IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-752

No. COA22-67

Filed 15 November 2022

Cabarrus County, No. 20 JA 73

IN THE MATTER OF: D.D.H., Minor Child.

Appeal by Respondent-Mother from an order entered 24 September 2021 by Judge Michael G. Knox in Cabarrus County District Court. Heard in the Court of Appeals 20 September 2022.

Jacky L. Brammer for Respondent-Appellant Mother.

E. Garrison White for Petitioner-Appellee Cabarrus County Department of Human Services.

S. Wesley Tripp, III, for the Guardian ad Litem.

JACKSON, Judge.

¶ 1 Respondent-Mother appeals from the trial court's order ending reunification efforts and appointing paternal grandparents as guardians of the minor child, Derrick.[1] Upon careful review, we affirm.

I. Background

¶ 2 Respondent-Mother first became involved with Cabarrus Court Department of

[1] We use pseudonyms for the juvenile mentioned in this opinion to protect his privacy and for ease of reading. *See* N.C. R. App. P. 42(b).

Human Services (CCDHS) in April 2013 when services were recommended for her for neglect and exposing her older children to an injurious environment. Six years later, in March 2019, Derrick, Respondent-Mother's third child, was born. On 3 April 2019, CCDHS received a report from Child Protection Services alleging a lack of stable housing, abuse, and injurious environment as Respondent-Mother and Derrick's father ("Father") had engaged in a physical altercation in the presence of the children which resulted in injury to one of the children. The report alleged there had been numerous verbal altercations between Respondent-Mother and Father.

¶ 3 On 6 June 2019, Respondent-Mother entered into a case plan to address CCDHS' concerns. The case plan required Respondent-Mother to have a domestic violence, non-offender assessment at a local counseling center and follow all recommendations, comply with CCDHS safety plans, complete parenting education and comply with all recommendations, and to ensure all appointments for the children were scheduled and kept. However, Respondent-Mother and Father continued to minimize the effects of their harmful relationship, demonstrated by Respondent-Mother's inability to remain separated from Father.

¶ 4 In November 2019, CCDHS received evidence of Father verbally abusing Mother and using cocaine in the presence of her and the children. Then, on or about 9 November 2019, Father was charged with assaulting Mother. Father was released from jail on the condition that he have no contact with Mother.

¶ 5 On 10 May 2020, police were called by one of Respondent-Mother's older children who stated she "heard mommy scream." Law enforcement discovered Respondent-Mother and Father were living in the home together, in violation of Mother's case plan. On 11 May 2020, CCDHS removed the children from the home and Derrick was placed with his paternal grandparents.

¶ 6 On 12 May 2020, CCDHS filed a juvenile petition alleging Derrick and his siblings were neglected and on 29 July 2020, Derrick was adjudicated neglected. The court established a primary plan of reunification with a secondary plan of guardianship. On 11 February 2021, at a permanency planning hearing, the trial court found it contrary to the health, safety, welfare, and best interests of the children to return them to Respondent-Mother's home. Therefore, the court found nonsecure custody would be necessary to protect the juveniles. Based on these findings, the trial court altered Derrick's plan to reflect a primary plan of guardianship with a secondary plan of reunification.

¶ 7 On 26 August 2021, a permanency planning hearing was conducted in Cabarrus County District Court before the Honorable Michael G. Knox. At the conclusion of the hearing, Judge Knox entered an order, filed 24 September 2021, ending reunification between Derrick and Respondent-Mother and awarding guardianship to Derrick's paternal grandparents. On 22 October 2021, Respondent-Mother timely appealed.

II. Discussion

¶ 8 Respondent-Mother argues the trial court erred on several grounds which require the order at issue to be vacated and remanded. Specifically, Respondent-Mother argues the trial court erred in (A) finding, *inter alia*, Respondent-Mother was unfit and acted inconsistently with her constitutionally protected status; (B) relying on a DSS court report and previous court orders to make its findings; (C) failing to verify paternal grandfather understood the legal significance of guardianship; and (D) allegedly giving discretion to paternal grandparents to decide the visitation supervisor, or in failing to note how a supervisor would be determined.

A. Sufficient Evidence to Support the Findings

¶ 9 Respondent-Mother specifically argues the evidence presented was not sufficient to support the trial court's findings. We disagree.

¶ 10 This Court will review a permanency planning order only to determine whether the record contains competent evidence to support the findings of fact and, in turn, whether the findings of fact support the conclusions of law. *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013). Findings of fact supported by competent evidence are binding on appeal. *Id.* A trial court's conclusions of law are reviewed *de novo*. *In re N.K.*, 274 N.C. App. 5, 8, 851 S.E.2d 389, 392 (2020) (citations omitted).

