374 N.C.—No. 4 Pages 752-927

# ADVANCE SHEETS

OF

# CASES

ARGUED AND DETERMINED IN THE

# SUPREME COURT

OF

## NORTH CAROLINA

*SEPTEMBER 11, 2020*

**MAILING ADDRESS: The Judicial Department**
**P. O. Box 2170, Raleigh, N. C. 27602-2170**

**THE SUPREME COURT**
**OF**
**NORTH CAROLINA**

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SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 17 JULY 2020



**HEADNOTE INDEX**

**APPEAL AND ERROR**

**Notice of appeal—timeliness—termination of parental rights—adjudication order—not a final order—**A mother's appeal from an adjudication order in a termination of parental rights case was not untimely, even though it was filed more than thirty days after entry of the order, because an adjudication order finding at least one ground for termination is not a final order appealable under N.C.G.S. § 7B-1001, since the case must proceed to disposition before parental rights can be terminated. The mother's notice of appeal, timely filed after entry of the disposition order which concluded that termination was in the best interests of the child, was sufficient to appeal from both the adjudication and disposition orders. **In re A.B.C., 752.**

**TERMINATION OF PARENTAL RIGHTS**

**Adjudication—findings of fact—sufficiency of evidence—**Clear, cogent, and convincing evidence supported multiple findings of fact in the trial court's order terminating a father's parental rights to his son, including findings regarding the father's lack of progress in addressing his substance abuse, anger issues, Medicaid insurance coverage, and unwillingness to learn about his son's special needs. Conversely, some findings were not supported by the evidence and were disregarded on appeal. **In re J.C.L., 772.**

**Best interest of child—consideration of factors—**When determining the best interests of a mother's three minor sons, the trial court properly considered each factor in N.C.G.S. § 7B-1110(a) and did not need to enter written factual findings as to those factors in the absence of conflicting evidence concerning any factor. Moreover, the trial court did not abuse its discretion in concluding that termination of the mother's parental rights was in the children's best interests where all three children were under the age of twelve; the youngest was with a potential adoptive placement and was "100 percent likely" to be adopted; the Department of Social Services had placed the other two in therapeutic foster homes and planned to move them into an adoptive home; and none of the children had a bond with the mother. **In re J.S., 811.**

**Best interests of the child—dispositional factors—competent evidence—**The trial court did not abuse its discretion by deciding that termination of both parents'

parental rights, rather than guardianship, was in the best interests of the children after considering and weighing the dispositional factors in N.C.G.S. § 7B-1110(a), including the bond the children had with their parents. The court's finding that the two children had a "very strong bond" with their foster parents, despite the children having lived with them for only three months, was supported by the evidence, and the court made an unchallenged finding that the children were highly adoptable. The trial judge's verbal statement suggesting that the foster parents "honor" the relationship the children had with their parents was neither part of the written order nor an acknowledgment that termination was not in the children's best interests. **In re J.J.B., 787.**

**Best interests of the child—findings—bond with parent—**The trial court did not abuse its discretion by determining that termination of a mother's parental rights was in the best interest of the child where it considered the dispositional factors in N.C.G.S. § 7B-1110 and its findings, including one that the mother-child bond was "similar to that of playmates," were supported by evidence—including testimony by the social worker who supervised visits. Moreover, in making findings regarding the child's relationship with his foster family, the trial court did not improperly relegate the decision of whether to terminate the mother's rights to a direct comparison or choice between the mother and the foster parent. **In re A.B.C., 752.**

**Best interests of the child—likelihood of adoption—abuse of discretion analysis—**The trial court did not abuse its discretion by concluding that termination of a mother's parental rights was in her daughter's best interests where the court's dispositional findings addressed all the relevant criteria required by N.C.G.S. § 7B-1110(a). As required by the Court of Appeals' mandate in a prior opinion in the matter, the trial court properly considered the daughter's likelihood of adoption—concluding that a necessary condition to adoptability was the stability and closure that could result only from termination of her mother's parental rights, and recognizing the possibility that the daughter may never achieve adoptability. **In re S.M.M., 911.**

**Best interests of the child—statutory factors—likelihood of adoption—**The trial court did not abuse its discretion by concluding that termination of a mother's parental rights would be in the best interests of her children where the trial court made detailed findings of fact addressing each of the relevant criteria in N.C.G.S. § 7B-1110(a) and the findings were supported by competent evidence. Further, the children's strong bond with their parents and their desire to return to their parents' home did not preclude a finding that the children were likely to be adopted. **In re M.A., 865.**

**Best interests of the child—statutory factors—parent not promoting child's well-being—foster family eager to adopt—**The trial court did not abuse its discretion by determining that termination of a mother's parental rights was in her child's best interests where the trial court considered the statutory factors and found that the mother had demonstrated that she would not promote her child's well-being, there had been no progress toward returning the child home after 26 months in social services' care, and the child's foster family was meeting all her needs and eager to adopt her. **In re N.G., 891.**

**Best interests of the child—weighing factors—evidentiary support—**The trial court did not abuse its discretion in concluding that termination of a father's parental rights to his three-year-old son was in the child's best interests. First, the evidence

supported the trial court's findings that the child was placed in a pre-adoptive home and had a high likelihood of adoption. Second, although the record contained some evidence weighing against terminating the father's parental rights, the trial court properly weighed the factors in determining the child's best interests (N.C.G.S. § 7B-1110), thereby reaching a decision that was neither arbitrary nor manifestly unsupported by reason. **In re J.C.L., 772.**

**Dispositional evidence—bifurcated hearings—not required—**The trial court in a termination of parental rights case was not required to conduct a separate dispositional hearing where it heard dispositional evidence with adjudicatory evidence and applied the correct evidentiary standards to each. **In re S.M.M., 911.**

**Findings of fact—evidentiary support—**In a termination of parental rights case, a finding of fact that a mother did not complete a substance abuse treatment program was disregarded where it did not accurately reflect the evidence and contradicted another of the trial court's findings. Two other findings regarding the mother's housing conditions at the time of the termination hearing were not supported by evidence or were incomplete. **In re A.B.C., 752.**

**Grounds for termination—dependency—conclusion of law—evidentiary support—**The trial court erred in terminating a mother's parental rights on the ground of dependency where the trial court's conclusion that the mother was incapable of providing a safe, permanent home for the child was not supported by the record. Instead, evidence demonstrated that the mother adequately addressed her past history of abusive relationships, displayed appropriate parenting techniques, and obtained suitable housing. **In re K.L.T., 826.**

**Grounds for termination—failure to make reasonable progress—dependency—**The trial court properly terminated a mother's parental rights to her four children under N.C.G.S. § 7B-1111(a)(2) after finding that the mother made some progress on her family services plan but willfully failed to make reasonable progress in correcting the filthy, hazardous living conditions which led to the children's removal from her home. Furthermore, the trial court did not err in simultaneously finding the mother mentally incapable of parenting her children for purposes of N.C.G.S. § 7B-1111(a)(6) where, according to a psychologist's testimony, the mother's cognitive limitations affected her childrearing abilities but not her ability to clean her home. **In re J.S., 811.**

**Grounds for termination—neglect—findings of fact—sufficiency of evidence—**The trial court erred by determining that a mother's parental rights should be terminated on the ground of neglect, where its findings regarding the mother's compliance with her case plan, relationship issues, therapy participation, parenting skills, and home environment were not supported by clear, cogent, and convincing evidence and partially relied on speculation. Further, one of the court's ultimate findings linking the mother's history to the likelihood of future neglect failed to take into account the mother's positive steps to address domestic violence issues since the child was removed from her care, including obtaining a divorce from and taking out a protective order against the child's father with whom she had been in an abusive relationship, engaging in therapy, and writing a detailed safety plan in anticipation of regaining custody of her child. **In re K.L.T., 826.**

**Grounds for termination—neglect—likelihood of future neglect—**The trial court properly terminated a father's parental rights to his son on grounds of neglect,

where the father's lack of progress in completing his case plan with the Department of Social Services indicated a reasonable likelihood of future neglect if his son were returned to his care. **In re J.C.L., 772.**

**Grounds for termination—neglect—probability of repeated neglect—domestic violence—**The trial court did not err by determining that a father's parental rights to his children were subject to termination on the grounds of neglect where the trial court found that a substantial probability existed that the children would be neglected if they were returned to the father's care, based on findings that included the father's lengthy history of domestic violence in the presence of the children, his failure to fully follow the trial court's order to participate in domestic violence treatment, and testimony regarding 911 calls relating to domestic disturbances at his residence. **In re M.A., 865.**

**Grounds for termination—neglect—substance abuse—probability of future neglect—**The trial court properly terminated a father's parental rights after concluding that there existed a high probability of future neglect of the child based on the father's persistent substance abuse issues and domestic discord in the home. The findings of fact in support of that conclusion were in turn supported by clear, cogent, and convincing evidence. **In re J.O.D., 797.**

**Grounds for termination—neglect—sufficiency of findings—evidence of changed circumstances—**The trial court's conclusion that grounds existed to terminate a mother's parental rights for neglect was supported by sufficient findings of fact, which were supported by clear, cogent, and convincing evidence, where the children were exposed numerous times to domestic violence between their parents and the mother repeatedly returned to her relationship with the abusive father. The trial court was not required to consider in its findings the mother's evidence of changed circumstances—that the father had received a long prison sentence and that she would not return to a relationship with him—in light of the history of the couple's relationship and the fact that the trial court did not have to believe the mother's testimony. **In re M.C., 882.**

**Grounds for termination—parental rights to another child terminated involuntarily—mental health issues—**The trial court did not err by concluding that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(9) to terminate a father's parental rights where it was undisputed that his parental rights to another child had been terminated involuntarily and sufficient evidence supported the trial court's findings that the father suffered from antisocial personality disorder, he lied to the county department of social services to conceal his identity, and he made only minimal efforts toward treatment for his mental health issues. Even assuming the diagnosis of antisocial personality disorder was stale, the findings nonetheless supported the conclusion that the father was unable to provide a safe home for his child because the nature of the disorder made change unlikely, he lacked interest in and cancelled appointments for treatment, and he engaged in incidents of deception. **In re N.G., 891.**

**Grounds for termination—willful failure to make reasonable progress—addiction—**The trial court's determination that grounds existed to terminate a mother's parental rights on the basis that she willfully failed to make reasonable progress to correct the conditions which led to her child's removal from the home was supported by the court's unchallenged findings of fact regarding mother's lack of progress on her substance abuse issues. **In re A.B.C., 752.**

**Likelihood of adoption—findings—evidentiary support—**In a termination of parental rights case, the trial court's findings of fact regarding the juvenile's likelihood of adoption—including her mental health, her behavioral issues, and her biological family being an obstacle to stability—were supported by competent evidence and properly complied with the Court of Appeals' remand instructions. **In re S.M.M., 911.**

**No-merit brief—neglect—willful failure to make reasonable progress—**The trial court's termination of a mother's parental rights—based on neglect and leaving her child in a placement outside the home without making reasonable progress to correct the conditions that led to his removal—was affirmed where her counsel filed a no-merit brief and the order was based on clear, cogent, and convincing evidence supporting the statutory grounds for termination. **In re J.O.D., 797.**

**No-merit brief—sexual abuse of child—**The termination of a father's parental rights was affirmed where his counsel filed a no-merit brief and the termination was based on his sexual abuse of the child. The termination order was based on clear, cogent, and convincing evidence supporting the statutory grounds for termination. **In re R.A.B., 908.**

**Personal jurisdiction—amended petition—new summons—**The trial court properly exercised personal jurisdiction over a father in a termination of parental rights (TPR) case where the Health and Human Services Agency (HHSA)—after discovering a jurisdictional defect in its original TPR petition—filed an amended petition and served the father with a new summons. The new summons and petition constituted new filings initiating a second TPR proceeding. Thus, although HHSA's failure to obtain the issuance of an alias and pluries summons or an endorsement of the original summons would have discontinued the first proceeding, it had no effect on jurisdiction in the second proceeding. **In re W.I.M., 922.**

**Petition to terminate parental rights—denied—alleged mistake of law—findings of ultimate fact—conclusions of law—sufficiency—**In an order denying a mother's petition to terminate the father's parental rights to their child, the trial court's statement that the mother failed to prove that "necessary grounds" for termination existed did not indicate that the court mistakenly believed the mother had to prove multiple grounds for terminating the father's rights. However, the order was still vacated and remanded because the trial court failed to make sufficient, specific findings of ultimate fact—as required under N.C.G.S. §§ 7B-1109(e) and -1110(c)—and sufficient conclusions of law to allow for meaningful appellate review. **In re K.R.C., 849.**

**Remand from appellate court—motion to reopen evidence—trial court's discretion—mere speculation—**In a termination of parental rights case on remand from the Court of Appeals for dispositional findings on the juvenile's likelihood of adoption, the trial court did not abuse its discretion by denying the mother's motion to reopen the evidence. The Court of Appeals left the decision whether to take new evidence on remand to the trial court's discretion; further, the mother's motion offered mere speculation rather than a forecast of relevant evidence bearing upon the juvenile's best interests. **In re S.M.M., 911.**

## SCHEDULE FOR HEARING APPEALS DURING 2020

## NORTH CAROLINA SUPREME COURT

Appeals will be called for hearing on the following dates, which are subject to change.

January 6, 7, 8
February 3, 4
March 9, 10, 11, 12
April 6, 7, 20
May 4, 5, 6, 7
August 31
September 1, 2, 3
October 12, 13, 14, 15

**IN RE A.B.C.**

[374 N.C. 752 (2020)]

IN THE MATTER OF A.B.C.

No. 233A19

Filed 17 July 2020

**1. Appeal and Error—notice of appeal—timeliness—termination of parental rights—adjudication order—not a final order**

A mother's appeal from an adjudication order in a termination of parental rights case was not untimely, even though it was filed more than thirty days after entry of the order, because an adjudication order finding at least one ground for termination is not a final order appealable under N.C.G.S. § 7B-1001, since the case must proceed to disposition before parental rights can be terminated. The mother's notice of appeal, timely filed after entry of the disposition order which concluded that termination was in the best interests of the child, was sufficient to appeal from both the adjudication and disposition orders.

**2. Termination of Parental Rights—findings of fact—evidentiary support**

In a termination of parental rights case, a finding of fact that a mother did not complete a substance abuse treatment program was disregarded where it did not accurately reflect the evidence and contradicted another of the trial court's findings. Two other findings regarding the mother's housing conditions at the time of the termination hearing were not supported by evidence or were incomplete.

**3. Termination of Parental Rights—grounds for termination—willful failure to make reasonable progress—addiction**

The trial court's determination that grounds existed to terminate a mother's parental rights on the basis that she willfully failed to make reasonable progress to correct the conditions which led to her child's removal from the home was supported by the court's unchallenged findings of fact regarding mother's lack of progress on her substance abuse issues.

**4. Termination of Parental Rights—best interests of the child—findings—bond with parent**

The trial court did not abuse its discretion by determining that termination of a mother's parental rights was in the best interest of the child where it considered the dispositional factors in N.C.G.S. § 7B-1110 and its findings, including one that the mother-child bond

was "similar to that of playmates," were supported by evidence—including testimony by the social worker who supervised visits. Moreover, in making findings regarding the child's relationship with his foster family, the trial court did not improperly relegate the decision of whether to terminate the mother's rights to a direct comparison or choice between the mother and the foster parent.

Justice EARLS dissenting.

Chief Justice BEASLEY and Justice DAVIS join in this dissenting opinion.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 21 March 2019 and 18 April 2019 by Judge William Fairley in District Court, Columbus County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*David S. Tedder, Assistant County Attorney, for petitioner-appellee Columbus County Department of Social Services.*

*Womble Bond Dickinson (US) LLP, by John E. Pueschel, for appellee Guardian ad Litem.*

*Annick Lenoir-Peek for respondent-appellant mother.*

HUDSON, Justice.

Respondent, the mother of minor child A.B.C. (Adam)[1], appeals from the trial court's order terminating her parental rights on the ground that she willfully failed to make reasonable progress to correct the conditions that led to Adam's removal from her care. *See* N.C.G.S. § 7B-1111(a)(2) (2019). Because we hold that the evidence and findings of fact support the trial court's conclusion that grounds existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2), and that the trial court did not abuse its discretion in concluding that it was in the child's best interests to terminate respondent's parental rights, we affirm.

1. A pseudonym is used to protect the juvenile's identity and for ease of reading.

Factual and Procedural Background

This is the second appeal in this case. The following facts and procedural history are derived in part from the Court of Appeals' opinion in *In re A.B.C.*, 821 S.E.2d 308, 2018 WL 6053343 (N.C. Ct. App. 2018) (unpublished).

On 10 April 2015, bystanders found respondent and her roommate sleeping inside of a car in the parking lot of respondent's employer. Adam, who was four months old at the time, was crying in the back seat. The bystanders were unable to wake respondent or the roommate and called emergency responders.

After this event, respondent agreed to place Adam with a safety resource. The following week, on 17 April 2015, Columbus County Department of Social Services (DSS) received a referral alleging that respondent was found unresponsive in a car parked in a hospital parking lot. Respondent was admitted to the hospital for treatment and observation due to a possible drug overdose. After this second incident, the safety resource became unwilling to be the placement for Adam.

On 20 April 2015, DSS filed a juvenile petition alleging that Adam was neglected and dependent and took him into nonsecure custody. After a hearing, the trial court adjudicated Adam as dependent and dismissed the neglect allegation in an order entered 16 June 2015. In a separate disposition order entered the same day, the trial court ordered respondent to submit to a substance abuse assessment and a mental health assessment and to follow any resulting recommendations, comply with weekly random drug screens requested by DSS, enroll in and complete parenting classes, and establish suitable housing.

Respondent initially struggled to make progress on her case plan and was in and out of drug rehabilitation facilities and jail. On 5 July 2016, the trial court ceased reunification efforts with respondent and changed the permanent plan to guardianship with a court-approved caretaker with a secondary plan of adoption.

On 21 January 2017, respondent was arrested for violating her probation. She was released from jail in February 2017 and ordered to complete the six-month substance abuse program at a substance abuse treatment facility, Our House. After respondent completed the program at Our House, she was given the opportunity to continue with a residential substance abuse rehabilitation program at Grace Court where she could have resided with her child. However, respondent declined to enter the program at Grace Court, and she decided to live with her

boyfriend. While respondent was participating in the program at Our House, the trial court held a permanency planning hearing on 20 March 2017. In an order entered 30 March 2017, the trial court changed the permanent plan to adoption with a secondary plan of guardianship with a court-approved caretaker.

On 12 May 2017, DSS filed a petition to terminate respondent's parental rights alleging the grounds of neglect, willful failure to make reasonable progress toward correcting the conditions that led to Adam's removal from the home, willful failure to pay a reasonable portion of Adam's cost of care, dependency, willful abandonment, and that respondent's parental rights as to another child have been terminated and that she lacks the ability or willingness to establish a safe home. N.C.G.S. § 7B-1111(a)(1)–(3), (6)–(7), and (9) (2019). After multiple continuances, a hearing was held on the petition for termination on 3 and 17 January 2018. At the close of DSS's evidence, the trial court granted respondent's motion to dismiss the ground alleged by DSS concerning the fact that her parental rights as to another child had been terminated. On 1 February 2018, the trial court entered adjudication and disposition orders concluding that grounds existed to terminate respondent's parental rights based on her willful failure to make reasonable progress and that termination of respondent's parental rights was in Adam's best interests. The trial court dismissed the remaining alleged grounds, finding that DSS failed to satisfy its burden to prove the allegations. Respondent appealed to the Court of Appeals.

Before the Court of Appeals, respondent argued that the trial court erred in finding that she failed to make reasonable progress in correcting the conditions that led to Adam's removal from her care. *In re A.B.C.*, 2018 WL 6053343, at *2. The Court of Appeals concluded that there was "tension" between the trial court's findings that (1) respondent "willfully left the juvenile in foster care outside the home in excess of twelve months without showing to the Court's satisfaction that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile," and (2) "DSS 'failed to meet its burden to prove the allegations of . . . incapability of providing care and supervision as they relate to respondent.' " *Id.* at *3. The Court of Appeals reasoned that, "if DSS failed to show that Respondent was incapable of providing care and supervision for her child going forward, it suggest[ed] that Respondent had made at least some reasonable progress." *Id.* Therefore, the Court of Appeals vacated the termination order and remanded the case to the trial court "for additional findings that eliminate the arguable tension" in order to "permit

[the] Court to engage in a meaningful appellate review of the trial court's findings of fact and conclusions of law." *Id.* The Court of Appeals left it in the trial court's discretion whether to amend its findings based on the existing record, or whether to conduct further proceedings the trial court deemed necessary. *Id.*

On remand, the trial court did not take new evidence and on 21 March 2019, entered an amended adjudication order including additional findings of fact regarding the alleged grounds for termination. The trial court again found that grounds existed to terminate respondent's parental rights based on her willful failure to make reasonable progress toward correcting the conditions that led to Adam's removal from the home and found that DSS failed to meet its burden regarding the other alleged grounds for termination. In a separate amended disposition order entered 18 April 2019, the trial court concluded that termination of respondent's parental rights was in Adam's best interests. Respondent appealed.

## Analysis

### I. Motion to Dismiss

**[1]** As an initial matter, DSS filed a motion to dismiss respondent's appeal from the trial court's 21 March 2019 adjudication order arguing that her notice of appeal was untimely because it was filed more than thirty days after entry and service of that order.

Section 7B-1001 of the General Statutes of North Carolina sets out the orders from which a party may appeal in juvenile matters and the appropriate court to which they may be appealed. Pursuant to N.C.G.S. § 7B-1001, a final order "that terminates parental rights or denies a petition or motion to terminate parental rights" may be appealed directly to this Court. N.C.G.S. § 7B-1001(a1)(1) (2019). In juvenile cases, "[n]otice of appeal . . . shall be given in writing . . . and shall be made within 30 days after entry and service of the order . . . ." N.C.G.S. § 7B-1001(b) (2019).

DSS claims that N.C.G.S. § 7B-1001 provides that notice of appeal from the trial court's adjudication order in a termination of parental rights case must be filed within thirty days after entry and service of the order. However, an adjudication order in a termination of parental rights case is not listed as one of the orders from which a party may appeal under N.C.G.S. § 7B-1001 because it does not terminate parental rights; it determines only whether grounds exist to terminate parental rights.

The North Carolina Juvenile Code provides for a two-stage process for the termination of parental rights: adjudication and disposition. N.C.G.S. §§ 7B-1109, -1110 (2019). At the adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more grounds for termination under N.C.G.S. § 7B-1111(a). N.C.G.S. § 7B-1109(e), (f). If the petitioner fails to satisfy its burden of proving that grounds exist to terminate parental rights, then the trial court must enter an order denying the petition or motion for termination. Such order is appealable pursuant to the second part of N.C.G.S. § 7B-1001(a1)(1), permitting an appeal from an order denying a petition or motion to terminate parental rights.

However, if the trial court finds that at least one ground exists to terminate parental rights, the resulting adjudication order is not a final order appealable under N.C.G.S. § 7B-1001, as the case then proceeds to the dispositional stage where the trial court must "determine whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a). Thus, an adjudication order in which the trial court determines that at least one ground exists to terminate parental rights necessarily requires entry of a disposition order to address whether termination of parental rights is in the child's best interests.

Here, there was no final order terminating parental rights from which respondent could appeal pursuant to N.C.G.S. § 7B-1001 until the trial court entered its disposition order on 18 April 2019. *Cf. In re P.S.*, 242 N.C. App. 430, 432, 775 S.E.2d 370, 372 (concluding in the abuse, neglect, and dependency context that "[a]n adjudication order—even where it includes a temporary disposition—is not a final order" from which appeal of right lies under N.C.G.S. § 7B-1001), *cert. denied*, 368 N.C. 431, 778 S.E.2d 277 (2015); *In re Laney*, 156 N.C. App. 639, 643–44, 577 S.E.2d 377, 380 (concluding in the same context that the respondent-mother needed to notice an appeal from the final disposition order pursuant to N.C.G.S. § 7B-1001 in order for the adjudication order to be before the Court of Appeals), *disc. review denied*, 357 N.C. 459, 585 S.E.2d 762 (2003).[2] Respondent timely filed her notice of appeal within thirty days after entry and service of the disposition order, stating her desire to appeal both the adjudication order and the disposition order.

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2. We recognize that jurisdictional provisions of N.C.G.S. § 7B-1001 were recently amended to change the appellate court to which appeal of right lies in termination of parental rights cases. However, that amendment has no bearing on our determination that an adjudication order is not a final order from which a party has an immediate right to appeal under N.C.G.S. § 7B-1001. *See* S.L. 2017-41, § 8(a), 2017 N.C. Sess. Laws 214, 232–33.

Therefore, respondent's appeal of both the adjudication order and the disposition order is properly before this Court pursuant to N.C.G.S. § 7B-1001(a1)(1). As a result, we deny DSS's motion to dismiss.

II. Challenged Findings of Fact

**[2]** Respondent challenges several of the trial court's findings of fact. Findings of fact in support of a trial court's adjudication of grounds to terminate parental rights must be supported by clear, cogent, and convincing evidence. *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019). "Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) (citations omitted).

Respondent first challenges finding of fact 38, which states that respondent had engaged in multiple programs addressing drug abuse and treatment since the filing of the underlying juvenile petition, including the substance abuse treatment program at Our House, and that the "programs would have helped her acquire the ability to overcome factors that resulted in the child's placement but she did not do so." Respondent argues that this finding of fact conflicts with finding of fact 66, in which the trial court found that respondent completed the rehabilitation program at Our House in August 2017. We agree.

The trial court found in both finding of fact 33 and finding of fact 66 that respondent completed the substance abuse treatment program at Our House, and the evidence unequivocally demonstrates the same. To the extent that finding of fact 38 implies that respondent did not complete the program at Our House, it is not supported by the evidence, and therefore we disregard this specific portion of that finding of fact.

Respondent next challenges findings of fact 40 and 41, which state the following:

> 40. That throughout the life of the case respondent mother's housing has frequently been either jail or a treatment facility of some sort and she has not established stable housing.
>
> 41. That when not incarcerated or in a treatment facility respondent mother was and is currently staying with friends who provide accommodations. These friends and accommodations varied.

Respondent argues that these findings of fact fail to address her housing conditions at the time of the termination hearing. She argues that since she completed the substance abuse treatment program at Our House in August 2017, she had been living with her boyfriend in a three-bedroom home. We agree that these findings of fact are not supported by the evidence.

The trial court found that respondent "was and *is currently* staying with friends who provide accommodations." (Emphasis added). At the termination hearing, the social worker testified that "since [she] was involved in the case[,]" respondent's housing was "either jail or treatment facilities." Yet the social worker also testified that she was unaware of respondent's exact whereabouts at the time of the termination hearing and that respondent had informed her that she was living in Robeson County, although the social worker did not know the physical address. The social worker also testified that she had stopped being involved in the case on 1 September 2017. Thus, the social worker did not have knowledge of respondent's housing situation in the four months leading up to the termination hearing. Respondent and her boyfriend provided the only evidence regarding her housing situation from September 2017 through the termination hearing in January 2018. Respondent testified that she lived in a three-bedroom home with her boyfriend, with whom she had been in a relationship for about one year, and that she had been living with him there since completing the program at Our House in August 2017. Respondent's boyfriend also testified that they had been living in the home together since respondent was released from the program. Indeed, the trial court found that respondent opted to live with her boyfriend after she completed the program. Although the home was owned by the father of respondent's boyfriend, the trial court's finding of fact that states that respondent was currently staying with a friend who provided accommodations is supported by the evidence but is incomplete.

III. Grounds to Terminate Parental Rights

**[3]** Respondent argues that the trial court erred by concluding that grounds existed to terminate her parental rights based on her willful failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2). Because the trial court's unchallenged findings of fact support the conclusion that respondent failed to make reasonable progress on her substance abuse issue which "was the core cause of the circumstances" that led to the child's removal from respondent's care, we affirm.

We review a trial court's adjudication that grounds exist to terminate parental rights to determine "whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings support the trial court's conclusions of law." *In re B.O.A.*, 372 N.C. at 379, 831 S.E.2d at 310 (citation omitted). "Unchallenged findings of fact made at the adjudicatory stage, however, are binding on appeal." *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020) (citation omitted).

Pursuant to N.C.G.S. § 7B-1111(a)(2), a trial court may terminate parental rights if "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C.G.S. § 7B-1111(a)(2). This Court has stated that "a trial judge should refrain from finding that a parent has failed to make 'reasonable progress . . . in correcting those conditions which led to the removal of the juvenile' simply because of his or her 'failure to fully satisfy all elements of the case plan goals.' " *In re B.O.A.*, 372 N.C. at 385, 831 S.E.2d at 314 (citation omitted). However, we have also stated that "a trial court has ample authority to determine that a parent's 'extremely limited progress' in correcting the conditions leading to removal adequately supports a determination that a parent's parental rights in a particular child are subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2)." *Id.* (citation omitted).

Here, the trial court's finding of fact 67 establishes that "substance abuse was the core cause of the circumstances that brought the child into foster care originally." In finding of fact 66, the trial court determined that respondent failed to make reasonable progress. The trial court found that respondent made only "marginal progress" due to her failure to continue her substance abuse treatment after she completed the six-month substance abuse treatment program at Our House, in that she:

a) declined further rehabilitative services at Grace Court in August of 2017, services which would have allowed her to reside with her child while receiving residential rehabilitation services;

b) entered a methadone program without any counseling or plan to wean or otherwise end her methadone dependence; and

c) the [c]ourt does not believe the respondent mother's contention that she is in counseling through AA or NA[ ] or any other recovery program.

Further, the trial court found that respondent's progress was not reasonable under the circumstances because her failure to continue with rehabilitation programs demonstrated that she "failed to apply th[e] capabilities" that she learned during the program at Our House toward resolving her "longstanding addiction" issue.

These unchallenged findings of fact[3] support the trial court's conclusion that respondent failed to make reasonable progress to correct the conditions that led to the removal of Adam from her care. Specifically, these findings of fact establish that, after participating in the program at Our House, respondent decided to address her "longstanding addiction" issue solely by entering a methadone program without any counseling plan to resolve her resultant dependence on that substance. Further, we note that it is not the role of this Court to second-guess the trial court's credibility determination, specifically that respondent's testimony concerning her participation in counseling programs was not credible. *See In re J.A.M.*, 372 N.C. 1, 11, 822 S.E.2d 693, 700 (2019) ("But an important aspect of the trial court's role as finder of fact is assessing the demeanor and credibility of witnesses, often in light of inconsistencies or contradictory evidence. It is in part because the trial court is uniquely situated to make this credibility determination that appellate courts may not reweigh the underlying evidence presented at trial."). Moreover, the fact that respondent decided to address her substance abuse issues in this manner—without counseling, all the while having the available option to continue with another residential rehabilitation program that would have allowed her to reside with her child—after she completed the program at Our House is of great significance. As the trial court explained, respondent's approach demonstrated that she failed to apply the tools that she learned during the program at Our House to adequately address her substance abuse issue—the "core cause" of the child's removal from her care—by the time of the termination hearing. Therefore, the trial

3. Respondent does not challenge findings of fact 66 and 67 in her brief. In fact, she uses the veracity of finding of fact 66 to challenge the trial court's finding of fact 38. Because findings of fact 66 and 67 are sufficient to support the trial court's conclusion that grounds existed to terminate respondent's parental rights, we need not further address finding of fact 38 beyond our discussion above. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) ("Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." (citation omitted)).

court's findings of fact support the conclusion that respondent failed to make reasonable progress toward correcting the conditions which led to the child's removal from her care. N.C.G.S. § 7B-1111(a)(2).

Accordingly, we hold that the trial court did not err in concluding that grounds existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).

IV. Disposition under N.C.G.S. § 7B-1110

**[4]** Respondent also contends that the trial court abused its discretion under N.C.G.S. § 7B-1110(a) by determining it was in Adam's best interests to terminate her parental rights. Because we conclude that the trial court did not abuse its discretion, we affirm the trial court's decision to terminate respondent's parental rights.

If the trial court finds grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), it proceeds to the dispositional stage where it must "determine whether terminating the parent's rights is in the juvenile's best interest" based on the following factors:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a). It is well-established that the trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed only for abuse of discretion. *In re D.L.W.*, 368 N.C. at 842, 788 S.E.2d at 167; *In re L.M.T.*, 367 N.C. 165, 171, 752 S.E.2d 453, 457 (2013). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). Dispositional findings not challenged by respondent-mother are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019) (citation omitted).

Here, the trial court made the following all-encompassing finding of fact concerning the factors in subsection 7B-1110(a):

> 13. That the minor child is almost 3 years of age; that the likelihood of adoption is extremely high; that termination of parental rights will aid in the accomplishment of the permanent plan of the juvenile; that the bond between the juvenile and respondent mother is similar to that of playmates . . . that the quality of the relationship between the juvenile and the proposed adoptive parent is similar to that of parent/child.

The only part of this finding of fact that respondent challenges is the trial court's finding that the relationship between her and the child "is similar to that of playmates."

The finding of fact concerning the relationship between respondent and the child being similar to that of playmates, however, is supported by the testimony of the social worker who supervised respondent's visits with the child. Specifically, the social worker testified that (1) the child associated his visits with respondent with "play"; (2) the child did not refer to respondent as "Mom" during the visits, and respondent had to instruct him to call her "Mom"; (3) respondent and the child played very loudly during the visits such that the social worker had to tell them to "calm down"; and (4) the social worker never observed respondent assume a "supervision or a parental role" during the visits.

Respondent's only other challenge to the trial court's finding of fact concerning the relationship between respondent and the child being similar to that of playmates is that the "limited circumstances" of the supervised visits did not allow respondent to have an "opportunity to show her ability to provide care for [the child]." Respondent does not, however, point us to any authority or evidence in support of the proposition that the context of a supervised visit had a confounding effect on her ability to form or demonstrate a parental bond with the child.

Finally, respondent argues that the trial court abused its discretion in its analysis of the best interests of the child because it improperly made the decision of whether to terminate parental rights into a choice between respondent and the child's foster parent. Respondent relies on the Court of Appeals' opinion in *In re Nesbitt* for the proposition that it is improper for the trial court to "relegate[ ] [the decision of whether to terminate parental rights] to a choice between the natural parent and the foster family." 147 N.C. App. 349, 360–61, 555 S.E.2d 659, 667 (2001). *In re Nesbitt* quoted from this Court's decision in *Peterson v. Rogers*,

337 N.C. 397, 445 S.E.2d 901 (1994), to support that proposition. *In re Nesbitt*, 147 N.C. App. at 361, 555 S.E.2d at 667 ("Our Supreme Court has held that 'even if it were shown, . . . that a particular couple desirous of adopting a child would *best* provide for the child's welfare, the child would nonetheless not be removed from the custody of its parents so long as they were providing for the child *adequately*.' " (quoting *Peterson*, 337 N.C. at 401, 445 S.E.2d at 904)).

Here, by construing the trial court's finding of fact 13 in conjunction with findings of fact 18–21, 29, and 31, respondent argues that the trial court improperly relegated the decision concerning whether to terminate respondent's parental rights into one involving a choice between respondent and the child's foster parent. Respondent asserts that findings of fact 18–21, 29, and 31 "portrayed the foster home as 'better' than [respondent's]." Findings of fact 18–21, 29, and 31 are reproduced as follows:

> 18. That the juvenile has been placed with [the foster parent] since he was approximately 4 months. [The foster parent's] 3-year[-old] granddaughter lives with [the foster parent] and the juvenile. The granddaughter and the juvenile get along very well together.
>
> 19. That [the foster parent] has been responsible for the juvenile's day-to-day care and supervision for approximately the last 30 months. The de facto relationship between [the foster parent] and the juvenile is akin to mother/son in that she provides for the emotional and physical needs of the juvenile. [The foster parent] appropriately guides and supervises the juvenile together with providing care and discipline.
>
> 20. That the juvenile looks to [the foster parent] for guidance, comfort and security.
>
> 21. That the juvenile is healthy and happy in the care of [the foster parent] and the relationship between the two is extremely close and significant to the juvenile.
>
> . . . .
>
> 29. That this [c]ourt acknowledges that respondent mother loves the juvenile but the relationship between respondent mother and the juvenile is not akin to the relationship between [the foster parent] and the juvenile.

. . . .

31. That the bond that exists between the minor child and respondent mother is good but not parental, and is most similar to a bond between playmates.

We note that the Court of Appeals' decision in *In re Nesbitt* is not binding on this Court, moreover the findings of fact quoted here fail to demonstrate that the trial court relegated the decision of whether to terminate respondent's parental rights to a decision between respondent and the foster parent. *See In re Nesbitt*, 147 N.C. App. at 361, 555 S.E.2d at 667. Specifically, findings of fact 18–21 and 31 involve no comparison between respondent and the foster parent whatsoever. Further, although finding of fact 29 does make a comparison between respondent's and the foster parent's relationship with the child, the trial court was not endeavoring to determine whose relationship with the child was qualitatively "better." Viewing finding of fact 29 in light of the trial court's conclusion of law concerning the best interests of the child demonstrates that the trial court's ultimate assessment of respondent's relationship with the child was that it was not "akin" to a parental relationship. The trial court's conclusion of law regarding the best interests of the child is reproduced as follows:

> 3. That the minor child is almost 3 years of age; that the likelihood of adoption is extremely high; that termination of parental rights will aid in the accomplishment of the primary permanent plan of the juvenile; that the bond between the juvenile and respondent mother is akin to playmates; . . . that the quality of the relationship between the juvenile and the proposed adoptive parent is similar to that of parent/child and adoption is extremely high.

The trial court's conclusion of law on the issue of the best interests of the child is virtually identical to the trial court's finding of fact 13, and it draws no direct comparison between respondent and the foster parent. The trial court's conclusion of law merely follows the directive of N.C.G.S. § 7B-1110(a) to evaluate both the "bond" between respondent and the juvenile and the "quality of the relationship" between the juvenile and the proposed adoptive parent.

Further, the trial court's determination in its conclusion of law that respondent's relationship with the child was "*akin to* playmates," illuminates the reasoning behind the trial court's statement in finding of fact 29 that respondent's relationship with the child was not "*akin to* the relationship between [the foster parent] and the juvenile." (Emphases

added). Thus, it appears that finding of fact 29 simply communicated that respondent's relationship with the child was not "akin" to a parental relationship. The trial court's mention of the foster parent in finding of fact 29 serves as somewhat of an inartful proxy for describing the quality of the parental relationship.

Accordingly, the trial court's conclusion that it was in the child's best interests to terminate respondent's parental rights was supported by evidence in the record, was reached according to the directive of N.C.G.S. § 7B-1110(a), and was not otherwise arbitrary. Therefore, because the trial court's decision was not an abuse of its discretion, we affirm that decision.

Conclusion

Because we hold that the evidence and findings of fact support the trial court's conclusion that grounds existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2), and that the trial court did not abuse its discretion in concluding that it was in the child's best interests to terminate respondent's parental rights, we affirm.

AFFIRMED.

Justice EARLS, dissenting.

In vacating the trial court's original "Order of Adjudication on Termination of Parental Rights" finding grounds to terminate respondent-mother's parental rights to her son Adam, the Court of Appeals directed the trial court to resolve the central factual question of how respondent-mother failed to make reasonable progress toward correcting the conditions that led to Adam being removed from her care when the evidence failed to establish that she was incapable of providing proper care and supervision for Adam. *In re A.B.C.*, 821 S.E.2d 308, 2018 WL 6053343 (N.C. Ct. App. 2018) (unpublished). The Court of Appeals held that doing so was necessary to "permit th[e] [c]ourt to engage in meaningful appellate review of the trial court's findings of fact and conclusions of law." *Id.* at *1. On remand, the trial court's minimal new findings of fact do not address this contradiction, and are not based on "clear, cogent, and convincing evidence" that supports the legal conclusion that the respondent failed to make reasonable progress to correct the issue that led to Adam being removed from her care. *See* N.C.G.S. § 7B-1111(a)(2) (2019).

Contrary to the majority's characterization, this is not a question of whether to accept the trial court's credibility determination regarding

whether or not respondent attended counseling programs through Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). The issue here is whether the trial court adequately addressed the Court of Appeals direction on remand; whether the findings of fact made by the trial court are supported by clear, cogent, and convincing evidence in the record; and whether the trial court's findings adequately support its conclusions of law. The trial court's finding of fact, adopting language used by the Court of Appeals, that respondent made only "marginal progress" towards correcting the conditions that led to the removal of the child from her care is directly contradicted by its finding of fact that DSS "has failed to carry its burden of proof as to [the] alleged incapacity of the respondent mother to provide proper care and supervision of the child, … indeed, the respondent mother demonstrated such capabilities by completing a rehabilitation program at 'Our House' in August, 2017. … Thus, the [c]ourt cannot say by clear, cogent and convincing evidence that the respondent mother is 'incapable' of providing proper care and supervision." Not only did respondent complete the rehabilitation program, she was no longer homeless, had a stable living arrangement in a three-bedroom home, and was living with and parenting her younger child. I dissent and would reverse the trial court's termination orders because petitioners have failed to establish any grounds to terminate respondent's parental rights as to Adam.

In its earlier opinion in this case, the Court of Appeals stated the following:

> It is likely that the trial court's findings mean that Respondent made some marginal improvements since the filing of the petition and, thus, was not totally incapable of providing care and supervision for her child, but that, nonetheless, Respondent's progress was not enough to demonstrate "to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2). But because of the important liberty interests that are implicated when a court terminates parental rights, we will remand this case for additional findings that eliminate the arguable tension identified by Respondent and permit this Court to engage in a meaningful appellate review of the trial court's findings of fact and conclusions of law. *See In re A.B.*, 239 N.C. App. 157, 172, 768 S.E.2d 573, 581-82 (2015).

> On remand, the trial court, in its discretion, may amend its findings based on the existing record, or may conduct any further proceedings that the court deems necessary.

*In re A.B.C.*, 2018 WL 6053343, at *3. Hearing no new evidence,[1] the trial court simply amended its prior order to include the above-quoted language of the Court of Appeals, failing to even correct the date of the order. The first sixty-two paragraphs of the amended order are exactly the same as the prior Order. Indeed, the only new findings are contained in finding of fact 66. There, the trial court paraphrased the passage from the Court of Appeals opinion excerpted above and identified its three reasons why respondent's progress with regard to her case plan was not adequate. Namely that she declined to live at Grace Court following the residential treatment program, that her methadone program did not include counseling or other plan to end her methadone dependence, and that she was not receiving counseling through AA, NA or any other recovery program. These findings of fact do not support the trial court's conclusion that respondent failed to make reasonable progress to correct the conditions that led to the removal of Adam from her care.

At the time of the termination hearing, respondent had successfully completed a six-month residential substance abuse program at a rehabilitation facility and had been drug-free for nearly one year. Respondent continued her substance abuse rehabilitation by voluntarily participating in a methadone program, a medication-based therapy program for treating opioid addiction. Although the trial court found that respondent declined to enter Grace Court after her completion of the program at Our House, respondent was never ordered to participate in the additional program. A parent's decision not to attend an optional long-term residential rehabilitation program after successfully completing an initial six-month residential rehabilitation program and voluntarily participating in an out-patient treatment program does not show a lack of reasonable progress by the parent.

