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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. 22-498

Filed 06 June 2023

Stokes County, No. 19 JA 10

IN THE MATTER OF: A.N.

Appeal by Respondents from an order entered 3 March 2022 by Judge Marion Boone in Stokes County District Court. Heard in the Court of Appeals 16 May 2023.

Leslie Rawls, for Stokes County Department of Social Services, petitioner-appellee.

James N. Freeman, Jr., for Guardian ad Litem.

Wendy C. Sotolongo, Parent Defender, by J. Lee Gilliam, Assistant Parent Defender, for respondent-appellant mother.

Jeffrey L. Miller, for respondent-appellant father.

WOOD, Judge.

Respondents appeal from a permanency planning order granting guardianship of their child, Ava,¹ to Ms. Smith. For the following reasons, we vacate the trial court's order and remand for further proceedings.

I. Background

¹Pseudonyms are used to protect the identity of juveniles and for ease of reading.

Ava was born in September 2012. She has elder twin brothers, George and Sean,² who are also minors. On 6 February 2019, the Stokes County Department of Social Services (“DSS”) obtained nonsecure custody of Ava and filed a petition alleging Ava to be a neglected juvenile. The petition alleged that, on 6 December 2018, DSS received a report that one of the children had been setting fires, Respondent-father had given Ava a “bad spanking,” and the children were low-functioning and frequently absent from school. On 7 December 2018, a DSS social worker arrived at the children’s school and was informed that Respondent-father, upset at DSS’s involvement, was attempting to remove the children from school. Ava reported to the DSS social worker that Respondent-father had cursed at the children and had hit Respondent-mother in the face. Ava stated that she received “two hits from dad,” and the DSS social worker observed an oval-shaped bruise that covered a third of Ava’s back. Ava also stated that she and George started a fire outside on a piece of wood while Respondent-father was inside playing video games. Sean stated that Respondent-father spanked the children with a “paddle on the butt,” and that George started a fire on his bed with Respondent-father’s lighter. George stated that Respondent-father hit the children and Respondent-mother with a belt. He also stated he is often hungry and spanked for “getting food when he is not supposed to.”

The petition further alleged that, on 7 December 2018, the DSS social worker

² George and Sean are not subjects of this appeal.

spoke with Respondent-mother, who claimed she was unaware of what occurs at home while she is at work and unaware the children were missing school. She told DSS she believed the Respondent-father was taking them to school. On 7 December 2018, Respondents signed a safety assessment agreeing to refrain from physically disciplining the children during the investigation and to always provide close supervision of the children. On 16 January 2019, the school guidance counselor informed DSS that Ava had missed seventeen days of school, and that the school would file truancy charges after she missed twenty days. Ava reported to a DSS social worker that Respondent-father hit the children with a belt and tablet, while George stated that he hit Ava and Sean “with a spatula with only [their] underwear on.”

The petition alleged that on 24 January 2019, DSS social workers arrived at the family home to find the children “very ill and laying (sic) around in their underwear barely able to move.” Respondent-mother believed the children had fevers but had not taken them to the doctor. By 28 January 2019, the children were still very ill but had not yet received medical treatment. Respondent-mother reported to DSS she was going to take them to the Health Department. On 6 February 2019, DSS received information that the children had returned to school following their illnesses and that Sean’s lip was bleeding and swollen. Ava reported that Respondent-father had punched Sean and “spanks her but [tells] her to keep that as a secret for him.” George stated that Respondent-father “spanked Seth’s lip by accident with a belt.”

The adjudication and disposition hearings were conducted on 23 April 2019, wherein the Respondents entered stipulations that Ava was neglected. On 9 July 2019, the trial court entered an order adjudicating Ava to be a neglected juvenile. That same day, the trial court entered a separate disposition order granting DSS custody of Ava and granted Respondents supervised, weekly visitation. Respondent-mother was ordered to comply with her case plan which included completing a parenting psychological evaluation and parenting classes, completing a comprehensive clinical assessment for mental health and substance abuse issues, submitting to random substance use screenings as requested by DSS, and obtaining stable housing and income. Respondent-father was ordered to enter into a case plan and to comply with its requirements.

