378 N.C.—No. 3 Pages 377-523

GENERAL RULES OF PRACTICE; RULES FOR COURT-ORDERED ARBITRATION; RULES FOR MEDIATED SETTLEMENT CONFERENCES AND OTHER SETTLEMENT PROCEDURES IN SUPERIOR COURT CIVIL ACTIONS; RULES OF MEDIATION FOR MATTERS BEFORE THE CLERK OF SUPERIOR COURT; RULES OF MEDIATION FOR MATTERS IN DISTRICT CRIMINAL COURT; RULES OF THE DISPUTE RESOLUTION COMMISSION; RULES FOR SETTLEMENT PROCEDURES IN DISTRICT COURT FAMILY FINANCIAL CASES; STANDARDS OF PROFESSIONAL CONDUCT FOR MEDIATORS

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

OCTOBER 25, 2021

MAILING ADDRESS: The Judicial Department
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OF
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SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 27 AUGUST 2021

In re A.C. 377
In re A.L. 396
In re A.P.W. 405
In re A.S.D. 425
In re D.M. 435
In re J.E.H. 440
In re J.L.F. 445
In re K.N. 450
In re M.A. 462
In re M.J.M. 477
In re S.C.L.R. 484
In re Z.G.J. 500

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CHILD ABUSE, DEPENDENCY, AND NEGLECT

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NATIVE AMERICANS

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issues. Although the mother had made some progress on her case plan, at the time of the hearing she was sharing a studio apartment with a male coworker and was not on the lease, and she had failed to demonstrate an understanding of her domestic violence issues and how to protect herself and her child in the future. **In re M.A., 462.**

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Grounds for termination—willful abandonment—failure to pay for care required by decree or custody agreement—sufficiency of findings—In a private termination of parental rights action, the evidence did not support the trial court's finding that the father, who was incarcerated during the relevant time period, had willfully abandoned his child where the father testified that he spoke with his daughter every other weekend and where the petitioner, who had custody of the child, testified that the father called on Christmas. Even if the father's testimony were found not credible, the petitioner's testimony did not establish willful abandonment. The evidence also did not support the trial court's finding that the father had willfully failed to pay for care, support, or education as required by a decree or custody agreement where there was no evidence of any decree or custody agreement making such a requirement. **In re S.C.L.R., 484.**

Grounds for termination—willful abandonment—sufficiency of findings—willfulness—The Supreme Court rejected a mother's argument that the trial court failed to make any factual finding that her conduct was willful and therefore that the court erred by concluding her parental rights were subject to termination on the grounds of willful abandonment. Even though it was labeled as a conclusion of law, the trial court did make a finding that the mother had willfully abandoned the child. In addition, the Court rejected the mother's challenge to the sufficiency of the findings because the findings reflected that she had failed to do anything to express love, affection, and parental concern during the determinative period. **In re S.C.L.R., 484.**

Grounds for termination—willful failure to pay a reasonable portion of cost of care—voluntary support agreement—The trial court did not err by terminating a mother's parental rights to her three children on the basis that she willfully failed to pay a reasonable portion of the cost of the children's care (N.C.G.S. § 7B-1111(a)(3)), where the mother signed a voluntary support agreement in which she agreed to pay $112.00 per month and she had past periods of employment, but during the determinative six-month period immediately preceding the filing of the termination petition, she was unemployed, paid nothing toward the cost of the children's care, and never moved to modify the support agreement. **In re A.P.W., 405.**

No-merit brief—elimination of reunification from permanent plan—failure to make reasonable progress—The elimination of reunification with the father from his child's permanent plan and the subsequent termination of the father's parental rights on the grounds of failure to make reasonable progress were affirmed where the father's counsel filed a no-merit brief, the order eliminating reunification comported with the requirements of N.C.G.S. § 7B-906.2(b), and the termination order was supported by clear, cogent, and convincing evidence and based on proper legal grounds. **In re D.M., 435.**

No-merit brief—multiple grounds for termination—record support—The termination of a father's parental rights to his son based on five separate statutory grounds was affirmed where the father's counsel filed a no-merit brief, the father did not file any written arguments, the termination order's findings of fact had ample record support, and there was no error in the trial court's determination that the father's parental rights were subject to termination and that termination would be in the son's best interest. **In re J.L.F., 445.**

No-merit brief—termination on multiple grounds—The termination of a mother's parental rights on the grounds of neglect, failure to make reasonable progress, failure to pay a reasonable portion of the cost of care, and dependency was affirmed where the mother's counsel filed a no-merit brief and the termination order was supported by clear, cogent, and convincing evidence and was based on proper legal grounds. **In re J.E.H., 440.**

Pleadings—sufficiency—private termination action—reference to court order —The petition in a private termination of parental rights action comported with statutory pleading requirements (N.C.G.S. § 7B-1104(2)) where the petition stated petitioners' names and address, alleged that custody had been granted to them, and referenced the custody order establishing that the child had resided with them for two years. **In re S.C.L.R., 484.**

Subject matter jurisdiction—standing—petition filed by department of social services—The trial court had subject matter jurisdiction to terminate a mother's parental rights where the county department of social services (DSS) had standing to file the termination petition because it had been given custody of the child by a court of competent jurisdiction (N.C.G.S. § 7B-1103(a)). The social worker's testimony that she was the petitioner, when considered in context, did not mean that the petition was filed in the social worker's individual capacity. **In re Z.G.J., 500.**

Subject matter jurisdiction—UCCJEA—home state—record evidence—The trial court had subject matter jurisdiction to terminate the parental rights of a father who was living out of state where, although the court did not make an explicit finding that it had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (N.C.G.S. § 50A-201), the record established that the Act's jurisdictional requirements were satisfied. The children's home state was North Carolina at the time the termination proceedings commenced, and the children had been living in North Carolina with their foster parents for more than six consecutive months immediately preceding the commencement of the proceedings. **In re K.N., 450.**

Subject matter jurisdiction—where child resides with guardian—underlying juvenile case—In a private termination proceeding, the trial court had subject matter jurisdiction to enter an order terminating a mother's parental rights to her child where the child's legal permanent guardian filed the termination petition in the county in which she resided with the child (Robeson), satisfying the jurisdictional

requirements of N.C.G.S. § 7B-1101. A different county's jurisdiction over the child's underlying juvenile case did not prevent the Robeson County court from having jurisdiction over the termination petition. **In re M.J.M., 477.**

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

IN RE A.C.

[378 N.C. 377, 2021-NCSC-91]

IN THE MATTER OF A.C.

No. 446A20

Filed 27 August 2021

Termination of Parental Rights—grounds for termination—neglect—likelihood of repetition of neglect—findings

After disregarding numerous findings of fact that were mere recitations of testimony or that did not accurately reflect the record evidence, the Supreme Court nevertheless affirmed the trial court's order terminating a mother's parental rights to her son based on neglect (N.C.G.S. § 7B-1111(a)(1)) where the remaining findings were supported by clear, cogent, and convincing evidence regarding the mother's limited progress on various aspects of her case plan, her continued contact with the child's father despite his acts of abusive behavior, and her inability to grasp or tendency to minimize the severity of the issues preventing reunification with her child. The trial court did not impermissibly shift the burden of proof to the mother, it adequately considered evidence of changed circumstances between the child's removal and the termination hearing, and it supported its conclusion that there was a likelihood of repetition of neglect with sufficient findings of fact.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 13 July 2020 by Judge Marion M. Boone in District Court, Stokes County. This matter was calendared for argument in the Supreme Court on 21 June 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.

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

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

Jeffrey L. Miller for respondent-appellant mother.

ERVIN, Justice.

IN RE A.C.

[378 N.C. 377, 2021-NCSC-91]

¶ 1 Respondent-mother Krissy M. appeals from the trial court's orders terminating her parental rights in A.C.[1] After careful review of the trial court's termination orders in light of the record and the applicable law, we conclude that those orders should be affirmed.

¶ 2 On 13 July 2018, the Stokes County Department of Social Services filed a petition alleging that Arty was a neglected juvenile. In its petition, DSS alleged that it had received a child protective services report on 29 June 2018 stating that Arty, who had just been born, was in the neonatal intensive care unit as the result of possible drug exposure and respiratory distress. According to DSS, respondent-mother had admitted to having taken Subutex, which she purchased "off the street," and was suffering from withdrawal symptoms that included being "jittery[,] [s]haky, [and] sweaty." After expressing concern that respondent-mother "may be using something else now," DSS stated that she was "taking Subutex in the hospital and it[']s now prescribed by a doctor." Although a drug test that respondent-mother had taken while hospitalized had produced negative results, DSS asserted that Arty's umbilical cord had tested positive for the presence of amphetamines and Subutex at the time of his birth. DSS further alleged that respondent-mother had told social workers "that she had been getting Subutex off the street for the last four years due to her 'getting hooked' on pain medication after a car accident" and that she had been taking Adderall to help with her depression despite the fact that she did not have a prescription authorizing her to use that substance. On the same date upon which the petition was filed, DSS obtained the entry of an order providing that Arty should be taken into nonsecure custody.

¶ 3 After a hearing held on 27 September 2018, Judge Gretchen H. Kirkman, with respondent-mother's consent, entered an order on 30 October 2018 determining that Arty was a neglected juvenile. On 30 October 2018, Judge Kirkman entered a separate dispositional order providing that Arty would remain in DSS custody and establishing a primary permanent plan for Arty of reunification with a parent and a concurrent permanent plan of guardianship. In addition, Judge Kirkman ordered that respondent-mother enter into a Family Services Case Plan and comply with its provisions. Finally, Judge Kirkman authorized respondent-mother to have four hours of supervised visitation with Arty each week on the condition that she provide negative drug screens.

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1. A.C. will be referred to throughout the remainder of this opinion as "Arty," which is a pseudonym used for ease of reading and to protect the juvenile's privacy.

¶ 4 After a review hearing held on 28 March 2019, Judge Thomas Langan entered an order on 10 May 2019 in which he found that respondent-mother was living with her own mother, that she was struggling with anxiety and depression, that these mental health difficulties were interfering with her efforts to satisfy the requirements of her case plan, that she had not been attending parenting classes or receiving mental health treatment since December 2018, and that she had not had a domestic violence assessment. As a result, Judge Langan ordered respondent-mother to comply with the requirements of her case plan and to cooperate with the drug screening process.

¶ 5 In the aftermath of a review hearing held on 8 August 2019, the trial court entered a permanency-planning order on 10 September 2019 in which it found that respondent-mother continued to live with her mother, continued to struggle with anxiety and depression, and had not attended parenting classes or mental health treatment since December 2018 until restarting treatment in May 2019. In addition, the trial court found that respondent-mother had refused to participate in the drug screening process, had failed to appear for the purpose of providing a sample to be screened in December and January, had not been screened for drugs from December 2018 through 22 March 2019, had failed to appear for a scheduled drug screen on 10 June 2019, and had admitted to having taken Adderall that was purchased unlawfully. The trial court further found that respondent-mother had failed to participate in a second psychological evaluation that she had been ordered to obtain after reporting that she had ceased making any effort to satisfy the requirements of her case plan as the result of anxiety and depression. Moreover, the trial court also found that respondent-mother had reported that she had been involved in an incident of domestic violence during which Arty's father had become violent and which had led her to obtain the entry of a domestic violence protective order against Arty's father. Finally, the trial court found that respondent-mother had failed to demonstrate that she was employed. As a result, the trial court changed Arty's primary permanent plan to one of adoption.

¶ 6 Following a permanency-planning hearing held on 10 October 2019, the trial court entered an order on 7 November 2019 determining that respondent-mother was obtaining housing with Arty's father, had completed a domestic violence support group, had completed parenting classes, and had obtained a psychological evaluation. On the other hand, the trial court also found that respondent-mother continued to either refuse to participate in the drug screening process or to fail to appear upon occasions when she was requested to provide a sample for screening and that she had tested positive for the presence of

Subutex and methamphetamines on 4 September 2019. In addition, the trial court found that respondent-mother had failed to attend Arty's medical appointments.

¶ 7 On 7 November 2019, DSS filed a motion seeking to have respondent-mother's parental rights in Arty terminated on the basis of neglect, N.C.G.S. § 7B-1111(a)(1) (2019); willful failure to make reasonable progress toward correcting the conditions that had led to Arty's removal from her care, N.C.G.S. § 7B-1111(a)(2); and dependency, N.C.G.S. § 7B-1111(a)(6). On 13 July 2020, the trial court entered an adjudicatory order determining that respondent-mother's parental rights in Arty were subject to termination on the basis of all three grounds for termination alleged in the termination motion and a separate dispositional order determining that the termination of respondent-mother's parental rights would be in Arty's best interests. As a result, the trial court terminated respondent-mother's parental rights in Arty.[2] Respondent-mother noted an appeal to this Court from the trial court's termination orders.[3]

¶ 8 As an initial matter, respondent-mother contends that the trial court erred by determining that her parental rights in Arty were subject to termination. A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2019); *In re Montgomery*, 311 N.C. 101, 110 (1984). At the adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" that one or more of the grounds for termination set out in N.C.G.S. § 7B-1111(a) exist. N.C.G.S. § 7B-1109(f). We review a trial court's adjudication decision in order "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. at 111 (citing *In re Moore*, 306 N.C. 394, 404 (1982)). "[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395 (2019).

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2. Although the trial court terminated the parental rights of Arty's father as well, he did not note an appeal from the trial court's termination orders and is not a party to the proceedings before this Court.

3. The notice of appeal that respondent-mother filed in this case was directed to the Court of Appeals rather than this Court. In view of the seriousness of the consequences of the trial court's orders for both respondent-mother and Arty and the fact that neither DSS nor the guardian ad litem have objected to the sufficiency of respondent-mother's notice of appeal, we elect to treat the record on appeal as a certiorari petition and allow that petition in order to reach the merits of respondent-mother's challenge to the lawfulness of the trial court's termination orders. *Anderson v. Hollifield*, 345 N.C. 480, 482 (1997).

¶ 9 A parent's parental rights in a child are subject to termination pursuant to N.C.G.S. § 7B-1111(a)(1) in the event that the trial court concludes that the parent has neglected the juvenile within the meaning of N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is defined, in pertinent part, as a juvenile "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2019). As we have recently explained,

> [t]ermination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of a likelihood of future neglect by the parent. When determining whether such future neglect is likely, the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.

In re R.L.D., 375 N.C. 838, 841 (2020) (cleaned up) (first quoting *In re D.L.W.*, 368 N.C. 835, 843 (2016); then quoting *In re Z.V.A.*, 373 N.C. 207, 212 (2019).

¶ 10 In determining that respondent-mother's parental rights in Arty were subject to termination on the basis of neglect, the trial court took judicial notice of the file in the underlying juvenile neglect and dependency proceeding and found that Arty had been adjudicated to be a neglected juvenile on 27 September 2018. In addition, the trial court found that respondent-mother had agreed to a case plan on 19 September 2018 that required her to (1) attend and successfully complete an approved parenting class; (2) complete a parenting psychological evaluation, a mental health evaluation, a domestic violence assessment, and a substance abuse assessment and comply with all treatment-related recommendations; (3) participate in a random drug screening process; (4) communicate with DSS on a weekly basis; (5) maintain a legal and stable source of income for a period of at least three months; and (6) obtain and maintain stable housing for a period of at least three months. Although the trial court did find that respondent-mother had made some progress toward satisfying the requirements of her case plan, it also found, however:

> 36. That [respondent-mother] stated to Dr. Schaeffer during her psychological evaluation that she had

broken up with the father and that she didn't understand why he was listed as an aggressor in a report.

. . . .

38. That [respondent-mother] appears to have "broken up" with the father at least three different times throughout the time [Arty] has been in the care of Stokes DSS.

. . . .

42. That [respondent-mother] did not appear concerned that the father had not completed any domestic violence counseling.

. . . .

45. That although [respondent-mother] denie[d] drug use, the drug screens presented as Respondent's Exhibit 2 still list that [respondent-mother] is diagnosed with severe opioid use disorder.

. . . .

48. That [respondent-mother] began Mental Health services with The Neill Group two weeks after the Adjudication Hearing in this matter began on March 13th, 2020.

49. That the Court has not heard any evidence regarding any additional Mental Health or Domestic Violence counseling since the last [incidents] of Domestic Violence.

. . . .

54. That although [respondent-mother] states that she does not have a relationship with the father, it is extremely troubling to this Court that the mother is in continued contact with the father and is allowing visitation with her new baby.

. . . .

56. That the Court finds that [respondent-mother] has genuine love and affection for [Arty], but that she does not appear to grasp the severity of

the issues after all of the court hearings and all of the therapy that [she] has engaged in.

57. That [respondent-mother] minimizes her role in the issues leading up to today's hearing and what she needs to do to prevent problems of the past.

58. That even during [respondent-mother's] psychological evaluations the evaluators noted that [she] minimized issues and did not grasp why this was happening to her.

59. That Dr. Bennett specifically stated in [respondent-mother's] psychological evaluation that [respondent-mother] had minimized her mental health and substance abuse issues.

. . . .

65. That prior to March 13th, 2020, [respondent-mother] had missed approximately three months of visitation with [Arty].

. . . .

70. That the juvenile is a neglected juvenile, and that there is a reasonable likelihood of such neglect continuing in[to] the future. More specifically:

. . . .

b. [Respondent-mother] . . . ha[s] failed to show conditions were remedied since the time of removal of the juvenile and therefore it appears likely that such neglect would continue into the foreseeable future.

"Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407 (2019).

¶ 11 As an initial matter, we consider respondent-mother's contention that many of the findings of fact contained in the trial court's adjudication order should be disregarded because they are nothing more than recitations of the testimony provided by various witnesses. According to well-established North Carolina law, "[r]ecitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge."

In re N.D.A., 373 N.C. 71, 75 (2019) (alteration in original) (*quoting Moore v. Moore*, 160 N.C. App. 569, 571–72 (2003)). In *In re N.D.A.*, the trial court found as a fact that the father had "*testified* that he had 'attempted to set up visits with the child but could not get any assistance in doing so.' " *Id.* (emphasis added). On appeal, the father argued that the quoted language did not constitute a valid finding of fact because it contained nothing more than a recitation of his own testimony, a contention with which this Court agreed given that the language in question failed to determine whether the relevant portion of the father's testimony was credible. *Id.* As a result, this Court disregarded the language in question in determining the validity of the trial court's termination order. *Id.*

¶ 12 A careful review of the trial court's adjudication order satisfies us that Finding of Fact Nos. 33, 35, 37, 39–41, 43–44, 46–47, 50–53, and 55 are nothing more than recitations of the testimony of various witnesses. Each of these findings states that a witness either "testified," "contends," or "indicated" that something was true. In light of the fact that, in the relevant findings of fact, the trial court simply recited the testimony of various witnesses rather than indicating what actually happened or describing a statement that might constitute an admission by a party or otherwise had relevance because that statement was actually made, these "findings" fail to satisfy the trial court's obligation to evaluate the credibility of the witnesses who testified at the adjudication hearing and to resolve any contradictions that existed in the evidence. As a result, our precedent compels us to disregard these findings of fact in ascertaining whether the trial court did or did not err in determining that respondent-mother's parental rights in Arty were subject to termination on the basis of neglect.

¶ 13 In addition to the findings of fact listed above, respondent-mother contends that Finding of Fact Nos. 54 and 59 should also be disregarded as mere recitations of witness testimony. However, we are not persuaded by respondent-mother's contentions with respect to these findings of fact.

¶ 14 In Finding of Fact No. 54, the trial court stated that, "although [respondent-mother] states that she does not have a relationship with the father, it is extremely troubling to this Court that the mother is in continued contact with the father and is allowing visitation with her new baby." Admittedly, the trial court did point out that respondent-mother had "state[d]" that she was no longer in a relationship with the father. In addition, however, the trial court determined in Finding of Fact No. 54 (1) that respondent-mother continued to have contact with the father and allowed him to have visitation with her new baby and (2) that

her conduct in this regard was "extremely troubling" to the trial court. In our view, both of these statements constitute actual findings of fact rather than simple recitations of witness testimony. *See In re Harris Teeter, LLC*, 271 N.C. App. 589, 611 (stating that "[a] finding of fact is a 'determination reached through logical reasoning from the evidentiary facts' ") (quoting *Barnette v. Lowe's Home Ctrs., Inc.*, 247 N.C. App. 1, 6 (2016))), *cert. denied*, 376 N.C. 544 (2020), *and aff'd on other grounds*, 2021-NCSC-80. As a result, the information contained in Finding of Fact No. 54 relating to respondent-mother's continued contact with Arty's father, her decision to allow Arty's father to visit with her new baby, and the trial court's concern about her conduct is appropriately considered in determining whether respondent-mother's testimony was credible and whether respondent-mother's parental rights in Arty were subject to termination on the basis of neglect.

¶ 15 A careful reading of the trial court's termination order persuades us that Finding of Fact No. 59 must be read in conjunction with Finding of Fact 58, which states "[t]hat[,] even during [respondent-mother's] psychological evaluations[,] the evaluators noted that [respondent-mother] minimized issues and did not grasp why this was happening to her." In stating in Finding of Fact No. 59 "[t]hat Dr. Bennett specifically stated in [respondent-mother's] psychological evaluation that [respondent-mother] had minimized her mental health and substance abuse issues," the trial court was simply pointing to the portion of the record that provided the evidentiary support for Finding of Fact No. 58. As a result, we decline to disregard the essential import of Finding of Fact Nos. 58 and 59, which is that respondent-mother tended to minimize the nature and extent of the difficulties that she faced in attempting to parent Arty.

¶ 16 In addition, respondent-mother attacks the validity of the finding in which the trial court judicially noticed the materials in the underlying neglect and dependency action and incorporated the "file and any findings of fact therefrom within the current order." In support of this contention, respondent-mother points out that "[t]he trial court made broad, general statements of judicial notice and incorporation without specifying precisely what it was using for any specific finding" and argues that "[m]erely incorporating documents by reference is not a sufficient finding of fact." We do not believe that the presence of this language in the trial court's adjudication order constitutes prejudicial error.

¶ 17 As an initial matter, we note that respondent-mother did not object to the trial court's decision to judicially notice the file in the underlying neglect and dependency proceeding. *See In re A.B.*, 272 N.C. App.

13, 16 (2020) (stating that "[a] respondent's failure to object to the trial court's taking judicial notice of the underlying juvenile case files waives appellate review of the issue" (cleaned up) (quoting *In re W.L.M.*, 181 N.C. App. 518, 522 (2007))). In addition, even if respondent-mother had properly preserved her objection to the trial court's decision to judicially notice the materials in the underlying neglect and dependency proceeding for purposes of appellate review, her objection to the trial court's action lacks substantive merit. As this Court has previously recognized, "[a] trial court may take judicial notice of findings of fact made in prior orders, even when those findings are based on a lower evidentiary standard because where a judge sits without a jury, the trial court is presumed to have disregarded any incompetent evidence and relied upon the competent evidence." *In re T.N.H.*, 372 N.C. at 410 (citing *Munchak Corp. v. Caldwell*, 301 N.C. 689, 694 (1981)). On the other hand, however, "the trial court may not rely solely on prior court orders and reports" and must, instead, "receive some oral testimony at the hearing and make an independent determination regarding the evidence presented." *Id.*

¶ 18 Although the trial court did take judicial notice of the record in the underlying neglect and dependency proceeding and incorporated "that file and any findings of fact therefrom within the [adjudication] order," it did not rely solely upon these materials in determining that respondent-mother's parental rights in Arty were subject to termination. Instead, the trial court also received oral testimony during the termination hearing from Katie Fulk, a social worker; respondent-mother; and Jodi Callahan, an addiction specialist employed by Novant Health, who counseled respondent-mother regarding her substance abuse issues. In addition, the trial court made independent factual determinations based upon the evidence admitted at the termination hearing that adequately addressed the matters at issue between the parties. As a result, since the trial court received evidence in the form of oral witness testimony at the adjudication hearing, fully considered this evidence, and made findings of fact delineating its independent evaluation of the record evidence in its adjudication order, we conclude that respondent-mother's challenge to the trial court's decision to take judicial notice of the record developed in the underlying neglect and dependency proceeding lacks merit.

¶ 19 Next, respondent-mother challenges the appropriateness of Finding of Fact Nos. 36 and 38 on the grounds that they lack "a nexus, an anchor in time, or relevance as support for a conclusion on the existence of any ground at the time of the hearing." According to respondent-mother, in light of the trial court's failure to "articulat[e] the connection between a finding and a ground, many [of its] findings are simply statements with

no support for a ground for termination." Once again, we fail to find respondent-mother's argument to be persuasive.

