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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-175

Filed 15 January 2025

Cumberland County, Nos. 19 JA 363–64

IN THE MATTER OF: B.F., I.F.

Appeal by guardian ad litem from order entered 20 November 2023 by Judge Rosalyn Hood in Cumberland County District Court. Heard in the Court of Appeals 11 October 2024.

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

*Matthew D. Wunsche for appellant guardian ad litem.*

*Parent Defender Wendy C. Sotolongo, by Assistant Parent Defendant J. Lee Gilliam, for respondent-appellee father.*

*Jason R. Page for respondent-appellee mother.*

GORE, Judge.

The guardian ad litem (“GAL”) appeals from a permanency planning order awarding custody of B.F. (“Ben”) <sup>1</sup> and I.F. (“Irene”) (collectively “the children”) to respondent-father. Based on the reasons stated herein, we affirm.

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<sup>1</sup> Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

**I. Background**

Irene was born in January 2017, and Ben was born in May 2019. On 4 September 2019, Cumberland County Department of Social Services (“DSS”) obtained nonsecure custody of the children and filed a juvenile petition alleging they were abused, neglected, and dependent. The petition alleged that on 9 August 2019, a Child Protective Services (“CPS”) referral was made after respondent-parents were involved in a domestic violence incident while the children were present, and respondent-father was arrested.

On 13 August 2019, respondent-mother informed DSS that respondent-father had obtained a domestic violence protective order against her and had physical and legal custody of the children. Respondent-mother was prohibited from being around the children or respondent-father. On 14 August 2019, DSS observed respondent-father with the children at a hotel room and “everything appeared to be fine.” On 26 August 2019, DSS conducted a home visit at respondent-father’s new apartment, and there were no safety concerns. On 30 August 2019, respondent-mother checked into the Wilmington Treatment Center.

The petition further alleged on 2 September 2019, a CPS referral was made after Ben sustained a serious skull fracture while he was in respondent-father’s care. Respondent-father offered two explanations for the injury—that he accidentally dropped Ben after Ben vomited on him and scared him and that Irene rolled on top of Ben after their dog “bumped her over.” However, neither explanation could explain

the severity of Ben's injuries. On 4 September 2019, DSS was informed that respondent-mother had checked herself out of the Wilmington Treatment Center against medical advice.

On 10 February 2020, the trial court entered an order adjudicating Irene as a neglected juvenile and Ben as a neglected and abused juvenile. The trial court found that, as a result of the 2 September 2019 incident, Ben had suffered "bilateral subdural hematomas, an acute, nondisplaced right parietal calvarial fracture, mild anteroinferior breaking of the L3 vertebral body, and mild periportal edema" while in respondent-father's care. The Beacon Team at UNC Hospital concluded neither of respondent-father's explanations would be expected to cause the severity of Ben's injuries. The trial court found Ben's injuries were caused by "non-accidental trauma" and were the result of abuse.

The trial court entered an initial disposition order on 2 March 2020 continuing custody of the children with DSS. The trial court concluded aggravated circumstances existed pursuant to N.C.G.S. § 7B-901(c)(1)(f) and eliminated reunification efforts with respondent-father. Respondent-parents were ordered to maintain stable housing and employment, complete an intensive parenting class, engage in domestic violence counseling, and engage in mental health treatment and follow all recommendations. In addition to the foregoing, respondent-mother was ordered to complete substance abuse treatment and maintain sobriety. Respondent-father was prohibited from visiting with the children or having any contact with them.

Following a permanency planning hearing on 2 March 2020, the trial court entered an order on 29 May 2020 finding that the children were doing well in their foster care placement. Interstate Compact on the Placement of Children (“ICPC”) home studies had been approved for the maternal grandmother, maternal aunt, and paternal grandparents. Respondent-father was employed with United States Army and was stationed in Colorado. The trial court concluded return of the children to respondent-father would be contrary to their health, safety, welfare, and best interests, as they needed “more adequate care and supervision” than he could provide. While respondent-mother was neither a fit nor proper person to have the care, custody, and control of the children, she was fit to have supervised visitation with them. The primary permanent plan was set as reunification with respondent-mother, and the secondary permanent plan was set as custody with “other suitable persons.” Reunification with respondent-father was eliminated as a permanent plan.

