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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-497

Filed 06 June 2023

Cabarrus County, No. 20 JA 194

IN THE MATTER OF: M.J.B.

Appeal by respondents from order entered 22 March 2022 by Judge Nathaniel M. Knust in Cabarrus County District Court. Heard in the Court of Appeals 16 May 2023.

Hartsell & Williams, P.A., by E. Garrison White, for Petitioner-Appellee Cabarrus County Department of Human Services.

New South Law Firm, by Valerie L. Bateman, for Guardian ad Litem-Appellee.

Benjamin J. Kull for Respondent-Appellant-Mother.

Stam Law Firm PLLC, by R. Daniel Gibson and Parent Defender Wendy C. Sotolongo, by Deputy Parent Defender Annick Lenoir-Peek, for Respondent-Appellant-Father.

PER CURIAM.

Respondent-Father and Respondent-Mother (collectively, “Respondent-Parents”) are the parents of minor child M.J.B. (“Maury”),¹ and appeal from a permanency planning order (the “Order”), awarding legal guardianship of Maury to

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading.

his maternal aunt. After careful consideration, we conclude the Order's findings of fact are insufficient to support a conclusion of law that Respondent-Parents are unfit, have neglected Maury's welfare, or have acted inconsistently with their constitutionally protected parental rights. Accordingly, we vacate the Order and remand the matter to the trial court for further proceedings.

I. Factual & Procedural Background

Maury was born in September 2020. Approximately three months after his birth, Cabarrus County Department of Human Services ("CCDHS") obtained nonsecure custody of Maury upon the filing of a petition on 10 December 2020, alleging Maury was abused and neglected. CCDHS placed Maury in a kinship placement with his maternal aunt.

The juvenile petition alleged that CCDHS received two reports from Child Protective Services ("CPS") on 11 November 2020 after Maury was admitted to the hospital, and it was discovered that he had two fractures in his "left leg that were concerning for non-accidental trauma" and "highly probable for child abuse." Both CPS reports stated that Respondent-Parents brought Maury to the hospital claiming he had accidentally fallen off their bed, although the CPS reports differed slightly in their recitation of facts surrounding the fall. CCDHS visited the home during its investigation and observed that a fall from the bed would have been "approximately three feet high onto a carpeted floor." The petition further alleged that Maury

underwent a follow-up skeletal survey on 27 November 2020 that revealed two fractured ribs, which were also “highly probable for child abuse.”

At a 2 December 2020 multidisciplinary meeting conducted by CCDHS and attended by a board-certified child abuse physician, hospital social worker, and detective investigating the case, the hospital staff concluded that Maury’s injuries were “highly suspect for child abuse as they would require a great amount of force to cause them.” It was determined that the injuries would not have been caused by a fall from the bed because such injuries have only been seen following a severe car accident.

The petition explained that over the course of numerous meetings with CCDHS, Respondent-Parents never provided an explanation that was consistent with Maury’s injuries—they maintained that Maury had fallen off the bed. CCDHS reported “major concerns regarding who harmed [Maury] and what happened” and ultimately alleged that “[Maury’s] safety cannot be ensured without knowing who or what circumstances caused [his] injuries. . . . CCDHS cannot move a case into In-Home Services where the information does not make sense.”

On 28 January 2021, the juvenile petition was heard, and the trial court entered an “Adjudication/Disposition Consent Order,” adjudicating Maury abused and neglected based on Respondent-Parents’ stipulations to the allegations in the petition, though Respondent-Parents continued to deny fault for Maury’s injuries. The trial court specifically found the issues that led to placement included, but were

not limited to, “lack of explanation for an injury and failure to protect the juvenile.” The trial court concluded it was in Maury’s best interests that CCDHS retain custody with placement remaining with the maternal aunt, identifying reunification as a primary goal and legal guardianship as a secondary goal. After finding the district court had entered no-contact orders in related criminal child abuse cases against Respondent-Parents in December 2020 that prohibited Respondent-Parents from contacting Maury, the trial court determined visitation with Respondent-Parents was not in Maury’s best interests. Respondent-Parents agreed to case plans and were ordered to complete assessments and recommended services for parenting, psychological, substance abuse, and domestic violence issues; to maintain suitable housing and sufficient income to meet the needs of Respondent-Parents and Maury for a minimum of six consecutive months; and to communicate with, and sign releases of information for, CCDHS.

