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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-401

Filed 18 April 2023

Robeson County, Nos. 17 JA 84, 17 JA 85, 17 JA 86, 18 JA 15

IN THE MATTER OF:

M.S., S.L., T.H., S.H.

Appeal by Respondent-Mother from Order entered 8 March 2022 by Judge Gregory Bullard in Robeson County District Court. Heard in the Court of Appeals 21 March 2023.

J. Edward Yeager, Jr., for petitioner-appellee Robeson County DSS.

K&L Gates, LLP, by Sophie Goodman, for guardian ad litem.

Benjamin J. Kull, for respondent-appellant mother.

RIGGS, Judge.

Respondent-Mother appeals the order granting permanent guardianship of her children to their paternal grandmothers and great-aunt. On appeal, she argues the trial court's findings of facts were not supported by clear, cogent, and convincing evidence and those findings of fact do not support the conclusions of law.

Additionally, Mother argues that the trial court committed reversible error by failing to make statutorily mandated findings. After careful consideration, we affirm the order of the trial court in part and remand for additional finding per N.C. Gen. Stat. § 7B-906.2(d)(3) (2021).

I. Facts & Procedural History

On 4 February 2020, Robeson County Department of Social Services (“DSS”) filed a petition alleging Mariah, Sarah, Tracey, and Stacey¹ were neglected and dependent juveniles and lived in “environments injurious to the juvenile’s welfare.” On the same day, the trial court granted DSS nonsecure custody of the four minor children.

Respondent is the mother to all four children in this matter. Mr. L. is the father of the older children, Mariah and Sarah, while Mr. H. is the father of the younger children, Tracey and Stacey. In the order for nonsecure custody, DSS placed Mariah and Sarah with their paternal grandmother and great aunt and placed Tracey and Stacey with their paternal grandmother.

The pre-adjudication hearing was held on 11 March 2020. With the three parents and their attorneys present, the trial court found that it was in the best interest of the children for the nonsecure custody order to remain in effect with DSS to retain legal and physical custody of the four children due to domestic violence in

¹ Pseudonyms are used for the juveniles to protect their identity. N.C. R. App. P. 42(b) (2023).

the home. Five months later, on 29 July 2020, the trial court held an adjudication and disposition hearing² with all parties and their attorneys present. At that hearing, the trial court adjudicated the four children neglected as defined by N.C. Gen. Stat. §7B-101(15). In the disposition order, required by Section 7B-901 and entered 16 September 2020, the trial court ordered DSS to continue reunification efforts, in this matter, which included having Mother complete substance abuse treatment, domestic violence classes, and maintain stable housing in accordance with the Out of Home Family Services Agreement³ that Mother signed.

The first permanency planning hearing was held on 23 September 2020 with all parents and their attorneys present. In the order for that hearing, entered 18 November 2020, the court found that while Mother had maintained stable housing, she had not attended domestic violence classes. Additionally, while she had participated in substance abuse treatment, she had also tested positive for multiple illicit drugs since April 2020. In its order, the trial court found that: (1) legal and physical custody of the children should remain with DSS; (2) the court would continue the plan for reunification and add a concurrent plan for relative guardianship; and (3) the matter would return for a permanency planning hearing in six months as required by Section 7B-906.1(a) (2021).

² The hearing was originally scheduled for 22 April 2020 but was continued due to the pandemic.

³ The agreement is used to communicate objectives and activities to address needs and barriers to reunification.

A second permanency planning hearing was held on 27 January 2021. At the time of this hearing, the children had been in the custody of DSS for 358 days. In its written order entered 15 April 2021, the trial court credited Mother with finding stable housing, completing a domestic violence class, working her substance abuse program, and testing negative for drugs; however, the court noted that compliance with the substance abuse program included regular therapy which she had not completed. The trial court found that: (1) legal and physical custody of the children should remain with DSS; (2) the court would transition to a primary plan of relative guardianship with a concurrent plan for reunification; and (3) the matter would return in six months for a permanency planning hearing.

