IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-273

Filed 19 March 2024

Wake County, No. 21 JA 34

IN THE MATTER OF: L.L.

Appeal by Respondent-Father from order entered 3 January 2023 by Judge Ashleigh Parker Dunston in Wake County District Court. Heard in the Court of Appeals 14 February 2024.

Senior Assistant Wake County Attorney Mary Boyce Wells, for Petitioner-Appellee Wake County Health and Human Services.

Parker Poe Adams & Bernstein L.L.P., by Daniel J. Knight, for Guardian ad Litem.

Laura G. Hooks for Respondent-Appellant Father.

PER CURIAM.

Respondent-Father appeals from the trial court's order that eliminated reunification as a permanent plan and awarded guardianship of L.L. ("Laila")[1] to her maternal great aunt, Ms. F. After careful review, because the trial court's findings of

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

fact were supported by competent evidence, and the findings supported the trial court's conclusions of law, we affirm.

I. Factual & Procedural Background

Laila was born in April 2019 to Respondent-Father and Mother. Mother died in 2020 from injuries related to an automobile accident. Record evidence tends to show the following. On 3 February 2021, Wake County Health and Human Services ("WCHHS") received a report alleging Respondent-Father had left Laila unattended in a vehicle while he was at a party, where he appeared to have overdosed. On 12 February 2021, WCHHS received another report alleging Laila was found in a car with Respondent-Father, who was passed out and presumed intoxicated based on the bottle of rum found with him. While being treated at the hospital, Respondent-Father became violent with the staff, which led to his sedation and involuntary commitment. Because Mother was deceased, and Respondent-Father was unconscious and unable to identify an alternative caregiver, WCHHS filed a juvenile petition alleging Laila was a neglected and dependent juvenile and obtained nonsecure custody. Laila was initially placed in a licensed foster home while WCHHS conducted assessments for placement with a relative. After a brief placement with her paternal aunt, Laila was moved to a placement with her maternal great aunt, Ms. F, in July 2021.

Following a 12 May 2021 hearing, the trial court appointed a Guardian ad Litem ("GAL") for Respondent-Father, after finding that he understood "neither the

nature of these proceedings nor what [was] required of him to effectively participate in a case plan." Respondent-Father's GAL was present at each subsequent hearing.

On 14 July 2021, the trial court held an adjudication hearing. The trial court determined the evidence was insufficient to establish neglect but adjudicated Laila dependent. The trial court ordered Respondent-Father to obtain and maintain safe and appropriate housing; obtain and maintain sufficient income; complete a psychological evaluation and comply with all recommendations; complete an updated substance-abuse assessment; complete an approved parenting-education program and demonstrate learned skills; engage in grief counseling; sign necessary release forms; and maintain contact with his social worker. The trial court ordered Respondent-Father be allowed a minimum of one hour of supervised visitation each week.

While Respondent-Father initially refused to cooperate with the requirements for reunification, the trial court found he was "making slow but adequate progress" by the 4 April 2022 permanency-planning hearing. At that time, Respondent-Father had completed an updated substance-abuse assessment and consistently attended visitation, but he still refused to comply with required drug screens, had not completed a psychological assessment or parenting education, did not attend meetings with WCHHS or the GAL, and refused to take responsibility for the conditions that led to Laila's removal. The trial court determined it was possible Laila could return to Respondent-Father's care within six months if he fully engaged

in reunification efforts, continued to foster a healthy relationship with Laila and her caregiver, and acknowledged his role in her removal. The trial court set the primary permanent plan as reunification with a secondary plan of guardianship with a relative, and continued Respondent-Father's visitation schedule, with an extended two-hour visit on Laila's birthday.

On 19 July 2022, Respondent-Father completed a psychological evaluation. He was diagnosed with schizoaffective disorder, bipolar type, and was recommended to engage in individual counseling services, obtain a psychiatric evaluation, and engage in mental-health treatment prior to attempting parenting classes.

In the order entered following the 1 August 2022 permanency-planning hearing, the trial court noted Respondent-Father's progress in completing the psychological evaluation and resuming parenting classes. The trial court maintained the permanent plan, increased Respondent-Father's visitation to a minimum of two hours per week, and ordered Respondent-Father to comply with the recommendations from his psychological evaluation.

