IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-77

No. COA20-348

Filed 16 March 2021

Beaufort County, No. 18 JA 4

IN THE MATTER OF: S.O.

Appeal from order entered 6 February 2020 by Judge Keith B. Mason in Beaufort County District Court. Heard in the Court of Appeals 23 February 2021.

Miller & Audino, LLP, by Jay Anthony Audino, for petitioner-appellee Beaufort County Department of Social Services.

Steven S. Nelson for respondent-mother.

Benjamin J. Kull for respondent-father.

Raleigh Divorce Law Firm, by Morgan Renee Thomas, Heather Williams Forshey, and Katelyn Bailey Heath, for appellee Guardian ad Litem.

ARROWOOD, Judge.

¶ 1 Talos Owens ("respondent-father") and Tiffany Maria Brown ("respondent-mother") (collectively, "respondents") appeal, via separate petitions, from a permanency planning order entered 6 February 2020 granting permanent guardianship of their juvenile child, S.O. ("Sandra"),[1] to non-parent guardians and

[1] Pseudonyms are used throughout the opinion to protect the identity of the juveniles and for ease of reading.

ceasing further reunification efforts. Although Beaufort County Department of Social Services ("DSS") has custody of three of their children, respondents' appeal pertains only to Sandra. For the reasons discussed herein, we affirm.

I. Procedural Background

¶ 2 Respondents have three children: Sandra, Andrea, and Toni. On 17 January 2018, DSS filed a juvenile petition alleging Sandra to be neglected. The district court granted DSS' request for nonsecure custody on that same day. The court entered orders for continued nonsecure custody on 19 January 2018 and 1 February 2018. Respondents were allowed one hour per week of supervised visitation with Sandra and her two younger sisters.

¶ 3 The district court entered an adjudication order on 31 October 2018 following an adjudicatory hearing on 24 October 2018. Sandra and her siblings were determined to be neglected, and Andrea was determined to be neglected *and* abused. The court ordered that legal and physical custody of all children remain vested in DSS and continued the previously set visitation schedule. The trial court then conducted a disposition hearing on 7 November 2018 resulting in the entry of a disposition order on 8 November 2018. Pursuant to the disposition order, legal and physical custody of all three minor children remained vested in DSS with placement in their current foster care placements. The court ceased reunification efforts and reduced respondents' visitation to one hour every other week with the minor children.

The disposition order also set a date for a permanency planning hearing—5 December 2018. Moreover, the court stated that to "ever allow the children to return to parent's home would be a travesty as this Court would essentially be ensuring their future and continued physical and psychological injury." Following the 5 December 2018 hearing, the district court entered the first permanency planning order, dated 18 December 2018, in which the court set out a permanent plan of adoption with a concurrent plan of reunification with respondents, though the court decreed that "[t]here shall be no reunification efforts." From this point until the hearing discussed immediately below, all three minor children remained in their foster care placements.

¶ 4 The matter appeared for a second permanency planning hearing on 22 January 2020 to determine where Sandra would be permanently placed. The district court thereafter entered a final permanency planning order (the "Order") on 6 February 2020, awarding permanent guardianship of Sandra to non-familial foster parents. The Order stated that "[f]urther reunification efforts in this case are not warranted." As for visitation, the Order allowed respondents supervised visits with Sandra every other month for a minimum of two hours. The district court concluded that respondents had "acted inconsistent with their parental rights . . . [and] are not presently fit to care for [Sandra] without substantial supports." The Order indicated that the court would review the visitation plan during the 8 July 2020 session.

Respondent-father appealed the Order on 3 March 2020, and respondent-mother appealed the same on 4 March 2020.

II. Factual Background

¶ 5 Respondents, individually and jointly, have been evaluated by a number of professionals, including licensed psychological associate, Rhonda Cardinale, M.A. ("Ms. Cardinale"); Raymond E. Webster, Ph.D. ("Dr. Webster"); DSS social workers Shakeria Lomax and Cassandra Hawley ("Ms. Lomax" and "Ms. Hawley," respectively); Dwayne Bryant, M.D. ("Dr. Bryant"); and Hadley Berting, M.S., L.P.C. ("Ms. Berting").

