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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-575

No. COA21-602

Filed 16 August 2022

Haywood County, Nos. 17JA38-40

IN THE MATTER OF:

Z.R.F.D., JR.
J.L.G.D.
A.J.F.D.,
Juveniles.

Appeal by respondent-mother and respondent-father from order entered 1 July 2021 by Judge Kristina L. Earwood in Haywood County District Court. Heard in the Court of Appeals 5 April 2022.

Indigent Defense Services, by Jacky L. Brammer, for respondent-appellant-mother.

Batch, Poore & Williams, PC, by Sydney J. Batch, for respondent-appellant-father.

Jordan Israel for petitioner-appellee Haywood County Health & Human Services.

Matthew D. Wunsche for the Guardian ad Litem.

GORE, Judge.

I. Factual and Procedural Background

¶ 1 The juveniles "Zeke," "James," and "Allen" entered into foster care on two separate occasions.[1] On 24 March 2017, Haywood County Health and Human Services Agency (hereinafter, "Agency") filed petitions alleging the three juveniles were abused, neglected, and dependent. The juveniles spent 809 days in the nonsecure custody of the Agency. On this date, Zeke was found to be at substantial risk of physical injury, in need of medical treatment, and abandoned. Respondent-mother's address and whereabouts were unknown when this initial Juvenile Petition was filed.

¶ 2 Zeke, James, and Allen were adjudicated neglected and dependent in a hearing held 1 May 2017. Respondent-mother appeared in court on that date, but she did not appear at a subsequent 6-Month Permanency Planning Review Hearing during the juveniles' first time in foster care. The trial court found that respondent-mother: had made no progress on her case plan; the Agency had no further contact from her since prior to the last hearing; and her whereabouts and circumstances were unknown once again. In an Order filed 20 July 2019, the trial court returned custody to respondent-father and converted the matter to a Chapter 50 custody case.

¶ 3 Respondent-mother signed and stipulated to the facts at Adjudication. After a report to the Agency in 2015, respondent-mother moved to Rowan County. In 2016,

[1] We use pseudonyms to protect the identity of the juveniles and for ease of reading.

she was in Davidson County with Allen only, while Zeke and James remained with respondent-father. On 24 July 2016, respondent-mother reported she had recently returned to Haywood County to work things out with respondent-father. Respondent-mother stated that Zeke, James, and Allen had been with respondent-father for "quite some time."

¶ 4 During the assessment, respondent-mother moved with the children to a maternal relative's home in Rowan County. On 19 March 2017, the children were located with paternal relatives in Haywood County once again. On 21 March 2017, respondent-father had taken them to paternal relatives in Lincoln County with only their birth certificates and four trash bags full of dirty, wet laundry. The Agency was unable to reach respondent-mother on any of her phone numbers. Respondent-father reported picking the children up from the respondent-mother in February 2017, where they were living with a registered sex offender.

¶ 5 At the time of filing of the Juvenile Petition, there were concerns of serious domestic violence and substance abuse by respondent-parents. From 19 March 2017 to 24 March 2017, the Agency called three separate numbers for respondent-mother, sent messages to her Instagram and Facebook accounts, attempted to reach thirteen collateral contacts and relatives to help locate her, and requested assistance from Rowan County Department of Social Services ("DSS") to locate her. As of 24 March 2017, respondent-mother's whereabouts were unknown, and her children were in the

Agency's custody.

¶ 6 Respondent-mother appeared in the trial court on 3 April 2017 and provided an address in Salisbury. She appeared and testified at the Disposition Hearing held 1 May 2017. Respondent-mother reported to Agency social workers that she lived with and was in a relationship with John Smith,[2] who was a registered sex offender convicted of felony forcible rape in West Virginia. Respondent-mother was informed that her children would not be placed in a home where Mr. Smith lived. Respondent-mother testified she intended to stay in either Rowan County or Davidson County and that she relied on a paternal uncle for transportation. The uncle was also a registered sex offender for having perpetrated on a child victim.

¶ 7 At the hearing on 90-Day Review held 7 August 2017, respondent-mother was not present. The Agency was last able to contact her on 15 June 2017. DSS in Rowan County had no contact with respondent-mother, and her last visit with the children was 22 May 2017. At the 13 November 2017 Review Hearing, it was disclosed that respondent-mother had ceased contact with the Agency until 25 September 2017, at which time she reported living in New Jersey. On 13 November 2017, respondent-mother reported she had moved to West Virginia. She had not visited with her children and had completed nothing on her case plan.

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[2] A pseudonym.

