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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1045

Filed 21 November 2023

Onslow County, No. 20 JA 81

IN THE MATTER OF: L.L.

Appeal by respondent-mother from orders entered 22 August 2022 by Judge James W. Bateman, III, in Onslow County District Court. Heard in the Court of Appeals 9 November 2023.

Mercedes O. Chut for Respondent-Appellant Mother.

Fox Rothschild LLP, by Nathan W. Wilson and Troy D. Shelton, for Appellees Daniel and Jessica Hall.

North Carolina Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche and Brittany T. McKinney, for guardian ad litem.

PER CURIAM.

Respondent-Appellant Mother appeals from the trial court's permanency planning order that eliminated reunification from the permanent plan and awarded custody of L.L. ("Liam")¹ to his non-relative foster parents. Because the trial court

¹ Pseudonyms are used to protect the juvenile's identity and for ease of reading. See N.C. R. App. P. 42(b).

failed to make sufficient findings to support its determinations, we vacate and remand.

I. Factual and Procedural Background

In May 2020, Mother and her husband, Liam’s father,² took one-month-old Liam to the Naval Hospital in Onslow County when he appeared to have trouble breathing. Liam arrived with bruises on his head and face, a fracture to his right arm, nine broken ribs, and a skull fracture. Liam was sedated, placed on a mechanical ventilator, and airlifted to UNC Hospital, where he suffered multiple seizures over two days and remained on the ventilator for nearly a week. UNC staff observed retinal hemorrhages indicating head trauma. Subsequent diagnostic tests revealed an additional fracture to Liam’s left leg, with accompanying soft tissue damage and swelling; fractures to his right shoulder and several ribs that were already healing; and an additional skull fracture, with associated cranial hemorrhages and swelling.

On 5 June 2020, the Onslow County Department of Social Services (“DSS”) filed a juvenile petition alleging that Liam was an abused and neglected juvenile. The petition alleged that Liam’s injuries and clinical presentation were “most consistent with a medical diagnosis of abusive head trauma and non-accidental trauma.” The petition further alleged that the parents’ “stated history of trauma” did

² Liam’s father is not a party to this appeal.

“not explain the severity or extent” of his injuries. As the parents indicated they were the sole caretakers for Liam, DSS sought and obtained nonsecure custody of Liam that same day.

Mother entered into a case plan with DSS on 16 July 2020, which required she complete recommended parenting classes and demonstrate learned skills, complete a comprehensive clinical assessment for mental health, and participate in Liam’s ongoing medical appointments. Mother provided several potential relative placements in Georgia for Liam, including with Mother’s father. As relative placements had not yet been approved, Liam was placed with a foster family (“the Halls”) following his discharge from the hospital.

The DSS report prepared prior to the adjudication and disposition hearing noted that Mother was compliant with her case plan. The report also noted that Mother had not yet fully addressed the concerns that led to Liam being taken into DSS custody and identified a pending criminal charge for felony child abuse and accompanying criminal investigation of the events that led to Liam’s injuries.

Following her arrest and subsequent pretrial release, Mother relocated to Georgia and resided with her mother. In March 2021, she gave birth to another child, who was placed into foster care in Georgia because of the pending North Carolina criminal charge.

After an adjudication and disposition hearing on 22 September 2021, the trial court adjudicated Liam an abused and neglected juvenile based on the severe,

unexplained injuries he suffered while in his parents' care, as alleged in the juvenile petition. The parents did not contest adjudication and offered no evidence. In its dispositional findings, the court found that Liam had been diagnosed with Cerebral Palsy and attended physical therapy, occupational therapy, and speech therapy twice a week. The court found that Liam will have "substantial needs for the rest of his life" due to the severity of the injuries he suffered. The court also found that two ICPC assessments were completed and subsequently denied for both the maternal grandmother and the maternal grandfather. The court ordered Mother to continue complying with her case plan and allowed her a minimum of two hours of supervised visitation per month.