A permanency planning hearing was held on 1 February 2021, and the trial court entered an order on 7 April 2021 finding that pending approval of an ICPC home study, the children should be placed with the maternal aunt. The trial court changed the primary permanent plan to guardianship with the maternal aunt and the secondary permanent plan to reunification with respondent-mother. On 31 March 2021, the children were placed with their maternal aunt in Ohio.

Following permanency planning hearings held on 28–29 June and 28 July 2021, the trial court entered an order on 12 November 2021 finding that the children

were doing well with their maternal aunt. Ben was functioning at a “nine-month developmental age[,]” was not walking, and had been diagnosed with cerebral palsy due to brain damage from his injuries. Respondent-father was living in New Hampshire and had pending criminal charges related to inflicting Ben’s injuries.

The next permanency planning hearing was held on 24 January 2022, and the trial court entered an order on 18 February 2022 finding that the maternal aunt could no longer provide long-term care for the children. Respondent-mother was living in Ohio, and DSS had not had contact with her since April 2021. DSS was unable to verify respondent-mother’s engagement in services. The trial court found that respondent-mother was not making adequate progress within a reasonable period of time to achieve a permanent plan of reunification.

Respondent-father pled guilty on 11 August 2021 to child abuse and received a suspended sentence of sixty days and twelve months of unsupervised probation. He had completed parenting classes and domestic violence counseling and was engaged in individual therapy. The trial court changed the primary permanent plan to guardianship, with a secondary permanent plan of custody to a relative or other suitable person. It also ordered an expedited ICPC home study on the paternal grandparents’ home in New Hampshire. Respondent-father and the paternal grandparents were ordered to take age-appropriate parenting classes, a class on juveniles with disabilities, and a class on juveniles of domestic violence.

By the time a permanency planning hearing was held on 19 May 2022, the

children had been placed with their paternal grandmother in New Hampshire and were doing well in the placement. The following permanency planning hearing was held on 15 September 2022, and the trial court entered an order on 30 December 2022 finding that although respondent-father lived only a few blocks away from his parents and the children, he still had not been permitted any contacts or visits with the children. The trial court found respondent-father's infliction of life-threatening injuries to Ben caused "chronic physical and cognitive challenges [Ben] will now grow up with." However, respondent-father "expressed an understanding of what led to the incident[.]" including a "self-awareness in how to avoid thought traps and improve emotional resilience." The trial court found respondent-father had completed his case plan, and that it had mistakenly ordered petitioner to take age-appropriate parenting classes, juveniles with disabilities class, and a class on juveniles of domestic violence in its previous permanency planning order. Respondent-father was ordered to maintain stable employment and to continue participating in individual therapy. He was granted fifteen to sixty minutes of supervised visitation with the children every two weeks.

A subsequent permanency planning hearing was held on 23 February 2023, and the trial court entered an order on 10 May 2023 finding that respondent-father had completed "everything that this Court has requested of him." The trial court found respondent-father was "the perpetrator of an egregious crime against his child" and it was "interested in an evaluation to determine any future propensities of

violence.” Based on the evaluation, the trial court would determine if placement of the children with respondent-father would be a safety concern. Respondent-father had been visiting with the children, and the visitations were going well. The trial court changed the primary permanent plan to reunification with respondent-father, with a secondary permanent plan of guardianship. Respondent-father’s visitation with the children was increased to a minimum of one hour per week.

The next permanency planning hearing was held on 11 September 2023, and the trial court entered an order on 20 November 2023 finding that although respondent-father had not completed an assessment to evaluate his propensity for violence, it would “strike this service requirement” for respondent-father because DSS was unable to “tell him where he can complete[ ] this service since the [30] February [ ] 2023 court date.” The trial court also found that a social worker in New Hampshire had visited respondent-father’s home and requested he make modifications, including putting a fence around his fireplace and cleaning “loose construction items” in a “remodeling area.” However, respondent-father had not made those modifications by the time of the hearing.

