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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-434

Filed 2 January 2024

Wilkes County, No. 20 JA 126

IN THE MATTER OF: B.O.R., minor child.

Appeal by Respondent-Mother and Respondent-Father from order entered 27 January 2023 by Judge Donna L. Shumate in Wilkes County District Court. Heard in the Court of Appeals 19 December 2023.

*Sherryl R. West for petitioner-appellee Wilkes County Department of Social Services.*

*Garron T. Michael for respondent-appellant mother.*

*Richard Croutharmel for respondent-appellant father.*

*Poyner Spruill LLP, by Stephanie L. Gumm, for guardian ad litem.*

PER CURIAM.

Respondent-mother (“Mother”) and respondent-father (“Father”) appeal from a permanency planning order granting guardianship of their minor child B.O.R.

(“Ben”) to the child’s foster parents.<sup>1</sup> For the reasons below, we vacate the portion of the permanency planning order finding Mother and Father acted inconsistently with their constitutionally protected parental rights, vacate the visitation provisions of the permanency planning order, affirm the permanency planning order to the extent it ceases reunification efforts between Father and Ben, and remand for further proceedings.

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

Ben was born in December 2018. On 23 September 2020, the Wilkes County Department of Social Services (“DSS”) filed a juvenile petition alleging Ben was an abused and neglected juvenile. The petition specifically alleged that, on 19 August 2020, two child protective services (“CPS”) reports were received on Ben, stating he was being seen at Brenner Children’s Hospital for “a broken clavicle, torn frenulum, and extensive bruising to protected areas such as throat.” The bruising was in “varying stages of healing throughout the entire trunk, upper and lower extremities and a large abrasion to the anterior chest wall.” Due to his injuries, Ben was admitted to the hospital and placed on “Child Abuse protocol[.]” “Medical collaterals stated there was no way the child was injured by falling down steps as described.” The petition further alleged a skeletal survey on 14 September 2020 revealed the ulna and radius of Ben’s right arm and distal portion of his left arm were broken. Since

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<sup>1</sup> A pseudonym is used for the privacy of the juvenile and ease of reading. *See* N.C. R. App. P. 42(b).

“[t]he family [was] unable to identify the perpetrator or where the child was injured or a plausible explanation for the injuries[,] DSS [was] unable to ensure the safety of the child.”

Following a hearing on 26 October 2020, the trial court adjudicated Ben abused and neglected on 8 June 2021, based on stipulated facts consistent with the allegations in the juvenile petition and an additional stipulation that Father had not been alone with Ben during the three months preceding his injuries. The trial court then entered a dispositional order that found “[t]here are concerns at this time” regarding Father’s ability to care for Ben, and Ben’s “continuation in or return to [Ben’s] own home would be contrary to [Ben’s] health and safety.” The trial court ordered that Ben remain in DSS custody and placed with foster parents; Father receive twice-monthly, one-hour-long supervised visitation with Ben; and Mother “shall have no visits with the minor child during the pendency of the investigation pertaining to the abuse allegations.” Following a January 2021 hearing, on 10 May 2021, the trial court entered a permanency planning order finding Mother and Father had both been given case plans and begun making progress on those plans. However, the court found it “would be contrary to the child’s health, safety, and well-being to place” Ben with his parents.

On 10 August 2021, the trial court entered a permanency planning order finding Ben was doing well in his foster placement but had developed serious medical issues. Ben was often sick with vomiting and fever and had a weakened immune

system and weakened lungs due to a chromosomal abnormality. The trial court also found Mother was not making progress on her case plan, and Father had been completing elements of his case plan.<sup>2</sup> However, Father had taken a psychological assessment, and his “cognitive abilities and his ability to parent his child [were] concerning.” The trial court did not make findings specifically addressing these concerns. The trial court set a permanent plan of reunification and concurrent plan of custody with an approved caregiver and expanded Father’s visitation to include “short unsupervised daytime visits with the minor child.” The court also ordered that the paternal grandmother could only attend “one in every two visits in order to ascertain [F]ather’s ability to interact with his son.”

