IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-775

Filed 7 November 2023

Johnston County, Nos. 20 JA 127, 21 JA 75

IN THE MATTER OF: K.C., K.A.

Appeal by respondent-appellant-mother from orders entered 26 April 2022 by Judge Resson O. Faircloth, II, in District Court, Johnston County. Heard in the Court of Appeals 9 October 2023.

Jennifer S. O'Connor for petitioner-appellee Johnston County Department of Social Services.

Mobley Law Office, P.A., by Marie H. Mobley, for guardian ad litem.

Edward Eldred for respondent-appellant mother.

STROUD, Chief Judge.

Respondent-appellant-mother appeals from permanency planning orders that eliminated reunification with her two minor children from the permanent plans. After careful review, we affirm in part and remand in part for further findings under North Carolina General Statute § 7B-906.2(d)(3).

I. Background

Respondent-appellant-mother ("Respondent") is the mother of minor children K.C. ("Kim")[1] and K.A. ("Kam") (collectively "the children"). On 19 June 2020, Johnston County Department of Social Services ("DSS") filed a juvenile petition alleging one-year-old Kim was neglected and dependent. The petition alleged DSS received a Child Protective Services ("CPS") report on or about 15 June 2020 that Kim had been hospitalized with a gluteal abscess three days before. The CPS report alleged that while Kim was in the hospital, Respondent told staff Respondent was going to have a seizure, she left the hospital multiple times despite COVID-19 restrictions, and staff was unable to wake Respondent when she fell asleep in the hospital. The CPS report also alleged that Respondent stated she suffered from "mental health and medical conditions[.]" Respondent informed the hospital that Kim's legal father, "Charles,"[2] was not allowed to have contact with Kim due to a no-contact order. However, Respondent did not provide the no-contact order to the hospital.

The petition also alleged that Respondent disclosed a history of substance abuse to DSS. The petition alleged that Respondent submitted to a drug screen on 16 June 2020 and tested positive for multiple illegal substances. Respondent repeated her concerns against Charles to DSS and alleged she had obtained a

[1] Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

[2] We have used pseudonyms for the legal father to protect the identity of the juveniles.

domestic violence protection order against him on 15 June 2020. The petition also included DSS's determination that a temporary safety provider was needed for Kim's discharge from the hospital.

DSS removed Kim from Respondent's custody and placed her with Mr. and Mrs. Taylor[3] as temporary safety providers. Charles consented to Kim's placement with the Taylors. DSS then filed the juvenile petition and obtained nonsecure custody of Kim.

The matter came on for adjudication on 29 July 2020 and, on 9 October 2020, the trial court adjudicated Kim to be a neglected and dependent juvenile based on findings consistent with the allegations in the juvenile petition. On 26 October 2020, the trial court entered a disposition order continuing Kim's placement with the Taylors. The trial court also ordered Respondent to follow her case plan, which required her to complete substance abuse treatment, random drug screenings, mental health services, domestic violence classes, and parenting classes.

On 4 November 2020, the trial court held a permanency planning hearing where the court set the "primary permanent plan as reunification, with a secondary permanent plan of custody with a relative or other suitable person." On 17 February 2021, the trial court held a permanency planning review hearing where the court continued the same permanent plan.

[3] We have used a pseudonym for this placement with a related party to protect the identity of the juveniles.

In May of 2021, Kam was born to Respondent. On 24 May 2021, DSS filed a juvenile petition alleging Kam was neglected, alleging Respondent and Kam both tested positive for methamphetamines in the hospital, and that Respondent admitted to using methamphetamines during the last two months of her pregnancy. Respondent named Charles as Kam's putative father, and Kam was discharged to a non-relative temporary safety provider from the hospital, Ms. King.[4]

On 18 August 2021, the trial court held a permanency planning hearing for Kim and a disposition hearing for Kam. On 3 September 2021, the trial court adjudicated Kam to be a neglected juvenile. Respondent and Charles stipulated facts necessary to support Kam's adjudication as a neglected juvenile. On 12 October 2021, the trial court entered an initial disposition order for Kam and a third permanency planning order for Kim.