¶ 20 As an initial matter, we hold that both of the challenged findings of fact have ample evidentiary support. In Finding of Fact No. 36, the trial court stated that respondent-mother had told "Dr. Schaeffer during her psychological evaluation that she had broken up with the father and that she didn't understand why he was listed as an aggressor in a report." As the record reflects, respondent-mother acknowledged that DSS had expressed concern about her relationship with Arty's father and that she had told Dr. Schaeffer that Arty's father had a "bad temper" before stating that she did not "know why" Arty's father had been described as an "aggressor" in various reports. In Finding of Fact No. 38, the trial court found that respondent-mother "appears to have 'broken up' with the father at least three different times throughout the time the juvenile has been in" DSS care. According to the record, respondent-mother testified that she had "broke[n] up" with Arty's father right after Christmas in 2019, after previously having ended her relationship with him one year earlier. In addition, the record reflects that respondent-mother admitted that, in April 2019, Arty's father had intimidated her; that she had locked herself in a bathroom in response to his conduct; and that, after she had done so, Arty's father broke down the door and forced his way into the bathroom, causing her to obtain the entry of a domestic violence protective order against him. As a result, the relevant findings of fact are supported by clear, cogent, and convincing record evidence and appear to us to have been relevant to the issue of whether respondent-mother's parental rights in Arty were subject to termination on the basis of neglect given that they demonstrated the continued existence of contact between respondent-mother and Arty's father despite his abusive behavior, a fact that tends to show her failure to understand and to address the issue of domestic violence.

¶ 21 Similarly, respondent-mother challenges a number of other findings as lacking in sufficient record support. First, respondent-mother argues that the record fails to provide sufficient support for Finding of Fact No. 42, in which the trial court found that respondent-mother "did not appear concerned that the father had not completed any domestic violence counselling." The record contains ample support for an assertion that respondent-mother and Arty's father had a history of domestic violence. At the termination hearing, respondent-mother testified that, during the first year of her relationship with Arty's father and while she was pregnant with Arty, she "started noticing that he might have like some anger issues, . . . but I stayed with him in a chance to make our family work.

He's gotten worse over the time." In addition, as we have already noted, respondent-mother had reported an incident of domestic violence between herself and Arty's father that had occurred in April 2019 and that had (1) caused Arty's father to go on "a three-day high, which led to his being violent" and had (2) motivated respondent-mother to obtain the entry of a domestic violence protective order directed against Arty's father. In spite of this history of domestic violence, however, respondent-mother subsequently reconciled with Arty's father. At a permanency-planning hearing held on 10 October 2019, respondent-mother reported that she had established housing with Arty's father in Winston-Salem. In addition, respondent-mother acknowledged at the termination hearing that she continued to allow the father to visit with her new baby. When asked at the termination hearing whether, as a victim of domestic violence, she had concerns about the fact that Arty's father was having visits with her child, respondent-mother testified that her "only concern" was Arty's father's "substance abuse problems." As a result, the record contains ample support for Finding of Fact No. 42. *See In re D.L.W.*, 368 N.C. at 843 (stating that the trial judge is required to consider all of the evidence, to pass upon the credibility of the witnesses, and to determine the reasonable inferences to be drawn from the evidence).

¶ 22 In addition, respondent-mother challenges the sufficiency of the record support for Finding of Fact No. 45, which states that, "although [respondent-mother] denies drug use, the drug screens presented as Respondent's Exhibit 2 still list that the mother is diagnosed with severe opioid use disorder." In support of this contention, respondent-mother states that, since her drug screen results demonstrate that she had not engaged in improper drug use since July 2018, the fact that the drug screen summaries that were admitted into evidence at the termination hearing continued to "list" a diagnosis of severe opioid use disorder constitutes a misrepresentation of the evidence by implying that she has a new or ongoing substance abuse or disorder.

¶ 23 As the trial court's findings reflect, the drug screen summaries indicate that, throughout the relevant period of time, respondent-mother was diagnosed as having an "[o]pioid use disorder, severe." For that reason, the specific finding that the trial court actually made has sufficient evidentiary support. *In re D.L.W.*, 368 N.C. at 843. On the other hand, given the absence of any evidence tending to show what, if anything, the continued existence of this diagnosis reflects and what was necessary in order for this diagnosis to be deleted and the absence of any findings that respondent-mother had tested positive for the presence of unlawful drugs or exhibited a consistent pattern of attempting to evade the

required drug screening process in the period of time immediately prior to the termination hearing, we opt to refrain from considering Finding of Fact No. 45 in determining whether the trial court's findings support its conclusion that respondent-mother's parental rights in Arty were subject to termination on the basis of neglect. *See In re N.G.*, 374 N.C. 891, 900 (stating that this Court limits its review of findings of fact "to those challenged findings that are necessary to support the trial court's determination . . . that parental rights should be terminated").

¶ 24 Next, respondent-mother challenges the sufficiency of the record support for Finding of Fact No. 49, which states that "the Court has not heard any evidence regarding any additional Mental Health or Domestic Violence counseling since the last [incidents] of Domestic Violence." Although respondent-mother testified at the termination hearing that the last incident of domestic violence in which she was involved with Arty's father had occurred in April 2019, she also claims that, after this date, she had continued to participate in substance abuse counseling at Novant Health, had attended mental health treatment at Novant Health and the Neill Group, and had participated in group sessions that were intended to address domestic violence concerns. A careful review of the record satisfies us that respondent-mother did, in fact, receive mental health counseling at Novant Health after April 2019, with the Novant Health records that were admitted into evidence as Respondent's Exhibit 2 tending to show that respondent-mother saw a physician for treatment of major depressive disorder and panic disorder on 16 May 2019 and that she saw a provider at Novant Health for "[d]epression affecting pregnancy" on 3 October 2019. In addition, DSS concedes that respondent-mother sought domestic violence counseling after April 2019 given that the record contains a certificate of participation dated 9 October 2019 that shows that respondent-mother completed a domestic violence support group.[4] As a result, we will disregard Finding of Fact No. 49 in evaluating the lawfulness of the trial court's determination that respondent-mother's parental rights in Arty were subject to termination on the basis of neglect. *In re S.M.*, 375 N.C. 673, 684 (2020).

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4. DSS contends that, "given that the parents reconciled and separated again by December of 2019, it is not beyond imagining that further instances of domestic violence likely occurred around that time." Although the trial court does have the right to make reasonable inferences from the evidence, "[s]uch inferences, however, 'cannot rest on conjecture or surmise.' " *In re K.L.T.*, 374 N.C. 826, 843 (2020) (quoting *Sowers v. Marley*, 235 N.C. 607, 609 (1952)). The inference that DSS seeks to have us draw from the parents' reconciliation and subsequent separation does not strike us as a reasonable one.

¶ 25 Moreover, respondent-mother argues that Finding of Fact Nos. 57 through 59, which indicate that respondent-mother failed to "grasp" and tended to minimize the extent of her involvement in the difficulties that precluded her reunification with Arty, lack sufficient record support. Respondent-mother's argument to the contrary notwithstanding, however, the record reflects that Dr. Bennett specifically stated in his report that respondent-mother "minimized emotional and psychiatric issues"; that this tendency to minimize the problems that respondent-mother faced "extend[ed] to the potential for domestic violence as she does not appear to understand that the [April 2019] incident . . . would be considered domestic violence"; and that respondent-mother tended to minimize her substance abuse problems. Although respondent-mother points out that Dr. Bennett's report was the only evidence upon which these findings could possibly rest, the report in question provides ample support for the challenged portions of Finding of Fact Nos. 57 through 59, with it being the province of the trial court to evaluate the credibility of the evidence and to determine the reasonableness of the inferences that should be drawn from that evidence. *In re D.L.W.*, 368 N.C. at 843. Thus, we reject this aspect of respondent-mother's challenge to the lawfulness of the trial court's order.

¶ 26 Furthermore, respondent-mother contends that Finding of Fact No. 65, in which the trial court stated that, "[p]rior to March 13th 2020, [respondent-mother] had missed approximately three months of visitation with [Arty]," fails "to account for those reasonable and excusable justifications consistent with the missed visits." Respondent-mother does not, however, argue that she did not miss the visits in question. In addition, the trial court has the authority, in the exercise of its responsibility as the finder of fact, to refrain from accepting any justifications or explanations that respondent-mother offered for missing these visits. *See In re J.T.C.*, 273 N.C App. 66, 70 (2020) (stating that "[i]t is well-established . . . that '[c]redibility, contradictions, and discrepancies in the evidence are matters to be resolved by the trier of fact, here the trial judge, and the trier of fact may accept or reject the testimony of any witness' " (second alteration in original) (quoting *Smith v. Smith*, 89 N.C. App. 232, 235 (1988)), *aff'd per curiam*, 376 N.C. 642 (2021). As a result, the trial court did not commit any error of law in making Finding of Fact No. 65.

¶ 27 In Finding of Fact No. 71, the trial court stated that the allegations set out in the termination motion had "been proven by clear, cogent, and convincing evidence." Although respondent-mother appears to contend that the trial court erred by making Finding of Fact No. 71 on the

grounds that this finding involves an erroneous application of the legal principles governing the issue of judicial notice, the challenged finding of fact is nothing more than a statement of the applicable standard of proof. *See* N.C.G.S. § 7B-1109(f) (providing that, at the adjudicatory portion of a termination of parental rights proceeding, "[t]he burden . . . shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence"); *see also In re B.L.H.*, 376 N.C. 118, 127 (2020) (holding that, while the trial court failed to state the required standard of proof in the written termination order, its oral statement that its findings rested upon "clear, cogent, and convincing" evidence satisfied the requirements of N.C.G.S. § 7B-1109(f)).

¶ 28 Similarly, in Finding of Fact No. 72, the trial court stated that "any additional allegations of the Motion for Termination of Parental Rights not specifically laid out [in its previous findings were incorporated into its adjudicatory order] as Findings of Fact." According to respondent-mother, the trial court erred by making this finding of fact on the theory that the trial court is required to find the facts specifically rather than simply incorporating a large body of findings from some other document by reference and on the grounds that a trial court cannot make adequate findings of fact by simply reciting the allegations set out in a termination motion. *See In re Harton*, 156 N.C. App. 655, 660 (2003) (stating that, "[w]hen a trial court is required to make findings of fact, it must make the findings of fact specially" and, instead of "simply recit[ing] allegations," "must through processes of logical reasoning from the evidentiary facts find the ultimate facts essential to support the conclusions of law" (cleaned up) (first quoting N.C.G.S. § 1A-1, Rule 52(a)(1) (2001); then quoting *In re Anderson*, 151 N.C. App. 94, 96 (2002))). We do not find respondent-mother's argument to be persuasive.

¶ 29 As this Court has previously stated, "[t]he requirement for appropriately detailed findings is . . . not a mere formality or a rule of empty ritual; it is designed instead 'to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.' " *Coble v. Coble*, 300 N.C. 708, 712 (1980) (quoting *Montgomery v. Montgomery*, 32 N.C. App. 154, 158 (1977)). A careful review of the trial court's adjudication order reveals that, rather than simply reciting the allegations set out in the termination motion, the trial court made "sufficient additional findings of fact which indicate the trial court considered the evidence presented at the hearing," *In re S.C.R.*, 217 N.C. App. 166, 169 (2011) (quoting *In re O.W.*, 164 N.C. App. 699, 702 (2004)), with this case being readily distinguishable from *In re S.C.R.*, in which the trial court erroneously made only "one additional

finding of fact beyond those incorporated from the petition," resulting in the entry of an order that was, as the Court of Appeals determined, insufficient to permit a "determin[ation] that the judgment is adequately supported by competent evidence." *Id.* at 170 (quoting *Montgomery*, 32 N.C. App. at 156–57). Instead, the trial court made over seventy findings of fact in the adjudication order that is at issue in this case. Even though, as we have already noted, a number of the trial court's findings were deficient for various reasons, the remaining findings are sufficient to permit meaningful appellate review. *Cf. In re K.R.C.*, 374 N.C. 849, 861 (2020) (concluding that this Court was "simply unable to undertake meaningful appellate review of the trial court's decision based upon a series of evidentiary findings which [were] untethered to any ultimate facts which undergird an adjudication pursuant to N.C.G.S. § 7B-1111(a) or to any particularized conclusions of law which would otherwise explain the trial court's reasoning"). *See also In re Z.D.*, 258 N.C. App. 441, 444 (2018) (stating that, in order for an appellate court to conduct a meaningful review, a "trial court must make *specific findings* of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached" (internal quotation marks omitted) (quoting *Quick v. Quick*, 305 N.C. 446, 452 (1982))); *In re A.B.*, 245 N.C. App. 35, 44–45 (2016) (stating that, "[a]lthough finding of fact 13 certainly includes some 'unoriginal prose [,]' . . . the trial court made 70 findings of fact" and "referred to the allegations from DSS's petitions by reference to subparagraphs a-k in one of seventy findings, so it is clear that the trial court made an independent determination of the facts and did 'more' than merely 'recit[e] the allegations' " (second and fourth alterations in original) (quoting *In re O.W.*, 164 N.C. App. at 702)). As a result, we reject respondent-mother's contention that the trial court erred by incorporating the allegations set out in the termination motion in its termination order.

¶ 30 Next, respondent-mother argues that Finding of Fact No. 70(b), which states that respondent-mother had "failed to show conditions were remedied since the time of removal of the juvenile and therefore it appears likely that such neglect would continue into the foreseeable future" improperly shifted the burden of proof from DSS to respondent-mother by requiring her to "show conditions" had been "remedied" since Arty had been removed from her home. Although respondent-mother is certainly correct in noting that the burden of proof at the adjudication stage of a termination of parental rights proceeding rests upon the petitioner or movant, *see* N.C.G.S. § 7B-1109(f) (stating that "[t]he burden in [an adjudicatory hearing on termination] shall be

upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence"), we do not believe that Finding of Fact No. 70(b) indicates that the trial court impermissibly shifted the burden of proof from DSS to respondent-mother. Instead, we conclude that, "[w]hen viewed in the context of the entire termination order, the trial court's finding is merely an expression of its observation that respondent-mother failed to rebut petitioners' clear, cogent, and convincing evidence that the conditions of [removal had not been remedied]," *In re D.L.A.D.*, 375 N.C. 565, 570 (2020); *see also In re A.R.A.*, 373 N.C. 190, 196 (2019) (stating that "the district court did not improperly shift DSS' burden of proof onto respondent-mother" and had, instead, "simply observed that respondent-mother had failed to rebut DSS' clear, cogent, and convincing evidence that she and the father had not established safe and stable housing for the children"), when viewed in light of its earlier determinations that respondent-mother failed to fully grasp the extent of her mental health problems and the difficulties created by her continued relationship with Arty's father.[5] As a result, we hold that this aspect of respondent-mother's challenge to the trial court's adjudication order has no merit.

¶ 31 Finally, respondent-mother asserts that the record evidence and the trial court's findings of fact fail to support its determination that it was likely that Arty would be neglected in the event that he was returned to respondent-mother's care. We are unable to agree with respondent-mother's contention.

¶ 32 As we have already noted, the trial court erred by making a number of findings of fact that constituted nothing more than recitations of the testimony of various witnesses and by finding, in the absence of sufficient record support, that the record did not contain any indication that respondent-mother had participated in any mental health or domestic violence treatment after the April 2019 incident in which Arty's father committed acts of domestic violence against her. However, "[t]here is nothing impermissible about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes," *In re T.N.H.*, 372 N.C. at 408 (quoting *In re C.L.C.*, 171 N.C. App. 438, 446 (2005), *aff'd per curiam*, *in part*, *and disc. rev. improvidently*

5. Although respondent-mother challenges the lawfulness of Finding of Fact Nos. 41, 60, 61, and 68 as well, we need not address the arguments that she advanced in support of her contention that the trial court erred by making these findings on the grounds that the findings in question are not necessary to support a conclusion that the trial court's findings support its conclusion that respondent-mother's parental rights were subject to termination on the basis of neglect. *See In re N.G.*, 374 N.C. at 900.

allowed, *in part*, 360 N.C. 475 (2006)), and this Court simply disregards information contained in findings of fact that lack sufficient evidentiary support in determining whether the trial court's findings of fact support a determination that a parent's parental rights in a child are subject to termination. As a result, we will now examine the sufficiency of the trial court's properly made and supported findings of fact for the purpose of ascertaining whether they support a determination that respondent-mother's parental rights in Arty were subject to termination on the basis of neglect, including whether those findings sufficed to show a likelihood of future neglect in the event that Arty was to be returned to respondent-mother's care.

¶ 33 A careful review of the trial court's valid findings of fact establishes that, while respondent-mother made some progress in satisfying the requirements of her case plan, the progress that she did make was extremely limited; that respondent-mother had "broken up" with the father on at least three occasions during the pendency of the underlying neglect and dependency proceeding; that, in spite of her denial that she was still involved in a romantic relationship with Arty's father, respondent-mother continued to have contact with Arty's father and allowed him to visit her new baby; that respondent-mother was not concerned by the fact that Arty's father had failed to complete domestic violence counseling; that, in spite of the fact that respondent-mother had genuine love and affection for Arty, she did not grasp the severity of the difficulties that she faced in seeking to be reunited with him; that respondent-mother minimized the problems that she faced and the significance of the steps that she needed to take in order to prevent these past difficulties from recurring; that respondent-mother was completely dependent upon others for her housing and finances; that respondent-mother had never had stable housing or independent means of support during the pendency of the underlying neglect and dependency proceeding; that respondent-mother missed approximately three months of visitation with Arty; and that respondent-mother had failed to provide any financial support for Arty during the time that he was in DSS custody. In addition, the trial court found that Arty had been adjudicated to be a neglected juvenile in 2018; that respondent-mother had failed to show that the conditions that had led to Arty's removal from her care had been remedied; and that there was a likelihood that the neglect that Arty had experienced would recur in the event that he was returned to respondent-mother's care.

¶ 34 The trial court's properly made findings indicate that Arty had previously been found to be a neglected juvenile. In addition, by finding as a fact that respondent-mother had made some progress toward satisfying

the requirements of her case plan by submitting to psychological evaluations, completing parenting classes, obtaining a domestic violence assessment and completing domestic violence classes, maintaining some level of contact with DSS, participating in substance abuse treatment, participating in a number of drug screens, and submitting to a mental health evaluation, it is apparent that the trial court considered whether respondent-mother's situation had improved between the date upon which Arty entered DSS custody and the date of the termination hearing. *In re Z.V.A.*, 373 N.C. at 212. On the other hand, the trial court also found that future neglect was likely in the event that Arty was returned to respondent-mother's care. In reaching this conclusion, the trial court focused upon the fact that respondent-mother minimized the severity of her parenting-related problems and the extent to which her parenting deficiencies had contributed to Arty's removal from her care, with the trial court having expressed particular concern about the fact that respondent-mother continued to have contact with Arty's father, had reconciled with him on more than one occasion, and was allowing him to visit her new child in spite of his prior history of committing acts of domestic violence against her. *See In re M.C.*, 374 N.C. 882, 889 (2020) (concluding that "respondent's refusal to acknowledge the effect of domestic violence on the children and her inability to sever her relationship with [the father], . . . supports the trial court's determination that the neglect of the children would likely be repeated if they were returned to respondent's care"); *see also In re M.A.*, 374 N.C. 865, 870 (2020) (holding that, even though the father claimed to have made reasonable progress toward satisfying the requirements of his case plan, the trial court's findings relating to his failure to adequately address the issue of domestic violence, which had been the primary reason for the children's removal from the family home, sufficed, "standing alone, . . . to support a determination that there was a likelihood of future neglect"); *In re J.A.M.*, 259 N.C. App. 810, 816 (2018) (holding that, where domestic violence was one of the grounds for the child's removal from the parental home, the mother's denial that she needed help and her continued involvement with the father, who had committed acts of domestic violence against her, "constitute[d] evidence that the trial court could find was predictive of future neglect"). As a result, the trial court did not err by determining that there was a likelihood that the neglect that Arty had previously experienced would be repeated in the event that he was returned to respondent-mother's care and by concluding that respondent-mother's parental rights in Arty were subject to termination based upon neglect pursuant to N.C.G.S. § 7B-1111(a)(1).

¶ 35 A trial court's determination that a parent's parental rights in a child are subject to termination for neglect pursuant to N.C.G.S. § 7B-1111(a)(1) is sufficient, in and of itself, to support the termination of that parent's parental rights. *In re E.H.P.*, 372 N.C. at 395. For that reason, we need not determine whether the trial court erred by determining that respondent-mother's parental rights in Arty were subject to termination for willful failure to make reasonable progress toward correcting the conditions that had led to Arty's placement in DSS custody, N.C.G.S. § 7B-1111(a)(2), or dependency, N.C.G.S. § 7B-1111(a)(6). In addition, we note that respondent-mother has not challenged the lawfulness of the trial court's determination that the termination of her parental rights would be in Arty's best interests. *See* N.C.G.S. § 7B-1110(a). As a result, for all of these reasons, we affirm the trial court's orders terminating respondent-mother's parental rights in Arty.

AFFIRMED.

IN THE MATTER OF A.L.

No. 370A20

Filed 27 August 2021

1. Termination of Parental Rights—grounds for termination—failure to make reasonable progress—drug relapses

The trial court did not err in terminating a mother's parental rights to her daughter for willful failure to make reasonable progress to correct the conditions that led to the child's removal (N.C.G.S. § 7B-1111(a)(2)) based on evidence that the mother's substance abuse continued for at least three and a half years during the pendency of this case. Although the mother argued that relapses for addicts are common and therefore her limited progress was not unreasonable, the court's findings regarding the mother's inability to successfully complete rehabilitation or maintain sobriety for any significant amount of time supported its conclusion that her progress was not reasonable.

2. Native Americans—Indian Child Welfare Act—termination of parental rights order—failure to make proper inquiry

Where the trial court's order terminating a mother's parental rights to her child did not address whether it made the required

inquiry, pursuant to 25 C.F.R. § 23.107(a), regarding whether the child was an Indian child as defined by the Indian Child Welfare Act, and the inquiry did not appear in the record, the matter was remanded for compliance with the Act.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from order entered on 26 February 2020 by Judge William J. Moore in District Court, Robeson County. This matter was calendared in the Supreme Court on 21 June 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

J. Edward Yeager, Jr. for petitioner-appellee Robeson County Department of Social Services.

Maggie D. Blair for appellee Guardian ad litem.

Anné C. Wright for respondent-appellant mother.

BERGER, Justice.

¶ 1 Respondent appeals from an order terminating her parental rights in A.L. (Arden).[1] While the trial court properly applied North Carolina law in terminating respondent's parental rights in Arden, this case should be remanded for further proceedings to ensure compliance with the Indian Child Welfare Act.

I. Background

¶ 2 Arden was born January 31, 2015. Arden's birth certificate listed respondent's race as "American Indian". On July 22, 2016, the Robeson County Department of Social Services (DSS) obtained nonsecure custody of Arden and filed a juvenile petition alleging her to be a neglected juvenile.

¶ 3 The petition alleged that DSS received a referral on December 18, 2015, which stated respondent's boyfriend "kicked her out" of the home after realizing she was using drugs. There were concerns that respondent went to her mother's house, where "they were smoking crack and snorting pills." There were also concerns of respondent having seizures because "she smoked so much dope" and of respondent having a seizure while caring for Arden. Respondent admitted to cocaine use twice a week and the use of a non-prescribed pill, Loracet, for back pain.

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

¶ 4 The petition further alleged that on February 16, 2016, respondent agreed to a case plan which required her to complete substance abuse counseling and to follow all recommendations. In late April 2016, respondent was accepted into a substance abuse program at Crystal Lake. By mid-July 2016, respondent had been removed from Crystal Lake's program. On July 18, 2016, respondent informed a DSS social worker that she had smoked "crack" with her mother, sold her food stamps for drugs, and used cocaine with her boyfriend while Arden "was with them but . . . asleep". On July 20, 2016, respondent also informed a DSS social worker that she paid her mother to watch Arden despite knowing that her mother was high. In an order issued July 22, 2016, the trial court found that Arden was a member of a State-recognized tribe and listed her race as "Indian" while ordering DSS to notify the tribe "of the need for nonsecure custody for the purpose of locating relatives or nonrelative kin for placement." The trial court reiterated that Arden was a member of a State-recognized tribe in orders dated August 31, 2016, September 1, 2016, and September 12, 2016.

