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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-717

Filed: 21 July 2020

Pitt County, Nos. 17 JA 86, 88

IN THE MATTERS OF: D.T., P.P.

Appeal by respondent-mother and respondent-father from orders entered 6 May 2019 by Judge Lee Teague in Pitt County District Court. Heard in the Court of Appeals 27 May 2020.

The Graham, Nuckolls, Conner Law Firm, PLLC, by Timothy E. Heinle, for Pitt County Department of Social Services.

Surrat Thompson & Ceberio PLLC, by Christopher M. Watford, for respondent-mother.

Ewing Law firm, P.C., by Robert W. Ewing, for respondent-father.

Keith Karlsson for the Guardian ad Litem.

ARROWOOD, Judge.

Respondent-mother and respondent-father appeal from the trial court's order awarding guardianship of the juveniles D.T. ("Danny") and P.P. ("Pam")[1] to their maternal grandparents as a primary permanent plan with a secondary plan of reunification. For the following reasons, we affirm.

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

I. Background

Respondent-mother is the natural mother of Danny and Pam, and respondent-father is the biological father of Pam. On 11 May 2017, the Pitt County Department of Social Services ("DSS") filed juvenile petitions alleging that Danny and Pam were neglected juveniles in that they did "not receive proper care, supervision, or discipline" from their parents and lived "in an environment injurious to [their] welfare." The petitions also included a history of DSS reports regarding the family dating back to 1999, which included allegations that respondent-mother suffers from depression and anxiety, abuses her prescription pain medication, was involved in several instances of domestic violence, and had violent outbursts. It also included unsubstantiated allegations that respondent-father may have been sexually abusing or otherwise having an inappropriate relationship with Pam.

On 20 July 2017, the trial court held an adjudicatory hearing on the juvenile petitions. The trial court found that respondent-mother had struggled with her mental health for at least thirteen years and had an inconsistent record with seeking medication and treatment, including a gap in treatment from December 2016 to June 2017. The trial court also found that respondent-mother had exposed the children to incidents of domestic violence, including one between herself and respondent-father, in which respondent-father pushed and knocked her down. In addition, respondent-mother reported that respondent-father sexually assaulted her in their home

multiple times. It further found that respondent-mother had attempted suicide as recently as 30 October 2016, and had destroyed the family Christmas tree during an emotional outburst. Based on its findings, the trial court adjudicated the children to be neglected juveniles pursuant to N.C. Gen. Stat. § 7B-101(15).

At the disposition hearing, the trial court determined that the juveniles should be placed in DSS custody. The trial court also ordered that respondent-mother take certain actions in order to be reunified with her children. Specifically, respondent-mother was required to do the following: (1) participate in a psychological evaluation and follow all recommendations of her provider; (2) participate in mental health treatment and follow all recommendations consistently; (3) take all medication as prescribed; (4) participate in an anger management assessment; (5) ensure that the juveniles are not exposed to domestic violence; (6) keep the juveniles away from her online boyfriend, "Bobby"; (7) maintain communication with DSS and sign any necessary releases; and (8) participate in family therapy as appropriate. Respondent-father was ordered to participate in a mental health assessment and follow all recommendations, maintain contact with DSS and sign any necessary releases, and not expose Pam to any domestic violence. Visitation between respondents and the juveniles was limited to once every other week, with the possibility of increased visitation dependent on their progress and compliance with the court's orders.

On 16 October 2017, DSS completed a home study of the maternal grandparents home following their request to have the children placed in their care. On 14 December 2017, the trial court held a permanency planning hearing. At the hearing, the trial court considered evidence including the home study report on the maternal grandparents' home, proof of respondent-mother's progress on her case plan, and statements from Danny that he did not want to be reunified with his mother. By written order entered 17 January 2018, the trial court ordered that the primary plan for Danny and Pam be reunification with a secondary plan of guardianship with a relative. The trial court found that respondent-mother and respondent-father were making reasonable progress under their case plans, but were still acting in a manner inconsistent with the health and safety of Danny and Pam. DSS was instructed to transition Danny and Pam into the care of their maternal grandparents. The trial court further ordered respondent-mother to comply with the original requirements of her case plan, in addition to the requirements that she follow all recommendations of her psychological and anger management assessments. Respondent-father was ordered to follow all the recommendations of his mental health evaluation, not expose Pam to any domestic violence, and participate in the Fatherhood Initiative.

