IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-352

Filed 2 January 2024

Forsyth County, Nos. 21J85, 21J86

IN THE MATTER OF: E.O.N. & E.O.N.

Appeal by Respondent Mother from judgment entered 22 December 2022 by Judge Theodore Kazakos in Forsyth County District Court. Heard in the Court of Appeals 28 November 2023.

Forsyth County Department of Social Services, by Deputy County Attorney Theresa A. Boucher, for the Petitioner-Appellee.

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

Lenore R. Livingston, for the Guardian ad Litem.

WOOD, Judge.

Respondent Mother ("Mother") appeals from an order granting guardianship of her daughter E.O.N. ("Elizabeth") and son E.O.N. ("Eric") to their maternal Uncle ("Uncle"). After careful review, we affirm the trial court's order in part, vacate the order in part, and remand.

I. Factual and Procedural Background

Less than a week after Elizabeth and Eric were born in December 2008, the Forsyth County Department of Social Services ("DSS") became involved with the family. Services were recommended for the family on 9 March 2009. The family remained intact. In 2010, DSS again became involved with the family and recommended services to address the needs of the family and the children.

On 22 May 2016, DSS received a report alleging substance abuse in the home and that the children were in an injurious environment. Emergency Services responded to a call after Mother was found unconscious with empty pill bottles in her cabinet and an apparent suicide note with final wishes requesting someone to take care of her children. The children told paramedics they had not eaten and their mother had fallen the day before but never got back up. On 19 July 2016, DSS recommended services for the family and the case closed on the same date. During this period, Uncle became the temporary safety provider for the children and they stayed with him for a period of nine to twelve months.

On 1 February 2019, DSS received a report alleging improper supervision of the children because Elizabeth and Eric, who were approximately ten years old, were routinely locked out of the house in poor weather without appropriate clothing and were forced to wait outside alone for extended periods of time until someone returned home to let them inside. DSS recommended services for the family and then closed the case on 26 February 2019. On 19 September 2019, DSS received an additional report alleging improper supervision of the children because Elizabeth and Eric

continued to be locked out of their home after school and were left unsupervised. Upon assessment, DSS recommended services for the family and then closed the case on 20 March 2020.

On 9 September 2020, DSS received a report alleging improper care, dependency, and substance abuse. Elizabeth had called EMS requesting an ambulance, and Mother was taken into emergency commitment. Officers who arrived on scene determined Mother was under the influence and exhibiting mental health issues. The report stated Mother did not make a plan for the children, would not cooperate with Officers, and Officers contacted Uncle to ask him to provide care for Elizabeth and Eric. DSS recommended services for the family to address the needs of the family and the children, and the case was closed on 6 October 2020.

On 26 May 2021, Mother was arrested and charged with driving while impaired. The minor children were in the car at the time of her arrest. Mother's blood alcohol content (BAC) was 0.19.

On 27 May 2021, DSS filed juvenile petitions alleging the children were neglected and dependent. The petition alleged the parents failed to provide proper care, supervision, or discipline and that the minor children live in an environment injurious to their welfare. DSS took non-secure custody of the children that same day. The minor children were placed in a kinship placement with Uncle on 2 June 2021. Mother was incarcerated on the driving while impaired charges from 26 May 2021 to 19 June 2021.

On 28 June 2021, the trial court found that the return of Elizabeth and Eric to Mother would be contrary to their welfare and concluded it was in the best interest of the children that they remain in non-secure custody with DSS and placement be at the discretion of that Agency. The trial court granted supervised visitation to Mother for one hour per week, permitted Mother to send written communications monitored by their Guardian Ad Litem (GAL), and allowed supervised three-way telephone calls with the children.

On 18 August 2021, the trial court granted DSS's motion for a Rule 17 GAL to be appointed for Mother. On 14 September 2021, Mother entered inpatient substance abuse treatment, and she completed the inpatient treatment on 4 November 2021. During her treatment, Mother was diagnosed with post-traumatic stress disorder (PTSD), anxiety, ADHD, multiple sclerosis, chronic pain syndrome, insomnia, phobia, and alcohol dependence. Following her release from treatment, Mother was arrested and charged with driving under the influence (DUI) in Georgia on 27 November 2021.

On 8 December 2021, the trial court adjudicated Elizabeth and Eric to be neglected and dependent juveniles. At disposition, the trial court authorized continued placement of Elizabeth and Eric with Uncle and provided Mother with supervised visitation with the children one hour per week, noting that the visits may occur virtually. The trial court permitted a transition to monthly supervised visits "not to exceed" four hours in length. Mother entered into a case plan with DSS to achieve reunification. The case plan required Mother to complete a substance

use/alcohol assessment and follow the recommendations; complete an updated mental health assessment and follow the recommendations; submit to random drug/alcohol screens as requested by DSS within the 24-hour required timeframe; complete a psychiatric evaluation to ensure she is being prescribed the correct medications; take medications as prescribed and refrain from taking medications that are not prescribed to her; complete a psychological evaluation/parenting capacity assessment and follow the recommendations; sign releases of information for her service and medical providers in order for DSS to obtain records; follow recommendations of her medical provider in regard to her treatment for her Multiple Sclerosis diagnosis and maintain all appointments; refrain from incurring any additional criminal charges; maintain stable housing and obtain transportation, including working on getting her license reinstated due to the DWI charge; inform DSS within 24 hours of any changes in household composition, employment, and telephone number; and demonstrate an ability to maintain an adequate, stable and physically and emotionally safe home environment for herself and her children for at least six months.