On 2 March 2022, the trial court entered a permanency planning order finding Mother had made little progress on her case plan and there were still concerns Father needed to address. The trial court had “a concern with [Father’s] lack of personal hygiene, the possibility of [Ben] being exposed to second hand smoke when he is with [Father], and a reluctance on the part of [Father] to change” Ben’s diapers. DSS had also been unable to confirm whether Father had appropriate housing, and while Father brought “toys and food to the visits . . . the food is sometimes leftovers, and he brought a sippy cup with mold inside once. It is not known whether the child drank

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<sup>2</sup> Due to the nature of Mother’s arguments on appeal, we do not discuss in detail the findings and conclusions related to her noncompliance with her case plan and the cessation of reunification efforts between her and Ben.

from the cup.” The trial court amended the permanent plan to reunification with Father, but not Mother, with a concurrent plan of custody with an approved caregiver. The trial court also granted Mother “limited telephone and video visits,” with DSS having “the discretion to cease these visits if they appear to be detrimental to” Ben’s wellbeing. Father’s visitation was expanded to include unsupervised holiday visitation, and the trial court ordered the paternal grandmother would only be allowed to visit at supervised visitation.

On 7 June 2022, the trial court entered a permanency planning order finding Father’s visits with Ben were having an adverse impact on Ben’s health. Due to Ben’s weakened immune system and lungs, he could “have severe reactions when exposed to second hand smoke and must use his inhalers after visitations.” Ben also had “minor chest congestion, sore throats, and vomiting following visitation.” During one visit, “the social worker observed on three separate occasions, [Father] pull a vape from his pocket and turn from the social worker and smoke the vape while directly next to [Ben] and while holding [Ben].” “After one of these inhalations and the following smoke cloud, [Ben] began to cough heavily and had to be told to sit down and get a drink and try to take breaths in order to recover.” Father did not make the suggestion for Ben to sit down, he “continued to run and chase after [Ben] without seeming to try and address the coughing” until the paternal grandmother suggested Ben sit down.

The trial court also found that Father had mostly complied with his case plan,

but there were still concerns with his home and capability to parent Ben. While Father's home "met minimum standards[.]" during home visits "[t]he social worker noted that the front door and all the windows were open, and there was a smell of cigarette smoke in the home." Additionally, although Father was instructed to provide food and supplies for Ben during visits, Father had only "provided food on two occasions" and once brought a moldy sippy cup as noted in the previous order. Father also "d[id] not bring wipes or diapers, and [Ben was] not yet potty trained[.]" The court ultimately found Father was "not acting in the best interest of [Ben] by not providing for him at visits and by smoking and vaping," and that Father's "smoking, vaping, and not providing for [Ben] at visits may result in an order of the court in a subsequent permanency planning hearing that reunification efforts may cease and informed [F]ather of the same." The trial court also found DSS ceased Mother's video visitation after "a few visits" because "[d]uring the visits [Ben] seemed uncomfortable and scared of [M]other and displayed behavioral issues following the visits."

The trial court left Father's visitation schedule unchanged but denied Mother further visitation. The trial court also ordered Father to participate in a "Marschak Interaction Method (MIM)" assessment and to comply with any therapeutic recommendations, including "smoking cessation activities." The trial court gave DSS the authority to cease visitation between Father and Ben if Father smoked or vaped during future visits.

On 27 January 2023, the trial court entered the permanency planning order

on appeal (“PPO”). The trial court’s findings are discussed below. The trial court concluded both parents had acted inconsistently with their parental rights, ceased reunification efforts between Father and Ben, granted guardianship of Ben to his foster parents, and ordered Father shall have twice monthly supervised visitation at “Our House.” Mother was not awarded visitation. Both parents appealed.

## **II. Conduct Inconsistent with Constitutional Rights as a Parent**

Both Mother and Father argue the trial court erred by failing to state the standard of proof it used when making its findings and concluding they were acting in a manner inconsistent with their constitutional rights as a parent.

