IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-739

Filed 01 August 2023

Harnett County, No. 19 JA 103

IN THE MATTER OF: L. D. M.

Appeal by respondent-mother from order entered 17 June 2022 by Judge Resson O. Faircloth in Harnett County District Court. Heard in the Court of Appeals 23 May 2023.

Rebekah W. Davis for respondent-appellant mother.

Marie H. Mobley for guardian ad litem.

Duncan B. McCormick for petitioner-appellee Harnett County Department of Social Services.

DILLON, Judge.

Respondent-mother ("Mother") appeals a permanency planning order awarding guardianship of her son ("Luke")[1] to nonparents. We affirm.

I. Background

Mother is the mother of Luke, as well as two other children, who are not subject

[1] A pseudonym has been used throughout the opinion to protect the identity of the juvenile and for ease of reading. See N.C. R. App. P. 42(b)(1).

to this appeal.

The Harnett County Department of Social Services ("DSS") has been involved with Mother and Luke since August 2018. In November 2018, DSS found Mother was unstable and was not receiving treatment for her mental and emotional health. Mother has diagnoses of borderline personality disorder, factitious disorder imposed on another, and anxiety. Mother also has a history of drug and alcohol use.

On 21 August 2020, the trial court entered its adjudication and disposition order, adjudicating Luke as a neglected juvenile. In its order, the court authorized placement of Luke with a married couple, the Williamses, whom Mother had developed a close relationship with during the time they supervised visitation prior to COVID-19 restrictions. Additionally, the trial court ordered Mother to participate in long-term psychotherapy and treatment for her bi-polar disorder, take her medication as prescribed, participate in outpatient substance abuse treatment, cooperate with random and scheduled drug screens, obtain and maintain suitable housing, and complete a parenting education program.

Six weeks later, on 2 October 2020, the trial court conducted a permanency planning review hearing, in which it continued to authorize placement of Luke with the Williamses. The trial court established a primary plan of reunification and a secondary plan of guardianship. During the following year, the trial court conducted two additional review hearings and established a primary plan of custody, a secondary plan of reunification, and a concurrent secondary plan of guardianship.

On 17 June 2023, after hearings on the matter, the trial court entered an order (the "Order") establishing a primary plan of guardianship, ceasing reunification efforts, and appointing the couple as Luke's permanent guardians. Mother appealed.

II. Analysis

Mother raises three arguments, which we address in turn.

A. Guardianship

Mother argues that the trial court failed to make sufficient findings to support its conclusion she acted inconsistently with her parental rights. We disagree.

Our appellate review of the Order "is limited to whether there is competent evidence in the record to support the findings of fact and whether the findings support the conclusion of law." *In re B.R.W.*, 381 N.C. 61, 77, 871 S.E.2d 764, 775 (2022). The trial court's findings of fact are "conclusive on appeal if supported by any competent evidence." *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453 (2013).

We review the trial court's conclusions of law *de novo*.

> The trial court's legal conclusion that a parent acted inconsistently with his constitutionally protected status as a parent is reviewed de novo to determine whether the findings of fact cumulatively support the conclusion and whether the conclusion is supported by clear and convincing evidence. The trial court's findings of fact are conclusive on appeal if unchallenged, or if supported by competent evidence in the record.

In re I.K., 377 N.C. 417, 421–22, 858 S.E.2d 607, 611 (2021) (citations omitted).

The Due Process Clause in the Fourteenth Amendment of the United States

Constitution protects a natural parent's paramount constitutional right to the custody and control of his or her children. *See Troxel v. Granville*, 530 U.S. 57, 72-73, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). Absent a finding that a parent is (1) unfit or (2) has acted inconsistently with his or her constitutionally protected parental status, the parent's right to the custody, care, and control of his or her child must prevail. *In re B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775-76. A trial court's determination that a parent's conduct is inconsistent with his or her constitutionally protected status must be supported by clear and convincing evidence. *Adams v. Tessener*, 354 N.C. 57, 63, 550 S.E.2d 499, 503 (2001).