¶ 6 Respondent-mother has a long history of diagnosed depression, self-injurious behavior, and suicidal thoughts. She has been diagnosed on numerous occasions as having major depressive disorder, bipolar disorder, personality disorder, anxiety issues, and self-harming tendencies. When respondents moved to North Carolina in or around March 2017, respondent-mother attended therapy at Dream Provider Care Services. Shortly thereafter, in or around, June 2017, respondent-mother was involuntarily committed to a psychiatric unit for suicidal thoughts. Following her commitment, medical personnel discovered handwritten notes by respondent-mother threatening to harm her minor child, Toni. The medical providers reported the matter to DSS which opened an in-home services case as a precaution. The report received by DSS indicated that respondent-mother had been "banging her head

against things" and that nurses had recovered notes written by respondent-mother that stated "she had been hurting [Toni] by slapping [Toni] and [Toni] had lost her breath and was as she described 'fading.' " In respondent-mother's discharge summary, the medical professional noted that respondent-mother had confided to "trying to kill her self [sic] at least three times. She states she has been a cutter since high school." DSS determined it was necessary to provide in-home services to respondent-mother (and by extension to respondent-father), which ultimately lasted for approximately six months. These services included therapy and assistance from a community support team, ensuring that respondent-mother continued her medications and attended therapy. Nevertheless, between July 2017 and January 2018, respondent-mother missed nine of eighteen scheduled therapy appointments.

¶ 7 On or around 1 July 2017, respondents agreed to a safety plan whereby respondent-father "would supervise all contact with mother and under no circumstance could mother be unsupervised around the children or the children could be removed from the home." The safety plan contained one caveat: respondent-mother may be in the unsupervised company of the minor children for two thirty-minute periods, one in the morning and the other in the afternoon.

¶ 8 On 15 January 2018, respondents violated the safety plan by allowing respondent-mother to have extended unsupervised contact with the minor children.

During this period of unsupervised interaction, respondent-mother attempted to strangle the minor child, Andrea. Shortly thereafter, Andrea reported the strangulation and injury to respondent-father; however, respondent-father declined to seek medical attention for the child and instead chose to conceal the incident. At school the next day, staff observed marks on Andrea's neck and alerted DSS; the agency took custody of all three children the same day. Andrea was subsequently admitted to a nearby hospital where it was determined that her neck injury was consistent with strangulation. Respondent-mother was again involuntarily committed to a medical facility following expressions of suicidal ideations. Later, on 23 August 2018, respondent-mother pled guilty to assault on a child under the age of twelve and to misdemeanor child abuse.

¶ 9 Respondent-mother completed a psychological evaluation on 4 February 2018 with Ms. Cardinale. Respondent-mother admitted to violating the safety plan established in July 2017 by having unsupervised contact with the juveniles. Respondent-mother also indicated that she often writes things in her journal but later cannot recall writing the entries. However, she confirmed that the notes found at the hospital regarding harming her minor child were written in her handwriting.

¶ 10 In March 2018, respondent-father underwent a psychological evaluation with Dr. Webster, who diagnosed respondent-father with persistent depressive disorder (Dysthymia) with anxious distress. Dr. Webster noted that respondent-father

"repeatedly insisted that [respondent-mother] does not have any psychological, behavioral, or emotional characteristics that concern him to the point that he questions her ability to take care of the children." Dr. Webster's summary of findings and diagnostic impressions from the evaluation noted the following: "If the children are returned to [respondents'] care, there is an above average probability that [respondent-father] will overlook, minimize, or rationalize any negative interactions between [respondent-mother] and the children . . . . Serious consideration needs to be given to the kind of visitation arrangement that exists between the children and their parents. Data are compelling to question the appropriateness of unsupervised visits." Dr. Webster also noted that respondent-father is "highly invested in invalidating the medical information, the DSS investigatory process, and teach observations. He is adamant about his refusal to accept the implications of these findings as they relate to the competency and parenting skills of [respondent-mother]." Dr. Webster further expressed concern that respondent-father "appears to be highly emotionally invested in [respondent-mother] to the point that he [is] protective and distorts information about her status." According to Dr. Webster, "[i]t is probable that he will attempt to contaminate the children, should another complaint be made to CPS."

