IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-871

Filed: 21 July 2020

Onslow County, Nos. 16 JA 200-201

IN THE MATTER OF: K.M., K.M.

Appeal by respondent-mother and respondent-father from order entered 10 June 2019 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 26 May 2020.

Richard Allen Penley for petitioner-appellee Onslow County Department of Social Services.

Speaks Law Firm, PC, by Garron T. Michael, Esq., for respondent-mother.

Law Office of Mark L. Hayes, by Mark L. Hayes for respondent-father.

Parker, Poe, Adams & Berstein L.L.P., by Charles E. Raynal, IV, for guardian ad litem

BRYANT, Judge.

Where the trial court's findings of fact were insufficient to support its conclusion to cease efforts to reunite K.M. and K.M. (hereinafter "the juveniles") with

respondent-father (hereinafter "father"), we reverse that portion of the trial court's 10 June 2019 order ceasing reunification efforts with the juveniles and remand for further proceedings consistent with this opinion. Where the trial court's findings of fact support its conclusion to cease efforts to reunite the juveniles with respondent-mother (hereinafter "mother"), we affirm the trial court's order to cease reunification efforts between the juveniles and mother. Where this matter is remanded to the trial court for further proceedings on efforts to reunite the juveniles with father, we do not address mother's arguments regarding the court's order reducing her visitation and ceasing further review hearings.

On 17 August 2016, the Onslow County Department of Social Services (hereinafter "DSS") filed a juvenile petition in Onslow County District Court alleging that the juveniles were neglected and dependent. That same day, the trial court entered an order for nonsecure custody. Soon, a guardian *ad litem* was appointed for each of the juveniles. Following an adjudication and disposition hearing held on 22 September 2016 before the Honorable Sarah C. Seaton, Judge presiding, the court entered an adjudication and disposition order on 10 May 2017 in which it concluded the juveniles were neglected and dependent.[1]

As stated in its 10 May 2017 adjudication and disposition order, the trial court found that DSS had an extensive history with respondent-parents. In reports made

[1] On 10 May 2017, the trial court also entered a permanency planning and review order after a hearing held on 8 December 2016.

in September 2014 and November 2015, DSS stated concerns regarding unsanitary living conditions in the home, improper care and supervision of the juveniles, as well as mother's mental health. During a 15 July 2016 home visit by a DSS social worker and an EMS worker, the marital residence "smelled of urine and feces and was littered with trash." The juveniles were both wearing soiled diapers, layered with fecal matter. One of the juveniles was discovered on the floor of a closet in a locked room, "trapped" in a blanket. The room was "smeared with urine and feces," and the EMS worker could not initially discern where the juvenile was located due to the "various piles of refuse strewn about." Mother was present; father, a service member of the United States Marine Corps, was not present. DSS attempted to address parenting issues, sanitation, and mother's mental health. Sanitation in the residence temporarily improved, but the following month, conditions in the residence regressed. DSS removed the juveniles. Following its adjudication that the juveniles were neglected and dependent, in its disposition, the trial court found that both parents had entered into case plans with DSS. The parents were ordered to complete full-scale psychological evaluations, follow recommendations, sign releases to allow DSS workers to communicate with their providers, and take parenting education classes through PEERS. They were also ordered to maintain a clean, sanitary home free from safety hazards. Mother and father were each afforded two hours of supervised visitation per month.

In a permanency planning review order entered 10 May 2017, the trial court found that mother had completed a full-scale psychological evaluation and engaged in therapy but not medication management, as recommended after her psychological evaluation. DSS workers had noted an improvement in the living conditions of the marital residence. The court ordered that the primary plan for the juveniles was reunification with a secondary plan of custody or guardianship with a relative or court approved caretaker. Again, each parent was afforded two hours of supervised visitation per month.