Here, the trial court awarded guardianship of Luke to the Williamses because Mother "neglected the juvenile and acted inconsistently with [her] respective parental rights, duties, and obligations." Mother makes numerous arguments challenging this determination, but we also note the trial court made extensive findings of fact which Mother does not challenge on appeal. We discuss only the arguments necessary to support the trial court's conclusion that Mother acted inconsistent with her parental rights.

First, Mother takes issue with the trial court's conclusion that:

> By clear, cogent, and convincing evidence, the court finds that the parents neglected the juvenile and acted inconsistently with their respective parental rights, duties, and obligations.

Mother contends this conclusion was erroneous because it references "the parents"

instead of her specifically. She cites two cases from our Court to support her argument. However, unlike the Order here, the trial court's orders in those cases were reversed because of the trial court's failure to make *any findings or conclusions* regarding whether the parent was unfit or had acted inconsistently with his/her constitutional right to parent. *In re D.M.*, 211 N.C. App. 382, 385, 712 S.E.2d 355, 357 (2011) ("Because the trial court failed to make *any* findings of fact or conclusions of law as to whether respondent-father had acted inconsistently with his parental rights, it erred in awarding permanent custody to [the] grandmother"); *In re B.G.*, 197 N.C. App. 570, 574, 677 S.E.2d 549, 552 (2009) ("Contrary to the trial court's conclusions otherwise, to apply the best interest of the child test in a custody dispute between a parent and a nonparent, a trial court must find that the natural parent is unfit or that his or her conduct is inconsistent with a parent's constitutionally protected status."). Here, however, the trial court made the requisite finding that Mother, herself, acted inconsistently with her constitutional right. We, therefore, conclude that the specific reference to "the parents" rather than just to her, does not constitute reversible error.

Next, Mother contends the trial court's findings regarding whether she acted inconsistently with her parental rights were not supported by the evidence. However, this is a conclusion of law, not a finding of fact, and Mother does not challenge most of the trial court's extensive findings of fact, which are binding on appeal. Specifically, she contends the "implication that [Mother] did not understand past

problems or minimized them and she will not deal with mental health issues" was not supported by evidence. However, the trial court's unchallenged findings specifically note Mother's efforts in detail, but the trial court ultimately found Mother did not make sufficient progress. For example, the trial court found:

> kkk. The mother has made efforts. The mother has made progress. She has checked the boxes on her case plan, and she believes that checking these boxes is the equivalent of substantial completion of the case plan. ….
>
> mmm. The mother does not acknowledge the significance of her history of mental illness or the impact of her mental illness on the juvenile and the older ½ sibling.

Mother does not challenge that these findings are unsupported by the evidence. Rather, she argues they are "inaccurate" based upon her contention that her progress was greater than the trial court found. We, however, do not reweigh the evidence or determine its credibility. And there is evidence in the record showing that Mother continuously failed to engage in dialectical behavioral therapy (DBT) to treat her bi-polar disorder. During trial, when asked by the DSS attorney whether she acknowledged her mental health issues, Mother responded that "[she] wouldn't say it's severe at all." Mother later testified the following:

> [Mother]: I don't believe I'm cured. And I, that's why I'm still attending therapy. I have a lot of past traumas that I have to work through. But none of them affect my parenting or affect how I will be a parent to, to my children.
>
> [DSS attorney]: You acknowledge they've effected your parenting in the past.

> [Mother]: The drugs effected my parenting in the past. Nothing to do with my mental health has ever [a]ffected my parenting.

Additionally, Mother's therapist noted concerns over Mother's apparent impression her medication was only prescribed on an "as-needed" basis. And instead of addressing her mental health issues, Mother obtained a mental health assessment that was not recommended by DSS. This evaluation concluded Mother did not meet the diagnostic criteria for any psychological or mental health disorder. The evaluation was unreliable because, as the trial court found, "the evaluator did not review [the former therapist's] psychological evaluation… did not consider any information from [Mother's] therapist… [and] did not consider any information other than information provided by [Mother]." The most recent mental health assessment recommended by DSS, conducted in April 2019, confirmed Mother's diagnosis for bi-polar disorder.

Thus, we conclude the trial court's finding that Mother continually failed to recognize the impact of her mental health issues is supported by the evidence.