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1. While the Court of Appeals left to the trial court's discretion whether new evidence should be heard, I would note that as with neglect, a trial court must consider evidence of changed circumstances at the time of the TPR hearing to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). *In re O.C.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005) ("to find grounds to terminate a parent's rights under G.S. § 7B-1111(a)(2), the trial court must . . . determine . . . that as of the time of the hearing, . . ., the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child"); *see also In re A.B.*, 253 N.C. App. 29, 30, 799 S.E.2d 445, 447 (2017) ("Where the trial court's findings and conclusions do not adequately account for respondent-mother's circumstances at the time of the termination hearing, as required to support a termination of her parental rights under N.C.G.S. § 7B1111(a)(1) or (2), we vacate and remand.")

Moreover, the evidence and supported findings also show that respondent had been living in a three-bedroom home with her boyfriend for five months and that she was engaging in regular visitation with Adam that went well. Although respondent's progress on her case plan regarding housing is partly attributed to her relationship with her boyfriend, respondent's "case plan does not and cannot require that she alone be responsible for providing her housing and transportation." *In re C.N.*, 831 S.E.2d 878, 884 (N.C. Ct. App. 2019); *see also id.* ("Nothing in the record suggests or supports the finding that the Respondent-mother's dependence on her present boyfriend for housing, transportation, and for providing her a cell phone bears any relation to the causes of the conditions of the removal of [the children] from their mother's home.").

The trial court found that it did not believe respondent's testimony that she was in counseling. However, DSS bore the burden of proving by clear, cogent, and convincing evidence that grounds existed to terminate respondent's parental rights. N.C.G.S. § 7B-1109(f). Aside from respondent's testimony, DSS did not present any evidence of respondent's participation, or lack thereof, in counseling and therapy. DSS's only evidence during the adjudication stage of the hearing was from a child support enforcement supervisor, who did not testify as to respondent's participation in counseling, and a social worker, who had not been involved in respondent's case for the four months prior to the termination hearing. The social worker testified that DSS "[was] not aware of any completion of any of the goals" of respondent's case plan. However, it is undisputed that respondent participated in the residential rehabilitation program at Our House from February 2017 through August 2017. Additionally, the social worker stopped being involved in the case on 1 September 2017 and did not testify regarding respondent's actions or inactions from September 2017 through the termination hearing in January 2018. An absence of evidence is far from clear, cogent, and convincing evidence that respondent did not complete the requirements of the case plan.

Although respondent did not complete every aspect of her case plan, "[a] parent's failure to fully satisfy all elements of the case plan goals is not the equivalent of a lack of 'reasonable progress.' " *In re J.S.L.*, 177 N.C. App. 151, 163, 628 S.E.2d 387, 394 (2006). The trial court found that respondent successfully completed the court-ordered six-month residential substance abuse program and continued seeking substance abuse treatment by voluntarily participating in a methadone program. Evidence was also presented that respondent remained drug-free after completing the residential substance abuse program, obtained suitable

housing as required by her case plan, and regularly visited with Adam, during which she behaved appropriately.

The trial court's finding of fact regarding respondent's participation in a methadone program is particularly inappropriate as a basis for concluding that she has not made reasonable progress. It is undisputed that respondent was drug tested frequently as part of her probation and methadone treatment. Respondent testified that she saw a therapist once a month and that a medical decision had been made not to wean her from methadone while she was experiencing back pain. Even though the trial court specifically found that respondent's statements about counseling were not believable, it is for a medical professional, not the trial court, to determine whether and how respondent's duly prescribed medications should be discontinued. As long as she was meeting the requirements of the methadone program she was enrolled in, respondent would, in fact, be held accountable for *not being compliant* if she chose to stop taking a medication being prescribed for her. Moreover, drug addiction is a brain disease. *See, e.g.*, Nora D. Volkow, George F. Koob, and A. Thomas McLellan, *Neurobiologic Advances from the Brain Disease Model of Addiction*, 374 N. Engl. J. Med. 363 (2016) (reviewing recent advances in neurobiology of addiction to clarify link between addiction and brain function and to broaden understanding of addiction as a brain disease.) A parent who is following a doctor's orders in a treatment program should not have that fact held against her, just as one would not conclude that a diabetic relying on medication to control their diabetes rather than diet and exercise is failing to make reasonable progress towards good health.

Finally, respondent argues that she could have resumed custody of Adam as evidenced by her having custody of her younger daughter Amy. While not determinative, this Court has certainly considered it relevant when a parent has previously had their parental rights terminated as to another child. Here, the fact that respondent was parenting another child without any evidence of neglect should have been relevant to the issue of whether respondent made reasonable progress towards addressing the conditions that led to her son being removed from her care.

Willfulness "is established when the respondent had the ability to show reasonable progress but was unwilling to make the effort." *In re Fletcher*, 148 N.C. App. 228, 235, 558 S.E.2d 498, 502 (2002). In the context of a termination of parental rights proceeding, "the word 'willful' connotes purpose and deliberation." *See, e.g.*, *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). The trial court's finding that respondent declined to enter a second, optional long-term residential

rehabilitation program and its finding that she was participating in the methadone program without a plan to wean off of the methadone, along with its finding that it did not believe respondent's testimony that she was in counseling, do not support its conclusion that respondent willfully left her child in care and did not make reasonable progress to correct the conditions that led to Adam's removal from her care. *See In re C.N.*, 831 S.E.2d at 884 (holding that the trial court's findings that the respondent-mother "had not been consistent in her treatment, was not fully compliant with her case plan, and had only recently re-engaged in some services" did not support the trial court's conclusion that the respondent-mother had not made reasonable progress); *cf. In re I.G.C.*, 373 N.C. 201, 205–06, 835 S.E.2d 432, 435 (2019) (affirming an order terminating parental rights under N.C.G.S. § 7B-1111(a)(2) where, despite findings that the respondent-mother complied with her case plan by completing multiple parenting courses, participating in domestic violence and substance abuse treatment, and testing negative at three recent drug screens, there were additional findings that the respondent-mother's substance abuse and domestic violence treatment were shorter in duration and less intense than recommended, she never completed a court-ordered substance abuse assessment, and she admitted that she would not feel comfortable caring for the children for another "year, year and a half" because she feared she would relapse). Therefore, the trial court erred in concluding that grounds existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).

Respondent also claims the trial court abused its discretion under N.C.G.S. § 7B-1110(a) by determining that it was in Adam's best interests to terminate her parental rights. Having concluded that the trial court erred in adjudicating grounds for terminating respondent's parental rights under N.C.G.S. § 7B-1111(a), there is no need to address this issue. *In re Young*, 346 N.C. 244, 252, 485 S.E.2d 612, 617 (1997).

The statute concerning the dispositional phase of a termination of parental rights proceeding provides that, where "circumstances authorizing termination of parental rights do not exist, the court shall dismiss the petition." N.C.G.S. § 7B-1110(c) (2019). I would therefore reverse the trial court's orders and remand the cause for the dismissal of DSS's petition. *See Young*, 346 N.C. at 253, 485 S.E.2d at 618.

Chief Justice BEASLEY and Justice DAVIS join in this dissenting opinion.

**IN RE J.C.L.**

[374 N.C. 772 (2020)]

IN THE MATTER OF J.C.L.

No. 336A19

Filed 17 July 2020

**1. Termination of Parental Rights—adjudication—findings of fact—sufficiency of evidence**

Clear, cogent, and convincing evidence supported multiple findings of fact in the trial court's order terminating a father's parental rights to his son, including findings regarding the father's lack of progress in addressing his substance abuse, anger issues, Medicaid insurance coverage, and unwillingness to learn about his son's special needs. Conversely, some findings were not supported by the evidence and were disregarded on appeal.

**2. Termination of Parental Rights—grounds for termination—neglect—likelihood of future neglect**

The trial court properly terminated a father's parental rights to his son on grounds of neglect, where the father's lack of progress in completing his case plan with the Department of Social Services indicated a reasonable likelihood of future neglect if his son were returned to his care.

**3. Termination of Parental Rights—best interests of the child—weighing factors—evidentiary support**

The trial court did not abuse its discretion in concluding that termination of a father's parental rights to his three-year-old son was in the child's best interests. First, the evidence supported the trial court's findings that the child was placed in a pre-adoptive home and had a high likelihood of adoption. Second, although the record contained some evidence weighing against terminating the father's parental rights, the trial court properly weighed the factors in determining the child's best interests (N.C.G.S. § 7B-1110), thereby reaching a decision that was neither arbitrary nor manifestly unsupported by reason.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 7 May 2019 by Judge Emily G. Cowan in District Court, Henderson County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but was determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Susan F. Davis, Assistant County Attorney, for petitioner-appellee Henderson County Department of Social Services.*

*Michelle FormyDuval Lynch, GAL Appellate Counsel, for appellee Guardian ad Litem.*

*Anné C. Wright for respondent-appellant father.*

MORGAN, Justice.

Respondent father appeals from an order terminating his parental rights to his minor child, J.C.L. (Josiah).[1] We affirm the trial court's determination.

The Henderson County Department of Social Services (DSS) filed a petition on 6 December 2016, alleging that Josiah was a neglected juvenile in that (1) respondent and Josiah's mother had used marijuana in front of Josiah and Josiah's half-sibling; (2) respondent and the mother had committed the offense of shoplifting in the presence of the children; (3) respondent had engaged in acts of domestic violence against the children's grandmother in their presence; and (4) the family did not have stable housing. DSS filed a supplemental petition on 27 February 2017, adding allegations that (1) respondent and the mother had taken Josiah and Josiah's half-sibling to Greenville, South Carolina, to avoid juvenile court proceedings; (2) respondent had used inappropriate discipline upon Josiah's half-sibling; (3) respondent and the mother had not enrolled the children in school; (4) the mother had failed to appropriately supervise the children while living at a temporary shelter; (5) respondent and the mother were seen screaming at and hitting each other in the temporary shelter's parking lot; and (6) the mother had tested positive for marijuana. DSS had initially left custody of Josiah with respondent and the mother but obtained nonsecure custody of him by order entered 27 February 2017.

After a hearing on 1 June 2017, the trial court entered an order adjudicating Josiah to be a neglected juvenile. In its separate disposition order, the trial court continued custody of Josiah with DSS and granted weekly supervised visitation to respondent. The trial court ordered respondent to (1) submit to random drug and alcohol screenings as requested by DSS; (2) refrain from further criminal activity, including

1. The minor child will be referenced throughout this opinion as "Josiah," which is a pseudonym used to protect the child's identity and for ease of reading.

illegal drug use, in Josiah's presence; (3) participate in family-centered therapy and comply with all referrals and recommendations; (4) address his anger management issues in therapy; (5) demonstrate stable income sufficient to meet the family's needs; (6) obtain and maintain an appropriate residence for the family; (7) maintain contact and cooperate with DSS; (8) participate in a formal budgeting counseling program and implement a monthly budget; (9) complete parenting classes and demonstrate age-appropriate parenting skills; (10) complete individual and/or family therapy if recommended by his mental health assessment; and (11) pay child support.

By order entered 1 November 2017, the trial court established the primary permanent plan for Josiah as reunification with respondent and the mother and set the secondary permanent plan as adoption. The trial court continued with these plans until 10 September 2018, when it entered an order finding that both respondent and the mother had not made adequate progress under their plans, had not actively participated in their plans, had not cooperated with DSS, and had not cooperated with the guardian *ad litem*. The trial court changed Josiah's primary permanent plan to adoption and his secondary permanent plan to guardianship.

DSS filed a petition to terminate the parental rights of both parents to Josiah on 1 October 2018. As grounds for termination, DSS alleged the grounds of neglect and failure to make reasonable progress to correct the conditions that led to Josiah's removal from the home. *See* N.C.G.S. § 7B-1111(a)(1)–(2) (2019). DSS filed an amended petition on 18 January 2019, adding additional factual allegations to support its alleged grounds. After a hearing which began on 7 March 2019 and ended on 4 April 2019, the trial court entered an order on 7 May 2019 terminating both respondent and the mother's parental rights to Josiah. The trial court concluded that both grounds existed to terminate parental rights as alleged by DSS and that termination of parental rights, including the parental rights of respondent as Josiah's father, was in Josiah's best interests.[2] Respondent appeals.

We review a trial court's adjudication of the existence of grounds to terminate parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253

2. The trial court's order also terminated the parental rights of Josiah's mother, but she is not a party to this appeal.

(1984)). "Unchallenged findings of fact made at the adjudicatory stage are binding on appeal." *In re Z.V.A.*, 373 N.C. 207, 211, 835 S.E.2d 425, 429 (2019) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)). Additionally, "[a] trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019) (citing *In re Moore*, 306 N.C. 394, 403–04, 293 S.E.2d 127, 132 (1982)). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

*Adjudicatory Findings of Fact*

**[1]** We first address respondent's challenges to several of the trial court's findings of fact. Respondent first challenges Finding of Fact 52 which states:

> 52. The parents have been late with rent several months [and] have received disconnect notices from the utility company. The parents have not been successful in connecting the gas in order for the heat in the home to function. For the past two winters they have not had heat except for one small space heater in the main living area, which did not adequately heat the home.

Respondent contends that the portion of this finding that states that respondent's home was only heated by one small space heater is unsupported by the evidence, because the social worker's testimony regarding this fact was hearsay and was contradicted by other testimony. Respondent did not raise any objection, either on a hearsay ground or upon any other basis, to the social worker's testimony at trial. He has thus waived his hearsay argument on appeal, and the social worker's testimony must be considered to be competent evidence. N.C. R. App. P. 10(a)(1); *See also*, *e.g.*, *In re F.G.J.*, 200 N.C. App. 681, 693, 684 S.E.2d 745, 753–54 (2009) (holding "any objection has been waived, and the testimony must be considered competent evidence" where no objection on hearsay grounds was made by either parent at the hearing). Moreover, because the trial court's finding is supported by the social worker's testimony, it is deemed conclusive for appellate review purposes. Respondent does not challenge the remainder of Finding of Fact 52; accordingly, the entire finding of fact is binding on appeal.

Respondent next contends that Finding of Fact 40 is not supported by clear, cogent, and convincing evidence. In Findings of Fact 37 through 39, the trial court specified that respondent had received two

alternative substance abuse treatment recommendations because his Medicaid insurance had been discontinued, that the social worker had told respondent that he needed to contact DSS to reinstate his insurance, that these discussions between the social worker and respondent had occurred repeatedly from 6 February to 16 April 2018, that respondent reapplied for his insurance on 17 April 2018, and that his insurance was reinstated on 18 April 2018. In Finding of Fact 40, the trial court then determined:

> 40. [Respondent] could have rectified his insurance (Medicaid) problems in early February 2018 if he had gone to Rutherford County DSS. However, it took him over two months to go to Rutherford County DSS to get his Medicaid reinstated.

Respondent contends that this finding is not supported by the evidence, because respondent testified that the required appointment could not be made for the same day and that sometimes there is a waiting period of several months to get an appointment. Respondent's testimony, however, was presented in the context of Josiah's need for therapy due to respondent's failure to complete his case plan in the preceding twenty-four months:

> Q. . . . Do you think [Josiah] would need therapy?
>
> A. Of course. After what he's been through, I'm sure. As with [Josiah's half-sibling], being bounced around everywhere.
>
> Q. Well, wouldn't it be true, sir, that if you all had finished your case plan sooner than 24 months, they wouldn't have been bounced around?
>
> . . . .
>
> [A]: I don't think it's the case plan. I think it's the constant continuances in this case. It's not our fault. Things happen in life, you know. Medicaid appointments can't be made the same day. Sometimes appointments are six months away.

Nothing in respondent's testimony suggests that respondent attempted to contact DSS before 17 April 2018 to reinstate his Medicaid insurance, or that the appointments to which respondent was referring in this portion of his testimony were with DSS for the purpose of reinstating his Medicaid insurance as opposed to an attempt to schedule therapy

appointments for Josiah. Consequently, we hold that the trial court's Finding of Fact 40 is supported by the social worker's testimony and thus binding on appeal.

Respondent also argues that the completion timeframe set forth in Finding of Fact 41 is not supported by the evidence. This factual finding states:

> 41. [Respondent] completed a basic level substance abuse course six weeks ago, however this course did not include[] group or individual counseling.

The certification of completion of the course in question displays a completion date of 19 December 2018. To the extent that this finding of fact recognizes respondent's completion date was later than 19 December 2018, we agree with respondent. On the other hand, respondent does not challenge the portion of Finding of Fact 41 that his substance abuse course did not include group or individual counseling, and this segment of the factual finding is binding on appeal.

Respondent next challenges Finding of Fact 50:

> 50. [Respondent] struggles with recurrent anger issues, and has become inappropriately belligerent with the Social Worker, the Social Worker Supervisor and the Program Manager on multiple occasions. [Respondent's] main reaction to conflict or to things that make him angry or frustrated is to remove himself from the situation, leaving in a fit, and not dealing with whatever it is that has him upset. This at times, leads to an inability to obtain necessary information as it relates to the juvenile.

To the extent that this finding stands for the proposition that he was displaying issues with anger in the period leading up to, or at the time of, the termination hearing, respondent asserts that Finding of Fact 50 is unsupported by the evidence. The social worker's testimony, however, establishes that respondent struggled with recurrent anger issues, became belligerent with DSS employees, stormed out of rooms during meetings with DSS personnel, and generally dealt with situations that angered him by leaving the situation. Although the social worker testified that she had seen a "slight change over the last several months" with regard to respondent's anger issues, this improvement was due in part to the social worker's new discussion tactics by avoiding opposition with respondent.

Respondent also asserts that his decision to leave frustrating situations is a technique developed in conjunction with the Family Centered Treatment (FCT) clinician with whom respondent had worked in order to help respondent to deal with his anger management issues, thereby showing that respondent was making reasonable progress toward satisfying the requirements of his case plan. However, the clinician's testimony focused only upon the manner in which respondent dealt with anger when respondent was under stress due to interactions with Josiah and did not address more generalized situations which might invoke respondent's anger. In the limited circumstances about which the social worker testified, respondent was reported to have handed Josiah to his mother while stepping away until respondent could calm down. The trial court's finding of fact at issue, in contrast, relates to respondent's general reactions when he became angry—particularly with adults involved in the case—and how respondent reacted inappropriately by leaving the situation in an enraged state. We hold that the trial court's Finding of Fact 50 regarding respondent's inability to restrain his emotions when interacting with the DSS employees who were working to ensure Josiah's care and attempting to reunify Josiah with respondent is supported by the social worker's testimony.

Next, respondent challenges Finding of Fact 28 which states:

> 28. [Respondent's 10 January 2018 Comprehensive Clinical Assessment] recommended that [respondent] engage with outpatient substance abuse therapy including group and individual counseling as well as to follow through with his physical health needs through regular care by his physician.

Respondent represents that the recommendations from the 10 January 2018 assessment referenced in Finding of Fact 28 are instead correctly stated in Finding of Fact 36:

> 36. The CCA completed by [respondent] on January 10, 2018 recommended two avenues in which to address his substance abuse issues. [Respondent] was to participate in basic level substance abuse services to address his diagnoses of Cannabis Use Disorder, Moderate[;] and Stimulant Use Disorder (Methamphetamines) Mild as well as to identify preliminary goals and corresponding stages of change and complete a relapse prevention plan; OR engage in individual therapy to address his diagnoses of Cannabis Use Disorder, Moderate[;] and

> Stimulant Use Disorder (Methamphetamines) Mild as well as to identify preliminary goals and corresponding stages of change and to complete a relapse prevention plan. In addition, if [respondent] is unsuccessful in abstaining from illegal substance[s] or legal substances not prescribed, he shall participate in Substance Abuse Intensive Outpatient Services.

We agree with respondent that Finding of Fact 36 accurately sets forth the recommendations of his 10 January 2018 Comprehensive Clinical Assessment. Finding of Fact 28 also includes recommendations from respondent's FCT clinician, from whose program respondent was terminated at the end of August 2018. This Court will further consider this portion of Finding of Fact 28 accordingly.

Respondent additionally submits that Finding of Fact 42 is not supported by the evidence. This finding of fact states:

> 42. [Respondent] has not completed individual and group counseling/therapy.

Respondent contends that the recommendation made by his FCT clinician at the time that respondent was terminated from the Family Centered Treatment program was that he "continue" participating in substance abuse treatment with group and individual counseling, which respondent completed in December 2018. However, the trial court found that respondent's basic level substance abuse course did not encompass group or individual counseling, and respondent has not challenged this finding. Although respondent testified that he was engaged in some individual therapy, respondent could not articulate the services that he received from the therapist apart from his statement that she provided "safe, you know, practices and, you know, solutions, recommended agencies or groups that we can take." Accordingly, we are not persuaded by respondent's challenge to Finding of Fact 42.

The Court next addresses respondent's objections to Findings of Fact 72 and 74. The findings state:

> 72. [Respondent] blames his lack of completing the court's reunification requirements on other people.
>
> . . . .
>
> 74. The juvenile has been out of the home for 769 days. The parents are not taking responsibility for why the juvenile came into custody, nor have they completed the court's reunification requirements.

Respondent claims that these findings are not supported by clear, cogent, and convincing evidence, because the FCT clinician testified that the clinician observed the parents "progressing and taking responsibility for DSS's involvement," the October 2018 letter from the FCT clinician identified behaviors displayed by respondent of "ownership" and "less blaming," and respondent testified that respondent had learned not to blame other people. Although respondent may have shown some behaviors characterized by "ownership" and "less blaming" in sessions with the FCT clinician, at the hearing, respondent blamed the continuances allowed in the case, rather than respondent's inability to meet the requirements of his case plan, as the reason why the case had gone on for so long. Respondent further stated that the delay was not his fault. The social worker added testimony that, during the entirety of the case, respondent never accepted any responsibility for the circumstances that led to Josiah coming into DSS custody. These findings of fact numbered 72 and 74 are thus supported by record evidence.

Respondent likewise challenges Finding of Fact 60 which provides:

> 60. The juvenile has special needs. He is physically aggressive (biting, kicking, hitting). He has extreme tantrum behaviors that can last from minutes to hours especially if he is not getting his way or is being told no. He recently has begun being aggressive with animals in the foster home (throwing and hitting them with toys, pulling tails and ears and kicking) despite all attempts at redirection.

Respondent contends that there is no evidence to support the portion of this finding which recites that Josiah had kicked any animals or hit them with toys. We agree with respondent's contention and therefore disregard said portion of Finding of Fact 60. Respondent otherwise concedes that this factual finding is supported by the evidence, but offers that Josiah's behaviors are merely the normal behaviors of a two-year-old child and are not likely to be long-lasting.[3] This argument is entirely speculative and unsupported by any evidence presented at the hearing. Rather, the evidence showed that Josiah's behaviors were extreme for a child of his age and were serious enough to require Josiah to begin occupational therapy and behavior therapy treatments.

Respondent poses challenges to Findings of Fact 70 and 71, which included these determinations of the trial court:

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3. Josiah was three years old at the time of the termination hearing.

> 70. Neither parent has taken the opportunity to learn about the special needs of the juvenile.
>
> 71. [Respondent] does not know the special needs of the juvenile. He blames DSS for any problems associated with the juvenile.

Respondent posits that it is unclear to what opportunities the trial court refers in Finding of Fact 70, because there was no evidence presented at the hearing regarding any opportunities for respondent to learn more about Josiah's special needs other than at the termination hearing itself. Respondent also claims that he was rightfully confused about what special needs Josiah has, because there is no definition of the term "special needs" in the North Carolina General Statutes; as a result, the meaning of this term is fluid and dependent upon the context in which it is used. Respondent further argues that there is no evidence that he blamed DSS for Josiah's special needs.

In making this argument, respondent ignores the thirteen Child and Family Team Meetings DSS held or attempted to hold with him over the course of the case in an effort to discuss Josiah's needs. Respondent either failed to attend, refused to attend, or cancelled nine of these thirteen sessions. The uncontroverted evidence in this case establishes that Josiah has special needs. Respondent admitted that he did not know what those needs were and rejected the fact that Josiah had special needs, asserting that he thought special needs were "like autism or Downs Syndrome." He blamed Josiah's aggressive behavior on Josiah's placement in daycare while in DSS custody and, although he admitted Josiah would need therapy, he asserted that this need was due to Josiah being "bounced around everywhere" while in DSS custody. Respondent refused to take any ownership of his role in Josiah's placement with DSS. The evidence shows that respondent was given numerous opportunities over the duration of the matter to learn about Josiah's special needs, but respondent failed to do so and instead blamed Josiah's problems on DSS. Any confusion held by respondent about Josiah's special needs is the consequence of respondent's failure to engage in his case plan and is not the result of the lack of a statutory definition for the term "special needs" as applied to Josiah. Accordingly, we hold that Findings of Fact 70 and 71 are supported by clear, cogent, and convincing evidence.

Respondent lastly challenges Findings of Fact 44 and 69:

> 44. [Respondent] has stated he will not take any medications for any reason to assist him in managing mental health symptoms.

. . . .

> 69. The parents missed 90% of the meetings that have to do with the juvenile's special needs.

We agree with respondent's arguments concerning these referenced findings of fact. With regard to Finding of Fact 44, the social worker testified that over the course of respondent's participation in FCT, respondent was never prescribed medication to manage any mental health symptoms, thus rendering respondent's statement that he *would* refuse to take medications, if prescribed, to be irrelevant with respect to his progress on his case plan. With regard to Finding of Fact 69, as noted above, the uncontroverted evidence was that respondent missed or cancelled nine of thirteen meetings intended to address the juvenile's special needs—a rate of 70% rather than 90%. Consequently, we disregard Findings of Fact 44 and 69 in our analysis of the trial court's adjudicatory conclusions of law.

*Conclusion of the Existence of the Ground of Neglect*

**[2]** This Court now addresses respondent's argument that the trial court erred in concluding that grounds exist to terminate his parental rights based on neglect. A trial court may terminate parental rights when it concludes that the parent has neglected the juvenile within the meaning of N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1) (2019). A neglected juvenile is defined, in pertinent part, as a juvenile "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile's welfare . . . ." N.C.G.S. § 7B-101(15) (2019).

> Termination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.

*In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016) (citing *In re Ballard*, 311 N.C. 708, 713–15, 319 S.E.2d 227, 231–32 (1984)). "When determining whether such future neglect is likely, the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing." *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425, 430 (2019) (citing *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232). We agree that "[a] parent's failure to make progress in completing a case plan is indicative of a likelihood of

future neglect." *In re M.J.S.M.*, 257 N.C. App. 633, 637, 810 S.E.2d 370, 373 (2018) (citing *In re D.M.W.*, 173 N.C. App. 679, 688–89, 619 S.E.2d 910, 917 (2005)).

By orders entered 7 July 2017, the trial court adjudicated Josiah to be a neglected juvenile and established a case plan for respondent. In its termination order, the trial court made numerous findings which demonstrated respondent's lack of progress and concluded that there was a reasonable likelihood that the neglect would reoccur if Josiah were returned to respondent's care. As discussed in part above, the trial court found: (1) respondent engaged in Family Centered Treatment, which is traditionally a nine- to twelve-month program, from August 2016 to August 2018, and completed only two of the four phases of the program, struggled with ownership of past trauma and experiences, never followed through with the requirements to progress in the program, and was discharged due to his inability to complete his goals; (2) after the commencement of the termination proceeding, respondent enrolled in a parenting program that was not sanctioned by DSS, attended four classes, and failed to complete the program; (3) respondent completed a Comprehensive Clinical Assessment on 10 January 2018 that recommended two different avenues by which he could responsibly address his substance abuse issues, but respondent prolonged his engagement of substance abuse services due in part to his willful delay in reinstating his Medicaid insurance coverage; (4) respondent completed a basic level substance abuse course in December 2018 but it did not include group or individual counseling, which had been recommended when he was discharged from the FCT program; (5) respondent informed the social worker that he would never really stop smoking marijuana, respondent was arrested for possession of marijuana and methamphetamine on 2 December 2017, respondent was convicted of said charges on 10 May 2018, and respondent was incarcerated for these convictions until 9 July 2018; (6) DSS requested that respondent submit to twenty-three drug screens, of which eight were positive for marijuana—including one taken the day after he was released from incarceration—eight of which were negative, and seven to which respondent refused to submit; (7) respondent struggled with recurrent anger issues and his main reaction to conflict, or situations that angered or frustrated him, was to remove himself from the situation, leaving in an enraged state and not addressing the issue that made him angry; (8) although respondent lived in the same home since September 2017, he was late with rent several months, he received several disconnect notices from the utility company, and he was not able to have gas connected to the residence as the home's source for heat, thus leading to respondent's use of a space heater that

inadequately heated the home; (9) respondent did not enroll in a formal budgeting program as ordered, even though he was referred to three different programs; (10) respondent attended only one appointment with Foothills Credit Counseling on 10 April 2018, with said appointment revealing that respondent's budget operated with a monthly deficit, that respondent's budget did not include the cost of having Josiah or Josiah's half-sibling in the home, that respondent's expenses had increased since the analysis of his budget, and that respondent's financial situation continued to be extremely tenuous; (11) respondent did not know the details of Josiah's special needs and failed or refused to attend eight of thirteen Child and Family Team Meetings to discuss Josiah's needs; (12) respondent continued to deny the reasons for DSS's custody of Josiah through 22 January 2019, blamed DSS for Josiah's issues, and blamed others for respondent's failure to complete components of his court-ordered case plan; and (13) respondent did not take responsibility for the reasons for Josiah's custody with DSS, and respondent's progress over the course of two years to resolve the issues which led to Josiah's custody with DSS was not sufficient for the trial court to have found that Josiah would receive proper care and supervision from respondent during an unsupervised visit or trial home placement.

Although respondent made some progress toward completing his court-ordered case plan, his success was extremely limited and insufficient in light of Josiah's placement in DSS custody for over two years. We agree with the trial court that its findings demonstrate that there is a likelihood of repetition of neglect in the event that Josiah is returned to respondent's care and custody. This Court therefore affirms the trial court's adjudication on the ground of neglect to terminate respondent's parental rights.[4]

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4. We note that respondent also expressly argues that the trial court's findings regarding respondent's tenuous financial situation are insufficient to support a finding of the likelihood of repetition of neglect. In support of his argument, respondent cites *In re Nesbitt*, 147 N.C. App. 349, 555 S.E.2d 659 (2001), in which the Court of Appeals concluded that a parent's inability to "mak[e] ends meet from month to month" is not "a legitimate basis upon which to terminate parental rights" on the ground of failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2). *Id.* at 358–59, 555 S.E.2d at 665–66. *Nesbitt*, however, is inapposite here, because, while N.C.G.S. § 7B-1111(a)(2) states in part that "[n]o parental rights . . . shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty," *id.*, the ground of neglect does not have a similar prohibition, *see* N.C.G.S. § 7B-101(15), -1111(a)(1). Moreover, the trial court did not premise its finding of neglect solely on respondent's tenuous financial situation, which is only one of several factors supporting the trial court's conclusion that there is a likelihood of repetition of neglect should Josiah be returned to respondent's care and custody.

Due to our conclusion that the trial court did not err in adjudicating the ground of neglect, we need not address respondent's arguments regarding the ground of failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2). *See In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019).

*Best Interests Determination*

**[3]** Respondent argues that the trial court abused its discretion in concluding that it was in Josiah's best interests to terminate respondent's parental rights. We disagree with respondent's contention.

Once a trial court has adjudicated that grounds exist to terminate parental rights, it proceeds to the dispositional stage of a termination of parental rights hearing. N.C.G.S. § 7B-1110 (2019). At disposition, a trial court must consider the following factors and make findings as to any of them which it deems relevant:

(1) The age of the juvenile.

(2) The likelihood of adoption of the juvenile.

(3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.

(4) The bond between the juvenile and the parent.

(5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.

(6) Any relevant consideration.

*Id.* A trial court's determination of whether termination of parental rights is in a juvenile's best interests "is reviewed solely for abuse of discretion." *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019) (citing *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016)). This high standard of review requires a showing that "the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015).

In the present case, the trial court made the following findings of fact in support of its conclusion that termination of respondent's parental rights was in Josiah's best interests:

1. The juvenile is three years of age.

> 2. There is a high likelihood that the juvenile will be adopted. The juvenile was placed in a pre-adoptive home on January 18, 2019.
>
> 3. This [c]ourt has previously adopted a permanency plan for this juvenile of adoption, and termination of the parental rights as ordered herein will aid in the accomplishment of this plan.
>
> 4. As to the bond between the juvenile and [his parents,] the [c]ourt finds as follows: There is a bond between the juvenile and his parents. However, the parents have not raised the juvenile since he was six months of age. The parents do not know his special needs, much less how to appropriately address those needs.
>
> 5. As to the relationship between the juvenile and the prospective adoptive parents, the [c]ourt finds as follows: [T]he juvenile refers to the prospective adoptive parents as Mom and Dad. He consistently relies on them to meet his basic needs, goes to them for comfort and has a secure attachment to them. The prospective adoptive parents ensure that the juvenile attends occupational therapy and behavioral therapy.
>
> 6. The juvenile is in the same pre-adoptive home as his half-brother.

Respondent only challenges the trial court's findings that there is a "high likelihood" that Josiah will be adopted and that he was "placed in a pre-adoptive home on January 18, 2019." Respondent represents that the evidence only established that Josiah's placement was in a "*potential* pre-adoptive" home, and not a "pre-adoptive" home. This argument rests upon a distinction without a difference, as all pre-adoptive homes are by their nature inherently potential. The social worker testified that Josiah's current placement providers had expressed an interest in adopting Josiah and his half-sibling, that the home of these providers was considered a "therapeutic home" for Josiah's half-sibling, that the providers were participating in the half-sibling's therapy appointments, and that the providers were taking Josiah to his own appointments. Additionally, although Josiah had been placed with his current placement providers for less than three months, he was already referring to them as "Mom" and "Dad." This evidence supports the trial court's findings that Josiah had been placed in a pre-adoptive home, and that there was a high likelihood of Josiah's adoption.

Respondent further argues that the trial court abused its discretion in concluding that termination of parental rights is in Josiah's best interests in light of respondent's strong bond with Josiah, Josiah's loving and affectionate relationship with his paternal grandmother, the period of less than three months that Josiah had been in the pre-adoptive home, and the FCT clinician's opinion that, given more time, respondent potentially could have completed all of the steps of the clinical process. While we recognize that the record in this case contains some evidence and the trial court's order contains some findings of fact that support respondent's position, nonetheless it is the province of the trial court to weigh the relevant factors in determining Josiah's best interests. *See In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 66 (2019). The trial court's findings show a reasoned conclusion which was not reached arbitrarily. Accordingly, we hold that the trial court did not abuse its discretion in determining that termination of respondent's parental rights is in Josiah's best interests. Therefore, we affirm the trial court's order.

AFFIRMED.

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IN THE MATTER OF J.J.B., J.D.B.

No. 277A19

Filed 17 July 2020

**Termination of Parental Rights—best interests of the child—dispositional factors—competent evidence**

The trial court did not abuse its discretion by deciding that termination of both parents' parental rights, rather than guardianship, was in the best interests of the children after considering and weighing the dispositional factors in N.C.G.S. § 7B-1110(a), including the bond the children had with their parents. The court's finding that the two children had a "very strong bond" with their foster parents, despite the children having lived with them for only three months, was supported by the evidence, and the court made an unchallenged finding that the children were highly adoptable. The trial judge's verbal statement suggesting that the foster parents "honor" the relationship the children had with their parents was neither part of the written order nor an acknowledgment that termination was not in the children's best interests.

**IN RE J.J.B.**

[374 N.C. 787 (2020)]

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 8 April 2019 by Judge William B. Davis in District Court, Guilford County. This matter was calendared in the Supreme Court on 19 June 2020 but was determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.*

*Poyner Spruill LLP, by Andrew H. Erteschik and N. Cosmo Zinkow, for appellee Guardian ad Litem.*

*Robert W. Ewing for respondent-appellant mother.*

*Surratt Thompson & Ceberio PLLC, by Christopher M. Watford, for respondent-appellant father.*

EARLS, Justice.

Respondents, mother and father of the minor children, appeal from the trial court's order terminating their parental rights to J.J.B. and J.D.B. ("John" and "Jessica").[1] After careful review, we affirm.

On 19 July 2016, the Guilford County Department of Health and Human Services (DHHS) received a Child Protective Services (CPS) report claiming that John and Jessica lived in an injurious environment due to domestic violence between respondents. The report alleged that respondent-father had entered the respondent-mother's home while intoxicated and assaulted her. Respondent-mother was observed to have several injuries, including bleeding from both nostrils, a swollen upper lip, a contusion to her lip, and a three-inch-long scratch on the right side of her neck, under her jawline. Respondent-mother told law enforcement that respondent-father hit her with "maybe like a backhand type of thing." Law enforcement officers stated that they could smell alcohol on respondent-father's breath, that he was acting in an aggressive manner and making inflammatory statements, and that they eventually tasered him in order to effectuate his arrest.

1. The minor children J.J.B. and J.D.B. will be referred to throughout this opinion as "John" and "Jessica," which are pseudonyms used to protect the identity of the juveniles and for ease of reading.

On 26 July 2016, social workers interviewed John and Jessica, and the children reported seeing respondent-father push his way into their home and hit respondent-mother. John and Jessica told the social worker that respondent-mother was screaming and yelling, they were scared, and Jessica was crying. They stated that police were called to the home, and respondent-father was taken to jail.

On 29 July 2016, a Team Decision Making meeting was held, and both respondents were present. Respondent-father denied the allegations and stated that he did not remember much of what happened. Respondent-father entered into a safety agreement in which he agreed to have no contact with the juveniles unless supervised by the paternal grandmother. Respondent-father also agreed to complete a substance abuse assessment and follow all recommendations and attend a domestic violence intervention program.

On 9 September 2016, social workers met with the juveniles' older siblings. Social workers asked them if they had seen respondent-father, and they reported having seen him on three occasions since school began on 29 August 2016, in violation of the safety agreement. Social workers also learned that the family was residing with respondent-father's sister. Social workers then visited John and Jessica at school, and they also reported having seen respondent-father.

On 23 September 2016, DHHS filed a petition alleging that John and Jessica were neglected and dependent juveniles. In addition to the events outlined in the CPS report, DHHS alleged that respondent-mother had a CPS history which included reports of sexual abuse involving John and Jessica's older siblings, substance abuse issues, and domestic violence. DHHS also alleged that respondent-mother had a criminal history which included multiple drug-related charges. DHHS further claimed that respondent-father had numerous drug-related convictions and charges and had pending misdemeanor criminal charges, including possession of marijuana paraphernalia, resisting a public officer, disorderly conduct, and assault on a female. DHHS stated that no suitable relative had been identified for placement of the juveniles, and it was contrary to the juveniles' safety and best interests to remain in the custody of either respondent. Accordingly, DHHS obtained nonsecure custody of the juveniles and placed them in a group home.

On 5 January 2017, the trial court adjudicated John and Jessica neglected and dependent juveniles. Respondent-mother was ordered to comply with her case plan, which included: completing a psychological evaluation and following all recommendations; participating in

a domestic violence victims' group; obtaining and maintaining appropriate housing and employment; and completing a parent assessment and training program and following all recommendations. Respondent-father was also ordered to enter into a case plan with DHHS, and a meeting was scheduled for him to do so. Respondent-father subsequently entered into a case plan, which included: completing a psychological evaluation and substance abuse assessment and following all recommendations; participating in a domestic violence intervention program; obtaining and maintaining appropriate housing and employment; and completing a parent assessment and training program and following all recommendations. Both respondents were granted separate, supervised visitation. On 8 February 2017, the trial court set the permanent plan for the juveniles as reunification with a concurrent plan of adoption.

On 15 September 2017, John and Jessica were placed in a licensed foster home after a disrupted trial home placement with respondent-mother. In a permanency planning review order entered on 9 May 2018, the trial court found that respondents were not making adequate progress, were minimally participating and cooperating with DHHS and the guardian ad litem for the juveniles, and were acting in a manner inconsistent with the juveniles' health and safety. The trial court changed the primary permanent plan for the juveniles to adoption with a secondary permanent plan of reunification. The trial court further ordered DHHS to proceed with filing a petition to terminate respondents' parental rights.

On 29 August 2018, DHHS filed a motion to terminate respondents' parental rights on the grounds of neglect, willful failure to make reasonable progress, failure to pay support, and dependency. *See* N.C.G.S. § 7B-1111(a)(1)–(3), (6) (2017).[2] On 8 April 2019, the trial court entered an order in which it determined grounds existed to terminate respondent-father's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1)–(3), but dismissed the allegation as to N.C.G.S. § 7B-1111(a)(6). The trial court further determined that grounds existed to terminate respondent-mother's parental rights as alleged in the motion. The trial court also concluded it was in John's and Jessica's best interests that both respondents' parental rights be terminated. Accordingly, the trial court terminated their parental rights. Both respondents appeal.

Respondents argue on appeal that the trial court erred when it determined termination of their parental rights was in John's and Jessica's

2. This statute was amended in non-pertinent part effective 1 October 2018 by N.C. Session Laws 2018-47, § 2 (June 22, 2018).

best interests. We conclude that the trial court's ruling was not an abuse of discretion.

A termination-of-parental-rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2019); *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). If, during the adjudicatory stage, the trial court finds grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), it proceeds to the dispositional stage where it must "determine whether terminating the parent's rights is in the juvenile's best interest" based on the following factors:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a) (2019).

Both respondents initially argue that this Court should utilize a *de novo* standard of review on appeal, rather than an abuse of discretion standard, and that under such review it would be clear that terminating their parental rights is not in John's and Jessica's best interests. However, this Court recently "reaffirm[ed] our application of an abuse of discretion standard of review to the trial court's determination of 'whether terminating the parent's rights is in the juvenile's best interest[s.]' " *In re Z.A.M.*, 374 N.C. 88, 99–100, 839 S.E.2d 792, 800 (2020) (quoting N.C.G.S. § 7B-1110(a)). "Under this standard, we defer to the trial court's decision unless it is 'manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.' " *Id.* at 100, 839 S.E.2d at 800 (quoting *Briley v. Farabow*, 348 N.C. 537, 547, 501 S.E.2d 649, 656 (1998)).