¶ 5 Following a hearing on September 15, 2016, the trial court entered an order on November 9, 2016, adjudicating Arden to be a neglected juvenile. In a separate disposition order entered November 15, 2016, the trial court found that on August 31, 2016, respondent met with a DSS social worker and agreed to attend substance abuse treatment, participate and successfully complete the inpatient treatment services at Family Treatment Court, and participate in random drug screens. The permanent plan was set as reunification with a concurrent plan of adoption.

¶ 6 Following a permanency planning hearing on May 3, 2017, the trial court entered an order on July 6, 2017, finding that respondent had attended two separate facilities for substance abuse treatment during DSS's involvement. However, respondent had not successfully completed either program and was not seeing any provider to address her issues. The trial court further made findings of fact that respondent needed to address issues including housing, substance abuse, and parenting and mental health concerns.

¶ 7 Following a permanency planning hearing on November 1, 2017, the trial court entered an order on November 29, 2017, finding that on August 8, 2017, respondent entered treatment at Faith Home Recovery in South Carolina and graduated from its program on September 29, 2017. Thereafter, respondent entered residential treatment at Grace Court, and Arden was placed with respondent in a trial home placement.

¶ 8 Following a permanency planning hearing on February 7, 2018, the trial court entered an order on May 23, 2018, finding that on November

4, 2017, Grace Court staff informed a DSS social worker that respondent was testing negative on her random drug screens. On December 15, 2017, a DSS social worker made contact with Family Treatment Court and was informed that respondent was "doing well."

¶ 9 Following a permanency planning hearing on August 1, 2018, the trial court entered an order finding that Arden was placed in a licensed foster home. Respondent had been discharged from Grace Court for "insubordination" on April 6, 2018, and was receiving outpatient services at Southeastern Behavioral Health Services. On June 26, 2018, respondent was present for visitation with Arden at DSS, however, she was subsequently arrested for failure to appear for Family Treatment Court. On June 29, 2018, respondent was discharged from Family Treatment Court for noncompliance after testing positive for cocaine. On July 16, 2018, respondent informed a DSS social worker that she had "used crack . . . last Monday." The trial court changed the permanent plan to adoption with a concurrent plan of reunification with respondent.

¶ 10 On October 24, 2018, DSS filed a petition to terminate respondent's parental rights[2] pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (3).

¶ 11 Following a permanency planning hearing on February 20, 2019, the trial court entered an order on May 8, 2019, finding that although respondent had attended three inpatient facilities for substance abuse, she had not successfully completed any of the programs. The trial court also found that she was not consistent in attending outpatient services at Southeastern Behavioral Health Services. Respondent continued to admit to cocaine use. On February 1, 2019, respondent entered the Walter B. Jones Center and successfully completed the detox program. She was discharged on February 13, 2019, but she did not follow up with any services after completing the program. The trial court further found that respondent had not completed parenting classes, was not receiving mental health services, and did not have her own housing.

¶ 12 Following a permanency planning hearing on January 15, 2020, the trial court entered an order on March 11, 2020, finding that respondent was currently receiving inpatient treatment at Miracle Hill/Shepherd's Gate. Arden had been in her current foster home since April 6, 2018. Arden's therapist testified that after her monthly visitations with respondent, Arden would suffer from sleep disruption, breakdowns, and outbursts of anger. The trial court subsequently terminated respondent's visitations with Arden.

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2. DSS also sought to terminate the parental rights of Arden's alleged father, and his rights were terminated. But he is not a party to this appeal.

¶ 13 A hearing was held on the petition to terminate respondent's parental rights, and the trial court entered an order on February 26, 2020, concluding that grounds existed to terminate respondent's rights in Arden pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (3).[3] Despite the trial court's initial orders finding Arden to be a member of a State-recognized tribe, the trial court did not address the Indian Child Welfare Act in the Order on Adjudication, Order on Disposition, or the Order Terminating Respondent's Parental Rights. Respondent appeals.

¶ 14 On appeal, respondent challenges the trial court's determination that grounds existed to terminate her parental rights and argues that the trial court failed to comply with the Indian Child Welfare Act.

II. Discussion

A. Grounds for Termination

¶ 15 **[1]** Here, the trial court found grounds for termination under N.C.G.S. § 7B-1111(a)(1), (2), (3), and (6). Because only one ground is needed to support termination, we will only review termination under N.C.G.S. § 7B-1111(a)(2). *See* N.C.G.S. § 7B-1111(a) ("The court may terminate the parental rights upon a finding of one or more [grounds for termination.]").

¶ 16 "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, 839 S.E.2d 792, 796–97 (2020) (citing N.C.G.S. §§ 7B-1109, -1110 (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, 831 S.E.2d 49, 52 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (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, 831 S.E.2d 305, 310 (2019). Unchallenged findings are deemed to be supported by the evidence and are binding on appeal. *In re Z.L.W.*, 372 N.C.

3. The trial court found grounds for termination existed under N.C.G.S. § 7B-1111(a)(6). However, there is no evidence in the record that DSS alleged grounds for termination under this subsection, or that respondent was given notice that termination would proceed pursuant to N.C.G.S. § 7B-1111(a)(6). Given that the petitioner makes no argument on appeal for the validity of this ground, and the lack of record support, we will disregard it during our analysis.

432, 437, 831 S.E.2d 62, 65 (2019). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

¶ 17 On appeal, respondent specifically challenges whether the trial court's findings of fact support its conclusion that, under N.C.G.S. § 7B-1111(a)(2), she willfully left Arden "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" had been made in correcting the conditions which led to Arden's removal. Respondent argues that she made reasonable progress to correct the conditions that led to Arden's removal from her home by consistently seeking and engaging in treatment. She asserts that relapses for addicts "are not uncommon or unique, and therefore not unreasonable under the circumstances" and that at the time of the termination hearing, she had been sober and successfully participating in treatment for seven months. Respondent has only challenged the determination that her progress was not reasonable and has not contested any of the underlying findings of fact, so they are binding on appeal. *In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 65.

¶ 18 N.C.G.S. § 7B-1111(a)(2) provides that 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). "[T]he willfulness of a parent's failure to make reasonable progress toward correcting the conditions that led to a child's removal from the family home 'is established when the [parent] had the ability to show reasonable progress, but was unwilling to make the effort.' " *In re L.E.W.*, 375 N.C. 124, 136, 846 S.E.2d 460, 469 (2020) (quoting *In re Fletcher*, 148 N.C. App. 228, 235, 558 S.E.2d 498, 502 (2002)).

¶ 19 This Court has recognized that "parental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)[.]" *In re B.O.A.*, 372 N.C. at 384, 831 S.E.2d at 313. A trial court "should refrain from finding that a parent has failed to make reasonable progress" in correcting the conditions that led to the children's removal "simply because of his or her failure to fully satisfy all elements of the case plan goals." *Id.* at 385, 831 S.E.2d at 314 (citation and quotation marks omitted). However, "a trial court has ample authority to determine that a parent's 'extremely limited progress' in correcting the conditions leading to removal adequately

supports a determination that a parent's parental rights in a particular child are subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2)[.]" *Id.* (citation omitted).

¶ 20 In its termination order, the trial court made numerous, unchallenged findings of fact to support termination under N.C.G.S. § 7B-1111(a)(2). The trial court found that on December 18, 2015, DSS received a referral regarding respondent's substance abuse and substance use while in Arden's presence. Respondent continued to abuse drugs until at least July 9, 2019, when she admitted to using crack cocaine. Respondent also showed a consistent inability to successfully complete rehabilitation programs over that same time period. Respondent's first attempt at rehabilitation ended on July 14, 2016, when she was kicked out for possessing an energy drink. More recently, in January 2019, she attended a substance abuse treatment group at Southeastern Behavioral Health Services. However, she was still on drugs at the time and admitted on January 22, 2019, that she had used cocaine "a few days ago".

¶ 21 The trial court's extensive findings also demonstrate that Arden was removed from respondent's home in July 2016 due to respondent's substance abuse and substance use while in Arden's presence. The trial court's November 9, 2016, order, which adjudicated Arden to be a neglected juvenile, indicated that respondent entered into a case plan in February 2016 in which she agreed to complete substance abuse counseling and to follow their recommendations.

¶ 22 While respondent entered numerous inpatient and residential programs to address her substance abuse issues up until the time of the termination hearing, she was unable to successfully complete the majority of the programs she entered, failed to maintain sobriety for any meaningful amount of time, and regularly admitted to DSS social workers that she was abusing substances. Her continued abuse of drugs and failure to complete the vast majority of rehabilitation programs she entered demonstrates extremely limited progress at best in correcting the conditions that led to Arden's removal.

¶ 23 As such, despite respondent's good intentions to seek help, respondent failed to improve her situation. *See In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (stating that a parent's consistent inability to improve their situation will support a finding of willfulness, regardless of good intentions). Accordingly, respondent's argument has no merit.

¶ 24 Therefore, we conclude that the trial court's unchallenged findings support its conclusion that respondent failed to make reasonable progress under the circumstances to correct the conditions that led to

Arden's removal and that the trial court did not err in determining that respondent's parental rights were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2). Because only one ground is necessary to support a termination of parental rights, we need not address respondent's challenges to the trial court's conclusion that grounds existed to terminate her parental rights under N.C.G.S. § 7B-1111(a)(1), (3), and (6). *See* N.C.G.S. § 7B-1111(a) ("The court may terminate the parental rights upon a finding of one or more [grounds for termination.]"). In addition, respondent does not challenge the trial court's determination that it was in Arden's best interests that respondent's parental rights be terminated.

B. Indian Child Welfare Act

¶ 25 **[2]** Respondent also contends the trial court erred in failing to comply with its statutory duties under the Indian Child Welfare Act (ICWA).

¶ 26 We recently addressed an argument to this effect in *In re M.L.B.*, 2021-NCSC-51, 377 N.C. 335. This Court recognized that for all child custody proceedings occurring after 12 December 2016, the ICWA imposes a duty on the trial court to "ask each participant . . . whether the participant knows or has reason to know that the child is an Indian child." *Id.* at ¶¶ 13–14 (quoting 25 C.F.R. § 23.107(a)). "Th[is] inquiry is made at the commencement of the proceeding and all responses should be on the record." 25 C.F.R. § 23.107(a). In this matter, as in *In re M.L.B.*, nothing in the record reflects the trial court making this inquiry or the participants' responses. *Id.* at ¶ 18. Therefore, the trial court did not comply with 25 C.F.R. § 23.107(a). Because the trial court did not comply with 25 C.F.R. § 23.107(a), the trial court could not comply with other requirements in the ICWA and could not determine whether the trial court had reason to know Arden is an Indian child. *See In re M.L.B.*, 2021-NCSC-51 ¶ 18; 25 C.F.R. 23.107(c) ("A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if . . . .").

¶ 27 DSS and the Guardian ad Litem argue that the ICWA does not apply in this case as the ICWA addresses federally recognized tribes of which the Lumbee tribe in Robeson County is not. We disagree in part. The ICWA imposes a duty on the trial court to inquire of participants as set forth in 25 C.F.R. § 23.107(a) in all child-custody cases, but whether the other provisions of the ICWA apply are triggered by whether the trial court has reason to know that the child is an Indian child as defined in the ICWA. *See* 25 C.F.R. § 23.107. The ICWA defines Indian child to only include those eligible for membership in a tribe recognized for services by the Secretary of the Bureau of Indian Affairs of the United States.

25 U.S.C. § 1903(4), (8). DSS and the Guardian ad Litem are correct that the Lumbee tribe is not a tribe recognized for services by the Secretary of the Bureau of Indian Affairs of the United States. Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 86 Fed. Reg. 7,554, 7,556 (Jan. 29, 2021). Thus, the trial court's non-compliance with 25 C.F.R. § 23.107(a) would not be prejudicial if Arden is only eligible for membership in the Lumbee tribe, which is a state-recognized but not a federally recognized tribe.

¶ 28 As the determination of whether there is reason to know that Arden is an Indian child cannot be made on the record before us, we remand to the trial court. On remand the trial court "must ask each participant . . . whether the participant knows or has reason to know that [Arden] is an Indian child" on the record and receive the participants' response on the record. *See* 25 C.F.R. § 23.107(a). If there is reason to know that Arden is an Indian child, the trial court must comply with 25 C.F.R. § 23.107(b) and conduct a new hearing on termination of respondent's parental rights. DSS must also comply with 25 U.S.C. § 1912(a) and 25 C.F.R. § 23.111(d) as the party seeking termination of parental rights. If there is not a reason to know that Arden is an Indian child, such as if Arden is only eligible for membership in the Lumbee tribe, then the trial court should enter an order to this effect and the termination of respondent's parental rights order to Arden signed February 25, 2020, remains undisturbed.

¶ 29 Accordingly, while we reject respondent's challenge to the termination-of-parental-rights order as the findings of fact support the conclusion of law that a ground for termination of parental rights exist, we hold that this case, given the inadequacy in the record, should be remanded to the trial court for compliance with the ICWA.

AFFIRMED IN PART AND REMANDED.

IN RE A.P.W.

[378 N.C. 405, 2021-NCSC-93]

IN THE MATTER OF A.P.W., A.J.W., H.K.W.

No. 418A20

Filed 27 August 2021

1. Child Abuse, Dependency, and Neglect—permanent plan—ceasing reunification efforts—statutory requirements—sufficiency of findings

The trial court did not err by eliminating reunification from the permanent plan for three children where, although the court's order did not use the precise language found in N.C.G.S. § 7B-906.1 and 7B-906.2, its findings—which detailed the parents' lack of progress and minimal engagement with their case plans—addressed the substance of those statutes and supported its determination that the return of the children to their parents would be contrary to the children's health, safety, and general welfare and that there were no realistic prospects for reunification. With regard to the father, additional findings contained in the orders terminating the parents' rights to their children cured any deficiency in the permanency planning order.

2. Termination of Parental Rights—grounds for termination—willful failure to pay a reasonable portion of cost of care—voluntary support agreement

The trial court did not err by terminating a mother's parental rights to her three children on the basis that she willfully failed to pay a reasonable portion of the cost of the children's care (N.C.G.S. § 7B-1111(a)(3)), where the mother signed a voluntary support agreement in which she agreed to pay $112.00 per month and she had past periods of employment, but during the determinative six-month period immediately preceding the filing of the termination petition, she was unemployed, paid nothing toward the cost of the children's care, and never moved to modify the support agreement.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) and on writ of certiorari pursuant to N.C.G.S. § 7A-32(b) from orders entered on 4 March 2019 by Judge David V. Byrd and on 30 June 2020 by Judge Jeanie R. Houston in District Court, Wilkes County. This matter was calendared in the Supreme Court on 21 June 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 A.P.W.

[378 N.C. 405, 2021-NCSC-93]

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

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

Parent Defender Wendy C. Sotolongo and Assistant Parent Defender J. Lee Gilliam for respondent-appellant father.

Anné C. Wright for respondent-appellant mother.

BERGER, Justice.

¶ 1 Respondent-mother and respondent-father appeal from the trial court's orders terminating their parental rights in the minor children "Ava," born on January 16, 2014, "Aiden," born on June 16, 2012, and "Hunter," born on February 14, 2011.[1] In an order entered on December 18, 2020, this Court also allowed respondents' joint petition for writ of certiorari to review the trial court's March 4, 2019 permanency planning order eliminating reunification from the children's permanent plan. *See* N.C.G.S. § 7B-1001(a1)(2), (a2) (2019); *see also* N.C.R. App. P. 21(a)(1) (authorizing certiorari review "when the right to prosecute an appeal has been lost by failure to take timely action[.]"). We now affirm the trial court's orders with regard to respondent-mother and respondent-father.

I. Procedural History

¶ 2 On January 2, 2017, the Wilkes County Department of Social Services (DSS) received a child protective services (CPS) report stating that Ava, Aiden, and Hunter's home lacked heat and running water and had holes in the floor. The same day, law enforcement came to the residence to investigate a reported robbery in which a man wearing a ski mask brandished a toy gun while attempting to steal medication belonging to a friend of respondent-mother. Officers found drug paraphernalia in the home, and two of the children identified respondent-father as the robber. Law enforcement reported finding used hypodermic needles in the home, raising "concerns about improper supervision and ongoing substance abuse." DSS was notified that day that "mom and the children resided in a home with no running water or heat and holes in the f1oor." In subsequent drug screens, respondent-mother tested positive for THC

1. We use these pseudonyms to protect the juveniles' identities and for ease of reading.

and benzodiazepine.[2] Respondent-father tested positive for methamphetamine and benzodiazepine.

¶ 3 On January 3, 2017, DSS obtained nonsecure custody of the children and filed petitions alleging they were neglected juveniles under N.C.G.S. § 7B-101(15) (2019). Specifically, the petitions alleged that the children were neglected because they did not receive proper supervision from their parents and lived in an environment injurious to their welfare. Because of this, respondent-mother was asked to find appropriate housing for the family, and she subsequently moved in with the children's paternal grandmother. Respondent-father "was asked to move out of the home due to inappropriate housing arrangements."

¶ 4 After a hearing on February 6, 2017, the trial court entered an order adjudicating the children neglected. In lieu of written findings, the trial court found that respondents had stipulated to the facts stated in the court summary prepared by DSS and incorporated the document into the order by reference. According to the court summary, respondents' CPS history began in 2013 when one child fell and hit his head while under respondent-mother's care, though the case was closed because neglect was not substantiated. Then, in 2016, there were concerns of "substance abuse by the parents and improper care of the children." Later that year, all three children underwent medical exams which showed medical or remedial neglect. Due to this, the family went into case management, and "[b]oth parents were substantiated on for improper medical/remedial care."

¶ 5 Per a separate disposition order, legal and physical custody of the juveniles was to remain with DSS. The trial court granted respondents semi-monthly, one-hour periods of supervised visitation, "contingent upon clean drug screens." The court ordered DSS to conduct a home study of the paternal grandmother.

¶ 6 Respondents each entered into a DSS case plan requiring them to provide DSS with a written statement of the reasons their children were placed in foster care. Further, both respondents had to obtain substance abuse assessments; complete parenting classes; obtain and maintain stable employment and appropriate housing; sign a voluntary support agreement requiring payment of timely child support; and attend regular visitation with the children, conditioned upon negative

2. Respondent-mother has a valid prescription for Xanax, a brand-name benzodiazepine.

drug screens. Respondent-father was also required to complete anger management classes.

¶ 7 At the initial review hearing on June 5, 2017, the trial court found respondent-mother had "completed most of the requirements of her family service case plan[,]" including substance abuse treatment and parenting classes. Respondent-mother had signed a voluntary support agreement and had a "small child support arrearage." She had submitted to random drug screens and regularly attended visitation with the children. However, while DSS was unable to inspect the interior of respondent-mother's home at that time, the exterior was found to be in poor condition. Respondent-father had "made practically no progress" on his case plan, and he was not attending visitations or maintaining regular contact with the social worker.

¶ 8 On December 4, 2017, the trial court held a permanency planning hearing and established a primary permanent plan of reunification with a concurrent plan of custody with a court-approved caretaker. At the time of the hearing, respondent-father was incarcerated for a probation violation and had made no child support payments despite entering into a voluntary support agreement. The trial court found that respondent-mother was unemployed and "behind in her child support[.]" Additionally, an inspection of respondent-mother's home revealed that the condition of her residence was unclean, "very cluttered[,]" and "not appropriate at this time." Respondent-mother was living with her boyfriend Thomas and their infant child. The trial court further found that Ava, Aiden, and Hunter had "indicated that they are afraid of [Thomas,]" and that respondent-mother had "advised the social worker that she will separate herself from [Thomas] if necessary to regain custody of her children."

¶ 9 Following a review hearing on September 18, 2018, the trial court entered a permanency planning order on March 4, 2019. This order eliminated reunification and changed the primary plan to adoption with the secondary plan being custody with an approved caretaker. The court relieved DSS of further reunification efforts while noting that "[e]ach parent, through counsel, preserves their right to appeal the Court's decision to cease reunification efforts." However, respondents failed to file written notice preserving their right to appeal the order eliminating reunification from the permanent plan, as required by N.C.G.S. § 7B-1001(a1)(2)which states

> (a1) In a juvenile matter . . . only the following final orders may be appealed directly to the Supreme Court:

. . . .

> (2) An order eliminating reunification as a permanent plan under G.S. 7B-906.2(b), if all of the following conditions are satisfied:
>
> a. The right to appeal the order eliminating reunification has been preserved in writing within 30 days of entry and service of the order.
>
> b. A motion or petition to terminate the parent's rights is filed with 65 days of entry and service of the order eliminating reunification and both of the following occur:
>
> (1) The motion or petition to terminate rights is heard and granted.
>
> (2) The order terminating parental rights is appealed in a proper and timely manner.

N.C.G.S. § 7B-1001(a1)(2) (2019).

¶ 10 DSS later filed petitions to terminate respondents' parental rights in Ava, Aiden, and Hunter. On June 9, 2020, the trial court held a hearing on the petitions, and on June 30, 2020, the trial court entered orders terminating respondents' parental rights.

¶ 11 In adjudicating grounds for termination, the trial court concluded respondents had: (1) neglected the children under N.C.G.S. § 7B-1111(a)(1); (2) willfully left the children in a placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to their removal under N.C.G.S. § 7B-1111(a)(2); and (3) willfully failed to pay a reasonable portion of the children's cost of care in DSS custody under N.C.G.S. § 7B-1111(a)(3). With regard to respondent-mother, the trial court further concluded the children were dependent juveniles under N.C.G.S. § 7B-1111(a)(6), because she was incapable of providing proper care and supervision for the children and lacked an appropriate alternative childcare arrangement. The trial court then considered the dispositional factors in N.C.G.S. § 7B-1110(a) and determined it was in the children's best interests that respondents' parental rights be terminated.

¶ 12 Respondents filed notice of appeal from the termination orders. By an order entered on December 18, 2020, this Court allowed respondents' joint petition for writ of certiorari to review the March 4, 2019, perma-

nency planning order eliminating reunification from the permanent plan as part of their appeal.

II. Order Eliminating Reunification from the Permanent Plan

¶ 13 **[1]** Respondents contend the trial court erred when it eliminated reunification from the children's permanent plan in the March 4, 2019, permanency planning order. We disagree.

A. Standard of review

¶ 14 > This Court's review of a permanency planning review order "is limited to whether there is competent evidence in the record to support the findings [of fact] and whether the findings support the conclusions of law." The trial court's findings of fact are conclusive on appeal if supported by any competent evidence."

In re H.A.J., 377 N.C. 43, 2021-NCSC-26, ¶ 14 (quoting *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013)). Uncontested findings are binding on appeal. *Id.* ¶ 15.

¶ 15 The trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed for abuse of discretion. *In re J.H.*, 373 N.C. 264, 267–68, 837 S.E.2d 847, 850 (2020). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *Id.* at 268, 837 S.E.2d at 850.

¶ 16 When this Court reviews an order eliminating reunification from the permanent plan with an order terminating parental rights, "we consider both orders together" as provided in N.C.G.S. § 7B-1001(a2). *In re L.M.T.*, 367 N.C. 165, 170, 752 S.E.2d 453, 457 (2013). Therefore, "incomplete findings of fact in the cease reunification order may be cured by findings of fact in the termination order."[3] *Id.*

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3. At the time of our decision in *In re L.M.T.*, the parent's right to appeal from a permanency planning order was triggered by the trial court's ceasing of reunification efforts, rather than its elimination of reunification from the permanent plan as in current N.C.G.S. §§ 7B-1001(a)(5) and (a1)(2) (2019). *In re L.M.T.*, 367 N.C. at 167–70, 752 S.E.2d at 455–57 (discussing former N.C.G.S. §§ 7B-507(b)(1) and 7B-1001(a)(5) (2011)). Section 7B-906.2 now directs the trial court to "order the county department of social services to make efforts toward finalizing the primary and secondary permanent plans" until permanence is achieved. N.C.G.S. § 7B-906.2(b). The elimination of reunification from the permanent plan thus implicitly relieves the department of its duty to undertake reunification efforts pursuant to N.C.G.S. § 7B-906.2(b).

