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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-269

No. COA21-592

Filed 19 April 2022

New Hanover County, No. 20 JA 64

IN THE MATTER OF: C.A.M.

Appeal by Respondent-Father from orders entered 22 July 2021 and 5 August 2021 by Judge J. H. Corpening, II in New Hanover County District Court. Heard in the Court of Appeals 22 February 2022.

New Hanover County Staff Attorney Jill R. Cairo, for New Hanover County Department of Social Services, Petitioner-Appellee.

Neil A. Riemann, for Guardian ad Litem.

Jeffrey L. Miller, for Respondent-Appellant Father.

WOOD, Judge.

¶ 1 Respondent-Father ("Respondent") appeals from the trial court's orders granting guardianship of his infant daughter Iris[1] to a non-parent. On appeal, Respondent argues the trial court erred because clear and convincing evidence did not support the trial court's findings of fact, and in turn, these findings of fact did not

[1] We use the pseudonym chosen by Respondent to protect the juvenile's identity.

support the conclusion Respondent acted inconsistently with his constitutionally protected status as a parent. After a careful review of the record and applicable law, we affirm the trial court's orders.

I. Factual and Procedural Background

¶ 2 Respondent and the child's mother ("Mother")[2] are the parents of Iris, born April 13, 2020. Prior to Iris's birth, Mother had an "extensive history with the [New Hanover County] Department of Social Services," including a "chronic 5-year history of . . . PCP use" and the loss of legal guardianship to her older child from a previous relationship. While pregnant with Iris, Mother tested positive for Phencyclidine ("PCP") on "4 separate occasions" and both she and Iris tested positive for PCP at the time of delivery. A few days later, Respondent elected to undergo a hair sample drug screening and the test result was positive for PCP.

¶ 3 On April 21, 2020, nine days after Iris was born, the New Hanover County Department of Social Services ("DSS") filed a juvenile petition alleging Iris to be a neglected juvenile. The petition alleged Respondent "claimed not to know of Resp[ondent]-Mother's drug use" and despite being made aware of DSS's concerns surrounding her drug use, "continued to allow Resp[ondent]-Mother to live in his home since the Juvenile was discharged . . . ." Respondent later admitted he was

[2] Mother did not appeal the trial court's orders, and thus is not a party to this action.

aware of Mother's drug use but did not divulge this information to DSS in an effort to "protect" Mother.

¶ 4 On April 22, 2020, the trial court entered an order for nonsecure custody, placing Iris with Respondent's cousin, Diana.[3] Approximately two months later, the trial court entered an order addressing the need for continued nonsecure custody. Therein, the trial court found "Respondent-Father acted during the CPS investigation . . . in a manner designed to shield and protect Respondent-Mother and thus far has not shown to the Court that he can prioritize the Juvenile's needs and well-being over the wishes of Respondent-Mother." The trial court further found "[t]he Department should continue to make reasonable efforts to eliminate the need for placement of" Iris.

¶ 5 Thereafter, Mother moved out of Respondent's residence but remained non-complaint with DSS's recommendations. Mother continued to test positive for PCP. Respondent, however, worked to comply with DSS's requirements by maintaining stable employment, completing clinical assessments, attending counseling, and repeatedly testing negative for the use of drugs. Interestingly, DSS could only perform a urine drug analysis because Respondent constantly shaved his body hair to render himself hairless. Respondent continued to maintain a romantic

[3] We use a pseudonym for Respondent's cousin to protect the juvenile's identity.

relationship with Mother.

¶ 6 In the June 18, 2020 report to the court, the guardian ad litem reported Iris was doing "very well" in her placement but was "not meeting her milestone regarding her weight/age" and "still exhibiting signs of withdrawal" from the PCP. Respondent and Mother continued to attend their visits with Iris.

¶ 7 On June 18, 2020, the trial court adjudicated Iris as a neglected juvenile because she did not receive proper care, supervision, or discipline from her parents, and lived in an environment injurious to her welfare. In its disposition order, the trial court reiterated it was concerned about the parents' relationship and Respondent's inability to place Iris's needs above those of Mother. Nonetheless, the trial court permitted Respondent to have two unsupervised visits per week with the restriction that he could not allow Mother any in-person contact with Iris during these visits. Once more, the trial court directed DSS to make reasonable efforts to eliminate the need for Iris's placement.

¶ 8 At the July 16, 2020 review hearing, DSS filed a report with the trial court stating the following: A social worker visited Respondent's house and found it to be "acceptable by the Department." However, when asked if he would be willing to establish and uphold boundaries with Mother, Respondent reported he was willing to follow the court's orders "within reason." The social worker further reported Respondent and Mother continued to live together, although both denied living

together. The trial court entered an order prohibiting Respondent from "permit[ting] any in-person contact between the Juvenile and Respondent-Mother . . . ." Again, DSS was directed to continue to make reasonable efforts to eliminate the need for Iris's placement.