“A natural parent’s constitutionally protected paramount interest in the companionship, custody, care, and control of his or her child is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child.” *In re D.A.*, 258 N.C. App. 247, 250, 811 S.E.2d 729, 731 (2018) (citation and quotation marks omitted). “[A] natural parent may lose his constitutionally protected right to the control of his children in one of two ways: (1) by a finding of unfitness of the natural parent, or (2) where the natural parent’s conduct is inconsistent with his or her constitutionally protected status.” *Id.* at 250, 811 S.E.2d at 731–32. Only after making one of these determinations may the trial court apply the “best interests of the child test” to award guardianship to a nonparent. *In re B.R.W.*, 278 N.C. App. 382, 394, 863 S.E.2d 202, 212–13 (2021) (citation and quotation marks omitted). Either determination must be

made by clear and convincing evidence, and “[i]f the trial court fails to find the parent unfit or to have acted inconsistently with her constitutionally protected status” by this standard of proof, then “a permanent custody award to a non-parent must be vacated.” *In re J.C.-B.*, 276 N.C. App. 180, 185, 856 S.E.2d 883, 888 (2021) (citation omitted). Both determinations of “parental unfitness or whether parental conduct is inconsistent with the parents’ constitutionally protected status [are] reviewed *de novo*.” *Id.* at 184, 856 S.E.2d at 887 (citation omitted).

In the PPO, the trial court concluded Father was an unfit parent and both “[p]arents have acted inconsistently with their parental rights and responsibilities[.]” However, at no point does the court identify the standard of proof it employed when making findings to support these conclusions. A careful review of the transcript also reveals the trial court did not state any standard of proof when rendering its decision at the permanency planning hearing.<sup>3</sup>

This Court has repeatedly held that a permanency planning order awarding guardianship to a nonparent cannot stand “[a]bsent an indication that the trial court applied the clear and convincing standard” in determining the natural parents were unfit or acted inconsistently with their constitutionally protected status. *In re J.L.*, 264 N.C. App. 408, 419, 826 S.E.2d 258, 267 (2019) (citation and quotation marks

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<sup>3</sup> We note large parts of the permanency planning hearing, including entire lines of questioning, were omitted from the transcript due to static in the audio recording. However, the trial court’s rendering of its decision is relatively clear, and as best we can tell the trial court never stated a standard of proof in open court.



omitted); *see also In re J.C.-B.*, 276 N.C. App. at 194, 856 S.E.2d at 893; *In re D.A.*, 258 N.C. App. at 252, 811 S.E.2d at 733; *In re E.M.*, 249 N.C. App. 44, 58, 790 S.E.2d 863, 874 (2016). To the extent the GAL and DSS argue “the record when viewed in its entirety clearly reveals that the court applied the proper evidentiary standard[.]” we note the case the appellees rely on, *In re M.D.*, is entirely inapposite to the case at bar. *See In re M.D.*, 200 N.C. App. 35, 38–39, 682 S.E.2d 780, 783 (2009) (concluding the trial court did not commit prejudicial error by misstating the standard of proof as “clear and cogent evidence” in a written termination order when it correctly stated its findings were made by “clear, cogent, and convincing evidence” as required by N.C. Gen. Stat. § 7B-1109(f) when rendering its order). Because the trial court failed to identify the standard of proof it applied, we vacate the portion of the PPO concluding both parents had acted inconsistently with their constitutionally protected parental rights and, as a consequence, the trial court’s guardianship determination, *see In re B.R.W.*, 278 N.C. App. at 394, 863 S.E.2d at 213, and remand for findings of fact applying the correct standard of proof and conclusions based thereon.

### **III. Visitation**

Both parents also argue the trial court erred in ordering visitation.

#### **A. Mother’s Appeal**

Mother asserts the trial court failed to follow a statutory mandate and erred “by not providing any indication in its permanency planning order regarding Mother’s visitation and failed to make any finding that visitation was not in Ben’s best interest,

or otherwise contrary to his health and safety.” Whether a trial court fails to follow a statutory mandate is a question of law reviewed *de novo*. *In re J.C.-B.*, 276 N.C. App. at 192, 856 S.E.2d at 892.

