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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-544

Filed 06 June 2023

Craven County, No. 18 JA 79

IN THE MATTER OF: D.T.

Appeal by respondent mother from order entered 31 March 2022 by Judge Debra Massie in District Court, Craven County. Heard in the Court of Appeals 9 May 2023.

*Sydney Batch for respondent-appellant.*

*No brief for appellee Craven County Department of Social Services.*

*Matthew D. Wunsche for guardian ad litem.*

STROUD, Chief Judge.

Respondent-mother appeals from an order granting guardianship of her minor child to the child's non-relative foster mother, and granting Mother supervised visitation with the minor child. Mother argues the trial court abused its discretion by granting her supervised, instead of unsupervised, visitation because (1) there was evidence in the record to support granting Mother unsupervised visitation, and (2)

the trial court did not adequately specify a visitation schedule that included phone contact with the minor child. Because there was competent evidence in the record to support the trial court's decision to only grant Mother supervised visitation, and because the trial court sufficiently established a visitation schedule between Mother and the minor child, we affirm the trial court's order.

### **I. Background**

Debbie<sup>1</sup> was born to Mother and Father in January 2014. On 19 July 2018, when Debbie was four years old, the Craven County Department of Social Services ("DSS") filed a juvenile petition alleging Debbie was an abused, neglected, and dependent juvenile. As to Mother, DSS alleged that in August 2017, Mother had left Debbie with Father to escape domestic abuse by Father, including assaults on Mother in the presence of the child, and Mother had "a history of substance use and mental health issues that negatively impact[ed] her ability to parent" Debbie. As to Father, DSS alleged in May 2018 Father had endangered Debbie by running away from police with Debbie in his arms and throwing her over a fence twice; there were three dogs inside one of the fences, and one of the dogs was aggressive to one of the officers. In addition, DSS alleged neither parent had appropriate housing. The trial court ordered DSS to take non-secure custody of Debbie, and a guardian *ad litem* ("GAL") was appointed on or about 25 July 2018.

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<sup>1</sup> A pseudonym is used to protect the privacy of the child.

Debbie was adjudicated abused, neglected, and dependent in October 2018. The trial court ordered custody of Debbie to remain with DSS; DSS was granted the discretion of determining a physical placement for Debbie; and Mother was granted supervised visitation with Debbie. The trial court set a dispositional hearing for 30 November 2018.

After several continuances, the trial court held the disposition hearing on 1 March 2019. The trial court entered a written review order on 27 March 2019 finding Mother had partially complied with DSS's case plan for reunification between Mother and Debbie, but also found that Mother had only sporadically complied with random drug screenings and had tested positive for cocaine, opioids, and Suboxone.<sup>2</sup> The trial court ultimately found, "[i]n order for the Respondent Mother to achieve reunification, she must free herself of her domestic violence issues, develop/improve her parenting skills, and obtain and maintain suitable housing and employment." The trial court set a permanent plan of reunification, with a concurrent plan of custody, and ordered Mother to be allowed continued supervised visitation. The trial court also adopted recommendations made by DSS in a "Court Report for Dispositional and Review Hearings" filed the same day as the hearing which specifically set out a plan for Mother to achieve reunification with Debbie.

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<sup>2</sup> Suboxone is used to wean patients off of opioids and other illicit substances. Mother was reportedly prescribed Suboxone and was participating in medication management and therapy through Port Health Services.

The trial court held review hearings on 7 June 2019 and 10 October 2019. The trial court found in both orders that Mother had made progress on her case plan and ordered Mother to continue complying with DSS's recommendations for reunification. In the 10 October 2019 order the trial court authorized DSS and the GAL to approve unsupervised visitation between Mother and Debbie.

The trial court continued the next review hearing and held the hearing on 31 January 2020. The trial court entered a written review order on 12 March 2020. The trial court found Mother had begun having difficulty complying with DSS's case plan for reunification. The trial court ordered Mother to continue complying with DSS's recommendations as stated in prior review orders and allowed Mother to continue unsupervised visits with Debbie. The next review hearing was set for 1 May 2020.

