

NO. COA 06-1697

TWENTY-SIXTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

* * * * *

IN RE: K.S.

)
)
)
)
)
)

From Mecklenburg County

* * * * *

BRIEF OF THE MINOR CHILD K.S., APPELLEE,
BY AND THROUGH HER GUARDIAN AD LITEM

* * * * *

TABLE OF CONTENTS

STATEMENT OF THE FACTS.....1

ARGUMENT.....7

 I. STANDARD OF REVIEW.....7

 II. THE TRIAL COURT MADE ALL FINDINGS REQUIRED BY
 STATUTE.....8

 III. THE TRIAL COURT’S FINDINGS OF FACT ARE WELL
 SUPPORTED BY COMPETENT EVIDENCE IN THE RECORD.....11

 A. Finding of Fact No. 2.....12

 B. Finding of Fact No. 3.....13

 C. Finding of Fact No. 4.....14

 IV. THE FINDINGS OF FACT AND THE LAW SUPPORT THE
 TRIAL COURT’S CONCLUSIONS.....15

 V. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WITH
 RESPECT TO VISITATION OR OTHER DISPOSITIONAL
 ISSUES.....18

 VI. THE USE OF A FORM HELPED ASSURE THAT THE
 PERMANENCY PLANNING ORDER COMPLIED WITH STATUTORY
 REQUIREMENTS.....19

CONCLUSION.....20

TABLE OF AUTHORITIES

STATE CASES

In the Matter of C.L. Jr., C.L. and C.L., No. COA 05-122, 2005
N.C. App. LEXIS 2687, slip op. 3 (Dec. 20, 2005) (unpublished
opinion)

In re Isenhour, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73
(1991).

In re Oghenekevebe, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397-
398 (1996).

In re Pittman, 149 N.C. App. 756, 561 S.E.2d 560 (2002), cert.
denied, 538 U.S. 982, 123 S. Ct. 1799, 155 L. Ed. 2d 673 (2003)

In the Matter of R.T.W., 359 N.C. 539, 545, 614 S.E.2d 489, 493
(2005)

Price v. Price, 133 N.C. App. 440, 443, 154 S.E.2d 553, 554, n.2
(1999)

STATUTES

N.C. Gen. Stat. § 7B-907

NORTH CAROLINA COURT OF APPEALS

* * * * *

)	
IN RE: K.S.)	<u>From Mecklenburg County</u>
)	
)	

* * * * *

BRIEF OF THE MINOR CHILD K.S., APPELLEE,
BY AND THROUGH HER GUARDIAN AD LITEM

* * * * *

Appellee K.S., by and through her Guardian ad Litem and her Guardian ad Litem Attorney Advocate and pursuant to the North Carolina Rules of Appellate Procedure, respectfully ask that the Permanency Planning Order be affirmed in all respects. In support of this request, K.S. shows unto the Court the following:

STATEMENT OF THE FACTS

Appellee K.S. came into the custody of Mecklenberg County Department of Social Services ("DSS") following a referral. R. 45. During February, 2005, K.S., then about eight months old, had been left by her mother, Appellant, in the care of Appellant's mother in Catawba County. R. 45. Appellant then left Catawba and moved to Mecklenburg County, where she became

pregnant with her fifth child. R. 45, 46.¹ Prior to June 2005, Appellant recovered K.S. and moved her to Mecklenburg County. R. 45. DSS personnel spoke with Appellant during June, 2005 at the Women's Shelter. R.45. K.S. was taken into DSS custody because K.S. faced a substantial risk of injury and Appellant was unable to provide basic needs, adequate supervision or protection for K.S. R. 25.

The home of Appellant's mother, where K.S. was left between February and June of 2005, was not appropriate for K.S. R. 46. A home study revealed that Appellant's mother had a criminal record for larceny, property damage and felonious assault with a firearm. R. 42. She had a long history with Child Protective Services, which substantiated claims that she was a perpetrator as to the four oldest of her five children, including Appellant. R. 37, 42. The husband of Appellant's mother, who was living in the home when K.S. was left there by Appellant, had fathered four children out-of-wedlock, all of whom were removed from their mother and placed for adoption. R. 38. In approximately 1990, he was convicted of assault and battery for scalding his son in a bathtub when the child was approximately 2-3 years old. R. 38.

