IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-695

No. COA22-134

Filed 18 October 2022

Wilkes County, Nos. 20 JA 105–07

IN THE MATTER OF: M.A.C., N.G.C., AND C.A.B.C., MINOR CHILDREN

Appeal by respondent-mother from order entered 9 November 2021 by Judge Donna L. Shumate in Wilkes County District Court. Heard in the Court of Appeals 20 September 2022.

Sherryl Roten West for petitioner-appellee Wilkes County Department of Social Services.

Poyner Spruill LLP, by Caroline P. Mackie and Andrea M. Liberatore, for guardian ad litem.

Sydney Batch for respondent-appellant mother.

ZACHARY, Judge.

¶ 1 Respondent-Mother appeals from the trial court's order eliminating reunification with her minor children from the permanent plan. After careful review, we affirm.

I. Background

¶ 2 Respondent-Mother has been in a romantic relationship with Respondent-

Father for 15 years. Three children, "Maya," "Nora," and "Chris,"[1] (collectively, "the children") have been born of the relationship.

¶ 3 On 8 August 2020, Petitioner Wilkes County Department of Social Services ("DSS") received a report that, while Respondent-Mother and her seventeen-year-old brother were making marijuana wax, Respondent-Father "had an altercation with [Respondent-Mother]'s . . . brother and shot him." Maya and Nora were present at the time of the illegal drug activity and the shooting, but Chris was not; he was later found at his paternal aunt and uncle's residence. Respondent-Father fled the scene and Respondent-Mother was arrested on outstanding warrants.

¶ 4 On 10 August 2020, DSS filed petitions alleging that the children were neglected and dependent juveniles, and the trial court entered orders awarding nonsecure custody of the children to DSS. Chris was placed in his aunt and uncle's home while Maya and Nora were placed in a licensed foster home.

¶ 5 On 14 September 2020, the petitions came on for an adjudication and disposition hearing in Wilkes County District Court. By order entered on 14 October 2020, the trial court adjudicated the children as neglected, continued their legal and physical custody with DSS, and granted DSS placement authority over the children. The trial court awarded Respondent-Parents one hour of supervised visitation twice

[1] The pseudonyms adopted by the parties pursuant to N.C.R. App. P. 42(b) are used for ease of reading and to protect the juveniles' identities.

a month. DSS placed Maya and Nora with their paternal aunt and uncle, alongside Chris.

¶ 6 Also on 14 October 2020, Respondent-Mother signed a Family Services Case Plan, pursuant to which Respondent-Mother agreed to (1) complete parenting classes; (2) obtain and maintain employment; (3) obtain and maintain appropriate and clean housing; (4) complete a mental health assessment and follow the treatment recommendations; (5) participate in family therapy; (6) complete a substance abuse assessment and follow the treatment recommendations; (7) submit to drug screens; (8) complete a domestic violence assessment and follow all recommendations; (9) keep all weapons in locked containers; (10) contact DSS weekly; (11) attend all meetings, court proceedings, and scheduled visitations; and (12) resolve her legal charges.

¶ 7 On 7 December 2020, the matter came on for a review hearing. By order entered on 9 April 2021, the trial court found that Respondent-Mother was "uncooperative and ha[d] completed nothing on [her] case plan." In contrast, the trial court found that the children were "thriving" in their placement.

¶ 8 Thereafter, Respondent-Mother began making progress with her case plan, and by the time this matter came on for a permanency planning hearing on 7 June 2021, the trial court found that she "ha[d] completed the majority of her case plan." Respondent-Mother had completed parenting classes, had obtained employment and "for the most part appropriate" housing, had visited the children five times in the

previous three months, and was contacting her social worker regularly. She had completed mental health and substance abuse assessments and had "started following the recommendations from said assessments." Respondent-Mother had also "cooperated with drug screens" but had not passed each test.