Visitation is governed by N.C. Gen. Stat. § 7B-905.1, which states:

An order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile’s placement outside the home *shall provide* for visitation that is in the best interests of the juvenile consistent with the juvenile’s health and safety, *including no visitation*. The court may specify in the order conditions under which visitation may be suspended.

N.C. Gen. Stat. § 7B-905.1(a) (2021) (emphasis added). However:

[i]n the absence of findings that the parent has forfeited his or her right to visitation or that it is in the child’s best interest to deny visitation, the court should safeguard the parent’s visitation rights by a provision in the order defining and establishing the time, place, and conditions under which such visitation rights may be exercised. As a result, even if the trial court determines that visitation would be inappropriate in a particular case or that a parent has forfeited his or her right to visitation, *it must still address that issue in its dispositional order* and either adopt a visitation plan *or specifically determine that such a plan would be inappropriate in light of the specific facts under consideration*.

*In re J.C.*, 283 N.C. App. 486, 491, 873 S.E.2d 757, 761–62 (2022) (emphasis added) (citation, quotation marks, and editing marks omitted).

Here, the trial court only found Mother had been provided “minimal video visitation,” but not in-person visitation, and these visits ceased at the request of Ben’s therapist because “[t]hese visits did not go well for [Ben] as he seemed scared during

the visits and had behavioral issues following the visits.” The trial court did not find all visitation with Mother was not in Ben’s best interests, and included no provisions regarding ongoing visitation, or a lack there of, with Mother. The trial court left Mother entirely absent from its visitation provisions.

We have already determined the PPO must be remanded. On remand the trial court must also clarify if it intentionally did not grant Mother visitation. If the trial court did intend to not grant Mother visitation, it must “specifically determine that such a plan would be inappropriate in light of the specific facts under consideration.” *Id.* at 491, 873 S.E.2d at 762.

### **B. Father’s Appeal**

Father also appealed the trial court’s visitation determination. Father asserts the trial court abused its discretion by ordering supervised visitation at a paid visitation center without making findings regarding his ability to pay for visitation.

“A trial court’s order regarding visitation rights is reviewed for an abuse of discretion.” *In re R.J.P.*, 284 N.C. App. 53, 60, 875 S.E.2d 1, 6 (2022) (citations omitted). “A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason or upon a showing that the trial court’s decision was so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 60, 875 S.E.2d at 6–7 (citations and quotation marks omitted).

Section 7B-905.1 provides the trial court must order visitation in a juvenile’s best interests and, “[i]f the juvenile is placed or continued in the custody or

guardianship of a relative or other suitable person, any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised.” N.C. Gen. Stat. § 7B-905.1(c). When the trial court orders supervised visitation, it must make findings “as to the costs associated with supervised visitation, who would bear the responsibility of paying such costs, or [the] [r]espondent’s ability to pay the costs.” *In re J.T.S.*, 268 N.C. App. 61, 74, 834 S.E.2d 637, 646 (2019). This Court has specifically held a trial court must make findings regarding a parent’s ability to pay the costs of supervised visitation when ordered, otherwise this Court cannot determine whether a trial court abused its discretion when setting conditions for visitation. *See In re E.P.-L.M.*, 272 N.C. App. 585, 603, 847 S.E.2d 427, 441 (2020).

Here, the trial court ordered Father “shall have a minimum of twice monthly supervised visitation with [Ben]. Each visit is to be for a minimum of one (1) hour in length and take place at Our House.” However, the trial court did not make any findings related to fees associated with Our House, whether it intended Father to bear the costs of such fees, or whether Father had the ability to pay supervised visitation fees. Therefore, we remand for additional findings. *See id.* at 604, 847 S.E.2d at 441.

