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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-362

Filed 21 November 2023

Davidson County, No. 20-JT-123

IN THE MATTER OF:

C.C.K.

Appeal by respondent-father from order entered 29 March 2022 by Judge Carlos Jané in Davidson County District Court. Heard in the Court of Appeals 31 October 2023.

*Holly M. Groce for Davidson County Department of Social Services, petitioner-appellee.*

*Ewing Law Firm, P.C., by Robert W. Ewing, for respondent-appellant.*

*Ellis & Winters LLP, by Tyler C. Jameson and Steven A. Scoggan, for Guardian ad Litem.*

THOMPSON, Judge.

Respondent-father appeals from the district court's 29 March 2022 order eliminating reunification from the permanent plan for his minor child, C.C.K.<sup>1</sup>

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<sup>1</sup> Initials are used to protect the identity of the juvenile.

Respondent-father argues that the district court erred by removing reunification from the permanent plan for C.C.K. in its permanency order without making the required statutory findings of fact required pursuant to N.C. Gen. Stat. § 7B-906.2(b). After careful review, we affirm.

### **I. Factual Background and Procedural History**

Around 5 A.M. on 18 December 2020, respondent-father was involved in a hit-and-run accident while his minor child, C.C.K., was in the vehicle. Respondent-father fled the scene of the accident and brought the minor child with him into the woods to hide, where they remained for approximately two hours in thirty-degree weather. When law enforcement officers located respondent-father and C.C.K., C.C.K. was wearing a coat, short-sleeved t-shirt, and soiled swim shorts. Law enforcement officers reported that respondent-father appeared to be under the influence of an unknown substance, as he slurred his words when he gave a false name to law enforcement.

Respondent-father was arrested for hit-and-run, in addition to outstanding warrants for assault on a female, misdemeanor larceny, second-degree trespassing, felony obtaining property by false pretenses, felony breaking/entering to terrorize/injure, resisting a public officer, assault on a government official/employee, and driving with a revoked license. Respondent-father also had pending charges for possession of methamphetamine and drug paraphernalia. Pursuant to his arrest, respondent-father was placed in the Randolph County Jail.

Later that day, Davidson County Department of Social Services (DSS) filed a petition alleging that the minor child, C.C.K., was an abused, neglected, and dependent juvenile. By non-secure custody order entered that same day, C.C.K. was placed in the custody of DSS. Respondent-father made several statements that he intended to remove C.C.K. from whatever placement C.C.K. was in upon respondent-father's release from prison.

On 31 December 2020, respondent-father entered a Family Services Case Plan (Case Plan) with DSS, whereupon he agreed to complete a Comprehensive Clinical Assessment (CCA) to address his mental health and substance abuse issues. Additionally, respondent-father agreed to sign a release for all service providers so that DSS could monitor his progress, complete random drug screenings, obtain and maintain a suitable residence, and obtain and maintain a steady source of income.

On 9 June 2021, an adjudication and disposition hearing was held in Davidson County District Court, and by order entered 9 July 2021, C.C.K. was adjudicated as an abused, neglected, and dependent juvenile pursuant to N.C. Gen. Stat. § 7B-101. In the disposition order, also entered 9 July 2021, the court ordered that respondent-father complete a CCA as agreed upon in the Case Plan entered with DSS on 31 December 2020, provide a copy of the assessment to DSS, and sign a release of information so that DSS could monitor his progress. Additionally, respondent-father was ordered to complete random drug screenings provided by the Department, obtain and maintain stable housing and income, maintain contact with the permanency

planning social worker at least twice a month, pay child support for the care of C.C.K., and complete a Parenting Capacity Assessment.

In that same order, the court found that the best interest of C.C.K. would be served by his legal and physical custody remaining with DSS, that C.C.K. returning to respondent-father's home was contrary to his health and safety, and that DSS had made reasonable efforts to prevent or eliminate the need for placement of C.C.K. Respondent-father was granted supervised visitation with the minor child once a month for two hours.

A follow-up permanency planning hearing was held on 1 September 2021, and by order entered 5 October 2021, the court found that respondent-father "ha[d] not made any progress in his [C]ase [P]lan[.]" in that he had not completed a CCA, had not participated in mental health or substance abuse treatment, had attended only one visit with C.C.K., and had not made himself available to complete a random drug screening. Moreover, DSS was unaware of respondent-father's housing situation, he remained unemployed without a steady source of income, he had failed to maintain contact with C.C.K.'s placement or therapist since June 2021, and he had not completed a Parenting Capacity Assessment pursuant to the court's 9 July 2021 disposition order.

