378 N.C.—No. 1 **Pages 1-99**

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

AUGUST 25, 2021

MAILING ADDRESS: The Judicial Department
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OF
NORTH CAROLINA

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SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 18 JUNE 2021

In re B.S. 1
In re E.S. 8
In re I.J.W. 17
In re J.E.E.R. 23
In re M.S. 30
In re M.S.E. 40
In re T.A.M. 64
In re Z.R. 92

HEADNOTE INDEX

TERMINATION OF PARENTAL RIGHTS

Adjudication—findings of fact—sufficiency of evidence—The adjudicatory findings of fact in an order terminating respondent-mother's parental rights to her two children (based on neglect and willful failure to make reasonable progress) were supported by clear, cogent, and convincing evidence regarding respondent's failure to take advantage of multiple opportunities to engage in services for her substance abuse and mental health issues, her lack of progress in various treatment programs, and the effect of her behavior on her son's mental health. **In re M.S.E., 40.**

Best interests of the child—dispositional findings of fact—abuse of discretion analysis—The trial court did not abuse its discretion by determining that termination of respondent-mother's rights to her children was in their best interests where the court's findings addressed the statutory factors in N.C.G.S. § 7B-1110(a) and were supported by competent evidence or reasonable inferences from that evidence, including findings that the bond between respondent and her daughter had lessened over time, and that respondent's behavior played a part in her son's mental health issues. The trial court was not required to make findings regarding every dispositional alternative it considered, and its findings demonstrated a reasoned decision. **In re M.S.E., 40.**

Best interests of the child—dispositional findings—sufficiency of evidence—weighing of factors—The trial court did not abuse its discretion by determining that termination of respondent-mother's parental rights, and not other dispositional alternatives, was in the best interests of respondent's children where the court's findings of fact—including the poor bond between respondent and her children and the negative impact of respondent's visits on the children—were supported by competent evidence and showed the court properly addressed and weighed the various dispositional factors contained in N.C.G.S. § 7B-1110(a). **In re T.A.M., 64.**

Best interests of the child—potential relative placement—dispositional findings —The trial court did not abuse its discretion by determining that termination of a father's parental rights was in his daughter's best interests where, one month before the termination hearing, the father requested that the department of social services consider his third cousin as a potential placement for the child. Although the court was not required to consider the availability of relative placement when making its best interests determination, the court's dispositional findings—including that the proposed placement was not appropriate and that the daughter already had a strong bond with her foster parents—showed that the court adequately considered all critical circumstances regarding the daughter's placement. **In re E.S., 8.**

Best interests of the child—statutory factors—child's consent to adoption—bond with mother—The trial court did not abuse its discretion by determining that termination of a mother's parental rights was in her fifteen-year-old daughter's best interests. The trial court was not required to consider the daughter's consent to adoption under N.C.G.S. § 48-3-601(1) (requiring minors over twelve years old to consent to adoption) when entering its disposition pursuant to N.C.G.S. § 7B-1110. Further, in considering the statutory factors under section 7B-1110(a), the trial court properly considered the bond between the mother and her daughter and was not required to make written findings about that factor because the evidence on the issue was uncontested. **In re E.S., 8.**

Competency of parent—guardian ad litem—Rule 17—abuse of discretion analysis—In a termination of parental rights matter, the trial court did not abuse its discretion by failing to sua sponte conduct a competency hearing to determine whether respondent-mother needed a Rule 17 guardian ad litem. Although respondent's psychological evaluation recommended various types of assistance after stating that respondent had borderline intellectual functioning, the evaluation also noted several positive attributes of respondent including her resourcefulness. Further, the trial court had ample opportunity to observe respondent at multiple hearings, including during respondent's testimony, and respondent exhibited appropriate judgment prior to the hearings when she told the social services agency that she did not feel ready to take her children back and asked that they remain in their relative placement. **In re M.S.E., 40.**

Effective assistance of counsel—failure to advise—steps to establish paternity—findings not challenged—meritless—In an appeal from an order terminating respondent-father's parental rights to his child in which respondent did not challenge the findings or conclusion regarding the ground of failure to establish paternity (N.C.G.S. § 7B-1111(a)(5)), the Supreme Court rejected respondent's argument alleging that he received ineffective assistance of counsel due to his counsel's failure to advise him on or assist him with establishing paternity. Respondent's professed ignorance of his legal duty as a parent to establish paternity did not excuse his failure to fulfill that duty, and therefore respondent failed to demonstrate that there was a reasonable probability that, absent counsel's alleged failure to advise him regarding that duty, a different result would have been reached at the hearing. **In re B.S., 1.**

Grounds for termination—failure to make reasonable progress—nexus between case plan and conditions that led to removal—The trial court's order terminating respondent-father's parental rights to the youngest child based on failure to make reasonable progress was supported by unchallenged findings, which showed that respondent-father failed to complete parenting classes, tested positive for controlled substances and refused at least four drug screenings, and was not incarcerated for seven months while his child was in DSS custody. Although respondent argued that he did make reasonable progress where the only condition relating to him that led to the child's removal—that his paternity had not been established—had since been corrected, there was a sufficient nexus between the substance abuse and mental health components of respondent's case plan and the conditions that led to the child's removal from the home, because the child had been removed from respondent-mother's care based on neglect caused by exposure to substance abuse. **In re M.S., 30.**

Grounds for termination—failure to pay reasonable portion of cost of care—no contribution—The termination of respondent-father's parental rights for failure to pay a reasonable portion of the cost of care for the juvenile was affirmed where the trial court found that respondent was employed and earned between $200 and $800 per week but did not provide any financial support for the child during the six months prior to the filing of the petition and the findings were supported by clear, cogent, and convincing evidence. **In re J.E.E.R., 23.**

Grounds for termination—neglect—likelihood of future neglect—The trial court properly terminated respondent-mother's parental rights on the ground of neglect where its findings of fact, which were either unchallenged or supported by clear, cogent, and convincing evidence, supported the court's conclusion that there was a likelihood of future neglect of respondent's two children if they were returned to her care, based on respondent's lack of progress in addressing her ongoing substance abuse, mental health issues, and parenting skills, and her inability to acknowledge her role in her son's mental health struggles. **In re M.S.E., 40.**

Grounds for termination—willful abandonment—sufficiency of findings—relevant six-month period—The trial court's order terminating respondent-father's parental rights on the grounds of willful abandonment was affirmed where the unchallenged findings of fact showed that for over a year prior to the filing of the motion to terminate respondent had not visited the child, he refused to work his case plan or take any of the steps required to reunite with the child, and did not make any effort to maintain a parental bond with the child. Respondent's attempts to comply with the case plan after the filing of the petition did not bar an ultimate finding of willful abandonment because they did not occur during the determinative period for adjudicating willful abandonment—the six consecutive months preceding the filing of the petition. **In re I.J.W., 17.**

Grounds for termination—willful failure to make reasonable progress—failure to enter into a case plan—The trial court did not err by determining that grounds existed to terminate the parental rights of the father of the two oldest children based on a willful failure to make reasonable progress where the unchallenged findings showed that he did not enter into a case plan with DSS to establish the goals he needed to achieve prior to reunification—despite several opportunities to do so—and that he was not incarcerated for nine of the twenty months the children were in DSS custody. **In re M.S., 30.**

No-merit brief—neglect—willful failure to make reasonable progress—The termination of a mother's parental rights—based on grounds of neglect and willful failure to make reasonable progress—was affirmed where the mother's counsel filed a no-merit brief, the termination order's findings of fact had ample record support, and where those findings supported the trial court's conclusions. To permit appellate review, the Supreme Court invoked Appellate Rule 2 to suspend the requirements under Rule 3.1(a) (that counsel provide copies of the no-merit brief, transcript, and record on appeal to the mother and to inform her of her right to file a pro se brief) where the mother's counsel made exhaustive efforts to contact her but to no avail. **In re Z.R., 92.**

No-merit brief—termination on multiple grounds—competent evidence and proper legal grounds—The termination of respondent-mother's parental rights based on neglect, willful failure to make reasonable progress, and being incapable of providing proper care and supervision of the children was affirmed where the

mother's counsel filed a no-merit brief and the termination order was supported by competent evidence and based on proper legal grounds. **In re M.S., 30.**

Parental right to counsel—motion to withdraw—lack of contact—granted in parent's absence—In a termination of parental rights proceeding, the trial court did not abuse its discretion by allowing respondent-father's appointed counsel to withdraw from representation at a hearing in which respondent failed to appear. Respondent had been advised multiple times by the court of his responsibility to maintain contact with his attorney, the department of social services made diligent efforts to locate respondent, respondent appeared to actively avoid being found or receiving communications, he failed to appear at several hearings, and counsel related to the court that she spoke to respondent and he did not object to her motion. **In re T.A.M., 64.**

SCHEDULE FOR HEARING APPEALS DURING 2021

NORTH CAROLINA SUPREME COURT

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

January 11, 12, 13, 14
February 15, 16, 17, 18
March 22, 23, 24, 25
May 3, 4, 5, 6
August 30, 31
September 1, 2
October 4, 5, 6, 7
November 8, 9, 10

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

AT

RALEIGH

IN THE MATTER OF B.S.

No. 322A20

Filed 18 June 2021

Termination of Parental Rights—effective assistance of counsel—failure to advise—steps to establish paternity—findings not challenged—meritless

In an appeal from an order terminating respondent-father's parental rights to his child in which respondent did not challenge the findings or conclusion regarding the ground of failure to establish paternity (N.C.G.S. § 7B-1111(a)(5)), the Supreme Court rejected respondent's argument alleging that he received ineffective assistance of counsel due to his counsel's failure to advise him on or assist him with establishing paternity. Respondent's professed ignorance of his legal duty as a parent to establish paternity did not excuse his failure to fulfill that duty, and therefore respondent failed to demonstrate that there was a reasonable probability that, absent counsel's alleged failure to advise him regarding that duty, a different result would have been reached at the hearing.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 16 March 2020 by Judge Monica Bousman in District Court, Wake County. This matter was calendared for argument in the Supreme Court on 22 April 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Mary Boyce Wells for petitioner-appellee Wake County Human Services.

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

Garron T. Michael for respondent-appellant father.

BARRINGER, Justice.

¶ 1 Respondent appeals from the order terminating his parental rights to his minor child B.S. (Bailey).[1] The trial court found that grounds existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (5) and that termination was in Bailey's best interests. Respondent has not challenged on appeal the trial court's conclusion that the ground for termination pursuant to N.C.G.S. § 7B-1111(a)(5) existed or that termination was in Bailey's best interests. Respondent instead contends that this Court should reverse the trial court's order as to this ground for termination of respondent's parental rights because he received ineffective assistance of counsel. As we conclude that respondent has not carried his burden to show ineffective assistance of counsel, we affirm the trial court's order terminating the parental rights of respondent to Bailey.

I. Background

¶ 2 Wake County Human Services (WCHS) became involved with Bailey at the time of her birth when Bailey and her mother tested positive for cocaine. Bailey's mother was also homeless and suffering from mental health issues which required hospitalization.

¶ 3 On 18 July 2018, WCHS filed a petition alleging that Bailey and her two half-siblings were neglected juveniles.[2] Respondent and Bailey's mother subsequently consented to the entry of an order adjudicating Bailey a neglected juvenile, which was entered on 16 October 2018. In this consent order on adjudication and disposition, the trial court ordered respondent to submit to genetic marker testing and to establish legal paternity if found to be the biological father of Bailey. At the time, respondent was incarcerated and denied knowing Bailey's mother and being Bailey's biological father. Nevertheless, on 15 January

1. The pseudonym "Bailey" is used throughout this opinion to protect the identity of the juvenile and for ease of reading.

2. This appeal does not involve Bailey's half-siblings or her mother.

2019, respondent was determined to be the biological father of Bailey after respondent submitted to genetic marker testing. Respondent continued to deny that he was the biological father of Bailey until a social worker sent him a copy of the genetic marker report in late January 2019.

¶ 4 After respondent was released from incarceration, WCHS filed a motion for termination of the parental rights of Bailey's mother, respondent, and the known or unknown fathers of Bailey's two half-siblings. WCHS alleged that grounds existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (5). The termination-of-parental-rights hearing was conducted over four days in November 2019 and January and February 2020. On 16 March 2020, the trial court entered an order terminating respondent's parental rights. The trial court concluded that WCHS had proven all three alleged grounds for termination, *see* N.C.G.S. § 7B-1111(a)(1), (2), (5), and that termination of respondent's parental rights was in Bailey's best interests. The trial court's findings of fact included that:

> [Respondent] was served with a copy of the petition filed July 18, 2018 which contained the name of the child and her date of birth. He had access to paper, envelopes, and stamps while he was incarcerated. He corresponded via U.S. Mail with both the social worker and his attorney in this case. He had the means to file an affidavit of paternity with [WCHS]. The same attorney has been appointed to represent him in this case and also in cases involving two other children. In a termination of parental rights order filed for two of [respondent]'s other children on August 7, 2019, finding of fact #31 indicates that [respondent] filed an affidavit of parentage for another of his children. In orders filed on October 16, 2018, February 1, 2019, and July 24, 2019 the [c]ourt ordered . . . [respondent] to establish "legal paternity" if genetic marker testing showed him to be the biological father of the child. While N.C.G.S. §[ ]7B-1111(a)(5) does not require that an unwed father have actual notice that a ground exist[s] for termination of parental rights unless paternity and/or legitimation is established prior to the filing of a termination of . . . parental rights action, [respondent] was on "notice" that he was to establish legal paternity beginning with the disposition order

> filed October 16, 2018. He had "notice" that he could have sired a child when he had a sexual encounter with [Bailey's mother]. He further knew by late January 2019 that genetic marker testing showed him to be the biological father of [Bailey] which was more than six months before the motion to terminate his parental rights was filed.

¶ 5 Respondent appealed.

¶ 6 On appeal, respondent challenges several findings of fact as not supported by competent evidence and the trial court's conclusion that grounds existed for termination pursuant to N.C.G.S. § 7B-1111(a)(1) and (2). However, respondent has neither challenged the trial court's conclusion that the ground for termination pursuant to N.C.G.S. § 7B-1111(a)(5) had been established nor challenged any findings of fact supporting this conclusion. Thus, it is undisputed that respondent failed to establish legal paternity as required by the trial court's order and failed to do any of the acts specified in N.C.G.S. § 7B-1111(a)(5)(a)–(e).

¶ 7 Subsection 7B-1111(a)(5) provides that a trial court may terminate parental rights upon a finding that:

> The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights, done any of the following:
>
> a. Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services. The petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and the Department's certified reply shall be submitted to and considered by the court.
>
> b. Legitimated the juvenile pursuant to provisions of G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific purpose.
>
> c. Legitimated the juvenile by marriage to the mother of the juvenile.
>
> d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

e. Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding.

N.C.G.S. § 7B-1111(a)(5) (2019).

¶ 8 Respondent, however, argues for the first time on appeal that his appointed trial counsel was ineffective. Respondent contends that because he received ineffective assistance of counsel, this Court should reverse the portion of the trial court's order concluding that the ground set forth in N.C.G.S. § 7B-1111(a)(5) existed to terminate his parental rights.

II. Ineffective Assistance of Counsel Claim

¶ 9 As "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 (2019), and respondent has not challenged the conclusion or findings of fact supporting the trial court's conclusion that the ground set forth in N.C.G.S. § 7B-1111(a)(5) existed to terminate his parental rights, we must affirm the trial court's order terminating respondent's parental rights if respondent has not shown that he received ineffective assistance of counsel. The Juvenile Code provides that "[i]n cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent," N.C.G.S. § 7B-602(a) (2019), and "[w]hen a petition [for termination of parental rights] is filed," the parent "has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right," N.C.G.S. § 7B-1101.1(a) (2019). When addressing a contention by a respondent that he or she received ineffective assistance of counsel, this Court has explained that:

> Parents have a right to counsel in all proceedings dedicated to the termination of parental rights. Counsel necessarily must provide effective assistance, as the alternative would render any statutory right to counsel potentially meaningless. To prevail on a claim of ineffective assistance of counsel, respondent must show that counsel's performance was deficient and the deficiency was so serious as to deprive him of a fair hearing. To make the latter showing, the respondent must prove that there is a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings.

In re G.G.M., 2021-NCSC-25, ¶ 35 (cleaned up).

¶ 10 Respondent's argument in his brief to this Court is as follows:

> Although the trial court ordered him to "establish legal paternity" in three separate orders dating back to 16 October 2018, no action was ever undertaken by [respondent] to do so. Nothing contained in the record on appeal or within the transcript of the termination hearing indicate appointed counsel ever advised or informed [respondent] of how or why he needed to "establish legal paternity" as [the] court ordered. Nothing in the record indicates that appointed counsel sent or provided an affidavit of paternity to [respondent] prior to the motion to terminate parental rights being filed. Instead, appointed counsel argued during its closing on grounds that WCHS failed to make reasonable efforts to achieve reunification by assisting [respondent] in executing an affidavit of paternity.
>
> Appointed counsel's failure to advise, inform or assist [respondent] with filing an affidavit of paternity, or otherwise legally establish paternity as [the] court ordered in the underlying juvenile case fell below an objective standard [of] reasonableness. Specifically, the trial court formally ordered [respondent] to establish legal paternity over nine months before the motion to terminate parental rights was filed on 2 August 2019. Moreover [respondent] was transported to Wake [C]ounty on both 7 May 2019 and 24 June 2019 for scheduled hearings affording appointed counsel face to face access to [respondent] despite his incarceration. Had appointed counsel properly informed, advised, or assisted [respondent] in establishing legal paternity, a single filing would have precluded the trial court from terminating his parental rights pursuant to N.C.[G.S.] § 7B-1111(a)(5) (2019).

¶ 11 WCHS and the guardian ad litem contend that respondent has failed to show he received ineffective assistance of counsel and that respondent has not shown that had counsel assisted with establishing paternity that there is a reasonable probability there would have been a different outcome in the proceeding.

¶ 12 We agree that respondent has not met his burden to establish ineffective assistance of counsel. This State's jurisprudence has "recog-

nized that there could be no law if knowledge of it was the test of its application" and has not permitted a respondent's purported absence of knowledge of his or her parental duties to protect the respondent from the termination of his or her parental rights. *In re Wright*, 64 N.C. App. 135, 139 (1983); *see also In re S.E.*, 373 N.C. 360, 366 (2020) (quoting *In re Wright* in a parenthetical); *In re T.D.P.*, 164 N.C. App. 287, 289 (2004) (quoting *In re Wright* in a parenthetical), *aff'd per curiam*, 359 N.C. 405 (2005). Thus, when addressing a claim of ineffective assistance of counsel for failing to advise the respondent of what he needed to do to regain custody of a juvenile child, this Court has recognized that ignorance of an inherent duty of a parent to their child does not excuse a parent's failure to fulfill this duty, and as a result, any alleged failure by counsel to advise concerning these inherent duties cannot be prejudicial. *In re J.M.*, 2021-NCSC-48, ¶¶ 35–36.

¶ 13 Based on the foregoing, our examination of the record, and the undisputed factual findings, we conclude that there is no reasonable probability that any of the alleged omissions by respondent's counsel affected the outcome of the termination-of-parental-rights hearing. *See State v. Braswell*, 312 N.C. 553, 563 (1985) ("[I]f a reviewing court can determine at the outset that there is no reasonable probability that in the absence of counsel's alleged errors the result of the proceeding would have been different, then the court need not determine whether counsel's performance was actually deficient."). Respondent's argument of ineffective assistance of counsel is without merit.

III. Conclusion

¶ 14 Because respondent has not challenged on appeal the trial court's conclusion that the ground for termination pursuant to N.C.G.S. § 7B-1111(a)(5) existed or that termination was in Bailey's best interests and because we conclude that respondent's claim of ineffective assistance of counsel is without merit, we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

IN RE E.S.

[378 N.C. 8, 2021-NCSC-72]

IN THE MATTER OF E.S. AND E.S.S.

No. 20A20

Filed 18 June 2021

1. Termination of Parental Rights—best interests of the child—statutory factors—child's consent to adoption—bond with mother

The trial court did not abuse its discretion by determining that termination of a mother's parental rights was in her fifteen-year-old daughter's best interests. The trial court was not required to consider the daughter's consent to adoption under N.C.G.S. § 48-3-601(1) (requiring minors over twelve years old to consent to adoption) when entering its disposition pursuant to N.C.G.S. § 7B-1110. Further, in considering the statutory factors under section 7B-1110(a), the trial court properly considered the bond between the mother and her daughter and was not required to make written findings about that factor because the evidence on the issue was uncontested.

2. Termination of Parental Rights—best interests of the child—potential relative placement—dispositional findings

The trial court did not abuse its discretion by determining that termination of a father's parental rights was in his daughter's best interests where, one month before the termination hearing, the father requested that the department of social services consider his third cousin as a potential placement for the child. Although the court was not required to consider the availability of relative placement when making its best interests determination, the court's dispositional findings—including that the proposed placement was not appropriate and that the daughter already had a strong bond with her foster parents—showed that the court adequately considered all critical circumstances regarding the daughter's placement.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 3 December 2019 by Judge Hal G. Harrison in District Court, Watauga County. This matter was calendared for argument in the Supreme Court on 22 April 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

IN RE E.S.

[378 N.C. 8, 2021-NCSC-72]

Chelsea Bell Garrett for petitioner-appellee Watauga County Department of Social Services.

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

David A. Perez for respondent-appellant father.

Leslie Rawls for respondent-appellant mother.

BARRINGER, Justice.

¶ 1 Respondent-mother is the biological mother of E.S. (Elyse) and E.S.S. (Elizabeth),[1] and respondent-father is the biological father of Elizabeth. Respondent-mother appeals from the trial court's order finding that it was in Elyse's best interests to terminate her parental rights. Although respondent-mother filed a notice of appeal as to Elizabeth, respondent-mother has abandoned all arguments relating to the trial court's termination of her parental rights as to Elizabeth and the trial court's best interests determination for Elizabeth because respondent-mother did not present or discuss any issues regarding Elizabeth in her brief. *See* N.C. R. App. P. 28(a). Respondent-father appeals from the trial court's order finding that it was in Elizabeth's best interests to terminate his parental rights. Since we conclude that the trial court did not abuse its discretion in its best interests determination as to Elyse and Elizabeth, respectively, we affirm the trial court's orders.

I. Facts

¶ 2 In December 2017, respondent-mother gave birth to twin girls, Elizabeth and Ida. At birth, both Elizabeth and Ida tested positive for methadone. Prior to giving birth, respondent-mother tested positive for methamphetamine, methadone, and acetaminophen. The twins were suffering from withdrawal and were transferred to the pediatric unit before being released to respondents. Ida later passed away on 18 February 2018 from unknown causes.

¶ 3 Respondent-father did not live with respondent-mother and Elizabeth but stayed at a nearby hospitality house. A social worker with the Watauga County Department of Social Services (DSS) stated that

1. Pseudonyms are used to protect the juveniles' identities and for ease of reading. A pseudonym will also be used to protect the identity of Elizabeth's twin, Ida, who passed away as an infant.

respondent-father was incapable of providing care for Elizabeth on his own and that he did not have the proper living situation to do so.