¶ 11 In July 2019, respondents jointly submitted to a parenting competency evaluation by Dr. Webster. Dr. Webster opined that respondents' proposed plan for arranging in-home supervision was not feasible and "logistically complicated." Dr.

Webster also questioned the efficacy of respondent-mother's therapy at Dream Provider Care Services. Dr. Webster concluded that respondent-mother's " 'perceptions do not indicate that she has received any useful information relevant to the circumstances leading to her need for counseling or addressing her long-standing and severe psychological maladjustment and mental health impairments.' " This observation is corroborated by a March 2019 report by a therapeutic provider at Dream Provider Care Services. The report indicated that respondent-mother's psychiatric severity rate was an "[e]xtreme problem" and that respondent-mother was still having mood swings and anxiety problems, though respondent-mother admitted to functioning better after the children were removed from the household. In addition, Dr. Webster opined that the information before him was "compelling to indicate that the probability of 1 or more of the children being subjected to either emotional and/or physical maltreatment is well above average."

¶ 12 Furthermore, during the parenting competency evaluation, respondent-father outlined a proposed safety plan to maximize respondent-mother's accountability with the children and minimize her amount of unsupervised contact. Dr. Webster posited that "[q]uestions exist about the ability of this safety plan to truly protect the children from [respondent-mother]." Moreover, Dr. Webster concluded that respondent-father "does not have a full understanding and appreciation of the magnitude and severity of [respondent-mother's] diagnosed mental health disorders" and opined that there is

evidence to suggest "a below average probability that he will be able to monitor [respondent-mother] to ensure that she is not harming the children emotionally and/or physically."

¶ 13 This appeal is properly before this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001 (2019).

III. Discussion

¶ 14 Respondents raise several issues on appeal. In a nutshell, respondents collectively contend that the trial court erred by granting guardianship of Sandra to foster parents because they had not been sufficiently deemed unfit or to have acted inconsistently with their constitutionally protected statuses. Respondents also argue that the district court erred by failing to notify them of their right to file a motion for review. Respondent-mother individually argues that the trial court lacked subject matter jurisdiction to enter all orders in this case due to a defect in an attachment to the petition filed by DSS on 17 January 2018.[2]

A. Subject Matter Jurisdiction

¶ 15 At the outset, respondent-mother contends that the district court lacked subject matter jurisdiction to enter the Order and all prior mandates because an

[2] Any other assignments of error will be discussed *infra*.

attachment to the juvenile petition filed 17 January 2018 contained a scrivener's error. We disagree.

¶ 16 We review challenges to subject matter jurisdiction *de novo*. *In re K.A.D.*, 187 N.C. App. 502, 503, 653 S.E.2d 427, 428 (2007) (citing *Raleigh Rescue Mission, Inc. v. Bd. of Adjust. of Raleigh*, 153 N.C. App. 737, 740, 571 S.E.2d 588, 590 (2002)).

¶ 17 Pursuant to North Carolina Juvenile Code, trial courts have "exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent." N.C. Gen. Stat. § 7B-200(a) (2019). This jurisdiction extends to guardians, as well. *See* N.C. Gen. Stat. § 7B-200(b). "In any case where the court finds the juvenile to be abused, neglected, or dependent, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile, until terminated by order of the court, or until the juvenile is otherwise emancipated." N.C. Gen. Stat. § 7B-1000(b) (2019). The trial court retains jurisdiction over a juvenile "until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first." N.C. Gen. Stat. § 7B-201(a) (2019).

¶ 18 Section 7B-403(a) of the North Carolina General Statutes, in turn, requires that any petition alleging neglect "shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of

filing." N.C. Gen. Stat. § 7B-403(a) (2019). "Without such a verification, the trial court has no power to act." *In re T.R.P.*, 360 N.C. 588, 598, 636 S.E.2d 787, 795 (2006).