On 23 February 2018, the juveniles were placed with their maternal grandparents. On 31 May 2018, the trial court held a permanency planning review

hearing. Evidence at the hearing included a letter from Danny's therapist recommending that he not have visits or phone conversations with respondent-mother because they seemed to be having a regressive effect on his progress in treatment. The court also again reviewed the progress that respondent-mother and respondent-father had made on their respective case plans. In its written order entered 28 June 2018, the trial court found that Danny again expressed his desire not to be reunited with his mother. In addition, the trial court made several findings regarding respondent-mother. It found that, in November 2017, respondent-mother married her ex-husband's stepson, who had been adjudicated an incompetent individual. In January 2018, respondent-mother attempted to have the marriage annulled. In addition, DSS was informed there had been numerous occasions where the Sheriff's Department was called to respondent-mother's home due to domestic disputes, and on 22 January 2018, respondent-mother was arrested for simple assault on her husband.

Following a psychological assessment on 17 October 2017, respondent-mother was diagnosed with Persistent Depressive Disorder with Anxious Distress and Intermittent Depressive Episodes, Post-Traumatic Stress Disorder, and Borderline Personality Disorder. The trial court further found that respondent-mother had not participated in Trauma Focused Cognitive Behavioral Therapy and had not consistently attended monthly mental health appointments as recommended in her

psychological evaluation. At the time of the hearing, respondent-mother had not attended a therapy session since 16 January 2018. While respondent-mother had completed an anger management course, she continued to have hostile and explosive outbursts. Respondent-mother had also refused to participate in family therapy.

The trial court again found that respondent-mother and respondent-father were making reasonable progress under their case plans, but were presently still acting in a manner inconsistent with the health and safety of Danny and Pam. Based on its findings, the trial court sanctioned DSS's physical placement of the juveniles with their maternal grandparents, and suspended visitation between respondent-mother and Danny. In addition to the previously established requirements of her case plan, respondent-mother was ordered to not expose the children to any husbands, boyfriends, or male friends for the duration of the case. The trial court also ordered respondent-father to follow previously established requirements of his case plan.

On 18 October 2018, the trial court held another permanency planning review hearing. In its written order entered on 21 November 2018, the trial court found that respondent-mother still had not participated in Trauma Focused Cognitive Behavioral Therapy, had not attended a therapy session since 16 January 2018, and continued to have hostile and explosive outbursts. She also did not have stable housing. However, the trial court found that respondent-mother and respondent-

father were both making reasonable progress under their case plans and that reunification efforts should continue. The trial court ordered that respondent-mother and respondent-father comply with the previously established requirements of their respective case plans.

On 11 April 2019, the trial court held the permanency planning review hearing that is the subject of this appeal. Prior to the hearing, DSS filed and presented a report which indicated that respondent-mother's situation had changed since the last hearing. Specifically, she began regularly attending therapy, she recently resumed medication management, she completed anger management, and obtained housing, employment, and transportation. However, it reported respondent-mother continues to have hostile and explosive outbursts towards her family and loved ones, and is suspected to still have contact with "Bobby," who pays her phone bill. DSS also conducted a study of her home, in which it noted concerns about respondent-mother's early morning work schedule and Pam being placed in her home without supervision during that time.

