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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-709

Filed 20 June 2023

Buncombe County, Nos. 20JA306, 20JA307

IN THE MATTER OF: A.C. & L.C., Minor Children.

Appeal by respondent from judgment entered 9 March 2022 by Judge Susan M. Dotson-Smith in Buncombe County District Court. Heard in the Court of Appeals 24 May 2023.

King Law Offices, PLLC, by Nicholas A. White, for the respondent-appellant.

Buncombe County DSS, by Jack Densmore, for the petitioner-appellee.

Marion Parsons, for the respondent-appellee.

Attorney for GAL, by Jackson M. Pitts, for the other-appellee.

TYSON, Judge.

Respondent Father (“Father”) appeals from orders entered on 10 May 2022, which awarded sole legal and physical custody to Mother and supervised visitation for a minimum of two hours and maximum of six hours per week with no overnight visits to Father. We affirm in part, vacate in part, and remand for correction of a clerical error.

I. Background

Buncombe County Department of Social Services (“DSS”) obtained custody of Father’s children, A.C. and L.C., who were adjudicated as neglected juveniles 23 July 2021.

DSS initiated an inquiry after receiving a Child Protective Services Report on 24 August 2020. The report alleged Mother was abusing prescription medication, Mother was allegedly driving A.C. and L.C. while intoxicated, with both children unrestrained in the vehicle, and their home was reportedly maintained in an unsanitary condition.

A DSS social worker investigated and discovered Mother had fled from Father’s home in Tennessee on 23 August 2020 after a physical altercation during which he had threatened to kill Mother in front of the children. Father and Mother confirmed a history of domestic violence spanning over 13 years, during which Mother had sought and dropped criminal charges multiple times. Both parents stated the domestic violence had occurred in front of both minor children.

In September, 2020, a friend helped Mother file for a 50-B Domestic Violence Protective Order (“DVPO”), which was granted on September 2020. Following the grant, Mother and Father went on vacation to Charleston, S.C. Mother reported she goes back to Father to alleviate threats of violence. She also believes staying with Father avoids angering him and is safer for the children.

On 21 October 2020, DSS determined the family needed services and a safety plan was initiated. The safety plan recommended Father have no contact with his

minor children.

One week later, the social worker learned from the paternal grandmother that Mother and both children were back in Father's home. DSS contacted Father, who confirmed Mother and the children had been at his home for five days. Father reported Mother had consumed about three-fourths of a bottle of Phentermine. Mother had a physician's prescription for Phentermine, as well as Adderall, but she also admitted taking them as a coping mechanisms to deal with issues of living with Father.

Father provided DSS with two videos showing Mother intoxicated. In the first video, Mother was on the bathroom floor, and Father was asking the minor children "when is your mommy going to get sober?" In the second video, Mother is in her vehicle running into the Father's wrecker truck, while intoxicated and trying to leave with the children. The children were in distress and neither Father nor Mother did anything to protect or intervene in both videos.

DSS contacted social services counterparts in Tennessee to request emergency assistance. A Tennessee social worker responded to Father's home, but Mother refused to leave with the minor children. This violation of the safety plan ultimately resulted in DSS filing for custody. The children were taken into non-secure custody on 29 October 2020 and placed with their maternal aunt.

After custody was taken, but prior to the adjudication hearing, Mother visited the children daily, participated in therapy with both children, helped with virtual

schooling, completed the recommended parenting classes and domestic violence courses, engaged in a trauma-focused program called Widening Circles, completed a substance abuse program, and tested negative on all drug screens.

DSS was also aware Mother was visiting Father in Tennessee by herself. Father was regularly texting and threatening to harm Mother, to take the children, and verbally abusing Mother.

During this time Father visited the children regularly and engaged in the Batter's Intervention Program ("BIP") and parenting classes. Father strived to be a better parent, but DSS remained concerned the threats and messages negatively impacted his children.

Following the adjudication and initial dispositional hearing, the trial court entered identical findings of fact and conclusions of law for each juvenile in a joint order entered 9 February 2022. The trial court made the following finding of fact:

36. Based upon the competent evidence before the court, and the above findings of fact as found by the Court, and by clear, cogent, and convincing evidence, the minor children are neglected juveniles, pursuant to N.C.G.S. § 7B-101(9), in that the juveniles do not receive proper care, supervision, or discipline from the juveniles' parent, guardian, custodian, or caretaker, and in that the juveniles live in an environment injurious to the juveniles' welfare.

