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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1035

Filed: 6 June 2017

New Hanover County, No. 15 JA 123

IN THE MATTER OF L.C.D.

Appeal by respondent-mother from order entered 28 July 2016 by Judge J.H. Corpening, II in New Hanover County District Court. Heard in the Court of Appeals 3 May 2017.

*Jennifer G. Cooke for petitioner-appellee New Hanover County Department of Social Services.*

*Richard Croutharmel for respondent-appellant mother.*

*T. Richmond McPherson, III for Guardian ad Litem.*

ELMORE, Judge.

Respondent-mother appeals from an order awarding guardianship of her minor child L.C.D. (Lucy)<sup>1</sup> to Lucy's paternal grandparents. Lucy's father did not appeal from the trial court's order and is not a party to this appeal. We affirm.

**I. Background**

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<sup>1</sup> Pursuant to N.C. R. App. P. 3.1(b), the parties have stipulated to this pseudonym for the minor child.

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Lucy was born to respondents in January 2011. At the time of Lucy's birth, the family resided in Pennsylvania. The Montgomery County, Pennsylvania Department of Social Services investigated the family on multiple occasions based on reports of domestic violence, suspected housing instability, and parental drug and alcohol use. No legal action resulted from these investigations.

In April 2015, the family moved from Pennsylvania to Wilmington, North Carolina. On 20 May 2015, the New Hanover County Department of Social Services (DSS) received a report that both respondents had been arrested for obtaining property by false pretenses and providing fictitious information to a law enforcement officer. Respondents each had outstanding arrest warrants in Pennsylvania. As a result, on 21 May 2015 DSS filed a juvenile petition alleging that Lucy was neglected and dependent. DSS obtained nonsecure custody of Lucy and placed her with a foster parent.

The petition was heard on 2 July 2015. Respondents stipulated to findings supporting a conclusion that Lucy was a dependent juvenile. DSS dismissed the allegation of neglect. In its adjudication and disposition order entered 22 July 2015, the trial court ordered that legal custody and placement responsibility of Lucy remain with DSS. Respondent-mother was ordered to complete a comprehensive clinical assessment with substance abuse features and comply with any recommendations, to

submit to random drug screens, and to provide Lucy with an appropriate and stable environment.

After the first permanency planning hearing on 9 May 2016, the trial court entered an order accepting the recommended concurrent plan of reunification with a parent with a secondary plan of guardianship with a relative. The court identified the paternal grandparents as a placement resource because they were licensed foster parents in Pennsylvania and willing to provide Lucy with permanence, if needed. The court found that “it may be possible for [Lucy] to be placed with a parent within the next six months” but “[p]lacement is not in the juvenile’s best interest in that neither parent is in a position to provide appropriate care for her at this time.”

After the second permanency planning hearing on 14 July 2016, the trial court entered an order adopting a permanent plan of guardianship with a relative. The court found in particular that respondent-mother had not been participating in mental health services, she had failed to submit to multiple random drug screenings, and respondents had been arguing in front of Lucy during scheduled visitations—upsetting Lucy to the point of tears. The court awarded legal guardianship of Lucy to her paternal grandparents. Respondent-mother timely appeals.

## **II. Discussion**

### **A. Subject Matter Jurisdiction**

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Respondent-mother first argues that the trial court lacked subject matter jurisdiction under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) at the time DSS filed the initial juvenile petition. We disagree.

“Subject matter jurisdiction, a threshold requirement for a court to hear and adjudicate a controversy brought before it, ‘is conferred upon the courts by either the North Carolina Constitution or by statute.’” *In re M.B.*, 179 N.C. App. 572, 574, 635 S.E.2d 8, 10 (2006) (quoting *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987)). A judgment entered by a court without subject matter jurisdiction is void. *In re T.R.P.*, 360 N.C. 588, 590, 636 S.E.2d 787, 790 (2006).