¶ 9 Following the 7 June 2021 hearing, the trial court entered a permanency planning order on 2 July 2021 that established reunification as the primary plan and placement with an approved caregiver as the secondary plan. The trial court also ordered, *inter alia*, that Respondent-Mother "cooperate with a psychological evaluation."

¶ 10 The matter next came on for hearing on 20 September 2021. In its court report for the September hearing, DSS acknowledged that Respondent-Mother "completed the majority of her case plan." However, DSS also noted that Respondent-Mother had failed another drug screen, that her "housing is not appropriate" and that, when completing her psychological evaluation, she gave information regarding her housing and employment that was inconsistent with what she told her social worker. The guardian *ad litem* ("GAL") echoed DSS's assessment, stating in its report that Respondent-Mother "has completed a lot of her case plan but has shown she is too unstable/inconsistent to stay on the right path."

¶ 11 As for the children, DSS reported that they were still "thriving in th[eir] placement" with the paternal aunt and uncle. DSS and the GAL each recommended

that the children's permanent plan be changed to guardianship with a secondary plan of custody with a court-approved caretaker.

¶ 12 At the conclusion of the hearing, the trial court adopted the recommendations of DSS and the GAL. By order entered on 9 November 2021, the trial court set guardianship as the primary plan with custody with an approved caregiver as the secondary plan, and awarded guardianship of the children to the paternal aunt and uncle.

¶ 13 As specifically regards Respondent-Mother's progress with her case plan, the trial court made the following findings of fact:

> 9. The children's mother, [Respondent-Mother], signed a Family Services Case Plan (FSCP) on October 14, 2020. [Respondent-Mother] has partially completed her Case Plan. [She] has completed her parenting classes and provided the Social Worker with her completion certificate.
>
> 10. [Respondent-Mother] has completed her substance abuse and mental health assessments. She is sporadically following the recommendations from said assessments. She was ordered to cooperate with a psychological evaluation. She completed this on August 19, 2021.
>
> 11. [Respondent-Mother] has inconsistently cooperated with drug screens. Since the last court date on June 7, 2021, [Respondent-Mother]'s drug screening and results are as follows. On June 9, 2021, [Respondent-Mother] arrived for a drug screen but would not comply with an observed urine screen, so the testing did not take place. On June 10, 2021[,] she was a no show. On June 21, 2021, she was not able to be screened due to incarceration.

> On July 14, 2021[,] she passed the drug screen. On July 28, 2021, she tested positive for amphetamines, methamphetamine and marijuana metabolite. On September 3, 2021[,] she no showed for testing. On September 9, 2021[,] she passed the screen, but the sample was diluted. On September 10, 2021[,] she no showed for testing. [Respondent-Mother] has denied drug use and stated the tests are incorrect. However, she has also stated that the stress of not being with her children is why she is doing drugs.
>
> 12. Since the last court date on June 7, 2021, [Respondent-Mother] has had two supervised visits with the children, on July 14, 2021 and July 28, 2021. The visits went well. Visitation has been suspended due to a failed drug screen in July. She is ordered to pay $50.00 per month in support for the children, but is in arrears.
>
> 13. [Respondent-Mother]'s employment has been erratic. She has not been employed for the past two months. She is residing with [B.S.], and per her testimony, she has been residing there for a year.
>
> 14. [Respondent-Mother] testified that she provided school supplies for [Chris], bought the children Easter baskets, snacks, clothes, car seats, and painting supplies. She stated she has remodeled rooms for the children to sleep in and has bought beds. However, [Respondent-Mother]'s testimony related to certain topics, such as drug use, appears inconsistent. It is difficult for the Court to ascertain whether she is having difficulty remembering or is being dishonest with the Court.
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> . . . .
>
> 21. It is not likely that it will be possible for the children to be returned to the home of a parent in the next six months due to lack of progress on their Case Plans.

