

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-553

Filed 19 March 2025

Cumberland County, No. 22 JA 121

IN THE MATTER OF: J.F.

Appeal by respondent-mother from order entered 29 January 2024 by Judge Cull Jordan, III in Cumberland County Superior Court. Heard in the Court of Appeals 12 February 2025.

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

Alexis Kovolenko for appellee guardian ad litem.

David A. Perez for respondent-appellant mother.

TYSON, Judge.

Elaina Willaims (“Respondent”) appeals from a permanency planning order granting custody of J.F. (“Jacob”) to Respondent’s cousin. *See* N.C. R. App. P 42(b) (pseudonym used to protect the identity of minor). We affirm in part, vacate in part, and remand.

I. Background

Jacob was born in May 2022. DNA testing confirmed Keith F. is Jacob’s father.

Respondent resided with her boyfriend, Gavyn Ryan, and Jacob.

Respondent pulled on Jacob while he was being held by Ryan. Ryan resisted Respondent's attempt, Jacob began to cry, and Respondent noticed Jacob appeared injured. Respondent contacted her sister, Amanda Thomas, and had her to take Jacob to a Hoke County hospital. Respondent did not accompany Jacob and Thomas to the hospital nor did she provide Thomas with diapers, extra clothing, bottles, or formula for Jacob. Jacob's x-rays showed a displaced fracture of his right clavicle with no signs of fracture healing.

Respondent initially agreed to temporarily place Jacob with her sister, Thomas. After Cumberland County Department of Social Services ("DSS") visited Thomas' home and completed background checks for individuals residing within the home, DSS asserted Thomas' home was not safe for Jacob. Respondent then agreed for Jacob to be temporarily placed with her cousin, Haley Carter-Stephenson, as a temporary safety care provider.

Fayetteville Police officers issued a warrant for Respondent charging her with felonious intentional child abuse inflicting serious physical injury on 29 June 2022. Jacob was adjudicated as neglected on 21 March 2023. Respondent was allowed two hours of visitation weekly with Jacob to be supervised by DSS or Carter-Stephenson's fiancé, Ethan Lemaire, due to a contentious relationship between Carter-Stephenson and Respondent.

Respondent was ordered to complete a psychological evaluation, comply with

all recommendations, complete intensive parenting classes and demonstrate skills learned, and sign appropriate releases to allow DSS to verify her engagement in and progress with services on 21 March 2023. DSS was relieved of reunification and visitation efforts with Respondent.

The district court found Respondent had been discharged by her mental health provider due to inconsistent attendance and she had not signed the releases for DSS to verify engagement. The district court also found at a permanency planning hearing Respondent had not completed her psychological evaluation, was not engaged in any mental health services, and had only attended one parenting class.

At the 12 December 2023 permanency planning hearing, Respondent had completed her psychological evaluation the month before, but the results were still pending. Respondent's visitation with Jacob had been impacted because her father, who provided her means of transportation, was ill. DSS was unable to verify engagement in mental health services because she had never signed any releases.

Respondent asked the district court to delay deciding whether to transfer custody of Jacob until after the court was able to review the psychological evaluation report. DSS proposed custody of Jacob to be awarded to Carter-Stephenson without waiting for the results of the evaluation that it had demanded.

The district court awarded custody to Carter-Stephenson by order entered 29 January 2024 and ended further reviews. Respondent appeals.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a) (2023).

III. Issues

Respondent argues the district court erred by awarding custody to a non-parent without making the required findings pursuant to N.C. Gen. Stat. § 7B-906.2(d) (2023) and by failing to properly verify Carter-Stephenson had adequate resources to properly care for her son, Jacob. N.C. Gen. Stat. § 7B-903(a)(4) (2023).

IV. Standard of Review

Our 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.” *In re J.H.*, 244 N.C. App. 255, 268, 780 S.E.2d 228, 238 (2015) (citation omitted).

V. N.C. Gen. Stat. § 7B-906.2(d) Findings

Respondent argues the district court erred by awarding custody to a non-parent without making the required statutory findings pursuant to N.C. Gen. Stat. § 7B-906.2(d)(3), which requires “Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.” N.C. Gen. Stat. § 7B-906.2(d)(3) (2023). Respondent asserts the permanency planning order lacks this requisite finding and remand is necessitated by our Supreme Court’s holding in *In re L.R.L.B.*, 377 N.C. 311, 323-24, 857 S.E.2d 105, 116 (2021), which remanded a permanency planning order because the written record contained:

little evidence presented by the parties on the issue of

respondent-mother's availability as contemplated by the statute, we note that DSS's written report to the trial court for the permanency planning hearing includes information about respondent-mother's attendance at court dates and scheduled visitations, as well as her failure to attend child and family team (CFT) meetings. The report submitted by the guardian ad litem also alludes to respondent-mother's failure to attend CFT meetings and states that "[t]he GAL has spoken to the parents three times but . . . has had no significant interactions in the last six months." This information contained in the respective reports of DSS and the GAL, however, does not satisfy the trial court's statutory obligation to fulfill the requirements of N.C.G.S. § 7B-906.2(d)(3) by making written findings on the issue of respondent-mother's availability.

Id. at 324, 857 S.E.2d at 116.

