

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-256

Filed: 19 September 2017

New Hanover County, Nos. 15 JA 206-07

IN THE MATTER OF: M.D.-W., J.M.

Appeal by respondent from order entered 9 December 2016 by Judge J.H. Corpening, II in New Hanover County District Court. Heard in the Court of Appeals 8 August 2017.

*Dean W. Hollandsworth, for New Hanover County Department of Social Services, petitioner-appellee.*

*Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.*

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

CALABRIA, Judge.

Respondent-mother appeals from a permanency planning order in which the court awarded legal guardianship of her children M.D.-W. (“Mary”), and J.M. (“Jennifer”)<sup>1</sup> to their respective paternal grandmothers, with a concurrent plan of reunification. After careful review, we affirm.

---

<sup>1</sup> To protect the identities of the minor children, these pseudonyms are used.

*Opinion of the Court*

I. Factual and Procedural Background

On 14 August 2015, New Hanover County Department of Social Services (“DSS”) filed a juvenile petition alleging that respondent’s five children, including Mary and Jennifer, were neglected juveniles. In an order filed 22 January 2016, the trial court adjudicated them as neglected in that they do not receive proper care, supervision or discipline or live in an environment injurious to their welfare based upon respondent’s unstable mental health condition, refusal to take medications, and transient housing situation. The court ordered a permanent plan of reunification with a concurrent plan of guardianship.

The trial court held review and permanency planning hearings on 30 March 2016 and 24 August 2016. At the latter hearing, the court changed the permanent plan to guardianship with a relative and a concurrent plan of reunification. The court subsequently held a permanency planning hearing on 22 September 2016 which resulted in the order under review filed on 9 December 2016. In this order, the court released the guardian ad litem and waived further review hearings unless requested by a party. Respondent filed timely notice of appeal.

II. Permanency Planning Order

In her sole argument on appeal, respondent contends that the trial court erred in ceasing reunification efforts without entering the proper findings. We disagree.

A. Standard of Review

*Opinion of the Court*

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

B. Analysis

Respondent contends the court erred by ceasing reunification efforts and awarding guardianship without making findings and conclusions required by N.C. Gen. Stat. §§ 7B-906.2(d) and 7B-906.1. 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.

N.C. Gen. Stat. § 7B-906.2(b) (2015). Thus, the trial court is required 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), or makes statutorily-mandated findings in its permanency planning order. N.C. Gen. Stat. §§ 7B-901(c), 7B-906.2(b). With regard to mandated

*Opinion of the Court*

findings, N.C. Gen. Stat. § 7B-906.2(d) provides that at any permanency planning under subsection (b) above,

[t]he court shall make written findings as to each of the following, which shall demonstrate lack of success:

- (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
- (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
- (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile;
- (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C. Gen. Stat. § 7B-906.2(d). In addition, at each permanency planning hearing, the trial court is to consider seven listed criteria “and make written findings regarding those that are relevant[,]” including “[w]hether efforts to reunite the juvenile with either parent 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).

Respondent argues that the court implicitly ceased reunification efforts when it granted guardianship to the paternal grandmothers, transferred custody to the paternal grandmothers, and waived all future hearings. Consequently, respondent

*Opinion of the Court*

submits, the court was required to make the above findings of fact in its order, which it failed to do.

We do not find respondent's arguments persuasive. The court found in unchallenged finding of fact number twelve, in pertinent part, that "the Department has made reasonable efforts to implement the specific permanent plan of guardianship with a relative with a concurrent plan of reunification[.]" Moreover, in unchallenged finding of fact number four, respondent's counsel indicated that respondent initially opposed guardianship but now agrees with it because it permits her to maintain a relationship with her children and have visitation. Specifically, the order mandated that respondent would have "visitation for a minimum of two hours per month" with Mary and Jennifer, which could be increased at the discretion of their legal guardians. And although the trial court released counsel and the guardian ad litem and waived further review, the order specified that the matter could nonetheless be revisited via "the filing of a motion for review by any party in accordance with the provisions of N.C.G.S. § 7B-600(b)[.]" These mandates are consistent with the trial court's interest in Mary and Jennifer maintaining a relationship with respondent, not with the trial court ceasing reunification.

The trial court has not included anything in the order directing DSS to cease reunification efforts. Pursuant to N.C. Gen. Stat. § 7B-906.2(b), the trial court is

*Opinion of the Court*

only required to make findings concerning cessation of reunification efforts if it completely eliminates reunification as a permanent plan.

We affirm the permanency planning order.

AFFIRMED.

Judge DILLON concurs.

Judge DAVIS concurs in the result only.

Report per Rule 30(e).