In November 2021, DSS confirmed John[5], not Charles, was Kim's biological father. On 16 March 2022, the trial court held a permanency planning hearing for both children. DSS presented Social Worker Sydney Milligan, Kam's temporary safety provider, and the children's guardian *ad litem* as witnesses.

On 26 April 2022, the trial court entered written permanency planning orders. In Kim's case, the trial court eliminated reunification with Respondent from the

[4] Pseudonym

[5] Pseudonym

permanent plan and established reunification with John as the primary plan. In Kam's case, the trial court adopted guardianship as the primary plan and awarded guardianship to Ms. King, a nonrelative. The trial court also eliminated reunification with Respondent from Kam's permanent plan.[6] Respondent appealed both orders to this Court.

II. Petition for Writ of Certiorari

Respondent has filed a petition for writ of certiorari with this Court to review the 26 April 2022 permanency planning orders if this Court determines she has lost her right to appeal by failure to take timely action. She explains her attorney filed sixteen documents in an attempt to appeal the permanency planning orders.

Our Supreme Court has stated:

> the appellate court obtains jurisdiction only over the rulings specifically designated in the notice of appeal as the ones from which the appeal is being taken. However, a mistake in designating the judgment, or in designating the part appealed from if only a part is designated, should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be fairly inferred from the notice and the appellee is not misled by the mistake.

In re A.E., 379 N.C. 177, 183-84 n.4, 864 S.E.2d 487, 494 n.4 (2021) (quotation altered). This Court has also recognized that it is appropriate to allow certiorari in juvenile cases to "avoid penalizing respondents for their attorneys' errors." *In re J.G.*,

[6] The order also eliminated reunification with Charles from Kam's permanent plan. Charles is not a party to this appeal.

280 N.C. App. 321, 323, 867 S.E.2d 351, 353 (2021) (quoting *In re I.T.P–L.*, 194 N.C. App. 453, 460, 670 S.E.2d 282, 285 (2008) (allowing petitions for writ of certiorari where respondent-parents filed timely, although incomplete, notices of appeal).

Because it appears Respondent intended to appeal the 26 April 2022 permanency planning orders, and because DSS has not sought to dismiss the appeal or suffered prejudice based on alleged defects in the notices of appeal, we exercise our discretion under Rule 21 of the North Carolina Rules of Appellate Procedure to allow the petition for writ of certiorari and review Respondent's challenges to the permanency planning orders. *See* N.C. R. App. P. 21.

III. Analysis

Respondent contends the trial court's finding that she is not a "fit and proper parent" is not supported by clear and convincing evidence. Respondent also contends that "[t]he trial court was not authorized to eliminate reunification from the permanent plans because the trial court did not make any of the findings required by N.C. [Gen. Stat.] § 7B-906.2(d)." After first discussing the standard of review, we will discuss each argument.

A. Standard of Review

"[A]ppellate review of a permanency planning 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) (citation and quotation marks omitted). "The trial court's findings of

fact are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings." *In re J.S.*, 250 N.C. App. 370, 372, 792 S.E.2d 861, 863 (2016) (citation omitted). Unchallenged findings are binding on appeal. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). Conclusions of law are reviewed *de novo*. *In re J.T.*, 252 N.C. App. 19, 20, 796 S.E.2d 534, 536 (2017).

B. Fit and Proper Parent

Respondent first challenges the trial court's award of guardianship of Kam to a nonparent, arguing its finding that she is not a "fit and proper parent" is not supported by clear and convincing evidence.

1. Preservation

Before reaching the merits of Respondent's argument, we address preservation as DSS and the GAL argue Respondent waived her arguments by failing to raise her constitutionally protected status in the trial court.