¶ 8 Respondent-mother was first court-ordered to complete a case plan at the 1 May 2017 Disposition Hearing. In each order thereafter until the trial court initially ceased reasonable efforts with respondent-mother on 7 June 2018, she was again ordered to complete the following case plan:

> The Respondent Mother shall:
>
> a. Complete a Mental Health and Substance Abuse Assessment and follow all recommendations of the assessment.
>
> b. Take all Drug Screens on the date requested by the Agency.
>
> c. Secure and maintain appropriate housing.
>
> d. Provide a current address to the Agency and will notify the Agency within 48 hours of obtaining a new address or telephone number.
>
> e. Refrain from relationships with individuals who have criminal convictions around substance abuse, sexual abuse and domestic violence.
>
> f. Complete an education program for domestic violence victims.
>
> g. Complete a Capacity to Parent Assessment and follow all recommendations.
>
> h. Complete Parenting Classes and model what was learned during visitation with the minor children.
>
> i. Complete a Children in the Middle course or the equivalent in order to appropriately co-parent with the Respondent Father.
>
> j. Sign any releases requested by the Agency in order

to work toward the Permanent Plan.

¶ 9 Respondent-mother never made progress on her case plan during the 809-day period that her children were first in foster care. After 22 May 2017, respondent-mother did not visit with Zeke, James, and Allen. At the Permanency Planning Review on 7 June 2018, the trial court ordered that respondent-mother would have no visitation until she contacted the Agency to create a new visitation plan. Upon doing so, she would be afforded four hours of visitation a month. Respondent-mother never contacted the Agency to reinitiate her visitation. The trial court held a 6-Month Permanency Planning Review Hearing on 11 June 2019. Respondent-father had completed his case plan with the Agency, and had trial home placement of Zeke, Allen, and James. Respondent-mother's whereabouts and circumstances were unknown. Custody of the juveniles was placed with respondent-father. The trial court determined that it was not in the children's best interests to have visitation with respondent-mother, due to her lack of contact with them in over one year, and her failure to do anything whatsoever to reunify with her children. The trial court entered an order pursuant to N.C. Gen. Stat. § 7B-911.

¶ 10 Zeke, James, and Allen came into the nonsecure custody of the Agency once again on 27 April 2020. After the filing of the Juvenile Petitions, respondent-mother provided an address in West Virginia. Neither respondent-mother nor respondent-father were present for the first hearing on the need for continued nonsecure custody

held 1 May 2020. Through counsel, both waived further hearing to 8 May 2020. On 8 May 2020, neither respondent-mother nor respondent-father were present for hearing. Respondent-mother did appear for the Adjudication and Disposition Hearings on 3 June 2020. Respondent-father did not appear this date and did not appear for another hearing thereafter. Respondent-mother did not testify. The Agency put forward testimony from two social workers, and its evidence was admitted without objection. The trial court found that, as of the time of the filing of the second Juvenile Petition, respondent-mother's whereabouts were unknown.

¶ 11 From 16 September 2019 to 1 April 2020, the Agency received four reports relating to Zeke, James, and Allen. Each report alleged inadequate care and supervision by respondent-father. Zeke, James, and Allen informed Agency social workers that they were supervised by their paternal great-grandmother and paternal uncle when respondent-father was not around. On 1 April 2020, Zeke was interviewed in response to a report of inappropriate physical discipline. He stated that respondent-father had recently overheard him tell respondent-mother about the abuse on the phone. In response, respondent-father "smacked" Zeke in the face and told him that his punishment would be to "get smacked in the face every hour." Zeke packed a backpack, walked to the highway, and "[stuck his] thumb out" for a ride to his paternal great-grandmother's apartment. When he arrived there, law enforcement was present. Respondent-father agreed to temporarily place all three

children with safety providers on 2 April 2020.

¶ 12 On 24 April 2020, the Agency was informed that Zeke could no longer remain with his paternal great-grandmother due to the parameters of her lease with a local housing authority. Respondent-father was unable to provide another safety resource and stated that he would bring Zeke back home. When Agency social workers spoke to Zeke about this, he expressed his fears of returning home. Zeke insisted that respondent-father was punishing him for telling respondent-mother about the abuse in the home. Zeke worried that if he returned, respondent-father would be even angrier since he ran away. Zeke became tearful, expressing fear for himself and his brothers. He further described the physical abuse in the home. The Agency took twelve-hour custody of the juveniles on 27 April 2020.

¶ 13 The trial court made a finding based upon the testimony of an Agency social worker at the Adjudication Hearing. The Agency contacted respondent-mother via phone on 2 April 2020 to advise that the children were in temporary safety placements, and that there were serious allegations of inappropriate physical discipline. Respondent-mother's phone number was obtained from respondent-father. From that date to 27 April 2020, respondent-mother did not travel to North Carolina. She did not initiate any contact with the Agency.