The trial court then made the following conclusions of law:

6. The GAL reports that the minor children are doing well, and continue to be engaged in therapy with Xia Bell. Xia Bell has recommended that [Father] engage in therapy, with her, to help him address his anger and language,

which would help with how he parents the girls.

...

12. [Mother] has engaged with the services as set forth in her Family Services agreement. [Mother] has maintained the domestic violence protective order. [Mother] is working with the minor children's therapist. [Mother] has not been requested to complete any random drug screens from the department. The social worker notes that there have not been any subsequent concerns of substance abuse issues with [Mother].

13. [Father] has also engaged with his case plan and the Family Services agreement. [Father] has worked with the Batterer's Intervention Program and continues to engage. [Father] continues to see a private therapist. [Father] would like to be able to work with the minor children's therapist as well.

14. [Father] does not seem to understand the negative impact of his actions on the minor children. [Father] currently has no contact with the minor children.

...

16. Visits for [Father] should be brought back to supervised, and any visitation will need to occur in Buncombe County at this time, given [Father] continues to reside in Tennessee. All screens have been negative. [Father] needs a comprehensive clinical assessment and parenting evaluation. The CCA should include collateral information.

17. The Court finds that [Father] has used the minor children to manipulate [Mother], and as long as they are used as a tool to do that, the minor children are in danger. This is so potentially harmful to the minor children that they have to understand how not to be used as pawns. This needs to be figured out now, or the minor children will grow to rebel.

18. A lot of progress has been made. It is not easy to do BIP/SAIOP. The respondent parents are both strong and resilient, and they will pass this on to the minor children. Both parents seem smart and able to learn. The minor children need to know that they can be kids, and that they do not have to be “in the middle.” A cycle of 50-Bs is not uncommon. Both respondent parents are on track in terms of divorcing. It is time that the respondent parents focus on their own lives, and the lives of the minor children, going forward. Multiple times, [Father]’s focus went back to substance abuse issues, as he minimized domestic violence issues.

19. The Court is concerned that the Department is not getting good disclosure, and transparency helps with accountability, which helps build trust with the whole team. Even with the completion of classes, the minor children were treated as pawns, within the last week.

20. It is in the best interest of the minor child that the Court adopt the recommendations of the Department and of the minor child’s GAL, as specified above and modified as follows:

a. That [Father] submit to a CCA/parenting evaluation, with the Department providing collateral information for the assessor.

b. That [Father] provide the Department with information on his prescriptions; and, that if a medication assessment was completed in the last year that it be provided to the Department and if not that an addendum be completed, with the Department providing collateral information for the assessor.

c. That the CFT have the discretion to go back to unsupervised visits, for [Father], if and when the CCA is complete and if and when there is engagement with the recommendations of that CCA.

- d. That [Mother] continue in SAIOP.
- e. That the minor children engage with AF-CBT therapy, and that the respondent parents also engage, separately, until discharged.
- f. That the CFT have the discretion to approve up to 3 overnight visits with [Mother].
- g. That [Mother] continue[s] to submit random drug screens.
- h. That the respondent parents not discuss this case, or the other parent, with the minor children.
- i. That the respondent parents not have combined visitation.
- j. That the respondent parents not be at the same place, at the same time.
- k. That CFT meetings continue to be held separately.
- l. That the minor children not miss school because of visitation.
- m. That [Father] ha[s] 4 hours of supervised visitation, at the Department, or at the FVC; or, if he can, that [Father] can have an 8-hour visit, with paid visitation coach.

A subsequent Permanency Planning Hearing Court Report, regarding the permanency planning hearing held 21 September 2021, explained:

Mother: [] continues weekly therapy with Xia Bell and Johnny Evans from the Mountain Child Advocacy Center. [Mother] also reports that she is taking a 10-week online course for narcissistic abuse recovery. [Mother] reports

she is having a wonderful time having the girls with her 5 days a week and looks forward to reunification. [Mother] shared with the GAL that she continues to get calls from unknown numbers and, when she answers, the caller says nothing. [Mother] also shared that she is still cautious and fearful of the [Father] even though there is a 50-B. [Maternal grandmother] reported to the GAL that she notices how both girls seem[] to always be full of joy when they are with the [Mother]. She further reported to the GAL that the [Father] sent her a nasty text two months ago.