¶ 4 Respondent-mother subsequently tested positive for methamphetamine on 4 February, 2 March, and 7 March 2018. Respondent-mother's older child, Elyse[2] (born on 7 May 2004), was also residing with respondent-mother during this time. After receiving a report of respondent-mother's substance abuse and respondent-father's lack of stable housing, DSS filed juvenile petitions on 15 March 2018 alleging that Elyse and Elizabeth were neglected and dependent juveniles and obtained nonsecure custody of the children.

¶ 5 In an order entered 31 May 2018, the trial court adjudicated the children as dependent juveniles based on stipulations acknowledged by respondents. In a separate disposition order filed on 15 June 2018 and amended on 3 July 2018, the trial court set the permanent plan for Elyse and Elizabeth as reunification with a concurrent plan of guardianship. Respondents entered into case plans that required them to complete treatment at a substance abuse recovery center, attend parenting classes, attend visitation regularly, submit to drug screens, and maintain safe housing, among other requirements. Respondent-mother was also required to participate in grief counseling with a licensed provider to learn healthy coping skills and maintain stability.

¶ 6 In a permanency-planning order entered on 17 January 2019, the trial court continued the permanent plan of reunification with a concurrent plan of guardianship for Elyse and Elizabeth. The trial court found that respondent-mother had made minimal progress on her case plan and was not cooperating with DSS or the guardian ad litem (GAL) program. The trial court suspended respondent-mother's visitation with the children until she provided a release of information to the substance abuse recovery center, which would allow DSS to "follow up on her treatment progress." The trial court also required her to submit at least two clean drug screens to DSS prior to any visitation. Regarding respondent-father, the trial court found that he was making adequate progress on his case plan and permitted DSS to increase his visitation with Elizabeth.

¶ 7 After a permanency-planning hearing held on 15 February 2019, the trial court found that respondents were not making adequate progress on their case plans and so changed the permanent plan for Elyse to adoption with a concurrent plan of guardianship and changed the permanent plan for Elizabeth to guardianship with a concurrent plan of

2. Elyse's biological father is deceased.

adoption. Respondent-mother had not visited Elyse and Elizabeth since September 2018 because she failed to submit clean drug screens, and respondent-father had not visited Elizabeth since January 2019 because he refused to participate in drug screens. The trial court also found that respondent-father had not maintained stable housing and that he admitted to using methamphetamine as recently as two days before the permanency-planning hearing.

¶ 8 The trial court held another permanency-planning hearing on 11 April 2019 and found that respondents had made little to no progress on their case plans and that the conditions that led to the removal of Elyse and Elizabeth from the home still existed. The trial court maintained the permanent and concurrent plans for Elyse and Elizabeth.

¶ 9 On 8 May 2019, DSS filed motions to terminate respondent-mother's parental rights to Elyse and Elizabeth and respondent-father's parental rights to Elizabeth pursuant to N.C.G.S. § 7B-1111(a)(1), (6), and (7). After the termination-of-parental-rights hearing held on 26 and 27 September 2019, the trial court found that grounds existed to terminate respondents' parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) and (6) and that termination of respondents' parental rights was in Elyse's and Elizabeth's best interests pursuant to N.C.G.S. § 7B-1110(a).[3] Accordingly, the trial court terminated respondent-mother's parental rights to Elyse and Elizabeth and respondent-father's parental rights to Elizabeth. Respondents appealed.

¶ 10 On appeal, respondents do not challenge the trial court's grounds for termination but instead argue that the trial court abused its discretion in concluding that it was in Elyse's and Elizabeth's best interests to terminate respondents' parental rights. Respondent-mother only challenges the trial court's best interests determination as to Elyse.

II. Applicable Law

¶ 11 The termination of parental rights is a two-stage process consisting of an adjudicatory stage and a dispositional stage. *See* N.C.G.S. §§ 7B-1109 to -1110 (2019). If, during the adjudicatory stage, the trial court finds grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), the trial court proceeds to the dispositional stage where it

3. In an order entered on 1 October 2019, the trial court also amended the order from the 11 April 2019 permanency-planning hearing to correct the permanent plan for Elizabeth, which had been inadvertently reversed. The trial court corrected the permanent plan for Elizabeth to properly reflect adoption as the permanent plan with a concurrent plan of guardianship.

must "determine whether terminating the parent's rights is in the juvenile's best interest" after considering the following criteria:

> (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 must "make written findings regarding the [aforementioned criteria] that are relevant." *Id.* "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." *In re C.J.C.*, 374 N.C. 42, 48 (2020) (cleaned up) (quoting *In re A.R.A.*, 373 N.C. 190, 199 (2019)). "We review the trial court's dispositional findings of fact to determine whether they are supported by competent evidence." *In re J.J.B.*, 374 N.C. 787, 793 (2020).

¶ 12 "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. 3, 6 (2019). "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 T.L.H.*, 368 N.C. 101, 107 (2015) (alteration in original) (quoting *State v. Hennis*, 323 N.C. 279, 285 (1988)).

III. Respondent-mother's Appeal

¶ 13 **[1]** Respondent-mother only challenges the trial court's dispositional determination for her oldest child, Elyse. Respondent-mother argues that the trial court abused its discretion in determining that termination of her parental rights was in Elyse's best interests. We disagree.

¶ 14 Respondent-mother first argues that the trial court failed to comply with the statutory mandate of N.C.G.S. § 7B-1110(a) because it did not "expressly consider" and receive evidence regarding whether Elyse consented to adoption. Since Elyse was fifteen years old at the time of

the termination hearing and N.C.G.S. § 48-3-601(1) requires minors over twelve years old to consent to adoption, respondent-mother contends that N.C.G.S. § 7B-1110(a)(1)–(3) and (6) "required the court to consider the need for her consent to any adoption" because Elyse's refusal to give consent would create a barrier that would diminish the likelihood of her adoption. Respondent-mother also challenges the portion of finding of fact 11 stating that termination of respondent-mother's parental rights was the "only barrier" to achieving the permanent plan of adoption because N.C.G.S. § 48-3-601 requires Elyse's consent for adoption.

¶ 15 The controlling statute for termination-of-parental-rights proceedings does not expressly require a trial court to consider a child's consent to adoption in making its dispositional decision. N.C.G.S. § 7B-1110(a). In fact, N.C.G.S. § 48-3-601(1) is found in an entirely separate chapter of the General Statutes of North Carolina, which concerns adoption. The trial court in the dispositional stage of a termination-of-parental-rights hearing is charged with "determin[ing] whether *terminating the parent's rights* is in the juvenile's best interest." N.C.G.S. § 7B-1110(a) (emphasis added). Testimony concerning Elyse's interest in adoption may be admissible evidence during the dispositional stage and considered by the trial court. However, the dispositional determination by a trial court that terminating the parent's rights is in the juvenile's best interests is not an abuse of discretion merely because a child over the age of twelve indicates a lack of interest in adoption. *See In re M.A.*, 374 N.C. 865, 879–80 (2020) (affirming the trial court's best interest determination after holding that while a child's consent to adoption is relevant to a trial court's best interests determination, it is not controlling and that findings and conclusions concerning likelihood of consent to adoption were not required); *In re M.M.*, 200 N.C. App. 248, 258 (2009) ("Further, nothing within [N.C.G.S. § 7B-1110] requires that termination lead to adoption in order for termination to be in a child's best interests."), *disc. review denied*, 364 N.C. 241 (2010). Notably, there was no testimony or evidence that Elyse had no interest or would not consent to adoption. Therefore, we reject respondent-mother's argument that the trial court should have expressly considered Elyse's consent to adoption and respondent-mother's challenge to finding of fact 11.[4]

4. Respondent-mother also argues that the GAL provided Elyse with incorrect information regarding the educational benefits of adoption, and therefore, respondent-mother asserts that to the extent Elyse consented to adoption, it could not have been knowing and voluntary. Since we have rejected respondent-mother's argument that the trial court should have expressly considered Elyse's consent to an adoption, we reject respondent-mother's argument that Elyse's consent to an adoption could not have been knowing and voluntary for the same reasons.

¶ 16 Respondent-mother next argues that the trial court abused its discretion in determining that termination of her parental rights was in Elyse's best interests because it failed to consider Elyse's bond with respondent-mother and whether Elyse consented to adoption. Respondent-mother argues that "it does not appear the court considered Elyse's bond with [respondent-]mother" because "[t]he record is replete with references to their love and connection and to . . . Elyse's wish to return to her mother." The uncontested evidence does demonstrate that Elyse loves respondent-mother and has a bond with her. As such, the trial court was not required to make a finding on this issue. *See In re E.F.*, 375 N.C. 88, 91 (2020) ("Although the trial court must 'consider' each of the statutory factors . . . we have construed [N.C.G.S. § 7B-1110(a)] to require written findings only as to those factors for which there is conflicting evidence." (quoting N.C.G.S. § 7B-1110(a))).

¶ 17 Additionally, "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. 432, 437 (2019). In this case, the GAL testified that while Elyse wished the situation with respondent-mother to be different, Elyse wanted to remain with her foster parents. The trial court also found that Elyse had not seen respondent-mother in nearly twelve months due to respondent-mother's noncompliance with the trial court's orders. Therefore, we reject respondent-mother's argument.

¶ 18 The trial court was not required to consider Elyse's consent to adoption for its dispositional conclusion pursuant to N.C.G.S. § 7B-1110, nor was the trial court required to make findings as to Elyse's bond with respondent-mother when it was uncontested. Therefore, the trial court did not abuse its discretion in concluding that it was in Elyse's best interests to terminate respondent-mother's parental rights, and we affirm the trial court's orders.

¶ 19 Respondent-mother has abandoned any challenges to the trial court's termination of her parental rights as to Elizabeth and to the trial court's best interests determination concerning Elizabeth because respondent-mother did not present or discuss any arguments in her brief. *See* N.C. R. App. P. 28(a).

IV. Respondent-father's Appeal

¶ 20 **[2]** Respondent-father argues that the trial court abused its discretion in its best interests determination as to Elizabeth because it failed to make "necessary and proper" findings of fact regarding a possible rela-

tive placement as required by *In re S.D.C.*, 373 N.C. 285, 290 (2020). We disagree.

¶ 21 One month prior to the termination hearing, respondent-father submitted to DSS a request that his third cousin be a potential placement for Elizabeth. The investigation was still pending at the time of the termination hearing. In the termination order, the trial court found that

> b. [Elizabeth] is currently in an adoptive placement and is very bonded to the foster parents and her adoptive siblings. She has been in this placement all but approximately five months of her 18 months in DSS custody.
>
> c. [Elizabeth] has not seen [respondent-mother] since the fall of 2018 or [respondent-father] for at least six (6) months.
>
> d. The proposed kinship placement suggested by [respondent-father] would not be appropriate as [Elizabeth] has been with her foster family for most of her life and [respondent-father] just suggested this kinship placement last month. Additionally, the potential kinship provider expressed reservations to the GAL regarding [respondent-father] possibly interfering and causing problems.

¶ 22 The dispositional findings show that the trial court considered the relative placement and made findings of fact sufficient to allow this Court to review the trial court's dispositional determination for abuse of discretion. We therefore reject respondent-father's argument that the trial court abused its discretion by concluding that termination was in the best interests of Elizabeth. "[T]he trial court is not required to make findings of fact on all the evidence presented, nor state every option it considered." *In re J.A.A.*, 175 N.C. App. 66, 75 (2005). The trial court is also not "expressly directed to consider the availability of a relative placement in the course of deciding a termination of parental rights proceeding." *In re S.D.C.*, 373 N.C. at 290.

¶ 23 In *In re S.D.C.*, this Court recognized that a trial court "may treat the availability of a relative placement as a 'relevant consideration' in determining whether termination of a parent's parental rights is in the child's best interests" and indicated that when determined to be a relevant consideration, "the trial court *should make* findings of fact addressing 'the competing goals of (1) preserving the ties between the

children and their biological relatives; and (2) achieving permanence for the children as offered by their prospective adoptive family.' " *Id.* (emphasis added) (quoting *In re A.U.D.*, 373 N.C. at 12). When there is no evidence presented at the termination hearing tending to show that a potential relative is available for the juvenile, the trial court need not consider or make findings on the matter. *In re S.D.C.*, 373 N.C. at 291. Furthermore, the dispositional findings demonstrate that the trial court adequately considered the "critical circumstances" regarding Elizabeth's placement.

¶ 24 Since this Court concludes that the trial court's decision on this matter was not so manifestly unsupported by reason as to constitute an abuse of discretion, we affirm the trial court's order terminating respondent-father's parental rights to Elizabeth.

V. Conclusion

¶ 25 In summary, we conclude that the trial court did not abuse its discretion in determining that termination of respondent-mother's parental rights was in Elyse's best interests and that termination of respondent-father's parental rights was in Elizabeth's best interests. Respondent-mother abandoned any and all challenges to the trial court's order terminating her parental rights to Elizabeth and the trial court's best interests determination as to Elizabeth. Accordingly, we affirm the trial court's orders terminating respondents' parental rights.

AFFIRMED.

IN RE I.J.W.

[378 N.C. 17, 2021-NCSC-73]

IN THE MATTER OF I.J.W.

No. 347A20

Filed 18 June 2021

Termination of Parental Rights—grounds for termination—willful abandonment—sufficiency of findings—relevant six-month period

The trial court's order terminating respondent-father's parental rights on the grounds of willful abandonment was affirmed where the unchallenged findings of fact showed that for over a year prior to the filing of the motion to terminate respondent had not visited the child, he refused to work his case plan or take any of the steps required to reunite with the child, and he did not make any effort to maintain a parental bond with the child. Respondent's attempts to comply with the case plan after the filing of the petition did not bar an ultimate finding of willful abandonment because they did not occur during the determinative period for adjudicating willful abandonment—the six consecutive months preceding the filing of the petition.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 9 April 2020 by Judge Mark L. Killian in District Court, Burke County. This matter was calendared for argument in the Supreme Court on 22 April 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Mona E. Leipold for petitioner-appellee Burke County Department of Social Services.

Christopher S. Edwards for appellee Guardian ad Litem.

Leslie Rawls for respondent-appellant father.

EARLS, Justice.

¶ 1 Respondent, the biological father of minor child I.J.W. (Ian)[1], appeals from the trial court's order terminating his parental rights. Unchallenged

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

findings of fact based on clear and convincing evidence in the record support the trial court's conclusion that respondent willfully abandoned Ian. Therefore, we affirm the trial court's adjudication that there are grounds pursuant to N.C.G.S. § 7B-1111(a)(7) to terminate respondent's parental rights as to Ian.

1. Factual Background

¶ 2 On 6 December 2017, the Burke County Department of Social Services (DSS) obtained nonsecure custody of Ian and filed a petition alleging him to be a neglected and dependent juvenile.[2] According to the petition, on 24 February 2017, DSS received a Child Protective Services ("CPS") report stating that the mother left Ian in a car while she was in a courthouse and he had a seizure. In addition, the mother was using methamphetamines while Ian was in her care, and respondent was aware of the mother's drug use. On 2 March 2017 DSS received the results of Ian's drug screen, showing that he tested positive for methamphetamines. On 27 February 2017 Respondent signed a safety assessment agreeing to be Ian's primary caregiver.

¶ 3 In its subsequent Adjudication/Disposition Order entered 1 March 2018, the trial court found as fact that respondent obtained a domestic violence protective order in effect from 24 March 2017 to 23 March 2018, based on findings that the mother struck Ian leaving marks on two occasions, was using methamphetamines in Ian's presence, and used heroin while being his primary caretaker. The protective order barred contact between respondent and Ian's mother, and required that the maternal grandmother supervise any and all contact between Ian and his mother.

¶ 4 The trial court further found that notwithstanding these restrictions, on 27 November 2017 a DSS social worker met with respondent at his home, where the mother was also living. Respondent admitted to the social worker that the home did not have electricity, heat, or running water and admitted that he and the mother had recently used methamphetamines. Despite respondent's statements that he understood the terms of the protective order, he still did not comply. On 4 December 2017 the social worker completed a home visit and observed Ian to have a bruise on his cheek which the mother explained was caused by a fall while he was playing with her. That day the mother agreed to leave the home and to abide by the terms of the protective order. On 5 December 2017 the social worker made an unannounced visit and again found the mother to

2. DSS filed an amended petition on 12 December 2017 including the results from the parents' 4 and 5 December 2017 drug tests.

be in the home with Ian present. The mother was arrested for violating the trial court's protective order. That same day respondent tested positive for methamphetamines and THC metabolite.

¶ 5 A hearing on the juvenile petition was held on 30 January 2018. On 1 March 2018, the trial court entered an order adjudicating Ian to be a neglected and dependent juvenile based on factual stipulations made by the parents. The trial court ordered respondent to comply with an out-of-home family services agreement in which he was required to obtain a substance abuse assessment and follow all recommendations; submit to random drug screens; attend parenting classes and demonstrate skills learned; obtain a parenting capacity evaluation and follow all recommendations; obtain a psychological assessment and follow all recommendations; obtain a domestic violence offender assessment and follow all recommendations; obtain and maintain stable, appropriate, and independent housing; and obtain and maintain legal, stable, and verifiable income. Respondent was allowed one hour of supervised visitation per week to be supervised by DSS.

¶ 6 Following a 1 March 2018 permanency-planning hearing, the trial court entered an order on 12 April 2018 setting the permanent plan for Ian as reunification with a secondary plan of adoption. Respondent was ordered to comply with the components of his case plan and was allowed two hours of supervised visits every other week.

¶ 7 Respondent initially made progress on his case plan. He completed his substance abuse assessment and began group therapy, completed parenting classes at One Love, completed his psychological assessment on 12 February 2018 which recommended he attend individual counseling, and obtained transportation. Respondent also obtained housing, but it was deemed inappropriate for a minor child.

¶ 8 In a permanency-planning order entered 3 August 2018, the trial court changed the permanent plan to adoption with a secondary plan of reunification. The trial court found that respondent was not making reasonable progress toward reunification and was not actively participating in his case plan. Specifically, the trial court found that respondent had not begun individual counseling, had tested positive for marijuana on 9 May 2018, and maintained that it was age-appropriate to "whip" Ian for discipline. The court also found that on 18 May 2018, DSS ended respondent's visit with Ian early due to respondent's aggressive behavior and derogatory comments toward the social worker. Respondent became irate, left the building, and threw grass and mud at DSS's door. Respondent did not have any further communication with DSS after

that visit. The trial court suspended respondent's visitation and ordered that respondent complete an anger management program as part of his case plan.

¶ 9 Although respondent was ordered to complete an anger management program on 19 July 2018 and ongoing visitation was conditioned upon the father completing the program, he failed to do so. There is nothing in the record to suggest that the trial court's finding of fact that respondent refused to participate in an anger management program is wrong and respondent does not contest it. Moreover, respondent did not return to court to request that his visitation otherwise be reinstated. He was aware of what he needed to do to reinstate visitation with Ian and did nothing. Respondent had not visited Ian since 18 May 2018. The trial court found that respondent withheld his love and affection from Ian by not seeking to re-establish visitation and by failing to send cards, gifts or letters.

¶ 10 Essentially, after the 18 May 2018 incident, respondent was unwilling to work with DSS. From May 2018 until DSS filed the motion to terminate parental rights almost a year and a half later on 18 October 2019, respondent ceased all engagement with DSS and case plan objectives. He would disengage with social workers when they called, he refused to provide his address, and did not attempt to work any aspect of his case plan.

¶ 11 The trial court entered a permanency planning order on 14 February 2019 placing the child with his maternal grandmother who recently had her foster care license reinstated. The court found that Ian had been having visits with his maternal grandmother, and they had bonded.

¶ 12 On 18 October 2019, DSS filed a motion to terminate respondent's parental rights to Ian.[3] DSS alleged that five grounds existed to terminate respondent's parental rights: (1) neglect, (2) willful failure to make reasonable progress to correct the conditions that led to Ian's removal from the home, (3) willful failure to pay a reasonable portion of the cost of Ian's care, (4) dependency, and (5) willful abandonment. N.C.G.S. § 7B-1111(a)(1)–(3), (6)–(7) (2019). On 6 December 2019, respondent filed an answer in which he admitted the ground of willful failure to pay under N.C.G.S. § 7B-1111(a)(3) but denied the remaining alleged grounds.

¶ 13 Following hearings held 30 January, 31 January and 27 February 2020, the trial court entered an order on 9 April 2020 terminating

3. The mother relinquished her parental rights to Ian on 6 May 2019.

respondent's parental rights. The trial court concluded that all five grounds alleged in the termination motion existed and that termination of respondent's parental rights was in Ian's best interests.[4] Accordingly, the trial court terminated respondent's parental rights to Ian. Respondent appealed.

2. Legal Analysis

¶ 14 Respondent argues generally that the trial court erred by concluding that grounds existed to terminate his parental rights. "Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re Z.A.M.*, 374 N.C. 88, 94 (2020) (citing 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 (2019) (quoting N.C.G.S. § 7B-1109(f) (2017)). We review a trial court's adjudication 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 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19 (2019).

¶ 15 Although the trial court determined that five grounds exist to terminate respondent's parental rights, it is well settled that a "finding by the trial court that any one of the grounds for termination enumerated in N.C.G.S. § 7B-1111(a) exists is sufficient to support a termination order." *In re B.O.A.*, 372 N.C. 372, 380 (2019). While the termination order is comprehensive, the clearest ground on the facts of this case and therefore the place we start is that of willful abandonment.

¶ 16 The court must determine that the parent abandoned his child "for at least [the] six consecutive months" before the motion to terminate parental rights was filed. N.C.G.S. § 7B-1111(a)(7). The trial court made numerous findings of fact supported by clear and convincing evidence in the record establishing that respondent father willfully abandoned Ian during the relevant six-month period from 18 April 2019 to 18 October

4. Although the trial court found and concluded that grounds existed by clear and convincing evidence pursuant to N.C.G.S. § 7B-1111(a)(2) to terminate respondent's parental rights, the "Order on Adjudication" portion of the termination order does not list N.C.G.S. § 7B-1111(a)(2) as a ground. The parties seem to agree in their briefs, however, that N.C.G.S. § 7B-1111 (a)(2) was a ground on which the court terminated parental rights.

2019. When the motion to terminate respondent's rights was filed, respondent had not visited Ian in more than a year. Moreover, during that year he refused to work his case plan—failing to take any of the steps required to reunite with Ian. Indeed, during the relevant period he did not make any effort to maintain any sort of parental bond with Ian.

¶ 17 As the trial court found, respondent demonstrated that this was willful behavior on his part to the extent that once the motion for termination of parental rights was filed in October of 2019, he began to "complete a flurry of services from October 2019 through January 2020." Based on the evidence before it, the trial court concluded that respondent's post-petition behavior demonstrated that he previously had the ability to engage in services but chose not to. However, his later actions do not bar an ultimate finding of willful abandonment because the statute explicitly prescribes the relevant time period for evaluating whether a child has been willfully abandoned and none of respondent's activities in compliance with his case plan, including completing a substance abuse assessment, substance abuse classes and a domestic violence assessment, occurred during the relevant period. *See In re E.B.*, 375 N.C. 310, 318 (2020) ("[A]lthough the trial court may consider a parent's conduct outside the six-month window in evaluating a parent's credibility and intentions, the determinative period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition."). Respondent has not contested any of these findings of fact and therefore they are binding on appeal. *See In re T.N.H.*, 372 N.C. 403, 407 (2019) ("Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal."). Taken together, the trial court's factual findings in this case support the conclusion that respondent willfully abandoned Ian for more than six consecutive months preceding the filing of the petition.