The initial permanency planning hearing was held on 8 December 2021. The court found that Mother was making adequate progress on her case plan, having completed an approved parenting class in Georgia and maintaining regular video visitation with Liam. The court ordered Mother to attend Liam's "ongoing medical appointments to understand the impact of his injuries [to] his long-term development." The court set a primary permanent plan of reunification with a secondary plan of custody with a court-approved caretaker.

In April 2022, Georgia provided a status update on the ICPC assessment of the maternal grandfather, noting that his home was approved as a placement in January 2022. However, as he had subsequently moved, his new home needed to be assessed.

Liam's placement and Mother's visitation remained unchanged following the 5

May 2022 permanency planning hearing, and Liam’s permanent plan remained substantively the same, with the primary permanent plan remaining reunification and the secondary plan being custody with a relative or court-approved caretaker. The court also decreed that DSS would “be allowed” to move Liam into his maternal grandfather’s home following an approved ICPC assessment from Georgia.

The next permanency planning hearing was held on 7 June 2022. The Halls were scheduled to relocate to Florida on military orders, so the trial court approved “an extended visit” with Liam in Florida until the next hearing. The court modified the permanent plan to a primary plan of guardianship or custody and a secondary plan of reunification.

The assessment on the maternal grandfather’s home was completed, and the home was deemed appropriate for placement on 3 June 2022. DSS received the ICPC assessment on 13 July 2022.

The third permanency planning hearing was held on 1 August 2022. In the subsequent order, the trial court found that Mother was unfit and had acted inconsistently with her constitutional right to parent Liam. The court also found that it was in Liam’s best interests that custody be awarded to the Halls. The court awarded the Halls legal and physical custody of Liam and ordered the matter be transferred to a Chapter 50 civil custody proceeding. Mother appeals.

II. Jurisdiction

Mother concedes that her appeal of the permanency planning order is

untimely. The trial court's order was entered on 22 August 2022 and was served on 24 August 2022. Respondent's notice of appeal should have been filed on or before 23 September 2022. *See* N.C. Gen. Stat. § 7B-1001(b) (providing that notice of appeal "shall be made within 30 days after entry and service of the order"). However, her notice of appeal was not filed until 28 September 2022.

Mother also concedes that her notice of appeal fails to indicate her intent to appeal the Chapter 50 civil custody order entered in accordance with the trial court's decree. However, she appears to argue that such a designation was not required, as there does not appear to be a separate civil custody order in the civil file. Because Appellees argued in their brief that her failure to specifically appeal the civil custody order rendered her appeal moot, Mother filed a petition for writ of certiorari seeking this Court's review of both the permanency planning order and the "identical" civil custody order.

Attached to her petition for writ of certiorari is an affidavit from Mother's trial counsel, which indicates that both the untimely filing of the notice of appeal and the failure to include the civil order in the notice of appeal were due to her ignorance of both the Rules of Appellate Procedure and the appeals process for Chapter 7B cases. While an untimely notice subjects an appeal to dismissal, this Court may allow petitions for writ of certiorari "to permit consideration of their appeals on the merits so as to avoid penalizing [r]espondents for their attorneys' errors." *In re I.T.P-L*, 194 N.C. App. 453, 460, 670 S.E.2d 282, 285 (2008). Moreover,

a mistake in designating the judgment, or in designating the part appealed from if only a part is designated, should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be *fairly inferred* from the notice and the appellee is not misled by the mistake.

In re A.E., 379 N.C. 177, 183 n.4, 864 S.E.2d 487, 494 n.4 (2021) (citation omitted).

Under Chapter 7B, a trial court, placing custody of the child “with a parent or other appropriate person” must “determine whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded” under a Chapter 50 civil custody order. N.C. Gen. Stat. § 7B-911(a) (2021). If the court determines such action is appropriate, it “shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.” N.C. Gen. Stat. § 7B-911(b). In either case, there is no need for the court to “enter two different orders. The trial court may enter one order for placement in both the juvenile file and the civil file[.]” *In re A.S.*, 182 N.C. App. 139, 142, 641 S.E.2d 400, 403 (2007). The record indicates that is what was done in this case. Mother appealed from the order entered in the juvenile case, and it can be fairly inferred that she also intended to challenge any civil custody action resulting from the juvenile order. As the civil custody action was initiated with the original juvenile order, Appellees could not be prejudiced by Mother’s trial counsel’s failure to reference the identical order under the civil file number in the notice of appeal.

