IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-433

No. COA20-29-2

Filed 17 August 2021

Wilkes County, No. 15 JA 200

IN THE MATTER OF: S.R.J.T.

Appeal by respondent-mother from orders entered on 17 July 2018 and 27 September 2019 by Judge David V. Byrd in District Court, Wilkes County. Heard in the Court of Appeals 17 November 2020.

Vannoy, Colvard, Triplett & Vannoy, PLLC, by Daniel S. Johnson, for petitioner-appellee Wilkes County Department of Social Services.

Lisa Anne Wagner for respondent-appellant-mother.

STROUD, Chief Judge.

¶ 1 Respondent-Mother appeals from the trial court's order adjudicating Scottie[1] as a neglected and dependent juvenile and from the trial court's disposition order which ceased reunification efforts and granted guardianship of Scottie to his paternal aunt. Because the evidence presented and trial court's findings support its conclusion that Scottie was neglected, we affirm the adjudication order as to neglect, and we affirm in part, vacate in part, and remand the disposition order for entry of an order

[1] Pseudonyms are used to protect the identity of the juvenile.

containing findings of fact in compliance with North Carolina General Statutes §§ 7B-101(9) and 7B-906.1(n).

I. Background

¶ 2 Mother has an extensive history with the Wilkes County Department of Social Services ("DSS"), and her parental rights were terminated to two other children in 2008 and 2010. DSS initially removed Scottie and his brother[2] in 2015 due to issues of domestic violence and substance abuse. Scottie was adjudicated neglected, and Mother previously appealed this order. On 20 June 2017, this Court reversed the trial court's adjudication order in an unpublished opinion. *See In re J.L.T. and S.R.J.T.,* 254 N.C. App. 240, 801 S.E.2d 391 (2017) (unpublished).

¶ 3 On 3 July 2017, DSS filed a new petition alleging Scottie was neglected and dependent. An adjudication hearing was held on 18 December 2017. On 17 July 2018 the trial court entered an adjudication order which declared Scottie to be neglected and dependent. Disposition hearings were held on 8 January 2018, 6 March 2018, and 21 August 2018. The written disposition order, entered on 27 September 2019, ceased reunification efforts, granted guardianship of Scottie to his paternal aunt, and suspended visitation and further hearings. Mother timely appealed from the

[2] Mother has only appealed as to Scottie, and Scottie's Father is not a party to this appeal.

disposition order and petitioned this Court for a writ of certiorari in the event her notice of appeal was defective.

II. Petition for Writ of Certiorari

¶ 4 Mother's notice of appeal stated, Mother "hereby gives Notice of Appeal to the Court of Appeals of North Carolina from the Adjudication Judgment and Dispositional Order that was filed on September 27th 2019." However, the adjudication order was filed on 17 July 2018. Because we can infer from the notice of appeal that Mother intended to appeal the both the adjudication and disposition orders, in our discretion, we allow her petition as to the disposition order. N.C. R. App. P. 21(a)(1).

III. Adjudication

¶ 5 Mother argues, "[t]he trial court erred by adjudicating Scottie neglected and dependent when the trial court failed to make necessary finding of fact, there is insufficient evidence to support the findings of fact the trial court did make, and the findings that are supported by the evidence are insufficient to support its conclusions of law."

A. Standard of Review

> We review an adjudication under N.C. Gen. Stat. § 7B-807 to determine whether the trial court's findings of fact are supported by clear and convincing competent evidence and whether the court's findings support its conclusions of law. The clear and convincing standard is greater than the preponderance of the evidence standard required in most

> civil cases. Clear and convincing evidence is evidence which should fully convince. . . . [W]e review a trial court's conclusions of law de novo.

In re N.K., ___ N.C. App. ___, ___, 851 S.E.2d 389, 392 (2020) (quoting *In re M.H.*, ___ N.C. App. ___, ___, 845 S.E.2d 908, 911 (2020)). Unchallenged findings are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

B. Adjudication of Neglect

¶ 6 Mother argues, "DSS failed to present any evidence that the children were present for, or impacted by, any acts of domestic violence or substance use, or that they suffered any physical, mental or emotional impairment as a result."

