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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-281

No. COA20-231

Filed 15 June 2021

Gaston County, Nos. 17 JA 342, 17 JA 343.

IN THE MATTERS OF J.F. & J.F.

Appeal by respondent-mother from an order entered 9 December 2019 by Judge Pennie M. Thrower in Gaston County District Court. Heard in the Court of Appeals 23 February 2021.

Elizabeth Myrick Boone, for petitioner-appellee Gaston County Department of Health and Human Services.

Matthew C. Phillips, for Guardian ad Litem.

David A. Perez, for respondent-mother.

GORE, Judge.

¶ 1

Kristan F. (“respondent-mother”) appeals from a juvenile order entered 9 December 2019, following a review and permanency planning hearing held on 15 October 2019, granting guardianship of her juvenile children, J.F. (“Joyce”) and J.F. (“Julia”),¹ to Juanita June (“Ms. June”), the juveniles’ paternal grandmother. We

¹ Pseudonyms to protect the identities of the juveniles.

affirm in part and reverse and remand in part.

I. Procedural Background

¶ 2 On 13 December 2017 Gaston County Department of Health and Human Services (“DHHS”) filed a juvenile petition alleging Joyce and Julia to be neglected. The district court granted DHHS nonsecure custody on that same day and placed the juveniles with their paternal grandmother, Ms. June. The court entered an order for continued nonsecure custody on 17 July 2018. Respondent-mother was allowed two hours supervised visitation per week.

¶ 3 The district court entered an adjudication order on 26 June 2018, following an adjudicatory hearing held on 3 April 2018. Joyce and Julia were determined to be neglected. The court ordered that physical and legal custody of the juveniles remain with DHHS. The trial court conducted a disposition hearing on 17 July 2018 resulting in the entry of a disposition order that same day. In accordance with the disposition order, physical and legal custody of the juveniles was to remain with DHHS, and DHHS was authorized to place the juveniles in foster care, at a licensed facility, or with an individual, other than the parents, who were willing and able to provide for the juveniles.

¶ 4 The order adopted DHHS’s recommended case plan for respondent-mother. The case plan required respondent-mother:

- a) Refrain from using/abusing all illegal/mind altering

substances;

- b) Complete an updated mental health and substance abuse assessment;
- c) Follow any recommendations from the mental health and substance abuse assessments;
- d) Submit to drug screens as requested;
- e) Complete parenting classes;
- f) Obtain and maintain safe, appropriate, and stable housing;
- g) Attend visitations with the juveniles, demonstrate effective parenting skills and display appropriate communication skills in presence of the juveniles;
- h) Sign all consents necessary; and
- i) Refrain from any criminal activity.

Respondent-mother was required to follow through with the recommended case plan in order to regain custody of the juveniles.

¶ 5

The disposition order also set a date for a review and permanency planning hearing—9 October 2018. The review and permanency planning hearing was continued until 13 November 2018. Following the 13 November 2018 hearing, the district court entered a juvenile order. The order found that respondent-mother had developed, signed, and complied with most of her case plan. However, respondent-mother had not refrained from criminal behavior and she refused to complete a full psychological exam. The district court ordered that physical and legal custody of the juveniles shall remain with DHHS and set a primary permanency plan of reunification and a secondary plan of guardianship. A second review and permanency planning hearing was held on 26 March 2019 where the court adopted the same

permanency plan as above.

¶ 6 A third review and permanency planning hearing was held on 15 October 2019. In the order following the hearing the court found respondent-mother acted inconsistently with the health and safety of the juveniles and that it was contrary to the health and safety of the juveniles to be returned to the custody of the parents. The district court updated the primary permanent plan of the juveniles to guardianship with a secondary permanent plan of reunification. The district court appointed Ms. June guardian of the juveniles and terminated DHHS's custody.

II. Factual Background

¶ 7 On 6 December 2019, respondent-mother was arrested for felony drug charges relating to the possession, sale, and use of illegal drugs in respondent-mother's home. A social worker visited respondent-mother while in jail and asked respondent-mother to make a temporary safety plan for the juveniles. Respondent-mother stated she did not want the juveniles placed with Ms. June and preferred they go to foster care. However, the juveniles' father identified Ms. June as a temporary safety provider, and DHHS found Ms. June to be an appropriate placement for the juveniles. The juveniles were placed with Ms. June.

