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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-918

Filed 7 October 2026

Buncombe County, Nos. 22JA000190-100, 22JA000191-100

IN THE MATTER OF: B.B.W., D.I.W.

Appeal by Respondent-Mother from Order entered 25 June 2025 by Judge Ward D. Scott in Buncombe County District Court. Heard in the Court of Appeals 19 May 2026.

*Reeves DiVenere & Wright, by Anné C. Wright, for Respondent-Appellant Mother.*

*Matthew J. Putnam for Petitioner-Appellee Buncombe County Department of Social Services.*

*Poyner Spruill LLP, by Evan A. Lee, for Guardian ad litem.*

HAMPSON, Judge.

**Factual and Procedural Background**

Respondent-Mother appeals from an Order following a permanency planning review hearing awarding guardianship of her minor children Dylan and Bryson<sup>1</sup> to their foster parents. The Record before us tends to reflect the following:

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<sup>1</sup> Pseudonyms to protect the identities of the minor children.

Dylan was born in 2018, and his brother Bryson was born in 2022. On 11 June 2022, the Buncombe County Department of Health and Human Services (DHHS) received two reports related to the minor children. The first report alleged domestic violence between Respondent-Mother and the minor children's father had occurred while the children were present in the home. The second report alleged Dylan, then three years old, "had been observed on a second-floor balcony unsupervised for approximately 15 minutes." A DHHS social worker contacted Respondent-Mother, who confirmed the substance of the reported domestic violence and balcony incidents.

DHHS filed juvenile petitions alleging Dylan and Bryson were neglected and dependent on 14 June 2022. The trial court granted DHHS nonsecure custody the same day. Dylan and Bryson were placed in foster care.

After a hearing in May 2023, the trial court adjudicated Dylan and Bryson neglected and dependent juveniles and ordered that they shall remain in the custody of DHHS. The adjudication order included factual findings about the June 2022 balcony incident:

23. [Respondent-Mother] confirmed that she had placed [Dylan] on the balcony. She explained that she left him on the balcony, with some water, toys, chair and food for a period of one (1) to two (2) hours, because she "needed a break." [Respondent-Mother] states that she was watching [Dylan] through the window and went out to check on him on occasion. [Respondent-Mother] has a history of mental health issues. She has stated to [a DHHS social worker] that she has become increasingly overwhelmed with her parenting responsibilities and would like both minor children to enter foster care. She has stated she does not know how she is going to care for a newborn and [Dylan] at the same time. . . .

24. [A neighbor] . . . confirmed that [Dylan] had been observed on the second-floor balcony without adult supervision for some time. Both [the neighbor] and a friend observed [Dylan] trying to get back into the apartment but [he] could not get in; that [Dylan] had been throwing objects off of the balcony, and at one point [Dylan] was observed to be climbing on the balcony railing. . . .

The trial court entered initial dispositional and permanency planning orders on 31 October 2023. The initial dispositional order required Respondent-Mother to complete a psychological evaluation and comply with its recommendations, attend scheduled visits with the minor children, sign releases of information for all service providers, engage in parenting classes, and keep DHHS up to date on her contact information and living situation. The initial permanency planning order established a primary plan of reunification and a secondary plan of guardianship. Respondent-Mother was granted a minimum of four hours of supervised visitation per week.

In a December 2023 permanency planning order, the trial court found Respondent-Mother had consistently visited the juveniles since the last hearing. It also made findings drawn from reports entered into evidence by DHHS and the minor children's Guardian ad litem (GAL). Among these reports was a psychological evaluation performed by Dr. Chris Mulchay. The trial court found Dr. Mulchay's report indicated Respondent-Mother had demonstrated an appropriate understanding of childhood development and had reported employing nurturing practices with her children. However, Dr. Mulchay raised a concern about Respondent-Mother's ability to "work collaboratively with other providers,

particularly those who are also fostering the minor children's development." Dr. Mulchay also reported Respondent-Mother believed "concerns about her mental health were unfounded[.]" but observed she "struggled with remembering information within context, comprehending conversations, and managing her impulses."