The trial court found that respondent-father had remained fully available to the court, DSS, and the GAL, and had taken full responsibility for Ben’s injuries. The trial court determined that return of the children to the home and custody of respondent-father was in their best interests and consistent with their health and safety and that respondent-father was a fit or proper person for the care, custody, or

control of his children. The sole legal and physical custody of the children was granted to respondent-father, and respondent-mother was ordered to not have any visitation with the children. The matter was transferred to a civil action under Chapter 50 of the North Carolina General Statutes. The GAL appeals.

## II. Discussion

This Court’s review of a 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. The trial court’s findings of fact are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings.” *In re J.S.*, 250 N.C. App. 370, 372 (2016). “Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *In re J.M.*, 384 N.C. 584, 591 (2023) (citation omitted). Unchallenged findings are binding on appeal. *In re T.N.H.*, 372 N.C. 403, 407 (2019). Conclusions of law are reviewed de novo. *In re J.T.*, 252 N.C. App. 19, 20 (2017).

“In choosing an appropriate permanent plan under N.C.G.S. § 7B-906.1 . . . , the juvenile’s best interests are paramount.” *In re J.H.*, 244 N.C. App. 255, 269 (2015). North Carolina General Statutes § 7B-906.1(i) permits the trial court, at a permanency planning hearing, “to place the child in the custody of either parent . . . found by the court to be suitable and found by the court to be in the best interests of the juvenile.” N.C.G.S. § 7B-906.1(i) (2023). “We review a trial court’s determination as to the best interest of the child for an abuse of discretion.” *In re J.H.*, 244 N.C. App.

at 269 (citation omitted).

On appeal, the GAL contests several findings of fact. First, the GAL challenges finding of fact 17, which provides as follows:

17. Respondent Father has not completed a propensity for violence assessment, which was recently ordered at the last hearing. He requests assistance to complete this service. The Court ordered to strike this service requirement for Respondent Father inasmuch as [DSS] was not able to tell him where he can complete this service since the February 23, 2023 court date. The [GAL] offered to the Court to assist Respondent Father with finding a service provider of this service.

Specifically, the GAL argues that the evidence does not support the portion of the trial court's finding DSS was unable to tell respondent-father where he could obtain an assessment to evaluate his propensity for violence. We are not convinced.

At the 11 September 2023 hearing, respondent-father testified to the following:

[Counsel for respondent-father:] Okay. Now, what are you doing –you've completed, I think, everything other than ongoing therapy, and there was mention of an assessment for, I think, aggression or something like that. Are you aware of you're being court-ordered to do that?

[Respondent-father:] I was unclear about what exactly that entailed. After discussion with the social worker, she recommended that I do a – everything with my services around him, and do a self-reflection on whether or not I am prepared to fulfill the parental duties of caring for my children. I asked if there was any formal program that she could recommend. She did not know of any at the time, of what would fulfill that, other than just, you know, accepting that – whether or not I'm ready to be a father to my children.

[Counsel for respondent-father:] Well, if there is any kind of assessment, is that something you're willing to undertake?

[Respondent-father:] Yes, absolutely. I've made myself available to any requests by the Court, as far as treatment, or anything that I can do to get custody of my children.

The foregoing testimony is adequate to support the trial court's finding DSS was unable to give guidance to respondent-father on where he could complete the only remaining component of his case plan.

Second, the GAL argues that finding of fact 24 is not a proper finding but a "mere recitation" of the maternal aunt's testimony. Finding of fact 24 states as follows:

24. The maternal aunt . . . read a personal letter to the Court, expressing her concerns for the juveniles' safety, if returned to the Respondent Father. Counsel for maternal aunt submitted the letter to the Court.

We agree that the trial court's finding of fact 24 is a mere recitation of the maternal aunt's testimony and is not a proper finding of fact. *See In re N.D.A.*, 373 N.C. 71, 75 (2019) (citations omitted) ("[R]ecitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge."); *see also In re Green*, 67 N.C. App. 501, 505 n. 1 (1984) (explaining that recitations of witness testimony "*do not* constitute *findings of fact* by the trial judge, because they do not reflect a conscious choice between the conflicting versions of the incident in question which emerged from all the evidence presented"). Thus, we disregard this finding.