¶ 19 In the case at bar, DSS filed a juvenile petition on 17 January 2018. The petition alleged that Sandra was "neglected" and "does not receive proper care, supervision, or discipline from the juvenile's parent" and "lives in an environment injurious to the juvenile's welfare." The petition was executed by Ms. Hawley, an authorized representative of the director of DSS, and drawn by the DSS director herself—Melanie B. Corprew. The petition was properly verified and notarized. Further, the petition was accompanied with an attachment setting out specific factual allegations regarding the neglect and abuse of the minor children. The attachment was properly verified and notarized, as well. However, respondent-mother challenges language in the attachment verification, which states, in part, "I have read the foregoing *Grounds for abuse and dependency*[.]" Respondent-mother contends that because the word "neglect" was not included in this oath, the entire juvenile petition (and the orders stemming therefrom) are void and null. We disagree.

¶ 20 The attachment verified by Ms. Hawley includes multiple allegations of neglect. For example, Ms. Hawley alleged under oath that the juveniles "are neglected within the meaning of N.C. [Gen. Stat. §] 7B-101 in the children do not receive proper care, supervision or discipline from the juveniles' parents and the children live in an injurious environment." Moreover, as noted above, the petition

was filed based on the alleged neglect of Sandra, which is clearly delineated on the first page of the bona fide petition. The factual statements set out in Ms. Hawley's attachment demonstrate clear and sufficient allegations of neglect; the fact that the word "neglect" was inadvertently omitted from Ms. Hawley's oath to the attachment is a ministerial error and inconsequential. We have held that such clerical mistakes do not deprive the district court of subject matter jurisdiction, and, therefore, do not nullify the underlying juvenile petition and orders entered thereafter. *See*, *e.g.*, *In re D.D.F.*, 187 N.C. App. 388, 397, 654 S.E.2d 1, 6 (2007); *In re Dj.L.*, 184 N.C. App. 76, 82, 646 S.E.2d 134, 139 (2007). Since the petition incorporates by reference an attachment that enumerates specific factual allegations of neglect, respondents were put on notice as to each alleged ground for adjudication. *In re D.C.*, 183 N.C. App. 344, 350, 644 S.E.2d 640, 643 (2007) ("[I]f the specific factual allegations of the petition are sufficient to put the respondent on notice as to each alleged ground for adjudication, the petition will be adequate."). The proper verification of the petition itself deems any clerical error in the attachment's verification immaterial. For these reasons, the district court had (and has) subject matter jurisdiction and authority to enter orders in this case until Sandra reaches the age of eighteen years or is otherwise emancipated, whichever occurs first. N.C. Gen. Stat. § 7B-201(a).

B. Findings of Fact and Conclusions of Law

¶ 21 Respondents collectively contend that the trial court erred by granting guardianship of Sandra to foster parents because they had not been sufficiently deemed unfit or to have acted inconsistently with their constitutionally protected statuses. Respondent-mother individually contends that the trial court erred by failing to make findings of fact regarding her mental health and behavioral status as they existed at the time of the 22 January 2020 hearing.

¶ 22 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." *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (citation omitted). The district court's findings are conclusive on appeal when supported by any competent evidence, "even if the evidence could sustain contrary findings." *Matter of J.L.*, 264 N.C. App. 408, 416, 826 S.E.2d 258, 265 (2019) (citation omitted). We review the trial court's conclusions of law in a permanency planning order *de novo*. *In re T.R.M.*, 208 N.C. App. 160, 162, 702 S.E.2d 108, 110 (2010) (citation omitted).

¶ 23 Our Supreme Court has held that a "natural parent may lose his constitutionally protected right to the control of his children in one of two ways: (1) by a finding of unfitness of the natural parent, or (2) where the natural parent's conduct is inconsistent with his or her constitutionally protected status." *David N. v. Jason N.*, 359 N.C. 303, 307, 608 S.E.2d 751, 753 (2005). Thus, even if a parent is

found to be fit, a court may nevertheless conclude that the parent's conduct is inconsistent with his or her protected status. *Id.* "Findings in support of the conclusion that a parent acted inconsistently with the parent's constitutionally protected status are required to be supported by clear and convincing evidence." *Matter of K.L.*, 254 N.C. App. 269, 283, 802 S.E.2d 588, 597 (2017) (citation omitted). Conclusions of law that a parent has acted inconsistently with his or her parental status will be reviewed *de novo* on appeal. *Matter of D.A.*, 258 N.C. App. 247, 249, 811 S.E.2d 729, 731 (2018).