In a December 2024 permanency planning order, the trial court found DHHS believed Respondent-Mother "is fully capable of completing her case plan and reunifying with the minor children" but DHHS also remained "concerned about the level of commitment [Respondent-Mother] has to reunification." For instance, Respondent-Mother had not signed releases permitting DHHS to determine if she had "completed a medication evaluation, as [had been] previously ordered[.]" Another finding indicated DHHS was concerned Respondent-Mother was not accurate or transparent when reporting her mental health history to health care providers. Further, Respondent-Mother "continue[d] to argue that her past mental health history is not relevant to the present child welfare case[.]" even though "her mental health is a safety concern that brought the minor children into custody." The trial court also found Respondent-Mother "may be incapable of complying with the orders of the Court, and [DHHS] should look at changing the permanency plans."

In an April 2025 permanency planning order, the trial court found Respondent-Mother was "completing tasks on her case plan but has not addressed the issues that caused the minor children to be placed in the custody of [DHHS]. [She] has never

understood that leaving the minor child [Dylan] alone on a balcony was wrong or taken responsibility for it.” Another finding stated Respondent-Mother had “told the Court that she had concerns with her own mental health, but she has not addressed these concerns.” The trial court also noted, “Throughout the life of this case, [Respondent-Mother] has demonstrated great difficulty in managing her emotions and frustrations, often without regard to the children being present.”

In early 2025, DHHS and GAL recommended changing the primary plan from reunification to guardianship in favor of the foster parents.<sup>2</sup> The trial court held a permanency planning hearing across five days. Witnesses included Respondent-Mother, DHHS Social Worker Elizabeth Roach (SW Roach), and DHHS visitation coach Stephanie Bonham.

On 25 June 2025,<sup>3</sup> the trial court entered an order adopting a permanent plan of guardianship and awarding legal guardianship of Dylan and Bryson to the foster parents (the Amended Order).<sup>4</sup> In its Conclusions of Law, the trial court stated: (1) Respondent-Mother was not a “fit and proper parent[] for the juveniles[,]” had “acted inconsistently with [her] constitutionally protected rights and responsibilities as [a]

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<sup>2</sup> Reunification and guardianship remained the primary and secondary plans for the first five permanency planning orders, beginning with the initial October 2023 order.

<sup>3</sup> The trial court entered an initial “Subsequent Permanency Planning and Review Order” on 17 June 2025. On 25 June 2025, the trial court entered the Amended Order on its own motion to correct minor “errors” in the factual findings. The Amended Order did not alter any of the 17 June 2025 order’s legal determinations.

<sup>4</sup> The trial court entered a guardianship order the same day, from which Respondent-Mother did not appeal.

parent[],” and had “abrogated [her] constitutionally protected rights to parent [her] children”; and (2) granting guardianship to the foster parents was “in the best interest of the minor children.”

The trial court also ceased reunification efforts, stating:

9. That, pursuant to N.C.G.S. § 7B-906.2, [DHHS] should be relieved of further reasonable efforts towards reunification with [Respondent-Mother], as reunification efforts clearly would be unsuccessful or would be inconsistent with the juveniles’ health or safety and need for a safe, permanent home within a reasonable period of time, and would not be in the minor children’s best interest.

The trial court thereby eliminated reunification from the juveniles’ permanent plan and did not establish a concurrent plan, noting, “Concurrent planning is not necessary as the permanent plan [of guardianship] will be achieved upon entry of this order.”

Respondent-Mother was granted six hours of supervised visitation per month. The trial court specified how supervisors for Respondent-Mother’s visits would be selected (the Visitation Condition), ordering, “That supervisors for [Respondent-Mother’s] visits shall be proposed by [Respondent-Mother] and approved by the minor children’s guardians.”

Respondent-Mother timely filed written Notice of Appeal from the Amended Order on 11 July 2025.

### **Issues**

The issues on appeal are whether the trial court: (I) erred by concluding

Respondent-Mother had forfeited her constitutionally protected rights to the care, custody, and control of her minor children; (II) erred by ceasing reunification efforts; and (III) abused its discretion in the visitation provisions of the Amended Order.

### **Analysis**

“[A]ppellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings of fact and whether the findings support the conclusion of law[.]” *In re B.R.W.*, 381 N.C. 61, 77, 871 S.E.2d 764, 775 (2022) (citation and quotation marks omitted). “[T]he trial court’s findings of fact are conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary.” *Owenby v. Young*, 357 N.C. 142, 147, 579 S.E.2d 264, 268 (2003) (citations omitted). “Unchallenged findings of fact are presumed to be supported by sufficient evidence and are binding on appeal.” *In re X.M.*, 293 N.C. App. 98, 102, 899 S.E.2d 867, 870 (2024) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)). Moreover, “[w]hen a challenged finding of fact is not necessary to support a trial court’s conclusions, those findings ‘need not be reviewed on appeal.’ ” *Id.* at 102, 899 S.E.2d at 871 (quoting *In re C.J.*, 373 N.C. 260, 262, 837 S.E.2d 859, 860 (2020)).

