at 250, 811 S.E.2d at 731-32, *with* N.C. Gen. Stat. § 7B-906.2(d)(4). However, Respondent does not challenge the trial court’s conclusion that Respondent and Staton “acted inconsistently with their constitutionally protected rights found by clear, cogent, and convincing evidence in that they have failed to address issues of concern that led to the placement of [Nathan] outside the home.” Respondent’s analogy to our holding in *In re D.A.* is inapt.

Regardless, the facts in the case at bar are distinguishable from *In re D.A.* in several respects, and there is ample evidence to support the trial court’s determination that reunification efforts would be unsuccessful and inconsistent with Nathan’s health and safety. In *In re D.A.*, the trial court found that, in the two years following the juvenile’s placement in the custody of DSS,

neither respondent parent ha[d] taken responsibility or provided a plausible explanation for the injuries that occurred to the juvenile while he was in their care. That while [the] respondent father’s charges were dismissed,

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and despite pleading guilty to the charges imposed upon her for harming her child, [the] respondent mother continues to maintain that she did not inflict the juvenile's injuries, and this remains a barrier to reunification as the home remains an injurious environment.

258 N.C. App. at 251, 811 S.E.2d at 732. The trial court erred, however, by failing to “explain how [the] [r]espondent-father was culpable for D.A.’s injuries, unfit, or otherwise acted inconsistently with his constitutionally protected status as a parent[.]” *Id.* at 252, 811 S.E.2d at 733.

By contrast, the trial court in the instant case determined that Respondent and Staton were Nathan’s sole caregivers when he sustained his non-accidental injuries, finding that Respondent and Staton “either inflicted or allowed to be inflicted serious physical injury [on Nathan] *by other than accidental means.*” (Emphasis added). The trial court also found that “[s]omeone seriously harmed” Nathan, and “that both parents were responsible for their infant son’s *non-accidental* serious injury.” (Emphases added). As the trial court noted, “[w]hen an adult has exclusive custody of a child for a period of time during which the child suffers injuries that are neither self-inflicted nor accidental there is sufficient evidence to create an inference that the adult intentionally inflicted those injuries.” *See In re Y.Y.E.T.*, 205 N.C. App. 120, 128-29, 695 S.E.2d 517, 522 (“Despite the trial court’s inability to conclusively determine who was the perpetrator of the injury, the trial court’s finding that both parents were responsible is nevertheless supported by clear, cogent, and

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convincing evidence. Y.Y.E.T.'s injury was not accidental and was found to be 'highly specific of child abuse in an infant of four months of age.' As the child's sole care providers, it necessarily follows that [the] [r]espondents were jointly and individually responsible for the child's injury."), *disc. review denied*, 364 N.C. 434, 703 S.E.2d 150 (2010).

Moreover, the trial court relied heavily on the fact that Respondent and Staton were Nathan's sole caregivers when he suffered his non-accidental injuries, rendering one or both of them culpable. The trial court found that: (1) "[t]he parents were the sole, primary caregivers responsible for assuring [the] safety and wellbeing of a three month old child[,]" and "[t]hat one or both of the parents should have been providing a sufficient level of care and supervision to know what happened to the child and to protect the child"; and (2) "[e]ven if a parent is working, when the parent comes home and the child has injuries and/or illnesses the parent/s should know something is wrong and take immediate action." *See In re D.W.P.*, 373 N.C. 327, 331-32, 838 S.E.2d 396, 401 (2020) (concluding that the trial court's findings regarding the respondent-mother's truthfulness were supported by the evidence where the infant was injured while in the exclusive care of the respondent-mother and her fiancé).

While it is unclear who injured Nathan, it is evident that the trial court assigned responsibility to Respondent as well as Staton. The trial court found, *inter alia*, that: (1) both Respondent and Staton ignored "warning signs" that Nathan

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required medical attention—“[w]hen a three month old child stops or reduces eating, both or either parent should know something is wrong and take immediate affirmative action”; (2) Respondent should have “know[n] something [wa]s wrong and take[n] immediate action” to help Nathan notwithstanding the fact that she had a job; (3) Respondent refused to acknowledge that Staton may have caused Nathan’s injuries even though he pleaded guilty to felony child abuse; (4) Respondent and Staton are Nathan’s only caregivers, and “both deny causing [Nathan’s] near fatal injuries”; (5) Respondent and Staton do not comprehend the reasons for the children’s removal from the home, or “the role each parent played in failing to recognize that [Nathan] was hurt and/or unwell”; (6) there was no sufficient explanation as to how Nathan was injured, and neither Respondent nor Staton could account for the delay in seeking medical care for Nathan; (7) because “it was reported that [Respondent’s] older children are returning to live in North Carolina[,]” then “[i]f [Respondent] does not believe that [Staton] or her daughter hurt [Nathan], [and] if they are both in the area, [Respondent] will allow either or both of these individuals access to [Nathan]”; and (8) should Nathan be returned to either Respondent or Staton, he would be placed with someone who either caused his injuries or allowed him to be exposed to the person who caused the injuries. Accordingly, there is substantial evidence to support the trial court’s findings of fact, and the trial court’s findings amply support the conclusions that (1) “the primary plan of guardianship . . . is the most appropriate

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plan to achieve a safe, permanent home within a reasonable period of time”; and (2) “reunification efforts . . . clearly would be unsuccessful and inconsistent with [Nathan’s] health and safety[.]”