¶ 7 A neglected juvenile is defined as one

> who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare[.]

N.C. Gen. Stat. § 7B-101(15) (2017). "[I]n order for a court to find that the child resided in an injurious environment, evidence must show that the environment in which the child resided has resulted in harm to the child or a substantial risk of harm." *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016). "A trial court's failure to make specific findings regarding a child's impairment or risk of harm will not require reversal where the evidence supports such findings." *Id.*

¶ 8 Here, the trial court found:

> 5. The Respondents have unstable living arrangements and maintain a strange, ongoing, and inappropriate relationship with one another. [Mother] alternates living with [Scottie's Father] and [Aaron], choosing to stay with whichever father has money and drugs to offer to her.
>
> 6. [Mother] and [Scottie's Father] have failed numerous drug screens during the time that the children have been in the care of DSS.
>
> . . . .
>
> 8. On October 6, 2017, the Respondents submitted to hair follicle drug tests and the results were as follows: [Mother]: positive for amphetamines and methamphetamine[.]
>
> 9. On October 13, 2017, social worker Carver made a surprise visit to [Aaron's] home. When she arrived, [Aaron] was lying on a couch and [Mother] was scurrying around the kitchen. [Mother] told social worker Carver that she was pouring a beer out. Social worker Carver noticed a needle on the kitchen counter, two more needles in the sink, a packet of some sort, and a spoon containing a burned substance. [Aaron] told the social worker that he didn't know why [Mother] was using the "junk" in his home. [Mother] admitted that she was using drugs and that she was depressed since her children had not been at home.
>
> . . . .
>
> 13 Since the children have been in the care of DSS . . . . [Scottie] has been diagnosed with post-traumatic stress disorder.
>
> . . . .

> 15. [Scottie] receives counseling from Brooke Gregory at Kids Count Pediatrics. Therapist Gregory was duly qualified as an expert witness and provided the following opinions regarding [Scottie]:
>
> > (a) He suffers from post-traumatic stress disorder as a result of matters he witnessed while in the care of [Mother] and [Scottie's Father], including drug use, domestic violence, and his mother moving back and forth between [Scottie's Father] and [Aaron, the father of Scottie's brother];
> >
> > (b) He regressed in treatment following visits with his parents. Interaction with his parents increased his behaviors of acting out, not listening, and oppositional defiance;
> >
> > (c) He experienced nightmares of being left alone and someone cutting his head off after contact with his parents;
> >
> > (d) He was exposed to sexual behavior during the time that he was with his parents. He has talked to other children about sexual behavior and engaged in sexualized conduct; and
> >
> > (e) It is not in the best interests for [Scottie] to have visitation with his biological parents.

The trial court concluded:

> 3. With regard to neglect, each child would be placed at a serious risk of impairment in the event that they were placed with their parents due to the parents' ongoing drug abuse and their unstable living arrangements. Each of the children would be placed at substantial risk of physical, mental, and emotional impairment in the event that they were returned to their parents.

¶ 9 Mother raises several arguments regarding Finding of Fact No. 15. Mother argues that portions of finding of fact 15(a) and (e) are conclusions of law and should be reviewed *de novo*. We disagree. First, we note that Finding No. 15 is phrased as a recitation of testimony of facts about the juvenile since it specifically lists the observations and opinions of Therapist Gregory. *See In re L.C.*, 253 N.C. App. 67, 70, 800 S.E.2d 82, 86 (2017). Although recitations of evidence may not allow for appropriate appellate review where the trial court fails to make findings demonstrating it found the evidence to be credible, *id.*, when we consider Finding No. 15 in the context of the entire order, the trial court did determine the evidence to be credible and this finding is supported by the evidence.

¶ 10 To the extent that Finding 15(e) is a finding of fact and not a recitation of testimony, we review the trial court's determination of whether visitation is in the best interest of the juvenile for abuse of discretion. *In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007) ("This Court reviews the trial court's dispositional orders of visitation for an abuse of discretion.").