#### **I. Constitutionally Protected Status**

Respondent-Mother argues the trial court erred by determining she had acted inconsistently with her constitutionally protected status and was an unfit parent. We disagree.

“[A] natural parent may lose his constitutionally protected right to the control of his children in one of two ways: (1) by a finding of unfitness of the natural parent, or (2) where the natural parent’s conduct is inconsistent with his or her constitutionally protected status.” *David N. v. Jason N.*, 359 N.C. 303, 307, 608 S.E.2d 751, 753 (2005). In a dispute between a minor child’s natural parent and a nonparent, as in the present case, the trial court must find the natural parent is unfit or has acted inconsistently with his or her constitutionally protected status before it can consider awarding custody or guardianship to the nonparent. *In re R.P.*, 252 N.C. App. 301, 304, 798 S.E.2d 428, 430 (2017). As our Supreme Court stated in *Price v. Howard*,

Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy. Other types of conduct, which must be viewed on a case-by-case basis, can also rise to this level so as to be inconsistent with the protected status of natural parents. Where such conduct is properly found by the trier of fact, based on evidence in the record, custody should be determined by the “best interest of the child” test mandated by statute.

346 N.C. 68, 79, 484 S.E.2d 528, 534-35 (1997). In this inquiry, “evidence of a parent’s conduct should be viewed cumulatively.” *Owenby*, 357 N.C. at 147, 579 S.E.2d at 267 (citation omitted). “[A]ny past circumstance or conduct which could impact either the present or the future of a child is relevant, notwithstanding the fact that such circumstance or conduct did not exist or was not being engaged in at the time of the custody proceeding.” *Speagle v. Seitz*, 354 N.C. 525, 531, 557 S.E.2d 83, 87 (2001). “A

trial court's determination that a parent has acted inconsistently with his or her constitutionally protected status as the parent is subject to de novo review, and must be supported by clear and convincing evidence[.]” *B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775 (citations and quotation marks omitted).

Here, Findings of Fact 7, 19, and 23 are pertinent to our analysis. Respondent-Mother challenges the latter two Findings in her appellate brief. However, Respondent-Mother does not challenge Finding 7. Therefore, it is binding on appeal. *See X.M.*, 293 N.C. App. at 102, 899 S.E.2d at 870.

Finding 7 stated: “The minor children were adjudicated . . . neglected juveniles, . . . [in] 2023, upon a verified Juveniles Petition filed by [DHHS] on June 14, 2022.” Respondent-Mother’s neglect of her children “clearly constitute[s] conduct inconsistent” with her protected constitutional status as a natural parent. *Price*, 346 N.C. at 79, 484 S.E.2d at 534. Indeed, “in most juvenile cases, the underlying facts that support the adjudication of . . . neglect[] . . . also will satisfy the constitutional criteria” of conduct inconsistent with the natural parent’s constitutionally protected status. *In re K.C.*, 386 N.C. 690, 696, 909 S.E.2d 170, 175 (2024).

Finding 19 concerned Respondent-Mother’s continued disavowal of responsibility for the balcony incident, which partly led to the neglect adjudication described in Finding 7:

19. [Respondent-Mother] continues to defend locking the minor child, [Dylan], on the balcony for hours and avoids responsibility by blaming [Dylan]. She stated that her worst mistake as a parent

was not mitigating his attention-seeking behaviors which led to her putting him on the balcony, and that it was impossible for [Dylan] to have been in any danger on the balcony. The minor child was seen trying to climb over the balcony railing.

In her challenge to Finding 19, Respondent-Mother argues she expressly acknowledged she should not have put Dylan on the balcony. However, Respondent-Mother's own testimony supports this Finding. Asked what she considered her "greatest mistake as a parent[.]" Respondent-Mother testified:

[Respondent-Mother]: It would be that I would have preferred to pay more attention to [Dylan's] attention-seeking behavior. Which during the balcony incident he was doing other things . . . , such as pouring milk on the floor, breaking objects, getting into things he knows he shouldn't have. And [the DHHS social worker] said that was attention-seeking behavior, even though he had toys and books and food, and he had all of his needs met. But he was doing those things, and so that was a reason that I had placed him out on the balcony.