The 1 May 2020 review hearing was repeatedly continued until 7 August 2020, and the trial court entered a written order on 31 August 2020. The trial court found Mother had become confined to a wheelchair "due to late stages of rheumatoid arthritis." The trial court also found Mother's progress toward reunification had regressed:

10. Prior to the last hearing in this matter, the Respondent Mother was making reasonable progress towards reunification.

11. However, subsequent to the last hearing in this matter, the Respondent Mother has become antagonistic with her court-appointed counsel and the social worker. She refused to submit to any further drug tests or sign any additional releases of information.

12. The Respondent Mother testified that she submitted to drug screens for over a year, and they were all negative, and she is tired of submitting to further drug tests.

13. The Respondent Mother expressed frustration with her attorney, but when given the opportunity to release him, decided to keep him.

. . . .

19. The Respondent Mother completed the Nurturing Parenting program and has demonstrated her ability to implement the skills learned in the parenting program. However, there have been some concerns with the minor child such as her sad demeanor after phone calls and visits with the Respondent Mother.

20. The social worker has seen some of the long and inappropriate texts sent to the minor child that she did not understand from the Respondent Mother. The social worker was informed in June, 2020, by the foster parent that since in person visits have resumed, the minor child has been defecating on herself after the visits.

The trial court consequently found that “[g]iven the Respondent Mother’s change in attitude and lack of cooperation with the social workers, it is in the best interests of the minor child that visits return to supervised.” The trial court again found that, to achieve reunification, Mother “must address her mental health issues, free herself of her domestic violence issues, develop/improve her parenting skills, and obtain and maintain suitable housing and employment.” The trial court ordered Mother to comply with DSS’s unchanged recommendations, and reduced Mother’s visitation from unsupervised to supervised.

The next review hearing was continued then held on 20 November 2020, and

the trial court entered a written order on 14 December 2020. The trial court found that since the last review hearing Mother had failed to comply with drug screening requests by CCDSS. The trial court also again found that Debbie was sad after visits with Mother, and Mother had been sending Debbie inappropriate text messages. The trial court found it was in Debbie's best interests that visits remain supervised. The trial court reiterated that Mother must address her mental health, domestic violence, parenting, and housing issues before reunification could be achieved. The trial court ordered Mother to comply with DSS's recommendations and that visits with Debbie remain supervised. The trial court set the next review hearing for 5 March 2021.

The next review hearing was repeatedly continued and ultimately held on 21 February 2022.<sup>3</sup> Mother did not testify or provide any evidence at this hearing indicating that she had progressed toward reunification. The trial court entered a written order on 31 March 2022 ("Order").

The trial court found that there was no relative placement available. Although both paternal and maternal placements had been recommended and studied, none of the placements were appropriate. The trial court also found Mother had refused to cooperate with DSS and had not complied with DSS's recommendations originally set in March 2019. The trial court incorporated a DSS "Court Report for Permanency

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<sup>3</sup> We note this review hearing was continued for over a year for multiple reasons, including: by agreement of the parties; because Father hired a new attorney; Father's new attorney was unavailable for one of the scheduled hearing dates; and by Father's request. Mother does not challenge any continuance on appeal.

Planning Hearings” into the court’s factual findings and found DSS recommended the trial court appoint Debbie’s current foster placement as her guardian in order to prevent adverse effects to Debbie from potential future transitions to a new placement. Debbie had been with this foster placement since 1 October 2019 and was doing well at this placement. The court also found that “[i]t is very important to the minor child that she continue to visit with both Respondent Parents.”

The trial court then found “[i]t is not possible to place the minor child with the Respondent Parents immediately or within the next six months because the Respondent Parents have not made sufficient progress towards reunification[.]” The court concluded “the Permanent Plan for the minor child[ ] shall be Guardianship with [Ms. Mackey], and this plan is in the best interests of the minor child.”<sup>4</sup> The trial court ordered “the full care, control and legal Guardianship” of Debbie be placed with Ms. Mackey; “[t]hat the permanent plan for the minor child shall be Guardianship, and this plan is in the best interests of the minor child[;]” and granted Mother supervised visitation with Debbie. The trial court’s schedule for visitation is addressed in more detail below. Only Mother appealed.