"Prior cases have held that a parent may fail to preserve the constitutional issue of whether the parent has acted inconsistently with her constitutionally protected rights as a parent by failing to raise the issue before the trial court[.]" *In re B.R.W.*, 278 N.C. App. 382, 398, 863 S.E.2d 202, 215 (2021) (citation omitted), *aff'd*, 381 N.C. 61, 871 S.E.2d 764 (2022). "[F]or waiver to occur the parent must have been afforded the opportunity to object or raise the issue at the hearing." *Id.* (citation omitted).

However, our courts have explained that a party cannot object at a hearing to

findings and conclusions in an order not yet entered:

> [A] trial court's findings of fact are not evidence, and a parent may not "object" to a trial court's rendition of an order or findings of fact, even if these are announced in open court at the conclusion of a hearing. If a party has presented evidence and arguments in support of her position at trial, has requested that the trial court make a ruling in her favor, and has obtained a ruling from the trial court, she has complied with the requirements of Rule 10 and she may challenge that issue on appeal. An appeal is the procedure for "objecting" to the trial court's findings of fact and conclusions of law.

Id. at 399, 863 S.E.2d at 215. Ultimately, this Court stated in *B.R.W.*, "[m]other preserved this [constitutional] issue for appellate review by her evidence, arguments, and opposition to guardianship at the trial." *Id.* at 399, 863 S.E.2d at 216.

The permanency planning hearing occurred on 16 March 2022, and the order was not entered until 26 April 2022. Respondent could not have objected to the trial court's findings and conclusions when an order had not been entered. *See id.* at 399, 863 S.E.2d at 215. Respondent was present in court the morning her case was calendared but was absent by the time her case was called in the afternoon. Nonetheless, Respondent was in court on the day the hearing was conducted, and her counsel cross-examined the DSS social worker, the GAL, and Kam's current caretaker regarding the efforts to cease reunification. Lastly, Respondent's counsel made closing arguments, clearly stating Respondent's opposition to ceasing reunification. Therefore, Respondent preserved her constitutional argument, and we can now discuss the merits of Respondent's case.

2. Fit and Proper Parent

"A parent has an interest in the companionship, custody, care, and control of his or her children that is protected by the United States Constitution." *In re N.Z.B.*, 278 N.C. App. 445, 449, 863 S.E.2d 232, 236 (2021) (quoting *Boseman v. Jarrell*, 364 N.C. 537, 549, 704 S.E.2d 494, 502 (2010) (quotation marks omitted). However, a parent's constitutionally protected paramount interest in their children is not absolute and may be lost "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 [their] constitutionally protected status." *In re D.A.*, 258 N.C. App. 247, 250, 811 S.E.2d 729, 731–32 (2018) (citations omitted).

"The trial court must clearly address whether [a] parent is unfit or if their conduct has been inconsistent with their constitutionally protected status as a parent, where the trial court considers granting custody or guardianship to a nonparent." *N.Z.B.,* 278 N.C. App. at 450, 863 S.E.2d at 236. "In ceasing reunification efforts with a parent and granting guardianship to a nonparent, there is no bright-line test to determine whether a parent's conduct amounts to action inconsistent with his constitutionally protected status." *In re I.K.,* 377 N.C. 417, 429, 858 S.E.2d 607, 615 (2021).

"A determination that a parent has forfeited [their constitutionally protected] status must be based on clear and convincing evidence." *N.Z.B.,* 278 N.C. App. at 450, 863 S.E.2d at 236. "Clear and convincing evidence is an intermediate standard

of proof, greater than the preponderance of the evidence standard applied in most civil cases, but not as stringent as the requirement of proof beyond a reasonable doubt required in most criminal cases." *In re J.L.*, 264 N.C. App. 408, 419, 826 S.E.2d 258, 266 (2019) (quotation altered).