Thus, in our discretion we allow Mother’s petition for writ of certiorari to

review the order entered in both the juvenile case under file number 20 JA 81 and the civil custody case under file number 22 CVD 2299.

III. Analysis

Mother argues that the trial court erred in ceasing reunification as a permanent plan and awarding custody of Liam to his foster parents.

A. Standard of Review

“This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court’s conclusions, and whether the trial court abused its discretion with respect to disposition.” *In re C.M.*, 273 N.C. App. 427, 429, 848 S.E.2d 749, 751 (2020) (quoting *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007)).

B. Constitutionally Protected Parental Status

Mother first challenges the court’s determination that she was unfit or acted inconsistent with her constitutionally protected status as a parent. She contends that neither the court’s findings of fact nor the record evidence supports such a determination. We disagree.

A parent’s interest “in the companionship, custody, care, and control of his or her children[.]” prevents a trial court from granting custody of a child to a nonparent unless the parent has forfeited his or her constitutionally protected status. *In re N.Z.B.*, 278 N.C. App. 445, 449, 863 S.E.2d 232, 236 (2021). A trial court’s

determination “that a parent’s conduct is inconsistent with his or her [constitutionally] protected status” must be based on clear and convincing evidence. *In re D.A.*, 258 N.C. App. 247, 249, 811 S.E.2d 729, 731 (2018) (citation omitted). “The trial court’s findings of fact are conclusive on appeal if unchallenged, or if supported by competent evidence in the record[.]” *In re I.K.*, 377 N.C. 417, 422, 858 S.E.2d 607, 611 (2021) (citations omitted). We review the trial court’s determination *de novo*, considering the matter anew and freely substituting our judgment for that of the lower court. *In re D.A.*, 258 N.C. App. at 249, 811 S.E.2d at 731.

Here, the trial court made multiple, relevant findings:

7. That [Mother is] unfit and ha[s] acted inconsistently with [her] paramount parental rights, in that:

...

b. [Liam] originally presented to Naval Hospital, Camp Lejeune for trouble breathing; but it was discovered by medical professionals there that he had multiple serious injuries.

c. That at all relevant times prior to the discovery of those injuries, [Liam] was in the exclusive care, custody, and control of the Mother parents.

d. That the injuries included numerous broken bones in different states of healing.

e. [Liam] had multiple broken ribs and a leg fracture.

f. [Liam] also had severe bruising about his head and body and was below his birth weight at the time of admission.

g. [Liam] had to be placed on a respirator and airlifted to UNC Chapel Hill.

h. The parents were and are unable to provide any plausible explanation as to the cause of the injuries.

i. The injuries were the result of non-accidental trauma.

j. The injuries have resulted in severe developmental delays for [Liam] and have created lifelong serious medical issues including cerebral palsy.

k. [Liam] is in need of, and will continue to be in need of, weekly speech, occupational, and physical therapy as a result of his injuries.

l. Both parents were arrested on felonies related to the injuries, on or about March 4, 2022.

m. [Mother] bonded out and returned to Georgia where she is originally from.

...

o. [Liam] was previously adjudicated abused and neglected by this [c]ourt.

p. [Mother was] previously ordered by this [c]ourt to participate in [Liam's] numerous medical and therapy appointments for the purpose of familiarizing [herself] with [Liam's] extreme medical needs and treatments.

q. [Mother has not] participated as ordered in these appointments[.]

Mother challenges the majority of these findings. She first argues that the use of the present tense in finding 7.h.—that the parents were and *are* unable to provide a plausible explanation for Liam's injuries—is unsupported by the evidence. She also contends that the trial court's "emphasis" on this topic is suspect, as her case plan did not require she provide an explanation for Liam's injuries. However, both the GAL

report and the DSS report prepared for the hearing, which were both admitted into evidence, noted concerns due to the parents still not providing a clear explanation for Liam's injuries. As discussed below, this finding and the supporting evidence are relevant to the determination of parental fitness, regardless of whether the case plan required such a disclosure. Thus, Mother's argument is meritless.