The DSS report also described respondent-father's progress. Respondent-father had not maintained open communication with DSS. He was laid off from his job in July 2018 but had reported that he maintained steady employment since then. Respondent-father also recently moved to another town to live with his girlfriend. DSS had been unable to complete a home study of respondent-father's new home

because he did not complete the Personal Information Statement needed to proceed with the study. DSS also noted that his visits with Pam had been sporadic, with respondent-father missing many of them. In addition, respondent-father had not paid child support since July 2018, and owed $3,760.36 in arrears.

The guardian *ad litem* ("GAL") also reported that respondent-mother's visits had been sporadic and respondent-father's visits had been very sporadic. Moreover, it observed that phone calls with respondent-mother and respondent-father were "more of a disruption and cause of issues rather than a benefit." Both the GAL and DSS recommended that the trial court award guardianship to the grandparents, noting that the juveniles had been in DSS's custody for almost two years and some of the same issues continue to exist. The trial court also received a financial affidavit signed and sworn by the maternal grandparents, which detailed the grandparent's income, expenses, and debt. In addition, the affidavit contained the grandparents' statements acknowledging that they understood the legal obligations of guardianship.

At the hearing, counsel for respondent-mother and respondent-father jointly moved to continue the hearing because the DSS report indicated that it was asking the court to appoint the maternal grandparents as guardians. The trial court denied their motion and proceeded with the hearing. During the hearing, the DSS social worker and GAL testified that the juveniles expressed their desire to live with their

grandparents and not to be returned to their mother at this time. DSS recommended that the court award guardianship to the maternal grandparents. Respondent-mother testified that she wished to have more visits with the children and the opportunity to repair her relationship with them, but did not want to push them into anything. She also testified that she had resolved the concerns with her work schedule, had been attending therapy and managing her medication, and otherwise made progress with her case plan. She further expressed concern about her parents assuming guardianship of the children, pointing to her father's health issues and her mother's upcoming knee surgery, and alleging that the children were not being appropriately supervised.

Respondent-father, who participated in the hearing by telephone, testified that his visits with Pam had been sporadic because of his busy work schedule. He further testified that he currently lived in a two-bedroom house with two other people, and that there were problems with cleanliness in the house. However, he felt that he could accommodate Pam by giving her his bedroom, and estimated he could possibly be ready to have her move in by the end of the month. He argued that Pam's placement with her grandparents should be changed because he had concerns that they were turning her against him and not properly supervising her.

On 6 May 2019, the trial court entered permanency planning orders finding that it was in the best interests of the juveniles that their permanent plans be

changed to a primary plan of guardianship with a secondary plan of reunification. The trial court found that Danny "continues to state that he does not want to be reunified with his mother or be returned to her home." In addition, though respondent-mother and respondent-father were making reasonable progress under their case plans, the trial court ultimately found that they were presently acting in a manner inconsistent with the health and safety of the juveniles. The trial court further found that it was unlikely that the children would be able to return home within the next six months, and it was in the best interests of the children that their primary plans be changed to guardianship with a relative. The trial court thus designated the maternal grandparents as guardians. Respondent-mother and respondent-father timely gave written notices of appeal.

II. Discussion

Respondent-mother raises four arguments on appeal: (1) the trial court committed reversible error by awarding guardianship to the maternal grandparents when the respondent-mother was not determined to be unfit or to have acted inconsistent with her constitutionally protected status as a parent; (2) the trial court failed to properly verify that the maternal grandparents understood the legal significance of guardianship and had adequate resources to support the children; (3) the trial court erred by entering a visitation order that placed sole discretion as to whether visitation would occur with the minor child and the minor child's therapist;

and (4) the trial court abused its discretion in denying mother's motion to continue the hearing. Respondent-father, in a separate brief, contends that the trial court's order awarding guardianship to the maternal grandparents should be vacated because the trial court erred in (1) basing its decision to award guardianship to the maternal grandparents on repealed statutes N.C. Gen. Stat. §§ 7B-906 and 7B-907, and (2) finding and concluding that respondent-father acted in a manner inconsistent with Pam's health and safety when the order failed to address the criteria under N.C. Gen. Stat. § 7B-906.1(d)(3). We disagree.