Last, Mother contends the findings do not support the trial court's conclusion that Mother acted inconsistently with her parental rights. In doing so, she essentially asks this Court to reweigh the evidence presented at trial, stating:

> [Mother] had maintained appropriate housing. [Mother] was employed regularly. [Mother] entered into a child support agreement and paid child support. [Mother] completed courses on anger management, parenting, drug and alcohol awareness, conflict resolution, fire safety, and

> CPR. [Mother] admitted that she inappropriately spoke to Ms. Williams when she expressed her disappointment and anger about the Williams' decision to request custody… Additionally, after DSS assumed custody of Luke, [Mother] had no problems with substance abuse. [Mother] visited Luke regularly. Most importantly, [Mother] dealt with her physical and mental health. She consistently worked with individual and group therapy.

While many of the above statements may be true, and despite Mother's compliance with portions of her case plan, her ultimate failure to address the root issues that led to removal of Luke supports the trial court's conclusion that she acted contrary to her parental rights. First, as mentioned previously, Mother has failed to acknowledge or correct the issues caused by her bi-polar diagnosis, and she fails to consistently take her prescribed medication. Second, Mother neglects to acknowledge that for most of her supervised visits, she was either over an hour late or did not show up. For the visits she did attend, instead of spending time with Luke, she would vape, make phone calls to men, be distracted by her phone, or talk to the supervising adult (either the social worker or Ms. Williams). Testimony during trial indicated that Mother would speak with the social worker or Ms. Williams about various problems in her life, such as drinking alcohol to the point of waking up on the road, bar fights with other people, and getting arrested for various offenses. Testimony to this effect was presented at trial by the social worker and Ms. Williams and was further substantiated by the DSS court report prepared by the social worker and admitted into evidence.

Our courts routinely hold that a "case plan is not just a checklist", and that parents must acknowledge the issues that led to removal, and ultimately change their behaviors. *In re M.A.*, 378 N.C. 462, 476, 862 S.E.2d 169, 179 (2021).

Here, despite Mother's effort to meet many of the elements of her case plan, the record shows that for the three years of DSS involvement, she made little to no progress towards acknowledging and correcting the impact of her mental health on her parenting skills. For these reasons, we conclude that the trial court made sufficient factual findings to support its Order.

Because we affirm the trial court's conclusion that Mother acted inconsistent with her parental rights, we likewise conclude that the trial court did not err when it ceased reunification efforts due to Mother's failure to make adequate progress towards her case plan. Thus, we affirm the trial court's Order.

B. Visitation

Next, Mother argues the trial court abused its discretion when it placed conditions on her visitation and required her to pay the cost of supervised visitation.

We review a trial court's visitation determination for abuse of discretion. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (abuse of discretion occurs "only upon a showing that [the trial court's] actions are manifestly unsupported by reason.")

First, Mother contends the trial court's visitation determination gave the Williamses the opportunity to limit Mother's visitation with Luke, and thus failed to

indicate the "minimum frequency" of the visits according to Section 7B-905.1(b) of our General Statutes, which requires the trial court to determine "the minimum frequency and length of visits and whether the visits shall be supervised."

The visitation plan set out the following requirements (in relevant portion):

> a. [Mother] shall have a minimum of 2 hours of supervised visitation per month.
>
> b. The visits shall be supervised by a supervision center, the guardians, or an adult approved by the guardians.
>
> c. Unless otherwise agreed, the mother shall have a minimum of 2 hours per month of supervised visitation at All Kids First, A Time Together, or another supervision center within a reasonable radius agreed upon by the guardians and [Mother] (and consent shall not be unreasonably withheld).
>
> d. If supervised by a supervision center, the visitation shall be at a time and location agreed upon by [Mother], the guardians, and the supervision center... [Mother] shall be responsible for the supervision center's fees.
>
> e. If supervised by guardians or an approved adult, the visitation shall be at a time and location agreed upon by [Mother] and the guardians.
>
> f. The guardians are authorized to facilitate additional supervised visitation...
>
> g. [Mother] shall cooperate with all instructions of the supervisor, to include instructions with respect to feeding (or not feeding) the juvenile.
>
> h. [Mother] shall not be under the influence of an impairing substance at any visit. If [Mother] appears to be impaired, the supervising adult may cancel the visit...
>
> j. [Mother] shall not bring third parties to the visitations

without prior approval of the guardians.