1. Unfitness and Acting Inconsistently with a Constitutionally Protected Status

¶ 11 Respondent-Mother first takes issue with Finding of Fact 48 and Conclusions

of Law 10 and 12, noting the court's use of the disjunctive "or" instead of "and" led the court to make irreconcilable findings that show it conflated two separate concepts—unfitness and a parent's constitutionally protected status. We disagree.

¶ 12 A natural parent may lose their constitutionally protected right—to control their child—where a court makes a "(1) [ ] 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). "[T]hese are two separate determinations, and each must be reviewed independently." *In re B.R.W.*, 278 N.C. App. 382, 395, 2021-NCCOA-343 ¶ 32.

¶ 13 As to a finding of unfitness, this Court has previously found specific facts in evidence to show parental unfitness, such as when "(i) the parents have not provided safe and suitable housing for their children; (ii) the parents have not contributed to child support; (iii) the parents have not been involved in the children's upbringing; and (iv) the children are at substantial risk of harm from the parents." *Wellons v. White*, 229 N.C. App. 164, 176, 748 S.E.2d 709, 719 (2013) (internal marks and citations omitted). When considering whether a parent's conduct is inconsistent with his or her protected status, this Court has stated, "[u]nfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy." *Price v. Howard*, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997).

¶ 14 Here, the trial court found, "[Respondent] Mother and Father are unfit, and have neglected [Derrick's] welfare, *or* have acted inconsistently with his and her constitutional rights." (Emphasis added.) Then, the trial court concluded, "[Respondent] Mother and [F]ather as parents are unfit, have neglected [Derrick's] welfare, *and* acted inconsistently with their constitutionally protected status and rights." (Emphasis added.) Upon independent review, despite the trial court's use of the disjunctive "or" and later "and," there is evidence to support the trial court's findings and conclusions, all of which reflect unfitness and acting inconsistently with a constitutionally protected status.

¶ 15 As demonstrated in the record, there was evidence of numerous safety concerns regarding Derrick and his siblings which included domestic violence, lack of parenting skills, and lack of stable housing. Further, evidence tended to show not only that Respondent-Mother and Father engaged in domestic altercations, verbal and physical, in the presence of the children, but also used drugs in the home. Additionally, Respondent-Mother frequently returned to Father, abandoning plans to keep herself and the children safe. Notably, when the children were removed from the home in 2020 by CCDHS, they found the home extremely cluttered, a lack of safe sleeping arrangements for Derrick, dog feces on the floor, and food on both the floor and in the sink.

¶ 16 In the order in question, the trial court found:

> 34. . . . Throughout 27 months of working with the family and providing services there has not been an observable sustained behavioral change. Until recently, [Respondent-Mother] has not put the needs and safety of her children before her own needs in over two years.
>
> 35. . . . Since 2019 there have been consistent incidents of domestic violence between [Respondent-Mother and Father]. There were several incidents between [Respondent-Mother and Father] to include one incident where one of the children was injured trying to intervene in a physical altercation between [Respondent-Mother and Father]. [Father] has also slashed [Respondent-Mother's] tires during altercations[.]
>
> 47. [Respondent] Mother and Father have abdicated their parental role and responsibilities by allowing CCDHS and the paternal grandparents to provide for [Derrick's] needs, by leaving [Derrick] in CCDHS primary care, and/or has failed to provide substantial care and maintenance for [Derrick] while he is with the paternal grandparents.

The evidence in the record together with these findings indicate that not only has Respondent-Mother failed to provide suitable, safe housing for her children but also that Derrick and his siblings have previously been and would be at substantial risk of harm from the parents. Reviewing this evidence, we hold that the trial court did not err in its findings or conclusion that Respondent-Mother is unfit and has acted inconsistently with her protected status as a parent.

2. Additional Findings

¶ 17 Respondent-Mother generally claims there is insufficient evidence to support the trial court's findings that Derrick's return to Respondent-Mother's home would

be contrary to his best interest and would not be possible within six months, that Respondent-Mother was not making enough progress on her case plan, and that guardianship and entry of the order was in Derrick's best interest and reunification would no longer be successful and was no longer in his best interest. Again, we disagree.

