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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-157

Filed 5 November 2024

Surry County, Nos. 22 JA 2, 22 JA 3

IN THE MATTER OF: A.H., B.H.

Appeal by Respondent-Mother from an order entered 11 September 2023 by Chief Judge William F. Southern, III in Surry County District Court. Heard in the Court of Appeals 11 October 2024.

*The Law Office of Partin & Cheek, P.L.L.C., by R. Blake Cheek, for petitioner-appellee Surry County Department of Social Services.*

*James N. Freeman, Jr., P.C., by James N. Freeman, Jr., for Guardian ad Litem.*

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

WOOD, Judge.

Respondent-Mother (“Mother”) appeals from the trial court’s permanency planning order that awarded guardianship of her two minor children, A.H. (“Adam”)

and B.H. (“Bailey”),<sup>1</sup> to the maternal grandparents, reduced her visitation time, and ceased further permanency planning hearings. After careful review, we affirm in part, vacate in part, and remand.

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

On 17 June 2021, Surry County Department of Social Services (“DSS”) received allegations that Adam and Bailey were living in an injurious environment due to parental substance abuse. Upon Adam’s birth on 16 June 2021, his meconium tested positive for methamphetamines, amphetamines, and THC. Mother admitted to methamphetamine use while pregnant. DSS found the family in need of services on 6 August 2021.

Mother developed a case plan with DSS to address her substance abuse and to complete a program to strengthen her parenting abilities. DSS referred Mother to a parenting class on three different occasions. Mother did not engage in the first two attempts, which led to the services being terminated. She finally engaged with the provider on the third attempt on 22 December 2021. She was also referred to a substance abuse treatment provider for a clinical assessment but did not attend her appointments. On 10 January 2022, DSS filed amended juvenile petitions<sup>2</sup> alleging

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<sup>1</sup> Pseudonyms have been agreed upon by the parties and are used for ease of reading and to protect the identities of the juveniles in accordance with N.C.R. App. P. 42.

<sup>2</sup> DSS filed the original petitions on 7 January 2022 but did so on an outdated AOC form. The amended petitions were filed on the correct version of the form and DSS dismissed their first petitions on 11 January 2022.

that Adam and Bailey were neglected juveniles. DSS alleged despite its attempts to engage Mother with needed services, she showed no behavioral changes to alleviate the risk of harm to the juveniles.

On 19 July 2022, it was reported to DSS that Bailey had been taken to urgent care due to suspected vaginal bleeding. After a urine test and further evaluation at the hospital, it was determined Bailey had a severe urinary tract infection. DSS interviewed Bailey at the hospital, where Bailey described domestic violence between Mother and Father<sup>3</sup>, as well as substance abuse. DSS developed a safety plan with the parents where the children would not be exposed to drug use or drug paraphernalia and Father would arrange to stay elsewhere due to their frequent arguments. The following day, Mother went for a urine drug screen but was unable to produce a specimen.

DSS made an unannounced visit on 1 August 2022 and found Father at the residence, in violation of the parents' safety plan. Mother refused DSS's request to speak to Bailey during this visit. Thereafter, the parents agreed to place the children in a temporary safety placement. Bailey told DSS Father had been staying at the home and her parents had continued to fight. Adam, who was 14 months old at the time, had not received any well checks or immunizations since he was four months old.

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<sup>3</sup> Father did not appeal the order at issue in this case and is not a party to this appeal.

DSS filed another set of amended juvenile petitions on 2 August 2022, again alleging both juveniles were neglected. The trial court entered an order for nonsecure custody that day. Although DSS placed both juveniles with the maternal grandmother, the juveniles were placed temporarily with their maternal uncle until their grandmother was discharged from the hospital. The juveniles began staying with their grandmother on 22 September 2022.