In the 5 October 2021 order, the court also noted that it had "informed the respondent[[]-father] that [his] refusal or failure to cooperate with the [Case] [P]lan may result in an order that reunification efforts may cease." Ultimately, the court (1)

ordered that respondent-father comply with all of the stipulations enumerated in the 9 July 2021 disposition order, (2) continued custody of C.C.K. with DSS, and (3) established a permanent plan of care for C.C.K. as a primary plan of reunification with a parent and a secondary plan of guardianship with a relative or court-approved caretaker.

On 23 February 2022, another permanency planning hearing was held, and by order entered 29 March 2022, the court found in its findings of fact that C.C.K. had his first visit with respondent-father in six months on 3 January 2022. The court further found that after the 3 January 2022 visit, C.C.K.'s behavior had "regressed greatly since [respondent-father] began visits in January 2022" including "self-harm, hitting himself on the face, hitting his head on the wall . . . being disrespectful, not following directions, arguing, not handling re-direction, yelling, wanting to receive items on demand . . . shutting down when told no, negative self-talk, and looking for opportunities to fight/argue."

In the 29 March 2022 order, the court also noted that respondent-father had completed a CCA on 14 January 2022; however, the CCA stated that respondent-father was "evasive when answering questions and interacting with [the] therapist." Respondent-father tested negative for illegal substances in an 11 January 2022 drug screening, but did not complete a drug screening offered to him on 17 February 2022. The court also found that respondent-father resided in a homeless shelter but had obtained employment, as he provided paystubs for 28 January 2022 and 4 February

2022. Additionally, respondent-father had initiated contact with the social worker but had not contacted C.C.K.'s placement providers nor his therapist. Finally, the court found that respondent-father had not completed a Parenting Capacity Assessment, nor was he in compliance with his child support order.

For the aforementioned reasons, the court found that respondent-father was “not making adequate progress within a reasonable period of time” on the case plan, and based upon this finding of fact, the court concluded as a matter of law that “the best interest of the minor child would further be served with his permanent plan of care changed to a primary plan of termination of parental rights and adoption and a secondary plan of guardianship with a relative or court approved caretaker.” Visitation between respondent-father and C.C.K. was also ordered to cease. From this order, respondent-father timely filed a notice to preserve his right of appeal to the trial court's permanency planning order eliminating reunification as a permanent plan for C.C.K.

On 21 June 2022, DSS filed a petition to terminate respondent-father's parental rights, alleging four grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111. On 8 December 2022, a termination of parental rights hearing took place in Davidson County District Court, and by order entered 21 December 2022, the court terminated respondent-father's parental rights to C.C.K. From this order, respondent-father timely entered written notice of appeal.

## **II. Analysis**

**A. Standard of review**

“Appellate review of a trial court’s permanency planning order is restricted to whether there is competent evidence in the record to support the findings of fact and whether the findings support the conclusions of law.” *In re J.M.*, 384 N.C. 584, 591, 887 S.E.2d 823, 828 (2023) (citation, brackets, and internal quotation marks omitted). “Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *Id.* (citation omitted). “The trial court’s findings of fact are conclusive on appeal if supported by any competent evidence.” *Id.* (citation omitted). “Uncontested findings of fact are likewise binding on appeal.” *Id.* “[T]he trial court’s decisions as to the weight and credibility of the evidence, and the inferences drawn from the evidence, are not subject to appellate review.” *Id.* (citation and brackets omitted).

Finally, “[t]he trial court’s dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed for abuse of discretion.” *Id.* (citation omitted). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (citation omitted).

**B. Sufficiency of findings of fact under N.C. Gen. Stat. § 7B-906.2(b)**

Respondent-father contends that the district court erred in eliminating reunification as a primary or secondary plan for C.C.K. because it “failed to make the crucial ultimate finding of fact that ‘reunification efforts clearly would be

unsuccessful or would be inconsistent’ with [C.C.K.]’s health and safety before eliminating reunification for the minor child’s permanent plan.” We disagree.

When “the court removes custody of the juvenile from a parent, guardian, or custodian at the initial disposition hearing, the statutory provisions regarding permanency planning apply.” *Id.* at 593, 887 S.E.2d at 829.

N.C. Gen. Stat. § 7B-906.2(b) governs modifications of permanency plans:

(b) At any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall be a primary or secondary plan unless the court made written findings under [N.C. Gen. Stat. §] 7B-901(c) or [N.C. Gen. Stat. §] 7B-906.1(d)(3) . . . or the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety. The finding that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile’s health or safety may be made at any permanency planning hearing, and if made, shall eliminate reunification as a plan.