¶ 18 While Respondent-Mother summarily claims certain findings are not supported by sufficient evidence, citing Findings of Fact 9, 13, 30-34, and 46. In these findings, the trial court specifically stated:

> 9. While [Respondent-Mother] has made some progress on the services previously ordered, this progress made is insufficient for the court to be assured that the juveniles could safely return to her care[.]
>
> . . .
>
> 13. [Respondent-Mother's] and [Father's] progress [is] insufficient that the juveniles could safely return to the care of either [Respodent-Mother] or [Father].
>
> . . .
>
> 30. The juveniles' return to home would be contrary to their health, safety, welfare and best interests and nonsecure custody is necessary to protect the juveniles.
>
> 31. It is not possible for the juveniles to be placed with [Respondent-Mother] within the next six months although [Respondent] Mother is actively working her case plan and is doing well in treatment, however, the children have been in CCDHS custody for 15 months. There are concerns that due to the history of domestic violence and substance use. There are concerns for her children's safety due to [her]

actions throughout the life of the case. [Respondent-Mother] has been involved with CCDHS since 2013. Since 2019 there have been consistent concerns of substance abuse, injurious environment, improper housing, and incidents of domestic violence and between [Respondent-Mother and Father]. There were several incidents between [Respondent-Mother and Father] to include one incident where one of the children was injured trying to intervene in a physical altercation between [Respondent-Mother and Father].

32. [Respondent-Mother] in the past [has] not taken serious action to alleviate the issues which brought the children into care. [Respondent-Mother] has repeatedly returned to [Father's] home in 2019, 2020, and 2021 even though she was breaking no-contact court orders, CCDHS safety plans, and lying to CCDHS about their relationship. [Respondent-Mother] has moved out of [Father's] home several times even to other states including South Carolina and Tennessee only to return. [Respondent-Mother and Father] last lived together in April 2021, which again ended in a domestic dispute and the police being called. [Respondent-Mother] is currently pregnant with [Father's] child. [Respondent-Mother] has not demonstrated her ability to care for her children independent of [Father].

33. [Respondent-Mother] has started taking responsibility for her actions since starting the Cascade program. [Respondent-Mother] has shown that she realizes what has caused the children to come into care and has working forward in addressing these concerns. However, as recent as July 2021, [Respondent-Mother] called a meeting with CCDHS, Cascades, and service providers to discuss her leaving the program at Cascades due to her feeling that the program is holding her back from getting her children and not helping her reunify with her children. [Respondent-Mother] often has unrealistic plans for herself and her children's futures related to her

> being able to provide them with basic needs such as housing, employment, and childcare.
>
> 34. The children have been in care over 15 months. Prior to the children being in care the family worked with In-home Services for 12 months. Throughout 27 months of working with the family and providing services there has not been an observable sustained behavior change. Until recently, [Respondent-Mother] has not put the needs and safety of her children before her own needs in over two years. [Respondent-Mother] also has pending charges from Cabarrus County for driving with no registration, no liability insurance, and failure to stop at a red light.
>
> . . .
>
> 46. Concurrent planning for [Derrick] is not required because a permanent plan of legal guardianship has been achieved. Adoption and reunification are not appropriate or in the child's best interest.

These findings with which Respondent-Mother takes issue are extremely detailed and are supported by the record evidence.

¶ 19 The record evidence, including the chart encompassed in Finding of Fact 9 detailing Respondent-Mother's progress, supports the trial court's finding that Respondent-Mother needed to stay in treatment longer to sustain the changes in her behavior. Therefore, the trial court did not err in finding not only that Respondent-Mother had not made sufficient progress on her case plan but also that reunification would not be possible within six months. Further, the record evidence included repeated substance abuse, injurious environment, improper housing, and incidents of domestic violence. This coupled with Respondent-Mother's failure to show her

ability to support her children without Father and her unrealistic plans for herself and her children's futures related to her being able to provide them with basic needs such as housing, employment, and childcare. Moreover, this evidence supports the trial court's evidentiary findings, which in turn support its ultimate finding that awarding guardianship to Derrick's paternal grandparents was in Derrick's best interest and reunification would no longer be successful and was no longer in his best interest. Therefore, because the findings are supported by sufficient evidence in the record, the trial court did not err.

B. Reliance on DSS Court Report and Previous Court Orders

¶ 20 Respondent-Mother argues the trial court relied wholly on DSS reports and prior court orders for its evidentiary findings. Specifically, Respondent-Mother alleges the trial court reversibly erred in "failing to conduct an independent review of the evidence and failing to make any substantive, independent findings." We disagree.

