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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-648

Filed: 21 March 2017

Iredell County, Nos. 14 JA 16, 17, 20

IN RE: G.S., C.G., M.P., Minor Juveniles

Appeal by respondent-parents from order entered 10 February 2016 by Judge H. Thomas Church in Iredell County District Court. Heard in the Court of Appeals 20 February 2017.

*Lauren Vaughan, for petitioner-appellee Iredell County Department of Social Services.*

*Miller & Audino, LLP, by Jay Anthony Audino, for respondent-appellant mother.*

*David A. Perez, for respondent-appellant father.*

*Melanie Stewart Cranford, for guardian ad litem.*

CALABRIA, Judge.

Mother and father (collectively, “respondents”) appeal from an order ceasing reunification efforts and appointing guardians for their child, G.S. (“Gina”),<sup>1</sup> and for mother’s daughter, C.G. (“Cindy”).<sup>2</sup> We affirm the cessation of reunification efforts with father, but vacate the trial court’s order as to the guardianship appointment and remand for further proceedings.

### **I. Background**

On 24 January 2014, the Iredell County Department of Social Services (“DSS”) initiated the underlying juvenile case by filing a petition alleging that Gina and Cindy were abused and neglected juveniles.<sup>3</sup> DSS obtained nonsecure custody of the children that same day. On 16 April 2014, the trial court entered orders adjudicating Gina and Cindy as neglected juveniles. The trial court held a disposition hearing on 14 May 2014. The court ordered DSS to retain custody of Gina and Cindy, and to continue to make reasonable efforts to return the children to their home; established reunification with mother as their plan of care; and continued mother’s twice-weekly visitation. At the time of the hearing, father’s paternity to Gina had not yet been confirmed, and he had refused to submit to requested drug screens.

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<sup>1</sup> Pseudonyms are used throughout for ease of reading and to protect the juveniles’ identities.

<sup>2</sup> Cindy’s father is not a party to this appeal.

<sup>3</sup> The juvenile petition also addressed mother’s three other minor children, but they are not the subjects of this appeal.

The trial court held a review and permanency planning hearing on 5 November 2014.<sup>4</sup> The court found that although mother had completed parenting classes, she had also been arrested and had sixteen pending criminal charges; had been erratic in visiting her children; and had failed to submit to requested drug screens and to verify her employment. As to father, the trial court found that he had neither contacted DSS nor submitted to a paternity test. The court further found that Gina and Cindy had been placed in the home of their maternal aunt and uncle (“the Hodges”) since 15 September 2014, and they had adjusted very well to the new placement. Based on its findings, the court concluded that reunification with respondents was no longer in the children’s best interests. The trial court relieved DSS from further reunification efforts and set the children’s permanent plan as guardianship with a relative or court-approved caretaker. DSS retained custody of Gina and Cindy, and the court granted respondents each two hours of weekly supervised visitation.

On 1 April 2015, the trial court held a second permanency planning hearing. In its order from that hearing, the court found that mother had moved into a new home, was current on her rent and utility payments, was employed as a part-time certified nursing assistant, and was generally able to provide for her needs. Nevertheless, if mother wished to proceed with reunification efforts, the court required her to show that she had an income and a safe, stable home; had resolved

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<sup>4</sup> The trial court’s orders from the disposition and first permanency planning hearings were not entered until 2 March 2015.

her criminal charges; was complying with the terms of her probation; and was consistently testing negative for drugs. As to guardianship, the court found that the Hodges understood the “legal responsibilities” and “significance” of an appointment and had “adequate resources to care appropriately” for Gina and Cindy. The court ordered DSS to retain custody of the children and to continue to make reasonable efforts to return them to mother’s home. The court changed the children’s permanent plan to reunification with mother with a concurrent plan of guardianship, and ordered that reunification efforts with father remain ceased.

Mother failed to comply with the trial court’s requirements, and following a permanency planning hearing on 26 August 2015, the court again ceased reunification efforts with her. However, the trial court found that father had shown improvement, in that he was having appropriate visits with Gina, had a stable home and income, and had begun paying child support. Accordingly, the court changed the permanent plan for Cindy to guardianship with a relative or other court-approved person, and changed Gina’s permanent plan to reunification with father with a concurrent plan of guardianship. The court continued DSS’s custody of the children, but directed DSS to work toward reunifying Gina with father. The court also directed father to enter into a case plan with DSS, and to obtain a substance abuse assessment and comply with its recommendations.