Mother argues that findings 7.b. through f. and 7.i. "improperly beef up" several of the findings from the adjudication order. She contends the adjudication findings "cannot be relitigated" under the doctrine of collateral estoppel. Collateral estoppel prevents a court "from issuing findings of fact and conclusions of law contrary to the previous disposition." *Simms v. Simms*, 195 N.C. App. 780, 782, 673 S.E.2d 753, 755 (2009). Moreover, the doctrine only applies where the "issues to be concluded" are "the same as those involved in the prior action[.]" *Id.* (quoting *King v. Grindstaff*, 284 N.C. 348, 358, 200 S.E.2d 799, 806 (1973)). The descriptions of Liam's injuries in the challenged findings 7.d., e., f., and i., as well as the difference in how the injuries were reported to DSS, as Mother argues in regard to finding 7.b., do not contradict the findings Mother isolated from the adjudication order.

We also reject Mother's assertion that the differences highlighted in finding 7.c. or i. contradict the findings in the adjudication order or implicate collateral estoppel. While we acknowledge the difference between the parents being the "primary caretakers," as found in the adjudicatory findings, versus the challenged finding 7.c. that Liam "was in the exclusive care, custody and control of the Mother

parents,” as well as the differences between the adjudicatory finding that Liam’s injuries were “most likely sustained as a result of non-accidental trauma[,]” and the certainty that the injuries “were the result of non-accidental trauma” in challenged finding 7.i., these differences do not amount to a contradiction between the two orders. The findings in the adjudication order were based on a determination of the allegations in the juvenile petition, and at the time it was filed, DSS had not completed its investigation. In the time between the entry of that order and the permanency planning hearing, Mother and Liam’s father had been charged with child abuse related felonies, and Liam’s medical team had determined his injuries were, in fact, caused by non-accidental trauma.

Moreover, the issue to be concluded in this challenged portion of the permanency planning order—whether Mother is unfit or acted contrary to her constitutional parental rights—is not the same as the issue of whether Liam should be adjudicated as having the status of an abused and neglected juvenile, as concluded in the adjudication order. *See In re A.B.*, 272 N.C. App. 13, 17, 844 S.E.2d 368, 371 (2020). Thus, the doctrine of collateral estoppel does not preclude variation in the findings between the two orders.

Mother also challenges finding of fact 7.l., arguing that the wording is misleading because she was only charged with one felony. As the evidence supports the finding, Mother’s argument is without merit.

Mother contends that findings 7.j., and k., and the portion of finding 7.p.

describing Liam’s needs as “extreme” are unsupported by the evidence. She argues that Liam’s medical needs were not “extreme” at the time of the permanency planning hearing, that his long-term prognosis was unknown due to his young age, and that his needs had already made a dramatic improvement. The evidence is clear that Liam was diagnosed with cerebral palsy, and the neurologist’s letter admitted at the hearing noted the condition includes developmental delay as well as possible intellectual delays. The neurologist also noted that Liam would “always” be at risk for seizures, and he would require consistent monitoring at home and in clinic for seizure activity. At the time of the hearing, Liam’s motor skills were still impaired by the effects of his injuries, as he did not have full use of his right hand and arm and needed braces to walk. Liam’s neurologist recommended “extensive” physical, occupational, and speech therapy, which he would need on a consistent basis. Thus, the trial court’s findings are supported by the evidence.

Mother also contends that the remainder of finding of fact 7.p. and finding 7.q. are unsupported by the evidence. She argues that she did attend Liam’s medical appointments before she returned to Georgia, but there is no evidence to support her assertion. The evidence indicates that she received “weekly email correspondences from the placement providers regarding [Liam’s] ongoing medical treatment, upcoming medical appointments, and developmental milestones.” However, despite the trial court repeatedly ordering Mother to attend the appointments so she could “understand the impact” of the injuries Liam suffered and learn how to properly care

for him, there is no evidence that she attended any of them. Thus, Mother's arguments are overruled.

