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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-829

Filed 7 May 2024

Alleghany County, Nos. 22 JA 11–13

IN THE MATTER OF: Z.M., L.M., H.M.

Appeal by respondent-mother and respondent-father from order entered 7 March 2023 by Judge William F. Brooks in District Court, Alleghany County. Heard in the Court of Appeals 3 April 2024.

Anné C. Wright and John Benjamin “Jak” Reeves for petitioner-appellee Alleghany County Department of Social Services.

Michelle FormyDuval Lynch for the Guardian ad Litem.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender J. Lee Gilliam, for respondent-appellant mother.

Sean P. Vitrano for respondent-appellant father.

ARROWOOD, Judge.

Respondent-mother (“mother”) and respondent-father (“father”) appeal from a permanency planning order entered 7 March 2023. For the following reasons, we affirm the trial court’s order.

I. Background

Z.M. (“Zara”), L.M. (“Luna”), and H.M. (“Hudson”) are children of mother and father.¹ Zara was born in June 2014, Luna in October 2015, and Hudson in June 2018. In October 2021, the Allegheny County Department of Social Services (“DSS”) received a report alleging domestic violence, substance abuse, improper remedial/medical care, and improper supervision in mother and father’s home where the children lived. After mother and father failed to respond to attempted communications, DSS social workers and a law enforcement officer visited the home unannounced in November 2021.² At the conclusion of the visit, mother and father entered into a safety plan with DSS which required that they enroll Zara in school, keep pathways and exits in the home clear, clean up animal waste, and refrain from domestic violence.

Multiple follow-up visits were conducted by DSS from November 2021 to January 2022. DSS attempted four visits in February 2022, but no one answered the door or responded to messages. DSS social worker Sarah Bennett (“Bennett”) returned on 18 February 2022 with a law enforcement officer. While in the home, Bennett spoke with Zara, who described how father had choked mother, and how Zara

¹ Pseudonyms are used to protect the identity of the children and for ease of reading.

² During the visit, mother and father admitted that there had been instances of domestic violence, though none in front of the children, and they denied any substance abuse in the home. However, father admitted that he “did use and sold a little” to make extra income. Mother stated that she home schooled Zara, but the school was not licensed. None of the children had seen a doctor, nor were they vaccinated. A DSS social worker described the home as cluttered: there were toys everywhere, the couch was “cut up,” and dog feces and urine were on the floor. The children told the social worker that mother and father fight and that it scares them.

hit him to “get him off of” mother. Mother denied arguing with father and stated that he had left the residence to prevent an argument. Both Zara and Luna stated that they were not afraid to speak with the social worker because father was not home. Bennett also observed that the home was very messy and cluttered—dog feces were near the staircase, open food containers and old food were sitting out, and there was an odor of trash and dogs in the downstairs area of the home. Following the visit, Bennett completed a safety assessment, reporting that “[d]omestic violence exist[ed] in the household and pose[d] an imminent danger of serious physical harm and/or emotional harm to the child.” Mother and father initialed each page of the safety assessment. Within the safety agreement section of the assessment, mother and father agreed to “go outside away from the kids” if arguing, “and separate when needed[.]”

DSS filed juvenile petitions on 21 February 2022 alleging Zara, Luna, and Hudson were neglected and dependent juveniles. According to the date stamps, the petitions were filed at 3:40 p.m., 3:41 p.m., and 3:44 p.m., respectively. Orders for nonsecure custody of the three children were filed at approximately the same time as the petitions—3:40 p.m., 3:42 p.m., and 3:44 p.m. The nonsecure orders were signed, “Jak Reeves by Wandy Del Valle[.]” with “Jak Reeves” listed as the “Judge’s Designee[.]”³ The orders also indicated that Jak Reeves received “telephonic

³ Jak Reeves is an attorney for petitioner-appellee, Alleghany County DSS, and Wandy Del Valle is one of the DSS social workers assigned to the case.

approval” for the orders at 2:47 p.m. The trial court held a hearing the following day, granting nonsecure custody. In its 15 March 2022 nonsecure custody order, the trial court awarded mother and father “a minimum of two, two-hour supervised visits per month[.]”

