IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-64

No. COA20-576

Filed 4 May 2021

Haywood County, No. 19-JA-54, 19-JA-55

IN THE MATTER OF: E.Y.B. & G.E.E.B.

Appeal by Respondent-Appellant Father from an order entered on 13 April 2020 by Judge Kristina L. Earwood in Haywood County District Court. Heard in the Court of Appeals 24 February 2021.

David A. Perez for Respondent-Appellant Father.

Rachael J. Hawes for Petitioner-Appellee Haywood County Health and Human Services.

Robert C. Montgomery for the Guardian ad Litem.

JACKSON, Judge.

¶ 1 This case is a juvenile matter concerning the custody of two minor children as between their father, Respondent-Father ("Respondent"); and their caretaker/custodian, "Mr. Smith."[1] In this appeal from the trial court's permanency planning review order, Respondent contends that the trial court erred by (1) denying Respondent's motion for a continuance of the permanency planning hearing; (2)

[1] Pseudonyms are used to protect the parties' identities.

granting custody of the children to Mr. Smith; (3) disallowing visitation between Respondent and the children; and (4) waiving further judicial review of the children's placement with Mr. Smith. Because we conclude that Respondent cannot demonstrate that the trial court erred in any of these rulings, we affirm.

I. Factual and Procedural Background

¶ 2 "Ms. Baker" is the biological mother of the two minor children at issue in this case, Emma and Grace.[2] Respondent is their biological father, as confirmed by a court-ordered DNA test. Emma was born on 21 September 2015 and Grace was born on 13 December 2016.

¶ 3 Respondent has had little involvement in his children's lives. Instead, Mr. Smith has acted as the children's parent for much of their young lives. Mr. Smith was present when Emma was born in September 2015 and helped deliver her, and has been her primary caretaker since she was ten months old. Mr. Smith gained custody of Grace in January 2017 (approximately one month after her birth) pursuant to a Tennessee court order and has been her primary caretaker since that time. Mr. Smith is listed as the father on both Grace and Emma's birth certificates. Ms. Baker approves of Mr. Smith's parental role and it was at her behest that Mr. Smith signed the children's birth certificates.

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[2] Pseudonyms are used to protect the minor children's identities.

¶ 4 In July 2019, Mr. Smith's home became the subject of a child welfare investigation by the Haywood County Department of Health and Human Services ("HHS"). At that time, Emma and Grace (along with their three older half-siblings)[3] were all living together in Mr. Smith's home in Maggie Valley, North Carolina, while the children's mother was incarcerated. A juvenile petition filed on 11 July 2019 alleged that the children were living in an unfinished basement in unsuitable conditions, that the children lacked good hygiene, that Mr. Smith was inappropriately physically disciplining the children, and that Mr. Smith lacked adequate financial resources to care for the children. On 11 July 2019, HHS assumed custody of the children and filed a petition alleging that Emma and Grace were abused, neglected, and dependent juveniles.

¶ 5 The children were adjudicated abused, neglected, and dependent in a proceeding on 18 September 2019. Mr. Smith thereafter entered into a case plan with HHS, requiring him to obtain a mental health and substance abuse assessment, attend individual therapy and group therapy with Emma, obtain appropriate housing, and provide evidence of employment.

¶ 6 As for Respondent, his whereabouts remained largely unknown both before

[3] The three elder half-siblings are the not the subject of this appeal. The elder siblings share a mother with Emma and Grace but have a different father, who also is not a party to this appeal.

and after HHS assumed custody of the children. During the summer of 2019, social workers began attempting to locate Respondent by speaking with his father in Alabama, his probation officer in Georgia, and other family members. Social workers were finally able to reach Respondent by phone on 1 August 2019 to inform him that his children were in foster care in Haywood County, North Carolina. Respondent acknowledged this information, and voiced his support of Mr. Smith caring for the children, stating that he believed Mr. Smith was "a very smart and wise man" who would care for them well.

¶ 7 In another phone call on 6 August 2019, Respondent advised social workers that he wanted DNA testing on himself, Emma, and Grace to prove his paternity. After this call, however, Respondent stopped responding to any of the phone calls made by social workers trying to reach him—nor did he respond to the multiple certified letters sent to his address, or the Facebook messages that social workers sent to his social media account. Respondent had no contact with DSS for over six months. Respondent did not appear for the next scheduled nonsecure hearing for the juveniles on 27 August 2019, nor at the adjudication and disposition hearings on 18 September 2019, nor at the review and permanency planning hearing on 4 December 2019.

¶ 8 Meanwhile, as of the 4 December 2019 permanency planning hearing, the trial court found that Mr. Smith had made significant progress on his case plan and had

been "compliant with all requests of [HHS]." Mr. Smith had obtained new housing, which social workers had visited and found to be appropriate for the children. He had obtained new employment and furnished proof of his income to social workers; had completed a mental health assessment and begun therapy services; and had started parenting classes and Parent Child Interactive Therapy ("PCIT") with Emma. The trial court also found that Grace and Emma were "very attached" to Mr. Smith and that he was "the only parent they know." Accordingly, at that time the trial court concluded that Mr. Smith was "willing and able to provide proper care and supervision" for Grace and Emma, and ordered that the children be placed back into Mr. Smith's custody for a trial home placement of six months, as part of their permanent plan of reunification.

¶ 9 Respondent had no contact with HHS until 25 February 2020, when he appeared at a permanency planning review hearing for the juveniles in Haywood County. He advised the trial court that he had been out of contact because he had been incarcerated in Georgia for the past several months, but that he was now residing with Ms. Baker, the children's mother, in Buncombe County. A DNA test was performed on Respondent the next day, which confirmed that Respondent was the biological father of Emma and Grace. Due to Respondent's unexpected reappearance, the trial court allowed a continuance of the matter until 11 March 2020. On 2 March 2020, Respondent was arrested in Buncombe County for felony

possession of stolen property, but was soon released on bail (paid for by Ms. Baker). At the time of his arrest, he also had active arrest warrants in Tennessee and Alabama.

¶ 10 The rescheduled permanency planning hearing was held on 11 March 2020 in Haywood County District Court. Once all parties were present, Respondent's counsel made another motion to continue, asserting that he had not had adequate time to meet with Respondent and to analyze the results of Respondent's recent DNA test. The trial court denied the motion to continue, finding that it was not in the juveniles' best interests to delay the proceedings any longer. The trial court also noted that it was disinclined to grant a continuance given that Respondent had not "had contact with [HHS] for seven months and didn't appear before the last court date." Accordingly, the hearing proceeded as planned on 11 March 2020.

