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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-987

Filed: 7 July 2020

Johnston County, No. 17 JA 23

IN THE MATTER OF: J.R.

Appeal by Respondent-Mother from Order entered 24 May 2019 by Judge Paul A. Holcombe, III in Johnston County District Court. Heard in the Court of Appeals 9 June 2020.

*Mobley Law Office, P.A., by Marie H. Mobley, for guardian ad litem.*

*Peter Wood for respondent-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Respondent-Mother (Respondent)<sup>1</sup> appeals from a “Juvenile Permanency Planning (Subsequent) Order” (Order) ceasing reunification efforts with Respondent

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<sup>1</sup> The father (Father) is not a party to this appeal. Thus, all references to Respondent are to Respondent-Mother.

and granting guardianship of Respondent's minor child Janet<sup>2</sup> to Respondent's aunt Cassie.<sup>3</sup> The Record before us tends to show the following:

Respondent and Father are the parents of Janet, who was born on 11 November 2016. At the time of Janet's birth, Respondent had four other children from a previous relationship who were all placed outside the home due to prior child protective services involvement. Because of Respondent's and Father's history with Johnston County Department of Social Services (DSS) in its child protective services capacity, Janet was voluntarily placed in kinship care with Cassie on or about 17 November 2016, and she has remained in Cassie's care throughout the case. Cassie also had two other nonbiological children, who are cousins of Janet, in her home.

On 21 February 2017, DSS filed a juvenile petition alleging Janet was neglected and dependent. The trial court held an adjudication hearing on 17 May 2017, at which both Respondent and Father consented to an adjudication for Janet as neglected and dependent. The same day, the trial court held a dispositional hearing, concluding Cassie was "willing and able to provide proper care and supervision [for Janet] in a safe home[.]" placing Janet with Cassie, and directing DSS to continue reasonable efforts towards reunification. The trial court entered its written adjudication and disposition orders on 2 August 2017.

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<sup>2</sup> A pseudonym chosen by the parties to protect the identity of the juvenile.

<sup>3</sup> We elect to use a pseudonym for the Respondent's aunt who was granted guardianship of Janet in this case both to provide additional protection of identities and for ease of reading.

On 23 August 2017, the trial court conducted its initial permanency planning hearing. In its order from this hearing, entered on 25 October 2017, the trial court found it was not possible to return Janet to Respondent's home because, *inter alia*, Respondent did not have stable housing or the financial ability to support Janet and had not been regularly utilizing her visitation. The trial court further found Cassie had been "ensuring that [Janet's] needs are being appropriately addressed in a safe, stable and nurturing environment" and that all parties consented to continuing Janet's placement with Cassie. Accordingly, the trial court ordered Janet remain in the placement with Cassie and established a primary permanent plan of reunification with a secondary plan of custody/guardianship with a relative.

After a subsequent permanency planning hearing on 11 October 2017, the trial court entered a second permanency planning order relieving DSS of further efforts towards reunification and changing the primary permanent plan to custody/guardianship with a relative and the secondary permanent plan to custody/guardianship with a court-approved caretaker. Because all parties continued to consent to Janet's ongoing placement with Cassie, the trial court ordered Janet remain in that placement. The trial court held two additional permanency planning hearings on 7 March and 8 August 2018, and at both hearings, the trial court ordered Janet's permanent plans and placement with Cassie remained the same. On 5 September 2018, the trial court held another permanency planning hearing.

Following this hearing, the trial court kept the primary permanent plan of guardianship but changed the secondary permanent plan to reunification with Respondent. Placement of Janet continued to remain with Cassie.

On 10 April 2019, the trial court held the permanency planning hearing giving rise to the current appeal. At this hearing, the trial court heard testimony from Cassie regarding the adequacy of her resources to care for Janet as her guardian. Specifically, Cassie testified as follows concerning her monthly expenses and income:

Q. Ms. [Cassie], where you're staying, do you rent or do you own?

A. I rent. It's my dad's.

Q. Okay. How much is your rent?

A. It's three, 375.

Q. And how much do you bring home after taxes from --

A. After taxes, two -- about two something.

Q. Okay. And what other bills do you have?

A. I have a light bill.

Q. And how much is that usually per month?

A. About two something. I have a insurance bill, \$63.00. My phone bill is \$35.00 a month.

. . . .