Following a 17 May 2022 hearing on the juvenile petitions, the trial court adjudicated Zara, Luna, and Hudson neglected and dependent juveniles. The trial court ordered a primary plan of reunification with a concurrent plan of custody with an approved caregiver.⁴

Permanency planning hearings were held in August and November 2022. In a 15 September 2022 permanency planning order, the trial court found that mother and father “continue to refuse to sign their case plan, visitation plan, and immunizations forms.”⁵ In another finding, the trial court stated that—during his pro se closing argument—father remarked, “there was ‘no point’ in working with DSS and the Court and that the Court always follows the recommendations.” The trial court found that it was in the best interest of the children “that the primary permanency plan be reunification with a concurrent plan of guardianship or custody with an approved caregiver.”

⁴ The trial court also stated in its order that legal and physical custody would remain with DSS and that the children could be placed with the maternal grandmother at DSS’s discretion.

⁵ The trial court also found that mother and father continued to refuse to sign medical consent forms for Hudson’s dental services and surgery.

In a 6 December 2022 permanency planning order, the trial court found that Hudson had dental surgery in September where six teeth were removed and replaced with crowns. Mother and father visited with the children following the procedure but “spent the visit discussing th[e] court case and coached the children on what to say to the Court at the next hearing.” The order also stated that mother and father had arrived late to each visit since the August 2022 hearing and were evicted from their home in October 2022. The trial court set a new primary plan of guardianship with an approved caregiver with a concurrent plan of reunification. The trial court declared that if progress was not made, the primary permanency plan would “be changed to guardianship with a concurrent plan of adoption.”

A third permanency planning hearing was held on 17 February 2023. During the hearing, social worker Haley Shelton (“Shelton”) testified primarily about the period after the 18 November 2022 hearing. Specifically, Shelton testified that mother and father were scheduled to complete drug screenings on 21 November 2022. However, when they arrived for testing, father decided not to test because “he had already told DSS staff he would be positive.” Mother tested positive for buprenorphine and methamphetamine.

After the failed screenings, DSS scheduled a Child and Family Team Meeting (“CFT”) for 2 December 2022; however, after arriving late and reviewing the revised Out of Home Family Service Agreement (“OHFSA”), mother and father refused to sign the plan, argued with the staff, and blamed DSS for the children being in foster

care. Mother and father were scheduled for assessments and drug testing with Daymark Recovery Services (“Daymark”) on 12 and 13 December 2022 but neither of them showed up. According to Shelton, father communicated to her that they no longer wanted to work with Daymark and planned to switch to Phoenix Consulting (“Phoenix”), having completed their initial intake with Phoenix that day via Zoom. However, Phoenix later contacted Shelton, stating that mother and father failed to attend their scheduled assessments on 20 December 2022 and did not respond to phone communications. After failing to complete scheduled drug tests with Phoenix on 4 and 5 January 2023, Phoenix ultimately discharged mother and father from services “due to missed appointments and behaviors.”

Additional drug tests were scheduled for mother and father with Daymark on 7 and 14 February 2023; however, mother and father again failed to complete them despite reminders from Shelton to do so. Shelton testified that since the last court date, neither mother nor father had “submitted to a clean drug screen[.]” The 4 January 2023 screening with Phoenix and the 7 and 14 February 2023 screenings with Daymark were scheduled by Shelton.

On 31 January 2023, Shelton met with mother and father where Shelton explained that the primary plan was currently guardianship with a concurrent plan of reunification. When Shelton stated “that they were not working their plan at this time,” mother and father “continued to blame DSS for the removal of the children”

and “continued to argue and state that DSS w[ere] liars.” According to Shelton, she “tried to reason with [them], but [she] was unable to.”

With respect to domestic violence treatment, father and mother completed an eight-hour domestic class in February 2023. However, the class was completed online and did not require an assessment, which according to Shelton, made the class “[in]sufficient.”⁶ Father and mother also completed an online drug and alcohol class in February 2023 that did not require an assessment. Shelton testified that, in the months leading up to the February hearing, mother and father “had a trend” of unilaterally deciding not to attend classes scheduled by DSS and communicating that they “want[ed] to pick [their] own agency.”