¶ 11 HHS Social Worker Amanda Hooper testified that the home placement was "going really well," that Mr. Smith had continued to participate in PCIT with Emma as well as in individual therapy, and that Mr. Smith had "learned a lot of parenting skills." She reported that Mr. Smith had recently moved to a new, larger home in Buncombe County, and that she had visited his home several times and always found it to be clean and appropriate. Mr. Smith had enrolled the children in daycare, and the children were also receiving regular visits from their "grandmother" (Mr. Smith's mother), who they were quite bonded with. Social Worker Hooper reiterated that the

children were "very bonded with Mr. [Smith]" and thought of him as their father, and that the children did not appear to "know who their biological father is." She stated that during each of her visits she found the children to be "appropriately dressed," "happy," "comfortable," and "well-adjusted little girls." Accordingly, Social Worker Hooper ultimately recommended that Emma and Grace "be returned to the custody of . . . [Mr. Smith], at this time."

¶ 12 With regard to Respondent, Social Worker Hooper described the difficulties that HHS had experienced in getting into contact with Respondent during the lifespan of the case. She testified that she had only learned that Respondent was the children's biological father a week prior to the hearing, and that she was still in the process of creating a case plan for him to address issues of mental health, substance abuse, locating suitable employment and housing, and complying with his probation. Social Worker Hooper recommended that Respondent be allowed one hour of supervised monthly visitation with Emma and Grace until a case plan could be finalized.

¶ 13 Mr. Smith also testified at the hearing, stating that he was "elated" that the court was considering granting him legal custody of Emma and Grace. He described his extensive involvement in both children's lives since their infancy, and said that he considered them to be his daughters and felt he had "become a father to them." He stated that Respondent had come to visit Grace and Emma approximately three

times during their childhood and had occasionally spoken to them on the phone, but that Respondent had never provided any money, child support, clothes, food, or supplies for the children.

¶ 14 Respondent also testified that he had lived with Emma and Ms. Baker off and on between Emma's birth and his arrest in 2016. After his release from prison in Georgia in 2017, he stated that he attempted to have his probation transferred to North Carolina but was unable to. He testified that he made an effort to "maintain somewhat adequate communication" with the children after his release and had visited them "probably about four or five times" between 2017 and 2019. He stated that the only reason he stopped visiting was because he "lost contact with [Mr. Smith]" after Mr. Smith stopped answering his phone calls. Respondent testified that he first became aware of the pending custody case sometime during the summer of 2019, but that he was incarcerated shortly thereafter on 5 September 2019. He remained incarcerated until 24 February 2020, when he was released in order to attend the 25 February 2020 permanency planning hearing. Respondent also described his recent history of arrests and incarceration, for a variety of charges, including: robbery, aggravated assault, felony theft of property over $25,000, criminal simulation, perjury, and several probation violations. At the time of the hearing, Respondent was under active probation orders in both Alabama and Tennessee.

¶ 15 Respondent testified that he was currently renting a room from an elderly woman in Hickory, North Carolina; that he was working construction at Cross Contracting; and that he had begun to meet with therapists at Daymark Mental Health. However, on cross-examination Respondent was unable to recall the name of his supervisor at work, unable to provide a paystub or other proof of employment, and unable to produce any documentation demonstrating his attendance at Daymark.

¶ 16 Respondent also admitted on cross-examination that during his most recent period of incarceration (from 2017 to 2019), he had phone privileges, email privileges, and the ability to send and receive mail, but nevertheless had not made any effort to contact HHS about his children. He initially claimed that he was unable to place calls or send emails because of the cost, claiming to have had no money in his prison account—but later admitted on cross-examination that he was, indeed, earning a small paycheck from a work release program during his time in prison, which he could have used to place calls or emails to HHS.

¶ 17 After considering all of the testimony, the trial court issued an oral ruling ordering that: (1) Emma and Grace remain in the custody of Mr. Smith; and (2) Respondent not receive any visitation with the children. The trial court's decision was memorialized in a detailed written order dated 13 April 2020. The written order noted that Mr. Smith's home was "safe and appropriate"; that Grace and Emma were "very attached to [Mr. Smith], and he is the only parent they know"; that Mr. Smith

had exhibited "high quality" parenting skills during his therapy sessions; and that he had fully "completed his Case Plan." The trial court concluded that it was in the best interests of the juveniles that "their legal custody be awarded to [Mr. Smith] immediately."

¶ 18 With regard to Respondent, the trial court noted its "significant concern regarding [Respondent's] history of criminal behavior, repeated incarcerations, and chronic instability" as well as his "utter lack of regard for his minor children for the entirety of [Grace's] life, and the near-entirety of [Emma's] life." The court found that Respondent had not "made adequate progress within a reasonable period of time," was not "cooperating with" HHS or the children's guardian ad litem, and had "done nothing whatsoever to establish his paternity of [Emma] and [Grace] prior to presenting himself before this Court on February 25, 2020." The court concluded that Respondent was "unfit" and had "acted inconsistently with [his] constitutionally protected parental status." Finally, the court determined that visitation with Respondent would be contrary to the children's best interests, "due to his failure to visit the children in well over one (1) year, the fact that the children do not know him, and [Emma's] ongoing PCIT therapies." Respondent filed a timely appeal of the trial

court's permanency planning order[4] on 25 April 2020.

II. Analysis

¶ 19 Respondent raises four primary arguments on appeal, asserting that the trial court erred by: (1) denying his motion to continue the permanency planning hearing; (2) granting custody of Grace and Emma to Mr. Smith without making certain required findings and without verifying Mr. Smith's ability to care for the juveniles; (3) terminating the court's jurisdiction over Grace and Emma without making certain required findings; and (4) ordering that Respondent have no visitation with Emma and Grace. Because Respondent is unable to show any error by the trial court, we affirm.

A. UCCJEA Jurisdiction

¶ 20 We first must address the trial court's jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). The UCCJEA is a jurisdictional statute that aims to "[a]void jurisdictional competition and conflict with courts of other States in matters of child custody." N.C. Gen. Stat. § 50A-101, Official Comment (2019). "The trial court must comply with the UCCJEA in order to have subject matter jurisdiction over juvenile abuse, neglect, and dependency cases and

[4] Respondent's notice of appeal also attempted to appeal the trial court's accompanying Civil Custody Order; however, as explained in further detail in section II.C.1 of our analysis, Respondent has abandoned his appeal of the Civil Custody Order.

termination of parental rights cases." *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200 (2020).

