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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1030

Filed: 4 June 2019

Ashe County, No. 17-JA-5

IN THE MATTER OF: J.H.B.

Appeal by respondent from order entered 12 July 2018 by Judge Jeanie R. Houston in District Court, Ashe County. Heard in the Court of Appeals 9 May 2019.

*Grier J. Hurley for petitioner-appellee Ashe County Department of Social Services.*

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

*McGuireWoods LLP, by Joshua D. Davey, for guardian ad litem.*

STROUD, Judge.

Respondent, Jenny's mother,<sup>1</sup> appeals from a permanency planning review order in which the trial court awarded guardianship of Jenny to her paternal aunt and uncle. After careful review, we affirm.

On 8 February 2017, the Ashe County Department of Social Services ("DSS") filed a petition alleging that Jenny was a neglected juvenile. DSS stated that it had

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<sup>1</sup> A pseudonym is used to protect the identity of the juvenile.

previously provided in-home services to respondent and Jenny due to respondent's substance abuse issues. DSS closed its case in December 2016 and ceased providing services but received a new child protective services report a few weeks later on 5 January 2017. The new report again alleged substance abuse by respondent. The report also raised concerns about impaired individuals in the home and Jenny being improperly supervised. A social worker, along with law enforcement, went to the home to investigate and found two impaired men in respondent's home who behaved as if they had been using methamphetamine or other illegal substances. They found a third man with Jenny and he admitted to smoking marijuana in the home. Respondent was not found in the home. Approximately thirty minutes later respondent arrived home; she appeared impaired. Respondent admitted to using methamphetamine two days prior. A search of the home revealed needles, marijuana, and other drug paraphernalia within Jenny's reach. Respondent voluntarily submitted to a drug test at Ashe Memorial Hospital and tested positive for methamphetamines, amphetamines, and marijuana. Respondent agreed that Jenny should stay with her maternal grandmother while DSS completed its investigation.

On 19 September 2017, the trial court adjudicated Jenny a neglected juvenile based on stipulations made by the parties. The trial court granted DSS non-secure custody of Jenny and placed her with her paternal aunt and uncle. The court further

ordered that respondent comply with her Family Services Case Plan as developed by DSS and comply with any recommended treatment.

An initial review hearing was held on 13 October 2017, at which time the trial court adopted a primary permanent plan of reunification and a secondary permanent plan of custody with an approved caregiver. The trial court held a permanency planning review hearing on 25 May 2018 and 8 June 2018. The trial court found that respondent had entered substance abuse treatment at Black Mountain Treatment Center, and after her release, at her 15 March 2018 assessment, she tested positive for marijuana and admitted to alcohol abuse. The trial court also noted that respondent could not be found for a drug screen on 9 April 2018, had an invalid screen on 16 April 2018, and had a drug screen requested for 7 May 2018 but did not attend. The trial court also found that respondent had a court date in Avery County on 14 June 2018 for felony possession of methamphetamine. The trial court additionally noted that respondent had missed a visit with Jenny and her pre-school graduation ceremony, though transportation had been offered; Jenny was upset by respondent's absence. There were also discrepancies regarding where respondent was living. On 12 July 2018, the trial court entered its order awarding guardianship to Jenny's aunt and uncle. Respondent appeals the 12 July 2018 order.

Respondent's sole argument on appeal is that the trial court ceased reunification efforts without making proper findings of fact. We disagree.

This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition. An abuse of discretion occurs when a trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision.

*In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007) (citations and quotation marks omitted). "Findings supported by competent evidence, as well as any uncontested findings, are binding on appeal. The trial court's conclusions of law are reviewed *de novo*." *Matter of D.A.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 822 S.E.2d 664, 667 (2018).

Here, the trial court awarded guardianship of Jenny to her aunt and uncle, and in doing so effectively removed reunification as a plan for Jenny. *See generally In re N.B.*, 240 N.C. App. 353, 362, 771 S.E.2d 562, 568 (2015) ("We agree with Mother that the order effectively ceases reunification efforts by (1) eliminating reunification as a goal of Noah and Lindsay's permanent plan, (2) establishing a permanent plan of guardianship with Mr. and Ms. Smith, and (3) transferring custody of the children from YFS to their legal guardians."). But under North Carolina General Statute § 7B-906.2(b), "[r]eunification shall remain a primary or secondary [permanent] plan unless the court . . . 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) (2017).

The trial court found that returning Jenny to respondent's home was "contrary to [her] health and safety, contrary to her welfare and is not in her best interest." Respondent contends this finding is insufficient to meet the requirements of North Carolina General Statute § 7B-906.2(b) because "such a finding is not the same as finding reunification would be unsuccessful." We disagree. North Carolina General Statute § 7B-906.2(b) is stated in the disjunctive, and requires the trial court to find that "reunification efforts clearly would be unsuccessful *or* would be inconsistent with the juvenile's health or safety." *Id.* (emphasis added). Thus, we conclude that the trial court's finding was sufficient.

Next, where a trial court eliminates reunification as a permanent plan pursuant to North Carolina General Statute § 7B-906.2(b),

the 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) (2017).

The written findings in a trial court's order do not need to adhere verbatim to the statutory language but

the order must make clear that the trial court considered the evidence in light of whether reunification would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time. The trial court's written findings must address the statute's concerns, but need not quote its exact language.

*In re L.M.T.*, 367 N.C. 165, 167-68, 752 S.E.2d 453, 455 (2013) (quotation marks omitted).

Here, the trial court found:

16. . . . [respondent] is not consistently participating and cooperating with the plan and is not making adequate progress within a reasonable period of time. The mother generally has made herself available to the court but is not here on June 8, 2018 and has not consistently made herself available to the department or the child's GAL since her release from Black Mountain.

. . . .

34. The Court finds . . . the mother . . . [is not] fit to provide proper and safe care for [Jenny].

35. The Court finds the mother has chosen to not consistently seek outpatient treatment for her substance abuse, to not keep regular contact with the social worker, to not come to court today, to not visit [Jenny] since May 25, 2018 nor attend [Jenny's] pre-school graduation. The Court finds the mother has acted inconsistently with her constitutional rights as a parent.

. . . .

41. . . . [respondent] has not maintained her sobriety for a significant length of time.

Respondent has not challenged these findings of fact, and they are binding on appeal.

*In re D.A.*, \_\_\_ N.C. App. at \_\_\_, 822 S.E.2d at 667.

The trial court's findings establish that respondent was not consistently participating and cooperating with her case plan and not making herself consistently available to the trial court, DSS, or Jenny's guardian ad litem. The trial court's findings further demonstrate that respondent was not making adequate progress within a reasonable period of time under the plan, could not provide care for Jenny, and that reunification was not in Jenny's best interest. Although the trial court's findings are not always specifically couched in the language of the statute, the findings of fact are sufficient to embrace the substance of the North Carolina General Statute § 7B-906.2(d). Therefore, we conclude the trial court's findings of fact support its decision to eliminate reunification as a permanent plan. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges ZACHARY and INMAN concur.

Report per Rule 30(e).