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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1039

Filed: 16 May 2017

Robeson County, Nos. 13 JA 118, 13 JA 119, 15 JA 340

IN THE MATTER OF: J.S., J.S., Jr., H.F.

Appeal by Respondent-Mother from orders entered 22 July 2016 and 11 August 2016 by Judge Herbert L. Richardson in Robeson County District Court. Heard in the Court of Appeals 3 May 2017.

Brooke L. Clark, for petitioner-appellee Robeson County Department of Social Services.

Miller & Audino, LLP, by Jeffrey L. Miller, for respondent-appellant mother.

No brief filed for guardian ad litem.

HUNTER, JR., Robert N., Judge.

Respondent appeals permanency planning orders granting legal guardianship of her children, J.S. (“Jason”), J.S., Jr. (“Johnny”), and H.F. (“Helen”).¹ On appeal, Respondent argues the trial court committed the following errors: (1) failing to apply the correct evidentiary standard in the order; (2) ceasing reunification efforts and

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

granting guardianship of Helen; (3) failing to make a proper inquiry of the proposed guardians' financial resources; (4) failing to establish an appropriate visitation schedule; and (5) failing to make appropriate findings to waive future review hearings. We affirm in part and vacate and remand in part.

I. Factual and Procedural Background

On 3 April 2012, Davidson County Department of Social Services ("DCDSS") received a neglect referral,² alleging acts of domestic violence between Respondent and Johnny's father. On 29 May 2012, DCDSS received another neglect referral, again alleging acts of domestic violence between Respondent and Johnny's father. DCDSS recommended services to address domestic violence, parenting, and employment. DCDSS placed Jason and Johnny in their maternal great-aunt's, Carol's³, home in Robeson County. Within a week, Respondent moved in with Carol, Jason, and Johnny.

On 8 March 2013, DCDSS transferred the case to Robeson County. On 26 March 2013, the Robeson County Department of Social Services ("DSS") filed juvenile petitions alleging Jason and Johnny to be dependent juveniles. DSS based the petitions upon prior instances of domestic violence; Respondent's diagnosis of major depressive disorder with psychotic features and mild mental retardation; and

² The record does not indicate who filed the neglect referral.

³ We use this pseudonym to further protect the identity of the juveniles.

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Respondent's "cognitive deficits, low adaptive functioning, and mood disturbance[.]" The petition averred DSS could "not ensure the safety of the child[ren] without court intervention." Also on 26 March 2013, the trial court placed Jason and Johnny in non-secure custody.

On 1 May 2013, the trial court held an adjudication hearing. In an order entered on 7 August 2013, the trial court adjudicated Jason and Johnny as dependent juveniles. On the same day, the trial court entered a separate disposition order and kept Jason and Johnny in DSS custody and in placement with Carol. The trial court implemented a permanent plan of reunification with Respondent.

Between August 2013 and 8 January 2014, Respondent progressed in her case plan with DSS. Respondent completed the Parenting Matters Program. She also attended WAVE classes through Southeastern Family Violence Center. She completed two psychological evaluations, one of which revealed Respondent was unable to "make sound decisions" or "care for her children without the assistance of another individual[.]"

On 10 March 2014, the trial court granted Carol guardianship of Jason and Johnny. On 4 September 2014, the trial court awarded primary custody of Jason and Johnny to Carol and secondary custody to Respondent. The trial court terminated the juvenile matter and transferred it to civil district court.

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On 24 April 2015, DSS again filed juvenile petitions alleging Jason and Johnny to be dependent juveniles. The petitions averred Carol could no longer provide care for Jason and Johnny, due to her health. On the same day, the trial court placed Jason and Johnny in non-secure custody.

On 5 May 2015, Rolanda Collins, a social worker with DSS, visited Jason and Johnny at their foster home. Both children “appear[ed] to be[] adjusting well and . . . were well groomed and clean.” On 6 May 2015, Collins spoke with Carol. Carol informed Collins that Amy, another maternal great-aunt and previous custodian, was interested in keeping Jason and Johnny. On the same day, Collins spoke with Respondent and asked if she would be willing to have the children stay with Amy. Respondent replied, “yes, she [(Amy)] is a good lady.” On 9 June 2015, DSS placed Jason and Johnny in Amy’s home. On the same day, Collins visited Respondent’s apartment. Respondent had no furniture and slept on a pallet in the living room.