Our Supreme Court more recently examined the statutory findings mandated by N.C. Gen. Stat. § 7B-906.2(d)(3). In the case of *In re L.L.*, __ N.C. __, 909 S.E.2d 151, 160-61 (2024), the Court held a DSS report was specifically incorporated by reference into the permanency planning order, and "listed in chronological order all contact maintained by both parents with the trial court, DSS, and the GAL." *Id.* at __, 909 S.E.2d at 161. The Court further held the incorporated report noted when respondents had traveled to court hearings, listed all prior hearings, detailed the respondents' participation with the case plan, and noted failures to comply with the plan. *Id.* The Court held: "Taken together, these incorporated facts exhibit respondent's availability to the trial court and the GAL under N.C.G.S. § 7B-906.2(d)(3)[.]" The Court reasoned with the specific facts detained in the incorporated orders, "the trial court is not obligated to recite the statutory language." *Id.* (citation

omitted).

Here, the order and prior orders were incorporated by reference and listed all contacts by Respondent with the district court, DSS, and the GAL. The orders detail Respondent's participation with her case plan and documents her progress with the case plan. These facts, as with those in *In re L.L.*, demonstrate Respondent's availability to the district court, DSS, and the GAL as required by N.C. Gen. Stat. § 7B-906.2(d)(3). *Id.* Respondent's argument is overruled.

VI. Adequate Resources

Respondent argues the trial court erred by failing to make required findings to verify Carter-Stephenson had demonstrated adequate resources to care for Jacob. Before placing a juvenile with someone "other than a parent," the district court is statutorily mandated under the Juvenile Code, to ascertain and it "shall verify" whether the proposed placement individual "will have adequate resources to care appropriately for the juvenile." N.C. Gen. Stat. § 7B-906.1(j) (2023). Likewise, N.C. Gen. Stat. § 7B-903(a)(4) mandates:

If the court determines that the juvenile should be placed in the custody of an individual *other than a parent*, the court shall verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile. The fact that the prospective custodian 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-903(a)(4) (2023) (emphasis supplied).

Under Section 7B-906.1(j)—and analogously N.C. Gen. Stat. § 7B-600(c), specific to guardianships—we have consistently recognized that in making the verification a custody placement has adequate resources: “the trial court need not make detailed findings of evidentiary facts or extensive findings regarding the [placement’s] situation and resources . . . But the statute does require the trial court to make a determination that the [placement] has ‘adequate resources’ and some evidence of [those] ‘resources’ is necessary as a practical matter, since the trial court cannot make any determination of adequacy without evidence.” *In re P.A.*, 241 N.C. App. 53, 61–62, 772 S.E.2d 240, 246 (2015) (citations omitted).

In 2019, however, the General Assembly amended these statutes to include the proviso: “The fact that the prospective custodian has provided a stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources.” 2019 North Carolina Laws S.L. 2019-33 (H.B. 301). Thus, the fact the proposed custodian has provided a stable placement for the juvenile for six months is some evidence tending to show the proposed custodian has adequate resources to care appropriately for the juvenile, but is not determinative. N.C. Gen. Stat. § 7B-906.1(j) (2023).

At the time of the hearing, Jacob had been placed with Carter-Stephenson for almost eighteen months—well beyond the six-months contemplated by the statutes. As such, this is some “evidence” of adequate resources to care for Jacob. Further, Carter-Stephenson testified her fiancé was employed and he had contributed to the

household income, her monthly expenses were \$1,700, and asserted she does not receive financial assistance from the State. Carter-Stephenson also testified she has not had any problems financially caring for Jacob since he was placed with her on 23 May 2022. Carter-Stephenson explained she was not employed as of the time of hearing, but she and her fiancé had saved money from her working while pregnant.

Here, the trial court found “Carter-Stephenson has the financial means and ability to continue to care for the juvenile on a permanent basis[.]” The trial court acknowledged: “The juvenile has resided with the proposed custodian . . . for well over a period of one (1) year with placement beginning in her home on or about May 23, 2022.” The trial court also found “Carter-Stephenson has a sufficient monthly income to provide for the juvenile.”

In this case, no evidence tends to support any finding concerning Carter-Stephenson’s income. To the contrary, she testified she was not employed and did not receive any government assistance. It is unclear on this record exactly what evidence the trial court relied upon in verifying Carter-Stephenson will have adequate resources to care appropriately for the juvenile in the future.

This Court cannot conclude the trial court’s verification was based on evidence in the Record. We vacate the trial court’s Order in part and remand to the trial court to clarify what evidence it had relied upon in verifying whether the proposed custodian had adequate resources to care for Jacob in the future. On remand, the trial court may, in its discretion, receive additional evidence to assist it in clarifying

its Order and take into account any changed circumstances since the prior order was entered.

VII. Conclusion

The trial court incorporated prior orders and specific prior findings to satisfy the required findings under N.C. Gen. Stat. § 7B-906.2(d)(3) of Respondent's availability to the district court, DSS, and the GAL. N.C. Gen. Stat. § 7B-906.2(d)(3) (2023); *In re L.L.*, __ N.C. at __, 909 S.E.2d at 160-61.

More specific and detailed findings are needed to review the district court's verification of "adequate resources" to support granting custody of Jacob to Respondent's cousin, Carter-Stephenson, and not her fiancé, prior to ceasing reunification and discontinuing further reviews to comply with Section 7B-903(a)(4). N.C. Gen. Stat. § 7B-903(a)(4) (2023).

The order of the district court is affirmed in part, vacated in part, and remanded. *It is so ordered.*

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).