In her final challenge to the findings of fact, Mother contends that findings 7.a. through q. "do not present an accurate narrative of the case." She asserts the court's findings "improperly ignore material evidence about [her] progress on her case plan[.]" However, Mother's arguments are merely an attempt to have this Court reweigh the evidence, which we cannot do. *In re I.K.*, 377 N.C. 417, 426, 858 S.E.2d 607, 613 (2021).

Having concluded that the challenged findings of fact are adequately supported by competent evidence, we now consider the trial court's determination that Mother was unfit and acted inconsistently with her constitutional parental rights. Though the trial court styled its determination as a finding of fact, it is a conclusion of law, and we review it as such. *In re B.R.W.*, 381 N.C. 61, 82, 871 S.E.2d 764, 778–79 (2022).

Mother argues that the trial court "focused almost exclusively on the prior adjudication . . . and ignored [her] progress on her case plan[.]" though she also acknowledges the "one factor the court emphasized" was her failure to attend Liam's medical appointments. She dismisses her failure to comply with the trial court's numerous orders as "too trivial to impact [her] constitutional rights[.]" and contends the court made no findings that her failure to attend the appointments impacted her fitness as a parent. She further argues that her constitutionally protected status

cannot be negated absent “a finding of intentional, voluntary conduct.”

Our Supreme Court recently acknowledged that a respondent’s substantial compliance with a case plan is “relevant to the issue of parental fitness” but “a lack of fitness is only one of the means by which a parent may act inconsistently with her constitutionally protected status as a parent[.]” *In re B.R.W.*, 381 N.C. 61, 87, 871 S.E.2d 764, 782 (2022). “[A]bandonment, neglect, and abuse” all constitute conduct inconsistent with the protected parental status. *David N. v. Jason N.*, 359 N.C. 303, 307, 608 S.E.2d 751, 754 (2005).

[O]ther types of conduct, *which must be viewed on a case-by-case basis*, can rise to this level so as to be inconsistent with the protected status of natural parents. For that reason, there is no bright line rule beyond which a parent’s conduct meets this standard; instead, we examine each case individually in light of all of the relevant facts and circumstances and the applicable legal precedent.

In re B.R.W., 381 N.C. at 82, 871 S.E.2d at 779 (citations omitted).

While the trial court “heard no evidence” regarding Mother’s guilt on her criminal charge, as noted above, the evidence in this case indicates that Liam was abused and neglected while in Mother’s care. Even if she did not inflict the abuse, the numerous injuries in various states of healing indicate that she at least was negligent by failing to protect Liam from the abuse. Moreover, Mother failed to provide any other explanation for Liam’s injuries, and she continuously ignored the trial court’s orders to attend Liam’s appointments. Though she attempts to excuse her inability to comply, Mother’s failure to attend even one of Liam’s six weekly

therapies or any other medical visit, either before or after she moved to Georgia, can be categorized as nothing other than intentional and voluntary.

Additionally, the case Mother relies upon for her argument that her noncompliance with the court's order was "too trivial to impact [her] constitutional rights" is inapplicable to the facts before us. In *Rodriguez v. Rodriguez*, this Court determined that a prior adjudication of dependency was insufficient to establish that the mother acted in a manner inconsistent with her parental status, as the trial court's findings failed to indicate the mother had "voluntarily engaged in" inconsistent conduct. *Rodriguez v. Rodriguez*, 211 N.C. App. 267, 278–79, 710 S.E.2d 235, 243 (2011). Instead, the prior adjudication of dependency suggested a lack of any engagement, as opposed to an adjudication of neglect or abuse. *Id.* at 279, 710 S.E.2d at 243. The only findings related to affirmative actions by the mother included her frequent moves following her husband's death and her short-temperedness, which made her prone to raising her voice in anger. *Id.* Here, not only is there an underlying adjudication of abuse and neglect, but Mother's noncompliance with the court's orders cannot be deemed "too trivial to impact [her] constitutional rights[.]" especially given the injuries Liam suffered and the care he will require because of them.