On 9 November 2022, a permanency-planning hearing was held before the Honorable Ashleigh Parker Dunston in Wake County District Court. Respondent-Father was not present at the hearing, despite actual notice. The trial court found Respondent-Father's progress on his case plan was no longer adequate, as he refused to accept his mental-health diagnosis, refused to seek appropriate treatment or acknowledge his potential risk to Laila, and failed to maintain contact with WCHHS

since 4 October 2022. In its 3 January 2023 order, the trial court concluded Respondent-Father was unfit and had acted in a manner inconsistent with his constitutional right to parent, ceased reunification efforts, and awarded guardianship of Laila to Ms. F. The trial court ordered Respondent-Father be allowed four hours of supervised visitation each month. Respondent-Father timely appealed.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. §§ 7A-27(b)(2), 7B-1001(a)(4), (5) (2021).

III. Issues

The issues on appeal are whether the trial court erred: (1) by eliminating reunification with Respondent-Father as a permanent plan; and (2) by awarding guardianship of Laila to Ms. F. without properly verifying Ms. F. as a guardian.

IV. Analysis

Respondent-Father argues the trial court erred in eliminating reunification as a permanent plan and awarding guardianship of Laila to Ms. F. We disagree.

A. Standard of Review

This Court reviews an order that eliminates reunification as a permanent plan "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.*, 273 N.C. App. 427, 429, 848 S.E.2d 749, 751 (2020)

(citation omitted). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

"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.H.*, 244 N.C. App. 255, 268, 780 S.E.2d 228, 238 (2015) (citation and internal quotation marks omitted). Unchallenged findings of fact are binding on appeal, and this Court may disregard any erroneous findings of fact that are unnecessary to support the trial court's conclusions of law. *In re A.C.*, 247 N.C. App. 528, 533, 786 S.E.2d 728, 733 (2016).

A trial court's determination "that a parent's conduct is inconsistent with his or her [constitutionally] protected status" must be based on clear and convincing evidence. *In re D.A.*, 258 N.C. App. 247, 249, 811 S.E.2d 729, 731 (2018) (citation omitted). We review this determination de novo, meaning we "consider[ ] the matter anew and freely substitute[ ] [our] judgment for that of the lower tribunal." *Id.* at 249, 811 S.E.2d at 731 (citation omitted).

B. Challenged Findings

Respondent-Father first challenges a number of the trial court's findings of fact, in whole or in part, as being unsupported by competent evidence:

> 1. Reports from [WCHHS] and the GAL were introduced into evidence without objection. The reports are incorporated by reference herein. The Court has

considered the competent evidence in the reports and finds credible and factually sufficient evidence to support the disposition.

2. The Court notes that [WCHHS's] recommendations regarding permanency planning on page 2 of the WCHHS report (see paragraph captioned "Permanency Planning") include maintaining a primary plan of reunification with a secondary plan of guardianship. However, [WCHHS's] recommendations on page 4 and the testimony of the social worker clearly indicate that [WCHHS] instead recommends that the Court grant guardianship to the caregiver today and to cease concurrent planning and reunification efforts with [Respondent-Father]. The GAL's recommendation is the same.

3. [Respondent-Father] was not present for this hearing despite receiving appropriate notice. He was present at the last court hearing where he received verbal notice as well as written notice of hearing. He was also served with a copy of the August 1, 2022 permanency planning order setting forth the date and time of hearing. A copy of the order was properly emailed to his attorney and his Rule 17 GAL on August 31, 2022, and a written copy was sent to [Respondent-Father] via first-class mail . . . on the same date. [Respondent-Father] has not contacted counsel, the social worker, or the [GAL] to explain his absence.

. . . .

10. Dr. Matala concluded that [Respondent-Father] would not be a safe caretaker for the child until he received proper mental health treatment, including individual therapy and medication management. She noted that it would be difficult for [Respondent-Father] to voluntarily engage in treatment due to his persistent conspiracy delusions and lack of insight into his own illness. The Court concurs and finds that [Respondent-Father] is not an appropriate caregiver for the child without additional supports and treatments.

11. [Respondent-Father] has failed to appropriately

> address his mental illness for almost two years despite repeated pleas and referrals from the parties and the Court. The Court has no doubt that [Respondent-Father] loves his daughter and can be a good father. His interactions with his daughter during visits [are] appropriate. However, his behaviors, including speaking in loops and being unable to speak on a subject other than imagined conspiracies, hinder his ability to productively interact with others for extended periods of time. [Respondent-Father] has not yet acknowledged his need for help or the harm he potentially poses to his daughter without treatment.
>
> 12. While [Respondent-Father] has made some progress on his case plan, the progress has not been adequate to meet the child's needs within a reasonable period of time. Since the last hearing, [Respondent-Father] has been mostly unavailable to the agency and the GAL, and he is unavailable to the Court for today's hearing. His behaviors remain inconsistent with the child's health and safety.
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> 13. The child has resided with [Ms. F.] since being placed in the custody of WCHHS in February 2021 . . . .

