IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-110

No. COA20-31

Filed 6 April 2021

Cumberland County, Nos. 16 JA 493; 17 JA 530

IN THE MATTER OF: K.S. & K.S.

Appeal by Respondent-Mother from order entered 15 May 2019 by Judge Luis J. Olivera in Cumberland County District Court. Heard in the Court of Appeals 17 December 2020.

James D. Dill for petitioner-appellee Cumberland County Department of Social Services.

Diepenbrock Law Office, P.A., by J. Thomas Diepenbrock, for respondent-appellant mother.

Administrative Office of the Courts, Guardian Ad Litem Division, by Staff Attorney Michelle FormyDuval Lynch, for guardian ad litem.

MURPHY, Judge.

¶ 1 Respondent Mother ("Hermine")[1] appeals from a *Subsequent Permanency Planning Order* filed 15 May 2019 ("May 2019 Order"), wherein the trial court changed the juveniles' primary permanent plan to guardianship, maintained the

[1] Pseudonyms are used for all relevant persons throughout this opinion to protect the identities of the juveniles and for ease of reading.

secondary permanent plan as custody with other suitable persons, and eliminated reunification as a permanent plan. By its order, the trial court also relieved DSS of reunification efforts with both parents. Hermine asserts one issue on appeal. Respondent Father ("Earl") did not appeal.

¶ 2 Hermine argues the trial court erred when it ceased reunification efforts based on findings of fact that were not supported by the evidence. This argument contains two parts: (1) the trial court's findings pursuant to N.C.G.S. § 7B-906.2(d) are not supported by competent evidence and are inconsistent with corresponding findings made in previous orders; and (2) the findings of fact made in support of the conclusion that Hermine did not act consistently with her constitutionally protected status are not supported by clear and convincing evidence and are contrary to the other findings. *See In re L.E.W.*, 375 N.C. 124, 129, 846 S.E.2d 460, 465 (2020) (internal marks omitted) ("As we have previously stated, appellate review of a trial court's permanency planning review 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[.]"); *David N. v. Jason N.*, 359 N.C. 303, 307, 608 S.E.2d 751, 753 (2005) ("[A] determination that a natural parent has acted in a way inconsistent with his constitutionally protected status must be supported by clear and convincing evidence.").

BACKGROUND

¶ 3 The older child, Charley, was born on 30 November 2016, and the younger child, Frances, was born on 1 December 2017. The children share the same parents, Hermine and Earl. Hermine and Earl are parents of another child, but she was removed from their care after Earl pleaded guilty to felony child abuse due to the child sustaining burns on multiple areas of her body while in his care. The trial court granted physical and legal custody of that child to the maternal grandmother.

¶ 4 On 13 December 2016, Cumberland County Department of Social Services ("DSS" or "Department") filed a juvenile petition alleging Charley was neglected and dependent. An *Order for Nonsecure Custody* was granted, giving custody of Charley to DSS. On 18 January 2017, Charley was adjudged a dependent juvenile. On 15 February 2017, the trial court filed an *Adjudication and Temporary Disposition* ("February 2017 Order") and ordered Hermine to:

> a. Comply with her case plan with [DSS];
>
> b. Submit to random drug screens;
>
> c. Complete all services ordered in the sibling matter [from her first child];
>
> d. Complete a Psychological Evaluation and Parenting Assessment . . . ;
>
> e. Complete Parenting Classes . . . ;
>
> f. Continue to attend couples counseling and follow all recommendations;
>
> g. Maintain stable and suitable housing and employment

> and/or enroll in school;
>
> h. Complete a budgeting worksheet and demonstrate her ability to maintain her financial obligations; and
>
> i. Provide information about potential [relatives for] placement [of the child to DSS].

At that time, Hermine had stable housing, was employed, and had begun participating in the services previously recommended to her in January 2017. The trial court adjudged legal and physical custody of Charley would remain with DSS, she would be placed in foster care, and Hermine and Earl would receive supervised visitation. Visitation amounted to five hours per week.