Accordingly, we conclude that the trial court did not err in concluding that Mother acted in a manner inconsistent with her protected parental status.

C. Cessation of Reunification Efforts

Mother argues that the trial court failed to make sufficient findings to support ceasing reunification efforts. We agree.

Mother first contends that the trial court failed to make findings regarding “[w]hether it is possible for the juvenile to be placed with a parent within the next six months and, if not, why such placement is not in the juvenile’s best interests.” N.C. Gen. Stat. § 7B-906.1(e)(1) (2021). “The trial court’s findings must explain ‘why [Liam] could not be returned home immediately or within the next six months, and why it is not in [his] best interests to return home.’” *In re J.H.*, 244 N.C. App. 255, 273, 780 S.E.2d 228, 241 (2015) (quoting *In re I.K.*, 227 N.C. App. 264, 275, 742 S.E.2d 588, 595–96 (2013)). The permanency planning order contains no mention of Liam’s placement with Mother within the six months following the order. Appellees contend finding of fact 8.l. is sufficient to support such a determination: “At least six months has passed since the [c]ourt identified custody with a court-approved caretaker as a permanent plan.” However, they cite no support for their argument, and we find it unconvincing.

Mother next contends that the trial court failed to make the findings required under N.C. Gen. Stat. § 7B-906.2(b) or (d). During permanency planning hearings, “[r]eunification shall be a primary or secondary plan unless,” *inter alia*, “the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety.” N.C. Gen. Stat. § 7B-906.2(b) (2021). These findings must “demonstrate the degree of success or failure

toward reunification,” and consider:

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

N.C. Gen. Stat. § 7B-906.2(d) (2021).

Although “use of the actual statutory language [is] the best practice, the statute does not demand a verbatim recitation of its language.” Instead, “the order must make clear that the trial court considered the evidence in light of whether reunification would be futile or would be inconsistent with the juvenile’s health, safety, and need for a safe, permanent home within a reasonable period of time.”

In re L.E.W., 375 N.C. 124, 129–30, 846 S.E.2d 460, 465 (2020) (quoting *In re L.M.T.*, 367 N.C. 165, 167–68, 752 S.E.2d 453, 455 (2013)). While “[a]n order may implicitly cease reunification efforts if the order’s effect is the cessation of reunification efforts[,]” the court must still make findings of fact sufficient to support such a determination. *In re S.D.*, 276 N.C. App. 309, 324, 857 S.E.2d 332, 343 (2021).

Here, the trial court at least minimally met the considerations of subsection 7B-906.2(d)(1). The finding that Mother had never attended any of Liam’s medical appointments, as required by her case plan, demonstrates that Mother was not actively complying with her case plan within a reasonable time. This finding could

also support the first portion of subsection 7B-906.2(d)(2), as Mother was not actively complying with her case plan. However, there are no findings that address whether Mother had cooperated with DSS or the guardian ad litem, as required by subsection 7B-906.2(d)(2). *In re D.C.*, 275 N.C. App. 26, 31, 852 S.E.2d 694, 698 (2020).

Similarly, no findings address the considerations of subsection 7B-906.2(d)(3). The only findings concerning whether Mother remained available to the court are those that she was present for, and testified at, the hearing. However, absent more, this finding does not sufficiently address Mother's availability to the trial court, DSS, or the guardian ad litem. *In re C.H.*, 381 N.C. 745, 759, 874 S.E.2d 537, 548 (2022).