Moreover, SW Roach testified Respondent-Mother "still defends her position of putting [Dylan] out on that balcony and leaving him out there for hours as a good parenting choice."

Respondent-Mother's testimony also supports the portion of Finding 19 regarding her denial that Dylan was "in any danger on the balcony." She testified, "it was impossible for [Dylan] to be endangered within that particular balcony." But DHHS had received a report from a neighbor who had "observed" Dylan "climbing on the balcony railing."

Finding 23 related to concerns about the minor children's safety in

Respondent-Mother's care caused by her behavior during supervised visits:

23. [Respondent-Mother] struggles to safely manage even four (4) hours per week of supervised visitation with the minor children. When [Respondent-Mother] cannot dominate and control the minor child, [Dylan], she resorts to putting her hands on him. Ultimately, the way [Respondent-Mother] deals with [Dylan's] behaviors is to reject him by ending the visit early and sending him back to the foster parents. On three (3) occasions [DHHS] offered [Respondent-Mother] training on how best to redirect [Dylan], but she declined the training each time. [Respondent-Mother] has been instructed by visit coaches on how to redirect . . . [Dylan], but she does not apply the advice once she becomes frustrated. Visit coaches have intervened during visits to keep the minor children safe.

Respondent-Mother argues Finding 23 is an unsupported "distortion of the evidence[.]" specifically contending the conduct the trial court characterized as domination, control, and "putting her hands on" Dylan are in fact "actions not outside the bounds of typical, usual, or conventional parental behavior." However, the evidence supports this Finding. Per SW Roach, "the most concerning behavior" DHHS saw during visits was that Respondent-Mother "resorts to wanting to lay hands on [Dylan] to control him, to discipline him; and that's the same that we saw at the beginning of the case." As an example, SW Roach cited Dylan's habit of playing "the shaky game[.]" a "self-soothing" activity he does "when his anxiety kicks in." The shaky game involves repeatedly picking up and throwing down objects while making a humming noise. SW Roach explained that when Dylan plays the shaky game, it can be "difficult to break him out of that cycle[.]" SW Roach testified Respondent-Mother would become frustrated with Dylan when he played the shaky game: "she wants him

to stop that immediately when she tells him to, and he won't. And things can escalate." Respondent-Mother had sometimes gotten "to a point where she wants to physically force" Dylan into a timeout, specifically "want[ing] to hold him, restrain him, hold his arms together and pull him." "[A]t that point[.]" per SW Roach, Respondent-Mother "wants [DHHS] to tell her that it's okay to do that. And she gets frustrated when [DHHS] again says, no, you can't, you can't lay hands on him." SW Roach also stated, "twice within the past 30 days -- she's wanted to send [Dylan] home because of that behavior, because he won't obey," which substantiates Finding 23's statement that Respondent-Mother deals with Dylan's behavior by rejecting him and sending him back to his foster parents.

Respondent-Mother also disputes the portion of Finding 23 about visit coaches intervening to keep the children safe during visits, contending, "there was no evidence intervention was necessary for either of the children's safety." To the contrary, SW Roach testified, "At times [Respondent-Mother] has put her hands on [Dylan] and we've had other staff members intervene." This testimony was corroborated by DHHS visitation coach Bonham. Bonham confirmed a "common theme of [Respondent-Mother's] visitations is not being able to calm [Dylan] down when he escalates[.]" During visits Bonham had supervised, Respondent-Mother "consistently resorted to physically restraining him and making moves that escalate the situation instead of calm it down[.]" There had been "four different incidents since July of 2024" in which Bonham "had to intervene" during visits. During one incident,

after Dylan “became escalated[,]” Bonham “saw [Respondent-Mother] dragging him out” of the visitation room and into the hallway by his hands. Bonham was “concerned that [Dylan] might get hurt in this interaction, because [Respondent-Mother] was pulling forward and he was trying to pull backward.” Bonham’s testimony about her concern Dylan “might get hurt” supports the portion of Finding 23 stating intervention by visit coaches was necessary to keep the children safe.

