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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1128

Filed 4 June 2024

Washington County, Nos. 21 JA 14-19; 22 JA 19

IN THE MATTER OF: E.C., M.S., M.S., L.C., M.S., M.S., A.C.

Appeal by respondent-parents from order entered 14 August 2023 by Judge Darrell B. Cayton, Jr., in Washington County District Court. Heard in the Court of Appeals 6 May 2024.

J. Edward Yeager, Jr., for petitioner-appellee Washington County Department of Social Services.

GAL Appellate Counsel Matthew D. Wunsche for the guardian ad litem.

Antoinette Lawrence pro se appellee no brief filed.

Quasha Woodley pro se appellee no brief filed.

Parent Defender Wendy C. Sotolongo, by Deputy Parent Defender Annick Lenoir-Peek, for respondent-appellant mother.

Conor E. Smith for respondent-appellant father.

PER CURIAM.

Respondent-parents appeal from a permanency planning order changing the primary permanent plans for their children to guardianship. Both respondent-parents argue that the district court erred in determining that the reunification

efforts made by the Washington County Department of Social Services (WCDSS) were reasonable. Respondent-mother challenges several findings of fact contained in the order and also contends that the district court violated her rights under the Americans with Disabilities Act (ADA) by failing to ensure she received reasonable accommodations in regard to the reunification efforts. Respondent-father additionally asserts that the district court failed to make an adequate verification of the resources of the juveniles' prospective guardians. After careful consideration, we affirm.

I. Factual Background and Procedural History

Respondent-mother is the mother of the seven juveniles whose cases are the subject of this matter: “Micah,” born in September of 2014; “Mark,” born in September of 2015; “Malik,” born in September of 2018; “Myer,” born in July of 2019; “Lily,” born in April of 2020; “Elijah,” born in March of 2021; and “Aaliyah,” born in April of 2022.¹ Respondent-father, the boyfriend of respondent-mother, is the biological father of all the children except Elijah and Myer and has acted as a father and caretaker to all seven juveniles throughout their lives. All parties to this appeal agree that each member of the family—including both respondent-parents and all of the juveniles—suffer from serious challenges, whether physical, psychological, or developmental.

¹ Pseudonyms are used to protect the identities of the juveniles and for ease of reading.

Respondent-mother has a second-grade education, limited reading and writing skills, and a full-scale IQ score of 53—in the extremely low range of functioning. She has also been diagnosed with anxiety and panic disorder and suffers from Phenylketonuria.² Her psychological evaluation indicated that her disabilities “would impair her ability to effectively parent without having significant support and assistance.” Respondent-father tested in the borderline range of functioning, has a diagnosis of trauma/stressor disorder related to his sickle cell disease, and a learning disorder which impairs his ability to read and write. His evaluation resulted in recommendations for “individual and family therapy [as well as] ongoing supports for the family.” In addition, each of the juveniles has serious physical and/or developmental challenges which require therapeutic interventions.

On 6 December 2021, WCDSS filed juvenile petitions alleging that the oldest six of the juveniles were neglected and dependent and obtained nonsecure custody.³ Those petitions assert the following: In October 2021, WCDSS received a report that respondent-mother’s niece, who then lived in the home with respondent-parents and the juveniles, was not attending school and had been improperly disciplined by respondent-father. The family had already been receiving in-home services following multiple reports of suspected medical neglect of the juveniles, and respondent-

² Phenylketonuria is “a rare inherited disorder that causes an amino acid called phenylalanine to build up in the body.” *Phenylketonuria*, Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/phenylketonuria/symptoms-causes/syc-20376302> (last visited April 24, 2024).

³ Aaliyah was not yet born.

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parents refused entry of a WCDSS social worker who attempted to follow up the report regarding the niece as well as to provide services for the other juveniles. In November 2021, WCDSS received a report that then-eight-month-old Elijah had been admitted to the hospital in November 2021 because of seizures and had then been airlifted to a second hospital for additional treatment. WCDSS also learned that five of the juveniles had missed numerous medical appointments, including those required to address Elijah's serious heart condition and Lily's failure to thrive, and each child had missed immunizations. Respondent-parents continued to obstruct access to the juveniles by WCDSS.