In the instant case, in finding of fact 38 the trial court made the following findings concerning the factors set forth in N.C.G.S. § 7B-1110(a):

> a. The age of the juveniles: [John and Jessica] are seven years, and seven months old.

b. The likelihood of adoption for the juveniles is high. The juveniles are placed in a preadoptive home. [John and Jessica] are young and healthy with great personalities.

c. The primary permanent plan for the juveniles is adoption. Termination of parental rights of each parent is necessary in order to free the juveniles for adoption and accomplish the permanent plan for the juveniles. The termination of [respondents'] parental rights will allow the juveniles to be legally free to be adopted and have the permanence they crave.

d. There is a strong bond between the juveniles and [respondents]. The juveniles enjoy spending time with [respondents] and respond positively to all visits. [Respondents] have a deep love for the juveniles and care for them.

e. The juveniles have a very strong bond with their current caregivers, even though they were just placed in this home three months ago. The juveniles seek comfort, advice and support from their current caregivers. [John] describes this placement as his home. [Jessica] calls the preadoptive parents "mom" and "dad". The juveniles and preadoptive parents say their prayers together and the juveniles look to the preadoptive parents to meet their emotional needs. On January 31, 2019, [the social worker] went to the foster home to complete a routine monthly visit. The juveniles were terrified that they were going to be moved from this home and ran to the foster mother for protection.

f. The [c]ourt considers as relevant the time the juveniles have been in foster care, the number of placements the juveniles have been placed in, and that the juveniles are thriving in the[ir] current foster/preadoptive home. [John's] mental health behaviors have decreased, [Jessica] is eating more, and her medical condition of psoriasis has improved. Although the juveniles and [respondents] are bonded to one another, neither parent is in a position to provide adequate care and supervision to the juveniles as of today's hearing, nor are they likely to within the reasonably foreseeable future. [Respondents] have had more than sufficient time to address the needs that led to removal of the juveniles.

We review the trial court's dispositional findings of fact to determine whether they are supported by competent evidence. *In re K.N.K.*, 374 N.C. 50, 57, 839 S.E.2d 735, 740 (N.C. 2020). Dispositional findings not challenged by respondents are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019) (citations omitted).

The sole finding challenged on appeal is finding of fact 38(e). Respondent-father argues that the evidence did not support the trial court's finding of fact that John and Jessica have a "very strong bond" with their foster parents. However, the juveniles' guardian ad litem testified at the termination hearing that John and Jessica were "quite bonded" to their caregivers. The guardian ad litem testified that John was "very comfortable and . . . very talkative and affectionate" towards his caregivers. The guardian ad litem witnessed John refer to his caregivers as "mom and dad" when saying his prayers. Jessica was described as being "very playful with [the caregivers] and . . . also very comfortable and jumping on backs to go up the steps[.]" In addition to the guardian ad litem's testimony, the foster care social worker testified that John and Jessica were "terrified" that they would be moved out of their foster home. The social worker testified that at one point, Jessica "literally hopped on [the] foster mom and would not let go of her and [John] was right on the side of her."

Respondent-father claims that while petitioner did produce some evidence of a bond between John and Jessica and their caregivers, it was inadequate to support the trial court's finding in light of the brief period of time they had been placed with the caregivers. Nevertheless, the above testimony permits the reasonable inference that John and Jessica were "very bonded" to their foster parents. *See In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167–68 (2016) (stating that it is the trial judge's duty to consider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn therefrom); *see also Scott v. Scott*, 157 N.C. App. 382, 388, 579 S.E.2d 431, 435 (2003) (stating that when the trial court sits as fact-finder, it is the sole judge of the credibility and weight to be given to the evidence, and it is not the role of the appellate courts to substitute its judgment for that of the trial courts).

Respondent-father additionally contends that the trial court failed to consider the effect permanent severance would have on the juveniles in light of the uncertainty that their current caregivers would adopt them. Respondent-father claims that, should there be no adoption, the effect of terminating respondents' parental rights would be to render John and

Jessica "legal orphan[s]." *In re J.A.O.*, 166 N.C. App. 222, 227, 601 S.E.2d 226, 230 (2004).

*In re J.A.O.* is distinguishable from the instant case. In *In re J.A.O.*, the juvenile had "a history of being verbally and physically aggressive and threatening, and he ha[d] been diagnosed with bipolar disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, borderline intellectual functioning, non-insulin dependent diabetes mellitus, and hypertension." *Id.* at 228, 601 S.E.2d at 230. The juvenile had "been placed in foster care since the age of eighteen months and ha[d] been shuffled through nineteen treatment centers over the last fourteen years." *Id.* at 227, 601 S.E.2d at 230. As a result, the guardian ad litem argued at trial that the juvenile was unlikely to be a candidate for adoption, and termination was not in the juvenile's best interests, because it would "cut him off from any family that he might have." *Id.* Despite this evidence, and despite finding that there was only a "small possibility" that the juvenile would be adopted, the trial court concluded that it was in the juvenile's best interests that the mother's parental rights be terminated. *Id.* at 228, 601 S.E.2d at 230. On appeal, the Court of Appeals reversed. The Court of Appeals balanced the minimal possibilities of adoption "against the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring" and determined that rendering *J.A.O.* a legal orphan was not in his best interests. *Id.*

Here, the evidence does not show that John or Jessica have the serious issues the juvenile had in *In re J.A.O.* The only basis for respondent-father's contention is mere speculation that because John and Jessica had been placed with their caregivers for a relatively short time, issues could arise after a "honeymoon" period, and there was no evidence of record as to why previous placements failed for John and Jessica. However, unlike the juvenile in *In re J.A.O.*, John and Jessica are in a preadoptive placement, and the trial court made an unchallenged finding that John and Jessica are highly adoptable. Additionally, while the mother in *In re J.A.O.* had made reasonable progress towards correcting the conditions which led to the removal of her son from her care, respondents here failed to make such progress. Instead, the trial court found at disposition that respondents were not in a position to provide adequate care for the juveniles and were unlikely to be able to do so for the foreseeable future. Consequently, we conclude that respondent-father's argument is without merit.

Both respondents argue that the trial court should not have terminated their parental rights in light of the strong bond they had with John

and Jessica. The trial court did find that John and Jessica had a strong bond with respondents and that respondents deeply loved their children. However, "the bond between parent and child is just one of the factors to be considered under N.C.G.S. § 7B-1110(a), and the trial court is permitted to give greater weight to other factors." *In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 66. Here, when considering the other factors set forth in N.C.G.S. § 7B-1110(a), the trial court found: that John and Jessica also had a strong bond with their foster parents; there was a strong likelihood of adoption; and termination of respondents' parental rights would aid in the permanent plan of adoption. The trial court also found that, when considering other relevant factors, John and Jessica were "thriving" in their preadoptive home. Furthermore, the trial court found the juveniles craved permanence, but respondents were not in a position to provide care for the juveniles, nor were they likely to be able to do so for the foreseeable future. Therefore, we conclude the trial court appropriately considered the factors set forth in N.C.G.S. § 7B-1110(a) when determining John's and Jessica's best interests and that the trial court's determination that respondents' strong bond with John and Jessica was outweighed by other factors was not manifestly unsupported by reason.

Respondents further argue that, given the strong bond between themselves and John and Jessica, the trial court should have considered other dispositional alternatives, such as guardianship. The GAL argues that this claim was abandoned because neither parent asked the trial court to consider guardianship as an alternative. More fundamentally, the paramount consideration must always be the best interests of the child. As we explained in *Z.L.W.*,

> [w]hile the stated policy of the Juvenile Code is to prevent "the unnecessary or inappropriate separation of juveniles from their parents," N.C.G.S. § 7B-100(4) (2017), we note that "the best interests of the juvenile are of paramount consideration by the court and . . . when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a *safe, permanent home within a reasonable amount of time*," *id.* § 7B-100(5) (2017) (emphasis added); *see also In re Montgomery*, 311 N.C. at 109, 316 S.E.2d at 251 (emphasizing that "the fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody [is] that the best interest of the child is the polar star").

*Id.* (alterations in original). Consequently, in *Z.L.W.*, we held the trial court did not abuse its discretion in determining termination, rather

than guardianship, was in the best interests of the juveniles. *Id.* In the instant case, as in *In re Z.L.W.*, the trial court's findings of fact demonstrate that it considered the dispositional factors set forth in N.C.G.S. § 7B-1110(a) and "performed a reasoned analysis weighing those factors." *In re Z.A.M.*, 374 N.C. at 101, 839 S.E.2d at 801. Accordingly, "[b]ecause the trial court made sufficient dispositional findings and performed the proper analysis of the dispositional factors," *id.*, we conclude the trial court did not abuse its discretion by concluding that termination, rather than guardianship, was in John's and Jessica's best interests.

Both respondents lastly argue that the trial court erred by terminating their parental rights because statements made by the trial judge at the conclusion of the termination hearing demonstrated that, in fact, termination was not in John's and Jessica's best interests. After ruling that termination of respondents' parental rights was in the juveniles' best interests, the trial court made the following statement:

> THE COURT: I will say this: this is not part of the order and you may be thinking maybe it's out of order, but I understand the pre-adoptive placement parents are here, –
>
> MS. GERSHON: Yes.
>
> THE COURT: – so I hope that even though parental rights have been terminated in this case, we've heard how much these children love their parents, but I hope that maybe there'll be found some ways to honor that. I'm not going to say anything more specific. I guess it's really not my place to, but to continue to honor that relationship despite the order from today's hearing.

Respondent-father asserts that the trial court's statement communicates "its belief that the children will [be] better off with being able to love their parents and by being loved by their parents." Respondent-father argues that the trial court's desire in this regard is inconsistent with its decision to terminate their parental rights.

As is clear from the context, the trial court's statement to the caregivers that they should "honor" the relationship between respondents, John, and Jessica was advice to the prospective adoptive parents, not a repudiation of the ruling just announced from the bench. Even assuming *arguendo* that the trial court had the authority to do so, the trial court's written order contains no decree that the caregivers continue the juveniles' relationship with respondents. *See*, *e.g.*, *In re A.U.D.*, 373 N.C. 3, 10, 832 S.E.2d 698, 702 (2019) (concluding that the trial court's oral

findings are subject to change before the final order was entered, and there was no error "based merely on the fact that there were differences between the findings orally rendered at the hearing and those set forth in the written order."); *see also* N.C.G.S. § 1A-1, Rule 58 (2019) (stating that "a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court"). In fact, the trial court specifically stated that the comments were not a part of its order. Additionally, the trial court's order indicates its awareness of the effect of termination by acknowledging that its "[o]rder completely and permanently terminate[d] all rights and obligations of [respondents] to the juveniles." *See* N.C.G.S. § 7B-1112 (2019) (providing that an order terminating parental rights "completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship").

We therefore hold the trial court's conclusion that termination of respondents' parental rights was in John's and Jessica's best interests did not constitute an abuse of discretion. Accordingly, we affirm the trial court's order terminating respondents' parental rights.

AFFIRMED.

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IN THE MATTER OF J.O.D.

No. 298A19

Filed 17 July 2020

**1. Termination of Parental Rights—grounds for termination—neglect—substance abuse—probability of future neglect**

The trial court properly terminated a father's parental rights after concluding that there existed a high probability of future neglect of the child based on the father's persistent substance abuse issues and domestic discord in the home. The findings of fact in support of that conclusion were in turn supported by clear, cogent, and convincing evidence.

**2. Termination of Parental Rights—no-merit brief—neglect—willful failure to make reasonable progress**

The trial court's termination of a mother's parental rights—based on neglect and leaving her child in a placement outside the home without making reasonable progress to correct the conditions

that led to his removal—was affirmed where her counsel filed a no-merit brief and the order was based on clear, cogent, and convincing evidence supporting the statutory grounds for termination.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 17 May 2019 by Judge J.H. Corpening II in District Court, New Hanover County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but determined on the records and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Jennifer G. Cooke for petitioner-appellee New Hanover County Department of Social Services.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for Guardian ad Litem.*

*Sydney Batch, for respondent-appellant mother.*

*Anné C. Wright for respondent-appellant father.*

DAVIS, Justice.

In this case, we consider whether the trial court erred by terminating the parental rights of respondent-father and respondent-mother (collectively, respondents) to J.O.D. (Joshua).[1] We conclude that the trial court made sufficient findings of fact, which were supported by clear, cogent, and convincing evidence, to support its conclusion that grounds existed to terminate respondent-father's parental rights on the basis of neglect. Respondent-mother's counsel has filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We are satisfied that the issues identified by counsel in respondent-mother's brief lack merit. Accordingly, we affirm the trial court's order terminating respondents' parental rights.

**Factual and Procedural Background**

Respondents are the parents[2] of Joshua, who was born on 12 November 2017. On 5 December 2017, New Hanover County Department of Social

1. A pseudonym is used throughout this opinion to protect the identity of the juvenile.

2. The trial court found that although no father was listed on Joshua's birth certificate and no paternity testing was performed, respondent-father had never denied that

Services (DSS) obtained nonsecure custody of Joshua and filed a juvenile petition in District Court, New Hanover County, alleging that he was a neglected juvenile. The petition alleged that: (1) Joshua's meconium tested positive for cocaine and methadone and that he had been treated with morphine and clonidine for withdrawal shortly after his birth; (2) respondent-mother had consistently tested positive for barbiturates, cocaine, and methadone prior to Joshua's birth and admitted to consistent heroin use during her pregnancy; (3) respondent-father admitted to having an opiate addiction for the past ten years; and (4) on 21 November 2017, respondent-mother tested positive for methadone, cocaine, benzoylecgonine, and norcocaine, and respondent-father tested positive for methadone, benzoylecgonine, cocaine, cocaethylene, morphine, norcocaine, and heroin.

On 14 February 2018, the trial court entered an order adjudicating Joshua to be a neglected juvenile. The trial court ordered respondent-mother to comply with the terms of a family services agreement by: (1) engaging in a substance abuse program and complying with any and all recommended services; (2) completing a comprehensive clinical assessment and complying with any and all recommendations; (3) submitting to random drug screens as requested by DSS and the guardian *ad litem* (GAL); (4) completing a parenting education program and demonstrating the skills that she had learned during her interactions with Joshua; and (5) maintaining verifiable employment and housing.

Respondent-father was also ordered to comply with the terms of a family services agreement by: (1) engaging in a substance abuse program and complying with any and all recommended services; (2) submitting to random drug screens as requested by DSS and the GAL; (3) completing a parenting education program and demonstrating the skills that he had learned during his interactions with Joshua; and (4) maintaining verifiable employment and housing. Joshua remained in DSS custody following the 14 February 2018 order.

Following a hearing on 18 October 2018, the trial court entered a permanency planning order on 9 November 2018. The trial court found that respondents had been participating in DSS's Intensive Reunification Program (IRP) and were initially successful. However, in July 2018, respondents were discharged from the program due to their continued drug use and failure to consistently engage in services required for the program. Respondents' overnight visits with Joshua were suspended on

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Joshua was his biological son and respondent-mother had never named any other male as Joshua's putative father.

9 June 2018 due to positive drug screens, and they were given the option of weekly supervised visitation for two hours.

Respondent-mother had maintained housing and obtained employment. However, she had failed both to engage in required counseling since 26 June 2018 and to participate in recommended relapse prevention group services since June 2018. Respondent-mother, who admitted to relapsing, submitted to seven drug screens from June to August of 2018, all of which showed positive results for cocaine, and failed to submit to random drug screens requested by DSS on five occasions in July, September, and October of 2018.

The trial court further found that respondent-father had maintained housing and was receiving social security disability benefits. He had not participated in counseling since 7 August 2018, and he had failed to participate in recommended relapse prevention group services since July 2018. He also admitted to relapsing, testing positive for cocaine on four occasions between June and August of 2018 and testing positive for marijuana and amphetamines on 2 October 2018. Respondent-father failed to submit to drug screens requested by DSS on seven occasions from June to October of 2018. The trial court changed the permanent plan to adoption with a concurrent plan of reunification and ordered DSS to file a petition to terminate respondents' parental rights within sixty days.

On 2 January 2019, DSS filed a petition to terminate respondents' parental rights, alleging that they had neglected Joshua and that such neglect was likely to reoccur if he were returned to respondents, *see* N.C.G.S. § 7B-1111(a)(1) (2019), and that they had willfully left Joshua in foster care or a placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to his removal, *see* N.C.G.S. § 7B-1111(a)(2).

Following a hearing held from 15 April to 17 April 2019, the trial court entered an order on 17 May 2019 concluding that both grounds alleged in the petition existed so as to warrant the termination of respondents' parental rights. The trial court also determined that it was in Joshua's best interests that respondents' parental rights be terminated. *See* N.C.G.S. § 7B-1110(a) (2019). Respondents gave notice of appeal to this Court pursuant to N.C.G.S. § 7B-1001(a1)(1).

## Analysis

### I. Respondent-Father's Appeal

**[1]** On appeal, respondent-father contends that the trial court erred in concluding that there was a likelihood of future neglect of Joshua by him

and that he did not make reasonable progress to correct the conditions that led to Joshua's removal. *See* N.C.G.S. § 7B-1111(a)(1)–(2). Because only one ground is necessary to support a termination of parental rights, we address respondent-father's arguments as they relate to the ground of neglect. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982) ("If either of the . . . grounds aforesaid is supported by findings of fact based on clear, cogent and convincing evidence, the order appealed from should be affirmed."); *see also* N.C.G.S. § 7B-1111(a) ("The court may terminate the parental rights upon a finding of one or more [grounds for termination.]").

Our Juvenile Code provides for a two-step process for the termination of parental rights—an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2019). During the adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more grounds for termination under section 7B-1111(a). N.C.G.S. § 7B-1109(e), (f). If the trial court finds that a ground exists for termination, the matter proceeds to the dispositional stage, at which point the trial court must "determine whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a).

We review a trial court's adjudication "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The trial court's conclusions of law are reviewable de novo on appeal. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (citing *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009)).

Subsection 7B-1111(a)(1) allows for the termination of parental rights if the trial court finds that the parent has neglected his or her child to such an extent that the child fits the definition of a "neglected juvenile" under N.C.G.S. § 7B-101(15). N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is statutorily defined, in pertinent part, as a juvenile "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C.G.S. § 7B-101(15) (2019).

Generally, "[t]ermination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination

hearing." *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016) (citing *In re Ballard*, 311 N.C. 708, 713–15, 319 S.E.2d 227, 231–32 (1984)). However, "if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent." *Id.* at 843, 788 S.E.2d at 167. When determining whether future neglect is likely, "the trial court must consider all evidence of relevant circumstances or events which existed or occurred *either before or after* the prior adjudication of neglect." *In re Ballard*, 311 N.C. at 716, 319 S.E.2d at 232–33. "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *Id.* at 715, 319 S.E.2d at 232.

In its termination order, the trial court found that Joshua was adjudicated to be a neglected juvenile on 17 January 2018 and determined that "[r]epetition of neglect is certain given [respondents'] lack of sobriety." The trial court made the following pertinent findings of fact in support of its conclusion that grounds existed to terminate respondent-father's parental rights under N.C.G.S. § 7B-1111(a)(1): Before Joshua was born, respondent-father had struggled with an opiate addiction for several years. Joshua was born in November 2017 at thirty-three weeks gestation, and his meconium tested positive for cocaine and methadone. On 13 November 2017, DSS received a report and initiated an investigation due to concerns about respondents' substance abuse. On 21 November 2017, respondent-father tested positive for methadone, benzoylecgonine, cocaine, cocaethylene, morphine, norcocaine, and heroin, and respondent-mother tested positive for methadone, cocaine, benzoylecgonine, and norcocaine. Respondent-father's case plan included participating in substance abuse treatment, completing parenting classes, and obtaining and maintaining appropriate and stable housing and verifiable income.

The trial court further found that in January 2018, respondent-father completed the Substance Abuse Intensive Outpatient Program (SAIOP) at Coastal Horizons Center, Inc. On 23 January 2018, respondents were accepted into DSS's IRP. Initially, they were actively engaged in the program and complied with recommended services by engaging in substance abuse treatment, medication management, and daily methadone dosing; by participating in weekly therapy; and by working with a parenting coach and demonstrating the skills that they had learned during their interactions with Joshua. Due to their progress with their case plans, on 26 April 2018, respondents' visitation was expanded to include three unsupervised overnight visits. However, on 30 May 2018,

respondent-father tested positive for benzoylecgonine, cocaine, cocaethylene, and norcocaine, and, on 1 June 2018, he tested positive for cocaine. He denied using controlled substances and offered multiple explanations for the positive results. Respondent-mother also tested positive for benzoylecgonine, cocaine, norcocaine, and cocaine metabolite on 30 May 2018.

Respondents' level of compliance with the IRP began to wane in June 2018. They missed multiple parental coaching sessions, sessions with their counselor, and visits with Joshua. On 8 June 2018, respondents admitted to relapsing and to continued use of controlled substances. Due to repeated positive drug screens and their failure to appropriately address their substance abuse concerns, respondents' overnight visits with Joshua were suspended on 9 June 2018, and respondents were discharged from the IRP on 25 July 2018.

The trial court also found that on 23 October 2018, respondent-father completed an updated comprehensive clinical assessment, which resulted in diagnoses of cannabis, alcohol, anxiolytic, cocaine, and opioid use disorders. It was recommended that he re-engage in SAIOP and participate in community support and twelve-step support groups. It was further recommended that he engage in individual and group therapy for maintenance of relapse prevention and recovery after his completion of SAIOP.

From 26 October 2018 to 14 December 2018, respondent-father attended seventeen out of twenty-three SAIOP group sessions. After reporting that he could no longer sit down for the entirety of the three-hour group sessions due to ongoing physical issues with his multiple sclerosis, a modified schedule was presented to respondent-father on 16 January 2019, which included attending a relapse prevention group one time per week for one hour, a support group meeting one time per week for one hour, and an individual counseling session once per month for one hour. By the time of the termination hearing in mid-April, respondent-father had only attended three group sessions and three individual sessions.[3]

The trial court made detailed findings regarding the results of respondent-father's drug tests. On 11 January 2019, respondent-father's underarm hair follicles tested positive for cocaine metabolite

3. While finding of fact 31 states that respondent-father attended only "two group sessions," it lists three separate dates. The testimony at the termination hearing demonstrates that respondent-father attended three group sessions.

benzoylecgonine, cocaine, cocaethylene, and norcocaine, and, on 15 February and 7 March 2019, his underarm hair follicles tested positive for cocaine metabolite benzoylecgonine, cocaine, and cocaethylene. The trial court found that hair screens using underarm hair were "not equivalent to hair screens using head hair" because while hair removed from the scalp would show "three months of use assuming one half inch hair growth per month[,]" hair removed from the underarm "could show use within one year as the blood supply is not as abundant."

On 15 February 2019, respondent-mother informed a social worker that respondent-father was excessively drinking alcohol, and respondent-father tested positive for alcohol on 4 March, 11 March, 14 March, 18 March, and 12 April 2019 with "high levels of alcohol in his system." The trial court found that respondent-father did not appreciate the "gravity of his drinking problem" and did not "accept that he has an alcohol addiction."

On 27 February 2019, respondent-mother made allegations of domestic violence perpetrated by respondent-father. On 15 March 2019, respondent-father was ordered to complete the Domestic Violence Offender Program as part of his case plan, but he had failed to initiate the program at the time of the termination hearing. Despite the "current discord in the home" and respondents' insistence that they were separated, respondents remained in an ongoing relationship.

In his brief, respondent-father does not dispute the trial court's prior adjudication of neglect. Rather, he challenges several of the trial court's findings of fact as unsupported by clear, cogent, and convincing evidence and the trial court's conclusion of law that there was a "high probability that the neglect will continue in the foreseeable future." We address his contentions in turn.

**A. Findings of Fact**

Respondent-father argues that the portion of finding of fact 36 that states he showed "high" levels of alcohol in his system is not supported by the evidence and is contradicted by the portion of finding of fact 35, which provides that "[i]t is not possible to quantify the amount of alcohol . . . included in the levels identified." Respondent-father asserts that the word "high" should be stricken from finding of fact 36. We disagree.

In finding of fact 34, which has not been challenged, the trial court listed the results of respondent-father's random drug screens conducted from 19 November 2018 to 18 March 2019. During that testing, respondent-father tested positive for EtG and EtS with levels greater than

25,000 ng/ml on 4, 11, 14, and 18 March 2019. Daniel Shapiro, a physician's assistant and the lead clinician at Medac Corporate Health, testified at the termination hearing that "EtG and EtS is our 80-hour alcohol test. It picks up alcohol in the system in the urine up to 80 hours after the use of alcohol." The "[c]ut-off" level for the detection of EtG is 500 ng/ml and 100 ng/ml for EtS. The following exchange took place at the termination hearing between counsel for respondent-father and Mr. Shapiro:

> Q. So there's a — there's a possibility as far as the EtG and the EtS amounts are concerned with my client specifically, like, it's possible that he could have one beer every day and they could result in the numbers that he has. Or he could have three beers in one setting. And, I mean, you can't — I guess the point is you can't distinguish whether it's one or the other?
>
> A. I can't say for sure. You have to, you know, talk to a physiologist to get that answered.
>
> Q. Right.
>
> A. But I — I can say that the 25,000 is a high level. It is.
>
> . . . .
>
> A. We have had positive EtG and EtS levels periodically throughout time and I don't see too many that high.

This testimony supports the trial court's finding that although it was not possible to quantify the number of alcoholic drinks respondent-father had consumed in order for his levels to read greater than 25,000 ng/ml for EtG and EtS, Mr. Shapiro considered EtG and EtS levels greater than 25,000 ng/ml to constitute a "high" level. The portions of findings of fact 35 and 36 at issue are therefore not mutually exclusive. Clear, cogent, and convincing evidence exists to support the challenged portion of finding of fact 36.

Next, respondent-father challenges the portion of finding of fact 60 providing that "[r]espondent-[p]arents obtained and maintained independent housing . . . [in] Wilmington, North Carolina throughout the case. They continue residing in the home." At the termination hearing, respondents testified that respondent-mother had moved out of the house in February 2019. Yet, unchallenged finding of fact 57 establishes that on 14 March 2019, DSS visited respondent-father's home to see if respondent-mother continued to live in the home and discovered that respondent-mother was present. A DSS foster care social worker

testified that a week prior to the termination hearing, she "stopped by the home" and respondent-mother's belongings were still in the home. At the termination hearing, respondent-father testified that respondent-mother's name was on the lease to the residence and that he had not yet removed her name from the lease. When asked if respondent-mother was "still contributing to the bills" at the house, respondent-father answered "[s]he tries."

Based on the foregoing, the trial court made the reasonable inference that respondents continued to live together at the time of the termination hearing. *See In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167–68 (stating that it is the trial court's duty to consider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn therefrom). Although there was record evidence that would have supported a contrary decision, "this Court lacks the authority to reweigh the evidence that was before the trial court." *In re A.U.D.*, 373 N.C. 3, 12, 832 S.E.2d 698, 704 (2019); *see also In re Montgomery*, 311 N.C. at 110–11, 316 S.E.2d at 252–53 ("[O]ur appellate courts are bound by the trial courts' findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.").

Respondent-father also argues that finding of fact 58 is not supported by clear, cogent, and convincing evidence. Finding of fact 58 states that respondents "are consistently seen together at Coastal Horizons for their daily doses [of methadone]. Caitlyn Garner and Kelly Long have seen them together consistently since their claims to be apart." However, this finding of fact is not necessary to affirm the trial court's conclusion that grounds existed under N.C.G.S. § 7B-1111(a)(1) to terminate respondent-father's parental rights, and we therefore decline to address it. *See In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) ("[W]e review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." (citing *In re Moore*, 306 N.C. at 404, 293 S.E.2d at 133)).

**B. Conclusions of Law**

Respondent-father also argues that the trial court's determination that there was a "high probability that the neglect will continue in the foreseeable future" and its determination that DSS had established the grounds alleged in the petition to terminate respondent-father's parental rights were not supported by sufficient evidence and competent findings of fact. We are not persuaded.

As an initial matter, respondent-father correctly notes that the trial court's determination that neglect is likely to reoccur if Joshua was returned to his care is more properly classified as a conclusion of law. *See In re S.D.*, 839 S.E.2d 315, 330 (N.C. 2020). The determination that DSS established the grounds alleged in the petition to terminate respondent-father's parental rights is likewise a conclusion of law. *See id.* Although the trial court labeled these conclusions of law as findings of fact, "findings of fact [which] are essentially conclusions of law . . . will be treated as such on appeal." *State v. Sparks*, 362 N.C. 181, 185, 657 S.E.2d 655, 658 (2008) (alterations in original) (citation omitted).

In the present case, the trial court's conclusion of law that there was a high likelihood of a repetition of neglect if Joshua was returned to respondent-father's care is supported by the following factual findings, which are either unchallenged—and therefore binding on appeal—or supported by clear, cogent, and convincing evidence as discussed above: respondent-father relapsed in May 2018; he failed to successfully complete SAIOP after re-engaging with the program in October 2018; he failed to appreciate the gravity of his alcohol problem and to accept that he had an alcohol addiction; he did not engage in the Domestic Violence Offender Program; he made a choice to remain in a relationship with and to live with respondent-mother, who continued to struggle with addiction; and there was current domestic discord in the home between respondents.

In reaching its conclusion, the trial court relied heavily on respondent-father's lack of sobriety. Respondent-father asserts that he "overcame years of substance abuse and addiction" when Joshua was born, "took responsibility" for his relapse and re-engaged in substance abuse treatment, and "maintained his sobriety for a considerable period of time." While we recognize respondent-father's initial progress from the end of January until May of 2018—during which he actively engaged in the IRP and complied with recommendations received from his comprehensive clinical assessments—the evidence and findings of fact establish that he had failed to make meaningful progress in addressing his addiction issues by the time of the termination hearing. *See In re M.A.W.*, 370 N.C. 149, 154–55, 804 S.E.2d 513, 517–18 (2017) (holding that a respondent's failure to comply with the terms of his case plan with respect to addressing ongoing substance abuse issues—along with other relevant findings of fact—supported the trial court's decision to terminate the respondent's parental rights on the basis of neglect).

The trial court was entitled to conclude that based upon respondent-father's long history of substance abuse, his relapse in May 2018,

his failure to follow the recommendations of his updated comprehensive clinical assessment, and his failure to appreciate the gravity of his alcohol use and to accept that he had an alcohol addiction, there was a probability that there would be a repetition of neglect based on his lack of sobriety. *See In re J.A.M.*, 372 N.C. 1, 9, 822 S.E.2d 693, 698–99 (2019) (quoting *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999)) (stating that in neglect cases involving newborns, "the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future . . . neglect of a child based on the historical facts of the case").

The trial court's findings of fact demonstrate that respondent-father completed an updated comprehensive clinical assessment on 23 October 2018, in which he was diagnosed with, among other things, alcohol use disorder. It was recommended that he re-engage in SAIOP. To accommodate his needs arising out of his issues with multiple sclerosis, a modified schedule was offered to him in January 2019, which required him to attend a relapse prevention group one time per week for one hour, attend a support group meeting one time per week for one hour, and attend an individual counseling session once per month for one hour. By the time of the termination hearing, he had attended only three group sessions and three individual sessions.

The trial court's findings of fact further show that respondent-father tested positive for cocaine on 11 January, 15 February, and 7 March 2019. But because the hair source was his underarm hair, the trial court found that "[h]air removed from under the arm could show use within one year." Although the results of these tests could not conclusively establish that respondent-father was using cocaine at the time of the termination hearing, respondent-father tested positive for alcohol on 4, 11, 14, and 18 March 2019, showing "high levels of alcohol in his system." Respondent-father also tested positive for alcohol at Coastal Horizons Center, Inc. on 12 April 2019, just days before the termination hearing. The trial court found that because respondent-father suffered from hepatitis C, "alcohol use could kill him." Nevertheless, he failed to "accept that he has an alcohol addiction" and to "appreciate the gravity of his drinking problem."

Respondent-father argues that the fact that he "has drank alcohol is not sufficient by itself to support a determination of neglect without proof of an adverse impact on Joshua." In addition to the fact that his argument seeks to minimize the severity of his alcohol addiction, however, he ignores the fact that his alcohol abuse was not the sole factor upon which the trial court's decision was based. As discussed above,

the trial court also considered respondent-father's relapses, his failure to successfully complete SAIOP, his failure to initiate the Domestic Violence Offender Program, his choice to remain in a relationship with and live with respondent-mother, who continued to struggle with addiction issues of her own, and the current domestic discord in the home in concluding that there was a high likelihood of a repetition of neglect.

Respondent-father also argues that the trial court erred in concluding that there was a likelihood of future neglect if Joshua was returned to his care because he demonstrated during his visitations with Joshua that he had "obtained the skills and knowledge necessary to appropriately parent." It is true that findings of fact 15 and 16 demonstrate that when respondents were actively engaged in the IRP, they were working with a parenting coach and demonstrating the skills learned during their interactions with Joshua. Because respondents were showing improvement at the time, on 26 April 2018, visitation was expanded to unsupervised, overnight visits.

Nonetheless, respondent-father fails to take into account the evidence showing that he was unable to sustain this initial progress. Finding of fact 19 demonstrates that respondent-father tested positive for benzoylecgonine, cocaine, cocaethylene, and norcocaine on 30 May 2018 and tested positive for cocaine on 1 June 2018. Respondent-mother tested positive for cocaine, among other substances, near the end of May 2018. Findings of fact 20 and 21 indicate that although DSS had arranged for respondents to participate in the ABC program, they were never able to begin the program due to continued positive drug screens and Joshua not being in the home. Ultimately, on 9 June 2018, respondents' overnight visits were suspended due to the positive drug screens, as reflected in finding of fact 24. Moreover, the trial court found in its 9 November 2018 permanency planning order that despite being offered weekly two-hour supervised visits with Joshua following the suspension of overnight visits, respondents had failed to consistently participate in scheduled visitation.

Finally, respondent-father asserts that the trial court appears to have based its conclusion that there was a likelihood of future neglect "on the failure of [respondent-mother] to appropriately treat her addictions" and that the trial court erred in making this conclusion given that respondent-father "understood and agreed that contact with [respondent-mother] had to be limited unless and until she successfully engaged in treatment for her substance abuse." The trial court's findings of fact recognize that respondent-mother continued to struggle with her addiction and reflect the fact that the trial court considered respondent-father's continuing

relationship with respondent-mother. The trial court noted the "current domestic discord" between respondents. The trial court's findings of fact establish that on 8 March 2019, respondent-mother reported to Joshua's foster parent that respondent-father had "trashed" their home, pushed her, hit her, and threw her belongings out of the home. Due to respondent-mother's continued reports of domestic problems in the home, empowerment classes were added to her case plan and the Domestic Violence Offender Program was added to respondent-father's case plan. Neither respondent-mother nor respondent-father had initiated the programs aimed at addressing these issues. Moreover, respondent-mother admitted to slapping respondent-father in the face, and there was evidence that there had "been frequent and loud disputes" between respondents. There was nothing improper about the trial court relying on this evidence in making its findings of fact.

Furthermore, we are unconvinced that respondent-father "understood and agreed" that contact with respondent-mother had to be limited unless or until she successfully engaged in substance abuse treatment. At the time of the termination hearing, evidence existed—as reflected in the trial court's findings of fact—that respondents continued to live together and maintain a relationship. Findings of fact 56 and 59 establish that at the time of the termination hearing, respondent-mother was two months pregnant with respondent-father's child and, "despite their insistence that they [were] separated[,]" respondents were still in a relationship—having repeatedly told their social worker that they remained a couple. Thus, the trial court was not required to credit respondent-father's testimony that he would separate from respondent-mother in order to regain custody of Joshua. *See In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167–68.

Based on the foregoing, we hold that the trial court did not err by determining that grounds existed under N.C.G.S. § 7B-1111(a)(1) to terminate respondent-father's parental rights. Furthermore, respondent-father does not challenge the trial court's conclusion that termination of his parental rights was in Joshua's best interests. *See* N.C.G.S. § 7B-1110(a). Accordingly, we affirm the trial court's 17 May 2019 order terminating respondent-father's parental rights.

## II. Respondent-Mother's Appeal

**[2]** Respondent-mother's counsel has filed a no-merit brief on her behalf pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. Counsel has advised respondent-mother of her right to file pro se written arguments on her own behalf with this Court, and counsel

has provided her with the documents necessary to do so. However, respondent-mother has not submitted any written arguments.

We independently review issues contained in a no-merit brief filed pursuant to Rule 3.1(e). *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). In her brief, respondent-mother's counsel identified two issues that could arguably support an appeal but stated why she believed both of these issues lacked merit. Based upon our careful review of the issues identified in the no-merit brief in light of our consideration of the entire record, we are satisfied that the trial court's 17 May 2019 order was supported by competent evidence and based on proper legal grounds.

**Conclusion**

For the reasons stated above, we affirm the trial court's order terminating respondents' parental rights.

AFFIRMED.

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IN THE MATTER OF J.S., C.S., D.R.S., D.S.

No. 395PA19

Filed 17 July 2020

**1. Termination of Parental Rights—grounds for termination—failure to make reasonable progress—dependency**

The trial court properly terminated a mother's parental rights to her four children under N.C.G.S. § 7B-1111(a)(2) after finding that the mother made some progress on her family services plan but willfully failed to make reasonable progress in correcting the filthy, hazardous living conditions which led to the children's removal from her home. Furthermore, the trial court did not err in simultaneously finding the mother mentally incapable of parenting her children for purposes of N.C.G.S. § 7B-1111(a)(6) where, according to a psychologist's testimony, the mother's cognitive limitations affected her childrearing abilities but not her ability to clean her home.

**2. Termination of Parental Rights—best interest of child—consideration of factors**

When determining the best interests of a mother's three minor sons, the trial court properly considered each factor in N.C.G.S. § 7B-1110(a) and did not need to enter written factual findings as to

those factors in the absence of conflicting evidence concerning any factor. Moreover, the trial court did not abuse its discretion in concluding that termination of the mother's parental rights was in the children's best interests where all three children were under the age of twelve; the youngest was with a potential adoptive placement and was "100 percent likely" to be adopted; the Department of Social Services had placed the other two in therapeutic foster homes and planned to move them into an adoptive home; and none of the children had a bond with the mother.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 11 July 2019 by Judge Jeanie R. Houston in District Court, Wilkes County, and on writ of certiorari pursuant to N.C.G.S. § 7A-32(b) to review an order entered on 10 September 2018 by Judge William F. Brooks in District Court, Wilkes County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Vannoy, Colvard, Triplett & Vannoy, P.L.L.C., by Daniel S. Johnson, for petitioner-appellee Wilkes County Department of Social Services.*

*Robert C. Montgomery for appellee Guardian ad Litem.*

*Peter Wood for respondent-appellant mother.*

MORGAN, Justice.

Respondent-mother appeals from the trial court's orders terminating her parental rights to the minor children Donald, Jimmy, Charles, and Dora.[1] By order entered on 28 October 2019, this Court granted respondent's petition for writ of certiorari to review the trial court's 10 September 2018 permanency planning order which eliminated reunification with respondent from the children's permanent plans and relieved petitioner Wilkes County Department of Social Services (DSS) from further efforts to reunify respondent with her children. We now affirm the trial court's orders in their entirety.

1. We use pseudonyms chosen by respondent to protect the juveniles' identities and for ease of reading. We note that the trial court also terminated the parental rights of the respective fathers of Donald, Jimmy, and Charles, none of whom are a party to this appeal. Dora's father relinquished his parental rights prior to the institution of these proceedings.

*Factual Background and Procedural History*

On 9 May 2016, DSS obtained nonsecure custody of respondent's children and filed juvenile petitions alleging that they were neglected based on the following:

> Several [Child Protective Services] reports have c[o]me into the Wilkes DSS office . . . with concerns of an injurious environment due to the living conditions [in] the home. The child[ren were] placed into a safety resource placement with the maternal grandmother . . . . Mother was given 10 days to get the home cleaned. The home has not been cleaned up. There is animal feces in every room of the home, clothing is piled up in every room, medications are left out in children's reach, food & garbage is piled up in every room. There is also a concern for improper supervision because the children continue to go back up to the mother's home which places the children in an injurious environment to [their] welfare.

Respondent entered into a DSS family services case plan on 31 May 2016 in which she agreed to (1) obtain a mental health assessment and comply with all treatment recommendations; (2) submit a written explanation of why her children were in DSS custody; (3) complete parenting classes, submit a written report of what she learned, and incorporate those lessons into her interactions with the children; (4) obtain and maintain suitable employment; (5) sign a voluntary support agreement and pay child support; (6) obtain and maintain housing free from safety hazards and otherwise suitable for her children; (7) participate in DSS's In-Home Aide Program and work to address issues identified by the aide; (8) maintain regular contact with her social worker; (9) submit to and pass random drug screens; (10) attend all scheduled visitations with her children; and (11) refrain from illegal activity.

At a hearing on 7 June 2016, respondent stipulated to the allegations in the juvenile petitions filed by DSS and consented to an adjudication of neglect. The trial court entered its "Adjudication and Disposition Order" on 26 July 2016, adjudicating respondent's children to be neglected and maintaining them in DSS custody. On 4 April 2017, the trial court established a primary permanent plan of reunification for each child with a secondary plan of adoption for Dora and Jimmy and a secondary plan of custody with a court-approved caretaker for Donald and Charles. After successive hearings reviewing respondent's progress toward reunification, the trial court entered a permanency planning order on 10 September

2018 that changed each child's primary permanent plan to adoption with a secondary plan of custody with a court-approved caretaker.

DSS filed petitions to terminate respondent's parental rights to the children on 29 November 2018. The trial court held a hearing on the petitions for termination on 3 April 2019 and entered orders terminating respondent's parental rights on 11 July 2019. Respondent filed notices of appeal from the termination orders. This Court subsequently granted respondent's petition for writ of certiorari to review the trial court's 10 September 2018 permanency planning order that eliminated reunification from the children's permanent plans. *See* N.C.G.S. § 7B-1001(a1)(2), (a2) (2019) (prescribing preservation and notice requirements for appeal from an order eliminating reunification as a permanent plan); *see also* N.C. R. App. P. 21(a)(1) (allowing review by writ of certiorari "when the right to prosecute an appeal has been lost by failure to take timely action"). In her brief to this Court, however, respondent does not bring forward any issues related to this 10 September 2018 permanency planning order. *See generally* N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief . . . will be taken as abandoned."). As a result, we have no basis for finding any error in the permanency planning order that was the subject of respondent's petition for writ of certiorari.

In her brief, respondent argues that the trial court erred in adjudicating the existence of grounds to terminate her parental rights under N.C.G.S. § 7B-1111(a). She further contends that the trial court abused its discretion under N.C.G.S. § 7B-1110(a) by concluding that termination of her parental rights was in the best interests of Donald, Jimmy, and Charles.

*Adjudication*

**[1]** "We review a district court's adjudication [under N.C.G.S. § 7B-1111(a)] 'to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.' " *In re N.P.*, 839 S.E.2d 801, 802–03 (N.C. 2020) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)); *see also* N.C.G.S. § 7B-1109(f) (2019). Unchallenged findings of fact "are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). Moreover, we review only those findings needed to sustain the trial court's adjudication. *Id.* at 407, 831 S.E.2d at 58–59.

The issue of whether a trial court's findings of fact support its conclusions of law is reviewed de novo. *See State v. Nicholson*, 371 N.C. 284,

288, 813 S.E.2d 840, 843 (2018). However, an adjudication of any single ground for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order. *In re B.O.A.*, 372 N.C. 372, 380, 831 S.E.2d 305, 311 (2019); *accord In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 132 (1982). Therefore, if this Court upholds the trial court's order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds. *In re C.J.*, 373 N.C. 260, 263, 837 S.E.2d 859, 861 (2020).

In the present case, the trial court concluded that there were four statutory grounds for terminating respondent's parental rights, including her failure to make reasonable progress under N.C.G.S. § 7B-1111(a)(2). Subsection 7B-1111(a)(2) authorizes termination of parental rights if "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C.G.S. § 7B-1111(a)(2) (2019).