The Juvenile Code grants our district courts “exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent.” N.C. Gen. Stat. § 7B-200(a) (2015). “However, the jurisdictional requirements of the [UCCJEA] . . . must also be satisfied for a court to have authority to adjudicate petitions filed pursuant to our juvenile code.” *In re E.J.*, 225 N.C. App. 333, 336, 738 S.E.2d 204, 206 (2013) (citing *In re Brode*, 151 N.C. App. 690, 692–94, 566 S.E.2d 858, 860–61 (2002)). Whether the trial court has jurisdiction under the UCCJEA is a question of law reviewed *de novo* on appeal. *See In re K.U.-S.G.*, 208 N.C. App. 128, 131, 702 S.E.2d 103, 105 (2010).

Under the UCCJEA, a district court of this State has jurisdiction to make an initial child custody determination if:

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(1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

N.C. Gen. Stat. § 50A-201(a) (2015). "Home state" is defined as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding." N.C. Gen. Stat. § 50A-102(7) (2015).

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The parties agree that Lucy did not have a home state when the juvenile petition was filed because the family was living in North Carolina at that time but neither she nor her parents had lived in North Carolina for at least six consecutive months. Respondent-mother argues, however, that neither Lucy nor respondents had a “significant connection” with this State when the petition was filed. She contends that, as a result, the trial court did not have jurisdiction over the action.

The requirements of N.C. Gen. Stat. § 50A-201 need not be satisfied if the trial court has “temporary emergency jurisdiction.” *See* N.C. Gen. Stat. §§ 50A-201(a), -204 (2015). A court “has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.” N.C. Gen. Stat. § 50A-204(a) (2015).

In this case, DSS obtained nonsecure custody of Lucy after both of her parents were arrested and she lacked any alternative caregivers. Under these circumstances, the trial court had temporary emergency jurisdiction to enter the nonsecure custody order. *See In re N.T.U.*, 234 N.C. App. 722, 727, 760 S.E.2d 49, 54 (concluding that the trial court had temporary emergency jurisdiction because the child was “abandoned” in that he “was present in the State and—due to his mother’s arrest and subsequent incarceration—left without supervision or any provision for his care”), *disc. review denied*, \_\_\_\_ N.C. \_\_\_\_, 763 S.E.2d 517 (Oct. 9, 2014) (No. 267P14).

After Lucy was placed in DSS custody in July 2015, she continued to live in North Carolina until July 2016 when the trial court awarded guardianship to her paternal grandparents in Pennsylvania. In the interim, no custody proceedings were instituted or custody orders entered in another state. Under the UCCJEA, North Carolina became Lucy's home state after six months, and therefore, the trial court had jurisdiction to enter its order awarding guardianship. *See id.* at 728, 760 S.E.2d at 54–55; *In re E.X.J.*, 191 N.C. App. 34, 43–44, 662 S.E.2d 24, 29–30 (2008), *aff'd per curiam*, 363 N.C. 9, 672 S.E.2d 19 (2009).

#### **B. Cessation of Reunification**

Respondent-mother also argues that, even if the trial court had subject matter jurisdiction, the court erred in ceasing reunification efforts without making the statutorily-required findings. We disagree.

Our “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). Unchallenged findings of fact are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

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At each permanency planning hearing, the trial court must consider and, if relevant, make findings as to “[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. Ann. § 7B-906.1(d)(3) (West 2016).<sup>2</sup> If the court finds that reunification “efforts would be unsuccessful or inconsistent,” it must “consider other permanent plans of care for the juvenile pursuant to G.S. 7B-906.2,” N.C. Gen. Stat. Ann. § 7B-906.1(d)(3), which includes plans of guardianship and custody to a relative, N.C. Gen. Stat. § 7B-906.2(a)(3), (4) (2015). The trial court must adopt concurrent permanent plans for the juvenile until one has been achieved. N.C. Gen. Stat. Ann. § 7B-906.2(a1), (b) (West 2016).<sup>3</sup> Each concurrent plan must include reunification “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.” N.C. Gen. Stat. Ann. § 7B-906.2(b).

Respondent-mother argues that the trial court “effectively ceased reunification efforts” when it adopted a permanent plan of guardianship with Lucy’s paternal grandparents without a concurrent plan of reunification. As such, respondent-mother contends that the trial court was required to find that “reunification efforts

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<sup>2</sup> N.C. Gen. Stat. § 7B-906.1(d)(3) was amended by S.L. 2016-94, § 12C.1(g1) (effective 1 July 2016).