¶ 18 Because the ground of willful abandonment is sufficient to support the trial court's order of termination, we need not address respondent's arguments as to the other grounds. Respondent does not challenge the trial court's best interests determination. Accordingly, we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

IN RE J.E.E.R.

[378 N.C. 23, 2021-NCSC-74]

IN THE MATTER OF J.E.E.R.

No. 344A20

Filed 18 June 2021

Termination of Parental Rights—grounds for termination—failure to pay reasonable portion of cost of care—no contribution

The termination of respondent-father's parental rights for failure to pay a reasonable portion of the cost of care for the juvenile was affirmed where the trial court found that respondent was employed and earned between $200 and $800 per week but did not provide any financial support for the child during the six months prior to the filing of the petition and the findings were supported by clear, cogent, and convincing evidence.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 16 March 2020 by Judge William B. Davis in District Court, Guilford County. This matter was calendared for argument in the Supreme Court on 22 April 2021 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.

Ward and Smith, P.A., by Mary V. Cavanagh for appellee Guardian ad litem.

Robert W. Ewing for respondent-appellant father.

BARRINGER, Justice.

¶ 1 Respondent, the biological father of J.E.E.R. (Jane),[1] appeals from the trial court's order terminating his parental rights pursuant to N.C.G.S. § 7B-1111(a)(2)–(3), and (7) (2019). Since we find that the trial court's findings of fact supporting its termination of respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(3) are supported by clear, cogent, and convincing evidence, we affirm.

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

I. Factual and Procedural Background

¶ 2 Jane was born in 2006. On 8 May 2017, Guilford County Department of Health and Human Services (DHHS) obtained nonsecure custody of Jane and her three siblings[2] and filed a petition alleging Jane to be an abused and neglected juvenile. At that time, DHHS did not have knowledge of respondent's location or contact information. DHHS's petition alleged that on 3 May 2017, it received a report of physical abuse after Jane's brother arrived at school with black eyes and swelling on the left side of his face. After each sibling was interviewed, Jane's brother and sister disclosed that they sustained injuries from their mother and stepfather. Jane denied being physically disciplined during the current school year "but disclosed that she has had marks in the past from being physically disciplined." Jane reported that her mother and stepfather disciplined the children using their hands and objects, such as a toy ukulele and extension cords.

¶ 3 Subsequently, DHHS located respondent in New York. Respondent is listed as the father on Jane's birth certificate. On 27 June 2017, respondent submitted to genetic paternity testing that determined he was Jane's biological father. In an order entered 4 August 2017, the trial court adjudicated Jane to be a neglected juvenile. The trial court ordered respondent to cooperate with an Interstate Compact on the Placement of Children (ICPC) home study, enter a case plan, and cooperate with DHHS.[3] The trial court authorized DHHS to allow supervised telephone calls between respondent and Jane for a minimum of one hour per week.

¶ 4 Following a permanency-planning hearing on 25 October 2017, the trial court found that respondent had spoken with Jane by telephone, supervised by her foster parents. Although respondent had been in contact with a DHHS social worker and was cooperative he had not yet entered into a case plan. Respondent reported to a social worker and the trial court that he was planning on moving in with his sister in New York and wanted a home study completed on his sister's home. The trial court set the permanent plan for Jane as reunification with respondent, with a concurrent plan of adoption. The trial court continued to allow supervised telephone calls between respondent and Jane.

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2. Jane's siblings are not the subjects of this appeal.

3. The result of respondent's genetic paternity testing was pending at the time of the adjudication hearing. The trial court's order that respondent cooperate with an ICPC home study, enter into a case plan, and cooperate with DHHS was contingent upon confirmation of respondent's paternity.

¶ 5 Subsequently, the New York Office of Children & Family Services, through an ICPC request, completed a home study of respondent's sister's apartment. By a report dated 1 May 2018, the New York Office of Children & Family Services disapproved of the placement in respondent's sister's home. On 24 May 2018, respondent contacted DHHS and requested that a home study be completed on his mother's home. The home study on his mother's home was conducted and denied.

¶ 6 In a permanency-planning hearing on 1 August 2018, the trial court found that respondent was not working towards reunification. Respondent had been hostile with a DHHS social worker, and in December 2017, requested that the social worker no longer contact him. On 6 March 2018, respondent contacted a social worker and stated that he wanted Jane to call him the following day, Jane's birthday. Jane called respondent as requested, but respondent did not answer. Jane left a voice mail, but he never returned her phone call. The trial court further found that a DHHS social worker sent respondent a proposed case plan on 31 May 2018 and asked respondent to contact the social worker if he wished to enter into the plan. Despite acknowledging receipt of the proposed case plan on 6 June 2018, respondent did not enter into a case plan with DHHS. The trial court concluded that DHHS should cease reunification efforts with respondent and changed the permanent plan to adoption with a concurrent plan of guardianship. DHHS was ordered to proceed with filing for termination of parental rights within sixty days of the entry of the order.

¶ 7 On 3 October 2018, DHHS filed a petition to terminate respondent's parental rights to Jane. DHHS alleged grounds for termination pursuant to N.C.G.S. § 7B-1111(a)(1)–(3) and (7). Following a hearing on 1 October 2019, at which respondent did not appear, the trial court entered an order on 31 October 2019 concluding that grounds existed to terminate respondent's parental rights in Jane pursuant to N.C.G.S. § 7B-1111(a)(1)–(3) and (7). The trial court then determined that it was in Jane's best interests that respondent's parental rights be terminated, and it terminated his parental rights. *See* N.C.G.S. § 7B-1110(a) (2019).

¶ 8 On 11 October 2019, respondent filed a "Motion to Re-Appoint Counsel, Motion to Re-Open the Evidence, and Motion for a New Trial." The trial court entered an order on 27 January 2020 granting respondent's motion for a new trial because of concerns that respondent lacked proper notice of the first hearing and without objection from any party. The 31 October 2019 order terminating respondent's parental rights was "stricken and set aside."

¶ 9 Following a termination-of-parental-rights hearing on 18 February 2020, which respondent was present for and participated in, the trial court entered an order on 16 March 2020 concluding that grounds existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2)–(3), and (7) and determining that it was in Jane's best interests that respondent's parental rights be terminated. *See* N.C.G.S. § 7B-1110(a). Respondent appealed.

II. Standard of Review

¶ 10 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). 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 trial court finds the existence of one or more grounds to terminate the respondent's parental rights, the matter proceeds to the dispositional stage where the trial court must determine whether terminating the parent's rights is in the juvenile's best interests. N.C.G.S. § 7B-1110(a).

¶ 11 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 Montgomery*, 311 N.C. 101, 111 (1984). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19 (2019). Unchallenged findings are deemed to be supported by the evidence and are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437 (2019).

III. Analysis

¶ 12 On appeal, respondent challenges the trial court's determination that grounds existed to terminate his parental rights. Specifically, respondent argues that the findings of fact supporting the trial court's grounds for termination pursuant to N.C.G.S. § 7B-1111(a)(3), and (7) were not supported by clear, cogent, and convincing evidence. Respondent also argues that because the trial court found that respondent had not neglected Jane pursuant to N.C.G.S. § 7B-1111(a)(1), the trial court was precluded from terminating his parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).

A. Termination of Respondent's Parental Rights Pursuant to N.C.G.S. § 7B-1111(a)(3)

¶ 13 N.C.G.S. § 7B-1111(a)(3) states, in relevant part:

> (a) The court may terminate the parental rights upon a finding of one or more of the following:
>
> . . . .
>
> (3) The juvenile has been placed in the custody of a county department of social services . . . and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

¶ 14 The " 'cost of care' refers to the amount it costs the Department of Social Services to care for the child, namely, foster care." *In re Montgomery*, 311 N.C. at 113. "A parent is required to pay that portion of the cost of foster care for the child that is fair, just and equitable based upon the parent's ability or means to pay. . . . The requirement applies irrespective of the parent's wealth or poverty." *In re Clark*, 303 N.C. 592, 604 (1981).

¶ 15 The trial court made the following findings of fact, in pertinent part, to support its termination of respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(3):

> 2. [Jane] has been in the legal and physical custody of [DHHS] a consolidated county human services agency, pursuant to Court Order continuously since May 8, 2017.
>
> . . . .
>
> 5. The Petition to Terminate Parental Rights in this matter was filed on October 3, 2018. . . . The six-month period applicable to the (a)(3) and (a)(7) claim is April 3, 2018 through October 3, 2018.
>
> . . . .
>
> [10]b. Income – [Respondent] was to obtain and maintain suitable employment and provide proof of income. [Respondent] indicated that he was employed at A&J Grocery at the beginning of

> 2018 until approximately the fall/winter of 2019. [Respondent] indicated that this employer did not provide paystubs, and that he was being paid under the table four to five days per week, at a payment of approximately $200.00 to $300.00 per week. In the winter of 2018 until the present, [respondent] indicates by his own testimony that he is employed with Postmates delivery service. He schedules his own hours and brings home anywhere between $300.00 to $800.00 per week by direct deposit to his pre-paid card. He also indicated that he has some additional entrepreneurial activities but has given no indication of whether those resulted in any income, and if so, what amounts. As of today's hearing [respondent] has not provided any proof of income. . . .
>
> . . . .
>
> 17. . . .
>
> a. [DHHS] has incurred cost in connection with the care of [Jane] on a continuous basis in the six months preceding the filing of this Petition, namely from April 2018 through October 2018 amounting to $6,158.46.
>
> b. [Respondent] has not provided any type or amount of financial support for [Jane] within the six months immediately preceding the filing of this Petition though he stated to [DHHS] he was working. He agreed to provide verification of his income but has failed to do so.
>
> c. [Respondent] has never provided any documentation verifying he is unable to work due to a disability and agreed to provide proof of income. [Respondent] has reported that he is employed and has been since 2018. This demonstrates that [respondent] has sufficient resources to pay some amount greater than zero.

¶ 16 Respondent does not dispute the trial court's finding of fact that he "has not provided any type or amount of financial support for [Jane] within the six months immediately preceding the filing of this Petition though he stated to [DHHS] he was working." Rather, he argues the trial

court's finding of fact that respondent had sufficient resources to pay some amount of financial support greater than zero is not supported by the evidence. Specifically, respondent contends the trial court erred in determining that he had the ability to pay for Jane's cost of care because he was unable to support himself on the income he was receiving.

¶ 17 Here, the relevant six-month time period was 3 April 2018 to 3 October 2018. Respondent testified that he was employed at A&J Grocery from the beginning of 2018 until "[s]omewhere in the fall, going into winter" of 2018 and made between $200.00 and $700.00 per week. At the end of 2018 "going into [20]19," he began working at Postmates delivery service, earning between $300.00 and $800.00 per week. He also testified that he was never unemployed between the job at A&J Grocery and Postmates. Therefore, the trial court's findings that respondent was employed during the relevant time period with some income is supported by clear, cogent, and convincing evidence. *See*, *e.g.*, *In re T.D.P.*, 164 N.C. App. 287, 290 (2004) (holding there was clear and convincing evidence the respondent had an ability to pay an amount greater than zero where he was earning $0.40 to $1.00 per day while incarcerated), *aff'd*, 359 N.C. 405 (2005).

¶ 18 As this Court held in *In re J.A.E.W.*, 375 N.C. 112, 118 (2020), where the trial court finds that the respondent has made no contributions to the juvenile's care for the period of six months immediately preceding the filing of the petition and that the respondent had income during this period, the trial court properly terminates respondent's rights based on N.C.G.S. § 7B-1111(a)(3) for willful failure to pay a reasonable portion of the costs of care for the juvenile although physically and financially able to do so. Therefore, the trial court properly terminated respondent's parental rights in Jane pursuant to N.C.G.S. § 7B-1111(a)(3).

IV. Conclusion

¶ 19 Since only one ground is necessary to support a termination of parental rights, we decline to address respondent's arguments challenging the trial court's finding that grounds existed to terminate his parental rights under N.C.G.S. § 7B-1111(a)(2) and (7). *See* N.C.G.S. § 7B-1111(a). Respondent does not challenge the trial court's determination that it was in Jane's best interests to terminate his parental rights. Accordingly, we affirm the trial court's order.

AFFIRMED.

IN RE M.S.

[378 N.C. 30, 2021-NCSC-75]

IN THE MATTER OF M.S., W.S., E.S.

No. 343A20

Filed 18 June 2021

1. Termination of Parental Rights—no-merit brief—termination on multiple grounds—competent evidence and proper legal grounds

The termination of respondent-mother's parental rights based on neglect, willful failure to make reasonable progress, and being incapable of providing proper care and supervision of the children was affirmed where the mother's counsel filed a no-merit brief and the termination order was supported by competent evidence and based on proper legal grounds.

2. Termination of Parental Rights—grounds for termination—willful failure to make reasonable progress—failure to enter into a case plan

The trial court did not err by determining that grounds existed to terminate the parental rights of the father of the two oldest children based on a willful failure to make reasonable progress where the unchallenged findings showed that he did not enter into a case plan with DSS to establish the goals he needed to achieve prior to reunification—despite several opportunities to do so—and that he was not incarcerated for nine of the twenty months the children were in DSS custody.

3. Termination of Parental Rights—grounds for termination—failure to make reasonable progress—nexus between case plan and conditions that led to removal

The trial court's order terminating respondent-father's parental rights to the youngest child based on failure to make reasonable progress was supported by unchallenged findings, which showed that respondent-father failed to complete parenting classes, tested positive for controlled substances and refused at least four drug screenings, and was not incarcerated for seven months while his child was in DSS custody. Although respondent argued that he did make reasonable progress where the only condition relating to him that led to the child's removal—that his paternity had not been established—had since been corrected, there was a sufficient nexus between the substance abuse and mental health components of respondent's case plan and the conditions that led to the child's

removal from the home, because the child had been removed from respondent-mother's care based on neglect caused by exposure to substance abuse.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 2 April 2020 by Judge Marion Boone in District Court, Stokes County. This matter was calendared for argument in the Supreme Court on 22 April 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Jennifer Oakley Michaud for petitioner-appellee Stokes County Department of Social Services.

James N. Freeman Jr. for appellee Guardian ad Litem.

Anné C. Wright for respondent-appellant mother.

Christopher M. Watford for respondent-appellant father of M.S. and W.S.

Edward Eldred for respondent-appellant father of E.S.

BERGER, Justice.

¶ 1 Respondent-mother appeals from the trial court's orders terminating her parental rights to M.S. (Molly), W.S. (Will), and E.S. (Ella).[1] Counsel for respondent-mother has filed a no-merit brief under Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We conclude the issues identified by counsel as arguably supporting the appeal are meritless and, therefore, affirm the trial court's orders as to respondent-mother.

¶ 2 Respondent-father Cameron appeals from the trial court's orders terminating his parental rights to Molly and Will. Respondent-father Miles appeals from the trial court's orders terminating his parental rights to Ella. We conclude that the trial court made sufficient findings of fact, supported by clear, cogent, and convincing evidence, to support its conclusion to terminate both respondent-fathers' parental rights under N.C.G.S. § 7B-1111(a)(2); therefore, we affirm the trial court's orders as to both respondent-fathers.

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1. Pseudonyms are used in this opinion to protect the juveniles' identities and for ease of reading.

I. Background

¶ 3 On July 5, 2018, the Stokes County Department of Social Services (DSS) received a report alleging that respondent-mother, respondent-father Cameron, Molly, and Will were overnight guests at a home when officers with the King Police Department responded to a report of drug use. After obtaining a search warrant, officers found evidence of drug use, including methamphetamine and marijuana; drug paraphernalia, including hypodermic needles; and an unsecured, loaded gun, all of which were accessible to the children. Respondent-mother denied seeing any drugs or drug paraphernalia in the home and denied intravenous drug use; however, an officer noted that she appeared to have fresh track marks on her arms and hands. The children were then placed with a temporary safety provider that same day.

¶ 4 On July 6, 2018, respondent-mother was arrested and charged with possession of heroin, possession of drug paraphernalia, and child abuse. These charges were later dismissed. Respondent-father Cameron was also arrested and charged with a felony probation violation and resisting a public officer. Both parents refused to submit to a drug screen requested by DSS.

¶ 5 On July 13, 2018, DSS filed juvenile petitions alleging that Molly and Will were neglected juveniles due to the children living in an environment injurious to their welfare, and DSS obtained nonsecure custody of the children the same day.

¶ 6 On July 24, 2018, respondent-mother entered into an Out of Home Family Services Agreement Case Plan with DSS.

¶ 7 On August 20, 2018, respondent-mother gave birth to Ella. Both respondent-mother and Ella tested negative for controlled substances at the hospital; however, on August 27, 2018, a test of Ella's umbilical cord came back positive for Suboxone.

¶ 8 On August 22, 2018, DSS received a report of substance abuse and an injurious environment, which alleged that respondent-mother did not have a home to take Ella to following their discharge from the hospital. Respondent-mother obtained a placement at The Shepherd's House in Mount Airy. On August 28, 2018, respondent-mother and Ella were discharged from the hospital and moved to The Shepherd's House.

¶ 9 On September 13, 2018, DSS reported that respondent-mother had made no progress on most of the requirements of her case plan, except she "has had clean drug screens since the children were placed in [the] custody of DSS." In addition, respondent-mother was participat-

ing in parenting classes, which was in compliance with her case plan, while living at The Shepherd's House. On or about October 4, 2018, respondent-mother's progress stalled. She admitted to taking Suboxone on several occasions, and DSS learned respondent-mother was spending significant time with respondent-father Cameron, though she refused to provide his contact information to DSS. On October 5, 2018, DSS filed a juvenile petition alleging Ella was neglected due to her living in an environment injurious to her welfare. DSS obtained nonsecure custody of Ella that same day.

¶ 10 On September 13, 2018, an adjudication hearing was held for Molly and Will. Respondent-mother consented that Molly and Will were neglected juveniles based on the allegations contained in the July 13, 2018 juvenile petitions. Respondent-father Cameron did not attend the hearing. On October 29, 2018, the trial court entered an order adjudicating Molly and Will to be neglected juveniles. In an order entered after a subsequent disposition hearing, the trial court set the primary permanent plan as reunification, with a concurrent plan of guardianship with a court-approved individual. Respondent-mother was ordered to comply with her case plan and was allowed two hours of supervised visitation per week. Respondent-father Cameron was ordered to enter into a case plan and cooperate with DNA paternity testing. He was denied visitation "due to his lack of contact with DSS and engagement with the case." Subsequent DNA testing established respondent-father Cameron to be the father of Molly and Will.

¶ 11 At a December 6, 2018, adjudication hearing, respondent-mother consented that Ella was a neglected juvenile based on the allegations contained in the October 5, 2018 juvenile petition. Respondent-father Miles had been determined to be Ella's biological father through DNA testing, and he was present at the hearing. On January 16, 2019, the trial court entered an order adjudicating Ella to be a neglected juvenile. In the accompanying disposition order, the trial court set the primary permanent plan as reunification, with a concurrent plan of guardianship with a court-approved individual. Respondent-mother was ordered to comply with her case plan and was allowed two hours of supervised visitation per week with Ella as well as two additional hours per week during respondent-mother's visitations with Molly and Will. Respondent-father Miles was ordered to enter into a case plan and was allowed two hours of supervised visitation per week.

¶ 12 Subsequent reports compiled by DSS and the guardian ad litem reflect the lack of progress made by any of the parents. Respondent-mother reported continued use of unprescribed Suboxone, marijuana, and

methamphetamines, resulting in several positive drug screens. She also refused at least three requested drug screens. While she reported to the social worker that she had completed various assessments as required by her case plan, she did not comply with any of the recommendations from the assessments. She also refused to cooperate when told not to use inappropriate language, not to bring inappropriate food, not to discuss the facts of the case with and in front of the children, and not to tell them they would be coming home after the next hearing.

¶ 13 Respondent-father Cameron was incarcerated at the Franklin Correctional Center in November 2018 and was released on May 1, 2019. He requested visitation with Molly and Will, though he only attended two out of five possible scheduled visits. He never entered into a case plan with DSS. He did not stay in consistent contact with DSS after being released from custody and did not provide DSS with his contact information. On July 1, 2019, respondent-father Cameron was arrested and was in custody in the Surry County Jail with multiple pending felony drug charges.

¶ 14 On December 12, 2018, respondent-father Miles entered into a case plan and was attending visitations with Ella until he was incarcerated on April 10, 2019. He was released on May 27, 2019, but he was rearrested three days later and confined in the Stokes County Jail. Prior to his incarceration, he was not engaged with DSS and did not make any progress towards his case plan. While he still needed to complete parenting classes and mental health and substance abuse assessments, DSS noted that he was not able to satisfy those requirements of his case plan while he was in jail. Subsequent testimony from a DSS social worker established that respondent-father Miles had access to resources to assist with the completion of his case plan while incarcerated, but he had only availed himself of GED classes and not Narcotics Anonymous meetings, parenting classes, or cognitive behavioral intervention.

¶ 15 On September 10, 2019, the primary permanent plan for all of the children was changed to adoption, with a concurrent plan of reunification, as a result of the lack of progress by each of the parents. On November 7, 2019, DSS filed motions to terminate the parental rights of all three parents. The motions alleged there were grounds to terminate each parent's parental rights to their respective children pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (6).

¶ 16 Following a hearing, the trial court entered orders on April 2, 2020, in which it determined grounds existed to terminate the parental rights of all parents for the grounds alleged in the motions. The trial court also de-

termined it was in the children's best interests that respondent-parents' rights be terminated. Respondent-parents appeal.

II. Respondent-Mother's No-Merit Appeal

¶ 17 **[1]** Respondent-mother's counsel filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. Counsel has advised respondent-mother of her right to file a pro se brief on her own behalf with this Court and has provided respondent-mother with the documents necessary to do so. Respondent-mother has not submitted any written arguments.

¶ 18 Respondent-mother's counsel identified three issues that could arguably support an appeal but stated why she believed each of these issues lacked merit. We independently review these issues contained in respondent-mother's 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). Based upon our careful review of the issues identified in the no-merit brief, we are satisfied that the trial court's April 2, 2020 orders were supported by competent evidence and based on proper legal grounds. Accordingly, we affirm the trial court's orders terminating respondent-mother's parental rights.

III. Respondent-Fathers' Appeals

¶ 19 Both respondent-fathers argue that the trial court erred by concluding that grounds existed to terminate their parental rights in their respective children.

¶ 20 A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, 7B-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 N.C.G.S. § 7B-1111(a). N.C.G.S. § 7B-1109(f). 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. 372, 379, 831 S.E.2d 305, 310 (2019). Findings of fact that are supported by clear, cogent, and convincing evidence are "deemed conclusive even if the record contains evidence that would support a contrary finding." *Id.* Unchallenged findings of fact are binding on appeal. *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020).

¶ 21 Here, both respondent-fathers' parental rights were terminated under N.C.G.S. § 7B-1111(a)(1), (2), and (6). "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 J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020). Therefore, we will only review respondent-fathers' challenges to termination pursuant to N.C.G.S. § 7B-1111(a)(2) and will not review either of the respondent-fathers' challenges to grounds for termination pursuant to N.C.G.S. § 7B-1111(a)(1)or (6).

