IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-763

Filed 16 April 2024

Columbus County, Nos. 21 JA 14–17, 92

IN RE: P.R., Z.R., M.V., Z.C., C.R.,

Minor Children.

Appeal by respondents by writ of certiorari from order entered 1 May 2023 by Judge Sarah McPherson in Columbus County District Court. Heard in the Court of Appeals 2 April 2024.

*David S. Tedder for petitioner-appellee Columbus County Department of Social Services.*

*N.C. Administrative Office of the Courts, by Michelle FormyDuval Lynch, for guardian ad litem.*

*Robert W. Ewing for respondent-appellant mother.*

*Hooks Law, P.C., by Laura G. Hooks, for respondent-appellant father.*

ZACHARY, Judge.

Respondent-parents appeal from the trial court's order eliminating reunification from the permanent plans of the minor children "Prenice," "Zan,"

"Meri," "Zara," and "Cara"[1] and establishing, for each juvenile, primary permanent plans of guardianship with court-approved caretakers and secondary permanent plans of custody with court-approved caretakers. After careful review, we affirm.

## I. Background

Respondent-Mother is the biological mother of all five juveniles. Respondent-Father is the biological father of Prenice, Zan, and Cara; at the time of the filing of the juvenile petitions in this case, he was also the caretaker of Meri and Zara. Respondent-Father—who stated that he has "about 22 kids with 9 women"—"has a long history of child protective service cases" with Columbus County Department of Social Services ("DSS").

On 15 February 2021, after receiving a report containing allegations of domestic violence, improper care, and an injurious environment, DSS filed juvenile petitions with facts supporting that Prenice, Zan, Meri, and Zara were neglected juveniles, and that Prenice was also an abused juvenile. The petitions detailed "several incidents of domestic violence in the presence of the children." For instance, there were reports that Respondent-Mother had stabbed Respondent-Father, and that Respondent-Father had pushed Respondent-Mother out of a vehicle. It was further alleged that, during a domestic violence incident between Respondents, Respondent-Father struck Prenice as well as Respondent-Mother.

[1] We use the pseudonyms to which the parties stipulated, pursuant to N.C.R. App. P. 42.

That same day, the trial court granted DSS nonsecure custody of the juveniles and approved kinship placements for each: Prenice was placed with her maternal grandparents, Zan and Zara were placed with their maternal great-grandmother, and Meri was placed with her father. On 3 March 2021, the trial court entered an order appointing a guardian *ad litem* for Prenice.

On 13 April and 4 May 2021, the petitions came on for adjudication in Columbus County District Court. At the conclusion of the hearing on 4 May, the trial court entered an order adjudicating Prenice as abused and all four juveniles as neglected, and setting a disposition hearing for 1 June 2021.

On 28 July 2021, following the initial disposition order, the trial court entered a disposition order in which it concluded that it was in the juveniles' best interests that they remain in the custody of DSS, and established case plans for Respondents. The case plans "include[d] anger management [counseling], psychological evaluation and follow recommendations, substance abuse assessment and follow recommendations, random drug screens, parenting classes and substantial domestic violence counseling and follow recommendations." The trial court also awarded Respondents one hour of supervised visitation each week.

On 14 September 2021, the matter came on for an initial review hearing. The trial court found that Respondent-Mother had completed a psychological evaluation, submitted to random drug screens, and begun a domestic violence program. Respondent-Mother also was engaged in therapy through Coastal Horizons, which

was incorporating Respondent-Mother's parenting classes and anger management program into her therapy. Respondent-Father, on the other hand, had only completed a psychological evaluation and submitted to drug screens, but had refused to enter into a case plan.

Based on the psychological evaluations, the trial court further found:

> [Respondents] will require a support person who would be willing to provide direction and guidance to complete activities of daily living and important decision making for the needs of respondent parents and the children; . . . and . . . it would be essential for [Respondents] to demonstrate clear and factually based understanding of the ways in which their choices and behaviors have contributed to [DSS] concerns about the safety and welfare of their children — and until then, [Respondents] will not be in a position to safely participate in parenting their children.