¶ 5 The next hearing took place on 11 May 2017. In its order filed on 17 July 2017 ("July 2017 Order"), the trial court found Hermine had maintained "stable housing and employment[,]" was "working her case plan and [made] herself available to work with the agency[,]" but DSS and the guardian ad litem ("GAL") assigned to the case continued to be concerned about Earl's lack of progress and his "ability to care for the juvenile." DSS reported it was confident in Hermine's "ability to care for [Charley]," that she was "very attentive" to Charley's needs, "observant of her behaviors, and [was] sure to ask questions if she [had] a concern." DSS recommended moving Hermine's visits to be unsupervised, and the trial court found visitation with Charley could be unsupervised, but Earl's visits should remain supervised at all times.

¶ 6 On 12 January 2018, the trial court filed the Initial Permanency Planning Order ("January 2018 Order"). Hermine and Earl had been cooperative with DSS and the GAL, and the trial court found Hermine and Earl were making "adequate progress within a reasonable period of time to achieve a permanent plan of reunification[,] . . . cooperating with a permanent plan of reunification," and had "not acted in a manner inconsistent with the health and safety of the juveniles." At this time, Hermine was ordered to:

> a. Complete her parenting course if not previously completed;
>
> b. Continue to participate in couples counseling and follow all recommendations;
>
> c. Submit financial budget sheets to [DSS] for their review;
>
> d. Follow all recommendations of her psychological evaluation; and
>
> e. Obtain and maintain suitable and sufficient housing and employment, or be enrolled in school.

The main concern of DSS was "about the parents' ability to maintain their financial obligations while caring for [Charley]." There were also concerns with "[Earl] being able to care for [Charley] alone, which also relates to [Hermine's] care, as they are still in a relationship and living together."

¶ 7 Frances was born on 1 December 2017. On 4 December 2017, DSS filed a petition alleging she was neglected and dependent. An *Order for Nonsecure Custody*

was granted, giving custody of Frances to DSS on 7 December 2017. In the *Order on Non-Secure Custody* filed on 19 January 2018 ("January 2018 Order"), the trial court found the "[DSS employee] indicate[d] that [Hermine and Earl] have completed a significant amount of services in the sibling matter. However, [Earl] has a felony child abuse conviction related to the older sibling[.]" The trial court ruled "the Non-Secure Custody Order should remain in effect," and Frances was adjudicated a neglected juvenile on 10 May 2018. Another *Permanency Planning Order* was filed on 1 May 2018 ("May 2018 Order").

¶ 8 On 6 August 2018, the trial court filed a *Disposition Order* ("August 2018 Order") regarding Frances's case, whereby it reviewed the February 2017 Order. There were no changes made from the January 2018 Order, and legal and physical custody of Frances remained with DSS. The court ordered Hermine to:

> a. Successfully complete and demonstrate knowledge from the 16-week parenting class . . . ;
>
> b. Engage in and complete couples counseling and provide verification of the same to [DSS];
>
> c. Engage in individual therapy and continue with the family attachment therapy until successfully discharged;
>
> d. Maintain suitable and stable housing;
>
> e. Maintain suitable and stable employment and demonstrate the ability to maintain financial obligations; and

f. Maintain reliable transportation.

According to the Record, Hermine had switched jobs, but had nevertheless remained employed. She was also demonstrating "positive parenting skills during the visits with the juvenile."

¶ 9 A *Judicial Review and Permanency Planning Order* was filed on 7 December 2018 ("December 2018 Order"). Prior to the hearing on 6 September 2018, both parents were in the process of seeking new employment and neither had jobs at the time. Both parents completed the 16-week parenting class and were engaged in attachment therapy. In the DSS report to the trial court, under the question, "Is it possible for the juvenile(s) to return home immediately or within the next six (6) months?" DSS answered "No." However, when listing the "barriers" to returning home, DSS listed only issues pertaining to Earl, with no mention of Hermine. DSS continued to recommend reunification as the primary permanent plan. The GAL, however, proposed "a primary permanent plan of adoption and a secondary permanent plan of guardianship concurrent with reunification with [Hermine]."

¶ 10 At the 6 September 2018 permanency planning hearing, the trial court consolidated the two cases for Charley and Frances. At the time of the hearing, Hermine was still unemployed, but seeking employment, and Earl was employed as a car detailer but had not provided proof to DSS. In the December 2018 Order, the trial court found the "primary permanent plan" in the "best interest of the juveniles

[was] reunification with [Hermine and Earl]," but DSS would maintain legal and physical custody. However, contrary to all previous orders, at this hearing, the trial court did not provide any steps, as findings of fact, as conclusions of law, in the decree, or otherwise, that Hermine and Earl needed to complete in order to gain legal and physical custody of Charley and Frances again.