N.C. Gen. Stat. § 7B-906.2(b) (2021).

Ultimately, “[t]he goal of the permanency planning process is to return the child to their home or when that is not possible to a safe, permanent home within a reasonable period of time.” *J.M.* at 593, 887 S.E.2d at 829 (citation and internal quotation marks omitted).

While respondent-father is correct to acknowledge that the district court’s findings of fact did not make the “finding of fact that ‘reunification efforts *clearly* would be unsuccessful or would be inconsistent’ with [C.C.K.]’s health and safety



before eliminating reunification for the minor child’s permanent plan[.]”; (emphasis added) this omission is not dispositive; “[t]he court’s written findings do not have to track the statutory language verbatim, but they must make clear that the trial court considered the evidence in light of whether reunification would be clearly unsuccessful or would be inconsistent with the juvenile’s health, safety, and need for a safe, permanent home within a reasonable period of time.” *Id.* at 594, 887 S.E.2d at 830 (citation, internal quotation marks, and brackets omitted).

In fact, in *In re J.M.*, our Court reversed the trial court’s elimination of reunification from the juvenile’s permanent plan because “the trial court’s second permanency planning order ‘does not make findings that embrace the requisite ultimate finding that reunification efforts *clearly would be unsuccessful* or . . . inconsistent with the juvenile’s health or safety.’” *Id.* at 598, 887 S.E.2d at 833 (emphasis added) (citation omitted).

Our Supreme Court disagreed, holding that “the Court of Appeals erred in reversing the trial court’s decision to eliminate reunification from the permanent plan[.]” *id.* at 595, 887 S.E.2d at 831, and admonished that “[d]ue regard for our own precedent requires us to reverse the Court of Appeals.” *Id.* at 599, 887 S.E.2d at 833. Although the district court’s order modifying the minor child’s permanency plan did not mirror the language of N.C. Gen. Stat. § 7B-906.2(b) verbatim with the use of the word *clearly*, “[t]he court’s written findings do not have to track the statutory language verbatim, but they must make clear that the trial court considered the

evidence in light of whether reunification would be clearly unsuccessful or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *Id.* at 594, 887 S.E.2d at 830 (citation, internal quotation marks, and brackets omitted).

Here, in its 29 March 2022 permanency planning order which eliminated reunification from the primary plan for C.C.K., the district court made the following findings of fact as to how reunification would clearly be unsuccessful or inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time, including:

55. [Respondent-father] has not scheduled or completed a Parenting Capacity Assessment.

56. [Respondent-father] has pending criminal charges for indecent exposure, larceny, second[-]degree trespass, resisting a public officer, larceny of a motor vehicle, possession of stolen motor vehicle, impersonating law enforcement, and injury to personal property.

57. [Respondent-father] was ordered to pay \$215.00 per month in child support. He is not in compliance with his child support order.

58. It is not possible or likely that the minor child could be placed with a parent now or within the next six (6) months. Placement with a parent at this time is not in the best interest of the minor child for the reasons set out above and in the reports incorporated herein.

....

60. The best interest of the child would be served by retaining the child in his current placement.

61. That the minor child continuing or returning to the child's home is *contrary to the child's health and safety*.

. . . .

63. The Court finds that the respondent/parents are not making adequate progress within a reasonable period of time, they are not participating in and cooperating with the plan, and are not making themselves available to the [c]ourt, the Department of Social Services and the Guardian *ad Litem*. The Court finds that the *respondent/parents are acting in a manner inconsistent with the health or safety of the juvenile*.

. . . .

74. The Davidson County Department of Social Services has made reasonable efforts to prevent the need for placement and implement the primary plan of reunification with a parent and the secondary plan of guardianship with a relative o[r] court approved caretaker with respect to the minor child. The Court finds these efforts reasonable and in order to timely achieve permanence for the minor child.

(emphases added).

The district court's findings of fact in the order modifying C.C.K.'s permanency plan, specifically, numbers 61 and 63, that "the minor child continuing or returning to the child's home is *contrary to the child's health and safety*[,] that "the respondent/parents are not making adequate progress *within a reasonable period of time* . . . [and] that the respondent/parents are acting in a manner *inconsistent with the health or safety* of the juvenile" (emphases added) make abundantly clear that the district court "considered the evidence in light of whether reunification would be

clearly unsuccessful or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *Id.* at 594, 887 S.E.2d at 830 (citation, internal quotation marks, and brackets omitted).