¶ 14 Respondent-mother testified at Disposition. She had not completed a mental health assessment or a drug screen since 11 June 2019. She visited with the children

around 14 March 2020 at respondent-father's home. During this visit, Zeke told respondent-mother that he wanted to live in her home because of respondent-father's treatment. Respondent-mother returned to West Virginia. On 27 April 2020, respondent-mother was advised of the nonsecure custody of the juveniles and was informed of the first hearing on need for continued nonsecure. At the second hearing on need for continued nonsecure custody, respondent-mother advised the Agency that she was at work and would contact the Agency after her shift at 3:30 pm. She did not appear for the hearing and never returned a phone call that date.

¶ 15 The trial court held a Permanency Planning Hearing on 13 July 2020. Respondent-mother was present. Respondent-mother entered into a new case plan with the Agency on 20 May 2020. The Agency had submitted an ICPC home study to the State of West Virginia. Respondent-mother subsequently indicated she would be moving, requiring submission of a second ICPC request. She had not obtained a mental health assessment and had not made a significant effort to do so. The Agency provided respondent-mother with several options for the assessment in both West Virginia and Kentucky. Respondent-mother had completed a parenting course, had maintained employment, and was engaging in visitation. However, she missed her weekly visitation with James and Allen on 18 June 2020 and made no contact with anyone to advise of her absence prior to the appointed time. She did not engage in scheduled weekly visitation with Zeke on 13 July 2020, and she did not contact

anyone to advise of her absence prior to this scheduled visit. The trial court ceased reunification efforts with respondent-father this date, having found the existence of aggravating factors under N.C. Gen. Stat. § 7B-901(c) at the Initial Disposition hearing. The trial court ordered that the primary plan be Reunification with Respondent Mother Only, with a concurrent plan of Legal Guardianship with a Relative or Court-Approved Caretaker.

¶ 16 A 90-Day Review and Permanency Planning Review was held 18 August 2020. Respondent-mother submitted to a mental health assessment on 11 July 2020. She provided a one paragraph document stating that she had presented with no symptoms. As respondent-mother had missed two scheduled visitations with the children previously, she was court-ordered to confirm visitation with the Agency by 5:00 pm the day prior to her scheduled visit. Respondent-mother did not confirm or appear for visitation with Zeke on 27 July 2020. James and Allen's concerning behaviors increased following visitation with respondent-mother. Allen experienced bed-wetting after visitation began, and James expressed to his relative placement that respondent-mother "can't take care of [him.]" Allen stated that Mother did not know him. On this date, the trial court changed the primary plan to Legal Guardianship with a Relative or Court-Approved Caretaker, and the concurrent plan to Reunification with Respondent Mother Only. The trial court determined and made findings that respondent-mother and respondent-father were unfit or had acted

inconsistently with their constitutionally protected parental status regarding James and Allen, and granted guardianship to their maternal great-aunt and great-uncle, thus achieving their primary permanent plan. Zeke remained in the Agency's custody.

¶ 17 The hearing on First 6-Month Review and Permanency Planning Review began 31 March 2021. By Order Continuing Hearing in Progress entered that date, and an Order on Continuance entered 5 May 2021, it was concluded on 25 May 2021. The trial court first heard testimony from Zeke. Zeke had been continuously placed in foster care with the "Kaminsky" family since 27 April 2020.[3] During his first time in foster care, Zeke was also placed with the Kaminskys. In total, Zeke had lived in their home for more than three years. Upon entering the Agency's custody a second time, Zeke specifically requested that he be placed with Mr. and Mrs. Kaminsky. Zeke testified and the trial court found that he felt safe in their home and was bonded to them.

¶ 18 Zeke's therapist, who was admitted as an expert witness in Trauma-Focused Therapy with a focus on children and adolescents, testified that the Kaminskys were a positive support for Zeke. The consistency in this relationship was beneficial to Zeke due to the number of broken attachments in his life. Zeke would require more

[3] We use a pseudonym for the foster family to protect the anonymity of the juveniles.

structure and stability than most children, due to his history of trauma and disruptions. Zeke was diagnosed with Adjustment Disorder and Mixed Anxiety with Depressed Mood, which caused heightened emotion in response to change. Zeke was experiencing increased anxiety relating to the uncertainty in his future. His emotional responses had increased in the months prior to hearing. Zeke was torn about staying with the Kaminskys and fostering a relationship with respondent-mother. In the weeks prior to the conclusion of the hearing, Zeke was noticeably emotional after visits with respondent-mother. He tearfully expressed to Mrs. Kaminsky how much he would miss the Kaminskys if he were moved from their home.

¶ 19 Zeke, who was eleven years-old at the time of hearing, last recalled living with respondent-mother around age five. He expressed sadness relating to the fear of his father, and his relationship with his mother. Zeke was fearful that his mother would let his father back into her life once again. Zeke expressed some desire to know what it would be like to live with his mother. In therapy, he was working on the sources of his worry and confusion with his mother. This was a cause of crying episodes and a trigger to his emotional responses. Zeke displayed feelings of guilt surrounding the topic of his mother. His lack of relationship with her was a cause of his anxiety. Zeke expressed doubts about the success of living with her long-term. He also expressed a desire to see his brothers more often. For reunification to be successful, respondent-

mother needed to be knowledgeable of trauma-informed care; and needed to understand and acknowledge where Zeke was coming from, what he had experienced, and what his needs were as a result. Zeke only expressed a desire to visit respondent-mother in her home for a short time to see if it were successful.