The district court adjudicated Elijah, Malik, Mark, Lily, Micah, and Myer neglected and dependent in an order entered 28 March 2022. The court found that DSS had made reasonable efforts to prevent the need for the children to come into care and to eliminate the need for continued placement, including, *inter alia*, developing a case plan with respondent-parents, following up with the children's medical providers, scheduling psychological evaluations for each parent, making referrals for parenting classes and mental health treatment for respondent-parents, holding Child and Family Evaluations⁴ and other meetings with the parents,

⁴ "A Child and Family Evaluation (CFE) is a forensically informed evaluation in which the service is provided by a qualified psychologist, clinical social worker or licensed mental health practitioner. . . ." *FY 2023 Guidelines for Child and Family Evaluation (CFE) Providers*, North Carolina Child Medical Evaluation Program, UNC School of Medicine Department of Pediatrics, <https://www.med.unc.edu/pediatrics/wp-content/uploads/sites/1115/2022/09/FY23-CFE-Provider-Guidelines.pdf>.

arranging for supervised visits between respondent-parents and the children, and attending to the medical needs of the children.

Aaliyah was born in April 2022. In June 2022, WCDSS filed a petition alleging that Aaliyah was dependent based on concerns that respondent-parents would not be able to provide proper care for her in light of their failure to care for Aaliyah's siblings. WCDSS obtained nonsecure custody of Aaliyah, and she was placed in kinship care along with three of her siblings. The court adjudicated Aaliyah dependent in a consent order entered 16 December 2022.

Following a permanency planning hearing for all seven juveniles on 24 July 2023, the district court entered a permanency planning order on 14 August 2023 in which it, *inter alia*, changed the juveniles' primary permanent plan from reunification with respondent-parents to guardianship with relatives. Respondent-parents filed notices of appeal.

II. Respondent-father's Petition for Writ of Certiorari

Although respondent-father timely filed his notice of appeal, he concedes that "the certificate of service on the [n]otice of [a]ppeal indicates that it was not properly served on the guardians for the juveniles." *See* N.C.R. App. P. 3.1(b) (requiring that notice of appeal in matters arising under Subchapter I of the Juvenile Code be served on all parties). The order appealed from set the primary permanent plan for the juveniles as guardianship. Accordingly, the juveniles' guardians were parties, and service of the notice of appeal upon them was required. *See* N.C. Gen. Stat. § 7B-

401.1(c) (2023) (“A person who is the child’s court-appointed guardian . . . pursuant to G.S. 7B-600 shall automatically become a party but only if the court has found that the guardianship is the permanent plan for the juvenile.”); N.C. Gen. Stat. § 7B-600(b) (2023) (“In any case where the court has determined that the appointment of a . . . guardian of the person for the juvenile is the permanent plan for the juvenile and appoints a guardian under this section, the guardian becomes a party to the proceeding.”).

Respondent-father asks this Court to reach the merits of his appellate argument by means of certiorari review in the event we dismiss his appeal as a result of his failure to timely serve the juveniles’ guardians. In support of this request, respondent-father asserts that: he reasonably relied upon his trial counsel to properly serve his notice of appeal; “the Indigent Defense Services’ Office of the Parent Defender served the appellate entries on the guardians for the juveniles” on 27 September 2023; and no party will be prejudiced by allowing his petition for writ of certiorari.

The failure to serve a notice of appeal on all other parties is a nonjurisdictional defect. *In re K.D.C.*, 375 N.C. 784, 787, 850 S.E.2d 911, 915 (2020) (citing *Hale v. Afro-American Arts Int’l, Inc.*, 335 N.C. 231, 232, 436 S.E.2d 588, 589 (1993)). “[A] party’s failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal.” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 198, 657 S.E.2d 361, 365 (2008) (citations omitted). We find no

reason to depart from that view in regard to respondent-father's appeal. The guardians here were timely served with respondent-mother's notice of appeal on 13 September 2023 and thus were made aware that the permanency planning order would be subject to appellate review; respondent-father's notice of appeal was belatedly served on the guardians only two weeks later, on 27 September 2023, before the proposed record on appeal was served on the guardians by respondent-mother. Thus, there has been no disruption in the orderly flow of the appellate process. *See id.* No other party—including the guardians of the juveniles—has asked the Court to dismiss respondent-father's appeal or filed a response to respondent-father's petition suggesting that any prejudice occurred as a result of respondent-father's failure to timely serve his notice of appeal on the juveniles' guardians.