In a 26 June 2017 permanency planning review order, the trial court found that the parents had made progress on their respective case plans. Mother's therapist provided positive feedback on her progress. Father was scheduled to be discharged from the United States Marine Corps and had already lined up subsequent employment. The trial court afforded each parent two hours of supervised visitation per month and two hours of unsupervised visitation per month. "Unsupervised visitation [could be] expanded to overnight [visitation] with the consent of [DSS] and the Guardian ad Litem."

In a 24 April 2018 permanency planning review order, the trial court noted that father had made good progress on his case plan: he was in regular contact with DSS; provided up to date contact information and work schedule; was up to date on his child support payments; completed his parenting classes; and attended an anger

management class. Father worked as an out-of-state truck driver, which required extensive travel and absence from home. However, he had indicated his willingness to find local employment in order to provide better stability for his family. The court later noted that father had obtained local employment.

In a 26 June 2018 permanency planning review order, the trial court found that mother had made no further progress on her case plan and several concerns had come to the attention of the DSS: at times, mother appeared to be either lying or delusional; mother had not researched daycare options or support systems in anticipation of the juveniles' return to her care; and, on an unannounced visit to the marital residence, mother denied a social worker entrance. Both mother and the residence "reeked of cat urine." Mother was directed to obtain a comprehensive clinical assessment with a licensed mental health provider and follow all recommendations. Nevertheless, the court increased both parents' respective visitation: father would be afforded six hours of unsupervised visitation every other weekend and mother would be afforded six hours of supervised visitation every other weekend.

In a 25 October 2018 permanency plan review order, the court found that the marital home had been damaged in Hurricane Florence. Mother had been residing with friends in Ohio; father resided locally and had been making repairs to the home. The court further found that father had completed all recommendations DSS had

made, attended DSS meetings, and verbally expressed his intention to reunite his family. The parents were each up to date on their child support obligation, "with no arrears." However, the trial court changed the primary plan for the juveniles from reunification to guardianship with a court approved caretaker, with a secondary plan of reunification. The court ordered that father be afforded twelve hours of unsupervised visitation every other weekend and mother be afforded twelve hours of supervised visitation every other weekend.

In a 15 January 2019 permanency planning order, the trial court found that the parents had failed to notify DSS that their marital home was in foreclosure status. Further, both parents were in arrears on their respective child support obligations. Since the prior hearing, mother had become hostile toward DSS staff, and her therapist had voiced concerns about mother resuming parental responsibilities where she had exhibited mental instability. However, the court ordered that the parents' visitation hours would remain unchanged; father was directed to supervise mother's visitation.

In its 10 June 2019 permanency planning order, the trial court found by clear and convincing evidence that, individually, mother and father were unfit parents who had acted inconsistently with their respective constitutionally protected status as parents regarding the juveniles. "[R]eunification efforts clearly would be unsuccessful and inconsistent with the juveniles' health or safety . . . ." The court

found that DSS had made reasonable efforts toward the permanent plan of guardianship with a court-approved caretaker, with a secondary plan of reunification. Reunification efforts as to each parent were to cease. Review hearings were to cease. The permanent plan of guardianship with a court-approved caretaker was the primary plan, with no secondary plan. DSS and the guardians *ad litem* were released from further responsibility. Each parent would be afforded a minimum of two hours of supervised visitation per month.

Father and mother appeal.

On appeal, father argues that the trial court (I) erred by ceasing reunification efforts as to him and (II) abused its discretion in awarding guardianship to the foster placement, significantly reducing his visitation hours, and ceasing further review hearings.

Mother argues that the trial court (III) erred by ceasing reunification efforts as to her, (IV) erred by granting guardianship to the foster parents, (V) abused its discretion by reducing her visitation, and (VI) abused its discretion by ceasing further review hearings.

Standard of Review

> Our review of [a] cease reunification order . . . "is limited to whether there is competent evidence in the record to support the findings [of fact] and whether the findings support the conclusions of law." *In re P.O.*, 207 N.C. App.