¶ 9 On October 14, 2020, DSS filed another report with the trial court. The report explained that Iris has acid reflux and must maintain a strict feeding schedule to maintain her weight and prevent vomiting. Respondent often over-fed or under-fed Iris during his visitations such that she would have an increase in acid reflux. Although Respondent had an opportunity to take Iris to an appointment with her nutritionist, DSS reported that "[a]fter that appointment, it was clear that [Respondent] still did not understand or comply with the medical needs of the child." Additionally, Respondent had attended less than three of his two hour visits since the court permitted unsupervised visitation. When Respondent did participate in visitation, multiple family members reported he would involve Mother in the visitation. Specifically, Respondent did not visit Iris at all from August 22, 2020, to September 15, 2020. DSS stressed to the trial court that Respondent "had missed an abundance of visitation opportunities due to prioritizing the needs of [Mother] over his visitation opportunity."

¶ 10 A review and permanency planning hearing was held on October 14, 2020. The trial court subsequently entered an order on review, granting Respondent two

unsupervised visits per week but requiring he "advise the Department in advance as to where the Juvenile will be at all times during unsupervised visitation." Respondent also was granted unlimited visitation with Iris in her placement as he and Diana could agree. DSS was directed by the trial court to continue to work to eliminate the need of Iris's placement.

¶ 11 After the October 14, 2020 hearing, Respondent began visiting Iris less frequently. Between the October 14 hearing and the January 14, 2021 hearing, Respondent had one unsupervised visitation with Iris on October 28, 2020. He exercised some supervised visitations in Diana's home but did not request any other unsupervised visits.

¶ 12 From August 28, 2020 to December 25, 2020, Mother was arrested twice and charged with seven different offenses. On December 9, 2020, Respondent and Mother engaged in an altercation that resulted in Respondent being charged with assault, taken into custody, and temporarily losing his job. After the charges were dropped, Respondent obtained a restraining order against Mother. Despite the restraining order, Respondent continued to talk to and visit with Mother. Ultimately, Respondent voluntarily dropped the restraining order, explaining he believed the order was unnecessary and thought he and Mother could effectively co-parent.

¶ 13 On January 14, 2021, the trial court held a review and permanency planning hearing. The trial court removed Respondent's unsupervised visits with Iris and

instituted weekly visitation supervised by the caretaker. The trial court continued to direct DSS to make reasonable efforts to eliminate the need for Iris's placement. At the time of the review hearing, Mother remained incarcerated from her December 25, 2020 arrest. Thereafter, she was released, but incarcerated again on April 7, 2021.

¶ 14 At the May 20, 2021, permanency planning hearing, DSS filed a report to the trial court recommending the primary plan of care for Iris be changed to guardianship with a concurrent plan of reunification. This report stated Respondent "continues to prioritize his romantic relationship with [Mother] over his concern for his daughter's safety. . . . [Respondent] continues to allow [Mother] to reside in his home, drive his vehicles, and support her lifestyle." Furthermore, Respondent's primary goal "is to have his daughter in his home so that he can co-parent with [Mother]." Concerning visitations with Iris, DSS reported Respondent "has a lack of consistency with visitation which increases when [Mother] is not in jail." At the time of the hearing, Mother had not visited with Iris since November 13, 2020. The guardian ad litem also filed a permanency planning hearing court report recommending the permanent plan for Iris to be guardianship with a secondary plan of reunification.

¶ 15 A review and permanency planning hearing was held over three days between May 20 and June 17, 2021. The trial court entered an order wherein it found it was "not possible for the Juvenile to be placed with a parent within the next six months, and such placement would not be in the Juvenile's best interest . . . ." The trial court

further found that "legal guardianship with a relative should be established, with the Respondent-Parents retaining visitation rights . . . ." As such, the trial court ordered "that the primary plan be legal guardianship with a relative with a concurrent plan of reunification." The trial court directed DSS to continue to make reasonable efforts to eliminate the need for Iris's placement.

¶ 16 On June 17, 2021, DSS filed a report to the court recommending guardianship of Iris be granted to Diana. DSS reported that barriers to achieving the goal of reunification were 1) Mother continued to test positive for PCP, 2) Respondent minimized Mother's drug use, 3) domestic discord existed between Respondent and Mother, and 4) Respondent "continues to remain involved with [Mother] and provide her with housing." That same day, the guardian ad litem filed a permanency planning hearing court report with the trial court. The guardian ad litem, likewise, recommended the permanent plan for Iris be guardianship with a relative, with a secondary plan of reunification.