¶ 11 Mother also contends Finding 15(d) is not supported by the evidence. Ms. Gregory testified about the reasons she saw Scottie:

> Q. Why did you begin work counseling with [Scottie]?
>
> A. He was referred to my case load due to family circumstances where he was removed from his family and

lives with [his Aunt]. There's a pretty significant neglect and abuse history there, so he has post-traumatic stress disorder.

Q. When did you diagnose [Scottie] with post-traumatic stress disorder?

A. On 6/14/16.

Q. And it's your opinion that that stress disorder resulted from abuse and the circumstances that he encountered in his parents (sic) home?

A. Yes, sir.

Q. How did you arrive at that diagnosis?

A. Well, there are several criteria you need in order to get diagnosed with post-traumatic stress disorder. [Scottie] exhibits mood changes, anxiety, sleep disturbances, eating disturbances, attachment issues, and [Scottie] qualifies for all of those.

. . . .

Q. Now, has [Scottie] indicated to you during counseling sessions that he had witnessed his parents using illegal drugs?

A. Yes.

Q. What did he tell you about seeing his parents use illegal drugs?

A. He has talked about seeing needles. There's an actual quote here in the letter from July 19th, 2017 that I provided for Department of Social Services. "My parents will never get me back because they do drugs. They take a shot every day. I have seen them. They put medicine in

their arm with a shot."

Ms. Gregory testified, "There has been some sexualized behavior after he has interacted with his parents that comes out in session. I don't have enough to pursue that at this moment[.]" On cross examination, Ms. Gregory stated, "I'm not sure where the sexualized behavior has come from."

¶ 12 The portion of the finding of fact 15(d) about exposure to sexual behavior "during the time that he was with his parents" is not supported by clear and convincing evidence and is error. The rest of the challenged portions of Finding No. 15 are supported by clear and convincing evidence which support the trial court's conclusion that Scottie was a neglected juvenile. *In re N.G.,* 186 N.C. App. 1, 12-13, 650 S.E.2d 451, 52 (2007). In addition, these findings, considered along with the other unchallenged findings regarding drug abuse and domestic violence in the home, Scottie's regression after visitation with the parents and the diagnosis of post-traumatic stress disorder demonstrate "the environment in which the child resided has resulted in harm to the child or a substantial risk of harm." *In re K.J.B.*, 248 N.C. App. at 354, 797 S.E.2d at 518. We affirm the trial court's adjudication of neglect.

C. Adjudication of Dependency

¶ 13 Mother argues that "[t]he trial court erred where it failed to make necessary findings of fact to support its conclusion that Scottie is dependent and its conclusion

that Scottie is a dependent juvenile is not supported by competent evidence[.]" We agree.

¶ 14 Relevant to this appeal, a "dependent juvenile" is defined by statute as:

> A juvenile in need of assistance or placement because . . . the juvenile's parent . . . is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-101(9)[3].

> In determining whether a juvenile is dependent, the trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.

In re A.W., 377 N.C. 238, 2021-NCSC-44, ¶ 20 (citations and quotation marks omitted).

¶ 15 This Court has held that the trial court must make sufficient findings of fact based on competent evidence meeting the applicable standard of proof to support the ultimate findings that a parent is both "unable to provide for the juvenile's care or supervision *and* *lacks an appropriate alternative child care arrangement*":

> [A]lthough the trial court entered findings that the mother was unable to provide for the child's care and supervision, the trial court never addressed the second prong of the dependency definition. The trial court made no finding that respondent lacked an appropriate alternative child care arrangement. We are faced with the same situation here: the trial court's language in the adjudication order

[3] This version of the statute was in effect at the time the orders on appeal were entered.

> tracks the first prong of the definition of dependency, but ignores the second. We, therefore, reverse as to [the child's] dependency, and remand to the trial court for further findings as to whether [the child] lacks an appropriate alternative child care arrangement.

In re K.D., 178 N.C. App. 322, 329, 631 S.E.2d 150, 155 (2006) (citations and quotation marks omitted); *see also In re P.M.*, 169 N.C. App. 423, 427–28, 610 S.E.2d 403, 406–07 (2005) ("[A]ffirm[ing] the trial court's conclusion that P.M. [wa]s a neglected child[,]" "revers[ing], however, as to the conclusion that P.M. [wa]s a dependent child and remand[ing] for further findings of fact on that issue" because "[t]he trial court made no finding that respondent lacked 'an appropriate alternative child care arrangement.'").