> 35, 41, 698 S.E.2d 525, 530 (2010) (citing *In re Eckard*, 148 N.C. App. 541, 544, 559 S.E.2d 233, 235, *disc. rev. denied*, 356 N.C. 163, 568 S.E.2d 192 (2002)). The trial court's findings of fact are conclusive on appeal if supported by any competent evidence. *Id.* (citing *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003)).

In re L.M.T., 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013) (third alteration in original). "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (citation omitted).

Respondent-Father's Appeal

I

Father argues that the trial court erred by ceasing reunification efforts as to him when he had completed his case plan, regularly visited his children without supervision, and supervised his wife during visitation without incident. We agree.

Pursuant to our General Statutes, section 7B-906.2 ("Permanent plans; concurrent planning"),

> [a]t any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall be a primary or secondary plan unless the court made findings under . . . G.S. 7B-906.1(d)(3) . . . or the court 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). Pursuant to section 7B-906.1 ("Review and permanency planning hearings"),

> the court shall consider the following criteria and make written findings regarding those that are relevant:
>
> . . . .
>
> (3) Whether 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.

Id. § 7B-906.1(d)(3).

Father acknowledges that the trial court's 10 June 2019 permanency planning order includes language parallel to that in section 7B-906.1(d) and expressly cites section 7B-906.2(b). However, he contends the findings set out in support thereof are either unsupported by evidence or do not support the conclusions of law.

Spanning some thirty-five pages, the 10 June 2019 order sets forth ten ultimate or substantive findings of fact and for each ultimate finding of fact, supportive findings. The order contains findings addressing statutory criteria which are not particular to a specific parent. When comparing the ultimate findings of fact particular to father and mother and the underlying supportive findings, we note that many of the supportive findings are similar, regardless of which parent the ultimate finding of fact addresses. For example, the ultimate finding "that [father or mother] has acted inconsistently with [his or her] constitutionally protected status as a parent" is based primarily on findings from the 10 May 2017 adjudication and disposition order regarding the circumstances which gave rise to the adjudication of

neglect and dependency, a finding as to each parents' current arrearages for child support, and a finding of a likelihood of repetition of future neglect—predicated predominately on mother's mental health issues and the status of the marital residence.

As to statutory criteria set forth in section 7B-906.1(d)(3), the court found that "[e]fforts to reunite the juveniles with the parents clearly would be unsuccessful and inconsistent with the juveniles' health or safety and need for a safe, permanent home within a reasonable period of time . . . ." In support of this finding, the court found

> [t]here is a likelihood of repetition of future neglect if the children were to return to the *respondent's* care to wit:
>
> (1) To remediate the neglectful actions of the parents, this Court implemented a roadmap for reunification with the *respondent mother* which included, among other things, mental health treatment and parenting education classes . . .
>
> . . . .
>
> (3) . . . [R]espondent mother is 25 years old, has a long history of self-harming behaviors as an adolescent . . . .
>
> (4) At the last hearing on December 11, 2018 [(the 15 January 2019 order)] this [c]ourt made a finding of fact:
>
> > [A] [s]ocial [w]orker . . . spoke with [mother]'s therapist on November 13, 2018. When asked . . . the therapist replied that she was not confident with [mother] providing care for her children due to the mental instability she has observed . . . .

> (5) Since the last hearing in December of 2018, respondent mother continues to demonstrate her mental instability despite therapy resumption . . . .
>
> (6) On October 12, 2018, the primary plan changed from one of reunification to guardianship with a court-approved caretaker. The secondary plan became reunification. . . .
>
> > The home of the respondent parents was damaged in Hurricane Florence. They are currently working on repairs so they can have a stable environment in which to start overnight visits with the [juveniles]. . . .
>
> (7) On December 11, 2018 this [c]ourt found as fact that:
>
> > [DSS] has become aware that [the parents'] home is in foreclosure. This information was not provided to [DSS] by either of the respondent-parents.
>
> (8) Since the last hearing in December of 2018, the respondents were living in the home and reluctant to allow social workers to assess the home for possible return of the juveniles to their care. . . .
>
> (9) Respondent father has not kept in contact with the social worker nor has he asked for updates on the [juveniles] or inquired as to their well-being since the last court date.