¶ 17 This case came before the trial court for a permanency planning on June 17, 2021. At the time of the hearing, Mother was pregnant with twins. Mother testified there was a "50/50 chance of [Respondent] being the parent." Additionally, Mother had incurred new breaking and entering charges. Mother had visited Iris only once between November 30, 2020 and March 30, 2021, and thereafter had no further visitations with Iris. At the time of the hearing, Respondent had maintained

employment and housing and was engaged in therapy. However, Respondent's testimony at the hearing tended to show his continued involvement with Mother despite her persistent drug use and criminal activity resulting in repeated arrests and incarcerations. During final arguments, Respondent's attorney told the trial court he did not "believe [Respondent] has done anything at this point that has gone against his constitutional right to parent."

¶ 18 Following the June 17, 2021 permanency planning hearing, the trial court entered a Juvenile Order acknowledging guardianship on July 22, 2021, and an Order on Review on August 5, 2021 (the "Permanency Planning Order"), appointing Diana as Iris's legal guardian. In the Permanency Planning Order, the trial court found "[e]ach Respondent-Parent has acted contrary to their constitutionally-protected right to parent the Juvenile." The trial court found that because the best permanent plan for Iris was legal guardianship, there was "no longer any need of a concurrent plan." Respondent and Mother retained supervised visitation rights with Iris. On August 16, 2021, Respondent timely filed a notice of appeal of the Juvenile Order and the Permanency Planning Order.

II. Jurisdiction

¶ 19 A right of appeal in a juvenile matter lies in "[a]ny order, other than a nonsecure custody order, which changes the legal custody of a juvenile." N.C. Gen. Stat. § 7B-1001(a)(4) (2021). Here, both the Juvenile Order and Permanency

Planning Order grant Diana legal guardianship of Iris. Since both orders change Iris's legal custody, Respondent-Father's timely appeal is properly before this Court.

III. Discussion

¶ 20 Respondent raises multiple issues on appeal; each will be addressed in turn.

A. Conduct Inconsistent With a Parent's Constitutionally Protected Status

¶ 21 Respondent first argues the trial court erred by granting Diana guardianship of Iris because clear and convincing evidence did not support the Permanency Planning Order's findings of fact and conclusions of law that he had acted inconsistently with his constitutionally protected status as a parent. We disagree.

¶ 22 As Respondent correctly points out, a high evidentiary standard is applied when the court awards custody of a juvenile to a non-parent and ceases reunification with the natural parents as a concurrent plan. *In re I.K.*, 273 N.C. App. 37, 41, 848 S.E.2d 13, 18 (2020), *aff'd,* 377 N.C. 417, 2021-NCSC-60. The Due Process Clause of the Fourteenth Amendment guarantees a parent the "fundamental right[] 'to make decisions concerning the care, custody, and control' of his or her children." *Adams v. Tessener*, 354 N.C. 57, 60, 550 S.E.2d 499, 501 (2001) (quoting *Troxel v. Granville*, 530 U.S. 57, 66, 120 S. Ct. 2054, 2060, 147 L. Ed. 2d 49, 57 (2000)); *see also* U.S. Const. amend. XIV. A fit parent is presumed to act in the best interest of the child such that "there is 'normally . . . no reason for the [s]tate to inject itself into the private realm of the family to further question the ability of that parent to make the best

decisions concerning the rearing of that parent's children.' " *Adams*, 354 N.C. at 60, 550 S.E.2d at 501 (quoting *Troxel*, 530 U.S. at 68-69, 120 S. Ct. at 2061, 147 L. Ed. 2d at 58).

¶ 23 A parent's constitutionally protected interest

> in the companionship, custody, care, and control of his or her child is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child. Therefore, the parent may no longer enjoy a paramount status if his or her conduct is inconsistent with this presumption or if he or she fails to shoulder the responsibilities that are attendant to rearing a child.

Price v. Howard, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997) (internal citations omitted). In other words, a parent's constitutionally protected status ensures the government may only take a child away from his parent if the parent is unfit or has neglected the welfare of the child. *Petersen v. Rogers*, 337 N.C. 397, 403-04, 445 S.E.2d 901, 905 (1994); *Adams*, 354 N.C. at 60, 550 S.E.2d at 501; *In re A.C.*, 247 N.C. App. 528, 533, 786 S.E.2d 728, 733 (2016); *see also In re D.M.*, 211 N.C. App. 382, 385, 712 S.E.2d 355, 357 (2011) (noting this analysis "also applies to custody awards arising out of juvenile petitions filed under Chapter 7B[]").