Consequently, the trial court found that it would be necessary "that reunification efforts with [Respondents] proceed very conservatively and only on the basis of evidence that [Respondents] are engaging in the treatment services recommended for them in a consistent and reliable fashion and [are] benefitting from the services[.]"

In September 2021, Respondents' youngest child Cara was born. On 1 October 2021, DSS filed a juvenile petition alleging that Cara was neglected and dependent. The trial court entered an order granting DSS nonsecure custody of Cara, while noting that "DSS will vet[ ] existing placements where [Cara's] siblings are" for a relative placement.

On 4 October 2021, as Respondents were leaving the courtroom after a hearing,

Respondent-Mother "[waved] her hand at the [child protective services case] worker, witnesses and gallery and said something to the effect of 'All of you mother f__ are going to be dead.' " Respondent-Father, looking at a case worker, stated: " 'Laugh now but you will cry later' or words to that [e]ffect." That night, Respondent-Father

> posted a video on Facebook depicting himself sitting with large sums of what appeared to be cash money, indicating he was willing to give someone money to take care of those bothering him (upset and losing it) and for that person to be gone. His posts were odd and, though not verbatim, sounded like: "Twenty thousand to thirty thousand grams. If death is what it takes, well though not ready to die have love when people blow up buildings with bombs. Use to pick up guns but has changed now and joined Rangers."

Respondent-Father also "stated that anyone can disappear."

On 20 October 2021, DSS filed a motion for review, seeking to modify Respondents' visitation to provide virtual instead of in-person visitation, and to have Respondent-Father ordered to pay child support. By order entered on 9 December 2021, the trial court found that Respondent-Father "is disabled and draws SSI." The court continued Respondents' in-person, supervised visitation, although it noted that Respondents' "behaviors are becoming troublesome to" DSS, the Rule 17 guardian *ad litem* appointed for Respondent-Father, and the guardians of Prenice and Cara.

On 5 April 2022, the matters came on for hearing in Columbus County District Court. On 10 May 2022, the trial court entered an order adjudicating Cara as neglected, but dismissing the allegation of dependency. On 9 June 2022, the trial court entered a permanency planning order in the matter of the other four juveniles,

in which it found that Respondents were "actively participating in the plan for the juveniles" and had "made marginal progress on their respective case plans within a reasonable period of time." The trial court determined that it was in the best interests of the juveniles that they remain in DSS's custody and set a primary plan of reunification with a secondary plan of guardianship with a court-approved caretaker. That same day, the trial court entered a disposition order for Cara, finding that it was in Cara's best interests to remain in DSS's custody, but establishing reunification as "the plan . . . at the present time."

Following a subsequent permanency planning hearing in the matter of all five juveniles, on 22 September 2022, the trial court entered an order finding that Respondent-Mother had continued to make adequate progress, but Respondent-Father had not. The trial court therefore established guardianship as the primary plan with reunification as the secondary plan.

On 2 February 2023, the matter came on for hearing; Respondents were not present, although their attorneys of record were. Respondent's attorneys moved for a continuance due to "family illness," but the trial court found that the explanation was not credible and denied the motion. On 20 February 2023, the trial court entered a permanency planning order finding that neither parent had made adequate progress on their case plans, and further finding that Respondents had "acted inconsistently with their constitutionally protected right to custody of the juveniles." However, the trial court maintained the primary and secondary plans.

On 5 April 2023, the matter came on for "a quick 'come-back' hearing . . . to afford [Respondents] an opportunity to participate and be heard." By order announced in open court and entered on 1 May 2023, the trial court ceased DSS's reunification efforts and relieved DSS of custody of all five juveniles; granted guardianship of each juvenile to the relatives with whom each juvenile had been placed; and established guardianship with a court-approved caretaker as the primary plan for each juvenile, with custody with a court-approved caretaker as the secondary plan. In support of these determinations, the trial court incorporated its findings of fact from the February order, and again found that Respondents had not made adequate progress with their case plans.