Here, the trial court made the following finding of fact in Kim's permanency planning order:

> 3. [x] [DSS] has provided the following services towards reunification: as [DSS] developed a case plan with the parents to address issues of parenting, substance abuse, domestic violence, stable housing, and employment. Referrals have been made to Family Pride for parenting; Harbor and HALT for domestic violence; and Recovery Strategies for substance abuse treatment. [DSS] further developed a visitation plan to maintain and strengthen the parent, child relationship.
>
> [x] The court determines that [DSS] has exercised reasonable efforts towards reunification.
>
> [x] [DSS] shall continue to make reasonable efforts towards reunification with the father, [John].
>
> [x] The court determines that [DSS] is relieved of reasonable efforts towards reunification with [Respondent], as:
>
> > [x] It is futile and inconsistent with the juvenile's health, safety and need for a permanent home within a reasonable period of time because the Court finds that [Respondent] has not completed all services to address the identified risk issues. [Respondent] was recommended to complete domestic violence education, which she did; however, she continues to maintain contact with [Charles], whom she has made multiple domestic violence allegations against. Therefore, she

> has not shown knowledge gained from the completion of domestic violence education. [Respondent] has reported she has discontinued all prescribed medications; however, she failed to consult the prescribing physician prior to. [Respondent] has failed to continue with mental health services and substance abuse treatment. [Respondent] has completed four drug screens since the last court date and all were positive results; two which were positive for illicit substances and two were positive for reported prescribed medication. [Respondent] was discharged from substance abuse intensive outpatient services through Carolina Outreach due to non-compliance. The Court finds by clear, cogent and convincing evidence that [Respondent] is not a fit and proper parent for the minor child.

The trial court made a similar finding of fact in Kam's permanency planning order:

> 3. [x] [DSS] has provided the following services towards reunification: as [DSS] has developed safety assessments as well as family services agreements to address the identified risk issues of substance abuse, mental health, stable housing, and domestic violence. [DSS] has assessed the home of a non-relative, which was approved for placement of the minor child. [DSS] has made referrals to various treatment facilities and programs for the parents. [DSS] has maintained contact with the parents as well as with collateral contacts to assess the current situation and their progress.
>
> [x] The court determines that [DSS] has exercised reasonable efforts towards reunification.
>
> [ ] [DSS] shall continue to make reasonable efforts towards reunification.
>
> [x] The court determines that [DSS] is relieved of reasonable efforts towards reunification with [Respondent] and [Charles], as:
>
> [x] It is futile and inconsistent with the juvenile's

> health, safety and need for a permanent home within a reasonable period of time because the Court finds that [Respondent] has failed to demonstrate knowledge gained from parenting classes. [Respondent] completed an additional parenting class through Triple P, which was verified by [DSS]. [Respondent] completed a substance abuse assessment through Carolina Outreach, which recommended substance abuse intensive outpatient services. [Respondent] did enroll in the recommended services; however, was discharged from the program in November 2021 due to non-compliance. [Respondent] has discontinued all prescribed medications; however, failed to consult her physician to approve the same. [Respondent] has failed to complete requested drug screens since December 2021; however, the ones which were completed, two were positive for reported prescribed medications and two were positive for illicit substances. [Respondent] has completed domestic violence education through Harbor; however, concerns have been raised regarding [Respondent]'s contact with [Charles], despite [Respondent] alleging [Charles] was tampering with her vehicle and trying to kill her. The father, [Charles], has completed domestic violence education; however, the parents continue to remain in contact with one another, despite domestic violence allegations. . . . The father has completed services through HALT and Family Pride. [Charles] has failed to provide any information regarding plans for the juvenile such as daycare, housing preparation, or support systems if the juvenile were to return to his care. The Court finds by clear, cogent and convincing evidence that neither parent is a fit and proper parent for the minor child.

Respondent argues the part of finding of fact 3 stating that she "has not shown knowledge gained from the completion of domestic violence education" is not supported by clear and convincing evidence. She also argues there was no evidence she required prescribed medications to parent her children. Respondent ultimately

argues the trial court erred in concluding she was "not a fit and proper parent."