¶ 24 Our Supreme Court, in *Boseman v. Jarrell* noted "there is no bright line beyond which a parent's conduct" rises to the level of inconsistent with his or her constitutionally protected status as a parent. *Boseman v. Jarrell*, 364 N.C. 537, 549,

704 S.E.2d 494, 503 (2010); *In re I.K.*, 273 N.C. App. at 42, 848 S.E.2d at 18. Rather, each case requires a "fact-sensitive inquiry," *Boseman*, 364 N.C. at 550, 704 S.E.2d at 503, wherein the court must consider " 'both the legal parent's conduct and his or her intentions' *vis-à-vis* the child." *In re A.C.*, 247 N.C. App. at 536, 786 S.E.2d at 735 (quoting *Estroff v. Chatterjee*, 190 N.C. App. 61, 70, 660 S.E.2d 73, 78 (2008)).

1. Petitioners DSS and the Guardian Ad Litem's Evidence

¶ 25 Respondent contends the Juvenile Order and the Permanency Planning Order solely relied on the DSS's and guardian ad litem's reports and such reports alone are insufficient to overcome his constitutionally protected status as Iris's father. We disagree that the trial court solely relied on the reports.

¶ 26 At a permanency planning hearing, a trial court

> shall consider information from the parents, the juvenile, the guardian, any person with whom the juvenile is placed, the custodian or agency with custody, the guardian ad litem, and any other person or agency that will aid in the court's review. . . . The court may consider any evidence, including hearsay evidence as define in [N.C.] G[en]. S[tat]. [§] 8C-1, Rule 801, or testimony or evidence from any person that is not a party, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

N.C. Gen. Stat. § 7B-906.1(c) (2021). In this case, the trial court received the DSS's and guardian ad litem's reports into evidence, along with testimony from Respondent, Mother, Diana, a DSS worker, and Respondent's sister. Under Section 7B-906.1, the

court may receive into evidence reports and testimonies in order "to determine the needs of the juvenile and [make] the most appropriate disposition." *Id.* Because the trial court received both the reports and testimony during the hearing, the Juvenile Order and Permanency Planning Order were not premised solely on the reports as Respondent alleges; rather, the Juvenile Order and Permanency Planning Order were based upon the evidence presented during the permanency planning hearing.

2. The Permanency Planning Order's Findings of Fact

¶ 27 Respondent next challenges several of the Permanency Planning Order's findings of fact. When reviewing whether the trial court's findings of fact are relevant to its determination a parent has acted inconsistently with his or her constitutionally protected status, we are required by the Due Process Clause of the United States Constitution to determine whether the findings of fact are "supported by clear and convincing evidence." *Adams*, 354 N.C. at 63, 550 S.E.2d at 503; *In re I.K.*, 273 N.C. App. at 42, 848 S.E.2d at 18. "The clear and convincing standard requires evidence that should fully convince." *Scarborough v. Dillard's, Inc.*, 363 N.C. 715, 721, 693 S.E.2d 640, 643 (2009) (internal quotations omitted) (quoting *In re Will of McCauley*, 356 N.C. 91, 101, 565 S.E.2d 88, 95 (2002)); *In re A.C.*, 247 N.C. App. at 533, 786 S.E.2d at 734; *see also clear and convincing evidence*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining clear and convincing evidence as "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain"). Any unchallenged

findings of fact are deemed to be supported by competent evidence and binding on appeal. *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citing *State v. Baker*, 312 N.C. 34, 37, 320 S.E.2d 670, 673 (1984)).

a. Finding of Fact No. 14

¶ 28 Respondent challenges the Permanency Planning Order's finding of fact No. 14 which states "Respondent-Mother reports being pregnant with twins and that there is a '50-50 chance' that Respondent-Father is the father. Despite having been adamant for months that he was only in contact with Respondent-Mother and not 'involved' with her, Respondent-Father admits that he could be the father of the unborn twins."

¶ 29 At trial, Mother stated there was a "50/50" percent chance Respondent was the father of the twins. Respondent denied being the father to the twins, explaining he did "not believe that child is mine." While the court could infer from the Respondent's statement that he had spent some nights with Mother and it is possible he is the father, the record is otherwise devoid of evidence tending to show Respondent actually *admitted* he could be the father of the twins. Accordingly, we hold the trial court erred in the part of finding of fact No. 14 which states "Respondent-Father admits that he could be the father of the unborn twins."

b. Finding of Fact No. 18

¶ 30 Respondent next challenges the Permanency Planning Order's finding of fact

No. 18, arguing it is impermissibly broad and vague. Finding of fact No. 18 provides, "Respondent-Father has taken no action which would satisfy the Court that he is willing and/or able to protect the Juvenile's well-being when that might conflict with Respondent-Mother's wants and needs." We hold the finding of fact is an accurate statement that the Court was not satisfied with the Respondent's actions, or lack thereof. Further, the June 17 DSS report contained the following:

> [1. Respondent] intends to maintain connections with [Mother] despite the Department's urge for [Respondent] to develop healthy boundaries.
>
> [2. Respondent] continues to prioritize his relationship with [Mother] over his concern for his daughter's safety.
>
> [3. Respondent] continues to allow [Mother] to reside in his home, drive his vehicles, and support her lifestyle.
>
> [4. Mother] has caused many hardships for [Respondent] including safety issues to his minor and adult children, criminal charges, temporary loss of job, financial problems, and damaging (to the point of being non-operable) both of [Respondent's] vehicles.
>
> . . .
>
> [5. Respondent] reported he dropped the restraining order [against Mother] because he felt it was no longer necessary and that he and [Mother] can co parent. [Respondent] described several times he had been with [Mother] within the past month to "check on her" or "help her out."
>
> . . .
>
> [6. Respondent] continues to allow [Mother] to utilize his cars and stay at his home. Caregivers report that

> [Respondent] has a lack of consistency with visitation which increases when [Mother] is not in jail. [Respondent's] primary goal is to have his daughter in his home so that he can co-parent with [Mother]. At this time, [Mother's] lifestyle and drug use create a harmful environment for the child and [Respondent's] inability to prioritize the child's safety and create appropriate boundaries with [Mother] is a concern with no evidence from [Respondent] that he intends to change in a timely manner.
>
> . . .
>
> [7. Respondent] has consistently missed visitation with his daughter due to working additional hours to make up for financial losses as well as multiple occasions of missing visitation with the child to support [Mother].

¶ 31 On direct examination, Respondent testified he continued to engage with Mother despite of Mother's continued PCP use. Four days prior to the permanency planning hearing, Respondent picked Mother up for a visitation with her other children, noticed she was substantially impaired, and took her to his house "so she c[ould] sleep it off." Respondent further testified Mother continued to come over to his house: "[P]eriodically, did she come out to the house? Yes. Do you know even know [sic] what we did during that period of time? No, you do not." Respondent continued, "I have not done anything other than having full conversation with [Mother] or taking [Mother] to the doctor because she broke her hand. Or I'm trying to make sure that she makes court dates so she wouldn't get locked up again."

¶ 32 The evidence from the DSS's report, the guardian ad litem report, and

Respondent's testimony establishes Respondent continued to prioritize Mother's needs above those of Iris. Accordingly, we hold finding of fact No. 18 is supported by clear and convincing evidence.

c. Findings of Fact Nos. 22 and 23

¶ 33 Respondent next alleges findings of fact Nos. 22 and 23 are insufficient as findings of any facts contained in the DSS's or guardian ad litem's reports themselves. Notably, the findings of fact only recite that the reports were admitted into evidence and considered by the trial court but does not incorporate the reports into the order as findings of fact. Therefore, Respondent's argument is without merit. Finding of fact No. 22 provides, "[t]he Report to the Court dated June 17, 2021, prepared by Monica Pettaway, Social Worker with the Department, was admitted into evidence without objection and was considered by the Court, along with the financial affidavit executed by [Diana]." Likewise, finding of fact No. 23 states "[t]he Report to the Court dated June 17, 2021, prepared by Carol Wagner, Volunteer Guardian ad Litem, was admitted into evidence without objection and was considered by the Court, along with a picture of the Juvenile." Defendant did not object to admission of these reports as evidence.

¶ 34 Section 7B-901 allows the trial court to "consider *any evidence* . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." § 7B-901(a) (emphasis added). This

section "lead[s] to but one conclusion: In juvenile proceedings, trial courts may properly consider all written reports and materials submitted in connection with said proceedings." *In re Ivey*, 156 N.C. App. 398, 402-03, 576 S.E.2d 386, 390 (2003) (quoting *In re Shue*, 63 N.C. App. 76, 79, 303 S.E.2d 636, 638 (1983)). Because the DSS's and guardian ad litem's reports were properly admitted into evidence, the trial court had authority under Section 7B-901 to consider the contents these reports. *See id.* (holding the trial court did not err "in considering the DSS and guardian ad litem reports . . . . Respondents were given prior notice of the reports and the opportunity to present evidence against them"). Accordingly, we hold the trial court did not err by admitting the DSS's and guardian ad litem's reports into evidence and considering these reports or the evidence therein.

d. Finding of Fact No. 19

¶ 35 Respondent also challenges finding of fact No. 19, arguing it is facially insufficient and does not support a conclusion he acted contrary to his constitutionally protected status as a parent. Finding of fact No. 19 states "Respondent-Father has been visiting with the Juvenile more frequently in the last few weeks. He indicated that he had not prioritized visitation in the months before that as he needed to take care of other things during that time."