Father: [] was ordered to have a CCA but instead he had his psychiatrist send a letter to DSS (see attached). At the last court hearing, the [Father] was presented with a 50-B [order] by the [Mother]. Also, at the last court hearing, supervised visits were ordered for the [Father]. The [Father] has not asked for any visitation with the children since then. [Mother]'s sister reports that the [Father] has not called to ask how the children are or if they need anything. She also reports that the [Father] sent a text with a picture of a race car that he said he had purchased for [A.C.]. The [Father] has filed for divorce from the [Mother].

The report also explained Father had violated the DVPO by contacting Mother, and a warrant was issued for the violation. On Sunday, 5 September 2021, Mother received a threatening text message, asserting something bad was going to happen on Tuesday.

On Wednesday, 8 September 2021, three police vehicles pulled in front of Mother's house during dinnertime, officers handcuffed her in front of the minor children, and they placed her in the back seat of the police vehicle. The officers arrested Mother because Father had filed obtaining property by false pretenses

charges against her for pawning a gun from his house.

Mother reported to the social worker that months ago, with Father's knowledge, she had taken three guns from the marital home and pawned them, believing they belonged to her and Father. The statute of limitations was about to expire, so Father had Mother charged. Mother believed this action was payback for reporting him for the DVPO violation. Mother contacted her sister to come and get the children. Both children were traumatized by the situation. DSS asserted Father made parenting decisions which negatively impacted the children.

At the culmination of the Initial Permanency Planning Hearing, Mother was given a trial home placement, while Father's visitation remained supervised. The recommendation for Father to complete a CCA and follow the remaining recommendations remained as well.

Following a Subsequent Permanency Planning and Review Hearing held 9 March 2022, the trial court found:

12. [Mother] has completed her case plan. She continues to work on herself and participate in therapy with the minor children to improve on her parenting skills. The minor children are in a trial home placement with her and [it] is successful.

13. [Mother] continues to keep herself and the children safe from domestic violence occurrences.

14. SW made a referral to October Road for the respondent father to complete a Comprehensive Clinical Assessment on October 11, 2021. [Father] completed the assessment on October 14, 2021. [Father] informed the SW that he

believed that no recommendations were made after the assessment. SW got the CCA from October Road and [Father] was recommended to engage in 72 hours of SAIOP and medication management. [Father] disagrees with the recommendations because he believes he does not have substance abuse issues.

15. [Father] started supervised visitation with the minor children on November 6, 2021. He has had 2 visits so far and they have gone well. He has met the Rylan's law requirement for unsupervised visitation. The minor children's therapist believes it will not be in the best interest of the minor children to have unsupervised visitation with the [Father] and he is yet to engage in the recommendations from his CDCA.

...

17. SW was informed by the therapist that the minor children have internal stress about their self-esteem tied to their physical appearance and that it is important that they are treated equally. Furthermore, the therapist stated that the oldest child has a relational stress with [Father]. SW can confirm that there has been times when the oldest minor child has said to him that she does not want to visit with [Father]. It is imperative that whatever visitation that is awarded to [Father], the oldest child should be given the option if she wants to have a visit with her father, or not. SW can also confirm that since [Father] started his supervised visits the visits have gone well with no concerns.

...

19. Since [Father] started unsupervised visits, the Department has not received any concerns from collaterals or the minor children about these visits until they were suspended due to [Father]'s behaviors. The CFT was given discretion to sanction unsupervised visits for the respondent after he completes his CCA. [Father] has completed his CCA but yet to engage in SAIOP as

recommended, the minor children's therapist is not recommending unsupervised visits at this time. [Father] is engaged in therapy and has been visiting consistently with the minor children. If the Court is inclined to award [Father] unsupervised visits, it is important that he remain sober at all times when the children are in his care. [Father] has a tendency to focus (or fixate) on superficial topics like the minor children's appearance, which is distracting from quality time and potentially causing insecurities in the minor children.

...

25. [Father] continues to reside in Tennessee and he continued to have supervised visits. These occur at the Department every Monday for 2 hours. These have been consistent. There were two cancellations-one due to COVID-19 and one due to [Father]'s work schedule. There are no issues with [Father] at this point. [Father], in his CCA, was recommended to complete intensive outpatient. He completed a program. This was a 48-hour program. Another recommendation was to engage in medication management.

26. [Father] was initially awarded four hours, not two. This was altered due to logistics regarding [Father] traveling from Tennessee and due to the minor child's school schedule. Other issues that have altered visits have been threatening texts to [Mother].