¶ 21 With regard to Emma, we conclude that the UCCJEA was satisfied because the trial court possessed home-state jurisdiction. The UCCJEA provides that North Carolina has "jurisdiction to make an initial child-custody determination" if North Carolina "is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding." N.C. Gen. Stat. § 50A-201(a)(1) (2019). "'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding." *Id*. § 50A-102(7). Here, Emma lived with Mr. Smith at his home in Maggie Valley, North Carolina, since at least August 2016. Accordingly, at the time that the first juvenile petition was filed in this case (11 July 2019), Emma had been living with Mr. Smith for approximately three years. Thus, because Emma had been living in North Carolina with "a person acting as a parent" (i.e., Mr. Smith) for at least "six consecutive months" before the commencement of the juvenile proceeding, North Carolina was her home state under the UCCJEA—and the trial court possessed proper UCCJEA jurisdiction over the juvenile Emma.

¶ 22 With regard to Grace, we conclude that the UCCJEA was satisfied because the trial court entered an order demonstrating its modification jurisdiction over Grace.

The UCCJEA provides that

> [A] court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:
>
> (1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or
>
> (2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

N.C. Gen. Stat. § 50A-203 (2019).

¶ 23 All elements of this statute are satisfied here. Grace was the subject of a custody decision in Tennessee in January 2017 which placed Grace in the legal custody of Mr. Smith. From January 2017 until the time of the first juvenile petition in this case (11 July 2019), Grace lived with Mr. Smith at his home in Maggie Valley, North Carolina. Accordingly, at the time that the juvenile petition was filed, North Carolina qualified as the home state of Grace under G.S. 50A-201(a)(1) because at that time Grace had lived with Mr. Smith in North Carolina for longer than six consecutive months. The trial court's UCCJEA order, entered on 20 August 2019, demonstrates that all statutory requirements were met to transfer jurisdiction over Grace from Tennessee to North Carolina. In its 20 August 2019 order, the Tennessee

court expressly relinquished its jurisdiction over Grace, after both trial courts conferred and agreed that North Carolina would be the more convenient and appropriate forum for the resolution of Grace's custody matters. The order also noted that none of the relevant parties was residing in Tennessee, as Grace and her caretaker Mr. Smith were residing in North Carolina, and Grace's mother was residing in Alabama. Accordingly, because (1) North Carolina was Grace's home state at the time of the North Carolina juvenile petition; (2) the Tennessee court agreed that North Carolina would be a more convenient forum for the parties; and (3) none of the relevant parties (including Grace, Mr. Smith, and the mother) were living in Tennessee, all requirements of N.C. Gen. Stat. § 50A-203 were satisfied and the trial court possessed proper UCCJEA jurisdiction over the juvenile Grace.

B. Motion to Continue

¶ 24 Respondent first argues that the trial court erred by denying his motion to continue at the 11 March 2020 permanency planning hearing. We review a trial court's decision regarding a motion to continue for abuse of discretion. *In re J.B.*, 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005). An abuse of discretion occurs when a trial court's ruling "is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Matter of C.B.*, 375 N.C. 556, 560, 850 S.E.2d 324, 328 (2020) (citation omitted). Moreover, in juvenile matters "[c]ontinuances are generally disfavored, and the burden of demonstrating sufficient

grounds for continuation is placed upon the party seeking the continuation." *In re J.B.*, 172 N.C. App. at 10, 616 S.E.2d at 270.

¶ 25 In the context of abuse, neglect, and dependency hearings, our Juvenile Code provides as follows with regard to continuances:

> The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-803 (2019).

¶ 26 Respondent contends that the trial court committed such an abuse of discretion here in denying his continuance because extraordinary circumstances existed surrounding his recent release from prison. Respondent emphasizes the fact that he was imprisoned from the time the juvenile petitions were filed until one day prior to the hearing, and asserts that he was unable to contact HHS during his imprisonment. He also asserts that he should have been allowed more time in order to (1) consult with his attorney, who had only been appointed to the case 15 days earlier; (2) consult with HHS regarding his pending case plan and his progress towards reunification; and (3) analyze the results of the DNA test, which he had only recently received. We

disagree, and hold that the trial court did not abuse its discretion in declining to grant a continuance of the hearing.

¶ 27 Our courts have generally held that "[w]here the lack of preparation for trial is due to a party's own actions, the trial court does not err in denying a motion to continue." *In re Bishop*, 92 N.C. App. 662, 666, 375 S.E.2d 676, 679 (1989). For example, in *In re J.B.*, the respondent-parent similarly argued that the trial court should have granted her motion to continue "because she had been incarcerated prior to the hearing and was thus unable to gather evidence." 172 N.C. App. at 10, 616 S.E.2d at 270. We disagreed, holding that the trial court properly denied her motion to continue. *Id*. at 11, 616 S.E.2d at 270. We noted that the respondent had already received one prior continuance from the trial court but had not utilized it to collect evidence, and moreover that the respondent's recent incarceration "was the result of her own actions." *Id*.

¶ 28 In contrast, circumstances must be truly extraordinary to justify a reversal of a trial court's denial of a continuance—such as in *In re D.W.*, where (1) it was "unclear whether [the respondent] received notice of the hearing" while she was imprisoned; (2) the respondent "suffered from diminished capacity, possibly making her absence [from the hearing] involuntary"; and (3) it was apparent that "external time constraints negatively affected the nature of the proceeding." *In re D.W.*, 202 N.C. App. 624, 628, 693 S.E.2d 357, 360 (2010).

¶ 29 Here, Respondent has failed to meet his burden of demonstrating that his recent incarceration constituted an extraordinary circumstance that would justify a continuance, as his inability to adequately prepare for trial was due to his own knowing inaction in the days and months leading up to the hearing. Respondent first became aware that his children were in HHS custody in August 2019. Though he was imprisoned several weeks thereafter in September 2019, throughout his time in prison he made no efforts to contact HHS or the court regarding his case. Respondent was out of contact with HHS for nearly six months, until he unexpectedly appeared at a review hearing on 25 February 2020. Indeed, the trial court explained that this was the precise reason for its denial of the continuance—that Respondent "has been aware that [Emma] and [Grace] have been in foster care since at least August 2019, and has not presented himself to this Court prior to February 25, 2020."