Following review hearings on 29 April 2021 and 12 August 2021, the trial court entered orders finding Respondent-Parents had made progress with case plan services, but the progress was insufficient for the court to be assured Maury could safely return to their care. Visitation remained suspended due to no-contact orders entered in the pending child abuse cases, but following the 12 August 2021 hearing, the trial court ordered Respondent-Parents would be allowed one hour of weekly supervised visitation when the no-contact orders were lifted.

In its order from the 9 December 2021 permanency planning hearing, the trial court again noted Respondent-Parents’ engagement in services and progress on their case plans but found, “[t]hough [they have] completed some of the tasks . . . and appear[] to be making some behavioral changes[,] there is still a no-contact order in place. Due to the no-contact order[,] CCDHS is not able to observe any parenting or interactions with [Maury].” The trial court ultimately determined Respondent-Parents’ progress was insufficient for the trial court to be assured Maury could safely return to their care, and it was “not possible for [Maury] to be placed with his [parents] within the next six months.” Consequently, the trial court changed the primary goal to legal guardianship and the secondary goal to reunification. The trial court again ordered Respondent-Parents be allowed “supervised visitation once the no-contact order is lifted.”

At the next permanency planning hearing on 24 February 2022, CCDHS and Maury’s guardian ad litem recommended that the trial court award guardianship to Maury’s maternal aunt to “achieve timely permanence for [Maury].” The trial court accepted the recommendation over Respondent-Parents’ objections and entered the Order on 22 March 2022, awarding legal guardianship of Maury to his maternal aunt. In the Order, the trial court found, *inter alia*, Respondent-Parents are unfit, have neglected the juvenile’s welfare, or have acted inconsistently with their constitutionally protected statuses and rights, and it is in Maury’s best interests for

legal guardianship to be granted. Respondent-Parents separately gave written notice of appeal from the Order.

II. Jurisdiction

This Court has jurisdiction to address Respondent-Parents' appeals from the Order pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021) and N.C. Gen. Stat. § 7B-1001(a)(4) (2021).

III. Issues

The issues before this Court are whether: (1) the trial court's findings of fact are supported by clear, cogent, and convincing evidence; (2) the trial court's conclusion of law that Respondent-Parents forfeited their constitutionally protected parental statuses is supported by the findings of fact; (3) the trial court abused its discretion by deciding that legal guardianship was in Maury's best interests; and (4) the trial court abused its discretion by denying Respondent-Parents visitation with Maury where no-contact orders in related criminal cases precluded Respondent-Parents from visitation.

IV. Analysis

Although Respondent-Parents separately appeal from the permanency planning Order, they raise similar issues. Respondent-Parents both challenge findings of fact made by the trial court and argue the trial court erred in awarding legal guardianship to Maury's maternal aunt based on erroneous determinations that they had acted inconsistently with their constitutionally protected rights as Maury's

parents and that guardianship was in Maury's best interests. Respondent-Parents also argue the trial court erred in deferring to the no-contact orders in their criminal cases in setting visitation. We address Respondent-Parents' arguments together where possible.

A. Standard of Review

"[A]ppellate review of a permanency planning order 'is limited to whether there is competent evidence in the record to support the findings of fact and whether the findings support the conclusion of law[.]'" *In re B.R.W.*, 381 N.C. 61, 77, 871 S.E.2d 764, 775 (2022) (quoting *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013)). "The trial court's findings of fact are conclusive on appeal if unchallenged, or if supported by competent evidence in the record." *In re I.K.*, 377 N.C. 417, 422, 858 S.E.2d 607, 611 (2021) (citations omitted). "The trial court's legal conclusion that a parent acted inconsistently with [their] constitutionally protected status as a parent is reviewed de novo to determine whether the findings of fact cumulatively support the conclusion and whether the conclusion is supported by clear and convincing evidence." *Id.* at 421, 858 S.E.2d at 611. "The clear and convincing standard requires evidence that should fully convince." *Id.* at 421, 858 S.E.2d at 611 (quoting *Scarborough v. Dillard's, Inc.*, 363 N.C. 715, 721, 693 S.E.2d 640, 643 (2009)). The trial court's determination of a child's best interests is reviewed for an abuse of discretion. *In re C.P.*, 252 N.C. App. 118, 122, 801 S.E.2d 647, 651 (2017).