¶ 22 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) (2019). Because Molly and Will were in the custody of DSS for approximately twenty months prior to the termination hearing, and Ella for approximately seventeen months, we address each of respondent-fathers' arguments below and conclude that neither respondent-father made a sufficient showing that he made reasonable progress under the circumstances to correct the conditions which led to the children's removal.

A. Respondent-Father Cameron

¶ 23 **[2]** Respondent-father Cameron argues the trial court failed to establish both that he willfully left Molly and Will in foster care and that he failed to make reasonable progress under the circumstances. We disagree.

¶ 24 "[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 J.S.*, 374 N.C. at 815, 845 S.E.2d at 71 (quoting *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996)). "Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re S.M.*, 375 N.C. 673, 685, 850 S.E.2d 292, 303 (2020) (quoting *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001)).

¶ 25 Here, respondent-father Cameron never entered into a case plan with DSS. Had he done so, the goals he needed to achieve prior to reunification would have included: (1) to demonstrate appropriate parenting skills; (2) "to effectively manage mental health symptoms, including treatment for substance abuse"; (3) "to address the child[ren]'s basic needs with income security"; and (4) "[t]o obtain and maintain safe and stable housing[and] transportation." There is no indication respondent-father Cameron took any steps toward remediating the conditions which led

to the removal of Molly and Will, namely their exposure to an unsafe environment due to the substance abuse occurring in the home. In fact, respondent-father Cameron's most recent incarceration stemmed from several felony drug charges.

¶ 26 Moreover, respondent-father Cameron does not challenge finding of fact 23—that he never entered into a case plan; findings of fact 26 and 30—that he was not incarcerated for nine of the approximate twenty months Molly and Will were in DSS custody, including the first four months after they were removed from the home; finding of fact 27—that he requested one visit following his release from jail in May 2019 but failed to contact DSS after the visit concerning its request to set up a meeting to establish a case plan; and finding of fact 29—that after his incarceration in February 2020, he wrote a letter to DSS indicating that he would "do things once he went to prison." These unchallenged findings support the trial court's conclusion that respondent-father Cameron "willfully left [Molly and Will] in foster care . . . for more than 12 months without showing" reasonable progress to correct the conditions that led to their removal.

¶ 27 "[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)[.]" *In re B.O.A.*, 372 N.C. at 385, 831 S.E.2d at 314. In this case, respondent-father Cameron cannot point to even "extremely limited progress" as he failed to even take the first step, entering into a case plan, even though he was presented with several opportunities to do so. Accordingly, we conclude the trial court did not err in determining grounds existed to terminate respondent-father Cameron's parental rights under N.C.G.S. § 7B-1111(a)(2).

B. Respondent-Father Miles

¶ 28 **[3]** Respondent-father Miles argues the only condition relating to him that led to Ella's removal from the home was that his paternity was not established at the time of removal. Thus, he argues that after his paternity was established by a DNA test, he fulfilled the reasonable progress standard by correcting the only condition that led to Ella's removal from his custody. We disagree.

> [A]s long as a particular case plan provision addresses an issue that, directly or indirectly, contributed to causing the juvenile's removal from the parental home, the extent to which a parent has reasonably

> complied with that case plan provision is, at minimum, relevant to the determination of whether that parent's parental rights in his or her child are subject to termination for failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2).

In re B.O.A., 372 N.C. at 385, 831 S.E.2d at 314.

¶ 29 In *In re B.O.A.*, the child was placed into DSS custody as a result of a domestic violence incident and an unexplained bruise on the child's arm. *Id.* at 385–86, 831 S.E.2d at 314. Throughout subsequent orders, starting with the initial adjudication order, the trial court identified "a complex series of interrelated factors [that] contributed to causing the conditions that led to [the child's] removal from [the respondent's] home." *Id.* at 386, 831 S.E.2d at 315. The respondent was receiving treatment for anxiety and depression, had a previous diagnosis of post-traumatic stress disorder, and was receiving treatment for substance abuse. *Id.* This Court acknowledged that post-traumatic stress disorder can result from domestic violence and untreated mental health disorders and substance abuse can make an individual more susceptible to domestic violence; therefore, "the history shown in the[ ] reports and orders reveals the existence of a sufficient nexus between the conditions that led to [the child's] removal from [the respondent's] home and the provisions of the court-ordered case plan relating to [the respondent's] mental health issues, substance abuse treatment, and medication management problems." *Id.* at 386–87, 831 S.E.2d at 315.

¶ 30 Similarly, the respondent in *In re C.J.* argued that the only condition that led to her child's removal was her "potential lengthy incarceration in Mississippi," which she argued was remedied at the time of the termination hearing. *In re C.J.*, 373 N.C. 260, 262–63, 837 S.E.2d 859, 861 (2020). However, the record revealed the respondent's pending criminal charges were for drug-trafficking and stolen weapons; she had an open case in another state involving allegations that she used the child to obtain prescription medication; she had a history of involvement with Child Protective Services in Mississippi related to allegations of inappropriate care, sexual abuse, exposure of a child to illegal substances, and inappropriate discipline; and her demeanor at hearings led the trial court to believe she may have been under the influence of substances and suffering from a mental health condition. *Id.* at 263, 837 S.E.2d at 861. This Court determined that "[t]hese findings establish[ed] the required nexus between the components of [the respondent's] court-approved case plan"— which required her to complete an assessment and follow all recommended treatment for sub-

stance abuse issues, submit to requested drug screens, and obtain and maintain stable employment and housing —"and the overall conditions that led to [the child's] removal." *Id.*

¶ 31 In this case, Ella was taken into DSS custody due to allegations of neglect stemming, in part, from concerns about her exposure to substance abuse. While respondent-father Miles may not have been involved in the removal of Ella from respondent-mother's care, the conditions that led to Ella's removal were appropriately considered by the trial court in addressing the requirements present in respondent-father Miles's case plan. *See In re B.O.A.*, 372 N.C. at 381, 831 S.E.2d at 311–12 ("According to N.C.G.S. § 7B-904(d1)(3), a trial judge has the authority to require the parent of a juvenile who has been adjudicated to be abused, neglected, or dependent to take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, or caretaker." (cleaned up) (quoting N.C.G.S. § 7B-904(d1)(3) (2017))).

¶ 32 Respondent-father Miles's case plan required him to (1) complete parenting classes, (2) complete substance abuse and mental health assessments and follow all recommendations, (3) obtain secure income, and (4) obtain and maintain safe and stable housing and transportation. Respondent-father Miles does not challenge any of the trial court's findings of fact, which establish that he (1) failed to complete parenting classes; (2) failed to obtain the appropriate assessments; (3) tested positive for marijuana, methamphetamines, and amphetamines; and (4) refused at least four requested drug screens. The trial court also made unchallenged findings that respondent-father Miles was incarcerated several times while Ella was in DSS custody, that he was not incarcerated for seven months while Ella was in DSS custody, and that he failed to complete any programs while incarcerated that would show progress toward the completion of his case plan.

¶ 33 In fact, respondent-father Miles's unmanaged issues with substance abuse presents a sufficient nexus between the conditions that led to Ella's removal and the substance abuse and mental health components of his case plan. *See In re B.O.A.*, 372 N.C. at 387, 831 S.E.2d at 315. Moreover, the requirements related to income and housing may also relate to the issues involving respondent-father Miles's untreated substance abuse. *See id.* Accordingly, the trial court's unchallenged findings support its conclusion that respondent-father Miles failed to make reasonable progress to correct the conditions that led to Ella's

removal. Therefore, we conclude the trial court did not err in determining grounds existed to terminate respondent-father Miles's parental rights under N.C.G.S. § 7B-1111(a)(2).

IV. Conclusion

¶ 34 We conclude respondent-mother failed to present any arguments of merit on appeal. Additionally, we conclude the trial court's findings of fact support its conclusion that grounds existed to terminate the parental rights of both respondent-father Cameron and respondent-father Miles under N.C.G.S § 7B-1111(a)(2). 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. 190, 194, 835 S.E.2d 417, 421 (2019), we need not review either of respondent-fathers' challenges to the grounds for termination pursuant to N.C.G.S. § 7B-1111(a)(1) and (6). As neither respondent-father has challenged the trial court's best interest determination, we affirm the trial court's termination orders.

AFFIRMED.

IN THE MATTER OF M.S.E. AND K.A.E.

No. 192A20

Filed 18 June 2021

1. Termination of Parental Rights—competency of parent—guardian ad litem—Rule 17—abuse of discretion analysis

In a termination of parental rights matter, the trial court did not abuse its discretion by failing to sua sponte conduct a competency hearing to determine whether respondent-mother needed a Rule 17 guardian ad litem. Although respondent's psychological evaluation recommended various types of assistance after stating that respondent had borderline intellectual functioning, the evaluation also noted several positive attributes of respondent including her resourcefulness. Further, the trial court had ample opportunity to observe respondent at multiple hearings, including during respondent's testimony, and respondent exhibited appropriate judgment prior to the hearings when she told the social services agency that she did not feel ready to take her children back and asked that they remain in their relative placement.

2. Termination of Parental Rights—adjudication—findings of fact—sufficiency of evidence

The adjudicatory findings of fact in an order terminating respondent-mother's parental rights to her two children (based on neglect and willful failure to make reasonable progress) were supported by clear, cogent, and convincing evidence regarding respondent's failure to take advantage of multiple opportunities to engage in services for her substance abuse and mental health issues, her lack of progress in various treatment programs, and the effect of her behavior on her son's mental health.

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

The trial court properly terminated respondent-mother's parental rights on the ground of neglect where its findings of fact, which were either unchallenged or supported by clear, cogent, and convincing evidence, supported the court's conclusion that there was a likelihood of future neglect of respondent's two children if they were returned to her care, based on respondent's lack of progress in addressing her ongoing substance abuse, mental health issues, and parenting skills, and her inability to acknowledge her role in her son's mental health struggles.

4. Termination of Parental Rights—best interests of the child—dispositional findings of fact—abuse of discretion analysis

The trial court did not abuse its discretion by determining that termination of respondent-mother's rights to her children was in their best interests where the court's findings addressed the statutory factors in N.C.G.S. § 7B-1110(a) and were supported by competent evidence or reasonable inferences from that evidence, including findings that the bond between respondent and her daughter had lessened over time, and that respondent's behavior played a part in her son's mental health issues. The trial court was not required to make findings regarding every dispositional alternative it considered, and its findings demonstrated a reasoned decision.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from order entered on 9 March 2020 by Judge Monica M. Bousman in District Court, Wake County. This matter was calendared in the Supreme Court on 22 April 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

IN RE M.S.E.

[378 N.C. 40, 2021-NCSC-76]

Mary Boyce Wells for petitioner-appellee Wake County Human Services.

R. Bruce Thompson II for appellee Guardian ad Litem.

Kathleen M. Joyce for respondent-appellant mother.

EARLS, Justice.

¶ 1 Respondent appeals from an order terminating her parental rights in her children, M.S.E. (Mary) and K.A.E. (Kevin).[1] We affirm.

I. Background

¶ 2 Kevin was born in August 2010, and Mary was born in May 2017. On 8 May 2018, Wake County Human Services (WCHS) filed a juvenile petition alleging that Kevin and Mary were neglected juveniles. The petition alleged that on 9 December 2017, WCHS received a report that respondent, Kevin, Mary, and respondent's ten-year-old son[2], Gary, had been expelled from the Salvation Army homeless shelter based on respondent's failed drug screens. Respondent took the children briefly to a hotel but ran out of money. Kevin and Mary were placed in a safety placement with respondent's cousin, and Gary was placed with his father. Respondent had a history of homelessness and transiency, repeatedly placing her children with relatives for extended periods of time due to housing and income instability. She acknowledged daily use of marijuana since the age of fourteen and use of cocaine after 2014. Respondent had been diagnosed with depression, post-traumatic stress disorder, and anxiety.

¶ 3 The petition further alleged that while respondent agreed to participate in substance abuse and mental health treatment, she failed to do so. The Salvation Army connected respondent-mother with North Carolina Recovery Services for Substance Abuse Intensive Outpatient (SAIOP) treatment, but she did not attend any of the scheduled appointments. She also failed to appear for appointments with WCHS for In-Home Services. On 13 March 2018, respondent experienced a mental health crisis and went to Holly Hill Hospital for evaluation. She was not admitted but was recommended to immediately schedule an appointment with an outpatient therapist, a psychiatrist, and a SAIOP program. She did not follow

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

2. Respondent's ten-year-old son is not a subject of this appeal.

any of the recommendations. On 14 March 2018, she went to Healing Transitions, a residential substance abuse treatment program, but she left after five days. By this time, Kevin and Mary had been in their safety placement for four months, and respondent had only visited them on three occasions.

¶ 4 Following hearings on 15 June 2018 and 9 July 2018, the trial court entered an order on 4 September 2018 adjudicating Kevin and Mary to be neglected juveniles and continuing custody with WCHS. On 6 August 2018, Kevin was transferred to a therapeutic foster home after it was determined that he required a higher level of care than his safety placement could provide. The trial court conducted a review hearing on 1 October 2018, and entered an order on 23 October 2018 finding that respondent had failed to comply with any drug screen requests since the hair screen specifically ordered at the conclusion of the dispositional hearing. She admitted to ongoing, regular use of marijuana approximately three times per week, and the result of a hair sample screen was positive for marijuana and cocaine. The trial court also found that returning Kevin and Mary to the home would be contrary to their health and safety. The primary permanent plan was set as reunification, with a secondary plan of adoption.

¶ 5 Following a review hearing on 25 March 2019, the trial court entered an order on 22 April 2019 finding that respondent continued to use marijuana and had only complied with one of five drug screens requested by WCHS since the prior review hearing. Respondent reported use of cocaine on 22 February 2019. She had participated in five of sixteen possible parenting coaching sessions, and the sessions she did attend were productive, resulting in "noticeable improvements" in her interactions with the children. On 23 May 2019, Mary was transferred to a foster home after her safety placement could no longer care for her.

¶ 6 On 30 September 2019, WCHS filed a motion to terminate respondent's parental rights in Kevin and Mary. WCHS alleged: (1) respondent had neglected the children, and it was probable there would be a repetition of neglect if they were returned to her care, *see* N.C.G.S. § 7B-1111(a)(1) (2019): (2) respondent had willfully left the children in foster care for more than twelve months without showing reasonable progress under the circumstances to correct the conditions that led to their removal, *see* N.C.G.S. § 7B-1111(a)(2); and (3) the children had been placed in WCHS custody and respondent had for a continuous period of six months next proceeding the filing of the motion willfully failed to pay a reasonable portion of the cost of care for the children although physically and financially able to do so, *see* N.C.G.S. § 7B-1111(a)(3).

¶ 7 The motion to terminate respondent's parental rights came on for hearing on 16 and 29 January 2020. On 9 March 2020, the trial court entered an order concluding that grounds existed to terminate respondent's parental rights in Kevin and Mary pursuant to N.C.G.S. § 7B-1111(a)(1)–(2). The trial court determined it was in Kevin and Mary's best interests that respondent's parental rights be terminated, and the court terminated her parental rights.[3] *See* N.C.G.S. § 7B-1110(a). Respondent appeals.

II. Analysis

A. Rule 17 Guardian *ad Litem*

¶ 8 **[1]** Respondent's first argument on appeal is that the trial court abused its discretion by failing to, sua sponte, conduct an inquiry into whether she should be appointed a guardian ad litem (GAL) under Rule 17 of the North Carolina Rules of Civil Procedure to assist her during the termination hearing. She contends that once the trial court learned the results of a psychological evaluation she underwent in December 2019, it had a duty to inquire into her competency.

¶ 9 Section 7B-1101.1(c) of the North Carolina General Statutes permits the trial court "[o]n motion of any party or on the court's own motion" to appoint a GAL for a parent who is incompetent in accordance with N.C.G.S. § 1A-1, Rule 17. N.C.G.S. § 7B-1101.1(c). An "incompetent adult" is defined as one "who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition." N.C.G.S. § 35A-1101(7) (2019).

¶ 10 "A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention [that] raise a substantial question as to whether the litigant is *non compos mentis*." *In re T.L.H.*, 368 N.C. 101, 106–07 (2015) (alterations in original) (quoting *In re J.A.A.*, 175 N.C. App. 66, 72 (2005)). "A trial court's decision concerning whether to conduct an inquiry into a parent's competency" and "[a] trial court's decision concerning whether to appoint a parental [GAL] based on the parent's incompetence" are both reviewed on appeal for abuse of discretion. *Id.* at 107. "An '[a]buse of discretion results where the court's ruling is manifestly

3. The trial court also terminated the parental rights of Kevin and Mary's fathers, but they are not parties to this appeal.

unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.' " *Id.* (alteration in original) (quoting *State v. Hennis*, 323 N.C. 279, 285 (1988)). Further, the abuse of discretion standard is appropriate here because the evaluation of an individual's competence "involves much more than an examination of the manner in which the individual in question has been diagnosed by mental health professionals." *In re T.L.H.*, 368 N.C. at 108. Also important are factors such as the individual's behavior in the courtroom, how clearly they express themselves, whether they appear to understand what is going on, and whether they can assist counsel. *Id.*, at 108–09.

¶ 11 Here, respondent relies heavily on the testimony of a WCHS social worker who testified at the termination hearing. The social worker testified that on 4 December 2019, respondent completed a psychological assessment with Dr. Robert Aiello. Dr. Aiello determined respondent had borderline intellectual functioning. The social worker testified that Dr. Aiello recommended a parenting education program which focused on individuals with some cognitive impairments, "delivering the information on more of a functional level for the parents." Dr. Aiello further recommended that respondent identify a consistent support person who could provide her with "direction and guidance" with complex decisions regarding the needs and welfare of her children and with "daily living and important decision-making"; that if respondent was awarded disability, she would require a payee to assure proper use of funds; and that WCHS personnel and professional parties working with respondent review written documents with her to assure understanding of the information being presented.

¶ 12 Respondent argues that the results of Dr. Aiello's assessment and his recommendations indicate she needed the assistance of a Rule 17 GAL. Respondent also contends that there was other evidence to suggest she might be legally incompetent: she needed assistance from vocational rehabilitation, she believed she needed a disability instructor due to her learning comprehension disability in order to pass the General Educational Development Test, and a WCHS social worker noted in a March 2019 permanency planning hearing report that respondent "does not understand why this case was initiated or continues, and does not understand why she needs to pursue services."

¶ 13 After careful review of the record, we believe the record contains "an appreciable amount of evidence tending to show that [respondent was] not incompetent" at the time of the termination hearing. *In re T.L.H.*, 368 N.C. at 108–09. First, the WCHS social worker testified to some "assets" noted by Dr. Aiello in his assessment of respondent. Dr.

Aiello's assessment noted that respondent acknowledged her history of homelessness, "made statements indicating she understands her children need a safe and stable living environment[,]" and had established "some supportive relationships with others." Dr. Aiello observed that respondent was "resourceful and resilient and should be able to address her problems if she remains motivated to do so."

¶ 14 Second, the record indicates that respondent exercised appropriate judgment when she informed the Child and Family Team of WCHS on 30 April 2018 that she did not feel ready to take the children back due to her unstable housing and lack of employment, requesting that they remain in her cousin's home. *See In re T.L.H.*, 368 N.C. at 109 (noting that the respondent had exercised "proper judgment" in allowing the petitioner to take custody of respondent's child shortly after his birth based upon concerns about the safety of her home).

¶ 15 Third, the trial court's view of respondent's competency is supported by the fact that she attended all hearings related to this matter. Her presence gave the trial court ample opportunity to observe and evaluate respondent's capacity to understand the nature of the proceedings. *See In re Q.B.*, 375 N.C. 826, 834 (2020) (stating that the respondent's attendance at all hearings related to the matter supported her competency and "gave the trial court a sufficient opportunity to continue to observe her capacity to understand the nature of the proceedings").

¶ 16 Fourth, respondent testified at the termination hearing on 29 January 2020, and her testimony showed that she understood the questions addressed to her and had the ability to respond in a clear and cogent manner. Her courtroom conduct and responses provided no reason to believe that she did not understand the nature of the proceedings. For instance, respondent's testimony suggested that she understood the reasons why Kevin and Mary were removed from her care. *See id.*, 375 N.C. at 834 (stating that the respondent's testimony at the termination hearing demonstrated that "she understood the nature of the proceedings and her role in them as well as her ability to assist her attorney in support of her case"); *see also In re T.L.H.*, 368 N.C. at 109 (stating that the respondent's testimony at the permanency planning hearing was "cogent and gave no indication that she failed to understand the nature of the proceedings in which she was participating or the consequences of the decisions that she was being called to make"). Based on the evidence in the record, respondent has failed to demonstrate that the trial court abused its discretion by failing to, sua sponte, conduct an inquiry into whether she should be appointed a Rule 17 GAL.

B. Grounds for Termination

¶ 17 **[2]** Respondent next argues that the trial court erred by concluding that grounds existed to terminate her parental rights in Kevin and Mary. "Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re Z.A.M.*, 374 N.C. 88, 94 (2020) (citing 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 (2019) (quoting N.C.G.S. § 7B-1109(f) (2019)). We review a trial court's adjudication 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 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "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 (2019). Unchallenged findings are deemed to be supported by the evidence and are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437 (2019). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19 (2019).

¶ 18 Here, the trial court determined that grounds existed to terminate respondent's parental rights based on neglect and willfully leaving the children in foster care for more than twelve months without making reasonable progress to correct the conditions that led to their removal. N.C.G.S. § 7B-1111(a)(1)–(2) (2019). We begin our analysis by determining whether grounds existed to terminate respondent's parental rights on the basis of neglect pursuant to N.C.G.S. § 7B-1111(a)(1).

¶ 19 A trial court may terminate parental rights if it concludes 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 has been abandoned; . . . or who lives in an environment injurious to the juvenile's welfare[.]

N.C.G.S. § 7B-101(15) (2019).

¶ 20 In certain circumstances, the trial court may terminate a parent's rights based on neglect that is currently occurring at the time of the termination hearing. *See, e.g.*, *In re K.C.T.*, 375 N.C. 592, 559–600 (2020) ("[T]his Court has recognized that the neglect ground can support termination . . . if a parent is presently neglecting their child by abandonment."). However, for other forms of neglect, the fact that "a child has not been in the custody of the parent for a significant period of time prior to the termination hearing" would make "requiring the petitioner in such circumstances to show that the child is currently neglected by the parent . . . impossible." *In re N.D.A.*, 373 N.C. 71, 80 (2019). In this situation, "evidence of neglect by a parent prior to losing custody of a child— including an adjudication of such neglect— is admissible in subsequent proceedings to terminate parental rights[,]" but "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715 (1984). After weighing this evidence, the court may find the neglect ground if it concludes the evidence demonstrates "a likelihood of future neglect by the parent." *In re R.L.D.*, 375 N.C. 838, 841 (2020). Thus, even in the absence of current neglect, the trial court may adjudicate neglect as a ground for termination based upon its consideration of any evidence of past neglect and its determination that there is a likelihood of future neglect if the child is returned to the parent. *Id.* at 841 & n.3. "A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *In re M.A.*, 374 N.C. 865, 870 (2020) (quoting *In re M.J.S.M.*, 257 N.C. App. 633, 637 (2018)).