In sum, clear and convincing evidence supports Findings 7, 19, and 23. *B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775. Finding 7, which is binding on appeal, stated Dylan and Bryson had been adjudicated neglected in 2023—and neglect “clearly constitute[s] conduct inconsistent” with Respondent-Mother’s constitutionally protected status. *Price*, 346 N.C. at 79, 484 S.E.2d at 534. Additionally, Finding 19 reflects Respondent-Mother’s continued disclamation of responsibility for the balcony incident and refusal to acknowledge putting Dylan on the balcony for several hours placed him in danger, while Finding 23 reflects well-founded concerns about the safety of Respondent-Mother’s disciplinary methods and her unwillingness to adjust them. *See id.* (a natural parent “may no longer enjoy a paramount [constitutional] status if his or her conduct is inconsistent with [the] presumption [he or she will act in the child’s best interest] or if he or she fails to shoulder the responsibilities that are attendant to rearing a child”). These Findings, in turn, are sufficient to support the Conclusion Respondent-Mother had acted inconsistently with her constitutionally

protected parental status.<sup>5</sup> *B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775. Consequently, the trial court did not err by determining Respondent-Mother had forfeited her constitutionally protected interest in her children. *See David N.*, 359 N.C. at 307, 608 S.E.2d at 753.

Moreover, Respondent-Mother has not challenged the trial court's Conclusion awarding guardianship to the foster parents was in the minor children's best interest. Accordingly, the trial court did not err in concluding it was in the best interests of the children to award guardianship to the foster parents. *See In re K.B.C.*, 295 N.C. App. 619, 631, 906 S.E.2d 840, 848 (2024).

## II. Ceasing Reunification Efforts

Respondent-Mother argues the trial court erred by ceasing reunification efforts.

"The trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed only for abuse of discretion, as those decisions are based upon the trial court's assessment of the child's best interest." *In re C.H.*, 381 N.C. 745, 751, 874 S.E.2d 537, 544 (2022) (citation and quotation marks omitted). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *Id.*

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<sup>5</sup> We need not address Respondent-Mother's challenges to other Findings of Fact in the Amended Order because Findings 7, 19, and 23 are sufficient to support the Conclusion her conduct was inconsistent with her constitutionally protected status. *See X.M.*, 293 N.C. App. at 102, 899 S.E.2d at 871.

(citation and quotation marks omitted).

“The purpose of a permanency planning hearing is to develop a plan ‘to achieve a safe, permanent home for the juvenile within a reasonable period of time.’ ” *R.P.*, 252 N.C. App. at 305, 798 S.E.2d at 431 (quoting N.C. Gen. Stat. § 7B-906.1(g) (2015)). In relevant part, “reunification” means “[p]lacement of the juvenile in the home of either parent . . . from whose home the child was removed by court order.” N.C. Gen. Stat. § 7B-101(18c) (2025). Though “reunification ordinarily must be the primary or secondary plan in a juvenile’s permanent plan[.]” *In re J.M.*, 384 N.C. 584, 593, 887 S.E.2d 823, 830 (2023) (citing N.C. Gen. Stat. § 7B-906.2(b)), this “requirement . . . is not absolute[.]” *id.* at 594, 887 S.E.2d at 830. Thus, “[a]t any permanency planning hearing, the trial court may cease reunification efforts upon making ‘written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety.’ ” *In re J.R.*, 279 N.C. App. 352, 364, 866 S.E.2d 1, 8 (2021) (quoting N.C. Gen. Stat. § 7B-906.2(b)). In making such a determination, the trial court must make written findings “which shall demonstrate the degree of success or failure toward reunification[.]” including:

- (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
- (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
- (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.

(4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C. Gen. Stat. § 7B-906.2(d). Our Supreme Court has “recognize[d] the [North Carolina] Juvenile Code’s flexibility for written findings that are responsive to each permanency-planning dispute.” *In re L.L.*, 386 N.C. 706, 716, 909 S.E.2d 151, 159 (2024). Thus, when a trial court considers ceasing reunification efforts, “only those [Section 7B-902(d)] factors which demonstrate the degree of success or failure toward reunification require written findings[.]” *Id.* These written findings need not “track the statutory language verbatim, but they must make clear that the trial court considered the evidence in light of whether reunification would be [clearly unsuccessful] or would be inconsistent with the juvenile’s health, safety, and need for a safe, permanent home within a reasonable period of time.” *J.M.*, 384 N.C. at 594, 887 S.E.2d at 830 (alteration in original) (citation and quotation marks omitted).

Here, the trial court made the following pertinent Findings:

45. [Respondent-Mother] ha[s] demonstrated a lack of success towards the plan of reunification and towards completion of court orders in the following ways:

a. [Respondent-Mother is] not making adequate progress within a reasonable period of time under the plan. The minor children have been in the custody of [DHHS] for about two (2) years and seven (7) months. . . . [Respondent-Mother] has not shown benefit from services.