¹ The Record reveals that Appellant was five month's pregnant in June, 2005.

The home of Appellant's mother was particularly inappropriate in light of Appellant's own experience there. In 1985, when Appellant was approximately 2 years old, DSS substantiated a report against her mother. R. 57. Factors contributing to this report included alcohol abuse, disruption of family structure, insufficient income, and mental/emotional problems. R. 57. Appellant lived with alcohol abuse and domestic violence in her mother's home, was abused emotionally and was sexually abused around age 10. R. 134. At the age of about 16, Appellant was discovered hungry and homeless at the South Frye Mental Health facility. R. 58. Appellant stated that she was molested by several men as a child. R. 58. Her childhood was characterized by drug and alcohol abuse, sexual activity, truancy, mental health problems, criminal charges including prostitution, larceny, trespassing, and probation violations. R. 134. At age sixteen Appellant attempted suicide by cutting her wrist, and she reported having wished, as a child, to kill her nephew who had sexually abused her. R. 135.

Appellant, who is approximately twenty-three years old, has been pregnant at least six times. R. 135. She had her first child, C1., when she was thirteen years old. C1. is being raised by the family of the child's father. R. 144. Her second child, B., was taken into DSS custody due to Appellant's substance abuse. Appellant's parental rights were terminated

and B. was adopted during 2004. R. 144. B.'s father, a drug abuser, was forty-five years old - Appellant was seventeen. R. 135. Her third child, A., lives in South Carolina with that child's father and paternal aunt, and Appellant has surrendered custody of the child to the aunt. R. 135. Her fourth child is Appellee. A fifth child, C2., is, as far as the Record discloses, in the Appellant's custody. Appellant is unsure of who C2.'s biological father is because she was involved with drugs and several men at the time C2. was conceived. R. 135. Finally, Appellant is pregnant with a sixth child, due in November, 2006. R. 135. Appellant said at various times that she did not know who was the father of this latest child, that the father was "Alphonso," and that Michael Conner was the father. R. 123.

Appellant knows little about the father of Appellee K.S. Appellant's encounter with him was casual. R. 144. Appellant has little or no information about the father, R. 144, and only knows the man's first name. R. 19.

Appellant has a history of substance abuse. R.45. She has been hospitalized twice for substance abuse, among other things, in Frye Memorial Hospital and has been involved in several substance abuse programs, including Hope Meadows in Chapel Hill, Black Mountain in western North Carolina, twice in Hickory and twice in Charlotte. R. 134. In June, 2005 Appellant stated a

desire to enter Hope Haven to address her substance abuse addiction. R. 45. Unable to enter Hope Haven, she began the Cascade Treatment Program but did not comply, relapsed, left the program, and began residing with a recovering substance abuser. R. 45-46. Appellant appears to be having more success with her present substance abuse program - the eight or ninth program in which her substance abuse has been the subject of treatment. R. 150, 134, 45-46.

Appellant did not complete high school and has not obtained a GED. R. 134. Though she has worked in the past as a waitress and cashier in fast-food restaurants and diners, she was not working at the time of the Parent Capacity Evaluation. R. 134. At the time of the Permanency Planning Order, Appellant had no income and no housing. R. 152.

The Parent Capacity Evaluation demonstrated how Appellant's background affected her capacity to parent K.S. effectively.

4) How has substance abuse impacted this family's and this mother's ability to parent effectively?

Ms. S_____ 's substance abuse history has had a tremendous, negative impact on her family's functioning and her parenting abilities. Her history of utilizing drugs and alcohol during pregnancies, engaging in substance abuse and related activities such as living in a "crack house", and having relationships with multiple men produce situations which resulted in Ms. S_____ losing custody of her children, having unplanned pregnancies, and involvement with the legal system. Her substance abuse has

also resulted in disruption of her relationships with her children, with three of her four children currently residing outside the home in various placements including DSS custody and with other relatives. The substance abuse also appears to have been a primary factor in terms of Ms. S_____ becoming pregnant such as being involved in a relationship with an older man in which they were using drugs together that resulted in her first pregnancy, and poor judgment resulting in other pregnancies. These issues have also impacted the age at which Ms. S_____ began having children (teenager) and resulted in a situation in which she became a parent and was involved in legal and social situations in which her developmental maturity was an issue.

