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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-590

Filed 16 May 2023

Stanly County, Nos. 20JT27, 20JT28

IN THE MATTER OF:

J.E.H., Z.M.H.

Appeal by respondent-appellant-mother from orders entered 30 July 2021 and 17 February 2022 by Judge T. Thai Vang in Stanly County District Court. Heard in the Court of Appeals 25 April 2023.

*Indigent Defense Services, Parent Defender Wendy C. Sotolongo, by Deputy Parent Defender Annick I. Lenoir-Peek, for respondent-appellant-mother.*

*Stanly County Department of Social Services, by Valeree Renee Adams, for the petitioner-appellee.*

*Parker Poe Adams & Bernstein, LLP, by Daniel J. Knight, for the appellee Guardian ad Litem.*

GORE, Judge.

Respondent mother, Tammy Renee Hollar, appeals the permanency planning order and termination orders of Jayden and Zeke.<sup>1</sup> Respondent mother argues the

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<sup>1</sup> Pseudonyms are used to protect the identity of the juveniles.

trial court erred when it eliminated reunification efforts under the permanency planning order. Upon review of the parties' briefs and the record, we affirm.

**I.**

On 13 May 2020, the Stanly County Department of Social Services ("DSS") initiated custody of Jayden after police discovered powder methamphetamines accessible to the children who were residing in the home with respondent mother and the maternal grandmother. On 29 June 2020, DSS discovered Zeke at a maternal aunt's home. Respondent mother had fled the home with Zeke on the day law enforcement discovered the methamphetamines but later left him with the aunt. DSS filed a neglect and dependency petition for Jayden and Zeke on 30 June 2020 and took nonsecure custody the same day. Respondent mother was located and arrested on 2 July 2020 for multiple charges and remained in jail until she was released on bond 15 September 2020. Respondent mother was already on probation for prior charges in August 2019, had a long criminal history in North Carolina, and a long history with DSS for prior incidents.

The children were adjudicated as neglected and dependent. The children's original permanent plan for reunification was with a parent along with concurrent custody to a relative. Jayden and Zeke were in separate placement homes until they were ultimately moved to the same foster home; Jayden began living with the foster parents on 22 October 2020, and Zeke was moved to the foster parents' home on 27

March 2021 after living with paternal relatives who determined they could not keep him along with their other young children.

DSS's contact with respondent mother has been limited and intermittent since taking custody of the children. DSS made contact with respondent mother while she was in jail on 10 July 2020 and again on 10 September 2020. Respondent mother attended the adjudication hearing on 17 September 2020 and the disposition hearing on 1 October 2020. The court ordered respondent mother submit to a drug screen, but she failed to attend. Respondent mother participated in a virtual meeting on 16 February 2021 in which she agreed to a case plan. Her case plan required she "participate in a drug assessment and treatment, participate in random drug screens, locate stable housing and employment and participate in parenting classes." Respondent mother contacted the foster father, and he encouraged respondent mother to contact DSS, seek treatment, and he communicated she needs to go through DSS to see her children. Respondent mother was told to arrange visits through DSS but failed to initiate any visit. Instead, she had intermittent contact with the children through video visits with the foster father and a few visits where the foster father works and Jayden volunteers.

DSS attempted to contact respondent mother multiple times after the virtual meeting, but only received one response in which she disagreed with Zeke's placement. On 6 May 2021, respondent mother appeared in court and submitted to a court ordered drug test, which returned positive for methamphetamines. On 8 July

2021, the trial court held a permanency planning hearing that respondent mother did not attend. During the permanency planning hearing, the trial court determined reunification with respondent mother was not possible and relieved DSS of reunification efforts with the parents. On 6 August 2021, respondent mother preserved the right to appeal the permanency planning order. On 3 September 2021, DSS filed a petition for termination of parental rights, and the hearing occurred on 20 January 2022. Respondent mother continued to give different addresses when asked and admitted she was homeless until just weeks before the termination hearing. The trial court terminated respondent mother's parental rights of Jayden and Zeke on 17 February 2022. On 21 March 2022, respondent mother appealed the permanency planning order and termination order pursuant to section 7B-1001(a)(7).

## II.

Respondent mother argues the trial court erred by ceasing reunification efforts between her and the juveniles. Specifically, respondent mother argues the trial court failed to make three of the four statutorily required findings of fact prior to exercising its authority to eliminate reunification efforts. In making this argument, respondent mother specifically challenges findings of fact numbers eight, eleven, and thirteen. Finally, within this same argument, respondent mother argues DSS did not provide reasonable efforts for reunification.

We review a permanency planning order to determine “whether there is competent evidence in the record to support the findings [of fact] and whether the

findings support the conclusions of law.” *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013) (alteration in original) (citation omitted). “Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal.” *In re R.D.B.*, 274 N.C. App. 374, 379–80, 853 S.E.2d 1, 5 (2020) (citation omitted). We review the trial court’s “decision to eliminate reunification from the permanent plan . . . for abuse of discretion.” *In re L.R.L.B.*, 377 N.C. 311, 315, 857 S.E.2d 105, 111 (2021).

A.