¶ 20 As of 25 May 2021, reasonable efforts with respondent-father remained ceased and he had not further engaged with the trial court, the Agency, or his case plan. He had then been indicted for Felony Assault by Strangulation and seven counts of Misdemeanor Child Abuse relating to his treatment of Zeke, James, and Allen.

¶ 21 Respondent-mother had addressed some elements of her case plan, but the trial court found her efforts inadequate. While her ICPC home study was approved, respondent-mother made concerning statements bringing her ability to acknowledge Zeke's heightened needs into question. Respondent-mother admitted she remained in a relationship with John Smith until September 2019 and admitted this relationship was the reason she moved to West Virginia. Respondent-mother explained her children's first time in foster care by stating simply that their father had given them to Child Protective Services ("CPS"). She dismissed her failure to complete or engage with her case plan or the Agency during that time by stating that respondent-father told the Agency he did not know where she was. She explained to the State of West Virginia that she signed a "safety plan" during her children's first time in foster care, but she did not know what she was signing. Respondent-mother

explained the children's second entry into foster care and Agency custody by stating that respondent-father was abusing the children and excusing her long absence in their lives on a lack of transportation. Additionally, respondent-mother informed Zeke during a visit that she did not get him back after his first time in foster care, as the social worker overseeing the case "did not do her job." The trial court determined that respondent-mother had minimized her contributions to the children's lengthy time in Agency custody, and that any compliance with her case plan did nothing to correct the conditions leading to removal of the children. Viewing this progress in light of her long history of "dereliction of her parental duties," respondent-mother was again determined to be unfit and to have acted inconsistently with her constitutionally protected status.

¶ 22 In an order entered 1 July 2021, the trial court found that further reunification efforts with respondent-mother and respondent-father would be unsuccessful. It was found to be in Zeke's best interests that legal guardianship was awarded to Mr. and Mrs. Kaminsky, which achieved Zeke's primary permanent plan. It waived further reviews regarding James and Allen. Respondent-mother and respondent-father filed notice of appeal to this Court from the 1 July 2021 Order on 1st 6-Month Review and Permanency Planning Review.

II. Appellate Jurisdiction

¶ 23 This Court has jurisdiction to address both respondent-mother's appeal and

respondent-father's appeal from the 1 July 2021 Permanency Planning Review Order pursuant to § 7A-27(b)(2) (2021) and § 7B-1001(a)(4) (2021).

III. Analysis

¶ 24 On appeal, respondent-mother asserts the trial court's determination that she abandoned her children and refused to accept responsibility for them, and that she was unfit and acted in a manner inconsistent with her constitutionally protected status, was not supported by clear and convincing evidence. She challenges the evidentiary support for several of the trial court's findings of fact and conclusions of law. We disagree.

A. Preservation of Issue for Review

¶ 25 As a preliminary matter, we note that the Agency and the Guardian ad Litem ("GAL") argue respondent-mother failed to preserve this argument for appellate review. Specifically, they assert that respondent-mother: (i) had ample notice that guardianship was being recommended for Zeke; (ii) failed to raise an objection at hearing on constitutional grounds; and (iii) failed to appeal a prior order entered 30 September 2020, which included a finding that respondent-parents were unfit or have acted inconsistently with their constitutionally protected status regarding the juveniles Allen and James. Accordingly, we must first address whether respondent-mother's argument is preserved for our review.

¶ 26 It is well established that "parents have a constitutionally protected right to

the custody, care and control of their child, absent a showing of unfitness to care for the child." *Cantrell v. Wishon*, 141 N.C. App. 340, 342, 540 S.E.2d 804, 806 (2000) (citation omitted). However, a parent may waive her right to argument against the trial court's finding on their constitutionally protected status when the parent does not "raise[] the issue that guardianship would be an inappropriate disposition on a constitutional basis." *In re C.P.*, 258 N.C. App. 241, 246, 812 S.E.2d 188, 192 (2018). "[C]onstitutional issues not raised and passed upon at trial will not be considered for the first time on appeal." *In re T.P.*, 217 N.C. App. 181, 186, 718 S.E.2d 716, 719 (2011) (citation omitted); *see also* N.C.R. App. P. 10(a)(1) (specifying requirements for the preservation of issues during trial proceedings).