5) How has domestic violence impacted this family and this mother's ability to parent effectively?

In conjunction with Ms. S_____ 's history of substance abuse, she has been involved in relationships in which domestic violence occurred. It appears as if her drug abuse negatively impacted her judgment, and resulted in her remaining in relationships which were physically and emotionally harmful secondary to continued availability of drugs, poor judgment, and lower senses of self-esteem and self-worth. These situations also produced an impact on Ms. S_____ 's parenting, as the safety and well-being of her children were threatened both physically and emotionally while the domestic violence was occurring within the household in or near the presence of the children. The situation also appears to suggest that Ms. S_____ did not place the physical and/or emotional safety needs of her children as a high priority, continuing in these situations in spite of the risk to her children.

ARGUMENT

I. STANDARD OF REVIEW

In this appeal, Appellant challenges the Permanency Planning Order. The Court of Appeals "reviews a permanency planning order for whether the findings required by statute have been made, whether the findings and the law support the trial court's conclusions, and whether the trial court has abused its discretion with respect to dispositional issues." In the Matter of C.L. Jr., C.L. and C.L., No. COA 05-122, 2005 N.C. App. LEXIS 2687, slip op. 3 (Dec. 20, 2005) (unpublished opinion, attached hereto as Appendix ____). Thus, the issues presented in this appeal are: (1) whether the trial court made the findings required by statute, (2) whether those findings are supported by the evidence and the law, and (3) whether the trial court abused its discretion with respect to disposition.

Applying this three-part test demonstrates that the Permanency Planning Order should be affirmed. The findings of fact in the Permanency Planning Order fully satisfy the requirements set forth in N.C. Gen. Stat. § 7B-907. Competent evidence in the record amply supports these findings of fact; thus, the findings are conclusive on appeal. In re Isenhour, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73 (1991). The findings of fact support the trial court's conclusions. Finally, the

court did not abuse its discretion regarding visitation or other aspects of the disposition.

II. THE TRIAL COURT MADE ALL FINDINGS REQUIRED BY STATUTE

ASSIGNMENTS OF ERROR NO. 3-34, R. 165-72

N.C. Gen. Stat. § 7B-907 states that a trial court must make certain written findings of fact in a permanency planning order:

the court shall consider the following criteria and make written findings regarding those that are relevant.

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

N.C.G.S. § 7B-907(b)(emphasis added). The court is expressly not required by statute to make a finding as to each factor listed in § 7B-907(b); instead, it must make those findings that are relevant to the permanency plans being developed by the court.

In the case at bar, the trial court made a finding of fact as to all of the criteria listed in §7B-907(b). Regarding whether K.S. could be returned home, custody and adoption (§ 7B-907(b)(1, 2, 3, and 4)), the court expressly found:

4. It is not possible for the juvenile to be returned home immediately or within 6 months nor is it in the juvenile's best interest to return home because: The mother exhibits an inability to refrain from inappropriate sexual activity. She has had at least 3 pregnancies in 3 years. She continues to exhibit poor decision-making. The mother's parental rights have been terminated to another child. She has two other children not in her custody. The mother has not reasonably complied with her case plan.

5. Because the juvenile's return home is unlikely within 6 months, the court has considered whether legal guardianship or custody with a relative or some other suitable person should be established and finds: There are no barriers to adoption. The plan in the juvenile's best interest to achieve permanent placement is adoption.

6. The Court finds there are no barriers to adoption.

R. 152. As to whether DSS made reasonable efforts to implement the permanent plan for K.S. (§ 7B-907(b)(5)), the court found:

7. DSS has made reasonable efforts to implement the permanent plan for the juvenile.

R. 152. The Court also made additional findings of fact that support the factors listed in § 7B-907(b) as well as other issues that support and help implement the permanent plan:

2. ... The mother participates in level III of Drug Court. She completed treatment; however concerns persist regarding the mother meeting the required number of NA/AA meetings as well as engaging with her sponsor. The mother completed the parenting capacity evaluation.

3. ... The mother ceased participation in individual therapy. She was involved in a domestic violence incident since the last hearing. She does not have housing nor income.

8. Visitation between the juvenile and the mother is desirable contingent upon the mother's progress and compliance with [the] case plan. Visitation between the juvenile and the father is desirable upon establishment of paternity and the father presenting to YFS to enter a case plan.