Finally, the court's findings do not sufficiently address the consideration of subsection 7B-906.2(d)(4) or "embrace the requisite ultimate finding that 'reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety[,]'" as required by N.C. Gen. Stat. § 7B-906.2(b). *In re D.A.*, 258 N.C. App. 247, 253 811 S.E.2d 729, 734 (2018). The only finding that could arguably be relevant to whether Mother was acting in a manner inconsistent with Liam's health or safety is the finding that she had failed to provide a sufficient explanation for Liam's injuries. However, this finding is insufficient. *See id.* (concluding that general findings "directed at Respondent-mother's failure to admit she caused [the child's] injuries after pleading guilty to misdemeanor child abuse" were insufficient to meet the requirements of N.C. Gen. Stat. § 7B-906.2(b) or (d)(4)). Even if this finding was sufficient to comply with the requirements of subsection 7B-

906.2(d)(4), the trial court failed to make the ultimate finding required for subsection 7B-906.2(b). *See In re D.C.*, 275 N.C. App. at 32–33, 852 S.E.2d at 698–99.

Because the trial court ceased reunification efforts without making sufficient findings required under subsection 7B-906.2(d) and the ultimate finding required by subsection 7B-906.2(b), we vacate the trial court’s order and remand for further proceedings. *In re D.A.*, 258 N.C. App. at 254, 811 S.E.2d at 734. On remand, the trial court should also consider and make findings regarding the possibility of Liam returning to Mother’s care within the six months following the hearing. *In re L.G.*, 274 N.C. App. 292, 302, 851 S.E.2d 681, 689 (2020).

D. Custody with Foster Parents

In light of our holding, we need not review Mother’s challenge to the trial court’s decision to award custody of Liam to his foster parents. However, because the court’s findings were insufficient to overcome the statutory preference for placement with a willing and able relative, and because there is a possibility that such an error may be repeated on remand, we address it here.

When a child is placed into care outside his or her home,

the court *shall first consider* whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court *shall order* placement of the juvenile with the relative *unless* the court finds that the placement is contrary to the best interests of the juvenile.

N.C. Gen. Stat. § 7B-903(a1) (2021) (emphasis added). “Our statutes and precedents mandate ‘a preference, where appropriate, to relative placements over non-relative, out-of-home placements.’” *In re A.N.T.*, 272 N.C. App. 19, 27, 845 S.E.2d 176, 181 (2020) (quoting *In re T.H.*, 232 N.C. App. 16, 29, 753 S.E.2d 207, 216 (2014)). “Failure to make specific findings of fact explaining the placement with the relative is not in the juvenile’s best interest will result in remand.” *In re A.S.*, 203 N.C. App. 140, 141–42, 693 S.E.2d 659, 660 (2010).

The trial court made the following, relevant findings of fact regarding Liam’s placement:

8. That it is in the best interests of the juvenile that his custody be granted to [the Halls] in that:
 - a. [Liam] has been living with the [Halls] for twenty-six months, they are the only “family” that he is familiar with, and [Liam] has not lived with any other family since being admitted to Naval Hospital in June of 2020.
 - b. [Liam] has a close, loving, and bonded relationship in the nature of a parent/child relationship with the [Halls] and is also bonded with their children[.]
 - c. The [Halls] are familiar with the special needs of [Liam], his ongoing therapy and medical treatment, and the constant attention he requires. The [Halls] have demonstrated over the past twenty-six months that they are willing and able to provide for all of [Liam’s] special and intensive needs.
 - d. [DSS] identified . . . [Liam’s] maternal grandfather as possible placement early on in this case; however, due to a combination of Covid-19, a move by [the maternal grandfather], and the agency in Georgia not completing the

ICPC in a timely manner; [the maternal grandfather] was not approved for placement until recently.

e. [Liam] is unable to attend daycare due to his special needs and needs an adult to be home with him during the day.

f. [The maternal grandfather] is employed full-time and unable to provide the type of childcare necessary to meet [Liam's] needs.

g. [The maternal grandfather] lives with his girlfriend, [Ms. K.], who is willing to provide care for the child.

h. [Ms. K.] is not related by blood or marriage to [Liam].

i. [Liam] has not had significant regular contact with [the maternal grandfather] or [Ms. K.] sufficient to form a close bond with them.

j. [Liam] has lived in North Carolina at all times prior to the filing of this action and with the [Halls] until June 2022 in North Carolina.

...

l. At least six months has passed since the [c]ourt identified custody with a court-approved caretaker as a permanent plan. That the child has lived with no one other than the [Halls] during that time.