¶ 30 Respondent argues that the trial court failed to take into consideration his inability to make contact with HHS while in custody—but Respondent's own testimony belies this assertion. On cross-examination, Respondent admitted that during his incarceration he had phone privileges, email privileges, and the ability to send and receive mail, but nevertheless still had not made any effort to contact HHS about his children. Moreover, the trial court already granted Respondent one continuance of the matter on 26 February 2020, allowing Respondent until 11 March 2020 to consult with his attorney, inquire with HHS regarding his case plan, and

otherwise prepare for the hearing. Thus, because the trial court had already allowed Respondent one continuance to allow him to better prepare, and because any lack of preparation in the first place was caused by Respondent's knowing failure to communicate with HHS, we hold that the trial court did not abuse its discretion by denying the motion to continue.

C. Permanency Planning Review Order

¶ 31 Respondent next challenges the trial court's permanency planning order, arguing that the order erroneously eliminated reunification with Respondent as a permanent plan for Emma and Grace. Specifically, Respondent argues that eliminating reunification with him was improper because: (1) the trial court's order lacked certain statutorily required findings of fact; (2) certain findings of fact were unsupported by competent evidence; and (3) by placing custody of the children with Mr. Smith, the trial court failed to verify that Mr. Smith possessed adequate resources to care for the juveniles or that he understood the legal consequences of their placement. We disagree on all counts, and affirm the trial court's custody decision.

¶ 32 To begin with, some background regarding permanency planning hearings may prove useful. Once a juvenile is adjudicated as abused, neglected, or dependent, the trial court must conduct regular review hearings—known as permanency planning hearings—every six months to review the juvenile's status. *See* N.C. Gen.

Stat. § 7B-906.1(a) (2019). At the conclusion of each of these hearings, the trial court must "make specific findings as to the best permanent plans to achieve a safe, permanent home for the juvenile within a reasonable period of time." *Id.* § 7B-906.1(g).

¶ 33 The trial court may then choose from a range of permanent plan options for the juvenile, including options such as adoption, custody or guardianship with a suitable person, or reunification with a parent, custodian, or guardian. *See id.* § 7B-906.2(a). The Juvenile Code generally requires trial courts to prioritize reunification whenever possible. *See id.* § 7B-906.2(b) (providing that "[r]eunification shall be a primary or secondary plan" unless certain criteria are present); *see also id.* § 7B-901(c) (providing that the trial court must "direct reasonable efforts for reunification" unless certain circumstances apply). Reunification is not limited to biological parents—rather, reunification is statutorily defined as "[p]lacement of the juvenile in the home of either parent or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order." *Id.* § 7B-101(18b). Once a permanent plan is chosen, the trial court must then continue to hold permanency planning review hearings "until a permanent plan is or has been achieved" for the juvenile or is waived pursuant to N.C. Gen. Stat. 7B-906.1(k) or (n). *Id.* § 7B-906.2(a1).

¶ 34 Once a permanent plan is achieved, and custody of the juvenile has been placed

with "a parent or other appropriate person," the trial court may terminate its jurisdiction over the juvenile. *Id.* § 7B-911(a). If the court decides to terminate its jurisdiction, it must enter an order containing certain required statutory findings. *Id.* § 7B-911(c). Upon terminating its jurisdiction, the court should then enter a civil custody order under Chapter 50 of our General Statutes, which has the effect of formally awarding custody of the juvenile to the chosen "parent or other appropriate person." *Id.* §§ 7B-911(a), (b). Once such a civil custody order has been entered, all future actions to modify or enforce the custody order will take place within the Chapter 50 proceeding. *Id.*

¶ 35 Here, Respondent challenges the trial court's permanency planning order, entered on 13 April 2020. To review, after Emma and Grace were initially taken into HHS custody in 2019, they were assigned a primary permanent plan of reunification (with either Mr. Smith or their mother), as well as a concurrent plan of guardianship with a relative or court-approved caretaker. In its 4 December 2019 permanency planning order, the trial court determined that Mr. Smith had made significant progress on his case plan and placed Emma and Grace back into Mr. Smith's care for a trial home placement.

¶ 36 In its 13 April 2020 permanency planning order, the trial court determined that it was in the best interests of Emma and Grace to permanently return to Mr. Smith's custody, and that awarding custody of the children to Mr. Smith was in

accord with their permanent plan. The trial court thus relieved HHS of any further duties with regards to Emma and Grace, and entered a separate order officially terminating the court's jurisdiction over Emma and Grace. The trial court also stated that the matter would be transferred to a Chapter 50 civil custody action, and declared its intention to initiate such an action "in further Order of this Court."

1. Chapter 50 Civil Custody Order

¶ 37 We first must resolve which issues Respondent has properly appealed. Respondent's notice of appeal to this Court stated his intention to appeal from two orders: (1) the trial court's permanency planning review order entered 13 April 2020; and (2) "the resulting Civil Custody Order filed . . . on April 13, 2020." However, Respondent has failed to include a copy of this civil custody order in the appellate record. Respondent's brief also failed to raise any specific challenges to the civil custody order, instead only focusing on alleged errors in the permanency planning order. We accordingly hold that Respondent has abandoned any challenge to the trial court's civil custody order by omitting this order from the record and by failing to discuss it in his brief. *See* N.C. R. App. P. 9(a)(1)(h) ("The record on appeal in civil actions and special proceedings shall contain . . . a copy of the judgment, order, or other determination from which appeal is taken."); N.C. R. App. P. 28(a) ("The scope of review on appeal is limited to issue so presented in the [parties'] several briefs. Issues not presented and discussed in a party's brief are deemed abandoned."). Thus,

this appeal relates solely to the permanency planning order and the challenges thereto.

2. Required Statutory Findings Under N.C. Gen. Stat. § 7B-906.2(d)

¶ 38 On appeal, this Court reviews a trial court's permanency planning order to determine "whether there is competent evidence in the record to support the findings and the findings support the conclusions of law." *In re R.A.H.*, 182 N.C. App. 52, 57-58, 641 S.E.2d 404, 408 (2007) (internal marks and citations omitted). A trial court's findings of fact are "conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings." *Matter of Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983). In contrast, the trial court's conclusions of law "are reviewed de novo on appeal." *Matter of K.L.*, 254 N.C. App. 269, 273, 802 S.E.2d 588, 591 (2017).

¶ 39 In Respondent's first challenge to the permanency planning order, he contends that when the court placed custody of the children with Mr. Smith and terminated its jurisdiction over them, the trial court effectively ceased reunification efforts between the children and Respondent—an action which requires that certain findings be made. Specifically, Respondent asserts that N.C. Gen. Stat. § 7B-906.2(d) requires that when a trial court ceases reunification efforts with a parent, it must make certain findings regarding the futility or inappropriateness of reunification with that parent. Because the trial court did not make adequate findings under this statute,

Respondent contends that it was improper for the court to cease all reunification efforts between him and the children. We disagree, and hold that the trial court made all required findings under the statute.