Following a permanency planning review hearing on 13 February 2020, the trial court entered an order on 17 March 2020 finding that Respondent-mother was engaging in parenting classes and visiting Ava regularly. The trial court further found that her drug screens had been negative, that she had completed a mental health evaluation which recommended counseling, and that Respondent-father had moved to Texas. The trial court established the permanent plan as reunification with a concurrent plan of guardianship with a court-approved caretaker.

Following a permanency planning review hearing on 13 August 2020, the trial court entered an order on 16 September 2020 finding that Respondent-mother had completed parenting classes and continued to have negative drug screens. She

attended group therapy in February and March of 2020 and began individual therapy in July 2020. She had been evicted from her home and was living with her mother. The trial court also found Respondent-mother denied Respondent-father ever hitting her or their children. Respondent-father entered a case plan on 20 January 2020 but had not signed releases for DSS to obtain information regarding the progress he had made.

Following a permanency planning hearing on 12 August 2021, the trial court entered an order on 29 September 2021 finding that Respondent-mother had completed individual therapy and was participating in a “coping skills group.” However, she had not maintained stable employment or independent housing. During visitation, she had difficulty managing her children’s “challenging behaviors,” and she had a “poor understanding of [their] needs and challenges.” Respondent-father participated in a parenting psychological evaluation but had not complied with recommendations to engage in dialectical behavior therapy, a psychiatric evaluation, anger management education, or drug testing. DSS continued to have difficulty tracking Respondent-father’s progress on his case plan due to his failure to sign the releases for DSS to have access to his information, and his lack of communication with DSS.

Following a permanency planning hearing on 13 January 2022, the trial court entered an order on 3 March 2022 finding that despite having completed parenting classes and therapy, Respondent-mother failed to demonstrate an “understanding of

her children’s developmental and behavioral needs, their mental health diagnoses,” and “at-risk behaviors, including their sexualized behaviors.” Respondent-mother continued to deny Respondent-father’s physical abuse of her and the children. DSS remained unable to track Respondent-father’s progress based on his continued failure to sign required releases and his lack of contact with DSS. Concluding Respondents were unfit and had acted inconsistently with their constitutionally protected status as parents, the trial court granted guardianship of Ava to Ms. Smith, a foster parent with whom she had been placed since 30 May 2019. Respondents appeal.³

II. Analysis

On appeal, Respondents argue the trial court’s conclusions that they are unfit and have acted inconsistently with their constitutionally protected status as parents are unsupported by the evidence and findings of fact. Respondents contend that the trial court failed to verify that Ms. Smith understood the legal significance of her appointment as guardian of Ava. Respondent-mother also asserts the trial court failed to verify whether Ms. Smith had adequate resources to care for Ava. Respondent-father challenges the trial court’s determination that it is in Ava’s best interests that she not have visitation with him, while Respondent-mother challenges

³ Respondents have filed a joint petition for writ of certiorari seeking review of the trial court’s 13 January 2022 “Juvenile Court Same Day Order.” The appealed 3 March 2022 order was entered pursuant to a permanency planning hearing held 13 January 2022, and the “Juvenile Court Same Day Order” is also based upon the same hearing. We exercise our discretion and deny the petition. Respondents’ notices of appeal are timely based on the challenged permanency planning order’s date of service.

the trial court's determination that her visitation with Ava should be "arranged and facilitated by her therapist, at [Ava's] request, and at a minimum of once each month." Lastly, Respondent-mother contests the trial court's conclusion that DSS made reasonable efforts toward reunification.

A. Standard of Review

This Court's review of a permanency planning order is "limited to whether there is competent evidence in the record to support the findings and whether the findings support the 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). Unchallenged findings of fact are binding on appeal. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). Conclusions of law are reviewed de novo. *In re J.T.*, 252 N.C. App. 19, 20, 796 S.E.2d 534, 536 (2017). "Questions of statutory interpretation are questions of law, which are reviewed *de novo* by an appellate court." *In re P.A.*, 241 N.C. App. 53, 58, 772 S.E.2d 240, 245 (2015) (citation omitted).

