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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-188

Filed 19 December 2023

Cumberland County, No. 19JA301

IN THE MATTER OF: A.C.

Appeal by respondent from order entered 15 November 2022 by Judge Adam Phillips in Cumberland County District Court. Heard in the Court of Appeals 28 November 2023.

*Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender, Jacky L. Brammer, for the respondent-appellant.*

*Cumberland County Department of Social Services, by Dawn M. Oxendine, for the petitioner-appellee.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, by Amelia L. Serrat, for the Guardian ad Litem.*

TYSON, Judge.

Respondent-father (“Respondent”) appeals from a permanency planning order, which awarded guardianship of his minor child, A.C. (“Amanda”), to Amanda’s foster parents, her paternal aunt and uncle (“Mr. and Mrs. K”) and denied Respondent visitation with Amanda. *See* N.C. R. App. P. 42(b) (pseudonym used to protect the identity of minor). We affirm.

## **I. Background**

Cumberland County Department of Social Services (“DSS”) filed a juvenile petition 26 July 2019 alleging then six-year-old Amanda was an abused, neglected, and dependent juvenile. DSS alleged Amanda had: (1) witnessed Respondent abuse her half-brother; (2) missed excessive days of school and was behind academically; and, (3) been and would be at risk for irreputable harm in the physical custody of her mother or Respondent.

Respondent’s record shows multiple prior convictions for child abuse, assault on a female, resisting a public officer, and for driving while intoxicated. Respondent also had pending charges including larceny, communicating threats, and resisting a public officer.

DSS was granted nonsecure custody of Amanda on 26 July 2019. Amanda was adjudicated to be neglected and dependent on 7 January 2020. She was placed with Mr. and Mrs. K. on 20 May 2021. Following a permanency planning hearing held on 18 July 2022, the district court entered an order appointing Mr. and Mrs. K. as Amanda’s permanent guardians. Respondent appeals.

## **II. Jurisdiction**

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27 and 7B-1001(4) (2021).

## **III. Issues**

Respondent argues the trial court erred by only receiving general

unsubstantiated, vague, and conclusory assurances of Mr. and Mrs. K's finances.

#### **IV. Standard of Review**

Appellate “review of a permanency planning review order is limited to whether . . . competent evidence in the record . . . support[s] the findings [of fact] and whether the findings support the conclusions of law.” *In re H.A.J.*, 377 N.C. 43, 49, 855 S.E.2d 464, 469 (2021) (citation and internal quotation marks omitted).

At a permanency planning hearing, any evidence may be considered, “including hearsay evidence as is defined in [N.C. Gen. Stat. §] 8C-1, Rule 801, or testimony or evidence from any person not a party, the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.” N.C. Gen. Stat. § 7B-906.1(c) (2021).

“The trial court’s findings of fact are conclusive on appeal if supported by any competent evidence.” *In re H.A.J.*, 377 N.C. at 49, 855 S.E.2d at 469 (citation omitted). Unchallenged findings of fact are “deemed to be supported by the evidence and are binding on appeal.” *In re J.C.M.J.C.*, 268 N.C. App. 47, 51, 834 S.E.2d 670, 673-74 (2019) (citation omitted). This Court reviews conclusions of law *de novo*. *Id.*

#### **V. Adequate Financial Resources for Guardians**

Respondent argues the trial court erred by only receiving unsubstantiated, vague, and conclusory assurances of Mr. and Mrs. K's finances. Respondent asserts Mrs. K's testimony admitting she has to routinely rely on “debt or savings” to cover Amanda's regular expenses and needs raises concerns of their means and ability to

care for Amanda.

Under the Juvenile Code, before placing a juvenile in a guardianship, the trial court is mandated to ascertain and verify both whether the proposed guardian “understands the legal significance of the appointment” and “will have adequate resources to care appropriately for the juvenile.” N.C. Gen. Stat. §§ 7B-600(c), 7B-906.1(j) (2021).

N.C. Gen. Stat. § 7B-600(c) provides:

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

N.C. Gen. Stat. § 7B-600(c) (emphasis supplied). Such “six consecutive months” evidence is only to be considered along with all other requirements and factors and evidence and is not *per se* conclusive of “adequate resources.” *Id.*

The trial court found and concluded at the 18 July 2022 hearing:

[Amanda] is currently 9 years old. [Amanda] has been placed with [Mr. and Mrs. K] since May 20, 2021. This placement has been stable for over a year. Both [Mr. and Mrs. K] understand the legal significance of being appointed [Amanda]’s guardians, and they have adequate resources to appropriately care for [Amanda].

This order was not entered until four months later. Respondent argues the district

court's conclusory and unsupported "finding" is not supported by competent evidence.

At the permanency planning hearing, DSS' counsel conducted the following colloquy with the social worker:

DSS COUNSEL: Okay. And have you been able to confirm [Mr. and Mrs. K's] resources since that time? Have they -  
- do they have sufficient resources to take care of[?]

