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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-1

Filed: 1 December 2020

Yadkin County, No. 18 JA 27

IN THE MATTER OF: I.S.M.

Appeal by respondent from order entered 6 August 2019 by Judge Marion Boone in Yadkin County District Court. Heard in the Court of Appeals 3 November 2020.

*Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky Brammer, for appellant-respondent-mother.*

*James N. Freeman Jr., for petitioner-appellee Yadkin County Human Services Agency.*

ARROWOOD, Judge.

Kristian McDaniel (“respondent-mother”) appeals from a permanency planning order filed 6 August 2019 ceasing reunification efforts with her daughter, I.S.M. (“Irene”)<sup>1</sup>. Appellant contends that the evidence and findings were insufficient to cease reunification, and that the Yadkin County Human Services Agency (“YCHSA”) should still be working towards reunification. For the following reasons,

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<sup>1</sup> Pseudonyms are used throughout the opinion to protect the identity of the juveniles and for ease of reading.

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we hold that the evidence and findings were sufficient, and affirm the trial court's permanency planning order.

I. Background

Irene was born on 17 October 2017. On 19 October 2017, YCHSA received a Child Protective Services report alleging that Irene was neglected, and that urine tests for both Irene and respondent-mother were positive for marijuana. Respondent-mother tested positive for opiates and benzodiazepines in addition to marijuana. YCHSA initiated in-home child protective services on 10 January 2018. Respondent-mother was arrested and charged with possession of marijuana up to one-half ounce and possession of marijuana paraphernalia on 23 February 2018. Respondent-mother tested positive for marijuana, morphine, and buprenorphine on 26 February 2018, and tested positive for marijuana and cocaine on 1 March 2018.

YCHSA filed a petition alleging that Irene was neglected on 29 March 2018, and Irene was adjudicated neglected on 5 April 2018. The trial court transferred custody of Irene to YCHSA, and ordered a primary plan of reunification with a concurrent plan of guardianship. The trial court also ordered a visitation plan for a minimum of one hour of supervised visitation on a bi-weekly basis and required respondent-mother to participate in a substance abuse treatment program and submit to all drug screens requested by YCHSA. Irene was placed in foster care.

The trial court held a 90-day review hearing on 5 July 2018. The trial court found that respondent-mother had scheduled appointments to complete a

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psychological assessment, had completed a substance abuse assessment and was undergoing substance abuse treatment, had completed a parenting education program, and had no positive drug screens, but that respondent-mother reported that she continued to use marijuana. The trial court also found that the identity of Irene's father was unknown. The trial court continued custody with YCHSA and ordered YCHSA to continue to provide efforts toward the permanent plan of reunification. The trial court increased the visitation plan to a minimum of one hour per week, with YCHSA having the discretion to increase the time and/or frequency of visitation.

The trial court held another permanency planning review hearing on 13 December 2018. The trial court found that respondent-mother had completed a psychological assessment, was continuing substance abuse treatment, had an unspecified number of positive drug screens since the 5 July 2018 hearing, had demonstrated appropriate parenting skills during visitation, and currently had housing with her boyfriend that had not been inspected by YCHSA. The trial court also found that respondent-mother had made adequate progress within a reasonable period of time under the plan, that she was actively participating and cooperating with the plan, and was not acting in a manner that was inconsistent with the health or safety of Irene. The trial court again continued custody with YCHSA, increased weekly visitation to a minimum of three hours per visit, and allowed YCHSA the discretion to allow respondent-mother to have unsupervised visitation contingent upon respondent-mother providing clean drug screens before participating in

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unsupervised visitation. The trial court also ordered YCHSA to work with respondent-mother's boyfriend to develop an out-of-home family services agreement.