On 8 December 2022, the trial court held adjudication and disposition hearings. DSS, the guardian *ad litem*, and both parents entered into a memorandum of agreement regarding the allegations in the juvenile petitions. Based on the stipulations of the parties, the trial court adjudicated the juveniles neglected. The trial court then proceeded to the disposition hearing and ordered the juveniles to remain in DSS's custody with placement with the maternal grandparents. The trial court identified the issues Mother needed to address in her case plan as substance abuse, domestic violence, parenting, and mental health. The trial court ordered Mother, *inter alia*, to do the following: obtain a substance abuse/mental health assessment and comply with all recommended treatment; enter into and comply with a family services case plan and comply with requests from DSS, including random drug screens; obtain a domestic violence assessment and attend domestic violence counseling; complete parenting classes; obtain and maintain a suitable residence and gainful employment; and not use or possess any controlled substances. The permanent plan was set as reunification and Mother was provided weekly, two-hour

supervised visitation. The trial court's findings were reduced to written orders entered 13 December 2022.

On 2 February 2023, the trial court held a permanency planning hearing. The trial court noted while Mother had completed a substance abuse assessment on 10 January 2023, she declined to sign a release of information. She also missed multiple drug screens since the last hearing, totaling five attempts by DSS. The trial court acknowledged Mother regularly attended visitation and the visits go well, although Mother frequently arrived late. The trial court ordered the primary plan to remain reunification and added a secondary plan of legal custody with a relative. Mother was instructed to complete similar goals as outlined in the prior hearing and to complete a urine and hair follicle drug test directly after the hearing.

Six months later, on 14 August 2023, the trial court held another permanency planning hearing and made numerous findings concerning Mother's progress. Mother had failed to sign the release of her records from her substance abuse assessment until one week prior to the 14 August 2023 hearing. Mother did not complete a urine and hair follicle drug test following the last hearing, although she was ordered by the court to do so. Since the initiation of this matter, Mother had completed four out of approximately forty-seven drug screen attempts by DSS: testing positive for amphetamines and methamphetamines twice and testing negative once. She completed a domestic violence assessment that recommended no domestic violence treatment but recommended substance abuse services and parenting classes.

Mother completed parenting classes and three sessions of counseling; however, Mother was removed from the counselor's schedule after she failed to respond to the counselor. She did not engage in any of the recommended substance abuse treatment.

From these findings, the trial court found Mother had not made adequate progress on her case plan within a reasonable time and was acting in a manner inconsistent with the health and safety of the juveniles. It adopted a new permanent plan, with a primary plan of guardianship and a secondary plan of reunification. The trial court awarded guardianship to the juveniles' maternal grandparents. It also reduced Mother's visitation schedule from once a week for two hours to twice monthly for two hours. Lastly, the trial court declared that no further permanency planning hearings were required. A written order was entered 11 September 2023.

On 25 September 2023, Mother gave notice of appeal from the 11 September 2023 order. While she does not challenge the award of guardianship, she argues that the guardians were given too much latitude to determine the terms of visitation, the changes to her visitation schedule were unsupported by the findings, and the trial court did not make a statutorily required finding to cease future permanency planning hearings.

## **II. Appellate Jurisdiction**

Mother filed a timely notice of appeal from the 11 September 2023 order. Mother admits, however, that the certificates of service do not indicate that the notice of appeal was served on the guardians, in violation of N.C.R. App. P. 3.1(b) ("Any

party entitled to an appeal . . . may take appeal by filing notice of appeal with the clerk of superior court . . . *and* by serving copies of the notice of appeal on *all* other parties.”) (emphasis added). Mother has filed a petition for writ of *certiorari*, requesting this Court to reach the merits of her appeal notwithstanding this defect.

In support of her petition, Mother argues the guardians would not be prejudiced by allowing the petition, as all parties, including the guardians, were timely served with subsequent appellate documents: Mother’s appellate counsel appointment order, the appellate entries, and the proposed and final record on appeal. She also asserts that the arguments in her brief have merit.