¶ 36 Respondent asserts other evidence contradicts finding of fact No. 19, argues he disagrees with the credibility of finding of fact No. 19, and then concludes "[n]othing

in the finding of fact explains any neglect or abdication of parental status which could support a conclusion allowing custody to be given to a nonparent." Respondent's challenge to finding of fact No. 19 is misplaced. When the trial judge sits as fact finder, he "is the sole judge of the credibility and weight to be given to the evidence." *Scott v. Scott*, 157 N.C. App. 382, 388, 579 S.E.2d 431, 435 (2003) (citing *Woncik v. Woncik*, 82 N.C. App. 244, 248, 346 S.E.2d 277, 279 (1986). It is the trial court's duty to consider all the evidence, "pass[ ] upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167-68 (2016) (citation omitted). Here, the trial court determined the credibility and weight of the evidence as it considered the history of Respondent's visits with Iris over the life of the case and Respondent's testimony from the final permanency planning hearing when he stated that he had been pushing [his visitations with Iris] back a little bit" to take care of other things. Therefore, we hold that finding of fact No. 19 is supported by clear and convincing evidence.

e. Finding of Fact No. 20

¶ 37 Respondent argues finding of fact No. 20 is a legal conclusion of law and is not supported by any evidentiary finding of fact. We disagree. Finding of fact No. 20 states:

> Respondent-Father has not accepted responsibility for his

> actions which led to the Juvenile's initial removal from the parent's care, custody and control, and he has continued to demonstrate an ongoing lack of insight as to how his actions have prevented reunification by presenting an ongoing substantial risk of harm to the Juvenile's well-being, health, and safety.

¶ 38 Respondent argues finding of fact No. 20 should be classified as a conclusion of law and thus we should review it *de novo*. Generally, a conclusion of law is "any determination requiring the exercise of judgment or the application of legal principles . . . ." *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (cleaned up). A finding of fact is the result of "processes of logical reasoning from the evidentiary facts." *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657-58 (1982) (citation omitted); *see In re Helms*, 127 N.C. App. at 510, 491 S.E.2d at 675. Here, finding of fact No. 20 is the product of logical reasoning from the evidence presented by the June 17, 2021 DSS report and Respondent's own testimony. Therefore, the trial court correctly classified finding of fact No. 20 as a finding of fact.

¶ 39 Finding of fact No. 20 is supported by ample clear and convincing evidence. The June 17 DSS report stated Mother "consistently tests positive for PCP in urine and hair screens." The report further stated Mother had new criminal charges pending against her. Mother failed to attend her scheduled drug screenings and had not visited Iris for the past several months. Furthermore, Mother and Respondent experienced domestic violence issues which resulted in a restraining order.

¶ 40 Despite Mother's continued use of drugs, ongoing criminal charges, and Respondent's restraining order, the DSS report further explained Respondent "continues to prioritize his relationship with [Mother] over his concern for his daughter's safety." DSS reported that Respondent

> continues to allow [Mother] to reside in his home, drive his vehicles, and support her lifestyle. [Mother] has caused many hardships for [Respondent] including causing safety issues to his minor and adult children, criminal charges, temporary loss of job, financial problems, and damaging . . . both of [his] vehicles.

Notwithstanding this, Respondent "made it clear to the Department that he intends to maintain connections with [Mother] despite the Department's urge" that he establish healthy boundaries. Particularly, Respondent explained his primary goal "is to have his daughter in his home so that he can co-parent with [Mother]." Concerning Respondent's visitation with Iris, DSS reported Respondent missed multiple visitations with Iris because he was with Mother.

¶ 41 At the June 17, 2021 hearing, Respondent admitted Mother continued to come over to his house. Respondent testified he maintained an active relationship with Mother despite her drug use, such as taking her to the doctor or to court dates. Moreover, Respondent continued to support Mother despite her drug use, testifying that four days prior to the hearing, Respondent saw Mother "staggering basically down the street," discovered she "was high," and took her back to his house so she

could "sleep it off." At the hearing, Respondent blamed DSS for Iris's placement, stating,

> I'm trying not to hate these ladies on this camera. . . . But they have put every block that they can possibly do to try and make me look like an unfit parent. . . . And for DSS telling me that I had not stepped up, that is a lie. A blatant lie.

The DSS report and Respondent's testimony at the hearing illustrate Respondent continues to blame DSS for Iris's external placement while maintaining a relationship with Mother and supporting her lifestyle and drug use. While Respondent urges this Court to presume he has the best intentions for Iris, the trial court is the sole judge of the credibility of the evidence and there was clear and convincing evidence to support the finding that Respondent does not accept how his actions resulted in Iris's removal and hampered subsequent reunification.

f. Finding of Fact No. 29

¶ 42 Respondent next challenges the portion of finding of fact No. 29. In particular, Respondent argues finding of fact No. 29 should be considered a conclusion of law, or, alternatively, is not supported by clear and convincing evidence. Finding of fact No. 29 states:

> [i]t is not possible for the Juvenile to be placed with a parent within the next six months, and such placement would not be in the Juvenile's best interest due to Respondent-Mother's lack of progress in addressing her substance use and mental health issues, her lack of

> parenting skills, and general instability in housing and income, as well as continuing domestic violence and discord between the parents and Respondent-Father's unwillingness to establish appropriate boundaries with Respondent-Mother and inability or unwillingness to recognize the risks posed to the Juvenile from contact with Respondent-Mother.