¶ 40 First, we note that Respondent is correct that the trial court's 13 April 2020 permanency planning order had the legal effect of ceasing reunification efforts between Respondent and the children. "[A] permanent order, without further scheduled hearings, effectively ceases reunification efforts." *Matter of D.A.*, 258 N.C. App. 247, 252, 811 S.E.2d 729, 733 (2018). In order to justify such a termination of reunification efforts, the trial court must make specific written findings regarding each of the following factors:

> (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)(1)-(4) (2019).

¶ 41 Here, in Finding of Fact 26 of the trial court's order, the court made findings regarding each of these four factors:

> [Respondent] has not made adequate progress within a

> reasonable period of time under the plan. [Respondent] is not actively participating in or cooperating with the plan, the Agency, and the guardian ad litem for the juveniles [Emma] and [Grace]. [Respondent] has not remained available to the Court, the Agency, and the guardian ad litem for the juveniles. [Respondent] is acting in a manner inconsistent with the health or safety of the juveniles [Emma] and [Grace].

¶ 42 Respondent argues that Finding of Fact 26 is insufficient to satisfy the statute because it does not contain enough detail explaining why these four factors were met, and because there is not competent evidence to support these four factors. This argument is unavailing. Though we agree that it might have been preferable for the trial court to include somewhat more detail in this finding to better explain its rationale, other portions of the order flesh out this finding and the record clearly shows that there was competent evidence to support each of the four findings.

¶ 43 Competent evidence supports the trial court's finding that Respondent had not made adequate progress towards his case plan's anticipated goals of finding stable housing, stable employment, completing mental health and substance abuse assessments, and complying with all probation requirements. Though Respondent testified that he was renting a room in Hickory, had obtained a construction job, and had begun to meet with therapists, he was unable to recall the name of his supervisor at work, unable to provide a paystub or other proof of employment, and unable to produce any documentation demonstrating his attendance at therapy. Accordingly,

we conclude it was entirely reasonable for the trial court to discredit Respondent's testimony on these points—especially considering Respondent's prior convictions for perjury and fraud. Competent evidence also supported the trial court's finding that Respondent was not adequately cooperating with HHS or the trial court by failing to return HHS phone calls; failing to contact HHS during the entirety of his time in prison (despite being able to do so); and failing to appear at several scheduled court appearances for Grace and Emma. Finally, competent evidence supported the trial court's finding that Respondent's behavior was inconsistent with the health and safety of the children, given his lack of stable and appropriate housing, his multiple active probation orders, and his history of criminal activity and instability. Accordingly, the trial court's order encompassed all required findings under N.C. Gen. Stat. § 7B-906.2(d)(1)-(4) and Respondent's assertion of error is overruled.

3. Challenged Findings of Fact

¶ 44 Next, Respondent challenges several findings of fact within the trial court's permanency planning order. Respondent disputes the portion of Finding of Fact 58 which states that "[Respondent] has done nothing whatsoever to establish his paternity of [Emma] and [Grace] prior to presenting himself before this Court on February 25, 2020." Respondent contends that this finding is incorrect because he established his paternity both by (1) obtaining a DNA test showing him to be the biological father, as well as (2) by maintaining a common law marriage with the

children's mother.

¶ 45 Respondent asserts that he entered into a common law marriage with Ms. Baker in 2014 (prior to the birth of Grace and Emma) while the two were living together in Alabama—a state which recognizes common law marriages.[5] However, the only evidence in the record indicating the existence of this alleged common law marriage was Ms. Baker's testimony that "[Respondent] and I entered a common law marriage" as well as Social Worker Hooper's statement that "[t]hey report that they are in a common law relationship." Respondent never presented evidence of any kind of official recognition of this alleged common law marriage. Moreover, our precedent makes clear that a simple assertion is not enough to bring a common law marriage into being—the alleged spouses bear the burden of demonstrating the existence of a common law marriage under the law of the relevant state. *See Garrett v. Burris*, 224 N.C. App. 32, 34-35, 735 S.E.2d 414, 416 (2012), *aff'd*, 366 N.C. 551, 742 S.E.2d 803 (2013) (holding that the plaintiff had failed to meet her burden of demonstrating that a common law marriage existed between the parties under Texas law).

¶ 46 Second, the trial court correctly concluded that Respondent had taken no official action to establish his paternity "*prior to presenting himself before this Court*

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[5] North Carolina does not recognize common law marriages, but "will recognize as valid a common law marriage if the acts alleged to have created it took place in a state in which such a marriage is valid." *State v. Alford*, 298 N.C. 465, 473, 259 S.E.2d 242, 247 (1979) (internal marks and citations omitted).

on February 25, 2020." In an attempt to refute this finding, Respondent cites the DNA test that he undertook to show his paternity. However, Respondent did not undergo this DNA test until after his appearance in court on 25 February 2020—his DNA sample was collected on 26 February 2020. Accordingly, we hold that Finding of Fact 58 is supported by competent evidence.

¶ 47 Finally, Respondent contends that the trial court erred by referring to Mr. Smith as Emma and Grace's "legal father" throughout its order, arguing that there was no proof of Mr. Smith's status as their legal father. On this issue, we tend to agree with Respondent that it was improper for the trial court to refer to Mr. Smith as the children's "legal father."

¶ 48 First, we note that the term "legal father" or "legal parent" is not statutorily defined in the Juvenile Code, nor is it consistently defined in our caselaw. We have previously used "legal parent" as a shorthand term "to reference both biological and adoptive parents." *Mason v. Dwinnell*, 190 N.C. App. 209, 211, 660 S.E.2d 58, 60 (2008). If we accept this definition, then it is true that Mr. Smith was not the children's legal father, as he was not the biological father or adoptive father of either Grace or Emma. Instead, Respondent would qualify as Emma and Grace's legal father due to the trial court's judicial recognition of his status as their biological father.

¶ 49 The GAL contends that Mr. Smith qualified as the children's legal father due

to his presence on the children's birth certificates. To support this argument, the GAL relies on *In re J.K.C.*, where we held that placement of a father's name on a birth certificate established a "rebuttable presumption that respondent had established paternity judicially." *See In re J.K.C.*, 218 N.C. App. 22, 39, 721 S.E.2d 264, 276 (2012), *superseded by statute as recognized in Matter of A.L.S.*, 375 N.C. 708, 851 S.E.2d 22 (2020) (addressing the placement of a father's name on an amended birth certificate in the context of a termination of parental rights action based on N.C. Gen. Stat. § 7B-1111(a)(5)). It is true that N.C. Gen. Stat. § 130A-101(f) once contained language indicating that when a father completes an affidavit of parentage and lists his name on a child's birth certificate, then "the declaring father . . . shall be presumed to be the natural father of the child." *See* S.L. 2005-389 § 4. However, this statute was subsequently amended, removing this language. *See id.* Accordingly, no presumption of parenthood attaches from simply placing a person's name on a child's birth certificate, and the GAL's argument is mistaken.