Accordingly, we elect to invoke Appellate Rule 2, suspend the service provision of Appellate Rule 3.1(b), and address the merits of respondent-father's appeal. Respondent-father's petition for writ of certiorari is therefore dismissed as moot.

III. Analysis

A. Standard of review

On appeal, our consideration “of a permanency planning review order is limited 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 A.P.W.*, 378 N.C. 405, 410, 861 S.E.2d 819, 825–26 (2021) (citation, internal quotation marks, and brackets

omitted). Findings of fact supported by any competent evidence and uncontested findings are conclusive on appeal. *Id.* (citation omitted).

We review a court’s resulting dispositional decisions only for abuse of discretion. *In re C.M.*, 273 N.C. App. 427, 429, 848 S.E.2d 749, 751 (2020) (citation omitted), *aff’d per curiam*, 377 N.C. 105, 856 S.E.2d 96 (2021). “A . . . court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason.” *Id.* (citation and internal quotation marks omitted).

B. Reasonable efforts at reunification

Both respondent-parents argue that the district court erred in determining that WCDSS made reasonable efforts to reunify them with the juveniles. In addition, respondent-mother challenges certain findings of fact in the order and further contends that the “court violated [her] rights under the ADA and the Juvenile Code by failing to require [WC]DSS to provide reasonable accommodations.” We find no merit in these contentions.

“[A]t each permanency planning hearing the court shall make a finding about whether the reunification efforts of the county department of social services were reasonable.” N.C. Gen. Stat. § 7B-906.2(c) (2023). Under the Juvenile Code, the term “reasonable efforts” is defined as the “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.” N.C. Gen. Stat. § 7B-101(18) (2023). This Court

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has noted that social services departments are thus only required to “undertake *reasonable, not exhaustive, efforts* towards reunification.” *In re A.A.S.*, 258 N.C. App. 422, 430, 812 S.E.2d 875, 882 (2018) (emphasis added). Reasonable efforts can include creating and implementing a case plan, providing transportation, supervising visits, and arranging for drug screens, *id.*, as well as “crisis counseling, individual and family counseling, services to unmarried parents, mental health counseling, drug and alcohol abuse counseling, homemaker services, day care, emergency shelters, vocational counseling, emergency caretaker and other services.” *In re D.M.*, 211 N.C. App. 382, 386, 712 S.E.2d 355, 357 (2011) (citations and internal quotation marks omitted) (listing with approval examples taken from a relevant federal regulation).

Respondent-mother first takes issue with Finding of Fact 26, which describes the services offered by WCDSS to support reunification of the children with respondent-parents:

WCDSS has held Child and Family Team [CFT] meetings; facilitated the parents’ psychological evaluations; made mental health, parenting and substance abuse referrals for each respondent-parent; followed up with the parents’ service providers; supervised and helped facilitate visitation; and *arranged for the parents to attend medical appointments with the children*. The [c]ourt finds that these are reasonable efforts toward achieving a plan of reunification.

(Emphasis added.) Respondent-mother asserts that the italicized portion of this finding “is not accurate” because respondent-parents were only permitted to attend the juveniles’ well-child visits but were not included in their specialist and

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therapeutic appointments. The hearing transcript includes testimony from respondent-mother and other witnesses that respondent-parents were included in medical appointments with the family practitioner who provided care for the six oldest juveniles. The challenged portion of this finding, which does not refer to *all* medical appointments or to any therapeutic appointments, is thus supported.

Further, we are not persuaded by respondent-mother's contention that the failure to include her in additional medical and therapeutic appointments prevented her from "learn[ing] more about her children's conditions"—one of the key barriers to the juveniles returning to the care of respondent-parents—and thus demonstrates that the efforts at reunification were *not* reasonable. Similarly, respondent-father argues that "there is no evidence anywhere in the record that WCDSS offered services or assistance to [him] to address education on the juveniles' medical needs and diagnoses or for helping him understand the juveniles' medical needs due to his cognitive deficits." But the social worker testified that WCDSS was concerned that respondent-parents' cognitive deficits and learning difficulties prevented them from understanding the challenges and needs of the juveniles. As a result, WCDSS met with respondent-parents and their therapists to discuss the juveniles' diagnoses, appointments, and therapies, encouraging respondent-parents to ask questions and following up to see whether "they need help understanding." Such meetings reflect reasonable efforts by WCDSS to support respondent-parents in addressing that barrier to the juveniles' return to the family home.