. . . .

c. [Respondent-Mother is] acting in a manner inconsistent

with the health or safety of the juveniles. . . . [She] continues to demonstrate a consistent lack of impulse control as evidenced by hostile and aggressive text messages sent to the social worker as recently as 2:00 a.m. last night.

. . . .

49. [DHHS] is hereby relieved of further reasonable efforts towards reunification . . ., as reunification clearly would be unsuccessful or would be inconsistent with the juveniles' health or safety and need for a safe, permanent home within a reasonable period of time, and would not be in the minor children's best interest, due to [Respondent-Mother's] impulsive and aggressive behavior and failure to take responsibility for the events leading to custody[.]

. . . .

54. Placement of the minor children in the home of [Respondent-Mother] . . . would be contrary to the health and safety of the minor children due to [Respondent-Mother's] impulsive and aggressive behavior and failure to take responsibility for the events leading to custody.

On appeal, Respondent-Mother argues these Findings are unsupported or contradicted by evidence in the Record. We disagree.

The Record supports Finding 45a, which states Respondent-Mother was "not making adequate progress within a reasonable period of time" under the case plan insofar as she "has not shown benefit from services." A December 2024 court report prepared by SW Roach and admitted into evidence acknowledged Respondent-Mother "has made some minimal progress on her case plan." However, SW Roach opined Respondent-Mother's "inability to understand and address her own limitations" was

a “continual identified barrier” to progress. For example, despite attending court-ordered therapy, Respondent-Mother had “made no progress towards investigating any personal responsibility for the conditions th[at] brought the children into care” and was “unable to accept the services and interventions” set forth in her case plan necessary “to improve her capacity to care for her children.” Further, though Respondent-Mother is “intelligent and able to compile knowledge” about childhood development and nurturing, SW Roach stated she was limited by an inability “to apply her knowledge to her interactions with her children.” For instance, during visits, Respondent-Mother was “not open to feedback” on how to handle Dylan’s tantrums and had “not engaged in any services to mitigate her limitations” in this area. Additionally, when asked at hearing whether Respondent-Mother had “shown improvement in her ability to safely parent” since her children entered DHHS custody in 2022, SW Roach testified, “there are times when she has improved in visits. But overall the parenting choices that she makes are the same.”

Thus, the evidence supports Finding 45a by demonstrating Respondent-Mother engaged with some services in her case plan but had “not shown benefit” from them. Moreover, Finding 45a addresses the first two Section 7B-906.2(d) factors: “Whether the parent is making adequate progress within a reasonable time under the plan[,]” and “Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.” N.C. Gen. Stat. § 7B-906.2(d)(1), (2).

The evidence also supports Findings 45c, 49, and 54, which address “Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.” *Id.* § 7B-906.2(d)(4). Finding 45c states Respondent-Mother “[is] acting in a manner inconsistent with the health or safety of the juveniles[.]” specifically noting her “continue[d]” demonstration of “a consistent lack of impulse control[.]” Findings 49 and 54 also refer to Respondent-Mother’s “impulsive and aggressive behavior” as reasons placement of the minor children in her home would be inconsistent with their health or safety.

We observe two salient examples in the Record demonstrating Respondent-Mother’s impulsiveness and aggression referenced in these Findings. First, in a separate Finding, the trial court referred to a past incident at a dentist appointment for Dylan attended by Respondent-Mother and the foster family, at which Respondent-Mother “said the foster mother’s twelve (12) year old daughter looked like a slut.” In a prior order,<sup>6</sup> the trial court made a detailed finding about this event:

15. At a dental visit on October 6, 2022, for the minor child, [Dylan], [Respondent-Mother] did not support [Dylan] during his exam, but instead held the baby in the lobby. She became agitated and angry when she was unable to soothe the baby’s crying. [Respondent-Mother’s] behavior escalated, culminating in a verbal attack of the foster parent’s twelve-year-old daughter,

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<sup>6</sup> For the purpose of finding facts in permanency planning proceedings, the trial court is “permitted to receive into evidence and rely on prior court orders and reports by DSS or a guardian *ad litem*.” *In re A.P.*, 179 N.C. App. 425, 427-28, 634 S.E.2d 561, 563 (2006). Here, in the Amended Order, the trial court stated it took “Judicial Notice of all prior Orders of the Court regarding these minor children, and the Court incorporates herein by reference, such findings of fact as may be contained within said Orders.”

calling the child a “slut” and berating her. [Respondent-Mother’s] behavior continued becoming more aggressive and antagonistic until the Social Work Supervisor intervened. [Respondent-Mother] reacted to the Social Work Supervisor by thrusting two middle fingers inches from her face while smiling. [The] Supervisor . . . had to physically step between [Respondent-Mother] and the Foster Parent’s vehicle to stop [Respondent-Mother’s] gesticulations into the vehicle and shut the children’s car door so the foster parent could leave.