SOCIAL WORKER: Yes.

No further inquiry was made to show the basis for or how the social worker determined or substantiated her single answer to the two separate questions posed. Also, at the permanency planning hearing, DSS' counsel conducted the following colloquy with Mrs. K:

DSS COUNSEL: And I was going to ask you some questions about – see (sic) adequate resources. Has your household's monthly income been sufficient to cover all of [Amanda's] needs?

[MRS. K]: Yes.

DSS COUNSEL: Have you had to routinely rely on debt or savings to cover her regular needs?

[MRS. K]: Debt or savings?

DSS COUNSEL: As opposed to income?

[MRS. K.] Oh, yes.

DSS COUNSEL: Have monthly income. Have you ever had to deny [Amanda's] needs to provide for the needs of any other children or adults in your home?

[MRS. K]: No.

DSS COUNSEL: Have you ever had to deny any other child (sic) needs in your home to provide for the needs of [Amanda]? .

[MRS. K]: No.

DSS COUNSEL: Has your income increased, decreased, or stayed the same during the time [Amanda] has been in your care?

[MRS. K]: It's (sic) increased.

DSS COUNSEL: And do you have any known reason at this time to expect your income will decrease to the point you cannot care for [Amanda]?

[MRS. K]: No.

DSS COUNSEL: In your future?

[MRS. K]: No.

At the permanency planning hearing, DSS' counsel conducted the following conversation and colloquy with Mr. K:

DSS COUNSEL: And have you been sworn or affirmed already?

[MR. K]: Yes.

DSS COUNSEL Okay. Did you hear everything -- all the questions that I just asked your wife?

[MR. K]: Yes.

DSS COUNSEL: Okay. And do also understand all of the things *that I assert, you affirm?*

[MR. K]: Yes.

DSS COUNSEL Okay. And do you affirm all of her answers to my questions about you guy's (sic) adequate resources?

[MR. K]: Yes, sir.

(emphasis supplied)

N.C. Gen. Stat. § 7B-600 requires the district “court *shall verify*” the prospective guardian has “adequate resources to care appropriately for the juvenile.” N.C. Gen. Stat. § 7B-600 (emphasis supplied). “The fact that the prospective guardian has provided a stable placement for the juvenile for at least six consecutive months is evidence the person has adequate resources.” *Id.* Amanda’s foster parents, Mr. and Mrs. K., had provided a stable placement for Amanda for fourteen consecutive months at the time of the 18 July 2022 permanency planning hearing.

Any contradiction between Mrs. K’s testimony requiring the need to use debt or savings, and her household’s ability to meet the needs of the adults and children, is for the district court as finder of fact to decide and is not the role of an appellate court to weigh. *See In re Montgomery*, 311 N.C. 101, 110-111, 316 S.E.2d 246, 252-53 (1984) (“[A]ppellate courts are bound by the trial courts’ findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.”). Even so the statutory mandate, requiring “the court shall verify[,]” compels evidence of “adequate resources,” and not generalized speculation. N.C. Gen. Stat. § 7B-600(c).

In verifying adequate resources, generalized speculation or vague assurances of such “do not suffice to allow an independent determination by the court, based upon the facts in the particular case, that the resources available to the potential custodian

are in fact ‘adequate’ for purposes of N.C. Gen. Stat. § 7B-906.1(j).” *In re T.W.*, 250 N.C. App. 68, 77, 796 S.E.2d 792, 798 (2016) (citation and internal quotation marks omitted). Vague assurances also do not allow this Court to adequately review whether the trial court’s conclusions of law are supported *de novo*. See *In re J.C.M.J.C.*, 268 N.C. App. at 51, 834 S.E.2d at 673-74.

While the district court need not make detailed findings of evidentiary facts, or extensive findings regarding the guardian’s situation and resources, nor any specific form of investigation of the potential guardian, the statute does require the district court to make a knowledgeable and supported determination the guardian has “adequate resources” and some specified evidence of the guardian’s “resources” is necessary, since the district court cannot make any determination of adequacy without specific evidence as opposed to generalized or summary assertions. The “six consecutive months” is some evidence, but it is not *per se* or dispositive. See N.C. Gen. Stat. §§ 7B-600(c), 906.1(j).

## **VI. Conclusion**

While more specific and detailed findings are helpful on appeal to review the district court’s verification of “adequate resources” to support granting permanent guardianship of Amanda to her paternal aunt and uncle, Mr. and Mrs. K, competent evidence in the Record and Transcript tends to show they understood the legal significance of guardianship and will have adequate resources to care appropriately for her as they have in the past.



IN RE: A.C.

*Opinion of the Court*

The order of the district court is affirmed. *It is so ordered.*

AFFIRMED.

Judges ZACHARY and FLOOD concur.

Report per Rule 30(e).