Third, the GAL challenges the portion of finding of fact 31, which states that respondent-father took “full responsibility for [Ben’s] injuries[.]” The GAL argues that this finding was an “overstatement of respondent father’s ownership of his responsibility for Ben’s injuries[.]” We are not convinced.

At the 11 September 2023 permanency planning hearing, the paternal grandmother testified that Ben was injured under respondent-father’s care. She testified that respondent-father was “charged” but did not “recall the outcome.” Later, the following exchange took place between respondent-father and his counsel:

[Respondent-father’s Counsel:] Well, can you – can you explain – I mean, obviously, you can’t understand your mother, but can you explain how it is that she doesn’t seem to understand what the courts have found?

[Respondent-father:] I believe that she does understand. Perhaps she doesn’t feel comfortable discussing it right now. She’s been grilled eight times here today already. But she does understand that [Ben] sustained injuries while he was under my care. I was charged and convicted of committing those injures to my son.

[Respondent-father’s Counsel:] Okay. So you accept responsibility for that?

[Respondent-father:] For my role in what happened to [Ben], yes.

Through his own testimony, respondent-father admitted to being convicted of physically injuring Ben and acknowledged his role in harming Ben. The trial court made the reasonable inference from this testimony that respondent-father took full responsibility for Ben’s injuries. *See In re R.B.*, 280 N.C. App. 424, 430 (2021) (citation

omitted) (“[W]hen a trial judge sits as both judge and juror, as he or she does in a non-jury proceeding, it is that judge’s duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom.”).

Finally, the GAL challenges the trial court’s findings of fact 22, 36, 39, and 40. The GAL initially contends that these findings “are more properly considered conclusions of law.”

The challenged findings provide as follows:

22. Respondent Father is a fit or proper person for the continued care, custody, or control of the juveniles. He has remained fully available to the Court, [DSS], and the [GAL] for the juveniles. He has acted in a manner consistent with the health and safety of the juveniles.

....

36. It is possible for the juveniles to be placed with a parent within the next six months . . . as this Court finds it in the juveniles’ best interests to be returned to Respondent Father’s custody on today’s date.

....

39. Return of the juveniles to the home and custody of Respondent Father is in the best interest of the juveniles and is consistent with their health and safety. Respondent Father is a fit or proper person for the care, custody, or control of the juveniles. Respondent Father has remained available to the Court, [DSS], and the [GAL] for the juveniles.

40. Although Respondent Father has previously acted in a manner contrary to the health and safety of the juveniles, he is now acting consistently with the health and safety of

the juveniles as found herein and return of legal and physical custody to the Respondent Father is appropriate at this time.

Although the trial court labeled the determinations respondent-father was acting consistently with the health and safety of the children and it was in the children's best interests they be returned to the custody of respondent-father as findings of fact, we agree with the GAL they are more appropriately considered conclusions of law, and we review them accordingly. *See In re L.G.*, 274 N.C. App. 292, 299 (2020) ("We have characterized a trial court determination of a juvenile's best interest as a conclusion of law which must be supported by its findings of fact."); *see also In re Helms*, 127 N.C. App. 505, 510 (1997) (stating that "any determination requiring the exercise of judgment, or the application of legal principles, is more properly classified as a conclusion of law."). "We are obliged to apply the appropriate standard of review to a finding of fact or conclusion of law, regardless of the label which it is given by the trial court." *In re J.S.*, 374 N.C. 811, 818 (2020) (citations omitted).

In challenging the foregoing conclusions, the GAL points to the trial court's findings that respondent-father did not complete an assessment to evaluate his propensity for violence or make modifications to his home as suggested by a New Hampshire social worker. The GAL also asserts the trial court failed to make findings addressing whether respondent-father was willing or able to care for Ben's medical needs. The GAL maintains given the lack of findings regarding respondent-father's

home and ability to care for the children, the trial court's conclusions that he had acted consistently with their health and safety and that it was in their best interests to be placed with them are unsupported. We disagree.