Although the trial court labeled its determination that Respondent was unfit as a finding of fact, it is a conclusion of law, and we review it accordingly. *See In re J.S.*, 374 N.C. 811, 818, 845 S.E.2d 66, 73 (2020) ("We are obliged to apply the appropriate standard of review to a finding of fact or conclusion of law, regardless of the label which it is given by the trial court."); *see also B.R.W.*, 278 N.C. App. at 405, 863 S.E.2d at 219 ("[T]he determination of unfitness of a parent is a conclusion of law[.]"). "[A] finding of unfitness should be reviewed de novo on appeal by examining the totality of the circumstances." *Raynor v. Odom*, 124 N.C. App. 724, 731, 478 S.E.2d 655, 659 (1996).

Although Respondent completed several parts of her case plan, she did not successfully complete mental health services and substance abuse treatment. Out of four drug screens completed by Respondent, two were positive for illicit substances. The trial court also found that Respondent failed to demonstrate learned knowledge from her parenting classes. Finally, although Respondent completed domestic violence classes, the trial court found that she failed to demonstrate learned knowledge because she continued to keep in contact with Charles, against whom she made domestic violence allegations. Respondent disputes this part of the trial court's finding, as well as the part which finds she discontinued her prescribed medications without consulting her physician.

However, these disputed findings are supported by competent testimony.

Social Worker Milligan testified that DSS had concerns about "continued domestic violence incidents" between Respondent and Charles after Respondent's completion of her domestic violence program in November of 2020. Therefore, Social Worker Milligan testified that Respondent had not demonstrated knowledge gained from completing her domestic violence classes. As to Respondent's prescribed medications, Social Worker Milligan testified "[Respondent's attorney] . . . also asked that she contact her physician about the medications, and I don't think she's provided me or him any of that information."

Further, the trial court correctly considered issues leading to the children's removal and adjudication in making the conclusion that Respondent was not a fit parent. *See Raynor*, 124 N.C. App. at 732, 478 S.E.2d at 660 (concluding that the respondent is unfit because she "had substance abuse problems, does not respect authority, is unable to recognize her child's developmental problems, and is incapable of caring for the child's welfare"). In Kim's permanency planning order, unchallenged finding of fact 10 establishes the following risk factors: substance abuse, mental health, domestic violence, and parenting. Further, in Kam's permanency planning order, the unchallenged part[7] of finding of fact 3 establishes the similar risk factors of substance abuse, mental health, stable housing, and domestic violence. Respondent's failure to make progress on her case plan is significant given these risk

[7] Respondent challenges the latter portion of finding of fact 3 but does not challenge that these were the risk factors in Kam's case.

factors. *See I.K.,* 377 N.C. at 429, 858 S.E.2d at 615; *see also In re J.R.*, 279 N.C. App. 352, 360–61, 866 S.E.2d 1, 6–7 (2021).

We conclude each of the challenged parts of the finding of fact 3 dealing with domestic violence and prescription medications are supported by clear and convincing evidence in the record. Further, the trial court's conclusion of law that Respondent was not a "fit and proper parent" is supported by the trial court's findings of fact. Because Respondent's conduct amounted to actions inconsistent with her constitutionally protected status, the trial court also did not err in awarding guardianship of Kam to a nonparent.

C. Elimination of Reunification from Permanent Plan

Respondent also argues that the trial court erred in eliminating reunification with her from the permanent plans because the trial court did not make any of the findings required by North Carolina General Statute § 7B-906.2(d), which requires:

> (d) At any permanency planning hearing under subsections (b) and (c) of this section, 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) (2021).