¶ 11 The final permanency planning hearing took place on 28 February 2019 and the trial court filed its *Permanency Planning Order* on 15 May 2019 ("May 2019 Order"). It is from this order that Hermine appeals. Prior to the May 2019 Order, the DSS employee wrote:

> [Hermine] has demonstrated her ability to appropriately care for [Charley and Frances] during the supervised and unsupervised visitations within the community. [Hermine] is also very attentive to the needs of [Charley and Frances]. The Department is concerned about the parents' ability to maintain their financial obligations as [Hermine] has changed jobs several times over the life of the case and the family has struggled with meeting their financial needs without the children. The Department remains concerned about the ability of the parents to effectively parent the children together . . . [and] about the supervision of the children while [Hermine] is at work in the evenings.

Further, it was noted "[Hermine and Earl] have not exhibited the ability to maintain stable employment," were "changing jobs frequently," and "parents do have housing however they do not have space for the children in the residence."

¶ 12 As of 28 February 2019, Hermine was employed full-time. DSS continued to contend it was not possible for children to return home with the parents in the next six months, and again attributed this to Earl not making "significant enough of progress to remove the concerns [DSS] has regarding him having unsupervised contact with the children." DSS did not mention Hermine at all when discussing the barriers, or even the parents jointly. For the first time, DSS recommended the new primary plan be "[g]uardianship [with] other suitable persons for [Charley and Frances]" and the secondary permanent plan as "[c]ustody with other suitable persons," no longer recommending reunification as the permanent plan. However, the only services recommended for Hermine to complete were to "participate in individual therapy, until deemed no longer necessary by the therapist" and for "[b]oth parents" to obtain and maintain "stable housing and employment." The GAL similarly proposed "a primary permanent plan of adoption and a secondary permanent plan of guardianship concurrent with reunification with [Hermine]."

¶ 13 In its May 2019 Order, the trial court made the following relevant findings of fact in ceasing reunification as a permanent plan:

> 3. [T]he [c]ourt readopts the findings from all previous Orders entered in these matters . . . including the Adjudication and Disposition Orders in both cases. The Court incorporates the findings from those orders herein as if fully set forth.

4. [The Court incorporated into evidence the full DSS report] filed on 14 February, 2019, as well as the [full GAL report filed 24 January 2019.]

. . .

16. [Hermine] has been offered the following services: parenting classes with Mason Unlimited, and individual and couples' counseling and attachment therapy at Heart to Heart Counseling and Wellness Center.

17. [Hermine] is employed at Waffle House and Sanderson Farms. However, [Hermine] has had three jobs since 2016 and as such, consistent employment has remained an issue for [Hermine]. She has completed the sixteen-week parenting class . . . , and therapeutic services to include individual, couples' counseling and attachment therapy . . . That the [DSS employee's] last contact with [Hermine] was on [11 February] 2019 during the family supervised visitation.

. . .

21. [Hermine] has been compliant with the Department's recommendations. She has exhibited an ability to care for the juveniles during supervised and unsupervised visitations. [Earl] has shown some improvements during his supervised visits with the juveniles; however, his progress has not been significant enough to erase the concerns of the Department. During supervised visits, [Earl] has been observed not to accept constructive criticism from [Hermine] during visits. When a child cries and appears to be upset, rather than console the child, [Earl] has said the child is fine. One or both of the juveniles have been observed to be on the verge of falling off the couch, tripping over toys or [Earl's] legs or feet, or choking on a snack and [Earl's] only response is 'I see them.' Due to [Earl's] felony child abuse charges and his failure to fully understand the importance of supervision without prompts

from others, the Department is not comfortable with recommending any unsupervised visitation with [Earl].

22. That [Hermine and Earl] continue to reside in the same home, although [Hermine] informed the Court on today's date, and the Department in July 2019, that she intends to get her own place in March as she was moving. Despite [her] contention, she does not have a definitive address or any lease to provide to the [c]ourt. The Department continues to have concerns about [Hermine's] ability to parent and to keep the juveniles safe. [Hermine and Earl's] home does not have sufficient space for the juveniles, and according to [Hermine], the Paternal Uncle resides in the home. That the Department recommends relief of reunification efforts with [Hermine and Earl] and that their visits be reduced at this time. That the [GAL] concurs.