At the next permanency planning hearing on 27 June 2019, the trial court heard testimony from respondent-mother's social worker Jade Burkeen ("Ms. Burkeen"). Ms. Burkeen testified that she had visited the home where respondent-mother resided with her boyfriend and that the home was appropriate for Irene, and that during visitation "our technician has nothing but praise for [respondent-mother]." Ms. Burkeen also noted that respondent-mother's boyfriend consistently attended visitation and had formed a strong bond with Irene, and that although he was willing to agree to a case plan, he could not afford to pay for the required psychological assessment.

Ms. Burkeen further testified that respondent-mother had not followed through with recommendations to work with a therapist, and explained that respondent-mother was unhappy with her previous mental health provider but had an appointment scheduled to meet with a therapist "to get some extra resources, a push, if you will, as far as the substance use goes," as well as an appointment scheduled with her primary care doctor to discuss alternative treatments for anxiety. Regarding respondent-mother's substance use, Ms. Burkeen testified that respondent-mother was unable to complete a drug test scheduled for 6 June 2019 because she did not have the required identification, but that respondent-mother was fairly open in conversations about her use of marijuana, which she was "trying" to

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cease but that it was “a habit” that lessens her anxiety. Due to respondent-mother’s failure to pass her previous drug screens, she had been unable to participate in any unsupervised visitation at the time of the hearing.

Ms. Burkeen recommended that the permanent plan of reunification and concurrent plan of adoption remain in place to give respondent-mother time to meet the recommendations of her family services agreement. This recommendation was based in part in the interest of fairness, as Ms. Burkeen was the third social worker assigned to the case. The Guardian *ad Litem* (“GAL”) recommended that the plan should be changed to a primary permanency plan of adoption and a secondary plan of guardianship. The GAL court report provided the following rationale for this recommendation:

- YCHSA has tried to work with Mom in CPS since [Irene]’s birth and in foster care for 15 months.
- Mom has made no progress in changing the primary issues that brought [Irene] into care.
- Other than a few hours a week, [Irene]’s foster family is her de facto mother and father. She has known no other and is very bonded to them. They are willing to adopt her.
- It is in this child’s best interest to have a safe and healthy, loving permanent home.

During the closing argument for respondent-mother, the trial court asked respondent-mother’s trial counsel “[s]ay, that we continue it another 60 days when this child has already been in foster care for 75-ish percent of its life. Why in two months is it going to be different than it was two months ago?”

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The trial court ordered that the permanency plan be changed to a primary plan of adoption and a secondary plan of guardianship. In assessing respondent-mother's progress on her family services agreement, the trial court found the following: (1) respondent-mother had completed a psychological assessment but was not currently participating in treatment; (2) she was participating in substance abuse treatment; (3) she had tested positive for marijuana on 11 April 2019, and did not participate in a 6 June 2019 random drug test because she did not have her identification, and admitted to ongoing marijuana use; (4) she had completed a parenting education program, demonstrated appropriate parenting skills during visitation, and her boyfriend was participating in a parenting education program; (5) she has resided at the same residence since September 2018, and a YCHSA inspection in March 2019 found the residence to be safe and appropriate for the minor child; and (6) she had a valid driver's license and access to transportation.

Pursuant to N.C. Gen. Stat. § 7B-906.2, the trial court made the following findings:

- m. [Respondent-mother] has not made adequate progress within a reasonable period of time under the plan. [Respondent-mother] has an extensive history of substance abuse and, although she has been participating in substance abuse treatment in one form or another for multiple years, she has demonstrated no progress in dealing with her substance abuse issues. [Irene] has been in foster care for approximately 75% of her lifetime and is deserving of permanency in a safe,

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loving, and appropriate home within a reasonable period of time.

- n. [Respondent-mother] is not actively participating in and cooperating with the plan, the YCHSA, and the child's GAL.
- o. [Respondent-mother] has remained available to the Court, the YCHSA, and the GAL.
- p. [Respondent-mother] is acting in a manner that is inconsistent with the health or safety of the juvenile in that she continues to use marijuana despite knowing that she will be unable to enjoy expanded visitation with [Irene], or be reunified with [Irene], unless and until she demonstrates that she has ceased using illicit substances.