¶ 16 We are faced with the identical issue in this case. The trial court made the following conclusions of law concerning the issue of dependency:

> 5. With regard to dependency, all of the parents in this case are unable to provide age-appropriate care or supervision for the children as a result of their ongoing drug abuse, their unstable living arrangements, and the special needs of the children.
>
> 6. It is contrary to the health and safety of the children to be returned to the home of a parent.

¶ 17 We hold the conclusion that Mother was "unable to provide age appropriate care or supervision for [Scottie]" is supported by sufficient findings that are, in turn, supported by the evidence. However, as in *K.D.* and *P.M.*, the trial court did not make

any finding that Mother "lack[ed] an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9). Indeed, in finding 14, the trial court noted that "[Scottie] has been placed in the home of his paternal aunt, [Rebecca], since April 2016."

¶ 18 DSS contends that even if the trial court erred by failing to make a finding regarding the lack of an appropriate alternative child-care arrangement, "this is not sufficient reason to overturn or remand this case." DSS argues Mother did not present any evidence she had an alternative child-care arrangement, and it was "undisputed" that she had none.

¶ 19 Scottie began to reside outside Mother's care on 5 November 2015, when he was placed with his father in Yadkin County after Wilkes County DSS investigated the reports of domestic violence and drug use in Mother's home. However, Scottie remained there only one day, as Yadkin County DSS did not approve the father's home due to his extensive criminal and CPS history, and Wilkes County DSS filed the first petition on 6 November 2015. Upon filing of the first petition, a nonsecure custody order was entered and both boys were initially placed into foster care.

¶ 20 After difficulties developed having both boys in the same foster home, DSS placed Scottie with his paternal aunt, and he remained in this placement at the time this Court reversed the order in the previous appeal and when DSS filed the second petition. Mother's entire factual argument is simply that Scottie was ultimately

placed with his paternal aunt and after the reversal of the order in the previous appeal, he remained there after the second petition was filed. She contends that as a result of the 29 August 2016 first custody review order, Scottie "was placed in the custody of DSS and [was] residing in the care of a family member who had been approved as a placement provider as of the date of the allegations contained in the 3 July 2017 Juvenile Petition[.] (R pp 65-66, 78, 81-82)."

¶ 21 Mother does not direct this Court to any evidence wherein *she* requested this placement or that she had any participation in Scottie's placement with his paternal aunt. In *In re K.O.*, this Court determined that the "appropriate alternative child care arrangement" as contemplated by N.C. Gen. Stat. § 7B-101 must occur at the behest of the parent, not a by a court order or placement by DSS. *See In re K.O.*, 223 N.C. App. 420, 421-22, 735 S.E.2d 369, 370 (2012) ("Respondent contends that her alternative child care arrangement is custody of the juvenile with petitioner, and, thus, for petitioner to show she lacked an alternative child care arrangement, petitioner would have to prove respondent no longer desired the juvenile to live with petitioner, which petitioner has not done. We are not persuaded by respondent's argument. Petitioner does not have custody of the juvenile at respondent's request. Rather, petitioner commenced a private custody action against respondent and was awarded custody of the juvenile due to respondent's substance abuse problems and her abandonment of the juvenile in petitioner's care. Respondent has no ability to

unilaterally decide that she no longer wants petitioner to have custody of the juvenile, and petitioner cannot be deemed to be respondent's alternative child care arrangement for the juvenile.").