We agree with the Court of Appeals that an adjudication under N.C.G.S. § 7B-1111(a)(2) requires that a child be " 'left' in foster care or placement outside the home pursuant to a court order" for more than a year at the time the petition to terminate parental rights is filed. *In re A.C.F.*, 176 N.C. App. 520, 527, 626 S.E.2d 729, 734 (2006). "This is in contrast to the nature and extent of the parent's *reasonable progress*, which is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights." *Id.* at 528, 626 S.E.2d at 735.

We also agree with the Court of Appeals that a finding that a parent acted "willfully" for purposes of N.C.G.S. § 7B-1111(a)(2) "does not require a showing of fault by the parent." *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). " '[A] respondent's prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness "regardless of her good intentions," ' and will support a finding of lack of progress . . . sufficient to warrant termination of parental rights under section 7B-1111(a)(2)." *In re J.W.*, 173 N.C. App. 450, 465–66, 619 S.E.2d 534, 545 (2005) (quoting *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004)), *aff'd per curiam*, 360 N.C. 361, 625 S.E.2d 780 (2006).

"[P]arental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)." *In re B.O.A.*, 372 N.C. 372, 384, 831 S.E.2d 305, 313 (2019). However, in order for a respondent's noncompliance

with her case plan to support the termination of her parental rights, there must be a "nexus between the components of the court-approved case plan with which [the respondent] failed to comply and the 'conditions which led to [the child's] removal' from the parental home." *Id.* at 385, 831 S.E.2d at 314 (quoting N.C.G.S. § 7B-1111(a)(2)); *see also In re Y.Y.E.T.*, 205 N.C. App. 120, 131, 695 S.E.2d 517, 524 (explaining that a "case plan is not just a check list" and that "parents must demonstrate acknowledgement and understanding of why the juvenile entered DSS custody as well as changed behaviors"), *disc. review denied*, 364 N.C. 434, 703 S.E.2d 150 (2010).

We note that the trial court here entered a separate termination order for each of respondent's children. The findings of fact and conclusions of law supporting the trial court's adjudications are essentially identical in each termination order. In order to facilitate our discussion of the salient matters in this case involving all four of the juveniles, we shall refer therefore to the findings of fact and conclusions of law as enumerated in the termination order entered by the trial court in the child Dora's case.

The trial court's adjudicatory findings recount the reasons for the children's removal from respondent's home on 9 May 2016 and their subsequent adjudication by the trial court as neglected. Specifically, the findings of fact describe the filthy and hazardous conditions in respondent's home, respondent's failure to improve those conditions when given time to do so, and respondent's violation of the DSS safety plan by retrieving the children from their placement with the maternal grandmother. The findings of fact also list the requirements of respondent's family services case plan signed on 31 May 2016.

The trial court made the following additional findings of fact regarding respondent's conduct after DSS obtained nonsecure custody of her children:

> 14. The Respondent-Mother completed the following items on her plan: she participated in parenting classes; she submitted a written statement concerning what she learned during parenting classes; she paid small amounts of child support; she contacted her social worker on a somewhat regular basis; she attended visitation with the minor child; she passed all drug screens; and, she refrained from illegal activity.
>
> 15. The Respondent-Mother failed to obtain and maintain appropriate housing. The Respondent-Mother's housing

has been a consistent concern while the minor child has been in DSS custody.

16. DSS offered services to the Respondent-Mother through its in-home aide program after she signed her case plan. This program was intended to assist the Respondent-Mother in making improvements to the condition of her home and to make appropriate decisions on behalf of her children.

17. On multiple occasions, the Respondent-Mother stated that she thought the in-home aide worker was there to clean her house for her. After numerous arguments with the in-home aide worker, DSS closed its in-home aide services at the Respondent-Mother's request.

18. Although the Respondent-Mother made small improvements to her home, DSS social workers consistently found that it was unsanitary, cluttered, and unfit for children. The Respondent-Mother lives with a disabled relative, who would leave jars of urine in the home. The Respondent-Mother also had numerous pets that defecated in the home.

19. The Respondent-Mother failed to obtain and maintain consistent employment. She has told DSS that her job is to manage the trailer park adjacent to her home. In late 2018 to early 2019, she worked briefly for a temporary service at Hobes' Hams in North Wilkesboro.

20. The Respondent-Mother was ordered to pay child support for the minor child and her siblings. The Respondent-Mother has made small payments and has consistently maintained a child support arrearage.

. . . .

22. During visits between the minor child, her siblings, and the Respondent-Mother, . . . . [t]he Respondent-Mother . . . consistently made inappropriate comments to the children regarding when they would be returning to her home.

. . . .

24. The Respondent-Mother struggled during visits with age appropriate interactions and conversations with the minor child. . . .

> 25. The minor child has been in DSS custody since May 2016. . . .
>
> 26. The Respondent-Mother failed to make any reasonable progress in correcting the conditions which led to the removal of the minor child from her home.

To the extent respondent does not except to these findings of fact, they are binding on appeal. *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58.

Based on its findings of fact, the trial court concluded that each child had been residing in a "placement outside of the Respondent-Mother's home for more than twelve (12) months and the Respondent-Mother willfully left the minor child in such placement without making any reasonable progress to correct the conditions which led to the removal of the minor child." The determination that respondent acted "willfully" is a finding of fact rather than a conclusion of law. *See*, *e.g.*, *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962). However, the trial court's placement of this finding in its conclusions of law is immaterial to our analysis. *See State v. Icard*, 363 N.C. 303, 308, 677 S.E.2d 822, 826 (2009). 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. *See Burns*, 287 N.C. at 110, 214 S.E.2d at 61–62.

Respondent challenges the trial court's findings of fact that respondent "failed to make any reasonable progress in correcting the conditions which led to the removal of" her children and that she acted "willfully" in this regard. Respondent contends that the evidence showed that she "lacked 'the ability to show reasonable progress' " as a result of the cognitive limitations and personality issues identified by Dr. Nancy F. Joyce in a "Psychological/Parental Fitness Assessment" performed on respondent in October and November of 2017.

Respondent also characterizes the contested factual findings as "irreconcilably inconsistent" with the trial court's additional finding that she lacked the "capability to provide for the proper care of the minor child[ren] . . . as a result of her mental limitations as found by the examination psychologist Dr. Joyce," as well as the trial court's adjudication of grounds to terminate respondent's parental rights based on the children's status as dependent juveniles under N.C.G.S. § 7B-1111(a)(6). *See* N.C.G.S. § 7B-101(9) (2019) (defining "[d]ependent juvenile"). According to respondent, she "could not simultaneously have lacked the capacity to parent the children" for purposes of N.C.G.S. § 7B-1111(a)(6) "while also willfully failing to take steps to regain custody" for purposes of N.C.G.S. § 7B-1111(a)(2).

The record in this case shows that the children were removed from respondent's home on 9 May 2016 as a result of its "filthy and unsafe condition" as well as respondent's failure to abide by a DSS safety plan that placed the children with their maternal grandmother. Respondent consented to the trial court's adjudication of the children as neglected juveniles based on the conditions in the home and respondent's failure to remedy them. At the time of the termination hearing on 3 April 2019, respondent had met several conditions of her case plan—completing parenting classes, maintaining regular contact with DSS, attending visitations with the children, passing drug screens, and refraining from illegal activity—but had failed to make meaningful progress in improving the conditions of her home. *Cf. In re A.R.A.*, 373 N.C. 190, 198, 835 S.E.2d 417, 423 (2019) (affirming adjudication under N.C.G.S. § 7B-1111(a)(2) despite the respondent's completion of some case plan requirements where she failed to resolve "the primary reason for the removal of her children—the presence of the father in the home").

Contrary to respondent's assertion, we see no irreconcilable inconsistency between the trial court's finding that respondent willfully failed to make reasonable progress in correcting the conditions that led to the children's removal from her home on 9 May 2016 and the trial court's determination that respondent is incapable of providing proper care and supervision for her four children under N.C.G.S. § 7B-1111(a)(6).

As the Court of Appeals has explained,

> the issue of whether or not the parent is in a position to actually regain custody of the children at the time of the termination hearing is not a relevant consideration under N.C.[G.S.] § 7B-1111(a)(2), since there is no requirement for the respondent-parent to regain custody to avoid termination under that ground. Instead, the court must only determine whether the respondent-parent had made "reasonable progress under the circumstances . . . in correcting those conditions which led to the removal of the juvenile." N.C.[G.S.] § 7B-1111(a)(2). Accordingly, the conditions which led to removal are not required to be corrected completely to avoid termination. Only reasonable progress in correcting the conditions must be shown.

*In re L.C.R.*, 226 N.C. App. 249, 252, 739 S.E.2d 596, 598 (2013). The "reasonable progress" standard enunciated in N.C.G.S. § 7B-1111(a)(2) therefore did not require respondent to completely remediate the conditions that led to the children's removal or to render herself capable of

being reunified with her children. In applying this standard, we conclude that the evidence supports the trial court's finding that respondent acted willfully in failing to make reasonable progress toward correcting the conditions that led to the children's removal from her home.

In her written report,[2] Dr. Joyce diagnosed respondent with a "Mild Intellectual Disability" and an "Unspecified Personality Disorder" and opined, *inter alia*, "that [respondent] lacks the cognitive skills necessary to manage a home as well as the children[-]rearing responsibilities for four children." The trial court accurately summarized the results of respondent's psychological assessment in its findings of fact. As respondent observes, the trial court expressly accepted Dr. Joyce's conclusion that respondent "does not have the capability to provide for the proper care of the [four children] as a result of her mental limitations."

Notwithstanding respondent's cognitive deficits, Dr. Joyce did not find that respondent lacked the ability to clean the home or to maintain it in a condition suitable for children in order to address the principal cause of the children's removal from her home. As the trial court found, Dr. Joyce did report that respondent appeared to lack the capacity to manage a home while simultaneously rearing four children. However, even when respondent was relieved of her child-rearing responsibilities when DSS took the children into nonsecure custody on 9 May 2016, respondent still failed to materially improve the conditions in her home.

The evidence and the uncontested findings of fact show that respondent refused to cooperate with the in-home aide who was provided by DSS to assist respondent in addressing the conditions in the home. For example, when asked why she had refused the in-home aide's services, respondent testified as follows:

> I felt like that she was pushing me a little harder. I understand that she was—yes, I should have listened, but I just . . . . felt like I was being pushed too hard, and I felt like she was staying up in my business all the time wanting —I felt like she was my mother and trying to tell me what to do.

Such evidence establishes that respondent was capable of complying with the important aspects of her case plan.

In light of respondent's refusal to work with the in-home aide provided by DSS and the fact that respondent was afforded almost three

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2. Although Dr. Joyce was deceased by the time of the termination hearing, the trial court admitted her report into evidence.

years to achieve a home environment suitable for her children, we conclude that the trial court did not err by finding that respondent failed to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2) under these conditions and by finding that her failure to do so was willful. *See In re Bishop*, 92 N.C. App. 662, 669, 375 S.E.2d 676, 681 (1989) ("[R]espondent has been afforded almost double the statutory . . . period in which to demonstrate her willingness to correct the conditions which led to the removal of her children. Her failure to do so supports a finding of willfulness regardless of her good intentions."); *see also In re Nolen*, 117 N.C. App. 693, 699–700, 453 S.E.2d 220, 224–25 (1995) (concluding that respondent's "sporadic efforts to improve her situation" did not preclude a finding of willfulness where she "had more than three and one-half times the statutory period of twelve months in which to take steps to improve her situation, yet she has failed to do so"). In light of the extended length of time that respondent was given to be successful in completing her case plan, the trial court's findings of fact demonstrate that it duly considered respondent's partial completion of her case plan as well as her limited cognitive abilities as diagnosed by Dr. Joyce. *See In re Bishop*, 92 N.C. App. at 669, 375 S.E.2d at 681 (upholding adjudication while acknowledging "respondent's contentions that her inability to improve her situation stems from her mental disability, her poverty, and other personal problems"); *see also In re I.G.C.*, 373 N.C. 201, 206, 835 S.E.2d 432, 435 (2019) (noting that the trial court "considered all of respondent-mother's efforts up to the time of the termination hearing, weighed the evidence before it, and then made findings which showed that respondent-mother . . . had not made reasonable progress"). Consequently, respondent's challenge to the trial court's adjudication is overruled.

Because we hold that the trial court properly adjudicated a ground for terminating respondent's parental rights under N.C.G.S. § 7B-1111(a)(2), we need not review respondent's arguments regarding the three additional grounds for termination found by the trial court. *See In re A.R.A.*, 373 N.C. at 194, 835 S.E.2d at 421; *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019).

*Disposition*

**[2]** Respondent also challenges the trial court's conclusion that it is in the best interests of Donald, Jimmy, and Charles to terminate her parental rights. Respondent does not contest the trial court's determination with regard to Dora.

At the dispositional stage of a termination proceeding, the trial court must "determine whether terminating the parent's rights is in the

juvenile's best interest." N.C.G.S. § 7B-1110(a) (2019). In doing so, the trial court must "consider the following criteria and make written findings regarding the following that are relevant":

> (1) The age of the juvenile.
> (2) The likelihood of adoption of the juvenile.
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
> (4) The bond between the juvenile and the parent.
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
> (6) Any relevant consideration.

*Id.* Although the trial court must consider each of the factors in N.C.G.S. § 7B-1110(a), written findings of fact are required only "if there is 'conflicting evidence concerning' the factor, such that it is 'placed in issue by virtue of the evidence presented before the [trial] court[.]' " *In re A.R.A.*, 373 N.C. at 199, 835 S.E.2d at 424 (second alteration in original) (quoting *In re H.D.*, 239 N.C. App. 318, 327, 768 S.E.2d 860, 866 (2015)).

The trial court's dispositional findings are binding on appeal if supported by any competent evidence. *In re K.N.K.*, 839 S.E.2d 735, 740 (N.C. 2020). The trial court's determination of a child's best interests under N.C.G.S. § 7B-1110(a) is reviewed only for abuse of discretion. *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019). "An abuse of discretion is a decision manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *In re K.N.K.*, 839 S.E.2d at 740 (citation omitted).

Respondent asserts that the trial court failed to comply with N.C.G.S. § 7B-1110(a) because it "did not consider [certain] statutorily mandated factors" in assessing each of her sons' best interests. She specifically contends that "[t]he court did not address [each child's] permanent plan, the bond with his placement, the probability of adoption[,] and whether or not termination would help accomplish the permanent plan." *See* N.C.G.S. § 7B-1110(a)(2)–(3), (5).

We find no merit in respondent's argument. In the termination orders concerning Donald, Jimmy, and Charles, the trial court concluded that "[*b*]*ased upon the factors set forth in N.C.G.S. § 7B-1110*, it is in the best interest of the minor child for the [respondent's] parental rights to be terminated." (Emphasis added.) Since there was no conflicting

evidence about the likelihood of each child's adoption or the facilitation of each child's permanent plan of adoption if respondent's parental rights were terminated, the trial court was not required to make written findings under N.C.G.S. § 7B-1110(a)(2)–(3). *See In re A.R.A.*, 373 N.C. at 200, 835 S.E.2d at 424. Likewise, the absence of any conflicting evidence regarding Charles's strong bond with his prospective adoptive parents obviated the need for written findings on this issue under N.C.G.S. § 7B-1111(a)(5). Finally, because no prospective permanent placement had been identified for Donald and Jimmy, the factor in N.C.G.S. § 7B-1110(a)(5) did not apply to those two children. *Id.* To the extent that respondent contends that the trial court violated the statutory mandate in N.C.G.S. § 7B-1110(a) as to its determination of the best interests of each juvenile, her argument is overruled.

Respondent also challenges the merits of the trial court's determination that terminating her parental rights was in each child's best interests. According to respondent, "Charles, Jimmy, and Donald had zero adoptive possibilities" due to their "tremendous behavioral problems." With no hope of adoption, she argues that the trial court's decision to terminate her parental rights amounts to a needless and "arbitrary" separation of a mother from her children. *See* N.C.G.S. § 7B-100(4) (2019) (articulating policy goal of "preventing the unnecessary or inappropriate separation of juveniles from their parents"). Respondent notes that she attended all of her scheduled visitations with her children. Moreover, she contends that "Donald and Jimmy wanted to return to live with their mother." Given the strength of the family relationship, respondent submits that the trial court should have maintained the existing arrangement that she had with her sons, which "was working."

Respondent's characterization of the circumstances is inconsistent with both the evidence from the termination hearing and the trial court's uncontested findings of fact. At the time of the termination hearing, Donald was eleven years old, Jimmy was ten years old, and Charles was eight years old. Charles was in a potential adoptive placement, while Donald and Jimmy were in therapeutic foster homes. When asked at the termination hearing about the likelihood of Charles's adoption if respondent's parental rights were terminated, the DSS adoption social worker testified that adoption "is 100 percent likely."

The DSS adoption social worker acknowledged that Donald and Jimmy "had some pretty significant behavioral problems" when the two children entered DSS custody, but described both juveniles' marked improvement in therapeutic foster care. In responding to the query about Donald's and Jimmy's prospects for being "levelled down" from

therapeutic foster care, the DSS adoption social worker said, "I think right now it's just a matter of finding an appropriate possible adoptive home, because their behaviors are so much better. I think that they could easily be levelled down, but just again, need to be a home where they had plenty of the same structure that they needed . . . ."[3] She expressed a preference for placing Donald and Jimmy together and confirmed that DSS planned to move them into an adoptive home "[o]nce a placement is found." Based on this testimony offered by the DSS adoption social worker, respondent's contention that Donald and Jimmy had only a "speculative and remote" chance for adoption is unsupported by the record.[4]

Respondent also mischaracterizes the evidence concerning the bond between her and her two sons. The trial court expressly found that none of respondent's sons had a bond with respondent. Respondent does not except to the trial court's findings of fact as to any of the children and is therefore bound by its determinations. *In re A.R.A.*, 373 N.C. at 195, 835 S.E.2d at 421.

In our assessment of the record, we discern some evidence of a bond between respondent and Jimmy and, to a lesser extent, between respondent and Donald. The guardian *ad litem* described Donald as having "more of [a] bond with the grandmother than [respondent]. His bond

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3. The guardian *ad litem* noted Donald's need for "a consistent home with structure, logical consequences, and either an only child or children who are of similar age" as well as Jimmy's need for "a structured and emotionally supportive environment" to address "his attention seeking behaviors."

4. For this reason, we are unpersuaded by respondent's invocation of the Court of Appeals' decision reversing an order terminating parental rights in *In re J.A.O.*, 166 N.C. App. 222, 601 S.E.2d 226 (2004). The sixteen-year-old boy in *In re J.A.O.* had cycled through nineteen different treatment centers due to his "verbally and physically aggressive and threatening" behavior, and he had been diagnosed with "bipolar disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, borderline intellectual functioning, non-insulin dependent diabetes mellitus, and hypertension." *Id.* at 223, 228, 601 S.E.2d at 227, 230. Adoption was "highly unlikely," and the guardian *ad litem* recommended against terminating the respondent-mother's parental rights. *Id.* at 224, 226, 601 S.E.2d at 228, 229. In light of the devotion shown to the child by his mother, and "balancing the minimal possibilities of adoptive placement against the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring," the Court of Appeals held that the trial court abused its discretion in terminating the mother's parental rights. *Id.* at 228, 601 S.E.2d at 230 (quoting *In re A.B.E.*, 564 A.2d 751, 757 (D.C. 1989)).

Here, the DSS adoption social worker expressed optimism about Donald and Jimmy's prospects for adoption. The guardian *ad litem* also recommended terminating respondent's parental rights so that Donald and Jimmy could "have a permanent, safe home." The holding of the Court of Appeals in *In re J.A.O.* is thus inapposite.

with [respondent] seems to be more towards what [she] can get or do for him." Moreover, as respondent relates, Jimmy told the guardian *ad litem* that he "want[ed] to go back home and live with [his] mom and uncle." Donald also stated a desire "to go back home, with his mother or grandmother." However, the DSS adoption social worker who supervised the majority of respondent's visitations with the children testified that she "d[id not] see a bond" between respondent and any of the children. As the finder of fact, the trial court was entitled to credit this testimony of the DSS adoption social worker over any conflicting evidence. *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167–68 (2016). Additionally, in light of the trial court's uncontested finding of fact that respondent was incapable of raising her children, the fact that Donald and Jimmy may have expressed a preference to return home is noteworthy but not determinative.

*Conclusion*

We affirm the adjudications in regard to all four children. Respondent has not challenged the trial court's disposition regarding Dora and based on the evidence in the record and the trial court's findings of fact, the trial court did not abuse its discretion by deciding to terminate respondent's parental rights to Donald, Jimmy, and Charles. All three children had been in foster care for almost three years and had no realistic prospect of being reunified with respondent. Charles was in an adoptive placement, and DSS was hopeful of finding adoptive homes for Donald and Jimmy. *Cf. In re A.R.A.*, 373 N.C. at 200, 835 S.E.2d at 424 ("[T]he absence of an adoptive placement for a juvenile at the time of the termination hearing is not a bar to terminating parental rights." (alteration in original) (quoting *In re D.H.*, 232 N.C. App. 217, 223, 753 S.E.2d 732, 736 (2014))). Contrary to respondent's assertion, leaving her sons in their current foster placements with periodic visitation by respondent was not "working" as a "plan." This arrangement was not only contrary to the permanent plan established by the trial court, it also served to deny to the juveniles the prospect of "a safe, permanent home within a reasonable amount of time" as contemplated by the Juvenile Code. N.C.G.S. § 7B-100(5). Accordingly, we affirm the termination orders.

AFFIRMED.

**IN RE K.L.T.**

[374 N.C. 826 (2020)]

IN THE MATTER OF K.L.T.

No. 329A19

Filed 17 July 2020

**1. Termination of Parental Rights—grounds for termination—neglect—findings of fact—sufficiency of evidence**

The trial court erred by determining that a mother's parental rights should be terminated on the ground of neglect, where its findings regarding the mother's compliance with her case plan, relationship issues, therapy participation, parenting skills, and home environment were not supported by clear, cogent, and convincing evidence and partially relied on speculation. Further, one of the court's ultimate findings linking the mother's history to the likelihood of future neglect failed to take into account the mother's positive steps to address domestic violence issues since the child was removed from her care, including obtaining a divorce from and taking out a protective order against the child's father with whom she had been in an abusive relationship, engaging in therapy, and writing a detailed safety plan in anticipation of regaining custody of her child.

**2. Termination of Parental Rights—grounds for termination—dependency—conclusion of law—evidentiary support**

The trial court erred in terminating a mother's parental rights on the ground of dependency where the trial court's conclusion that the mother was incapable of providing a safe, permanent home for the child was not supported by the record. Instead, evidence demonstrated that the mother adequately addressed her past history of abusive relationships, displayed appropriate parenting techniques, and obtained suitable housing.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 8 May 2019 by Judge Betty J. Brown in District Court, Guilford County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.*

*Rosenwood, Rose & Litwak, PLLC, by Nancy S. Litwak, for appellee Guardian ad Litem.*

*David A. Perez for respondent-appellant mother.*

DAVIS, Justice.

Respondent-mother appeals from the trial court's order terminating her parental rights in her son K.L.T. (Kirk),[1] who was born in March 2011. Although the trial court's order also terminates the parental rights of Kirk's father (respondent-father), he is not a party to this appeal. Based on our determination that the trial court erred in concluding that grounds existed to terminate respondent-mother's parental rights, we reverse.

**Factual and Procedural Background**

Respondent-mother, who is legally blind, has five children. Kirk is her youngest child and the sole offspring of her marriage to respondent-father, who was her third husband and whom she divorced in April 2018. Mr. L., respondent-mother's second husband, is the father of her four eldest children, Jack, Brooke, Becky, and Justin. Jack and Brooke were no longer minors when these proceedings commenced, and Becky attained the age of majority in May 2017.

On 26 August 2016, the Guilford County Department of Health and Human Services (GCDHHS) obtained nonsecure custody of Becky, Justin, and Kirk and filed juvenile petitions alleging that they were abused, neglected, and dependent juveniles. The juvenile petition filed by GCDHHS regarding Kirk summarized the family's "extensive" Child Protective Services (CPS) history in Orange County dating back to 2004, which included "numerous substantiated neglect reports against [respondent-father] for inappropriate discipline of . . . [Becky] and [Justin]" and against respondent-mother "because she was complicit in [respondent-father's] inappropriate discipline of her children."

The juvenile petition first summarized three CPS reports made about the family in March and April of 2016, each of which was investigated and substantiated by GCDHHS. These reports described the physical abuse of Brooke, Becky, Justin, and Kirk by respondent-father. One report alleged that respondent-father "beats four-year-old [Kirk]

1. We use pseudonyms and initials throughout this opinion in order to protect the privacy of the juveniles referenced herein.

with items such as hangers, a broom, and a wooden back scratcher," leaving visible bruises on the child. Another report alleged that respondent-father had physically and sexually assaulted respondent-mother's cognitively-impaired adult daughter, Brooke. Respondent-father admitted to a GCDHHS social worker in March of 2016 that he had engaged in oral sex with Brooke. When the social worker questioned respondent-mother about the incident, she acknowledged that respondent-father's sexual abuse of Brooke was "wrong" but also blamed Brooke for "sitting on [respondent-father's] lap and moving around."

The juvenile petition next recounted GCDHHS's efforts to work with the family before taking the minor children into custody in 2016. For example, when respondent-father refused to leave the home, GCDHHS provided a hotel room for respondent-mother and the children. In addition, the juvenile petition alleged that respondent-mother had refused to seek a domestic violence protective order (DVPO) against respondent-father, violated her GCDHHS safety plan by allowing respondent-father to drive her to one of Becky's medical appointments, and "coached [Becky] on what to say to the CPS Investigator."

The juvenile petition also alleged that GCDHHS received a report that respondent-father had confined the family to a bedroom in the residence and demanded to know who had made the CPS reports. The episode was overheard by Brooke's therapist, who was on speakerphone with Brooke as it happened. Respondent-mother initially denied the report during a family meeting with GCDHHS but later admitted she was "intimidated by [respondent-father] and did not tell the truth during the meeting."

The juvenile petition further detailed an incident occurring at a Child and Family Team Meeting on 23 August 2016 in which respondent-father denied any abuse of the children and physically assaulted a social worker in the presence of Justin, Kirk, and respondent-mother. The juvenile petition accused respondent-father of abusing the children and of "perpetrat[ing] domestic violence against [respondent-mother], in particular by exerting power and control over her, isolating her, and physically assaulting her." Respondent-mother was depicted as contributing to an injurious home environment "due to [her] enabling of [respondent-father's] behavior, her repeated refusal to leave him, and her failure to protect the children."

After the children were taken into GCDHHS custody, respondent-mother entered into a case plan with GCDHHS on 3 October 2016, requiring her to address the issues of domestic violence, mental and

emotional health, and parenting skills, and requiring her to maintain suitable housing. At a hearing on 19 October 2016, respondent-mother, respondent-father, and Mr. L. stipulated to facts consistent with the allegations contained in the juvenile petitions and consented to the children being adjudicated as neglected and dependent juveniles. At the hearing, GCDHHS dismissed the allegations of abuse. By order entered 14 November 2016, the trial court adjudicated Becky, Justin, and Kirk to be neglected and dependent juveniles and ordered that the children remain in GCDHHS custody. The trial court awarded respondent-mother one hour per week of supervised visitation with each of the children and ordered her to comply with the requirements of her case plan.

In its adjudication and disposition order, the trial court noted that Kirk had been suspended from kindergarten for violent behavior and was hospitalized in September 2016 after "reporting that he was hearing voices." At the time of the adjudication and disposition hearing on 19 October 2016, Kirk had begun trauma-based therapy and was diagnosed with attention deficit hyperactivity disorder and oppositional defiant disorder. The trial court found that Kirk "require[d] continued redirection and constant supervision" from his foster parents and that GCDHHS was "exploring a higher level of care for [Kirk] due to his placement and mental health needs." In order to meet his need for a higher level of care, Kirk was moved to a new therapeutic foster home on 14 November 2016.

The trial court held seven permanency planning review hearings between 14 December 2016 and 6 February 2019. During this interval, Becky aged out of juvenile court jurisdiction, and the court granted Mr. L. full custody of Justin and terminated its jurisdiction over him pursuant to N.C.G.S. § 7B-911. In addition, respondent-mother separated from respondent-father in October 2016 and obtained a divorce judgment on 2 April 2018. Respondent-mother also successfully sought a DVPO against respondent-father on 22 February 2017 and renewed the DVPO through February 2021.

With regard to Kirk, the trial court initially established a primary permanent plan of reunification with a concurrent secondary plan of adoption. After concluding that further reunification efforts with respondent-father would be futile, the trial court changed Kirk's primary permanent plan to reunification with respondent-mother on 29 August 2017. At the next permanency planning review hearing on 10 January 2018, however, the trial court found that respondent-mother "has not made adequate progress within a reasonable period of time under [her case] plan." The trial court changed Kirk's primary permanent plan to

adoption with a concurrent secondary plan of reunification with respondent-mother and ordered GCDHHS to initiate termination of parental rights proceedings as to both parents.

GCDHHS filed a petition seeking the termination of both respondents' parental rights with regard to Kirk on 25 June 2018 on the grounds of neglect and dependency. The trial court held a hearing on 26 and 27 March 2019 and entered an order terminating respondents' parental rights on 8 May 2019. The trial court found that although respondent-mother had complied with the formal requirements of her case plan, a likelihood of future neglect existed due to: (1) her history of domestic violence and abusive partners; (2) her questionable new online relationship; (3) her failure to meaningfully engage in therapy; and (4) her failure to exercise control over her household environment. The trial court also concluded that termination of respondent-mother's parental rights was proper based on the ground of dependency. Finally, the trial court determined that the termination of her parental rights was in Kirk's best interests. Respondent-mother filed a notice of appeal.

**Analysis**

On appeal, respondent-mother argues that the trial court erred in finding the existence of grounds to terminate her parental rights to Kirk based on neglect and dependency. She further asserts that the trial court erred in concluding that it was in Kirk's best interests that her parental rights be terminated. *See* N.C.G.S. § 7B-1110(a) (2019).

A proceeding to terminate parental rights is comprised of an adjudicatory phase and a dispositional phase. "We review a trial court's adjudication under N.C.G.S. § 7B-1111 'to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.' " *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). It is well established that "[f]indings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019). We review the trial court's conclusions of law de novo. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019). With regard to the dispositional phase, the trial court's determination of whether termination of parental rights is in the juvenile's best interests is reviewed under an abuse of discretion standard. *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52.

## I. Adjudication of Neglect

**[1]** Under subsection 7B-1111(a)(1), the trial court may terminate the parental rights of a parent if "[t]he parent has . . . neglected the juvenile." N.C.G.S. § 7B-1111(a)(1) (2019). The Juvenile Code defines "[n]eglected juvenile" as a minor child "whose parent . . . does not provide proper care, supervision, or discipline . . . or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2019). In order to constitute actionable neglect, the conditions at issue must result in "some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment." *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (citations omitted).

"The petitioner seeking termination [under N.C.G.S. § 7B-1111(a)(1)] bears the burden of showing by clear, cogent and convincing evidence that such neglect exists at the time of the termination proceeding." *In re Ballard*, 311 N.C. 708, 716, 319 S.E.2d 227, 232 (1984). Our case law makes clear that "if the child has been separated from the parent for a long period of time [at the time of the termination hearing], there must be a showing of past neglect and a likelihood of future neglect by the parent." *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016). "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re K.N.*, 373 N.C. 274, 282, 837 S.E.2d 861, 867 (2020) (citation omitted).

The trial court found that Kirk was adjudicated to be neglected in 2016 and that there was a "strong likelihood of the repetition of neglect" if Kirk was returned to respondent-mother's care due to her "inability to demonstrate an ability to correct the conditions that led to removal." Specifically, the trial court found that respondent-mother's behavior indicated a likelihood of future neglect due to: (1) her history of domestic violence and abusive partners; (2) her questionable new online relationship; (3) her failure to meaningfully engage in therapy; and (4) her failure to exercise control over her household environment.

Respondent-mother concedes Kirk's prior adjudication of neglect but challenges the trial court's finding as to the likelihood of a repetition of neglect. Respondent-mother also takes exception to many of the trial court's evidentiary findings in support of the adjudication of neglect. We review her arguments in turn.

### A. Findings of Fact

#### 1. Completion of Case Plan

Respondent-mother first challenges the trial court's finding that she did not fully comply with the requirements of her case plan. Respondent-mother's 2016 case plan required her to address deficiencies in her parenting skills, housing and employment, mental and emotional health, and domestic violence issues. We agree with respondent-mother that the record demonstrates that she completed each of these requirements.

Specifically, she (1) successfully completed a twelve-session domestic violence support group on 30 January 2017; (2) obtained a psychological evaluation and parenting assessment on 3 November 2016 by a clinical psychologist, Michael A. McColloch, Ph.D., who did not recommend any additional treatment; (3) completed the Parent Assessment Training and Education (PATE) program; (4) completed outpatient therapy with Tabitha McGeachy at Peculiar Counseling & Consulting, PLLC, on 2 March 2017, accomplishing all treatment goals with no additional treatment recommended; (5) completed two courses of outpatient psychotherapy from May to September of 2017 and from May to November of 2018 with Joanna Hudson, LCSW, at Family Service of the Piedmont, Inc., who did not recommend any further therapy; (6) separated from respondent-father and obtained a judgment of divorce on 2 April 2018; (7) obtained a DVPO against respondent-father on 22 February 2017 and renewed the DVPO through February 2021; (8) maintained stable income through monthly disability benefits and part-time employment as a musician at her church; (9) moved into a three-bedroom townhouse appropriate for Kirk on 29 May 2017; (10) consistently attended visitation, engaged in appropriate interactions with Kirk, complied with suggestions made by her visitation supervisor, and demonstrated no significant defects in her parenting techniques; (11) attended Kirk's school meetings and otherwise participated in shared parenting with his foster parents; and (12) remained current on her monthly child support obligation of $291.08, which began on 1 July 2018. Thus, the record shows respondent-mother's compliance with each requirement set out in her case plan.

#### 2. Domestic Violence and Personal Relationships

Respondent-mother next contests the trial court's findings of fact regarding her tendency to fall victim to abusive and unsafe relationships. Specifically, she challenges findings of fact 31, 32, 37, and 42 in which, in part, the trial court voiced its concerns regarding a new online relationship into which she had recently entered. The trial court made

the following findings regarding respondent-mother's online relationship with a former high school classmate, Milton Leon Westray, who lived in Philadelphia, Pennsylvania:

> 31. . . . In December 2017, GCDHHS confirmed with the Mother that the Mother was in a new relationship. The Mother explained she was involved in an online relationship with a former high school classmate by the name of Milton Leon Westray. When GCDHHS researched Mr. Westray using the name, date of birth and place of birth provided by the Mother, GCDHHS received a report indicating that Milton Leon Westray was deceased. After receiving this information, the Mother conducted an independent search and obtained the same result. The Mother ultimately decided that the deceased was her classmate's father. However, Mr. Westray and his father do not share the same birth date. The Mother could not account for this discrepancy and continues to pursue this online relationship.
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> 32. The Mother cannot account for the discrepancy in birth dates because she has not demanded an explanation from Mr. Westray. The Mother's actions are singularly focused on her romantic pursuits. She married her third husband [, respondent-father,] eighteen months after divorcing her second husband. She entered into th[e] relationship [with Mr. Westray] prior to ending the marriage with [respondent-father] and describes her current relationship as "developing." Perhaps, the Mother has not questioned Mr. Westray because she would then be required to make a decision. The Mother is deserving of a logical and verifiable response. If such a response is not forthcoming, the Mother should end the relationship, period. The Mother does not appear motivated to forego romantic liaisons until her circumstances are stable.
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> 37. . . . The Mother has shown a selfish preoccupation with her romantic attachments even when those attachments are unhealthy and harmful to the Mother and her children. The Mother's mindless attachments will in all likelihood subject [Kirk] to repeated harm and result in [his] eventual removal. . . .

. . . .

> 42. . . . Although the Mother initiated divorce proceedings, obtained a 50-B Domestic Violence Protective Order and renewed the protective order twice, the [c]ourt is concerned about the Mother's involvement in yet another relationship since the juvenile's removal in 2016 without addressing adverse issues from her prior relationships. The concerns and red flags raised in this new relationship causes the Court to question the Mother's judgment. . . .

The trial court relied heavily on the existence of this online relationship as a basis for its determination that respondent-mother was likely to repeat her prior neglect of Kirk. Respondent-mother objects to these findings of fact, arguing that they are unsupported by the evidence of record, insofar as they (1) depict her response to the concerns raised by GCDHHS about Mr. Westray, and (2) extrapolate more broadly about her judgment and priorities. We agree with respondent-mother that key portions of the trial court's findings of fact concerning Mr. Westray—and the inferences drawn by the trial court therefrom—are unsupported by the evidence. Because of the great weight placed by the trial court on this relationship, we deem it appropriate to discuss this issue in some detail.

The evidence shows that, upon being informed of respondent-mother's new online relationship, GCDHHS obtained from her the man's full name, Milton Leon Westray, and date of birth, which was in August 1966. Using this information, GCDHHS requested a nationwide criminal record check and received a report indicating that a Milton Westray, a/k/a, *inter alia*, "Westray, Milton L Jr.," died on 19 May 2012. We note, however, that the report lists two different dates of birth for the deceased Milton Westray: "08/XX/1966" and "03/1959." Moreover, the report purports to be based on information derived from credit reporting services, such as Experian, as well as e-mail and phone records and an obituary—rather than from any official government source.[2]

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2. Despite GCDHHS's repeated references during the termination hearing to a "death certificate," there is no evidence suggesting that GCDHHS ever obtained the deceased Mr. Westray's death certificate or any other official record to confirm its belief that respondent-mother had fallen victim to an online impostor. Aside from the results of the criminal record search, which are based on unofficial sources and list two different birthdates for the deceased Mr. Westray, the record contains only a two-line death notice for "Milton Westray" published on Philly.com. This notice makes no reference to the decedent's date of birth or any other identifying information.

When respondent-mother was presented with GCDHHS' concerns, she "conducted an independent search" into the death of Milton Westray but did not obtain the same result as GCDHHS. To the contrary, respondent-mother's research led her to conclude that the Milton Westray who died in May 2012 was her friend's father—Milton L. Westray, *Sr.* Her search revealed that although the two men "[had] the same name," they were two different individuals with different birthdates.[3]

In addition, she testified that she did, in fact, confront her online correspondent with GCDHHS's concerns. In response, he provided her with copies of his driver's license and birth certificate, and she provided these items to GCDHHS. Respondent-mother also stated that she asked Mr. Westray to appear at the termination hearing in order to prove his identity but that he could not afford to travel to North Carolina. Her counsel also offered to have Mr. Westray testify by telephone from a local department of social services office in Philadelphia, but both GCDHHS and the guardian *ad litem* objected to the use of this procedure.

In addition to the lack of any official record that would have enabled the trial court to definitively conclude that respondent-mother's online correspondent was an impostor, we are of the view that the larger inferences drawn by the trial court about respondent-mother's character, motivations, and judgment do not flow from the evidence in the record. The record is devoid of any indication that respondent-mother's online communications with Mr. Westray posed any risk to Kirk. Respondent-mother testified that Mr. Westray has not asked her to provide any financial or other private information, Mr. Westray has never tried to take advantage of her in any way, and that the two have no current plans to meet in person. GCDHHS lacks the authority to prohibit respondent-mother from engaging in social interaction in the absence of any legitimate basis for believing that such interaction was likely to cause harm to Kirk, and such evidence was absent here. Moreover, the evidence shows that respondent-mother did, in fact, take steps to address the concerns that GCDHHS had about Mr. Westray. Accordingly, we agree with respondent-mother that the evidence regarding this issue does not support the trial court's conclusion that there was a likelihood of future neglect.

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3. The trial court was, of course, not required to accept respondent-mother's testimony as credible. However, the termination order does not contain any indication that the trial court chose to disbelieve her testimony on this issue or as to the other issues relied upon by the trial court in concluding that termination was warranted. Instead, at times, the termination order either ignores respondent-mother's testimony altogether or fails to characterize it accurately.

### 3. Mental and Emotional Health

Respondent-mother also challenges certain findings of fact by the trial court related to the mental and emotional health component of her case plan. After acknowledging respondent-mother's successful completion of an initial course of psychotherapy with Ms. Hudson in September 2017, the trial court found as follows:

> 29. The Mother returned to out-patient therapy with Ms. Hudson on May 5, 2018 and was discharged on November 4, 2018 after nine additional sessions. During these sessions, the Mother addressed parenting in the wake of domestic violence and verbalized her understanding of potential issues that might arise for her children due to their exposure to domestic violence. *However, the Mother did not discuss with her therapist, Ms. Hudson, that at a prior hearing, in the underlying case, the Mother defended her beliefs about the culpability of her cognitively impaired daughter's actions regarding the sexual assault by [respondent-father] and concluded her cognitively impaired daughter was partly responsible for the sexual assault.* The Mother also failed to discuss her three failed marriages, two of which[ ] were with men who exhibited aggression and subjected the Mother and her children to physical and emotional abuse. The Mother married [respondent-father] just eighteen months after she divorced her second husband. The Mother's involvement in her current relationship [with Mr. Westray] began prior to her divorce from [respondent-father]. *The Mother's choice in partners and hurried attachments are issues requiring in-depth therapy to avoid repeated mistakes.*

(Emphases added.) Respondent-mother takes exception to the italicized portions of this finding of fact.

In her report dated 16 October 2018, respondent-mother's therapist, Ms. Hudson, stated that "[i]t is my assessment that [respondent-mother] has engaged in meaningful conversations about the effect that domestic violence has had on her family, as well as the initial concern that she somehow held her then-teenage daughter responsible for the sexual abuse perpetrated by an adult in the home." Similarly, Ms. Hudson testified at the termination hearing as follows:

> Q. . . . Did [respondent-mother] tell you that she had come to court and testified that originally she blamed her

daughter as part of the reason why her husband, [respondent-father], sexually assaulted her daughter?

A. I don't recall if I learned about that from her or from the [GCDHHS] referral or where I got that information.

Q. Did you all talk about it?

A. That [it] was a concern, yes.

Q. And what did she say?

A. That she does not hold her daughter responsible for what happened to her.

Q. Did you ask her then why did she testify to that in court?

A. We did not discuss her testimony. We were just discussing [the] issue.

Respondent-mother testified that she believed with "99 percent" certainty she had, in fact, discussed this issue in therapy with Ms. Hudson and she recalled explaining to Ms. Hudson that she had been "scared at the time just by the nature of the type of person [respondent-father] was." In any event, even if there was evidence to support the trial court's findings of fact concerning whether respondent-mother and Ms. Hudson specifically discussed her prior testimony regarding the culpability of her daughter for the abuse committed by respondent-father, the undisputed testimony of both respondent-mother and Ms. Hudson demonstrates that they *did* discuss the key underlying issue that respondent-mother's daughter was not responsible for the sexual abuse.