¶ 24 As for respondent-father, the district court's findings that respondent-father had acted inconsistently with his constitutionally protected status are supported by clear, cogent, and convincing evidence. In addition to the evidence discussed *supra*, the district court found—based on clear, cogent, and convincing evidence—the following:

> b. Respondent Father submitted to a psychological evaluation with Dr. Raymond Webster that determined that Respondent Father was highly invested in invalidating the medical information, DSS investigatory process and his own observations of Respondent Mother's mental health.
>
> c. Due to Respondent Father's desire to protect Respondent Mother, overlook her mental illness, minimize Respondent Mother's harmful behaviors, and rationalize the chaos Respondent Mother causes in the home, Respondent Father lacks the

capacity to protect this juvenile.

d. Respondent Father left these children with Respondent Mother in violation of the safety plan on the day A[ndrea] was strangled. Respondent Father failed to utilize prior safety planning and in-home protective services. Such failure was to the detriment of the children.

e. Respondent Father suffers from persistent depressive disorder (dysthymia).

f. Respondent Father attended one therapy session in March 2018, but then, he stopped attending until recently.

g. Respondent Father does not acknowledge the seriousness of Respondent Mother's mental illness or the safety risks that her illness poses to others that interact with Respondent Mother, including those risks to the children.

h. Due to Respondent Father's outlook, his failure to previously utilize safety planning or in-home protective services, there is no way he can be responsible for ensuring the children are safe.

39. When given an opportunity to develop a safety plan for the juvenile, during their parenting capacity evaluations, the Respondent Parents were unable to develop a logical safety plan. Rather, their plans were convoluted, involved family members out of state, and appears to be unfeasible.

These findings are supported by Dr. Webster's (and many other professionals') evaluations of respondent-father as discussed herein. The trial court made multiple findings of fact, which were clearly set out in the Order, supporting the court's

adjudication of Sandra as neglected. *See* N.C. Gen. Stat. § 7B-101(15) (2019) (defining "[n]eglected juvenile"). The district court found based on clear, cogent, and convincing evidence that respondent-father is incapable of adequately protecting the minor children because he does not fully comprehend or appreciate the severity of respondent-mother's mental illness, which poses a grave threat to the children. Also, the district court recognized that respondent-father's decision to leave respondent-mother alone with the children on 15 January 2018 in direct contravention to the safety plan resulted in Andrea, Sandra's younger sister, being strangled and subsequently found to be abused. This finding supports the district court's findings of neglect vis-à-vis Sandra, which, in turn, supports its finding that respondent-father acted inconsistently with his constitutionally protected rights. *See In re C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007) (citation omitted) ("In determining whether a juvenile is a neglected juvenile, 'it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.' "); *see also Price v. Howard*, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997) ("Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy."). In sum, the district court made numerous findings of fact—all of which were supported by clear, cogent, and convincing evidence—that respondent-father acted

inconsistently with his constitutionally protected status.

¶ 25 Respondent-father reads the Order as concluding that respondents are fit so long as they have "substantial supports." We disagree. The district court concluded that respondents "are not presently fit to care for [Sandra] without substantial supports." We do not interpret this language to mean that respondents are fit should they have "substantial supports." In light of the findings discussed herein, respondents may have been reasonably determined to be unfit even with substantial supports. In any case, however, we need not analyze this issue further as we have concluded that clear, cogent, and convincing evidence supports the trial court's findings that respondents acted inconsistently with their constitutionally protected statuses. *See David*, 359 N.C. at 307, 608 S.E.2d at 753.