¶ 17 As an initial matter, we note the record on appeal does not include a transcript of the September 18, 2018, permanency planning hearing or a narrative of the hearing testimony. *See* N.C R. App. P. 9(a)(1)(e) (stating that the record on appeal shall contain information "necessary for an understanding of all issues presented on appeal.") Because respondents have failed to include a narration of the evidence, or a transcript of the trial court proceedings with the record, we presume the findings made by the trial court are supported by competent evidence. *See Summerlin v. Carolina & N.W. Ry. Co.*, 133 N.C. 550, 557, 45 S.E. 898, 901 (1903) (deciding that it is the responsibility of the appellant to assemble the record in such a way as to show error, otherwise the Court cannot presume error.); *see also In re A.R.H.B.*, 186 N.C. App. 211, 219, 651 S.E.2d 247, 253 (2007), *appeal dismissed*, 362 N.C. 235, 659 S.E.2d 433 (2008) (finding that in the absence of a transcript "[t]he longstanding rule is that there is a presumption in favor of regularity and correctness in proceedings in the trial court, with the burden on the appellant to show error." (citation and quotation marks omitted)). To the extent respondents challenge any of the findings in the March 4, 2019, permanency planning order on evidentiary grounds, those challenges cannot succeed.

B. Sufficiency of findings

¶ 18 Respondent-mother contends the permanency planning order lacks the findings required by N.C.G.S. § 7B-906.1(d)(3) (2019) and N.C.G.S. § 7B-906.2(b) (2019) to eliminate reunification from the children's permanent plan.

¶ 19 Subdivision 7B-906.1(d)(3) applies at all review and permanency planning hearings following an adjudication of abuse, neglect, or dependency. This statute requires the trial court to "make written findings regarding . . . [w]hether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time."[4] N.C.G.S. § 7B-906.1(d)(3).

4. Subsection 7B-906.1(d) includes seven subdivisions and provides that, "the court shall consider the following criteria and make written findings regarding those that are relevant[.]" N.C.G.S. § 7B-906.1(d). This Court has construed virtually identical language in N.C.G.S. 7B-1110(a) (2019)—which governs the dispositional stage of a termination of parental rights proceeding—"to require written findings only as to those factors for which there is conflicting evidence." *In re E.F.*, 375 N.C. 88, 91, 846 S.E.2d 630, 633 (2020) (citing *In re A.R.A.*, 373 N.C. 190, 199, 835 S.E.2d 417, 424 (2019)).

¶ 20 Subsection 7B-906.2(b) provides, in pertinent part, that reunification shall remain a part of the juvenile's permanent plan unless the trial court "made findings under . . . G.S. 7B-906.1(d)(3) . . . or the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety."[5] N.C.G.S. § 7B-906.2(b). "The trial court's written findings must address the statute's concerns but need not quote its exact language." *In re L.M.T.*, 367 N.C. at 168, 752 S.E.2d at 455 (interpreting former N.C.G.S. § 7B-507(b)(1) (2011)).

¶ 21 The trial court made the following findings with regard to respondent-mother's progress and prospects for reunification:

> 5. The mother signed her case plan on February 27, 2017. She completed some of the items of her case plan. She completed substance abuse classes, parenting classes, and signed a voluntary support agreement. The mother has made a few child support payments. She has a child support arrearage in excess of $2,000.00. The mother's employment status is unclear. She has reported work at Lydall, Van Heusen, the Candle Company, and Tyson.
>
> 6. The condition of the mother's home has been a concern throughout the pendency of these cases. Each time the mother has moved she has failed to keep a suitable and clean residence.
>
> 7. The mother has lived with her boyfriend, Thomas . . ., throughout the pendency of these cases. The children have consistently indicated that they are afraid of [Thomas] and they have described, in detail, incidents of domestic violence perpetrated by [Thomas] against their mother. [Thomas] signed a case plan; however, he did not complete the plan with the exception of taking a few random drug screens.
>
> . . . .
>
> 9. Both parents have been allowed supervised visitation, twice monthly for one hour, contingent on

5. Subsection 7B-906.2(b) also allows the trial court to exclude reunification from the permanent plan if "the court made findings under G.S. 7B-901(c) or G.S. 7B-906.1(d)(3), [or] the permanent plan is or has been achieved . . . ." N.C.G.S. § 7B-906.2(b).

passing drug screens. The mother missed visits from April through July 2018. The mother's visits have been appropriate and she has done well with the children during her visits. . . .

10. The mother was ordered to undergo a psychological evaluation with Nancy Sizemore, MA, LPA. Ms. Sizemore submitted her report in August 2018. She diagnosed the mother with the following conditions:

- Borderline intelligence
- Attention deficit hyperactivity disorder ("ADHD")
- Generalized anxiety disorder
- Paranoid personality disorder
- Mild neurocognitive disorder

11. Ms. Sizemore opined that and the court finds the mother does not appear able to make appropriate decisions in the best interests of the children and reunification is not likely to be in the best interest of the children. The mother does not appear to learn from past mistakes and blames others for her situation. She does not appear capable to make the necessary changes in her life to provide a safe and secure environment for the children.

12. There are no appropriate relative placements for the children. . . .

13. It is not possible for the children to be returned to the home of a parent immediately or within the next six months and it would be contrary to the children's health and safety and their general welfare to be returned to the home of a parent. The parents have not completed their case plans. The mother is unable to appropriately parent the children. The mother has not separated herself from Thomas. . . . Neither parent has demonstrated such stability which would warrant the children being returned to their care. As a result, the Court finds that the permanent plan should be changed from reunification to a primary permanent plan of adoption and a secondary plan of custody with an approved caretaker. DSS should

> be relieved of any further obligation to attempt to reunify the children with a parent.

¶ 22 We find no merit to respondent-mother's argument. Although the trial court did not use the precise language of N.C.G.S. §§ 7B-906.1(d)(3) and -906.2(b) in its findings, the court addressed the substance of both statutes' concerns. *See In re L.M.T.*, 367 N.C. at 168, 752 S.E.2d at 455 ("The trial court's written findings must address the statute's concerns, but need not quote its exact language."). The trial court also found sufficient evidentiary facts that demonstrate the basis for its findings of fact: "[i]t is not possible for the children to be returned to the home of a parent immediately or within the next six months *and it would be contrary to the children's health and safety and their general welfare to be returned to the home of a parent*." (emphasis added). Specifically, the trial court cited respondent-mother's failure to obtain stable and appropriate housing or employment, her continued cohabitation with Thomas despite the children's detailed accounts of his domestic violence against her, the unfavorable results of her psychological evaluation, and her apparent inability "to learn from past mistakes and . . . make the necessary changes in her life to provide a safe and secure environment for the children."

¶ 23 Respondent-mother insists the evidence and the trial court's findings show that "[r]eunification efforts between Ava, Aiden, Hunter and their mother would not have been clearly unsuccessful," given her progress in completing some components of her case plan. As explained above, however, the trial court's findings of fact support its conclusion of law that reunification with either parent would be "contrary to the children's health and safety[.]" Accordingly, we affirm the order eliminating reunification from the permanent plan as to respondent-mother.

¶ 24 Respondent-father claims the trial court failed to make sufficient findings to comply with N.C.G.S. § 7B-906.2(d)(1)–(4) (2019) in eliminating reunification from the children's permanent plan. Subsection 7B-906.2(d) requires the trial court to

> make written findings as to each of the following, which shall demonstrate the [parent's] degree of success or failure toward reunification:
>
> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
>
> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.

> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
>
> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C.G.S. § 7B-906.2(d)(1)–(4). While the findings need not track the statutory language, they "must make clear that the trial court considered the evidence in light of whether reunification would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *In re L.E.W.*, 375 N.C. 124, 129–30, 846 S.E.2d 460, 465 (2020). Moreover, as previously noted, "incomplete findings of fact in the cease reunification order may be cured by findings of fact in the termination order." *In re L.M.T.*, 367 N.C. at 170, 752 S.E.2d at 457.

¶ 25 Here, the permanency planning order includes the following findings regarding respondent-father's progress and prospects for reunification:

> 8. The father signed a case plan on April 6, 2017. He has been in and out of prison and treatment for substance abuse. As a result of his incarceration and treatment the father has only had three visits with the children since they have been in DSS custody. He signed a voluntary support agreement and has a child support arrearage in excess of $5,000.00
>
> 9. Both parents have been allowed supervised visitation, twice monthly for one hour, contingent on passing drug screens. . . . As noted above, the father has only had three visits with the children during the time that they have been in DSS custody.
>
> . . . .
>
> 12. There are no appropriate relative placements for the children. . . .
>
> 13. It is not possible for the children to be returned to the home of a parent immediately or within the next six months and it would be contrary to the children's health and safety and their general welfare to be returned to the home of a parent. The parents have not completed their case plans. . . . Neither parent has demonstrated such stability which would warrant the

> children being returned to their care. As a result, the Court finds that the permanent plan should be changed from reunification to a primary permanent plan of adoption and a secondary plan of custody with an approved caretaker. DSS should be relieved of any further obligation to attempt to reunify the children with a parent.

¶ 26 In its three orders terminating respondents' parental rights, the trial court listed the requirements of respondent-father's case plan and made the following additional findings regarding the N.C.G.S. § 7B-906.2(d) criteria:[6]

> 25. The Respondent-Father was incarcerated from November 2017 until January 2018.
>
> 26. The Respondent-Father failed to complete his anger management assessment.
>
> 27. The Respondent-Father signed a voluntary support agreement in 2017 to pay child support in the amount of $295.00 per month. . . . At the time of the termination hearing, [he] had a child support arrearage of approximately $10,000.00.
>
> . . . .
>
> 29. The Respondent-Father participated in a substance abuse assessment and went through an inpatient treatment program in the DART program.
>
> 30. The Respondent-Father suffered a substance abuse relapse in September 2019. On September 23, 2019, the Respondent-Father was ordered to submit a drug screen by the Court. This drug screen was positive for methamphetamine.
>
> 31. The Respondent-Father has not consistently submitted himself for drug screening requested by DSS. He was asked to submit to forty-one (41) drug screens but only took twelve (12) during the pendency of the underlying juvenile action.

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6. The trial court entered a separate termination order for Ava, Aiden, and Hunter. The three orders contain virtually identical findings of fact and conclusions of law, altered only to account for the name, age, and sex of the child at issue.

> 32. The Respondent-Father also refused to take some drug screens. . . .
>
> 33. The Respondent-Father has not consistently participated in visitation with the minor child[ren]. During the pendency of the underlying juvenile action, the Respondent-Father could have participated in forty (40) supervised visits with the child[ren] but only had five (5) visits.
>
> 34. The Respondent-Father did not complete parenting classes.
>
> . . . .
>
> 45. . . . Neither parent made any appreciable progress in their case plan. Neither Respondent has shown that they could serve as a responsible custodian for the child. Neither parent has maintained stable and appropriate housing.

As respondent-father does not contest any of these findings, they are binding on appeal.

¶ 27 Respondent-father first contends that the trial court's bare finding that he "ha[d] not completed" his case plan at the time of the permanency planning hearing is insufficient to address the criteria required by N.C.G.S. § 7B-906.2(d)(1). However, the trial court made additional findings that satisfy N.C.G.S. § 7B-906.2(d)(1). Specifically, the trial court found that respondent-father: had been "in and out of prison and treatment for substance abuse" since signing his case plan on April 6, 2017; had visited the children just three times in the twenty months since they entered DSS custody; had accumulated "a child support arrearage in excess of $5,000.00"; and had not "demonstrated such stability which would warrant the children being returned to [his] care." Additional findings in the termination orders include that, although he obtained a substance abuse assessment and attended inpatient treatment through the DART program, respondent-father: failed to complete an anger management assessment or parenting classes; failed to secure stable housing; attended fewer than one-third of the drug screens requested by DSS and refused to submit to other screens; and made no "appreciable progress" on his case plan even at the time of the termination hearing in June 2020. *See generally In re L.M.T.*, 367 N.C. at 170, 752 S.E.2d at 457 (concluding that "incomplete findings of fact in the cease reunification order may be

cured by findings of fact in the termination order"). Accordingly, these findings more than satisfy the requirements of N.C.G.S. § 7B-906.1(d)(1).

¶ 28 Respondent-father further asserts the trial court made "no findings" addressing the remaining criteria in N.C.G.S. § 7B-906.2(d)(2)–(4). We disagree.

¶ 29 While not utilizing the statutory language, the trial court's findings "address the necessary statutory factors by showing that the trial court considered the evidence in light of whether reunification would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time[.]" *In re H.A.J.*, 377 N.C. 43, 2021-NCSC-26, ¶ 16 (cleaned up). The findings depict respondent-father's minimal degree of engagement with his case plan and cooperation with DSS, specifically with DSS's requests for drug screens. In addition to noting respondent-father's attendance at the hearing, the trial court found respondent-father had been "in and out of prison," undergone "treatment for substance abuse," and "ha[d] not consistently submitted himself for drug screening requested by DSS[.]" These findings reflected respondent-father's less-than-consistent availability to the court and DSS.

¶ 30 With regard to N.C.G.S. § 7B-906.2(d)(4), the trial court found that respondent-father was incarcerated from November 2017 to January 2018; that he failed to address the anger management and parenting skills components of his case plan; that he either failed to attend or refused to participate in most of the requested drug screens requested by DSS; that he failed to obtain stable housing; and that "it would be contrary to the children's health and safety and their general welfare to be returned to" his care. Therefore, the trial court addressed the purpose of N.C.G.S. §7B-906.2(d)(4).

¶ 31 Respondent-father next argues the trial court failed to make the conclusions of law required by N.C.G.S. § 7B-906.2(b)—i.e., "that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile[s'] health or safety." However, the trial court satisfied the substance of N.C.G.S. § 7B-906.2(b) by finding that "[i]t is not possible for the children to be returned to the home of a parent or within the next six months *and it would be contrary to the children's health and safety and their general welfare to be returned to the home of a parent*." (emphasis added). *See In re L.M.T.*, 367 N.C. at 169, 752 S.E.2d at 456 (holding that "[w]hile [the] findings of fact do not quote the precise language [the statute], the order embraces the substance of the statutory provisions requiring findings of fact that further reunification

efforts "would be futile" or "would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time.").

¶ 32 To the extent respondent-father separately contends the trial court's evidentiary findings focus solely on his "completion of a case plan" and, therefore, do not support its findings of fact under N.C.G.S. § 7B-906.2(b), we conclude the court's findings adequately explain the basis for its determination that there were no realistic prospects for reunification. At the time of the permanency planning hearing, the children had been in DSS custody for more than twenty months, and respondent-father had been afforded more than nineteen months to remedy the conditions leading to their adjudication as neglected in February 2017. Respondent-father continued to engage in activities resulting in his incarceration,[7] repeatedly refused to submit to drugs screens, and had made no meaningful effort to engage with his case plan by attaining personal stability or providing support for the children. These facts fully support a determination that returning the children to respondent-father at any time in the foreseeable future would be contrary to their health, safety, and general welfare. *See In re L.R.L.B.*, 377 N.C. 311, 2021-NCSC-49 ¶ 25 (stating that the "trial court thus made the finding required by N.C.G.S. § 7B-906.2(b) to eliminate reunification from the permanent plan" by finding "[t]hat further reasonable efforts to prevent or eliminate the need for placement of the juvenile are clearly futile or inconsistent with the juvenile's need for a safe, permanent home within a reasonable period of time.").

¶ 33 Finally, respondent-father claims the trial court failed to make the findings required by N.C.G.S. § 7B-906.2(c) (2019), which provides:

> (c) Unless reunification efforts were previously ceased, at each permanency planning hearing the court shall make a finding about whether the reunification efforts of the county department of social services were reasonable. In every subsequent permanency planning hearing held pursuant to G.S. 7B-906.1, the court shall make written findings about the efforts the county department of social services has made toward the primary permanent plan and any secondary permanent plans in effect prior to the hearing. The court shall make a conclusion about whether

7. Although respondents have not provided this Court with a transcript of the permanency planning hearing, the record suggests respondent-father had been incarcerated for violating his probation.

efforts to finalize the permanent plan were reasonable to timely achieve permanence for the juvenile.

¶ 34 The trial court's orders refer to DSS's efforts with respondent-father, DSS's consideration of relative placements for the children, visitations by respondent-father, and the voluntary support agreement entered with DSS. The termination order includes additional findings of fact detailing DSS's efforts, including efforts relating to the development and implementation of a case plan tailored to assist respondent-father and respondent-mother in correcting the conditions that led to Ava, Aiden, and Hunter's removal in order to facilitate reunification; home inspections of respondent-mother's residence; offering respondent-mother's boyfriend the opportunity to participate in a case plan; requests for drug screens offering forty supervised visitations for respondent-father; providing transportation for supervised visitations for respondent-father; and attempts to and verification of respondent-father's reported residences. The orders which detail the efforts made by DSS to reunify the children with respondent-father, in addition to other findings related to efforts with respondent-mother, include "written findings about the efforts the county department of social services has made toward the primary permanent plan and any secondary permanent plans in effect prior to the hearing," N.C.G.S. § 7B-906.2(c).[8] While the trial court's orders lack an express finding using the term "reasonable" or "reasonableness" regarding DSS's efforts, this Court has recognized that in regard to other statutory requirements for findings in a trial court order, "[t]he trial court's written findings must address the statute's concerns, but need not quote its exact language." *In re L.M.T.*, 367 N.C. at 168, 752 S.E.2d at 455 (addressing sufficiency of findings to satisfy former N.C.G.S. § 7B-507(b)(1) (2011)); *see also In re H.A.J.*, 377 N.C. 43, 2021-NCSC-26, ¶ 16 (addressing sufficiency of findings to satisfy N.C.G.S. § 7B-906.2(d)).

8. The trial court's findings also state that a written report submitted by the DSS social worker is "incorporated herein as Findings of Fact." However, that report is not included in the record on appeal. Although the document's absence does not affect our ruling here as the trial court made the necessary findings of fact as to DSS's efforts, we reiterate the appellant's burden of assembling a record on appeal that affirmatively demonstrates the errors asserted in the appeal.

As the trial court may consider such materials as the written report submitted by a DSS social worker at a permanency planning hearing, this report likely set forth additional details concerning DSS's efforts that the trial court found relevant. *See* N.C.G.S. § 7B-906.1(c) (2019) ("The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, or testimony or evidence from any person that is not a party, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition."). To the extent the report was submitted to the trial court and is germane to his appeal, it was incumbent upon respondent-father to make it a part of the appellate record.

We conclude that the trial court's findings of fact address the statutory concern of N.C.G.S. § 7B-906.2(c).

¶ 35 Our conclusion is further supported by the failure of respondent-father to identify how DSS's efforts for reunification were not reasonable. Respondent-father claims that "the efforts of DSS toward reunification were not reasonable, particularly with unreasonable limits on the children's time with respondent-father," but we find no merit to his complaint. Pursuant to N.C.G.S. § 7B-905.1, it is the trial court's duty to "provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety, including no visitation." N.C.G.S. § 7B-905.1(a) (2019). It was not DSS, but the trial court that made respondents' visitation with the children "contingent upon clean drug screens" as part of its initial "Juvenile Disposition Order" entered on February 14, 2017. The trial court maintained this condition in each subsequent order. Whatever actions DSS must undertake to meet the "reasonable efforts" standard, it is not obliged to defy the trial court's orders. It was also the trial court that established that DSS was not "required to provide visits to any incarcerated parent[,]" and significantly, there is no indication that respondent-father requested visitation with the children while incarcerated and only exercised five out of forty supervised visitations offered by DSS. Accordingly, we reject respondent-father's assignment of error by the trial court or DSS.

III. Orders Terminating Respondents' Parental Rights

¶ 36 **[2]** Respondent-mother contends the trial court erred in adjudicating the existence of grounds for the termination of her parental rights under N.C.G.S. § 7B-1111(a). Respondent-father does not raise any claims of error with regard to the termination orders.

A. Standard of Review

¶ 37 Under this Court's well-established standard of review,

> 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. Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal. The trial court's conclusions of law are reviewable de novo on appeal.

In re B.T.J., 377 N.C. 18, 2021-NCSC-23, ¶9 (cleaned up). This Court has also held that "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. Therefore, if this Court upholds the trial court's order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds." *In re S.R.F.*, 376 N.C. 647, 2021-NCSC-5 ¶ 9 (quoting *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020)).

¶ 38 We will address the trial court's adjudication that respondent-mother willfully failed to pay a reasonable portion of the children's cost of care under N.C.G.S. § 7B-1111(a)(3). Under this provision, the trial court may terminate the rights of a parent whose child is in DSS custody if "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." N.C.G.S. § 7B-1111(a)(3). The determinative six-month period in this case is October 23, 2018, to April 23, 2019, the day DSS filed its petitions to terminate respondents' parental rights.

¶ 39 The trial court made the following findings of fact pertinent to its adjudication under N.C.G.S. § 7B-1111(a)(3) and to respondent-mother's arguments on appeal:

> 3. From the preliminary hearing held before the trial of this action, the petitioner presents the following issues for adjudication:
>
> . . . .
>
> c. The minor children have been in the care and custody of DSS for a continuous period of six (6) months or more next preceding the filing of these petitions. During this period, the Respondents have willfully failed to pay a reasonable portion of the costs of care for the minor children, although each of the parents has been physically and financially able to do so N.C.G.S. § 7B-1111(a)(3);
>
> . . . .
>
> . . . .
>
> 6. The minor children have been in the legal and physical custody of DSS at all times since January 10, 2017.
>
> . . . .

21. The Respondent-Mother does not have a valid driver's license and relies on her mother and Thomas . . . for transportation.

. . . .

23. The Respondent-Mother has not maintained stable employment. At the time of the termination hearing, she was unemployed. The Respondent-Mother has reported past work at Sonic restaurant and Lydall Manufacturing. She has also reported work as a babysitter.

24. The Respondent-Mother signed a voluntary support agreement to pay child support for all of her children in the amount of $112.00 per month. The Respondent-Mother has failed to consistently pay child support and currently has a child support arrearage of $3,953.00. The Respondent-Mother's last child support payment was made on October 15, 2018.

. . . .

38. DSS has expended significant funds providing for the cost of care for the minor children since they have been in care. DSS has expended the sum of $1,564.00 per month per child since the children have been in custody beginning in January 2017.

39. The Respondents have failed to pay a reasonable portion of the cost of care for the minor children. Each of the Respondents has had the physical ability to engage in employment and to provide support for the minor child.

. . . .

46. Each Respondent has willfully failed to pay a reasonable portion of the cost of care for the minor children while they have been in the care and custody of DSS.

¶ 40 Based on these findings, the trial court concluded as follows:

2. The Petitioner has proven the following statutory grounds for terminating the Respondent-Mother's parental rights by clear, cogent, and convincing evidence:

. . . .

> c. The Respondent-Mother has willfully failed to pay a reasonable portion of the cost of care for the juveniles, although she has had the ability to do so, while the children have been in the custody of DSS N.C.G.S. § 7B-1111(a)(3).

¶ 41 Respondent-mother challenges the trial court's finding that her nonpayment of support was willful in Finding of Fact 46 and Conclusion of Law 2(c). "The willfulness of a parent's actions is a question of fact for the trial court." *In re K.N.K.*, 374 N.C. 50, 53, 839 S.E.2d 735, 738 (2020).

¶ 42 Respondent-mother acknowledges having paid nothing toward the children's cost of care during the six months at issue. However, she contends the trial court's order fails to support a finding of willfulness because "there are no findings that address [her] income, employment, or capacity for the same during the six-month period relevant to [N.C.G.S. §] 7B-1111(a)(3)." We disagree.

¶ 43 "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." *In re S.E.*, 373 N.C. 360, 366, 838 S.E.2d 328, 332 (2020) (quoting *In re Clark*, 303 N.C. 592, 604, 281 S.E.2d 47, 55 (1981)). Here, the parents signed a voluntary support agreement. A voluntary support agreement has "the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases." N.C.G.S. § 110-132(a3) (2019).

¶ 44 The evidence and the trial court's findings show respondent-mother paid nothing toward the children's cost of care during the six-month period immediately preceding DSS's filing of the petitions to terminate her parental rights, despite having agreed to pay $112.00 per month in support and having demonstrated an ability to work by multiple reported periods of employment. Respondent-mother never moved to modify or nullify the voluntary agreement, and she was thus subject to a valid order "that established her ability to financially support for her children." *In re J.M.*, 373 N.C. 352, 359, 838 S.E.2d 173, 178 (2020).

¶ 45 Accordingly, we hold the trial court did not err in finding respondent-mother's nonpayment to be willful and in concluding that grounds existed to terminate her parental rights under N.C.G.S. § 7B-1111(a)(3). Therefore, we need not review the court's additional grounds for termination under N.C.G.S. § 7B-1111(a)(1), (2), and (6).

¶ 46 Respondent-mother does not separately challenge the trial court's conclusion at the dispositional stage of the termination proceeding that terminating her parental rights is in the children's best interests. Accordingly, we affirm the termination orders as to respondent-mother.