On 15 July 2015, the trial court held an adjudication hearing. On 2 September 2015, the trial court held a disposition hearing. Between June 2015 and August 2015, Collins met with Respondent several times. On 9 June 2015, Respondent told Collins “she did not know when she last attended therapy and she wanted a new provider.” On 14 July 2015, Respondent told Collins she attended therapy and visited her children. On 21 July 2015, Collins visited Respondent’s home. Respondent had no furniture for the bedrooms or a dining room table. As of 4 August 2015, Respondent

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saw a psychiatrist and did not need medication. On 17 August 2015, Respondent spoke with Collins and told Collins she had not been to therapy because she was “trying to get some things done” and wanted to learn to drive. On 25 August 2015, Collins and Rebecca McNeill, a worker at Vocational Rehabilitation spoke on the phone. McNeill told Collins that Respondent missed “several” appointments, which concerned McNeill. Additionally, McNeill said Respondent had a “hard time” remembering appointments and transportation is an “issue.”

On 7 October 2015, the trial court entered an amended order, adjudicating Jason and Johnny as dependent juveniles. On the same day, the trial court entered a separate disposition order. The trial court concluded it was in the juveniles’ best interests to remain in DSS custody and in placement with Amy. The trial court also continued the permanent plan of reunification with Respondent.

Respondent gave birth to Helen on 16 December 2015. The next day, DSS received a neglect referral, alleging Respondent had a “hard time comprehending” and “did not have any of the necessary items for the baby to go home with.” Respondent told Tyler Locklear, a social worker with DSS, she did not have all the materials needed to take Helen home. However, she told him that family and friends would help her get the necessary items. She also told Locklear she was “slightly retarded.” On 18 December 2015, DSS filed a juvenile petition alleging Helen to be a

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neglected juvenile. DSS obtained non-secure custody of Helen and placed her in a non-relative kinship placement with Donna, a family friend.

The trial court held an adjudication hearing on 20 April 2016. At the hearing, Respondent “neither admit[ted] [n]or denie[d] the allegations in the Juvenile Petition but [did] not object to a finding of dependency.” In an order entered on 28 June 2016, the trial court adjudicated Helen as dependent. On the same day, the trial court entered a separate disposition order and concluded that it was in Helen’s best interest to remain in DSS custody and in placement with Donna. The trial court changed the permanent plan from reunification to guardianship, with a concurrent plan of adoption.

On 13 July 2016, the trial court held a permanency planning hearing. DSS’s evidence tended to show the following.

DSS first called Rolanda Collins. Collins worked as the social worker for Jason, Johnny, and Helen. All of the children did well in their current placements. Respondent participated in supervised visits with the children. Respondent was “compliant” in her case plan with DSS. However, Respondent was not “compliant” with her medication. Respondent also fell behind on her rent payments. According to Collins, although Respondent loved her children, she could not parent them without someone’s assistance. Collins testified the proposed guardians were “willing to accept guardianship.”

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DSS next called Amy. At the time of the hearing, Jason and Johnny lived with Amy for a year. No one else lived in Amy's home. Amy thought guardianship for Jason and Johnny was "a good thing." At first, Amy was "not sure of all of the significance" of being a guardian. However, she understood she would "[e]nsure the care of the children . . . their education and their medical care and all those things like that." She also understood she would be responsible for signing off for medical treatment and enrolling the juveniles in school.

Amy worked at Premiere Behavioral Services. She was financially able to care for Jason and Johnny, because she worked. She believed her income was "sufficient" to support Jason and Johnny. Amy had no reservations or concerns about being Jason's and Johnny's guardian.

Amy was willing to abide by court orders for visitation by Respondent. Amy would also supervise those visitations. At the time of the hearing, Respondent visited all three children at the same time, in Amy's home. Amy was willing to continue that visitation system in the future.

DSS next called Donna. Donna first started caring for Helen when Respondent placed Helen in Donna's home. Donna understood the legal significance of being a guardian. She understood she would be responsible for all of Helen's needs, including medical, emotional, and financial. Donna worked at Kiddieland Center, driving the

van and “sometimes” working inside the center. Donna had no reservations about being Helen’s guardian.

On 22 July 2016, the trial court entered an order and awarded Amy guardianship of Jason and Johnny. The trial court found that Amy was willing to accept legal guardianship of Jason and Johnny and she was financially able to care for their needs. The trial court also concluded that further review hearings were no longer necessary.