¶ 21 In the present case, the trial court found in its termination order that Kevin and Mary had been in WCHS custody since 8 May 2018 and that the circumstances that caused them to be in foster care were: respondent's chronic substance abuse; chronic homelessness of respondent and the children, due in part to respondent's substance abuse; untreated mental health needs of respondent and Kevin; and undetermined paternity of the children. The children were adjudicated neglected on 4 September 2018. Respondent was ordered to: have supervised visitation with the children a minimum of one hour per week; fully participate in a PEP assessment and comply with recommendations; complete a substance abuse assessment and comply with recommendations; demonstrate skills and lessons learned in parenting education in her interactions with the children and professionals involved in the case, and in respondent's life choices; refrain from the use of illegal and impairing substances and submit to random urine and hair sample drug screens; comply with services and recommendations by vocational rehabilitation; follow up with

recommended medical care for herself; refrain from criminal activity, and comply with requirements related to pending charges or convictions; obtain and maintain safe, stable housing suitable for herself and the children; obtain and maintain stable, legal income sufficient to support herself and her children; and maintain regular contact with the assigned WCHS social worker.

¶ 22 The trial court found that respondent had failed to take advantage of opportunities to engage in services since the filing of the juvenile petition. Although she complied with the interview portion of a substance abuse assessment with WCHS on 31 May 2018, she failed to comply with the drug screen required to complete the assessment. Based on the interview, respondent was diagnosed with marijuana use disorder (moderate) and cocaine use disorder (in remission) and was recommended to submit to random drug screens. In the Fall of 2018, respondent completed another assessment at North Carolina Recovery Support Services (NC Recovery), but she did not follow through with services at that program. On 4 April 2019, respondent participated in a reassessment of her substance abuse and was diagnosed with cannabis use disorder (moderate, in remission) and cocaine use disorder (mild, in remission). While it was recommended that she participate in substance abuse, mental health, and medical services at Fellowship Health, she failed to participate in any services at Fellowship Health.

¶ 23 Also in April 2019, respondent participated in a comprehensive clinical assessment at Southlight. It was recommended she participate in SAIOP, but she only attended one session and discontinued participation. In August 2019, respondent was again referred to NC Recovery for substance abuse and mental health services, but she did not comply with the recommendations of the program. She failed to demonstrate that she made progress in her mental health and substance abuse treatment. Since July 2018, respondent had been asked to complete twenty-four drug screens, but only completed seven. Four of the seven screens were positive for marijuana, and one was positive for cocaine. She continued to miss drug screens as recently as 31 December 2019.

¶ 24 The trial court further found that respondent missed three appointments with the PEP. After the third missed appointment, the PEP provider was no longer willing to provide an evaluation to respondent, and respondent was ordered to participate in a psychological evaluation in lieu of the PEP. She did not complete the psychological evaluation until December 2019 and missed her appointments for the interpretive session with the psychologist. Respondent eventually completed the one-on-one parenting education after two unsuccessful attempts.

However, she demonstrated that she did not understand the needs of her children, including the impact her words have on them. Despite being repeatedly instructed to refrain from telling the children they would be coming "home," she continued to tell them they were coming home for her own benefit. Her comments about the children coming to live with her were "closely correlated" with Kevin engaging in self-destructive behavior. Respondent was dismissive of Kevin's mental health needs. She participated in one therapy session with Kevin and never contacted the therapist again. Finally, the court found that respondent had obtained appropriate housing in May 2019.

¶ 25 Respondent challenges multiple findings of fact made by the trial court. First, she challenges portions of findings of fact 16, 22, and 31 as not being supported by clear and convincing evidence. These findings provide as follows:

> 16. [Respondent] has had multiple opportunities to engage in services since the filing of the juvenile petition, but she did not take advantage of those opportunities.
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> . . . .
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> 22. In August 2019, [respondent] was again referred to NC Recovery for substance abuse and mental health services, but she did not comply with the recommendations of that program, including skipping an appointment on December 20, 2019 for a psychiatric evaluation. The psychiatric evaluation could have determined her need for medication, which could have reduced her feeling the need to self-medicate with marijuana and other substances. She did not call to cancel or reschedule the treatment.
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> 31. [Respondent] has not demonstrated that she has made progress in her mental health and substance abuse treatment.

Specifically, respondent challenges the portions of the foregoing findings which provide she "did not take advantage" of opportunities to engage in services, "did not comply with the recommendations" of NC Recovery, and "has not demonstrated that she has made progress in her mental health and substance abuse treatment."

¶ 26 Unchallenged finding of fact 19, supported by testimony from a WCHS social worker, establishes that in the fall of 2018, respondent completed an assessment with NC Recovery but failed to follow through with any services. A WCHS social worker also testified that respondent was referred to Southlight in early 2019. Respondent completed an assessment, and it was recommended she complete SAIOP. Instead of participating in SAIOP, respondent "opted to elect for a lower level of care" choosing to engage in a weekly relapse prevention group and monthly individual therapy. She had one visit on 12 March 2019 and did not engage in any further services at Southlight. Unchallenged finding of fact 20, which is also supported by testimony from a WCHS social worker, demonstrates that on 4 April 2019, respondent participated in a substance abuse assessment, and it was recommended she participate in substance abuse, mental health, and medical services at Fellowship Health. However, she did not engage in any services at Fellowship Health. The social worker further testified that respondent re-engaged with NC Recovery in August 2019, and she was assigned a therapist to have outpatient therapy. While she had been "more engaged" in the service than she had been in the past and was more consistent with her outpatient therapy, respondent missed a psychiatric evaluation on 20 December 2019 and had not rescheduled it at the time of the termination hearing. Based on the foregoing unchallenged findings and evidence, there was clear, cogent, and convincing evidence to support the trial court's findings that respondent failed to take advantage of multiple opportunities to engage in services, she did not comply with the recommendations made by NC Recovery, and she did not make reasonable progress in her mental health and substance abuse treatment.

¶ 27 Respondent also challenges finding of fact 23, which provides as follows:

> 23. [Respondent] was prescribed Zoloft by the Wake Med high risk pregnancy clinic to address symptoms of depression. [Respondent-mother] is not compliant with that prescription, citing concern that the medication could harm the baby she delivered in November 2019, in spite of it being prescribed by professionals who were treating her for the pregnancy. [Respondent] did not have concern that continued use of marijuana would harm the baby.

She argues that the trial court erred by faulting her for not taking her Zoloft prescription when there was no record evidence to show she had active symptoms of depression at the time. However, clear and

convincing evidence supports this finding and establishes respondent's symptoms of depression at the time. Respondent testified that the high-risk pregnancy clinic placed her on Zoloft based on her history of depression. She admitted that during her pregnancy, she "dealt with depression at times." In addition, a WCHS social worker testified that in August 2019, respondent was prescribed Zoloft by a physician at WakeMed Hospital because she had "endorsed some depressive symptoms."

¶ 28 Respondent further challenges finding of fact 21, which states:

> 21. [Respondent] participated in a Comprehensive Clinical Assessment (CCA) at Southlight in April 2019, which recommended that she participate in Substance Abuse Intensive Out-Patient (SAIOP) treatment. [Respondent] was noted to smell of marijuana when she arrived for the assessment; following a break during the assessment, [respondent-mother] returned with an even stronger odor of marijuana than when she first arrived. She attended one session of SAIOP, and discontinued participation. [Respondent] claims that the program facilitator told her that the program is not available for those who only use marijuana. The Court takes judicial notice that Southlight provides services to participants sentenced to drug treatment court, which includes users of only marijuana. Additionally, it is disingenuous for the mother to claim that she uses only marijuana. While marijuana might be her substance of choice, she tested positive for marijuana and cocaine when she took the drug screen to complete the CCA at Southlight, as well as other of the few other screens she completed.

Respondent argues that the trial court erred by taking judicial notice that Southlight provides services to drug treatment court participants who use only marijuana.

¶ 29 "[G]enerally a judge or court may take judicial notice of a fact which is either so notoriously true as not to be the subject of reasonable dispute or is capable of demonstration by readily accessible sources of indisputable accuracy." *West v. G. D. Reddick, Inc.*, 302 N.C. 201, 203 (1981). This Court has held that "[a] matter is the proper subject of judicial notice only if it is 'known,' well established and authoritatively settled." *Hughes v. Vestal*, 264 N.C. 500, 506 (1965). Under these principles and based on the record before us, we are unable to say that the

matter of whether Southlight provides services to participants of drug treatment court who use only marijuana is a proper subject of judicial notice. Nevertheless, we conclude the trial court's unsupported finding is not prejudicial in light of the remaining, unchallenged portions of finding of fact 21 which establish that respondent tested positive for marijuana *and* cocaine when she took the drug screen to complete the CCA at Southlight. *See Tripp v. Tripp*, 17 N.C. App. 64, 67 (1972) (holding that although the trial court took improper judicial notice of an attorney's special competence and skill, that decision did "not detract from the other facts found"). Thus, her explanation that she discontinued participation in SAIOP treatment because the program was not available for users of only marijuana is unavailing because she demonstrably used cocaine as well.

¶ 30 Respondent also challenges findings of fact 24 and 26 which provide as follows:

> 24. [Respondent] missed three appointments with the Parent Evaluation Program (PEP), for an evaluation that would have been used to determine the services best suited to assist her in reunification. After the third missed appointment, the PEP provider was no longer willing to provide an evaluation to [respondent]. It was then ordered that [respondent] participate in a psychological evaluation in lieu of the PEP. [Respondent] did not complete the psychological evaluation until December 2019; she missed her appointment for the interpretive session with the psychologist, which would have helped her understand what was recommended and why.
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> 26. [Respondent] did eventually complete 1:1 parenting education after two attempts. During the first opportunity to participate in these sessions, [respondent] attended seven of 25 possible sessions. [Respondent] was discharged from the program after multiple cancellations and no-shows for appointments. Another referral was made in September 2019 for [respondent] to resume 1:1 parenting education sessions; [respondent] attended four sessions, and cancelled six sessions, including one for the week of the first date of this hearing. Had the psychological

> evaluation been completed by [respondent] in a timely manner, then the sessions could have been tailored to more specifically meet [respondent's] needs.

Respondent contends that the trial court "blames" her for not completing her psychological evaluation in a timely manner but fails to acknowledge delays on the part of WCHS, respondent's attendance at an evaluation with Dr. Aiello three weeks after giving birth, respondent's engagement in weekly parenting coaching while caring for a newborn, and the reason she missed her interpretive session with Dr. Aiello—because she could not get to the office on time by bus.

¶ 31 We note that the "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." *Witherow v. Witherow*, 99 N.C. App. 61, 63 (1990), *aff'd per curiam*, 328 N.C. 324 (1991). Here, the trial court found the facts that were material to resolution of this case. Furthermore, there was clear, cogent, and convincing evidence to support findings of fact 24 and 26. A WCHS social worker testified that after respondent missed multiple appointments for the PEP assessment, the PEP provider decided that it would no longer provide respondent an assessment. In lieu of a PEP assessment, WCHS recommended a psychological assessment, and respondent completed the psychological assessment with Dr. Aiello on 4 December 2019. However, respondent missed the interpretive session with Dr. Aiello that was scheduled for 9 January 2020. A WCHS senior practitioner and parenting coach also testified that respondent was referred in November 2018 for one-on-one parent coaching sessions, but respondent only completed seven sessions. Respondent was terminated from the program due to ongoing cancellations and no-shows. A second referral occurred in September 2019, and respondent attended four sessions and canceled or rescheduled six sessions.

¶ 32 Respondent next contends that the trial court's findings of fact 27, 29, 30, and 34 focus on Kevin's mental health problems, but that the trial court's "narrow focus" on her as the source of Kevin's problems is not supported by the record. The challenged findings provide as follows:

> 27. [Respondent] has demonstrated that she does not understand the needs of her children, including the impact her words can have on them. [Respondent] was repeatedly instructed to not say anything to the children about them coming "home". She states that she would continue to tell them that they were

coming home in order to give them hope. In reality, she made these statements for her own benefit. Her comments about the children coming to live with her were closely related to [Kevin] engaging in self-destructive behavior that, on at least two occasions, resulted in him requiring hospitalization for mental health treatment to prevent him from harming himself. Most recently, in December 2019, she gave [Kevin] [the] impression that he might return to her care at the next scheduled review hearing in March 2020. Soon after that, he became so out of control that he tried to wrap a seatbelt around his neck to suffocate himself. This resulted in a nine day hospitalization to get him stabilized. He was previously hospitalized at Holly Hill due to his grabbing knives and wanting to hurt himself.

. . . .

29. [Kevin] is relatively stable when he is unaware of court hearings or is not told anything that would indicate or imply that he is returning to his mother's care.

30. [Respondent] is dismissive of [Kevin's] mental health needs, and believes that his behavior is due only to his wanting to return home. To the contrary, his behavior, and the timing thereof, indicates that he is frightened to return to her care.

. . . .

34. [Respondent] participated in one therapy session with [Kevin]. [Kevin] began the session feeling nervous, and became increasingly "closed off" as it progressed. He indicated to the therapist that he was afraid he would get in trouble if he said what he wanted to say. At the conclusion of that session, the next appointment was scheduled with [respondent's] input, and she indicated that she would attend. [Respondent] did not attend that appointment, which hurt and disappointed [Kevin]. She never contacted the therapist again. The relationship required much more than one session to address [Kevin's] anxiety about being reunified with his mother.

¶ 33 At the termination hearing, a WCHS social worker testified that there were concerns respondent was giving the children false hope about being reunited with her. The social worker discussed these concerns with respondent, explaining that respondent's comments to the children about them coming "home" negatively impacted Kevin's emotional well-being. Respondent acknowledged that while she could not "guarantee" the children would be coming home, she would continue to tell them they were coming "home" in order to "instill hope" in them. The WCHS social worker further testified that respondent's comments created "distress" for Kevin which manifested in self-harm and destructive behaviors, such as breaking doors, kicking furniture, and pulling down rods in the closet. Most recently, respondent told Kevin that he would be coming "home" in March 2020, and thereafter, Kevin attempted to wrap a seatbelt around his neck and had to be hospitalized. Based on the testimony of the WCHS social worker, the trial court reasonably inferred that respondent's comments were "closely correlated" to Kevin's self-destructive behavior. *See In re D.L.W.*, 368 N.C. 835, 843 (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). These challenged findings of fact are supported by clear, cogent, and convincing evidence in the record.

¶ 34 Respondent also argues that the trial court's findings regarding Kevin's mental health issues are insufficient because the trial court failed to make findings about a gap in Kevin's therapy between May and September 2019 and failed to address whether her intellectual disability impacted her understanding of Kevin's needs. However, as stated above, the trial court is not required to make a finding of every fact that arises from the evidence. *See Witherow*, 99 N.C. App. at 63.

¶ 35 Respondent further contends that there was no evidence to support the finding that respondent offered the children the hope of coming home for her own benefit. However, a WCHS social worker testified that respondent refused to stop telling her children they were coming home, despite warnings of its negative effects on Kevin, because "she believes that she can get her kids back one day. So she's gonna just keep saying it." Thus, it was reasonable for the trial court to determine that respondent continued to make these remarks for her own benefit, where she was fully advised that making such statements was not beneficial for the children and, in fact, had been very detrimental to them. *See In re D.L.W.*, 368 N.C. at 843 (trial judge has the responsibility to determine the credibility and weight of testimony as well as "the reasonable inferences to be drawn therefrom.").

¶ 36 Respondent also argues that in finding of fact 34, the trial court detailed a March 2019 therapy session respondent attended with Kevin and erroneously found that the next appointment was scheduled with her input, and she indicated she would attend. Kevin's therapist testified that in March 2019, respondent joined Kevin in therapy, and she left that session "with the next appointment time." Respondent indicated to the therapist that she "wasn't sure if she'd be able to make it, but she was gonna do her best to try." Thus, we disregard the portion of finding of fact 34 providing that "the next appointment was scheduled with [respondent's] input, and she indicated that she would attend." *See In re N.G.*, 374 N.C. 891, 901 (2020) (disregarding findings of fact not supported by clear, cogent, and convincing evidence).

¶ 37 **[3]** Next, respondent argues that the trial court's challenged findings of fact and uncontested findings are insufficient to support its conclusion that her parental rights were subject to termination based on neglect. Respondent does not challenge the children's prior adjudication of neglect. Rather, she contends that the evidence does not support the trial court's determination that there was a likelihood of future neglect if the children were returned to her care.

¶ 38 Here, the trial court concluded that:

> 54. There are facts sufficient to warrant a determination that grounds exist for the termination of parental rights, said grounds as follows:
>
> . . . .
>
> c. The parents neglected the children within the meaning of N.C.G.S. § 7B-101(15), and it is probable that there would be a repetition of neglect if the children were returned to the care of the parents.

¶ 39 In support of this conclusion, the trial court made numerous findings concerning the lack of progress respondent made toward satisfying the requirements of her case plan. The findings are either unchallenged, and therefore binding on appeal, or supported by clear, cogent, and convincing evidence as previously discussed. In unchallenged finding of fact 13, the trial court identified the steps that respondent was required to complete in order to achieve reunification. Among these requirements were that respondent participate in a PEP assessment and comply with all recommendations, fully complete a substance abuse assessment and comply with all recommendations, demonstrate skills and lessons

learned in parenting education in her interactions with the children, refrain from the use of illegal and impairing substances, submit to random drug screens, follow up with recommended medical care for herself, and obtain and maintain safe and stable housing suitable for herself and her children.

¶ 40 The trial court's findings establish that although respondent was able to obtain safe, appropriate housing in May 2019, her progress in other aspects of her case plan was inadequate. Although she had multiple opportunities to engage in services, respondent did not take advantage of such opportunities and failed to demonstrate progress in addressing her mental health and substance abuse issues. In May 2018, respondent completed the interview portion of a substance abuse assessment, but she did not comply with the drug screen required to complete that assessment. She then tested positive for cocaine and marijuana in July 2018. In the fall of 2018, she completed another substance abuse assessment at NC Recovery, but did not complete any services. In April 2019, respondent participated in a substance abuse reassessment and was recommended for substance abuse, mental health, and medical services at Fellowship Health, but she failed to comply with those recommendations. Also in April 2019, she participated in a CCA at Southlight and was recommended to participated in SAIOP treatment. However, she only attended one session of SAIOP. She was again referred to NC Recovery for substance abuse and mental health services but did not comply with the recommendations of that program. In addition, respondent was prescribed Zoloft to address symptoms of depression, but was not compliant with that prescription.

¶ 41 The trial court's findings show that the PEP provider was no longer willing to provide an evaluation to respondent after she missed three appointments. In lieu of a PEP assessment, respondent completed a psychological evaluation, but did not complete the psychological evaluation until December 2019, shortly before the termination hearing. Even after completing the evaluation, she missed the interpretive session with the psychologist, which would have helped her understand the recommendations made. After two unsuccessful attempts, respondent completed one-on-one parenting education. Yet, she demonstrated that she did not understand the needs of her children. Despite being instructed to discontinue telling them they were coming "home" because Kevin's self-destructive behavior was closely correlated with her comments, she continued to make these comments. In addition, Kevin was relatively stable when he was unaware of court hearings and not told anything that would indicate he would be returning to respondent's care. However, re-

spondent was dismissive of Kevin's mental health needs, believing that his behavior was due to his desire to return home.

¶ 42 The trial court's findings also show that since July 2018, respondent had been asked to complete twenty-four drug screens but only completed seven. Four of the screens were positive for marijuana, and one was positive for cocaine. She continued to miss drug screens, one as recently as 31 December 2019, just weeks before the termination hearing.

¶ 43 Based on the foregoing, we conclude the trial court's findings of fact support its conclusion that respondent neglected the children, and it was probable that there would be a repetition of neglect if they were returned to her care. Because 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. 190, 194 (2019), we need not address whether the trial court erred in terminating respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).

C. Best Interests

¶ 44 **[4]** Respondent challenges several dispositional findings of fact and contends that the trial court abused its discretion in determining that it was in Kevin and Mary's best interests that respondent's parental rights be terminated. We conclude that the trial court did not abuse its discretion in determining that terminating respondent's parental rights was in the best interests of the children.

¶ 45 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 [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). 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 (2020). Unchallenged dispositional findings are binding on appeal. *In re Z.L.W.*, 372 N.C. at 437. A trial court's best interests determination "is reviewed solely for abuse of discretion." *In re A.U.D.*, 373 N.C. at 6 (citing *In re D.L.W.*, 368 N.C. at 842).

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

1. The child, [Mary], is a two year old female[.]

2. The child, [Kevin], is a nine year old male[.]

. . . .

56. The primary plan for the children is adoption. Termination of parental rights aids in accomplishing that plan.

57. [Mary] does not have any special needs at this time.

58. [Kevin] has special needs related to treatment of his mental health issues. Many of these issues can be traced to his experiences prior to the filing of the juvenile petition, and the more significant mental health events he has experienced since coming into foster care have occurred due to statements of his mother. He currently receives intensive in-home therapy, and is prescribed Lexapro to treat his symptoms of depression and anxiety.

59. [Kevin's] mental health needs do not pose a barrier to his being successfully adopted.

60. Both the children are currently placed in prospective adoptive homes. Although they are placed separately, the prospective adoptive families are closely connected, and are part of the same church and social communities. The children currently have at least weekly contact with each other, and based on the regular activities of the prospective adoptive

families, it is anticipated that this regular contact will continue.

61. [Mary] was placed in her current foster home in May 2019. She has formed a strong, positive bond with the prospective adoptive parents, and has been integrated into their family. [Mary] is noted to be more vocal, playful, and confident since moving to this home.

62. When [Mary] first came into foster care, she had a strong attachment to her mother. While the attachment continues, it has eroded due to the passage of time. [Mary] does recognize her mother, and goes to her willingly at visits. At this time, she does not know her mother was her caregiver or provider.

. . . .

64. [Kevin] has been placed in his current foster home since August 2018. He refers to the foster parents as "mom" and "dad," and is noted to be playful and comfortable with them. [Kevin] and the foster parents regularly exchange hugs and other shows of affection. [Kevin] feels safe and loved in this home.

65. [Kevin's] foster parents are undeterred by his occasional mental health crises, and have demonstrated extraordinary commitment to him during these periods. [Kevin] required hospitalization to address his mental health, and received his treatment at Carolina Dunes, located approximately two hours away from his foster home. [Kevin] was at Carolina Dunes for nine days. At least one of his foster parents drove to and from Carolina Dunes every night during the hospitalization to visit with [Kevin].

66. Both of the children would be adoptable by other families, should an unforeseen issue impeded [sic] the current placements. [Kevin] is recognized to be loveable, outgoing, and gregarious child. [Mary] is an easy-going, happy little girl.

67. [Kevin] continues to have a strong bond with his mother, and is very affectionate with her. However, the bond is not healthy for [Kevin]. He is conflicted

> about his situation because he does not want to hurt his mother. [Kevin] worries for his mother's safety and well-being; he has expressed concern that she will again be homeless.
>
> . . . .
>
> 69. The prospective adoptive parents of both children have indicated their willingness to maintain a relationship between the children and [respondent].
>
> 70. The conduct of the [respondent-]parents has been such as to demonstrate that they will not promote the healthy and orderly, physical and emotional well being of the children.
>
> 71. The [respondent-]parents have acted inconsistently with their Constitutionally-protected parental status.
>
> 72. The minor children are in need of a permanent plan of care at the earliest possible age which can be obtained only by the severing of the relationship between the children and their parents by termination of the parental rights of the parents.
>
> 73. It is in the best interests of the children that the parental rights of the [respondent-]parents be terminated.