Respondent-mother next contends that there is no evidence to support the trial court's finding that her "choice in partners and hurried attachments are issues requiring in-depth therapy to avoid repeated mistakes." We agree. To be sure, the evidence shows that respondent-mother has been divorced three times and that her two most recent husbands, Mr. L. and respondent-father, were abusive. However, none of the treatment professionals who worked with respondent-mother on the subjects of domestic violence, mental and emotional health, or parenting believed she needed additional treatment in order to avoid such abusive relationships in the future. Moreover, the evidence concerning respondent-mother's actions since separating from respondent-father in October 2016 does not support a finding that she is in danger of repeating her past mistakes in tolerating domestic violence or abuse. To

the contrary, the evidence showed that she took appropriate action by divorcing respondent-father and obtaining a DVPO against him.

Respondent-mother also challenges the following finding of fact regarding her therapy:

> 42. . . . Although the Mother has participated in individual therapy, there is no clear, convincing evidence that the Mother has incorporated the knowledge or techniques obtained through therapy into her everyday life. It is concerning to this [c]ourt that Ms. Hudson, the therapist, indicated that there were pertinent issues that were not discussed during the course of the therapeutic relationship between the Mother and the therapist. The [c]ourt expressed its concern that if the therapist were not given a full, true and complete picture of the issues that led to the juvenile's removal from the home, those issues and concerns were not addressed and still exist. . . .

Once again, we find merit in respondent-mother's arguments. A faulty premise underlies the trial court's finding that "there is no clear, convincing evidence" of respondent-mother's successful integration of the lessons she learned during therapy into her daily life. Under N.C.G.S. § 7B-1109(f), it was GCDHHS's burden—as petitioner—to prove by clear, cogent, and convincing evidence the existence of facts establishing grounds for the termination of respondent-mother's parental rights under N.C.G.S. § 7B-1111(a). It was not respondent-mother's burden to prove that such grounds did *not* exist.

Moreover, evidence was presented that respondent-mother (1) divorced and ceased all contact with respondent-father; (2) relocated from an isolated rural area in Brown Summit, North Carolina, to the city of Greensboro, where she has ready access to transportation (via the city bus system); and (3) cultivated an additional social support network by joining the board of directors of a local disability rights organization. Respondent-mother also devoted many hours—with the assistance of Ms. Hudson—to developing a detailed safety plan for Kirk in anticipation of regaining custody of the child.

We discern no evidence in the record supporting the trial court's assertion that respondent-mother's progress in therapy was hindered by her failure to discuss with her therapist specific aspects of her CPS history or her past relationships in the precise manner referenced by the trial court. None of respondent-mother's treatment providers believed she required additional therapy, and their testimony and reports indicate

that they addressed with her the issues that led to Kirk's removal from her custody.

**4. Parenting Skills**

Respondent-mother next challenges the trial court's findings of fact concerning her parenting skills. The trial court made the following findings of fact with regard to this issue:

> 30. Prior to a hearing in October 2018, GCDHHS informed the Mother that [respondent-father] had notified GCDHHS that he was going to attend the hearing. GCDHHS recommended to the Mother that she advise her daughter [, Brooke,] of [respondent-father's] intentions and encourage the daughter to stay away since the daughter had been sexually assaulted by [respondent-father]. The Mother did not elect to act on the recommendation of [GCDHHS]. The Mother's explanation as to why she did not act on [GCDHHS's] recommendation caused the [c]ourt grave concerns as to the Mother's ability to protect any juvenile.
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> 37. The Mother has not demonstrated the ability to care for the juvenile without GCDHHS'[s] involvement. The Mother has shown a selfish preoccupation with her romantic attachments even when those attachments are unhealthy and harmful to the Mother and her children. The Mother's mindless attachments will in all likelihood subject the juvenile to repeated harm and result in the juvenile's eventual removal. . . .
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> 38. The juvenile has been in the custody of GCDHHS since August 26, 2016 and the Mother has only progressed to supervised visitation.

Respondent-mother challenges the trial court's finding that she disregarded GCDHHS's recommendation to discourage Brooke from attending the hearing in October 2018, which respondent-father was expected to attend. Respondent-mother testified that she "told [Brooke and Becky] not to come" to the hearing, "but they insisted on coming." Neither GCDHHS nor the guardian *ad litem* has identified any evidence in the record contradicting respondent-mother's testimony on this issue, nor have we located any such evidence.

The record does support the trial court's finding that respondent-mother was never allowed unsupervised visitation with Kirk during the pendency of this case. But, as respondent-mother observes, she "could not force the trial court to give her unsupervised visits with her child" despite having complied with her case plan and having displayed appropriate parenting techniques in her supervised visitations with Kirk.

The record shows that the trial court temporarily suspended Kirk's visitations with respondent-mother and his siblings in 2017 on the recommendation of Kirk's therapist. The therapist sought to avoid Kirk's "re-traumatization" through contact with his family members pending his adjustment to foster care. As acknowledged by the GCDHHS supervisor, the suspension of respondent-mother's visitation with Kirk did not result from any inappropriate action by respondent-mother during the visits. The record also includes a letter from Kirk's therapist dated 9 January 2018 recommending that Kirk's supervised visits with respondent-mother and his siblings resume. Once again, there is no indication that this recommendation was based on concerns about respondent-mother's parenting ability.

The record demonstrates that respondent-mother resolved all of the apparent risks posed to her minor children by divorcing and obtaining a DVPO against respondent-father, avoiding any subsequent abusive romantic relationships, completing therapy, obtaining suitable housing, cultivating greater independence and additional social support, and otherwise fully complying with her case plan. Dr. McColloch, who performed respondent-mother's psychological evaluation and parenting assessment in November 2016, concluded that "it is appropriate to return the children to this mother in the near future—if [respondent-father] or another abuser is not in the home. The current interventions appear appropriate for this mother's needs." Respondent-mother's March 2017 discharge summary from Peculiar Counseling & Consulting, PLLC, reported that she "has made tremendous progress" and "has met all [treatment] goals." Ms. Hudson likewise reported that she did "not recommend[] any further treatment" for respondent-mother, that respondent-mother "has made a great deal of progress," and that respondent-mother "presents as more confident, more knowledgeable about the issues that brought her children into foster care, and more prepared to resume full-time care of her youngest son." Respondent-mother's treatment providers were thus consistent in their assessment of her positive response to treatment and her prospects for resuming a parental relationship with Kirk.

**5. Housing and Home Environment**

Respondent-mother also contests several of the trial court's findings of fact related to her housing and home environment. Although the trial court acknowledged that the physical structure of respondent-mother's three-bedroom townhouse "provides an appropriate environment for the juvenile[,]" the trial court's findings of fact refer to several episodes reflecting respondent-mother's alleged inability to maintain a suitable home environment for Kirk.

The trial court found that respondent-mother currently shared her residence with her adult daughters Brooke and Becky. The trial court then recounted a series of incidents arising from this living arrangement, stating as follows:

> 26. On December 18, 201[8], a GCDHHS social worker made an unannounced visit and noted the following concerns regarding the cleanliness of the home: overflowing trash can, kitchen sink full of dirty dishes, unkempt floors and grimy bathroom fixtures. The Mother utilizes a cleaning service that had just cleaned the home the day before on December 17, 2018. The GCDHHS social worker voiced concerns regarding the condition of the home since the service had just been at the home twenty-four hours prior. The social worker also expressed concerns that the other adult occupants of the home were not contributing to home maintenance. The Mother informed the social worker that her two adult daughters were only responsible for cleaning their individual rooms. The Mother was responsible for the other areas of the house.
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> 33. . . . The daughters brought dogs into the home *against the Mother's preference and her expressed dislike of dogs. The dogs eventually had to be given away because her daughters did not adequately care for the animals. It was reported that one of the daughters had allowed a boyfriend to move in.* The Mother denies that the boyfriend resided there. Upon further research, GCDHHS was able to verify the boyfriend's criminal record which was not favorable. *Until the unannounced home visit* [on *18 December 2018*], *the daughters were not required to assist in home maintenance and apparently were not*

> *required to clean behind themselves.* The Mother has since discussed home maintenance with her daughters and has divided housekeeping tasks among the three of them.
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> 34. Within the last few months, one of the daughters was attacked [at] the Mother's residence by a neighbor for whom the daughter had babysat. *Notwithstanding that the Mother is not currently permitted to have minor children in her home, the Mother did nothing to protect her daughter or stop the attack from occurring.* The identity and behavior of occupants, potential occupants and visitors in the Mother's home is pertinent and necessary to [e]nsure the safety of everyone in the household. *It is essential that the Mother exercise dominion and authority over her household. Thus far, the Mother considers the needs and preferences of everyone else superior to her own. The Mother cannot maintain a safe, stable environment for the juvenile if she retains this conciliatory attitude. The Mother needs to know and understand who is in her home as well as the individual's stated purpose there. The Mother cannot ensure and has not demonstrated that her home functions according to the Mother's desires. Until the Mother is able to demonstrate that, the juvenile would be subject to danger and harm if the juvenile were returned to the Mother's care.*

(Emphases added). Respondent-mother takes issue with the italicized portions of these findings.

With regard to Brooke's and Becky's cleaning responsibilities in the home before the GCDHHS home visit on 18 December 2018, the evidence as to this issue was that respondent-mother did, in fact, require her daughters to keep their own rooms clean. As to the presence of dogs in the home, respondent-mother points to evidence demonstrating that she mandated that Brooke and Becky keep the two dogs caged and out of her way while she was downstairs. Moreover, when her daughters failed to take care of the dogs to her satisfaction, she required them to give the dogs away. Furthermore, it is not apparent from the trial court's order how the presence of the dogs gave rise to a likelihood that Kirk would be neglected.

With regard to the findings of fact concerning Brooke's boyfriend, respondent-mother testified that the boyfriend never actually moved into the residence and was not allowed to visit after she learned of his criminal record. A report submitted by social worker Cynthia Johnson indicated that Brooke's boyfriend was "living on and off at the home" during December 2017 and that respondent-mother initially "didn't really have knowledge that he had been staying on and off in the home." Respondent-mother testified that she forbade him from visiting the home once she found out about his background. There is no evidence in the record suggesting that he continued to visit after she forbade him from doing so.

Respondent-mother also objects to finding of fact 34's depiction of an incident in July 2018 during which Brooke was assaulted outside of respondent-mother's residence by the mother of a child that Brooke had been babysitting. The GCDHHS supervisor testified that the child's mother came to the residence after the child told her that Brooke had struck her with a shoe. During the incident, the mother punched Brooke in the face and hit her with a shoe several times before being restrained by Becky. Respondent-mother subsequently reported the incident to GCDHHS, informing GCDHHS that she encouraged Brooke to file criminal charges but that Brooke refused.

Respondent-mother testified she had been upstairs with her door open while Brooke was babysitting the child downstairs. She was unaware that the child's mother had come to the residence until she "heard major commotion outside [her] window," at which time she "went downstairs and outside." By the time respondent-mother reached the scene of the incident, the child's mother was gone. We are unable to find any evidence in the record to support the trial court's statement in finding of fact 34 that respondent-mother was not permitted to have minor children in her home. Furthermore, it is unclear what respondent-mother could have done to prevent this incident from occurring.

The remainder of finding of fact 34 consists of a series of generalizations or inferences drawn by the trial court. It is the province of the trial court when sitting as the fact-finder to assign weight to particular evidence and to draw reasonable inferences therefrom. *In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167–68. Such inferences, however, "cannot rest on conjecture or surmise. This is necessarily so because an inference is a permissible conclusion drawn by reason from a premise established by proof." *Sowers v. Marley*, 235 N.C. 607, 609, 70 S.E.2d 670, 672 (1952) (citations omitted). Accordingly, an appellate court may review the reasonableness of the inferences drawn by the trial court from the evidence.

We conclude that the majority of the trial court's inferences in finding of fact 34 are based merely on conjecture. The incidents described in the trial court's findings of fact do not give rise to a reasonable inference that respondent-mother's "conciliatory attitude" renders her unable to "maintain a safe, stable environment for [Kirk]," or that "[Kirk] would be subject to danger and harm if . . . returned to the Mother's care."

As for the cleanliness issues identified by the trial court, we do not believe that they are sufficiently indicative of respondent-mother's inability to control her household as to support a conclusion that a likelihood of future neglect exists. Although the GCDHHS social worker found respondent-mother's residence cluttered and dirty on one occasion, the evidence also shows that respondent-mother promptly addressed the issue by assigning Brooke and Becky additional cleaning responsibilities. The trial court's findings of fact show that respondent-mother was employing a cleaning service for her residence prior to this incident, and there is no evidence that the cleanliness of the home remained a problem at the time of the termination hearing in March 2019. Although the trial court noted that cleanliness concerns were the subject of several CPS reports filed about the family in Orange County between 2003 and 2012, no such concerns were raised in any of the CPS reports received by GCDHHS between 2014 and 2016. Moreover, a lack of cleanliness in the home was not a cause of Kirk's adjudication as a neglected and dependent juvenile in 2016.

The remaining incidents cited in the trial court's findings of fact do not support the larger inferences drawn by the trial court about respondent-mother's ability to protect Kirk or provide him with a safe home environment. The findings of fact show that respondent-mother tried to accommodate Brooke's and Becky's desires to have dogs but then required the dogs to be given away when her daughters proved unable to care for them. Respondent-mother also barred Brooke's boyfriend from the residence upon learning of his criminal history. Neither of these events is sufficient to support the trial court's conclusion that respondent-mother is unwilling or unable to control her household so as to prevent harm to Kirk. Likewise, the attack on Brooke in 2018 was an isolated incident occurring eight months prior to the termination hearing. We see nothing inherently dangerous in respondent-mother's decision to permit her adult daughter to babysit a nine-year-old girl. Nor does the record contain any evidence that respondent-mother possessed any ability to predict or prevent the incident involving Brooke and the child's mother.

**B. Conclusions of Law/Ultimate Findings**

The trial court made the following ultimate findings in support of its conclusion of law that "[g]rounds exist to terminate the parental rights of [respondent-mother] pursuant to N.C.G.S. §[ ]7B-1111(a)(1)," all of which are contested by respondent-mother:

> 36. The Mother's [CPS] history alone, which dates back to 2000, supports the likelihood of repeat[ed] neglect. . . .
>
> 37. The Mother has not demonstrated the ability to care for the juvenile without GCDHHS'[s] involvement. The Mother has shown a selfish preoccupation with her romantic attachments even when those attachments are unhealthy and harmful to the Mother and her children. The Mother's mindless attachments will in all likelihood subject the juvenile to repeated harm and result in the juvenile's eventual removal. The juvenile has dealt with enough instability already in his young life.
>
> . . . .
>
> 40. Based on the Mother's . . . inability to demonstrate an ability to correct the conditions that led to removal the probability of repetition of neglect is high. . . . [T]he neglect continues to date and there is a strong likelihood of the repetition of neglect if the juvenile is returned to [the Mother].

We agree with respondent-mother that the findings of fact in the trial court's termination order that are actually supported by evidence of record are insufficient to support the trial court's ultimate finding that there was a likelihood of repetition of neglect. Accordingly, we hold that the trial court erred in determining that grounds existed for termination under N.C.G.S. § 7B-1111(a)(1).

We note that the above-quoted portion of finding of fact 36 represents a misunderstanding of the applicable legal standard for establishing future neglect for purposes of N.C.G.S. § 7B-1111(a)(1). "Termination of parental rights for neglect may not be based solely on past conditions which no longer exist." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). The trial court may not rely upon a parent's history alone to find a likelihood of future neglect but "must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect. [One] determinative factor[ ] must

be . . . the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232 (citation omitted). "If past neglect is shown, the trial court also must then consider evidence of changed circumstances." *In re M.A.W.*, 370 N.C. 149, 152, 804 S.E.2d 513, 516 (2017).

In past cases involving families with a history of domestic violence, this Court has determined that a continued likelihood of future neglect is present when the parent continues to participate in domestic violence, fails to truly engage with her counseling or therapy requirements, or fails to break off the relationship with the abusive partner. For example, in *In re D.L.W.*, we considered whether the trial court erred by terminating the parental rights of a mother on the basis of neglect where the family had a history of "significant domestic violence between the parents." 368 N.C. at 836–37, 788 S.E.2d at 164. After the initial neglect adjudication and the removal of the juveniles from the mother's care, the mother's case plan required her to participate in counseling and remedy the domestic violence issues that were endangering her children. *Id.* at 838, 788 S.E.2d at 164.

The Court ultimately held that a likelihood of future neglect existed because (1) the trial court "received police reports and heard testimony regarding [the mother's] participation in multiple incidents involving domestic violence since the 2013 adjudication and removal of the juveniles"; (2) the mother "had not articulated an understanding of what she learned in her domestic violence counseling sessions"; and (3) the mother "continued in a relationship with the Respondent Father" despite the "ongoing domestic violence" between them. *Id.* at 843–44, 788 S.E.2d at 167–68; *see also In re D.W.P.*, 373 N.C. 327, 334, 838 S.E.2d 396, 402 (2020) (finding a likelihood of future neglect based on the mother's failure to complete all required therapy and counseling, as well as her decision to "maintain[ ] a relationship with [her partner] despite domestic violence incidents").

In contrast to those cases, respondent-mother here has not been involved in any reported incidents of domestic violence since her separation from respondent-father. As discussed above, following the removal of Kirk from her care in 2016, respondent-mother moved out, separated from respondent-father, and ultimately divorced him in April 2018. She also obtained a DVPO against respondent-father on 22 February 2017 and renewed the DVPO through February 2021. In addition, respondent-mother fully completed all of the therapy and counseling courses required by her case plan. Respondent-mother also devoted hours to writing up a detailed safety plan for Kirk in anticipation of regaining custody of him.

In this safety plan, she acknowledged her role in failing to protect the children from the prior abuse by respondent-father and stated that she found her children "IN NO WAY responsible for what they experienced." She articulately detailed the lessons she learned during counseling, and her safety plan for Kirk included high levels of supervision and structure, educational and extracurricular activities, and steps for avoiding "triggers" that may remind Kirk of prior trauma, including ensuring that respondent-father remains "blocked on all avenues" of potential contact with Kirk or other family members. In addition, each of her care providers stated that respondent-mother had satisfactorily addressed all concerns about her ability to safely and effectively parent her children and required no further counseling.

The trial court's finding of a likelihood of repetition of neglect in the future crosses the line separating a reasonable inference from mere speculation. Accordingly, we hold that the trial court erred in concluding that respondent-mother's parental rights should be terminated on the basis of neglect under N.C.G.S. § 7B-1111(a)(1).

## II. Adjudication of Dependency

**[2]** Respondent-mother also challenges the trial court's adjudication of dependency under N.C.G.S. § 7B-1111(a)(6) as an additional ground for termination. Subsection 7B-1111(a)(6) authorizes the termination of parental rights in cases where

> the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of [N.C.]G.S. [§] 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C.G.S. § 7B-1111(a)(6); *see also* N.C.G.S. § 7B-101(9). As the Court of Appeals has held, in order to sustain an adjudication of dependency, the trial court's findings of fact must establish "both (1) the parent's [in] ability to provide care or supervision, and (2) the [un]availability to the parent of alternative child care arrangements." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

Respondent-mother contests the trial court's ultimate conclusion of law in support of its adjudication under N.C.G.S. § 7B-1111(a)(6), which was based on the following findings of fact:

> 42. [The Mother] is incapable of providing a safe, permanent home for the juvenile. Although the Mother has participated in individual therapy, there is no clear, convincing evidence that the Mother has incorporated the knowledge or techniques obtained through therapy into her everyday life. It is concerning to this [c]ourt that Ms. Hudson, the therapist, indicated that there were pertinent issues that were not discussed during the course of the therapeutic relationship between the Mother and the therapist. . . . Although the Mother initiated divorce proceedings, obtained a 50-B Domestic Violence Protective Order and renewed the protective order twice, the [c]ourt is concerned about the Mother's involvement in yet another relationship [i.e., with Mr. Westray] since the juvenile's removal in 2016 without addressing adverse issues from her prior relationships. The concerns and red flags raised in this new relationship causes the [c]ourt to question the Mother's judgment. The Mother has not recommended anyone else to provide appropriate alternative care for the juvenile.
>
> . . . .
>
> 46. Grounds exist to terminate the parental rights of [the Mother] pursuant to . . . [N.C.G.S.] §[ ]7B-1111(a)(6) of the North Carolina General Statutes.

Based on our thorough review of the record, we conclude that the trial court erred by determining that respondent-mother was incapable of providing a safe, permanent home for Kirk. As set out above, the record shows that respondent-mother—among other things—eliminated the threat posed to Kirk by respondent-father, confronted her own history of violent domestic relationships to the satisfaction of her multiple treatment providers, displayed appropriate parenting techniques during her visits with Kirk, and obtained a suitable residence with ready access to transportation and social support.

We are unable to agree with the trial court that the isolated incidents referenced in its termination order are sufficient to satisfy the requirements of N.C.G.S. § 7B-1111(a)(6). Accordingly, based on our careful

review of the record, we hold that the trial court erred by terminating respondent-mother's parental rights on the ground of dependency.[4]

**Conclusion**

For the reasons set out above, we reverse the trial court's 8 May 2019 order terminating respondent-mother's parental rights.

REVERSED.

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IN THE MATTER OF K.R.C.

No. 389A19

Filed 17 July 2020

**Termination of Parental Rights—petition to terminate parental rights—denied—alleged mistake of law—findings of ultimate fact—conclusions of law—sufficiency**

In an order denying a mother's petition to terminate the father's parental rights to their child, the trial court's statement that the mother failed to prove that "necessary grounds" for termination existed did not indicate that the court mistakenly believed the mother had to prove multiple grounds for terminating the father's rights. However, the order was still vacated and remanded because the trial court failed to make sufficient, specific findings of ultimate fact—as required under N.C.G.S. §§ 7B-1109(e) and -1110(c)—and sufficient conclusions of law to allow for meaningful appellate review.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 6 May 2019 by Judge Paul A. Hardison in District Court, Pitt County. This matter was calendared in the Supreme Court on 19 June 2020 and determined without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

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4. Respondent-mother also asserts that the trial court abused its discretion by determining that it is in Kirk's best interests for her parental rights to be terminated. Having concluded that the trial court erred by finding the existence of grounds to terminate respondent-mother's parental rights under N.C.G.S. § 7B-1111(a), however, we need not address this issue. *See In re Young*, 346 N.C. 244, 252, 485 S.E.2d 612, 617 (1997).

*Miller & Audino, LLP, by Jay Anthony Audino, for petitioner-appellant mother.*

*Matthew D. Wunsche, GAL Appellate Counsel, for appellee Guardian ad Litem.*

*W. Gregory Duke for respondent-appellee father.*

MORGAN, Justice.

Petitioner, the mother of the minor child K.R.C. (Katie)[1], appeals from the trial court's order denying her petition to terminate the parental rights of respondent, Katie's biological father. Because the trial court failed to make sufficient findings of fact and conclusions of law to allow for meaningful appellate review, we vacate the trial court's order and remand for further proceedings.

*Factual Background and Procedural History*

Katie was born in April 2014. Petitioner mother and respondent father were not married to each other, and after Katie's birth, the child resided with petitioner in Pitt County. Soon after Katie was born, the District Court, Pitt County, entered a temporary custody order granting sole custody of Katie to petitioner due to respondent's mental health issues—respondent was hospitalized for three days with suicidal ideations in late January 2014—and his threatening conduct. Petitioner obtained an *ex parte* domestic violence protective order (DVPO) against respondent on 13 June 2014. On 12 July 2014, respondent was charged with assault on a female, interference with emergency communications, and second-degree trespass after he went to petitioner's residence, took petitioner's telephone from her when she tried to call 911 for help, and choked petitioner when she refused to allow him to see Katie.

During the summer of 2014, Katie was the subject of a series of child protective services (CPS) reports received by the Pitt and Beaufort County Departments of Social Services (DSS). The report received on 16 June 2014 alleged that respondent was experiencing suicidal thoughts again and had made indirect threats, such as advising petitioner to take out a life insurance policy on Katie. On 12 July 2014, a report alleged that petitioner had been contacting respondent and asking to see him,

1. A pseudonym chosen by the parties.

and that Katie had been severely sunburned during a beach trip with petitioner. It was further reported on 18 August 2014 that petitioner was unstable and possibly suffering from post-partum depression, and that petitioner's stepmother had mental health issues. Respondent later acknowledged that he had made the latter two of these CPS reports.

Due to petitioner's employment with Pitt County DSS, the CPS reports were investigated by Lenoir County DSS, which arranged for Beaufort County DSS (BCDSS) to provide services to the family. On 12 September 2014, petitioner contacted BCDSS and admitted to having ongoing contact with respondent. Petitioner acknowledged that she had allowed respondent to spend the night in her residence with Katie present on at least two occasions, had sexual relations with respondent while Katie was in the home on two other occasions, and had otherwise allowed respondent to visit with Katie.

Following these disclosures from petitioner, Katie was placed in kinship care with the child's maternal grandparents. Respondent objected to the placement, however, and threatened to remove Katie from the grandparents' home. On 15 September 2014, BCDSS obtained nonsecure custody of Katie and filed a juvenile petition alleging that Katie was a neglected juvenile.

Respondent submitted to a psychological evaluation by Dr. Anne L. Mauldin. In her report issued in November 2014, Dr. Mauldin noted that respondent was under a psychiatrist's care for attention-deficit/hyperactivity disorder (ADHD) and mood disorder related to his hospitalization. Based on her examination of respondent, Dr. Mauldin found "a high degree of fit with the diagnostic criteria for ADHD as well as Cluster B personality disorders, specifically Antisocial personality disorder and Borderline personality disorder." She described these personality disorders as characterized by "intense, shifting moods and . . . problems with impulse control" as well as rigid but shifting attitudes about other people and "problems maintaining relationships." Because of the negative implications of these diagnoses for parenting, Dr. Mauldin deemed it "critical that [respondent] . . . be under the care of a psychiatrist and be in treatment with a skilled psychotherapist . . . who utilizes Dialectical Behavioral Therapy (DBT.)"

The trial court adjudicated Katie to be a neglected juvenile on 3 December 2014, finding that she lived in an environment injurious to her welfare "in light of the substantial amount of domestic violence, aggression, and mental issues displayed by [respondent.]" *See* N.C.G.S. § 7B-101(15) (2019). Although petitioner "ha[d] not actively done anything

to injure [Katie]," the trial court found that petitioner had "continued to allow [respondent] to have access to the child in spite of seeking criminal charges, a [DVPO,] and a temporary custody order to prevent him from having such access."

The trial court entered its initial disposition order on 31 December 2014, maintaining Katie in the legal custody of BCDSS and authorizing her continued placement with her maternal grandparents. Although BCDSS had developed out-of-home family services agreements (OHFSA) for both parents, the trial court found as a fact that respondent had not signed his OHFSA and had "informed BCDSS that he is not going to complete services in order to work a plan of reunification." As a result, the trial court ceased reunification efforts toward respondent and established a permanent plan for Katie of reunification with petitioner. To achieve reunification, petitioner was ordered to comply with the conditions of her OHFSA.

The trial court ordered that respondent comply with the requirements of his OHFSA, which included anger management treatment and DBT. The trial court also ordered respondent to abstain from using marijuana and from posting material on social media about the case. Although respondent was attending supervised visitations with Katie and behaving appropriately toward his daughter during those visits, the trial court found that his ongoing hostility and aggression toward BCDSS staff required the relocation of his visits to the Family Violence Center (FVC) in Greenville. The trial court granted respondent two hours of biweekly supervised visitation with Katie but required him to contact the FVC to arrange the visits.

An initial permanency planning hearing was conducted by the trial court on 6 March 2015. That court entered an order on 24 March 2015 awarding petitioner sole legal and physical custody of Katie in fulfillment of the permanent plan. The trial court made findings that respondent had not visited Katie since the time that respondent's visits were moved to FVC, that respondent had "done nothing to eliminate the safety risks that led to this juvenile coming into care," that respondent was "unfit to raise a minor child or to be in the presence of a minor child unsupervised," and that respondent had mental health issues "prevent[ing] him from appreciating the risks he poses[] to a minor child." Based upon these findings, respondent was ordered by the trial court to have no further visitation with Katie. The order also forbade petitioner and respondent to have any contact with one another, whether "direct or indirect." In its 24 March 2015 order, the trial court waived further review hearings and relieved the parties and counsel from further responsibility in

the case. The trial court retained jurisdiction in the case, however, concluding that respondent's "general noncompliance" and "mental health warrant a continued need for state intervention and jurisdiction for this minor child." *See* N.C.G.S. § 7B-201(a) (2019).

On 18 August 2017, more than twenty-six months after regaining custody of Katie, petitioner filed a petition to terminate respondent's parental rights. Petitioner alleged the following statutory grounds for termination: (1) neglect; (2) leaving Katie in a placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to her removal; (3) failure to pay a reasonable portion of the cost of Katie's care; (4) dependency; and (5) abandonment. N.C.G.S. § 7B-1111(a)(1)–(3), (6)–(7) (2019). Respondent filed an answer to the petition denying each of these alleged termination grounds.

The trial court held an adjudicatory hearing on 6 and 9 November 2018. On the second day of the hearing, petitioner voluntarily dismissed her claim under N.C.G.S. § 7B-1111(a)(3) (failure to pay a reasonable portion of the cost of the juvenile's care), conceding that the application of the ground only arose when a juvenile is in DSS custody. At the conclusion of the presentation of evidence, respondent moved to dismiss petitioner's remaining claims on the basis of insufficient evidence. With regard to his alleged failure to make reasonable progress under N.C.G.S. § 7B-1111(a)(2), respondent argued that this ground for termination was also inapplicable because Katie was removed from petitioner's care for only six months between September 2014 and March 2015 and thus was not in a "placement outside the home for more than [twelve] months" as required by the governing statute. N.C.G.S. § 7B-1111(a)(2). After hearing from each party, the trial court took the matter under advisement, deferring the dispositional hearing pending its ruling on adjudication.

In a ruling captioned "Termination Order" which was entered on 6 May 2019, the trial court denied the petition, concluding that "[p]etitioner ha[d] failed her burden to prove by clear, cogent and convincing evidence that the necessary grounds exist to terminate the [r]espondent's parental rights." Petitioner filed timely notice of appeal after she was served with the order on 19 June 2019. *See* N.C.G.S. § 7B-1001(b) (2019).

*Analysis*

Petitioner begins with two related arguments which we consider together. She first challenges the trial court's conclusion of law that she failed to prove that "the necessary *grounds* exist" to support

the termination of respondent's parental rights. (Emphasis added). Petitioner claims that the pluralization of the term "ground" illustrates that the trial court mistakenly believed that petitioner was obliged to prove multiple "necessary grounds" for termination under N.C.G.S. § 7B-1111(a). Petitioner also contends that this sole conclusion of law of the trial court fails to disclose the specific deficiencies in petitioner's evidence regarding her burden of proof. In her second argument, petitioner asserts that the trial court failed to make sufficient findings of fact to support its conclusion regarding the lack of statutory grounds upon which to terminate respondent's parental rights.

In addressing the trial court's use of the term "necessary grounds" in its conclusion of law, we first recognize that at the adjudicatory stage of a termination of parental rights proceeding, the petitioner has the burden to prove the existence of at least one statutory ground for termination by clear, cogent, and convincing evidence. N.C.G.S. § 7B-1109(f) (2019). It is well-established that proof of any single statutory ground for termination is sufficient to meet the petitioner's burden. *See*, *e.g.*, *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982). Accordingly, "[a]fter an adjudication that *one or more grounds* for terminating a parent's rights exist," the trial court must proceed to disposition and "determine whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a) (2019) (emphasis added).

While this Court agrees with petitioner that proof of multiple grounds for termination is not necessary for an adjudication under N.C.G.S. § 7B-1109(e), we are not persuaded that, by itself, the trial court's use of the phrase "necessary grounds" which pluralizes the term "ground" connotes the commission of error by the trial court.

Among the common meanings of "grounds" is the "[b]asis or justification for something, as in 'grounds for divorce.' " https://www.yourdictionary.com/grounds (last visited June 30, 2020).[2] In addition, as shown by the following passage from our Rules of Civil Procedure which are codified in the North Carolina General Statutes, legal references often use the terms "ground" and "grounds" interchangeably to denote a single basis or reason:

> It is not *ground* for objection that the information sought will be inadmissible at the trial if the information sought

2. *See also* https://www.merriam-webster.com (search "DICTIONARY" for "grounds") ("4 a: a basis for belief, action, or argument // *ground* for complaint —often used in plural // sufficient *grounds* for divorce")

> appears reasonably calculated to lead to the discovery of admissible evidence nor is it *grounds* for objection that the examining party has knowledge of the information as to which discovery is sought.

N.C.G.S. § 1A-1, 26(b)(1) (2019) (emphasis added). This same tendency appears in our case law. *Compare In re E.H.P.*, 372 N.C. 388, 391, 831 S.E.2d 49, 52 (2019) ("At the adjudication stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence that *grounds exist* for termination pursuant to section 7B-1111 of the General Statutes." (emphasis added)), *with id.* at 395, 831 S.E.2d at 53 ("As previously noted, an adjudication of *any single ground* in N.C.G.S. § 7B-1111(a) *is sufficient* to support a termination of parental rights." (emphasis added)). Likewise, in case citations, the phrase "*rev'd on other grounds*" may refer to a single alternative rationale for reversing a lower court's decision. *See* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 501 tbl.T.8 (Columbia Law Review Ass'n et al. eds., 20th ed. 2015). In light of this frequent interchangeable usage of the terms "ground" and "grounds" in legal authorities to refer to a singular basis for a decision, we are unwilling to conclude, without more than the trial court's facial reference to "grounds" in the order here, that the trial court harbored a mistaken belief that multiple statutory grounds for termination were necessary in order to terminate respondent's parental rights.

We do agree, however, with petitioner that the limited findings of fact and the single conclusion of law included in the trial court's "Termination Order" do not permit meaningful appellate review, and therefore they are insufficient to support the trial court's decision denying her petition. The pertinent statute governing adjudications, N.C.G.S. § 7B-1109, provides that the trial court "shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent." N.C.G.S. § 7B-1109(e) (2019). In addition to placing the burden of proof on the petitioner, the statute specifies that "all [adjudicatory] findings of fact shall be based on clear, cogent, and convincing evidence." N.C.G.S. § 7B-1109(f) (2019).

Here, the trial court concluded that petitioner had failed to prove any of her alleged grounds for terminating respondent's parental rights under N.C.G.S. § 7B-1111(a). In such circumstances, when the court "determine[s] that circumstances authorizing termination of parental rights do not exist," the dispositional statute provides that "the court

shall dismiss the petition or deny the motion,[3] *making appropriate findings of fact and conclusions*." N.C.G.S. § 7B-1110(c) (2019) (emphasis added).

We have previously held that N.C.G.S. § 7B-1109(e) "places a duty on the trial court as the adjudicator of the evidence"[4] which is equivalent to the duty imposed by Rule 52(a)(1) of the North Carolina Rules of Civil Procedure. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 59 (2019) (citing N.C.G.S. § 1A-1, Rule 52(a)(1) (2019)). Rule 52(a)(1) mandates that, "[i]n all actions tried upon the facts without a jury . . . , the court shall find the facts specially and state separately its conclusions of law thereon[.]" N.C.G.S. § 1A-1, Rule 52(a)(1). In explaining the trial court's obligation arising under N.C.G.S. § 7B-1109(e), we quoted a prior decision of this Court which applied Rule 52(a)(1):

> [W]hile Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, it does require *specific findings* of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached.

*In re T.N.H.*, 372 N.C. at 407–08, 831 S.E.2d at 59 (quoting *Quick v. Quick*, 305 N.C. 446, 451–52, 290 S.E.2d 653, 658 (1982) (emphasis and alteration in original)). "The purpose of the requirement that the court make findings of those specific facts which support its ultimate disposition of the case is to allow a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it—represent

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3. When a juvenile is the subject of a pending abuse, neglect, or dependency proceeding, a party seeking termination of parental rights may file a motion in the cause in lieu of a petition. *See* N.C.G.S. § 7B-1102 (2019). As a technical matter, N.C.G.S. § 7B-1110(c) directs the trial court to *dismiss* a petition and to *deny* a motion. However, we shall refer to the trial court's disposition in this case as denying petitioner's petition, as that wording is used in the "Termination Order."

4. The fact-finding requirement which is essential to support the trial court's dispositional determination of a child's best interests is governed by N.C.G.S. § 7B-1110(a) (2019), which provides that the court "shall consider the following [six] criteria and *make written findings regarding the following that are relevant*[.]" *Id.* (emphasis added); *see also In re A.R.A.*, 373 N.C. 190, 199, 835 S.E.2d 417, 424 (2019) ("[A] factor is 'relevant' if there is 'conflicting evidence concerning' the factor, such that it is 'placed in issue by virtue of the evidence presented before the [district] court[.]' " (second and third alterations in original) (quoting *In re H.D.*, 239 N.C. App. 318, 327, 768 S.E.2d 860, 866 (2015))).

a correct application of the law." *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (1980).

By its own terms, N.C.G.S. § 7B-1109(e) applies equally to instances in which the trial court "adjudicate[s] the existence *or nonexistence* of any of the circumstances set forth in G.S. 7B-1111[.]" *Id.* (emphasis added). Subsection 7B-1110(c) expressly requires the trial court to "mak[e] appropriate findings of fact and conclusions" when denying relief based on the absence of statutory grounds for termination. Consequently, we interpret N.C.G.S. § 7B-1109(e) as placing the same duty on the trial court to "find the facts specially and state separately its conclusions of law thereon," regardless of whether the court is granting or denying a petition to terminate parental rights. N.C.G.S. § 1A-1, Rule 52(a)(1); *see also In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 59.

In its "Termination Order," the trial court found dozens of evidentiary facts recounting the parties' respective actions during the course of the underlying juvenile proceeding and describing respondent's current employment, mental health diagnosis, and family life. Nonetheless, the trial court found none of the ultimate facts required to support an adjudication of "the existence *or nonexistence* of any of the circumstances set forth in G.S. 7B-1111 . . . ." N.C.G.S. § 7B-1109(e) (emphasis added). Combined with the trial court's bare conclusion of law[5] that petitioner failed to prove that "the necessary grounds exist to terminate the [r]espondent's parental rights[,]" these evidentiary findings do not meet the requirements of Rule 52(a)(1) as applied to adjudicatory orders under N.C.G.S. §§ 7B-1109(e) and -1110(c).

"Ultimate facts are the final facts required to establish the plaintiff's cause of action or the defendant's defense; and evidentiary facts are those subsidiary facts required to prove the ultimate facts." *Woodard v. Mordecai*, 234 N.C. 463, 470, 67 S.E.2d 639, 644 (1951). We have recognized that

> the line of demarcation between ultimate facts and legal conclusions is not easily drawn. An ultimate fact is the final resulting effect which is reached by processes of logical reasoning from the evidentiary facts. Whether a statement is an ultimate fact or a conclusion of law

5. We note the trial court also concluded that it "ha[d] jurisdiction over the matter pursuant to N.C.G.S. § 7B-1101 [(2019),]" and that respondent's parental rights "should not be terminated." Neither of these additional conclusions alters our view that the court's adjudicatory finds are inadequate.

> depends upon whether it is reached by natural reasoning or by an application of fixed rules of law.

*Id.* at 472, 67 S.E.2d at 645 (citations omitted); *see also In re N.D.A.*, 373 N.C. 71, 76, 833 S.E.2d 768, 772–73 (2019) (defining "an 'ultimate finding [a]s a conclusion of law or at least a determination of a mixed question of law and fact' [which] should 'be distinguished from the findings of primary, evidentiary, or circumstantial facts.' " (quoting *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 491, 57 S. Ct. 569, 574, 81 L. Ed. 755, 762 (1937)).

Compliance with the fact-finding requirements of N.C.G.S. §§ 7B-1109(e) and -1110(c) is critical because

> [e]ffective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity by which the order's rationale is articulated. Evidence must support findings; findings must support conclusions; conclusions must support the judgment. Each step of the progression must be taken by the trial judge, in logical sequence; each link in the chain of reasoning must appear in the order itself. Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function to find the facts and apply the law thereto.

*Quick*, 305 N.C. at 458, 290 S.E.2d at 661 (quoting *Coble*, 300 N.C. at 714, 268 S.E.2d at 190).

Here, petitioner presented the trial court with four potential grounds for the termination of respondent's parental rights: neglect under N.C.G.S. § 7B-1111(a)(1); lack of reasonable progress under N.C.G.S. § 7B-1111(a)(3); dependency under N.C.G.S. § 7B-1111(a)(6); and abandonment under N.C.G.S. § 7B-1111(a)(7). The trial court neglected to find the ultimate facts which would be dispositive of any of these grounds. Moreover, the trial court's general conclusion of law singly offers no analysis of the legal standards applied to petitioner's claims.

Subdivision 7B-1111(a)(1) authorizes the trial court to terminate one's parental rights upon proof that "[t]he parent has . . . neglected the juvenile." N.C.G.S. § 7B-1111(a)(1). The trial court found that Katie had been adjudicated as neglected on 3 December 2014, but made no findings on the dispositive question of whether respondent was neglecting Katie at the time of the termination hearing within the meaning of N.C.G.S. § 7B-101(15) (2019). *See*, *e.g.*, *In re Young*, 346 N.C. 244, 248,

485 S.E.2d 612, 615 (1997) ("A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding.").

Similarly, with regard to N.C.G.S. § 7B-1111(a)(2), the trial court's findings do not address whether respondent "willfully left the juvenile in foster care or placement outside the home for more than 12 months"[6] and, if so, whether "reasonable progress under the circumstances has been made [by respondent] in correcting those conditions which led to the removal of the juvenile." *Id.*; *see also In re O.C.*, 171 N.C. App. 457, 464, 615 S.E.2d 391, 396 (articulating "two[-]part analysis" for adjudications under N.C.G.S. § 7B-1111(a)(2)), *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005); *In re C.C.*, 173 N.C. App. 375, 384, 618 S.E.2d 813, 819 (2005) (reversing termination of parental rights under N.C.G.S. § 7B-1111(a)(2) where "the trial court's order does not contain adequate findings of fact that respondent acted 'willfully' or . . . adequate findings on respondent's progress").

An adjudication of dependency under N.C.G.S. § 7B-1111(a)(6) requires a showing that (1) "the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and . . . there is a reasonable probability that such incapability will continue for the foreseeable future[,]" and (2) "the parent lacks an appropriate alternative child care arrangement." *Id.* "Thus, the trial court's findings regarding this ground 'must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.' " *In re L.R.S.*, 237 N.C. App. 16, 19, 764 S.E.2d 908, 910 (2014) (quoting *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005)).