This Court reviews a permanency planning order for "whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. If the trial court's findings of fact are supported by any competent evidence, they are conclusive on appeal." *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (internal citations omitted). We review the trial court's conclusions of law *de novo*. *Id.* (quoting *In re D.H.,* 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006)).

A. Respondent-Mother's Claims

1. Findings Regarding Constitutionally Protected Status

Respondent-mother first challenges the trial court's order awarding guardianship to the juveniles' maternal grandparents on the basis that the trial court failed to first make the statutorily required findings and conclusions that she was

either unfit or acted inconsistently with her constitutionally protected status as a parent.

It is well established that " '[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.' " *In re A.C.*, 247 N.C. App. 528, 536, 786 S.E.2d 728, 735 (2016) (quoting *Cantrell v. Wishon*, 141 N.C. App. 340, 342, 540 S.E.2d 804, 806 (2000)). Before a court can apply the best interest of the child standard and grant guardianship of a minor child to a nonparent, it must first "clearly address whether [the] respondent is unfit as a parent or if her conduct has been inconsistent with her constitutionally protected status as a parent[.]" *In re P.A.*, 241 N.C. App. 53, 66, 772 S.E.2d 240, 249 (2015).

Respondent-mother argues that this Court's holding in *In re D.M.*, 211 N.C. App. 382, 712 S.E.2d 355 (2011) is controlling. There, the trial court awarded permanent custody to the minor child's maternal grandmother despite specifically finding that "[n]either parent is unfit to parent." *Id.* at 385, 712 S.E.2d at 357. In the absence of any findings that the respondent-father had acted inconsistently with his constitutional rights as a parent, we held the trial court erred in awarding permanent custody to the maternal grandmother. *Id.* However, *In re D.M.* is distinguishable from the present case because it did not consider the issue of the respondent's right to appeal a constitutional issue he did not raise or object to at trial.

Here, unlike the facts of *In re D.M.*, the trial court's written orders make no mention of respondent-mother's constitutionally protected status as a parent and whether she is unfit or has acted inconsistently with that status. Nevertheless, it found that "[i]t is in the best interest of the Juvenile[s] that the primary permanent plan for the Juvenile[s] shall be changed to guardianship with a relative with a secondary plan of reunification." Though a trial court is required to make findings that a natural parent is unfit or her conduct is inconsistent with her constitutionally protected status before it can apply the best interest of the child test, " '[c]onstitutional issues not raised and passed upon at trial will not be considered for the first time on appeal.' " *In re T.P.*, 217 N.C. App. 181, 186, 718 S.E.2d 716, 719 (2011) (quoting *State v. Lloyd*, 354 N.C. 76, 86-87, 552 S.E.2d 596, 607 (2001). "We have [thus] 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." *Matter of R.P.*, 252 N.C. App. 301, 304, 798 S.E.2d 428, 430-31 (2017) (citing *In re T.P.*, 217 N.C. App. at 186, 718 S.E.2d at 719).

In the present case, respondent-mother had advance notice that DSS was advocating that the trial court grant guardianship to the maternal grandparents as the primary plan of custody. At the hearing, respondent-mother had the opportunity to object to the court considering that option without first finding she was unfit or had acted inconsistently with her constitutional right as a parent. Not only did she

fail to object, but she also employed the best interest analysis in her own testimony. She thus waived her right to appeal the issue. Because we hold respondent-mother waived her right to appeal this issue, we do not consider respondent-mother's related argument that the trial court's findings would not support a conclusion that she is unfit or has acted inconsistently with her constitutionally protected status. Moreover, we note that the trial court did not cease reunification efforts, but merely adopted reunification as a secondary plan. Respondent-mother thus has additional opportunities to object to guardianship below should the trial court decide to cease reunification efforts.

2. Verification of Legal Significance of Guardianship

Respondent-mother next contends that the trial court did not properly verify that the juveniles' grandparent's understood the legal significance of guardianship and had adequate resources to support the children when it relied solely on an affidavit and did not examine the maternal grandparents, who were present at court.