¶ 8 Upon release from jail on 8 December 2017, respondent-mother immediately retrieved the juveniles from Ms. June's home. Respondent-mother then provided DHHS with the names of two additional potential placements for the juveniles,

neither of which were deemed suitable by DHHS. After meeting with DHHS on 8 December 2017, respondent-mother agreed that the juveniles could remain placed with Ms. June. At a Child and Family Team Meeting with DHHS, respondent-mother again expressed her desire for the juveniles to be placed in foster care over placement with Ms. June. However, respondent-mother once again agreed to allow the juveniles to stay with Ms. June for the time being.

¶ 9 Throughout 2018, respondent-mother completed a parenting class, substance abuse and mental health assessments, substance abuse treatment, random drug screens, maintained housing appropriate for the juveniles, and maintained employment all in accordance with her case plan. However, respondent-mother did not refrain from criminal behavior and refused to complete a full psychological exam. Throughout this time, Julia and Joyce lived with Ms. June, and both girls expressed to the social worker that they wished to remain with Ms. June. Additionally, Julia and Joyce were receiving weekly counseling, and their therapist opined it would be in the girls' best interest to remain with Ms. June.

¶ 10 By 26 March 2019 respondent-mother had completed a psychological evaluation in accordance with her case plan. On 18 April 2019, respondent-mother underwent a parental capacity evaluation and psychological assessment. At this time respondent-mother was diagnosed with Other Specified Personality Disorder with antisocial features, and psychotherapy was recommended. Further, the doctor

reported respondent-mother “did not express any remorse for her behaviors that led to the current [DHHS] involvement and her children being placed in foster care. At no time did she express any insight as to why her behavior choices had potentially placed her children in harm’s way.”

¶ 11 However, by April 2019 respondent-mother had been allowed overnight visitation. Following the first overnight visit with Julia and Joyce, DHHS became concerned due to people coming and going from respondent-mother’s home, that a person named Brandon was providing transportation to the juveniles, and that respondent-mother’s home was infested with roaches. Then on 6 April 2019, during her second overnight visit, respondent-mother drove Julia and Joyce to a street fight where they witnessed their brother intervene and restrain one female, allowing his girlfriend to punch the restrained female in the face. Additionally, in June 2019 respondent-mother posted a “Facebook Live” video in which she expressed her intent to beat up her niece and to involve her children in beating up her niece. Julia saw this video.

¶ 12 This appeal is properly before this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2), 7B-1001, and 7B-1002.

III. Discussion

¶ 13 On appeal, respondent-mother argues that the trial court, in granting guardianship of the juveniles, failed to make required findings under N.C. Gen. Stat.

§ 7B-906.2(d); that the trial court failed, prior to granting guardianship of the juveniles, to find that respondent-mother was unfit or had acted in a manner inconsistent with her constitutionally protected status as a parent by clear and convincing evidence; that the trial court erred in releasing the parties and waiving further review hearings without making the findings of fact required under N.C. Gen. Stat. § 7B-906.1(n); and that the trial court erred by granting guardianship of the juveniles to Ms. June without making the required findings under N.C. Gen. Stat. §§ 7B-600(c) and 7B-906.1(j).

A. Standard of Review

¶ 14 “[Appellate] review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. 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) (citations omitted). This Court reviews issues of statutory interpretation, conclusions of law, and matters of law *de novo*. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006); *In re A.C.F.*, 176 N.C. App. 520, 522, 626 S.E.2d 729, 732 (2006).

B. N.C. Gen. Stat. § 7B-906.2(d) Required Findings

¶ 15 Respondent-mother argues that the trial court’s findings made under § 7B-906.2(d)(2)&(3) did not address her cooperation with DHHS/the Guardian ad Litem,

or whether she remained available to DHHS/the Guardian ad Litem. As to subsection (4), she argues the trial court erred because its findings were in the past tense while the statutory language is in the present tense. We disagree. Respondent-mother concedes the trial court made proper findings addressing subsection (1).