This Court has held that where the party has actual notice of the appeal, any error in service of the notice of appeal made by the parent “is non-jurisdictional and is not a substantial or gross violation of the appellate rules.” *In re A.N.B.*, 290 N.C. App. 151, 162, 891 S.E.2d 647, 656 (2023) (citation omitted). In *In re A.N.B.*, the parent failed to serve his notice of appeal on the child’s guardian *ad litem*. In denying the petition for writ of *certiorari* as superfluous, this Court noted the guardian *ad litem* had actual notice of the appeal, the guardian *ad litem* did not raise any issue before the Court regarding service, and there was no indication in the record that any party would be prejudiced should this Court hear the appeal.

Similarly, the guardians in this case have actual notice of the appeal, have not raised any issue regarding service, and did not file a response in opposition to the petition for writ of *certiorari*. The GAL and DSS have filed briefs addressing Mother’s

arguments on the merits. There is no indication in the record any party would be prejudiced should we hear Mother's appeal. The error in service, like the error in *In re A.N.B.*, was non-jurisdictional and not a substantial or gross violation of the appellate rules. We dismiss Mother's petition for writ of *certiorari* and proceed to address Mother's arguments on appeal.

### **III. Analysis**

Mother raises three issues on appeal from the trial court's permanency planning review order awarding guardianship of the minor children to their maternal grandparents. Mother makes two arguments regarding the 11 September 2023 order which reduced her visitation schedule. She first argues the trial court abused its discretion in granting the guardians "unfettered discretion" over the terms of Mother's visitation. She then argues, in the alternative, that if there was no issue with the discretion given to the guardians, the trial court still erred when it reduced Mother's visitation from one visit every week to twice monthly visits. Lastly, Mother argues the trial court erred in waiving the holding of future review hearings, as the children had not been in their current placement for at least one year. We address each argument in turn.

This Court reviews a permanency planning review order to determine "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 B.R.W.*, 278 N.C. App. 382, 392, 863 S.E.2d 202, 211 (2021) (cleaned up). "If the trial court's findings of fact are



supported by any competent evidence, they are conclusive on appeal.” *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010) (citation omitted). A trial court’s visitation determination is reviewed under a different standard and considers the best interest of the child. *In re K.W.*, 272 N.C. App. 487, 493, 846 S.E.2d 584, 590 (2020) (citation omitted). “This Court reviews the trial court’s dispositional orders of visitation for an abuse of discretion.” *In re J.R.*, 279 N.C. App. 352, 366, 866 S.E.2d 1, 10 (2021) (citation omitted). “When reviewing for abuse of discretion, we defer to the trial court’s judgment and overturn it only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.” *In re K.W.*, 272 N.C. App. at 493, 846 S.E.2d at 590 (2020) (citation omitted).

#### **A. Terms of Mother’s Visitation**

Mother’s first argument concerns the trial court granting the guardians excessive discretion over the terms of Mother’s visitation. The statute governing visitation plans is found in N.C. Gen. Stat. § 7B-905.1(c):

If 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. The court may authorize additional visitation as agreed upon by the respondent and custodian or guardian.

The trial court’s visitation order states the following:

The [Mother] shall have a minimum of twice monthly visitations for a minimum of two hours, supervised by the [g]uardians at a location determined by the [g]uardians,

and visitation may be expanded at the discretion of the [g]uardians.

The order sets out what is statutorily required—the minimum frequency and length of the visits, and that they are to be supervised, in this case, by the guardians. Mother argues the order is contrary to this Court’s case law because it gives complete discretion to the guardians to determine who supervises the visits, the timing and location of the visits, and whether to expand visitation.

We first note that the trial court’s order did not give the guardians complete discretion to determine who supervises visits. The plain language of the order explicitly assigns the duty of supervision solely to the guardians. The statute cited above does not bar guardians from supervising visits.