Shelton also testified about various meetings with mother and father and monthly visits with the children that she supervised. When asked about DSS’s concerns regarding mother and father’s behavior during meetings and visits, Shelton alluded to “explosive behaviors [mother and father] have had in the past,” and “talking to the children about the court involvement.” With respect to father’s behavior, Shelton testified that, on multiple occasions, father “came into the office cussing[,]” threatening social workers, and “slamming doors.”

⁶ According to Shelton, mother and father’s OHFSA stated, “[mother and father] agree to work together on their relationship *with a therapist that offers domestic violence services*.” (emphasis added) Shelton further testified that father took the online domestic violence class after she “had sent him the court report for [the 17 February 2023 hearing, which stated father was] not working on anything else on his out-of-home service agreement.”

Shelton recommended to the trial court that the permanent plan be changed to guardianship with a concurrent plan of adoption and that—given mother and father’s “refusal to work with [DSS] and their failure to comply with any type of out-of-home family services case plan”—reasonable efforts should be ceased.

DSS and guardian ad litem (“GAL”) court reports were admitted into evidence during the hearing. Both reports detailed mother’s positive drug test in November 2022, and mother and father’s failure to complete additional tests between December 2022 and February 2023. Further, the GAL report indicated that mother and father had not “completed any items” on their plan and had “cancelled [an] appointment with GAL on 2.7.23” without rescheduling.

The trial court filed its third permanency planning order on 7 March 2023, which included the following relevant findings:

19. The Alleghany County [DSS] has throughout the history of this case made all reasonable efforts to avoid the children’s placement in foster care The reasonable efforts made or being pursued regarding the minor children as of this date are as follows:
 - a. CPS Investigative Assessment
 - b. Safety Plans
 - c. Contact with Collaterals
 - d. Risk Assessments
 - e. Strength and Needs Assessments
 - f. Attempt to Maintain regular contact with the respondents and children
 - g. Kinship assessment as requested
 - h. Made referrals for counseling for the respondents and children
 - i. Transportation as needed

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- j. Medicaid for the children
- k. Monitoring mental health services offered the respondents through DayMark
- l. Referrals have been made for parenting and/or substance abuse

20. That reasonable efforts no longer remain necessary to protect the safety, health, and welfare of the children.

21. It is not in the best interest of the minor children to return or remain in the home of the respondent at this time.

....

23. DSS has made all reasonable efforts to prevent the removal of the minor children from the home.

....

27. Alleghany DSS continues to have concerns about the family's history of substance abuse, domestic violence and improper medical and remedial care and has recommended that the respondents address the issues through services made available for substance abuse treatment through assessments and drugs screening, address the domestic violence and abuse through counseling services and provide the children with age-appropriate education and regular medical and dental care.

28. In March 2022 the respondents entered into an [OHFSA] with the Alleghany DSS. The respondents have a treatment plan developed with the Alleghany County Health Department[.] [T]hey have not completed their plan and is currently non-compliant.

....

34. The respondents did complete an assessment with

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Tim Jones with the Health Department; however, they are not currently working with Tim Jones and they are non-compliant.

....

38. The respondent father has consistently exhibited aggressive anger and has projected a dominate behavior when interacting with Alleghany DSS staff member. To the extent that the social work staff have become uncomfortable and fearful in the presence of the respondent father.

39. The case plan with the respondents entered requires that the respondents maintain proper communication with DSS and done so in a civil and respectful manner, the respondents have not complied with this requirement.

....

55. There has been very little progress since the last hearing. Neither parent has had a negative drug screen since the last hearing. The parents presented certificates for substance abuse and domestic violence programs, but they did not require either parent[] to submit to an assessment for their needs, and appear inadequate to the Court.

....

57. The Court finds that it is not possible for the children to be returned to the home in the next six months in that the respondents have made no progress to improve matters that led to the removal from the home.

....

59. The court finds that it is in the best interest of the minor children that the primary permanency plan

be guardianship with an approved caregiver and a concurrent plan of adoption.