¶ 21 The trial court is required, at a permanency planning hearing, to make written findings as to certain, specified circumstances. N.C. Gen. Stat. § 7B-906.2(d) (2021). Further, when required to make findings, the court must "through processes of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support the conclusions of law." *In re L.Z.A.*, 249 N.C. App. 628, 634, 792 S.E.2d 160, 166 (2016) (internal quotations and citations omitted). "Consequently, the trial

court's findings must consist of more than a recitation of the allegations." *Id.* (quoting *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004)). However, there exists no inherent reversible error where the trial court's findings "mirror the wording of a petition or other pleading prepared by a party." *In re J.W.*, 241 N.C. App. 44, 48, 772 S.E.2d 249, 253 (2015). Additional findings in conjunction with those recited from previous petitions or other pleadings may "indicate the trial court considered the evidence presented at the hearing[.]" *In re S.C.R.*, 217 N.C. App. 166, 169, 718 S.E.2d 709, 712 (2011) (citations omitted).

¶ 22 Here, the trial court indicated in its first Finding of Fact: "The [c]ourt accepts the CCDHS and GAL Court Reports into evidence and incorporated as this [c]ourt's findings of fact." Further, several of the trial court's findings use language identical to that used previously in numerous orders. However, there are additional findings which are not recitations of previous orders.

¶ 23 Therefore, although several of the findings are exact recitations from the previous orders, the additional findings included indicate, upon review, that the trial court used logical reasoning to find the facts essential to the conclusions of law when considering the evidence presented.

C. Verifying an Understanding of the Legal Significance of Guardianship

¶ 24 Respondent-Mother alleges the trial court failed to properly verify the paternal grandfather's understanding of the legal significance of guardianship, as required by

N.C. Gen. Stat. § 7B-600(c), noting the record and transcript alike are void of evidence showing as such, and therefore, the order must be vacated and remanded. We disagree.

¶ 25 "'Questions of statutory interpretation are questions of law, which are reviewed *de novo* by an appellate court.'" *In re P.A.*, 241 N.C. App. 53, 58, 772 S.E.2d 240, 245 (2015) (quoting *State v. Jones*, 237 N.C. App. 526, 530, 767 S.E.2d 341, 344 (2014)).

¶ 26 Where the trial court appoints a person guardian of a juvenile, the court must verify the person being appointed "understands the legal significance of the appointment[.]" N.C. Gen. Stat. § 7B-600(c) (2021); *See also* 7B-906.1(j) (2021). Similarly, "when two persons are appointed together . . . there must be sufficient evidence before the trial court that both persons understand the legal significance of the appointment." *In re B.H.*, 278 N.C. App. 183, 190, 2021-NCCOA-297 ¶ 24. It is not required that the trial court make any specific findings as to the verification. *In re J.R.*, 279 N.C. App. 352, 361, 2021-NCCOA-491 ¶ 24. "It is sufficient that the court receives and considers evidence that the guardians understand the legal significance of the guardianship." *In re L.M.*, 238 N.C. App. 345, 347, 767 S.E.2d 430, 432 (2014) (citation omitted). Further,

> [e]vidence sufficient to support a factual finding that a potential guardian understands the legal significance of guardianship can include, *inter alia*, testimony from the

> potential guardian of a desire to take guardianship of the child, the signing of a guardianship agreement acknowledging an understanding of the legal relationship, and testimony from a social worker that the potential guardian was willing to assume legal guardianship.

In re E.M., 249 N.C. App. 44, 54, 790 S.E.2d 863, 872 (2016). Notably, our Court in *In re J.R.*, found evidence sufficient to prove the grandfather understood the legal significance of assuming guardianship of his grandchildren where he testified the children had lived with him for a year and, during that time he had taken them to appointments and ensured visitation with their parents. *In re J.R.*, 279 N.C. App. 352, 2021-NCCOA-491 ¶ 24. In the instant case, upon direct examination, paternal grandmother testified as follows:

> Q: Do you understand the legal significance as it relates to being a guardian for [Derrick]?
>
> A: I do.

This is direct evidence sufficient to show paternal grandmother understood the legal significance of guardianship. Paternal grandfather, however, did not testify. Yet, additional testimony in paternal grandmother's testimony is sufficient to show paternal grandfather also understood the legal significance:

> Q: And do you have a child in your home right now?
>
> A: I do.
>
> . . .

> Q: And how long has [Derrick] been in your home? About.
>
> A: Probably about 15, 14 months (inaudible).
>
> Q: And who takes care of [Derrick] on a day-to-day basis?
>
> A: Myself and my husband, [paternal grandfather].
>
> Q: And who takes care of his educational needs?
>
> A: Myself and my husband, [paternal grandfather].
>
> Q: And who takes care of his medical needs, in other words, appointments, taking him to the appointments and things like that?
>
> A: Myself and my husband, [paternal grandfather].