In support of her argument, Mother first cites *In re A.P.*, 281 N.C. App. 347, 868 S.E.2d 692 (2022). In *In re A.P.*, father was given custody of a juvenile in a permanency planning order. Like the order in the present case, the order in *In re A.P.* specified the minimum frequency and length of the visits—two hours of supervised visitation every other weekend to mother. Unlike the order at issue, the order allowed father to supervise the visits *or* choose someone else to supervise them. It also allowed him to choose the location of the visit if mother and father could not agree to one. There, mother argued this order gave father too much discretion over the visitation plan. This Court agreed, stating “the trial court improperly gave [father] substantial discretion over the circumstances of [mother’s] visitation by

allowing him to choose the location and supervisor of the visitation.” *Id.*, 281 N.C. App. at 361, 868 S.E.2d at 702.

The Court in *In re A.P.*, however, also cited father’s testimony during the hearing, where he stated he was not willing to facilitate or supervise mother’s visits and did not want mother to be a part of the juvenile’s life. *Id.* This Court ultimately held that the visitation order improperly delegated a judicial function to father by allowing him the sole discretion to decide where and by whom mother would be supervised during her visitations. The order was vacated and remanded to the trial court for entry of a proper visitation plan. In its holdings, the Court in *In re A.P.* explained this was the situation the Court had cautioned against in *In re Custody of Stancil*, 10 N.C. App. 545, 179 S.E.2d 844 (1971). There, this Court cautioned that a trial court’s grant of authority to a custodian-parent to decide the circumstances of the other parent’s visitation plan could completely deny that parent of their right to visit their minor child. *Id.*, 10 N.C. App. at 552, 179 S.E.2d at 849.

The order at issue is distinguishable from the order in *In re A.P.* There, the father could choose the location of the visits and the supervisor of the visits. In the present case, the guardians are not given discretion to choose the supervisor of the visits. The court ordered the guardians to supervise the visits. The silence in the order as to the location of the visits is similar to the order in *In re A.P.* The Court in *In re A.P.* also cited the father’s testimony—that he wanted mother to have no part in the child’s life—as support for vacating the visitation order.

In the present case, the guardians testified they supported a visitation plan and were amenable to allowing expanded visitation. They also testified they had a good relationship with Mother and hoped Mother would be able to one day regain custody of her children.

Mother also cites *In re C.S.L.B.*, 254 N.C. App. 395, 829 S.E.2d 492 (2017) in support of her argument. In that case, a permanency planning order granted guardianship of two of mother's children to their maternal aunt and guardianship of mother's other child to the maternal grandmother. *Id.*, at 396, 829 S.E.2d at 493. Mother was granted four hours of unsupervised visitation per week, provided the guardians did not have concern she was using drugs or that there would be discord between mother and father during the visits. *Id.* at 399–400, 829 S.E.2d at 495. If the guardians did have these concerns, they could suspend the visits. *Id.* There, this Court held that the order improperly delegated the court's judicial function to the guardians by allowing them to unilaterally modify mother's visitation based on their concerns. *Id.* at 400, 829 S.E.2d at 495. This Court vacated the visitation part of the order. *Id.*

*In re C.S.L.B.* is also distinguishable from the present case. The order in *In re C.S.L.B.* gave the guardians unilateral discretion to suspend mother's visitation. In the present case, the order does not give any discretion to the guardians to suspend visitation. Instead, the order allows the guardians to expand visitation, which complies with the provision in N.C. Gen. Stat. § 7B-905.1(c), allowing expanded

visitation. Although the order does not exactly match the language of the statute, “[t]he court may authorize additional visitation as agreed upon by the respondent and custodian or guardian[,]” the order is the functional equivalent of the statutory provision, stating that “visitation may be expanded at the discretion of the [g]uardians.” N.C. Gen. Stat. § 7B-905.1(c). The statute contemplates a scenario where both parties agree to visitation; meaning that one party, likely the guardian, can deny expanded visitation if it does not agree. The order at issue also implies an agreement between the parties as to expanded visitation, with the guardian retaining the ability to deny expanded visitation.<sup>4</sup>