¶ 50 It was thus error for the trial court to classify Mr. Smith as the children's legal father. However, this nominal error is insufficient to overturn the trial court's ultimate decision. *See, e.g.*, *In re A.C.*, 247 N.C. App. 528, 533, 786 S.E.2d 728, 733 (2016) ("[E]rroneous findings that are unnecessary to support the trial court's conclusions of law may be disregarded as harmless."). Because colloquial use of the erroneous term "legal father" did not undermine the legitimacy of the trial court's

ultimately correct decision, we conclude that this error was harmless.

¶ 51 We also note that although Mr. Smith did not qualify as Emma and Grace's "legal father," this does not mean that he did not still occupy an important and legally recognizable role in the children's lives. With regard to Grace, at the time she was removed from the home, Mr. Smith was best classified as her custodian, which is defined as "[t]he person or agency that has been awarded legal custody of a juvenile by a court." N.C. Gen. Stat. § 7B-101(8) (2019). Mr. Smith here was awarded "full legal and physical custody" of Grace in 2017 by the Tennessee court order—an order which remains standing, and has not been challenged by Respondent. With regard to Emma, at the time she was removed from the home, Mr. Smith was best classified as her caretaker, which is defined as "[a]ny person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting." *Id.* § 7B-101(3). Mr. Smith was not a biological parent to Emma; was not her guardian; and was not her custodian because, unlike Grace, Emma was never the subject of a formal custody order. However, Mr. Smith did have responsibility over Emma's health and welfare in his home for many years, and thus qualified as her caretaker.

4. Required Statutory Findings Under N.C. Gen. Stat. § 7B-906.2(b)

¶ 52 Respondent also argues that the trial court failed to make several required statutory findings under N.C. Gen. Stat. § 7B-906.2(b), which he asserts must be

satisfied when the trial court removes reunification as a primary or secondary plan for the juveniles. We disagree and hold that the trial court's order fully complied with N.C. Gen. Stat. § 7B-906.2(b).

¶ 53 Section 7B-906.2(b) of the North Carolina General Statutes governs the steps that a trial court must take when it decides to eliminate reunification as a permanent plan with a parent:

> At any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall be a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or G.S. 7B-901(d)(3), the permanent plan is or has been achieved in accordance with subsection (a1) of this section, or the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety.

N.C. Gen. Stat. § 7B-906.2(b) (2019).

¶ 54 We have previously explained that this statute allows a trial court to eliminate reunification and cease reunification efforts when *any one* of the following three criteria are met: "(1) the court makes findings under N.C. Gen. Stat. § 7B-901(c) or § 7B-901(d)(3), (2) the permanent plan is or has been achieved in accordance with § 7B-906.2(a1), or (3) the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." *Matter of D.C.*, 852 S.E.2d 694, 697 (N.C. Ct. App. 2020) (internal marks and citations omitted).

¶ 55 The most relevant portion here is the second prong of this test, which provides that reunification may be ceased when "the permanent plan is or has been achieved in accordance with § 7B-906.2(a1)." *Id.* Because this portion of the statute was only enacted in 2016, to date there is little published case law discussing the proper application of § 7B-906.2(a1).[6] However, in interpreting this statute, we have previously held, in an unpublished opinion, that "[t]he trial court must adopt concurrent permanent plans for the juvenile until *one* has been achieved." *Matter of L.C.D.*, 253 N.C. App. 840, 800 S.E.2d 137, 2017 WL 2437033, at *3 (2017) (unpublished) (emphasis added). We agree with this interpretation, and hold that under § 7B-906.2(a1), reunification efforts may be ceased simply upon completion of one of the juvenile's permanent plans—and consequently, that completion of a permanent plan means that no specific factual findings are required under § 7B-906.2(b).

¶ 56 Here, as previously discussed, when Emma and Grace were taken into HHS custody in 2019, they were assigned a primary permanent plan of reunification (with either Mr. Smith or their mother), as well as a concurrent plan of guardianship with

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[6] *See Matter of T.W.,* 791 S.E.2d 906, 2016 WL 6081433, at *7 (N.C. Ct. App. 2016) (unpublished) ("Effective 1 July 2016, N.C. Gen. Stat. § 7B-906.2 has been amended to provide that '[c]oncurrent planning shall continue until a permanent plan has been achieved.'")

a relative or court-approved caretaker. In its 13 April 2020 permanency planning order, the trial court determined that it was in the best interests of Emma and Grace to permanently return to Mr. Smith's custody, and that awarding custody of the children to Mr. Smith would achieve their primary permanent plan of reunification.

¶ 57 On this point, there is a slight wrinkle—the trial court was correct that returning the children to the custody of Mr. Smith achieved their permanent plan, however the trial court was mistaken in concluding that the plan which was achieved was reunification for both children. This is because a different permanent plan was achieved for each child. With regard to Grace, the plan which was achieved was indeed reunification. Reunification is statutorily defined as "[p]lacement of the juvenile in the home of either parent or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order." N.C. Gen. Stat. § 7B-101(18b) (2019). As explained above, at the time Grace was removed from the home, Mr. Smith qualified as Grace's custodian pursuant to the Tennessee court order. Thus, Grace's primary permanent plan of reunification was achieved when Grace was placed back in Mr. Smith's home.

¶ 58 With regard to Emma, the plan which was achieved was custody with a court-approved caretaker. As explained above, at the time Emma was removed from the home, Mr. Smith qualified as her caretaker because he was responsible for her health and welfare in a residential setting. Thus, Emma's concurrent permanent plan of

custody with a court-approved caretaker was achieved when Emma was placed back in Mr. Smith's home. In sum, the trial court was right (though for the wrong reason) when it concluded that awarding custody of the children to Mr. Smith would achieve their permanent plans. A ruling that is right in result, but for the wrong reason, will be upheld by this Court on appeal. *See, e.g., Templeton v. Town of Boone*, 208 N.C. App. 50, 54, 701 S.E.2d 709, 712 (2010) ("[E]ven if dismissal was for the wrong reason, a trial court's ruling must be upheld if it is correct upon any theory of law, and thus it should not be set aside merely because the court gives a wrong or insufficient reason.").