Additionally, as the trial court detailed in the finding of facts in its written order, Respondents disrupted the hearing:

> 59. That during the hearing [Respondent-Mother] became disruptive, was given a warning by the Court and subsequently stormed out of the courtroom. [Respondent-Father] was given a warning by the Court and subsequently followed [Respondent-Mother] out of the courtroom. Both left the Hearing without the Court's permission.
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> 60. That during the dictation of the Order both [Respondents] returned back to the courtroom along with their Guardians. When guardianship was granted, [Respondent-Mother] became irate, was visibly out of control, attempted to flip the counsel table and was inconsolable. Screaming threats and cursing at the top of her lungs she exited the room again, [Respondent-Father] in tow and aiding her departure. For the record, the counsel table is well

> in excess of 8 feet in length. When order was restored the Court continued dictating the Order.

On 26 May 2023, Respondents filed their notices of appeal. However, in light of the deficiencies in each Respondent's notice of appeal, their appellate counsel filed petitions for writ of certiorari. Having reviewed the petitions, and recognizing that Respondents lost the right to appeal through no fault of their own, we allow the petitions in the exercise of our discretion and proceed to review the merits of Respondents' appeals. *See* N.C.R. App. P. 21(a)(1); *In re K.P.*, 249 N.C. App. 620, 623, 790 S.E.2d 744, 747 (2016).

## II. Discussion

Respondents argue that the trial court erred by ceasing reunification efforts, and separately challenge several of the trial court's findings of fact and conclusions of law. We address each Respondent's argument in turn.

### A. Standard of Review

"Appellate review of a trial court's permanency planning order is restricted to whether there is competent evidence in the record to support the findings of fact and whether the findings support the conclusions of law." *In re J.M.*, 384 N.C. 584, 591, 887 S.E.2d 823, 828 (2023) (cleaned up). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *Id.* (citation omitted). "The trial court's findings of fact are conclusive on appeal if supported by any competent evidence. Uncontested findings of fact are likewise binding on appeal."

*Id.* (cleaned up).

"At the disposition stage, the trial court solely considers the best interests of the child. Nonetheless, facts found by the trial court are binding absent a showing of an abuse of discretion." *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020) (citation omitted). Additionally, "[t]he trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed for abuse of discretion." *J.M.*, 384 N.C. at 591, 887 S.E.2d at 828 (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." *Id.* (citation omitted).

**B. Cessation of Reunification**

Respondents do not challenge the underlying adjudications of Prenice as abused and all five children as neglected; they solely raise arguments concerning the trial court's decision to cease further reunification efforts in the disposition phase of this matter. We begin with an overview of the applicable statutory and case law.

"The provisions in Chapter 7B (Juvenile Code) of our General Statutes reflect the need both to respect parental rights and to protect children from unfit, abusive, or neglectful parents." *Id.* at 591–92, 887 S.E.2d at 828–29 (cleaned up). "If the court adjudicates the juvenile abused, neglected, or dependent, proceedings move to the dispositional phase, the purpose of which is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising

jurisdiction." *Id.* at 592, 887 S.E.2d at 829 (cleaned up); *accord* N.C. Gen. Stat. § 7B-900 (2023).

"During the dispositional phase, the court may select among or combine various alternatives for disposition . . . ." *J.M.*, 384 N.C. at 592, 887 S.E.2d at 829. "There is no burden of proof at the dispositional phase. Rather, the essential requirement, at the dispositional hearing, is that sufficient evidence be presented to the trial court so that it can determine what is in the best interest of the child[ren]." *Id.* (cleaned up).

"The permanent plan adopted by the court must contain a primary plan and a secondary plan. The most common primary and secondary plans include reunification of the juvenile with his or her parent(s), adoption, guardianship with relatives or others, and custody to a relative or other suitable person." *Id.* at 593, 887 S.E.2d at 829 (citation omitted). "The goal of the permanency planning process is to return the child to [the child's] home or when that is not possible to a safe, permanent home within a reasonable period of time. Accordingly, reunification ordinarily must be the primary or secondary plan in a juvenile's permanent plan." *Id.* at 593, 887 S.E.2d at 829–30 (cleaned up).