Our Supreme Court has noted that "[w]hile use of the actual statutory language is the best practice, the statute does not demand a verbatim recitation of its language." *In re H.A.J.*, 377 N.C. 43, 49, 855 S.E.2d 464, 469 (2021) (quotation altered). The trial court's written findings "must make clear that the trial court considered the evidence in light of whether reunification would be [clearly unsuccessful] 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 49, 855 S.E.2d at 470.

1. Kim

The trial court made the following findings of fact in Kim's permanency planning order:

> 3. . . . [x] It is futile and inconsistent with the juvenile's health, safety and need for a permanent home within a reasonable period of time because the Court finds that [Respondent] has not completed all services to address the identified risk issues. [Respondent] was recommended to complete domestic violence education, which she did; however, she continues to maintain contact with [Charles], whom she has made multiple domestic violence allegations against. Therefore, she has not shown knowledge gained from the completion of domestic violence education.

[Respondent] has reported she has discontinued all prescribed medications; however, she failed to consult the prescribing physician prior to. [Respondent] has failed to continue with mental health services and substance use treatment. [Respondent] has completed four drug screens since the last court date and all were positive results; two which were positive for illicit substances and two were positive for reported prescribed medication. [Respondent] was discharged from substance abuse intensive outpatient services through Carolina Outreach due to non-compliance. The Court finds by clear, cogent and convincing evidence that [Respondent] is not a fit and proper parent for [Kim].

. . . .

5. . . . [x] . . . [T]he court finds that [Respondent] has completed domestic violence counseling. [Respondent] has recently completed parenting classes. [Respondent] has recently obtained employment and has provided verification of the same. [Respondent] continues to identify her mother as her support person to help her cover her bills. [Respondent] recently tested positive for substances. [Respondent] has not explicitly reported any domestic violence, but expresses feelings of fear and intimidation by [Charles].

. . . .

9. . . . [x] The Court determines that it is contrary to the juvenile, [Kim's], welfare that the juvenile is returned to the parent[.]

. . . .

12. [x] The Court determines that [DSS] has proceeded in a timely manner for the permanent plan as: [DSS] has continued to work with both parents to address the identified risk issues and offer referrals for necessary services. [DSS] has continued to monitor both parents' progress in attending the specific classes, as outlined in

> their case plans. [DSS] has continued to monitor the juvenile's placement in the home of his current placement provider.
>
> . . . .
>
> 16. a. The Court finds that since the last hearing in this matter, visitations have occurred. . . . [Respondent] has only completed three in-person visits since the last hearing; the remaining visits have been virtual at the request of [Respondent]. [Respondent]'s visits are reported to be short and she has limited interaction with the juvenile. Concerns have been raised regarding [Respondent] potentially being under the influence of substances during visits as she appears to have dilated pupils, trembling and spastic movements.
>
> . . . .
>
> 21. The court finds that [Respondent] was present earlier in the day; however, was not present at the time the case was called.

Respondent does not claim these findings are unsupported by the evidence; thus, they are binding on appeal. *See T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. Here, the trial court's findings of fact establish that it addressed three of the factors required by North Carolina General Statute § 7B-906.2(d), although it did not use the precise statutory language in each finding.

In Kim's case, finding of fact 3 addresses Respondent's lack of progress with her case plan and failure to participate and cooperate with the goals of her plan. This finding detailed that Respondent "has not completed all services to address the identified risk issues" by failing to complete mental health services, failing two drug

screens, and being discharged from substance abuse intensive outpatient services. In part, Respondent's case plan required her to complete substance abuse treatment, random drug screening, and mental health services. In making these findings, the trial court considered Respondent's degree of progress and compliance with DSS and her case plan. Therefore, we conclude that the trial court addressed the substance of North Carolina General Statute § 7B-906.2(d)(1) and (d)(2).

As to the fourth requirement, findings of fact 5, 9, and 16 found that Respondent has recently tested positive for illicit substances, continues to struggle with substance abuse, and engages in short visits with her children. Finally, the trial court found that it would be contrary to her children's welfare if they are returned to her. Therefore, we conclude that the trial court also adequately considered whether Respondent was "acting in a manner inconsistent with the health or safety of the juvenile." N.C. Gen. Stat. § 7B-906.2(d)(4) (2021).