On 18 November 2021, the trial court held a third permanency planning hearing. In this hearing, the social worker for DSS and the guardian ad litem (“GAL”) testified. Also, the relative guardians of the children testified. Mother and both fathers attended most of the hearing but did not present evidence or testify. Mother and Mr. H. left the hearing early after Mr. H confronted and intimidated one of the relative guardians in front of the trial judge.

At that hearing, the social worker testified that Mother had maintained housing for close to two years. However, the social worker followed up with Mother’s housing manager on 8 November 2021, who reported Mother’s public housing was in jeopardy because Mother allowed Mr. H, who was banned from the housing, to be in the apartment. The housing manager further reported that Mother was not

responsive to the housing manager's attempts to contact her about incidents with Mr. H.

The social worker also testified that although Mother completed domestic violence classes in September 2020, a series of 911 calls were placed in December 2020, January 2021, and May 2021, regarding arguments and threats between Mother and Mr. H. Specifically, in the 31 December 2020 call, caller advised "her babydaddy [Mr. H.] keeps riding by her house looking for trouble. . ." and in the 3 January 2021 call, the caller advised 911 that "her Baby's father making threats with a firearm, [Mr. H.] . . ."⁴ The social worker testified that Mother admitted that she made the calls in December and January; however, the social worker acknowledged that the incidents occurred before Mr. H. completed his domestic violence class. The social worker further testified that Mother began the process of pursuing a restraining order at DSS's recommendation, but the court dismissed the order when Mother did not appear to finalize the order. Additionally, the social worker reported that on 25 March 2021, after Mother and Mr. H. completed domestic violence classes, supervised visits between Mother and the children were suspended due to concerns about drinking and arguing between Mother and Mr. H. at the visitation. Finally, the social worker testified about a 911 call regarding domestic violence between "[Mother] and unknown male" on 13 May 2021 at Mother's address.

⁴ Caller also gave Mr. H.'s date of birth.

As to Mother's substance abuse treatment, the social worker testified that Mother has never fully complied with her substance abuse treatment in the almost two years her children had been in the custody of DSS. While Mother has attended initial assessments, Mother did not follow up by attending weekly treatment sessions and failed to respond to requests for random drug screenings. While Mother did have negative drug screenings, the screenings were not random. Additionally, the social worker testified that Mother tested positive for cocaine on multiple occasions, including as recently as October 2021. The DSS report submitted to the court and referenced by the social worker shows a pattern of Mother missing substance abuse treatment appointments and random drug screenings.

Finally, the social worker testified that while both older children, Mariah and Sarah, expressed a desire to live with Mother, they did not want to live with her if she is going to be with Mr. H. because they were afraid of the fighting and scared something would happen to Mother. The social worker testified that often, when Mother would visit the children in the placement home, she would bring Mr. H., or he would park across the street during the visit, which caused the children anxiety. The girl's therapist, who has treated them for two years, advised via affidavit that remaining in their current placements was in the best interest of the children. At the time of the hearing, all four children had been in the custody of DSS for 653 days.

At the close of the hearing, the trial court found that Mother was not compliant with her substance abuse treatment and that although Mother has maintained stable

housing, her housing was currently in jeopardy due to her decision to allow Mr. H. to be at the home. The trial court stated that the behavior in the courtroom demonstrated that Mr. H.'s violent behavior continues to be an issue. Finally, the trial court found it compelling that Mariah and Sarah would choose not to be in Mother's home because of concerns about violence in the home. The trial court noted that since the plan transitioned to a primary plan of guardianship with a concurrent plan for reunification, Mother and Mr. H. made little progress in changing the plan back to reunification. It likewise found that DSS's efforts to achieve relative guardianship with a concurrent plan of reunification had been reasonable.