B. Constitutionally Protected Status of Parent

It is well established that:

[t]he Due Process Clause of the Fourteenth Amendment to the United States Constitution protects “a natural parent’s paramount constitutional right to custody and control of his or her children” and ensures that “the government may take a child away from his or her natural parent only upon a showing that the parent is unfit to have custody” or “where the parent’s conduct is inconsistent with his or her constitutionally protected status.”

In re B.R.W., 381 N.C. at 77, 871 S.E.2d at 775–76 (quoting *Adams v. Tessener*, 354 N.C. 57, 62, 550 S.E.2d 499, 503 (2001)); *see also Petersen v. Rogers*, 337 N.C. 397, 402, 445 S.E.2d 901, 904 (1994) (recognizing “the paramount right of parents to custody, care, and nurture of their children”).

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. Therefore, the parent may no longer enjoy a paramount status if his or her conduct is inconsistent with this presumption or if he or she fails to shoulder the responsibilities that are attendant to rearing a child.

Price v. Howard, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997) (citations omitted).

“[T]here is no bright line beyond which a parent’s conduct meets this standard.”

Boseman v. Jarrell, 364 N.C. 537, 549, 704 S.E.2d 494, 503 (2010).

A determination that a parent is unfit or acted inconsistent with their protected status is required even when a juvenile has been adjudicated abused, neglected, or dependent, *see In re R.P.*, 252 N.C. App. 301, 304, 798 S.E.2d 428, 430

(2017), and must be made before the juvenile’s best interests are considered to award guardianship to a nonparent, *see Owenby v. Young*, 357 N.C. 142, 146, 579 S.E.2d 264, 267 (2003) (“Once a court determines that a parent has actually engaged in conduct inconsistent with the protected status, the ‘best interest of the child test’ may be applied without offending the Due Process Clause.”).

In this case, the trial court determined in both the findings of fact and the conclusions of law that Respondent-Parents “are unfit,” “have neglected the juvenile’s welfare,” and/or “acted inconsistently with their constitutionally protected status and rights.” Respondent-Mother argues these determinations by the trial court were not supported by the “properly made findings of fact” because the findings “do not show that Respondent-Mother ever did anything wrong.” Respondent-Father similarly challenges the determinations that Respondent-Parents were unfit or had neglected Maury’s welfare.

1. Preservation

We begin by addressing preservation of this constitutional issue because CCDHS and the guardian ad litem both contend that Respondent-Parents waived review by not objecting or raising this argument at the permanency planning hearing.

“[A] parent’s argument concerning his or her paramount interest to the custody of his or her child, although afforded constitutional protection, may be waived on review if the issue is not first raised in the trial court.” *In re J.N.*, 381 N.C. 131, 133, 871 S.E.2d 495, 497–98 (2022). “However, for waiver to occur the parent must have

been afforded the opportunity to object or raise the issue at the hearing.” *In re C.P.*, 258 N.C. App. 241, 246, 812 S.E.2d 188, 192 (2018) (citation omitted); *see also In re J.N.*, 381 N.C. at 135, 871 S.E.2d at 499 (Earls, J., concurring) (“[A] parent must actually have an opportunity to make the argument in the court below.”). In *In re J.N.*, our Supreme Court held that a respondent-father, who was on notice that guardianship was at stake but failed to raise the issue of his constitutionally protected status when he had an opportunity to do so during a permanency planning hearing, had waived his argument on appeal that the trial court failed to determine he was unfit or had acted inconsistently with his constitutionally protected status before awarding guardianship to a nonparent. *Id.* at 133–34, 871 S.E.2d at 498 (majority opinion).