On 20 January 2016, the trial court held another permanency planning hearing. In its order, entered 10 February 2016, the court found that although father had obtained a substance abuse assessment, it was inaccurate because the evaluator had not been “presented with all the relevant facts.” A second assessment was recommended, but father had not yet completed it. Additionally, he had missed three drug screens but had tested positive on two other occasions, twice for oxycodone and once for benzodiazepines. Father claimed to have prescriptions for those drugs, but he refused to provide DSS with proof. The court thus concluded that reunification efforts should cease as to father and remain ceased as to mother. The trial court appointed the Hodges as guardians of Cindy and Gina; granted respondents supervised visitation with them; and released DSS, the guardian *ad litem*, and all counsel from further obligations in the matter. Respondents filed timely notices of appeal.

## **II. Analysis**

### **A. Reunification with Father**

We first address father’s argument that the trial court erred in ceasing reunification efforts with him.

The North Carolina Juvenile Code requires a trial court to adopt reunification as “a primary or secondary plan unless the court made findings under [N.C. Gen. Stat. §] 7B-901(c) or makes written findings that reunification efforts clearly would

be unsuccessful or would be inconsistent with the juvenile's health or safety." N.C. Gen. Stat. § 7B-906.2(b) (2015). Our review of orders ceasing reunification efforts "is limited to whether there is competent evidence in the record to support the findings of fact and whether the findings support the conclusions of law. The trial court's findings of fact are conclusive on appeal if supported by any competent evidence." *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013) (citations, quotation marks, and brackets omitted). A trial court adopts a permanent plan for a juvenile based upon the juvenile's best interest, N.C. Gen. Stat. § 7B-906.2(a), and the court's decision will not be disturbed absent an abuse of discretion. *In re J.H.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 780 S.E.2d 228, 238 (2015).

On appeal, father argues that several of the trial court's findings of fact are either entirely or partially erroneous. The court found, in pertinent part:

6. At the last hearing of this matter, reunification with [father] was placed back on the permanency plan for the juvenile, [Gina]. At that time, the Court required [father] *inter alia* to enter a case plan with DSS and obtain a substance abuse assessment and follow any recommendations. Since the last hearing, he did get a substance abuse assessment on November 9, 2015 which was later found to be inaccurate due to the evaluator not being presented with all the relevant facts. Another assessment was recommended but has not been completed. He also failed to drug screen on November 18th, December 7th and January 5<sup>th</sup>. He did screen on December 9<sup>th</sup> (positive for oxycodone) and December 29<sup>th</sup> (positive for benzodiazepines and oxycodone) for which claims [sic] to have had prescriptions. [Father] only presented prescriptions for October for Percocet. [Father] refused to

provide prescriptions or prescription bottles to DSS.

7. Based upon [respondents'] lack of sufficient, timely progress in addressing the issues that caused the juveniles to enter the purview of the court and foster care, it no longer remains possible for the juveniles to be placed with a parent within the next six months.

8. For the same reason, efforts to reunite the juveniles with [respondents] would be clearly futile or inconsistent with the juveniles' safety and need for a safe, permanent home within a reasonable period of time and thus, should remain ceased and cease for [father].

9. The Court has considered whether legal guardianship or custody with a relative or some other suitable person should be established and, if so, the rights and responsibilities that should remain with the parents. Specifically, the Court finds that . . . [Cindy and Gina] have been placed with maternal relatives, [the] Hodges, and they are doing well in the placement which is appropriate and has been in place for more than one year; [Cindy] has grown attached to the Hodges; all of the juveniles are current on their medical and dental care; and [Cindy] is receiving therapy for anxiety. . . . Additionally, the Court finds that legal guardianship with a relative or some other suitable person should be established for [Cindy and Gina]. [Respondents] should retain the right to visit with the juveniles under the specific terms of this Order and the responsibility to provide financial support for the benefit of the juveniles.

. . .

16. Presently, the juveniles require more adequate care or supervision than [respondents] can provide, and continuation in or return to the juveniles' own home would be contrary to their best interest.

17. The best plan of care to achieve a safe, permanent home

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for the juveniles within a reasonable period of time is a sole plan of guardianship with a relative or other court approved person.

18. [Respondents] are not making adequate progress within a reasonable period of time under the plan.

