IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-508

No. COA21-181

Filed 21 September 2021

Scotland County, Nos. 17 J.A. 33-36; 69

IN THE MATTER OF:

T.T., T.T., T.T., T.T., T.T.,

MINOR JUVENILES.

Appeal by Respondent-Mother from orders entered 29 September 2020 by Judge Christopher W. Rhue in Scotland County District Court. Heard in the Court of Appeals 25 August 2021.

Garron T. Michael, Esq., for Respondent-Appellant Mother.

Brandi Jones Bullock for Petitioner-Appellee.

Stephen M. Schoeberle for Guardian ad Litem-Appellee.

GRIFFIN, Judge.

¶ 1 Respondent-Mother appeals five permanency planning orders which eliminated reunification efforts between Respondent-Mother and each of her five children. On appeal, Respondent-Mother contends that the trial court erred by making several unsupported findings of fact and by failing to make written findings of law as required by N.C. Gen. Stat. § 7B-906.2(b). Respondent-Mother argues that

the remaining findings do not support the conclusion to eliminate reunification as a permanent plan. Upon review, we affirm.

I. Factual and Procedural Background

A. Commencement of Proceedings

¶ 2 Respondent-Mother is the mother of Tina, Terry, Tracy, Trey, and Travis.[1] The children's respective dates of birth are 18 October 2016, 14 September 2015, 2 June 2012, 2 September 2008, and 23 June 2007. The children's fathers are either deceased or unknown.

¶ 3 On 2 June 2017, the Scotland County Department of Social Services ("DSS") filed petitions alleging that Tina, Terry, Tracy, and Travis were neglected juveniles. DSS was granted non-secure custody of the four children. Trey was voluntarily placed with a family friend. DSS later filed a petition, on 25 October 2017, alleging that Trey was a neglected juvenile. DSS was granted non-secure custody of Trey. Tina, Terry, Tracy, and Travis were adjudicated neglected on 12 December 2017, and Trey was adjudicated neglected on 3 April 2018.

¶ 4 The first four petitions were based on a 31 May 2016 sexual abuse report that Tracy (at the time nearly four years old) "was touched inappropriately by the boyfriend of her godmother." DSS received another report on 29 March 2017 that

[1] We use pseudonyms for ease of reading and to protect the identities of the juveniles. N.C. R. App. P. 42(b).

Respondent-Mother's mother's boyfriend "had inappropriately touched [Travis] and [Tracy]." Travis and Tracy were nine and four years old, respectively. Respondent-Mother did "not have safe or stable housing for herself and her children."

¶ 5 The petition alleging that Trey was neglected was based on Respondent-Mother's concerns that Trey was not being adequately supervised in his voluntary placement. Trey was "roaming around the neighborhood breaking things and [had] threatened an elderly lady with a knife." Trey had "been diagnosed with Autistic Disorder and ADHD." Respondent-Mother "told DSS that she would prefer that [Trey] be in DSS custody."

B. 2 July 2020 Permanency Planning Hearing

¶ 6 After multiple review and permanency planning hearings during 2018 and 2019, a permanency planning hearing was held on 2 July 2020 for the five children.

1. Respondent-Mother's Testimony

¶ 7 Respondent-Mother testified and presented documentation of her recent housing applications and disability appeal. She had no current source of income. During the past three years, the longest period she had been able to maintain housing was four and a half months. Respondent-Mother admitted that in the past, she would stop taking her prescribed medication for her mental health issues. She had no driver's license and no means of transportation except for relying upon other people. During a visit with her children, Respondent-Mother allowed her boyfriend, who had

been reported to have sexually abused Travis and Tracy, to bring pizza to her and the children.

2. Pastor Israel's Testimony and Letter

¶ 8 Deborah Hoskins Israel, Respondent-Mother's pastor, testified. Her letter in support of Respondent-Mother was admitted into evidence. Pastor Israel accompanied Respondent-Mother to multiple apartments where Respondent-Mother applied for housing, and the housing managers told them that due to Respondent-Mother's eight felony convictions, "they would have to wait until her felonies were three years old to even . . . put [her] on the waiting list due to the severity of her felonies." Pastor Israel observed that Travis cannot "even look [Respondent-Mother] in the face."

3. DSS and Guardian Ad Litem Reports

¶ 9 Reports from DSS and the Guardian Ad Litem, respectively dated 2 July 2020 and 30 June 2020, were admitted into evidence. The reports tended to show the following:

¶ 10 On 30 March 2017, Respondent-Mother tested positive for cocaine.