Respondent-Father argues that Findings of Fact 1 and 2 are unsupported by competent evidence, as there were "conflicts" within WCHHS's 27 October 2022 report and between the report and the social worker's testimony. As acknowledged in Finding of Fact 2, the report first noted that WCHHS was "recommending the permanent plan remain Reunification," before then recommending the permanent plan be changed to guardianship. As the trial court found, it appears that the WCHHS report Page 2 recommendation was inconsistent with the WCHHS report Page 4 recommendation, social-worker testimony, and GAL recommendation; however, that does not render the relevant, supporting evidence insufficient. *See In*

re J.H., 244 N.C. App. at 268, 780 S.E.2d at 238 ("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.").

The 27 October 2022 report includes evidence in support of WCHHS's final recommendation to change the primary plan to guardianship, including: Respondent-Father had made no progress on his case plan since the last permanency-planning hearing; Respondent-Father continued to deny his role in Laila's removal or acknowledge the need for any change in his life; Respondent-Father refused treatment for his mental-health diagnoses, refused further assessment, and had not followed the recommendations from his psychological evaluation; and Laila was in a stable placement with Ms. F., who had agreed to continued visitation with Respondent-Father. This evidence, and the recommendation to change the permanent plan to guardianship, were further supported by the social worker's testimony. Respondent-Father's argument is without merit.

Respondent-Father only challenges the last sentence of Finding of Fact 3, regarding his failure to contact anyone about his absence from the 9 November 2022 hearing, arguing that "[n]o inquiry was made of counsel or any witness as to [Respondent-Father's] absence," and "[n]o testimony was provided as to whether he had or had not contacted anyone regarding his absence that day." But there is sufficient evidence to establish Respondent-Father had no contact with the GAL, as her attempts to contact Respondent-Father on 24 October 2022 and 1 November 2022

were unsuccessful. Similarly, the social worker testified that she had not spoken with Respondent-Father since the supervised visit during the first week of October. Finally, the trial court raised the issue of Respondent-Father's absence prior to the start of testimony, noting that Respondent-Father was not present, though he had sufficient notice. Respondent-Father's counsel and GAL were in attendance, and neither of them offered any information regarding his absence. Thus, the challenged portion of the finding is supported by competent evidence. *See In re J.H.*, 244 N.C. App. at 268, 780 S.E.2d at 238.

As to Finding of Fact 10, discussing his need for mental-health treatment, Respondent-Father argues that he had engaged in the "additional supports and treatments" recommended during his psychological evaluation with Dr. Matala, as he "was appropriately engaged with [a] fatherhood specialist," had obtained a new psychological evaluation and a psychiatric evaluation, and had attended recommended outpatient therapy. The trial court's findings reflect Respondent-Father's completion of parenting-education classes. But, in unchallenged Finding of Fact 8, the trial court found there was "no evidence that [Respondent-Father] ha[d] sought the necessary mental health treatment to support reunification with the child." The trial court also found that Respondent-Father refused to accept Dr. Matala's diagnosis, and though Respondent-Father informed WCHHS that he obtained a second-opinion psychological evaluation, "he refused to provide a copy of the assessment or otherwise provide any verification of his testing or subsequent

treatment." Thus, the trial court's determination that Respondent-Father was not an appropriate caretaker because he did not obtain additional support and treatments is adequately supported by evidence.

Respondent-Father only challenges two portions of Finding of Fact 11. First, he argues the trial court erred in finding he had failed to appropriately address his mental illness for almost two years, as the case had not been pending for that length of time. He contends that he was first ordered "to comply with mental health case plan provisions in the disposition order entered 4 August 2021," and he did not receive a mental-health diagnosis until July 2022, four months before the 9 November 2022 permanency-planning hearing. But concerns about Respondent-Father's mental health impacting his ability to care for Laila were raised at the time the juvenile petition was filed in February 2021. The evidence and unchallenged findings of fact establish that Respondent-Father had yet to adequately address his mental illness by November 2022, twenty-one months after the case was initiated. Thus, there is competent evidence as to the first portion of Finding of Fact 11 relative to the trial court's estimation of time.

Second, Respondent-Father argues there is no evidence to support the trial court's finding he spoke "in loops" or that he had not yet acknowledged his need for help, as he was not present for the 9 November 2022 permanency-planning hearing, so the trial court could not "observe his current speech or demeanor." The record, however, is replete with evidence regarding Respondent-Father's behavior; his

"speaking in loops" was a contributing factor to the appointment of a GAL. Respondent-Father "speaking in loops" and his insistence that Laila was removed from his care due to the machinations of WCHHS were noted in numerous trial-court orders, WCHHS reports, and Dr. Matala's evaluation. Respondent-Father's argument is without merit.