The court awarded guardianship of Mariah and Sarah to their paternal grandmother and great-aunt and guardianship of Tracey and Stacey to their paternal grandmother and her husband. Mother, who had left the courtroom, was awarded continuing weekly supervised visitation. The court noted that she still has a chance to be a significant part of her children's life. However, the court ordered that Mr. H. could not join her when she visited Mariah and Sarah. The trial court granted Mr. H. supervised visitation with Tracey and Stacey and Mr. L. unsupervised visitation with Mariah and Sarah.

The trial court entered a written order on 17 February 2022 and an amended order on 9 March 2022. Mother filed a written notice of appeal on 9 March 2022 that referenced only the 17 February 2022 order.

II. Analysis

A. Appellate Jurisdiction

As a threshold issue, we must consider whether this Court has jurisdiction in this matter since the notice of appeal referenced the 17 February 2022 order rather than the final amended order dated 9 March 2022. In a juvenile matter, parties may appeal a final order changing the legal custody of a juvenile or eliminating reunification. N.C. Gen. Stat. § 7B-1001(4)-(5) (2021). A notice of appeal must designate the judgment or order from which the appeal is taken. N.C. R. App. P. 3(d) (2022). In order to confer jurisdiction on the state's appellate courts, appellants of lower court orders must comply with the requirements of Rule 3 of the North Carolina Rules of Appellate Procedure. *In re A.E.*, 379 N.C. 177, 183 n.4, 864 S.E.2d 487, 494 n.4 (2021).

First, we consider whether the trial court was divested of jurisdiction when it entered the amended order. Generally, a trial court is divested of jurisdiction in a matter once the notice of appeal has been filed. *SED Holdings, LLC v. 3 Star Props, LLC*, 250 N.C. App. 215, 219, 791 S.E.2d 914, 918 (2016). However, Rule 60(a) of the North Carolina Rules of Civil Procedure allows a judge to correct clerical errors during the pendency of the appeal before the appeal is docketed in the appellate division. N.C. R. Civ. P. 60(a) (2022).

Here, on 9 March 2022, the trial court issued an amended order that modified the original 17 February 2022 order by correcting the name of the attorney for the GAL on the front page of the order—a clerical correction that does not impact the

effect of the order in any way. *Buncombe County ex rel. Andres v. Newburn*, 111 N.C. App. 822, 825, 433 S.E.2d 782, 784 (1993) (changing an order is substantive and outside the boundaries of Rule 60(a) when it alters the effect of the original order). This amended order was filed prior to the docketing of this case in the Court of Appeal; therefore, the trial court was not divested of jurisdiction to enter this amended order.

Next, we consider whether the notice of appeal properly conferred jurisdiction on this Court. Although Mother filed a notice of appeal on 9 March 2022 that referenced the 17 February 2022 order, Mother never filed a notice of appeal regarding the amended order. It is well established that a mistake in designating the judgment should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be fairly inferred from the notice and the appellee is not misled by the mistake. *In re A.E.*, 379 N.C. at 183 n.4, 864 S.E.2d at 494 n.4. While Mother's notice of appeal does not reference the amended order, since the amended order only corrected a clerical mistake, the intent to appeal can be fairly inferred from the notice and the appellee, DSS was not misled. Accordingly, this Court has jurisdiction to consider the merits of the appeal from the 9 March 2022 order.

B. Amended order granting relative guardianship.

Mother appeals the order granting guardianship of Mariah and Sarah to their paternal grandmother and great-aunt and granting guardianship of Tracey and Stacey to their paternal grandmother and her husband. On appeal, Mother asserts

that the trial court did not have clear, cogent, and convincing evidence upon which to base its findings of fact and that the conclusions of law were not supported by the findings of fact. We hold that the findings of fact were supported by competent evidence and the findings of fact support the conclusions of law.