<sup>3</sup> Subsection (a1) was added to N.C. Gen. Stat. § 7B-906.2 by S.L. 2016-94, § 12C.1(h) (effective 1 July 2016).

clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety," which it failed to do in its order.

Respondent-mother is correct that the trial court's order does not include findings that mirror the statutory language. Our Supreme Court has held, however, that the trial court need not quote the precise statutory language so long as the court's written findings "address the statute's concerns." *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013).

In this case, the trial court's order included the following pertinent findings of fact:

7. That the Court heard testimony from [respondent-mother]. . . . [Respondent-mother] denied knowledge of the recommended mental health therapy despite entering a Family Services Agreement requiring the same, participation in two case planning meetings with [DSS] and its inclusion in each court order. Recently, she re-engaged in outpatient therapy . . . . She attended an intake appointment and had an appointment on July 13, 2016, but she had to cancel the appointment because of a court appearance in this matter. She continues to attend scheduled appointments . . . for medication management. She failed to submit to random drug screens as requested by [DSS] on May 9, 2016, May 27, 2016, June 20, 2016, and July 5, 2016. She did participate in a random screen on May 13, 2016 which was positive for Adderall for which [respondent-mother] has a prescription. The levels were appropriate for her prescription.

8. That the Respondent-Parents continue to engage in ongoing domestic discord. The Respondent-Parents are separated; however, they continued to reside together until two weeks ago when [respondent-father] vacated the home.

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The Respondent-Parents have consistently requested that visitation be rescheduled. Within the last month, [Lucy] has reported that the Respondent-Parents are arguing during scheduled visitation causing her to become visibly upset to the point of tears. This has occurred multiple times. She provided detailed descriptions of the arguments to the foster parent and social worker stating that “mommy and daddy are fighting all the time, mommy was missing and daddy asked mommy who she was speaking to on the phone and attempted to grab the phone from mommy’s hand.” [DSS] has addressed this conduct with the Respondent-Parents. [Respondent-mother] denies arguing with [respondent-father] and indicated that [Lucy] misunderstood the situation. [Respondent-father] did admit to participating in a verbal altercations [sic] with [respondent-mother] during unsupervised visitations. He indicated that [Lucy] was in another room at the time and may have overheard. Recently, [respondent-father] relocated from the shared residence . . . confirming the instability and credibility of the domestic discord. It is unknown if the Respondent-Mother can sustain the residence independently.

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11. That the Juvenile’s return to her own home would be contrary to her best interest and welfare.

12. That the Court finds New Hanover County Department of Social Services is making reasonable efforts to implement the permanent plan by: facilitating Child and Family Team Meeting, monitoring the Juvenile’s well-being in placement[;] recommending and assisting Respondent-Parents with needed services; monitoring Respondent-Parent’s [sic] progress in recommended services; requesting random drug screens and identifying relatives as placement resources.

13. That it is not possible for [Lucy] to be placed with a parent within the next six months. Placement is not in the

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Juvenile's best interest in that neither parent is in a position to provide appropriate care for her at this time. Respondent-Parents have acted inconsistently with their parental rights. She should be placed with . . . [the] paternal grandparents. Legal guardianship of [Lucy] should be granted to . . . [the] paternal grandparents.

Respondent-mother contends that various portions of these findings are not supported by evidence, do not “embrace the substance” of the statutes at issue, or both. First, respondent-mother contends that the trial court's finding that she “denied knowledge of the recommended mental health therapy” is not supported by the evidence. However, when asked about her mental health requirement at the permanency planning hearing, respondent-mother stated: “I wasn't aware of that until the last [hearing].” She went on to explain her attempts to seek treatment after she became aware of the requirement, which is reflected in another portion of the challenged finding. Respondent-mother's testimony supports the challenged portion of the trial court's finding.

Respondent-mother next takes issue with the court's finding that she missed four scheduled drug screenings. She argues that the trial court should not have made findings regarding her drug screenings unless it determined that she willfully failed to comply with the screenings. However, respondent-mother cites no authority for her argument that the trial court could not consider her missed drug screenings without evidence of willfulness. This finding was supported by the testimony of the DSS social worker and was made after the court was able to consider respondent-

mother's testimony regarding her explanations for the missed tests. We discern no impropriety in this finding or in its use to support the trial court's decision.