#### **IV. Cessation of Reunification Efforts**

Father also argues the trial court abused its discretion when it ceased reunification efforts between him and Ben because he was in substantial compliance

with his case plan and was available to the court, DSS, and the GAL. We affirm the PPO to the extent it ceases reunification efforts between Father and Ben.

#### **A. Standard of Review**

This Court reviews an order ceasing reunification efforts for whether there is competent evidence in the record to support the findings of fact, whether those findings support the conclusions of law, and whether the trial court abused its discretion when making dispositional determinations. *See In re K.P.*, 383 N.C. 292, 301–02, 881 S.E.2d 250, 256 (2022) (citation and quotation marks omitted). Findings of fact are conclusive if supported by any competent evidence, even if evidence exists to support contrary findings. *See In re J.M.*, 384 N.C. 584, 591, 887 S.E.2d 823, 828 (2023) (citation omitted). “An 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.” *In re K.P.*, 383 N.C. at 302, 881 S.E.2d at 256 (citation and quotation marks omitted).

#### **B. Analysis**

At every permanency planning hearing, the trial court is required to consider and, if relevant, make written findings on “[w]hether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile’s health or safety and need for a safe, permanent home within a reasonable period of time.” N.C. Gen. Stat. § 7B-906.1(d)(3) (2021).

Reunification shall be a primary or secondary plan unless

the court made written findings under G.S. 7B-901(c) or G.S. 7B-906.1(d)(3), the permanent plan is or has been achieved in accordance with subsection (a1) of this section, or 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). To demonstrate reunification efforts would be unsuccessful or inconsistent with a juvenile's health or safety, the trial court must make further written findings addressing:

- (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). These findings need not “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.” *In re J.M.*, 384 N.C. at 594, 887 S.E.2d at 830 (citation and quotation marks omitted). The trial court must make findings under both N.C. Gen. Stat. § 7B-906.2(b) and 7B-906.2(d) to cease reunification efforts. *See In re A.W.*, 280 N.C. App. 162, 169, 867 S.E.2d 235, 241 (2021).

Father challenges numerous findings of fact and argues they are either inaccurate or irrelevant for purposes of fulfilling the statutory criteria in N.C Gen. Stat. §§ 7B-906.1 and 7B-906.2. We first resolve these challenges and then determine whether the statutory criteria are met.

***1. Findings 19–21, 23 and 24***

Father first challenges findings 19–21, 23, and 24. Findings 19–21 address the appropriateness, particularly the cleanliness, of Father’s home. Finding 23 states Father has biweekly supervised visitation with Ben, and Father and Ben are “clearly bonded[,]” but “if the child has a change of clothing, diaper or wipes in the event of a dirty diaper, the foster parents or DSS has to plan ahead in order to provide these things for the child since [Father] does not prepare for the visits.” The challenged portion of finding 24 states Father “continues to struggle caring for [Ben] independently during visitation. He does not bring items like food, snacks, or activities for the visits consistently and when he does, he is supported by his mother,” the paternal grandmother.

Father asserts findings 19–21, 23, and 24 are, even if true, “irrelevant for purposes of supporting a cessation of reunification efforts because they are based on socioeconomic factors.” Father further argues that a portion of finding 24 is unsupported by competent evidence because of the existence of contradictory testimony.