¶ 47 First, respondent contends that in finding of fact 58, the trial court erroneously attributes Kevin's mental illness to respondent's statements and ignores the evidence of his complex mental health issues. We first note that the trial court did not attribute the entirety of Kevin's mental health issues to the statements of respondent. Instead, the trial court found that "the more significant mental health events" Kevin had experienced since coming into foster care occurred as a result of respondent's statements. This finding is supported by the WCHS social worker's testimony. The social worker testified that "a lot of increased escalation" from Kevin was observed after respondent informed Kevin that there was a possibility he would be coming "home" prior to a 25 March 2019 hearing. There was a "behavioral pattern when those false promises were communicated to him [by respondent], that it caused [Kevin] to act out." The social worker testified that based on the "misinformation" provided by respondent, Kevin had a "very reactive" type of relationship with respondent and would have "mental health flare-ups" when he

is "let down." Thus, the challenged portion of finding of fact 58 is supported by competent evidence.

¶ 48 Respondent also challenges the portion of finding of fact 62 stating that Mary's attachment to respondent had "eroded" due to the passage of time. The WCHS social worker testified that at the beginning of the case, Mary had a strong attachment to respondent and would "bawl her eyes out" for hours when she had to separate from respondent after visitations ended. He testified that "now, [Mary] knows who her mother is, and when she comes to visits, you know, she goes straight to her. . . . [T]here is a very evident bond there between the two." Although this testimony indicates that Mary continued to have a bond with respondent, it was reasonable for the trial court to infer from the testimony in this case that their bond had lessened over time, and this finding is not in error.

¶ 49 Next, respondent contends that the portion of finding of fact 67 stating that Kevin's bond with respondent "is not healthy" for Kevin is contradicted by the court's finding of fact 69 which gives a positive characterization of the adoptive parents' "willingness to maintain a relationship between the children and [respondent]." She argues that the court's findings "do not explain why, if the bond with [respondent] is not healthy for Kevin, it is in his best interest to continue a relationship with her after his adoption." However, respondent reads too much into finding of fact 69. The trial court did not find that continuing a relationship with respondent was necessarily in Kevin's best interests. It merely observed that Kevin's prospective adoptive parents noted their willingness to maintain a relationship between Kevin and respondent.

¶ 50 Respondent further contends that although the trial court determined, in finding of fact 72 and conclusion of law 3, that the children needed a permanent plan and that it could only be accomplished by terminating her parental rights, it failed to make findings on dispositional alternatives the court considered. She also challenges the trial court's finding of fact 73 and conclusion of law 4, arguing that the court's findings do not show how termination of her parental rights was in her children's best interests.

¶ 51 Initially, we note that N.C.G.S. § 7B-1110(a) does not require the trial court to make written findings regarding any dispositional alternatives it considered. Here, the trial court's findings 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. The trial court found that termination of respondent's parental rights would aid in the accomplishment of the primary plan of

adoption, Mary had formed a "strong, positive" bond with her prospective adoptive parents, Kevin was playful and comfortable in his foster home and felt safe and loved, and both Kevin and Mary would be adoptable by other families should an unforeseen issue impede their current placements. In addition, the trial court found that Kevin did not have a healthy bond with respondent and that the passage of time had eroded Mary's attachment to respondent. The trial court made sufficient dispositional findings and properly analyzed them. Therefore, we hold that the trial court did not abuse its discretion in concluding that termination was in Kevin and Mary's best interests. We affirm the trial court's order terminating respondent's parental rights in Kevin and Mary.

AFFIRMED.

IN THE MATTER OF T.A.M., K.R.M.

No. 276A20

Filed 18 June 2021

1. Termination of Parental Rights—parental right to counsel—motion to withdraw—lack of contact—granted in parent's absence

In a termination of parental rights proceeding, the trial court did not abuse its discretion by allowing respondent-father's appointed counsel to withdraw from representation at a hearing in which respondent failed to appear. Respondent had been advised multiple times by the court of his responsibility to maintain contact with his attorney, the department of social services made diligent efforts to locate respondent, respondent appeared to actively avoid being found or receiving communications, he failed to appear at several hearings, and counsel related to the court that she spoke to respondent and he did not object to her motion.

2. Termination of Parental Rights—best interests of the child—dispositional findings—sufficiency of evidence—weighing of factors

The trial court did not abuse its discretion by determining that termination of respondent-mother's parental rights, and not other dispositional alternatives, was in the best interests of respondent's children where the court's findings of fact—including the poor bond

between respondent and her children and the negative impact of respondent's visits on the children—were supported by competent evidence and showed the court properly addressed and weighed the various dispositional factors contained in N.C.G.S. § 7B-1110(a).

Justice ERVIN concurring in part and dissenting in part.

Justices HUDSON and EARLS join in this opinion concurring in part and dissenting in part.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 9 March 2020 by Judge Susan M. Dotson-Smith in District Court, Buncombe County. This matter was calendared for argument in the Supreme Court on 19 March 2021 but was determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Hanna Frost Honeycutt for petitioner-appellee Buncombe County Department of Social Services; and William A. Blancato for respondent-appellee Guardian ad Litem.

Edward Eldred for respondent-appellant father.

Peter Wood for respondent-appellant mother.

BARRINGER, Justice.

¶ 1 Respondent-mother Lauren S. and respondent-father Wesley M. appeal from orders entered by the trial court terminating their parental rights in their minor children T.A.M. and K.R.M.[1] Respondent-father challenges the trial court's decision to grant his appointed counsel's motion to withdraw whereas respondent-mother challenges the trial court's determination that it was in Tam and Kam's best interests to terminate her parental rights. Since we conclude that the trial court did not abuse its discretion in any issue raised by the parents' appeals, we affirm the trial court's termination-of-parental-rights orders.

1. T.A.M. and K.R.M. will be referred to throughout the remainder of this opinion as "Tam" and "Kam," which are pseudonyms that are used to protect the identities of the juveniles and for ease of reading.

I. Factual Background

¶ 2 On 15 August 2016, the Buncombe County Department of Social Services (DSS) received a pair of child protective services (CPS) reports alleging that respondent-mother had just given birth to Tam, that she had been using drugs during her pregnancy, and that she had been homeless and living in her automobile immediately prior to giving birth. In addition, the reports alleged that both parents had a history of substance abuse and domestic violence and had recently been arrested on drug-related charges. On 17 August 2016, DSS received another CPS report that restated the allegations contained in the prior report and asserted that respondent-mother suffered from untreated mental health problems, that respondent-father was consuming illegal substances, and that respondent-mother had previously lost custody of another child as the result of substance abuse problems.

¶ 3 A social worker assigned to investigate these reports learned from the staff of the hospital at which respondent-mother gave birth to Tam that respondent-mother had tested positive for THC and unprescribed Oxycodone, and that Tam's cord toxicology screen had been positive for the presence of marijuana and opiates. In addition, the hospital staff told the social worker that respondent-mother tested positive for methamphetamine in June 2016. Respondent-mother admitted that she had been smoking marijuana during her pregnancy, that she suffered from mental health problems, and that she was diagnosed with borderline personality disorder. However, respondent-mother denied that she had consumed other unlawful substances or had been involved in incidents of domestic violence with respondent-father.

¶ 4 Respondent-father, on the other hand, denied all the allegations that had been made in the CPS reports. Finally, the social worker interviewed another social worker who had worked with the parents at an earlier time. The previous social worker confirmed that she had seen bruises that respondent-father inflicted upon respondent-mother on more than one occasion; that neither parent satisfied the requirements set out in their case plans, which required them to complete substance abuse treatment, mental health treatment, and domestic violence classes; and that respondent-mother acknowledged a history of domestic violence that respondent-father perpetrated against her.

¶ 5 After Tam was placed in a safety care placement, the parents agreed to comply with a safety plan, which required them to participate in supervised visitation; obtain substance abuse treatment; have no contact with each other in Tam's presence; and consent to follow-up medical

care, the assistance of a home health nurse, and the provision of pediatric care for Tam. In addition, respondent-father agreed to complete an anger management program.

¶ 6 According to a substance abuse assessment that respondent-mother obtained, respondent-mother had a severe substance abuse problem, with the assessing agency recommending that respondent-mother participate in therapy due to her "lack of desire or capacity to get clean." The assessing agency also recommended that respondent-mother undergo intensive outpatient therapy and participate in parenting education and domestic violence classes. Furthermore, the assessing agency concluded that respondent-mother had significant mental health problems that hindered her ability to care for a child and diagnosed respondent-mother as being bipolar and suffering from borderline personality disorder, severe opiate use disorder, and moderate cannabis use disorder.

¶ 7 After the completion of this assessment, respondent-mother agreed to enter into a family services agreement pursuant to which she was required to comply with the recommendations made by the assessing agency, to refrain from consuming any medications not prescribed for her, to attend weekly Narcotics Anonymous meetings, and to submit to random drug screens. Similarly, respondent-father agreed to enter into a family services agreement, which required him to attend substance abuse classes, refrain from consuming unlawful substances, submit to random drug screens, complete a batterer's intervention program, and attend anger management classes. After entering into these family services agreements, respondent-mother was arrested on drug-related charges while respondent-father admitted that he had consumed marijuana and failed to start participating in the batterer's intervention program. As a result, DSS filed a petition alleging that Tam was a neglected juvenile on 22 September 2016.[2]

¶ 8 After an adjudicatory hearing held on 18 November 2016, the trial court entered an order on 5 January 2017 finding that Tam was a neglected juvenile based upon the parents' stipulation as to the accuracy of the allegations contained in the juvenile petition. In view of the parents' further stipulation to the continuance of this case for disposition until a later time, the trial court entered an interim disposition order. This order provided that, while the parents retained custody of Tam, Tam would continue to reside in her safety placement and both parents would be awarded supervised visitation with her.

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2. As a result of the fact that Tam was living in a safety placement, DSS did not take her into nonsecure custody.

¶ 9 Following an initial dispositional hearing held on 31 January 2017, the trial court entered an order on 20 February 2017 in which it found as a fact that (1) the parents failed to submit to required drug screens on 19 December 2016; (2) the parents continued to deny that their relationship was characterized by domestic violence and minimized the extent to which domestic violence had occurred between them; and (3) the parents continued to reside with each other and lacked sufficiently stable housing to permit them to assume responsibility for providing care for Tam. Moreover, the trial court found that respondent-mother (1) had been arrested on the basis of outstanding warrants on 22 November 2016, and (2) had yet to complete a psychiatric evaluation or participate in medication management, although she had attended substance abuse treatment group sessions.

¶ 10 The trial court further found that respondent-father was completing some aspects of his case plan, such as complying with the terms of his probation, but the trial court also found that he had not been attending his substance abuse group, he was not participating in individual therapy, and he had not yet obtained a medical evaluation. As a result, and with the parents' consent, the trial court placed Tam in DSS custody, provided for supervised visitation between the parents and Tam, and ordered the parents to comply with the provisions of their case plans. After a permanency planning review hearing held on 6 December 2017, the trial court entered an order on 8 January 2018 establishing reunification as the primary permanent plan for Tam, with a secondary permanent plan of custody.

¶ 11 On 12 January 2018, DSS received a CPS report indicating that respondent-mother had recently given birth to Kam. According to the report, respondent-mother admitted to having used marijuana while she was pregnant with Kam and tested positive for the presence of marijuana in September and December 2017. In addition, the report indicated that respondent-father tested positive for the presence of methamphetamine, cocaine, and marijuana in June 2017. A social worker assigned to investigate the report confirmed the validity of these allegations, with respondent-father having admitted that he had continued to use marijuana and had smoked marijuana on the day prior to his conversation with the investigating social worker.

¶ 12 On 16 January 2018, DSS filed a petition alleging that Kam was a neglected juvenile in which DSS recited the allegations set out in the earlier petition relating to Tam, the history of DSS's efforts to work with the parents, and the information contained in the most recent CPS report. In addition, DSS alleged that the respondent-parents had threatened to sue

DSS and that, after learning that Kam would not be discharged to their care, their "behaviors continued to escalate," with respondent-mother having "grabbed" Kam, necessitating the assistance of hospital security personnel. Based upon the same concerns, DSS obtained the entry of an order allowing DSS to take Kam into nonsecure custody.

¶ 13 On 30 January 2018, the trial court held a permanency planning and review hearing regarding Tam. In an order entered on 22 February 2018, the trial court found that the conditions that had led to Tam's removal from the parents' custody continued to exist and that a return to their home would be contrary to Tam's health and safety. In light of that determination, the trial court changed Tam's secondary permanent plan to adoption while leaving reunification as Tam's primary permanent plan.

¶ 14 An adjudicatory hearing relating to the juvenile petition concerning Kam was held on 16 March 2018. After the parents stipulated to the validity of the allegations in the DSS petitions, the trial court entered an order on 2 April 2018 determining that Kam was a neglected juvenile. Since the parents consented to a continuance of the required dispositional hearing, the trial court entered an interim disposition order providing that Kam would remain in the custody of DSS; that the parents would continue to have supervised visitation; and that the parents should continue to submit to random drug screens, attend counseling, and complete the other services that had been recommended for them.

¶ 15 On 6 June 2018, permanency planning and review hearings were held with respect to both juveniles. In orders entered on 23 July 2018, the trial court noted that the parents had maintained sobriety and sanctioned unsupervised visitation between the parents and Tam and Kam. In addition, the trial court established a primary permanent plan for Kam of reunification with a secondary permanent plan of adoption. In orders entered on 24 September 2018, however, the trial court suspended the parents' unsupervised visitation with the children and made their visitation supervised after the parents failed to satisfy the requirements of their case plans, such as inconsistencies in their attendance at various therapeutic activities and their eviction from their home.

¶ 16 On 24 January 2019, the trial court entered permanency planning and review orders for both juveniles after a hearing held on 9 January 2019. In that order, the trial court found that the parents had been "doing well with their case plans and visitation with [Tam and Kam] until October 2018 when [DSS] learned of continued substance abuse issues and domestic violence between the respondent parents." Furthermore, the trial court found that respondent-mother was not currently engaged

in treatment or therapy of any kind and that respondent-father was not consistently engaged to satisfy the requirements of his case plan. Finally, the trial court noted that DSS had reported that respondent-mother had threatened DSS employees and that DSS was no longer comfortable supervising parental visits with the children except during normal business hours, when law enforcement assistance would be available. As a result, the trial court entered orders changing the permanent plans for both Tam and Kam to a primary plan of adoption, with a secondary permanent plan of guardianship and a tertiary permanent plan of reunification.

¶ 17 On 26 February 2019, DSS filed petitions in which it sought to terminate the parental rights of both parents pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (3). As a result of the fact that respondent-father's whereabouts were unknown at the time that the termination petitions were filed, DSS served him by publication. On 15 May 2019, respondent-father's attorney moved to withdraw from his representation of respondent-father in light of respondent-father's failure to maintain contact with her. The trial court granted the attorney's motion to withdraw at a continuance hearing held on 22 May 2019 and by an order entered on 7 June 2019. On 4 October 2019, respondent-father appeared before the trial court and the same counsel was re-appointed to represent him. On 22 January 2020, respondent-father's counsel filed another withdrawal motion predicated upon respondent-father's failure to maintain contact with his attorney coupled with the attorney's lack of knowledge concerning respondent-father's wishes and her resulting inability to properly represent respondent-father at the termination hearing.

¶ 18 The DSS termination petitions were heard on 30 and 31 January 2020. On 9 March 2020, the trial court entered orders determining that respondent-mother's parental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(1) and (2). Respondent-father's parental rights were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (3). In addition, the trial court concluded that the termination of the parents' parental rights would be in the children's best interests. As a result, the trial court terminated both parents' parental rights in the children. The parents appealed to this Court from the trial court's termination orders.

II. Substantive Legal Issues

A. Respondent-Father's Appeal

¶ 19 **[1]** In his sole challenge to the trial court's termination orders, respondent-father argues that the trial court erred by allowing his coun-

sel to withdraw from representing him at the termination hearing. After a careful review of the record, we conclude that the trial court did not abuse its discretion in granting respondent-father's appointed counsel's motion to withdraw.

¶ 20 A trial court's decision to grant or deny an attorney's motion to withdraw is reviewed on appeal for an abuse of discretion. *See Benton v. Mintz*, 97 N.C. App. 583, 587 (1990). "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 T.L.H.*, 368 N.C. 101, 107 (2015) (alteration in original) (quoting *State v. Hennis*, 323 N.C. 279, 285 (1988)); *see also White v. White*, 312 N.C. 770, 777 (1985) ("A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision."). Thus, when appellate courts review for abuse of discretion, the inquiry is whether the ruling is unreachable by a reasoned decision, *see White*, 312 N.C. at 777, which necessarily requires appellate courts to consider broadly the circumstances which may render the ruling justifiable, *see In re K.M.W.*, 376 N.C. 195, 217 (2020) (Morgan, J., dissenting) (recognizing that a trial court's assessment of a motion to withdraw, even when involving a statutory right to counsel in a termination of parental rights proceeding, should not be reviewed "in a vacuum," but should include the "circumstances *surrounding* the termination of parental rights hearing.").

¶ 21 Here, the trial court allowed respondent-father numerous opportunities to participate in the termination-of-parental-rights proceedings, protected respondent-father's statutory right to appointed counsel, and acted well within its discretion to grant respondent-father's attorney's motion to withdraw.

¶ 22 The trial court first advised respondent-father of his responsibility to attend all trial court hearings and maintain communication with his court appointed attorney at the first appearance hearing on DSS's juvenile petition of neglect for Tam held on 11 October 2016.[3] Furthermore, the trial court advised respondent-father that if he failed to attend trial

3. Again, in an order entered on 23 February 2018, the trial court documented that on 16 January 2018 at the first appearance hearing on DSS's nonsecure custody order for Kam, it had advised respondent-father a second time that it was "his responsibility to maintain contact with his appointed attorney and . . . to attend all [trial c]ourt hearings." The trial court also advised respondent-father that if he did not maintain communication with his attorney or attend all trial court hearings, his attorney may "be permitted to withdraw . . . and the case may proceed without him being represented by an attorney."

court hearings or failed to maintain communication with his attorney, his attorney "may ask and be permitted to withdraw as his attorney of record, and the case may proceed without him being represented by an attorney."

¶ 23 Following DSS's filing of the termination-of-parental-rights petition on 26 February 2019, DSS made diligent efforts to locate respondent-father. In DSS's affidavit of due diligence filed on 27 February 2019, DSS stated that it had made unsuccessful efforts to locate respondent-father at four previous addresses, that DSS had spoken with respondent-father and he stated that he could not provide his current whereabouts, that respondent-father did not answer any of DSS's phone calls, that respondent-father was "actively attempting to conceal his residence from [DSS]," that respondent-father indicated that he did not want to receive mail, and that respondent-father's whereabouts could not be ascertained. Respondent-father then failed to appear at the first appearance hearing on the termination-of-parental-rights petition held on 19 March 2019. The trial court found as a fact that respondent-father's whereabouts were still unknown despite diligent efforts by DSS to locate him and ordered DSS to perfect service via publication pursuant to N.C.G.S. § 1-75.10(2), which DSS did on 8 May 2019. Sensitive to respondent-father's statutory right to counsel, the trial court also ordered that respondent-father's appointed-attorney from DSS's juvenile neglect proceeding remain as the provisional court appointed attorney. *See* N.C.G.S. § 7B-602(a) (2019).

¶ 24 Shortly thereafter, respondent-father's appointed attorney filed a motion to withdraw as counsel on 15 May 2019. In her motion to withdraw, respondent-father's attorney stated that she could no longer represent him due to his failure to maintain contact and indicated that the trial court only appointed her as provisional counsel for the termination-of-parental-rights action because respondent-father had not appeared at the first appearance hearing. *See* N.C.G.S. § 7B-1101.1(a)(1). At the continuance hearing for the termination-of-parental-rights petition held on 22 May 2019, the trial court granted respondent-father's attorney's motion to withdraw. Respondent-father was not present. After respondent-father's counsel was permitted to withdraw, respondent-father missed the subsequent continuance hearing for the termination-of-parental-rights petition held on 20 August 2019.

¶ 25 The trial court again appointed counsel for respondent-father when he appeared at the 4 October 2019 continuance hearing for the termination-of-parental-rights petition, the same attorney who had previously represented respondent-father, but who had been granted leave to

withdraw as counsel only five months earlier due to respondent-father's failure to maintain contact. The trial court advised respondent-father for a third time that it was "his responsibility to maintain contact with his appointed attorney and . . . to attend all [trial c]ourt hearings" and that if he failed to communicate or attend all trial court hearings, his attorney "may ask and be permitted to withdraw as his attorney of record, and the case may proceed without him being represented by an attorney."

¶ 26 On 22 January 2020, respondent-father's appointed counsel again filed a motion to withdraw as counsel stating that due to respondent-father's failure to communicate, she was unable to know respondent-father's wishes and represent him. Respondent-father's appointed counsel made a good faith effort to serve the motion on respondent-father, notwithstanding his actively attempting to conceal his residence and his statement to DSS that he did not want to receive mail. A notice of hearing was also filed with the motion, attempting to give respondent-father notice that the motion to withdraw would be heard 30 January 2020 at 9:00 a.m.

¶ 27 Respondent-father then failed to appear at the termination-of-parental-rights hearing held on 30 and 31 January 2020. As a pre-hearing matter on 30 January 2020, the trial court addressed the motion to withdraw filed by respondent-father's attorney, engaging in a colloquy with respondent-father's attorney. Counsel for respondent-father informed the trial court that she had spoken to respondent-father that day and informed respondent-father that if he did not appear at the termination-of-parental-rights hearing, she "would need to withdraw and the case would proceed in his absence." The attorney also stated that respondent-father did not object to his attorney's withdrawal as counsel. The trial court then granted respondent-father's attorney's motion to withdraw.

¶ 28 In relying on *K.M.W.*, the dissent asserts that the majority does not acknowledge that the trial court's discretion only comes into play when the parent has been provided adequate notice of counsel's intent to seek leave of court to withdraw and the trial court has adequately inquired into the basis for counsel's withdrawal motion. 376 N.C. at 211. The dissent erroneously assumes that these circumstances do not exist in this case when in fact they do, as evidenced by the information on the record in the colloquy on the day of the termination-of-parental-rights hearing, wherein the respondent-father's counsel voluntarily provided a thorough explanation of the circumstances to the trial court and responded to the trial court's sufficient inquiries.

¶ 29 Thus, the trial court acted well within its discretion when it granted respondent-father's appointed attorney's second motion to withdraw.

The trial court advised respondent-father on three separate occasions that it was his responsibility to maintain contact with his attorney and attend all trial court hearings. The trial court ensured respondent-father was served by publication even though he concealed his whereabouts from DSS. Despite respondent-father's whereabouts being unknown, the trial court ordered respondent-father's appointed attorney from DSS's juvenile neglect proceeding to remain as his provisional court appointed attorney. The trial court reappointed counsel when respondent-father appeared at the 4 October 2019 continuance hearing, despite his absence from the first appearance hearing on the termination-of-parental-rights petition. The trial court also granted both of respondent-father's motions to continue.