¶ 27 In contesting the preservation of this constitutional issue, the parties apply conflicting interpretations of this Court's recent decision in *In re B.R.W.*, 278 N.C. App. 382, 2021-NCCOA-343. In *In re B.R.W.*, we acknowledged prior cases in which a parent failed to preserve the constitutional issue of whether they acted inconsistently with their constitutionally protected parental rights because the issue was not raised or passed upon at the trial level. 278 N.C. App. at 398, 2021-NCCOA-343, ¶ 38. In light of this consideration, we held that

> [i]f a party has presented evidence and arguments in support of her position at trial, has requested that the trial court make a ruling in her favor, and has obtained a ruling from the trial court, she has complied with the requirements of Rule 10 and she may challenge that issue

> on appeal. An appeal is the procedure for "objecting" to the trial court's findings of fact and conclusions of law.

Id. at 399, 2021-NCCOA-343, ¶ 40.

¶ 28 The Agency and the GAL argue *In re B.R.W.* is distinguishable from the facts now before us. They contend the trial court's prior finding of respondent-mother's unfitness and acting inconsistently with her constitutionally protected status as to James and Allen at an earlier hearing should essentially bar her from challenging the trial court's findings as to Zeke in the instant appeal. However, a determination of a parent's fitness is fact-specific and child-specific. *See In re N.Z.B.*, 278 N.C. App. 445, 450, 2021-NCCOA-345, ¶ 20 (*purgandum*) ("Determining whether a parent has forfeited their constitutionally protected status is a fact specific inquiry. In making such a determination, the trial court must consider both the legal parent's conduct and his or her intentions vis-à-vis the child."). As such, a failure to appeal from a prior order and challenge findings specific to James and Allen does not preclude a later challenge to a different order with findings specific to Zeke.

¶ 29 In *In re B.R.W.*, we observed that the respondent-mother had notice that guardianship was being recommended, "so she had the opportunity to object or raise the issue at the hearing." 278 N.C. App. at 399, 2021-NCCOA-343, ¶ 41 (quotation marks and citation omitted). We then determined that the respondent-mother preserved this issue for appellate review because she "presented evidence regarding

her ability to care for the children, opposed the recommendation of guardianship, and requested that the trial court reject the recommendation of guardianship and allow a trial home placement." *Id.*

¶ 30 Here, as in *In re B.R.W.*, respondent-mother testified that she complied with her case plan and is capable of caring for Zeke. She opposed the recommendation of guardianship by specifically asking the trial court to "grant reunification in this case and a possible trial placement." Thus, in line with our holding in *In re B.R.W.*, respondent-mother "preserved this issue for appellate review by her evidence, arguments, and opposition to guardianship at the trial." *Id.*

B. Fitness as a Parent

¶ 31 "Our review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law." *In re J.H.*, 244 N.C. App. 255, 268, 780 S.E.2d 228, 238 (2015) (quotation marks and citation omitted). If the trial court's findings of fact are supported by any competent evidence, they are conclusive on appeal, even if there is evidence to support a contrary finding. *Id.* at 268-69, 780 S.E.2d at 238; *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citation omitted). The trial court's conclusions of law

are reviewable de novo. *In re C.B.C.*, 373 N.C. 16, 832 S.E.2d 692, 695 (2019).

¶ 32 The trial court "has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child. We review a dispositional order only for abuse of discretion." *In re J.W.*, 241 N.C. App. 44, 52, 772 S.E.2d 249, 255 (2015) (*purgandum*). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002) (quotation marks and citations omitted).

¶ 33 "A natural parent's constitutionally protected paramount 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." *Price v. Howard*, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997) (citations omitted). Thus, "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." *Id.*

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

and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy. Other types of conduct, which must be viewed on a case-by-case basis, can also rise to this level so as to be inconsistent with the protected status of natural parents." *Price*, 346 N.C. at 79, 484 S.E.2d at 534-35.

¶ 35 In this case, the trial court concluded as a matter of law, "Based upon clear and convincing evidence, that Respondent Parents are unfit or have acted inconsistently with their constitutionally protected parental status to raise the juveniles." This determination will be affirmed on appeal if we conclude it is supported by clear and convincing evidence. *See Adams v. Tessener*, 354 N.C. 57, 63, 550 S.E.2d 499, 503 (2001) (citation omitted) ("[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.").

¶ 36 Initially we note that respondent-mother challenges eighteen findings of fact, spanning over seven pages of the 1 July 2021 Order, as well as seven sections containing conclusions of law. In her principal brief, respondent-mother asserts, "The gravamen of the court's findings are [respondent-mother] was unfit and acted inconsistently because in its eyes, she abandoned her children, did not accept responsibility, and did not change. The court also considered a hodgepodge of improper socioeconomic factors." Respondent-mother then cites generally to findings of fact 21-32, 37-40, 42-44, and conclusions of law 2-3, 9-24, arguing, "These findings

are unsupported or in the alternative, improper, and the order must be reversed."