23. [Hermine and Earl] are *not* making adequate progress within a reasonable period of time to achieve a permanent plan of reunification. [They] are *not* actively participating in or cooperating with a permanent plan of reunification . . . . [They] have acted in a manner inconsistent with the health and safety of the juveniles. *[Hermine and Earl] have acted inconsistent with their constitutionally protected status as parents and have abrogated their parental duties to the juveniles.*

24. That the [c]ourt finds that a plan of reunification with Hermine and [Earl] is no longer appropriate and is in fact contrary to the continued health and safety of the juveniles. [Hermine and Earl] have failed to demonstrate that they are capable of providing a safe environment for the juveniles and the [c]ourt no longer has any other alternative than to relieve the Department of reunification efforts. The [c]ourt will do so at today's hearing.[Hermine and Earl] object to the relief of reunification efforts.

. . .

> 26. The [c]ourt finds that the primary permanent plan should be guardianship and the secondary permanent plan should be custody with other suitable persons. . . .
>
> . . .
>
> 31. That adoption and/or termination of parental rights should not be sought inasmuch as it is not necessary to achieve the permanent plans.

(Emphasis added). The trial court found, based on these findings of fact, the "return of [Charley and Frances] to the [custody of Hermine and Earl] would be contrary to the welfare and best interests of the [children]." Further, the trial court determined "[Hermine and Earl] are not fit and proper persons for the care, custody, and control of [Charley and Frances]. . . . [Hermine and Earl] have acted contrary to their constitutionally protected status as parents and have abrogated their parental duties." The trial court ordered the primary permanent plan to be guardianship, the secondary permanent plan to be custody with other suitable persons, and "eliminated" reunification as a permanent plan. The trial court reduced visitation to be supervised for one hour once per week at DSS. Hermine gave timely notice of appeal.[2]

ANALYSIS

[2] Only Hermine filed a timely notice of appeal. As Earl does not appeal the May 2019 Order, the trial court's cessation of reunification as a permanent plan with him remains undisturbed.

¶ 14 "[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). "However, a determination that a natural parent has acted in a way inconsistent with [her] constitutionally protected status must be supported by *clear and convincing* evidence." *David N.*, 359 N.C. at 307, 608 S.E.2d at 753 (emphasis added).

¶ 15 "Reunification shall remain a primary or secondary plan unless the court made findings under [N.C.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.G.S. § 7B-906.2(b) (2018);[3] *In re I.K.*, 260 N.C. App. 547, 551, 818 S.E.2d 359, 362 (2018). To cease reunification in this way,

> the trial 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

[3] Use of the 2018 version of the statute governs this appeal as N.C.G.S. § 7B-906.2 was amended with an effective date of 1 October 2019. *See* N.C.G.S. § 7B-906.2 (2018).

> 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.G.S. § 7B-906.2(d) (2018); *In re I.K.*, 260 N.C. App. at 551, 818 S.E.2d at 362-63. "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." *In re C.M.,* 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). "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), *aff'd* 362 N.C. 229, 657 S.E.2d 355 (2008). "The trial court may only order the cessation of reunification efforts when it finds facts based upon credible evidence presented at the hearing that support its conclusion of law to cease reunification efforts." *Id.* at 10, 650 S.E.2d at 51 (internal marks omitted). "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re T.R.M.*, 208 N.C. App. 160, 162, 702 S.E.2d 108, 110 (2010).

¶ 16 On appeal, Hermine argues the "trial court's findings made pursuant to [N.C.G.S.] § 7B-906.2(d) are not supported by competent evidence and are

inconsistent with corresponding findings made in previous orders and with findings made in the [May 2019 Order]."

¶ 17 Hermine challenges Findings of Fact 23 and 24:

> 23. [Hermine and Earl] are not making adequate progress within a reasonable period of time to achieve a permanent plan of reunification. [They] are not actively participating in or cooperating with a permanent plan of reunification . . . . [They] have acted in a manner inconsistent with the health and safety of the juveniles. [Hermine and Earl] have acted inconsistent with their constitutionally protected status as parents and have abrogated their parental duties to the juveniles.
>
> 24. That the [c]ourt finds that a plan of reunification with [Hermine] and [Earl] is no longer appropriate and is in fact contrary to the continued health and safety of the juveniles. [Hermine and Earl] have failed to demonstrate that they are capable of providing a safe environment for the juveniles and the [c]ourt no longer has any other alternative than to relieve the Department of reunification efforts. The [c]ourt will do so at today's hearing. [Hermine and Earl] object to the relief of reunification efforts.