"The requirement to make reunification the primary or secondary plan is not absolute. The court need not pursue reunification during the permanency planning process if" certain conditions are met:

> (1) the court made written findings specified in [N.C. Gen.

> Stat.] § 7B-901(c) at the initial disposition hearing; (2) the court made written findings described in [N.C. Gen. Stat.] § 7B-906.1(d)(3) at a review hearing or an earlier permanency planning hearing; (3) the permanent plan has been achieved; or (4) the court makes written findings that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety.

*Id.* at 594, 887 S.E.2d at 830 (cleaned up).

Pertinent to the current appeal, § 7B-906.1(d)(3) provides that the trial court "shall consider" and, if relevant, "make written findings" regarding "[w]hether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time." N.C. Gen. Stat. § 7B-906.1(d)(3). "The court shall consider efforts to reunite regardless of whether the juvenile resided with the parent, guardian, or custodian at the time of removal." *Id.*

The trial court's "written findings do not have to track the statutory language verbatim"; nonetheless, the 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." *J.M.*, 384 N.C. at 594, 887 S.E.2d at 830 (cleaned up).

***1. Respondent-Mother's Appeal***

Respondent-Mother challenges several of the trial court's findings of fact as unsupported by the evidence presented at the hearing. These challenged findings

recite her failure to address the issues that led to the removal of the juveniles from the home, culminating in a determination that Respondent-Mother, *inter alia*, "has not made adequate progress on her case plan[.]"

On appeal, Respondent-Mother primarily asserts that she "actively participated in and completed her case plan" and, consequently, the trial court's findings that she "did not take efforts to address the removal of the children from her home and that she was unwilling to address the issues in this case cannot be sustained[.]" Respondent-Mother further argues that "her participation with her case plan negates the findings of the trial court that she has acted inconsistently with constitutionally protected rights or that she was acting in a manner inconsistent with her children's health and safety." Accordingly, she contends that there was not a sufficient basis for the trial court's conclusion that further reunification efforts with Respondent-Mother "clearly would be unsuccessful" or would be "inconsistent with the juvenile[s'] health or safety, and need for a safe, permanent home within a reasonable period of time." We disagree.

First, notwithstanding Respondent-Mother's assertions otherwise, there is competent evidence in the record to support the trial court's determination that Respondent-Mother had not made adequate progress on her case plan. The DSS court report introduced into evidence at the hearing states, *inter alia*, that Respondent-Mother had not complied with drug screenings and had not been consistent in engaging with her mental health therapy. Although Respondent-Mother introduced

into evidence a discharge summary from Coastal Horizons, there was also evidence that she had not successfully completed her treatment. The trial court resolved this apparent conflict, finding that Respondent-Mother "ha[d] not engaged in mental health treatment consistently." This finding, in turn, supports the trial court's determination that she had not made adequate progress on her case plan.

Further, even assuming, *arguendo*, that Respondent-Mother had completed her case plan, "[p]arental compliance with a case plan alone is not always sufficient to preserve parental rights." *In re M.T.*, 285 N.C. App. 305, 332, 877 S.E.2d 732, 751, *disc. review denied*, 383 N.C. 689, ___ S.E.2d ___ (2022). In *M.T.*, "the trial court did not believe the parenting capacity evaluation or the parenting class [the m]other took part in adequately addressed the reasons for her children being in DSS custody" because the evaluation and class "failed to explain or teach [the m]other to prevent the injuries and conditions [one child] had when presented at the hospital." *Id.* "Thus, even with [the m]other's progress on her case plan," this Court explained, "the trial court's reasons for its decision still withstand our scrutiny." *Id.* at 332, 877 S.E.2d at 751–52.