1. Standard of Review

Our review of a permanency planning order that ceases reunification efforts is limited to whether there is competent evidence in the record to support the findings of fact, whether the findings support the conclusions of law, and whether the trial court abused its discretion with respect to disposition. *In re C.M.*, 273 N.C. App. 427, 429, 848 S.E.2d 749, 751 (2020) (internal quotations and citations omitted), *aff'd per curiam*, 377 N.C. 105, 856 S.E.2d 96 (2021). While the trial court considers whether there is clear, cogent, and convincing evidence to support the findings of fact, this Court may not reweigh the evidence in making the determination of whether the findings are supported. *In re I.K.*, 377 N.C. 417, 426, 858 S.E.2d 607, 623 (2021). The trial court's findings of fact are conclusive on appeal when supported by competent evidence, even if that evidence could sustain contrary findings. *In re L.T.R. & J.M.R.*, 181 N.C. App. 376, 381, 639 S.E.2d 122, 125 (2007) (internal quotations and citations omitted). 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 N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007) (quotations and citation omitted).

Whether a parent has made substantial progress towards reunification or has acted inconsistently with their constitutionally protected status as the parent is a conclusion of law subject to *de novo* review and must be supported by clear, cogent, and convincing evidence. *In re B.R.W.*, 381 N.C. 61, 77, 871 S.E.2d 764, 775 (2022) (internal citations and quotations omitted).

2. Findings of Fact

In her first issue on appeal, Mother challenges whether the trial court received clear, cogent, and convincing evidence to support several findings of fact. Specifically, Mother challenges whether there was evidence to support: (1) Finding of Fact 8 that Mother’s housing was in jeopardy, DSS had concerns for continued domestic violence, and there had been multiple 911 calls about domestic violence; (2) Finding of Fact 9 that the substance abuse assessment recommended therapy, medication management, and psychiatric evaluation; (3) Finding of Fact 11 that there is no reason to test positive for Narcan other than having it administered when Mother was on the verge of an overdose; and (5) Finding of Fact 12 that Mother continues to test positive for alcohol and domestic violence continues to be an issue between her and Mr. H.

Mother challenges the ultimate findings of the court that there was a “lack of progress made by the parents” and that “parents have acted inconsistently with their constitutionally protected parental status.” Although listed as findings of fact, they are conclusions of law, which we review *de novo*. *Id.*

Finally, Mother challenges Findings of Fact 23 to 26 which indicate that the trial court accepted into evidence and relied on the Visitation and Contact Plan; the North Carolina Family Time and Contact Plan; Mother's drug screenings, DSS exhibit S; and the 911 Communication report, DSS Exhibit T even though they were not actually offered or accepted into evidence during the hearing. We address each challenge in turn.

We start by considering Mother's challenge to Findings of Fact 23 through 26. In a permanency hearing, the court may consider any evidence, including hearsay evidence, 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). The court may also rely upon written reports even if they have not been admitted into evidence, and the lack of an objection to the trial court's consideration of the reports generally waives the issue for appellate review. *In re J.H.*, 244 N.C. App. 255, 269-70, 780 S.E.2d 228, 239 (2015); *See also* N.C. R. App. P. 10(a)(1) (2022).

Here, the hearing transcript does not show that these four documents were admitted into evidence; however, the social worker referred to the reports during her testimony. Additionally, she indicated that DSS relied upon the reports to make the recommendation in this case. Mother did not object when these documents were discussed during testimony, and in any event, the trial court considers them "without a formal proffer and admission of these documents into evidence as exhibits." *In re*

J.H., 244 N.C. App. at 270, 780 S.E.2d at 239. Accordingly, we leave Findings of Fact 23 to 26 undisturbed.

Next, we consider Mother's challenge to whether specific findings of fact were supported by competent evidence. First, Mother challenges Finding of Fact 8 in several ways alleging: (1) the finding that her housing was in jeopardy was not supported by the evidence; (2) the finding "DSS has concerns for continued domestic violence" was a mere recitation of the social worker's testimony; and (3) the finding of multiple 911 calls about domestic violence against Mother lacked supporting evidence.