¶ 26 As for respondent-mother, the trial court made multiple findings based on clear, cogent, and convincing evidence establishing that respondent-mother acted inconsistently with her constitutionally protected status. In addition to the findings discussed above, the district court found the following:

> 36. Respondent Mother's present circumstances and progress to date are, as follows:
>
> a. Respondent Mother and Respondent Father continue to reside together . . . [and r]ecently, on October 24, 2019, the Respondent Parents were married.
>
> b. Respondent Mother suffers from Bipolar I and

borderline personality disorder.

c. According to Respondent Mother's psychological evaluation, when faced with stressful situations she is prone to become highly agitated and to show poor impulse control. As a result, the children have observed Respondent Mother bang her head against the wall; and, they have seen Respondent Mother cut herself.

d. Due to Respondent Mother no longer having Medicaid, she was no longer able to work with the Community Support Team. Beginning in January 2020, Respondent Mother was able to acquire insurance through the Affordable Care Act; and, she indicates that she will be able to use it to resume CST services.

e. Respondent Mother attends therapy twice a month at Dream Care Provider Services. She scheduled an appointment to begin DBT therapy at Port Human Services, but she was not eligible for the service.

f. Respondent Mother has been prescribed Lamotrigine, a medication for bipolar disorder. In the past, Respondent Mother did not take her medication as prescribed.

g. While Respondent Mother is currently taking her medication, her prior history of noncompliance creates a substantial risk of harm to the child as she may stop her medication at any time. Respondent Mother lacks insight into when her mental health is deteriorating; and, she is unable to handle stressful situations.

h. Respondent Mother has pled guilty to misdemeanor child abuse and assault on A[ndrea],

> a child under 12 years of age. She remains on probation.
>
> i. Respondent Mother's mental health precludes her from being able to care for this juvenile. While Respondent Mother has access to treatment, when she is not receiving treatment her mental illness manifests in threats to the juvenile, harm to the juvenile, and harm to herself. Without consistent and intensive mental health treatment and consistent use of prescribed medications, there is no way for Respondent Mother to eliminate the safety risk she creates to this juvenile. Respondent Mother has been unable to demonstrate a logical safety plan and to show she is willing and able to commit to necessary treatment and medication management.
>
> j. Respondent Mother could have killed A[ndrea] in the assault that she inflicted upon that child; and, such behavior warrants a risk to S[andra].
>
> k. Prior in-home protective services and safety plan did not eliminate the risk of harm to these children. While those services were in place, Respondent Mother strangled A[ndrea].

These findings were supported by clear, cogent, and convincing evidence adduced by Ms. Cardinale, Dr. Webster, Ms. Lomax, Ms. Hawley, Dr. Bryant, and Ms. Berting. Respondent-mother has a proven history of diagnosed depression, self-injurious behavior, and suicidal thoughts. She has been diagnosed on numerous occasions as having major depressive disorder, bipolar disorder, personality disorder, anxiety issues, and self-harming tendencies. In June 2017, as mentioned, respondent-mother

was involuntarily committed to a psychiatric unit for suicidal thoughts. Following her commitment, medical personnel discovered handwritten notes by respondent-mother threatening to harm her minor child, Toni. The report received by DSS indicated that respondent-mother had been "banging her head against things" and that nurses had recovered notes written by respondent-mother that stated "she had been hurting [Toni] by slapping [Toni] and [Toni] had lost her breath and was as she described 'fading.' " In respondent-mother's discharge summary, the medical professional noted that respondent-mother had confided to "trying to kill her self [sic] at least three times. She states she has been a cutter since high school." On or around 1 July 2017, respondents agreed to a safety plan whereby respondent-father "would supervise all contact with mother and under no circumstance could mother be unsupervised around the children or the children could be removed from the home." On 15 January 2018, respondent-mother intentionally violated the safety plan by having extended unsupervised contact with the minor children. During this period of unsupervised interaction, respondent-mother attempted to strangle her minor child, Andrea. Andrea was subsequently admitted to a nearby hospital where it was determined that her neck injury was consistent with strangulation. Respondent-mother was again involuntarily committed to a medical facility following expressions of suicidal ideations. Later, on 23 August 2018, respondent-mother pled guilty to assault on a child under the age of twelve and to misdemeanor child abuse. Between

July 2017 and January 2018, respondent-mother failed to appear for at least nine of eighteen scheduled therapy appointments. In July 2019, Dr. Webster opined that the information before him was "compelling to indicate that the probability of 1 or more of the children being subjected to either emotional and/or physical maltreatment is well above average." The evidence is clear that respondent-mother has ongoing mental problems and that these issues will not be resolved in the foreseeable future. This same evidence supports the court's finding that respondent-mother's "mental health and outbursts place the juvenile at risk of serious bodily injury" and that the "risk of harm that respondent-mother poses to the juvenile has not been ameliorated by any service to which she has engaged since the children were removed."