However, Father does not cite any authority supporting the proposition that

socioeconomic factors as a matter of law cannot be considered when assessing the statutory criteria under N.C. Gen. Stat. § 7B-906.2. Only once in his brief, in the section discussing parental fitness and conduct inconsistent with a parent's protected status, does Father cite an opinion from this Court discussing the consideration of socioeconomic factors. *See Dunn v. Covington*, 272 N.C. App. 252, 265, 846 S.E.2d 557, 567 (2020) ("Socioeconomic factors that this Court has held do not show a parent's unfitness or acts inconsistent with constitutionally-protected status include. . . ." (citations omitted)). This Court's opinion in *Dunn* did not address the cessation of reunification efforts. A review of our precedent reveals a single opinion from this Court addressing both the consideration of socioeconomic factors and the cessation of reunification efforts. *See In re A.C.*, \_\_\_ N.C. App. \_\_\_, 872 S.E.2d 844, 2022 WL 2046226 (2022). However, this opinion was not published and only applied the doctrine discussed in *Dunn* to the trial court's determination of the respondent-father's parental fitness. *See id.* at \*5–6. This Court separately assessed the trial court's decision to cease reunification under N.C. Gen. Stat. § 7B-906.2(d) prior to discussing the trial court's erroneous reliance on socioeconomic factors as to the parental fitness determination. *See id.* at \*2–5. Because neither *Dunn* nor *In re A.C.* are applicable here, we do not overturn findings 19–21, 23, or 24 to the extent they discuss socioeconomic factors.

To the extent Father argued there was evidence to support a finding contrary to finding 24, we note contradictory evidence alone is insufficient to render a finding



unsupported by competent evidence. *See In re J.M.*, 384 N.C. at 591, 887 S.E.2d at 828. Finding 24 is supported by the psychological evaluations and DSS and GAL court reports in the record and is therefore binding on appeal.

**2. Findings 25 and 28**

Father summarily denies findings 25 and 28, arguing there was evidence to support contrary findings. Again, contradictory evidence alone does not render findings unsupported by competent evidence. *See id.* Finding 25 states “it [was] incumbent upon [Father] to ensure that [Ben] was not exposed to cigarette smoke or vaping[,]” but Father smelled of smoke at “eleven of the last thirteen visits[.]” This finding is supported by a DSS court report in the record. Finding 28 states Father engaged in more of a peer role than parental role during the MIM assessment, and finding 28 is supported by the MIM assessment itself. These findings are both binding on appeal.

**3. Finding 29**

Father “disputes finding 29 because it is erroneous as a matter of law.” We note finding 29 is a quote directly from the MIM assessment’s conclusion, without any credibility determination by the trial court. We disregard finding 29 as a mere recitation of evidence. *See In re A.E.*, 379 N.C. 177, 185–86, 864 S.E.2d 487, 495–96 (2021).

**4. Finding 30**

Father next challenges finding 30 to the extent it finds “[t]here have been

multiple hearings with no finding that [F]ather had the ability to independently parent [Ben].” Father asserts this portion of finding 30 is unsupported because it is based on prior permanency planning proceedings, the evidence from these prior proceedings was not before the trial court at the last permanency planning hearing, and therefore the trial judge’s “reliance on [Father’s] failure to previously regain custody of Ben was tantamount to her relying on evidence not presented to her to conclude that [Father] should not regain custody of Ben on this occasion.”

However, it is clear the trial court was taking judicial notice of the previous permanency planning orders for purposes of reviewing Father’s lack of improvement of his parenting ability during this juvenile case. While “we believe the better practice would be to explicitly give all parties notice by announcing in open court that [the trial court] is taking judicial notice of the matters contained in the court file[,]” *see In re M.N.C.*, 176 N.C. App. 114, 121, 625 S.E.2d 627, 632 (2006), “[t]his Court has held a trial court may take judicial notice of earlier proceedings in the same cause and that it is not necessary for either party to offer the file into evidence,” *id.* at 120–21, 625 S.E.2d at 632 (citation, quotation marks, and brackets omitted). We do not upset finding 30 on appeal.

### **5. Findings 31–33**

Father also summarily denies findings 31–33. Unlike findings 25 and 28 above, he offers no argument regarding these findings. These challenges are deemed abandoned. *See* N.C. R. App. P. 28(b)(g) (“An appellant’s brief shall contain . . . [a]n

argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, *or in support of which no reason or argument is stated*, will be taken as abandoned.” (emphasis added)).

## **6. Statutory Criteria**

We next review the trial court's findings for compliance with N.C. Gen. Stat. § 7B-906.2(b) and (d). On appeal, Father only argues the statutory requirement in N.C. Gen. Stat. § 7B-906.2(d)(2), “[w]hether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile[,]” was unmet. N.C. Gen. Stat. § 7B-906.2(d)(2). Father asserts that without findings Father failed to cooperate with his case plan, the trial court abused its discretion by removing reunification as a permanent plan.