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We likewise reject respondent-mother's challenge to findings "28, 31, 35, 36, 39, 42, and 44 all of which find that [WC]DSS provided proper reunification services, that further reunification efforts would be futile, that it would not be possible to place some or all of the children home, and that guardianship is the best result." Respondent-mother argues that WCDSS could have done *more* to accommodate her intellectual disability and support her understanding of the juveniles' specialized medical needs. Respondent-mother argues that the challenged findings of fact cannot stand because *WCDSS should have undertaken additional efforts* to support her parenting the juveniles, specifically by including her in specialist medical appointments with transportation provided, assisting her in continuing the juveniles' enrollment in day care "if returned to the parents' custody," requiring a full-time support person to be provided for the family, returning some but not all of the juveniles to the family home, and granting extended visitation time with the juveniles. Respondent-father similarly urges this Court to hold that reasonable efforts would have required WCDSS "to provide the parents education on the juveniles' medical needs and diagnoses and to provide further assistance to help [him] to understand the juveniles' medical needs due to his cognitive deficiencies."

As noted above, the court found that WCDSS made reasonable efforts at reunification, including holding CFT meetings; facilitating respondent-parents' psychological evaluations; making mental health, parenting, and substance abuse referrals; following up with respondent-parents' service providers; supervising and

facilitating visitation; and arranging for respondent-parents to attend the children's well-child medical appointments. While these efforts may not have been as "exhaustive" as respondent-parents would desire, *see In re A.A.S.*, 258 N.C. App. at 430, 812 S.E.2d at 882, they are of the type deemed reasonable under our case law, *see In re D.M.*, 211 N.C. App. at 386, 712 S.E.2d at 357, and respondent-parents cite no controlling precedent suggesting that the additional efforts they list are required under our Juvenile Code.

As to respondent-mother's assertion that WCDSS violated the ADA by failing to accommodate her intellectual disabilities when respondent-parents "were not included in specialty or therapy appointments and the [need for a] full-time support person was never reviewed," the ADA does not, as respondent-mother suggests, create any specialized requirements above and beyond those imposed by the Juvenile Code. *See In re A.P.*, 281 N.C. App. 347, 362, 868 S.E.2d 692, 703 (2022). In *In re A.P.*, we considered a parent's similar argument that a permanency planning order "was not consistent with her need for reasonable accommodations based on her intellectual disability, and therefore, violated" the ADA. *Id.* at 348, 868 S.E.2d at 695. The Court held that "abuse, neglect, and dependency proceedings are not 'services, programs or activities' within the meaning of the ADA, and therefore, *the ADA does not create special obligations in such child protection proceedings.*" *Id.* at 362, 868 S.E.2d at 703 (emphasis added) (citation omitted). Thus, where a district court's findings of fact show that a social services department has made reasonable efforts under our

Juvenile Code, the ADA's requirements are automatically deemed to be satisfied. *Id.* at 354, 868 S.E.2d at 698 (citing *In re S.A.*, 256 N.C. App. 398, 806 S.E.2d 81, 2017 N.C. App. LEXIS 906 (2017) (unpublished) and *In re C.M.S.*, 184 N.C. App. 488, 646 S.E.2d 592 (2007)). Because the ADA does not require special efforts or accommodations in a neglect proceeding, respondent-mother's argument lacks merit. For the same reason, we reject respondent-mother's assertion that the ADA was violated when WCDSS gave her "a boilerplate, cookie-cutter case plan" without accommodating her disabilities. As noted above, the reunification efforts made by WCDSS are reasonable under our case law, *see In re A.A.S.*, 258 N.C. App. at 430, 812 S.E.2d at 882 and *In re D.M.*, 211 N.C. App. at 386, 712 S.E.2d at 357, and thus they additionally satisfy the requirements of the ADA. *See In re A.P.*, 281 N.C. App. at 354, 868 S.E.2d at 698.