IV. Conclusion

¶ 47 In both respondent-mother's and respondent-father's appeal, we affirm the trial court's order eliminating reunification from the permanent plan and the orders terminating their parental rights in Ava, Aiden, and Hunter.

AFFIRMED.

IN THE MATTER OF A.S.D.

No. 489A20

Filed 27 August 2021

Termination of Parental Rights—grounds for termination—failure to make reasonable progress—findings—evidentiary support

The trial court did not err by terminating a mother's parental rights to her daughter based on the mother's willful failure to make reasonable progress to correct the conditions which led to the child's removal (N.C.G.S. § 7B-1111(a)(2)) where there was clear, cogent, and convincing evidence, in addition to the mother's stipulations, regarding the mother's extensive history of substance abuse for which she received inadequate treatment, her refusal to submit to drug screens on multiple occasions, her incomplete mental health treatment, her housing instability, and her lack of consistent employment.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 7 August 2020 by Judge Wesley W. Barkley in District Court, Caldwell County. This matter was calendared for argument in the Supreme Court on 21 June 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Lucy R. McCarl for petitioner-appellee Caldwell County Department of Social Services.

Matthew P. McGuire for appellee Guardian ad Litem.

David A. Perez for respondent-appellant mother.

MORGAN, Justice.

¶ 1 Respondent, the mother of the juvenile A.S.D. (Amanda),[1] appeals from the trial court's order terminating her parental rights. After careful review, we affirm.

I. Factual Background and Procedural History

¶ 2 On 4 December 2018, the Caldwell County Department of Social Services (DSS) filed a petition alleging that Amanda, who was less than two weeks old, was a neglected and dependent juvenile. DSS stated that it was currently involved with Amanda's half-brother, D.D., who was in DSS custody. DSS claimed that respondent-mother had an extensive history of mental illness, had been diagnosed with several mental health disorders, and had a history of "polysubstance abuse." DSS additionally alleged that respondent-mother did not have safe, stable housing and that respondent-mother had reported to hospital staff that she had been ousted from the home that she shared with Amanda's father and had nowhere to stay. DSS also claimed that respondent-mother had been involved in "multiple violent relationships" and had several criminal convictions. DSS stated that respondent-mother had placed Amanda in a kinship placement in the same home as D.D.

¶ 3 On 6 March 2019, the trial court adjudicated Amanda to be a neglected and dependent juvenile based upon respondent-mother's stipulations to the allegations contained within the juvenile petition. In a separate dispositional order, the trial court ordered that custody of Amanda be placed with DSS and that DSS have the authority to arrange a placement for the juvenile. The trial court further ordered respondent-mother to enter into an Out-of-Home Safety Agreement as her case plan and allowed respondent-mother to engage in supervised visitation with Amanda for one hour each week.

¶ 4 The trial court entered a permanency planning order on 30 May 2019 in which it found that respondent-mother was not consistently attending mental health or substance abuse treatment and did not have stable

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

housing. The trial court set the primary permanent plan as reunification with a secondary plan of adoption.

¶ 5 In a permanency planning review order entered on 3 October 2019, the trial court found as fact that respondent-mother had not attended mental health services since January 2019. The trial court additionally found that respondent-mother was not receiving substance abuse treatment and that respondent-mother refused to submit to hair follicle drug screens because she "believes that such may result in the use of Black Magic on her hair." The trial court also found as fact that respondent-mother still did not have stable housing.

¶ 6 On 5 March 2020, the trial court filed a permanency planning review order in which the trial court found that DSS had made numerous attempts to administer drug screens to respondent-mother, but that such attempts were often unsuccessful—such as on 25 November 2019 and 7 February 2020 when respondent-mother refused to come to the door on both occasions. The trial court also found that respondent-mother was living in a mobile home with her boyfriend, and that respondent-mother was unemployed because her boyfriend did not want respondent-mother to work and was paying respondent-mother $100 per week to complete chores around the home rather than have her to seek employment. The trial court further found as fact that respondent-mother had not visited with the juvenile since respondent-mother had refused a drug screen on 14 October 2019. The trial court changed the primary permanent plan for Amanda to adoption and the secondary plan to guardianship with an approved caretaker.

¶ 7 On 12 March 2020, DSS filed a motion in the cause to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (9), based on neglect, willful failure to make reasonable progress, and the fact that respondent-mother's parental rights with respect to another child had been terminated involuntarily and respondent-mother lacked the ability or willingness to establish a safe home. N.C.G.S. § 7B-1111(a)(1), (2), (9) (2019). On 7 August 2020, the trial court entered an order in which it determined that grounds existed to terminate respondent-mother's parental rights as alleged in the motion. The trial court further concluded that it was in Amanda's best interests that respondent-mother's parental rights to Amanda be terminated. Accordingly, the trial court terminated respondent-mother's parental rights.[2] Respondent-mother appeals.

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2. The trial court's order also terminated the parental rights of Amanda's father. He is not a party to the proceedings before this Court.

II. Analysis

¶ 8 Respondent-mother argues that the trial court erred by concluding that grounds existed to terminate her parental rights. A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2019); *In re Montgomery*, 311 N.C. 101, 110 (1984). At the adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more grounds for termination under subsection 7B-1111(a) of our General Statutes. N.C.G.S. § 7B-1109(e), (f). We review a trial court's adjudication "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. at 111 (citing *In re Moore*, 306 N.C. 394, 404 (1982)).

¶ 9 "[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395 (2019). We begin our analysis with the consideration of whether grounds existed to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).

¶ 10 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). "[T]he willfulness of a parent's failure to make reasonable progress toward correcting the conditions that led to a child's removal from the family home 'is established when the [parent] had the ability to show reasonable progress, but was unwilling to make the effort.' " *In re L.E.W.*, 375 N.C. 124, 136 (2020) (second alteration in original) (quoting *In re Fletcher*, 148 N.C. App. 228, 235 (2002)).

¶ 11 In support of its adjudication of grounds pursuant to N.C.G.S. § 7B-1111(a)(2)[3], the trial court made the following findings of fact:

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3. We note that Finding of Fact 14 and its subparts were in reference to the grounds to terminate respondent-mother's parental rights for neglect pursuant to N.C.G.S. § 7B-1111(a)(1), but the findings also demonstrate respondent-mother's failure to make reasonable progress in correcting the conditions which led to Amanda's removal, which supports the trial court's determination that grounds existed to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).

14. . . .

a. Respondent[-]mother has an extensive history of substance abuse for which she has received inadequate treatment. She received an updated Comprehensive Clinical Assessment (CCA) on January 27, 2020. She was recommended to complete 90 hours of Substance Abuse Intensive Outpatient Treatment (SAIOP). She has only attended a few classes.

b. Respondent[-]mother has submit[ted] to urine drug screens as requested by the Movant on 5/1/19, 5/15/19, and 6/19/19. She refused to submit to a hair follicle drug screen on 9/5/19 and again in January of 2020. She has on numerous other occasions not made herself available for drug screens. She has never had a consistent six (6) month period of negative drug screens.

c. Respondent[-]mother completed a psychological evaluation with Dr. Jennifer Cappelletty. Dr. Cappelletty diagnosed Respondent[-]mother with Schizoaffective Disorder, Bipolar Type; Cannabis Use Disorder; Stimulant Use Disorder –Amphetamine Type; and Opioid Use Disorder. Dr. Cappelletty made the following recommendations for Respondent[-]mother: (a) participate in psychotherapy; (b) participate in a psychiatric evaluation and comply with all recommendations; (c) participate in the Assertive Community Treatment Team (ACTT) program; (d) refrain from use of non-prescribed substances; and (e) participate in Vocational Rehabilitation Services. Respondent[-]mother has refused to take any prescription medication to address her mental health issues. In addition to the psychological evaluation by Dr. Cappelletty, Respondent[-]mother has completed 4 or 5 other mental health assessments. She has not addressed any of the issues identified by Dr. Cappelletty. She has not completed any mental health treatment. She did not participate in the ACTT program. She did not participate in Vocational Rehabilitation Services.

> d. Respondent[-]mother has lived a transient lifestyle during the course of her involvement with the Movant up until the last few months. She has moved at least six (6) times since the birth of the juvenile. She currently lives with a boyfriend and is totally dependent upon him. She is unemployed and has had only sporadic employment during her involvement with the Movant. She exhibited no consistency from February 2019 to March 2020. The brief period of stability during the last few months does not outweigh the year of instability during which her environment shifted on a monthly basis.
>
> e. Respondent[-]mother has not visited with the juvenile since October 14, 2019, due to her refusal to submit to drug screens.
>
> f. Respondent[-]mother has a history of domestic violence for which she has received no treatment.
>
> . . . .
>
> 16. Grounds exist to terminate the parental rights of Respondent[-]mother pursuant to N.C.G.S. § 7B-1111(a)(2). The juvenile has been willfully left in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the Court that outside of consideration of poverty, reasonable progress under the circumstances has been made [in] correcting the conditions which led to the removal of the juvenile. Specifically, Respondent[-]mother has not completed any of the objectives of her case plan with [DSS] or complied with the prior orders of the court in order to reunify with the juvenile. She demonstrated no consistency for a period in excess of a year.

"Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407 (2019). Furthermore, this Court limits its review of findings of fact "to those challenged findings that are *necessary* to support the trial court's determination that . . . parental rights should be terminated." *In re N.G.*, 374 N.C. 891, 900 (2020) (emphasis added).

¶ 12 Respondent-mother challenges several of the trial court's findings of fact. First, respondent-mother disputes Finding of Fact 14(a), arguing that there was no evidence to show that substance abuse was a continuing issue at the time of the termination of parental rights hearing.[4] We are not persuaded by this argument. In this finding, contrary to respondent-mother's assertion, the trial court did not purport to determine that respondent-mother was continuing to use drugs at the time of the hearing; rather, the trial court found that respondent-mother had an extensive history of substance abuse for which she received inadequate treatment. This finding is supported by the evidence of record. We note that respondent-mother stipulated to the allegations in the juvenile petition that she had "an extensive history of polysubstance abuse [and] a long history of using methamphetamines, benzodiazepines, opiates, and marijuana, as well as other substances." Additionally, a DSS social worker testified at the termination hearing that respondent-mother had an extensive history of substance abuse and that respondent-mother did not complete the required substance abuse treatment. The trial court also observed that respondent-mother was referred to intensive outpatient treatment but attended only a few classes. Respondent-mother does not challenge this finding of fact on appeal, and therefore it is deemed to be binding on this Court. *In re T.N.H.*, 372 N.C. at 407. Furthermore, we recognize that Dr. Cappelletty stated in her psychological evaluation of respondent-mother that, in her opinion, "the combination of [respondent-mother's] severe and chronic mental illness *and her history of substance abuse* has combined in such a way as to have a significant impact on her capacity to maintain stability and effectively parent." Also, on several occasions, respondent-mother refused drug screens and hair follicle tests. Thus, there is clear, cogent, and convincing evidence to support Finding of Fact 14(a).

¶ 13 Next, respondent-mother contends that the portion of Finding of Fact 14(b) that she had "on numerous other occasions not made herself available for drug screens" is not supported by the evidence. We disagree with this contention. The DSS social worker testified that respondent-mother refused to participate in drug screens on 1 May, 15 May, 19 June, and 14 October 2019. Additionally, respondent-mother refused to participate in hair follicle tests on 5 September 2019 and 6 January 2020. Consequently, we conclude that clear, cogent, and convincing evidence supports this finding of fact.

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4. Respondent-mother makes additional arguments regarding Finding of Fact 14(a), but we do not address them because they are not relevant to grounds for termination under N.C.G.S. § 7B-1111(a)(2). *In re N.G.*, 374 N.C. 891, 900 (2020).

¶ 14 Respondent-mother further contends that Finding of Fact 14(d), which states that she exhibited "no consistency from February 2019 to March 2020," is erroneous. As support for her stance, respondent-mother cites the testimony of the DSS social worker that respondent-mother had maintained stable housing since December 2019, and that her "home was appropriate, clean and had space for Amanda were she to be returned." Respondent-mother does not challenge, however, the portions of the trial court's Finding of Fact 14(d) that respondent-mother had lived a "transient lifestyle" during the course of the case and had moved at least six times since Amanda was born, that respondent-mother was unemployed and only had sporadic employment during the course of the case, and that respondent-mother lived with her boyfriend and was "totally dependent" upon him. Furthermore, the evidence of record showed that respondent-mother had moved multiple times during the course of the case, was not employed at the time of the termination of parental rights hearing, and had not been employed since losing her job in June 2019. Respondent-mother also acknowledged at the termination hearing that she was completely dependent upon her boyfriend. The trial court favorably noted that respondent-mother had exhibited a "brief period of stability during the last few months," but nonetheless still assessed that this positive stint did not "outweigh the year of instability during which her environment shifted on a monthly basis." We conclude that the trial court's finding that respondent-mother did not exhibit consistency from February 2019 to March 2020 was a permissible inference available to the trial court based upon the evidence and unchallenged findings of fact. *See In re D.L.W.*, 368 N.C. 835, 843 (2016) (stating that it is the trial court's duty to consider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn therefrom); *see also Scott v. Scott*, 157 N.C. App. 382, 388 (2003) (stating that when the trial court sits as fact-finder, it is the sole judge of the credibility and weight to be given to the evidence, and it is not the role of the appellate court to substitute its judgment for that of the trial court).

¶ 15 Respondent-mother maintains that Finding of Fact 14(e) is erroneous because she visited with Amanda in March 2020. Respondent-mother claims that she was eligible to visit earlier but could not do so because Amanda was out of town. We agree with respondent-mother on this point. The DSS social worker testified that respondent-mother had not visited with Amanda since October 2019 because respondent-mother "had to pass two [drug] screens" before she would be permitted visitation. The social worker further went on to testify, however, that respondent-mother passed drug screens in January 2020 and was eli-

gible to visit with the juvenile during that month but could not do so because Amanda went with her "foster family . . . on a trip to California." The trial court's Finding of Fact 14(e) does not properly reflect the evidence submitted at the termination of parental rights hearing, and hence we disregard this finding of fact. *See In re S.M.*, 375 N.C. 673, 684 (2020).

¶ 16 We next consider respondent-mother's representation that a segment of Finding of Fact 16 is erroneous in its establishment that she had not completed any objectives of her case plan or complied with the prior orders of the trial court in order to reunify with Amanda, and that respondent-mother had demonstrated no consistency for a period in excess of twelve months. We begin by recalling that we have already determined that there was sufficient evidence to support Finding of Fact 14(d) that respondent-mother exhibited "no consistency from February 2019 to March 2020," and likewise conclude that the same evidence supports the trial court's similar finding regarding respondent-mother's lack of consistency in Finding of Fact 16.

¶ 17 As for the balance of Finding of Fact 16, we conclude that there was clear, cogent, and convincing evidence to support the trial court's finding. First, respondent-mother admitted at the termination of parental rights hearing that she did not do anything toward completing her case plan other than working, and that she was unemployed by the time of the termination hearing. Second, we have found that there was sufficient evidence to sustain the trial court's findings of fact that respondent-mother did not always make herself available for drug screens, that she did not complete substance abuse treatment, and that she did not complete any mental health treatment. Furthermore, while the trial court acknowledged that at the time of the termination of parental rights hearing respondent-mother had a brief period of stability with regard to housing, nonetheless she had previously been transient, and the trial court thereupon determined that respondent-mother's short period of stability did not outweigh her lengthy period of instability. Therefore, Finding of Fact 16 is properly supported by the record.

¶ 18 Respondent-mother argues that the trial court erroneously concluded that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(2) to terminate her parental rights. Although respondent-mother concedes that she was slow to address many components of her case plan, respondent-mother contends that she made reasonable progress and rectified the issues which led to Amanda's removal from respondent-mother's care by the time of the termination of parental rights hearing. We are not persuaded by these representations of respondent-mother.

¶ 19 This Court has recognized that "parental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)." *In re B.O.A.*, 372 N.C. 372, 384 (2019). A trial court should refrain from finding that a parent has failed to make reasonable progress in correcting the conditions that led to the child's removal "simply because of his or her 'failure to fully satisfy all elements of the case plan goals.' " *Id.* at 385 (quoting *In re J.S.L.*, 177 N.C. App. 151, 163 (2006)). However, "a trial court has ample authority to determine that a parent's 'extremely limited progress' in correcting the conditions leading to removal adequately supports a determination that a parent's parental rights in a particular child are subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2)." *Id.*

¶ 20 Here, respondent-mother admits that Amanda has resided in foster care or placement outside of the home for more than twelve months. However, respondent-mother asserts that she made reasonable progress toward correcting the conditions which led to Amanda's removal from her care. This contention is without merit. Respondent-mother's case plan was directed at resolving her issues concerning substance abuse, mental health, and instability. The case plan also aimed at addressing respondent-mother's lack of stable, safe housing. The evidence in the record, which yielded the trial court's supported findings of fact, demonstrates that respondent-mother largely failed to comply with her case plan. Significantly, although it was recommended that respondent-mother complete ninety hours of intensive outpatient substance abuse treatment, she only attended a few classes and failed to complete the treatment. Respondent-mother also failed to complete mental health treatment and refused to take any prescription medication to address her mental health issues. In like manner, respondent-mother demonstrated continued instability during most of the course of this case; she was consistently transient and unable to maintain stable employment. Respondent-mother remained completely dependent upon her boyfriend, even up to the time of the termination hearing. Although respondent-mother cites progress made by her just prior to the termination of parental rights hearing, it was within the trial court's authority to decide that these improvements were insufficient in light of the historical facts of the case. *See In re T.M.L.*, 2021-NCSC-55, ¶ 32 (concluding that while the respondent "made some last-minute attempts to comply with the case plan by the time of the termination hearing . . . [his] partial steps—undertaken after DSS had filed petitions to terminate his parental rights and two years or more after the children's removal from the home—[were] insufficient to constitute reasonable progress under N.C.G.S. § 7B-1111(a)(2)"); *see also In re O.W.D.A.*, 375 N.C. 645, 654

(2020) (concluding that, with respect to grounds to terminate parental rights under N.C.G.S. § 7B-1111(a)(1), that although the respondent may have made some recent, minimal progress, "the trial court was within its authority to weigh the evidence and determine that these eleventh-hour efforts did not outweigh the evidence of his persistent failures to make improvements . . . and to conclude that there was a probability of repetition of neglect."). Consequently, we hold that the trial court did not err by concluding that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(2) to terminate respondent-mother's parental rights.

III. Conclusion

¶ 21 The trial court's conclusion that a ground for termination existed pursuant to N.C.G.S. § 7B-1111(a)(2) is sufficient in and of itself to support termination of respondent-mother's parental rights. *In re E.H.P.*, 372 N.C. at 395. As such, we do not need to address her arguments regarding N.C.G.S. § 7B-1111(a)(1) and (9). Respondent-mother does not challenge the trial court's conclusion that termination of her parental rights was in Amanda's best interests. *See* N.C.G.S. § 7B-1110(a). Accordingly, we affirm the trial court's order terminating the parental rights of respondent-mother.

AFFIRMED.

IN THE MATTER OF D.M. & A.H.

No. 473A20

Filed 27 August 2021

Termination of Parental Rights—no-merit brief—elimination of reunification from permanent plan—failure to make reasonable progress

The elimination of reunification with the father from his child's permanent plan and the subsequent termination of the father's parental rights on the grounds of failure to make reasonable progress were affirmed where the father's counsel filed a no-merit brief, the order eliminating reunification comported with the requirements of N.C.G.S. § 7B-906.2(b), and the termination order was supported by clear, cogent, and convincing evidence and based on proper legal grounds.

IN RE D.M.

[378 N.C. 435, 2021-NCSC-95]

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1)–(2), (a2) from orders entered on 26 August 2019 and 5 August 2020 by Judge Amber Davis in District Court, Dare County. This matter was calendared for argument in the Supreme Court on 21 June 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

No brief for petitioner-appellee Dare County Department of Health & Human Services, Division of Social Services.

No brief for appellee Guardian ad Litem.

Garron T. Michael for respondent-appellant father.

EARLS, Justice.

¶ 1 Respondent-father appeals from the trial court's order terminating his parental rights in the minor children "David" and "Allison."[1] *See* N.C.G.S. § 7B-1001(a1)(1) (2019). Pursuant to N.C.G.S. § 7B-1001(a1)(2) and (a2), respondent-father also appeals from the permanency-planning order that eliminated reunification with respondent-father from the children's permanent plan. The children's mother has relinquished her parental rights and is not a party to this appeal. We affirm.

¶ 2 On 1 May 2018, the Dare County Department of Health and Human Services, Division of Social Services (DSS), obtained nonsecure custody of six-year-old David and five-year-old Allison and filed juvenile petitions alleging they were neglected juveniles. After a hearing, the trial court entered an order on 9 August 2018 adjudicating the children as neglected juveniles based on respondents' stipulation to the following facts:

> 9. On April 30, 2018, [the children's mother] left the juveniles at her home with two persons who are not appropriate caregivers. [Her] neighbors called the police because the juveniles were yelling out of the upstairs windows that they were hungry and afraid to go downstairs.
>
> 10. Police performed a welfare check at [the children's mother's] home on April 30, 2018 after receiving calls from her neighbors. . . . Once the

1. We use these pseudonyms to protect the juveniles' identities and for ease of reading.

juveniles were secured, police searched [the] home. They found two small bags with a white powdery substance they believed to be cocaine in the juveniles' clothes and toy boxes. They found drug paraphernalia, including two burned pipes and two burned spoons. They also found about six grams of a powdery substance they believed to be cocaine in the freezer.

11. [The children's mother] failed to properly feed the juveniles. The home she provided for the juveniles was filthy, unkempt, and unsafe. There was moldy food in the kitchen, garbage throughout the home, and no suitable beds for the juveniles to sleep on.

12. When [the children's mother] arrived home, she told police that she had been on a date and had paid one of the individuals in the home $20.00 to watch the kids. She told police she had been gone for two hours and did not know who had been in her home. [She] was arrested and charged with possession of cocaine and possession of drug paraphernalia.

13. [Respondent-father] had limited contact with the juveniles before the Juvenile Petition was filed. He has willingly left the juveniles in the care of [the children's mother].

14. Neither [the children's mother] nor [respondent-father] have provided a safe, appropriate home for the juveniles.

15. [The children's mother] and [respondent-father] have failed to provide proper care and supervision for the juveniles. They have exposed the juveniles to unsafe, injurious environments.

16. The juveniles require more adequate care and supervision than [the children's mother] or [respondent-father] can provide in their homes.

¶ 3 In a disposition order entered on 6 November 2018, the trial court maintained the children in DSS custody and awarded respondent-father one hour per week of supervised visitation. The court found respondent-father had visited the children on two occasions since their placement in nonsecure custody but was arrested on 20 June 2018 and was facing

"serious" felony drug and weapons charges in Pitt County, which could result in "a substantial prison sentence." The court ordered respondent-father to enter into a visitation plan with DSS "to establish a regular, consistent visitation schedule"; submit to random drug screens as requested by DSS and abstain from all intoxicating substances; obtain a substance abuse assessment and comply with all treatment recommendations; and keep DSS apprised of his whereabouts and address.

¶ 4 At the initial permanency-planning hearing held on 6 February 2019, the trial court established a primary permanent plan for the children of reunification with the children's mother or respondent-father with a secondary plan of guardianship with a relative. The court maintained these primary and secondary plans at the next permanency-planning hearing held on 8 May 2019 and up to the permanency-planning hearing held on 7 August 2019.

¶ 5 However, in its permanency-planning order entered on 26 August 2019, the trial court changed the primary permanent plan to adoption, established a secondary plan of reunification with the children's mother, and relieved DSS of further reunification efforts with respondent-father. The court found that respondent-father had yet to enter into a case plan or visitation plan with DSS; he had submitted to a drug screen after a court appearance on 6 February 2019 and tested positive for marijuana and cocaine; he had scheduled an appointment for substance abuse treatment at PORT New Horizons but failed to attend the appointment; and he had been incarcerated since May 2019 for assaulting "his young paramour." The court also noted that respondent-father's felony drug and weapons charges in Pitt County remained pending. Respondent-father filed a timely notice to preserve his right to appeal the order eliminating reunification with him from the children's permanent plan. *See* N.C.G.S. § 7B-1001(a1)(2)(a), (b) (2019).