¶ 27 Nonetheless, respondent-mother argues that the trial court erred by failing to make findings regarding her mental health at the time of the January 2020 hearing. However, respondent-mother failed to present any additional, more recent evidence indicating that she had participated in the necessary mental health treatment to remedy or at least mitigate her mental health impairments, though such treatment was available. While respondent-mother offers various excuses as to why she believed she was unable to receive such services, the evidence presented indicates that any loss of services was a direct result of her own voluntary actions. While the evidence of respondent-mother's irregular participation in mental health services during the course of this case could sustain contrary findings, the district court's

findings (particularly those below) are supported by clear, cogent, and convincing evidence and thus binding on appeal. *See Matter of J.L.*, 264 N.C. App. at 416, 826 S.E.2d at 265.

> i. Respondent Mother's mental health precludes her from being able to care for this juvenile. While Respondent Mother has access to treatment, when she is not receiving treatment her mental illness manifests in threats to the juvenile, harm to the juvenile, and harm to herself. Without consistent and intensive mental health treatment and consistent use of prescribed medications, there is no way for Respondent Mother to eliminate the safety risk she creates to this juvenile. Respondent Mother has been unable to demonstrate a logical safety plan and to show she is willing and able to commit to necessary treatment and medication management.
>
> . . . .
>
> k. Prior in-home protective services and safety plan did not eliminate the risk of harm to these children. While those services were in place, Respondent Mother strangled A[ndrea].
>
> . . . .
>
> b. While Respondent Mother is currently engaging in mental health treatment and Respondent Father is supporting her in that effort, there is no plan available to this Court or the parties involved to eliminate the risk of harm that Respondent Mother and Respondent Father pose to S[andra], and Respondent Mother's treatment appears to be inadequate to properly address

> Respondent Mother's mental health issues. Despite prior efforts from BCDSS, Respondent Mother nearly strangled A[ndrea] to death; and, Respondent Father allowed it.

As such, respondent-mother's contention that the trial court erred by failing to make findings of fact regarding her mental health and behavioral status as of the date of the permanency planning hearing is without merit and overruled.

¶ 28 In sum, the district court's findings of fact—which are supported by clear, cogent, and convincing evidence—establish that respondent-mother abused Andrea, Sandra's younger sister; respondent-father created an environment which allowed respondent-mother to abuse Andrea; respondents neglected Sandra by knowingly placing her in an injurious environment in which Sandra and her sisters would be subject to physical and emotional harm; respondent-mother is mentally unfit to parent the children; respondent-father is incapable to parent the minor children due to his willingness to risk the children's safety by enabling respondent-mother; and that respondents have acted inconsistently with their constitutionally protected rights as the biological parents of Sandra. Accordingly, we hold that the district court's finding that respondents have acted inconsistently with their constitutionally protected statuses is supported by clear, cogent, and convincing evidence. *See Matter of K.L.*, 254 N.C. App. at 283, 802 S.E.2d at 597. These findings, in turn, support the district court's decision to award guardianship of Sandra to foster parents as it was

reasonably determined that such placement would be in the best interest of the child. *See In re B.G.*, 197 N.C. App. 570, 574, 677 S.E.2d 549, 552 (2009).[3]

C. Motion for Review

¶ 29 Respondents argue that the district court erred by failing to inform the parties of their right to file a motion for review pursuant to N.C. Gen. Stat. § 7B-905.1 (2019).

¶ 30 Section 7B-905.1(d) states in pertinent portion the following: "If the court retains jurisdiction, all parties shall be informed of the right to file a motion for review of any visitation plan entered pursuant to this section." N.C. Gen. Stat. § 7B-905.1(d).