A. My internet is, like, \$55.00, but I have internet because I have -- I do -- I'm a shipping clerk from home.

*Opinion of the Court*

Q. Uh-huh.

A. So I do -- I ship out supplies from home.

Q. Okay. So literally after you've paid all your bills, how much money do you have left over each month?

A. Over each month? Maybe five, six, maybe ten.

The trial court also received into evidence a Guardianship Verification Form completed by Cassie, in which Cassie swore she had “the financial means to support and provide care for [Janet], as evidenced by the following” monthly income and expenses:

Salary per month (gross and net)	2000.00
Other income and amount	272.00/400.00
Rent/Mortgage	375.00
Monthly Utility bills (combined)	175.00
Insurance (medical and/or vehicle)	—
Car payment	350.00
Groceries	35.00
Phone	55.00
Any other monthly bills	63.00

In addition, the trial court accepted a DSS Report into evidence, stating Janet is “doing well and thriving in the home of [Cassie]” and recommending Janet remain in the custody of Cassie. The DSS Report also recounted a March 2019 incident where Cassie needed financial assistance for paying her light bill, explaining:

[Cassie] appeared at [DSS] on March 19, 2019, requesting assistance with paying her light bill. Social worker supervisor Courie discussed [Cassie's] budget with her and her ability to meet [Janet's] financial needs. She reported that she works for JCI and makes about \$2000.00 per month. She states she has the

ability to meet their needs; however, her car required work and she needed assistance. She said that she also spends more on the children than she should, stating that if they asked for something, she usually bought it because she didn't want them to feel "different."

Cassie was questioned about this incident at the hearing, and she admitted she overspent on this occasion for a birthday party for one of the other children under her care. In addition, when asked at the hearing whether there were any concerns about Cassie providing care for Janet, a social worker from DSS testified:

[Cassie] sometimes struggles financially. She works. I think she makes enough money to support the children. I think that she has a very soft heart and can't say no to the children and spends money sometimes where she shouldn't, so she has asked for assistance in the past, but she has always met their needs[.]

In its Order from this hearing, entered 24 May 2019, the trial court continued the primary permanent plan for Janet as custody/guardianship with a relative and changed the secondary permanent plan to custody/guardianship. After finding Cassie understood the legal significance of being appointed guardian and had adequate resources to care for Janet, the trial court awarded guardianship of Janet to Cassie and relieved DSS of reasonable efforts towards reunification with Respondent. On 19 June 2019, Respondent filed timely Notice of Appeal from the Order awarding guardianship of Janet to Cassie.

**Issue**

The sole issue on appeal is whether the trial court’s finding verifying Cassie’s resources were adequate to provide appropriate care for Janet as her guardian was supported by competent evidence in the Record.

**Analysis**

“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 N.B.*, 240 N.C. App. 353, 358, 771 S.E.2d 562, 566 (2015) (citation and quotation marks omitted); *see also In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004) (“Where the trial court’s findings are supported by competent evidence, they are binding on appeal, *even if there is evidence which would support a finding to the contrary.*” (emphasis added) (citation omitted)), *superseded on other grounds by statute*, 2013 N.C. Sess. Law 129, § 25 (N.C. 2013), *as recognized in In re L.S.*, 250 N.C. App. 508, 793 S.E.2d 285 (15 Nov. 2016) (unpublished). We review the trial court’s conclusions of law de novo. *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (citation omitted).

“Before a trial court may appoint a guardian of the person for a juvenile in a Chapter 7B case, the 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.’ ” *In re N.H.*, 255 N.C. App.

501, 503, 804 S.E.2d 841, 843 (2017) (quoting N.C. Gen. Stat. § 7B-600(c) (2015)); *see also* N.C. Gen. Stat. § 7B-906.1(j) (2019) (requiring an identical verification when appointing a guardian of a person for a juvenile as part of the juvenile’s permanent plan). “The trial court need not make detailed findings of evidentiary facts or extensive findings regarding the guardian’s situation and resources, but 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 N.H.*, 255 N.C. App. at 503, 804 S.E.2d at 843 (alterations, citation, and quotation marks omitted); *see also In re J.H.*, 244 N.C. App. 255, 270-71, 780 S.E.2d 228, 240 (2015) (explaining in order to satisfy the verification requirement of N.C. Gen. Stat. § 7B-906.1(j), “the record must contain competent evidence of the guardians’ financial resources and their awareness of their legal obligations” (citations 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); *see also In re J.E., B.E.*, 182 N.C. App. 612, 617, 643 S.E.2d 70, 73 (2007) (holding such evidence may consist of reports and home studies conducted by the guardian *ad litem* or DSS).

Respondent does not dispute that Cassie understood her responsibilities as guardian. Rather, Respondent challenges the trial court’s Findings of Fact 6 and 8



regarding the adequacy of Cassie's resources to care for Janet as her guardian, which

Findings provide in part:

6. [x] The court determines that as the [Janet] cannot be returned home immediately or within six months, custody or guardianship with a relative or nonrelative caregiver should be explored as a permanent plan or as an appropriate concurrent plan.