On 8 March and 28 March 2022, the trial court conducted a permanency planning hearing. The trial court found Mother was not making adequate progress on her case plan within a reasonable period of time but was actively participating in or cooperating with her plan. The trial court ordered concurrent permanent plans of guardianship and reunification. The trial court determined the children should

continue in their placement with Uncle and that monthly supervised visitations would continue with Mother.

During a permanency planning hearing on 25 July 2022, the trial court heard testimony from DSS Social Worker Ms. Jules ("Ms. Jules") who recommended Uncle be given guardianship of the children. During Uncle's testimony, he requested a continuance to be able to consult his attorney regarding guardianship and custody. The trial court continued the hearing until 9 September 2022 on its own motion.

On 9 September 2022, the trial court granted a further continuance based on a motion by counsel for Mother to allow additional time to review Mother's updated psychological evaluation which had just recently been received. Counsel for the GAL also moved for the hearing to be continued. The trial court granted the motions, and the hearing was continued until 11 November 2022.

During the 11 November 2022 hearing, Uncle testified he had previously provided temporary care for Elizabeth and Eric in 2016 and they had been living with him for the past eighteen months. Uncle testified that the supervised visits between Mother and the children went well, however he was not willing to supervise visits himself moving forward. Uncle was then asked about his understanding of the legal significance of accepting guardianship of Elizabeth and Eric to which he stated that he understood the legal significance and was willing to accept the responsibility.

Mother's GAL testified regarding Mother's efforts to complete her case plan. Her GAL reported Mother had completed assessments with Eleanor Healthcare;

completed a DWI assessment and recommended treatment; attended AA meetings from 2 May 2022 through 20 August 2022; submitted to voluntary drug screens but tested positive for amphetamines on 26 January 2022; completed outpatient treatment at the Ringer Center; completed a parenting course through Family Services of Piedmont; signed releases for her medical providers, and maintained stable housing.

On 22 December 2022, the trial court entered a written order granting guardianship of the children to Uncle and permitting Mother to have monthly, supervised visitation with the children. The court ordered the visitations to be supervised by DSS and required Mother to pay the costs of the supervised visitations. Mother filed notice of appeal.

II. Analysis

On appeal, Mother argues the trial court erred by (1) granting guardianship of her children to Uncle, and (2) failing to make written findings that Mother had the ability to defray costs of supervised visitation. After careful review, we affirm the portion of the trial court's order granting guardianship of the children to Uncle. However, we vacate the portion of the order relating to Mother's visitation and remand to the trial court for an appropriate visitation order.

A. Standard of Review

Appellate review of a permanency planning order is "limited to whether there

is competent evidence in the record to support the findings and whether the findings support the conclusions of law. 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 of fact are presumed to be supported by competent evidence and are thus binding on appeal. *Id.* The trial court's conclusions of law are reviewable *de novo* on appeal." *In re T.R.M.*, 208 N.C. App. 160, 162, 702 S.E.2d 108, 110 (2010) (citation omitted). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *In re A.K.D.*, 227 N.C. App. 58, 60, 745 S.E.2d 7, 8-9 (2013) (citation omitted).

B. Guardianship

First, Mother argues the trial court erred by granting guardianship of her children to Uncle (1) "without sufficient evidence to properly verify that Uncle had adequate resources to care appropriately" for her children, and (2) "without making all of the statutorily required findings under N.C. Gen. Stat. § 7B-906.1." We address each in turn.

1. Adequate resources to care appropriately for the children.

Mother contends the trial court "received limited evidence and testimony regarding the adequacy of Uncle's resources to care appropriately for Elizabeth and Eric. . . . [T]he resulting order on permanency planning which granted Uncle

guardianship of the children contains no findings of fact addressing this statutorily required verification."

Pursuant to N.C. Gen. Stat. § 7B-906.1(j), before a juvenile can be placed in the custody or guardianship of someone other than a parent, a trial court must verify that the person receiving custody or guardianship "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) (2023). On appeal, Mother acknowledges the trial court "properly receive[d] and consider[ed] evidence of Uncle's understanding of the legal significance of accepting guardianship." Therefore, we turn our focus to the second statutory requirement.

N.C. Gen. Stat. § 7B-906.1(j) provides the following clarification regarding a guardian's financial resources to care for children: "The fact that the prospective custodian or 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). Furthermore, the trial court does not need to "make any specific findings in order to make the verification." *In re J.E.*, 182 N.C. App. 612, 616-17, 643 S.E.2d 70, 73 (2007).

In this case, the trial court found from the evidence presented that Eric and Elizabeth had been placed with Uncle for the preceding eighteen months at the time of the permanency planning order. The evidence demonstrates the children's needs were being met and they were doing well in Uncle's care. Therefore, there is sufficient

evidence to support the trial court finding Uncle met the statutory requirement of having adequate resources to be appointed as a guardian for Elizabeth and Eric. Mother's argument is overruled.