Because proof of both the parent's incapability to provide proper care and supervision and the parent's lack of an alternative child care

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6. We do not reach the merits of respondent's contention that N.C.G.S. § 7B-1111(a)(2) would seem inapplicable to the facts of this case inasmuch as Katie was in her mother's custody at the time that the petition was filed. *See generally In re A.C.F.*, 176 N.C. App. 520, 526, 626 S.E.2d 729, 734 (2006) (measuring the period of "more than twelve months" under N.C.G.S. § 7B-1111(a)(2) as "beginning when the child was 'left' in foster care or placement outside the home pursuant to a court order, *and ending when the motion or petition for termination of parental rights was filed*"); *see also* N.C.G.S. § 7B-101(18b) (2019) (defining "[r]eturn home or reunification" as "[p]lacement of the juvenile *in the home of either parent* or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order" (emphasis added)).

arrangement is required to terminate parental rights under N.C.G.S. § 7B-1111(a)(6), a trial court may adjudicate the nonexistence of this ground by finding the absence of either element, or by finding the petitioner's failure to prove either element by clear, cogent, and convincing evidence. N.C.G.S. § 7B-1109(c); *see also* N.C.G.S. §§ 7B-1109(e), -1110(c). In the instant case, the trial court made neither of these potential findings.

We note that petitioner does not argue on appeal that the evidence supported the termination of respondent's parental rights for dependency. Although petitioner does not expressly abandon this termination ground, nonetheless its omission from the pertinent arguments of her appellate brief implies that she recognizes that the circumstances contemplated by N.C.G.S. § 7B-1111(a)(6) do not exist in this case. As discussed, the statutory provision requires proof here that respondent's inability to provide for Katie's care and supervision rendered her "a dependent juvenile within the meaning of G.S. 7B-101[.]" N.C.G.S. § 7B-1111(a)(6). Section 7B-101 defines a "[d]ependent juvenile" as

> in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

N.C.G.S. § 7B-101(9) (2019). Regardless of respondent's abilities, Katie was not "in need of assistance or placement" at the time that the petition was filed because she was in the legal and physical custody of her mother. *Id.* Accordingly, Katie was not "a dependent juvenile within the meaning of G.S. 7B-101" as required to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(6).

Finally, N.C.G.S. § 7B-1111(a)(7) authorizes the termination of parental rights if "[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition . . . ." *Id.* Although not defined by North Carolina's Juvenile Code, "abandonment imports any wil[l]ful or intentional conduct on the part of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962). This Court has specifically held that the issue of the willfulness of a parent's conduct is "a question of fact to be determined from the evidence." *Id.*

The trial court's findings in the present case offer no assessment regarding the willfulness of respondent's conduct toward Katie on the matter of abandonment during the six months at issue under N.C.G.S. § 7B-1111(a)(7). *See In re I.R.L.*, 263 N.C. App. 481, 484, 823 S.E.2d 902, 905 (N.C. Ct. App. 2019) (remanding for further findings where "[t]he trial court's order fails to address the willfulness of Father's conduct, a required element under N.C. Gen. Stat. § 7B-1111(a)(4) and (7)"). The inadequacy of the trial court's findings is further displayed by its failure to identify "the determinative six-month period" governing its abandonment inquiry. *In re C.B.C.*, 373 N.C. 16, 23, 832 S.E.2d 692, 697 (2019).

In urging this Court to affirm the "Termination Order," both respondent and the guardian *ad litem* (GAL) emphasize the large number of evidentiary findings made by the trial court. They cite the Court of Appeals decision of *In re B.C.T.*, 828 S.E.2d 50 (N.C. Ct. App. 2019) as disclaiming the need for particular "magic words" in the trial court's findings of fact.[7] *Id.* at 58. However, the sufficiency of the trial court's order is not measured merely by the quantity of findings or the trial court's parlance. We are simply unable to undertake meaningful appellate review of the trial court's decision based upon a series of evidentiary findings which are untethered to any ultimate facts which undergird an adjudication pursuant to N.C.G.S. § 7B-1111(a) or to any particularized conclusions of law which would otherwise explain the trial court's reasoning.[8]

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7. We announced a similar principle in affirming an order that ceased reunification efforts toward a respondent-parent under the statutory predecessor to N.C.G.S. § 7B-906.2(b) (2019), which required the court to make certain findings of fact before ceasing such efforts:

> While [the trial court's] findings of fact do not quote the precise language of [former N.C.G.S. §] 7B-507(b), the order embraces the substance of the statutory provisions requiring findings of fact that further reunification efforts "would be futile" or "would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time."

*In re L.M.T.*, 367 N.C. 165, 169, 752 S.E.2d 453, 456 (2013). In *In re L.M.T.*, we opined that "[t]he trial court's written findings must address the statute's concerns, but need not quote its exact language." *Id.* at 168, 752 S.E.2d at 455. Because the order *sub judice* lacks any ultimate findings addressing the gravamen of N.C.G.S. § 7B-1111(a), we need not consider the degree to which our holding in *In re L.M.T.* applies to an adjudicatory order entered pursuant to N.C.G.S. §§ 7B-1109(e) and -1110(c).

8. We must decline to speculate about how the evidentiary facts led the trial court to conclude that petitioner had failed to prove the existence of any of her alleged grounds for termination. To indulge in such conjecture would exceed the proper scope of appellate review, thus undermining the purpose of Rule 52(a)(1) and the coordinate requirements of N.C.G.S. § 7B-1109(e) "to allow a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it—represent a correct

The Court of Appeals faced a different, though instructively relevant, issue in *In re B.C.T.*, where the trial court's dispositional order included a finding, unsupported by evidence, that a certain party was "a fit and proper person to have the care, custody, and control of the [j]uvenile." *In re B.C.T.*, 828 S.E.2d at 58. The order also included a conclusion of law "[t]hat it is in the best interests of the [j]uvenile for [the party] to be granted the care, custody, and control of the [j]uvenile." *Id.* In reversing and remanding for a new hearing, the Court of Appeals "noted that the trial court need not use 'magic words' in its findings of fact or conclusions of law, if the evidence and findings overall make the trial court's basis for its order clear." *Id.* However, just as the use of specific terminology was not necessary in *In re B.C.T.* to sustain the custody award, conversely the trial court's use of such terms in the present case as "fit and proper person" and "best interests of the [j]uvenile" was insufficient to substantiate its order. *Id.* ("Here, we have disposition orders with 'magic words' but no evidence to support some of the crucial findings of fact and thus no support for the related conclusions of law.").

Because the "Termination Order" under review here does not contain any of the "magic words" associated with an adjudication under N.C.G.S. § 7B-1111(a), we find the holding of *In re B.C.T.* to be inapplicable, even though the analysis employed in that decision aids our examination. The issue before the Court in this case is not the lack of supporting evidence for the trial court's findings and conclusions, but a lack of adequate findings and conclusions which would "make the trial court's basis for its order clear." *Id.*

Respondent and the GAL also reference the Court of Appeals opinion of *In re S.R.G.*, 200 N.C. App. 594, 684 S.E.2d 902 (2009), *disc. review and cert. denied*, 363 N.C. 804, 691 S.E.2d 19 (2010) (*S.R.G. II*), for the principle that a trial court's failure to address an alleged ground for termination in its order amounts to a tacit "non-adjudication of that ground." They appear to argue, by way of extension of this holding from *In re S.R.G.*, that a trial court's order does not need to address *any* of the specific grounds for termination alleged by a petitioner when the trial court concludes that none of the alleged grounds exist. To hold otherwise, the GAL contends, would require all future orders terminating parental rights "to list all of the grounds that [the trial court] had not

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application of the law." *Coble*, 300 N.C. at 712, 268 S.E.2d at 189; *see also Godfrey v. Zoning Bd. of Adjustment of Union Cty.*, 317 N.C. 51, 63, 344 S.E.2d 272, 279 (1986) ("Fact finding is not a function of our appellate courts.").

adjudicated," thereby imposing "an unnecessary new requirement" on trial courts and creating "a potential pitfall for other petitioners."

Respondent and the GAL, in their respective positions, misconstrue *S.R.G. II*, which involved an appeal which was lodged after remand of the Court of Appeals' prior decision in *In re S.R.G.*, 195 N.C. App. 79, 671 S.E.2d 47 (2009) (*S.R.G. I*). The petitioner in *S.R.G. I* alleged four grounds for terminating the respondent's parental rights, including neglect and abandonment under N.C.G.S. § 7B-1111(a)(1) and (7). *Id.* at 81, 671 S.E.2d at 49. The trial court originally entered an order terminating the respondent's parental rights, finding "as its sole basis for termination" that the respondent had willfully abandoned the child. *Id.* at 82, 671 S.E.2d at 50. In the respondent's appeal in *S.R.G. I*, the Court of Appeals held that the trial court had erred in adjudicating abandonment based on the respondent's "actions during the relevant six[-]month period[.]" *Id.* at 87, 671 S.E.2d at 53. The cause was remanded to the trial court "for further action consistent with this opinion." *Id.* at 88, 671 S.E.2d at 53.

On remand, the trial court entered a new order terminating the respondent's parental rights on the grounds of neglect under N.C.G.S. § 7B-1111(a)(1). *S.R.G. II*, 200 N.C. App. at 597, 684 S.E.2d at 904. In *S.R.G. II*, the Court of Appeals held that the "law of the case" doctrine barred the trial court from adjudicating a new ground for termination on remand which had not been found in its original order. *Id.* at 597–98, 684 S.E.2d at 904–05. The Court of Appeals reasoned that N.C.G.S. § 7B-1109(e) provides that the trial court "*shall adjudicate the existence or nonexistence of any of the circumstances* set forth in G.S. 7B–1111" at the adjudicatory hearing. *Id.* at 598, 684 S.E.2d at 905. This statutory language required the trial court to address all of the petitioner's alleged grounds at the initial termination hearing. Therefore, the Court of Appeals concluded, the "consequence" of the trial court's original order adjudicating the existence of abandonment under N.C.G.S. § 7B-1111(a)(7) was "the nonexistence of the other two grounds alleged by [the petitioner.]" *Id.*

At first glance, *S.R.G. II* might appear to support the joint position of respondent and the GAL that a trial court's failure to address an alleged ground for termination amounts to a proper adjudication of the nonexistence of the alleged ground. While a trial court's failure to address an alleged ground can imply that the trial court was not persuaded it existed, it tells a reviewing court nothing about how or why the trial court reached such a conclusion. The Court of Appeals did not affirm the reasoning of the trial court's original termination order or otherwise imply that the trial court's silence was sufficient to comply with

the requirement that courts "find the facts" under N.C.G.S. § 7B-1109(e). The opinion in *S.R.G. II* instead noted that the petitioner had "failed in *S.R.G.* [*I*] to cross-assign error" to the trial court's non-adjudication of the two grounds in its original order. *S.R.G. II*, 200 N.C. App. at 599, 684 S.E.2d at 905; *see also* N.C. R. App. P. 10(c), 28(c) (allowing appellee to "present issues on appeal based on any action or omission of the trial court that deprived the appellee of an alternative basis in law for supporting the judgment"). Because the petitioner "did not preserve this issue" by raising it on appeal in *S.R.G. I*, the law of the case doctrine barred the Court of Appeals from addressing any new potential errors in the original termination order in *S.R.G. II*. *Id.*

Furthermore, both *S.R.G. I* and *S.R.G. II* involved a trial court's order terminating parental rights. The trial court's order in the current case denied petitioner's termination petition pursuant to N.C.G.S. § 7B-1110(c). This distinction makes a difference, for as previously discussed, an adjudication of any statutory ground for termination under N.C.G.S. § 7B-1111(a) triggers the trial court's duty to proceed to disposition in order to "determine whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a). In the context of a termination order, therefore, the trial court's failure to address more than the single ground needed to terminate parental rights will often be harmless, albeit erroneous, under N.C.G.S. § 7B-1109(e).

By contrast, when the trial court denies a petition at the adjudicatory stage pursuant to N.C.G.S. § 7B-1110(c), the order must allow for appellate review of the trial court's evaluation of *each and every* ground for termination alleged by the petitioner. In this circumstance, the implementation of a principle that a trial court's silence on an alleged ground amounts to a proper adjudication of its nonexistence would hinder appellate review and effectually nullify the statutory requirement that the trial court "mak[e] appropriate findings of fact and conclusions." N.C.G.S. § 7B-1110(c).

Contrary to the GAL's assertion, our conclusion that a trial court must comply with N.C.G.S. §§ 7B-1109(e) and -1110(c) in denying a petition for the termination of parental rights is neither novel nor contrary to existing case law. Rather than placing an "unnecessary new" burden on the trial courts of the state, our holding merely reiterates that the trial courts must make findings of "those material and ultimate facts from which it can be determined whether the findings are supported by the evidence and whether they support the conclusions of law reached." *Quick*, 305 N.C. at 451, 290 S.E.2d at 657. This requirement is consistent with the trial court's duty regarding the entry of judgments following

civil bench trials under N.C.G.S. § 1A-1, Rule 52(a)(1), *see id.* at 450–51, 290 S.E.2d at 657, and reinforced by this Court in our decision in *In re T.N.H.*, 372 N.C. at 407–08, 831 S.E.2d at 59.

*Conclusion*

We hold that the trial court erred in its failure to enter sufficient findings of ultimate fact and conclusions of law to support its dismissal of the petitioner's termination of parental rights petition pursuant to N.C.G.S. § 7B-1110(c). Therefore, we vacate the "Termination Order" and remand this matter to the trial court for the entry of additional findings and conclusions. *See Coble*, 300 N.C. at 714, 268 S.E.2d at 190; *In re I.R.L.*, 823 S.E.2d at 906. On remand, we leave to the discretion of the trial court whether to hear additional evidence. *See, e.g.*, *In re I.R.L.*, 823 S.E.2d at 906. In light of our determination, we do not address petitioner's remaining arguments on appeal.

VACATED AND REMANDED.

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IN THE MATTER OF M.A., B.A., A.A.

No. 301A19

Filed 17 July 2020

**1. Termination of Parental Rights—grounds for termination—neglect—probability of repeated neglect—domestic violence**

The trial court did not err by determining that a father's parental rights to his children were subject to termination on the grounds of neglect where the trial court found that a substantial probability existed that the children would be neglected if they were returned to the father's care, based on findings that included the father's lengthy history of domestic violence in the presence of the children, his failure to fully follow the trial court's order to participate in domestic violence treatment, and testimony regarding 911 calls relating to domestic disturbances at his residence.

**2. Termination of Parental Rights—best interests of the child—statutory factors—likelihood of adoption**

The trial court did not abuse its discretion by concluding that termination of a mother's parental rights would be in the best interests of her children where the trial court made detailed findings of

fact addressing each of the relevant criteria in N.C.G.S. § 7B-1110(a) and the findings were supported by competent evidence. Further, the children's strong bond with their parents and their desire to return to their parents' home did not preclude a finding that the children were likely to be adopted.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 7 May 2019 by Judge Denise S. Hartsfield in District Court, Forsyth County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but was determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Theresa A. Boucher*, *Assistant County Attorney*, *for petitioner-appellee Forsyth County Department of Social Services.*

*Michelle FormyDuval Lynch*, *GAL Appellate Counsel*, *for appellee Guardian ad Litem.*

*Mary McCullers Reece for respondent-appellant father.*

*Richard Croutharmel for respondent-appellant mother.*

ERVIN, Justice.

Respondent-father Earl A. and respondent-mother Peggy A. appeal from an order entered by the trial court terminating their parental rights in their minor children M.A., B.A., and A.A.[1] After careful consideration of the parents' challenges to the trial court's termination order, we conclude that the order in question should be affirmed.

## I. Factual Background

On 2 August 2017, the Forsyth County Department of Social Services filed petitions alleging that Maria, Brenda, and Andrew were neglected juveniles and obtained the entry of orders placing the children in nonsecure custody.[2] In these petitions, DSS alleged that substance abuse and

1. M.A., B.A., and A.A. will, respectively, be referred to throughout the remainder of this opinion as "Maria," "Brenda," and "Andrew," which are pseudonyms used to protect the juveniles' identities and for ease of reading.

2. In addition, DSS obtained nonsecure custody of respondent-mother's oldest son, A.J., who will be referred to throughout the remainder of this opinion as "Adam."

domestic violence in the presence of the children had caused it to offer in-home services to the family and to subsequently seek to have the children removed from the family home. In addition, the petitions alleged that DSS had had extensive prior dealings with the children's family, including their placement in DSS custody from 19 April 2011 through 6 November 2012, and the fact that they had been the subject of a prior adjudication of neglect.[3]

The petitions came on for hearing before the trial court on 21 March 2018. On 30 May 2018, the trial court entered an order determining that the children were neglected juveniles "in that they received improper care and supervision from [the parents] and [ ] were allowed to live in an environment injurious to their wellbeing." The trial court's order detailed ongoing instances of domestic violence and substance abuse that had occurred in the presence of the children despite the fact that the parents had entered into a family services agreement with DSS that prohibited such conduct. As a precondition for allowing them to reunify with the children, the trial court ordered the parents to obtain substance abuse and domestic violence assessments and follow all resulting treatment recommendations; "[s]ubmit to random drug testing"; "[e]ngage in supervised visits with [the] children and demonstrate consistency and safe parenting skills during visits"; "[e]stablish and maintain stable, safe, adequate housing to meet [the] children's basic needs"; and notify DSS "of any change in residency, telephone number, or employment." In addition, respondent-father was ordered to "[p]rovide [DSS] with names of all physicians . . . prescribing him controlled substances" and to "[s]ign releases to all doctors providing treatment for him[.]"

After a permanency planning hearing held on 11 June 2018, the trial court entered an order on 11 July 2018 that established the primary permanent plan for all three children as adoption, with a secondary permanent plan of guardianship. In addition, the trial court ordered the cessation of efforts to reunify the parents with the children and

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Respondent-father is not Adam's father. In view of the fact that any issues concerning DSS' involvement with Adam are not before the Court in connection with this appeal, we will refrain from discussing those issues in the remainder of this opinion.

3. The children were adjudicated to be neglected juveniles due to domestic violence and substance abuse by means of an order entered by the trial court on 4 August 2011. However, the Court of Appeals reversed the trial court's adjudication order and remanded that case to the District Court, Forsyth County, for further proceedings. *In re M.A.*, No. COA11-1238, 2012 WL 1316378 (N.C. Ct. App. April 17, 2012) (unpublished). On remand, the trial court entered an order on 25 July 2012 finding the children to be neglected juveniles on the basis of domestic violence and substance abuse.

instructed DSS to file petitions seeking to have the parents' parental rights in the children terminated.[4]

On 14 August 2018, DSS filed a petition seeking to have the parents' parental rights in the children terminated based upon neglect and willful failure to make reasonable progress toward correcting the conditions that led to the children's removal from the family home. *See* N.C.G.S. § 7B-1111(a)(1)–(2) (2019). The termination petition came on for hearing before the trial court on 4 February 2019. On 7 May 2019, the trial court entered an order terminating both parents' parental rights in the children on the basis of both grounds for termination alleged in the termination petition. In addition, the trial court concluded that termination of the parents' parental rights would be in the children's best interests. The parents noted an appeal to this Court from the trial court's termination order.[5] In seeking relief from the trial court's termination order before this Court, respondent-father argues that the trial court erred by finding that grounds existed to support the termination of his parental rights in the children while respondent-mother argues that the trial court erred by determining that termination of her parental rights would be in the children's best interests.

## II. Legal Analysis

### A. Standard of Review

According to well-established North Carolina law, termination of parental rights proceedings involve the use of a two-stage process. N.C.G.S. §§ 7B-1109, -1110 (2019). "At the adjudicatory stage, the petitioner bears the burden of proving by 'clear, cogent, and convincing evidence' the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes." *In re A.U.D.*, 373 N.C. 3, 5–6, 832 S.E.2d 698, 700 (2019) (quoting N.C.G.S. § 7B-1109(f)). "If [the trial court] determines that one or more grounds listed in section 7B-1111 are present, the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile[s] to terminate parental rights." *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citing *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614–15 (1997); N.C.G.S. § 7B-1110).

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4. The parents filed notices preserving their right to seek appellate review of the 11 July 2018 order by the Court of Appeals pursuant to N.C.G.S. §§ 7B-1001(a)(5).

5. Although the parents noted appeals to this Court from the 11 July 2018 order, they have not contended in their briefs that the challenged order is legally erroneous, thereby abandoning any challenge that they might have otherwise been entitled to make to the lawfulness of that order. *See* N.C.R. App. P. 28(b)(6).

B. Respondent-Father's Appeal

**[1]** As an initial matter, we will address respondent-father's contention that the trial court erred by determining that his parental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(1) and (2). "This Court reviews a trial court's adjudication decision pursuant to N.C.G.S. § 7B-1109 in order to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law, with the trial court's conclusions of law being subject to de novo review on appeal." *In re N.D.A.*, 373 N.C. 71, 74, 833 S.E.2d 768, 771 (2019) (cleaned up) (citations omitted). "Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)). "Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *Id.* at 407, 831 S.E.2d at 58–59 (citing *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982)). "[A] finding of only one ground is necessary to support a termination of parental rights." *In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019).

According to N.C.G.S. § 7B-1111(a)(1), a trial judge may terminate a parent's parental rights in a child in the event that it finds that the parent has neglected his or her child in such a way that the child has become a neglected juvenile as that term is defined in N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1) (2019). A neglected juvenile is "[a]ny juvenile less than 18 years of age . . . whose parent . . . does not provide proper care, supervision, or discipline" or "who lives in an environment injurious to the juvenile's welfare." *Id.* § 7B-101(15).

> [I]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child at the time of the termination proceeding. In the event that a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible. In such circumstances, the trial court may find that a parent's parental rights in a child are subject to termination on the grounds of neglect in the event that the petitioner makes a showing of past neglect and a likelihood of future neglect by the parent.

*In re N.D.A.*, 373 N.C. at 80, 833 S.E.2d at 775 (cleaned up) (citations omitted). "When determining whether future neglect is likely, the trial court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing." *In re Z.A.M.*, 374 N.C. 88, 95, 839 S.E.2d 792, 797 (2020) (citing *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). "A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *In re M.J.S.M.*, 257 N.C. App. 633, 637, 810 S.E.2d 370, 373 (2018) (citation omitted).

In light of the testimony, prior orders, and a report prepared by the guardian ad litem that was introduced into evidence at the termination hearing, the trial court found that "[respondents], the parents of [Maria], [Brenda] and [Andrew,] have neglected their children" and that "[t]here is a strong probability of repeated neglect of [Maria], [Brenda] and [Andrew] should they be returned to the care[,] custody[,] and control of [respondents]." In support of these ultimate findings, the trial court made numerous evidentiary findings concerning the progress that respondent-father had made toward satisfying the requirements of his case plan in the course of concluding that the progress that he made toward the achievement of that goal had not been reasonable.

Although respondent-father acknowledges the existence of the trial court's earlier determination that the children were neglected juveniles, he challenges its finding that there was a substantial probability that the children would be neglected in the event that they were returned to his care. Among other things, respondent-father argues that the challenged trial court finding was erroneous because he had "made reasonable progress in addressing substance use, domestic violence, and maintenance of a stable home and income." In support of this contention, respondent-father asserts that several of the trial court's factual findings lack sufficient evidentiary support to the extent that they indicate that he had failed to make reasonable progress toward satisfying the requirements of his case plan. A careful review of the record persuades us that the trial court's findings concerning respondent-father's failure to adequately address the issue of domestic violence have ample evidentiary support and are, standing alone, sufficient to support a determination that there was a likelihood of future neglect in the event that the children were returned to respondent-father's care.

Respondent-father acknowledges that the trial court identified domestic violence as the central problem that resulted in the children's removal from the family home in the 30 May 2018 adjudication order. In that order, the trial court detailed the incidents of domestic violence that

had occurred in the family home during March and July 2017, resulted in the intervention of law enforcement officers, and caused the removal of the children from the parent's care before noting that the children had previously been in DSS custody and that "the issues for [ ] removal [in this instance were] similar to the prior removal reasons." According to the trial court, "[t]here was ongoing constant domestic violence in the home between [the parents,]" "[t]here were numerous 911 calls due to domestic violence[,]" "[respondent-mother] ha[d] made numerous attempts to leave the home with the juveniles[,]" "[respondent-mother] admitted to . . . ongoing issues of domestic violence with [respondent-father,]" and "this is clearly a case where domestic violence between [respondents] has made this environment injurious to their children." In order to remedy the problems resulting from the ongoing domestic violence between the parents and in an effort to achieve reunification, the trial court had ordered respondent-father to "[p]articipate in a domestic violence assessment at Family Services or with the COOL Program and follow all recommendation[s]."

In its termination order, the trial court found that:

> 26. [Respondent-father] attended 4 domestic violence classes: an intake session on April 7, 2018, and classes on May 5, 2018, May 12, 2018, May 17, 2018, and May 26, 2018. He was discharged unsuccessfully on August 15, 2018.
>
> 27. [Respondent-father] has failed to demonstrate the concepts taught in domestic violence classes. The [guardian ad litem] for the children learned of an incident at the [respondent-father's] home involving a disturbance for which law enforcement was called in November 2018.
>
> . . . .
>
> 34. . . . [Respondent-father] has failed to fully engage in domestic violence treatment.

Although respondent-father does not contend that Finding of Fact Nos. 26 and 27 lack sufficient evidentiary support, he does assert that these findings fail to support the trial court's determination that he had failed to make reasonable progress in addressing his domestic violence problems in light of the surrounding circumstances.

A careful review of the record evidence satisfies us that Finding of Fact Nos. 26, 27, and 34 are supported by clear, cogent and convincing evidence. At the termination hearing, the social worker testified that respondent-father had not complied with the trial court's order to

complete domestic violence classes. In spite of the fact that respondent-father enrolled in domestic violence classes provided by the COOL Program on 7 April 2018 and attended four classes on 5, 12, 17, and 26 May 2018, there was no evidence that he had had any further involvement in or had completed that or any other domestic violence program as of the date of a review hearing held on 5 December 2018. In addition, the social worker testified that the staff of the COOL Program had indicated that respondent-father had not attended any classes since 26 May 2018 and that respondent-father had not demonstrated the ability to utilize the concepts that he had been taught in the domestic violence classes that he had attended. Furthermore, the guardian ad litem testified that he had received a report that there had been 911 calls relating to disturbances at respondent-father's home approximately every other month during 2018. Although the report did not provide any details relating to these calls, the guardian ad litem asserted that the number of calls made during 2018 was similar to the number of calls relating to respondent-father's residence shown in an earlier report and "ma[d]e the point that the house, or the home ha[d] the same pattern of behavior [as] the last time [he] ran the 911 report[.]" In our opinion, this evidence provides ample support for Finding of Fact Nos. 26, 27, and 34 and demonstrates that respondent-father failed to fully engage in domestic violence treatment.

In seeking to persuade us to reach a different result with respect to this issue, respondent-father argues that the record evidence shows that he was attentive and engaged during the four domestic violence classes that he did attend. According to respondent-father, his limited attendance constituted reasonable progress under the circumstances, with it not being "surpris[ing] that [he] stopped attending [the domestic violence classes]" given that the trial court had ended the stipend for his expenses that was being drawn from the children's accounts, reduced his visitation with the children, and eliminated reunification as the permanent plan. In addition, respondent-father points to the social worker's testimony that, prior to the termination hearing, respondent-father "thought the rights had already been terminated with prior court proceedings." Finally, respondent-father contends that, "[i]n the context of the case, even though [he] did not complete the COOL [P]rogram, he was reasonably addressing the issues relating to domestic violence." We do not find these arguments persuasive.

In light of the lengthy history of domestic violence between the parents dating back to the initial DSS involvement with the family in 2011, the trial court did not err by determining that respondent-father's limited

attendance at and his failure to complete the COOL Program constituted a failure to fully engage in domestic violence treatment and a lack of reasonable progress toward addressing the issue of domestic violence. Although the 11 July 2018 order did end respondent-father's ability to obtain access to a $25 monthly stipend from the children's accounts, reduce respondent-father's visitation with the children, and eliminate reunification as the permanent plan for the children, that order did not terminate respondent-father's parental rights in the children. On the contrary, the 11 July 2018 order contained provisions requiring respondent-father to address the concerns that had resulted in the children's removal from the family home, including a requirement that he complete domestic violence classes. In addition, the 11 July 2018 order authorized monthly visits with the children, which respondent-father continued to attend through November 2018. Simply put, respondent-father's mistaken belief that his parental rights in the children had been terminated was unreasonable and does not either justify his failure to address the issue of domestic violence or render the minimal progress that he did make toward addressing the issue of domestic violence reasonable. *See In re B.O.A.*, 372 N.C. 372, 385, 831 S.E.2d 305, 314 (2019) (explaining that the trial court has the authority to decide whether a parent's limited progress toward compliance with the provisions of his or her case plan was reasonable). In the event that respondent-father is contending that he was unable to continue participating in domestic violence classes because he could not afford them in the absence of the monthly stipend, any such argument is refuted by the fact that financial assistance was available through the COOL Program and the fact that respondent-father had never "at any given point stopped by the office with . . . concerns about the financial barriers."

Similarly, respondent-father argues that the trial court had erred by finding that he had failed to make reasonable progress toward correcting the conditions that had led to the children's removal from the family home given that, even though he and respondent-mother continued to live together, the record contained no evidence that there had been ongoing conflict between them. Although the record does not contain any definitive indication that there had been recent instances of domestic violence between the two parents, it did contain evidence tending to show that law enforcement officers had been summoned to address disturbances at respondent-father's home at a level that was similar to the rate at which such calls had been made during earlier stages of this proceeding. Moreover, given the long history of domestic violence between the parents, which resulted in determinations that the children were neglected juveniles in both 2011 and 2018, the absence of

evidence that there had been any recent incidents of domestic violence between the parents does not suffice to establish that respondent-father had adequately addressed the issue of domestic violence given his failure to make reasonable efforts to complete required domestic violence education.[6] As a result, we conclude that the record does not support respondent-father's assertion that there was no longer any reason for concern that he would be involved in incidents of domestic violence with respondent-mother.

Aside from his argument that he had made reasonable progress toward addressing the conditions that had led to the children's removal from the family home, respondent-father contends that there has been a substantial change in circumstances because he is no longer required to interact with Adam. More specifically, respondent-father asserts that "several of the incidents preceding the neglect adjudication arose from conflicts between [himself] and [Adam]" and that a psychologist who had evaluated him had concluded that, while he was capable of parenting his own children, Adam's behaviors exceeded respondent-father's parenting capabilities. In view of the fact that Adam's permanent plan did not involve a return to respondent-father's home, respondent-father argues that the principal obstacle to his ability to parent the children would no longer be present there. This aspect of respondent-father's challenge to the trial court's order reflects little more than his failure to comprehend the underlying domestic violence problem confronting the family and rests upon a failure to accept responsibility for the domestic violence that plagued the family home.

The trial court's order reflects a clear understanding of the lengthy history of domestic violence in the family home and respondent-father's failure to make reasonable progress toward addressing the principal obstacle toward reunification that had been identified in the trial court's initial adjudication and disposition order. For that reason, we hold that the trial court's findings support its determination that "[t]here is a strong probability of repeated neglect of [Maria], [Brenda,] and [Andrew] should they be returned to the care[,] custody and control of . . . [respondent-father]"[7] and that respondent-father's parental rights

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6. As an additional matter, the trial court noted that respondent-mother's oldest son, Adam, was involved in a physical altercation with respondent-father on 29 July 2017 that stemmed from Adam's intervention into a physical altercation between the parents for the purpose of protecting respondent-mother.

7. As a result of our determination that the trial court's findings of fact concerning respondent-father's failure to adequately address the issue of domestic violence suffice to support its determination that his parental rights in the children were subject to

in the children were subject to termination on the grounds of neglect pursuant to N.C.G.S. § 7B-1111(a)(1). In addition, given that the existence of a single ground for termination suffices to support the termination of a parent's parental rights in a child, *see In re A.R.A.*, 373 N.C. at 194, 835 S.E.2d at 421, and that respondent-father has not challenged the lawfulness of the trial court's best interests determination, we affirm the trial court's termination order with respect to respondent-father.

C. Respondent-Mother's Appeal

**[2]** Next, we will address respondent-mother's contention that the trial court erred by finding that the termination of her parental rights would be in the best interests of the children. The trial court's best interests determination is governed by N.C.G.S. § 7B-1110, which provides that:

> [t]he court may consider any evidence, including hearsay evidence as defined in [N.C.G.S. §] 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:
>
> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a) (2019). "The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed solely for abuse of discretion." *In re A.U.D.*, 373 N.C. at 6, 832 S.E.2d at 700; *see also In*

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termination on the basis of neglect, we need not address respondent-father's challenge to the trial court's findings relating to the issues of substance abuse, the suitability of respondent-father's home, and the nature and extent of respondent-father's contacts with DSS. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59 (stating that "we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights").

*re Z.A.M.*, 374 N.C. at 99–100, 839 S.E.2d. at 800 (reaffirming the use of an abuse of discretion standard of review for the purpose of reviewing a trial court's best interests determination pursuant to N.C.G.S. § 7B-1110(a)). An "[a]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re A.U.D.*, 373 N.C. at 6–7, 832 S.E.2d at 700–01 (quoting *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015)). "The trial court's dispositional findings of fact are reviewed under a 'competent evidence' standard." *In re K.N.K.*, 374 N.C. 50, 57, 839 S.E.2d 735, 740 (2020) (citation omitted).

In its termination order, the trial court made detailed findings of fact that addressed each of the relevant statutory criteria. More specifically, the trial court found that Andrew was thirteen years old, that Brenda was twelve years old, and that Maria was nine years old at the time of the termination hearing and that each of the children had spent approximately thirty-eight months of their lives in DSS custody. In addition, the trial court found that, while no prospective adoptive families had been identified for the children, an adoption recruiter had become involved, so that the likelihood that each child would be adopted was very high. Furthermore, the trial court found that termination of the parents' parental rights in the children was necessary to effectuate the permanent plan of adoption; that the children had strong bonds with their parents and with the caregivers in the group home in which they had been placed; that the children were doing well in school and therapy and had no special needs; that the adoption recruiter was working to locate a family who would be willing to adopt all three children; that the children understood that the situation with their parents was not getting better; and that the children were not resistant to the plan of adoption. Finally, the trial court found that the adoption recruiter believed that there were no barriers to the children's adoption and that the guardian ad litem recommended that the parents' parental rights in the children be terminated given that the children had been in foster care for a lengthy period of time and needed a safe, permanent home.

Although respondent-mother acknowledges that "[t]he trial court made findings concerning the enumerated factors of N.C. Gen. Stat. § 7B-1110(a)," she questions the sufficiency of the evidentiary support for certain of the trial court's findings and faults the trial court for failing to make findings concerning the extent to which the children would consent to being adopted. As an initial matter, respondent-mother disputes the validity of the trial court's determination in Finding of Fact Nos. 37, 43, and 49 that the likelihood that the children would be adopted was

"very high." According to respondent-mother, the fact that the children "were placed in a group home with no identified adoptive placements[;]" that "[t]he adoption recruiter testified that it could be up to two years before an adoptive family is found[;]" that the children had strong bonds with respondents and wanted to be returned to their care; and that, since Brenda and Andrew were more than twelve years old, they must consent to be adopted fatally undermined the trial court's findings relating to the adoptability issue.

The trial court's finding that there was a high likelihood that the children would be adopted has adequate record support. A social worker with responsibility for handling this matter testified that she believed that all three children had "a great likelihood of adoption[.]" In addition, the social worker's testimony tended to show that the children had adjusted well to their current placement, that they had formed bonded relationships with their caregivers and other children who lived in the group home in which the children resided, that the children had no special needs and were not on medication, and that the children were generally doing well in school and succeeding in therapy. In addition to describing the circumstances in which the children currently found themselves, the guardian ad litem testified that he had no concerns about the children's ability to bond with an adoptive family and that termination of the parents' parental rights in the children would be in the children's best interests given their need for safety and permanence. In light of this testimony, we have no hesitation in concluding that the trial court's findings with respect to the issue of adoptability have ample record support.

In addition, we conclude that respondent-mother's argument that the likelihood that the children would be adopted was not high and her assertion that the trial court's statement in Finding of Fact No. 56 that there were "no barriers to adoption" was devoid of sufficient evidentiary support lack persuasive force. Although respondent-mother is correct in stating that no adoptive placement had been identified for the children, the absence of such a placement does not preclude the termination of a parent's parental rights in his or her children. *See In re A.R.A.*, 373 N.C. at 200, 835 S.E.2d at 424 (finding no error in the trial court's best interests determination despite the absence of an identified adoptive placement for the juvenile) (citing *In re D.H.*, 232 N.C. App. 217, 223, 753 S.E.2d 732, 736 (2014)). The adoption recruiter assigned to work with the children testified that she first met with the children on 3 December 2018, that she was in the initial phase of attempting to find an adoptive placement for them, and that the second stage in that process, which

included participation in adoption-related events, would begin in several months. In spite of the fact that the adoption recruiter did state that the longest that it had taken to complete an adoption in the cases in which she had been involved was "probably 18 months, two years[,]" her testimony to that effect did not constitute an estimate of the amount of time that it would take to find an adoptive placement for the children in this case. Instead, the adoption recruiter testified that "[e]ach situation really is different," with the trial court having clarified that the adoption recruiter's testimony was "based on the kids that she has worked with in the past." Simply put, the record does not support respondent-mother's assertion that the adoption recruiter testified that "it could be up to two years before an adoptive family is found" for the children.

Moreover, contrary to the assumption upon which this particular aspect of respondent-mother's argument rests, the possibility that the adoption process would be a lengthy one does not preclude a finding that there is a high likelihood that the children will be adopted. On the contrary, the adoption recruiter testified that there were no barriers to the children's adoption and that the termination of the parents' parental rights in the children would be in their best interests by making them eligible for listing with adoption services agencies and making additional avenues for identifying an adoptive family available to them. As a result, the testimony provided by the adoption recruiter supports the trial court's findings that there were no barriers to the children's adoption and that there was a high likelihood that the children would be adopted.

In addition, respondent-mother argues that the likelihood that the children would be adopted was not high given that the children had strong bonds with the parents, that the children wanted to return to their parents' care, and that Brenda and Andrew would be required to consent to any adoption because they were over twelve years old, *see* N.C.G.S. § 48-3-601(1) (2019), with this aspect of respondent-mother's argument being directed against Finding of Fact Nos. 47, 53, and 55. A careful review of the record evidence, however, satisfies us that the relevant findings of fact have sufficient support given that the record contains evidence tending to show that, while the children hoped that they could return to their parents' care and while they would like for this outcome to come to pass, the intensity of their hopes that such an outcome would ever happen had diminished given the passage of time and missed parental visits. In addition, the record contains evidence tending to show that the children were aware that the adoption recruiter was looking for an adoptive family and that Andrew and Brenda had expressed preferences concerning the composition of any adoptive family that might

become available, a fact that suggests that these two children had begun to accept the idea that they would be adopted. Although the guardian ad litem testified that Maria did not want to be adopted and simply wished to return to the parents' care, the record also contains evidence tending to show that even she understood that the problems that the parents had been experiencing had not been resolved. According to the adoption recruiter, even though the children wanted to return to the family home, they acknowledged that conditions there had not improved. As a result, we hold that the trial court's findings that the children understood that the parents had not addressed the issues that had resulted in their removal from the family home and that Andrew and Brenda did not resist the idea of adoption had adequate evidentiary support.[8]

In spite of the fact that the existence of a close bond between the children and the parents, the children's preference for returning to the parental home, and the necessity for certain of the children to consent to an adoption are clearly relevant to a trial court's best interests determination, we are not satisfied that these facts preclude a finding that the children are likely to be adopted. Instead of ignoring these issues, the trial court addressed them in Finding of Fact Nos. 39, 45, and 51 and considered them in the course of making its ultimate best interests determination. Similarly, while the trial court is entitled to consider the children's wishes in determining whether termination of their parents' parental rights would be appropriate, their preferences are not controlling given that the children's best interests constitute "the 'polar star' of the North Carolina Juvenile Code." *In re T.H.T.*, 362 N.C. 446, 450, 665 S.E.2d 54, 57 (2008); *see also Clark v. Clark*, 294 N.C. 554, 577, 243 S.E.2d 129, 142 (1978) (stating that "[t]he expressed wish of a child . . . is . . . never controlling upon the court, since the court must yield in all cases to what it considers to be for the child's best interests, regardless of the child's personal preference"). As a result, given that the trial court's findings of fact have adequate evidentiary support and given that the trial court considered all of the relevant factors before determining that termination of the parents' parental rights would be in the children's best interests, the trial court did not commit any prejudicial error of law in the course of making its best interests determination.

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8. The guardian ad litem's testimony at the termination hearing does not support the trial court's finding that Maria was not resistant to adoption. However, a finding that Maria opposed being adopted did not preclude a determination that termination of the parents' parental rights in the children would not be in their best interests, rendering the trial court's error in this respect harmless in light of the other surrounding facts and circumstances.

Furthermore, respondent-mother argues that the trial court erred by failing to make findings of fact concerning the extent to which Brenda and Andrew would consent to be adopted. To be sure, N.C.G.S. § 48-3-601 provides that a juvenile over the age of twelve must consent to an adoption. N.C.G.S. § 48-3-601(1) (2019). On the other hand, N.C.G.S. § 48-3-601 governs adoption, rather than termination of parental rights, proceedings. In addition, N.C.G.S. § 48-3-603(b) provides that a trial judge may dispense with the requirement that a child who is twelve years of age or older consent to an adoption "upon a finding that it is not in the best interest of the minor to require the consent." *Id.* § 48-3-603(b)(2). For that reason, any refusal on the part of Brenda and Andrew to consent to a proposed adoption would not preclude their adoption in the event that the trial judge made the necessary findings. As a result, given that a refusal on the part of one or more of the children to consent would not necessarily preclude their adoption, we hold that the trial court was not required to make findings and conclusions concerning the extent, if any, to which Brenda and Andrew were likely to consent to any adoption that might eventually be proposed.

Similarly, respondent-mother argues that the trial court erred in making Finding of Fact Nos. 40, 46, and 52, in which it found that the children had strong relationships and had bonded with the persons responsible for their care in the group home in which they lived. Instead of arguing that these findings lack sufficient evidentiary support, respondent-mother contends that the challenged findings are irrelevant because N.C.G.S. § 7B-1110(a)(5) requires consideration of the "quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement," N.C.G.S. § 7B-1110(a)(5) (2019), rather than the quality of the relationship between the children and the persons caring for them in their current non-adoptive placement. To be sure, the trial court could not make a finding concerning the quality of the children's relationship with any prospective adoptive parent because no such persons had been identified. On the other hand, the trial court's findings concerning the ability of the children to bond with their current caregivers did tend to support a conclusion that the children were adoptable given their ability to develop a bond with other human beings. Thus, the trial court did not err by making findings of fact concerning the bond between the children and their current caretakers.