As with the ultimate findings of fact specific to each parent and the supportive findings in support thereof, we note that with the exception of supportive finding (9), just above, the findings in support of the proposition of a likelihood of future neglect are not particular to father. The court makes no findings regarding father's mental health or concerns regarding father providing care for the juveniles. As to finding (9)

that father has not inquired of his DSS social worker as to the well-being of the juveniles or updates on them, father responds that he had no need to make inquiry since he had twelve hours of unsupervised visitation with the juveniles every other weekend. Moreover, father points out that the court directed him to supervise visitations between mother and the juveniles. We also note findings which indicate that father left his job as an out-of-state truck driver and obtained local employment to be less absent from his family, and following Hurricane Florence, father attempted to repair the damage to the marital residence.

On this record—in the face of father's sustained progress for over two years between 22 September 2016 and 11 December 2018—the trial court's findings of fact do not support a finding of a likelihood of repetition of future neglect as to father. As such, there are insufficient findings as set forth in the 10 June 2019 order to support the ultimate finding of fact that "reunification should cease as reunification efforts[, as to father,] clearly would be unsuccessful and inconsistent with the juveniles' health or safety . . . ." *See* N.C.G.S. § 7B-906.1(d)(3), -906.2(b). Accordingly, the trial court's 10 June 2019 permanency planning and review order ceasing reunification efforts as to respondent father is reversed, and we remand the matter for further proceedings.

II

Next, father argues that the trial court abused its discretion by awarding guardianship to the foster parents, significantly reducing father's visitation, and

ceasing further review hearings. We agree and remand this matter for further consideration in light of our holding in Issue I.

Pursuant to section 7B-906.2 ("Permanent plans; concurrent plans"),

> [a]t any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall be a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or G.S. 7B-906.1(d)(3), . . . or the court 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).

As noted in Issue I, the trial court's finding that "reunification should cease as reunification efforts[, as to father,] clearly would be unsuccessful and inconsistent with the juveniles' health or safety" is reversed. Upon remand, the court "shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan." *See id.*; *see also Matter of C.S.L.B.*, 254 N.C. App. 395, 398, 829 S.E.2d 492, 494–95 (2017) (holding that where reunification was a secondary permanent plan for the children, the trial court erred by ceasing review hearings). We vacate that portion of the 10 June 2019 permanency planning and review order which ceases further review hearings and remand for further proceedings in accordance with this opinion.

Respondent-Mother's Appeal

III

Mother argues that trial court erred by eliminating reunification efforts when she completed most of her case plan and there was no evidence that her on-going mental health treatment had any impact on her ability to safely parent her children. We disagree.

Mother challenges the trial court's conclusion to eliminate reunification efforts as between her and the juveniles. The court found that efforts toward reunification "would be unsuccessful and inconsistent with the juveniles' health or safety and need for a safe, permanent home within a reasonable period of time."

As to the trial court's findings of fact, mother challenges the contention that there is a likelihood of future neglect. Mother predicates her challenge on the premise that "[t]here was not a single concern or issue raised by [DSS] or the foster parents in connection with any of the [respondent-parents'] visitations." We disagree.

With regard to mother's conduct during visitations, the trial court made a detailed finding regarding mother's verbal confrontation with a social worker during a visitation with her children, which occurred on Seymore Johnson Air Force Base after the 11 December 2018 hearing date. Mother's demeanor was described as "yelling and screaming." After the social worker obtained clearance to enter Seymore Johnson Air Force Base in order to observe the parents during a visitation, mother told military police that she had a restraining order against the social worker and that he was harassing her family.

Mother generally challenges the trial court's findings by arguing that by June 2018, she had completed the components of her case plan except for "stabilizing her mental health needs." Regarding mother's progress addressing her mental health issues, in its 15 January 2019 order, the court found that mother had been providing regular updates to a social worker on her progress in therapy. However, more recently, mother had not been as forthcoming and appeared hostile toward DSS staff. The court recounted a November 2018 conversation between a social worker and mother's therapist in which mother's therapist vocalized her concern with mother providing care for her children due to exhibited mental instability. " '[DSS] would be making a big mistake' returning [the juveniles] to [mother] in her current state."