¶ 11 Respondent-Mother owed approximately $30,000 in fraudulently received social security income, which she would have to pay back, if she won her disability appeal.

¶ 12 Tracy, Trey, and Travis participate in therapy. Tracy has PTSD and ADD,

which is managed with medication. Trey has been diagnosed with autism, bipolar disorder, and ADHD. Travis is prescribed medication and has adjustment disorder, with "mixed anxiety," "depressed mood," and "panic." "[Respondent-Mother] refuses to understand that the traumatic behaviors of her children are effects of neglect and abuse while in her care." Respondent-Mother has a "continuing issue" of "not being there emotionally to support her children."

¶ 13 The five children "continue to thrive in their placements. There has been no regression in behaviors due to the children not visiting their mother." The children "aren't requesting to see or talk to [Respondent-Mother]"; in fact, the oldest child, Travis, "has expressed to GAL numerous [] times that he does not like having visits with his mother," and that "he does not want to reside with his mother and loves living in the [foster family's] home and enjoys his foster siblings." "All of the children have never lived together in the same home with [Respondent-Mother]."

¶ 14 DSS opined that "[a]ll the children would benefit from adoption. They need permanent homes and permanency in their lives." Tina's and Travis's foster parents expressed their wishes to adopt the children. Trey's former mental health counselor expressed an interest in adopting him.

4. Debra Webb's Testimony

¶ 15 Social worker Debra Webb, who prepared the DSS report, testified. Ms. Webb confirmed that the children were "doing well" in their foster homes. She testified that

throughout the case, Respondent-Mother had issues with consistently keeping up with mental health, housing, and other issues. When asked whether Respondent-Mother "[h]as . . . given you any reason to believe that she would now be consistent with maintaining housing . . . [o]r mental health," Ms. Webb responded, "No."

C. 29 September 2020 Permanency Planning Orders

1. Findings of Fact

¶ 16 On 29 September 2020, the trial court entered permanency planning orders for each of the five children. The orders contained the following findings of fact pertinent to this appeal:

> 8. It is not possible for the juvenile to be returned to the custody of the respondent mother immediately or within the next six (6) months because the respondent mother has not addressed the issues which led to the removal, including:
>
> a. Mental health assessment, and following through with all recommended treatment;
> b. Maintaining stable housing and meeting basic physical needs;
> c. Providing adequate supervision and discipline;
> d. Maintaining stable and full time employment or pursuing disability;
> e. Ensuring the medical and mental needs of the juvenile are met;
> f. Cooperating with DSS and maintaining contact with DSS at least once per week.
> g. Supporting the placement of the juvenile and visiting with the juvenile.
>
> 9. DSS has been working with the respondent mother for

several years. The issues which led to the removal remain mental health, housing, and proper supervision. The respondent mother completed the Intensive Outpatient Treatment Program at Generations Health. However, she still does not have stable housing. She has been receiving the juvenile sibling's disability income since 2017, after the juvenile was placed in foster care, in an approximate amount of $15,4000 [sic]. She has not provided any financial support for the juvenile or the juvenile's siblings. The respondent mother has allowed previous perpetrators of sexual abuse against the juvenile and the juvenile's siblings to accompany her to visits with the juveniles and encourages the juvenile and the juvenile's siblings to engage with said perpetrator. This caused substantial stress and trauma to the juvenile and juvenile's siblings. Her visits with the juveniles are chaotic, during which she has to take breaks because she says she cannot take it. She focuses on complaining about her situation and not on enjoying her time with the children. The respondent mother is aware of what she needs to accomplish in order to correct the conditions which led to removal.

. . .

14. The Court finds that it would be in the best interest of the juvenile and the State of North Carolina that DSS retain the legal and physical custody of the juvenile with the responsibility to provide for appropriate foster care, relative or other placement.

15. It would be contrary to the juvenile's welfare and best interests, at this time, for the juvenile to remain in or return to the home of the respondent mother until she addresses those issues identified herein and in the Family Services Agreement.

. . .

17. It would be in the best interest of the juvenile to continue to have no visitation with the respondent mother.

18. It would be in the juvenile's best interests for DSS to pursue a permanent plan of adoption for the juvenile with

> a concurrent plan of adoption.
>
> 19. The respondent mother has acted in a manner inconsistent with that of a parent, is not fit and a proper person to have custody, and they have forfeited their constitutionally protected right to custody of the juvenile.