¶ 31 In this case, the district court took at least two measures to satisfy the requirements set out in N.C. Gen. Stat. § 7B-905.1(d). First, the Order states that the "terms of the parents' visitation shall be reviewed at the [8 July 2020] term of this Court." The scheduling of the review hearing in the Order put respondents on notice of their right to review the visitation plan. Moreover, during the 22 January 2020 permanency planning hearing, the district court judge expressly noted his intention to continue monitoring the visitation plan and its effect on Sandra, stating, "I do think that we need to continue to monitor the [visitation] situation . . . and determine what impact these visits and the frequency of these visits are having on the child, because

[3] We also conclude that the evidence discussed herein amounts to competent evidence such that it supports the permanency planning findings set out in Paragraphs 44-60 of the Order, which, in turn, support the court's conclusions of law.

that's what we are here for, is what is in the child's best interest and not what is in the best interest of the parents." The district court judge then asked whether counsel for any party wished to input on the July 2020 review date; counsel for respondents replied, "No, Judge." In other words, respondents had the opportunity to request an earlier court date to address visitation, yet they acquiesced to the 8 July 2020 date. While the Order did not expressly communicate respondents' right to review visitation, the district court had no need to provide such information as the Order itself directed a review of visitation a few months later. In addition, as mentioned above, the colloquy that occurred at the 22 January 2020 hearing reveals that the trial court informed respondents (expressly or certainly implicitly) of their right to review the visitation plan outlined in the Order. For these reasons, we hold that the district court fulfilled its duties under N.C. Gen. Stat. § 7B-905.1(d). Respondents' assignment of error with respect to this issue is overruled.

D. Reunification

¶ 32 On 18 December 2018, the district court entered a permanency planning order in which the court set out a permanent plan of adoption with a concurrent plan of reunification. Respondent-mother argues that because DSS did not take reasonable efforts between the date of the aforesaid order and the January 2020 final permanency planning hearing to reunify Sandra with respondents, the court's

findings regarding reunification as set out in the Order entered 6 February 2020 were tainted. We disagree.

¶ 33 Pursuant to N.C. Gen. Stat. § 7B-906.1(e), at any permanency planning hearing where the juvenile is not placed with a parent, the court must additionally consider certain enumerated criteria and make written findings regarding those that are relevant. N.C. Gen. Stat. § 7B-906.1(e) (2019). One such criterion is whether "the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile." N.C. Gen. Stat. § 7B-906.1(e)(5). However, the aforesaid provision must be read in conjunction with N.C. Gen. Stat. § 7B-906.2(b), which states in relevant portion the following: "Reunification shall be a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or G.S. 7B-906.1(d)(3) . . . or the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety. The finding that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety may be made at any permanency planning hearing." N.C. Gen. Stat. § 7B-906.2(b) (2019).

¶ 34 In the case *sub judice*, the district court made findings based on clear, cogent, and convincing evidence that reunification efforts would be unsuccessful and inconsistent with Sandra's health and safety. The district court also made findings pursuant to N.C. Gen. Stat. § 7B-901(c)(1)(b), (f) (2019). The foregoing findings,

including, but not limited to, that continued reunification efforts are "inconsistent with the juvenile's health, safety and welfare" and "would likely be unsuccessful" are supported by clear, cogent, and convincing evidence.[4] Moreover, the district court is required to make written findings concerning DSS' reunification efforts "**[u]nless** reunification efforts were previously ceased[.]" N.C. Gen. Stat. § 7B-906.2(c) (emphasis added). As noted above, the district court had ceased further reunification efforts in the permanency planning order entered 18 December 2018. Thus, respondent-mother's final assignment of error is overruled.

IV. Conclusion

¶ 35 For the foregoing reasons, we affirm the district court's 6 February 2020 order.

AFFIRMED.

Judge CARPENTER concurs in the result.

Judge GORE concurs.

Report per Rule 30(e).

[4] Respondent-mother did not present specific evidence indicating that DSS failed to reunify respondents with Sandra in the wake of the first permanency planning order.