Finally, Mother cites *In re J.D.R.*, 239 N.C. App. 63, 768 S.E.2d 172 (2015) in support of her argument. In that case, the trial court removed custody from mother after a neglect adjudication and placed the child with father. The trial court ordered supervised visitation for mother. The order gave father complete discretion over who would supervise the visits. The order was also much more detailed than the one in the present case. It ordered mother to report to father whether she completed psychological and substance abuse assessments. It required her to report her compliance with the treatments recommended by the assessments to father. She was to report drug test results to father. Father was to monitor mother’s behavior during

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<sup>4</sup> The most likely scenario would be for a parent to ask for expanded visitation and for the guardian to decide whether to agree. The reverse scenario, a guardian offers expanded visits but the parent declines, is very unlikely.

visits to ensure she did not act inappropriately or cause disturbances at school. Upon father deeming her compliant with the order, she was eligible for additional visitation. *Id.*, at 74-75, 768 S.E.2d at 179.

The Court in *In re J.D.R.* held the substantial discretion given to father impermissibly delegated the trial court's judicial function to father and effectively turned him into mother's caseworker. *Id.*, at 75-76, 768 S.E.2d at 179-80. The order at issue is distinguishable from the order in *In re J.D.R.* Here, the order does not set multiple conditions on mother's visitation, does not give the guardians the authority to determine whether mother complied with the trial court's directives, and does not turn the guardians into mother's caseworker.

The order in this case is more analogous to the order this Court upheld in *In re I.K.*, 273 N.C. App. 37, 848 S.E.2d 13 (2020). In that case, the order stated "Respondent[s] shall have a minimum of one hour per week of supervised visitation. The guardian has the authority and discretion to allow additional visitation." *Id.*, at 49, 848 S.E.2d at 23 (alteration in original). The Court plainly stated the order complied with N.C. Gen. Stat. § 7B-905.1(c). *Id.*

Consistent with the *In re I.K.* order, the order at issue also sets the minimum frequency of visits and allows for expanded visitation at the discretion of the guardians. Like the *In re I.K.* order, the order at issue complies with the statute. In addition, the order at issue does not have the problematic language present in the *In re C.S.L.B.* order which allowed a party to unilaterally suspend visitation, nor does it

give the guardians the power to monitor compliance with the court order, as was present in *In re J.D.R.* 239 N.C. App. at 75-76, 768 S.E.2d at 179-80. Because the order complies with N.C. Gen. Stat. § 7B-905.1(c) and is not inconsistent with our case law, we hold Mother’s arguments on this issue are overruled. If future visitation issues arise, the trial court’s order states that “all parties are aware . . . the matter may be brought back before the Court by filing a motion in the cause.”

### **B. Reduced Visitation**

Mother next contends the trial court abused its discretion in reducing her supervised visitation from one visit every week to twice monthly visits. A trial court 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.” N.C. Gen. Stat. § 7B-905.1(a) (2023). Further,

The assessment of the juvenile’s best interests concerning visitation is left to the sound discretion of the trial court and appellate courts review the trial court’s assessment of a juvenile’s best interests solely for an abuse of discretion. Under this standard, we defer to the trial court’s decision unless it is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.

*In re A.J.L.H.*, 384 N.C. 45, 57, 884 S.E.2d 687, 695 (2023) (cleaned up).

Past compliance with a visitation plan, failing to make adequate progress on a case plan, acting in a manner inconsistent with the health and safety of the juvenile,

and changes to a permanent plan are factors a trial court may consider when altering visitation plans. *See In re L.E.W.*, 375 N.C. 124, 134, 846 S.E.2d 460, 468 (2020).

The bulk of Mother's argument centers on her disagreement with the trial court's characterization of her compliance with her case plan. She argues that contrary to the trial court's findings, she made progress on her case plan.

