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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1261

Filed: 5 July 2017

Mecklenburg County, No. 14 JA 69

IN THE MATTER OF: P.B.

Appeal by respondent from order entered 15 September 2016 by Judge Donald R. Cureton in Mecklenburg County District Court. Heard in the Court of Appeals 8 June 2017.

*Senior Associate Attorney Keith S. Smith for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.*

*Mercedes O. Chut for respondent-appellant mother.*

*Troutman Sanders LLP, by Gavin B. Parsons, for guardian ad litem.*

DIETZ, Judge.

Respondent appeals from a permanency planning review order in which the trial court granted custody of her son Peter to the maternal grandparents.<sup>1</sup> Among other arguments, Respondent contends that the trial court's order effectively ceased reunification efforts but lacked findings required by statute. As explained below, we

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<sup>1</sup> We use a pseudonym to protect the child's identity.

agree that the trial court's order effectively ceased reunification efforts without written findings that reunification efforts would be unsuccessful or would be inconsistent with the juvenile's health or safety. Accordingly, we vacate the court's order and remand for further proceedings.

### **Facts and Procedural History**

Respondent lost custody of her son Peter after social services reported that she used cocaine while pregnant with Peter and failed to feed Peter or appropriately hold him as a newborn.

On 15 September 2016, the trial court entered an order following a permanency planning hearing. The court determined that, while Respondent had made some progress, Peter's return home within six months was unlikely and not in his best interests. Accordingly, the trial court granted custody of Peter to his maternal grandparents. Respondent timely appealed.

### **Analysis**

Respondent first argues that the trial court erred by implicitly ceasing reunification efforts without making proper findings of fact. We agree.

A permanency planning order that effectively ceases reunification efforts must be treated as one that does so, even if the order does not expressly state that it is ceasing reunification efforts. *See In re J.N.S.*, 207 N.C. App. 670, 680–82, 704 S.E.2d 511, 518–19 (2010).

For example, in *In re N.B.*, 240 N.C. App. 353, 362, 771 S.E.2d 562, 568 (2015), this Court held that an order which: (1) eliminated reunification as a permanent plan; (2) established a permanent plan of guardianship; and (3) transferred custody of the children from DSS to their legal guardians, effectively ceased reunification efforts. Similarly, here, the trial court eliminated reunification as a permanent plan, established a permanent plan of custody, and granted custody of Peter to his maternal grandparents. The court then waived further review hearings in the matter. Under *In re N.B.*, the trial court's order is, in effect, an order ceasing reunification efforts and we must treat it as one.

We thus turn to whether the trial court's order ceasing reunification contained the necessary statutory findings. A trial court may cease reunification efforts following permanency planning hearing, but only if it makes written findings that reunification efforts would be unsuccessful or inconsistent with the juvenile's health or safety:

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*. The court shall order the county department of social services to make efforts toward finalizing the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile.

N.C. Gen. Stat. § 7B-906.2(b) (emphasis added).

This Court recently emphasized that, except where reunification efforts have been foreclosed at the initial disposition hearing pursuant to N.C. Gen. Stat. § 7B-901(c), which is not the case here, “the court may eliminate reunification as a goal of the permanent plan *only* upon a finding made under N.C. Gen. Stat. § 7B-906.2(b).” *In re T.W.*, \_\_ N.C. App. \_\_, \_\_, 796 S.E.2d 792, 795 (2016).

The trial court’s order in this case does not make written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety as required by N.C. Gen. Stat. § 7B-906.2(b). As a result, we must vacate the court’s order and remand for further proceedings. On remand, the trial court is free to decide, in its discretion, whether an additional hearing is necessary, or whether the case may be decided based on the existing record.<sup>2</sup>

VACATED AND REMANDED.

Judges CALABRIA and INMAN concur.

Report per Rule 30(e).

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<sup>2</sup> Because we vacate the trial court’s order, we need not address Respondent’s remaining arguments on appeal, which may be rendered moot by the trial court’s revised order on remand.