## **II. Standard of Review**

Our review of the trial court’s Order “is limited to whether there is competent evidence in the record to support the findings and whether the findings support the

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<sup>4</sup> A pseudonym is used to protect the privacy of Debbie’s foster mother and guardian.

conclusions of law. The trial court's findings of fact are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings." *In re J.S.*, 250 N.C. App. 370, 372, 792 S.E.2d 861, 863 (2016) (quotation marks omitted). "Factual findings that are not challenged on appeal are deemed to be supported by the evidence and are binding on appeal." *Id.* (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

"The trial court's dispositional choices [in a permanency planning order] . . . are reviewed only for abuse of discretion, as those decisions are based upon the trial court's assessment of the child's best interests." *In re L.R.L.B.*, 377 N.C. 311, 315, 857 S.E.2d 105, 111 (2021) (citation omitted). "[A]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re J.H.*, 373 N.C. 264, 270, 837 S.E.2d 847, 852 (2020) (quotation marks omitted).

### **III. Visitation Provisions**

We note that Mother does not challenge the adjudication of Debbie as an abused, neglected, and dependent juvenile, or any dispositional or review order establishing or altering a permanent plan for Debbie, including the Order which granted guardianship to Ms. Mackey. Nor does Mother specifically challenge any of the trial court's findings of fact in the Order as unsupported by competent evidence. Mother instead summarily challenges the portions of the Order's decree which grant Mother supervised visitation as unsupported by competent evidence, and also asserts



the trial court erred by “fail[ing] to provide a specific frequency and duration of phone calls that respondent mother should have” with Debbie in the Order. For the reasons below, we conclude the trial court did not abuse its discretion by granting Mother supervised visitation with Debbie, and the portion of the Order setting a schedule for visitation complies with the statute governing visitation.

### **A. Supervised Visitation**

Mother first argues the trial court’s decision to only grant her supervised visitation was not supported by competent evidence. Mother specifically argues that she “could provide proper care and supervision for Debbie during visitations” and that she “made significant progress on her case plan to warrant unsupervised visitation.” Mother’s arguments are without merit because Mother does not challenge any of the trial court’s findings of fact in either of these arguments. Instead, Mother makes a broad assertion that the trial court’s decision to grant supervised visitation was unsupported by competent evidence. However, the trial court’s unchallenged findings support the court’s decision to only grant Mother supervised visitation, and these findings are binding on appeal. *See In re J.S.*, 250 N.C. App. at 372, 792 S.E.2d at 863.

Mother notes various bits of evidence favorable to her, such as the statements in a May 2019 court report that she had stable housing; visited regularly; and brought toys, meals, and snacks for Debbie. Certainly, over the history of DSS’s involvement with Debbie, the trial court, in some orders, noted Mother’s progress at particular

times and in certain areas. The trial court also noted the areas where Mother failed to comply with requirements and when she began regressing in her progress, particularly in 2020. But Mother's brief ignores the portions of the record, and more importantly, the portions of the trial court's Order, which detail the difficulties Mother faced in 2021 in complying with the plan for reunification. Mother does not challenge any of the trial court's findings of fact, and the unchallenged findings of fact state, in relevant part:

18. The Respondent Mother has been uncooperative with the social worker in working her case plan.
  - a. The Respondent Mother failed to provide the social worker verification of participation with a telehealth provider.
  - b. The Respondent Mother failed to submit to random drug tests, and failed to provide a hair follicle for drug testing via hair follicle.
19. The Respondent Mother was in the [S]uboxone program at PORT and was testing positive for the [S]uboxone. She has not submitted to any drug tests since she left PORT. Suboxone is used to wean someone off illicit substances/opioids and is monitored through the substance abuse treatment provider.
20. The drug testing facility . . . is handicap accessible. Hair follicle testing does not require hair follicle from the scalp only, but can be a hair follicle from other parts of the body. The court takes judicial notice that the Respondent Mother had eyebrows, which are hair.
21. Due to the Respondent Mother's unwillingness to drug test, the social worker cannot determine the

Respondent Mother's maintenance of sobriety. As a result, the social worker cannot go forward with implementing the case plan.