Hermine relies on Findings of Fact 16, 17, and 21 in challenging Findings of Fact 23 and 24. Hermine argues she "exhibited an ability to care for her children during her supervised and unsupervised visits," and Earl had "shown some improvements during his supervised visits." However, the trial court found Earl had not progressed enough to "erase the concerns of the Department," finding he did not take constructive criticism from Hermine. Hermine contends "[i]t is hard to see how such

a concern on the part of DSS can support" the finding she "had acted in a manner inconsistent with the health and safety of her children."

¶ 18 DSS argues we should rely on evidence from the 10 May 2018 stipulations that Earl had a previous felony child abuse conviction, and Hermine's admission from the 28 February 2019 hearing that she knew "[Earl] was the major issue in being reunified with the juveniles" but she never evicted him and remained in a relationship with him. DSS also argues we should rely on the lack of space in Hermine's residence, not having a place to move to, and the issues of stable employment and housing for Hermine and Earl to conclude the findings of fact are supported by competent evidence. Additionally, DSS states the children had been in care for 800 days and 499 days, and "[Hermine] had chosen to stay with [Earl]," and "not enough progress had been made that reunification could be achieved[.]" DSS cites Findings of Fact 12, 16, 18, 21, 24, and 31 to support the finding that both parents were not fit or proper persons to care for the children, and to support the ultimate conclusion terminating reunification efforts.

> There is no bright line beyond which a parent's conduct amounts to action inconsistent with the parent's constitutionally protected paramount status. Our Supreme Court has emphasized the fact-sensitive nature of the inquiry, as well as the need to examine each parent's circumstances on a case-by-case basis. The court must consider both the legal parent's conduct and his or her intentions *vis-à-vis* the child.

In re I.K., 848 S.E.2d 13, 18 (N.C. App. 2020).

¶ 19 In *In re A.S.*, we recently held some findings of fact used to eliminate reunification from a mother's permanent plan were contradicted by the trial court's other findings and the record. *In re A.S.*, 853 S.E.2d 908, 911-12 (N.C. App. 2020). Specifically, the trial court found the mother was not "a fit or proper person for the continued care, custody or control of the juvenile," yet the immediately preceding finding in the order was that the mother was "actively participating or cooperating with the permanent plan, DSS, and the [GAL] for the juveniles." *Id.* at 911. We further noted there was "no evidence in the [r]ecord of attempts to contact [the mother] by the trial court, DSS, or the [GAL] that were unsuccessful," which supported a finding that the mother was actively engaged with all parties and the case plan. *Id.* at 912. We held the findings in the trial court's order that the mother did not "remain available" was not supported by competent evidence. *Id.*

A. Finding of Fact 23

¶ 20 Finding of Fact 23 is not supported by clear and convincing evidence. Finding of Fact 23 states:

> [Hermine and Earl] are not making adequate progress within a reasonable period of time to achieve a permanent plan of reunification. [They] are not actively participating in or cooperating with a permanent plan of reunification . . . . [They] have acted in a manner inconsistent with the health and safety of the juveniles. [Hermine and Earl] have acted inconsistent with their constitutionally

> protected status as parents and have abrogated their parental duties to the juveniles.

In fact, the findings of fact from previous orders are clear that Hermine has progressed well, has participated in services, and was attentive to both children during visits.