¶ 16

North Carolina General Statutes § 7B-906.2(d) states that

“[a]t any permanency planning hearing . . . the 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.”

N.C. Gen. Stat. § 7B-906.2(d) (2020).

¶ 17

The trial court’s findings of fact 9 and 10 directly discuss respondent-mother’s progress on her case plan and her parenting abilities. Further, findings of fact 11, 12, 17, 18, 19, 20, and 21 pertain to respondent-mother’s visitations with the juveniles and her parenting abilities, which are aspects of her case plan. Additionally, in findings of fact 7 and 8 the trial court adopted into the findings of fact reports prepared by DHHS and the Guardian ad Litem. These reports outline respondent-

mother's progress on her case plan, her visitations with the juveniles, and her contacts with DHHS and the Guardian ad Litem.

¶ 18 The trial court also made specific findings outlining actions respondent-mother took which were inconsistent with the health or safety of the juveniles. Findings of fact 20, 21, 22, 41, 42, and 43 pertain to two incidents, one where respondent-mother brought the juveniles to a street fight, and one where respondent-mother posted a "Facebook Live" video threatening to beat up her niece and involve the juveniles in the altercation. Finding of fact 40 found that respondent-mother "failed to correct the conditions that brought the juveniles into the custody of [DHHS]," and finding of fact 44 states "respondent-mother has not made sufficient progress in her therapeutic services to address the concerns that brought the juveniles into custody of [DHHS]." Further, findings of fact 37 and 41 specifically found that respondent-mother "has acted inconsistent" with the health and safety of the juveniles. Respondent-mother's only remaining argument is that the trial court's findings are in the past tense while the statutory language is in the present tense.

¶ 19 However, these findings all pertain to events which occurred within four months of the hearing and are sufficient because they satisfy the purpose of § 7B-906.2(d)(4) even if they do not mirror the statutory language. *See In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013) (holding that a trial court's findings need

not use the exact statutory language, the relevant inquiry is whether the court's findings addressed the statute's concerns).

C. Respondent-Mother's Constitutionally Protected Status as a Parent

¶ 20 Respondent-mother next argues the district court erred by granting guardianship of the juveniles to Ms. June (a nonparent) without first finding by clear and convincing evidence that respondent-mother was unfit or had acted in a manner inconsistent with her constitutionally protected status as a parent.

¶ 21 The Due Process Clause of the U.S. Constitution protects a parent's paramount right to custody of their children. *Adams v. Tessener*, 354 N.C. 57, 62, 550 S.E.2d 499, 503 (2001) (citing *Troxel v. Granville*, 530 U.S. 57, 72–73, 147 L. Ed. 2d 49, 61 (2000)). “As a result, the government may take a child away from his or her natural parent only upon a showing that the parent is unfit to have custody or where the parent's conduct is inconsistent with his or her constitutionally protected status.” *Id.* (citations omitted). However, a parent waives this argument if they had the opportunity to object or raise the issue at the hearing and the parent failed to do so. *In re C.P.*, 258 N.C. App. 241, 246, 812 S.E.2d 188, 192 (2018).

¶ 22 In the present case, each report by the DHHS and Guardian ad Litem, both of which were filed three months before the hearing where guardianship was ordered, recommended guardianship of the juveniles with Ms. June. Further, respondent-mother was advised in open court that DHHS was requesting guardianship of Julia

and Joyce on two occasions before the hearing where guardianship was ordered. However, at the hearing respondent-mother's arguments focused upon guardianship, and she did not raise a constitutional argument. Therefore, we find that respondent-mother waived this issue on appeal.

D. Findings of Fact Required Under N.C. Gen. Stat. § 7B-906.1(n)

¶ 23 Respondent-mother next argues that the trial court erred by releasing the parties and waiving further review hearings without making the findings of fact required under N.C. Gen. Stat. § 7B-906.1(n). Specifically, respondent-mother contends that the trial court did not address N.C. Gen. Stat. § 7B-906.1(n)(3), and the findings required by § 7B-906.1(n)(4)&(5) were made in the decretal portion of the order, which does not contain findings of fact. We Disagree.