On 11 August 2016, the trial court entered a separate permanency planning order and awarded Donna guardianship of Helen. The trial court found that Donna was willing to accept legal guardianship and was financially able to care for the needs of Helen.

Respondent filed timely notice of appeal from the two permanency planning orders.

II. 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. If the trial court’s findings of fact are supported by any competent evidence, they are conclusive on appeal.” *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (citations omitted). We review conclusions of law *de novo*. *Id.* at 41, 698 S.E.2d at 530 (citation omitted).

We review a dispositional order of visitation for abuse of discretion. *In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007) (citations omitted). A discretionary decision will be disturbed only if it is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (citation omitted).

III. Analysis

We review Respondent's contentions in five parts: (A) Respondent's constitutional right to parent; (B) ceasing reunification efforts with Helen; (C) verification of DSS's proposed guardians; (D) visitation schedule; and (E) waiver of future review hearings.

A. Constitutional Right to Parent

Respondent first argues, and DSS concedes, the trial court erred by using an incorrect legal standard in determining she was unfit to parent her children. We agree.

A parent has a constitutional right to the custody, care, and control of her children. *Price v. Howard*, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997) (citations omitted). However, "a natural parent may lose [her] constitutionally protected right to the control of [her] children in one of two ways: (1) by a finding of unfitness of the natural parent, or (2) where the natural parent's conduct is inconsistent with his or her constitutionally protected status." *In re D.M.*, 211 N.C. App. 382, 385, 712 S.E.2d

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355, 357 (2011) (internal quotation marks and citation omitted). “While this analysis is often applied in civil custody cases under Chapter 50 of the North Carolina General Statutes, it also applies to custody awards arising out of juvenile petitions filed under Chapter 7B.” *Id.* at 385, 712 S.E.2d at 357 (emphasis added) (citation omitted).

“Because the decision to remove a child from a natural parent’s custody ‘must not be lightly undertaken[,] . . . [the] determination that a parent’s conduct is inconsistent with . . . her constitutionally protected status must be supported by clear and convincing evidence.’” *In re E.M.*, ___ N.C. App. ___, ___, 790 S.E.2d 863, 874 (2016) (quoting *Adams v. Tessener*, 354 N.C. 57, 63, 550 S.E.2d 499, 503 (2001)) (alterations in original). “‘Clear and convincing’ evidence is an intermediate standard of proof, greater than the preponderance of the evidence standard applied in most civil cases, but not as stringent as the requirement of proof beyond a reasonable doubt required in most criminal cases.” *Id.* at ___, 790 S.E.2d at 874 (citation omitted).

Prior to granting guardianship of a child to a nonparent, the trial court must “clearly address whether [the] respondent is unfit as a parent or if her conduct has been inconsistent with her constitutionally protected status as a parent[.]” *In re P.A.*, ___ N.C. App. ___, ___, 772 S.E.2d 240, 249 (2015). If the trial court’s order fails to indicate it applied the clear and convincing standard, “we must vacate this portion of the [] order and remand for entry of a new finding of fact that makes clear the standard of proof applied by the district court in determining whether [her] actions

have been inconsistent with her constitutionally-protected status as [the juveniles'] parent.” *In re E.M.*, ___ N.C. App. at ___, 790 S.E.2d at 874 (citation omitted).

Here, the order stated, “after considering the evidence presented, [the court] makes the following [findings.]” Thus, the trial court failed to expressly state it was making findings related to Respondent’s constitutionally-protected status as a parent based on clear and convincing evidence. Indeed, it appears the trial court employed a lesser evidentiary standard when admitting certain documents at the hearing.

Because the trial court failed to indicate it used the clear and convincing standard, we are compelled to vacate the portion of the order pertaining to Respondent’s forfeiture of her constitutionally-protected status due to unfitness and remand for further proceedings.

B. Denial of Reunification Efforts

Next, Respondent argues, and DSS concedes, the trial court erred by denying reunification efforts with Helen. Respondent contends the trial court’s findings fail to comply with N.C. Gen. Stat. § 7B-906.2(b) (2016). We agree.

N.C. Gen. Stat. § 7B-906.2(b) states:

At any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall remain a primary or secondary plan unless the court made findings under G.S. 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.