N.C. Gen. Stat. § 7B-600(c) provides that if the trial court appoints a guardian for a juvenile,

> 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. The fact that the prospective guardian has provided a stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources."

N.C. Gen. Stat. § 7B-600(c) (2019). *See also* N.C. Gen. Stat. § 7B-906.1(j) (2019) (mandating similar conditions). "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." N.C. Gen. Stat. § 7B-906.1(c). Such evidence may include reports and home studies conducted by DSS. *In re J.E., B.E.*, 182 N.C. App. 612, 617, 643 S.E.2d 70, 73 (2007). Sufficient evidence can also include testimony from the potential guardian of a desire to take guardianship of the child, the signing of a guardianship agreement acknowledging an understanding of the legal relationship, and testimony from a social worker that the potential guardian was willing to assume legal guardianship. *Matter of E.M.*, 249 N.C. App. 44, 54, 790 S.E.2d 863, 872 (2016).

In Matter of N.H., this Court held that a sworn statement by the mother's sister that she was willing to care for the dependent child and possessed the financial resources to do so constituted competent evidence to support a finding that the sister had adequate financial resources to care for the child. 255 N.C. App. 501, 507, 804 S.E.2d 841, 845 (2017). *Compare In re P.A.*, 241 N.C. App. 53, 65, 772 S.E.2d 240, 248 (2015) (holding that unsworn, uncorroborated, and vague statement by the guardian that the guardian had "adequate resources" to support the juvenile was not sufficient). In *Matter of S.B.*, we held that even though an aunt who was awarded guardianship did not testify, there was competent evidence to support the trial court's

finding that she understood the legal significance of guardianship where the social worker testified to aunt's intentions to care for the children, a DSS report indicated that aunt was informed of the legal significance of guardianship, and the children had already been living with the aunt for over a year. __ N.C. App. __, __, 834 S.E.2d 683, 690-91 (2019).

Here, the trial court received evidence including a sworn affidavit signed by the grandparents that expressly stated that they understood the legal significance of guardianship and had adequate resources to support the children. The affidavit detailed the income, expenses, and debt of both the grandparents and the children. In addition, DSS conducted a home study of the grandparents' home which corroborated some of the information in the affidavit and approved the home as a suitable placement. Moreover, the grandparents had already been caring for the children for over a year, demonstrating that they understood their obligations as guardians. Respondent-mother appears to argue that the trial court must examine potential guardians or have them give some verbal acknowledgment before the court in order to properly verify they understand the legal obligations of guardianship. However, as this Court recognized in *Matter of S.B.*, testimony is not the only appropriate means of verification. *See* __ N.C. App. at __, 834 S.E.2d at 690-91. Accordingly, we hold that there was competent evidence upon which the trial court

could base its verification that the grandparents understood the legal significance of their appointment as guardians.

3. Visitation Order

Respondent-mother further contends that the trial court erred in its visitation order because it placed the sole discretion as to whether visitation would occur with Danny and his therapist. This Court reviews visitation orders for abuse of discretion. *In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007) (citations omitted).

We first note that respondent-mother is incorrect that the trial court placed the sole discretion as to whether visitation would occur with Danny and his therapist. In fact, the trial court awarded no visitation with Danny. Specifically, the trial court issued the following order:

> The Juvenile shall not be required to visit with Respondent Mother at this time. Should the Juvenile request a visit or should the Juvenile's therapist determine that a visit would be in the Juvenile's best interest, the Respondent Mother shall have a supervised visit with the Juvenile every other week for one hour supervised by [maternal grandmother] in the community. . . .