In the Amended Order, the trial court found Respondent-Mother “minimizes [the dentist] incident, saying [DHHS] is exploiting the fact that she called a twelve (12) year old girl a slut.” Indeed, at the hearing, Respondent-Mother downplayed this incident and made excuses for her behavior. For instance, she testified that at the time she didn’t know the child was twelve, and stated, “she did appear much older, and she was wearing suggestive clothing.” Respondent-Mother also testified counsel for DHHS was “exploiting the fact that [she] called a 12-year-old child a slut[.]” And while Respondent-Mother pointed out that she apologized to the foster family for this incident, she also minimized its seriousness by asserting, “I’m sure [DHHS] see[s] much worse behavior” from other parents.

As a second example, Finding 45c referred to “hostile and aggressive text messages” Respondent-Mother had sent to a social worker the prior night. This Finding is supported by testimony. On the fourth day of the hearing, Respondent-Mother confirmed she sent a text message to SW Roach late the previous night. In this message, which was read into the record by counsel for DHHS during cross-examination of Respondent-Mother, she accused SW Roach of having “lied[.]”

“bullied[,]” and “obstructed tirelessly to the merciless end and desire to see me separated from my children.” The message continued, “[y]ou have been an utterly graceless individual, showing no mercy and no kindness” and closed by stating, “May God give you what you deserve[.]” Viewing the two examples together, evidence about the dentist incident shows Respondent-Mother’s resistance to accepting responsibility for past impulsive, aggressive behavior in the presence of her children and other children, while the text message to SW Roach suggests this pattern of behavior had not improved by the time of the final permanency planning hearing.

Moreover, Findings 49 and 54 cite Respondent-Mother’s “failure to take responsibility for the events leading to custody” as a reason placement of the juveniles with her would be inconsistent with their health or safety. The Record also supports these Findings. As discussed above, Respondent-Mother’s testimony indicated her disavowal of responsibility for the balcony incident and continued denial that Dylan had been in any danger while being kept outside on a second-floor balcony. Further, SW Roach testified Respondent-Mother “still defends her position of putting [Dylan] out on that balcony and leaving him out there for hours as a good parenting choice[.]” and opined there was “still [a] high” risk similar neglect would recur if the minor children were placed in her care. Thus, the evidence supports Findings 45c, 49, and 54, which in turn properly address whether Respondent-Mother “is acting in a manner inconsistent with the health or safety of the juvenile[s].” N.C. Gen. Stat. § 7B-906.2(d)(4).

In summary, the evidence supports Findings 45a, 45c, 49, and 54. *B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775. These written Findings make clear that the trial court considered the evidence in light of whether reunification with Respondent-Mother would be clearly unsuccessful or inconsistent with the minor children's health, safety, and need for a safe, permanent home within a reasonable time period, *J.M.*, 384 N.C. at 594, 887 S.E.2d at 830, and support the trial court's decision to cease reunification efforts, *see B.R.W.*, 381 N.C. at 77, 871 S.E.2d at 775. Therefore, because we cannot say the trial court's determination this disposition was in the minor children's best interests was arbitrary or without reason, it did not abuse its discretion by ceasing reunification efforts and eliminating reunification from the permanent plan.<sup>7</sup> *See C.H.*, 381 N.C. at 751, 874 S.E.2d at 544; N.C. Gen. Stat. § 7B-906.2(b) (the written finding that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety, if made, eliminates reunification as a plan).

### III. Visitation

#### *A. Visitation Condition*

Respondent-Mother contends the trial court "inappropriately delegated its judicial function regarding visitation to the guardians" because the Visitation Condition granted the guardians "authority to effectively deny visitation by not

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<sup>7</sup> To the extent Respondent-Mother argues the trial court did not give sufficient weight to her positive efforts toward reunification, we emphasize it is not the function of this Court to reweigh the evidence on appeal. *In re T.H.*, 266 N.C. App. 41, 47, 832 S.E.2d 162, 166 (2019).

approving any supervisor” she proposes. We agree.