9. Pursuant to NCGS §7B-907(d), the Court further finds: the juvenile has been in custody or placement outside the home for 12 or [sic] the most recent 22 months. The permanent plan for the juvenile K.S. is TPR/Adoption.

10. Pursuant to NCGS §7B-507, the Court specifically finds: efforts to reunite would be futile and would be inconsistent with the juvenile's health, safety, and need for a safe permanent home within a reasonable period of time.

11. At this time, the juvenile's continuation in or return to her home is contrary to her best interest.

12. Paternity has not been established for K.S. DSS has made the following efforts to identify and/or locate and serve the missing parent and/or establish paternity: The mother has provided a first name only regarding the alleged father. She states that she is unsure of the alleged father's last name.

15. Other Findings: The mother's parental rights have been terminated as to another child. The mother has two other children who are being raised by relatives. She has another child - Crystal - who she placed with the maternal grandmother. The GAL raised concern regarding the juvenile having R.A.D.S. due to lack of permanent placement. The mother is currently pregnant with her sixth child...

R. 152-53.

Even a cursory glance at the these findings shows that they fully satisfy the requirements of §7B-907(b); indeed, the provisions of the statute are faithfully tracked by findings nos. 4-7 and further supported by findings nos. 2-3 and 8-15. The trial court made all the findings of fact - and more - needed to support the permanency planning order.

III. THE TRIAL COURT'S FINDINGS OF FACT ARE WELL SUPPORTED BY COMPETENT EVIDENCE IN THE RECORD

In her brief, Appellant attacks three of the Trial Court's findings of fact: numbers 2, 3 and 4. R. 151-52. However, there is ample evidence in the record to support the trial court's findings of fact. "Findings of fact are conclusive if supported by any competent evidence." In re Isenhour, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73 (1991).

When the trial court is the trier of fact, the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate. *G.R. Little Agency, Inc. v. Jennings*, 88 N.C. App. 107, 112, 362 S.E.2d 807, 811 (1987). In this situation, the trial judge acts as both judge and jury, thus resolving any conflicts in the evidence. *Williams v. Pilot Life Insurance Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975). If there is competent evidence to support the trial court's findings of fact and conclusions {473 S.E.2d 398} of law, the same are binding on appeal even in the presence of evidence to the contrary. *Id.*

In re Oghenekevebe, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397-398 (1996).

A. Finding of Fact No. 2

Finding of Fact No. 2 states that "concerns persist regarding the mother not meeting the required number of NA/AA meetings as well as engaging with her sponsor." R. 151.

Competent evidence supports this finding:

Ms. S_____ has missed some Cascade meetings without excuse... [A]nother DV counseling session was scheduled ... but Ms. S_____ no showed... Ms. S_____ reports that she last saw her therapist in April and does not understand why she still needed to go to therapy... Ms. S_____ denied on 5/30 that she has issues necessitating therapy...

R. 123. Appellant also lied about "going out with Michael Conner and her friends and sa[id] she does not understand the need to sign out or for anyone to know where she is going." R.

124. In light of these concerns, DSS concluded "it seems appropriate to introduce a concurrent plan of adoption" for K.S.

R. 124. This evidence is more than sufficient to support Finding of Fact No. 2.

Appellant's active participation in therapy is essential to her own health and to reunification. After concluding that all of her treatment programs were appropriate, the Parent Capacity Evaluation raised the following serious concerns:

The likely success of Ms. S_____ in her current treatment program is an area of uncertainty. While she has been involved in various forms of mental health and substance abuse treatment in the past, she has continued to utilize drugs until this past year. While her current length of sobriety is encouraging, she will need continued, significant involvement in substance abuse treatment and support services if she is to remain free from drug and alcohol use. Ms. S_____ will more than likely face additional pressures in life, given the impending birth of a child in November, and the possibility of reunification with [Appellee], and will need continued support from professional, paraprofessional, and lay persons to live a lifestyle free from drug and alcohol use.

R. 139. Appellant's resistance to important aspects of her therapy, established by evidence in the record, is a significant factor in assessing the best interests of K.S. and is an appropriate finding of fact.

B. Finding of Fact No. 3

Appellant's second complaint addresses Finding of Fact No. 3: "The mother ceased participation in individual therapy. She was involved in a domestic violence incident since the last hearing. She does not have housing or income." R. 152. The

evidence supporting Appellant's refusal to participate in aspects of her therapy is discussed above.