27. [Father] disagreed with recommendations from CCA. [Father] has only completed half of required substance abuse program hours. The family has a significant history of domestic violence Throughout the life of this case [Father] went from unsupervised to supervised, then went to unsupervised again and then back to supervised. [Father] is currently back to supervised because of his behavior. [Father]'s engagement has only been since October of 2021. The oldest minor child exhibits stress when it comes to [Father.] [S]he has asked to not attend some visits. The oldest minor child should have the option

to attend visits, or not. [Father] made no contact with therapist of minor child[.] [T]he therapist reported that it would not be a good idea to engage with [Father]. [Father] has threatened to kill, and to shoot [Mother] when she has the minor children with her, when transporting them to school. [Father] has violated a 50-B. [Father] completed BIP with SPARC.

28. [Mother]’s visits also went from unsupervised, to supervised, to unsupervised during the life of this case. [Father] completed medication management as well. The Department has not drug tested the [Father], just [Mother]. There have been no issues with [Mother] since she finished SAIOP.

...

30. [Father] violated a 50-B on various occasions, not just once.

...

32. During a visit, the youngest, minor child reportedly said to [Father] that he was not a good dad, and that she did not like him. The GAL is recommending supervised visits for [Father] at the Family Visitation Center, due to past behavior, and due to a 50-B filed in October 2021. The minor child A.C. reported to GAL that she is afraid of [Father]. She also told the GAL that she does not want to visit, and that she does not like to go to visits. She said when [Father] gets mad “he screams and yells, and it scares me, and I do not like it.” The minor child’s therapist told the GAL that she is concerned at the minor children’s reaction to [Father].

...

37. Attending church has been on [Father]’s mind. He took a parenting course. He is asking the court for overnights in Tennessee. He is currently engaged in therapy. He had therapy this morning. Additionally, [Father] took a Triple

P parenting class, and he took AIMS through the VA. Further, he took a SAIOP equivalent in Tennessee; but, it was only 48 hours rather than the CCA recommendation of 72 hours. He also attended a course for Drug and Alcohol Education through the AJ Novick Group and obtained a certificate of completion. Throughout this process, [Father] is still seeing the same psychiatrist who manages his medication in addition to attending therapy with his therapist, Hunter D. Cook, LPC-MHSP, with Tennessee Counseling.

38. The Court finds that [Father] has engaged in some services yet that he still exhibits a lack of accountability regarding domestic violence issues. He also appears to have a lack of genuine remorse regarding other issues. [Father] is intelligent/engaging, but his focus is not in what is in the best interest of the minor children. Multiple reports exist that the minor children are afraid of him. The minor children have trauma due to domestic violence with [Father] as perpetrator. [Mother] has “done the work” and has made decisions to protect the minor child.

39. It is in the best interest of the minor child that the Court adopts the recommendations of the department, and GAL, as specified above, with the following modifications:

- a. That the minor children have supervised visits with [Father] for a minimum of 2 hours per week at FVC or through a neutral supervisor paid for by [Father] and that he have a maximum of 6 hours per week with no overnights
- b. That the FVC supervisor needs to be a professional that does professional visitations.
- c. That visits remain in NC.
- d. That the paternal grandmother not be a supervisor at the FVC.
- e. That [Father] not be impaired during visits

and that [Father] not focus on the minor children's appearance.

f. That the minor children not be able to decide whether or not to attend visits as they are very young.

g. That [Father] is to engage in reunification therapy with the minor children.

h. That [Father] not discuss anything related to this case while at visits with the minor children.

40. It is in the best interest of the minor children that [they] be placed in the sole legal and physical custody of [Mother], [], at this time.

The trial court concluded that pursuant to N.C. Gen. Stat. § 7B-906.1(e) it was in the best interest of the children for them to remain in the home of Mother and in her sole legal and physical custody. In addition, the court found pursuant to N.C. Gen. Stat. § 7B-905.1(b) that the minor children shall have supervised visits with Father for a minimum of two hours and a maximum of six hours with no overnight visits. Mother did not appeal. Father filed a timely notice of appeal.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(4) (2021).

III. Issues

Father argues the poor quality of the audio recording prejudiced his ability to appeal.

He also argues certain findings of fact and therefore conclusions of law are

unsupported by clear, cogent, and convincing evidence.

IV. Prejudice Due to Transcript Quality

Father argues that many sections of the hearing transcript are marked as inaudible or indecipherable. He states that these sections were material to the court's ruling and, when paired with the hearing being conducted virtually, "one is hard pressed to believe disagreements in the content of a reconstructed transcript would not be inevitable." In addition, he does not believe that the judge "could confidently settle such a record."