Once a court has determined that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety, N.C. Gen. Stat. § 7B-906.2(b) *requires* that the trial court "shall eliminate" reunification as a plan. N.C. Gen. Stat. § 7B-906.2(b). It would be contrary to the statutory mandate for the district court *not* to eliminate reunification as a permanent plan after making the determination that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety. *See id.* § 7B-906.2(b).

Finally, as discussed above, "[t]he trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed for abuse of discretion." *J.M.*, 384 N.C. at 591, 887 S.E.2d at 828 (citation omitted). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Id.* (citation omitted).

Here, "the record evidence in this case provides ample basis for the trial court's determination that . . . further efforts at reunification [would] clearly [be] unsuccessful and 'inconsistent with the juvenile's health or safety[.]'" *id.* at 602, 887 S.E.2d at 835, and the trial court's conclusion that "[t]he best interest of [C.C.K.] would further be served with his permanent plan of care changed to a primary plan

of termination of parental rights and adoption and a secondary plan of guardianship with a relative or a court approved caretaker” is not “manifestly unsupported by reason” nor “so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 591, 887 S.E.2d at 828 (citation omitted). Respondent-father’s argument that the absence of the word “clearly” necessitates vacating the order modifying C.C.K.’s permanent plan is unavailing, and for these reasons, we affirm.

**C. Sufficiency of findings under N.C. Gen. Stat. § 7B-906.2(d)**

Alternatively, respondent-father argues that our Court “cannot properly review the trial court’s N.C. Gen. Stat. § 7B-906.2(d) findings of fact in the permanency planning order because the court made conflicting findings of fact regarding the respondent[-]father’s [ ] availability to the Department under (d)(3).” Again, we disagree.

N.C. Gen. Stat. § 7B-906.2(d) requires that “[a]t any permanency planning hearing under subsections (b) and (c) of this section, the court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification”:

- (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)(1)-(4).

Respondent-father contends that the trial court's findings of fact are insufficient because the court "made conflicting findings concerning 'whether the parents remained available to the court, the department, and the guardian ad litem for the juvenile.'" Specifically, respondent-father contends that there is a "material conflict" between Findings of Fact 53 and 63 in the district court's permanency planning order.

Finding of Fact 53 states that respondent-father "has initiated contact with the Department. Since the last court hearing, he has contacted the social worker on multiple occasions through text messages, phone calls, and meeting to discuss [his] case plan." Finding of Fact 63 states that "respondent/parents are not making adequate progress within a reasonable period of time, they are not participating in and cooperating with the plan, and are not making themselves available to the Court, the Department of Social Services, and the Guardian *ad Litem*."

These findings do not demonstrate a "material conflict" as respondent-father contends. Despite his contention otherwise, respondent-father "initiat[ing] contact" does not necessarily mean that he "remains available to the Court." N.C. Gen. Stat. § 7B-906.2(d)(3). In fact, the district court entered several findings of fact to demonstrate how respondent-father had not remained available to the court, DSS, or

the guardian ad litem, including Finding of Fact 63, which clearly contemplates all four of the requirements of N.C. Gen. Stat. § 7B-906.2(d).

Respondent-father cites no authority to support his argument that a “material conflict” in the trial court’s findings of fact necessitates remand for additional findings. N.C. Gen. Stat. § 7B-906.2(d) merely requires that the district court shall make a written finding as to “[w]hether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.” N.C. Gen. Stat. § 7B-906.2(d)(3). The trial court satisfied this statutory mandate in Finding of Fact 63, and therefore, respondent-father’s argument on this ground also fails.

Finally, we need not address respondent-father’s final argument, that the “trial court’s termination of parental rights order did not cure the deficiency in the [29 March 2022] permanency planning order[.]” as we have found no defect in the 29 March 2022 permanency planning order.

### **III. Conclusion**

The district court, despite the absence of the word “clearly” in its order modifying permanency planning, did not abuse its discretion when it found that the best interest of the minor child, C.C.K., would “be served with his permanent plan of care changed to a primary plan of termination of parental rights and adoption and a secondary plan of guardianship with a relative or a court approved caretaker.” Moreover, the district court’s finding of facts in the 29 March 2022 permanency planning order clearly demonstrate that the court *did* make the required findings

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under N.C. Gen. Stat. § 7B-906.2(d)(3). For the foregoing reasons, the trial court's order eliminating reunification from the permanent plan is affirmed.

AFFIRMED.

Judges ZACHARY and STADING concur.

Report per Rule 30(e).