As this Court has held, respondent-parents were entitled to "reasonable [but] not exhaustive efforts" in support of reunification with the juveniles. *See In re A.A.S.*, 258 N.C. App. at 430, 812 S.E.2d at 882. The evidence and the other findings of fact support the court's finding that WCDSS made reasonable efforts at reunification under the Juvenile Code, even though the efforts could not overcome the obstacle created by the combination of the extraordinary care needs of the juveniles and respondent-parents' limitations. Respondent-parents' arguments are overruled.

C. Verification of the prospective guardians' resources

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Respondent-father additionally argues that the district court failed to adequately verify the guardians' financial resources as required by statute, contending that "the record lacked evidence to support the portion of the finding regarding the guardians' financial means." We disagree.

When appointing a guardian for children under the Juvenile Code,

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) (2023) (emphasis added); *see also* N.C. Gen. Stat. § 7B-906.1(j) (2023) ("If the court . . . appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person . . . being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile. *The fact that the prospective custodian or guardian has provided a stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources.*") (emphasis added). "The court may consider 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 needs of the juvenile and the most appropriate disposition." *Id.* N.C. Gen. Stat. § 7B-906.1(c). No particular findings are required to support such a verification. *See In re*

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J.R., 279 N.C. App. 352, 361–62, 866 S.E.2d 1, 7–8 (2021). Moreover, as noted above, findings of fact supported by *any* competent evidence are conclusive on appeal, *In re A.P.W.*, 378 N.C. at 410, 861 S.E.2d at 826, and a district court’s determination of a child’s best interests—including the appointment of a guardian—is reviewed only for an abuse of discretion. *See In re J.H.*, 244 N.C. App. 255, 269, 780 S.E.2d 228, 238 (2015).

Here, the district court found, and respondent-parents have not challenged on appeal, that at the time of the permanency planning hearing in July 2023, the juveniles had been placed since March 2022—a period of almost seventeen months—with two paternal relatives. Micah, Malik, Elijah, and Aaliyah were residing in the care of A.L., while Mark, Myer, and Lily were residing in the care of Q.W. In addition, the district court found:

Each caregiver desires to become the legal guardian for the juveniles in their respective home. Each has discussed the same with social workers, and each understands the responsibilities that go along with being the legal guardian of a child. Each is capable of acting as the guardian, and *each has the financial means with which to take care of the children.*

(Emphasis added.)

Respondent-father cites *In re P.A.*, 241 N.C. App. 53, 772 S.E.2d 240 (2015) in support of his position that “[w]hile evidence that the guardian has provided care for the child is some evidence of the guardian’s resources, that fact alone is not dispositive.” In the cited case, an order establishing guardianship was vacated

because no evidence about the prospective guardian's resources appeared in the record beyond the guardian's statement that they were adequate to care for the juvenile. *Id.* at 65, 772 S.E.2d at 248. This Court reasoned that "some evidence of the guardian's 'resources' is necessary as a practical matter, since the [district] court cannot make any determination of adequacy without evidence." *Id.* at 61–62. 772 S.E.2d at 246 (citations omitted). However, that opinion was issued in 2015, prior to the 1 October 2019 effective date of amendments adding the same language—"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*"—to N.C. Gen. Stat. §§ 7B-600(c) and 7B-906.1(j). N.C. Gen. Stat. § 7B-600(c) (emphasis added); N.C. Gen. Stat. § 7B-906.1(j) (emphasis added). *See also* Session Laws 2019-33, s. 7(a), s. 10. Accordingly, *In re P.A.* is not controlling here where the amended statutes apply.

Instead, the court's unchallenged finding indicating that the prospective guardians had "provided a stable placement for the juvenile[s] for at least six consecutive months is evidence that the person has adequate resources." *See* N.C. Gen. Stat. § 7B-600(c). Further, both A.L. and Q.W. testified at the permanency planning hearing that they were financially able to provide for the juveniles in their care. This evidence supports the district court's verification regarding the financial means of the guardians as required by N.C. Gen. Stat. §§ 7B-600(c) and 7B-906.1.

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Because the court did not err in making the required verification, respondent-father's argument to the contrary is overruled.

IV. Conclusion

For the reasons stated above, we find no merit in the arguments of respondent-parents. Therefore, we affirm the permanency planning order entered by the district court on 14 August 2023.

AFFIRMED.

Panel consisting of:

Judges ZACHARY, CARPENTER, and THOMPSON.

Report per Rule 30(e).