An appellant bears the burden to "commence settlement of the record on appeal, including providing a verbatim transcript if available." *Sen Li v. Zhou*, 252 N.C. App. 22, 27, 797 S.E.2d 520, 524 (2017). "Where the appellant has done all that she can to do so, but those efforts fail because of some error on the part of our trial courts, it would be inequitable to simply conclude that the mere absence of the recordings indicates the failure of appellant to fulfill that responsibility." *Coppley v. Coppley*, 128 N.C. App. 658, 663, 496 S.E.2d 611, 616 (1998).

Father has not demonstrated any efforts to reconstruct the missing information in the transcript, such as seeking an extension of time or requesting notes and statements from any of counsel and the court officers present. *Miller v. Miller*, 92 N.C. App. 351, 354, 374 S.E.2d 467, 469 (1988). With no evidence of any action taken to reconstruct the transcript, Father has not shown reasonable efforts to remedy any deficiencies.

Additionally, “unavailability of a verbatim transcript does not automatically constitute error. To prevail on such grounds, a party must demonstrate that the missing recorded evidence resulted in prejudice. General allegations of prejudice are insufficient to show reversible error.” *State v. Quick*, 179 N.C. App. 647, 651, 634 S.E.2d 915, 918 (2006). In addition, “violation of the statute [requiring recording] does not relieve defendant of her burden of complying with App. R. 9(a)(1)(v) and showing prejudicial error.” *Miller*, 92 N.C. App. at 354, 374 S.E.2d at 469 (first citing an earlier version of N.C. R. App. P. 9(a)(1)(e); and then citing *In re Peirce*, 53 N.C. App. 373, 281 S.E.2d 198 (1981)).

Father does not assert specific allegations of prejudice, just “[g]eneral allegations” based on indecipherable sections of the transcript. *Quick*, 179 N.C. App. at 651, 634 S.E.2d at 918. Father has not demonstrated prejudice or how deficiencies would have changed the result. In contrast, over 130 pages of transcription are available. If Father had asserted reasonable efforts to reconstruct indecipherable sections, the transcript and record may have been better settled.

V. Findings of Fact

Father argues Findings of Fact 19, 25, 28, and 37, which address Father’s completion of SAIOP and medication management, are unclear, contradictory, or otherwise unsupported by competent evidence. He also argues Findings of Fact 38 and 39 are contradictory to other facts on the record including Facts 34 and 37.

A. Standard of Review

“Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and the findings support the conclusions of law. If the trial court’s findings of fact are supported by any competent evidence, they are conclusive on appeal.” *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d. 155, 161 (2004).

B. Analysis

1. Findings of Fact 19, 25, 28, and 37

Findings of fact 19, 25, 28 and 37, when read together, describe Father’s history with SAIOP. Father asserts the Court’s order that Father complete SAIOP is in contrast with the fact that he has already completed SAIOP and as such is unwarranted and redundant. In addition, to the extent that the Court based its custody order on Father’s engagement with SAIOP, he asserts such an order is erroneous because it is based at least in part on Father’s failure to engage in a program that he has completed. The social worker testified to the following at trial:

[DSS ATTORNEY]: Okay. The Respondent Father did complete a Comprehensive Clinical Assessment; is that right?

[DSS SOCIAL WORKER]: That’s correct.

[DSS ATTORNEY]: And there was a recommendation for him to complete intensive outpatient program?

[DSS SOCIAL WORKER]: Yes.

[DSS ATTORNEY]: And I believe that you have been provided with information that [Father] completed a

substance abuse program through AIMS?

[DSS SOCIAL WORKER]: That is correct.

[DSS ATTORNEY]: And have you had an opportunity to review that program?

[DSS SOCIAL WORKER]: I have, yes.

[DSS ATTORNEY]: And to your knowledge does that program meet the requirements or satisfy the Department that the Respondent Father has completed the requirements of the recommended substance abuse treatment?

[DSS SOCIAL WORKER]: The recommendations from October Road w[ere] for him to complete 72 hours SAIOP program. It actually stated in our recommendation that he can do it at his state of residence so it doesn't really have to be at October Road. He did complete, this was a 48-hour drug and alcohol program. The agency that he did it through we actually certified through substance abuse treatment counselors too as well so for now that is what he has to do, yes. [sic]

[DSS ATTORNEY]: And, Mr. Boakye-Ansah, is the – was there also a recommendation for the Respondent Father to engage in individual counseling?