It is undisputed respondent-father did not complete an assessment to evaluate his propensity for violence. However, the trial court struck this requirement after DSS was unable to offer guidance on where he could complete this service since the previous permanency planning hearing on 23 February 2023. As discussed above, this finding is supported by competent evidence.

With regard to respondent-father's home, the trial court made unchallenged findings that respondent-father had maintained stable housing and, while a New Hampshire social worker had requested he "make some modifications such as putting a fence around his fireplace and clean up the remodeling area so there are not any loose construction items for the juveniles to get hurt by[,]" he had not made those modifications by the time of the 11 September 2023 permanency planning hearing. The GAL cites to two cases, *In re A.E.S.H.*, 380 N.C. 688 (2022) and *In re Q.A.*, 245 N.C. App. 71 (2016), to support its contention the trial court's findings about the state of respondent-father's home "was a reason *not* to immediately place the children with him[,]" but these cases are inapposite.

In *In re A.E.S.H.*, the minor child was removed from his home and adjudicated neglected for three main reasons: (1) his home was "unsuitable due to filth"; (2) the respondent's substance abuse issues; and (3) the respondent's parenting issues. *In re*

*A.E.S.H.*, 380 N.C. at 690. The child’s home had “animal feces throughout the home[,]” “piles of beer cans[,]” and a “strong odor of ammonia due to cat urine.” *Id.* at 689. The child’s room also had a “hole a few inches wide” that led to the exterior of the home. *Id.* The trial court ordered the respondent to complete several requirements to work toward reunification with his son, but by the time of the termination hearing, the trial court found that the respondent had failed a drug screen, failed to complete a parenting class, had no income or employment, and had no residence suitable for his child. *Id.* at 693–94. The social worker made numerous attempts to evaluate the respondent’s home, but the respondent would either not respond or tell the social worker he would reach out to her when it was ready. *Id.* at 695–96. The North Carolina Supreme Court affirmed termination of the respondent’s parental rights on the ground of neglect. *Id.* at 696.

The grave condition of the home the minor child in *In re A.E.S.H.* was found in is clearly more serious than the state of respondent-father’s home in the case *sub judice*. Moreover, while the respondent in *In re A.E.S.H.* failed to give the social worker access to his home, here, respondent-father allowed a New Hampshire social worker an opportunity to evaluate his home. Most notably, the respondent in the case of *In re A.E.S.H.* also failed to complete the other components of his case plan while respondent-father has completed all the trial court has required of him.

In *In re Q.A.*, the five minor children were placed in DSS custody after they were found to be in the care of their grandmother, living in a transitional home that

had no electricity, plumbing, or food. *In re Q.A.*, 245 N.C. App. at 74. The trial court adjudicated two out of the five children neglected and dependent juveniles, and the respondent appealed. *Id.* at 73. This Court reversed and remanded the matter to the trial court to enter an order adjudicating the other three boys neglected juveniles. *Id.* at 74. Again, the living conditions the children in *In re Q.A.* faced are much more serious in nature than the circumstances of the case before us.

Here, the trial court made findings, either unchallenged or supported by competent evidence, that respondent-father had remained available to the court, DSS, and the GAL. He had completed all the services he was ordered to engage in, including completing a substance abuse assessment, maintaining stable housing and employment, completing intensive parenting classes, completing a mental health assessment, completing a domestic violence assessment, and providing verification regarding completion of services. Although he had not completed a propensity for violence assessment, the trial court struck the service requirement. He had completed his sentence related to his child abuse conviction and had been employed as an electrical apprentice for two years.

The trial court found that respondent-father desired custody of his children and had taken full responsibility for Ben's injuries. These findings support the trial court's conclusions respondent-father had acted in a manner consistent with the health and safety of his children and it was in the children's best interests to be

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reunified with respondent-father. As such, we are unable to hold that the trial court abused its discretion by placing custody of the children with respondent-father.

### **III. Conclusion**

We affirm the trial court's 20 November 2023 permanency planning order.

AFFIRMED.

Judges TYSON and WOOD concur.

Report per Rule 30(e).