¶ 43 Respondent argues finding of fact No. 29 is misclassified as a finding of fact. However, this finding is the product of logical reasoning of evidence from the June 2017 DSS Report and Respondent's own testimony. *See Quick*, 305 N.C. at 451, 290 S.E.2d at 657-58. We hold the trial court did not err in its classification of finding of fact No. 29, and we review it accordingly.

¶ 44 Finding of fact No. 29 is supported by clear and convincing evidence as it concerns Respondent. The trial court considered evidence from the June 2017 DSS report and the social worker's testimony. DSS reported Respondent claimed he was no longer in a relationship with Mother but had dropped a previous restraining order because "he felt it was no longer necessary and that he and [Mother] can co parent." The report also stated, "Mother has caused many hardships for [Respondent] including causing safety issues to his minor and adult children, criminal charges, temporary loss of job, financial problems, and damaging . . . both of [his] vehicles." DSS relayed that Respondent's "primary goal is to have his daughter in his home so that he can co-parent with [Mother,]" and Respondent made "it clear to the Department that he intends to maintain connections with [Mother] . . . ." DSS

concluded that Mother's "lifestyle and drug use create a harmful environment for the child and [Respondent's] inability to prioritize the child's safety and create appropriate boundaries with [Mother] is a concern with no evidence from [Respondent] that he intends to make any changes in a timely manner." Accordingly, there was clear and convincing evidence to support the trial court's finding that domestic violence exists between Respondent and Mother and Respondent is unwilling to establish appropriate boundaries with and recognize the risks posed to Iris by Mother.

g. Finding of Fact No. 33

¶ 45 Respondent also challenges finding of fact No. 33, arguing it is either a legal conclusion or not supported by clear and convincing evidence. Finding of fact No. 33 provides "Respondent-Father is not making adequate progress within a reasonable period of time under a plan of reunification." Finding of fact No. 33 was the product of logical reasoning from the June 2017 DSS report and Respondent's testimony, and thus we hold the trial court properly classified finding of fact No. 33 as a finding of fact. *See Quick*, 305 N.C. at 451, 290 S.E.2d at 657-58.

¶ 46 Ample clear and convincing evidence supported finding of fact No. 33. The June 2017 DSS report stated Respondent had 'consistently missed visitation with his daughter due to working additional hours to make up for financial loses as well as multiple occasions of missing visitation with the child to support [Mother]." Iris's

caregivers reported Respondent "has a lack of consistency with visitation which increases when [Mother] is not in jail." Respondent testified on days he did not visit Iris, he could "take care of the stuff that . . . [he] need[s] to do."

¶ 47 Furthermore, the trial court's following findings of fact provide additional support to finding of fact No. 33:

> 1. [Iris] . . . has been in out-of-home placement since a Nonsecure Custody Order was issued by the court on April 21, 2020.
>
> . . .
>
> 18. Respondent-Father has taken no action which would satisfy the Court that he is willing and/or able to protect the Juvenile's well-being when that might conflict with Respondent-Mother's wants and needs.
>
> 19. Respondent-Father . . . indicated that he had not prioritized visitation in the months before . . . as he needed to take care of other things during that time.
>
> 20. Respondent-Father has not accepted responsibility for his actions which led to the Juvenile's initial removal from the parent's care, custody and control, and he has continued to demonstrate an ongoing lack of insight as to how his actions have prevented reunification by presenting an ongoing substantial risk of harm to the Juvenile's well-being, health, and safety.
>
> . . .
>
> 29. It is not possible for the Juvenile to be placed with a parent within the next six months, and such placement would not be in the Juvenile's best interest due to . . . Respondent's Father's unwillingness to establish appropriate boundaries with Respondent-Mother and

> inability or unwillingness to recognize the risks posed to Juvenile from contact with Respondent-Mother.

Accordingly, the trial court possessed clear and convincing evidence to support finding of fact No. 33.

h. Findings of Fact Nos. 25 and 27

¶ 48 Respondent next contends findings of fact Nos. 25 and 27 should be classified as conclusions of law. Finding of fact No. 25 states "[f]urther efforts to reunite the Juvenile with a parent would clearly be unsuccessful and inconsistent with the Juvenile's health and safety, as well as her need for a safe, permanent home within a reasonable period of time." Finding of fact No. 27 provides "[i]t would be contrary to the welfare of the Juvenile to return legal or physical custody to any parent. Neither Respondent-Parent has sufficiently addressed the issues which led to the Juvenile's removal from their care, custody, and control." As discussed *supra*, these findings are the product of logical reasoning from the June 2017 DSS Report and Respondent's own testimony. *See Quick*, 305 N.C. at 451, 290 S.E.2d at 657-58. We therefore hold the trial court did not err by classifying findings of fact Nos. 25 and 27 as findings of fact.