¶ 37 We agree with the Agency's position that respondent-mother's "blanket" exceptions to the above findings and conclusions are ineffective to permit our review. *See In re A.C.*, 247 N.C. App. 528, 535, 786 S.E.2d 728, 735 (2016) (concluding that a "blanket exception" to several findings of fact was insufficient to permit review); *see also In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001) (holding that a "broadside exception that the trial court's conclusion of law is not supported by the evidence, does not present for review the sufficiency of the evidence to support the entire body of the findings of fact."). Respondent-mother's blanket exception to findings 21-32, 37-40, 42-44, and conclusions 2-3, 9-24, is overruled, except where indicated with some specificity elsewhere in her brief.

¶ 38 Respondent-mother challenges a portion of finding of fact 14, where the trial court found that Zeke "over-idealizes how his relationship [with respondent-mother] would be." Zeke's therapist testified that Zeke was "almost overidentifying how that relationship should look." Assuming, without deciding, that this finding is not based on sufficient competent evidence, this challenged finding is not necessary to the trial court's ultimate determination. Respondent-mother does not take specific exception to the remainder of this finding, which specifies that respondent-mother "has not been a part of [Zeke's] life for many years," "[Zeke's] current foster family placement is a positive support for him," "[Zeke] is securely attached to the [Kaminsky] family,"

and "[Zeke] has been clear about wanting to see his brothers more, and has expressed sadness over the thought of being reunified with the Respondent Mother, while his siblings were placed elsewhere."

¶ 39 Respondent-mother challenges a portion of finding of fact 15, where the trial court found that Zeke "expresses a belief that [staying with respondent-mother] would be fine for a couple of days, but expresses doubt about the success of living with [respondent-mother] long-term." In her testimony, Zeke's therapist stated:

> [H]e's been very verbal on saying that he would like to have a relationship with Mom, but he doesn't want it to be permanent, . . . as he said, things could go well for a *couple of days*, but I don't know if that's going to stay. So I feel like that is resident [sic] of his history that Mom may leave again or some situation may occur that he is unsafe. So he doesn't want it to be permanent right [a]way.

Thus, this finding is supported by competent evidence in the record, despite the existence of any evidence to the contrary.

¶ 40 Respondent-mother challenges a portion of finding of fact 16, where the trial court found that Zeke's "emotional responses have increased lately as a result of confusion over where he should live[,]" and a related challenge to finding of fact 31 where it determined that Zeke "has demonstrated serious anxiety over the prospect of leaving [the Kaminsky's] home." Respondent-mother argues Mrs. Kaminsky did not testify as to a definitive cause of Zeke's behaviors and thus the finding is supported. Upon review of Mrs. Kaminsky's testimony, we conclude that the trial

court appropriately exercised its judgment on the weight and credibility of the evidence presented. Accordingly, these challenged findings are based on competent evidence in the record despite the possible existence of evidence to the contrary.

¶ 41 Respondent-mother challenges a portion of finding of fact 21, where the trial court questioned the sufficiency of her substance abuse/mental health assessment. The trial court found that, based on finding of fact 15 in the previous "Order on 90-Day Review and Permanency Planning Review," that "there is no indication that any history of domestic violence or the Respondent Mother's long absence from her children's lives were discussed in this assessment." Finding of fact 15 from the prior order states, in pertinent part:

> Respondent Mother did not submit to a mental health assessment until [11 July 2020]. She subsequently provided a one paragraph letter from Life Strategies Counseling in West Virginia. This document stated that the Respondent Mother presented with no symptoms. Further, she did not meet criteria for depression, anxiety, or Post-Traumatic Stress Disorder. Social Worker Hooper has not spoken to the clinicians who wrote this assessment. There is no indication that any history of the domestic violence or the Respondent Mother's long absence from her children's life was discussed.

Thus, this portion of the finding is supported be competent evidence in the record.

¶ 42 Respondent-mother also challenges finding of fact 21 where the trial court found that she "has maintained her part-time employment at a gas station . . . ." Respondent-mother argues this portion is unsupported because uncontroverted

record evidence shows she was currently working full-time. Assuming this portion is unsupported, it does not impact the trial court's ultimate determination that respondent-mother is unfit or acting inconsistently with her constitutionally protected parental status.

¶ 43 Respondent-mother challenges a portion of finding of fact 22. There, the trial court found that West Virginia DSS had "some hesitation" approving her home study. Additionally, the court found that respondent-mother "chose to remain in a relationship with a registered sex offender, rather than engage in a Case Plan and make herself available to the Court during the children's first time in foster care."

¶ 44 Here, the parties stipulated to the entry of the Agency's Court report, including the attached ICPC home study, admitted into evidence at the subject hearing. The court report specifies that the ICPC home study was approved "after some hesitation by WV based on the case history of the Respondent Mother." The trial court heard testimony from Social Work Supervisor Rachel Young. Ms. Young testified:

> [N]owhere in this ICPC again does the Respondent Mother take responsibility for the fact that she abandoned her children in foster care and chose to move to West Virginia with [John Smith], who was a registered sex offender at this time.
>
> . . .
>
> [T]he Agency knew the whole time that she was in West Virginia with [John Smith]. She didn't end that relationship until September of 2019. The agency was

> involved most of that time with the boys. So we were well aware where the Respondent Mother was, and she was actively not pursuing a case plan with her children, instead choosing a relationship over her children.