Appellant does not contest the accuracy of the remaining two assertions in Finding of Fact No. 3, nor can such a challenge be sustained in light of the evidence in the record. The simple fact of the matter is that, despite the stated concerns of DSS, Appellant placed herself and her daughter C2. in potential jeopardy by secretly seeing Michael Conner, among others. R. 124. A domestic violence incident subsequently took place requiring that Appellant obtain a 50-B order against Mr. Conner. R. 143.

Similarly, there is no doubt that Appellant has no income and no housing. R. 123. The circumstances into which Appellant places herself are important factors in assessing the best interests of K.S. Finding of Fact No. 3 is well-supported by competent evidence and is important in supporting the Trial Court's conclusions.

C. Finding of Fact No. 4

Appellant's final challenge is to Finding of Fact No. 4: "The mother exhibits an inability to refrain from inappropriate sexual activity. She has had at least 3 pregnancies in 3 years. She continues to exhibit poor decision-making. The mother's parental rights have been terminated as to another child. She

has two other children not in her custody. The mother has not reasonably complied with her case plan."

Appellant ascribes nefarious, but vaguely defined, motives to the Court's concerns with her sexual activity. The evidence of that activity, however, is not in doubt. Appellant has been pregnant at least six times between the ages of thirteen and twenty-three. R. 19, 135, 144 (see discussion *supra*, pp. 3-4). There is no doubt that this sexual activity has been reckless: Appellant does not even know who the fathers of two of her children are, and she knows precious little about the father of Appellant. Id. In light of this, there can be no serious dispute that this unrestrained sexual activity affects her ability to be a parent, simply by straining already limited resources, and casts Appellant's judgment in an extremely poor light.

There is ample evidence of Appellant's failure to comply with her case plan, as discussed *supra*, pp. 12-13.

IV. THE FINDINGS OF FACT AND THE LAW SUPPORT THE TRIAL COURT'S CONCLUSIONS

In the permanency planning hearing, the court is required to consider what is in the best interest of the juvenile. N.C. Gen. Stat. § 7B-907. "The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." Id.

Although Appellant makes passing reference to the proper standard to be applied by the trial court - the best interest of K.S. - Appellant appears to then embrace a variety of other inappropriate standards. Appellant refers to standards applied in terminating parental rights (Appellant's Brief, p. 16, 18) and in finding abuse or neglect (Appellant's Brief, p. 18). Appellant also alludes to other substantive or procedural constructs that might form the basis for weighing K.S.'s future, including the "hand in life" that one is dealt (Appellant's Brief, p. 19), the proper "political motives" in reviewing the evidence (Appellant's Brief, p. 21), fundamental fairness to Appellant (Appellant's Brief, p. 24), and whether it was reasonable of the trial court to require a mother to refrain from activity harmful to her child absent an express prohibition against such activity issuing from the court (Appellant's Brief, p. 26).

Whatever the alleged merits of any of these approaches, the trial court is not authorized to base its permanency plan on such reasoning. The Legislature has defined the standard to be applied by the trial court, and that standard is the best interest of the juvenile. N.C. Gen. Stat. § 7B-907. "[T]he common thread running throughout the Juvenile Code, § 7B-100 et seq., is that the court's primary concern must be the child's best interest. See *In re Shue*, 63 N.C. App. 76, 81, 303 S.E.2d

636, 639 (1983), modified, 311 N.C. 586, 319 S.E.2d 567 (1984)... [T]he protection of the child's interests, as distinguished from the mother's interests, is the overriding consideration. See *Price v. Howard*, 346 N.C. 68, 72, 484 S.E.2d 528, 530 (1997).” In re Pittman, 149 N.C. App. 756, 561 S.E.2d 560 (2002), cert. denied, 538 U.S. 982, 123 S. Ct. 1799, 155 L. Ed. 2d 673 (2003); and see In the Matter of R.T.W., 359 N.C. 539, 545, 614 S.E.2d 489, 493 (2005) (For all the statute's concern with preserving families, subdivision (5) of N.C. Gen. Stat. § 7B-100 clearly makes the "best interests of the juvenile" the courts' "paramount consideration" when hearing cases arising under Subchapter I.)