[DSS SOCIAL WORKER]: Yes. Not on the, not on the current CCA from October Road. The current CCA from October Road actually had him to do SAIOP and then medication management. He's actually (indecipherable) medication management so all he had to do was the SAIOP.

[DSS ATTORNEY]: Okay. At this time are there additional services that [Father] needs to complete to address the orders of the Court or the elements of his current case plan?

[DSS SOCIAL WORKER]: Not to the knowledge of the

Department I understand.

Later, during Father's testimony, he described the issues he had acquiring services through October Road, the North Carolina facility DSS had recommended:

[MOTHER'S ATTORNEY]: Sir, explain to us what took you so long to have your CCA done. You engaged in October of 2021; right?

[FATHER]: Correct. So we – that was ordered and then there was a big, big giant snafu. George went on family leave for a month. The person that was taking his place, Craig, he was just a total, total mess-up. No one could tell me anything. I tried. And then when George got back we were trying to do, you know, get October Road. When October Road finally came involved they said, oh, we can't do anything because you're a Tennessee resident, and then that had to be worked out that they couldn't do any services for me but they could at least do the CPE, but they wouldn't take my insurance and I had to pay for it out of pocket. That is why it took so long. It was a big mess. I tried different places here in Tennessee. They didn't know what I was talking about. The only place I could find to do it I had to check myself in for seven days and that wasn't (indecipherable) so I did make the efforts to get that done, you know.

DSS social worker's testimony was based on his professional knowledge and experience and provided competent, clear, and convincing evidence. According to him, October Road recommended for Father to complete a 72-hour SAIOP through them or within his state of residence. The social worker noted, the agency in Tennessee, through which Father completed the course, was certified by DSS and met the necessary requirement, even though it was a 48-hour program. According to the social worker, Father has completed all necessary services and his certification of

completion was entered into evidence. Based upon this testimony, Finding of Fact 19 asserting “[t]he respondent father has completed his CCA but yet to engage in SAIOP as recommended” is not supported by competent, clear, and convincing evidence and is vacated.

2. Findings of Fact 38 and 39

Findings of Fact 38 and 39 summarize the court’s concern that Father lacks accountability and remorse concerning the domestic violence issues, its impact on the children, and requires Father to continue with supervised visits. Father points to Finding of Fact 34, in which the Court recognized Father’s testimony and found it credible and relevant, and Finding of Fact 37, which highlighted Father has taken the recommended classes as “contradictory” to the summary and recommendations in Facts 38 and 39.

The DSS social worker testified to the totality of Father’s behavior and interactions with Mother and the minor children. On cross examination by Mother’s attorney, DSS testified concerning times that Father had violated the DVRO with threatening calls and messages.

[MOTHER’S ATTORNEY]: Tell me what the issues of the text messages were.

[DSS SOCIAL WORKER]: Where the Respondent Father was threatening the Respondent Mother about, you know, say that he was going to make sure that she doesn’t get the kids and, you know (indecipherable).

...

[MOTHER'S ATTORNEY]: Throughout 2021; right?

[DSS SOCIAL WORKER]: That is correct, yes.

[MOTHER'S ATTORNEY]: She also shared with you audio recordings that dad would call and leave on her phone; did she not?

[DSS SOCIAL WORKER]: Yeah, she did, yes.

[MOTHER'S ATTORNEY]: And that was during a period of time that she had a domestic violence restraining order in place; was it not, sir?

[DSS SOCIAL WORKER]: That is correct, yes.

The social worker also discussed the repeated need to modify Father's visitation from unsupervised to supervised due to concerns with his behavior.

[MOTHER'S ATTORNEY]: So there have been two periods of time where the Department has had to back off of dad's unsupervised contact; correct?

[DSS SOCIAL WORKER]: That is correct.

[MOTHER'S ATTORNEY]: And currently we are back to supervised based on dad's behavior; is that correct?

[DSS SOCIAL WORKER]: That is correct, yes.

[MOTHER'S ATTORNEY]: And dad's engagement we could say has only been since October of 2021; correct?

[DSS SOCIAL WORKER]: That is correct.

Mother's attorney further questioned the social worker concerning the children's feelings surrounding their Father as well as their therapists'

recommendations:

[MOTHER'S ATTORNEY]: And you're aware that the children reported that they're afraid of their father; correct?

[DSS SOCIAL WORKER]: I believe . . . that oldest child has additional stress when it comes to Respondent Father and to the extent that the oldest child even asked, you know, not to even attend some visits and that (indecipherable) is that if (indecipherable) the oldest child should have the option, you know, to decide if she wants to attend visits or not.