Respondent mother challenges findings of fact eight, eleven, and thirteen in the permanency planning order, claiming there is no competent evidence to support these findings.

8. The last time Ms. McCroskey saw the respondent mother was in court on May 6, 2021. On that date she reported to Ms. McCroskey her address and that is the same address given by Ms. Postlewaite. She further reported that she was not going to stay at this home very long.

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11. Prior to the May 6, 2021 court date Social Worker McCroskey last saw the respondent mother in October 2020. On February 16, 2021 she participated in a child family team meeting via Google.

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13. The respondent mother has not provided any gift cards for the children’s birthdays or holidays. She has not written any letters or maintained contact with the foster family or Ms. McCroskey.

Respondent mother argues these findings should be stricken because they are unsupported by the record. We disagree. She argues the social worker, McCroskey,

did meet with respondent mother while she was in jail and she also participated in a virtual meeting in February 2021 with McCroskey. Respondent mother appears to read the findings of fact as suggesting there were only two meetings between her and McCroskey. However, the findings merely say, “the last time Ms. McCroskey saw respondent mother,” and provide further details as to those meetings before discussing the virtual meeting in February 2021.

The GAL report and the DSS report, which the trial court incorporated as evidence in the permanency planning order, state McCroskey attempted multiple times to contact respondent mother unsuccessfully, and also provided details about the virtual meeting in February 2021, in which respondent mother was “evasive” in her answers to questions and refused to give an address. The GAL report also states, “It appears the mother and the maternal grandmother are trying to not have to go through SC DSS to be able to visit with the children and be supervised.” Additionally, within the DSS report, DSS states the social worker met with respondent mother while she was in jail, however this was prior to the dates specified in the findings of fact numbers eight and eleven. The DSS report states respondent mother was last seen at her court appearance on 6 May 2021. Accordingly, competent evidence on the record supports the trial court’s findings of fact eight and eleven.

Respondent mother also argues finding of fact thirteen is unsupported by competent. We disagree. She argues the foster father testified respondent mother communicated with him through phone and virtual visits.

The GAL report states the respondent mother has not visited with the children because she has not contacted the social worker to set up a visit, but she does call the foster father and ask him to have Jayden call her. The GAL report also states McCroskey has attempted to contact the mother many times and in the limited times she is able to access the mother, the mother does not “follow through.” Additionally, the GAL report states the GAL did not have knowledge of the mother’s whereabouts. Both the GAL report and the DSS report discuss the email respondent mother sent in response to Zeke’s placement, and the GAL report discusses information provided by respondent mother’s aunt suggesting respondent mother wanted her children to “stay out of the courts and DSS.”

The foster father’s testimony suggested the children have phone calls with respondent mother, but the majority of these calls are initiated by the children. Respondent mother last initiated a phone call prior to the 8 July 2021 hearing, on 18 June 2021. He also testified the calls with the children are unscheduled and unexpected. He stated the maternal grandmother brought gifts to the children multiple times and communicated the gifts were from her and respondent mother. These facts taken together are competent evidence to support the trial court’s finding that respondent mother did not “maintain” contact with McCroskey nor the foster family. Accordingly, these challenged findings of fact are supported by competent evidence in the record.

Respondent mother appears to broadly challenge the trial court's conclusion of law two that DSS "made reasonable efforts toward . . . achieving the permanent plan" by generally arguing DSS did not make reasonable efforts at reunification. However, finding of fact thirty says,

The SCDSS has made reasonable efforts toward the permanent plan by working toward developing family services case plans, providing for random drug screens, assessing the home of the grandparents of Jayden for placement in that home, assessing the home of the biological aunt of Zeke for possible future placement, providing genetic marker testing for the biological grandparents of Zeke to determine parentage, arranging visitation for the respondent mother, encouraging the parents to seek treatment for substance abuse and mental health, encouraging the parents to work on the goals of their case plans and trying to locate the parents.

Respondent mother makes no specific challenge to the substance of this finding of fact, and thus it is binding on appeal. *See Lumsden v. Lawing*, 107 N.C. App. 493, 499, 421 S.E.2d 594, 597 (1992) (cleaned up) ("[The] assignment of error does not set forth plainly and concisely and without argumentation the basis upon which error is assigned."). Accordingly, finding of fact thirty includes competent evidence to support the trial court's determination that DSS made reasonable efforts to achieve the permanence plan. Therefore, the trial court did not err by concluding DSS made reasonable efforts at achieving the plan of reunification with the parents.

**B.**

Respondent mother also argues the trial court erred by eliminating reunification efforts because it failed to include written findings of fact for all the



statutory factors pursuant to section 7B-906.2(d). She claims this is a mandatory requirement the trial court must comply with prior to elimination of reunification efforts. On this basis, respondent mother asserts “a reversal of the order eliminating reunification results in the termination order being vacated as well” pursuant to section 7B-1001(a2). *See* N.C. Gen. Stat. § 7B-1001(a2) (2022). We disagree.