Id. Thus, the statute requires trial courts to maintain reunification as a primary or secondary plan, unless the trial court has already ceased reunification efforts in its initial disposition order by making findings under N.C. Gen. Stat. § 7B-901(c) (2016), or makes statutorily-mandated findings in its permanency planning order. *Id.*

In the 11 August 2016 permanency planning order, the trial court found “[r]eunification efforts would be inconsistent with the child’s need for a safe, permanent home within a reasonable time, given the child’s age[] and how long she has been in care.” This finding is not the same as a finding that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety.⁴ Therefore, we agree with Respondent’s argument that this finding fails to comply with N.C. Gen. Stat. § 7B-906.2(b).

The trial court also found it changed the permanent plan to guardianship in the initial disposition order. This finding would, on its face, appear to satisfy the statutory requirement that “[r]eunification shall remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c)[,]” as this section permits a court to cease reunification efforts at an initial disposition hearing under certain circumstances. N.C. Gen. Stat. § 7B-901(c). In the 28 June 2016 disposition order,

⁴ We note the trial court’s finding uses the language of the prior version of N.C. Gen. Stat. § 7B-906.1(d)(3), which governed permanency planning review orders prior to 1 July 2016. That statute required a factual finding that “efforts to reunite the juvenile . . . clearly would be futile or inconsistent with the juvenile’s safety and need for a safe, permanent home within a reasonable period of time.” N.C. Gen. Stat. § 7B-906.1(d)(3) (2015). However, the permanency planning order at bar is governed by the newly enacted N.C. Gen. Stat. § 7B-906.2(b), which became effective 1 July 2016.

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the trial court purported to change the permanent plan for Helen from reunification to guardianship with a concurrent plan of adoption, thereby ceasing reunification efforts with Respondent. However, upon review of the trial court's disposition order in the instant case, it is clear the trial court's findings fail to comply with the requirements of N.C. Gen. Stat. § 7B-901(c).

The trial court failed to make findings under N.C. Gen. Stat. § 7B-901(c) and failed to make a written finding "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). Thus, the trial court failed to comply with N.C. Gen. Stat. § 7B-906.2(b). Accordingly, we vacate this portion of the order and remand for findings in compliance with N.C. Gen. Stat. § 7B-906.2(b).⁵

C. Verification of DSS's Proposed Guardians

Next, Respondent argues the trial court erred by granting guardianship to Amy and Donna because the findings and the evidence were insufficient to verify that each guardian had adequate resources to appropriately care for the children. We agree the trial court did not have sufficient evidence to verify Amy possessed

⁵ We dismiss Respondent's arguments regarding alleged errors in the trial court's 28 June 2016 initial disposition order. Because the trial court's initial disposition order as to Helen was an appealable order, the proper avenue for Respondent to attack the disposition order would have been to appeal the order pursuant to N.C. Gen. Stat. § 7B-1001(a)(3) (2016). *See also In re Wheeler*, 87 N.C. App. 189, 193, 360 S.E.2d 458, 461 (1987). Respondent failed to do so, and her attempt to now re-litigate the sufficiency of certain findings in the disposition order amounts to an impermissible collateral attack on the disposition order. *Id.* at 193-94, 360 S.E.2d at 461.

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adequate resources to be Jason's and Johnny's guardian. However, we affirm the trial court's grant of guardianship to Donna.

When a trial court appoints a guardian for a juvenile, 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) (2016); *see also* N.C. Gen. Stat. § 7B-906.1(j) (2016). These provisions require the trial court to make two verifications: first, the prospective guardian understands the legal significance of the appointment; and second, the prospective guardian has adequate financial resources to care for the juvenile. *Id.* Respondent does not dispute the fact that the trial court's verification satisfies the first prong. However, she argues that the evidence was not sufficient to satisfy the second prong.