As a part of her case plan, Mother was to obtain a domestic violence assessment and attend domestic violence counseling. She did obtain the assessment, and the provider did not recommend further domestic violence treatment. She was also required to complete a parenting class, which she did accordingly. Mother was to obtain a substance abuse and mental health assessment and comply with all recommended treatment. She was also required to sign a consent for the release of confidential information to allow copies of drug treatment and mental health assessments to be sent to the trial court, DSS, and the GAL. While Mother completed an assessment in January 2023, she declined to sign a release until the week prior to the 14 August 2023 hearing, even though the trial court ordered her to do so on 2 February 2023. At her substance abuse assessment on 10 January 2023, Mother admitted that she had used marijuana every day and had no plan to stop. At the assessment, she tested positive for methamphetamines but adamantly denied use. Following her assessment, she was diagnosed with amphetamine-type substance use disorder, severe; cannabis use disorder, severe; and adjustment disorder with mixed



anxiety and depressed mood. It was recommended that she attend an intensive outpatient therapy program. She did not follow this recommendation.

Mother later attempted to re-start substance abuse counseling with another provider. Mother attended three in-person visits and had one telephone visit between 16 June 2023 and 7 July 2023. The provider recommended a treatment plan of twice weekly sessions for a minimum of 12 weeks, utilizing cognitive behavioral therapy, solution focused therapy, and substance abuse education. The provider also recommended monthly drug screens and engagement in relapse prevention training and education. The provider reported that when they attempted to engage Mother between 10 and 20 July they received no response and consequently removed Mother from their schedule.

Mother was also required to comply with all drug screen requests made by DSS and not use or possess any controlled substances. Over the life of the case, Mother completed four drug screens out of approximately forty-seven requests by DSS. Of the four, she tested positive twice and negative once, with the other result pending at the time of the hearing. The trial court ordered her to complete drug screens on 8 December 2022 and 2 February 2023. She did not comply with either court order. On 7 July 2023, eleven months after the removal of her children, DSS took her to a drug testing facility where she refused to complete a hair follicle test and could not produce enough urine for a screen. She did not respond to DSS messages left for her on 7, 10, and 24 July 2023 requesting for her to complete drug screens.

The unchallenged findings by the trial court support its ultimate finding that Mother did not make adequate progress within a reasonable time under the plan. Unchallenged findings are deemed to be supported by competent evidence and are binding on appeal. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) (citations omitted). While she completed a parenting class, a domestic violence class, and underwent a substance abuse assessment, she failed to follow the treatment recommendations and failed to show for nearly all but four of her drug screens. These failures spanned the time from when her case plan began in December 2022 up to the hearing on 14 August 2023. These findings also support the trial court’s finding that Mother was acting in a manner inconsistent with the health and safety of the juveniles.

Mother also argues the trial court placed too heavy of an emphasis on her drug screen results, violating the spirit of the Juvenile Code, which in her view prohibits conditioning visitation solely on drug screen results. *See, e.g.*, N.C. Gen. Stat. § 7B-905.1(b1). A significant reason the children were initially removed from Mother’s custody was her ongoing illegal substance abuses, hence a significant part of her case plan was focused on remedying this issue. In this area, Mother’s noncompliance with her case plan was more than just the drug screen results. She failed to attend nearly all of her drug screens. She also failed to meaningfully engage in drug treatment and admitted she illegally used marijuana every day and had no plans to stop. She did not timely sign releases for DSS to monitor her compliance with treatment. She has

failed to show the trial court placed too heavy an emphasis on her drug screening results. It appears that the reduction in visitation was brought on by Mother's overall noncompliance with her case plan.

With this noncompliance, combined with the trial court's change to the permanent plan to award guardianship to the juveniles' maternal grandparents, and the unchallenged finding that Mother had acted in a manner inconsistent with her parental duty to provide for the health and safety of the juveniles, we cannot say the trial court's order reducing visitation was so arbitrary that it could not have been the result of a reasoned decision. *See In re L.E.W.*, 375 N.C. at 134, 846 S.E.2d at 468. We find no abuse of discretion in the trial court's decision to reduce visitation. For these reasons we affirm the trial court's 11 September 2023 order, awarding guardianship to the maternal grandparents.