¶ 6 DSS filed a motion to terminate respondent-father's parental rights on 11 December 2019. The trial court held a hearing on the motion on 3 June and 1 July 2020 and entered its "Termination of Parental Rights Order" on 5 August 2020. In its order, the court adjudicated the existence of grounds to terminate respondent-father's parental rights for neglect, lack of reasonable progress, and dependency. *See* N.C.G.S. § 7B-1111(a)(1)–(2), (6) (2019). The trial court further concluded that termination of respondent-father's parental rights was in both children's best interests. *See* N.C.G.S. § 7B-1110(a) (2019). Respondent-father filed timely notices of appeal from the termination order and from the order eliminating reunification with him from the permanent plan. *See* N.C.G.S. § 7B-1001(a1)(1)–(2), (b).

¶ 7 Counsel for respondent-father has filed a no-merit brief on his client's behalf under Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. Counsel advised respondent-father of his right to file pro se written arguments on his own behalf and provided him with the documents necessary to do so. *See* N.C. R. App. P. 3.1(e). Respondent-father has not submitted written arguments to this Court.

¶ 8 This Court independently reviews issues identified by counsel in a no-merit brief filed pursuant to Appellate Rule 3.1(e). *In re L.E.M.*, 372 N.C. 396, 402 (2019). Respondent-father's counsel has identified issues that could arguably support an appeal in this case while also explaining why, based on a careful review of the record, these issues lack merit.

¶ 9 With regard to the order eliminating reunification from the permanent plan, counsel for respondent-father acknowledges that competent evidence supports the trial court's findings of fact and that the findings support the court's conclusion that further efforts to reunify David and Allison with respondent-father "would clearly be unsuccessful or inconsistent with the juveniles' need for a permanent pla[cement] within a reasonable period of time." *See* N.C.G.S. § 7B-906.2(b) (2019). At the time of the permanency-planning hearing respondent-father had made no meaningful steps toward reunification; he was incarcerated for a recent act of domestic violence; he had submitted to just one drug screen, which was positive for marijuana and cocaine; and he had failed to attend a scheduled appointment to begin substance abuse treatment. The trial court's ceasing of reunification efforts with respondent-father thus comports with the requirements of N.C.G.S. § 7B-906.2(b).

¶ 10 Turning to the termination order, counsel for respondent-father concedes that "the existence of a single ground for termination suffices to support the termination of a parent's parental rights in a child," *In re J.S.*, 2021-NCSC-28, ¶ 24, and that the evidence and the trial court's findings support a conclusion under N.C.G.S. § 7B-1111(a)(2) that respondent-father willfully left the children in a placement outside the home for more than twelve months without making reasonable progress to correct the conditions leading to their removal. Respondent-father's failure to comply with the court's orders or address his substance abuse issues, as well as his continued involvement in criminal conduct and resulting incarceration, evinced a lack of reasonable progress since the children were removed from the children's mother's custody in May 2018. *See In re Z.K.*, 375 N.C. 370, 373 (2020). The trial court did not err in adjudicating the existence of grounds for termination pursuant to N.C.G.S. § 7B-1111(a)(2).

¶ 11 Finally, the trial court made written findings addressing each of the factors relevant to disposition under N.C.G.S. § 7B-1110(a). As counsel for respondent-father admits, the findings provide a rational basis for the trial court's assessment that terminating respondent-father's parental rights was in the children's best interests in that it will facilitate the children's adoption by their maternal aunt and uncle. We further note these findings are supported by competent evidence presented at the termination hearing. Accordingly, we conclude the trial court did not abuse its discretion during the dispositional stage of the proceeding by choosing to terminate respondent-father's parental rights. *In re Z.K.*, 375 N.C. at 373, 847 S.E.2d at 749.

¶ 12 Having considered the entire record and the issues identified in the no-merit brief, we affirm the trial court's order eliminating reunification from the permanent plan and the trial court's order terminating respondent-father's parental rights.

AFFIRMED.

IN THE MATTER OF J.E.H., J.I.H., K.T.B., Q.D.B., I.T.B.

No. 449A20

Filed 27 August 2021

Termination of Parental Rights—no-merit brief—termination on multiple grounds

The termination of a mother's parental rights on the grounds of neglect, failure to make reasonable progress, failure to pay a reasonable portion of the cost of care, and dependency was affirmed where the mother's counsel filed a no-merit brief and the termination order was supported by clear, cogent, and convincing evidence and was based on proper legal grounds.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 6 August 2020 by Judge William F. Helms III in District Court, Union County. This matter was calendared for argument in the Supreme Court on 21 June 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 J.E.H.

[378 N.C. 440, 2021-NCSC-96]

Perry, Bundy, Plyler & Long, LLP, by Ashley J. McBride, for petitioner-appellee Union County Division of Social Services.

No brief for appellee Guardian ad Litem.

Richard Croutharmel for respondent-appellant mother.

EARLS, Justice.

¶ 1 Respondent-mother appeals from the trial court's order terminating her parental rights to J.E.H. (Jerry), J.I.H. (Jimmy), K.T.B. (Kenny), Q.D.B. (Quentin), and I.T.B. (Iris).[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 order.

¶ 2 On 19 June 2018, the Union County Division of Social Services (DSS) filed juvenile petitions alleging that Jerry and Jimmy, who are twins, were neglected and dependent juveniles. The petitions alleged that on 17 June 2018, respondent-mother took Jimmy to the emergency department and he was admitted to the hospital, where he was diagnosed with failure to thrive. The petition noted that hospital employees were concerned about respondent-mother's ability to care for the twins. The petition further noted earlier reports to DSS that respondent-mother received no prenatal care while pregnant with the twins, who were born prematurely; she was diagnosed with postpartum depression soon after their birth; and she did not have adequate supplies such as diapers, formula, and clothing for the twins. The petition alleged DSS supplied the children with formula and diapers, but respondent-mother continued to fail to provide those items. Later juvenile petitions concerning the other children noted that a social worker reportedly observed the children being fed Carnation evaporated milk instead of formula.

¶ 3 On 18 June 2018, a Child and Family Team Meeting was held, and respondent-mother indicated she was unable to care for the children.[2] She consented to the children's placement with family or in foster care.

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

2. The narratives attached to the juvenile petitions for Jerry and Jimmy refer to the neglect and dependent status of three other children of respondent-mother, none of whom are the subject of this appeal.

DSS obtained nonsecure custody of Jerry and Jimmy on 19 June 2018. Following Jimmy's discharge from the hospital, he and Jerry were placed in a licensed foster home.

¶ 4 On 11 July 2018, respondent-mother entered into a case plan to facilitate reunification with Jerry and Jimmy, which identified her needs in the areas of employment, housing and basic needs, emotional and mental health, and parenting and life skills. On 30 July 2018, respondent-mother entered into an In-Home Service Agreement to address her needs as they related to her other children, Kenny, Quentin, and Iris, who resided with their father.

¶ 5 Following a hearing on 22 August 2018, the trial court entered an order on 20 September 2018 that adjudicated Jerry and Jimmy as neglected and dependent juveniles. Respondent-mother was allowed one hour of supervised visitation weekly. She was ordered to (1) sign releases to allow her service providers to share information with DSS and the guardian ad litem, (2) maintain monthly contact with DSS, (3) submit to random drug screens, (4) complete a global mental health assessment and comply with all recommendations, (5) complete parenting classes, (6) secure safe and stable housing, and (7) maintain legal income.

¶ 6 On 18 October 2018, DSS filed juvenile petitions alleging the neglect and dependency of Kenny, Quentin, and Iris. The petitions alleged respondent-mother had failed to address the needs identified in her In-Home Service Agreement, as the children were not being provided necessary school uniforms and supplies; respondent-mother lost her job and was still without housing; respondent-mother was not scheduling medical and dental appointments for the children; respondent-mother failed to attend her scheduled mental health sessions and parenting classes; and respondent-mother was left unsupervised with Kenny and Quentin in violation of the safety plan.

¶ 7 Following a hearing on 14 November 2018, the trial court entered an order on 18 December 2018 that adjudicated Kenny, Quentin, and Iris as neglected and dependent juveniles. The court ordered that the children remain with their father in the home of their paternal grandmother. Respondent-mother was allowed visitation supervised by the children's father or their paternal grandmother. She was required to comply with her case plan and attend parenting classes; attend medication appointments; transport Iris to school on time; and address the children's well-being, needs, and recommended services.

¶ 8 Before the adjudication order was entered, on 5 December 2018, DSS filed additional juvenile petitions, again alleging that Kenny, Quentin,

and Iris were neglected and dependent juveniles. The petitions alleged that during a home visit on 25 October 2018, a social worker observed a gun lying on the couch in the living room where Kenny was playing. It was undetermined whether the gun was loaded, though the owner of the gun asserted it was not. The petitions also noted a report to DSS on 3 December 2018 that indicated the children were often seen outside running across the road with no parental supervision, respondent-mother was seen outside yelling at and physically disciplining Iris, respondent-mother was at risk of being evicted from her apartment due to complaints to management, and it was believed respondent-mother was with the children unsupervised at the apartment. The petitions also alleged respondent-mother remained noncompliant with her case plan requirements, noting her failure to complete mental health treatment and parenting classes and to schedule medical visits for the children. Further, when a social worker arrived at the home to transport the family to a Child and Family Team Meeting, she was refused entry to the home, the family did not attend the meeting, and neither respondent-mother nor the children's father contacted the social worker regarding the missed meeting. DSS sought and obtained nonsecure custody of the children on 5 December 2018.

¶ 9 Following a hearing on 9 January 2019, the trial court entered an order on 21 February 2019, again adjudicating Kenny, Quentin, and Iris as neglected and dependent juveniles. The court ordered custody of the children to remain with DSS. Respondent-mother was allowed a minimum of one hour of supervised visitation a week, and she was ordered to comply with her case plan, sign releases with her service providers, maintain monthly contact with DSS, and submit to random drug screens.

¶ 10 Following a permanency-planning hearing on 12 June 2019, the trial court entered an order on 11 July 2019 setting the primary permanent plan for Jerry, Jimmy, Kenny, Quentin, and Iris as adoption, with a secondary concurrent plan of guardianship with a relative or court-approved caretaker. On 6 August 2019, DSS filed a termination-of-parental-rights petition for all five children. The grounds alleged to terminate respondent-mother's parental rights were (1) her neglect of each of the children, (2) her leaving Jerry and Jimmy in foster care or a placement outside the home for more than twelve months without a showing of reasonable progress to correct the conditions that led to their removal, (3) her failure to pay a reasonable portion of the cost of care for all five children in the preceding six months, and (4) her inability to provide proper care and supervision of all the children rendering them dependent juveniles. *See* N.C.G.S. § 7B-1111(a)(1)–(3), (6) (2019).

¶ 11 Following a hearing on 1 and 2 July 2020, the trial court entered an order on 6 August 2020 adjudicating the existence of the grounds alleged in the termination petition. The court also concluded that it was in the children's best interests to terminate respondent-mother's parental rights and ordered that her rights in all five children be terminated.[3] Respondent-mother appeals.

¶ 12 Respondent-mother's counsel has filed a no-merit brief pursuant to Rule 3.1(e) of the Rules of Appellate Procedure. In the brief, counsel identified certain issues relating to the adjudication and disposition portions of the termination proceeding that could arguably support an appeal, including whether the trial court properly found grounds existed for the termination of respondent-mother's parental rights and whether the trial court abused its discretion by determining that termination of respondent-mother's parental rights was in the children's best interests, but explained why he believed the issues lacked merit. Counsel also advised respondent-mother of her right to file pro se written arguments on her own behalf and provided her with the documents necessary to do so. Respondent-mother, however, has not submitted any written arguments to this Court.

¶ 13 This Court independently reviews issues identified by counsel in a no-merit brief filed pursuant to Rule 3.1(e) to see if the issues have potential merit. *In re L.E.M.*, 372 N.C. 396, 402 (2019). After careful review of the issues identified in the no-merit brief in this matter in light of the record and applicable law, we are satisfied that the 6 August 2020 order is supported by clear, cogent, and convincing evidence and is based on proper legal grounds. Accordingly, we affirm the trial court's order terminating respondent-mother's parental rights.

AFFIRMED.

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3. The parental rights of the children's fathers—known, putative, and unknown—were also terminated. They are not parties to this appeal.

IN RE J.L.F.

[378 N.C. 445, 2021-NCSC-97]

IN THE MATTER OF J.L.F.

No. 451A20

Filed 27 August 2021

Termination of Parental Rights—no-merit brief—multiple grounds for termination—record support

The termination of a father's parental rights to his son based on five separate statutory grounds was affirmed where the father's counsel filed a no-merit brief, the father did not file any written arguments, the termination order's findings of fact had ample record support, and there was no error in the trial court's determination that the father's parental rights were subject to termination and that termination would be in the son's best interest.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from order entered on 23 July 2020 by Judge Ellen M. Shelley in District Court, McDowell County. This matter was calendared in the Supreme Court on 21 June 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.

Aaron G. Walker for petitioner-appellee McDowell County Department of Social Services.

Daniel Heyman for appellee Guardian ad Litem.

Leslie Rawls for respondent-appellant father.

PER CURIAM.

¶ 1 Respondent-father William F. appeals from the trial court's order terminating his parental rights in his minor child J.L.F.[1] Respondent-father's appellate counsel has filed a no-merit brief on his client's behalf pursuant to N.C.R. App. P. 3.1(e). After careful consideration of the record in light of the applicable law, we conclude that the issues identified by respondent-father's appellate counsel as potentially supporting an award of relief from the trial court's termination order lack merit and affirm the trial court's order.

1. J.L.F. will be referred to throughout the remainder of this opinion as "Jacob," which is a pseudonym that will be used for ease of reading and to protect the identity of the juvenile.

¶ 2 On 17 September 2018, the McDowell County Department of Social Services filed a petition alleging that Jacob was a neglected and dependent juvenile and obtained the entry of an order taking Jacob into nonsecure custody.[2] In its petition, DSS alleged that, while Jacob remained in the neo-natal intensive care unit following his birth, it had received a child protective services report on 6 August 2018 that expressed concerns relating to substance abuse, domestic violence, and the existence of an injurious environment. According to the child protective services report, the mother, Heather D., was afraid of respondent-father, who was reputed to be Jacob's father even though he had not been mentioned on Jacob's birth certificate,[3] and had obtained the entry of a restraining order, which she later "dropped," against respondent-father for the purpose of preventing him from learning of her current location and the fact of Jacob's birth. In addition, the child protective services report asserted that both the mother and respondent-father used methamphetamine.

¶ 3 DSS further alleged that, after the receipt of the child protective services report, the mother and respondent-father had met with agency representatives on 8 August 2018. At that time, the mother and respondent-father denied having used methamphetamine, acknowledged that they did not have an appropriate place to live, and agreed to comply with the terms of a safety plan that required them to obtain comprehensive clinical assessments and refrain from using illegal substances.

¶ 4 In addition, DSS alleged in the juvenile petition that Jacob had been discharged from the hospital into the care of his paternal grandparents on 11 August 2018. Subsequently, however, DSS determined that Jacob would not be safe in this placement after the grandmother reported that the grandfather "had taken off with [Jacob] without a car seat" and indicated that she could no longer care for Jacob given her concerns about the grandfather's temper and her fears for her own safety and that of Jacob. Moreover, DSS alleged that, even though they had been allowed to visit with Jacob while he was in his grandparents' care, the mother and respondent-father had only visited Jacob on a single occasion for approximately one hour during that period of time. Finally, DSS alleged that neither the mother nor respondent-father had attempted to contact DSS since the 8 August 2018 meeting; that its attempts to contact the mother and respondent-father had been unsuccessful; and that the

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2. An amended juvenile petition and nonsecure custody order in which the juvenile's last name was corrected were, respectively, filed and entered on 28 September 2018.

3. On 30 October 2018, respondent-father submitted to a paternity test, the results of which concluded that there was a 99.99% probability that he was Jacob's father.

mother and respondent-father were understood to be living in their vehicle, with their exact whereabouts being unknown.

¶ 5 After a hearing held on 29 November 2018, Judge C. Randy Pool entered an order on 7 December 2018 determining that Jacob was a neglected and dependent juvenile, placing Jacob in DSS custody, allowing the mother and respondent-father to have separate supervised visitation sessions with Jacob, and ordering the mother and respondent-father to comply with their case plans. In his case plan, respondent-father was required to obtain a comprehensive clinical assessment and comply with any resulting recommendations; complete intensive outpatient substance abuse treatment, abstain from the use of illegal substances, and submit to random drug screens; complete the Batterer's Intervention Program and refrain from "abus[ing], manipulat[ing], control[ling], or exert[ing] power over the [mother]"; complete parenting classes; participate in visitation; and obtain and maintain stable, safe, and independent housing and stable employment.

¶ 6 The underlying juvenile proceeding came on for an initial review and permanency planning hearing on 14 February 2019, by which time respondent-father had been sentenced to five consecutive terms of six to seventeen months imprisonment for violating the terms and conditions set out in earlier probationary judgments. In an order entered on 22 April 2019, Judge Pool found that the mother had been making progress toward satisfying the requirements of her case plan while respondent had been incarcerated. Judge Pool established a primary permanent plan of reunification and a secondary plan of custody or guardianship.

¶ 7 After another permanency planning hearing held on 16 May 2019, Judge Pool entered an order on 31 May 2019 maintaining the primary permanent plan of reunification in light of the fact that the mother continued to make progress toward satisfying the requirements of her case plan. After another permanency planning hearing held on 29 August 2019 hearing, however, Judge Robert K. Martelle entered an order changing the primary plan for Jacob to one of adoption, with a secondary plan of reunification, based upon determinations that the mother had entered into a new romantic relationship and was living with a man who had failed to comply with his own DSS case plan and that she intended to remain in that relationship after being informed that her persistence in such conduct created an obstacle to her reunification with Jacob. Although respondent-father remained incarcerated, he had been present for each of these permanency planning hearings while displaying little interest in Jacob and appearing to be focused upon the mother's alleged involvement with other men. At the time of the final permanency planning

hearing, which was held before Judge Martelle on 21 November 2019, respondent-father asked to be allowed to leave the courtroom, was granted permission to do so, and threatened the mother while departing from that location.

¶ 8 On 27 November 2019, the mother executed a relinquishment of her parental rights in order to allow Jacob to be adopted by his foster mother, with whom Jacob had been placed since the date upon which he had been taken into DSS custody. On 4 March 2020, DSS filed a motion seeking to have respondent-father's parental rights in Jacob terminated on the basis of neglect, N.C.G.S. § 7B-1111(a)(1); willful failure to make reasonable progress toward correcting the conditions that had led to Jacob's removal from the family home, N.C.G.S. § 7B-1111(a)(2); failure to legitimate Jacob, N.C.G.S. § 7B-1111(a)(2)(5); dependency, N.C.G.S. § 7B-1111(a)6); and willful abandonment, N.C.G.S. § 7B-1111(a)(7) (2019). After a termination hearing held on 9 July 2020, the trial court entered an order on 23 July 2020 in which it established respondent-father's paternity and terminated respondent-father's parental rights in Jacob. More specifically, the trial court determined that respondent-father was Jacob's biological father, that respondent's-father's parental rights in Jacob were subject to termination on the basis of each of the grounds for termination alleged in the termination motion, and that the termination of respondent-father's parental rights would be in Jacob's best interests. Respondent-father noted an appeal to this Court from the trial court's termination order.[4]

¶ 9 As we have already noted, respondent-father's appellate counsel has filed a no-merit brief on his client's behalf as authorized by N.C. R. App. P. Rule 3.1(e). In her no-merit brief, respondent-father's appellate counsel identified certain issues relating to the adjudication and dispositional portions of the termination proceeding that could potentially support an

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4. The record on appeal as settled by the parties reflects that respondent-father did not sign the notice of appeal that was filed on his behalf in this case as required by N.C.G.S. § 7B-1001(c) (2019) and N.C.R. App. P. 3.1(b). On the other hand, however, respondent-father's trial counsel did attach a letter that he had received from respondent-father, who remained in the custody of the Division of Adult Correction, in which respondent-father indicated that he wished to note an appeal from the trial court's termination order. Although a parent's failure to sign the relevant notice of appeal has been held to constitute a jurisdictional defect, *see In re L.B.*, 187 N.C. App. 326, 332 (2007), *aff'd per curiam*, 362 N.C. 507 (2008), we conclude that the decision by respondent-father's trial counsel to attach respondent-father's letter to the notice of appeal resulted in substantial compliance with the signature requirement delineated in N.C.G.S. § 7B-1001(c) and N.C.R. App. P. 3.1(b), particularly given that neither DSS nor the guardian ad litem have sought to have respondent-father's appeal dismissed.

award of appellate relief, including whether the trial court had lawfully found that respondent-father's parental rights in Jacob were subject to termination and whether the trial court had abused its discretion by determining that termination of respondent-father's parental rights would be in Jacob's best interests before explaining why these potential issues lacked merit. In addition, respondent-father's appellate counsel advised respondent-father of his right to file pro se written arguments on his own behalf and provided him with the documents necessary to do so. Respondent-father has not, however, submitted any written arguments for our consideration in this case.

¶ 10 This Court independently reviews issues identified by counsel in a no-merit brief filed pursuant to N.C.R. App. P. 3.1(e) for the purpose of determining if any of those issues have potential merit. *In re L.E.M.*, 372 N.C. 396, 402 (2019). After a careful review of the issues identified in the no-merit brief filed by respondent-father's appellate counsel in this case in light of the record and applicable law, we are satisfied that the findings of fact contained in the trial court's termination order have ample record support and that the trial court did not err in the course of determining that respondent-father's parental rights in Jacob were subject to termination and that the termination of respondent-father's parental rights would be in Jacob's best interests. As a result, we affirm the trial court's order terminating respondent-father's parental rights in Jacob.

AFFIRMED.

IN RE K.N.

[378 N.C. 450, 2021-NCSC-98]

IN THE MATTER OF K.N. & K.N.

No. 459A20

Filed 27 August 2021

1. Termination of Parental Rights—subject matter jurisdiction—UCCJEA—home state—record evidence

The trial court had subject matter jurisdiction to terminate the parental rights of a father who was living out of state where, although the court did not make an explicit finding that it had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (N.C.G.S. § 50A-201), the record established that the Act's jurisdictional requirements were satisfied. The children's home state was North Carolina at the time the termination proceedings commenced, and the children had been living in North Carolina with their foster parents for more than six consecutive months immediately preceding the commencement of the proceedings.

2. Termination of Parental Rights—grounds for termination—neglect—failure to make reasonable progress—evidence before and after the termination petition

In determining that a father's parental rights were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(1) (neglect) and (a)(2) (failure to make reasonable progress), the trial court properly considered the totality of the evidence—both before and after the filing of the termination petition, despite the father's argument to the contrary on appeal—and determined that the events occurring after the petition's filing were unpersuasive and inadequate to overcome evidence supporting termination.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 29 July 2020 by Judge William J. Moore in District Court, Robeson County. This matter was calendared in the Supreme Court on 21 June 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

J. Edward Yeager, Jr., for petitioner-appellee Robeson County Department of Social Services.

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

Benjamin J. Kull for respondent-appellant father.

IN RE K.N.

[378 N.C. 450, 2021-NCSC-98]

NEWBY, Chief Justice.

¶ 1 Respondent-father appeals from an order terminating his parental rights to K.N. and K.N. (Kevin and Kimberly)[1]. For the reasons set forth herein, we affirm the order terminating his parental rights.

¶ 2 Kevin was born in February 2012 and Kimberly was born in August 2015. The Robeson County Department of Social Services (DSS) first became involved with the family in 2015 after it received information that Kevin, Kimberly, respondent, and the children's mother were homeless and living in their car. The family thereafter obtained housing.

¶ 3 On 31 May 2017, DSS again received a neglect referral alleging that the family was homeless and that respondent was inappropriately disciplining the children. On 21 June 2017, DSS learned that the family had been kicked out of the homeless shelter where they were staying and went to stay with relatives in a home that had no running water. On 21 June 2017, a child and family team meeting was held with the family to discuss placement options, but the parents were unable to provide relatives or family friends to assist in serving as a safety resource for the family.

¶ 4 Thereafter, on 22 June 2017, DSS obtained nonsecure custody of Kevin and Kimberly[2] and filed juvenile petitions alleging them to be neglected juveniles. On 12 July 2017, the nonsecure custody order was dismissed, and the children were placed back into the home of respondent and mother.