¶ 30 The dissent contends that the majority ignores the principle of *stare decisis* in its view of *K.M.W.* by adopting the *K.M.W.* dissent's perspective. However, such cases as these are fact-specific and hence dependent on the unique facts of any given case. Respondent-father's conduct is distinguishable in the present case from respondent's conduct in *K.M.W.* and, when coupled with the respective counsel's execution of their responsibilities and the respective trial courts' responses to the unique circumstances, the two cases and their respective outcomes are appropriately distinguishable as well. For example, in *K.M.W.*, the respondent did appear at the termination-of-parental-rights hearing, thereby giving the trial court the opportunity to observe the statutory requirements of N.C.G.S. § 7B-1101.1(a1) (2019), and thus determine if respondent knowingly and voluntarily *waived* her statutory right to counsel. 376 N.C. at 201–02, 210. Here, respondent-father made no apparent effort to observe the trial court's advisements to attend hearings, admitted he did not want to receive mail from DSS or other interested parties, and verbally consented to his attorney's *withdrawal* as counsel. Therefore, we decline to extend *K.M.W.* to the facts before us.

¶ 31 If the holding of *K.M.W.* controlled this case, the result would cause further burdens on our already overburdened trial courts by imposing additional and unnecessary procedures regarding termination-of-parental-rights hearings. A parent, by repeatedly failing to communicate with appointed counsel, by failing to attend numerous hearings, and by admittedly avoiding receiving mail and other communications from DSS and other interested parties, could successfully manipulate the judicial system to seriously delay the termination of parental rights proceeding. Under *K.M.W.*, the trial court would be required to halt a termination-of-parental-rights hearing, track down a parent, ensure the motion to withdraw was properly served and inquire into the efforts made by counsel

to contact the parent, all before allowing counsel to withdraw from representation. 376 N.C. at 210–11. And under these facts, trial courts would be obliged to re-appoint counsel for it all to begin again. These extensive and burdensome processes would impair judicial efficiency and drain already scarce judicial resources, while thwarting the over-arching North Carolina policy to find permanency for the juvenile at the earliest possible age. *See* N.C.G.S. § 7B-1100(2).

¶ 32 The trial court's actions respected the sanctity of respondent-father's statutory right to counsel, giving respondent-father every reasonable opportunity to participate in the termination-of-parental-rights proceeding and to be represented by appointed counsel. The trial court ensured that respondent-father had knowledge of his responsibility to communicate with counsel to enable him to retain representation. All the while, the trial court reasonably balanced and honored the purpose and policy of this State to promote finding permanency for the juvenile at the earliest possible age and to put the best interest of the juvenile first where there is a conflict with those of a parent. *See* N.C.G.S. § 7B-1100(2)–(3) (2019). Therefore, we conclude that the trial court did not abuse its discretion when it granted respondent-father's attorney's motion to withdraw.

B. Respondent-Mother's Appeal

¶ 33 **[2]** Respondent-mother argues that the trial court abused its discretion by determining that terminating her parental rights would be in the children's best interests. A careful review of the record satisfies us that respondent-mother's argument lacks merit.

¶ 34 The termination of parental rights is a two-stage process consisting of an adjudicatory stage and a dispositional stage. *See* N.C.G.S. §§ 7B-1109 to -1110 (2019). If, during the adjudicatory stage, the trial court finds grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), the trial court proceeds to the dispositional stage where it must "determine whether terminating the parent's rights is in the juvenile's best interest" after considering the following criteria:

(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).

¶ 35 "We review the trial court's dispositional findings of fact to determine whether they are supported by competent evidence." *In re J.J.B.*, 374 N.C. 787, 793 (2020). "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. 3, 6 (2019). "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 T.L.H.*, 368 N.C. at 107 (alteration in original) (quoting *State v. Hennis*, 323 N.C. 279, 285 (1988)).

¶ 36 Respondent-mother challenges the following dispositional findings of fact:

> 9. The minor child[ren][4] ha[ve] little bond with the respondent mother.
>
> . . . .
>
> 11. The respondent mother's relationship with the minor child[ren] is similar to that of a babysitter or family friend.
>
> 12. Respondent mother has failed to address her mental health needs and that impacts her visits. Respondent mother has been unable to be on time consistently to visitation.
>
> 13. Respondent mother has been unable to control her emotions at times during visitation requiring redirection.
>
> . . . .
>
> 15. The children are manifesting behaviors after visitation which show a negative impact of visitation

4. "Minor child" is amended to read "minor children" since the trial court entered separate termination-of-parental-rights orders as to Tam and Kam and respondent-mother challenges the same findings of fact in each order. The findings of fact use the same language in each of the termination orders.

> upon them, including nightmares and aggressive behavior [by Tam].
>
> . . . .
>
> 17. Exposure of the minor child[ren] to respondent parents[’] continued relapses would not be in the best interest[s] of the minor child[ren].

¶ 37 As an initial matter, respondent-mother argues that several of the trial court’s dispositional findings lack sufficient record support. First, respondent-mother argues that the record fails to support Finding of Fact Nos. 9 and 11. However, Finding of Fact Nos. 9 and 11 are supported by the testimony of a foster care social worker, who described the bond between respondent-mother and the juveniles as follows:

> They know their mom. Her visits have been more consistent. It is not a bond like they have with the foster parents. They do recognize mom. When they visit with mom they, you know, she does engage with them; they engage with her, but there are times that the kids will lean more towards the visitation coach or whoever is supervising that visit for assistance, like maybe with a diaper change or if they want a specific toy or something like that, they often will go to the visitation coach for those rather than mom.

¶ 38 In addition, the social worker agreed that the relationship between respondent-mother and the juveniles was more like that between a child and a friend or other relative than like that between a child and his or her parent. Finally, the guardian ad litem’s report, which was admitted into evidence at the termination hearing, described the bond between respondent-mother and the juveniles as “nonexistent.” As a result, we hold that the record contains ample support for Finding of Fact Nos. 9 and 11.

¶ 39 Secondly, respondent-mother contends that the visitation logs that were introduced into evidence at the termination hearing fail to support the trial court’s statement in Finding of Fact No. 12. Since the visitation logs reflect that respondent-mother was unable to attend certain scheduled visits and arrived late on numerous occasions, we hold that respondent-mother’s challenge to Finding of Fact No. 12 lacks merit.

¶ 40 Thirdly, respondent-mother argues that the visitation logs, which reflect that the visitation coach gave her “high marks on her interactions with Kam and Tam,” conflict with Finding of Fact No. 13. However, the

Visitation Observation Form relating to the 18 January 2019 visit reflects that, after respondent-mother spoke about "issues with work and family," the visitation coach had to redirect respondent-mother's attention to the juveniles and to ask respondent-mother to interact appropriately and positively with the children. According to the visitation coach, respondent-mother "seemed more focused on what was going on in her life" and "continued to talk about her own stressful situations during [the] visit," leading the visitation coach to urge respondent-mother "not to talk about her own issues."

¶ 41 Similarly, the visitation coach noted on 17 May 2019 that, while respondent-mother was "responsive and playful" at some points during the visit, at other times respondent-mother "became angry and depressed" and stated, "I just wish I would die, I just don't want to be here anymore." The visitation coach stated that, rather than engaging respondent-mother about her concerns, she asked respondent-mother to focus upon the needs of the children. As a result, Finding of Fact No. 13, is supported by competent evidence.

¶ 42 Respondent-mother also argues that the record does not support the trial court's Finding of Fact No. 15. The record is replete, however, with evidence supporting this component of the trial court's findings. As an initial matter, we note that the guardian ad litem stated in her report that Tam "has always been very clingy after visitation, then she started becoming angry. She would kick, bite, and hit after coming home. Now she comes home afraid, wanting to be held and having nightmares." In addition, the foster care social worker testified that, following their visits with the parents, "[t]he kids have been known to bang their head against the wall" and display "tantrum kind of behaviors." As a result, the record contains ample support for the challenged portion of Finding of Fact No. 15.

¶ 43 Furthermore, respondent-mother argues that the trial court's Finding of Fact No. 17 lacks sufficient support in the record. Once again, we disagree with respondent-mother's contention. The children came into DSS care due, at least in part, to respondent-mother's substance abuse. In support of its termination of respondent-mother's parental rights, the trial court found that respondent-mother had continued to use unlawful controlled substances such as methamphetamine, cocaine, and marijuana, while the children were in foster care. In addition, as we have previously noted, the record contains ample evidence tending to show that the children engaged in troubling behaviors following their visits with respondent-mother. Thus, we conclude the trial court did not err in making the challenged portion of Finding of Fact No. 17.

¶ 44 Next, respondent-mother contends that she had a strong bond with the children and that, even though that bond was not parental in nature, the trial court erred by effectively requiring her to have such a bond with the children as a precondition for avoiding the termination of her parental rights. According to respondent-mother, the trial court's decision to criticize her bond with the children as not "being parental enough was disingenuous" given that she had few opportunities to act in a parental manner during her visits with the children. Respondent-mother claims that she "should not be penalized for separation from her children when evaluating parental skills" because she "did not have a reasonable opportunity to be [parental with the juveniles]." We are not persuaded by this argument.

¶ 45 The initial defect in respondent-mother's argument is that, as we have already noted, the trial court found, with proper evidentiary support, that respondent-mother had "little bond" with the juveniles. Moreover, we agree with DSS and the guardian ad litem that respondent-mother's limited opportunity to play a parental role in the children's lives while they were in foster care stemmed, at least in part, from her own relapses into substance abuse, the fact that she was often late for visits, and her inability to control her emotions during those visits. For these and other reasons, we cannot agree with respondent-mother's contention that she bore no responsibility for the lack of bond with her children. Finally, the record fails to support respondent-mother's claim that the trial court required her to show that she had a "parental bond" with the children as a precondition for avoiding the termination of her parental rights. As a result, we hold that the trial court did not commit any error of law in evaluating the nature and extent of respondent-mother's bond with the children as required by N.C.G.S. § 7B-1110(a)(4).[5]

¶ 46 Next, respondent-mother contends that the trial court erred by failing to consider other dispositional alternatives, such as guardianship or placement with a relative or some other suitable person. We addressed a similar argument in *In re Z.L.W.*, 372 N.C. 432, 438 (2019), in which the respondent-father argued that, "given the strong bond between him and" his children, "the trial court should have considered other dispositional alternatives, such as granting guardianship or custody to the foster family, thereby leaving a legal avenue by which [the children] could maintain a relationship with their father." In rejecting this argument, we stated that:

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5. As an aside, we reiterate our prior determination that "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. 432, 437 (2019).

> [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 (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. at 438 (alteration in original). Consequently, we held the trial court did not abuse its discretion by determining that termination, rather than guardianship or custody with a foster family, would be in the children's best interests. *Id.*

¶ 47 Similarly, in this case, 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. 88, 101 (2020). As a result, "[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 or custody, would be in Tam's and Kam's best interests.

¶ 48 Finally, respondent-mother argues that the trial court abused its discretion by terminating her parental rights because, while returning custody of the juveniles to her would not be in their best interests, allowing them to maintain a relationship through continued visitation was in the juveniles' best interests. Respondent-mother again cites the bond she had with the juveniles and claims they enjoyed their visits. However, the trial court found in unchallenged Findings of Fact Nos. 18, 19, and 20 that the children's permanent plan included adoption, that the likelihood that they would be adopted was high, and that terminating respondent-mother's parental rights was necessary to accomplish the permanent plan for the children. In addition, we have already concluded that the trial court's dispositional findings regarding her visitation and lack of a parental bond with the juveniles was supported by competent evidence. As a result, we hold that respondent-mother's final argument lacks merit and that the trial court did not abuse its discretion in deter-

mining that terminating respondent-mother's parental rights was in the children's best interests.

III. Conclusion

¶ 49 Thus, for the reasons set forth above, we hold that the trial court did not abuse its discretion in granting respondent-father's counsel's motion to withdraw and the trial court did not abuse its discretion by determining that the termination of respondent-mother's parental rights was in the children's best interests. Accordingly, the trial court's termination-of-parental-rights orders are affirmed.

AFFIRMED.

Justice ERVIN, concurring, in part, and dissenting, in part.

¶ 50 Although I concur with my colleagues' determination that the trial court's decision to terminate respondent-mother's parental rights should be affirmed, I am unable to agree with their decision to uphold the termination of respondent-father's parental rights and respectfully dissent from their decision to do so. Simply put, after carefully reviewing the record in light of recent, and clearly controlling, precedent from this Court, I feel compelled to conclude that the trial court erred by allowing respondent-father's trial counsel to withdraw from her representation of respondent-father without ensuring that proper notice had been provided to respondent-father and without conducting a sufficient inquiry into either the reasons for the requested withdrawal or the extent to which respondent-father understood the implications of his counsel's request. As a result, I concur in the Court's decision, in part, and dissent from that decision, in part.

¶ 51 At the outset of the termination hearing which occurred on 30 and 31 January 2020, the following proceedings occurred:

> [DSS ATTORNEY]: Mr. Sheriff, if you could call out [respondent-father].
>
> THE COURT: Sheriff, if you would please call out [respondent-father].
>
> (Bailiff called out [respondent-father] to appear in court.)
>
> THE COURT: Thank you. He does not appear present. You'd like to rest on your Motion To Withdraw?

[FATHER'S COUNSEL]: Your Honor, I would like to tell the Court so it will be -- and I probably, if Your Honor can sign that order, but I want to draft a more comprehensive order that includes the findings of fact of what's happened today. I spoke to him. I explained that if he wasn't here at 2:00 p.m. I would need to withdraw and the case would proceed in his absence.

THE COURT: So you spoke to him today?

[FATHER'S COUNSEL]: Correct, like very briefly a short time ago. He understands that we've not spoken substantively about the case and if he doesn't show up today I need to proceed on the Motion To Withdraw and he does not object to that.

THE COURT: All right. I will grant your motion but I'll hold it for a proper order to withdraw. If I sign this one I don't want to have to do an amended so --

[FATHER'S COUNSEL]: Okay.

THE COURT: -- I want to get something more fully but I'll go ahead and grant that motion at this time.

[FATHER'S COUNSEL]: I'll bring that tomorrow.

. . . .

THE COURT: So let me put it to you this way, [counsel]. I don't want to stop not going through to this afternoon's case and so I'm more inclined to write in my own little bits on this order and let that count and that way I can give it to you right now and we'll be ready to go; okay?

[FATHER'S COUNSEL]: Yes, ma'am.

THE COURT: All right. I'm just going to do it right now. Thank you.

[FATHER'S COUNSEL]: Your Honor, the main thing I wanted in it is that I had explained to the client that if he didn't show up today I would withdraw and they would proceed in his absence and that he did not object to that motion.

In a subsequent written order granting respondent-father's attorney's withdrawal motion, the trial court found that:

> [R]espondent-father has been in contact [with his attorney], but provided no direction or substance. [Respondent-father was] given [the opportunity] to show up in [court for the morning and afternoon] sessions, and opted to communicate no objection to [his counsel's] withdrawal. [Respondent-father] was aware of [the hearing to terminate his parental rights] and of [the] hearing on [the] motion to withdraw.

¶ 52 "A parent whose rights are considered in a termination of parental rights proceeding must be provided with fundamentally fair procedures consistent with the Due Process Clause of the Fourteenth Amendment." *In re J.E.B.*, 376 N.C. 629, 2021-NCSC-2 (cleaned up). "In order to adequately protect a parent's due process rights in a termination of parental rights proceeding, the General Assembly has created a statutory right to counsel for parents involved in termination proceedings." *In re K.M.W.*, 376 N.C. 195, 208 (2020). According to N.C.G.S. § 7B-1101.1(a) (2019), "[t]he parent [in a termination of parental rights proceeding] has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right."

¶ 53 As this Court has previously stated, "[c]onsistently with the provisions of N.C.G.S. § 7B-1101.1(a1), Rule 16 of the General Rules of Practice prohibits an attorney from withdrawing from his or her representation of a client in the absence of '(1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court.' " *In re K.M.W.*, 376 N.C. at 209. "[B]efore allowing an attorney to withdraw or relieving an attorney from any obligation to actively participate in a termination of parental rights proceeding when the parent is absent from a hearing, the trial court must inquire into the efforts made by counsel to contact the parent in order to ensure that the parent's rights are adequately protected." *Id.* at 210.

¶ 54 A trial court's decision to grant or deny an attorney's withdrawal motion is reviewed on appeal using an abuse of discretion standard of review, *id.* at 209, with such an abuse of discretion having occurred only when the trial court's ruling is "so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777 (1985). "However, this 'general rule presupposes that an attorney's withdrawal has been properly investigated and authorized by the court,' so that, '[w]here an attorney has given his client no prior notice of an intent

to withdraw, the trial judge has no discretion.' " *In re K.M.W.*, 376 N.C. at 209 (quoting *Williams & Michael, P.A. v. Kennamer*, 71 N.C. App. 215, 217 (1984)).

¶ 55 I see no indication, after a careful examination of the record, that respondent-father was served with his attorney's withdrawal motion prior to the hearing. Respondent-father's attorney attempted to serve her withdrawal motion upon her client by mailing it to him at an address at which respondent-father had previously stated that he did not receive mail. Although respondent-father's attorney told the trial court that she had spoken with her client and informed him that she intended to withdraw in the event that respondent-father failed to appear for the hearing, the attorney described her conversation with respondent-father as brief and indicated that it had occurred shortly before the termination hearing was scheduled to begin. In addition, the record does not reflect that the trial court made any inquiry concerning the nature and extent of the attorney's efforts to serve the withdrawal motion upon respondent-father prior to the date of the hearing or into what efforts the attorney had made to ensure that respondent-father "understood the implications of the action that [counsel] proposed to take or to protect [respondent-father's] statutory right to the assistance of counsel." *Id.* at 211. As a result, I believe that the trial court erred by failing to ensure that respondent-father had received "reasonable notice" of the attorney's withdrawal motion as required by N.C.G.S. § 7B-1101.1(a1) or by our decision in *K.M.W.* before allowing that motion.

¶ 56 In addition, even though respondent-father's counsel informed the trial court at the termination hearing that her client did not object to the allowance of the withdrawal motion, I am not persuaded that any statement that respondent-father might have made to that effect amounted to a waiver of his statutory right to counsel. "Although parents eligible for the appointment of counsel in termination of parental rights proceedings may waive their right to counsel, they are entitled to do so only 'after the court examines the parent and makes findings of fact sufficient to show that the waiver is knowing and voluntary.' " *Id.* at 209 (quoting N.C.G.S. § 7B-1101.1(a1) (2019)). Aside from the fact that the trial court was unable to make the required inquiry given respondent-father's failure to appear at the termination hearing, I agree with respondent-father that, given that his alleged "consent" to the attorney's withdrawal was obtained, at most, only a few hours before the hearing began and at a time when the record does not show that respondent-father had prior notice of the attorney's intention to withdraw or had been adequately advised about the implications of this action, respondent-father was not provided with

sufficient opportunity to make a reasoned decision concerning whether to waive his right to counsel. *Id.* (stating that "a waiver of counsel, generally speaking, requires a knowing and intentional relinquishment of that right").

¶ 57 The Court does not clearly indicate whether its decision to reject respondent-father's challenge to the trial court's termination orders rests upon a determination that respondent-father waived his statutory right to counsel or that respondent-father forfeited that right. To the extent that the Court's decision rests upon forfeiture-related, rather than waiver-related, considerations, I am unable to agree with any such determination. As this Court recently stated:

> in rare circumstances a defendant's actions frustrate the purpose of the right to counsel itself and prevent the trial court from moving the case forward. In such circumstances, a defendant may be deemed to have forfeited the right to counsel because, by his or her own actions, the defendant has totally frustrated that right. If one purpose of the right to counsel is to "justify reliance on the outcome of the proceeding," then totally frustrating the ability of the trial court to reach an outcome thwarts the purpose of the right to counsel.

State v. Simpkins, 373 N.C. 530, 536 (2020). In other words,

> [t]he trial court is not required to abide by the directive to engage in a colloquy regarding a knowing waiver where the litigant has forfeited his right to counsel by engaging in actions which totally undermine the purposes of the right itself by making representation impossible and seeking to prevent a trial from happening at all. However, a finding that a [parent] has forfeited the right to counsel has been restricted to situations involving egregious dilatory or abusive conduct on the part of the litigant.

In re K.M.W., 376 N.C. at 209 (cleaned up); *see also State v. Blakeney*, 245 N.C. App. 452, 461–62 (2016) (stating that "forfeiture has generally been limited to situations involving 'severe misconduct' and specifically to cases in which the defendant engaged in one or more of the following: (1) flagrant or extended delaying tactics, such as repeatedly firing a series of attorneys; (2) offensive or abusive behavior, such as threatening counsel, cursing, spitting, or disrupting proceedings in court; or

(3) refusal to acknowledge the trial court's jurisdiction or participate in the judicial process, or insistence on nonsensical and nonexistent legal 'rights' "). Although respondent-father may have attempted to conceal his whereabouts and avoid service in the course of this proceeding and although the trial court warned respondent-father on at least two occasions that he was responsible for maintaining contact with his appointed counsel and to attend the trial court's hearings, with the potential consequence of any failure on his part to do so including the withdrawal of his trial counsel and the necessity for him to proceed without the assistance of counsel, I do not believe that respondent-father's conduct, as described in the record, suffices to support a finding that respondent-father had forfeited the right to counsel and my colleagues do not explicitly make an argument to the contrary. While "[t]here is no bright-line definition of the degree of misconduct that would justify forfeiture of a [parent's] right to counsel," *Blakeney*, 245 N.C. App. at 461, a finding of "[f]orfeiture of counsel should[, as the Court of Appeals has stated,] be a court's last resort," *State v. Wray*, 206 N.C. App. 354, 360 (2010). After carefully examining the record, I am unable to agree with the majority that the conduct in which respondent-father engaged in this case constituted conduct that was "so egregious as to justify forfeiture of the right to counsel." *Simpkins*, 373 N.C. at 540.

¶ 58 Aside from its failure to make any mention of the legal principles that control the resolution of issues like those that we have before us in this case, the Court's decision is patently inconsistent with our very recent decision in *K.M.W.*, in which we held that a "very limited inquiry undert[aken] [by the trial court] before allowing [counsel's] withdrawal motion" constituted error and that, "even if the trial court did not err by allowing [the] withdrawal motion, it erred by allowing respondent-mother to represent herself at the termination hearing without making adequate inquiry into the issue of whether she wished to appear *pro se*." *In re K.M.W.*, 376 N.C. at 211–12. In reaching the first of these conclusions, we stated that:

> A careful examination of the record that has been presented for our review in this case indicates that neither the certificate of service attached to [trial counsel's] withdrawal motion nor any related correspondence shows that respondent-mother was served with a copy of the withdrawal motion prior to the date upon which [trial counsel] was allowed to withdraw. On the contrary, the certificate of service attached to [trial counsel's] withdrawal motion appears to reflect

> that the only party upon whom that motion was served was DSS. Although [trial counsel] told the trial court that respondent-mother had "requested" that he withdraw from his representation of her and that he had "attempted to secure [respondent-mother's] presence in court" at the time that his withdrawal motion was heard, the trial court does not appear to have made any inquiry into whether respondent-mother had been served with the withdrawal motion; whether [trial counsel] had informed respondent-mother that he intended to move to withdraw on that date; why respondent-mother had requested [trial counsel] to withdraw, including whether his withdrawal motion resulted from respondent-mother's inability to pay for his services; and what efforts [trial counsel] had made to ensure that respondent-mother understood the implications of the action that he proposed to take or to protect her statutory right to the assistance of counsel. As a result, given the very limited inquiry that the trial court undertook before allowing [trial counsel's] withdrawal motion, we conclude that the trial court erred by allowing that motion.