¶ 17 The trial court also adopted, as findings of fact, the findings of the DSS and Guardian Ad Litem reports dated 2 July 2020 and 30 June 2020, respectively.

2. Conclusions of Law

¶ 18 Based on its findings of fact, the trial court made the following pertinent conclusions of law:

> It would be contrary to the juvenile's welfare and best interests, at this time, for the juvenile to remain in or return to the home of the respondent mother until she addresses those issues identified herein and in the Family Services Agreement.
> . . .
> It would be in the best interest of the juvenile and the State of North Carolina that DSS retain the legal and physical custody of the juvenile with the responsibility to provide for appropriate foster care, relative or other placement.
> . . .
> It would be in the best interest of the juvenile to continue to have no visitation with the respondent mother.
> . . .
> It would be in the juvenile's best interests for DSS to pursue of permanent plan of adoption for the juvenile with a concurrent plan of adoption.
> . . .
> The respondent mother has acted in a manner inconsistent with that of a parent, is not fit and a proper person to have custody, and they have forfeited their constitutionally protected right to custody of the juvenile.

3. Elimination of Reunification

¶ 19 Based on its findings of fact and conclusions of law, the trial court eliminated all reunification efforts with Respondent-Mother and ordered DSS to pursue a permanent plan of adoption with a concurrent plan of adoption. Respondent-Mother timely appealed.

II. Analysis

¶ 20 "This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007) (citations omitted). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007) (citation and internal quotation marks omitted), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008).

A. Competent Evidence Supports the Challenged Findings of Fact.

¶ 21 Respondent-Mother argues that portions of findings of fact nos. 8, 9, 18 and 19 (which are verbatim across each of the five orders) are not supported by competent evidence. We review whether any competent evidence supports each of the challenged findings of fact. *See In re J.H.*, 373 N.C. 264, 267, 837 S.E.2d 847, 850

(2020) ("The trial court's findings of fact are conclusive on appeal if supported by any competent evidence." (citation omitted)).

1. Competent Evidence Supported Finding of Fact No. 8

¶ 22 Respondent-Mother argues that no evidence supports Finding of Fact No. 8 (finding that Respondent-Mother had not addressed the issues which led to removal), particularly because she was pursuing disability and was making efforts to obtain stable housing. Finding of Fact No. 8 identified the following as issues which led to removal of the children:

> a. Mental health assessment, and following through with all recommended treatment;
> b. Maintaining stable housing and meeting basic physical needs;
> c. Providing adequate supervision and discipline;
> d. Maintaining stable and full time employment or pursuing disability;
> e. Ensuring the medical and mental needs of the juvenile are met;
> f. Cooperating with DSS and maintaining contact with DSS at least once per week.
> g. Supporting the placement of the juvenile and visiting with the juvenile.

Upon review, we conclude that competent evidence supports issues "a." through "e." but that no evidence supports "f." or "g."

¶ 23 Respondent-Mother did not follow through with all recommended mental health treatment. Respondent-Mother admitted that in the past, she would stop taking her prescribed medication for her mental health issues. Debra Webb testified

that Respondent-Mother had not "given [her] any reason to believe that [Respondent-Mother] would . . . be consistent with maintaining . . . mental health."

¶ 24 Respondent-Mother was not "[m]aintaining stable housing." During the past three years, the longest period that Respondent-Mother had been able to maintain housing was four and a half months. Although Respondent-Mother had recently applied for housing, she had not actually obtained any housing as of the 2 July 2020 hearing, and her eight felony convictions presented a substantial barrier to her ability to obtain housing. Respondent-Mother's argument on appeal that she has been trying to obtain stable housing does not demonstrate that Respondent-Mother has maintained stable housing (or even that she could do so in the near future).

¶ 25 Respondent-Mother was not "[p]roviding adequate supervision or discipline." Respondent-Mother's visits with the children had ceased at the time of the hearing due to a 26 September 2019 no-contact order. Her previous visits with her children were "chaotic, during which she ha[d] to take breaks because she sa[id] she [could not] take it."

¶ 26 Respondent-Mother had no current source of income, and even potential disability payments would not provide a meaningful source of income. Respondent-Mother testified that she has no current source of income. Although Respondent-Mother had an upcoming disability determination hearing, Respondent-Mother owed approximately $30,000 in fraudulently received social security income, which she

would have to reimburse if she won her disability appeal.