2. N.C. Gen. Stat. § 7B-906.1 statutory findings.

Next, Mother contends the trial court erred in waiving further review hearings because the trial court failed to make written findings satisfying the requirements of N.C. Gen. Stat. § 7B-906.1(n).

A trial court may not cease further review hearings without making the following findings of fact pursuant to N.C. Gen. Stat. § 7B-906.1(n):

> (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 [N.C. Gen. Stat. §] 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 review hearings be held every six months.
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> (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)(1)-(5); *In re S.D.*, 276 N.C. App. 309, 325-26, 857 S.E.2d 332, 344 (2021). Absent a waiver under subsection (n), Section 7B-906.1(a) requires

that subsequent review or permanency planning hearings shall be held at least every six months after the initial permanency planning hearing. N.C. Gen. Stat. § 7B-906.1(a). If the trial court waives these hearings, it is required to "make written findings of fact satisfying each of the enumerated criteria listed in N.C. Gen. Stat. § 7B-906.1(n), and its failure to do so constitutes reversible error." *In re P.A.*, 241 N.C. App. 53, 66, 772 S.E.2d 240, 249 (2015) (citation omitted).

Mother specifically argues,

> the trial court's order omits any reference to the parties being made aware that the case could be brought back before the trial court for review at a later date by filing a motion for review as required under subsection (n)(4). Even though the trial court made a loose mention of the ability to file a motion in its oral order, the rights of the parties were not directly clarified and ultimately left out of the written order altogether.

We agree. Here, the trial court failed to make the required written findings under N.C. Gen. Stat. § 7B-906.1(n). Therefore, the trial court committed reversible error and its order must be remanded. *In re R.A.H.*, 182 N.C. App. 52, 62, 641 S.E.2d 404, 410 (2007). We vacate this portion of the trial court's order and remand to the court for further findings as required under N.C. Gen. Stat. § 7B-906.1(n).

C. Visitation

Mother next argues, and the children's GAL agrees, that the trial court erred when it failed to make findings of fact to support its conclusion that she had the ability to defray costs of supervised visitation. Mother contends the trial court's order

is "devoid of any findings of fact as to the actual costs, or even anticipated costs, associated with conducting visitations with any 'agency' or other third party for that matter." According to Mother, the court's order "lacks any findings regarding [her] current income, her ability to earn income, or her ability to otherwise independently defray the costs required to be able to have future visits with her children." We agree.

Pursuant to N.C. Gen. Stat. § 7B-905.1(c), when a child is placed or continued in the custody or guardianship of a relative, "any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised. The court may authorize additional visitation as agreed upon by the respondent and custodian or guardian." N.C. Gen. Stat. § 7B-905.1(c).

In the present case, the trial court ordered:

> Visitation between [Mother] with [Elizabeth] and [Eric] shall be four hours per month, supervised by an agency. [Mother] shall bear the cost of the supervising agency. [Mother] shall arrive 45 minutes prior to the scheduled visit at the visitation site or the visit will be cancelled. Additionally, monitored speaker phone calls shall be allowed 1 time per week between 8:00 p.m.-9:00 p.m. There shall be no discussion of this juvenile matter with the children.

Although the trial court set forth "the minimum length and frequency of the visits and whether the visits shall be supervised" the trial court's order is not specific enough to permit this Court "to determine if the trial court abused its discretion" in setting the conditions of visitation. *In re J.C.,* 368 N.C. 89, 89, 772 S.E.2d 465, 465 (2015) (per curiam). Our Supreme Court has held without findings addressing

whether a parent "was able to pay for supervised visitation once ordered[,] . . . our appellate courts are unable to determine if the trial court abused its discretion by requiring as a condition of visitation that visits with the children be at [the parent's] expense." *Id.* at 89, 772 S.E.2d at 465. Furthermore, this Court should, and has, vacated and remanded permanency planning orders when "the trial court made no findings as to the costs associated with supervised visitation, . . . or [the r]espondent's ability to pay the costs." *In re J.T.S.*, 268 N.C. App. 61, 74, 834 S.E.2d 637, 646 (2019); *In re Y.I.*, 262 N.C. App. 575, 582, 822 S.E.2d 501, 505-06 (2018).

Here, the trial court made no findings as to the costs associated with supervised visitation or Mother's ability to pay the costs of supervised visitation. Thus, we vacate the portion of the trial court's order regarding visitation and remand for findings addressing appropriate visitation with the children, supervised visitation costs if the visitation should be supervised, and whether Mother has the ability to pay those costs. *In re Y.I.*, 262 N.C. App. at 582, 822 S.E.2d at 506.

III. Conclusion

For the foregoing reasons, we vacate the portion of the order regarding visitation and remand for an appropriate visitation order. Additionally, we remand the guardianship order to the trial court for it to make the required statutory findings before ceasing reunification efforts under N.C. Gen. Stat. § 906.1(n). The remainder of the permanency planning order is affirmed.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).