Finally, respondent-mother challenges Finding of Fact No. 57, in which the trial court found that "[p]overty is not the cause for [respondents'] neglect of their children." In response, respondent-mother argues

that "poverty was most certainly an issue that impacted [her] ability to reunify with the juveniles." Although respondent-mother is correct in noting that her parental rights are not subject to termination in the event that her inability to care for her children rested solely upon poverty-related considerations, *see* N.C.G.S. § 7B-1111(a)(2) (2019) (providing that "[n]o parental rights . . . shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty"), the challenged trial court finding appears to relate to the trial court's decision that grounds for the termination of respondent-mother's parental rights existed, a determination that respondent-mother has not challenged on appeal, rather than to the trial court's best interests determination. However, to the extent that the trial court intended for Finding of Fact No. 57 to relate to the dispositional, as well as the adjudicatory, stage of the present proceeding, we conclude that Finding of Fact No. 57 is supported by the unchallenged findings that respondent-mother failed to comply with substance abuse treatment; failed to demonstrate sustained sobriety; failed to obtain domestic violence counseling and demonstrate the ability to use the concepts that she had learned during that process; continued to reside with respondent-father; and failed to consistently keep FCDSS aware of changes in her employment, residence, and contact information and conclude that the trial court's decision that it would be in the children's best interests for respondent-mother's parental rights to be terminated did not rest solely upon respondent-mother's poverty.

Thus, with a single exception, we conclude that the trial court's findings of fact had ample evidentiary support. Moreover, in spite of the existence of record evidence tending to show that the children were strongly bonded to the parents and wanted to return to their care, the termination order establishes that the trial court performed a reasoned best-interests analysis and did not abuse its discretion by determining that the termination of respondent-mother's parental rights in the children would be in their best interests. For that reason, given that respondent-mother has not challenged the trial court's determination that grounds for the termination of her parental rights in the children existed, we hold that the trial court did not err by terminating respondent-mother's parental rights in the children. As a result, the trial court's termination order is affirmed with respect to both parents.

AFFIRMED.

**IN RE M.C.**

[374 N.C. 882 (2020)]

IN THE MATTER OF M.C., M.C., M.C.

No. 272A19

Filed 17 July 2020

**Termination of Parental Rights—grounds for termination—neglect—sufficiency of findings—evidence of changed circumstances**

The trial court's conclusion that grounds existed to terminate a mother's parental rights for neglect was supported by sufficient findings of fact, which were supported by clear, cogent, and convincing evidence, where the children were exposed numerous times to domestic violence between their parents and the mother repeatedly returned to her relationship with the abusive father. The trial court was not required to consider in its findings the mother's evidence of changed circumstances—that the father had received a long prison sentence and that she would not return to a relationship with him—in light of the history of the couple's relationship and the fact that the trial court did not have to believe the mother's testimony.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 29 April 2019 by Judge Joseph Moody Buckner in District Court, Orange County. This matter was calendared in the Supreme Court on 19 June 2020 but was determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Stephenson & Fleming, LLP, by Deana K. Fleming, for petitioner-appellee Orange County Department of Social Services.*

*Parker Poe Adams & Bernstein LLP, by Tiffany M. Burba and Spencer J. Guld, for appellee Guardian ad Litem.*

*Richard Croutharmel for respondent-appellant mother.*

HUDSON, Justice.

Respondent appeals from the trial court's orders terminating her parental rights to M.C. (Megan), M.C. (Miranda), and M.C. (Margot).[1] We affirm.

1. Pseudonyms have been used to protect the identity of the juveniles and for ease of reading.

Respondent and the children's father, Walter, were married in September 2010. Miranda was born in February 2012. Respondent and Walter divorced in April 2013, though they maintained an "on and off" relationship subsequent to the divorce. Megan was born in August 2016.

On 15 February 2017, Orange County Department of Social Services (DSS) received a report alleging neglect of Miranda and Megan due to their exposure to domestic violence. The report alleged Walter was verbally abusive, possessed a firearm, and that respondent was afraid for her life. Walter was arrested and charged for this incident. The report also alleged there had been an incident during the previous week where Walter pushed respondent against a wall and punched her in the face. When Miranda attempted to intervene, Walter threw her across the room. Law enforcement was not notified of that incident.

As a result of the report, DSS conducted an assessment and decided to provide in-home services to the family. DSS determined there was a history of domestic violence. Respondent had obtained five previous domestic violence protective orders (DVPOs) against Walter, though each was subsequently violated, and she obtained a sixth following the February 2017 incidents. As part of a safety plan, DSS mandated respondent and Walter have no contact for three months. Services were recommended to address the domestic violence, respondent's mental health, and Walter's substance abuse.

As with the previous DVPOs, Walter violated the sixth, and respondent became pregnant with Margot during the mandated no-contact period. In June 2017, respondent informed her social worker that she had resumed her relationship with Walter and that services were no longer needed. Respondent and Walter moved back in together on 19 June 2017.

On 21 June 2017, Walter became enraged because respondent lost her wallet, and he told her over the phone that he would put her "in the ground." When he subsequently showed up at her workplace, the police were called, and Walter was arrested for violating the DVPO. Respondent amended her DVPO to prevent Walter from contacting her or the children.

On 27 June 2017, DSS filed juvenile petitions alleging Miranda and Megan were neglected but allowed the children to remain in respondent's physical custody. On 12 July 2017, respondent entered into a consent order with DSS in which she agreed to have no contact with Walter. On 1 August 2017, respondent's social worker learned that respondent went to the emergency room on 21 July 2017, accompanied by Walter and the children. The social worker also learned that respondent was

staying at the apartment she had previously shared with Walter, though she claimed to be staying with her mother. DSS took Miranda and Megan into non-secure custody on 2 August 2017. They were placed in the home of their maternal grandmother.

Following a hearing on 17 August 2017, Miranda and Megan were adjudicated to be neglected juveniles. The trial court concluded it was in the best interests of the children for DSS to maintain custody and allowed respondent one hour of visitation with the children per week. The court also ordered respondent to complete a mental health assessment and follow all recommendations, to sign a release for her treatment providers to release relevant information to DSS, and to abide by the DVPO against Walter.

Walter was incarcerated for violating the DVPO from the end of July 2017 to November 2017. During that period, respondent was "highly engaged" and attended weekly visitations with the children, as well as a weekly domestic violence support group and monthly therapy sessions.

Margot was born in January 2018. Because respondent was progressing with her case plan and "on track for reunification," DSS did not remove Margot from her care. Respondent continued to make progress throughout the beginning of 2018. She continued therapy, started a parenting program, and claimed to be "done" with Walter. DSS expanded respondent's visitation with Miranda and Megan, allowing respondent to be supervised by her mother instead of DSS and to visit the children in their grandmother's home.

On 22 March 2018, respondent was seen with Walter in the DSS parking lot. When confronted by her social worker the next day, respondent admitted having been in contact with Walter since December 2017. She also admitted she and Walter had argued in the car after leaving the DSS parking lot, and she had left Margot in the car with Walter following the argument. As a result of these admissions, DSS filed a petition alleging Margot was a neglected juvenile and obtained non-secure custody the same day.

Following Margot's removal, both parents appeared to make efforts toward reunification. They agreed to not contact each other but indicated their ultimate goal was reunification as a family. Less than one month after Margot's removal, however, respondent and Walter were seen at a funeral together. DSS was informed they arrived together and held hands during the ceremony.

In the weeks that followed, Walter was repeatedly observed driving respondent's car. DSS was aware respondent and Walter continued

seeing each other during the summer of 2018 and advised respondent that her relationship with Walter would prevent reunification with her daughters. Despite these warnings, the relationship continued.

After a permanency planning hearing on 16 August 2018, the trial court changed the children's primary permanent plan to adoption with a secondary plan of reunification. DSS moved the children from their placement with respondent's mother into an adoptive foster home.

After the permanency planning hearing, DSS lost contact with Walter, and he ceased all services with the agency. Respondent continued to report that she and Walter were still together. On 30 October 2018, respondent told her social worker that her relationship with Walter was stable and free of violence. At their next weekly meeting, the social worker learned that Walter had threatened to kill respondent on 29 October 2018 and 30 October 2018 and had threatened to burn down her apartment on one of those occasions. Respondent sought another DVPO in November 2018. Respondent again reported to DSS that she was not seeing Walter anymore and would not allow his presence to keep her from getting her children back.

Police saw Walter and respondent together in her car at her apartment complex on 13 November 2018. The officers spoke with her, but respondent and Walter left together in her car before the officers could serve Walter with the DVPO. Two days later, the property manager at respondent's apartment complex saw Walter enter respondent's apartment alone and called the police. Respondent later reported that she had given Walter a key. On 1 December 2018, two days after Walter was served with the DVPO, respondent called the police to report that Walter had taken her debit card and her car. Respondent later reported she had previously given him the PIN for the debit card. Police were waiting for Walter when he arrived back at the apartment. He became aggressive toward the officers, was arrested, and charged with violating the DVPO and resisting arrest.

On 16 November 2018, DSS filed motions to terminate respondent's and Walter's parental rights to each of the children. Following a hearing on 21 February 2019, the trial court adjudicated grounds to terminate respondent's and Walter's parental rights to the children. The court further concluded that the termination of respondent's and Walter's parental rights was in the best interests of the children. Respondent appeals.[2]

2. Walter did not appeal the trial court's orders and is not a party to this appeal.

Termination of parental rights consists of a two-stage process: adjudication and disposition. N.C.G.S. §§ 7B-1109, -1110 (2019). "At the adjudicatory stage, the petitioner bears the burden of proving by 'clear, cogent, and convincing evidence' the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes." *In re A.U.D.*, 373 N.C. 3, 5–6, 832 S.E.2d 698, 700 (2019) (quoting N.C.G.S. § 7B-1109(f)).

On appeal, respondent argues the trial court erred in adjudicating the existence of grounds to terminate her parental rights under N.C.G.S. § 7B-1111(a)(1), (2), and (6). As "an adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights," *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019), we need only to address respondent's arguments as to the ground of neglect under N.C.G.S. § 7B-1111(a)(1).

"We review a trial court's adjudication under N.C.G.S. § 7B-1111 'to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.' " *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52 (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). "[A]ppellate courts are bound by the trial courts' findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *In re Montgomery*, 311 N.C. at 110–11, 316 S.E.2d at 252–53. Unchallenged findings are deemed binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). "Moreover, we review only those [challenged] findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019). The trial court's conclusions of law are reviewed de novo. *In re N.D.A.*, 373 N.C. 71, 74, 833 S.E.2d 768, 772 (2019).

A neglected juvenile is one "whose parent, guardian, custodian, or caretaker; does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C.G.S. § 7B-101(15) (2019). Termination of parental rights for neglect "requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent." *In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167 (citing *In re Ballard*, 311 N.C. 708, 713–15, 319 S.E.2d 227, 231–32 (1984)).

Respondent challenges several of the trial court's findings of fact. She first contends there is no evidence to support the trial court's finding

of fact 35 and 37[3] that she and Walter had dinner together for his birthday. While there was no testimony at the termination hearing related to the dinner meeting, the social worker's adjudicatory hearing report, admitted into evidence without objection, describes multiple meetings between respondent and Walter, including the birthday dinner, in violation of the no-contact orders and DVPOs. Respondent does not challenge the court's findings concerning these additional meetings between respondent and Walter, including their appearance together at a funeral and a court hearing, as well as Walter's ongoing use of respondent's car and his presence in her apartment.

Assuming, *arguendo*, the evidence is insufficient to support the trial court's finding about the shared birthday dinner, the remaining unchallenged findings establish respondent's continued engagement with Walter, notwithstanding the DVPOs and voluntary consent orders. Accordingly, the erroneous finding is not necessary to support the trial court's legal determination that grounds existed for the termination of respondent's parental rights. *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59.

Respondent next challenges the trial court's finding of fact 47 and 49:

> It is likely that the neglect experienced by the juvenile in the care of Respondent mother will repeat or continue if the juvenile is returned to Respondent mother's care and custody. Specifically, this court finds the following facts:
>
> . . . .
>
> b. Respondent mother minimizes the risk to herself, the juvenile, and her siblings.
>
> c. Respondent mother has had contact with Respondent father despite DVPO's she sought, agreements not to have contact, and orders of this court as set forth herein.
>
> d. Respondent mother has engaged in and completed several domestic violence education and support

3. The trial court entered a separate termination order for each child, which resulted in differences between the numbering of the findings of fact in 17 JT 39 and 17 JT 40 with 18 JT 19. As such, respondent's challenges to a single finding of fact refer to two numbers, both of which we include. Because the orders contain findings of fact and conclusions of law which are essentially identical, any quotes are from a representative order entered in file number 17 JT 39.

groups with the Compass Center, but she continued to maintain a relationship with Respondent father.

e. Respondent mother has engaged in individual therapy, but she continued to have contact with and maintain a relationship with Respondent father.

f. Respondent mother's continued relationship with Respondent father despite engagement in services and no contact orders, and failure to maintain a safe home free from domestic violence subjects the juvenile to the likelihood of repetition of neglect if the juvenile were returned to her care and custody.

Respondent argues her testimony at the termination hearing contradicts the finding that she minimizes the risk to herself or the children. At the hearing, she acknowledged it was a "terrible decision to get back together with [Walter] in March 2018 and she was sorry for having done so." She testified that she was no longer in a relationship with Walter, and she would not return to him again.

Respondent also challenges the trial court's finding that there would be a likely repetition of neglect if the children were returned to her care. She asserts her trial testimony, as well as Walter's possible incarceration for offenses with long prison sentences, are evidence of changed circumstances at the time of the termination hearing, which the trial court failed to consider in its findings.

Respondent cites *In re A.B.*, 253 N.C. App. 29, 799 S.E.2d 445 (2017), to support her assertion that the trial court failed to make adequate findings related to the evidence of changed circumstances. In that matter, the Court of Appeals determined "the trial court's findings and conclusions do not adequately account for respondent-mother's circumstances at the time of the termination hearing." *Id.* at 38, 799 S.E.2d at 452. In that case both a social worker and the respondent "presented testimony that would support additional findings up to the time of the termination hearing," and the Court "believe[d] the evidence would support different inferences and conclusions regarding the likelihood of a repetition of neglect based on evidence regarding respondent-mother's circumstances at the time of the hearing." *Id.* at 35, 799 S.E.2d at 451. That testimony included evidence of the respondent's (1) unbroken period of negative drug screens, (2) participation in therapy, (3) separation from the children's father and her obtaining a DVPO against him, (4) full-time employment, (5) consistent and appropriate visitation with her children, and (6) her willingness and ability to meet minimal living

standards for the children, all of which had been at issue at the adjudication hearing. *Id.* at 36–37, 799 S.E.2d at 451–52.

At the time of the termination hearing in this matter, Walter was in jail on pending felony and misdemeanor charges. This, along with respondent's testimony that she was no longer in a relationship with Walter and would not return to him, is the extent of the changed circumstances respondent presented. At the outset, the trial court heard respondent's evidence of purported "changed circumstance," but it "was not required to credit [respondent's] testimonial evidence, particularly in light of other testimony admitted during the hearing." *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425, 430 (2019) (citing *In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167–68).

Further, "[i]n predicting the probability of repetition of neglect, the court 'must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.' " *In re M.P.M.*, 243 N.C. App. 41, 48, 776 S.E.2d 687, 692 (2015) (quoting *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999)), *aff'd per curiam*, 368 N.C. 704, 782 S.E.2d 510 (2016).

In addition to the above challenged finding of fact, the trial court found numerous other unchallenged findings that show respondent repeatedly prioritized her relationship with Walter over the safety of Miranda, Megan, and Margot by continuing to allow Walter in her life and around the children; by violating court orders; and by lying to her social workers, doctors, and family members in the process. Walter has been confined for varying lengths of time during the course of the children's lives, and each time he was released, respondent welcomed him back into the home. We conclude respondent's evidence of changed circumstances does not "support different inferences and conclusions regarding the likelihood of a repetition of neglect based on evidence regarding [respondent's] circumstances at the time of the hearing." *In re A.B.*, 253 N.C. App at 35, 799 S.E.2d at 451. Moreover, respondent's refusal to acknowledge the effect of domestic violence on the children and her inability to sever her relationship with Walter, even during or immediately following his periods of incarceration, supports the trial court's determination that the neglect of the children would likely be repeated if they were returned to respondent's care. *See In re Z.V.A.*, 373 N.C. at 212, 835 S.E.2d at 430 (affirming a finding of neglect based on a respondent's inability to sever a relationship with an unsafe parent).

Respondent also asserts that finding of fact 8 is actually a conclusion of law, and as such this Court "must assess it in the context of whether

findings contained elsewhere in the TPR orders support it." Finding of fact 8 states, in relevant part, that DSS has proved "by clear and convincing evidence that grounds exist to terminate [respondent's] parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) . . . as set forth herein." We agree that this finding is better labeled as a conclusion of law. *Matter of Adoption of C.H.M.*, 371 N.C. 22, 28, 812 S.E.2d 804, 809 (2018) ("[A]ny determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law." (citation omitted)); *see also In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675–76 (1997) ("The determination of neglect requires the application of [statutory] legal principles . . . and is therefore a conclusion of law." (citation omitted)). The trial court's labels are not binding upon this Court, and we "may reclassify them as necessary before applying the appropriate standard of review." *N.C. Farm Bureau Mut. Ins. Co. v. Cully's Motorcross Park, Inc.*, 366 N.C. 505, 512, 742 S.E.2d 781, 786 (2013) (citing *In re Foreclosure of Gilbert*, 211 N.C. App. 483, 487–88, 711 S.E.2d 165, 169 (2011)).

Thus, having determined the challenged findings of fact are supported by clear, cogent, and convincing evidence, and having reviewed the findings as a whole, we conclude the findings of fact support the trial court's conclusion that DSS proved "by clear and convincing evidence that grounds exist to terminate [respondent's] parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) . . . ." *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52.

Finally, respondent argues that the trial court erred as its conclusions of law do not include the phrase "probability of future neglect." She asserts this renders the orders reversible. However, the trial court did make findings regarding the probability of future neglect, stating, "It is likely that the neglect experienced by the juvenile in the care of Respondent mother will repeat or continue if the juvenile is returned to Respondent mother's care and custody," and that the juvenile was subjected to "the likelihood of repetition of neglect if the juvenile were returned to [respondent's] care and custody." Again, the trial court's labels are not binding upon this Court, and we "may reclassify them as necessary before applying the appropriate standard of review." *N.C. Farm Bureau Mut. Ins. Co.* 366 N.C. at 512, 742 S.E.2d at 786. To the extent these determinations are more appropriately treated as conclusions of law, we will consider them as such, and we conclude there are sufficient findings of fact, supported by clear, cogent, and convincing evidence, to support the trial court's conclusion that grounds existed to terminate respondent's parental rights for neglect under N.C.G.S. 7B-1111(a)(1).

For the foregoing reasons, none of respondent's arguments demonstrate that the trial court erred in terminating her parental rights. Accordingly, we affirm the termination orders.

AFFIRMED.

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IN THE MATTER OF N.G.

No. 303A19

Filed 17 July 2020

**1. Termination of Parental Rights—grounds for termination—parental rights to another child terminated involuntarily—mental health issues**

The trial court did not err by concluding that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(9) to terminate a father's parental rights where it was undisputed that his parental rights to another child had been terminated involuntarily and sufficient evidence supported the trial court's findings that the father suffered from antisocial personality disorder, he lied to the county department of social services to conceal his identity, and he made only minimal efforts toward treatment for his mental health issues. Even assuming the diagnosis of antisocial personality disorder was stale, the findings nonetheless supported the conclusion that the father was unable to provide a safe home for his child because the nature of the disorder made change unlikely, he lacked interest in and cancelled appointments for treatment, and he engaged in incidents of deception.

**2. Termination of Parental Rights—best interests of the child—statutory factors—parent not promoting child's well-being—foster family eager to adopt**

The trial court did not abuse its discretion by determining that termination of a mother's parental rights was in her child's best interests where the trial court considered the statutory factors and found that the mother had demonstrated that she would not promote her child's well-being, there had been no progress toward returning the child home after 26 months in social services' care, and the child's foster family was meeting all her needs and eager to adopt her.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from order entered on 15 May 2019 by Judge J.H. Corpening II in District Court, New Hanover County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Karen F. Richards for petitioner-appellee New Hanover County Department of Social Services.*

*N.C. Administrative Office of the Courts, Guardian ad Litem Division, by Michelle FormyDuval Lynch, Staff Attorney, for appellee Guardian ad Litem.*

*Sydney Batch for respondent-appellant mother.*

*Jeffrey L. Miller for respondent-appellant father.*

HUDSON, Justice.

Respondents appeal from the trial court's order terminating their parental rights to N.G. (Natasha).[1] After careful review, we affirm.

Factual and Procedural Background

On 15 February 2017, the New Hanover County Department of Social Services (DSS) filed a juvenile petition alleging that Natasha was a neglected and dependent juvenile. DSS claimed that respondent-mother was "chronically homeless" and suffered from untreated mental health conditions. DSS asserted that respondent-mother's homelessness had contributed to Natasha being "excessively" tardy and absent from school and that it was affecting Natasha's school performance. DSS further alleged that respondent-father had provided care for Natasha in the past but was currently prevented from doing so due to respondent-mother's actions. DSS obtained nonsecure custody of Natasha and placed her with respondent-father.

On 20 February 2017, the trial court held a second seven-day custody hearing. At that time, DSS advised the trial court that (1) respondent-father had misled DSS as to his correct name and date of birth, and (2)

1. The minor child N.G. will be referred to throughout this opinion as "Natasha," which is a pseudonym used to protect the identity of the child and for ease of reading.

respondent-father was a party in an active termination of parental rights case that was on appeal. The trial court removed Natasha from her placement with respondent-father and placed her in foster care.

On 13 April 2017 and 25 May 2017, DSS filed amended juvenile petitions that added additional allegations concerning respondent-father. DSS claimed that respondent-father was not suitable for placement because he had mental health issues and had his parental rights terminated as to another child. DSS alleged that his diagnosis of antisocial personality disorder prevented him from providing a safe home for Natasha. DSS again alleged that respondent-father had actively misled DSS as to his identity prior to the filing of the original juvenile petition.

On 31 July 2017, the trial court adjudicated Natasha a dependent juvenile after respondents stipulated to the allegations in the juvenile petition. DSS voluntarily dismissed the allegation of neglect. The trial court determined that pursuant to N.C.G.S. § 7B-901(c)(2), reunification efforts with respondent-father were not required because he previously had his parental rights to another child involuntarily terminated. The trial court ordered that custody of Natasha would remain with DSS and that the permanent plan should be reunification with respondent-mother. The trial court further ordered respondent-mother to complete a case plan that required her to establish stable housing and income and complete a mental health assessment and follow all recommendations. Both respondents were granted visitation.

The trial court held a review hearing on 13 September 2017. At the review hearing, respondent-father requested temporary placement of Natasha and expanded visitation. Respondent-father testified, however, that he did not want legal custody of Natasha because he wanted respondent-mother to have legal custody. The trial court found as a fact that respondent-father had bought Natasha clothes and school supplies and furnished her with a telephone. The trial court made no changes in custody and ordered that the permanent plan for Natasha should continue to be reunification with respondent-mother.

A permanency planning review hearing was held on 7 February 2018. In an order entered on 15 March 2018, the trial court found that respondent-father had not been forthcoming with identifying information and had failed to acknowledge previous concerns regarding DSS involvement. Respondent-father requested that the trial court consider ordering DSS to work toward reunification efforts with him. He stated that he was willing to pay for another evaluation from Dr. Len Lecci who performed a psychological evaluation of respondent-father in his other

termination of parental rights case involving a sibling of Natasha's in 2014. Further, he requested additional visitation with Natasha. The trial court found, however, that respondent-father was not making progress towards a plan of reunification and had not provided evidence that he had engaged in necessary services on his own. The trial court ordered that a concurrent plan of adoption be added for Natasha.

Following a subsequent permanency planning hearing held on 30 August 2018, the trial court modified the permanent plan for Natasha to adoption with a concurrent plan of reunification. The trial court found that respondent-father had presented no evidence that he had engaged in services to address his untreated mental health issues and had consistently failed to acknowledge the concerns his mental health issues would raise regarding his ability to care for Natasha. The trial court found as a fact that there was a poor prognosis for change based on respondent-father's psychological evaluation. The trial court further found that respondent-mother had failed to attend individual therapy as recommended and that a psychological evaluation revealed that she exhibited a personality pattern profile associated with paranoid and narcissistic personality disorders. It was noted that individuals with diagnoses such as respondent-mother's are often resistant to treatment and have difficulty forming therapeutic relationships. Additionally, the trial court found that respondent-mother had failed to secure permanent stable housing and was participating in her case plan to a minimal degree.

A subsequent permanency planning hearing was held on 7 February 2019. In an order entered on 18 March 2019, the trial court found that neither parent was making adequate progress toward reunification and that adoption should be pursued. The trial court ordered DSS to pursue termination of respondents' parental rights.

On 14 December 2018, DSS filed a petition to terminate respondents' parental rights. DSS alleged grounds to terminate respondent-mother's parental rights to Natasha based on neglect, willful failure to make reasonable progress, and dependency. *See* N.C.G.S. § 7B-1111(a)(1), (2), and (6) (2019). DSS alleged grounds to terminate respondent-father's parental rights to Natasha based on neglect, willful failure to make reasonable progress, failure to legitimize, willful abandonment, and the fact that his parental rights with respect to another child had been terminated involuntarily and he lacked the ability or willingness to establish a safe home. *See* N.C.G.S. § 7B-1111(a)(1), (2), (5), (7), and (9).

On 15 May 2019, the trial court entered an order concluding that grounds existed to terminate respondents' parental rights. The trial

court found that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(1) and (2) to terminate both respondents' parental rights, and that additional grounds existed to terminate respondent-father's parental rights pursuant to N.C.G.S. § 7B-1111(a)(5), (7), and (9). The trial court dismissed the allegation of dependency as to respondent-mother. The trial court further concluded that termination of respondents' parental rights was in Natasha's best interests. Accordingly, the trial court terminated their parental rights. Respondents appealed.

Analysis

A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2019); *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). At the adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more grounds for termination under subsection 7B-1111(a) of our General Statutes. N.C.G.S. § 7B-1109(f). We review a trial court's adjudication "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. at 111, 316 S.E.2d at 253 (citing *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982)). If the petitioner meets its burden during the adjudicatory stage, "the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights." *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citing *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614–15 (1997); N.C.G.S. § 7B-1110).

I. Respondent-Father

**[1]** Respondent-father challenges the multiple grounds found by the trial court to terminate his parental rights. We first consider respondent-father's argument that the trial court erred by concluding that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(9) to terminate his parental rights. N.C.G.S. § 7B-1111(a)(9) provides for termination of parental rights where "[t]he parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home." N.C.G.S. § 7B-1111(a)(9). "A 'safe home' is defined by the Juvenile Code as one 'in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.' " *In re T.N.H.*, 372 N.C. 403, 412, 831 S.E.2d 54, 61 (2019) (quoting N.C.G.S. § 7B-101(19) (2017)).

Here, the trial court made the following findings of fact relevant to its adjudication of grounds to terminate respondent-father's parental rights under N.C.G.S. § 7B-1111(a)(9):

> 11. That Ms. Sullivan spoke to Respondent-Father about the concerns with Respondent-Mother's care for the Juvenile and Respondent-Father did not intervene. Respondent-Mother had placed the Juvenile with Respondent-Father prior to [DSS's] involvement and allowed the Respondent-Mother to take the Juvenile back into her care prior to [DSS's] involvement.
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> 12. That when the Juvenile came into care, Respondent-Father was explored for placement. Respondent-Father provided [DSS] with a different last name and birth date than his own and that fictitious information was used for system checks to determine if he was a proper placement. Based on the fictitious information, the Juvenile was placed with Respondent-Father. At the initial seven-day hearing, concerns about Respondent-Father's identity were expressed and [DSS] learned Respondent-Father's correct name and date of birth. The appropriate record checks were completed and revealed that he had a prior Child Protective Services history with [DSS] and his rights to another of his children were involuntarily terminated. The Juvenile was removed from his placement after one night with Respondent-Father and placed in the same foster home as her sibling. Respondent-Father admits that he was untruthful with [DSS], and went along with it while knowing he was doing wrong.
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> . . . .
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> 15. That [DSS] did not enter into a case plan with Respondent-Father. All efforts towards reunification with him were ceased at the Adjudication and Disposition Hearing on June 26, 2017. The Respondent-Father stipulated, in part, that his parental rights were terminated to another child.
>
> 16. That Respondent-Father had a case plan in New Hanover County Case Number 14 JA 84, and his rights to that child were terminated in New Hanover County Case Number 14 JT 84, In the Matter of [I.S.D.], entered February 3, 2016. . . .

. . . .

23. That Dr. Len Lecci previously evaluated Respondent-Father for his 2014 case involving a sibling to this Juvenile. [DSS] moved to introduce into evidence as *Petitioner's Exhibit "4"*, Dr. Lecci's CV, and *Petitioner's Exhibit "5"*, Respondent-Father's Psychological Evaluation dated November 5, 2014 with addendum dated January 7, 2015. No party present objected and said exhibits were received into evidence. It was stipulated by all parties that Dr. Lecci was qualified as an expert in clinical psychology and parental competency.

24. That Dr. Lecci diagnosed Respondent-Father with Antisocial Personality Disorder. This diagnosis came from a compilation of Respondent-Father's clinical interview, diagnostic/standardized tests, and collateral information. Most of the tests have built in measures to determine lying and defensiveness. Respondent-Father was elevated on all measures which is text book grossly underreporting. While Respondent-Father does not have cognitive issues to parent, his had the highest elevation on the L scale which is for lying. He was elevated for the defensiveness score as well as his superlative score. Elevations of these scores are problematic as the client may be aware that he is lying and providing "Pollyanna" responses. A client with these scores may have no sense of other people's distress or grossly underreporting about a situation. Initially, Dr. Lecci's diagnosis was limited due to Respondent-Father's extreme defensiveness, but Dr. Lecci did include Cannabis abuse, in partial remission, and Antisocial Personality Disorder remains to be ruled out but could be confirmed with some collateral information. Dr. Lecci opined that if an Antisocial Personality Disorder was an accurate diagnosis, then continued and longstanding dishonesty would be expected, and any adaptive change in the near future is unlikely. Short term interactions with a person with Antisocial Personality Disorder would have that person presenting favorably, be likeable and consistent with Respondent-Father's presentation. Underneath, that person would not be truthful, give complex inaccuracies with a self-serving nature, are hedonistic, impulsive, inpatient, irresponsible and have assaultive behavior. After

collecting and reviewing collateral information, Dr. Lecci gave a formal diagnosis of Antisocial Personality Disorder to Respondent-Father. Antisocial Personality Disorder is marked by extensive lying and a complete disregard for social or moral standards. As a result, Respondent-Father's self-report should be taken with extreme caution and should be verified by external sources whenever possible. A person with Antisocial Personality Disorder is hard to treat as this is a longstanding behavior and the person does not realize that a change in behavior is needed, and therefore will not seek assistance. Antisocial Personality Disorder is part of who that person is and does not bode well for parenting. The person would place self-interests over the best interests of the child. Adaptive change is unlikely in those with Antisocial Personality Disorder, and treatment is therefore not recommended at this time.

25. That Dr. Lecci has not evaluated Respondent-Father since 2014 and cannot give a current diagnosis but a change would be unusual due to Respondent-Father's lack of interest in treatment or change.

26. That Mr. Joseph Rengifo evaluated Respondent-Father on March 25, 2019. Attorney Oring moved to introduce into evidence as *Respondent-Father's Exhibit "1"*, Respondent-Father's Treatment Report dated March 25, 2018. No party present objected and said exhibits were received into evidence. Mr. Rengifo was qualified as an expert in clinical psychology and counseling.

27. That Mr. Rengifo diagnosed Respondent-Father with Adjustment Disorder, unspecified, and Personal History of Spouse or Partner Violence, Physical. This diagnosis came from Respondent-Father's self-report and diagnostic/standardized tests. Respondent-Father provided Mr. Rengifo with maybe four pages of Dr. Lecci's report, less than fifteen minutes worth of reading, and without the addendum in which Dr. Lecci's confirmed Respondent-Father's diagnosis. Mr. Rengifo was not aware that Dr. Lecci had confirmed his diagnosis of Antisocial Personality Disorder for Respondent-Father, of the physical abuse allegations made by the child to whom his rights were terminated, of the physical allegation made by a former girlfriend, of the extent of physical violence and use of weapons, that

Respondent-Father was not a victim as he reported, or of Respondent-Father's drug use. Mr. Rengifo is a counselor and does not prepare a psychological evaluation but believes he needed this information to complete a proper diagnosis and treatment plan.

28. That Mr. Rengifo met with Respondent-Father four times. The first meeting was for screening, the second and third were evaluations, and the fourth was for information gathering and developing a treatment plan. Based on the information that Respondent-Father provided, Mr. Rengifo opined that Respondent-Father currently suffers from anger issues but he has not seen Respondent-Father enough to determine a complete diagnosis. Mr. Rengifo uses weekly meetings to work a treatment plan and the length of that treatment is dependent on the information provided by the client and that client's individual progress. A treatment plan has not [been] discussed with Respondent-Father because Respondent-Father has cancelled his appointments since the information gathering meeting.

. . . .

36. That there are still concerns with the lack of efforts by Respondent-Father, as well as his anger management, prior termination of parental rights, and lack of mental health treatment.

. . . .

42. That parental rights of Respondent-Father to [I.S.D.] were terminated by this [c]ourt on February 3, 2016 in New Hanover County Case Number 14 JT 84, In the Matter of [I.S.D.].

. . . .

53. The Court took judicial notice of the underlying 17 JA 400 file as the North Carolina Court of Appeals allows including all attachments to the Petition for Termination of Parental Rights consisting of orders and the birth certificate of the child. The Court notes that the child has been in the legal custody of [DSS] since April 13, 2017 and is placed in a pre-adoptive foster home.

"Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58 (citation omitted).

Respondent-father asserts that findings of fact 12, 15–16, 23–28, 31–32, 36–37, 39–40, 42, 44, 47–48, and 53 are not supported by sufficient evidence. We disagree.

We initially note that in reviewing the findings, we limit our review to those challenged findings that are necessary to support the trial court's determination that respondent-father's parental rights should be terminated pursuant to N.C.G.S. § 7B-1111(a)(9). *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59 (citing *In re Moore*, 306 N.C. at 404, 293 S.E.2d at 133). Here, findings of fact 31–32, 37, 39–40, and 47 pertain to the trial court's conclusions that grounds existed to terminate respondent-father's parental rights for neglect, failure to make reasonable progress, or failure to legitimize Natasha. N.C.G.S. § 7B-1111(a)(1), (2), and (5). Findings of fact 44 and 48 do not concern grounds for termination, but instead pertain to the trial court's determination that termination of respondents' parental rights would be in Natasha's best interests. N.C.G.S. § 7B-1110(a). We note that respondent-father does not challenge the trial court's conclusion that termination of his parental rights would be in Natasha's best interests. Thus, we decline to review these findings of fact.

Addressing respondent-father's challenges to the findings of fact relevant to the trial court's determination that grounds existed to terminate his parental rights pursuant to N.C.G.S. § 7B-1111(a)(9), we conclude that the evidence supports the challenged findings of fact. First, we address finding of fact 12, which summarizes both respondent-father's misrepresentation to DSS and the fact that his rights were terminated as to another child. Respondent-Father stipulated at the adjudicatory hearing on the initial juvenile petition that his parental rights to another child had been involuntarily terminated, and that his mental health concerns did not allow him to provide a safe home for Natasha. Additionally, a social worker testified at the termination hearing that there was initial confusion regarding respondent-father's identity because he provided a fictitious name. Furthermore, respondent-father admitted at the termination hearing that he provided DSS with a false name. This finding is supported by clear, cogent, and convincing evidence of record.

Second, we address findings of fact 15, 16, and 42 regarding the termination of respondent-father's parental rights as to another child. As stated previously herein, respondent-father stipulated that his parental

rights to another child had been involuntarily terminated. Furthermore, in that case the Court of Appeals held that respondent-father had not made sufficient progress on his case plan and affirmed the order terminating his parental rights to the other child. *In re I.S.D.*, 797 S.E.2d 384, 2017 WL 1056327 (N.C. Ct. App. 2017) (unpublished). These findings are properly supported by the record evidence.

Third, findings of fact 23 through 25 address (1) Dr. Lecci's qualification as an expert, (2) the admission of Dr. Lecci's *curriculum vitae* and evaluation of respondent-father, (3) respondent-father's diagnosis and testing, and (4) Dr. Lecci's opinion that a change in respondent-father would be unusual due to his lack of interest in treatment or change. Dr. Lecci's evaluation of respondent-father and his *curriculum vitae* were introduced into evidence without objection and were part of the record at the termination hearing. Respondent-father's diagnosis of antisocial personality disorder, his cognitive issues, and his behavioral issues were outlined in Dr. Lecci's evaluation. Dr. Lecci also testified regarding these issues at the termination hearing. These findings are supported by clear, cogent, and convincing evidence of record.

Fourth, we address findings of fact 26 through 28 regarding Mr. Rengifo's evaluation, diagnosis, and proposed treatment of respondent-father. Mr. Rengifo was qualified as an expert in clinical psychology and counseling, and his report was part of the record at the termination hearing. Mr. Rengifo's evaluation contains his diagnoses of respondent-father and the process by which he evaluated respondent-father. Mr. Rengifo testified that respondent-father did not provide him with the addendum to Dr. Lecci's report and thus had not provided him with all the information necessary for him to make a proper diagnosis. Mr. Rengifo also testified that he did not believe respondent-father had anger issues, but he also stated that he did not see respondent-father enough to make a proper diagnosis. Thus, the trial court's portion of finding of fact 28 that states that Mr. Rengifo opined that respondent-father had anger issues is not supported by the evidence and is disregarded. The remainder of these findings of fact are supported by clear, cogent, and convincing evidence.

Fifth, in finding of fact 36, the trial court stated that there were still ongoing concerns regarding respondent-father's "lack of efforts . . . as well as his anger management, prior termination of parental rights, and lack of mental health treatment." This finding of fact is supported by the testimony provided by a social worker at the termination hearing. The social worker testified that prior to reunification, respondent-father needed to address several issues, including anger management, mental health, and other concerns that had arisen in connection with this

prior termination of parental rights case. The social worker also testified that the only efforts made by respondent-father to access DSS services did not occur until February 2019 or later—which was after DSS filed the petition to terminate respondent-father's parental rights and after Natasha had been in DSS custody for almost two years.

Lastly, finding of fact 53 concerns the trial court taking judicial notice of the underlying case file, the date when DSS was granted custody of Natasha, and Natasha's foster home placement. These facts are supported by the record. The trial court took judicial notice of the underlying case file at the termination hearing without objection. Furthermore, the record demonstrates that Natasha was placed in DSS custody no later than March 2017 and was placed in a pre-adoptive foster home.

Respondent-father next contends that there were insufficient findings of fact with supporting evidence to lead to the conclusion that at the time of the termination hearing he lacked the ability or willingness to establish a safe home for Natasha. We are not persuaded.

The trial court's findings of fact establish that Dr. Lecci evaluated respondent-father in 2014 and made an addendum to his report in 2015. Dr. Lecci diagnosed respondent-father with antisocial personality disorder. This disorder is "marked by extensive lying and a complete disregard for social or moral standards." The trial court found as a fact that a person with antisocial personality disorder is difficult to treat because it is "part of who that person is." The trial court also found that respondent-father's disorder "does not bode well for parenting" and that "[t]he person would place self-interests over the best interests of the child."

Additionally, the trial court found that a person with antisocial personality disorder was unlikely to change and that change would be "unusual" in respondent-father's case due to his "lack of interest in treatment or change." Respondent-father's later conduct, which was consistent with Dr. Lecci's diagnosis, only served to confirm that respondent-father still suffered from antisocial personality disorder. Specifically, after DSS filed the juvenile petition alleging that Natasha was neglected and dependent, respondent-father lied to DSS by providing a false name and date of birth in order to have Natasha placed with him. Furthermore, when respondent-father was evaluated by Mr. Rengifo in 2019, he provided Mr. Rengifo with only part of Dr. Lecci's report. Conspicuously absent from the portion of Dr. Lecci's report that respondent-father provided to Mr. Rengifo was Dr. Lecci's diagnosis of antisocial personality disorder. This exemplifies Dr. Lecci's opinion that because of respondent-father's disorder, "continued and longstanding

dishonesty would be expected." Respondent-father's failure to provide Mr. Rengifo with a full and accurate report is also consistent with another feature of antisocial personality disorder, which is lying in order to present oneself favorably.

Finally, we note the trial court's finding of fact that Mr. Rengifo was unable to discuss a treatment plan with respondent-father because respondent-father cancelled his appointments. These findings of fact are all supported by clear, cogent, and convincing evidence of record, and they fully support the trial court's conclusion that respondent-father lacked the ability or willingness to establish a safe home for Natasha, and that his argument that this conclusion is not supported by the evidence and the findings of fact is without merit.

Respondent-father further argues that the trial court relied solely on an outdated 2014 psychological report to determine that he had antisocial personality disorder and that he could not effectively raise Natasha, and he argues that there was insufficient evidence that he lacked the ability or willingness to provide a safe home for Natasha at the time of the termination hearing. However, even assuming *arguendo* that the diagnosis was stale, the trial court's findings of fact detailed above support its conclusion that respondent-father was unable to provide a safe home for Natasha at the time of the termination hearing. The evidence and findings of fact discussed above demonstrate: (1) the fact that change in respondent-father would be unexpected; (2) his apparent lack of interest in treatment or change; (3) his more recent incidents of deception and dishonesty, which were consistent with his diagnosis; and (4) that his cancellation of appointments resulted in Mr. Rengifo being unable to discuss a treatment plan with him. Therefore, respondent-father's argument that the record evidence and the trial court's findings fail to establish that he lacked the ability to provide Natasha with a safe home at the time of the termination hearing is without merit.

Respondent-father concedes in his brief, and there are numerous supported findings of fact in the record, that his parental rights with respect to another child have been terminated involuntarily by a court of competent jurisdiction. For the reasons discussed above, we further conclude that the record evidence and findings of fact support the trial court's determination that respondent-father lacked the willingness or ability to establish a safe home for Natasha. Accordingly, we hold that the trial court did not err by concluding that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(9) to terminate respondent-father's parental rights.

The trial court's conclusion that a ground for termination existed pursuant to N.C.G.S. § 7B-1111(a)(9) is sufficient in and of itself to support termination of respondent-father's parental rights. *In re T.N.H.*, 372 N.C. at 413, 831 S.E.2d at 62. As such, we need not address respondent-father's arguments regarding N.C.G.S. § 7B-1111(a)(1), (2), and (5). Furthermore, respondent-father does not challenge the trial court's conclusion that termination of his parental rights was in Natasha's best interests. *See* N.C.G.S. § 7B-1110(a). Accordingly, we affirm the trial court's order terminating respondent-father's parental rights.

II. Respondent-Mother

**[2]** Respondent-mother's sole argument on appeal is that the trial court abused its discretion when it determined that termination of her parental rights was in Natasha's best interests. We disagree.

If the trial court finds a ground to terminate parental rights under N.C.G.S. § 7B-1111(a), it proceeds to the dispositional stage where it must "determine whether terminating the parent's rights is in the juvenile's best interest" based on the following factors:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a). The trial court's assessment of a juvenile's best interest at the dispositional stage is reviewed only for abuse of discretion. *In re D.L.W.*, 368 N.C. at 842, 788 S.E.2d at 167; *In re L.M.T.*, 367 N.C. 165, 171, 752 S.E.2d 453, 457 (2013). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

Here, in its termination order, the trial court found as fact:

> 44. That there is a bond between Respondent-Parents and the Juvenile.