Mother argues that under this visitation schedule, it was "clear that [Mother] was not simply granted the right to supervised visits for two hours once per month", because Mother's visitation was limited by her compliance with the trial court's conditions. We disagree.

Here, the trial court made an express finding regarding Mother's minimum visitation amount of two hours per month. The trial court's conditions did not improperly limit Mother's right to visitation, but rather, provided reasonable guidelines for her to adhere to, such as remaining sober, not bringing third parties, and consulting with the Williamses regarding whether to provide food for Luke.

Further, we see no merit to Mother's contention that the Order "allowed the Williams[es] to determine if visits [would] take place." Instead, the visitation plan required both the Williamses *and* Mother to collaborate as to the time and place of the visits. The Order does not grant the Williamses the ability to keep Mother from visiting Luke. Rather, this visitation plan is similar to the plan in *In re N.B.*, in which our Court affirmed the trial court's visitation determination where the mother was "responsible for contacting the [visitation supervisor] at least once per month to participate in scheduling visitation appointments", and required to "respond to messages from the [visitation supervisor] within 48 hours." *In re N.B.*, 240 N.C. App. 353, 363-64, 771 S.E.2d 562, 569 (2015).

We further note that Mother's reliance on *In re A.P.* is misplaced. In *A.P.*, our

Court concluded that the trial court improperly gave the father discretion over the mother's visitation by allowing him to choose the location and supervisor of the visitation. *In re A.P.*, 281 N.C. App. 347, 348, 868 S.E.2d 692, 694 (2022). Here, unlike *A.P.*, the trial court concluded that both the Williamses and Mother should agree upon a time and location, as well as the supervisor.

Further, the trial court's conditions did not impermissibly award discretion to the Williamses. The Order does not allow the Williamses to eliminate or modify Mother's visitation. Instead, the Order merely states that Mother shall not bring a third party without prior approval, and that she shall comply with the Williamses' directions regarding bringing food for Luke. The trial court does not, however, provide that the Williamses would have the ability to suspend all visitation as a result. The only condition in which the Williamses possess the right to cancel a visit is if Mother showed up impaired by alcohol or drugs.

Mother relies on *In re C.S.L.B.* to support her argument that the trial court improperly gave the Williamses discretion to cancel a visit should she appear impaired. In *C.S.L.B.*, the trial court allowed the guardians to unilaterally suspend the mother's visitation if "there was concern she was using [illegal substances]." Our Court vacated this visitation plan because it left the mother's right to visitation "to the discretion of the guardians based on their 'concerns'." *In re C.S.L.B.*, 254 N.C. App. 395, 400, 829 S.E.2d 492, 495 (2017). Here, unlike in *C.S.L.B.*, the Williamses were not given any discretion over Mother's visitation. Rather, their ability to affect

visitation was limited to canceling one visitation should Mother arrive impaired. Thus, we conclude that the trial court did not abuse its discretion by placing these conditions on Mother's visitation.

Last, Mother argues that the trial court abused its discretion when it required Mother to pay the costs of supervision during her visitation periods.

Here, the trial court determined that "mother has sufficient income to pay a supervision service such as All Kids First or A Time Together to supervise visitation as set forth in the decretal." The court based its conclusion on findings that Mother was employed as a bartender, earning $1,200 per month; Mother was ordered to pay $190 per month in child support for Luke; she resided in a 3-bedroom home, with a rent of $650 per month; and, at the time of Mother's testimony in November 2021, her rent was prepaid through February 2022, which allowed her several months to save money to afford the $100 monthly fee for two hours of visitation.

We recognize that Mother's budget is tight and that, perhaps, Mother could show that she no longer has the ability to pay for visitation. However, we conclude that the trial court did not abuse its discretion in requiring Mother to cover the cost of supervised visitation at the time the Order was entered in 2022.

III. Conclusion

For the reasons stated above, we affirm the trial court's Order awarding guardianship to the Williamses. We also conclude that the trial court did not abuse its discretion when it placed conditions on Mother's visitation and required her to

cover the expense of supervised visitation.

AFFIRMED.

Chief Judge STROUD and Judge CARPENTER concur.

Report per Rule 30(e).