B. Unfitness and Acting in a Manner Inconsistent with Constitutionally Protected Status

Respondents challenge the trial court's determinations that Respondents "are unfit and have acted inconsistently with their constitutionally protected status as parents." As a preliminary matter, we note that Respondents properly preserved this issue for our review. Respondents had notice of the recommendation of guardianship,

made arguments opposing the recommendation of guardianship, and requested the trial court reject the recommendation of guardianship to allow Respondents more time to work towards reunification. *See In re B.R.W.*, 278 N.C. App. 382, 399 (2021) (holding that the Respondent-mother's challenge to the trial court's determination that she acted inconsistent with her protected status was preserved where she presented evidence of her ability to care for the children, opposed the recommendation of guardianship, and requested the trial court to reject the recommendation of guardianship), *aff'd*, 381 N.C. 61 (2022); *see also In re J.N.*, 381 N.C. 131, 136 (2022) (Earls, J., concurring) (stating that "there are no 'magic words' . . . 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" and that "[u]nless the parent presents no evidence and makes no arguments, the parent has raised the constitutional issue by responding to DSS's arguments").

Here, the trial court made the following pertinent findings of fact in support of its conclusion that Respondents were unfit and had acted inconsistently with their constitutionally protected status:

9. [Ava] completed a Trauma-Informed Comprehensive Clinical Assessment with Alexander Youth Network [on] 6/18/2020. The juvenile reported her father hitting her mother, her brothers, and her. Her testing revealed clinically significant sexual behavior scores on trauma measures (SASI). [Ava] was diagnosed with adjustment disorder, with a mixed disturbance of emotions and conduct and unspecified trauma and stressor-related disorder.

10[a]. [Ava], who completed TFCBT [(trauma-focused cognitive behavioral therapy)], is now in therapy with Ms. Buckley. Ms. Buckley allows [Ava] significant control of her therapeutic process, including whether or not she wishes to include her mother in sessions. In the past, [Ava] urinated in inappropriate places following visits with her mother. For example, she urinated in a basket in her room and expressed feeling afraid to go to the bathroom and afraid of monsters. [Ava] now states she wants more time with her mother, and Ms. Buckley advises following [Ava's] lead regarding the timing and pacing of the mother's participation in therapy sessions and in other interactions. [Ava] expresses fear of her father to Ms. Buckley.

10[b]. During sessions with Ms. Buckley, which began 9/9/21, [Ava] talked about her father's emotional and physical abuse of her mother and her. [Ava] noted she would try to hit her father when he was hitting her mother. [Ava's] brothers shared the same reports of their father's domestic violence against their mother, as well as their father's physical abuse of them and their sister.

11. The father and mother deny domestic violence occurred between them. The father and mother deny the father was physically or mentally abusive to any of the juveniles, despite the juveniles' repeated and consistent reporting [that] they and their mother were struck by their father.

....

16. The mother entered her case plan 4/2/2019. She completed parenting classes, and all her drug screens have been negative. She completed individual therapy [on] 7/26/2021. Despite her completion of parenting classes and her therapy, the mother does not demonstrate an understanding of her children's developmental and behavioral needs, including their mental health diagnoses. The mother does not demonstrate an understanding of her children's at-risk behaviors, including their sexualized behaviors.

17. The mother has not maintained stable employment. She reports working for Imperial Security, but her social worker contacted the company 1/6/2022 to verify employment and was told they had no record of [her] in their system.

18. The mother was evicted from the family home and now struggles to maintain independent housing. After mail sent to the mother by DSS was returned undeliverable to her address in Madison NC, the social worker learned the mother had moved to Clemmons 11/1/2021 but not reported her whereabouts to DSS.

19. The mother continues to assert the father did not physically abuse the children nor her, despite her knowing the children repeatedly reported to their providers their father struck them and their mother.

. . . .

21. [Respondent-father] signed his case plan 1/20/2020. He participated in a parenting psychological evaluation with Dr. Bennett, who recommended [Respondent-father] consider DBT (dialectical behavior therapy) to address his emotional dysregulation, and a psychiatric evaluation to explore both his serious mental health diagnoses in the past, as well as an updated diagnosis. He also recommended [Respondent-father] participate in anger management education and drug testing. These interventions were to address the father's emotional instability, anger, and inappropriate behaviors, according to Dr. Bennett. The father has provided no documentation he has followed Dr. Bennett's recommendations.