Id. at 211. In addition, we held that,

> even if the trial court did not err by allowing [trial counsel's] withdrawal motion, it erred by allowing respondent-mother to represent herself at the termination hearing without making adequate inquiry into the issue of whether she wished to appear *pro se*. As the record clearly reflects, the waiver of counsel form that respondent-mother completed at the time that [her original trial counsel] was allowed to withdraw from his representation of respondent-mother in the termination proceeding was intended to facilitate her employment of privately-retained counsel and did not constitute a waiver of her right to any and all counsel. On the contrary, a careful examination of the waiver of counsel form that respondent-mother completed reflects that respondent-mother checked the box relating to a waiver of her right to court-appointed counsel and did not check the box stating that "I do not want the assistance of any lawyer.

> I understand that I have the right to represent myself, and that is what I intend to do." For that reason, the record amply demonstrates that respondent-mother had generally wished to be represented by counsel, had been represented by counsel in the termination proceeding until the allowance of [trial counsel's] withdrawal motion, and had never expressed the intention of representing herself. In light of that set of circumstances, we believe that the trial court had an obligation to make inquiry of respondent-mother concerning the issue of whether she wished to represent herself at the time that she made her tardy appearance at the termination hearing as required by N.C.G.S. § 7B-1101.1(a1).

Id. at 211–12.

¶ 59 Although the facts before the Court in this case are not, of course, completely identical to those at issue in *K.M.W.*, the inquiry that the trial court conducted in this case is not materially different from the one that we found to be insufficient in *K.M.W.* After citing the dissenting opinion that was filed in *K.M.W.* rather than the analysis set out in the majority's decision, my colleagues make a number of fact-based arguments that misread our earlier decision and rest upon the same sorts of fact-based arguments that we held to be insufficient to support the affirmance of the trial court's order in that case. For example, my colleagues emphasize the fact that DSS made "diligent efforts to locate respondent-father" at earlier points during the history of this proceeding and the fact that respondent-father made it difficult for DSS to locate him. However, aside from the fact that similar difficulties existed in *K.M.W.*, the operative issue for purposes of this case is the extent to which the trial court, at the time that the withdrawal motion was made, conducted an adequate inquiry into the notice that respondent-father had received in advance of his counsel's request for leave to withdraw rather than whether respondent-father had been difficult to deal with earlier in the proceeding. Similarly, although my colleagues state that respondent-father's counsel "made a good faith effort to serve the [withdrawal] motion on respondent-father," they do not point to anything in the record that tends to support this particular assertion and appear to overlook the fact that the record does, as I have already noted, reflect that respondent-father's counsel sent the withdrawal motion to an address at which respondent-father had previously indicated that he did not receive mail. In addition, my colleagues emphasize the fact that

respondent-father's counsel talked to respondent-father shortly before the time at which the withdrawal motion was heard and told him that she would seek to withdraw from representing respondent-father despite the fact that a similar set of facts was addressed and found to be insufficient to support an affirmance in *K.M.W.* Finally, the Court states that this case is distinguishable from *K.M.W.* because respondent-father, unlike the respondent-mother in *K.M.W.*, did not attend any part of the hearing and could not, for that reason, have been questioned about the extent to which he knowingly and voluntarily waived his right to the assistance of counsel even though our opinion in *K.M.W.* clearly indicates that the trial court's failure to question respondent-mother when she arrived in the hearing room was an entirely separate error from the trial court's failure to conduct an adequate inquiry into the issue of whether respondent-mother's counsel should have been allowed to withdraw in the first place. As a result, there are no material differences between the facts in this case and those that were before us in *K.M.W.*

¶ 60 Finally, although my colleagues are correct in pointing out that the standard of review that is usually applicable in connection with appellate challenges to the allowance of withdrawal motions involves an inquiry into the issue of whether the trial court abused its discretion in allowing counsel to withdraw, they err to the extent that they treat this standard of review as the only one applicable in this case. Although the extent to which the trial court erred by allowing respondent-father's counsel to withdraw would have been subject to review on the basis of an abuse of discretion standard in the event that an adequate inquiry had been conducted into the issue of whether respondent-father had been properly notified of his counsel's request to withdraw, such a standard does not apply when the relevant issue is the extent to which the trial court conducted an adequate inquiry into the notice issue. The difference between the standards of review that apply with respect to these two distinct issues is clearly set out in *K.M.W.*, which my colleagues have, once again, simply failed to follow.

¶ 61 At the end of the day, I am unable to discern how our decision in this case can be squared with basic principles of stare decisis, pursuant to which those who disagree with an earlier decision are expected to continue to adhere to it unless and until it is overruled. *See State v. Straing*, 342 N.C. 623, 627 n.1 (stating that, "[a]lthough the author of this opinion still believes that [a former decision of this Court] was wrongly decided, he is now required by stare decisis to apply that precedent in the case sub judice"); *Hill v. Atlantic & N.C. R. Co.*, 143 N.C. 539, 574 (1906) (stating that "[w]hat our present opinion may be, as to

the merits of the decision in [a certain] case, is now of no consequence whatsoever" given that, "[i]n construing statutes, and the Constitution, the rule is almost universal to adhere to the doctrine of stare decisis"). As a result of its failure to adequately explain how the decision that it makes today can be squared with *K.M.W.*, it is difficult to avoid the conclusion that the Court has no basis for failing to rely upon our decision in that case other than the fact that my colleagues disagree with it. Moreover, even though "[t]he doctrine of stare decisis will not be applied . . . to preserve and perpetuate error and grievous wrong," *State v. Ballance*, 229 N.C. 764, 767 (1949), the Court has not made any attempt to establish how *K.M.W.* works such a "grievous wrong" that we should refuse to give it precedential effect. Such a disregard for precedent risks undermining the stability of North Carolina law.

¶ 62 At a deeper level, my colleagues appear to rest their decision to uphold the termination of respondent-father's parental rights on the basis of concerns that the decision that I believe to be appropriate "would cause further burdens on our already overburdened trial courts by imposing additional and unnecessary procedures regarding termination of parental rights hearings" and "thwart[ ] the over-arching North Carolina policy to find permanency for the juvenile at the earliest possible time." Aside from the fact that the principles that underlie the decision that I believe to be appropriate rest upon statutory provisions, judicial decisions, and portions of the General Rule of Practice that have been in effect for a considerable period of time, the number of reported cases relating to the waiver or forfeiture of counsel in termination cases is relatively small, a fact that suggests that my colleagues' concern for the efficiency with which termination cases will be handled in the future is substantially overstated. Simply put, while I acknowledge the difficulties that our colleagues on the trial bench face every day, the result that I believe to be appropriate in this case is solidly grounded in well-established North Carolina law, cannot be fairly accused of introducing any novelty into our termination of parental rights jurisprudence, does not involve any sort of extension of *K.M.W.*, and will not impose any undue burden upon our trial courts.

¶ 63 Secondly, and more importantly, the statutory provisions that govern this case are intended to serve a number of policy goals in addition to achieving permanence "within a reasonable amount of time" by placing a child up for adoption. N.C.G.S. § 7B-100(5). Aside from the fact that nothing contained in N.C.G.S. § 7B-100(5) creates any sort of presumption in favor of terminating a parent's parental rights and the fact that the decision to place the burden of proof with respect to

the issue of whether grounds for termination exist in a particular case upon the party seeking to achieve that result suggests that the opposite is, in fact true, N.C.G.S. § 7B-1111(b), the relevant provisions of our Juvenile Code are also intended to "assure fairness and equity" and "protect the constitutional rights of juveniles and parents," N.C.G.S. § 7B-100(1), and to "prevent[ ] the unnecessary or inappropriate separation of juveniles from their parents." N.C.G.S. § 7B-100(4). In other words, the policy that is sought to be achieved by means of the relevant statutory provisions, including those providing parents with the right to the assistance of counsel, does not consist of the achievement of a particular result. Instead, the relevant statutory provisions are intended to ensure that all affected parties have an adequate opportunity to be heard with respect to the issue of what is in the best interests of the child. As a result, given that the decision that the Court has reached in this case is inconsistent with controlling decisions of this Court and rests upon a mistaken view of the proper purpose of a termination of parental rights proceeding, I would hold that, while its termination order should be affirmed with respect to respondent-mother, the trial court erred by allowing respondent-father's trial counsel to withdraw from her representation of respondent-father and that this case should be remanded to the District Court, Buncombe County, for further proceedings not inconsistent with this opinion, including a new termination hearing concerning respondent-father's parental rights.

Justices HUDSON and EARLS join in this concurring and dissenting opinion.

IN RE Z.R.

[378 N.C. 92, 2021-NCSC-78]

IN THE MATTER OF Z.R., J.R., A.L.M.W.

No. 353A20

Filed 18 June 2021

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

The termination of a mother's parental rights—based on grounds of neglect and willful failure to make reasonable progress—was affirmed where the mother's counsel filed a no-merit brief, the termination order's findings of fact had ample record support, and where those findings supported the trial court's conclusions. To permit appellate review, the Supreme Court invoked Appellate Rule 2 to suspend the requirements under Rule 3.1(a) (that counsel provide copies of the no-merit brief, transcript, and record on appeal to the mother and to inform her of her right to file a pro se brief) where the mother's counsel made exhaustive efforts to contact her but to no avail.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 13 May 2020 by Judge Tonia Cutchin in District Court, Guilford County.[1] This matter was calendared for argument in the Supreme Court on 22 April 2021, 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 & Human Services.

Kelsey L. Kingsbery and Michelle C. Prendergast for appellee Guardian ad Litem.

Garron T. Michael for respondent-appellant mother.

PER CURIAM.

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1. The trial court's original termination order was filed on 31 March 2020, with an amended order having been filed on 13 May 2020, with the notice of appeal claiming to seek appellate relief from an order filed and served on 2 April 2020. In view of the fact that no party has objected to the sufficiency of the notice of appeal and the fact that the identity of the relevant termination order is clear from the record, we deem the notice of appeal sufficient to confer jurisdiction upon this Court.

IN RE Z.R.

[378 N.C. 92, 2021-NCSC-78]

¶ 1 Respondent-mother Tabitha W. appeals from the trial court's order terminating her parental rights in her minor children Z.R., J.R., and A.L.M.W.,[2] who were born in 2013, 2011, and 2008, respectively.[3] *See* N.C.G.S. § 7B-1001(a1) (2019). After careful consideration of the record and briefs in light of the applicable law, we conclude that the trial court's termination order should be affirmed.

¶ 2 On 27 January 2017, the Guilford County Department of Health and Human Services filed petitions alleging that three-year-old Zoey and five-year-old John were neglected and dependent juveniles and obtained the entry of orders placing both of them in nonsecure custody. In its petition, DHHS alleged that respondent-mother, who had had six children, had a child protective services history that dated back to July 2007 and involved multiple reports that she had failed to provide proper care for and supervision of her children and had engaged in substance abuse. In July 2016, DHHS had received another child protective services report alleging that the children's maternal grandmother, who was currently serving as the primary caretaker for five of respondent-mother's children, including Zoey, John, and Allison, had hit twelve-year-old Edward in the face with a belt and "that the mother and grandmother are overwhelmed due to the stressful situation with the kids." Although both Edward and Allison confirmed that she had engaged in violent conduct toward Edward, the maternal grandmother reacted to the initiation of the DHHS investigation in a hostile manner and denied having hit Edward. While speaking with a social worker, the maternal grandmother disclaimed any knowledge of respondent-mother's current location or how to contact her given that respondent-mother "moves from motel to motel and calls her from a bunch of different numbers."

¶ 3 In addition, DHHS alleged that, on 9 August 2016, the maternal grandmother had reported that respondent-mother had retrieved her children from the grandmother's home. After denying that she knew where respondent-mother was or how to contact her, the maternal grandmother stated that she was no longer willing to care for the chil-

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2. Z.R, J.R., and A.L.M.W. will be referred to throughout the remainder of this opinion as "Zoey," "John," and "Allison," which are pseudonyms used for ease of reading and to protect the juveniles' identities. We will refer to respondent-mother's minor child E.A.M. as "Edward," to her minor child Z.M.B.-M. as "Zach," and to her minor child T.A.S. as "Tina," none of whom are parties to this case, for the same reasons.

3. In addition, the trial court terminated the parental rights of Zoey and John's father and Allison's father. In view of the fact that neither of the children's fathers is a party to this appeal, we will refrain from discussing the proceedings relating to either father in any detail in this opinion.

dren. Following an unsuccessful attempt to contact respondent-mother by mail, a social worker used Student Locator to determine that Edward had been enrolled in school in the maternal grandmother's school district, while Zach and Allison had been enrolled in school in Haw River. At that point, the maternal grandmother told the social worker that "some of the children were in Haw River with her son and others were with their mother."

¶ 4 DHHS further alleged that the social worker had learned that the children's maternal aunt was caring for Zach, Allison, John, and Tina in her own home. As had been the case with the maternal grandmother, the aunt claimed not to know where respondent-mother was located or how to reach her given that respondent-mother "always calls from private numbers." The aunt told the social worker that respondent-mother "will get upset with her at times and will take the children but she is unable to care for them so she will eventually have to return them to her."

¶ 5 DHHS alleged that the social worker had made contact with respondent-mother on 19 October 2016. Respondent-mother "reported being unstable and bouncing from motel to motel" and explained that she had left the children with members of her family for that reason. In December 2016, the social worker spoke to Zoey and John's father, who was incarcerated and had a scheduled release date of July 2017. The father reported that John was staying with his maternal aunt and uncle, that Zoey had been residing with her maternal grandmother, and that he was willing to transfer custody of his children to their current caretakers in order to prevent them from being taken into DHHS custody.

¶ 6 Finally, the petition alleged that DHHS had held a team decision-making meeting with the parents and caretakers on 26 January 2017, during which respondent-mother had "admitted she [was] not in a position to care [for] the children at this time." As a result, DHHS and the parents agreed that Edward would be placed with his father; that Zach, Allison, and Tina would be placed with their maternal aunt and uncle; and that no suitable placement option could be identified for Zoey and John.

¶ 7 On 21 March 2017, DHHS filed a petition alleging that Allison was a neglected and dependent juvenile and obtained the entry of an order taking her into nonsecure custody. In its petition, DHHS alleged that Allison's father had agreed to leave his daughter in the care of her maternal aunt and uncle while he developed a relationship with her. Although he had failed to attend a scheduled visitation on 4 February 2017, Allison had a weekend-long visit with her father on 10 February 2017, after

which Allison "expressed that she did not like being at her father's home but would not elaborate." In addition, DHHS alleged that Allison's father had failed to attend an appointment at DHHS on 17 February 2017, at which he was scheduled to sign an agreement allowing the maternal aunt and uncle to take Allison into their custody. DHHS did not hear anything further from Allison's father until 27 February 2017, when he told the social worker that he had moved to Georgia and had no plans to return to North Carolina. Although he claimed that his preference was for Allison to come and live with him in Georgia, the father agreed to transfer custody to Allison's maternal aunt and uncle in the event that the necessary documents were mailed to him. However, even though she had mailed the relevant custody-related documents to the father in accordance with his request, the social worker had been unable to reach Allison's father by the date upon which the petition was filed.

¶ 8 On 20 February 2017, respondent-mother entered into a case plan agreement with DHHS. According to an updated case plan that she had entered into on 6 July 2017, respondent-mother agreed to complete a substance abuse and mental health assessment and comply with any resulting treatment recommendations; submit to random drug screens within forty-eight hours after a request for testing had been made; obtain and maintain housing that was suitable for herself and the children; verify that she had obtained sufficient income to meet her family's needs; successfully complete the Parent Assessment Training and Education Program; submit to a parenting and psychological evaluation and comply with any resulting treatment recommendations; attend scheduled visitations with the children; participate in shared parenting; refrain from making social media posts about the proceedings; and cooperate with Child Support Enforcement.

¶ 9 After a hearing held on 2 August 2017, Judge Betty J. Brown entered an order on 29 August 2017 in which she found Zoey, John, and Allison to be neglected and dependent juveniles. Judge Brown ordered that the children remain in DHHS custody, ordered respondent-mother to comply with the terms and conditions of her case plan, and authorized weekly supervised visits between respondent-mother and each of the children.

¶ 10 After the initial permanency planning hearing held on 27 October 2017, Judge Brown entered an order on 22 November 2017 establishing a primary permanent plan of reunification for all three children, with a secondary concurrent plan of guardianship for Allison and a secondary concurrent plan of adoption for Zoey and John. In light of respondent-mother's failure to make progress toward achieving stability

and her failure to comply with her mental health and substance abuse treatment recommendations, Judge Lora C. Cubbage entered an order on 15 August 2018 changing the children's primary permanent plan to one of adoption, with a secondary concurrent plan of reunification.

¶ 11 On 9 October 2018, DHHS filed a petition seeking to have the parents' parental rights in Zoey, John, and Allison terminated. Prior to the conclusion of a termination hearing held on 20 August 2019, Judge Angela Foster entered an order declaring a mistrial, appointing new counsel to represent Zoey and John's father, and recusing herself from the proceeding.

¶ 12 After a hearing held on 25 February 2020, the trial court entered an amended order on 13 May 2020 in which it determined that the parental rights of respondent-mother and both fathers were subject to termination on the basis of neglect, N.C.G.S. § 7B-1111(a)(1), and willful failure to make reasonable progress toward correcting the conditions that had resulted in the children's removal to a placement outside the family home, N.C.G.S. § 7B-1111(a)(2).[4] *See* N.C.G.S. § 7B-1111(a)(1)–(2) (2019). Similarly, after considering the dispositional factors enunciated in N.C.G.S. § 7B-1110(a) and determining that the termination of each parent's parental rights would be in the children's best interests, the trial court ordered that the parental rights of each parent be terminated. Respondent-mother noted an appeal to this Court from the amended termination order.

¶ 13 Respondent-mother's appellate counsel has filed a no-merit brief on her behalf with this Court as is authorized by N.C. R. App. P. Rule 3.1(e). As part of that process, respondent-mother's appellate counsel attempted to advise respondent-mother of her right to file a *pro se* brief on her own behalf and to provide respondent-mother with the documents that she would need to make such a filing. *See* N.C. R. App. P. 3.1(e). Subsequently, however, respondent-mother's appellate counsel notified this Court that his letter to respondent-mother explaining her right to file a *pro se* brief and providing her with copies of the relevant documents had been "returned to [his] office with an 'unable to forward' designation." Appellate counsel for respondent-mother described his subsequent efforts to contact respondent-mother for the purpose

4. The trial court also concluded that the parental rights of Zoey and John's father were subject to termination based upon his willful failure to pay a reasonable portion of the children's cost of care pursuant to N.C.G.S. § 7B-1111(a)(3) and that the parental rights of Allison's father were subject to termination for willful abandonment pursuant to N.C.G.S. § 7B-1111(a)(7) (2019).

of complying with his obligations pursuant to N.C. R. App. P. 3.1(e) as follows:

> 4. The undersigned mailed the no-merit documents via U.S. Priority Mail to the same address . . . he has previously sent mail correspondence [to respondent-mother]. No prior correspondences were returned before 17 September 2020.
>
> 5. The undersigned has never had direct contact with [respondent-mother] despite repeated efforts. The undersigned has contacted trial counsel on multiple occasions and requested additional contact information for [respondent-mother]. Trial counsel does not possess any viable telephone numbers, addresses, or other means of contact for [respondent-mother] beyond those already utilized by the undersigned.
>
> 6. Since the no-merit package was returned, the undersigned has attempted to locate [respondent-mother], or any viable contact information, through various means such as social media, including Facebook, as well as running searches with the BeenVerified program to no avail.
>
> 7. The undersigned has attempted to locate [respondent-mother's] relatives to obtain contact information but remains unable to locate or contact [respondent-mother] as of this filing.
>
> 8. The address utilized for mailing the no-merit documents on 8 September 2020 was the same address [respondent-mother] indicated as being her residence during her testimony on 25 February 2020.
>
> 9. The undersigned will continue to try and contact [respondent-mother] and remains willing to follow any further directives deemed necessary by this Court.

As of the present date, it appears that the subsequent efforts that respondent-mother's appellate counsel made for the purpose of attempting to contact her have proven equally unsuccessful. Respondent-mother has not submitted any written arguments to this Court for our consideration.

¶ 14 N.C. R. App. P. 3.1(e) provides that:

> Counsel *must* provide the appellant with a copy of the no-merit brief, the transcript, the printed record on appeal, and any supplements or exhibits that have been filed with the appellate court. Counsel *must* inform the appellant in writing that the appellant may file a pro se brief and that the pro se brief is due within thirty days after the date of the filing of the no-merit brief. Counsel must attach evidence of this communication to the no-merit brief.

N.C. R. App. P. 3.1(e) (emphases added). In this case, however, respondent-mother's "failure to communicate [her] current address to appellant counsel frustrates counsel's compliance with the Rule." *In re D.A.*, 262 N.C. App. 71, 74 (2018). Although we have recognized "the significant interest of ensuring that orders depriving parents of their fundamental right to parenthood are given meaningful appellate review," *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019), in light of the "exhaustive efforts" that respondent-mother's appellate counsel has made to contact his client and to provide her with the notice and materials contemplated by N.C. R. App. P. 3.1(e), we elect to suspend the requirements of N.C .R. App. P. 3.1(e) as authorized by N.C .R. App. P. 2 in order "to 'expedite a decision in the public interest,' " *In re D.A.*, 262 N.C. App. at 75–76, 820 S.E.2d at 875 (quoting N.C. R. App. P. 2).

¶ 15 When a parent's appellate counsel files a no-merit brief on his or her client's behalf pursuant to N.C. R. App. P. 3.1(e), this Court reviews the issues that are identified in that brief to see if they have potential merit. *In re L.E.M.*, 372 N.C. at 402, 831 S.E.2d at 345. In the no-merit brief that he filed on his client's behalf, respondent-mother's appellate counsel identified certain issues relating to the adjudicatory and dispositional portions of this proceeding that could arguably support an award of appellate relief, including whether the trial court properly found that respondent-mother's parental rights in the children were subject to termination and whether the trial court abused its discretion by determining that the termination of respondent-mother's parental rights in the children would be in their best interests, before explaining why he believed that these potential issues lacked merit. After a careful review of the issues identified in the no-merit brief that respondent-mother's appellate counsel has filed on his client's behalf in light of the record and the applicable law, we are satisfied that the findings of fact contained in the trial court's termination order have ample record support and

that those findings of fact support the trial court's determination that respondent-mother's parental rights in Zoey, John, and Allison were subject to termination on the basis of at least one of the grounds delineated in N.C.G.S. § 7B-1111(a) and that the termination of respondent-mother's parental rights in the children would be in their best interests. As a result, we affirm the trial court's termination order.

AFFIRMED.

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