Respondent-Father only challenges a portion of Finding of Fact 12. He argues that he was not "mostly unavailable" to WCHHS and the GAL since the last hearing, as he "had engaged with" WCHHS "approximately one month before the hearing," and he "was consistently available and present for his . . . supervised visits." As noted above, however, the record establishes Respondent-Father had no contact with the GAL since the prior hearing, and had no contact with the social worker since "the first week of October during a supervised visit and a home visit." Thus, this portion of the finding is supported by competent evidence, and we reject Respondent-Father's invitation to reweigh the evidence. *See In re T.H.*, 266 N.C. App. 41, 47, 832 S.E.2d 162, 166 (2019).

We acknowledge the error in Finding of Fact 13, as Laila was placed with Ms. F. in July 2021, not upon coming into WCHHS custody in February 2021. The date of placement, however, is irrelevant to our consideration, so we disregard the unsupported portion of this finding. *See In re A.C.*, 247 N.C. App. at 533, 786 S.E.2d at 733.

Accordingly, we conclude that all the relevant challenged findings or portions

thereof are adequately supported by competent evidence. *See In re C.M.*, 273 N.C. App. at 429, 848 S.E.2d at 751.

C. Elimination of Reunification as a Permanent Plan

Respondent-Father contends the trial court's findings of fact were insufficient to support its decision to eliminate reunification from the permanent plan. Respondent-Father first argues the trial court's conclusion that he was unfit or acted inconsistent with his constitutionally protected parental status was "based on no specific findings or based on findings not proven by clear and convincing evidence." He cites *In re: J.C.-B.*, 276 N.C. App. 180, 856 S.E.2d 883 (2021) for support. His arguments, however, appear to be rooted in a misunderstanding of this Court's holding in that case.

In *In re J.C.-B.*, the trial court neither found nor concluded that the mother was unfit. On appeal, DSS argued that "ample findings" in the order could support a conclusion of unfitness. *Id.* at 185, 856 S.E.2d at 888. Nevertheless, this Court rejected that argument, as "[n]o clear or convincing evidence or finding supports a conclusion of unfitness or engaging in conduct inconsistent with [the mother's] parental rights." *Id.* at 187, 856 S.E.2d at 889.

Here, the trial court specifically concluded that Respondent-Father was unfit and had acted inconsistent with his constitutionally protected parental status. Moreover, this conclusion is supported by the trial court's unchallenged findings of fact. *See In re I.K.*, 377 N.C. 417, 422, 858 S.E.2d 607, 611 (2021). The trial court's

findings and the record evidence established that Respondent-Father: failed to address his mental-health concerns and would not be a safe caregiver until he received proper mental-health treatment; refused to accept the diagnoses from the July 2022 psychological assessment while failing to provide WCHHS with the assessment he allegedly obtained on his own; refused to acknowledge he needed help or to accept his role in Laila's removal from his care, instead blaming her removal on conspiracy theories; and failed to provide any evidence that he had stable income to support Laila. Respondent-Father's argument is without merit.

Respondent-Father also argues the trial court made insufficient findings of fact to support its determination that reunification efforts would be unsuccessful or inconsistent with Laila's health or safety. "At a permanency planning hearing, '[r]eunification shall be a primary or secondary plan unless,' *inter alia*, 'the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety.'" *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020) (quoting N.C. Gen. Stat. § 7B-906.2(b)). These written findings "shall demonstrate the degree of success or failure toward reunification," considering:

> (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).

The findings need not include the statutory language verbatim, but "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." *In re H.A.J.*, 377 N.C. 43, 49, 855 S.E.2d 464, 469–70 (2021) (quoting *In re L.M.T.*, 367 N.C. 165, 167–68, 752 S.E.2d 453, 455 (2013)).

Here, Respondent-Father contends his absence from the 9 November 2022 permanency-planning hearing prevented the trial court from receiving evidence sufficient to conclude reunification would be unsuccessful. He also contends that the trial court's findings in Finding of Fact 12 "are inconsistent relating to [N.C. Gen. Stat.] § 7B-906.2(d)." The trial court, however, received clear evidence sufficient to make a determination on reunification efforts, even with Respondent-Father's absence, and the trial court's findings were not inconsistent with its conclusion.