Mother and father filed timely notices to preserve their right of appeal from the 7 March 2023 order on 6 April 2023, and they filed timely notices of appeal from the order on 9 June 2023.

II. Discussion

Mother and father contend the trial court lacked jurisdiction to enter nonsecure custody orders for the children. Mother and father also contend the trial court erred in eliminating reunification from the permanency plan and in finding that DSS made reasonable efforts at reunification. We address each argument in turn.

A. Subject Matter Jurisdiction

Mother and father contend that the trial court lacked jurisdiction because the orders were signed by a social worker who did not have the authority to do so. We disagree.

“Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal.” *In re N.X.A.*, 254 N.C. App. 670, 672 (2017) (citation omitted). The filing of a properly verified juvenile petition invokes the jurisdiction of the trial court. *In re T.R.P.*, 173 N.C. App. 541, 545–46 (2005), *aff’d*, 360 N.C. 588 (2006) (vacating a juvenile order because the petition was not signed nor verified by the director or authorized representative); *see also* N.C.G.S. § 7B-405 (2023). However, where a petition is filed after issuance of a nonsecure custody order, the

trial court gains subject matter jurisdiction when the petition is filed. *In re L.B.*, 181 N.C. App. 174, 186–87 (2007) (explaining that “the *T.R.P.* Court left open the possibility that DSS could take remedial action which, in turn, could provide the trial court with subject matter jurisdiction.”). In *In re L.B.*, a nonsecure custody order was entered two days before the juvenile petition was signed and verified. *Id.* at 187. Although the trial court did not have jurisdiction when the order for nonsecure custody was filed, the *In re L.B.* Court held that it “gained subject matter jurisdiction and could properly act on th[e] matter” once the petition was later signed and verified. *Id.*

Here, the juvenile petitions were verified by DSS Director Lisa Osborne and properly filed on 21 February 2022 at approximately the same time as the nonsecure custody orders. Even if the nonsecure custody orders were filed moments before the petitions, under *In re L.B.*, the trial court gained jurisdiction and “could properly act on the matter” when the petitions were filed. *Id.* at 187. Mother and father’s contention that the social worker exceeded her authority by signing the nonsecure custody order is thus not a jurisdictional matter. Even assuming *arguendo* that the social worker erred by signing the orders without proper authority, such contention is also without merit because “nonsecure custody orders are expressly excluded from the statutory list of appealable juvenile orders[.]” *In re A.T.*, 191 N.C. App. 372, 374 (2008). Accordingly, the trial court had subject matter jurisdiction in the proceeding and mother and father had no right to appeal the nonsecure custody orders.

B. Eliminating Reunification

Mother and father contend that the trial court erred in eliminating reunification from the permanency plans because it failed to make the requisite statutory findings. We disagree.

This Court’s review of a trial court’s permanency planning order is limited “to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law.” *In re A.P.W.*, 378 N.C. 405, 410 (2021) (cleaned up). “At a permanency planning hearing, competent evidence may consist of any evidence, including hearsay evidence or testimony or evidence from any person that is not a party, that the court finds to be relevant, reliable, and necessary to determine the most appropriate disposition.” *In re J.M.*, 384 N.C. 584, 591 (2023) (cleaned up). Findings of fact supported by competent evidence, as well as any uncontested findings, are deemed binding on appeal. *In re V.B.*, 239 N.C. App. 340, 341 (2015) (citations omitted). And we review only those findings necessary to support the trial court’s disposition. *See In re J.S.*, 374 N.C. 811, 814, 822 (2020) (citations omitted). Lastly, a trial court’s dispositional decisions—e.g., eliminating reunification from the permanency plan—are reviewed for abuse of discretion. *In re A.P.W.*, 378 N.C. at 410 (citing *In re J.H.*, 373 N.C. 264, 267–68 (2020)). An abuse of discretion occurs where “the court’s ruling is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision.” *Thorpe v. Perry-Riddick*, 144 N.C. App. 567, 570 (2001) (cleaned up).