....

[x] A relative of the juvenile, [Cassie], is willing and able to provide proper care and supervision in a safe home, and placement of the juvenile with this relative . . . would . . . be in the juvenile's best interest for the following reasons: [Cassie] has provided care for the juvenile since her release from the hospital. The Court heard from [Cassie] and finds that she understand[s] her role and responsibility as a guardian of the person. [Cassie] executed a guardianship verification form, which was submitted to the Court and accepted into evidence, and is referenced herein. The Court finds that [Cassie] is financially able to provide ongoing care for the juvenile and as such she fulfills the requirements for guardianship and should be appointed accordingly.

....

8. [x] The court determines that [Janet] should remain in the current placement because: [Cassie] is ensuring that [Janet's] needs are being appropriately addressed in a safe, stable and nurturing environment. [Cassie] has arranged for appropriate services to address the juvenile's medical and developmental needs[.]

Respondent argues the trial court erred in failing to properly verify that Cassie's resources were adequate to provide Janet appropriate care as her guardian. Specifically, Respondent contends Cassie "did not provide clear evidence of her

finances to the court[.]” that “the financial numbers provided by [Cassie] just did not add up[.]” and that the “trial court made zero effort to verify if [Cassie] had the financial resources to care for Janet.” We disagree and believe *In re N.H.* controls our analysis.

In *In re N.H.*, our Court upheld the appointment of a guardian where “the only evidence in the record to support [the guardian] having adequate resources to provide appropriate care for [the juvenile]” was the guardian’s testimony. 255 N.C. App. at 507, 804 S.E.2d at 845. The guardian testified she was employed as a school bus driver but had no income when she was not driving a school bus during the summer. *Id.* at 505-06, 804 S.E.2d at 844-45. Although she never testified as to her monthly income, the guardian did testify she had sufficient means to provide adequate care for the juvenile. *Id.* Our Court held: “although [the guardian’s] testimony was lacking in specificity, her sworn statement that she was willing to care for [the juvenile] and possessed the financial resources to do so constituted competent evidence, which in turn supported the trial court’s finding that she ‘has adequate resources to care appropriately for the minor child[.]’ ” *Id.* at 507, 804 S.E.2d at 845 (alteration in original).

Here, at the trial court’s request, Cassie completed the Guardianship Verification Form—which was received into evidence—provided a detailed list of her monthly income and expenses, and swore she had “the financial means to support

and provide care for [Janet.]” Cassie also testified at the hearing regarding her monthly income and expenses, which were substantially similar to the monthly income and expenses listed in the Guardianship Verification Form, and no party attempted to contradict or impeach Cassie’s testimony on this point. Further, the trial court received a DSS Report into evidence, stating Janet is “doing well and thriving in the home of [Cassie]” and recommending Janet remain in the custody of Cassie. In addition, a social worker from DSS testified although Cassie “has asked for assistance in the past, . . . she has always met [the children’s] needs[.]” Under *In re N.H.*, this evidence constitutes competent evidence to support Findings of Fact 6 and 8. *See id.*

Respondent, however, asserts Cassie’s testimony is simply not credible because “the financial numbers provided by [Cassie] just did not add up” and because evidence—in the form of a DSS Report and testimony from a DSS social worker—existed showing Cassie had to ask DSS for assistance in the past for paying a light bill. As in *In re N.H.*, this testimony and the DSS Report “would constitute evidence that [Cassie] lacked the resources to care for [Janet]. However, our role on appeal is not to weigh and compare the evidence; our standard of review merely asks if there was competent evidence, even hearsay evidence, at trial to support the trial court’s findings.” *Id.* As discussed *supra*, competent evidence was presented to the trial court supporting its Findings 6 and 8. Accordingly, we will not “weigh and compare

the evidence[.]” *Id.*; *see also In re J.S.*, 165 N.C. App. at 511, 598 S.E.2d at 660 (“Where the trial court’s findings are supported by competent evidence, they are binding on appeal, *even if there is evidence which would support a finding to the contrary.*” (emphasis added) (citation omitted)). In turn, Findings of Fact 6 and 8 support the trial court’s ultimate decision appointing Cassie as guardian of Janet. *See In re N.H.*, 255 N.C. App. at 507, 804 S.E.2d at 845.

**Conclusion**

Accordingly, for the foregoing reasons, we affirm the trial court’s Order.

AFFIRMED.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).