¶ 24 North Carolina General Statutes § 7B-906.1(n) provides:

[T]he court may waive the holding of hearings required by this section . . . if the court finds by clear, cogent, and convincing evidence each of the following:

- (1) The juvenile has resided in the placement for a period of at least one year or the juvenile has resided in the placement for at least six consecutive months and the court enters a consent order pursuant to G.S. 7B-801(b1).
- (2) The placement is stable and continuation of the placement is in the juvenile's best interests.
- (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months.
- (4) All parties are aware that the matter may be brought before the court for review at any time by

the filing of a motion for review or on the court's own motion.

(5) The court order has designated the relative or other suitable person as the juvenile's permanent custodian or guardian of the person.

N.C. Gen. Stat. § 7B-906.1(n). Failure to make written findings satisfying each of the enumerated criteria constitutes reversible error. *In re P.A.*, 241 N.C. App. 53, 66, 772 S.E.2d 240, 249 (2015). However, where the trial court has not made specific written findings as to all the criteria of § 7B-906.1(n), this Court may reverse the order and remand to the trial court for further findings. *See, e.g., In re K.L.*, 254 N.C. App. 269, 285, 802 S.E.2d 588, 598 (2017).

¶ 25 Respondent-mother's argument pertaining to § 7B-906.1(n)(5) is not persuasive. Section 7B-906.1(n)(5) requires the court order to designate a permanent custodian or guardian for the juvenile(s). The proper place to make such a designation is the decretal portion of the court order. Therefore, the trial court did not err as to § 7B-906.1(n)(5).

¶ 26 DHHS agrees that the trial court did not make proper factual findings as to § 7B-906.1(n)(3)&(4) and concedes that this constitutes error. However, DHHS contends that the error does not require vacating the order and requests that this Court remand the order to allow the trial court to make findings in compliance with statutory requirements. We agree that complete reversal would be inappropriate. Therefore, we reverse the portion of the trial court's order purporting to end judicial

review hearings for lack of written findings on all five criteria set forth in N.C. Gen. Stat. § 7B-906.1(n) and remand to allow the trial court to make the necessary findings.

E. Grant of Guardianship to Ms. June

¶ 27 Finally, respondent-mother argues the trial court erred in granting guardianship to Ms. June without verifying that she understood the legal significance of the appointment as a guardian for the juveniles, and without verifying that she had adequate resources to care appropriately for the juveniles as required by N.C. Gen. Stat. §§ 7B-600(c) and 7B-906.1(j).

¶ 28 Before a trial court appoints a person as guardian for a juvenile, the trial court must first “verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile.” N.C. Gen. Stat. §§ 7B-600(c) & 7B-906.1(j). Verification that the guardian understood the legal significance of appointment does not require any specific findings of fact. *In re J.E.*, 182 N.C. App. 612, 616–17, 643 S.E.2d 70, 73 (2007). “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) & 7B-906.1(j).

¶ 29

Here, Ms. June testified at the hearing that she had provided care for the juveniles throughout their life. She took the juveniles to doctors' appointments, tutoring, school, and counseling. Ms. June also testified that she was comfortable with guardianship. Additionally, the DHHS report, which was incorporated into the trial court's findings of fact, indicates that DHHS spoke with Ms. June about guardianship of the juveniles. Finally, at the time of the court's findings, the juveniles had been placed with Ms. June for twenty-one months. This amounts to sufficient competent evidence to support the trial court's findings that Ms. June is aware of the duties and responsibilities of the guardian of the juveniles, and that she has the resources to care for them.

IV. Conclusion

¶ 30

For the foregoing reasons we affirm the trial court's grant of guardianship of the juveniles with Ms. June and reverse the portion of the trial court's order purporting to end judicial review hearings for lack of written findings on all five criteria set forth in N.C. Gen. Stat. § 7B-906.1(n) and remand to allow the trial court to make the necessary findings.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).

IN RE J.F. & J.F.

2021-NCCOA-281

Opinion of the Court