¶ 21 After Charley was taken into DSS custody, Hermine was "able to care for the child independently and adequately during visits." It was further reiterated that "[t]he Department is confident in [Hermine's] ability to care for the juvenile." Additionally, in the May 2018 Order, the trial court held "[Hermine] continues to demonstrate the ability to appropriately care for the juvenile during supervised and unsupervised visits in the community." However, it restated a concern first raised in the February 2017 Order that the Department "has concerns about whether [Hermine and Earl] will have the ability to maintain their financial obligations while caring for the juvenile." However, Hermine and Earl "actively" participated in cooperating with DSS and the GAL to achieve a permanent plan of reunification. Nothing drastically changed going into the May 2019 Order. The most recent prior order, the December 2018 Order, stated Hermine and Earl were "making adequate progress within a reasonable period of time to achieve a permanent plan of reunification." Importantly, her progress was so adequate that the trial court did not order any additional steps or services that Hermine should complete. *See* N.C.G.S. §

7B-100 (2019) ("This Subchapter shall be interpreted and construed so as to implement the following purposes and policies: . . . (2) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family. (3) To provide for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence[.]"). At the time, DSS reported only that Hermine needed to "continue to participate in individual therapy, couples counseling, and attachment therapy" to remedy the conditions which led to the removal of the children.

¶ 22 It was inconsistent with other evidence in the Record to find Hermine was not making adequate progress within a reasonable period of time to achieve a permanent plan of reunification and she was not actively participating in or cooperating with a permanent plan of reunification. Finding of Fact 21 is directly inconsistent with the rest of Finding of Fact 23. Finding of Fact 21 states "[Hermine] has been compliant with the Department's recommendations. She has exhibited an ability to care for the juveniles during supervised and unsupervised visitations." This directly contradicts the evidence that Hermine acted in a manner inconsistent with the health and safety of the juveniles.

¶ 23 We hold Finding of Fact 23 is unsupported by clear and convincing evidence in the Record. Hermine did not act in a manner inconsistent with her constitutionally protected status as a parent and did not abrogate her parental duties to the children.

B. Finding of Fact 24

¶ 24 Finding of Fact 24 is similarly unsupported by competent evidence to support the finding that a plan of reunification was no longer appropriate and contrary to the health and safety of the children. Hermine argues Finding of Fact 24 is based on DSS's concerns about Earl and his previous felony conviction, rather than any failure of her own to ensure a safe and healthy environment for the children. Further, the trial court failed to make factual findings that would show allowing more time for further reunification efforts by Hermine would be unsuccessful, or that Hermine was a threat to the children's health and safety. We agree.

¶ 25 Finding of Fact 22 is the only finding from the May 2019 Order that could support Finding of Fact 24. Finding of Fact 22 states:

> [Hermine and Earl] continue to reside in the same home, although [Hermine] informed the [c]ourt on today's date, and the Department in July 2019, that she intends to get her own place in March as she was moving. Despite [her] contention, she does not have a definitive address or any lease to provide to the [c]ourt. The Department continues to have concerns about [Hermine's] ability to parent and keep the juveniles safe. [Hermine and Earl's] home does not have sufficient space for the juveniles, and according to [Hermine], the Paternal Uncle resides in the home. That the Department recommends relief of reunification efforts

> with [Hermine and Earl] and that their visits be reduced at this time. That the Guardian ad Litem concurs.

This was the first time the trial court raised concerns related to space in the home or the uncle residing in the home. Neither DSS, the GAL, nor the trial court ever provided a recommendation, requirement, or step for Hermine to take to make the old home suitable for the children. They similarly had not proposed, suggested, or ordered Hermine should move from her shared residence to a different one, nor provided any time for her to remedy this new problem. Further, the trial court never ordered Hermine must separate from Earl in order to reunify with Charley and Frances.[4]

¶ 26 Finding of Fact 22 does not bolster Finding of Fact 24. Prior to the hearing on 28 February 2019, DSS reported "[Hermine] has demonstrated her ability to appropriately care for [Charley and Frances] during the supervised and unsupervised visitations within the community. [Hermine] is also very attentive to the needs of [Charley and Frances]." Further, DSS reported "[DSS] remains concerned about the ability of the parents to effectively parent the children together . . . [and] about the supervision of the children while [Hermine] is at work in the evenings." It was never

[4] For example, the trial court consistently ordered Hermine to "[c]ontinue to attend couples counseling and follow all recommendations[,]" "[e]ngage in and complete couples counseling and provide verification of the same to [DSS]" and "continue with the family attachment therapy until successfully discharged."

noted Hermine would be a danger to the children's "health and safety," and DSS's report makes it clear DSS does not doubt Hermine would keep the children safe and has been attentive to their needs. The Department's concern is not about Hermine's ability to parent the children. Rather, the Department is concerned with Earl's actions or inactions while he is with Hermine. Hermine's time alone with Earl is not a reason for the trial court to cease reunification efforts with Hermine.