Notwithstanding the need for a respondent to object or raise an issue before the trial court, our appellate courts have recognized that a party cannot object at a hearing to findings and conclusions in an order not yet entered. On the same day the Supreme Court decided *In re J.N.*, the Court affirmed this Court’s decision in *In re B.R.W.*, which overruled contentions that a respondent-mother had waived challenges to determinations in a permanency planning order rendered months after the hearing that concluded she was unfit and had acted in a manner inconsistent with her constitutionally protected status as a parent. *In re B.R.W.*, 278 N.C. App. 382, 397–99, 863 S.E.2d 202, 214–17 (2021), *aff’d*, 381 N.C. 61, 871 S.E.2d 764 (2022).

This Court explained:

a trial court's findings of fact are not evidence, and a parent may not "object" to a trial court's rendition of an order or findings of fact, even if these are announced in open court at the conclusion of a hearing. If a party has presented evidence and arguments in support of [their] position at trial, has requested that the trial court make a ruling in [their] favor, and has obtained a ruling from the trial court, [they] ha[ve] complied with the requirements of Rule 10 and [they] 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, 863 S.E.2d at 215. Ultimately, this Court held the respondent-mother preserved her challenges to the trial court's determinations that she was unfit and had acted inconsistently with her protected status "by her evidence, arguments, and opposition to guardianship at the trial." *Id.* at 399, 863 S.E.2d at 216; *see also In re J.N.*, 381 N.C. at 136, 871 S.E.2d at 499 (Earls, J., concurring) (explaining "there are no 'magic words' such as 'constitutionally-protected status as a parent' that must be uttered by counsel, nor is the parent's counsel required to object to certain evidence or specific findings of fact to preserve the constitutional issue. DSS may present evidence that a parent is unfit or otherwise has acted inconsistently with their constitutionally-protected status. Unless the parent presents no evidence and makes no arguments, the parent has raised the constitutional issue by responding to DSS's arguments").

In the present case, Respondent-Parents were on notice that guardianship was at issue and opposed the guardianship recommendations by CCDHS and the guardian ad litem at the permanency planning hearing. Counsel for Respondent-

Parents presented evidence through cross-examination to show they had substantially complied with their case plans, and there had been no determination as to Respondent-Parents' culpability for Maury's injuries. Counsel specifically objected to the recommendation of guardianship, which the trial court specifically found in the order, and counsel argued it was premature to award guardianship as there had been no determination of Respondent-Parents' culpability, and they had done everything within their power to be reunited with Maury. Like our holding in *In re B.R.W.*, we hold Respondent-Parents preserved their challenges to the trial court's determinations that they were unfit and acted inconsistently with their constitutionally protected statuses by their evidence, arguments, and opposition to guardianship at the permanency planning hearing. *See In re B.R.W.*, 278 N.C. App. at 399, 863 S.E.2d at 216.

2. Challenged Findings of Fact

In challenging the trial court's determinations as to their constitutional rights as parents, Respondent-Parents take issue with various findings of fact. Respondent-Parents both contend finding of fact 30, in which the trial court found they "are unfit, and have neglected [Maury's] welfare, or have acted inconsistently with his or her constitutional rights[.]" is more appropriately considered a conclusion of law and should be reviewed accordingly. We agree.

This Court has recognized that the determinations that a parent is unfit, has neglected a juvenile, and has acted inconsistently with their constitutionally

protected status as a parent are conclusions of law that must be supported by findings of fact. *See id.* at 405, 863 S.E.2d at 219 (a determination that a parent is unfit is a conclusion of law); *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675–76 (1997) (a determination of neglect is a conclusion of law); *In re I.K.*, 377 N.C. at 421, 858 S.E.2d at 611 (a determination that a parent acted inconsistently with their constitutionally protected status is a conclusion of law). Accordingly, we will review finding of fact 30 “de novo to determine whether the findings of fact cumulatively support the conclusion and whether the conclusion is supported by clear and convincing evidence.” *In re I.K.*, 377 N.C. at 421, 858 S.E.2d at 611; *see also In re J.S.*, 374 N.C. 811, 818, 845 S.E.2d 66, 73 (2020) (“We are obliged to apply the appropriate standard of review to a finding of fact or conclusion of law, regardless of the label which it is given by the trial court.”). Respondent-Parents also contend finding of fact 29 should be reviewed as a conclusion of law. We conclude it is an ultimate finding and review it as such below. *See In re G.C.*, ___ N.C. ___, 884 S.E.2d 658, 661 (2023) (“A trial court’s finding of an ultimate fact is conclusive on appeal if the evidentiary facts reasonably support the trial court’s ultimate finding of fact.”).