22. Since [Respondent-father] moved to Texas, it has been difficult to obtain updates on his case plan progress. He did not share he had been hospitalized due to a mental health episode. He reports having a therapist but has provided no documentation nor signed releases. DSS is unaware of the father's case plan progress, due to little communication with the father and due to his not signing releases for DSS

to access his information.

....

25. In both of the mother's psychological evaluations, Dr. Bennett's 2/2019 and Dr. Sheaffer's 6/2020, she denied the children were ever hit by their father. During both evaluations, she did not demonstrate an understanding of her children's developmental delays and behavioral issues. In addition, she stated [Respondent-father] was never physical with her in any way.

26. Placing the juveniles in the exclusive care of their mother or father would cause an increased risk of harm to them.

27. [Ava] may not return home immediately. [Ava] may not return home in the next 6 months, as her parents continue to deny the abuse and trauma she experienced in their care. They have not demonstrated an understanding of [Ava's] educational needs, her trauma, and her psychological needs in the three years [Ava] has remained in DSS custody.

Respondent-mother argues that findings of fact 11 and 19 are unsupported by the evidence. We disagree. A court report prepared by DSS, which was submitted into evidence at the 13 January 2022 permanency planning hearing, provides information that Respondent-mother completed a parenting psychological evaluation with Dr. Bennett in February 2019. Dr. Bennett recommended Respondent-mother engage in counseling to "explore her resistance to considering the evidence that [Respondent-father] has treated the children harshly and has punished physically too severely." He opined that Respondent-mother would "not be able to protect her children if she minimizes and defends [Respondent-father's] behavior in spite of the

evidence to the contrary.” At the permanency planning hearing, Morgan Summers (“Ms. Summers”), a DSS social worker who became involved in Ava’s case in August 2021, testified that Dr. Bennett’s assessment of Respondent-mother remained true. Ms. Summers testified that Respondent-mother had not learned about the children’s trauma, did not understand the trauma they had experienced, did not support the disclosures the children were making during therapy, and continued to deny that the children had been inappropriately disciplined. Counsel for DSS noted that Respondent-mother denied the domestic violence issues with Respondent-father, and Bonny Buckley (“Ms. Buckley”), Ava’s therapist since 9 September 2021, testified that it would be important for Respondent-mother to acknowledge and understand the trauma that she had experienced, as well as the trauma her children experienced. The foregoing evidence supports findings of fact 11 and 19.

Respondent-father contests findings 9, 10(a–b), 11, 19, and 25, arguing that they do not constitute proper findings of fact because they amount to “mere testimonial statements and/or reports of allegations.” It is well established that “[r]ecitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge,” *In re M.D.R.C.*, 166 N.C. App. 693, 699, 603 S.E.2d 890, 894 (2004) (citation omitted), and that “factual findings must be more than a recitation of allegations. They must be the specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence.” *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (cleaned

up).

However, this Court has held that “[t]here is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes.” *In re C.L.C.*, 171 N.C. App. 438, 446, 615 S.E.2d 704, 708 (2005). “Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts.” *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (cleaned up). While findings 9, 10(a–b), and 25 recount the testimony or exhibits admitted during the 13 January 2022 permanency planning hearing, the trial court also made the necessary ultimate findings of fact in findings 11 and 19, as well as unchallenged finding of fact 27, which is binding on appeal. The trial court resolved material disputes in the evidence by finding that Respondents continued to deny the abuse and trauma Ava experienced in Respondents’ care, as well as denying the domestic violence that occurred between them, and lacked an understanding of Ava’s “educational needs, her trauma, and her psychological needs in the three years” she had been in DSS custody. *See In re C.L.C.*, 171 N.C. App. at 446, 615 S.E.2d at 708 (overruling the Respondent’s challenge to findings that described testimony because “[t]he testimony summaries were not the ultimate findings of fact; those findings were found elsewhere in the order”). Thus, we reject Respondent-father’s challenges to these findings.