19. [Respondents] are not actively participating in or cooperating with the plan, DSS, and the GAL for the juveniles.

20. [Respondents] have not remained available to the court, DSS, and the GAL for the juveniles.

21. [Respondents] are acting in a manner inconsistent with the health or safety of the juveniles.

22. It does not remain possible for the juveniles to be placed with a parent within the next six months.

23. The juveniles requires [sic] more adequate care or supervision than [respondents] can provide, and return to the juvenile's [sic] own home would be contrary to the juvenile's [sic] health and safety. [Respondents] are not fit and proper to exercise the care, custody, and control of the juveniles and have acted in a manner inconsistent with their rights as parents.

Father first contends that competent evidence does not support the court's statements, in finding of fact 6, that he failed to disclose material facts to the substance abuse assessor; that a second assessment was needed; or that he was informed of such need. These findings, however, are supported by the testimony of a DSS social worker. While father may have testified otherwise, it is the province of the trial court "to determine the credibility of the witnesses and the weight to be given



their testimony.” *In re S.C.R.*, 198 N.C. App. 525, 531-32, 679 S.E.2d 905, 909 (citations and quotation marks omitted), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009). The social worker’s testimony is sufficient to support finding of fact 6, and father’s argument is overruled.

Father also challenges finding of fact 7, in that the only reasons attributable to him for Gina entering foster care were that (1) he had drug charges, and (2) DSS could not communicate with him because mother refused to provide his contact information. According to father, this finding is erroneous because all of his drug charges were dismissed, and he was in contact with DSS at the time of the 20 January 2016 hearing. However, substance abuse concerns were identified as a possible barrier to his reunification with Gina as early as February 2014, when he refused to submit to a drug screen. Although father claimed that he was only taking prescribed medications, he refused to produce the prescriptions or provide any other evidence that he was taking the drugs legally. Furthermore, he failed to attend a second requested substance abuse assessment. Accordingly, competent evidence supports the trial court’s finding that father failed to demonstrate “sufficient, timely progress” in addressing the issues that led to Gina’s placement in foster care.

Father next argues that finding of fact 8 is not supported by “credible” evidence, because he had a stable home and income, had obtained a substance abuse

assessment, and was never advised of the need for a second assessment. However, as previously explained, this argument ignores the social worker's testimony, adopted by the trial court in finding of fact 6, that father *was* informed of the need for an additional assessment, failed to obtain one, and continued to test positive for controlled substances without providing proof that he was taking them as prescribed. Father's continued use of controlled substances and refusal to fully participate in the court-ordered assessment support the court's finding that reunification efforts would be clearly futile or inconsistent with Gina's safety and need for a safe, permanent home within a reasonable period of time.

Father next challenges finding of fact 9. He asserts that the trial court's finding that a guardianship should be established for Gina was only appropriate because the court improperly ceased reunification efforts with him. Nevertheless, as discussed below, the court did not abuse its discretion in ceasing reunification efforts, and this argument is without merit.

Father also contends that findings of fact 16 through 23 are erroneous. He does not, however, challenge the evidentiary support for these findings; instead, he merely offers general, conclusory assertions of error.<sup>5</sup> We are thus bound by the trial court's findings, and we decline to address father's arguments. *See In re A.C.*, \_\_\_\_

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<sup>5</sup> As an example, finding of fact 18 states: "[Respondents] are not making adequate progress within a reasonable period of time under the plan." In arguing that this finding is erroneous, father merely asserts that he "was making adequate progress within a reasonable time as of the January 20, 2016 hearing."

N.C. App. \_\_\_, \_\_\_ n.4, 786 S.E.2d 728, 736 n.4 (2016) (“Absent a more particularized argument as to particular facts, we decline to review the findings alluded to in respondent-mother’s broadside exceptions.” (citation omitted)).

Father has failed to show that the challenged findings of fact are unsupported by competent evidence, and we conclude that the trial court’s findings support its decision to cease reunification efforts with him. Therefore, we affirm this portion of the court’s order.

### **B. Guardianship of Gina and Cindy**

Next, respondents both argue that the trial court erred in awarding guardianship to the Hodges, because the court failed to verify that they understood the legal significance of the appointment and had adequate resources to care appropriately for Gina and Cindy. We agree.