¶ 59 Accordingly, because the trial court's award of custody to Mr. Smith achieved the children's permanent plan in accordance with § 7B-906.2(a1), the trial court's order satisfied the second prong of § 7B-906.2(b). Because of the disjunctive phrasing of § 7B-906.2(b), satisfaction of this single prong was sufficient to meet the requirements of the statute. *See Matter of Duvall*, 268 N.C. App. 14, 21, 834 S.E.2d 177, 183 (2019) ("Where a statute contains two [or more] clauses which prescribe its applicability, and the clauses are connected by a disjunctive (e.g. 'or'), the application of the statute is not limited to cases falling within both clauses, but will apply to cases falling within either of them.") (internal marks and citations omitted). Thus, the trial court's order complied with § 7B-906.2(b), and Respondent's assertion of error is

overruled.[7]

5. Verifying Financial Resources and Legal Understanding

¶ 60 Respondent's final challenge to the trial court's permanency planning order argues that the trial court's order improperly awarded custody of the children to Mr. Smith without verifying (1) that he understood the legal significance of his appointment as custodian; or (2) that he had adequate resources to appropriately care for the children. We disagree.

¶ 61 Section 7B-906.1(j) of the North Carolina General Statutes describes the procedures that a trial court must undertake when placing a child in the custody of a non-parent at a permanency planning hearing:

> If the court determines that the juvenile shall be placed in the custody of an individual other than a parent . . . the court shall verify that the person receiving custody . . . of the juvenile understands the legal significance of the placement . . . and will have adequate resources to care appropriately for the juvenile. The fact that the prospective custodian or guardian has provided a stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources.

N.C. Gen. Stat. § 7B-906.1(j) (2019).

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[7] We also note that, before placing custody of the children with Mr. Smith (a non-parent), the trial court made the requisite finding that Respondent and Ms. Baker "are unfit or have acted inconsistently with their constitutionally protected parental status to raise the juveniles [Emma] and [Grace]." *See Matter of C.P.*, 252 N.C. App. 118, 121-22, 801 S.E.2d 647, 650 (2017) (a trial court may only award custody to a non-parent after finding that "the natural parent is unfit or that his or her conduct is inconsistent with a parent's constitutionally protected status") (internal marks and citations omitted).

¶ 62 Here, Respondent asserts that because the trial court placed Emma and Grace in the custody of Mr. Smith, a non-parent, the court was consequently obligated to verify that Mr. Smith understood the legal significance of the placement and had adequate resources to care for the juveniles. Respondent's argument is unavailing because the trial court's order did include findings demonstrating both Mr. Smith's understanding of the placement and his financial ability to care for the children. Finding of Fact 40 in the trial court's order expressly found:

> [Mr. Smith] is ready, willing, and able to have the sole legal and physical care, custody, and control of the juveniles [Emma] and [Grace]; [Mr. Smith] understands his legal obligation to care for and support the juveniles [Emma] and [Grace]; and, has sufficient financial resources to do so.

¶ 63 Respondent contends that this finding is unsupported by the record, but we disagree. The record contains competent evidence demonstrating that Mr. Smith had made exemplary progress on his case plan, had obtained new housing for the children that was both safe and appropriate, had obtained new employment and was consistently providing HHS with proof of his income, and that Grace and Emma always appeared comfortable and appropriately dressed while in his care. The record also contains competent evidence showing that Mr. Smith understood the consequences of the trial court's custody ruling, and was "elated" to continue to provide care and support for Emma and Grace as their legal custodian—as he had been doing since their infancy. Accordingly, Respondent cannot demonstrate any

error on this issue.

D. Waiving Further Judicial Review of the Children's Placement

¶ 64 Respondent next alleges that the trial court erred by waiving further judicial review of the children's placement with Mr. Smith without making certain statutorily required findings under N.C. Gen. Stat. § 7B-906.1(n). We disagree, and hold that this statute is inapplicable.

¶ 65 Section 7B-906.1(n) of the North Carolina General Statutes sets out the circumstances under which a trial court may depart from the typical schedule of biannual permanency planning review hearings—for example, by receiving written reports in lieu of hearings; by holding hearings less often than every six months; or by waiving permanency planning review hearings altogether. The statute also lays out five specific criteria that must be met in order for the trial court to make such a procedural departure. *See* N.C. Gen. Stat. § 7B-906.1(n)(1)-(5) (2019).

¶ 66 However, this statute is not triggered here, because the trial court did not simply waive further permanency planning review hearings—instead, the court wholly terminated its jurisdiction over Emma and Grace in the Chapter 7B juvenile action, and transferred the action to a Chapter 50 civil custody action. The Juvenile Code provides:

> When the [juvenile] court's jurisdiction terminates, whether automatically or by court order, the court thereafter shall not modify or enforce any order previously

> entered in the case, including any juvenile court order relating to the custody, placement or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed[.]

N.C. Gen. Stat. § 7B-201(b) (2019).

¶ 67 When a trial court terminates its jurisdiction over a juvenile case in this manner, and the appellant fails to appeal from the corresponding Chapter 50 civil custody order, then the juvenile court order cannot be challenged based on alleged noncompliance with the provisions of Chapter 7B. We have previously addressed a similar issue in *Matter of J.S.*, 250 N.C. App. 370, 792 S.E.2d 861 (2016). There, the trial court similarly "terminated the jurisdiction of the juvenile court" over the case after awarding custody to one parent in a permanency planning order, and consequently transferred the matter to a Chapter 50 civil custody action. *Id.* at 371-72, 792 S.E.2d at 863. On appeal, the respondent alleged that the permanency planning order was invalid for failure to make required findings under N.C. Gen. Stat. § 7B-1000(a). *Id.* at 372-73, 792 S.E.2d at 863. However, because respondent had appealed only from the permanency planning order—and "did not appeal the civil custody order"—we declined to address her statutory challenge to the permanency planning order. *Id.* We explained that "even if this Court were to conclude that the trial court had erred in its permanency planning order, the civil custody order would remain in effect, mooting the effect of respondent-mother's challenge to the

permanency planning order." *Id.* at 374, 792 S.E.2d at 864. In other words, "the trial court's entry of both an order ending the jurisdiction of juvenile court and of a civil custody order renders moot the merits of the permanency planning order." *Id.*

¶ 68 Here, as in *Matter of J.S.,* the trial court expressly terminated its jurisdiction over Emma and Grace, after properly concluding that there was no need for continued State intervention on behalf of these juveniles. Based on Respondent's notice of appeal, the trial court also entered a corresponding Chapter 50 custody order. However, as explained above, Respondent abandoned any challenge to the civil custody order by failing to include that order in the record and failing to discuss it in his appellate brief.