22. The Respondent Mother failed to sign releases of information for the social worker to review her medical records. The Respondent Mother was told the importance of her providing her records. In addition, the Respondent Mother failed to submit any medical documents to the court today, declined her opportunity to testify, and failed to make any effort at this hearing to demonstrate what, if anything, she has done to reunify with the minor child.
23. The Respondent Mother attended several Child and Family Team Meetings, where in a forum with several service providers she was told the importance of releases.
24. The Respondent Mother was asked to submit to a drug screen, and failed to submit to a drug screen on the following dates:  
  
08/18/20,    10/23/20,    11/17/20,    01/12/21  
02/12/21,    02/26/21,    04/21/21,    04/27/21  
06/22/21,    06/23/21,    08/27/21,    10/08/21
25. The Respondent Mother is a non-removal parent. She has never been active in the life of the minor child in a child-care capacity. When the Respondent Father stated in open court that she has never been in the picture, and would not even take [Debbie] when he got in trouble, causing him to place the child with his adult child [, Debbie's half-sister], she did not contest the allegation. The Respondent Mother only participates in visitation, and made no effort to parent the minor child.

....

66. The Respondent Mother's visits were reduced from unsupervised to supervised visits with the minor child at a hearing last year *due to the Respondent Mother's change in attitude and lack of cooperation with the social workers.*
67. *It is in the best interests of the minor child that the Respondent Mother's visits remain supervised.*

(Emphasis added).<sup>5</sup>

Mother does not challenge any of the above findings of fact yet asserts the trial court should not have ordered supervised visitation between Mother and Debbie. However, the trial court's rationale for granting only supervised visitation is quite clear from the unchallenged findings of fact. The trial court did not abuse its discretion in granting Mother supervised visitation after finding it was in Debbie's best interests that Mother's visits remained supervised. *See In re L.R.L.B.*, 377 N.C. at 315, 857 S.E.2d at 111.

#### **B. Lack of Specific Decree Regarding Phone Calls**

We next address Mother's argument regarding the trial court's "fail[ure] to provide a specific frequency and duration of phone calls that respondent mother should have." As discussed by Mother, North Carolina General Statute § 7B-905.1 governs the frequency and duration of visitation:

- (c) If the juvenile is placed or continued in the custody or guardianship of a relative or other suitable person, any

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<sup>5</sup> Although Mother does not challenge the evidentiary support for any of the trial court's findings of fact, and they are therefore binding on appeal, we nevertheless note there was evidentiary support in the record for the above findings in the form of testimony and GAL and DSS reports filed with the trial court at each review hearing, including the 21 February 2022 hearing.

order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised. The court may authorize additional visitation as agreed upon by the respondent and custodian or guardian.

N.C. Gen. Stat. § 7B-905.1 (2022).

Mother argues the trial court failed to comply with North Carolina General Statute § 7B-905.1(c), and this argument is premised on the trial court's finding of fact 94, which states "[t]he Respondent Mother and the Respondent Father should be allowed visitation and telephone contact with the minor child." Mother asserts, because the trial court found telephone contact was appropriate, but failed to mention telephone contact in the portions of the Order's decree regarding visitation, that the Order should be remanded for the trial court to issue a visitation schedule setting out the specific frequency and duration of phone calls in addition to unsupervised visitation between Mother and Debbie. We have already addressed that the trial court did not abuse its discretion in granting supervised visitation, so we only address the portion of Mother's argument that asserts the trial court erred by not setting out the frequency and duration of telephonic visitation.

The decretal portion of the Order setting visitation states:

8. That each Respondent Parent shall have a minimum of two hour monthly supervised visits, and that visits can increase in duration by agreement of all parties, and may include unsupervised visits, without further court hearing on the issue of increased visitation.

9. That [Ms. Mackey] shall have the discretion to determine who will supervise the visitation and the location of the visitation.
10. That [Ms. Mackey] shall have the discretion to change the day and time of visits in response to scheduling conflicts, illness of the minor child[ ] or Respondent Parents, or other extraordinary circumstances.
11. That [Ms. Mackey] shall promptly communicate a limited and temporary change in the visitation schedule to the affected party.