¶ 5 On 6 September 2017, however, DSS again obtained nonsecure custody of the children and filed amended juvenile petitions based upon unstable, inadequate, and unsuitable housing for the children and their observing respondent engaging in violence. Thereafter, on 12 October 2017, respondent and mother entered into family services case plans. Specifically, respondent's plan intended to address issues of mental health, parenting, substance abuse, housing, and employment. Subsequently, respondent and mother obtained housing for four months because the Southeastern Family Violence Center paid the rent during that time. After the Center stopped paying rent, however, respondent and mother were evicted in the spring of 2018 because they could not pay.

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

2. DSS also obtained nonsecure custody of Kevin and Kimberly's younger sibling and filed a juvenile petition alleging that he was a neglected juvenile. That child, however, is not a subject of this appeal.

¶ 6 On 26 February 2018, the trial court entered an order adjudicating Kevin and Kimberly to be neglected juveniles. In a separate disposition order, the trial court ordered respondent to submit to a psychological evaluation, mental health assessment, and substance abuse assessment. Custody of the children remained with DSS. The permanent plan was set as reunification with mother, with a concurrent plan of adoption. The parents received bi-weekly visitation with the children.

¶ 7 In March of 2018, the trial court found that respondent alleged that he had obtained work but could not provide proof of income. Respondent stated that though he was employed, he had not been working much. Respondent completed a substance abuse assessment but only sporadically engaged in the required services and missed multiple visitations. At the hearing, the trial court told respondent and mother that if they did not become compliant on their case plans, the court would look at focusing efforts on a primary plan of adoption.

¶ 8 On 12 April 2018, respondent and mother informed DSS that they were thinking about moving to Michigan. Thereafter, DSS made several attempts to locate respondent before he eventually contacted DSS in mid-May. Respondent informed DSS that he and mother were living in Michigan, searching for employment and housing, and planning to begin classes at Community Mental Health. In July of 2018, DSS learned that respondent and mother were receiving substance abuse counseling.

¶ 9 On 31 July 2018, however, respondent pled guilty and thereafter was convicted of domestic violence and assault in Michigan based upon domestic violence between respondent and mother. In August of 2018, DSS received an email from St. Clair County DSS in Michigan reporting that mother was residing at a women's shelter and respondent was in the St. Clair County Jail.

¶ 10 On 5 September 2018, the trial court held a hearing and subsequently entered an order finding that respondent had moved to Michigan and had not made himself available to work on any plan to remove his children from foster care. The trial court ordered DSS to "primarily focus its efforts" on the plan of adoption and established a concurrent plan of reunification with respondent and mother.

¶ 11 On 11 September 2018, DSS received a call from mother, who reported that she was four months pregnant and that she had been to the clinic at the women's shelter, though she had not seen an OB/GYN. Respondent was released from jail on 18 September 2018.

¶ 12 Based on all of the incidents above, on 24 October 2018, DSS filed a petition to terminate respondent's parental rights in Kevin and Kimberly.[3] DSS alleged that respondent had neglected the children, *see* N.C.G.S. § 7B-1111(a)(1) (2019), willfully left the children in DSS custody for over twelve months without making reasonable progress to correct the conditions that led to their removal, *see* N.C.G.S. § 7B-1111(a)(2), and willfully failed to pay a reasonable portion of the cost of care for Kevin and Kimberly although physically and financially able to do so, *see* N.C.G.S. § 7B-1111(a)(3).

¶ 13 Several months after the petition was filed, respondent contacted DSS and stated that he was working, had completed parenting classes and substance abuse treatment, and was looking for housing. Respondent and mother came to North Carolina for a court hearing on 7 March 2019 and provided certificates verifying completion of services. They had one visit with the children that day. On 20 March 2019, however, DSS learned that Michigan DSS had filed a non-secure order and taken custody of respondent and mother's newborn due to neglect.

¶ 14 In July of 2019, respondent contacted DSS and alleged that he had completed inpatient therapy. On 8 October 2019, however, a social worker from Michigan DSS reported that respondent had not completed parenting classes and had missed four drug screens. During the spring of 2020, DSS learned that Michigan DSS had received permission to file for termination of parental rights for respondent and mother's newborn.

¶ 15 Following a hearing on 25 June 2020, the trial court entered an order on 29 July 2020 concluding that grounds existed to terminate respondent's parental rights in Kevin and Kimberly pursuant to N.C.G.S. § 7B-1111(a)(1)–(3). The trial court also concluded that it was in Kevin and Kimberly's best interests that respondent's parental rights be terminated. Thus, the trial court terminated respondent's rights. Respondent appeals.

¶ 16 On appeal respondent contends that the trial court failed to include a jurisdictional finding in its order terminating his parental rights. He also contends that in terminating his rights pursuant to N.C.G.S. § 7B-1111(a)(1) (neglect) and (2) (willfully leaving the children in DSS custody for over twelve months without making reasonable progress to correct the conditions that led to their removal), the trial court failed to consider evidence that occurred after the petition filing date. Finally, respondent argues that there was insufficient evidence to support terminating his

3. DSS also terminated mother's parental rights, but she is not a party to this appeal.

rights under N.C.G.S. § 7B-1111(a)(3) (failing to pay a reasonable portion of childcare costs).

¶ 17 "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, 839 S.E.2d 792, 796–97 (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, 832 S.E.2d 698, 700 (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, 831 S.E.2d 49, 52 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (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, 831 S.E.2d 305, 310 (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, 831 S.E.2d 62, 65 (2019).

I. Subject Matter Jurisdiction

¶ 18 **[1]** Respondent contends the trial court lacked subject matter jurisdiction to terminate his parental rights. Respondent acknowledges that the record supports jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) because North Carolina is the "home state" for Kevin and Kimberly. *See* N.C.G.S. § 50A-201 (2019). Nonetheless, respondent contends the trial court failed to comply with the requirements of N.C.G.S. § 7B-1101 (2019) by not making an explicit finding that it had jurisdiction under N.C.G.S. § 50A-201. Thus, respondent contends that the termination order is void.

¶ 19 "In matters arising under the Juvenile Code, the court's subject matter jurisdiction is established by statute." *In re K.J.L.*, 363 N.C. 343, 345, 677 S.E.2d 835, 837 (2009). Parties may challenge subject matter jurisdiction at any time. *In re T.R.P.*, 360 N.C. 588, 595, 636 S.E.2d 787, 793 (2006). Notably, however,

> "where the trial court has acted in a matter, every presumption not inconsistent with the record will be indulged in favor of jurisdiction . . . ." Nothing else appearing, we apply "the *prima facie* presumption of

> rightful jurisdiction which arises from the fact that a court of general jurisdiction has acted in the matter." As a result, "[t]he burden is on the party asserting want of jurisdiction to show such want."

In re N.T., 368 N.C. 705, 707, 782 S.E.2d 502, 503–04 (2016) (first quoting *Cheape v. Town of Chapel Hill*, 320 N.C. 549, 557, 359 S.E.2d 792, 797 (1987), then quoting *Williamson v. Spivey*, 224 N.C. 311, 313, 30 S.E.2d 46, 47 (1944), and then quoting *Dellinger v. Clark*, 234 N.C. 419, 424, 67 S.E.2d 448, 452 (1951)).

¶ 20 A trial court's subject matter jurisdiction over a petition to terminate parental rights is conferred by N.C.G.S. § 7B-1101, which provides that

> [t]he court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of the filing of the petition or motion. . . . The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the state of residence of the parent. Provided, that before exercising jurisdiction under this Article regarding the parental rights of a non-resident parent, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201 or G.S. 50A-203, without regard to G.S. 50A-204 and that process was served on the nonresident parent pursuant to G.S. 7B-1106.

N.C.G.S. § 7B-1101 (2019). N.C.G.S. § 50A-201 and N.C.G.S. § 50A-203 (2019) are provisions of the UCCJEA. Relevant to this matter, subparagraph (a)(1) of N.C.G.S. § 50A-201 provides:

> (a) . . . a court of this State has jurisdiction to make an initial child-custody determination only if:
>
> (1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or

> person acting as a parent continues to live in this State.

N.C.G.S. § 50A-201(a)(1). N.C.G.S. § 50A-203 provides the limited circumstances where "a court of this State may . . . modify a child-custody determination made by a court of another state." N.C.G.S. § 50A-203.

¶ 21 While respondent argues the trial court failed to comply with N.C.G.S. § 7B-1101 by not making an explicit finding that it had jurisdiction under N.C.G.S. § 50A-201, this Court has previously considered and rejected this argument. We have determined that "[t]he trial court is not required to make specific findings of fact demonstrating its jurisdiction under the UCCJEA, but the record must reflect that the jurisdictional prerequisites of the Act were satisfied when the court exercised jurisdiction." *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200–01 (2020); *see also In re A.S.M.R.*, 375 N.C. 539, 545–46, 850 S.E.2d 319, 323–24 (2020) ("Here, as in *In re L.T.*, the lack of explicit findings establishing jurisdiction under the UCCJEA does not constitute error because the record unambiguously demonstrates that 'the jurisdictional prerequisites in the Act were satisfied.' " (quoting *In re L.T.*, 347 N.C. at 569, 843 S.E.2d at 201)).

¶ 22 Here the trial court made the finding that "the Court has jurisdiction over the parties and the subject matter herein pursuant to Article 11 of Chapter 7B of the North Carolina General Statutes." Notably, the record supports this determination. The record establishes that respondent moved to Michigan several months before the filing of the termination petition. The children's home state, however, is North Carolina and has been since the commencement of termination proceedings; Kevin and Kimberly lived with their foster parents for more than six consecutive months immediately preceding the filing of the termination petition. *See* N.C.G.S. § 50A-201(a)(1) (2019); N.C.G.S. § 50A-102(7) (defining "home state" under the UCCJEA as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding"); *In re N.P.*, 376 N.C. 729, 2021-NCSC-11, ¶ 13 (concluding that where the juvenile was born in North Carolina and lived with foster parents in the state for the six months immediately preceding the termination petition filing, the trial court's determination that North Carolina was the home state was consistent with the UCCJEA and N.C.G.S. § 50A-201(a)(1)). Accordingly, the trial court had jurisdiction over this case.

II. Grounds for Termination

¶ 23 **[2]** Next respondent challenges the trial court's determination that grounds existed to terminate his parental rights.

A. N.C.G.S. § 7B-1111(a)(1)–(2)

¶ 24 Respondent contends the trial court erred by terminating his parental rights under N.C.G.S. § 7B-1111(a)(1) (neglect) and (2) (willfully leaving the children in DSS custody for over twelve months without making reasonable progress to correct the conditions that led to their removal) because it "operated under a misapprehension of law that post-petition facts were irrelevant and unnecessary." Respondent does not challenge any findings of fact as unsupported but instead contends that the trial court may have reached a different conclusion if it had correctly understood the significance of assessing events that occurred after the termination petition's filing. Respondent directs our attention to an objection made by counsel for DSS during the cross-examination of DSS Supervisor Vanessa McKnight. DSS counsel objected to testimony about evidence that occurred after the date the termination petition was filed, stating that the standard for termination was to look at what "happened prior to the date of the filing of the action." The trial court disagreed, however, allowing McKnight to testify.

¶ 25 Respondent also believes the trial court failed to consider any evidence after the petition was filed because DSS's only witness for the first part of the hearing was McKnight, who testified that she stopped supervising respondent's case on 24 October 2018 and thus could not provide information after that date. Respondent concedes, however, that the trial court received into evidence and considered DSS's "Termination of Parental Rights Timeline," which recounted numerous events that occurred after the filing of the termination petition. Nonetheless, respondent argues that, because the trial court did not require any other witnesses to testify, "the trial court clearly signaled that it did not anticipate or see the need for" evidence of events following 24 October 2018. Thus, respondent contends that he was prejudiced since "[t]here is simply no way to know what determinations the trial court may have made had it correctly understood the legal significance of that progress." Therefore, respondent requests that the termination order be vacated and remanded so that the trial court can conduct a new hearing considering the facts following the termination petition's filing date.

¶ 26 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). "To terminate parental rights

based on neglect, 'if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.' " *In re D.L.A.D.*, 375 N.C. 565, 567, 849 S.E.2d 811, 814 (2020) (quoting *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016)). 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, 319 S.E.2d 227, 232 (1984).

¶ 27 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). "[T]he willfulness of a parent's failure to make reasonable progress toward correcting the conditions that led to a child's removal from the family home 'is established when the [parent] had the ability to show reasonable progress, but was unwilling to make the effort.' " *In re L.E.W.*, 375 N.C. 124, 136, 846 S.E.2d 460, 469 (2020) (quoting *In re Fletcher*, 148 N.C. App. 228, 235, 558 S.E.2d 498, 502 (2002)). "[T]he nature and extent of the parent's *reasonable progress* . . . is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (quoting *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006)). This Court has recognized that "parental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)." *In re B.O.A.*, 372 N.C. at 384, 831 S.E.2d at 313.

¶ 28 Our case law clearly states that in determining whether future neglect is likely, the trial court must consider evidence of changed circumstances between the period of past neglect and the time of the termination hearing. *In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797. Similarly, in evaluating the nature and extent of a parent's reasonable progress in correcting the conditions that led to the children's removal, the trial court must consider the parent's progress leading up to the termination hearing. *In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71. Though it appears that counsel for DSS misstated this law during her objection to McKnight's testimony, the trial court overruled the objection and al-

lowed McKnight to continue with her testimony. The record does not indicate that counsel's misstatement of the law impacted the trial court in any way.

¶ 29 Moreover, though McKnight's testimony at the hearing was limited to the time immediately preceding the filing of the termination petition, the record indicates that the trial court admitted post-petition evidence during the proceeding and considered post-petition evidence in making its findings of fact and conclusions of law. During the adjudicatory stage of the termination hearing, the trial court took judicial notice of the children's underlying file, which included several court orders from hearings conducted after the filing of the termination petition. In addition, DSS introduced and the trial court admitted into evidence, without objection from respondent's counsel, a "Termination of Parental Rights Timeline" exhibit, which the trial court stated that it relied upon in making its findings. The timeline, which was signed and submitted by McKnight and DSS Social Worker McKoy, detailed DSS's involvement with respondent from December 2012 until the time of the termination hearing in June 2020. This timeline addressed numerous events that occurred after the filing of the termination petition on 24 October 2018.

¶ 30 The trial court's unchallenged findings, which are binding on appeal, establish that Kevin and Kimberly entered DSS custody on 21 June 2017 based on the family's homelessness and allegations of inappropriate discipline by respondent. The children were subsequently adjudicated neglected based on these allegations and respondent and mother's repeated failure to secure housing. Respondent entered into a case plan in October 2017 in which he agreed to complete a substance abuse assessment and submit to random drug screens, locate housing, and obtain employment. Initially, respondent obtained housing for four months through funding paid by the Southeastern Family Violence Center. Once the Southeastern Family Violence Center discontinued paying the rent, however, respondent was evicted for failure to pay. In May of 2018, respondent informed a DSS social worker that he and mother had moved and were living in Michigan. Though respondent began receiving substance abuse counseling, in August of 2018 respondent was convicted of domestic violence and assault and was released from jail on 18 September 2018.

¶ 31 Moreover, the trial court made the following findings of fact related to events occurring after the 24 October 2018 termination petition filing:

> 21. On January 25, 2019, SWS Vanessa McKnight received a telephone call from [respondent].

> [Respondent] reported that he was working two jobs. [Respondent] reported that he was coming to court in March, 2019.
>
> 22. On February 26, 2019, Social Worker received a telephone call from [mother]. [Mother] reported that she and [respondent] have completed parenting classes and substance abuse treatment. [Mother] stated that they were in the process of obtaining housing.
>
> 23. On March 7, 2019, the parents were present for court and provided to the court, certificates verifying completion of services. The parents visited with the children on March 8, 2019 and this was the last time the parents had a face to face visit with their children.
>
> 24. On March 20, 2019, SWS Anthony Maynor received a telephone call from Ms. Amanda Temple in Michigan, stating that they had filed a non-secure order and taken custody of [the] newborn due to neglect.
>
> 25. On July 11, 2019, Social Worker received a call from [respondent] informing worker that he was discharged from inpatient treatment with Sacred Hearts in Richmond, Michigan. [Respondent] reported that he is scheduled to begin outpatient treatment that is being offered by Michigan Department of Social Services on July 26, 2019.
>
> 26. On October 8, 2019, Tim Aiello, Michigan Social Worker reported [mother] has completed parenting classes; however, [respondent] has not completed parenting classes. [Mr.] Aiello reported that [respondent] has missed four drug screens and [mother] has missed six screens.
>
> 27. [In March 2020,] Mr. Tim Aeillo, Michigan Social Worker reported to Social Worker that . . . they received permission from the Court to file the Termination of Parental Rights on [mother] and [respondent's] new baby.

¶ 32 From the trial court order, it is clear the court considered evidence after the date of the termination petition's filing but determined that such evidence was unpersuasive and inadequate to overcome evidence supporting termination under N.C.G.S. § 7B-1111(a)(1) and (a)(2). This

appears especially so given that Michigan DSS proceeded with terminating the rights to respondent and mother's youngest child. Notably, the trial court can determine what weight to give any evidence of events occurring after the termination petition is filed; it is not up to this Court to reweigh how the trial court balanced that evidence. *See In re Z.A.M.*, 374 N.C. 88, 100, 839 S.E.2d 792, 800 (2020) (noting that "the trial court, which is involved in the case from the beginning and hears the evidence, is in the best position to assess and weigh the evidence, find the facts, and reach conclusions based thereon"). Thus, the unchallenged findings support the conclusion that the trial court considered the totality of the evidence, both before and after the petition's filing, in determining that respondent's parental rights were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(1) and (a)(2).

B. N.C.G.S. § 7B-1111(a)(3)

¶ 33 Respondent also argues that the trial court erred in terminating his rights under N.C.G.S. § 7B-1111(a)(3). Because the trial court properly terminated respondent's parental rights based on N.C.G.S. § 7B-1111(a)(1)–(2), we need not address this argument. *See In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982) (holding that an appealed order should be affirmed when any one of the grounds of the trial court is supported by findings of fact based on clear, cogent, and convincing evidence); *see also* N.C.G.S. § 7B-1111(a) (2019) ("The court may terminate the parental rights upon a finding of one or more [grounds for termination.]"). Accordingly, we affirm the trial court's termination order.

AFFIRMED.

IN RE M.A.

[378 N.C. 462, 2021-NCSC-99]

IN THE MATTER OF M.A.

No. 218A20

Filed 27 August 2021

Termination of Parental Rights—grounds for termination—neglect—likelihood of future neglect—unstable housing and domestic violence

The trial court did not err by determining that a mother's parental rights were subject to termination on the grounds of neglect where the court's findings were supported by the evidence, which demonstrated that the mother was likely to repeat her prior neglect if the child were returned to her care, based on the mother's lack of stable housing and unresolved domestic violence issues. Although the mother had made some progress on her case plan, at the time of the hearing she was sharing a studio apartment with a male coworker and was not on the lease, and she had failed to demonstrate an understanding of her domestic violence issues and how to protect herself and her child in the future.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 27 February 2020 by Judge Shamieka L. Rhinehart in District Court, Durham County. This matter was calendared for argument in the Supreme Court on 21 June 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

The Law Office of Derrick J. Hensley, PLLC, by Derrick J. Hensley, for petitioner-appellee Durham County Department of Social Services.

Carrie A. Hanger for appellee Guardian ad Litem.

Peter Wood for respondent-appellant mother.

HUDSON, Justice.

¶ 1 Respondent, the mother of M.A. (Mark)[1], appeals from the trial court's order terminating her parental rights on the grounds of neglect and willful failure to make reasonable progress to correct the conditions that led to the child's removal from the home. Because we hold the trial

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

court did not err in concluding that grounds existed to terminate respondent's parental rights under N.C.G.S. § 7B-1111(a)(1) based on neglect, we affirm the trial court's order.

I. Facts and Procedural History

¶ 2 On 1 June 2015, the Durham County Department of Social Services (DSS) obtained nonsecure custody of then ten-month-old Mark and his fifteen-year-old brother, J.M.[2], and filed a juvenile petition alleging they were neglected juveniles. In the petition, DSS alleged that respondent and the children were chronically homeless and had been staying "from place to place." The petition further alleged that on 21 May 2015, J.M. returned from school to the place where they had been staying and was unable to locate respondent. Respondent did not leave any information or instructions on where she could be found. After still not being able to find respondent that evening, J.M. went to his maternal grandmother's senior residential complex at 1:00 a.m. to have a place to stay. On 1 June 2015, the maternal grandmother informed DSS that J.M. could no longer stay with her as her residence did not allow children, and she was concerned about being evicted. DSS believed Mark was with respondent, however she had not been located at the time of filing the petition.

¶ 3 On 2 June 2015, respondent showed up at DSS's office with Mark. The social worker addressed the allegations and petition with respondent and explained that DSS had obtained legal custody of her children on 1 June 2015. Respondent left Mark in the custody of DSS, and he was placed in foster care.

¶ 4 On 20 August 2015, the trial court entered an order adjudicating the children as neglected juveniles based on stipulations by the parties. In order to correct the conditions that led to the children's removal, the trial court ordered respondent to complete a psychological evaluation with collateral contacts and objective testing, and follow any recommendations for mental health treatment; complete a parenting class and demonstrate and verbalize an understanding of the skills learned; obtain and maintain stable housing; obtain and maintain stable employment; demonstrate an ability and willingness to meet the children's needs; refrain from substance abuse; maintain contact with the social worker and provide current contact information; and maintain visitation with the children. The trial court granted respondent two hours of supervised visitation every other week.

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2. J.M. has reached the age of majority and is not a part of this appeal. Therefore, we discuss the facts primarily as they relate to Mark.

¶ 5 Following a review hearing held 17 November 2015, the trial court entered an order on 11 January 2016 continuing custody with DSS and placing Mark with his paternal great grandmother. The trial court found that respondent was employed and seeking housing, had started parenting classes, had completed a substance abuse assessment from which no services were recommended, and had completed a psychological evaluation.

¶ 6 In a review order entered on 7 June 2016, the trial court set the permanent plan for Mark as reunification with a secondary plan of guardianship. The trial court found that respondent had obtained a one-bedroom home through Housing for New Hope. DSS had assessed the home on 31 May 2016 and found it to be appropriate for Mark. The trial court further found that respondent was making progress and was not a safety risk to Mark during visits but that she still needed to complete the parenting course and obtain sufficient income to meet the needs of her children. The trial court allowed respondent unsupervised visitation with Mark with the possibility of transitioning to overnight visits. In addition to respondent's prior case plan requirements, the trial court ordered respondent to obtain a domestic violence assessment due to a history of domestic violence.

¶ 7 On 10 August 2016, Mark was placed in a foster home after the paternal great grandmother indicated she could no longer care for him due to her health. On 8 September 2016, respondent was awarded overnight unsupervised visits on the condition that the father not be present.

¶ 8 In a 2 May 2017 permanency-planning-review order, the trial court continued the permanent plan of reunification but changed the secondary plan to adoption. The trial court found that respondent completed a domestic violence assessment in December 2016 which recommended mental health treatment and domestic violence counseling. Respondent completed a mental health assessment on 28 February 2017, and no treatment was recommended. However, DSS was concerned that respondent underreported her domestic violence history. Respondent completed an addendum to the initial assessment on 15 August 2017. However, the trial court found that respondent "continued to minimize her domestic violence history and its impact on her."

¶ 9 After another hearing, the trial court subsequently entered a permanency-planning-review order continuing the permanent plan of reunification with a secondary plan of adoption. The trial court found that respondent had housing and had been employed at the same company for the past eighteen months. However, the trial court found that

respondent's participation in domestic violence counseling had been "sporadic" and that respondent did not fully acknowledge the effects of her domestic violence history, nor did she fully understand the reasons the trial court was ordering her to engage in domestic violence counseling.

¶ 10 On 24 May 2018, DSS filed a motion to terminate respondent's parental rights to Mark alleging the grounds of neglect and willfully leaving the child in foster care for more than twelve months without making reasonable progress to correct the conditions that led to his removal from the home. *See* N.C.G.S. § 7B-1111(a)(1)–(2) (2019). DSS alleged that respondent failed to demonstrate a willingness and ability to meet Mark's needs due to respondent's "delays in scheduling and attending assessments and treatment, her sporadic attendance at treatment, incomplete disclosures regarding problems and failure to utilize all visitation opportunities with the child." DSS further alleged that respondent "exhibit[ed] a pattern of behavior of disengagement and lack of follow through" as she had "several older children for whom she failed to engage in services in order to safely parent th[o]se children."