3. Conclusion of Law

¶ 49 Finally, Respondent challenges finding of fact No. 26, arguing it should be classified as a conclusion of law. We agree.

¶ 50 Finding of fact No. 26 states "[e]ach Respondent-Parent has acted contrary to

their constitutionally protected right to parent the Juvenile." As this Court noted in *In re V.M.,* "the labels findings of fact and conclusions of law employed by a lower tribunal in a written order do not determine the nature of our standard of review." *In re V.M.*, 273 N.C. App. 294, 298, 848 S.E.2d 530, 534 (2020) (cleaned up) (quoting *In re Estate of Sharpe*, 258 N.C. App. 601, 605, 814 S.E.2d 595, 598 (2018)). Accordingly, if the trial court labels as a finding a fact a statement which in substance is a conclusion of law, we review that "finding" as a conclusion of law *de novo*. *In re V.M.*, 273 N.C. App. at 298, 848 S.E.2d at 534; *see In re B.R.W.*, 278 N.C. App. 382, 2021-NCCOA-343, ¶ 33.

¶ 51 Respondent correctly argues finding of fact No. 26 is a conclusion of law and not a finding of fact. The determination of whether a parent acted inconsistent with their constitutionally protected status as a parent requires "the exercise of judgment" and the "application of legal principles[,]" and thus should have been classified as a conclusion of law. *In re Helms*, 127 N.C. App. at 510, 491 S.E.2d at 675. Indeed, this Court has viewed previous trial court order determinations that a parent acted inconsistently with their constitutionally protected status as a conclusion of law. *See In re I.K.*, 273 N.C. App. at 47, 848 S.E.2d at 22 ("The order's aforementioned findings of fact support the trial court's *conclusion of law* that respondents' conduct was inconsistent with their constitutionally protected right to parent . . . ." (emphasis added)); *In re C.M.P.*, 254 N.C. App. 647, 660, 803 S.E.2d 853, 862 (2017)

("Respondent also challenges the portion of the trial court's *Conclusion of Law* No. 6 stating that the parents acted inconsistently with their constitutionally protected rights." (emphasis added)); *Weideman v. Shelton*, 247 N.C. App. 875, 880, 787 S.E.2d 412, 416 (2016) ("[Intervenor] contends the trial court erred by *concluding* that [Defendant] did not act inconsistently with her constitutionally protected parental status." (emphasis added)).

¶ 52 Because Finding of fact No. 26, inasmuch as it determines Respondent acted contrary to his constitutionally protected status, is properly classified as a conclusion of law, we review *de novo* whether it is supported by the findings of fact. *See In re V.M.*, 273 N.C. App. at 298, 848 S.E.2d at 534. In this case, the Permanency Planning Order findings of fact support the conclusion Respondent acted inconsistently with his constitutionally protected status as a parent. The trial court found: Mother has not complied with drug screening, continued to incur new criminal charges, has not visited Iris since approximately five months prior to the hearing, and has failed to make reasonable progress in "addressing her substance use and mental health issues, her lack of parenting skills, and general instability in housing and income." Respondent has failed to demonstrate he would protect Iris's well-being when it may conflict with that of Mother's. Respondent has failed and is unwilling to establish appropriate boundaries with Mother and refuses to recognize the risks she poses to Iris. Indeed, Respondent and Mother's relationship worsened since Iris was removed

due to an increase in domestic violence and domestic discord. Instead of addressing the issues which resulted in Iris's out-of-home placement, Respondent refused to accepted responsibility for his action and "continued to demonstrate an ongoing lack of insight as to how his actions have prevented reunification[,]" while, concurrently, failing to attend the visitation time he did have with Iris.

¶ 53 The evidence in the record tends to show that Respondent has failed to "shoulder the responsibilities that are attendant to rearing" Iris by continuing to prioritize his or Mother's desire over Iris's well-being. Therefore, we affirm the trial court's conclusion that Respondent acted inconsistently with his constitutionally protected status as a parent.

IV. Conclusion

¶ 54 We hold clear and convincing evidence supports the trial court's findings of fact which, in turn, support its conclusion Respondent acted contrary to his constitutionally protected status as a parent. Accordingly, we hold the trial court did not err by granting Diana guardianship of Iris.

AFFIRMED.

Chief Judge STROUD and Judge ARROWOOD concur.

Report per Rule 30(e).