Section 7B-906.2(d) requires the trial court include written findings of fact for four statutory factors as consideration for eliminating reunification efforts. N.C. Gen. Stat. § 7B-906.2(d)(1)–(4) (2021). Section 7B-906.2(d) states:

(d) At any permanency planning hearing under subsections (b) and (c) of this section, the court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification:

- (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
- (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
- (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
- (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

Section 7B-906.2(b) states, the trial court may eliminate reunification from a child’s permanent plan if the trial court “makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety.” N.C. Gen. Stat. § 7B-906.2(b) (2022). The trial court is not required to quote each factor when applying the statute. *In re L.R.L.B.*, 377 N.C. at 320, 857 S.E.2d at 113. “Instead, the order must make clear that the trial court considered the evidence

in light of whether reunification would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *Id.* at 320, 857 S.E.2d at 113–14 (cleaned up).

Further, our Supreme Court determined in *In re L.M.T.*, and reaffirmed in *In re L.R.L.B.*, that when a permanency planning order that "eliminates reunification" efforts is entered in conjunction with a termination order, the orders may be considered together. *Id.* at 320, 857 S.E.2d at 114. Therefore, "[i]ncomplete findings of fact" within the permanency planning order "may be cured by findings of fact in the termination order." *Id.* (quoting *In re L.M.T.*, 367 N.C. at 170, 752 S.E.2d at 457). Accordingly, we consider the trial court's compliance with the statutory mandate to include written findings of fact.

Respondent mother concedes the trial court included written findings of fact for section 7B-906.2(d)(1) but argues the trial court failed to include findings of fact for the remaining three factors. Because respondent mother concedes on the first factor, we only consider the remaining three factors within the statute.

In line with section 7B-906.2(d)(2), the trial court considered respondent mother's participation and cooperation with the agreed upon case plan, DSS, and the GAL. The trial court included written findings that respondent mother last made face to face contact with the social worker on 6 May 2021, during a court appearance. Additional findings of fact indicated respondent mother's agreement to the case plan, which required a drug assessment, participation in random drug screens, and her

agreement to obtain stable housing and employment. The trial court found respondent mother was not employed, had not participated in the random drug screens, and tested positive for methamphetamines at a prior court appearance. Respondent mother failed to arrange visits with the children through DSS, the maternal grandmother provided gifts to the children stating the gifts were from both her and respondent mother, but no gift cards were sent directly from respondent mother to the children. Accordingly, the trial court made sufficient findings consistent with section 7B-906.2(d)(2).

Additionally, the trial court included findings of facts consistent with section 7B-906.2(d)(3) within the permanency planning order and the termination order regarding respondent mother's availability to DSS, the court, and the GAL. The trial court stated respondent mother was not present at the permanency planning hearing but had previously attended most court hearings. The trial court addressed the few times the DSS social worker had contact with respondent mother and addressed the multiple times respondent mother talked to the children on the phone and through video visits with the foster parents. The trial court included a finding that despite both parents' ability to arrange a visit with the children through DSS, neither parent arranged a visit.

Within the termination order, the trial court found respondent mother was ordered to complete a drug screen and failed to; the social worker attempted to make contact with respondent mother multiple times through multiple sources between

February and May 2021; respondent mother only responded during that time period to one email about her son's placement and disagreed with his placement; the social worker offered a referral to a treatment facility but respondent mother chose to wait to determine if she could "obtain a ride"; when respondent mother was in jail in November 2021, the social worker arranged a virtual visit, but respondent mother left the conversation when the social worker communicated DSS filed a petition for termination; and during the termination hearing, respondent mother left the court prior to cross-examination by DSS during a court recess. These findings of fact taken together are competent evidence to satisfy section 7B-906.2(d)(3).

Finally, the trial court included findings of fact for section 7B-906.2(d)(4) addressing whether the parents acted in a manner that was "inconsistent with the health or safety of the juvenile[s]." The trial court expressly stated, "the juvenile's continuation in or return to the care of the mother or father would be contrary to the juvenile's best interest and would not support their health, safety and wellbeing." The trial court found the parents failed to make any progress in the past year; the trial court found respondent mother tested positive for methamphetamines during one of the court dates for the juveniles; and respondent mother was unemployed.

Within the termination order, the trial court included the following findings of fact: respondent mother had been homeless for "large periods of time since her release from jail September 15, 2020" until just before the termination hearing; the children had been in DSS custody for 571 days yet respondent mother had not made "any

substantial or reasonable progress addressing the issues in her case plan”; respondent mother received unemployment benefits but provided no financial support to the children; respondent mother admitted to “sporadic use of drugs” since the filing of the petition for termination; and she failed to go through any substance abuse treatment despite opportunities to do so. These findings of fact directly address section 7B-906(d)(4) by quoting the language in one finding and substantially discussing the actions taken by respondent mother that are contrary to the health, safety, and wellbeing of the children. Accordingly, the trial court properly addressed the statutory factors in its written findings of fact and did not abuse its discretion by concluding DSS could eliminate reunification efforts with the parents.

Because we determine the trial court properly addressed the factors within section 7B-906.2(d) prior to determining DSS could eliminate reunification efforts, we do not consider respondent mother’s claim that the termination order must be vacated.

### **III.**

For the foregoing reasons, we determine the trial court did not err by eliminating reunification efforts.

**AFFIRMED.**

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).