Here, the trial court stated that Respondent-Mother "has extremely poor impulse control" and "extremely poor control over her anger." These directly implicate the reasons for Respondent-Mother's children being in DSS custody because they address her problems with anger management, among other reasons for the implementation of Respondent-Mother's case plan in the first place. As evidenced by

Respondent-Mother's behavior in court on the day of the hearing, these problems have not been resolved. Clearly, as was the case in *M.T.*, "even with [Respondent-M]other's progress on her case plan, the trial court's reasons for its decision still withstand our scrutiny." *Id.*

Respondent-Mother is unable to show that the trial court abused its discretion. Accordingly, her argument is overruled.

***2. Respondent-Father's Appeal***

Respondent-Father raises two principal arguments on appeal, the first of which is similar to Respondent-Mother's. Respondent-Father challenges several of the trial court's findings of fact and conclusions of law relating to his efforts to address the issues leading to the removal of Prenice, Zan, and Cara from the home,[2] and the futility of further reunification efforts. The crux of his argument is that, although the trial court found that Respondent-Father "ha[d] not taken efforts to address the issues causing the . . . removal" of these children from their home, he had in fact "made efforts."

As with Respondent-Mother's appeal, there is competent evidence in the record to support the trial court's findings regarding Respondent-Father's efforts. The DSS report reflects that Respondent-Father had made less progress than had Respondent-Mother. He had been discharged from his therapy program for noncompliance and

[2] Respondent-Father does not challenge the trial court's findings and conclusions regarding Meri and Zara.

nonattendance; although he claimed to be reengaging with this program, the child protective services case worker was unable to independently confirm this. Respondent-Father also had failed to complete his domestic violence program due to nonattendance, and had to reengage by restarting the program from the beginning; the case worker was able to confirm that Respondent-Father had called to reengage but then failed to attend the first class. Finally, Respondent-Father had not been compliant with his substance abuse course or drug screenings because of disengagement from his therapy program.

Respondent-Father's objection that he had "made efforts" despite the trial court finding that he had made none is insufficient to show that the trial court abused its discretion in concluding that he had not made adequate progress on his case plan. Similarly, Respondent-Father fails to persuade by arguing that his reengagement with his case plan undermines the trial court's determinations that it was not possible to return the juveniles to their home and that reunification efforts would be futile.

To the extent that Respondent-Father relies upon this Court's statement in *In re A.W.* that "[t]o cease reunification, the trial court's findings must include not only [a] finding [of] a lack of reasonable progress, but a lack of participation or cooperation with the plan, [DSS] and GAL[,]" we note that in that case the challenged finding was "wholly unsupported by evidence in the record[.]" 280 N.C. App. 162, 173, 867 S.E.2d 235, 243 (2021). *A.W.* should not be overread to suggest that any minimal participation or cooperation by a parent will necessarily prevent the cessation of

reunification; such a reading would be inconsistent with the well-established principle, discussed above, that "[p]arental compliance with a case plan alone is not always sufficient to preserve parental rights." *M.T.*, 285 N.C. App. at 332, 877 S.E.2d at 751.

Finally, Respondent-Father also challenges the trial court's determination that he had acted inconsistently with his constitutionally protected right of custody to Prenice, Zan, and Cara. However, our Supreme Court has repeatedly recognized that "the existence of a constitutional protection does not obviate the requirement that arguments rooted in the Constitution be preserved for appellate review." *J.M.*, 384 N.C. at 603, 887 S.E.2d at 835 (citation omitted).

Here, the trial court found in its February 2023 order that Respondent-Father had "acted inconsistently with [his] constitutionally protected right to custody of the juveniles." Respondent-Father was therefore on notice that his constitutional right was at issue in the following hearing. However, "[d]espite having notice and the opportunity to argue or otherwise assert that awarding guardianship . . . would be inappropriate on constitutional grounds," the record reveals that Respondent-Father "failed to do so." *Id.* at 604, 887 S.E.2d at 836 (cleaned up). Accordingly, Respondent-Father "did not preserve the issue for appellate review." *Id.*

## III. Conclusion

For the foregoing reasons, the trial court's order is affirmed.

AFFIRMED.

Judges HAMPSON and THOMPSON concur.

Report per Rule 30(e).