“This Court reviews the trial court’s dispositional orders of visitation for an abuse of discretion.” *In re C.M.*, 183 N.C. App. 207, 215, 644 S.E.2d 588, 595 (2007) (citations omitted). “Where the trial court places the juvenile with a guardian, ‘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.’ ” *J.R.*, 279 N.C. App. at 366, 866 S.E.2d at 10 (quoting N.C. Gen. Stat. § 7B-905.1(c)). “However, the trial court may not delegate its judicial function of awarding visitation to the custodian [or guardian] of a child.” *In re C.S.L.B.*, 254 N.C. App. 395, 399, 829 S.E.2d 492, 495 (2017) (citing *In re J.D.R.*, 239 N.C. App. 63, 75, 768 S.E.2d 172, 180 (2015)).

Here, the trial court awarded Respondent-Mother six hours of supervised visitation per month. It further provided that “if the parties cannot agree on a place and time, [Respondent-Mother] shall have supervised visitation . . . on second Saturdays of the month from 10:00 a.m. to 4:00 p.m. at the Asheville Mall Barnes and Noble entrance, by default.” This portion of the visitation order satisfies Section 7B-905.1(c)’s requirement to “specify the minimum frequency and length of the visits and whether the visits shall be supervised.”

However, in the Visitation Condition, the trial court ordered, “That supervisors for [Respondent-Mother’s] visits shall be proposed by [Respondent-Mother] and approved by the minor children’s guardians.” This language leaves unclear whether

the guardians *must* approve supervisors proposed by Respondent-Mother. And because the trial court required supervision of Respondent-Mother's visits, the Visitation Condition plausibly gives the guardians discretion to deny Respondent-Mother's visitation rights altogether by refusing to approve any of her proposed supervisors. Therefore, the Visitation Condition as written constitutes an improper delegation of a judicial function to the guardians.<sup>8</sup> *See id.*; *see also In re Custody of Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971) ("To give the custodian of the child authority to decide when, where and under what circumstances a parent may visit his or her child could result in a complete denial of the right and in any event would be delegating a judicial function to the custodian.").

Therefore, we must vacate the visitation provisions of the Amended Order and remand to the trial court for clarification as to how supervisors for Respondent-Mother's visits will be selected and approved. *See C.S.L.B.*, 254 N.C. App. at 400, 829 S.E.2d at 495.

### *B. Visitation Hours*

Respondent-Mother argues the trial court abused its discretion by "drastically decreasing" her supervised visitation with the minor children to six hours per month.

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<sup>8</sup> We note the appellate brief submitted by DHHS does not meaningfully engage on the Visitation Condition issue. While DHHS notes facts and circumstances from the proceeding to support its argument that ordering the Visitation Condition was within the trial court's discretion, the agency cites no legal authority for this contention. Nor does DHHS acknowledge our caselaw restricting the trial court from improperly delegating judicial functions regarding visitation to custodians or guardians.

We disagree.

Orders placing a minor child with a nonparent custodian or guardian must “provide for visitation [with the parent] 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). If the trial court decides to grant visitation to the parent, its order must “specify the minimum frequency and length of the visits and whether the visits shall be supervised.” *Id.* § 7B-905.1(c). We review visitation orders for abuse of discretion. *C.M.*, 183 N.C. App. at 215, 644 S.E.2d at 595.

Here, the Amended Order’s visitation provisions accounted for the minimum length and frequency of visits (six hours, once per month) and ordered that visits would be supervised. This portion of the visitation order satisfies the requirements of Section 7B-905.1(c) and does not constitute an abuse of the trial court’s discretion to fashion a visitation schedule in the minor children’s best interests under Section 7B-905.1(a). Thus, the trial court did not abuse its discretion by setting Respondent-Mother’s visitation at six hours of supervised visitation per month. *See id.*

### **Conclusion**

Accordingly, for the foregoing reasons, we vacate the Amended Order’s visitation provisions and remand this matter for clarification as to how supervisors for Respondent-Mother’s visits will be selected and approved, with instructions to the trial court to avoid delegating its judicial function on this issue. Additionally, although we hold the trial court did not abuse its discretion by awarding Respondent-

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Mother six hours of supervised visitation per month, the trial court on remand may in its discretion reconsider the frequency and duration of visits and whether the visits will be supervised. Otherwise, we affirm the Amended Order.

VACATED AND REMANDED IN PART; AFFIRMED IN PART.

Judges STROUD and FREEMAN concur.

Report per Rule 30(e).