This challenged finding is the result of logical reasoning from the evidentiary facts and the weight and credibility of the ICPC home study is within the trial court's sole discretion. Thus, the trial court's finding of fact 22 is based on competent evidence.

¶ 45 Respondent-mother challenges a portion of finding of fact 27, where the trial court found that there was testimony respondent-mother blamed a social worker's job performance "as the reason she abandoned her children." However, this finding is clearly supported by Ms. Young's testimony at the subject hearing.

¶ 46 The essence of respondent-mother's remaining arguments is that the trial court erred by looking only at her actions during the first DSS case, and entirely discrediting her progress in the present DSS case. This argument is without merit. A trial court may consider facts at issue in light of prior events. *In re A.C.*, 247 N.C. App. 528, 535, 786 S.E.2d 728, 735 (2016) (citing *Cantrell*, 141 N.C. App. at 344, 540 S.E.2d at 806-07 ("[T]he trial court erroneously placed *no* emphasis on the mother's past behavior, however inconsistent with her rights and responsibilities as a parent[;] . . . . failed to consider the long-term relationship between the mother and her children; . . . and failed to make findings on the mother's role in building the relationship between her children and the [nonparent custodians].")).

¶ 47 A finding of unfitness or acting inconsistently with constitutionally protected parental rights must be reviewed by examining the totality of the circumstances. *In re B.R.W.*, 278 N.C. App. at 396, 2021-NCCOA-343, ¶ 34. In this case, the trial court evaluated respondent-mother's actions throughout her involvement with CPS, during the intervening time before the filing of the second Juvenile Petition, and during Zeke's second time in foster care. The trial court's finding of fact 30 summarizes the trial court's prior findings and conclusions as to respondent-mother's protected status. Finding of fact 30 states:

> In determining whether continued efforts to reunify with the Respondent Mother would be successful, the Court has considered the facts at issue today, in light of the long-term relationship between Respondent-Mother and the juveniles. . . . The Respondent Mother was physically and legally able to resume custody of the juveniles during the juveniles' first period in foster care . . . . She failed to exhibit any effort during this time. The Respondent Mother was legally and physically able to avail herself of visitation with the juveniles . . . when the juveniles came into the Agency's custody once again. She failed to comply with the court's order that visitation could proceed. While the Order on Permanency Planning Review heard [11 June 2019] did not explicitly make a finding that the Respondent Mother was unfit or had acted inconsistently with her constitutionally-protected status as a parent, the Respondent Mother had then failed to shoulder the responsibilities that are attendant to raising a child. From [11 June 2019] to [27 April 2020], she voluntarily failed to shoulder her parental responsibilities. Her voluntary acts have contributed to a lengthy period of nonparent custody. In viewing her progress from [27 April 2020] to the present, the Court views them in light of this long-term history of

> dereliction of her parental duties. The Respondent Mother's progress on her case plan has not been adequate enough to correct the conditions leading to the removal of the children. The Court determines that the Respondent Mother is unfit, and had acted inconsistently with her constitutionally protected status.

Finding of fact 30 is effectively unchallenged by virtue of respondent-mother's blanket exception and is binding on appeal. The trial court's findings of fact are supported by competent evidence, and those findings in turn support its conclusion that respondent-mother is unfit or has acted inconsistently with her constitutionally protected parental rights.

¶ 48 Respondent-mother raises a few alternative arguments, which we address as follows:

¶ 49 First, respondent-mother argues the trial court misapprehended the law in not considering her request for a trial home placement, considering only a permanent disposition, and continuing concurrent planning. Respondent-mother provides no authority in support of her contention, and we deem this argument abandoned. *See* N.C.R. App. P. 28(b)(6). Further, she argues the court committed other mistakes of law in the order and underlying file. Respondent-mother appears to allege error and challenge findings from prior orders not subject to the instant appeal. We decline to address these contentions.

¶ 50 Next, she argues the trial court abused its discretion in denying respondent-

mother trial home placement and appointing a guardianship. However, the trial court has broad discretion to fashion a disposition from the prescribed alternatives in § 7B-903, based on the best interests of the child. *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008). Contrary to respondent-mother's assertion, the express interest by Zeke and respondent-mother in a trial home placement is not determinative on the trial court. *See In re L.M.*, 238 N.C. App. 345, 767 S.E.2d 430 (2014) (holding no abuse of discretion when the court determined it was in the child's best interests to order guardianship rather than reunification, even though the juvenile expressed a desire to be returned home to his mother). The trial court did not abuse its discretion in finalizing the primary permanent plan of guardianship where it made appropriate findings based on competent and credible evidence as discussed above.