Here, the trial court made numerous findings satisfying N.C. Gen. Stat. § 7B-906.2(d)(2) and detailing the degree of Father's compliance and participation with his case plan, DSS, and the GAL. While the trial court found Father did complete various elements of his case plan, including taking parenting classes, paying child support, completing mental health and substance abuse assessments, and remaining employed, as noted above the trial court also found Father failed to complete several other aspects of his plan.

Including the above findings, the trial court found Father still failed to bring supplies for Ben during visits. Father was also required to maintain appropriate housing, but “[a]t the time of the report, the home d[id] not meet minimum standards

to be an approvable living arrangement.” Father “reside[d] in a small one-bedroom home built on his mother’s property[,]” and upon inspection DSS “found that the home was not clean and had a substantial amount of trash in it, including the dirty diapers of” Father’s girlfriend’s child. “There were also dirty dishes in the sink and cigarette butts on the floor.” Father attempted to defer responsibility of the cleanliness of the home to his girlfriend, but the trial court found he could not transfer that responsibility.

The trial court also found that Father was previously ordered to “not smoke or vape during a visit . . . [and] to comply with any therapeutic recommendations that arose from [DSS’s] referral for [Father] to begin individual therapy, including smoking cessation activities.” However, Father did not address his smoking and continued to arrive at visits smelling of smoke. Additionally, although Father completed a required psychological assessment, the assessor developed a concern that Father could not properly care for and protect Ben due to “low Borderline intelligence.” Father was recommended individual therapy and the assessor sent nine referrals to Daymark for Father to begin counseling. Father did not attend therapy, and “[n]o progress ha[d] been made on these recommendations.”

The trial court also found Father continued to have difficulty parenting Ben independently. The paternal grandmother was Father’s “main support[,]” and allowed his home to be on her property. The paternal grandmother also had custody of Father’s older child. On the few occasions Father brought supplies for Ben to visits,

they were provided by the paternal grandmother. The trial court ultimately found Ben had been in DSS custody for twenty-five months and, due to Father's "lack of parenting skills and his inability to plan ahead, the minor child may not be safe in his care full time."

Although the trial court's findings do not "track the statutory language verbatim," they "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." *In re J.M.*, 384 N.C. at 594, 887 S.E.2d at 830. While Father had participated in his plan and cooperated with DSS to some degree, there were several aspects of his plan the trial court had repeatedly instructed Father he needed to remedy before he could be reunited with Ben. Father failed to do so for over two years and still relied on others for support, even though he had taken various classes and assessments required by his case plan. The trial court's findings satisfy N.C. Gen. Stat. § 7B-906.2(d)(2), that Father's degree of compliance with his case plan and cooperation with DSS indicated a failure of reunification efforts. *See* N.C. Gen. Stat. § 7B-906.2(d)(2).

Father does not argue the trial court failed to make any other findings required by N.C. Gen. Stat. § 7B-906.2(d), and, for the reasons above, the trial court did not abuse its discretion when it ceased reunification efforts between Ben and Father. We affirm the PPO to the extent the trial court ceased reunification efforts.

**V. Conclusion**

The trial court erred by failing to state the standard of proof when making findings and conclusions related to Mother and Father's parental fitness and the parents' conduct inconsistent with their constitutionally protected parental rights. The trial court also erred by omitting Mother entirely from its visitation provisions and by failing to make a finding regarding whether Father was capable of bearing the costs of supervised visitation. The trial court did not abuse its discretion when it ceased reunification efforts between Ben and Father. Therefore, the PPO is vacated and remanded in part, and affirmed in part.

VACATED AND REMANDED IN PART; AFFIRMED IN PART.

Panel consisting of: Judges DILLON, ARROWOOD, and GRIFFIN.

Report per Rule 30(e).