As in *In re J.R.*, this testimony at the hearing with paternal grandmother is sufficient to show both she and paternal grandfather understood the significance of accepting guardianship of Derrick because not only had Derrick lived with them for over a year, but also, during that time, they took care of his every need.

¶ 27 Because the evidence at trial is sufficient to show both paternal grandmother and paternal grandfather understood the legal significance of accepting guardianship of Derrick, the trial court did not err in awarding guardianship to them.

D. Discretion Given to Guardians Concerning Visitation

¶ 28 Respondent-Mother argues the trial court improperly gave paternal grandparents, as guardians, the discretion to determine the visitation supervisor or,

in the alternative, did not specify how a supervisor would be determined. We disagree.

¶ 29 "The trial court's dispositional choices . . . are reviewed only for abuse of discretion, as those decisions are based upon the trial court's assessment of the child's best interests." *In re L.R.L.B.*, 377 N.C. 311, 2021-NCSC-49 ¶ 11. "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 J.H.*, 373 N.C. 264, 267, 837 S.E.2d 847, 850 (2020) (internal marks and citations omitted).

¶ 30 "An order that removes custody of a juvenile from a parent . . . or continues the juvenile's placement outside the home shall provide for visitation that is in the best interest of the [juvenile.]" N.C. Gen. Stat. § 7B-905.1(a) (2021). Further, "any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised." N.C. Gen. Stat. § 7B-905.1(c) (2021). However, our General Assembly has eliminated any previous requirement under which the trial court had to explicitly include, in its orders, any particulars as to the time, place, or other possibly relevant conditions for visitations. *In re N.B.*, 240 N.C. App. 353, 364, 771 S.E.2d 562, 568 (2015). Nevertheless, the award of visitation rights is a judicial function which shall not be delegated to the custodian of the juvenile. *In re Custody of Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 848 (1971);

see also In re J.D.R., 239 N.C. App. 63, 768 S.E.2d 172, (2015) (holding a guardian cannot determine a child's visitation plan).

¶ 31 Although Respondent-Mother concedes the plain language of the order does not give the guardians authority to determine a designee for visitation, she argues the ambiguity pertaining to who would be the supervisor constitutes the need to vacate the current order.

¶ 32 In *In re G.J.J.*,[2] the trial court ordered, in relevant part, "the Respondent Mother shall have three hours visitation with the Juveniles to be supervised by the respective Guardian or their designee[.]" *In re G.J.J.*, 246 N.C. App. 515, 785 S.E.2d 187 2016 WL 1359065, at *4. On appeal from this order, Respondent-Mother argued the trial court "impermissibly delegated its judicial authority to the guardians when the court did not address 'where, when, and in whose presence [respondent] could visit her children.'" *Id.* at *5. This Court held, "the trial court did not delegate to anyone discretion over the kind, frequency, or length of visitation" which is the full extent of what our General Statute's require trial court's to specify in their orders. *Id.* at *5.

[2] While we recognize this case is unpublished and therefore not binding, this Court's holding is relevant to the case at bar and, in the instant case, is used only as a mere illustration of how this Court's decision in *In re N.B.*, a binding precedent, has been applied.

¶ 33 Similarly, in the recent case of *In re A.L.*,[3] the trial court's order stated, "[the respondent-parents] shall have supervised visitation with [A.L.] the first Sunday of each month from 12:00 p.m. to 2:00 p.m. [The respondent-parents] must give a 48 hour notice of their intent to visit and if [the respondent-parents] are more than 30 minutes late, the [Guardians] are not required to wait." 2021-NCCOA-626 ¶ 4. On appeal, the respondent mother argued the trial court erred by "failing to designate which parties would supervise the visits, thereby impermissibly delegating to the Guardians its judicial responsibility to set the terms of visitation." *Id.* at ¶ 7. Our Court held the trial court was not required to specify who would supervise the visits because the trial court had complied with N.C. Gen. Stat. § 7B-905.1 in only providing the essential framework for the visits. *Id.* at ¶ 16.

¶ 34 Here, in its order, the trial court decreed: "[Respondent] Mother's visitation with Derrick shall be supervised by an approved designee for a minimum of two hours weekly. Mother shall be able to have telephone calls with the juveniles twice every week for one hour." Because the trial court is only required to specify the minimum frequency, length of the visits, and whether the visits shall be supervised—not who will supervise them—the trial court here did not err.

III. Conclusion

[3] See footnote 2

¶ 35 For the reasons stated above, we hold there was no error in any of the trial court's dispositions which would require the order at issue to be vacated and remanded. Thus, we affirm the order.

AFFIRMED.

Judge DIETZ and INMAN concur.

Report per Rule 30(e).