### **C. Waiver of Future Review Hearings**

In its order, the trial court found further permanency planning hearings were not necessary. Pursuant to N.C. Gen. Stat. § 7B-906.1(n), to waive future hearings, the trial court must find by clear, cogent, and convincing evidence each of the following:

- (1) The juvenile has resided in the placement for a period of at least one year or the juvenile has resided in the placement for at least six consecutive months and the court enters a consent order pursuant to G.S. 7B-801(b1).
- (2) The placement is stable and continuation of the placement is in the juvenile's best interests.

(3) Neither the juvenile's best interests nor the rights of any party require that permanency planning hearings be held every six months.

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion.

(5) The court order has designated the relative or other suitable person as the juvenile's permanent custodian or guardian of the person.

However, "[t]he trial court must make written findings of fact satisfying each of the enumerated criteria listed in N.C. Gen. Stat. § 7B-906.1(n), and its failure to do so constitutes reversible error." *In re P.A.*, 241 N.C. App. 53, 66, 772 S.E.2d 240, 249 (2015) (citation omitted).

Mother argues, and DSS and the GAL agree, that the trial court erred in waiving future hearings because it did not make a finding that the children had been in their current placement for at least one year. Mother also argues that even if the trial court had made such a finding, it would be unsupported because the children had only been in the current placement since 22 September 2022—a period of eleven months, at the time of the 14 August 2023 hearing date.

The children were previously placed with their maternal uncle, while their maternal grandmother recovered from surgery. As of 22 September 2022, the children continuously remained in the placement with their maternal grandparents. As Mother asserts, the children remained in the placement for a period of eleven

months until the 14 August 2023 hearing. This Court in *In re J.T.S.* interpreted the meaning of “a period of at least one year” as required by N.C. Gen. Stat. § 7B-906.1(n)(1). *In re J.T.S.*, 268 N.C. App. 61, 66-72, 834 S.E.2d 637, 642-646 (2019). There, this Court noted, “the evidence gleaned from a continuous period of at least one year would provide the trial court the best evidence of stability and permanency[,]” which is consistent with the goals of the Juvenile Code. *Id.*, at 70, 834 S.E.2d at 644. The Court stated that, to maintain the interests of “family reunification, permanency for the child, and the best interests of the child,” the language of “at least one year” requires “a continuous, uninterrupted period of at least twelve months.” *Id.*, at 70-72, 834 S.E.2d at 644-45 (cleaned up). In that case, this Court vacated the portion of the order that waived future review hearings and remanded to the trial court. *Id.* at 72, 834 S.E.2d at 645-66.

We agree the trial court failed to make the statutorily required findings. We further agree that “a period of at least one year” was not satisfied. DSS argues that the children were placed with the “maternal relatives” for at least one year prior to the 14 August 2023 hearing. Although DSS is correct, placement with the maternal uncle and placement with the maternal grandparents must be separated when calculating the one-year statutorily required period. At the time of the hearing, the “continuous” and “uninterrupted” placement with the grandparents spanned eleven months. While it falls just short of the one-year requirement, we are bound by the precedent established in this Court. We therefore vacate this part of the order

waiving future review hearings and remand the case to the trial court for the statutorily required findings. *See In re C.S.L.B.*, 254 N.C. App. at 398–99, 829 S.E.2d at 494–95 (where the trial court left out a mandatory finding under N.C. Gen. Stat. § 7B-906.1(n), this Court vacated the portion of the order waiving further review and permanency planning hearings.).

#### **IV. Conclusion**

For the reasons set forth above, we vacate the portions of the trial court’s order discontinuing review hearings, along with the portions of the order related to the discontinuation of these hearings. We remand the case to the trial court for further proceedings and statutorily required findings. We affirm the remainder of the order.

**AFFIRMED IN PART; VACATED IN PART AND REMANDED.**

Judges TYSON and GORE concur.

Report per Rule 30(e).