¶ 27 Respondent-Mother was not ensuring that the medical and mental needs of the children were being met. Respondent-Mother had a "continuing issue" of "not being there emotionally to support her children." She had not provided financial support to the children. During one visit with her children, Respondent-Mother allowed a reported perpetrator of sexual abuse against Travis and Tracy to bring pizza to her and the children, which "caused substantial stress and trauma to the juvenile and juvenile's siblings." The children developed "traumatic behaviors" as "effects of neglect and abuse while in [Respondent-Mother's] care."

¶ 28 However, no evidence presented at the 2 July 2020 hearing showed that Respondent-Mother did not cooperate with DSS or failed to maintain contact with DSS at least once per week. Additionally, the court's finding that Respondent-Mother was not "[s]upporting the placement of" or "visiting with" the children was inapplicable due to the 29 September 2019 no-contact order between Respondent-Mother and her children. These portions of Finding of Fact No. 8 are unsupported by evidence.

¶ 29 Apart from the exceptions noted above, competent evidence supports that Respondent-Mother had not addressed the issues which led to removal of the children.

2. Competent Evidence Supports Finding of Fact No. 9

¶ 30 Respondent-Mother challenges the portion of Finding of Fact No. 9 that indicates that she "allowed previous perpetrators of sexual abuse against the juvenile and the juvenile's siblings to accompany her to visits with the juveniles." We disagree that this finding was unsupported.

¶ 31 Competent evidence, in the form of Respondent-Mother's own testimony, supports this challenged portion of the finding. Respondent-Mother testified that she allowed her boyfriend, who had been reported to have sexually abused Travis and Tracy, to bring pizza to her and the children while she was visiting them.

¶ 32 On appeal, Respondent-Mother argues that "there was no evidence that [Respondent-Mother's] former significant other provided her transportation to her visits, but rather the evidence showed that Social Worker Webb would transport [Respondent-Mother] to her visitations and that she had ended her relationship with that individual in 2018." Respondent-Mother's argument is inapposite. Finding of Fact No. 8 did not state that Respondent-Mother's boyfriend transported her to the visit, or that she was presently in a relationship with him. The finding stated that Respondent-Mother allowed this individual to "accompany her to visits with the juveniles," which is supported by Respondent-Mother's own testimony that she allowed him to bring pizza to her and her children during one of the visits.

¶ 33 The remaining portions of Finding of Fact No. 9 are not challenged by Respondent-Mother and therefore are binding upon appeal. *In re C.M.*, 273 N.C. App.

427, 431, 848 S.E.2d 749, 752 (2020) ("These . . . portions of findings are unchallenged by mother, and binding on appeal." (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991))).

3. Competent Evidence Supports Finding of Fact No. 18

¶ 34 The trial court found that "[i]t would be in the juvenile's best interests for DSS to pursue a permanent plan of adoption for the juvenile with a concurrent plan of adoption." Respondent-Mother challenges this finding for the same reasons as her challenge to Finding of Fact No. 8. We disagree; this finding is supported.

¶ 35 Competent evidence supports Finding of Fact No. 18. As discussed *supra*, Respondent-Mother failed to address most of the issues which led to the children's removal. The five children were "continu[ing] to thrive in their placements," without any regression due to not visiting Respondent-Mother. The children were not "requesting to see or talk to [Respondent-Mother]"; on the contrary, Travis "expressed to GAL numerous [] times that he does not like having visits with his mother," and that "he does not want to reside with his mother and loves living in the [foster family's] home and enjoys his foster siblings." Travis cannot "even look [Respondent-Mother] in the face." The DSS report stated that "[a]ll the children would benefit from adoption. They need permanent homes and permanency in their lives." Most of the children had prospective adoptive homes: Tina's and Travis's foster parents expressed their wishes to adopt the children, and Trey's former mental health

counselor expressed an interest in adopting him.

¶ 36 Because competent evidence supports Finding of Fact No. 18, we do not disturb it on appeal. *See In re J.H.*, 373 N.C. at 267, 837 S.E.2d at 850 ("The trial court's findings of fact are conclusive on appeal if supported by any competent evidence." (citation omitted)).

4. Competent Evidence Supports Finding of Fact No. 19

¶ 37 The trial court found that Respondent-Mother "has acted in a manner inconsistent with that of a parent, is not fit and a proper person to have custody, and [she] ha[s] forfeited [her] constitutionally protected right to custody of the juvenile." Respondent-Mother challenges this finding for the same reasons as her challenge to Finding of Fact No. 8. We disagree that this finding was unsupported.