¶ 22 DSS contends that since there is no evidence Mother had an appropriate alternative child-care arrangement for Scottie, we need not remand to the trial court for additional findings. DSS notes that in *Matter of A.U.D.*, 373 N.C. 3, 10, 11, 832 S.E.2d 698, 702, 703 (2019), our Supreme Court held that, although "it is clear that a trial court must consider all of the factors in section 7B-1110(a)[,]" when there is no conflict in the evidence as to factors set forth in N.C. Gen. Stat. § 7B-1110, there is no need to remand for additional findings of fact because remand "would be an elevation of form over substance and would serve only to delay the final resolution of this matter for the children." But the Supreme Court also noted that N.C. Gen. Stat. § 7B-1110(a) does not "explicitly require written findings as to each factor" and, in *AUD*, the record showed that the trial court did carefully consider each factor, even if it did not make written findings as to each one. *Id.*

¶ 23 This case arises under N.C. Gen. Stat. § 7B-101(9), not N.C. Gen. Stat. § 7B-1110(a), the statute at issue in *A.U.D.* The cases addressing N.C. Gen. Stat. § 7B-101(9) have held that the finding of the lack of an appropriate alternative child-care arrangement is required. This finding is not one of several discretionary factors, as the factors discussed in *A.U.D.* Thus, based upon the prior cases cited herein which

have remanded for the trial court to make additional findings in this situation, we vacate and remand for the trial court to make additional findings here. *See In re M.J.R.B.*, 2021-NCSC-62, ¶ 27 ("Again, while there may be sufficient evidence in the record, the lack of sufficient findings compels us to vacate the order terminating parental rights to S.B., and remand this matter back to the trial court for hearing additional evidence, if necessary, and entry of a new order.").

¶ 24 The trial court's adjudicatory determination that, with regard to Mother, Scottie is a dependent child as defined by N.C. Gen. Stat. § 7B-101(9) is vacated. Because the record does not clearly demonstrate an insufficiency of evidence to support a finding that Scottie *is* a dependent child, we remand to the trial court "for further findings as to whether [Scottie] lacks 'an appropriate alternative child care arrangement[,]'" *In re K.D.*, 178 N.C. App. at 329–30, 631 S.E.2d at 155, and to make all necessary associated amendments to the adjudication order—to ensure the findings support the conclusions, and both support the rulings of the trial court.

¶ 25 The trial court's finding of neglect under N.C. Gen. Stat. § 7B-101(15) was sufficient to support the decision ordered by it in the adjudication order. Because we have affirmed the trial court's determination that Scottie was a neglected child, our holding regarding dependency has no relevance to any findings of fact in the adjudication order, nor any conclusions, or parts thereof, not reliant on a finding that Scottie did not have an appropriate alternative child-care arrangement.

¶ 26 Further, because this Court affirmed the trial court's ultimate finding of neglect in the adjudication order, that neglect finding was sufficient to support all rulings in the decretal portion of the adjudication order *except* the determination that Scottie "[is] hereby declared … [a] dependent juvenile[] as … defined by N.C.G.S. § 7B-101." In Mother's case, we also vacate the parts of the *disposition* order that refer to Scottie as a dependent child, or that were solely dependent upon the determination of dependency in the adjudication order. Because we have affirmed the trial court's determination that Scottie is a neglected child, we also fully affirm the disposition order—*with the one exception* that we vacate the part of finding of fact 2. declaring Scottie to be a "dependent juvenile[.]" The conclusions of law and the actions ordered in the decretal section of the disposition order are in no manner impacted by our holdings in this matter.

IV. Disposition Order

¶ 27 Mother argues, "[t]he trial court reversibly erred and abused its discretion by ceasing reunification, granting guardianship of Scottie to his paternal aunt at the initial disposition, and waiving review hearings without making statutorily required findings."

A. Standard of Review

¶ 28 "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. at 213, 644 S.E.2d at 594. "An abuse of discretion occurs when a trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *Id.* This Court "review[s] statutory compliance *de novo*." *In re N.K.*, ___ N.C. App. at ___, 851 S.E.2d at 395.

B. Reunification

¶ 29 "Reunification shall remain a primary or secondary plan unless the court made findings under 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. Gen. Stat. § 7B-906.2(b) (2017).

> At any permanency hearing . . . 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 department, and the guardian ad litem for the juvenile.

> (4) Whether the parent is acting in a manner inconsistent with the health and safety of the juvenile.

N.C. Gen. Stat. § 7B-906.2(d).