Respondent-Parents also challenge finding of fact 5, that “[t]he issues which led to placement include but are not limited to, substance abuse, domestic violence, lack of parenting skills, and failure to protect [the juvenile].” CCDHS concedes this finding is erroneous to the extent the trial court found substance abuse and domestic violence contributed to Maury’s placement as there were no such allegations in the

petition. We agree.

Here, the petition included no allegations of substance abuse or domestic violence, and the evidence and findings from the permanency planning hearing show the parents have consistently tested negative on drug screens, and there have never been reports of domestic violence. Moreover, there were no allegations or evidence that a lack of parenting skills, beyond a failure to protect, led to Maury's placement. The trial court only specifically identified a "lack of an explanation for an injury and failure to protect the juvenile" as issues leading to Maury's placement in the Adjudication/Disposition Consent Order. Accordingly, we hold those portions of finding of fact 5, identifying substance abuse, domestic violence, and lack of parenting skills as issues leading to Maury's placement, are unsupported by the evidence, and we uphold this finding only to the extent the trial court found a lack of explanation regarding Maury's injury and a failure to protect led to Maury's placement. *See In re B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775; *see also In re A.N.H.*, 381 N.C. 30, 41–42, 871 S.E.2d 792, 802–03 (2022) (disregarding portions of findings of fact not supported by the evidence).

Respondent-Parents next challenge findings of fact 8, 9, and 24 concerning their progress on their respective case plans. In each finding, the trial court found Respondent-Parents' progress was insufficient for Maury to safely return to their care. Respondent-Parents contend the findings that their progress was "insufficient" are unsupported by evidence. Respondent-Mother directs this Court to the social

worker's testimony that "[t]he parents have completed their case plan," and "there's nothing more they could do, at least from the case plan standpoint, to satisfy [CCDHS] that [Maury] should be placed back with them[.]" Respondent-Mother also directs this Court to the remainder of findings 8 and 9, which reference summaries of Respondent-Parents' progress from court reports showing that Respondent-Parents substantially complied with their case plans relating to psychological, parenting, drug screen, domestic violence, housing, and income tasks. The trial court even found in findings of fact 21 and 22 that Respondent-Parents have completed all the tasks on their case plans and appear to be making some behavioral changes. But the court reports and findings 8, 9, 21 and 22 also establish that no-contact orders in pending child abuse cases against Respondent-Parents precluded Respondent-Parents from visiting with Maury, and thus, CCDHS could not evaluate Respondent-Parents' parenting and interactions with Maury.

In reviewing the challenged portions of findings of fact 8, 9, and 24, the trial court's findings that Respondent-Parents' progress was insufficient must be considered in the context that the trial court was measuring their progress to determine whether Maury could safely return to their care. Thus, the trial court's findings are supported by evidence that CCDHS had been unable to evaluate Respondent-Parents' parenting and interactions with Maury. *See In re B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775. Nevertheless, the findings must be considered with the perspective that Respondent-Parents had completed their case plans to the extent

possible and further progress was beyond Respondent-Parents' control.

Respondent-Parents next contend the portions of findings of fact 21 and 22, reciting what they reported about Maury's injuries, are merely recitations of their statements and not valid findings of fact. "[R]ecitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge absent an indication concerning whether the trial court deemed the relevant portion of the testimony credible." *In re A.E.*, 379 N.C. 177, 185, 864 S.E.2d 487, 495 (2021) (citations and quotation marks omitted). Thus, findings about what someone "testified" or "reported" do not constitute valid findings as to the content of the testimony or report. *See id.* at 177, 864 S.E.2d at 495; *see also In re A.C.*, 378 N.C. 377, 384, 861 S.E.2d 858, 867 (2021) (holding that findings merely reciting witness statements, exemplified by the words "testified," "contends," or "indicated," were not factual findings and must be disregarded).