Respondent-Father points to the trial court's findings that he made some progress on his case plan, having completed parenting-education classes, but he does not challenge the trial court's finding that his progress had not been adequate within a reasonable time. At the time of the 9 November 2022 permanency-planning

hearing, Respondent-Father had yet to complete the majority of his case plan requirements, as he had yet to: provide proof of stable income or appropriate housing; complete the therapy or psychiatric evaluation recommended following his May 2022 psychological evaluation; or produce any evidence of attempts to address his mental-health concerns, either by providing WCHHS with copies of assessments from practitioners or by signing waivers for WCHHS to obtain that information. As discussed above, the trial court received evidence of and made findings regarding Respondent-Father's failure to maintain contact and cooperate with WCHHS and the GAL, and Respondent-Father did not attend the 9 November 2022 permanency-planning hearing. Thus, the trial court received clear and convincing evidence and made the required findings to support its determination that reunification "would be futile or would be inconsistent with [Laila's] health, safety, and need for a safe, permanent home within a reasonable period of time." *See In re H.A.J.*, 377 N.C. at 49, 855 S.E.2d at 470.

D. Guardianship

Finally, Respondent-Father argues that the trial court failed to properly verify Ms. F. as a guardian. When a trial court appoints a guardian for a juvenile under N.C. Gen. Stat. § 7B-600, "the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile." N.C. Gen. Stat. § 7B-906.1(j) (2021); *see also* N.C. Gen. Stat. § 7B-600(c)

(2021). The trial court is not required to make any specific findings regarding verification, as long as the trial court receives and considers evidence related to verification. *In re L.M.*, 238 N.C. App. 345, 347, 767 S.E.2d 430, 432 (2014).

As to the first requirement, the trial court found that Ms. F. understood "the legal significance of being named the child's guardian, including her obligations and methods of termination." The trial court received testimony from both the social worker and Ms. F. confirming that Ms. F. understood the legal significance of guardianship. The trial court also received the social worker's report, which indicated Ms. F. had completed a guardianship assessment and had expressed willingness to accept guardianship if needed. This evidence is sufficient to support the trial court's finding that Ms. F. understood the legal significance of guardianship. *See, e.g.*, *In re E.M.*, 249 N.C. App. 44, 54, 790 S.E.2d 863, 872 (2016) ("Evidence sufficient to support a factual finding that a potential guardian understands the legal significance of guardianship can include, *inter alia*, testimony from the potential guardian of a desire to take guardianship of the child, . . . and testimony from a social worker that the potential guardian was willing to assume legal guardianship."); *In re S.B.*, 268 N.C. App. 78, 88, 834 S.E.2d 683, 691 (2019) (holding "testimony of the social worker and the court summary were relevant and reliable evidence"). Contrary to Respondent-Father's arguments, Ms. F.'s and the social worker's short, affirmative answers to the questions pertaining to guardianship are sufficient to support the trial court's finding that she understood the legal significance of guardianship. *See In re*

B.H., 278 N.C. App. 183, 194, 861 S.E.2d 895, 903 (2021) (holding that "an affirmative response of 'yes' to the question of whether a guardian understands the legal significance of guardianship is sufficient to satisfy the statutory requirement").

Respondent-Father also contends that there was "no evidence or testimony" regarding whether Ms. F. understood the methods for terminating guardianship. While there is no specific testimony concerning the methods of termination, we are aware of no precedent that requires such a finding for verification. Therefore, we disregard that portion of Finding of Fact 14 as irrelevant. *See In re A.C.*, 247 N.C. App. at 533, 786 S.E.2d at 733.

As to the second requirement, both the social worker and Ms. F. presented testimony to support the trial court's determination that Ms. F. had adequate resources to care for Laila. Ms. F. testified that she had adequate financial resources to care for Laila without additional support, and that she had no concerns about being named Laila's guardian. The social worker testified that she believed Ms. F. would be financially capable of providing long-term care for Laila and that Ms. F. had expressed no concerns about her financial ability. Moreover, the social worker testified, and it is undisputed, that Ms. F. had provided a stable placement for Laila for over a year at the time of the permanency-planning hearing. "The fact that the prospective . . . guardian has provided a stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources." N.C. Gen. Stat. § 7B-906.1(j). Thus, we conclude that the trial court's determination is

supported by competent evidence, *see In re J.H.*, 244 N.C. App. at 268, 780 S.E.2d at 238, and Respondent-Father's arguments are without merit.

V. Conclusion

As the trial court's findings of fact were adequately supported by competent evidence, the trial court did not err in concluding that Respondent-Father was unfit and had acted inconsistent with his constitutionally protected parental status, or in eliminating reunification from the permanent plan. The record contains sufficient evidence to support the trial court's appointment of Ms. F. as Laila's guardian. Accordingly, we affirm the 3 January 2023 permanency-planning order.

AFFIRMED.

Panel consisting of:
Judges ZACHARY, CARPENTER, THOMPSON.

Report per Rule 30(e).