¶ 27 Hermine complied with all services recommended to her and complied with each order from the trial court. To find "reunification with [Hermine]" is "contrary to the continued health and safety of the juveniles" is unsupported by competent evidence in the Record. Even if there was speculation about the safety of the home, the trial court did not give Hermine any time or prior notice that she was required to move or leave Earl in order to continue with reunification efforts. At the subsequent permanency planning hearing on 28 February 2019, Hermine testified that she would be willing to get her "own place" for her and the children. She also stated that while she was working "two jobs" at the time, she could go "down to one job" in order to manage an overnight schedule with the children:

> [HERMINE'S COUNSEL]: So would you let the [c]ourt know what plan you put into place.
>
> [HERMINE]: We discussed this at the CFT meeting.
>
> [HERMINE'S COUNSEL]: Just tell him what the plan is.

[HERMINE]: We will be living separately, getting my own place for me and the kids, have set it up towards where start the overnight and work the way towards getting them back permanently. I do work two jobs but going down to one job as to stop rotating schedules and trying to if I get them on an overnight schedule.

[HERMINE'S COUNSEL]: All right. So when did your lease expire?

[HERMINE]: Today, February 28th.

[HERMINE'S COUNSEL]: And were you signed on the lease?

[HERMINE]: Yes.

[HERMINE'S COUNSEL]: And were you responsible for making payments?

[HERMINE]: Yes.

[HERMINE'S COUNSEL]: All right. Was [Earl] required at all to make any of the payments? Was he on the lease?

[HERMINE]: No, he's not on the lease.

[HERMINE'S COUNSEL]: Now where are you looking at getting a new place?

[HERMINE]: Possible location would be - - one place I'm looking at that's in Spring Lake. The other one is Taylor's Creek in Hope Mills which is unavailable due to water damage. So right now I'm staying, staying with my mother or a friend's house due to her schedule.

[HERMINE'S COUNSEL]: Is it your intent when you move into your new place to take [Earl] with you?

> [HERMINE]: No, ma'am it is not my intention.
>
> . . .
>
> [HERMINE'S COUNSEL]: . . . So do you want your children back?
>
> [HERMINE]: Yes, ma'am.
>
> [HERMINE'S COUNSEL]: Do you intend to move into a place without [Earl]?
>
> [HERMINE]: Yes, ma'am.

This testimony demonstrates Hermine was willing to work with the trial court, DSS, and the GAL in any way possible to ensure she was complying with all recommendations to continue on a path of reunification with her children.

¶ 28 The United States Supreme Court has frequently emphasized the importance of the family. The rights to conceive and raise one's children have been deemed "essential," *Meyer v. Nebraska*, 262 U.S. 390, 399, 67 L. Ed. 1042, 1045 (1923), and "far more precious . . . than property rights." *May v. Anderson*, 345 U.S. 528, 533, 97 L. Ed. 1221, 1228 (1953).

> The private interest here, that of a [wo]man in the children [s]he has [given birth to] and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.

Stanley v. Illinois, 405 U.S. 645, 651, 31 L. Ed. 2d 551, 558 (1972) (internal marks omitted).

¶ 29 We hold Finding of Fact 24 is unsupported by competent evidence in the Record and does not support the ultimate conclusion that "reunification efforts clearly would be unsuccessful or would be inconsistent with the juveniles' health or safety." N.C.G.S. § 7B-906.2(b) (2018). The trial court erred in ceasing reunification efforts. Hermine is entitled to continue on a path of reunification with Charley and Frances.

CONCLUSION

¶ 30 The trial court's Findings of Fact 23 and 24 are not properly supported by evidence sufficient to support its conclusion that Hermine acted in a manner inconsistent with the health and safety of the children. The Record and trial court's findings of fact do not justify its ultimate conclusion that reunification efforts should cease with Hermine. Only Hermine filed a timely notice of appeal, and the May 2019 Order against Earl remains undisturbed.

¶ 31 Accordingly, the May 2019 Order eliminating reunification from Hermine's permanent plan is vacated and the matter is remanded to the trial court for further proceedings consistent with this opinion, with the primary plan remaining reunification of the children with Hermine.

VACATED IN PART AND REMANDED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).