¶ 69 Accordingly, because Respondent has not properly appealed from the civil custody order, and because "the trial court's entry of both an order ending the jurisdiction of juvenile court and of a civil custody order renders moot the merits of the permanency planning order," as in *Matter of J.S.* we decline to review Respondent's Chapter 7B challenge to the permanency planning order. As noted by the trial court, if Respondent still desires to contest the trial court's award of custody to Mr. Smith, he must do so via the new Chapter 50 civil custody action. *See* N.C. Gen. Stat. § 7B-911(b) (2019) ("[A]ny motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes.").

E. Visitation Order

¶ 70 Finally, Respondent contends that the trial court abused its discretion by denying him any visitation with Emma and Grace, arguing that the trial court relied on factually incorrect assertions to deny him visitation and that the decision was contrary to the visitation recommendations of HHS. We disagree.

¶ 71 We first hold that, for the reasons explained in the preceding section, Respondent is similarly unable to challenge the visitation provisions contained in the permanency planning order once the trial court terminated its jurisdiction over Emma and Grace, and Respondent has failed to properly appeal from the trial court's corresponding civil custody order. However, we nevertheless choose to exercise our discretion to review this argument because we believe it is clear that the trial court committed no abuse of discretion in denying Respondent visitation.

¶ 72 The statute governing visitation rights in Chapter 7B proceedings provides that

> [a]n order that removes custody of a juvenile from a parent, guardian, or custodian that continues the juvenile's placement outside of the home shall provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety, including no visitation. The court may specify in the order conditions under which visitation may be suspended.

N.C. Gen. Stat. § 7B-905.1(a) (2019).

¶ 73 We review an order disallowing visitation for abuse of discretion. *Matter of*

J.L., 264 N.C. App. 408, 421, 826 S.E.2d 258, 268 (2019). An abuse of discretion occurs when a decision is "manifestly unsupported by reason" or "so arbitrary that it could not have been the result of a reasoned decision." *Id.* at 415, 836 S.E.2d at 264 (citation omitted). A trial court "may prohibit visitation or contact by a parent when it is in the juvenile's best interest consistent with the juvenile's health and safety." *Id.* at 421, 826 S.E.2d at 268.

¶ 74 This Court has previously held that a denial of visitation is in a juvenile's best interest when the parent has failed to make adequate progress on their case plan, has failed to cooperate with DSS, or has not maintained sufficient contact with the juvenile. For example, in *In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007), we held that the trial court did not abuse its discretion in ordering no visitation with the respondent-mother based upon her "unsuccessful parenting" of the juvenile and her "lack of progress in working with DSS to parent" the juvenile.

¶ 75 Similarly, in *Matter of J.L.*, 264 N.C. App. at 422, 826 S.E.2d at 268, we held that the trial court did not abuse its discretion in ordering no visitation with the respondent-mother given her "long history with CPS"; her lack of any visits to the children in the past six months; and the fact that she "was only minimally participating" in her case plan and was not "able to demonstrate knowledge gained." *See also In re N.G.*, 186 N.C. App. 1, 11, 650 S.E.2d 45, 52 (2007), *aff'd*, 362 N.C. 229, 657 S.E.2d 355 (2008) ("In light of the historical facts of the case, respondents' failure

to accept responsibility for [the juvenile's] injuries, their failure to cooperate with DSS and comply with their case plan, and the trial court's conclusion that reunification efforts should cease, we hold that the trial court's decision to cease visitation was not manifestly unsupported by reason.").

¶ 76 Here, the trial court found that visitation with Respondent would not be in Emma and Grace's best interests for three primary reasons: (1) Respondent had not seen his children in well over one year; (2) the children did not know him and had no bond with him; and (3) visitation may interfere with Emma's ongoing PCIT therapies. Respondent challenges each of these findings, arguing that none of these factors constituted a reasonable basis to wholly deny him visitation with his children. Respondent's argument is unpersuasive, as each of these findings are factually accurate and demonstrate that denying visitation was in the best interests of Emma and Grace.

¶ 77 First, the trial court accurately noted that at the time of the 11 March 2020 hearing, Respondent had not contacted Emma and Grace since 2018. Respondent argues that this factor should not be held against him because he was imprisoned for much of this time frame. But Respondent neglects the fact that there was a one-month period—spanning from his phone call with HHS on 6 August 2019 until his arrest on 5 September 2019—wherein Respondent was not incarcerated, and knew that his children were in HHS custody, but still made no attempts to visit or contact

his children, nor any attempts to contact or cooperate with HHS. Moreover, as previously discussed, Respondent possessed both the means and opportunity to contact HHS and his children while imprisoned, but nevertheless made no effort to do so.

¶ 78 Second, the trial court accurately concluded that Emma and Grace do not know Respondent and had no bond with him. The testimony of both Social Worker Hooper and Mr. Smith clearly demonstrated that the children considered Mr. Smith their father, that Respondent had only sporadically visited the children throughout their childhood, and that the children did not appear to "know who their biological father is." It is reasonable to conclude that it would be harmful to the children's emotional well-being to suddenly be subjected to visitation with a man who is essentially a stranger to them—especially given Respondent's extensive criminal record and the chronic instability of his lifestyle.

¶ 79 Third, as for Emma's ongoing PCIT courses, Respondent correctly points out that there was no explicit evidence in the record indicating that visitation with Respondent would interfere with Emma's progress in therapy. Social Worker Hooper did not testify to this effect, and the letter from Emma's therapist did not mention visitation. However, given the above-mentioned issues with Respondent's transience and criminal history, and his lack of involvement throughout Emma's life, it was not manifestly unreasonable for the trial court to deduce that being introduced to

Respondent as a second father figure may be emotionally difficult for Emma and may hamper her progress in therapy. Accordingly, we hold that the trial court did not abuse its discretion in denying visitation to Respondent.

III. Conclusion

¶ 80 The trial court did not abuse its discretion in denying Respondent's motion to continue at the 11 March 2020 permanency planning hearing. The trial court did not err in placing custody of Emma and Grace with Mr. Smith in its permanency planning order, and the order contained all statutorily required findings of fact. The trial court did not err by terminating its jurisdiction over Emma and Grace. The trial court did not abuse its discretion in denying visitation to Respondent. For these reasons, we affirm the trial court's 13 April 2020 order.

AFFIRMED.

Judges DILLON and INMAN concur.

Report per Rule 30(e).