“[R]eunification ordinarily must be the primary or secondary plan in a juvenile’s permanent plan.” *In re J.M.*, 384 N.C. at 593 (citation omitted). But this requirement is not absolute, and the trial court does not need to pursue reunification during the permanency planning process if “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.G.S. § 7B-906.2(b) (2023). Such requisite written findings include:

(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 GAL for the juvenile; (3) whether the parent remains available to the court, the department, and the GAL for the juvenile; and (4) whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C.G.S. § 7B-906.2(d)(1)–(4) (cleaned up). Although the court’s written findings “do not need to track the statutory language verbatim, they must make clear that the trial court considered the evidence in light of whether reunification would be clearly unsuccessful or 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 (cleaned up).

Here, while not using the statutory language expressly, the trial court’s findings sufficiently address the factors in N.C.G.S. §7B-906.2(d) by showing that it considered the evidence in light of whether reunification would be unsuccessful.

Regarding factors (1) and (2), the trial court expressly found that “there ha[d] been very little progress since the last hearing[,]” with “[n]either parent ha[ving] a negative drug screen[,]” nor completing adequate assessments for substance abuse and domestic violence. Such finding was supported by Shelton’s testimony about mother and father’s failure to complete (1) scheduled drug tests despite multiple DSS reminders and (2) assessments for substance abuse and domestic violence.⁷ The finding thus depicts little to no engagement with their case plan, nor cooperation with DSS’s requests for drug testing.

With respect to factor (3), the trial court found that mother and father had not “maintain[ed] proper communication with DSS” as required by their case plan. Such finding addresses whether mother and father “remain[ed] available” to DSS, and neither parent challenged it in their briefs.⁸ N.C.G.S. § 7B-906.2(d)(3). On factor (4), the trial court found that it was “not possible for the children to be returned to the home” at this time because mother and father had “made no progress to improve matters that led to the removal from the home.” This finding depicts mother and father’s failure to act in a manner consistent with the children’s health or safety in that they failed to address domestic violence in the home. And Shelton’s testimony, as well as the DSS and GAL reports, support the finding. Accordingly, the trial court

⁷ The DSS and GAL court reports admitted into evidence also support this finding.

⁸ Even if the finding had been challenged, Shelton’s testimony about mother and father’s poor communication with DSS, Phoenix, and Daymark sufficiently supports it.

did not err in eliminating reunification from the permanency plans.

C. Reasonable Efforts at Reunification

Mother and father contend that the trial court erred in finding that DSS's efforts toward reunification were reasonable. We disagree.

“Our General Assembly requires social service agencies to undertake reasonable, not exhaustive, efforts towards reunification.” *In re A.A.S.*, 258 N.C. App. 422, 430 (2018). “‘Reasonable efforts’ is defined as ‘[t]he diligent use of preventive or reunification services by a department of social services when a juvenile’s remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time.’” *Id.* (quoting N.C.G.S. § 7B-101(18)).

For example, in *In re A.A.S.*, the mother argued that there was insufficient evidence in the record to show that her progress was unreasonable because she was denied “the benefit of reasonable efforts at reunification.” *Id.* In disagreeing with the mother, this Court pointed to ample evidence in the form of testimony from DSS social workers. *Id.* Specifically, social workers testified that they had “(1) created and implemented case plans for Respondents, (2) provided bus passes to Respondents, (3) organized and supervised visitation between Respondents and the children, and (4) arranged for drug screens of Respondents.” *Id.*

Here, the trial court found that DSS “made all reasonable efforts to prevent the removal of the minor children from the home”—i.e., facilitate reunification. And like in *In re A.A.S.*, ample evidence supports this finding. Shelton testified that DSS

(1) created and implemented case plans for mother and father; (2) conducted a CFT to review the OHFSA; (3) scheduled multiple drug tests with two agencies and sent mother and father reminders to them ahead of the scheduled tests; (4) established and maintained communications with Phoenix and Daymark concerning drug screenings; and (5) supervised monthly visits between mother and father and the children. Accordingly, the trial court did not err in finding that DSS's efforts toward reunification were reasonable.

III. Conclusion

For these reasons, we affirm the trial court's order.

AFFIRMED.

Judges WOOD and FLOOD concur.

Report per Rule 30(e).