> Although "use of the actual statutory language [is] the best practice, the statute does not demand a verbatim recitation of its language." Instead, "the order must make clear that the trial court considered the evidence in light of whether reunification would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time."

In re L.E.W., 375 N.C. 124, 129-30, 846 S.E.2d 460, 465 (2020) (alteration in original) (citation omitted).

¶ 30 Here, the trial court found as following regarding Scottie:

> 1. The status of the above-named minor children is accurately described in the Court Summaries and Reports prepared by DSS and the GAL which were introduced into evidence for purposes of disposition in these matters and are incorporated herein by reference as Findings of Fact.
>
> 2, The children have been declared neglected and dependent juveniles as those terms are defined by N.C.G.S. § 7B-101.
>
> 3. The children have not been in the custody of their parents since the fall of 2015. It would be contrary to the children's health and safety to be returned to the home of a parent as a result of their special needs and the instability of their parents.
>
> 4. There are no issues regarding paternity of the children. . . .

> 5. The Court has considered the requirements of N.C.G.S. § 7B-901(c) and finds that DSS should not be required to utilize reasonable efforts to reunify the children with a parent. [Mother] and [Scottie's Father] have had their parental rights terminated involuntarily to other children. Each of these parents have a significant history of substance abuse and their living arrangements are not suitable. . . .
>
> 6. [Scottie] has been placed in the care of his paternal aunt, [Rebecca], since April 2016. He has been diagnosed with post-traumatic stress disorder from exposure to domestic violence, abuse, and his parents' substance abuse which he witnessed while in the care of his parents. He displays anxiety, mood changes, sleep and eating disorders, and attachment issues. He is fearful of being removed from his aunt. [Scottie] receives counseling from therapist Brooke Gregory at Kids Count Pediatrics. Visitation between [Scottie] and his parents was ceased at the recommendation of therapist Gregory. [Scottie] has told the GAL's office that he does not want to live with his parents.
>
> . . . .
>
> 8. [Rebecca] has the financial means and capability to care for [Scottie]. She has provided care solely for the child with no assistance from his parents for over two years. [Rebecca] understands the legal significance of the appointment and has adequate resources to care appropriately for the child. [Scottie] is bonded to his aunt.
>
> 9. The children are not members of a state or federally recognized Indian tribe.

The trial court concluded:

> 1. The Court has jurisdiction of the subject matter and the parties.

> 2. DSS made reasonable efforts to prevent or eliminate the need for placement of the minor children; however, these efforts were not effective in light of the parents' histories of drug abuse, instability, and incarceration. DSS . . . placed [Scottie] in the care of a paternal relative.
>
> 3. The best interests of the minor children would be best served by the disposition set forth in the Decree below. DSS shall not be required to utilize reasonable efforts to reunify either child with a parent.
>
> 4. Any Finding of Fact that is a more appropriate Conclusion of Law is incorporated herein by reference.
>
> Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED, ADJUDGED, AND DECREED that:
>
> . . . .
>
> 3. [Rebecca] is appointed as guardian of the person of [Scottie] pursuant to N.C.G.S. § 7B-600. No accountings or bond shall be required. No further review hearings shall be required concerning this child. Neither of [Scottie's] parents shall have any visitation unless the same is approved by the Court.

These findings make it clear that the trial court "considered the evidence in light of whether reunification would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *Id.* at 129-30, 846 S.E.2d at 465. In addition, the trial court did not abuse its discretion by ceasing reunification efforts based upon these findings.

C. Guardianship

¶ 31 Mother argues, "[t]he trial court reversibly erred by failing to make necessary findings of fact to support its order granting guardianship of Scottie to [Rebecca]." Mother argues the trial court did not make a finding that her conduct was inconsistent with her constitutionally protected status as a parent and she had "participated in a substance abuse assessment and begun receiving [substance abuse] treatment, had consistently been providing clean drug screens . . . had inquired of DSS what she could provide for Scottie's needs, and was on waiting lists for housing of her own." As noted in the findings above, "[v]isitation between [Scottie] and his parents was ceased at the recommendation of therapist Gregory."