In making a guardianship appointment, the trial court must “verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile.” N.C. Gen. Stat. § 7B-600(c); *see also* N.C. Gen. Stat. § 7B-906.1(j). “The trial court has the responsibility to make an independent determination, based upon facts in the particular case, that the resources available to the potential guardian are in fact ‘adequate.’ ” *In re P.A.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 772 S.E.2d 240, 248 (2015) (brackets omitted). The court is not required to make specific findings of fact in

making this verification, but “the statute does require the trial court to make a determination that the guardian has ‘adequate resources’ and some evidence of the guardian’s ‘resources’ is necessary as a practical matter, since the trial court cannot make any determination of adequacy without evidence.” *In re J.H.*, \_\_\_ N.C. App. at \_\_\_, 780 S.E.2d at 240 (citation omitted).

Here, the trial court found that

[t]he proposed guardian[s] understand[] the legal significance of the placement and ha[ve] adequate resources--financial, emotional, and otherwise--to care for the juvenile[s] appropriately. Further, the proposed guardian[s] [are] suitable and awarding guardianship of the juvenile[s] to the proposed guardian[s] is in the best interest of the juveniles, [Cindy and Gina].

However, at the 20 January 2016 hearing, there was no testimony proffered regarding these issues. While the court did accept into evidence reports from a DSS social worker and the guardian *ad litem*, those reports only focused on respondents’ progress and how the children were faring in their placements; neither addressed the Hodges’ understanding of the legal significance of guardianship or the adequacy of their resources for the appointment. The trial court’s finding is thus unsupported by any evidence before it at the permanency planning review hearing.

The guardian *ad litem*, citing *In re J.M.*, 234 N.C. App. 664, 763 S.E.2d 17 (2014) (unpublished), contends that the trial court was permitted to rely on its guardianship findings from prior orders, of which it took judicial notice and

incorporated by reference. However, as an unpublished opinion of this Court, *J.M.* is not binding precedent. Even assuming, *arguendo*, that we were bound by its holding, the facts of *J.M.* are distinguishable from those of the instant case. In *J.M.*, the trial court had previously made specific findings of fact regarding the proposed guardians' employment status, financial resources, living arrangements, and demonstrated success in raising two of their own children. Notably, those findings were also reaffirmed by testimony from a DSS social worker prior to the award of guardianship one full year later. On appeal, we held that this constituted sufficient verification of the proposed guardians' resources.

By contrast, here, the trial court's prior guardianship findings provide no details about the Hodges' finances, employment, future plans, or parenting abilities. For example, in its order from the 1 April 2015 hearing, the trial court found:

15. That . . . the Hodges understand the legal responsibilities of guardianship and are willing to provide for [Gina and Cindy] in . . . their home[]. The minor children have been in their current placements for a long period of time and are doing well in these placements.

. . .

27. That the Court has verified that . . . the Hodges understand the legal significance of the appointment of guardianship and have adequate resources to care appropriately for the minor children.

And in its order from the 26 August 2015 hearing, the court found:

9. The Court has considered whether legal guardianship or

custody with a relative or some other suitable person should be established and, if so, the rights and responsibilities that should remain with the parents. Specifically, the Court finds that . . . [Cindy and Gina] have been placed with maternal relatives, [the] Hodges, and they are doing well in the placement which is appropriate; [Cindy] has grown attached to the Hodges; all of the juveniles are current on their medical and dental care; and [Cindy] is receiving therapy for anxiety.

While these findings establish that Cindy and Gina were “doing well” in their placements, they are, at best, conclusory as to the Hodges’ resources or understanding of the significance of guardianship. N.C. Gen. Stat. §§ 7B-600(c) and 7B-906.1(j) require more. *See In re J.H.*, \_\_ N.C. App. at \_\_, 780 S.E.2d at 240 (holding that verification was insufficient where the only evidence of the proposed guardians’ resources was (1) a DSS report stating that they had been “meeting [the juvenile’s] medical needs . . . , making sure that he has his yearly well-checkups”; and (2) the guardian *ad litem*’s statement that the juvenile had “no current financial or material needs”).

We conclude that the trial court failed to sufficiently verify that the Hodges understood the legal significance of the guardianship appointment and had adequate resources to care appropriately for Gina and Cindy. *See* N.C. Gen. Stat. §§ 7B-600(c), 7B-906.1(j). Consequently, we must vacate the trial court’s order as to the guardianship award and remand for further proceedings. *See In re P.A.*, \_\_ N.C. App. at \_\_, 772 S.E.2d at 248.

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AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).