However, the trial court did not make adequate findings about Respondent's availability to the court, DSS, and the GAL as required by North Carolina General Statute § 7B-906.2(d)(3). Our Supreme Court has remanded a permanency planning order where a trial court failed to make findings under this part of the statute. *See In re L.R.L.B.*, 377 N.C. 311, 326–27, 857 S.E.2d 105, 118–19 (2021).

Here, the trial court found in finding of fact 21 that Respondent was present for court earlier in the day but was not present when her case was called. The court also made findings as to DSS's relationship with Respondent in finding of fact 12.

However, the court did not address Respondent's availability to DSS or the GAL in either order, and we conclude the trial court's findings were insufficient to address North Carolina General Statute § 7B-906.2(d)(3), which requires that "the parent remains available to the court, the department, and the guardian ad litem for the juvenile." N.C. Gen. Stat. § 7B-906.2(d)(3).

As to Kim, we conclude the appropriate remedy is to remand the matter to the trial court for entry of additional findings as required by North Carolina General Statute § 7B-906.2(d)(3). *See id.* at 327, 857 S.E.2d at 118 ("If the trial court's additional findings under N.C. [Gen. Stat.] § 7B-906.2(d)(3) do not alter its finding under N.C. [Gen. Stat.] § 7B-906.2(b) that further reunification efforts are clearly futile or inconsistent with the juvenile's need for a safe, permanent home within a reasonable period of time[,] then the trial court may simply amend its permanency planning order to include the additional findings[.]" (quotation marks omitted)). We leave it to the discretion of the trial court to determine if further testimony is required or if the trial court can make a finding on the record. *See In re T.M.H.*, 186 N.C. App. 451, 456, 652 S.E.2d 1, 3 (2007) (stating that after remand in a termination of parental rights hearing, "[t]he trial court may, in its discretion, receive additional evidence on remand").

2. Kam

As to Kam, North Carolina General Statute § 7B-906.2(b) provides that reunification must continue and "shall be a primary or secondary plan unless . . . the

permanent plan is or has been achieved[.]" N.C. Gen. Stat. § 7B-906.2(b). Respondent argues findings were required even though guardianship was awarded in Kam's case, citing *In re K.P.,* 278 N.C. App. 42, 861 S.E.2d 754 (2021). However, this case was reversed in part by our Supreme Court. *See In re K.P.*, 383 N.C. 292, 293–94, 881 S.E.2d 250, 251 (2022) ("Because the trial court correctly found that a permanent plan had been achieved in this case as an alternative to reunification, and because the trial court properly verified that the juvenile's court-approved caretakers understood the legal significance of the juvenile's placement with them and that they possessed adequate resources to care appropriately for the juvenile, we reverse the portions of the Court of Appeals opinion that found error in these portions of the trial court's order.").

As the trial court awarded guardianship to Ms. King in Kam's case, we conclude that reunification efforts were not required to continue. So we also conclude the trial court was not required to make findings under § 7B-906.2(d) in Kam's permanency planning order.

IV. Conclusion

As to Kam, the trial court's conclusion of law that Respondent was not a "fit and proper parent" is supported by its findings of fact. Because Respondent's conduct amounted to action inconsistent with her constitutionally protected status, the trial court did not err in awarding guardianship of Kam to a nonparent. We affirm Kam's permanency planning order.

As to Kim, we hold the trial court made all statutorily required findings except a finding as required for North Carolina General Statute § 7B-906.2(d)(3). We affirm Kim's permanency planning order in part and remand for additional findings under North Carolina General Statute § 7B-906.2(d)(3).

AFFIRMED IN PART; REMANDED IN PART.

Judges GORE and STADING concur.

Report per Rule 30(e).