45. That the child is strongly bonded with her foster parents who [have] been addressing her medical, emotional, educational and daily needs. Her school attendance has improved as have her grades. She is in the girl scouts and attends church on a weekly basis. She is in the same foster [home] as her sister, who was removed from Respondent-Mother's care at the same time. She is thriving and improving by leaps and bounds.

46. That the foster parents are eager to adopt this minor child.

. . . .

48. That the conduct of Respondent-Parents . . . has been such as to demonstrate that they will not promote the minor child's health, physical and emotional wellbeing and there is a foreseeable likelihood of repetition of neglect of this child. It is in the best interests of [Natasha] that the parental rights of Respondent-Parents and Unknown Father are terminated.

49. That Attorney Advocate Morey Everett moved to introduce into evidence as *Guardian ad Litem's Exhibit "1"*, a detailed report for the Court dated April 8, 2019, prepared by Peter Maloff, Volunteer Guardian ad Litem. Ms. Maloff was present at the time of the entry of *Guardian ad Litem's Exhibit "1"*. No objection was made and said report was received into evidence and considered by the Court on the issue of best interest.

50. That [Natasha] is ten years old. She is bonded with her foster parents, who are eager to adopt her. She is making progress in her current home, which is providing her with a safe and stable environment in which to thrive. The termination of parental rights of the Respondent-Parents and Unknown Father will aid in establishment of the permanent plan of adoption, as this is the only obstacle to adoption at this time.

51. That taking into consideration all of the factors detailed above, that the best interests of [Natasha] would be served by the termination of the parental rights of [respondents], and that those rights are terminated so that the child can be afforded an opportunity for adoption

> and permanence. After twenty-six (26) months in [DSS's] care, the child is no closer to returning home. She is currently in a foster home that is meeting all of her needs with foster parents that are eager to adopt her. Additionally, the child is young, there needs to be a permanent plan for the child, and this family can provide it. Termination of Respondent-Parents' . . . parental rights would help achieve the permanent plan of adoption and provide the permanence this child deserves.

Dispositional findings not challenged by respondent-mother are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019) (citation omitted). Here, respondent-mother challenges finding of fact 51. However, evidence in the record supports the trial court's finding of fact. The evidence demonstrates that Natasha was removed from respondent-mother's care in February 2017 and the termination hearing was held in March and April of 2019. Therefore, Natasha was not in respondent-mother's care for a span of twenty-six months. Respondent-mother does not contest the trial court's conclusion that grounds existed to terminate her parental rights, and we have determined that grounds existed to terminate respondent-father's parental rights pursuant to N.C.G.S. § 7B-1111(a)(9).

In further support of finding of fact 51, regarding Natasha's foster home, a social worker testified that (1) Natasha had been in the foster home for almost two years, (2) her foster mom "attends to all of [Natasha's] medical needs," (3) her attendance and grades at school were "right back where [they] should be," and (4) "she participate[d] in Girl Scouts." Additionally, the guardian *ad litem*'s report to the trial court indicated that Natasha's foster parents were interested in adopting her. The social worker further testified that (1) the foster home was a stable environment for Natasha, (2) the only remaining obstacle to adoption was termination of respondents' parental rights, and (3) it was in Natasha's best interests that Natasha be adopted by the foster parents. This evidence supports the challenged finding of fact.

The remaining portion of finding of fact 51 contains the trial court's ultimate finding that Natasha's best interests would be served by termination of respondents' parental rights. "[A]n 'ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact' and should 'be distinguished from the findings of primary, evidentiary, or circumstantial facts.' " *In re N.D.A.*, 373 N.C. 71, 76, 833 S.E.2d 768, 773 (2019) (quoting *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 491, 57 S. Ct. 569, 574, 81 L. Ed. 755, 762 (1937)). This Court reviews

termination orders "to determine whether the trial court made sufficient factual findings to support its ultimate findings of fact and conclusions of law, regardless of how they are classified in the order." *In re Z.A.M.*, 839 S.E.2d 792, 798 (N.C. 2020).

We initially note that the trial court properly considered the statutory factors set forth in N.C.G.S. § 7B-1110(a) when determining Natasha's best interests. The trial court made uncontested findings of fact that (1) Natasha had a strong bond with her foster parents, (2) the foster parents were providing for Natasha's needs, (3) Natasha was thriving in their care, and (4) termination of respondents' parental rights would aid in the permanent plan of adoption.

The bulk of respondent-mother's argument concerns her claims that the trial court failed to consider: (1) the importance of preserving family integrity; (2) the "devastating affect" that termination of respondents' parental rights would have on Natasha; and (3) the fact that respondent-father was "perfectly capable of providing a stable and loving home for Natasha." We disagree.

While the stated policy of the Juvenile Code is to prevent "the unnecessary or inappropriate separation of juveniles from their parents," N.C.G.S. § 7B-100(4) (2019), "the best interests of the juvenile are of paramount consideration by the court and . . . when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a *safe, permanent home within a reasonable amount of time*." N.C.G.S. § 7B-100(5) (emphasis added); *see also In re Montgomery*, 311 N.C. at 109, 316 S.E.2d at 251 ("[T]he fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody [is] that the best interest of the child is the polar star."). Thus, while preserving family integrity is an appropriate consideration in the dispositional phase of the termination hearing, the best interests of the juvenile remain paramount.

Here, the trial court also found that respondents' conduct demonstrated that they would not promote Natasha's health, physical, and mental well-being. The trial court further found, after consideration of all the statutory factors, that Natasha was no closer to returning home than she was on the day she entered into DSS's care. Meanwhile, a family who was meeting all of her needs was willing to adopt her and provide her with permanence. Thus, the trial court could properly conclude based on its dispositional findings of fact that preserving family integrity was not in Natasha's best interests.

The remainder of respondent-mother's arguments are contingent on respondent-father's retention of his parental rights. However, because we have already determined that the trial court properly terminated respondent-father's parental rights, these arguments lack merit. We therefore hold that the trial court's conclusion that termination of respondent-mother's parental rights was in Natasha's best interests did not constitute an abuse of discretion.

Conclusion

We conclude that the trial court correctly determined that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(9) to terminate respondent-father's parental rights. We further conclude that the trial court did not abuse its discretion by determining that termination of respondent-mother's parental rights was in Natasha's best interests. Accordingly, we affirm the trial court's order terminating respondents' parental rights.

AFFIRMED.

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IN THE MATTER OF R.A.B.

No. 402A19

Filed 17 July 2020

**Termination of Parental Rights—no-merit brief—sexual abuse of child**

The termination of a father's parental rights was affirmed where his counsel filed a no-merit brief and the termination was based on his sexual abuse of the child. The termination order was based on clear, cogent, and convincing evidence supporting the statutory grounds for termination.

On writ of certiorari pursuant to N.C.G.S. § 7A-32(b) to review orders entered on 11 July 2019 by Judge Regina M. Joe in District Court, Moore County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but was determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Jerry D. Rhoades, Jr. for petitioner-appellees.*

*Edward Eldred for respondent-appellant father.*

NEWBY, Justice.

Respondent-father appeals from the trial court's 11 July 2019 adjudication and disposition orders terminating his parental rights to the minor child R.A.B. (Rose).[1] Counsel for respondent-father has filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We conclude the issue identified by counsel in respondent-father's brief as arguably supporting the appeal is meritless and therefore affirm the trial court's orders.

On 3 February 2014, a Catawba County grand jury indicted respondent-father based on criminal conduct against Rose, including one count of first-degree rape of a child, four counts of taking indecent liberties with a child, and three counts of first-degree sexual offense with a child. Rose's mother was charged with taking indecent liberties with a child. DSS had already filed a juvenile petition, and on 10 March 2014, Rose was adjudicated an abused and neglected juvenile. DSS received custody of Rose. On 20 October 2014, the trial court entered an order ceasing reunification efforts with both parents and setting the permanent plan for Rose as adoption. On 4 December 2014, DSS placed Rose with petitioners. On 18 December 2015, petitioners were granted guardianship of Rose with the parents' consent.

On 24 February 2017, respondent-father was convicted by a jury of first-degree rape of a child, four counts of taking indecent liberties with a child, and three counts of first-degree sexual offense with a child. Respondent-father appealed to the North Carolina Court of Appeals, and the Court of Appeals found no error in defendant's conviction for rape but reversed defendant's remaining convictions and remanded for resentencing. *State v. Blankenship*, 259 N.C. App. 102, 814 S.E.2d 901 (2018), *disc. review denied*, 372 N.C. 295, 827 S.E.2d 98 (2019).

On 2 October 2018, petitioners filed a petition to terminate respondent-father's parental rights. Rose's mother had previously relinquished her parental rights and consented to adoption and thus was not named as a party. Petitioners alleged that respondent-father had raped and sexually assaulted Rose and that grounds existed to terminate his parental rights for abuse and/or neglect. *See* N.C.G.S. § 7B-1111(a)(1) (2019).

1. A pseudonym is used to protect the identity of the juvenile and for ease of reading.

Following a hearing held on 16 May 2019, the trial court entered orders on 11 July 2019 terminating respondent-father's parental rights.

On 31 July 2019, respondent-father gave timely notice of appeal pursuant to N.C.G.S. §§ 7A-27(a)(5) and 7B-1001(a1)(1), but improperly designated the Court of Appeals as the court to which appeal was being taken. On 19 November 2019, respondent-father filed a petition for writ of certiorari seeking review of the trial court's orders. On 19 December 2019, petitioners moved to dismiss respondent-father's appeal. On 20 December 2019, we granted respondent-father's petition for writ of certiorari and denied petitioners' motion to dismiss the appeal.

Counsel for respondent-father has filed a no-merit brief on his client's behalf under Rule 3.1(e) of the Rules of Appellate Procedure. In his brief, counsel identified one issue that could arguably support an appeal, but also stated why he believed the issue lacked merit. Counsel has advised respondent-father of his right to file *pro se* written arguments on his own behalf and provided him with the documents necessary to do so. Respondent-father has not submitted written arguments to this Court.

We carefully and independently review issues identified by counsel in a no merit brief filed pursuant to Rule 3.1(e) in light of the entire record. *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). After conducting this review, we are satisfied the trial court's 11 July 2019 orders are supported by clear, cogent, and convincing evidence and based on proper legal grounds. Accordingly, we affirm the trial court's orders terminating respondent-father's parental rights.

AFFIRMED.

**IN RE S.M.M.**

[374 N.C. 911 (2020)]

IN THE MATTER OF S.M.M.

No. 299A19

Filed 17 July 2020

**1. Termination of Parental Rights—remand from appellate court—motion to reopen evidence—trial court's discretion—mere speculation**

In a termination of parental rights case on remand from the Court of Appeals for dispositional findings on the juvenile's likelihood of adoption, the trial court did not abuse its discretion by denying the mother's motion to reopen the evidence. The Court of Appeals left the decision whether to take new evidence on remand to the trial court's discretion; further, the mother's motion offered mere speculation rather than a forecast of relevant evidence bearing upon the juvenile's best interests.

**2. Termination of Parental Rights—dispositional evidence—bifurcated hearings—not required**

The trial court in a termination of parental rights case was not required to conduct a separate dispositional hearing where it heard dispositional evidence with adjudicatory evidence and applied the correct evidentiary standards to each.

**3. Termination of Parental Rights—likelihood of adoption—findings—evidentiary support**

In a termination of parental rights case, the trial court's findings of fact regarding the juvenile's likelihood of adoption—including her mental health, her behavioral issues, and her biological family being an obstacle to stability—were supported by competent evidence and properly complied with the Court of Appeals' remand instructions.

**4. Termination of Parental Rights—best interests of the child—likelihood of adoption—abuse of discretion analysis**

The trial court did not abuse its discretion by concluding that termination of a mother's parental rights was in her daughter's best interests where the court's dispositional findings addressed all the relevant criteria required by N.C.G.S. § 7B-1110(a). As required by the Court of Appeals' mandate in a prior opinion in the matter, the trial court properly considered the daughter's likelihood of adoption—concluding that a necessary condition to adoptability was

the stability and closure that could result only from termination of her mother's parental rights, and recognizing the possibility that the daughter may never achieve adoptability.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from order entered on 30 April 2019 by Judge Christy E. Wilhelm in District Court, Cabarrus County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Hartsell & Williams, PA, by H. Jay White and Austin "Dutch" Entwistle III, for petitioner-appellee Cabarrus County Department of Human Services.*

*Womble Bond Dickinson (US) LLP, by Jacob S. Wharton and Ryan H. Niland, for appellee Guardian ad Litem.*

*Mercedes O. Chut for respondent-appellant mother.*

EARLS, Justice.

Respondent appeals from an order terminating her parental rights to her minor child, S.M.M. (Sarah).[1] We hold the trial court properly complied with the Court of Appeals' mandate on remand from *In re S.M.M.*, 822 S.E.2d 329, 2019 N.C. App. LEXIS 13, 2019 WL 190200 (N.C. Ct. App. 2019) (unpublished), and the court's conclusion that termination of respondent's parental rights is in Sarah's best interests does not constitute an abuse of discretion.

The Cabarrus County Department of Human Services (CCDHS) obtained non-secure custody of Sarah and filed a petition alleging she was a neglected juvenile on 5 November 2015.[2] After a hearing on 14 April 2016, the trial court entered an order adjudicating Sarah to be a neglected juvenile and continuing her in CCDHS custody. On 30 May 2017, CCDHS filed a motion in the cause to terminate

1. The minor child will be referred to throughout this opinion as "Sarah," which is a pseudonym used to protect the child's identity and for ease of reading.

2. A full recitation of the underlying factual and procedural history of this case can be found in the Court of Appeals' opinion in *In re S.M.M.*, 822 S.E.2d 329, 2019 N.C. App. LEXIS 13, 2019 WL 190200.

respondent's parental rights to Sarah based on the grounds of neglect, failure to make reasonable progress, failure to pay a reasonable portion of the cost of Sarah's care, dependency, and abandonment. *See* N.C.G.S. § 7B-1111(a)(1)–(3), (6)–(7) (2019). The trial court entered an order terminating respondent's parental rights on 9 April 2018, concluding the grounds alleged by CCDHS existed and termination was in Sarah's best interests. Respondent appealed, and the Court of Appeals affirmed the trial court's adjudication of grounds based on neglect but reversed the court's best interests determination. *In re S.M.M.*, 822 S.E.2d 329, 2019 N.C. App. LEXIS 13, 2019 WL 190200. The Court of Appeals concluded the trial court's dispositional findings of fact did not address Sarah's likelihood of adoption, *see* N.C.G.S. § 7B-1110(a)(2) (2019), which was placed at issue by testimony at the hearing from a social worker and from Sarah's guardian *ad litem* (GAL). The Court of Appeals remanded for the trial court to make findings of fact on this statutory factor. *In re S.M.M.*, 2019 N.C. App. LEXIS 13, at *13, 2019 WL 190200, at *5.

On remand, respondent filed a motion to reopen the evidence to present additional evidence of Sarah's likelihood of adoption, including evidence of the changes in her and Sarah's circumstances since the original termination hearing. After a 28 March 2019 hearing on the motion to reopen evidence, the trial court denied the motion by order entered 23 April 2019.

The trial court entered its amended order terminating respondent's parental rights on 30 April 2019. The court made multiple new findings of fact regarding Sarah's likelihood of adoption and again concluded termination of respondent's parental rights was in Sarah's best interests. Respondent appeals.

**[1]** We first address respondent's argument that the trial court abused its discretion in denying her motion to reopen the evidence. Respondent contends the trial court could not comply with the mandate from the Court of Appeals without reopening the evidence, because the trial court could not make the necessary findings on Sarah's adoptability without considering her circumstances at the time of the remand hearing. Additionally, respondent contends the trial court was required to reopen the evidence despite the Court of Appeals' mandate leaving it to the trial court's discretion because "[w]henever the trial court is determining the best interest of a child, any evidence which is competent and relevant to a showing of the best interest of that child *must be heard and considered* by the trial court, subject to the discretionary powers of the trial court to exclude cumulative testimony." *In re Shue*, 311 N.C. 586, 597, 319 S.E.2d 567, 574 (1984) (emphasis added). Respondent argues

the Court of Appeals remanded the matter to the trial court for a new best interests determination, which thus required the trial court to hear any additional evidence proffered by the parties.

Contrary to respondent's assertion, the trial court was not required to reopen evidence on remand on the facts of this case. It is well established that the mandate of an appellate court "is binding upon [the trial court] and must be strictly followed without variation or departure. No judgment other than that directed or permitted by the appellate court may be entered." *Lea Co. v. N.C. Bd. of Transp.*, 323 N.C. 697, 699, 374 S.E.2d 866, 868 (1989) (alteration in original) (quoting *D & W, Inc. v. Charlotte*, 268 N.C. 720, 722, 152 S.E. 2d 199, 202 (1966)). The mandate of the Court of Appeals required the trial court to make findings of fact regarding Sarah's likelihood of adoption, a factor that must be considered in determining the best interests of a juvenile when terminating parental rights, *see* N.C.G.S. § 7B-1110(a)(2), and about which particular findings of fact must be made when conflicting evidence places the factor at issue. *See, e.g.*, *In re A.U.D.*, 373 N.C. 3, 10–11, 832 S.E.2d 698, 702–03 (2019) (holding that a trial court is not required to make written findings concerning factors set out in section 7B-1110(a) in the absence of conflicting evidence relating to the factor in question). The Court of Appeals here held that the evidence at the original hearing placed the likelihood of adoption factor at issue, but the trial court failed to make the requisite findings of fact. *In re S.M.M.*, 2019 N.C. App. LEXIS 13, at *13, 2019 WL 190200, at *5.

The Court of Appeals remanded the matter for the sole purpose of allowing the trial court to make the required findings, *id.*, not for a new dispositional hearing where the court would have been required to hear any relevant evidence as to Sarah's best interests. *Shue*, 311 N.C. at 597, 319 S.E.2d at 574. The Court of Appeals did note that "[t]he trial court retains the discretion to supplement its order as it sees fit, so long as it complies with the statute." *In re S.M.M.*, 2019 N.C. App. LEXIS 13, at *13, n3, 2019 WL 190200, at *5, n3. However, the opinion was silent as to whether the trial court should take new evidence on remand and, therefore, the Court of Appeals left that decision to the trial court's sound discretion. *See, e.g.*, *In re J.M.D.*, 210 N.C. App. 420, 428, 708 S.E.2d 167, 173 (2011) ("Whether on remand for additional findings a trial court receives new evidence or relies on previous evidence submitted is a matter within the discretion of the trial court." (quoting *Hicks v. Alford*, 156 N.C. App. 384, 389, 576 S.E.2d. 410, 414 (2003))).

Most significantly, although respondent made general representations about the degree to which all children change between the ages

of 10 and 12, nothing in respondent's motion identified any specific circumstances or forecast any particular changes in Sarah's life that would have any bearing on the question of the likelihood of her adoption. Mere speculation that some facts may have changed in the eighteen months since the court originally heard the evidence is not sufficient to demonstrate that the trial court abused its discretion in denying respondent's motion to reopen the evidence on remand. Absent any forecast of relevant testimony or other evidence bearing upon the Court's ultimate determination of the child's best interests, the trial court's decision to refrain from reopening the record is entirely consistent with this Court's general admonition that a trial court must always hear any relevant and competent evidence concerning the best interests of the child. *See In re Shue*, 311 N.C. at 597, 319 S.E.2d at 576. In this case there was simply no further relevant and competent evidence to be heard by the trial court on remand.

The trial court was able to make the required findings concerning the likelihood of Sarah's adoption from the evidence presented at the original hearing. The new findings satisfy the mandate of the Court of Appeals, and we hold the trial court did not abuse its discretion in denying respondent's motion to reopen the evidence.

**[2]** Respondent further contends the trial court never conducted a dispositional hearing and thus, never received proper dispositional evidence. However, the hearing transcript shows the trial court heard dispositional evidence from a CCDHS social worker and the GAL and received the GAL's dispositional report into evidence. Although the dispositional evidence was intertwined with adjudicatory evidence, a trial court is not required to bifurcate the hearing into two distinct stages. *See*, *e.g.*, *In re R.B.B.*, 187 N.C. App. 639, 643–44, 654 S.E.2d 514, 518 (2007) ("[A] trial court may combine the N.C.G.S. § 7B-1109 adjudicatory stage and the N.C.G.S. § 7B-1110 dispositional stage into one hearing, so long as the trial court applies the correct evidentiary standard at each stage and the trial court's orders associated with the termination action contain the appropriate standard-of-proof recitations."), *disc. review denied*, 362 N.C. 235, 659 S.E.2d 738 (2008).

**[3]** We next address respondent's challenges to the trial court's findings of fact regarding Sarah's likelihood of adoption and her argument that the trial court abused its discretion in assessing Sarah's best interests.

In determining whether termination of parental rights is in the best interests of a juvenile:

> The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:
>
> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a) (2019). A trial court's best interests determination "is reviewed solely for abuse of discretion." *In re A.U.D.*, 373 N.C. at 6, 832 S.E.2d at 700 (citing *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016)). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Id.* at 6–7, 832 S.E.2d at 700–01 (modification omitted) (quoting *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015)). "[O]ur appellate courts are bound by the trial courts' findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *In re Montgomery*, 311 N.C. 101, 110–11, 316 S.E.2d 246, 252–53 (1984).

On remand, the trial court amended its order terminating respondent's parental rights to include the following findings of fact regarding Sarah's likelihood of adoption:

> 4. There is a high likelihood of adoption once the juvenile can get stable, but she cannot be stable until she has closure regarding her relationship with her biological family. The juvenile needs permission to not feel guilty and to move forward and to allow herself to be loved by someone that can care for her appropriately.

5. Although the Juvenile struggles with transition, she is also in the process of stepping down from her current treatment program. When there are changes in her environment it causes the juvenile some stress and anxiety, which comes out in her behaviors.

6. The Juvenile has moderate mental health needs, based on a diagnosis of post-traumatic stress disorder and disruptive mood dysregulation disorder. The juvenile is extremely guarded. She is eleven years old and has endured years of injurious environment and neglect and exposure to substance abuse, domestic violence, and for her to be able to process that trauma that she has been through, she needs closure and as long as the biological family is in the picture, she feels split. Her loyalties are divided and she doesn't know how she should feel and she has expressed multiple times that it is her fault that she is in foster care.

7. The juvenile needs a little bit more stability before the conversation about adoption can occur. She has only been in this placement for a month and a half, and the juvenile and the foster parents need time to develop a bond before a discussion can be had. In addition, the Juvenile needs closure to allow for her to develop a bond because she is so guarded.

8. The plan to find the juvenile an adoptive home would be to start with the current placement and see if they are interested in keeping the juvenile. Once parents' rights are terminated, if there is not an identified adoptive home, CCDHS would complete adoption recruitment on behalf of the juvenile, including building a child profile, detailing the child's likes, dislikes, their needs, and it is submitted to NC Kids. NC Kids is a state website and also feeds into Adopt U.S. Kids, a national website to recruit for families. Pre-placement assessments for interested families would go to CCDHS and a team reviews them to determine which is the best placement for the child, and then the child would be placed in that home on a trial basis.

9. If an adoptive home is not located, the juvenile remains in CCDHS [custody] and they would continue to recruit to find an adoptive home for the juvenile. If the juvenile

> reaches the age of eighteen and is not adopted, the juvenile can transition into the LINKS program at CCDHS which helps teens transition into adulthood and develop necessary life skills.

Respondent first argues finding of fact four is erroneous. She contends the finding implies Sarah's only obstacle to stability was her relationship with her biological family, which is not supported by the evidence. She argues the evidence established that "closure" meant more than just severance from her biological family and included being able to process past trauma. She additionally contends the evidence regarding stability and closure for Sarah was only discussed in the context of whether termination of parental rights was in Sarah's best interests, and not specifically whether Sarah had a likelihood of adoption. Respondent further argues that without additional findings of fact as to what constitutes "stability" for Sarah and whether she would be able to obtain stability before reaching the age of majority, the likelihood of adoption is unknown.

Finding of fact four does not state that Sarah's relationship to her family was the *only* barrier to her ability to achieve stability in her life, but rather that severing the relationship was a necessary precondition to achieving it. The finding also does not suggest that "closure" for Sarah meant only the severance of parental rights. Finding of fact four is fully supported by testimony from the social worker, who testified, "the likelihood of adoption is high once we get [Sarah] stable, but she cannot be stable until she has closure." The social worker further testified:

> [Sarah] has endured years and years of an injurious environment and neglect and exposure to substance abuse, domestic violence, and for her to be able to process that trauma that she has been through, she needs closure. And as long as biological family are in the picture, . . . she's split and her loyalties are divided and she doesn't know how she should feel, and she's expressed to me multiple times that, "It is my fault that I'm in foster care. I should have never said anything." And so she needs that closure in order to . . . allow for her to develop a bond, because she's so guarded right now.

Furthermore, the trial court was not required to make findings of fact showing Sarah will attain the necessary stability to be adopted. *See*, *e.g.*, *In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983) ("It suffices to say that . . . a finding [of adoptability] is not required in order

to terminate parental rights."), *cert. denied*, 310 N.C. 744, 315 S.E.2d 703 (1984). Section 7B-1110 does not require the trial court to set forth detailed findings establishing the benchmarks a traumatized child must meet to obtain the necessary stability to be adopted. The court had only to make findings of fact addressing Sarah's likelihood of adoption.

Respondent next contends finding of fact five minimizes Sarah's mental health and behavioral issues and creates an inaccurate perception that her conditions have improved enough to enable her to "step down" from her current therapeutic placement. Respondent argues there is no evidence Sarah was stepping down from her current treatment program, was only experiencing stress and anxiety, or was making progress toward her transition.

Respondent, however, ignores the social worker's testimony that Sarah was "in the process of stepping down from her current treatment program and I think that's causing some stress and anxiety, which is coming out in her behavior." The social worker testified a more permanent and stable environment would help Sarah, and Sarah's current foster parents, who are participating in her therapeutic care, were willing to keep fostering her as she is stepped down to a lower level of care so that she does not have to make another disruptive transition. Contrary to respondent's interpretation, this finding does not state Sarah is only experiencing stress or indicate her progress in making the transition. The finding also does not minimize Sarah's mental health and behavioral issues and acknowledges her struggles with transition as a result of her issues.

Respondent also argues finding of fact six implies that Sarah's mental health diagnoses caused her guarded and conflicted behavior and that her mental health and behavioral issues will go away if parental rights are terminated. The finding that Sarah is "extremely guarded" holds no such implication. The statement is supported by testimony from the social worker and carries no improper implication merely because the relevant testimony followed the social worker's identification of Sarah's specific mental health diagnoses.

Respondent appears to suggest the trial court should have made additional findings regarding the nature of Sarah's disruptive behaviors. However, a trial court is only required to make findings of fact necessary to resolve material issues. *See*, *e.g.*, *Carpenter v. Carpenter*, 225 N.C. App. 269, 271, 737 S.E.2d 783, 785 (2013) ("[T]he trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute." (citation omitted)). The nature of Sarah's mental health

and behavioral issues was not in dispute, and the trial court was not required to make findings on those issues.

Respondent further argues finding of fact seven takes the social worker's testimony out of context and creates an inaccurate impression that all Sarah needed to gain "stability" was termination of parental rights. We conclude the finding is fully supported by the social worker's testimony. The finding states that Sarah needs more stability before a "conversation about adoption can occur," not that stability will automatically cause Sarah to develop a bond with her potential adoptive parents. The trial court's finding merely indicates stability and closure will *assist* Sarah in attaining her permanent plan of adoption, not that adoption is guaranteed. We agree with respondent that there is no evidence the foster parents are open to adopting Sarah. The record instead establishes that Sarah needs more stability and closure before CCDHS initiates that conversation with Sarah and her foster parents.

Respondent also argues the trial court's finding of fact that it "accepted the [GAL's] court report into evidence, as it relates to the best interests of the child" is erroneous because it does no more than recite the evidence. Respondent takes issue with numerous statements in the report and the report's failure to discuss other aspects of the case. Respondent appears to believe the trial court's finding adopted the report's findings as its own, however, the finding simply acknowledges for the record that the report had been admitted into evidence for dispositional purposes. The court did not adopt the report's findings as its own, and we do not treat the report's findings as anything more than evidence in the case.

We hold the above challenged findings of fact are supported by competent record evidence and are binding on appeal. *See Montgomery*, 311 N.C. at 110–11, 316 S.E.2d at 252–53. Respondent does not challenge the remaining dispositional findings of fact, and they are thus binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.").

Next, respondent argues the trial court did not comply with the remand instructions from the Court of Appeals, because its findings do not resolve what respondent contends is a conflict between the testimony of the social worker and the GAL over whether there is a "high likelihood" that Sarah will be adopted. Respondent asserts that the amended findings ignore the GAL's report altogether and, as argued above, are erroneous.

However, nothing in the remand order actually states that the two slightly different assessments are irreconcilable or determinative of whether termination of respondent's parental rights is in Sarah's best interests. The Court of Appeals remanded this matter for the trial court to address Sarah's likelihood of adoption, *see* N.C.G.S. § 7B-1110(a)(2) (2019), which it held was placed at issue due to testimony from a social worker and from Sarah's GAL. *In re S.M.M.*, 2019 N.C. App. LEXIS at *13, 2019 WL 190200 at *5. The social worker's testimony that she thought "the likelihood of adoption is high once we get [Sarah] stable, but she cannot be stable until she has closure" and that "[Sarah] needs a little bit more stability before we can have that conversation [about adoption,]" is not contradicted by the GAL's written report, which stated "[t]he likelihood of adoption is good." *Id.* The amended findings set forth above find Sarah to have a high likelihood of adoption and, as discussed above, are supported by competent evidence. The findings therefore complied with the Court's remand instructions.

**[4]** Respondent lastly argues the trial court abused its discretion in concluding termination of her parental rights is in Sarah's best interests. Respondent contends the court's findings do not support its conclusion and its conclusion is not the result of a reasoned decision because the court failed to include an analysis of Sarah's actual likelihood of adoption and possibility that termination of respondent's parental rights will render Sarah a "legal orphan."

However, the trial court's dispositional findings of fact on remand address all the relevant criteria required by N.C.G.S. § 7B-1110(a). The findings establish that Sarah has a likelihood of adoption only if she obtains stability in her life and closure with the traumas of her past, which cannot be obtained absent the termination of respondent's parental rights. The findings make clear that the trial court recognized Sarah may never achieve the necessary stability and closure to be adopted, but it is well established that a likelihood of adoption is not necessary for a court to conclude termination of parental rights is in a juvenile's best interests. *See*, *e.g.*, *Norris*, 65 N.C. App. at 275, 310 S.E.2d at 29.

The trial court's order shows a well-reasoned weighing of Sarah's adoptability and the obstacles thereto, along with her age, lack of appropriate bond with respondent, and need for permanency. Accordingly, we hold the trial court did not abuse its discretion in concluding that termination of respondent's parental rights was in Sarah's best interests, and we affirm the trial court's order.

AFFIRMED.

**IN RE W.I.M.**

[374 N.C. 922 (2020)]

IN THE MATTER OF W.I.M.

No. 431A19

Filed 17 July 2020

**Termination of Parental Rights—personal jurisdiction—amended petition—new summons**

The trial court properly exercised personal jurisdiction over a father in a termination of parental rights (TPR) case where the Health and Human Services Agency (HHSA)—after discovering a jurisdictional defect in its original TPR petition—filed an amended petition and served the father with a new summons. The new summons and petition constituted new filings initiating a second TPR proceeding. Thus, although HHSA's failure to obtain the issuance of an alias and pluries summons or an endorsement of the original summons would have discontinued the first proceeding, it had no effect on jurisdiction in the second proceeding.

On writ of certiorari pursuant to N.C.G.S. § 7A-32(b) to review orders entered on 31 May 2019 by Judge Monica H. Leslie in District Court, Haywood County. This matter was calendared for argument in the Supreme Court on 19 June 2020 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

*Rachael J. Hawes, Agency Attorney, for petitioner-appellee Haywood County Health and Human Services Agency.*

*Matthew D. Wunsche, GAL Appellate Counsel, for appellee Guardian ad Litem.*

*Richard Croutharmel for respondent-appellant father.*

MORGAN, Justice.

By virtue of orders entered on 28 February 2020, this Court dismissed respondent-father's pending appeal and allowed his petition for writ of certiorari to review two orders of the trial court terminating his parental rights to W.I.M. (Wesley),[1] a juvenile born in July 2010. Because

1. We use this pseudonym to protect the juvenile's identity and for ease of reading.

we find no merit in respondent's argument that the trial court lacked personal jurisdiction to proceed against him in this matter, we affirm the trial court's orders.

On 24 January 2017, the Haywood County Health and Human Services Agency (HHSA) removed Wesley and two of his half-siblings from their mother's care and took the juveniles into nonsecure custody due to their mother's ongoing substance abuse, her failure to provide proper care and supervision for the children, and her unsanitary and hazardous home environment to which she exposed them. HHSA also filed a juvenile petition alleging that Wesley was abused, neglected, and dependent. The juvenile petition identified respondent as Wesley's father and alleged that respondent was currently in custody serving a sentence for habitual impaired driving with a projected release date of 2 July 2017.

The trial court adjudicated Wesley to be a neglected juvenile on 14 March 2017 and ordered that HHSA maintain him in nonsecure custody. Since respondent had "expressed his desire to parent his son," the trial court directed HHSA to develop a case plan for respondent and to determine whether respondent had access to programs while incarcerated that would be appropriate for him. The trial court ordered respondent to comply with the case plan that was developed for him and to cooperate with HHSA. The trial court further ordered that upon respondent's release from custody, he must submit to random drug screens, undergo mental health and substance abuse assessments, comply with any related treatment recommendations, obtain and maintain stable housing and employment, and successfully complete parenting classes.

Respondent was released from incarceration on 2 July 2017 and was initially cooperative with HHSA. As a result, at the ninety-day review hearing, *see* N.C.G.S. § 7B-906.1(a) (2019), the trial court awarded respondent one hour per week of supervised visitation with Wesley and established a permanent plan of reunification with a concurrent plan of guardianship with a relative or court-approved caretaker. After visiting with Wesley on 20 September 2017, however, respondent absconded from his probation for another criminal conviction. HHSA was unable to contact respondent after 27 September 2017. Accordingly, following a permanency planning review hearing on 10 January 2018, the trial court ceased efforts at reunification with respondent and changed Wesley's permanent plan to reunification with his mother with a concurrent plan of guardianship.

On 23 July 2018, due to the mother's continued substance abuse issues and her overall lack of progress with her case plan, the trial court ceased all reunification efforts with the mother and changed the permanent plan for Wesley to adoption with a concurrent plan of guardianship. HHSA filed a petition to terminate the parental rights of both respondent and Wesley's mother on 21 September 2018. A summons was issued on 21 September 2018 and subsequently served on respondent by a deputy of the Caldwell County Sheriff's Office on 3 October 2018.

Respondent filed an answer to the petition for termination on 30 October 2018, accompanied by a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim for which relief may be granted under N.C.G.S. § 1A-1, Rule 12(b)(1), (6) (2019). In his motion to dismiss, respondent asserted that the petition for termination was not properly verified as required by N.C.G.S. § 7B-1104 because the verification was made on behalf of a *former* director of HHSA by his authorized agent. *See generally In re T.M.H.*, 186 N.C. App. 451, 454, 652 S.E.2d 1, 2 ("[A] violation of the verification requirement of N.C.G.S. § 7B-1104 has been held to be a jurisdictional defect *per se*."), *disc. review denied*, 362 N.C. 87, 657 S.E.2d 31 (2007).

On 9 November 2018, HHSA filed a "Motion to Amend Petition for Termination of Parental Rights" along with an amended petition for termination verified by the current HHSA director through his authorized agent. The trial court allowed the motion by order entered 19 November 2018. The trial court's order directed HHSA to file its amended petition for termination once it was "finalized for filing" and to serve it on respondent "by regular personal service, and/or through [his] Counsel of record." HHSA filed its amended petition for termination on 27 November 2018. A new summons was issued on 27 November 2018. Respondent was personally served with the new summons and amended petition for termination by a deputy of the Haywood County Sheriff's Office on 4 December 2018.

Respondent filed an answer to the amended petition for termination on 31 December 2018 along with a motion to quash the summons that was issued on 27 November 2018. In his motion to quash, respondent claimed that the 27 November 2018 summons was "null, void and of no effect" based on the following:

> 2. The [c]ourt allowed [HHSA] to amend the [p]etition, rather than file anew.
>
> 3. [HHSA] amended the [p]etition and served the same with a successive [s]ummons.

4. The successive summons is not marked an alias and pluries summons, nor does it contain information to support an alias and pluries summons.

Respondent's answer again denied the material allegations in the amended petition for termination.

The trial court addressed respondent's motion to quash at a hearing on 15 April 2019. Counsel for respondent explained the motion to quash as follows:

> [COUNSEL]: Your Honor, our motion is to quash a successive summons that was issued with the amended petition. We—*we were served with the original petition and original summons* and filed a motion to dismiss that. The underlying reason was the verification was bad. The court was—the court allowed the department to amend rather than filing a new—than telling them to start over in effect. That left the original summons outstanding. There can only be one original summons in a case and there was a summons attached to the amended petition which was not noted to be an alias and pluries summons and I won't try to remember which is the difference between alias and pluries but it doesn't contain the information necessary for that. We believe that that successive summons should be quashed if it's not valid under the theory that there can only be one original summons. The reason we're moving that is because we—we think that *if there's a need for an appeal that the appellate counsel will want to raise the subject matter jurisdiction and this is to protect that ground[ ] of appeal.*

(Emphases added.) The trial court denied respondent's motion to quash, finding that "the [a]mended [s]ummons and [p]etition[ ] were not a successive summons such that would require an alias and pluries summons . . . [but] were new filings, as allowed by the Order of the Court on November 19, 2018."

The trial court then proceeded with the hearing on HHSA's amended petition for termination on 15 and 16 April 2019. The trial court adjudicated the existence of three grounds for termination of respondent's parental rights: neglect, willful failure to make reasonable progress, and dependency. *See* N.C.G.S. § 7B-1111(a)(1), (2), (6) (2019). The trial court went on to consider the dispositional factors in N.C.G.S. § 7B-1110(a) and concluded that the termination of respondent's parental rights was

in Wesley's best interests. The adjudicatory order and dispositional order terminating respondent's parental rights to Wesley were entered by the trial court on 31 May 2019.

Respondent argues that the trial court had no personal jurisdiction over him for purposes of the termination-of-parental-rights proceeding. He contends that he was not served with a valid summons related to HHSA's amended petition for termination because (1) the summons issued on 27 November 2018 was not in the form of an alias or pluries summons as required by N.C.G.S. § 1A-1, Rule 4(d)(2) (2019), and (2) HHSA did not obtain either an endorsement of the original 21 September 2018 summons within ninety days pursuant to N.C.G.S. § 1A-1, Rule 4(d)(1), or an enlargement of the period for serving the original summons pursuant to N.C.G.S. § 1A-1, Rule 6(b) (2019).

As an initial matter, we note that the trial court characterized the new summons and amended petition which it directed HHSA to file pursuant to the trial court's 19 November 2018 order as "new filings." On 27 November 2018, the amended petition for termination was filed and the new summons was issued. While the essential purpose of the use of an endorsement or the issuance of an alias and pluries summons is to maintain an original action in order to toll the period of an applicable statute of limitations, no such consideration is invoked in this case. Even if HHSA had failed to obtain an endorsement upon either the original or new summons, or had failed to obtain the issuance of an alias and pluries summons, the only effect of any such failure would have been the resulting discontinuance of the original termination proceeding. *Lackey v. Cook*, 40 N.C. App. 522, 526, 253 S.E.2d 335, 337 (1979) (citing, *inter alia*, *Webb v. Seaboard Air Line R. Co.*, 268 N.C. 552, 151 S.E.2d 19 (1966)). Consequently, the result of HHSA's filing of the amended petition and the issuance of the new summons would have been the initiation on 27 November 2018 of a new termination proceeding. N.C.G.S. § 1A-1, Rule 4(e). However, due to the trial court's allowance of the filing of the amended petition and the issuance of the new summons, coupled with the lack of a contention by respondent that a termination petition filed on 27 November 2018 by HHSA involving his parental rights to Wesley would be time-barred, any failure of HHSA to preserve the operation of the original summons by endorsement or the issuance of the alias and pluries summons would not impact the trial court's authority to exercise personal jurisdiction over respondent. Respondent has not otherwise directed our attention to any alleged defect in the service of the 27 November 2018 summons upon him, or the content of it.

Upon careful review, we conclude that respondent waived any objection to the trial court's exercise of personal jurisdiction over him. The record before this Court shows that respondent filed an answer to HHSA's amended petition for termination and made a general appearance without raising the issue of personal jurisdiction either in his 30 October 2018 motion to dismiss or his 31 December 2018 motion to quash. *See* N.C.G.S. § 1A-1, Rule 12(b)(2), (h)(1) (2019); *In re K.J.L.*, 363 N.C. 343, 346, 677 S.E.2d 835, 837 (2009) ("Even without a summons, a court may properly obtain personal jurisdiction over a party who consents or makes a general appearance, for example, by filing an answer or appearing at a hearing without objecting to personal jurisdiction." (citing *Grimsley v. Nelson*, 342 N.C. 542, 545, 467 S.E.2d 92, 94 (1996)). Respondent asserts in his brief that "he meant personal jurisdiction" when he argued at the 15 April 2019 hearing that the trial court was without "subject matter jurisdiction." His assertion is belied by the written record, however, and is thus unavailing.[2] *See generally State v. Sharpe*, 344 N.C. 190, 194, 473 S.E.2d 3, 5 (1996) ("This Court has long held that where a theory argued on appeal was not raised before the trial court, 'the law does not permit parties to swap horses between courts in order to get a better mount in the Supreme Court.' " (quoting *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934)).

Respondent does not raise any claim of error with regard to the trial court's adjudication of grounds for the termination of his parental rights or its conclusion that terminating his parental rights is in Wesley's best interests. We therefore affirm the trial court's orders.

AFFIRMED.

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2. Respondent's 30 October 2018 motion to dismiss alleged as grounds for dismissal only that "the [c]ourt lacks subject matter jurisdiction for lack of a proper verification" and that HHSA's petition for termination "does not state a claim for which relief may be granted, because the factual allegations are not properly under oath." The motion to dismiss cited only Rule 12(b)(1) and (6) of the Rules of Civil Procedure as authority, making no mention of Rule 12(b)(2) regarding its reference to "[l]ack of jurisdiction over the person." N.C.G.S. § 1A-1, Rule 12(b)(2). While respondent's 31 December 2018 motion to quash averred that he had "previously moved the [c]ourt to dismiss based on lack of subject matter jurisdiction *and personal jurisdiction*," this averment's representation as to personal jurisdiction has no support in the record. (Emphasis added.)

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