Respondent also contends that the trial court failed to fairly consider two items of evidence. First, according to Respondent, the trial court heard evidence “that on Monday, 23 April 2018, Nathan was taken to his doctor where he was seen by staff and given two vaccinations. There is no evidence that the medical staff noticed anything wrong.” Second, Respondent notes that “the court had before it the report of a police detective and social worker[.]” which noted that Staton’s “polygraph . . . showed [his] responses on questions related to Nathan’s injuries to be extremely high level of deception.” (Internal quotation marks omitted). However, this evidence was received by the trial court, which as fact finder, properly determined its weight.

This Court does not reweigh the evidence presented before the trial court. “It is the trial judge’s duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom.” *In re T.H.*, ___ N.C. App. ___, ___, 832 S.E.2d 162, 165 (2019) (citation and internal quotation marks omitted). In accordance with these principles, we will not disturb the trial court’s decision finding certain pieces of evidence more credible than others.

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The trial court's unchallenged findings of fact support the conclusion that "reunification efforts . . . clearly would be unsuccessful and inconsistent with [Nathan's] health and safety as . . . neither parent has demonstrated the ability to keep the child safe[.]" as well as the trial court's elimination of reunification as a primary or secondary plan, in compliance with the requirements of § 7B-906.2(b) and (d). Accordingly, we affirm the trial court's decision to cease reunification efforts with Respondent.

III. Guardianship Verification

Respondent next asserts that the trial court erred by admitting an altered affidavit into evidence to verify the paternal grandmother's financial resources and acknowledge that she understood the legal significance of guardianship. Respondent contends that because the affidavit was altered it was "invalid," and therefore, "the guardianship itself is invalid." We disagree.

"Before placing a juvenile in a guardianship, the trial court is required to determine whether the proposed guardian understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile." *In re H.L.*, 256 N.C. App. 450, 459, 807 S.E.2d 685, 691 (2017) (citations and internal quotation marks omitted). It is well established that "the trial court need not make any specific findings in order to make the verification[.]" *In re J.H.*, 244 N.C. App. 255, 270, 780 S.E.2d 228, 240 (2015) (citation and internal quotation marks omitted).

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Nevertheless, “the record must contain competent evidence of the guardians’ financial resources and their awareness of their legal obligations.” *Id.* at 270-71, 780 S.E.2d at 240. “[S]ome 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 P.A.*, 241 N.C. App. at 61-62, 772 S.E.2d at 246 (citing N.C. Gen. Stat. §§ 7B-600(c) & -906.1(j)).

Here, Nathan had been successfully placed with his paternal grandmother for 11 months at the time of the 3 April 2019 permanency planning hearing. *See* N.C. Gen. Stat. § 7B-906.1(j) (“The fact that the prospective custodian or guardian has provided a stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources.”); *accord id.* § 7B-600(c). The paternal grandmother and Nathan attended the hearing, and her financial affidavit was admitted into evidence without objection. Social worker King testified that the paternal grandmother had met all of Nathan’s needs since he was placed with her; that Nathan receives Supplemental Security Income payments; and that after expenses, the paternal grandmother has \$808 in monthly discretionary income. King also explained that in completing the financial affidavit, Nathan’s paternal grandmother mistakenly *added* her income and expenses rather than *subtracting* the expenses from her income, thereby inadvertently misreporting her discretionary income as \$3,428. The affidavit was otherwise accurate. King explained to the trial

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court that her mistake was unintentional and clarified the actual amount of her discretionary income.

The evidence adduced at the hearing was sufficient to support the trial court's findings that "[t]he paternal grandmother has the financial ability to meet the needs" of Nathan, and that "[d]uring the time [Nathan] has been with the paternal grandmother, she has never asked Social Worker King for financial assistance to meet the needs of [Nathan]." Moreover, the trial court made an independent determination "that the resources available to the potential guardian are in fact adequate[.]" *In re P.A.*, 241 N.C. App. at 65, 772 S.E.2d at 248 (citation and internal quotation marks omitted), finding that "[t]he paternal grandmother has demonstrated the ability to assure [Nathan's] personal needs are meet [sic], as well as his medical needs." These findings are sufficient to support a determination that the paternal grandmother had the financial resources to care for Nathan.

The trial court also heard testimony that the grandmother understood the legal significance of a guardianship, and that she was "willing and able to take on the role and responsibility of a guardian," supporting the correlative findings of fact. *See In re H.L.*, 256 N.C. App. at 459-60, 807 S.E.2d at 691-92 (concluding that the verification requirement was met where the trial court heard testimony that the potential guardian had adequate resources to support the child and understood the legal consequences of guardianship, and reviewed an affidavit detailing her finances).

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Thus, the trial court relied on competent evidence when appointing Nathan's paternal grandmother to serve as his guardian.

Conclusion

In sum, the trial court did not err by ceasing reunification efforts with Respondent, eliminating reunification as a primary or secondary plan, or awarding guardianship of Nathan to his paternal grandmother. Accordingly, we affirm the trial court's 7 May 2019 permanency planning order.

AFFIRMED.

Judges DILLON and BROOK concur.

Report per Rule 30(e).