[MOTHER'S ATTORNEY]: And do you know if dad has had any communication with the children's therapist?

[DSS SOCIAL WORKER]: No. Initially when we were trying to get him involved, the therapist actually decided that it would not be in the best interest of the children based on, you know, the recommendation (indecipherable) text messages and other behaviors that the Respondent Father exhibited, the therapist thought it would not be a good idea to actually engage with (indecipherable) Respondent Father (indecipherable).

[MOTHER'S ATTORNEY]: And so has that changed as we sit here today is now his therapist willing at this point to communicate with dad?

[DSS SOCIAL WORKER]: Not necessarily about that at this point.

[MOTHER'S ATTORNEY]: Just so we're clear, when we're talking about dad's behavior, he has threatened to kill the Respondent Mother; has he not?

[DSS SOCIAL WORKER]: He has.

. . .

[MOTHER'S ATTORNEY]: He's threatened to shoot her when she has the children with her when she's transporting them to school; right?

[DSS SOCIAL WORKER]: I can recollect that he sa[id] that, yes.

On re-cross examination by the DSS attorney, the social worker testified Father illegally violated the DVRO even after completing the recommended programs, which was a significant concern to DSS:

[DSS ATTORNEY]: (Inaudible) do you recall when that program was completed?

[DSS SOCIAL WORKER]: I believe that, if I have my time line right, he had completed the Batterer's Intervention Program and after that we have an issue with the threatening text messages with Respondent Mother.

[DSS ATTORNEY]: And after completing the Batterer's Intervention Program is that when – or let me rephrase that. Was [Father] charged with the misdemeanor violation of the protective order after completing the Batterer's Intervention Program?

[DSS SOCIAL WORKER]: That is correct, yes.

The social worker testified similarly during the re-cross examination by the Guardian *Ad Litem's* attorney:

[GAL's ATTORNEY]: Sir, does the Respondent Father's repeated violations of the 50B demonstrate to you that he's applied whatever he learned in the SPARC class?

[DSS SOCIAL WORKER]: That was the previous concern for it because he got actually finished the program and then he had these behaviors so that was a huge red flag for us.

[GAL's ATTORNEY]: Does that remain a red flag for the Department?

[DSS SOCIAL WORKER]: At this point, yeah, I think it continues to be (indecipherable) so, yes.

While certain portions of testimony were unobjected to hearsay, the DSS social worker's testimony was predominately based on knowledge and experience and provided competent, clear, and convincing evidence to support the trial court's findings of fact. While Father has taken required classes and his testimony was deemed relevant, material, and admissible, the social worker's testimony and records provide competent evidence that he is not fully employing the skills presented and engages in illegal and alarming behaviors. *In re J.C.S.*, 164 N.C. App. at 106, 595 S.E.2d. at 161.

Nothing demonstrates Father's remorse for his prior actions. His testimony reveals denial of domestic violence issues:

[MOTHER'S ATTORNEY]: Sir, do you acknowledge that you have a history of domestic violence with [Mother]?

[FATHER]: I do not.

[MOTHER'S ATTORNEY]: So do you deny the allegations that [Mother] has made against you and that have been entered in various court findings finding that you've committed acts of violence against [Mother]?

[FATHER]: I've never been charged with any kind of – I've never been charged – excuse me – convicted of any acts of domestic violence, no.

[MOTHER'S ATTORNEY]: Would you admit that you

have threatened to shoot [Mother]?

[FATHER]: That has already been covered in the adjudication, that was covered also in the State of Tennessee.

THE COURT: [Father], I need you to just answer the question. Your attorney can object if she sees it is an appropriate determination to make but it's your job to just answer the questions asked. You can ask that again if you would like, [Mother's Attorney].

[MOTHER'S ATTORNEY]: Thank you, Your Honor.

[MOTHER'S ATTORNEY]: [Father] would you acknowledge that you have threatened to shoot [Mother]?

[FATHER]: Yes.

[MOTHER'S ATTORNEY]: You have threatened to shoot [Mother]?

[FATHER]: Yeah.

[MOTHER'S ATTORNEY]: And you have actually testified that you have threatened to shoot [Mother] correct?

[FATHER]: Yes.

[MOTHER'S ATTORNEY]: Remind us the circumstances of why you threatened to shoot [Mother]?