N.C. Gen. Stat. § 7B-905.1(a) provides, in pertinent part, that "[a]n order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile's placement outside the home shall provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety, including no visitation." N.C. Gen. Stat. § 7B-905.1(a) (2019). Furthermore, "[i]f the

juvenile is placed or continued in the custody or guardianship of a relative or other suitable person, any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised. The court may authorize additional visitation as agreed upon by the respondent and custodian or guardian." N.C. Gen. Stat. § 7B-905.1(c).

This Court has held that

> [the] judicial function [of awarding visitation] may [not] be . . . delegated by the court to the custodian of the child. Usually those who are involved in a controversy over the custody of a child have been unable to come to a satisfactory mutual agreement concerning custody and visitation rights. To give the custodian of the child authority to decide when, where[,] and under what circumstances a parent may visit his or her child . . . would be delegating a judicial function to the custodian.

In re J.D.R., 239 N.C. App. 63, 75, 768 S.E.2d 172, 180 (2015) (quoting *In re Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971)). While it is true that a trial court may not delegate its discretion to award visitation to the custodian of a minor child, that is not what happened in this case.

Here, the trial court exercised its discretion and awarded no visitation. This order is supported by evidence from Danny's therapist that visits with his mother appear to have an adverse and even regressive effect on his progress in treatment. In addition, the trial court found that Danny does not want to be reunified with his mother and the therapist has not yet recommended family therapy with respondent-

mother. Moreover, while the trial court did allow for the possibility of visitation should the minor child request it and his therapist approve, this was not an improper delegation because it was not given to the child's guardian or custodian. Thus, the concerns this Court reiterated in *In re J.D.R.* are not implicated here. In addition, the order also specified the minimum frequency and length of the potential visits and whether the visits were to be supervised, in accordance with statute. We thus hold the visitation order was proper and the trial court did not abuse its discretion.

4. Motion to Continue

Respondent-mother lastly contends that the trial court abused its discretion in denying her motion to continue the hearing so that she could issue a subpoena when state law permitted continuances for gathering information, a subpoena was the only means to secure the witness' attendance, and another hearing was already needed thirty days later.

Pursuant to N.C. Gen. Stat. § 7B-803:

> The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-803 (2019).

"[A] motion to continue is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court's ruling is not subject to review. Continuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it. The chief consideration is whether granting or denying a continuance will further substantial justice." *In re D.Q.W., T.A.W., Q.K.T., Q.M.T., & J.K.M.T.*, 167 N.C. App. 38, 40, 604 S.E.2d 675, 676-77 (2004) (internal citations and quotation marks omitted).

Here, the trial court did not abuse its discretion in denying respondent-mother's motion to continue. While the trial court *may* grant a continuance, it is by no means required to do so, and may only do so for good cause. *See* N.C. Gen. Stat. § 7B-803. In addition, the trial court had valid reasons for its denial. The children had already been in custody for nearly two years and obtaining a final resolution as quickly as possible was in their best interests, as it would give them some stability. Furthermore, respondent-mother had advance notice of the hearing and of DSS's intent to request that the court grant guardianship to the maternal grandparents, and thus had time to prepare. As all interested parties and their lawyers were present, with the exception of respondent-father who participated by phone, there was no "substantial justice" that would be furthered by continuing the hearing just so that respondent-mother's witness could testify on her behalf.

B. Respondent-Father's Claims

1. Citation of Repealed Statutes

We now turn to respondent-father's claims. On appeal, respondent-father first argues that the trial court's permanency planning order must be vacated because the trial court based its decision to award guardianship of Pam to the maternal grandparents upon repealed statutes N.C. Gen. Stat. §§ 7B-906 and 7B-907.

Although the trial court does cite to repealed statutes in its order, its written order nevertheless "embraces the substance of the [relevant] statutory provisions." *In re L.M.T.*, 367 N.C. 165, 169, 752 S.E.2d 453, 456 (2013). This Court has previously held that the trial court's findings of fact need "not quote the precise language" stated in the applicable statutes as long as they "embrace[ ] the substance of the statutory provisions." *Id*. Applying such reasoning to the present case, though the trial court incorrectly cited to repealed statutes N.C. Gen. Stat. §§ 7B-906 and 7B-907, this was not fatal because the trial court nevertheless conducted the analysis required under N.C. Gen. Stat. § 7B-906.1, the correct statute. Therefore, the trial court ultimately embraced the substance of the correct statutory provision.