"We have held that the trial court need not make any specific findings in order to make the verification under these statutory provisions[,] . . . [b]ut the record must contain competent evidence of the guardians' financial resources and their awareness of their legal obligations." *In re J.H.*, ___ N.C. App. ___, ___, 780 S.E.2d 228, 240 (2015) (internal citations and quotation marks omitted). To that end, we recently explained:

It is correct that the trial court need not make detailed findings of evidentiary facts or extensive findings regarding the guardian's situation and resources, nor does the law require any specific form of investigation of the

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potential guardian. See N.C. Gen. Stat. §§ 7B-600(c), -906.1(j). 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 P.A., ___ N.C. App. ___, ___, 772 S.E.2d 240, 246 (2015) (citation omitted). “The court may consider any evidence, including hearsay evidence . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.” N.C. Gen. Stat. § 7B-906.1(c) (2016). The evidence may include reports and a home study. *In re J.E., B.E.*, 182 N.C. App. 612, 617, 643 S.E.2d 70, 73 (2007).

i. Amy, the Proposed Guardian for Jason and Johnny

Counsel and the trial court questioned Amy about her financial resources. Amy testified she was financially able to care for Jason and Johnny, she was employed at Premiere Behavioral Services working towards being a counselor, and she believed her income was sufficient to support the boys.

Based on *P.A.* and its progeny, we conclude this evidence is insufficient to support the finding that Amy was financially able to provide for the needs of the juveniles. *In re P.A.*, ___ N.C. App. at ___, 772 S.E.2d at 245-48. Amy’s meager testimony regarding employment, without more detail, and conclusory opinions regarding her own ability to support Jason and Johnny are insufficient to support the

type of independent verification contemplated by *P.A.* *Id.* at ___, 772 S.E.2d at 245-

48. We explained:

[The prospective guardian’s] unsworn affirmative answer to the trial court’s inquiry as to whether she had “the financial and emotional ability to support this child and provide for its needs” alone is not sufficient evidence, as this is [the prospective guardian’s] own opinion of her abilities. No doubt, had the trial court asked respondent the same question, she also would have said “yes,” but her answer alone would not have been sufficient evidence of her actual resources or abilities to care for [the juvenile] either. 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[.]”

Id. at ___, 772 S.E.2d at 248 (third alteration in original) (citing N.C. Gen. Stat. §§ 7B-600(c), 7B-906.1(j)).

Moreover, the fact Amy successfully cared for Jason and Johnny at the time of the hearing is insufficient to support the trial court’s finding. *See In re J.H.*, ___ N.C. App. at ___, 780 S.E.2d at 240 (citation omitted) (holding that a successful ten-month placement with the juvenile’s grandparents was insufficient to support a finding that the grandparents had adequate resources to care for the juvenile).

Accordingly, we vacate the trial court’s determination that legal guardianship of Jason and Johnny should be granted and remand for further proceedings.

ii. Donna, the Proposed Guardian for Helen

Counsel and the trial court also questioned Donna about her financial resources. Donna testified that she was willing to provide for all of Helen's financial needs and that she was employed at the daycare Helen attended, driving a van and sometimes working inside the daycare itself. Additionally, in a home study conducted by DSS, Donna disclosed (1) her income source; (2) amount of monthly "take home" pay; (3) a detailed estimate of her bills, including payments for car, rent, cable, cell phone, and insurance.⁶ We conclude this evidence supports the trial court's determination that Donna possessed adequate resources to care for Helen. Accordingly, we overrule this assignment of error.

D. Visitation Schedule

Next, Respondent argues the trial court erred by failing to establish an appropriate visitation schedule for her. Respondent's contentions are two-fold: first, the trial court failed to comply with N.C. Gen. Stat. § 7B-905.1(c) (2016), and second, the trial court failed to comply with N.C. Gen. Stat. § 7B-905.1(d) (2016). We hold the trial court complied with N.C. Gen. Stat. § 7B-905.1(c). However, we agree the trial court failed to comply with N.C. Gen. Stat. § 7B-905.1(d) in Helen's order.

i. N.C. Gen. Stat. § 7B-905.1(c)

N.C. Gen. Stat. § 7B-905.1 (c) states:

If the juvenile is placed or continued in the custody or guardianship of a relative or other suitable person, any

⁶ In the home study, the bill is listed as "Ins", which we assume stands for insurance.

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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).

Here, the trial court granted Respondent visitation with Jason and Johnny on “the 1st and 3rd Saturday of each month from 2:00 p.m. to 4:00 p.m., supervised by the caretaker. The caretaker shall allow more visits as all parties can mutually agree.” The trial court’s visitation order as to Helen was identical. Thus, the trial court gave Respondent the same hours and days for all three children, notwithstanding the fact they were split between two different caretakers. Respondent argues that this visitation award is not appropriate because she cannot “be in different homes at the same time[.]”