Regarding Mother's housing, the social worker testified that she talked with Mother's housing manager two weeks before the hearing. The housing manager relayed that Mother's public housing was in jeopardy, and she was subject to eviction because (1) Mr. H. was banned from the premise but still visited Mother's apartment and (2) Mother had not responded to the housing manager's repeated inquiries about Mr. H.'s visits. Mother argues that this testimony is inadequate to support the trial court's order because it is hearsay that can be unreliable. However, in a permanency hearing, the court may consider hearsay evidence 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). The trial court heard the live testimony of the social worker and weighed the credibility of her testimony. The testimony was not refuted, and while Mother's brief argues that since she was still in

the housing at the time of the hearing her housing was not in jeopardy, there was no evidence presented in the record to support that statement. The competent evidence in the record supports the challenged finding that Mother's housing was in jeopardy.

As for the argument that Finding of Fact 8 regarding multiple 911 calls about domestic violence towards Mother is unsupported, the social worker testified about several 911 reports that raise concerns about domestic violence against Mother. In a 911 call on 31 December 2020, the caller identified father, Mr. H., by name and as the caller's "Baby daddy" stating he was driving around the house "looking for trouble." The call on 1 January 2021 also identified Mr. H by name and indicated he was "outside pointing a gun threatening to shoot up home." The social worker further testified that she confirmed with Mother that Mother had made the calls to the police.

While DSS recommended that Mother pursue a domestic violence protection order, she did not obtain one because she failed to appear in court. Mother's decision not to follow through on the domestic violence protection order occurred three months after Mother finished domestic violence classes on 22 September 2020 and only a month before the second permanency planning hearing. Finally, in May 2021, there was another 911 call that referred to Mother's apartment, with the 911 operator noting, "[d]omestic in progress between [Mother] and UNK male." At the hearing, Mother did not present evidence to refute the testimony regarding domestic violence or the 911 reports. Therefore, the finding that multiple 911 calls indicate ongoing domestic violence against Mother is supported by competent evidence.

Mother also asserts the finding that DSS has concerns about continued domestic violence is simply a recitation of the social worker's testimony. However, this finding is supported by the testimony of the social worker and the reports provided to the court as described above. The social worker testified that she had to suspend visitation in March of 2021 due to arguing between Mother and Mr. H. during visitation. Additionally, the social worker testified that the children have expressed concerns about the fights between Mother and Mr. H. The DSS report referenced the children's concerns about domestic violence. Significantly, during the hearing, the trial court witnessed Mr. H. confront and intimidate one of the children's guardians before Mr. H. left the court followed by Mother. Therefore, we hold there is competent evidence in the record to support all aspects of Finding of Fact 8.

Mother next challenges Finding of Fact 9 that Mother completed a substance abuse assessment on 3 August 2020, and the provider recommended therapy, medication management, and a psychiatric evaluation. The DSS Court Report, which was accepted into evidence, indicated Mother completed a substance abuse assessment on 3 August 2020, but she was not forthcoming during the assessment; therefore, no recommendations were made for substance abuse treatment. However, the DSS report also notes that Mother resumed Suboxone treatment on 17 September 2020. Substance abuse treatment, including medication management and weekly therapy, was a requirement of the Suboxone treatment. At the permanency planning hearing, the social worker testified that Mother completed another substance abuse

assessment on 8 April 2021, and DSS would require her to attend weekly therapy sessions and submit to random drug screenings to be compliant with the program. To the extent the finding misstates the dates and provider of the substance abuse assessment, those portions are stricken. However, the relevant portion providing that continued therapy was a required part of substance abuse treatment is adequately supported, and we leave it undisturbed.

Third, Mother challenges Finding of Fact 11: “Mother tested positive for Narcan and there is no reason to test positive for Narcan other than Respondent Mother was on the verge of overdosing and someone administered it to her.” The trial court accepted into evidence Mother’s drug test results. Those drug test results show that Mother consistently tested positive for naloxone, the medication found in Narcan. However, the drug test reports indicate that naloxone is an expected result based on Mother’s reported prescription medication, Suboxone. While the social worker testified that she thought Narcan was only used when a person was overdosing, the evidence in the record does not adequately support the finding that there is “no reason to test positive for Narcan other than Respondent Mother was on the verge of overdosing, and someone administered it to her.” Therefore, we strike that portion of the finding of fact. However, the remainder of Finding of Fact 11—that Mother had failed to comply with substance abuse treatment and tested positive for cocaine in May and October 2021—remains undisturbed.