Based on its findings of fact, the trial court assessed the best interest of K.S. as follows:

2. YFS has made reasonable efforts since the last hearing to prevent or eliminate need for placement in foster care.

* * * * *

4. Continuation of the juvenile in or return to the home would be contrary to their best interest, health, safety and welfare.

5. Reasonable efforts to reunify should be suspended. The plan is adoption.

* * * * *

9. It is in the juvenile's best interest to remain in the legal custody of YFS with placement with/in the appropriate placement.

10. The Court further concludes termination of parental rights is in the juvenile's

K.S.'s best interest to achieve a permanent plan

These Conclusions of Law are amply supported by the trial court's findings of fact. As discussed above, Appellant has no home and no income. R.152. She has a history of substance abuse and also of relapse back into substance abuse after treatment. *Supra*, pp. 4-5. She has a history of placing herself and her children in dangerous circumstances. *Supra*, pp. 2-3, 5-6, 14. The likelihood that her current treatment program will succeed is uncertain, yet her participation in that program has been far from wholehearted. *Supra*, pp. 12-13. In light of these facts, the Permanency Planning Order must be affirmed.

V. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WITH RESPECT TO VISITATION OR OTHER DISPOSITIONAL ISSUES

Appellant's only complaint as to disposition relates to visitation. The discrepancy between the Trial Court's oral ruling and the written order benefited Appellant - visitation is to continue as it had prior to the entry of the Permanency Planning Order. R. 156. The only remaining issue is whether the order to continue visitation was an abuse of the Trial Court's discretion.

The Permanency Planning Order simply continued the visitation plan then in force. R. 156. That visitation plan was originally put in place in the Order for Non-Secure Custody, R. 15, and reaffirmed or modified by the Court repeatedly

thereafter, R. 47, 48, 89, 119, 130, 131. Appellant has not assigned error as to any of the visitation provisions in these orders. Appellant's challenge to the visitation portion of the Permanency Planning Order is specious and should be dismissed.

VI. THE USE OF A FORM HELPED ASSURE THAT THE PERMANENCY PLANNING ORDER COMPLIED WITH STATUTORY REQUIREMENTS

Without reference to any authority, Appellant suggests that the use of a form for the Permanency Planning Order in this case undermines the validity of the order. Legal research uncovered one North Carolina case in which the Court of Appeals reviewed a form order - in that case, an AOC form that the trial court had failed to fill out. The Court of Appeals stated:

We note the Protective Order entered by the trial court was a form order printed by the Administrative Office of Courts and includes several boxes, in the "Findings" and "Conclusions" sections of the form, to be checked by the trial court. None of the boxes were checked. Because of the large number of domestic violence cases filed each year in North Carolina, we appreciate the usefulness of form orders. The trial court, however, should not neglect its responsibility to make necessary findings and conclusions.

Price v. Price, 133 N.C. App. 440, 443, 154 S.E.2d 553, 554, n.2 (1999)(emphasis added).

In Price, the fact that no boxes were checked supported the conclusion that the order did not contain any findings of fact or conclusions of law. Id., 133 N.C. App. at 441, 154 S.E.2d at

553. In the case at bar, by contrast, the trial court checked the appropriate boxes provided on the form and added language broadening its findings and conclusions. R. 151-57. Far from undermining the Permanency Planning Order, the fact that a form was used in this case strengthened the Order because it helped assure that the trial court considered all the appropriate factors set forth in N.C. Gen. Stat. § 7B-907(b). As explained in Section II, above, the trial court scrupulously considered all of the factors required by the statute.

CONCLUSION

For the reasons stated above, the Permanency Planning Order should be affirmed in all respects.

This the ____th day of February, 2007.

HUNTON & WILLIAMS

By: _____
Jason S. Thomas
N.C. State Bar No. 016527
P.O. Box 109
Raleigh, North Carolina 27602
Telephone: (919) 899-3000

GUARDIAN AD LITEM ATTORNEY
ADVOCATES FOR K.S.

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the persons listed below a copy of the **BRIEF OF THE MINOR CHILD K.S., APPELLEE, BY AND THROUGH HER GUARDIAN AD LITEM** by depositing a copy of same in the United States Mail in Raleigh, North Carolina, postage prepaid, addressed as follows:

This the ____th day of February, 2007.