Next, Respondents challenge the trial court’s conclusions that they were unfit and had acted inconsistently with their constitutionally protected status as parents.

Respondents contend that neither the evidence nor findings of fact support these conclusions. Specifically, Respondent-mother argues that she completed her case plan. She contends she separated from Respondent-father, completed a parenting evaluation and mental health assessment, submitted to drug screens, kept in contact with DSS, attended visits when permitted, attended all planning and team meetings, and attended all court hearings. Respondent-father contends that while he did not complete all of the components of his case plan, he made significant progress by completing parenting and anger management classes, “had a therapist who presumably was providing counseling,” was employed, maintained a residence, and participated with DSS in a “regular and consistent manner.”

The 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.” *Adams v. Tessener*, 354 N.C. 57, 62, 550 S.E.2d 499, 503 (2001). A parent’s constitutionally protected 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 the 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).

Although the trial court here labeled its determinations that Respondents were unfit and acting inconsistently with their constitutionally protected status as a parent as findings of fact, they are conclusions of law. *In re I.K.*, 377 N.C. 417, 421 (2021); *In re B.R.W.*, 278 N.C. App. at 405. Therefore, we review them accordingly. *See 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.”). Furthermore, unfitness and acting inconsistently with constitutionally protected rights “are two separate determinations, and each must be reviewed independently.” *In re B.R.W.*, 278 N.C. App. at 395.

“[A] finding of unfitness should be reviewed de novo on appeal by examining the totality of the circumstances.” *Raynor v. Odom*, 124 N.C. App. 724, 731, 478 S.E.2d 655, 659 (1996). We note that Respondents’ efforts to regain custody of Ava following removal from their care are relevant to the issue of parental fitness. *See In re B.R.W.*, 278 N.C. App. at 407. However, neither Respondent is able to show they are fit to parent Ava. Unchallenged finding of fact 8 establishes that Ava had the following needs: “mental health therapy, an ADHD evaluation, a yearly cardiologist checkup, optometrist appointments, and routine dental and medical appointments. In addition, she requires monitoring for sexualized behaviors.”

Although Respondent-mother completed several components of her case plan, she continued to deny: 1) domestic violence had occurred between her and Respondent-father, and 2) Respondent-father had physically and mentally abused the children. Respondent-mother completed parenting classes and therapy, failed to grasp an understanding of her children's "developmental and behavioral needs, including their mental health diagnoses," and their "at-risk behaviors, including their sexualized behaviors." In addition, during the three years Ava remained in DSS custody, Respondent-mother lacked an understanding of Ava's "educational needs, her trauma, and her psychological needs."

Respondent-father's lack of contact with DSS and failure to sign releases for DSS to access his information made it impossible for DSS to track Respondent-father's progress, if any, with his case plan. While he completed a parenting psychological evaluation, Respondent-father provided no proof he followed the recommendations of the evaluation. Like Respondent-mother, he continued to deny that domestic violence occurred between them or that he was physically or mentally abusive to the children and also failed to demonstrate an understanding of Ava's educational and psychological needs. Respondents did not demonstrate an understanding of Ava's needs, and thus could not adequately care for her or provide for her welfare. Thus, we conclude the trial court's findings of fact support its conclusion that Respondents are unfit to parent their minor child. *See Raynor*, 124 N.C. App. at 732, 78 S.E.2d at 660 (concluding that the Respondent is unfit because

she “had substance abuse problems, does not respect authority, is unable to recognize her child’s developmental problems, and is incapable for caring for the child’s welfare”).

As to the trial court’s conclusion that Respondents acted inconsistently with their constitutionally protected status, “there 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). “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. “[E]vidence of a parent’s conduct should be viewed cumulatively.” *Owenby v. Young*, 357 N.C. 142, 147, 579 S.E.2d 264, 267 (2003).