In addition, we also note that the trial court cited to the correct statute elsewhere in its order, acknowledging that "this Order is entered pursuant to N.C. [Gen. Stat.] § 7B-906.1." Because the trial court has the statutory authority to award guardianship, employed the correct analysis as required by N.C. Gen. Stat. § 7B-906.1 in reaching its decision, and even cited to the correct statute elsewhere in its order,

we reject respondent-father's argument and hold that the trial court's citing of the repealed statutes was harmless clerical error.

2. Findings under N.C. Gen. Stat. § 7B-906.1(d)(3)

Respondent-father next contends the permanency planning order awarding guardianship of Pam to her maternal grandparents must be vacated because the trial court erred by finding and concluding that respondent-father acted in a manner inconsistent with Pam's health and safety and failed to address the criteria under N.C. Gen. Stat. § 7B-906.1(d)(3).

Contrary to respondent-father's assertions, however, the trial court *did* consider the criteria set forth in N.C. Gen. Stat. § 7B-906.1(d)(3). N.C. Gen. Stat. § 7B-906.1(d)(3) provides that the trial court shall at each hearing consider and make written findings, where relevant, concerning

> [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. The court shall consider efforts to reunite regardless of whether the juvenile resided with the parent, guardian, or custodian at the time of removal. If the court determines efforts would be unsuccessful or inconsistent, the court shall schedule a permanency planning hearing within 30 days to address the permanent plans in accordance with this section and G.S. 7B-906.2, unless the determination is made at a permanency planning hearing.

N.C. Gen. Stat. § 7B-906.1(d)(3).

In the present case, there is competent evidence to support the trial court's finding that respondent-father acted inconsistently with Pam's health and safety. DSS reported that father's visits were sporadic and he had missed several of them, he had failed to maintain consistent contact with DSS since the last hearing, he had not completed the process to allow DSS to conduct a study of his home, he had been laid off in July 2018 but recently reported that he maintained steady employment, and he had not paid child support since July 2018. Respondent-father himself also testified that his home was not a clean environment, and he estimated that he would be unable to have Pam move in with him until at least a month from the date of the hearing. The trial court made several findings based on this evidence, including the following:

> 17. The Respondent Father has not maintained consistent communication with the Department since the last Court review.
>
> 18. The Respondent Father has reported steady employment despite being recently laid off.
>
> . . . .
>
> 20. The Respondent Father has recently relocated from Jacksonville, NC to Richlands, NC. The Respondent Father resides with his girlfriend. A home study on the Respondent Father has not been completed because of the move. The Respondent Father testified that he is ready for a home study to begin now.
>
> 21. The Respondent Father has not maintained consistent visitation with the Juvenile since the last

Court review. The Respondent Father's visits, while appropriate have been sporadic.

22. The Respondent Father has participated in all meetings and appointments for the Juveniles.

23. The Respondent Father completed a mental health evaluation on October 19, 2017.

24. The Respondent Father has been referred to the Fatherhood Initiative. The Respondent Father made contact with the program administrator but is unable to attend as he no longer resides in the area.

25. The . . . Respondent Father [is] presently making reasonable progress under the plan.

The trial court ultimately found that "[d]espite the progress made, the . . . Respondent Father [is] presently acting in a manner inconsistent with the health and safety of the Juvenile" and "[t]he Juvenile's return home within the next six months is unlikely[.]" The trial court thus did consider the criteria set forth in N.C. Gen. Stat. § 7B-906.1(d)(3), and its findings are supported by competent evidence. We therefore reject respondent-father's argument.

III. Conclusion

For the foregoing reasons, we affirm the order of the trial court.

AFFIRMED.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).