*In re N.B.* is instructive. See *In re N.B.*, 240 N.C. App. 353, 363-65, 771 S.E.2d 562, 569-70 (2015). In *In re N.B.*, similar to the case here, the mother argued the trial court's visitation order was "too vague and ill-defined" to satisfy the requirements of the predecessor statute to North Carolina General Statute § 7B-905.1 and the cases interpreting that statute. *In re N.B.*, 240 N.C. App. at 363-64, 771 S.E.2d at 569. The trial court had ordered the mother was entitled to at least one, one-hour visit per month, at the family therapist's office; this visit could be longer or more frequent if the therapist recommended; and the mother was responsible for scheduling the visits and communicating with the therapist. See *id.* This Court disagreed with the mother's argument because changes in our juvenile code were enacted—including the enactment of North Carolina General Statute § 7B-905.1—during the trial court proceeding, and this Court interpreted those changes to mean "that the General Assembly intended to eliminate any requirement that the trial court include in its order the particular time or place for such visitations but *only*

*require[s] the trial court to provide a framework for such visitations.” In re N.B., 240 N.C. App. at 364, 771 S.E.2d at 570 (emphasis added). Because the trial court “accounted for the minimum frequency and length of the visitation[s],” and also set a supervisor for the visits, this Court held the trial court’s order met the statutory minimum requirements under North Carolina General Statute § 7B-905.1 for a framework for visitation. In re N.B., 240 N.C. App. at 365, 771 S.E.2d at 570.*

This case is similar to *In re N.B* in that here, the trial court provided a sufficient minimum framework for visitation between Mother and Debbie, including a minimum frequency and duration for Mother’s visits. The Order’s decree states Mother is allowed “a minimum of two hour monthly supervised visits, and that visits can increase in duration by agreement of all parties, and may include unsupervised visits[.]” Ms. Mackey was awarded discretion in determining the location and supervisor for each visit. The trial court also gave Ms. Mackey the discretion to allow additional visitation, even unsupervised visitation; this broad discretion would include allowing telephone contact. This framework allows for the phone contact that the trial court found was appropriate and meets the minimum requirements established in North Carolina General Statute § 7B-905.1. *See* N.C. Gen. Stat. § 7B-905.1(c).

We also note that the trial court was not required to order electronic communication between Mother and Debbie, as the minimum visitation specifically set out in the Order complies with North Carolina General Statute § 7B-905.1. *See*

N.C. Gen. Stat. § 7B-905.1(c). North Carolina General Statute § 7B-905.1 does not require the trial court to set forth a specific schedule for each type of visitation available to respondent parents, based on the nature of the contact between the parent and child; the court need only “specify the minimum frequency and length of the visits and whether the visits shall be supervised.” N.C. Gen. Stat. § 7B-905.1(c); *see also In re N.B.*, 240 N.C. App. at 363-65, 771 S.E.2d at 569-70.

We further note the trial court’s findings of fact demonstrate it did not abuse its discretion by not specifically granting Mother unsupervised phone contact with Debbie. Prior review orders from 31 August 2020 and 14 December 2020 indicate Mother had previously sent “long and inappropriate texts” to Debbie when previously granted phone contact, and related DSS court reports indicated these texts had a negative impact on Debbie’s wellbeing.

The trial court’s order meets the requirements of North Carolina General Statute § 7B-905.1(c). *See* N.C. Gen. Stat. § 7B-905.1(c). The trial court did not abuse its discretion by crafting a visitation order setting minimum visitation but also allowing Debbie’s guardian the flexibility to increase or alter the duration, frequency, and nature of visitation without necessitating further court participation. *See In re L.R.L.B.*, 377 N.C. at 315, 857 S.E.2d at 111.

#### **IV. Conclusion**

We conclude the trial court did not abuse its discretion by granting Mother supervised, but not unsupervised, visitation with Debbie based on the trial court’s



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unchallenged findings of fact. We also conclude the trial court did not abuse its discretion by not specifically setting out telephonic visitation between Mother and Debbie since the trial court did establish a clear framework for visitation between Mother and Debbie, in compliance with North Carolina General Statute § 7B-905.1. Thus, we affirm.

AFFIRMED.

Judges WOOD and GRIFFIN concur.

Report per Rule 30(e).