¶ 14 Based on these findings of fact, among others, the trial court made the

following conclusions of law:

> 1. The minor child, [Chris] has been placed with [the paternal aunt and uncle] since August 8, 2020. The minor children, [Nora] and [Maya], have been placed with [the paternal aunt and uncle] since September 14, 2020. [The paternal aunt and uncle] are committed to caring for the minor children and providing guardianship, the minor children have been doing well in this placement, and this placement is in their best interests.
>
> 2. The Respondent Parents have acted inconsistently with their parental rights and responsibilities, and it is unlikely that the Respondent Parents will be able to care for the minor children within the next six months.
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> 3. Pursuant to NCGS §7B-906.1(n), neither the minor children's best interests nor the rights of any party require that review hearings be held every six months, and [DSS], the [GAL], and the attorneys of record are hereby released from further responsibility in these matters; however, all parties are aware the matters may be brought before this Court for review at any time by the filing of a motion.

¶ 15 Respondent-Mother filed notice of appeal on 6 December 2021. Respondent-Father did not appeal the trial court's 9 November 2021 order. Consequently, he is not a party to this appeal.

II. Appellate Jurisdiction

¶ 16 In her notice of appeal and appellate brief, Respondent-Mother cites N.C. Gen. Stat. § 7B-1001(a)(5) as providing the statutory basis for her appeal from the trial court's 9 November 2021 order. Section 7B-1001(a)(5) provides for an appeal to this

Court from:

> An order under G.S. 7B-906.2(b) eliminating reunification, as defined by G.S. 7B-101(18c), as a permanent plan by either of the following:
>
> a. A parent who is a party and:
>
> 1. Has preserved the right to appeal the order in writing within 30 days after entry and service of the order.
>
> 2. A termination of parental rights petition or motion has not been filed within 65 days of entry and service of the order.
>
> 3. A notice of appeal of the order eliminating reunification is filed within 30 days after the expiration of the 65 days.
>
> b. A party who is a guardian or custodian with whom reunification is not a permanent plan.

N.C. Gen. Stat. § 7B-1001(a)(5) (2021).

¶ 17 Respondent-Mother did not comply with the requirements of § 7B-1001(a)(5), in that she filed her notice of appeal within 30 days of the entry and service of the trial court's 9 November order without waiting the requisite 65 days to ascertain whether a termination of parental rights petition or motion would be filed. *See id.* Nonetheless, the order from which Respondent-Mother appeals "changes legal custody of a juvenile" by awarding guardianship of the children to the paternal aunt and uncle, which makes it appealable to this Court. *Id.* § 7B-1001(a)(4). Accordingly, we proceed to the merits of Respondent-Mother's appeal.

III. Discussion

¶ 18 Respondent-Mother argues that the trial court committed reversible error "when it ostensibly ceased reunification efforts with [Respondent-Mother] by awarding guardianship of the minor children to the paternal aunt and uncle." We disagree.

A. Standard of Review

¶ 19 "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 M.T.-L.Y.*, 265 N.C. App. 454, 466, 829 S.E.2d 496, 505 (citation omitted), *supersedeas and disc. review denied*, 372 N.C. 709, ___ S.E.2d ___ (2019). "[T]he trial court's findings of fact [are] conclusive on appeal if supported by any competent evidence." *In re L.E.W.*, 375 N.C. 124, 129, 846 S.E.2d 460, 465 (2020) (citation omitted). "Unchallenged findings of fact are binding on appeal." *In re J.R.*, 279 N.C. App. 352, 2021-NCCOA-491, ¶ 14.

¶ 20 "The trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed only for abuse of discretion, as those decisions are based upon the trial court's assessment of the child's best interests." *In re C.H. & J.H.*, 2022-NCSC-84, ¶ 20 (citation 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." *Id.* (citation omitted).

B. Analysis

¶ 21 On appeal, Respondent-Mother, DSS, and the GAL agree that the trial court effectively removed reunification as a plan for the children when the court awarded guardianship of the children to their paternal aunt and uncle. However, Respondent-Mother argues that the trial court committed reversible error by failing to satisfy the statutory requirements for ceasing reunification efforts with Respondent-Mother.