After reviewing the record, we reject Respondent’s argument. Each visitation order complies with N.C. Gen. Stat. § 7B-905.1(c) by specifying the minimum frequency and length of visits and ordering the visits to be supervised. Additionally, as DSS notes, visitations were already being held jointly at Amy’s home, and she was willing to continue them. Therefore, the visitation orders did not require Respondent to “be in different homes at the same time[.]” The trial court’s provisions satisfy the requirements of N.C. Gen. Stat. § 7B-905.1(c) and were appropriate under the circumstances of the case.

ii. N.C. Gen. Stat. § 7B-905.1(d)

N.C. Gen. Stat. § 7B-905.1(d) states, “[i]f the court retains jurisdiction, all parties shall be informed of the right to file a motion for review of any visitation plan entered pursuant to this section.” N.C. Gen. Stat. § 7B-905.1(d).

As discussed *infra*, the trial court did not retain jurisdiction over Jason and Johnny. Thus, the trial court was not required to comply with N.C. Gen. Stat. § 7B-905.1(d).

However, the trial court retained jurisdiction over Helen’s case. In Helen’s order, the trial court failed to inform the parties “of the right to file a motion for review of any visitation plan entered pursuant to [N.C. Gen. Stat. § 7B-905.1.]” N.C. Gen. Stat. § 7B-905.1(d). Accordingly, we vacate the trial court’s visitation order for Helen and remand for an order compliant with N.C. Gen. Stat. § 7B-905.1(d).

E. Waiver of Future Review Hearings

Finally, Respondent argues the trial court erred by waiving further review hearings in Jason and Johnny’s case without making the findings of fact mandated by N.C. Gen. Stat. § 7B-906.1(n) (2016). We agree.

Under N.C. Gen. Stat. § 7B-906.1(n):

the court may waive the holding of hearings required by this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months if the court finds by clear, cogent, and convincing evidence each of the following:

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- (1) The juvenile has resided in the placement for a period of at least one year.
- (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.
- (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.

Id. Failure to make findings of fact satisfying the criteria listed above constitutes reversible error, as does failure to affirmatively state the standard of proof used in making the findings. *In re E.M.*, ___ N.C. App. at ___, 790 S.E.2d at 873 (citations omitted).

Here, the trial court found "further requirements of review . . . are no longer deemed necessary as to juveniles [Jason] and [Johnny] and are no longer a requirement as to this matter." Respondent argues, and DSS concedes, the trial court failed to (1) affirmatively state that this finding was based on clear, cogent, and convincing evidence, and (2) make all requisite findings mandated by N.C. Gen. Stat. § 7B-906.1(n).

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First, the trial court failed to recite the standard of proof used in making its factual findings required under N.C. Gen. Stat. § 7B-906.1(n) in both its order and in open court. Furthermore, based on our review of the record, the trial court made only one of the findings mandated by this section—that the trial court awarded guardianship of the juveniles to their maternal great-aunt, Amy. *See* N.C. Gen. Stat. § 7B-906.1(n)(5). The trial court failed to make any findings with respect to subsections (1) through (4). N.C. Gen. Stat. § 7B-906.1(n). Also, while the trial court found that Jason and Johnny had been in DSS custody since 15 July 2015, the trial court failed to specifically find that they had resided in a placement with Amy for over a year, as required by the statute. N.C. Gen. Stat. § 7B-906.1(n)(1). The trial court’s failure to specify the standard of proof and make necessary findings of fact both constitute reversible error. *See E.M.*, ___ N.C. App. at ___, 790 S.E.2d at 873 (citations omitted). We, therefore, vacate the portion of the order waiving further review hearings.⁷

IV. Conclusion

In conclusion, we hold the trial court erred (1) in failing to state the proper standard for determining Respondent forfeited her constitutionally-protected status; (2) in granting guardianship to Amy without sufficient evidence to support the financial verification; (3) failing to inform the parties of the right to file a motion to

⁷ On remand, if the trial court does not waive future review hearings and retains jurisdiction over Jason and Johnny, we instruct the trial court to comply with N.C. Gen. Stat. § 7B-905.1(d).

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review visitation in Helen's order; and (4) in waiving further review hearings in Jason's and Johnny's case. We vacate those portions of the orders and remand for further proceedings consistent with this opinion. The orders are otherwise affirmed.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).