Finally, Mother challenges a portion of Finding of Fact 12 that Mother “continues to test positive for alcohol[.]” Mother omits reference to the remainder of the finding, which reads, in full, “Mother continues to test positive for alcohol and cocaine.” Mother also challenges the second sentence that domestic violence continues to be an issue with Mother and Mr. H.

As to the argument related to testing positive for alcohol, the record shows that Mother tested positive for alcohol in a drug screening on 19 July 2021 and 11 October 2021. The testimony of the social worker, the DSS report, and the drug screenings also show that Mother tested positive for cocaine on multiple drug screens. Although some sections of the medical reports, where patients self-report concerns, indicate that alcohol was not a problem, there is competent evidence to support the finding that Mother continues to test positive for alcohol and cocaine.

As to the second sentence in the finding regarding domestic violence, as discussed previously, there is adequate evidence in the record to support a finding that domestic violence continues to be a concern between Mother and Mr. H.

After review of all challenged findings of fact, we hold that the trial court had competent evidence to support the findings with the following exceptions: (1) in Finding of Fact 9, the date and provider for the substance abuse assessment is stricken, but the requirement for continuing therapy remains and (2) in Finding of Fact 11 the statement that “there is no reason to test positive for Narcan other than [Mother] was on the verge of overdosing and someone administered it to her” is

stricken. The conclusions of law are considered based on the undisturbed findings of fact.

3. *Conclusions of Law*

Mother challenges the purported finding that there has been a “lack of progress made by the parents” and the “parents have acted inconsistently with their constitutionally protected parental status,” which we review *de novo* as conclusions of law. *In re B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775. Mother further argues that the trial court and this Court cannot properly determine whether adequate progress has been made because the trial court did not make sufficient findings of fact in the adjudication order.

There is no bright line rule to determine whether a parent acted inconsistently with their constitutionally protected parental status; it is a fact-specific inquiry that must be performed on a case-by-case basis where evidence of the parent’s conduct should be viewed cumulatively. *Id.* at 82-83, 871 S.E.2d at 779. This Court has treated parental compliance with a case plan as a consideration in determining if reunification is appropriate, even where the case plan addressed issues beyond those that immediately led to the removal of the child from the home. *In re B.O.A.*, 372 N.C. 372, 383, 831 S.E.2d 305, 313 (2019). Although a lack of compliance with a case plan is not dispositive, the trial court should consider the parent’s progress relative to the plan when making a determination related to parental rights. *Id.* at 385, 831 S.E.2d at 314.

Mother argues that the trial court could not make a finding on progress because the adjudication order did not explain why the children were adjudicated neglected. However, Mother did not appeal the adjudication, and that order is not properly before this Court. The record shows that the trial court, in the 9 March 2022 order terminating reunification, appropriately considered progress relative to whether reunification would be successful or consistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time. *In re L.E.W.*, 375 N.C. 124, 129, 846 S.E.2d 460, 465 (2020).

At the time of the third permanency hearing, the four children at issue had been in the custody of DSS for 653 days. During this time, Mother's Out of Home Services Agreement required her to secure stable housing, attend domestic violence classes, and submit to a substance abuse treatment program. In the almost two-year period since the children were temporarily placed with their guardians, Mother was unable to consistently comply with these requirements as established by the supported findings of fact in the 9 March 2022 amended order. These findings included risk to Mother's housing, continuing domestic violence concerns, and failure to comply with substance abuse treatment. Mother completed the domestic violence classes, but when Mr. H. continued to threaten her, she did not get domestic violence protection for herself and her children. The trial court heard unrefuted testimony of ongoing domestic violence concerns. Significantly, Mr. H., whom the record shows

still plays a role in Mother's life, demonstrated intimidating behavior to the guardian of his children in front of the trial court.