> "'[P]arents have a constitutionally protected right to the custody, care and control of their child, absent a showing of unfitness to care for the child.'" "[A] parent may lose the constitutionally protected paramount right to child custody if the parent's conduct is inconsistent with this presumption or if the parent fails to shoulder the responsibilities that are attendant to rearing a child." Prior to granting guardianship of a child to a nonparent, a district court must "clearly address whether [the] respondent is unfit as a parent or if [his] conduct has been inconsistent with [his] constitutionally protected status as a parent[.]" "[A] trial court's determination that a parent's conduct is inconsistent with his or her constitutionally protected status must be supported by clear and convincing evidence."

In re R.P., 252 N.C. App. 301, 304, 798 S.E.2d 428, 430 (2017) (citations omitted).

¶ 32 This Court has held that where a parent is on notice that guardianship with a third party has been recommended and will be determined at the hearing, if the

parent fails to raise this argument at the hearing, appellate review of the constitutional issue is waived:

> "[T]o apply the best interest of the child test in a custody dispute between a parent and a non-parent, a trial court must find that the natural parent is unfit or that . . . her conduct is inconsistent with a parent's constitutionally protected status." This finding should be made when the court is considering whether to award guardianship to a non-parent. To preserve the issue for appellate review, the parent must raise it in the court below. However, for waiver to occur the parent must have been afforded the opportunity to object or raise the issue at the hearing. Here, although counsel had ample notice that guardianship . . . was being recommended, Respondent-mother never argued to the court or otherwise raised the issue that guardianship would be an inappropriate disposition on a constitutional basis. We conclude Respondent-mother waived appellate review of this issue.

In re C.P., 258 N.C. App. 241, 246, 812 S.E.2d 188, 192 (2018) (citations omitted).

¶ 33 Here, Mother was on notice of the recommendations of both DSS and the GAL of guardianship or custody to be granted to the juvenile's paternal aunt. The Court Report and GAL's reports prior to the last hearing recommended this plan. Mother did not present any evidence opposing the recommendation of guardianship. Mother did not make any argument regarding her constitutional rights and did not make any argument against guardianship on this or any other basis. Instead, her counsel's argument to the trial court addressed primarily visitation, as he asked the trial court to maintain Mother's visitation along with drug testing. This argument is overruled.

D. Waiving Further Review Hearings

¶ 34 Mother argues, "[t]he trial court did not make adequate findings to support its decision to waive further review hearings." Section 906.1 of the North Carolina General Statutes requires the trial court to make the following findings before having review hearings less often than every six months:

> (1) The juvenile has resided in the placement for a period of at least one year or the juvenile has resided in the placement for at least six consecutive months and the court enters a consent order pursuant to G.S. 7B-801(b1).
>
> (2) The placement is stable and continuation of the placement is in the juvenile's best interests.
>
> (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months.
>
> (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion.
>
> (5) The court order has designated the relative or other suitable person as the juvenile's permanent custodian or guardian of the person.

N.C. Gen. Stat. § 7B-906.1(n) (2017).

> This Court has held that the trial court must make written findings of fact satisfying each of the above criteria in its order. An order which fails to address all of the criteria will be reversed and remanded for entry of an order containing findings of fact in compliance with N.C. Gen. Stat. § 7B-906(b).

In re M.M., 230 N.C. App. 225, 239, 750 S.E.2d 50, 59 (2013) (citation omitted). The trial court's disposition order, quoted above, is silent as to the third and fourth criteria listed above. Accordingly, we reverse this portion of the order and remand for additional findings regarding review hearings.

V. Conclusion

¶ 35 We affirm the adjudication order as to Scottie being a neglected juvenile. We vacate the part of the adjudication order as to Scottie being a dependent juvenile, and remand for the trial court to make full and appropriate findings and conclusions concerning the issue of dependency, as and if needed to support the trial court's ultimate determination on this issue, whatever that may be. We affirm the disposition order in part, vacate in part, and remand. In particular, we vacate the provisions of the disposition order waiving review hearings and remand for entry of an order containing findings of fact in compliance with North Carolina General Statute § 7B-906.1(n).

AFFIRMED IN PART; VACATED IN PART AND REMANDED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).