¶ 22 Section 7B-906.2(b) provides, in pertinent part, that "[r]eunification shall be a primary or secondary plan unless" one of three conditions is met: (1) "the court made written findings under G.S. 7B-901(c) or G.S. 7B-906.1(d)(3)," (2) "the permanent plan is or has been achieved in accordance with" § 7B-906.2(a1), or (3) "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).

¶ 23 Respondent-Mother contends that "[n]one of these three situations apply to the instant case." By contrast, the GAL argues that "the trial court's order complies with two of the statutory requirements"—specifically, that a permanent plan had been achieved and that the court made sufficient written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the children's health or safety.

1. Achievement of Permanent Plan

¶ 24 The GAL contends that the permanent plan of guardianship had been achieved, and therefore the trial court could properly eliminate reunification as a permanent plan. Respondent-Mother dismisses this argument by asserting that "the trial court was required to maintain reunification as a permanent plan at the 20 September 2021 hearing because the permanent plan for the children had not been previously implemented in accordance with [N.C. Gen. Stat.] § 7B-906.2(a1)." However, Respondent-Mother does not provide any authority for the principle that the permanent plan had to be "previously implemented" rather than achieved in the permanency planning order that eliminates reunification. *Cf. In re D.A.*, 258 N.C. App. 247, 253, 811 S.E.2d 729, 733 (2018) ("In this case, the order eliminated reunification as a goal of D.A.'s permanent plan, established a permanent plan of full legal and physical custody with the foster parents, and transferred custody of the child to the foster parents.").

¶ 25 The plain language of § 7B-906.2(b)—which requires that the permanent plan "*is* or has been achieved"—allows for the contemporaneous achievement of the permanent plan just as it allows for the recognition of a previously implemented permanent plan. N.C. Gen. Stat. § 7B-906.2(b) (emphasis added). Similarly, § 7B-906.2(a1) provides that "[c]oncurrent planning shall continue until a permanent plan *is* or has been achieved." *Id.* § 7B-906.2(a1) (emphasis added). Thus, by establishing

guardianship as a permanent plan and granting guardianship of the children to the paternal aunt and uncle, the 9 November order achieved a permanent plan in accordance with § 7B-906.2(a1) and (b).

¶ 26 Accordingly, the trial court was under no obligation to maintain reunification as a primary or secondary plan.

2. Juveniles' Health or Safety

¶ 27 The trial court also satisfied the third condition under which a trial court may eliminate reunification—that "the court make[ ] written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." *Id.* § 7B-906.2(b).

¶ 28 Section 7B-906.2(d) requires that whenever a trial court eliminates reunification pursuant to § 7B-906.2(b), the court must make written findings that "demonstrate the degree of success or failure toward reunification" with regard to each of four factors:

> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
>
> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
>
> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
>
> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

Id. § 7B-906.2(d). We review the sufficiency of the trial court's findings of fact with the requirements of each of these statutes in mind.

¶ 29 On appeal, Respondent-Mother specifically challenges the trial court's findings of fact 10, 14, and 21 as not supported by competent evidence, and also challenges the trial court's conclusion of law 3. The remaining, unchallenged findings of fact are binding on appeal. *J.R.*, 279 N.C. App. 352, 2021-NCCOA-491, ¶ 14.

¶ 30 Respondent-Mother initially focuses on the trial court's finding of fact 21, which states that "[i]t is not likely that it will be possible for the children to be returned to the home of a parent in the next six months due to lack of progress on their Case Plans." Respondent-Mother argues that "[t]his finding, by itself, is insufficient to meet the statutory requirements necessary to cease efforts based on future efforts being futile or inconsistent with the children's need for safety." However, our review of the trial court's order shows that this finding does not stand "by itself" as she maintains.