In this case, findings of fact 21 and 22 do not recite testimony, as Respondent-Parents did not testify. Yet, the findings still amount to recitations of "reports" without credibility determinations. In finding of fact 21, the trial court found Respondent-Mother: "continues to report that her son's injuries were due to falling off the bed. Previously she reported she was changing his diaper and he fell, however; she now reports that she was standing up using a breast pump when her infant son fell off the bed." In finding of fact 22, the trial court found Respondent-Father "report[ed] that he was lying in bed . . . and was on his phone while [Respondent-

M]other was using her breast pump and his son fell off the bed.” As CCDHS argues, evidence supports these findings of fact, and we uphold the findings to the extent the trial court found Respondent-Parents made these reports. *See In re B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775. The trial court, however, did not make a credibility determination about Respondent-Parents’ reports, and we will not consider the findings as determinations of the truth or falsity of Respondent-Parents’ reports. *See In re A.E.*, 379 N.C. at 185, 864 S.E.2d at 495.

Similarly, in finding of fact 23, the trial court found “[t]he predominant concern of CCDHS is the safety of the minor child if he were returned to the care of his parents.” Respondent-Parents contend this finding is merely a recitation of the social worker’s testimony and is not a valid finding. We agree, in part. The trial court did not find that the social worker “testified” or “reported” Maury’s safety was the predominant concern; rather, finding of fact 23 is a determination that safety was CCDHS’s predominant concern. *See In re A.E.*, 379 N.C. at 185, 864 S.E.2d at 495. Nevertheless, finding of fact 23 is not a determination of the validity of that concern. *See id.* at 185, 864 S.E.2d at 495.

Lastly, Respondent-Parents challenge finding of fact 29, which provides:

[Respondent-]Mother and [Respondent-]Father have abdicated their parental role[s] and responsibilities by allowing CCDHS and the foster family to provide for the minor child’s needs, by leaving the minor child in CCDHS primary care, and/or ha[ve] failed to provide substantial care and maintenance for the minor child while [he] is with the foster family.

We agree with Respondent-Parents that finding of fact 29 is unsupported by evidence.

The evidence tends to show that Maury was removed from Respondent-Parents' custody by CCDHS and placed in a kinship placement where he has remained throughout the case. Respondent-Parents have cooperated with CCDHS and completed requirements of their case plans to reunify with Maury but are precluded from demonstrating their progress in visits with Maury by no-contact orders in related criminal cases. Additionally, there is no evidence that Respondent-Parents allowed CCDHS and the maternal aunt to provide for Maury's needs or failed to provide substantial care and maintenance while Maury has been placed with the aunt. The trial court found in unchallenged finding of fact 10 that Respondent-Parents were referred to child support in January 2021, but the maternal aunt did not request services and no order was established. Otherwise, no evidence was presented concerning whether Respondent-Parents have or have not provided support for Maury while he was placed with the maternal aunt. Because finding of fact 29 is not reasonably supported by the evidentiary facts, we disregard the ultimate finding. *See In re G.C.*, ___ N.C. ___, 884 S.E.2d at 661; *see also In re A.N.H.*, 381 N.C. at 41–42, 871 S.E.2d at 802–03.

3. Conclusions of Law

Having reviewed the challenged findings of fact, we next turn to the trial court's conclusions that Respondent-Parents are unfit, have neglected the juvenile's welfare, and/or have acted inconsistently with their constitutionally protected

statuses and rights.

As explained above, a trial court may only award legal guardianship to a nonparent based on a juvenile's best interests "[o]nce a court determines that a parent has actually engaged in conduct inconsistent with the protected status[.]" *Owenby* , 357 N.C. at 146, 579 S.E.2d at 267. In light of our caselaw, we agree with Respondent-Mother that acting inconsistently with one's constitutionally protected paramount parental status is an "umbrella term." "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; *see also In re B.R.W.*, 278 N.C. App. at 400, 863 S.E.2d at 216 (reviewing a determination that a parent acted inconsistently with her constitutionally protected status by voluntarily ceding her parental rights to a third party separately from a determination that the she was unfit).