Most significantly, Mother did not comply with the requirements for substance abuse treatment and remained non-compliant throughout the time when the children were removed from her care. Mother missed substance abuse treatment sessions and did not submit to random drug testing. She tested positive for cocaine on multiple occasions, including one month prior to the permanency planning hearing. The failure to make progress on this portion of the case plan was correctly identified as a significant risk to the children if reunited with Mother.

Mother notes that the trial court did not make a finding of fact regarding her ability to maintain a stable income. However, none of the parties presented evidence during the permanency planning hearing about Mother's income. In any event, progress on a single provision of a case plan is not dispositive, particularly when the remaining portions show a marked lack of progress.

We hold the trial court's conclusions of law that Mother failed to make appropriate progress and acted in a manner inconsistent with her constitutionally protected status was supported by the undisturbed findings of fact. Accordingly, we affirm the order of the trial court.

C. Statutorily mandated findings

Finally, Mother argues that the trial court made reversible error by failing to make statutorily mandated findings when they granted permanent guardianship to the children's paternal grandmothers and great-aunt.

1. *Standard of Review*

This Court reviews statutory compliance *de novo*. *In re N.K.*, 274 N.C. App. 5, 13, 851 S.E.2d 389, 395 (2020).

2. *Analysis*

Under our statutes, reunification is the goal of juvenile court whenever possible. *In re J.M.*, 276 N.C. App. 291, 300, 856 S.E.2d 904, 910 (2021). The trial court may cease reunification efforts only upon supported findings “that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety[.]” and need for a safe, permanent home within a reasonable period of time. N.C. Gen. Stat. § 7B-906.2(b) (2021); *In re D.A.*, 258 N.C. App. 248, 253, 811 S.E.2d 729, 733 (2018); *In re K.L.*, 254 N.C. App. 269, 274, 802 S.E.2d 588, 592 (2017). In making this determination, the trial court is required to make written findings as to whether: (1) the parent is making adequate progress within a reasonable period of time under the plan; (2) the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile; (3) the parent remains available to the court, the department, and the guardian ad litem for the juvenile; and (4) the parent is acting in a manner inconsistent with the health or safety of the juvenile. N.C. Gen. Stat. § 7B-906.2(d) (2021). The focus of this statute

is on the actions of the parents and highlights the importance of considering the parents' efforts toward reunification. *In re J.M.*, 276 N.C. App. 291, 300, 856 S.E.2d 904, 910 (2021). While the trial court is not mandated to use the precise language of Section 7B-906.2(d), the order must embrace the substance of the statutory provisions requiring findings of fact that further reunification efforts would be futile or inconsistent with the juvenile's health, safety, or need for a safe, permanent home within a reasonable period of time. *Id.*

Here, the trial court made three of the the findings required by Section 7B-906.2(d), even though it did not use precise statutory language in every finding. First, in Findings of Fact 15 and 16, the trial court found that Mother has not made reasonable progress in the almost two years that the children had been removed from her care. Second, the trial court found that Mother was not cooperating with the plan because (1) Mother was not compliant with the substance abuse treatment, was not responsive to requests for random drug tests, and was testing positive for cocaine; (2) Mother had placed her stable housing in jeopardy by failing to respond to the property manager and allowing a banned person to visit the home; and (3) Mother continued to expose the children to Mr. H. even though it caused the older children anxiety and domestic violence remained an issue at Mother's home. As to the fourth requirement, the trial court entered Finding of Fact 16 that Mother had not made a reasonable effort to remove her children from foster care in the 653 days that the children had been in a temporary placement and Mother has acted inconsistently with her

constitutionally protected status. The trial court also found that it would not be possible to place the children with Mother within the next six months, and such placement would not be in the best interest of the children.