¶ 38 Competent evidence supports Finding of Fact No. 19. Respondent-Mother had mental health issues and admitted that in the past she had stopped taking her prescribed medication. She had not provided financial support for the children, and was repeatedly failing to support them emotionally. During a visit with her children, Respondent-Mother allowed a reported perpetrator of sexual abuse against Travis and Tracy to bring pizza to her and the children, and she has "encouraged the juvenile and the juvenile's siblings to engage with said perpetrator." "This caused substantial stress and trauma to the juvenile and juvenile's siblings." The children developed "traumatic behaviors" as "effects of neglect and abuse while in her care."

¶ 39 Because competent evidence supports Finding of Fact No. 19, we do not disturb the finding on appeal. *See In re J.H.*, 373 N.C. at 267, 837 S.E.2d at 850 ("The trial court's findings of fact are conclusive on appeal if supported by any competent evidence." (citation omitted)).

B. The Trial Court Made the Appropriate Findings.

¶ 40 The 29 September 2020 orders eliminated all reunification efforts with Respondent-Mother. Therefore, the court was required to make "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). "The trial court's written findings must address the statute's concerns, but need not quote its exact language." *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013).

¶ 41 Here, the trial court addressed the concerns of N.C. Gen. Stat. § 7B-906.2(b). The trial court made numerous findings that supported that reunification would be unsuccessful or inconsistent with the children's health or safety, including the following:

> [Respondent-Mother] still does not have stable housing. She has been receiving the juvenile's sibling's disability income since 2017, after the juvenile was placed in foster care, in an approximate amount of $15,4000 [sic]. She has not provided any financial support for the juvenile or the juvenile's siblings. The respondent mother has allowed previous perpetrators of sexual abuse against the juvenile and the juvenile's siblings to accompany her to visits with the juveniles and encourages the juvenile and the juvenile's

> siblings to engage with said perpetrator. This caused substantial stress and trauma to the juvenile and juvenile's siblings. Her visits with the juveniles are chaotic, during which she has to take breaks because she says she cannot take it.
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> [I]t would be in the best interest of the juvenile and the State of North Carolina that DSS retain the legal and physical custody of the juvenile with the responsibility to provide for appropriate foster care, relative or other placement.
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> It would be contrary to the juvenile's welfare and best interests, at this time, for the juvenile to remain in or return to the home of the respondent mother until she addresses those issues identified herein and in the Family Services Agreement.
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> It would be in the best interest of the juvenile to continue to have no visitation with the respondent mother.
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> It would be in the juvenile's best interests for DSS to pursue a permanent plan of adoption for the juvenile with a concurrent plan of adoption.
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> The respondent mother has acted in a manner inconsistent with that of a parent, is not fit and a proper person to have custody, and they have forfeited their constitutionally protected right to custody of the juvenile.

¶ 42 By adopting the DSS and Guardian Ad Litem reports, the court made the following findings which also supported that reunification would be unsuccessful or inconsistent with the children's health or safety:

¶ 43 Respondent-Mother has a "continuing issue" of "not being there emotionally to support her children." "[Respondent-Mother] refuses to understand that the

traumatic behaviors of her children are effects of neglect and abuse while in her care." "There has been no regression in behaviors due to the children not visiting their mother." The children "aren't requesting to see or talk to [Respondent-Mother.]" Travis "has expressed to GAL numerous [] times that he does not like having visits with his mother," and that "he does not want to reside with his mother and loves living in the [foster family's] home and enjoys his foster siblings." "All of the children have never lived together in the same home with [Respondent-Mother]." "All the children would benefit from adoption. They need permanent homes and permanency in their lives."

¶ 44 With its findings, the trial court properly addressed the concerns of N.C. Gen. Stat. § 7B-906.2(b). The findings showed that the children suffered neglect and abuse in Respondent-Mother's care, that she was unwilling or unable to remedy the issues that led to their removal, that Respondent-Mother was unfit as a parent, and that the children needed permanency in their lives which could be achieved through adoption. In this context, reunification with Respondent-Mother would clearly be unsuccessful or inconsistent with the children's health or safety.

III. Conclusion

¶ 45 For the foregoing reasons, we hold that the trial court did not abuse its discretion and we affirm the orders of the trial court.

AFFIRMED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).