[FATHER]: I believe the, it was an argument and it wasn't – it wasn't like, you know, there was any kind of – we were having an argument and I believe in her words it was I threatened to take her out back and put a cap in her soul in her statement that she always makes.

[MOTHER'S ATTORNEY]: Do you recall testifying that you threatened to shoot [Mother] was the question I've already asked you, do you recall that?

[FATHER]: Okay. Then, yes.

MOTHER'S ATTORNEY]: What exactly did you say to [Mother] when you threatened to shoot her?

[FATHER]: Ma'am, I have no idea.

[MOTHER'S ATTORNEY]: But you remember that you did it?

[FATHER]: If she says that I did, I do have some memory of it so, yeah. It's something that's been, went over numerous, numerous times.

[MOTHER'S ATTORNEY]: And you acknowledge that you've done that on more than one occasion?

[FATHER]: I acknowledge that I definitely did it on one occasion, yes.

Based on the testimony of both the social worker and Father, the record supports the findings that: (1) Father lacks accountability and remorse concerning domestic violence issues and its impact on the children; and, (2) Father's need to continue with supervised visits.

VI. Conclusions of Law

Father argues that Conclusion of Law 10 based on Finding of Fact 47, both which describe Father's visitation rights, are unclear, ambiguous, or otherwise erroneous and error.

A. Standard of Review

"Appellate review of a permanency planning order is limited to whether there

is competent evidence in the record to support the findings and the findings support the conclusions of law. If the trial court's findings of fact are supported by any competent evidence, they are conclusive on appeal." *In re J.C.S.*, 164 N.C. App. at 106, 595 S.E.2d. at 161.

B. Analysis

There is a clerical error in Finding of Fact 47 and Conclusion of Law 10 which both describe the Father's visitation rights. The reference to N.C. Gen. Stat § 7B-905.1(b) (2021) in both sections is scrivener's error. That statute applies only to juveniles in the custody of the state. The record demonstrates the court's clear consideration and decision to place the children into the physical and legal custody of Mother.

N.C. Gen. Stat § 7B-905.1(c), the correct statute, requires the court to set a minimum frequency, length of visit, and supervision requirements. "Reference to an inapposite statute in the judgment...did not violate that judgment." *State v. McKinnon*, 35 N.C. App. 741, 744, 242 S.E.2d. 545, 547 (1978). Despite citing to the incorrect statute, the court followed the correct statute and set out a detailed plan, which contains all necessary considerations required by N.C. Gen. Stat § 7B-905.1(c). No prejudice is shown. Father's objection is overruled.

VII. Conclusion

Father failed to attempt to reconstruct the transcript, nor provided anything other than "broad allegations" of prejudice. *Miller*, 92 N.C. App. at 354, 374 S.E.2d

at 469; *Quick*, 179 N.C. App. at 651, 634 S.E.2d at 918. His failure is inconsistent with the requirements of N.C. R. App. P. 9(a)(1)(e), and the expectation for explicit examples of what prejudice occurred and how it impacted the result of the decision appealed from. *Miller*, 92 N.C. App. at 354, 374 S.E.2d at 469. Father's argument of prejudice due to transcription issues is without merit.

When the trial court's findings of fact are supported by "competent evidence, they are conclusive on appeal." *In re J.C.S.*, 164 N.C. App. at 106, 595 S.E.2d at 161. Testimony from the social worker shows Father has completed all necessary services required and his certification of completion was entered into evidence. Based upon this testimony, the trial court's statement in Finding of Fact 19, "[t]he respondent father has completed his CCA but yet to engage in SAIOP as recommended" is not supported by competent, clear, and convincing evidence. As a result, Conclusion of Law 12, concluding "respondent father shall engage in SAIOP," is vacated.

While Father has taken required classes and his testimony was deemed relevant and competent, the social worker's testimony and records show Father engaged in illegal and alarming behaviors, which support Finding of Facts 38 and 39. *Id.*

References to N.C. Gen. Stat § 7B-905.1(b) in both Finding of Fact 47 and Conclusion of Law 10 are clearly scrivener's errors. *McKinnon*, 35 N.C. App. at 744, 242 S.E.2d at 547. Despite citing to the incorrect statute, the court set a detailed plan that contains all the necessary considerations required by the controlling

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statute, N.C. Gen. Stat § 7B-905.1(c). No prejudice therein is shown. This cause is remanded for correction of the clerical errors. *It is so ordered.*

AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judge ZACHARY and Judge STADING concur.

Report per Rule 30(e).