Here, the trial court concluded in conclusion of law 8 that "[Respondent-Parents] are unfit, and have neglected the juvenile's welfare, *or* have acted inconsistently with his and her constitutional rights."² (Emphasis added). The trial court then concluded in conclusion of law 10 that "[Respondent-Parents] as parents are unfit, have neglected the child's welfare, *and* acted inconsistently with their

² We note this conclusion is identical to finding of fact 30, which we have already explained is more appropriately reviewed as a conclusion of law.

constitutionally protected status and rights.” (Emphasis added). We first note that because the trial court’s conclusions are stated both disjunctively and conjunctively, the trial court was not entirely clear as to whether it found unfitness, neglect, or other acts inconsistent with Respondent-Parents’ protected statuses, or whether the trial court found all three grounds. This Court generally benefits from clearer conclusions. *Coble v. Coble*, 300 N.C. 708, 714, 268 S.E.2d 185, 190 (1980) (“Effective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity by which the order’s rationale is articulated.”). Nevertheless, the conclusions of law in this case do not deprive the Court of meaningful review because we hold the trial court’s findings are insufficient to support any of these determinations.

As we explained above in disregarding finding of fact 29, unlike *In re B.R.W.*, this is not a case in which the evidence and findings establish Respondent-Parents have acted inconsistently with their constitutionally protected status by voluntarily ceding their parental responsibilities to a third party. *See In re B.R.W.*, 278 N.C. App. at 405, 863 S.E.2d at 218 (holding the mother acted inconsistently with her paramount status as a parent by “cho[osing] to forgo her constitutionally protected rights when she [voluntarily] left her daughters in the care of Grandmother for an indefinite period with no express or implied intention that the arrangement was temporary”). Here, the unchallenged findings and the challenged findings that are supported by evidence establish that Maury was removed from Respondent-Parents’

care due to a failure to protect and placed in a kinship placement with his maternal aunt on 10 December 2020. The findings further establish that Respondent-Parents have substantially complied with their case plan requirements to reunify with Maury in the fourteen months since Maury's removal and placement; however, Respondent-Parents have so far been unable to visit with Maury due to no-contact orders, despite the juvenile court's determination that visitation would be appropriate. There is no evidence or findings that Respondent-Parents have voluntarily ceded their constitutionally protected rights as parents. *See In re B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775.

We also hold the trial court's findings are insufficient to support the conclusions that Respondent-Parents are unfit or have neglected Maury's welfare. Although the trial court found Maury was removed due to a "failure to protect," the Order does not contain findings that explain the circumstances of Maury's removal, nor does it adjudge Respondent-Parents' culpability or credibility. Contrary to CCDHS's assertion that the trial court made findings about Maury's injuries, the Order lacks any findings about Maury's injuries. The Order also lacks any findings concerning Maury's adjudication, which we note would nevertheless be insufficient to support conclusions of unfitness or neglect without a further determination as to Respondent-Parents' fault or culpability. *See In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984) (explaining that a juvenile adjudication is about "the circumstances and conditions surrounding the child, not the fault or culpability of the

parent”).

As stated above, it is well established that the trial court must make findings of fact based on clear, cogent, and convincing evidence, which support the conclusion of law that a parent is unfit or has acted inconsistent with his or her constitutionally protected status. *In re I.K.*, 377 N.C. at 422, 858 S.E.2d at 611. In *In re D.A.*, this Court held that the trial court’s findings of fact in a permanency planning order were insufficient to support a conclusion of law that the respondent-father was unfit or acted inconsistently with his constitutionally protected status because the findings did not account for the circumstances of the child’s injuries, explain how the parent was culpable, explain how the parent was unfit, or otherwise demonstrate the parent acted inconsistently with his constitutionally protected parental rights. 258 N.C. App. 247, 252, 811 S.E.2d 729, 733 (2018) (“[T]he trial court failed to make any finding that the juvenile’s injuries were non-accidental or that [the r]espondents were the sole caregivers for [the juvenile] when he sustained his injuries.”). Accordingly, we vacated the trial court’s order awarding permanent custody of the juvenile to foster parents and remanded the matter for a new hearing. *Id.* at 252, 811 S.E.2d at 733.