However, these findings are insufficient to comply with the statutory requirements of N.C. Gen. Stat. § 7B-903(a1) because they do not resolve the issue of whether the maternal grandfather is a proper placement for Liam. *In re D.S.*, 260 N.C. App. 194, 200, 817 S.E.2d 901, 906 (2018). First, the trial court failed to make any finding concerning the maternal grandfather's willingness to care for Liam. However, he reaffirmed his willingness to care for Liam at the permanency planning

hearing, and both Mother and Liam’s father expressed a desire for placement with the maternal grandfather.

The court’s findings also failed to resolve the issue of whether the maternal grandfather was able to provide proper care for Liam. Finding of fact 8.f. indicates the maternal grandfather is “unable to provide the type of childcare” Liam needs. It appears this finding is based on an erroneous assumption that the maternal grandfather’s employment inhibits his ability to provide proper care for Liam. However, the evidence does not support such an assumption: (1) the ICPC assessment approved his home for placement; (2) he testified that his work schedule provided enough flexibility to attend Liam’s medical appointments, and he intended to do so; (3) he already provided a list of proposed medical providers to oversee Liam’s care; and (4) the court’s own finding of fact 8.g. indicates that his live-in partner is willing and able to stay home to care for Liam.

Finally, the trial court’s findings fail to establish why placement with the maternal grandfather would not be in Liam’s best interests. It appears the trial court attempted to do so in findings of fact 8.i. and j. Finding 8.j. appears to be a reference to the portion of N.C. Gen. Stat. § 7B-903(a1) that requires the court to “consider whether it is in the juvenile’s best interest to remain in the juvenile’s community of residence.” N.C. Gen. Stat. § 7B-903(a1) (2021). However, this factor does not seem to weigh against a best interests determination regarding the maternal grandfather, as neither proposed custodian is residing in North Carolina. Similarly, finding 8.i. is

clearly intended as a comparison between Liam's bond with the Halls as noted in findings 8.a. and b., as Appellees concede in their brief. Contrary to Appellees' arguments, such a comparison is not proper. The statute requires a full analysis of a relative placement prior to *any* consideration of a non-relative placement. *In re D.S.*, 260 N.C. App. at 200, 817 S.E.2d at 906. Thus, if the trial court determines that a relative is willing and able to provide care for a child, and such a placement is not contrary to the child's best interests, then the court *must* place the child with the relative, regardless of the strength of the child's bond with any non-relative placement or that placement's ability and willingness to care for the child. N.C. Gen. Stat. § 7B-903(a1); *In re D.S.*, 260 N.C. App. at 200, 817 S.E.2d at 906.

On remand, the court should make findings in accordance with the requirements of N.C. Gen. Stat. § 7B-903(a1), first considering whether the maternal grandfather is willing and able to provide proper care and supervision for Liam, which can include appropriate care provided by other parties during the maternal grandfather's workday. If he is both willing and able, then the court shall order placement with the maternal grandfather, unless it determines the relative placement is not in Liam's best interests. If the court determines placement with the maternal grandfather is not in Liam's best interests, that determination must be supported with and based on findings explaining why. *In re A.S.*, 203 N.C. App. at 141–42, 693 S.E.2d at 660. The court may not consider the Halls' willingness and ability to provide care for Liam, let alone whether placement with them is in Liam's

best interests, until it completes a full consideration of the relative placement with the maternal grandfather. *In re D.S.*, 260 N.C. App. at 200, 817 S.E.2d at 906.

IV. Conclusion

The 22 August 2022 order is vacated, and this matter is remanded for a new permanency planning hearing in conformity with the mandates of N.C. Gen. Stat. § 7B-906.1. *In re D.S.*, 260 N.C. App. at 200, 817 S.E.2d at 906. The subsequent permanency planning order shall be entered with sufficient findings and conclusions in accordance with this opinion.

VACATED AND REMANDED.

Panel consisting of Judges Dillon, Arrowood, and Griffin.

Report per Rule 30(e).