Respondent-mother also challenges the trial court's finding that she and respondent-father exposed Lucy to domestic discord. She contends that the evidence showed, at worst, that respondents argued while Lucy was in an adjacent room and the arguments had a minimal impact upon her. The DSS social worker testified: "Over the last month or so, [Lucy] has brought to my attention on multiple occasions of arguments in the household in front of her between [respondents] to the point that she's become distressed." She also stated that on at least four occasions since late May, Lucy left a visitation visibly upset by these arguments. While respondent-mother attempts to downplay the evidence regarding respondents' fighting and its effect on Lucy, it was ultimately for the trial court, as finder of fact, to draw its own inferences from the evidence. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) ("The trial judge determines the weight to be given the testimony . . . [and] he alone determines which inferences to draw and which to reject." (citation omitted)).

Respondent-mother also contests the trial court's finding that it was unclear whether respondent-mother could maintain the residence independently. Respondent-mother testified that respondent-father moved out of their shared residence two weeks before the hearing. Whether she could maintain the household

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on her own, particularly in light of her changes in employment, was an appropriate consideration of the trial court.

In addition, respondent-mother disputes the trial court's finding that DSS made reasonable efforts to implement a plan of reunification. But in the same finding, the trial court specifically described efforts by DSS to implement a plan of reunification, including facilitating Child and Family Team Meeting, monitoring the juvenile in placement, recommending and assisting respondents with needed services, and monitoring respondents' progress in recommended services.

Finally, respondent-mother challenges the trial court's findings that it was not possible for Lucy to return to her care in the next six months and that respondent-mother acted inconsistently with her parental rights. These findings are supported by the evidence of respondent-mother's failure to complete mental health therapy, her failure to submit to drug tests, and respondents' consistent fighting during visitation with Lucy. In addition, the order shows that the court considered evidence from reports by both DSS and Lucy's guardian *ad litem*. The DSS report noted that Lucy had been in foster care for fourteen months and that during that time respondent-mother had changed jobs several times, that she had recently been placed on probation for a criminal conviction, and that respondents' arguing had escalated in the previous two months—leaving Lucy crying and upset. Similarly, the guardian *ad litem*'s report also noted respondent-mother's frequent changes in employment

and her need to participate in mental health therapy. This evidence, taken together, was sufficient for the court to determine that Lucy would be unable to be return home in the next six months and that respondent-mother had acted inconsistently with her parental rights.

In light of the findings discussed, we conclude that the trial court's order sufficiently addressed the concerns of sections 7B-906.1(d)(3) and 7B-906.2(b). *See In re N.B.*, 240 N.C. App. 353, 362–63, 771 S.E.2d 562, 569 (2015) (concluding that the trial court's findings, which included references to the respondent's refusal both to accept responsibility for her actions and to attend to her substance abuse issues adequately addressed the concerns of N.C. Gen. Stat. § 7B-906.1(d)(3)); *In re H.D.*, 239 N.C. App. 318, 323–24, 768 S.E.2d 860, 864 (2015) (concluding findings that the juveniles would “be unable to go home within six months” due to the respondent-mother's pending criminal charges, refusal to submit to drug screens, failure to attend visits, and failure to complete her case plan were sufficient to support a determination that continued reunification efforts would be futile).

### **III. Conclusion**

At the time DSS filed the initial juvenile petition, the trial court had emergency jurisdiction over Lucy pursuant to N.C. Gen. Stat. § 50A-204(a). After Lucy and her parents had lived in North Carolina for six months without any custody filings in another state, North Carolina became Lucy's home state and the trial court had

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subject matter jurisdiction to enter its order awarding guardianship to the paternal grandparents. Although the court's order does not quote the specific language of sections 7B-906.1(d)(3) or 7B-906.2(b), the findings are nonetheless sufficient in that they address the statutes' concerns. Based on the foregoing, the trial court's order is affirmed.

AFFIRMED.

Judges HUNTER, JR. and ZACHARY concur.

Report per Rule 30(e).