Here, the trial court’s findings establish that despite the progress made on their respective case plans, Respondents continued to deny the “repeated and consistent” reports by the children of domestic violence that occurred between them and of the abuse the children experienced at the hands of Respondent-father. Respondents did not demonstrate an understanding of the trauma Ava had experienced while in their care. Together, Respondents lacked an understanding of Ava’s developmental, behavioral, psychological, and educational needs. These findings support the trial court’s conclusion that Respondents acted inconsistently with their constitutionally protected status. *See In re I.K.*, 273 N.C. App. 37, 47, 848

S.E.2d 13, 22 (2020) (affirming the trial court’s conclusion that the Respondents acted inconsistently with their constitutionally protected status due to “chronic issues related [to] unsafe housing, domestic violence, and substance abuse”).

C. Verification of Guardian

Respondent-father argues that the trial court failed to verify that Ms. Smith understood the legal significance of her appointment as guardian of Ava. Respondent-mother makes the same argument but also contends the trial court failed to verify that Ms. Smith had adequate resources to care for Ava.

N.C. Gen. Stat. § 7B-906.1(j) provides that when the trial court appoints a guardian at a permanency planning hearing:

the court shall verify that the person . . . being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile. The fact that the prospective . . . guardian has provided a stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources.

N.C. Gen. Stat. § 7B-906.1(j) (2021). The trial court need not “make any specific findings in order to make the verification.” *In re J.E.*, 182 N.C. App. 612, 617, 643 S.E.2d 70, 73 (2007). “But the record must contain competent evidence of the guardians’ financial resources and their awareness of their legal obligations.” *In re J.H.*, 244 N.C. App. 255, 270-71, 780 S.E.2d 228, 240 (2015) (citations omitted).

In the present case, the trial court made an unchallenged finding that Ava had “been in placement with [Ms. Smith] since 5/30/19, 31 months.” Because Ms. Smith

provided stable placement for Ava for 31 months, the trial court had more than sufficient evidence that Ms. Smith had adequate resources pursuant to N.C. Gen. Stat. § 7B-906.1(j). Respondent-mother's argument that the trial court failed to verify that Ms. Smith had adequate resources to care for Ava is overruled.

However, we agree there was insufficient record evidence Ms. Smith understood the legal significance of guardianship. The trial court found that Ms. Smith "understands the duties of guardianship, is able to meet [Ava's] medical, psychological, educational, and financial needs, and willingly accepts guardianship of [Ava]." But the record does not show that the trial court received and considered evidence that Ms. Smith understood the legal significance of guardianship. The trial court made findings that Respondents "have not demonstrated an understanding of [Ava's] educational needs, her trauma, and her psychological needs," but received no evidence that Ms. Smith understood Ava's needs or the legal significance of being required to provide for them as guardian. Ms. Smith did not testify at the permanency planning hearing, and neither DSS nor the Guardian ad Litem reported to the trial court that Ms. Smith understood the legal significance of being appointed Ava's guardian. *See In re J.H.*, 244 N.C. App. at 272, 780 S.E.2d at 240 (holding that the trial court failed to verify that the grandparents understood the legal significance of guardianship where the grandparents did not testify and neither DSS nor the GAL reported that the grandparents were aware of the legal significance of guardianship). Accordingly, we hold the trial court failed to verify that Ms. Smith understood the

legal significance of guardianship and vacate the trial court's determination that guardianship should be granted to Ms. Smith and remand for further proceedings.

Respondent-mother further challenges the trial court's determination of visitation with her, contending that the trial court improperly delegated its judicial requirement of establishing visitation to Ava and her therapist. We agree. The trial court may not delegate its judicial function of establishing a minimum outline of visitation by giving discretion to an individual to allow, reduce, or change the terms of the visitation. *See In re C.S.L.B.*, 254 N.C. App. 395, 400, 829 S.E.2d 492, 495 (2017) Here, the trial court gave discretion to both Ava, a young child, and to her therapist to determine when and if visitations with Respondent-Mother would occur, impermissibly delegating its judicial requirement to establish a minimum outline of visitation. Accordingly, the trial court's order must be vacated and remanded for further proceedings. Because we vacate the trial court's order, we need not address Respondents' remaining arguments.

III. Conclusion

The 3 March 2022 permanency planning order is vacated, and the matter is remand for further proceedings consistent with this opinion.

VACATED AND REMANDED.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).