¶ 31 For example, the trial court's finding of fact 11, quoted in full above and also unchallenged on appeal, details Respondent-Mother's continuing substance abuse issues, the treatment of which was a part of her case plan and about which the trial court noted it was "extremely concerned" at the permanency planning hearing. The trial court's unchallenged finding of fact 12 observes that Respondent-Mother's visitation was "suspended due to a failed drug screen[,]" which implicates her ability

to attend all visitations, as her case plan required. Further, the trial court's unchallenged finding of fact 13 addresses Respondent-Mother's employment, which was also a part of her case plan, and states that Respondent-Mother's "employment has been erratic. She has not been employed for the past two months." These findings satisfy the first two requirements of § 7B-906.2(d) because they address whether Respondent-Mother is "making adequate progress" or "actively participating in or cooperating with" her case plan. N.C. Gen. Stat. § 7B-906.2(d)(1)–(2). The trial court's findings of fact here sufficiently demonstrate the court's concerns with Respondent-Mother's progress, participation, and cooperation with her case plan.

¶ 32 The GAL also correctly asserts that finding of fact 12 satisfies § 7B-906.2(d)(3)—which requires the trial court to address whether Respondent-Mother "remains available to the court," DSS, and the GAL, *id.* § 7B-906.2(d)(3)—because her "failure to submit to drug screens when requested by DSS and missed visitations show [Respondent-Mother]'s limited availability to DSS."

¶ 33 Additionally, finding of fact 11 addresses § 7B-906.2(d)(4), in that documenting Respondent-Mother's substance abuse issues implicates whether she "is acting in a manner inconsistent with the health or safety of the juvenile." *Id.* § 7B-906.2(d)(4); *see also In re S.B.*, 268 N.C. App. 78, 83, 834 S.E.2d 683, 688 (2019) ("Caretakers with substance abuse issues pose a threat to the safety of children in their care.").

¶ 34 "Although use of the actual statutory language is the best practice, the statute

does not demand a verbatim recitation of its language." *L.E.W.*, 375 N.C. at 129, 846 S.E.2d at 465 (citation and internal quotation marks omitted). "Instead, the order must make clear that the trial court considered the evidence in light of whether reunification would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *Id.* at 129–30, 846 S.E.2d at 465 (citation and internal quotation marks omitted). The trial court here did not recite the statutory language verbatim in its 9 November order; nevertheless, we conclude after careful review that the trial court considered the evidence in the proper light and made sufficient findings of fact to address the statutory requirements.

3. Cessation of Review Hearings

¶ 35 Respondent-Mother also specifically challenges conclusion of law 3, in which the trial court concludes:

> Pursuant to NCGS §7B-906.1(n), neither the minor children's best interests nor the rights of any party require that review hearings be held every six months, and [DSS], the [GAL], and the attorneys of record are hereby released from further responsibility in these matters; however, all parties are aware the matters may be brought before this Court for review at any time by the filing of a motion.

¶ 36 "A trial court may not cease further review hearings without making the . . . findings of fact required by" § 7B-906.1(n). *In re S.D.*, 276 N.C. App. 309, 2021-NCCOA-93, ¶ 64. That section requires that the trial court find by clear, cogent, and

convincing evidence that:

> (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 permanency planning 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).

¶ 37 The order and the transcript of the permanency planning hearing reveal that the trial court made each of the findings necessary to satisfy this statutory requirement. There is nothing in conclusion of law 3 that is unsupported by the trial court's findings of fact. Neither can we say that the trial court abused its discretion in its disposition of this matter. *See C.H. & J.H.*, 2022-NCSC-84, ¶ 20; *M.T.-L.Y.*, 265 N.C. App. at 466, 829 S.E.2d at 505.

IV. Conclusion

¶ 38 For the foregoing reasons, the trial court's 9 November 2021 order eliminating

reunification with Respondent-Mother as a permanent or secondary plan is affirmed.

AFFIRMED.

Chief Judge STROUD and Judge MURPHY concur.

Report per Rule 30(e).