¶ 51 Finally, respondent-mother argues the Agency did not provide reasonable efforts. "Trial courts are required to make written findings of fact as to whether the department of social services made reasonable efforts towards reunification at permanency planning hearings." *In re A.A.S.*, 258 N.C. App. 422, 430, 812 S.E.2d 875, 882 (2018) (citation omitted). "Our General Assembly requires social service agencies to undertake reasonable, not exhaustive, efforts towards reunification." *Id.* "Reasonable Efforts" is defined, in part, as "[t]he diligent use of preventive or reunification services by a department of social services when a juvenile's remaining

at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time." § 7B-101(18) (2021).

¶ 52 Here, the trial court found that the Agency provided reasonable efforts, and respondent-mother argues this finding is unsupported. Respondent-mother does not explain the alleged lack of evidentiary support, and merely relies upon contradictory evidence presented which the trial court found to be inadequate. The uncontested findings demonstrate that the Agency monitored Zeke's placement, educational, therapeutic, and medical needs. The Agency monitored respondent-parents' progress on their respective case plans and provided supervised visitation for respondent-mother. Where efforts include case plan management, providing supervised visits, providing counseling, and arranging completion of case plan objectives, such efforts are reasonable. *See Rholetter v. Rholetter*, 162 N.C. App. 653, 662, 592 S.E.2d 237, 243 (2004).

C. Verification of Guardianship

¶ 53 When a trial court appoints a guardian for a child, it "shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile." § 7B-600(c) (2021); *see also* § 7B-906.1(j) (2021) (requiring an identical verification when appointing a guardian of a person for a juvenile as part of the juvenile's permanent plan). In reviewing the trial court's verification, "our role on

appeal is not to weigh and compare the evidence; our standard of review merely asks if there was competent evidence, even hearsay evidence, at trial to support the trial court's findings." *In re N.H.*, 255 N.C. App. 501, 507, 804 S.E.2d 841, 845 (2017).

¶ 54 Respondent-mother argues the trial court failed to verify that the Kaminskys understood the legal significance of a permanent guardianship. Respondent-father also appeals and raises one issue. Specifically, he argues the trial court erred in awarding guardianship of Zeke to the Kaminskys when it lacked evidence that Mr. Kaminsky understood the legal significance of assuming guardianship.

¶ 55 The trial court is not required to make any particular findings to support the verification, but evidence that the proposed guardians have raised children in the past and understand the responsibility of caring for a child, and have adequate income to care for the child, support the verification. *In re J.E.*, 182 N.C. App. 612, 617, 643 S.E.2d 70, 73, *disc. rev. denied*, 361 N.C. 427, 648 S.E.2d 504 (2007). Evidence that a social worker has spoken to the proposed guardian about the legal consequences of guardianship also supports the verification. *In re H.L.*, 256 N.C. App. 450, 459-60, 807 S.E.2d 685, 691 (2017).

¶ 56 In a recent decision by this Court, *In re B.H.*, 278 N.C. App. 183, 2021-NCCOA-297, we rejected arguments substantially similar to those raised by respondent-parents in the instant appeal. In *In re B.H.*, the respondent-parents argued that one of the proposed guardians' testimony was inadequate to support verification that both

proposed guardians understood the legal significance of guardianship. 278 N.C. App. at 189, 2021-NCCOA-297, ¶ 19. We held that the guardian's testimony that she understood that the child would return to the guardian's home after previously being in their custody showed that she understood the legal responsibilities of guardianship. *Id.* at 193, 2021-NCCOA-297, ¶ 30. Furthermore, we held that the social worker's testimony and home study report substantiated the guardian's testimony that both guardians understood the legal obligations of guardianship. *Id.*

¶ 57 In the case *sub judice*, Mrs. Kaminsky testified at the hearing that she was willing and able to serve as guardian for Zeke, but Mr. Kaminsky did not testify. Mrs. Kaminsky's testimony was substantiated by affidavit that indicated both foster parents understood the legal significance of guardianship.

¶ 58 Zeke was previously in the care of the Kaminskys for three years. The social worker's testimony also confirmed that the Kaminskys had previously successfully cared for Zeke. The Agency's report indicates that Zeke was bonded to his foster family, and the Kaminskys were willing and able to be his guardians.

¶ 59 The trial court's findings of fact and conclusions of law show that it considered the appropriate facts in making a guardianship verification, and the evidence, including testimony and court reports, supports those findings and conclusions. Therefore, we affirm the trial court's order making the Kaminskys Zeke's legal guardians.

AFFIRMED.

Judge GRIFFIN concurs.

Judge MURPHY concurs in parts I, II, and III-C, and concurs in result only in parts III-A and III-B.

Report per Rule 30(e).