Accordingly, the trial court found that "[e]fforts to reunite the juvenile with either parent would clearly be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time."

In its order, the trial court made no changes to the previously ordered visitation plan. The trial court also ordered that YCHSA initiate an action to terminate respondent-mother's parental rights within 60 days from the filing date of the order. The permanency planning order was filed on 6 August 2019 and served on respondent-mother on 13 August 2019.

On 30 August 2019, respondent-mother filed a notice to preserve the right of appeal. Respondent-mother appealed the permanency planning order on 11 October 2019.

II. Discussion

Respondent-mother contends that the trial court erred in ceasing reunification efforts because the evidence and findings were insufficient. We disagree.

“Our review of [a] cease reunification order . . . ‘is limited to whether there is competent evidence in the record to support the findings [of fact] and whether the findings support the conclusions of law.’” *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013) (second alteration in original) (quoting *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010)). “The trial court’s findings of fact are conclusive on appeal if supported by any competent evidence.” *Id.* (citing *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003)). We review an order ceasing reunification to determine “whether the trial court abused its discretion with respect to disposition.” *Matter of J.H.*, 373 N.C. 264, 267, 837 S.E.2d 847, 850 (2020) (citations omitted). “At the disposition stage, the trial court solely considers the best interests of the child[,]” and findings of fact “by the trial court are binding absent a showing of an abuse of discretion.” *Id.* at 268, 837 S.E.2d at 850 (citations omitted). “An abuse of discretion occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *In re N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007), (quoting *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002)), *aff’d*, 362 N.C. 229, 657 S.E.2d 355 (2008).

“Reunification shall be a primary or secondary plan unless . . . the court makes written findings that reunification efforts clearly would be unsuccessful or would be



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inconsistent with the juvenile’s health or safety.” N.C. Gen. Stat. § 7B-906.2(b) (2019). The trial court must also make findings “which shall demonstrate the degree of success or failure toward reunification,” including:

- (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). Our Supreme Court has stated in the context of orders ceasing reunification efforts that “[t]he 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. at 168, 752 S.E.2d at 455.

In the present case, the trial court addressed each of the factors specified in N.C. Gen. Stat § 7B-906.2(d). The trial court found that respondent-mother had completed a psychological assessment, was participating in substance abuse treatment, had completed a parenting education program and demonstrated appropriate parenting skills during visitation, and resided in a safe and appropriate home. On the other hand, the trial court found that respondent-mother was not

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currently participating in any mental health treatment, had tested positive for marijuana on 11 April 2019 and did not complete a random drug test on 6 June 2019, and had been unable to engage in unsupervised visitation due to an inability to provide YCHSA with a clean drug screen.

Based on these findings, the trial court concluded that respondent-mother had not been making adequate progress satisfying the requirements of her case plan, was not actively participating in and cooperating with the plan, remained available to the court and YCHSA, and was acting in a manner inconsistent with the health or safety of Irene. These findings were supported by competent evidence presented at the hearing, including Ms. Burkeen's testimony that respondent-mother continued to use marijuana, failed to comply with recommendations to participate in mental health treatment, and had been unable to engage in any unsupervised visitation.

Although respondent-mother had made some progress with her plan dating back to the original permanency planning order, we conclude that there was ample evidentiary support for the trial court's finding that respondent-mother had not made adequate progress within a reasonable period of time under the plan. Moreover, we conclude that given the trial court's findings regarding respondent-mother's degree of progress and the underlying evidence, the trial court did not abuse its discretion in determining that ceasing reunification was in the best interest of the child.

III. Conclusion

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For the foregoing reasons, we hold that there was sufficient evidence to support the trial court's findings of fact and conclusions of law, and that the trial court did not abuse its discretion in determining that ceasing reunification was in the best interest of the child.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).