We hold that the trial court's challenged findings of fact regarding mother's conduct during the Seymore Johnson Air Force Base visitation and her ultimate lack of progress in addressing her mental health issues were sufficient to support the finding that there existed a likelihood of future neglect if the juveniles were to return to mother's care.

In her challenge to the trial court's finding that reunification efforts would be inconsistent with the health and safety of her children, mother argues that the only barrier DSS presented to her reunification with the juveniles was mental instability. However, mother contends that over the months she was allowed multiple visitations with the juveniles, her mental health treatment requirements were unchanged and

there was no indication the juvenile's health or safety suffered from mother's actions. We agree that prior trial court orders acknowledged mother's progress in addressing her mental health needs. However, we also note the trial court's findings in both its 15 January and 10 June 2019 orders which indicate that mother's mental health became increasingly erratic. Further, the court found that mother's therapist had voiced her concern that mother did not have the ability to supervise and care for the juveniles due to her mental illness/instability.

We overrule mother's challenge to this issue as there is competent evidence in the record to support the trial court's findings and conclusion to cease reunification efforts between mother and the juveniles.

IV

Next, mother argues the trial court erred by granting guardianship to the foster parents. Mother contends her conduct neither rendered her an unfit parent nor was it inconsistent with her constitutionally protected status as a parent. We disagree.

> [A] natural parent may lose his constitutionally protected right to the control of his children in one of two ways: (1) by a finding of unfitness of the natural parent, or (2) where the natural parent's conduct is inconsistent with his or her constitutionally protected status. . . .
>
> However, a determination that a natural parent has acted in a way inconsistent with his constitutionally protected status must be supported by clear and convincing evidence.

David N. v. Jason N., 359 N.C. 303, 307, 608 S.E.2d 751, 753 (2005).

Here, the trial court found "by clear and convincing evidence that [mother] is an unfit parent and has acted inconsistently with her constitutionally protected status as a parent." The court premised this on findings that recounted the conduct and circumstances which led to the removal of the juveniles—the history of the juveniles living in an unsanitary home, along with concerns of improper care and supervision reported to DSS in September 2014, November 2015, and July 2016; the adjudication of the juveniles as neglected and dependent juveniles in the court's 10 May 2017 order; mother's arrearage in child support payments, noted in the court's 10 June 2019 order; and the likelihood of a repetition of neglect.

Mother argues that the evidence presented does not support a finding of the likelihood of future neglect. As this challenge is substantially similar to the challenge we addressed and overruled in Issue III, we need not address this argument again.

Mother does not challenge the trial court's findings of fact as to the circumstances and conduct which led to the initial removal of the juveniles, their adjudication as neglected and dependent juveniles, custody being awarded to DSS, and placement in the foster care system. As we have overruled mother's challenge to the trial court's finding of a likelihood of future neglect, we hold the court made findings of fact based on clear and convincing evidence sufficient to find or conclude that mother's conduct was inconsistent with her constitutionally protected status as

a parent. *See id.* at 307, 608 S.E.2d at 753. Accordingly, mother's argument on this issue is overruled.

V & VI

Mother argues that the trial court abused its discretion by unreasonably reducing the amount, duration, and type of visitation between parents and the juveniles without any findings as to the quality or appropriateness of the ongoing bi-weekly visitations. Mother also argues that the trial court abused its discretion by ceasing further review hearings.

As this matter has been remanded for further consideration of reunification as a primary or secondary permanent plan for the juveniles and visitation is subject to further review, we do not further address mother's arguments on these points.

REVERSED IN PART; VACATED IN PART; AFFIRMED IN PART, AND REMANDED.

Judges TYSON and YOUNG concur.

Report per Rule 30(e).