Here, although the trial court found that Respondent-Parents reported Maury had fallen off their bed and that CCDHS was concerned with Maury’s safety if he were returned to Respondent-Parents’ care, as explained above in our review of findings of fact 21 through 23, the trial court failed to pass judgment on Respondent-Parents’ culpability or the credibility of their explanations to validate the substance

of the reports or concern. The trial court's findings otherwise establish that Respondent-Parents have substantially complied with their case plans to address CCDHS's concerns and to reunify with Maury. Nonetheless, Respondent-Parents are precluded from demonstrating their progress by no-contact orders in pending criminal cases, and CCDHS has thus been unable to observe Respondent-Parents' parenting and interaction with Maury to determine if Maury could safely return to their care.

Minimal evidence was presented at the permanency planning hearing, and the trial court made insufficient findings of fact to support the determinations that Respondent-Parents were unfit, neglected Maury's welfare, or otherwise acted inconsistent with their constitutionally protected status as parents. Because the trial court failed to make findings in the Order regarding Maury's injuries, failed to assign culpability for his unexplained injuries, and the findings otherwise establish that Respondent-Parents have substantially completed the requirements of their case plans to the extent it is within their power to do so, we hold the findings of fact are insufficient to support the conclusions that Respondent-Parents are unfit or have neglected Maury's welfare. *See In re D.A.*, 258 N.C. App. at 252, 811 S.E.2d at 733; *see also In re B.R.W.*, 278 N.C. App. at 406, 863 S.E.2d at 219 (overruling the trial court's conclusion that a mother was unfit where the findings established she had substantially complied with the requirements of her case plan). Accordingly, we vacate the Order and remand to the trial court for further proceedings. If legal

guardianship remains the recommendation of CCDHS and the guardian ad litem, the trial court may take additional evidence before making findings of fact, which support its conclusions of law.

C. Additional Arguments

In addition to challenging the trial court's determination that they forfeited their constitutionally protected status as parents, Respondent-Parents argue the trial court erred in determining guardianship was in Maury's best interests, ceasing reunification efforts based on the award of guardianship, and setting visitation contingent on no-contact orders in their criminal cases being lifted. In light of the foregoing, we need not reach these additional arguments.

In a juvenile proceeding, the trial court proceeds to consider whether guardianship with a nonparent is in the best interests of a juvenile only after determining the parents have acted inconsistently with their constitutionally protected statuses. *Owenby*, 357 N.C. at 146, 579 S.E.2d at 267. Having held that the determination by the trial court in this case is not supported by the findings of fact based on clear and convincing evidence and must be vacated, it is premature for this Court to review the trial court's analysis of Maury's best interests. Similarly, because the cessation of reunification efforts was based on the achievement of a permanent plan that is now overturned, it is unnecessary for this Court to separately consider whether the trial court erred in ceasing reunification efforts.

Regarding visitation, Respondent-Parents argue the trial court erred in

deferring to no-contact orders entered in Respondent-Parents' pending child abuse cases to continue the suspension of visitation, based on a misapprehension of the application of N.C. Gen. Stat. § 15A-534.4 to Chapter 7B. Notably, the trial court has ordered visitation contingent upon the lifting of the no-contact orders in permanency planning orders entered in the case since the 12 August 2021 hearing. It does not appear Respondent-Parents have ever raised this argument in the trial court and thus have not preserved it for review on appeal. *See* N.C. R. App. P. 10(a)(1). Having vacated the Order awarding guardianship, we remand this matter to the trial court where Respondent-Parents can present their visitation argument at a subsequent permanency planning hearing or in a motion to modify visitation.

V. Conclusion

Because we hold the trial court's conclusions of law that Respondent-Parents are unfit, have neglected Maury's welfare, and/or have acted inconsistently with their constitutionally protected status as Maury's parents are not supported by the findings of fact, we vacate the Order awarding legal guardianship of Maury to his maternal aunt and remand to the trial court for further proceedings.

VACATED AND REMANDED.

Before a panel consisting of Judges COLLINS, CARPENTER, and WOOD.

Report per Rule 30(e).