However, the trial court did not make a specific written finding in the order about whether Mother remains available to the court, the department, and the GAL, as required by Section 7B-906.2(d)(3). The North Carolina Supreme Court specifically addressed the issue where the trial court neglected to make a finding as to the parent's availability to the court, the department, and the GAL in the case of *In re L.R.L.B.*, 377 N.C. 311, 324, 857 S.E.2d 105, 116 (2021). In that case, the trial court acknowledged the mother's attendance at some permanency hearings and referenced her absence at other hearings but found no facts addressing the issue embodied in Section 7B-906.2(d)(3). *Id.* The Court noted that the DSS written report, in that case, contained information relevant to this finding; however, information in the report "does not satisfy the trial court's statutory obligation to fulfill the requirements of a written finding." *Id.*

Here, also, the record shows that Mother attended hearings, and the DSS report identified when Mother had and had not been responsive to DSS. However, the order of the court terminating reunification as the secondary plan does not contain a finding about Mother's availability. A finding that the parent remains available to the trial court and other parties in no way precludes the trial court from eliminating reunification from the permanent plan based on other factors in Section

7B-906.2(d). *Id.* at 326, 857 S.E.2d at 117. Nonetheless, the Supreme Court confirmed that a trial court must still make such a finding. *Id.*

Mother requests that we reverse the guardianship order because the trial court did not make this finding; however, the Supreme Court said that this type of error was not material and prejudicial to warrant vacating and reversing the permanency planning order at issue. *Id.* The appropriate remedy here is to remand this matter to the trial court for entry of additional findings as required by Section 7B-906.2(d)(3). *Id.* We leave it to the discretion of the trial court to determine if further testimony is required or if the trial court can make a finding on the record. *In re T.M.H.*, 186 N.C. App. 451, 456, 652 S.E.2d 1, 3 (2007). If the trial court's additional findings under Section 7B-906.2(d)(3) do not alter its ultimate finding that further reunifications efforts are "clearly futile or inconsistent with the juvenile's need for a safe, permanent home within a reasonable period of time," then the trial court may simply amend its permanency planning order to include the additional finding and leave the order of permanent guardianship undisturbed. *In re L.R.L.B.*, 377 N.C. at 327, 857 S.E.2d at 118.

Additionally, Mother argues that the trial court failed to make the mandated finding under N.C. Gen. Stat. § 7B-906.1(n) (2021). The trial court may waive further permanency hearings if the court finds by clear, cogent, and convincing evidence that: (1) the juvenile has resided in the placement for a period of at least one year; (2) the placement is stable and continuation of the placement is in the juvenile's best

interests; (3) neither the juvenile's best interests nor the rights of any party require that permanency planning hearings be held every six months; (4) all parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and (5) the court order has designated a relative as the juvenile's permanent custodian or guardian. *Id.*

Here, the trial court made these statutorily required findings. The trial court made a finding that all four children had been in the custody of DSS for 653 days, more than one year. The court found that the children had safe and stable placements with relatives. Mariah and Sarah had been placed with their paternal grandmother and great aunt; DSS had no concerns with the placement; and the placement provided them with a safe, stable, and permanent home. Tracey and Stacey had been placed with their paternal grandmother and her husband; DSS had no concerns with the placement; and the placement provided them with a safe, stable, and permanent home. During the hearing, the trial judge notified all the parties that the matter may be brought before the court for review at any time by filing a motion for review. Therefore, we hold that the trial court made each of the statutorily required findings per N.C. Gen. Stat. § 7B-906.1(n) to waive future permanency hearings.

III. Conclusion

After careful consideration of Mother's arguments, the trial court's order, and the record, we hold the findings of fact are supported by competent evidence and support the conclusions of the law. Further, we hold the trial court made all

statutorily required findings except a finding as required for N.C. Gen. Stat. § 7B-906.2(d)(3). Accordingly, we affirm the order in part and remand for an additional finding on Subsection 7B-906.2(d)(3).

AFFIRMED IN PART; REMANDED IN PART.

Judge CARPENTER concurs.

Judge MURPHY concurs in Parts II-A and II-C and concurs in the result only in Part II-B.

Report per Rule 30(e).