¶ 11 Following a hearing on 20 and 23 July 2018, the trial court entered a permanency-planning-review order on 28 August 2018 changing the permanent plan to adoption with a secondary plan of guardianship. The trial court found that although respondent had stable housing, she had yet to complete the Parenting Capacity Assessment that was ordered in October 2017 which would address respondent's understanding of the impact of her domestic violence and her ability to keep Mark and herself safe. The trial court further found that respondent missed a permanency planning review meeting and failed to provide an explanation, and that respondent was not at her home when the social worker conducted a pop-in visit during Mark's unsupervised visitation. The trial court found that it is not possible for Mark to return to respondent's care within the next six months because she "has not completed her court ordered services, especially the Parenting Capacity Assessment, . . . and her sporadic attendance of domestic violence counseling."

¶ 12 The trial court conducted a termination-of-parental-rights hearing on 15 August, 9 and 15 October, 14 November, and 6 and 11 December 2019. On 27 February 2020, the trial court entered an order concluding that respondent's parental rights were subject to termination on the grounds of neglect and willful failure to make reasonable progress to correct the conditions that led to Mark's removal from the home. The trial court further concluded that termination of respondent's parental rights was in Mark's best interests. Accordingly, the trial court terminated respondent's parental rights. Respondent appealed.

II. Analysis

¶ 13 On appeal, respondent contends the trial court erred by adjudicating grounds for termination of her parental rights under N.C.G.S. § 7B-1111(a)(1) and (2). Because only one ground is necessary to terminate parental rights, we only address respondent's arguments regarding the ground of neglect. *See In re A.R.A.*, 373 N.C. 190, 194 (2019).

¶ 14 We review a trial court's adjudication "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. 101, 111 (1984). Unchallenged findings of fact "are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407 (2019). "Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *Id.* "The trial court's conclusions of law are reviewable de novo on appeal." *In re J.O.D.*, 374 N.C. 797, 801 (2020).

¶ 15 A trial court may terminate parental rights when 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). A neglected juvenile is one "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2019). In some circumstances, a 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, 599–600 (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) (quoting *In re L.O.K.*, 174 N.C. App. 426, 435 (2005)). 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 trial 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) (quoting *In re D.L.W.*, 368 N.C. 835, 843 (2016)). 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. *In re R.L.D.*, 375 N.C. at 841 n.3.

¶ 16 Respondent acknowledges that Mark was previously adjudicated to be a neglected juvenile but challenges the trial court's finding as to the likelihood of a repetition of neglect.

A. Challenged Findings of Fact

¶ 17 Respondent first challenges the following findings of fact:

> 11. That at the time of this termination hearing, the Petitioner demonstrated by and through the evidence presented that conditions rising to the level of neglect existed during the pendency of the termination action in that the child lived in an environment injurious and that the parents did not provide proper care or supervision in that there continued to be unstable housing, unresolved issues of domestic violence, the father's abandonment and issues surrounding the parent's willingness and ability to provide proper supervision and care in the home.
>
> . . . .
>
> 64. The [c]ourt is aware that there has not been any reporting of any incidents of domestic violence since adjudication, but the [c]ourt is concerned that the mother has continued to underreport her history of domestic violence. Dr. Harris-Britt did state that the mother did not demonstrate an understanding of the skills she may have learned in her domestic violence counseling. The [c]ourt finds that the mother was unable to articulate the skills she learned in her domestic violence counseling with KKJ Services as testified to in this hearing.
>
> 65. The [c]ourt acknowledges the reasons [Mark] was neglected in the underlying adjudication and disposition; however, the [c]ourt must assess risk and harm. This [c]ourt does not believe that the mother could protect herself or [Mark] from being in a situation of domestic violence or being able to protect [Mark] if she found herself in that situation. The

[c]ourt finds that the mother has yet to progress with her understanding of domestic violence and how it could impact her and what she would need to do to protect herself and [Mark].

66. The [c]ourt also finds that the reason that [Mark] was removed was because of instability of housing. The [c]ourt looks at how differently the mother's housing status has changed from when [Mark] entered in the custody of DSS. At the time this case was adjudicated, the mother resided at Urban Ministries. The mother was able to locate a one-bedroom apartment and resided there for about three years. However, the mother moved in April of 2019 after having stable housing for a good period to move to a studio apartment with a co-worker where she is not on the lease. The mother reports that she moved to be closer to a better school; however, her housing situation remains unstable. The mother did not communicate to DSS that she had moved until September of 2019 when she requested that DSS look at her home so she could have overnight supervised visits. When [DSS] inquired as to who stayed with the mother, she did not provide a name of who stayed with her. It was not only until the hearing, that the mother revealed that she was staying with a roommate and the name of the roommate was given. Apparently, the mother's roommate is a male co-worker.

. . . .

68. The [c]ourt wonders where the visits were occurring during the time period where the mother was staying at her new residence that had not been approved for overnight weekend visits. The mother would have known that it was important to have been in place at the apartment that was approved for her visits so that the social worker could bring back to the [c]ourt information about how the visits were going. During this same timeframe, the mother was requesting drop off and pick up of [Mark] at various public places but not the residence that was approved for her visits.

. . . .

70. The [c]ourt finds that the fact that the mother was having unsupervised overnight weekend visits made her unmotivated in addressing the concerns of the court. The mother was ordered to complete the PCA in November of 2017 and it was not completed until November of 2018. The mother did not tell social worker Dearing that she had moved in April of 2019; the mother requested an assessment of her "new" home, approximately five months after she moved. The [c]ourt is baffled as to why the mother would not tell the social worker she had moved.

71. The [c]ourt finds that the mother has been working, but the [c]ourt still has concerns as to whether she can maintain her own household with her own efforts. The [c]ourt also finds that the mother has had the type of visitation she has had for a good period, but the court still finds that: 1) she still does not have stable housing and that she continues to struggle in maintaining a safe and functioning home for [Mark]; 2) the [c]ourt also is concerned because Dr. April Harris-Britt has made recommendations for an ACTT team and intensive mental health services along with her having domestic violence counseling and the mother still has yet focused and address[ed] the core issues of domestic violence about which the [c]ourt remains concerned. The [c]ourt is dubious of the mother's participation for services with KKJ Services and whether the mother's participation with this program will decrease the likelihood that [Mark] is returned to conditions resulting in his neglect given her lack of insight and her high level of distrust.

72. The [c]ourt also gives great weight to how long [Mark] has been in the care of DSS since 2015. He has been in the care of DSS for most of his life. The mother has had ample times to address these issues that continue to pose a risk if [Mark] were returned to her care. The mother lives in a small apartment with a man and pays half the rent and not paying the utilities. The [c]ourt does not know whether [Mark] was kept safe or properly supervised and cared for during these overnight visits. When the social worker would

go to the residence that was approved for her visits for unannounced pop-in visits, the mother and [Mark] were not there. The [c]ourt does not know what, if anything, [Mark] was exposed to and the mother knew that pop-in visits were required by . . . DSS.

. . . .

74. The [c]ourt finds that there is a likelihood of repetition of neglect if the juvenile was returned to the home of the Respondents[3] based upon the findings of fact herein and the underlying permanency planning orders relied upon and incorporated herein.

75. Respondents' failure to adequately and timely address the issues that led to the removal of the juvenile from the home constitutes neglect. That failure to adequately and timely address the neglectful behaviors, renders the Respondents incapable of providing adequate care and supervision of the juvenile. The probability that the neglect will be repeated and said incapability will continue in the future is high given the failure of the Respondents to address and alleviate the issues.

76. The Respondent Mother has demonstrated a settled pattern of neglect of the juvenile, and this pattern is likely to continue into the foreseeable future. The [c]ourt finds there is a reasonable probability that such neglect would be continued and repeated if the juvenile was to be returned to the care, custody, or control of the Respondents.

. . . .

81. The [c]ourt finds that, as of the time of the termination hearing, the Respondent Mother has not made reasonable progress under the circumstances to correct the conditions that led to the juvenile's removal in that while she did maintain housing for a period of time, she moved without notifying the social worker during a time when she was being allowed unsupervised overnight visitations. There were periods

3. Although M.A.'s father was a respondent in this case, he is not party to this appeal.

> of time when the social worker could not complete any pop-in visits to observe and monitor these visits. The mother stopped having drop-offs and pickups at her known residence. She then relocated to an apartment residence with an undisclosed male roommate and no lease. She failed to cooperate with the mental health recommendations. She did not participate in domestic violence treatment to the satisfaction of this [c]ourt. She failed to comp[l]ete the Parenting Capacity Assessment until a year after it was ordered and then failed to demonstrate the willingness and ability to comply with the recommendations from that assessment. These last two services were ordered by this [c]ourt in order to remedy the conditions which led to the juvenile's adjudication, namely [the] mother's homelessness and housing instability and the contributions [of] her history of Domestic Violence which the [c]ourt found was critical in the neglect of this juvenile. The Respondent Mother willfully failed and refused to substantially complete the services as ordered by the [c]ourt in a reasonable manner and timeframe.[4]

¶ 18 Respondent raises no specific evidentiary challenges to these findings but "disputes" them generally. After reviewing the record, including the testimony from the termination hearing and the unchallenged findings of fact, we hold the challenged findings are supported by competent evidence in the record. First, the social worker testified at the termination hearing regarding respondent's progress on her case plan over the four years that Mark had been in DSS custody, including testimony regarding respondent's housing situation, her participation in domestic violence treatment, and her visitations with Mark. The social worker testified that respondent no longer had stable housing and did not inform DSS that she had relocated until five months after she had moved, had not completed domestic violence treatment as recommended by her case plan, and was not always present at her home when the social worker attempted random pop-in visits during several of respondent's unsupervised visitation periods. The social worker also testified that respondent delayed in completing some services, including taking one year to complete the Parenting Capacity Assessment, which respondent was ordered to complete to address respondent's domestic violence issues.

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4. Although respondent challenges finding of fact 81 in her argument regarding grounds for termination under N.C.G.S. § 7B-1111(a)(2), the finding is also relevant to support the ground of neglect, so we address it here.

¶ 19 Furthermore, the psychologist who conducted the Parenting Capacity Assessment testified at the termination hearing that respondent had "extremely limited insight into how her own behaviors had impacted her children, why they were in care[,]" and that respondent's "inability to recognize or acknowledge the really important events that have happened for her as well as for her children will impact her ability to . . . benefit from services" and "ultimately will impact her ability to provide a safe and nurturing appropriate home for [Mark]." The Parenting Capacity Assessment, which was admitted into evidence at the termination hearing, stated that respondent "continues to display an unwillingness to accept accountability and a continuous lack of consistency in completing the actions necessary to meet the requirements of the court for reunification." The assessment also stated that, although respondent participated in domestic violence classes, "she did not demonstrate or verbalize understanding of the skills she may have received in [those] classes."

¶ 20 Finally, the trial court found in other unchallenged findings that respondent moved to a studio apartment without informing DSS and was unable to provide a lease to the apartment nor the name of the roommate that lived with her. As a result, DSS was not able to approve respondent's residence for overnight visitations. The trial court also found that respondent had not provided any documentation to DSS showing that she was participating in mental health counseling, as recommended by her domestic violence assessment, and that respondent informed the social worker that she was receiving domestic violence counseling at KKJ, where she "participates in support group sessions where the participants discuss outcomes for domestic violence." The trial court further found that although respondent was present at her home during some of DSS's pop-in visits during her visitations with Mark, there were at least ten times where respondent was not at her home with Mark. Because there is substantial evidence in the record to support the challenged findings, including testimony from the termination hearing and other unchallenged findings, we reject respondent's general challenge to the trial court's findings of fact.

¶ 21 Respondent also argues that findings of fact 64 and 65, which relate to respondent's domestic violence issues, are mere speculation by the trial court and based on "pure conjecture."[5] "The [trial] court has the responsibility of making all reasonable inferences from the evidence presented." *In re N.P.*, 374 N.C. 61, 65 (2020). "Such inferences, however,

5. Respondent also challenges finding of fact 68 for the same reasons, however, that finding is not necessary to support the ground of neglect.

cannot rest on conjecture or surmise. This is necessarily so because an inference is a permissible conclusion drawn by reason from a premise established by proof." *In re K.L.T.*, 374 N.C. 826, 843 (2020) (cleaned up) (quoting *Sowers v. Marley*, 235 N.C. 607, 609 (1952)).

¶ 22 We conclude the trial court's inferences in findings of fact 64 and 65 are not based merely on conjecture. The trial court could reasonably infer from the evidence presented that respondent would not be able to protect herself or Mark from being in a domestic violence situation or to protect Mark if she found herself in that situation. In the termination order, the trial court acknowledged that there had not been any reports of incidents of domestic violence since the adjudication in 2015. However, the trial court expressed concern that respondent was underreporting her domestic violence history. The trial court also found that respondent was unable to articulate the skills she learned in her domestic violence counseling and that she had not progressed with her understanding of domestic violence, how it could impact both her and Mark, and what she would need to do to protect herself and Mark. At the termination hearing, the psychologist that conducted respondent's Parenting Capacity Assessment testified that respondent was "extremely limited in her ability and willingness to share information about her domestic violence history" and "oftentimes" would underreport that information. The psychologist also testified that respondent's "inability to recognize or acknowledge" her history would impact her ability to benefit from services and ultimately impact her ability to provide a safe and nurturing home for Mark. The trial court could reasonably infer from this evidence that respondent would not be able to utilize the learned skills in order to protect herself and Mark from a domestic violence situation.

¶ 23 Respondent also "disputes the findings that she had failed to obtain stable housing." She contends that one move in over three years "is hardly unstable" and that the only issue with her housing "seemed to be that DSS had not had time to investigate her new residence or her new roommate." We disagree.

¶ 24 The evidence and findings support the trial court's conclusion that at the time of the termination hearing, respondent did not have stable housing. The trial court found that respondent had obtained stable housing for three years while she was residing in the one-bedroom home she had been renting that DSS found to be appropriate for Mark. However, around April of 2019, respondent moved to a studio apartment that she shared with a male coworker where she was not named on the lease. The trial court found that respondent did not inform DSS of the move until five months later when she requested a home assessment for over-

night visits, that respondent was not forthcoming about the move when questioned by the social worker, and that respondent failed to provide a name for her roommate until the termination hearing. Based on these findings, the trial court found that although respondent had obtained stable housing "for a good period[,]" at the time of the termination hearing "her housing situation remain[ed] unstable."

¶ 25 Although one relocation in a period of three years does not necessarily indicate instability, respondent moved from an approved one-bedroom home where she was the only tenant named on the lease to a shared studio apartment where she was not named as a tenant on the lease, and thus she has no legal right to remain in the home. Respondent testified at the termination hearing that she split the rent with her roommate but that the roommate paid for the utilities. Respondent also testified that she had moved to the apartment "several months ago" but she did not know the exact date and that she was "planning on finding a two-bedroom apartment or a house." Therefore, we conclude the trial court's findings that respondent did not have stable housing at the time of the termination hearing are sufficiently supported.

B. Repetition of Neglect

¶ 26 Respondent next argues the trial court erred in determining there was a likelihood of future neglect. Citing N.C.G.S. § 7B-903.1(c), respondent contends that the trial court's finding of a probability of future neglect is inconsistent with its determination that she continued to have unsupervised visits for the three years leading up to the termination hearing.

¶ 27 Subsection 7B-901.3(c) provides that

> [i]f a juvenile is removed from the home and placed in the custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with or return physical custody of the juvenile to the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

N.C.G.S. § 7B-903.1(c) (2019). The Juvenile Code defines a "[s]afe home" as "[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect." N.C.G.S. § 7B-101(19).

¶ 28 Respondent argues that because the trial court did not change her unsupervised visitation during the four-month period in which the

termination hearing was held, "the court must have determined that [respondent] had continued to provide a safe home free of neglect." She contends that although the trial court did not specifically find in the termination order that respondent had provided a safe home free of neglect for Mark, it "implicitly reached those conclusions when it continued to allow unsupervised visits." Therefore, respondent contends that the trial court's finding of a probability of neglect was "irreconcilably inconsistent" with allowing continued unsupervised visits. She further argues that even if the evidence could support neglect, allowing respondent to continue to exercise unsupervised visitation was "internally inconsistent" with a finding of a probability of future neglect. Respondent's arguments are misplaced.

¶ 29 Pursuant to Rule 58 of the North Carolina Rules of Civil Procedure, "a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court." N.C.G.S. § 1A-1, Rule 58 (2019). Additionally, "a trial court's oral findings are subject to change before the final written order is entered." *In re A.U.D.*, 373 N.C. 3, 9–10 (2019). Thus, even assuming the trial court had determined that respondent provided a safe home during the termination hearing, the trial court's finding was subject to change until the final order was entered. Because the termination order does not continue respondent's unsupervised visitation, and in fact restricts respondent to supervised visitation, the trial court did not simultaneously find that respondent could provide a safe home for Mark and that there was a likelihood of repetition of neglect. Similarly, respondent's assertion that the trial court's findings are "internally inconsistent" is without merit. The trial court did not allow respondent to continue to exercise unsupervised visitation in the termination order in which it found a probability of future neglect.

¶ 30 Moreover, the fact that respondent was previously approved for unsupervised overnight visitation at a prior address did not preclude the trial court from later finding a likelihood of repetition of neglect when respondent's circumstances changed. At the time of the termination hearing, respondent was no longer residing at her approved one-bedroom home but was sharing a studio apartment with an unknown roommate, was not listed on the lease as a tenant, and was not paying utilities for the apartment. Respondent failed to inform DSS of the move for five months despite continuing to exercise her unsupervised overnight visitation. Therefore, we reject respondent's arguments.

¶ 31 Finally, respondent argues the evidence presented at the termination hearing did not support the trial court's finding of a probability of future neglect. We disagree.

¶ 32 "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)). However, "[a]s this Court has previously noted, a parent's compliance with his or her case plan does not preclude a finding of neglect." *In re J.J.H.*, 376 N.C. 161, 185 (2020) (citing *In re D.W.P.*, 373 N.C. 327, 339–40 (2020) (noting the respondent's progress in satisfying the requirements of her case plan while upholding the trial court's determination that there was a likelihood that the neglect would be repeated in the future because the respondent had failed "to recognize and break patterns of abuse that put her children at risk")); *see also In re Y.Y.E.T.*, 205 N.C. App. 120, 131 (explaining that a "case plan is not just a check list" and that "parents must demonstrate acknowledgement and understanding of why the juvenile entered DSS custody as well as changed behaviors"), *disc. review denied*, 364 N.C. 434 (2010). Although respondent had made some progress on the requirements of her case plan, she had not addressed the conditions that resulted in Mark's placement in DSS custody.

¶ 33 The trial court found that Mark was removed from respondent's care and adjudicated to be a neglected juvenile primarily due to respondent's unstable housing and history of domestic violence. The trial court also found that conditions rising to the level of neglect existed during the pendency of the termination action due to respondent's continued unstable housing and unresolved issues of domestic violence. Respondent had over four years to address the conditions that led to Mark's removal but failed to do so. Although respondent attended some domestic violence counseling, the trial court found that she "did not participate in domestic violence treatment to [its] satisfaction" and that she did not demonstrate an understanding of her domestic violence issues, how they impacted her and Mark, and how to protect herself and Mark in a domestic violence situation. The findings also show that although respondent had obtained stable housing for a period of three years, at the time of the termination hearing respondent was sharing a studio apartment with a male coworker and was not on the apartment lease as a tenant. Respondent was not forthcoming about her move and did not inform DSS of the move or request an assessment of her new home until five months after she moved despite continuing to exercise her unsupervised visitation. The trial court also found that respondent "failed to comp[l]ete the Parenting Capacity Assessment until a year after it was ordered and then failed to demonstrate the willingness and ability to comply with the recommendations from that assessment." Finally, the trial court found that respondent's failure to adequately and timely address the issues that led to Mark's removal from her care constitutes neglect.

¶ 34 We hold the evidence and findings demonstrate that Mark is likely to be neglected again if returned to respondent's care due to her lack of stable housing and unresolved domestic violence issues and that they support the trial court's ultimate finding that there is a likelihood of repetition of neglect. *See In re M.A.*, 374 N.C. at 870 (holding that, although the respondent claimed to have made reasonable progress in addressing elements of his case plan, the trial court's findings regarding the respondent's failure to adequately address the issue of domestic violence, which was the primary reason that the children had been removed from the home, were, "standing alone, sufficient to support a determination that there was a likelihood of future neglect"). As a result, the trial court did not err by determining that grounds existed under N.C.G.S. § 7B-1111(a)(1) to terminate respondent's parental rights. Respondent does not challenge the trial court's dispositional determination that termination of her parental rights was in Mark's best interests. *See* N.C.G.S. § 7B-1110(a) (2019). Accordingly, we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

IN THE MATTER OF M.J.M. AND A.M.M.

No. 494A20

Filed 27 August 2021

1. Termination of Parental Rights—subject matter jurisdiction—where child resides with guardian—underlying juvenile case

In a private termination proceeding, the trial court had subject matter jurisdiction to enter an order terminating a mother's parental rights to her child where the child's legal permanent guardian filed the termination petition in the county in which she resided with the child (Robeson), satisfying the jurisdictional requirements of N.C.G.S. § 7B-1101. A different county's jurisdiction over the child's underlying juvenile case did not prevent the Robeson County court from having jurisdiction over the termination petition.

2. Termination of Parental Rights—appointment of guardian ad litem—parent failed to file answer to petition—trial court's discretion

Even assuming the issue was preserved for appellate review, in a private termination of parental rights proceeding where the mother failed to file an answer to the termination petitions but later decided to contest the matter, the record gave no indication that the trial court acted under a misapprehension of law or failed to exercise its discretion when it did not appoint a guardian ad litem for the children.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 20 August 2020 by Judge Brooke Clark in District Court, Robeson County. This matter was calendared for argument in the Supreme Court on 21 June 2021 but determined on the record and brief without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

No brief for petitioner-appellee.

Dorothy Hairston Mitchell for respondent-appellant mother.

HUDSON, Justice.

¶ 1 Respondent-mother appeals from the trial court's orders terminating her parental rights to the minor children M.J.M. (Mariel)[1] and A.M.M. (Audrey). Upon consideration of respondent-mother's arguments, we affirm.

I. Background

¶ 2 This is an appeal in private termination proceedings initiated by the children's paternal aunt (petitioner) to terminate the parental rights of respondent-mother and the children's father.[2] On 19 September 2019, petitioner filed a verified petition to terminate respondent-mother's parental rights to Mariel. The petition alleged that Mariel, who was born in June 2014, had resided with petitioner since October 2014 and that petitioner had been awarded guardianship of Mariel on 28 June 2016 in juvenile proceedings in the District Court in Wake County. The petition further alleged that grounds existed to terminate respondent-mother's

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

2. The father ultimately consented to petitioner's adoption of Mariel and Audrey, making it unnecessary for petitioner to proceed with the termination of his parental rights. Accordingly, he is not a party to this appeal, and this opinion does not discuss the allegations in the termination petitions related to the father.

parental rights to Mariel for failure to make reasonable progress, willful failure to pay a reasonable portion of Mariel's cost of care, and willful abandonment. *See* N.C.G.S. § 7B-1111(a)(2)–(3), (7) (2019). On 18 November 2019, petitioner filed a verified petition to terminate respondent-mother's parental rights to Audrey. The petition alleged that Audrey, who was born in May 2015, had resided with petitioner since May 2015. The petition further alleged that grounds existed to terminate respondent-mother's parental rights to Audrey for willful failure to pay a reasonable portion of Audrey's cost of care and willful abandonment. *See* N.C.G.S. § 7B-1111(a)(3), (7).

¶ 3 The termination petitions were served on respondent-mother by certified mail, and respondent-mother did not file answers to the petitions.

¶ 4 At a pre-adjudication hearing on the termination petitions on 17 February 2020, the trial court determined it had jurisdiction over the petitions and scheduled a termination hearing for 20 April 2020. The termination hearing was continued once upon a motion by respondent-mother, but the trial court denied respondent-mother's motion to further continue the matter and heard the termination petitions together on 29 June 2020. On 20 August 2020, the trial court entered orders terminating respondent-mother's parental rights to Mariel and Audrey. The trial court concluded that grounds existed to terminate respondent-mother's parental rights to both children for willful failure to pay a reasonable portion of their cost of care and willful abandonment, *see* N.C.G.S. § 7B-1111(a)(3) and (7), and it was in the children's best interests to terminate her parental rights. Respondent-mother appealed the termination orders.

II. Analysis

¶ 5 Respondent-mother argues on appeal: (1) the trial court lacked subject-matter jurisdiction to enter the order terminating her parental rights to Mariel, and (2) the trial court erred by failing to exercise its discretion to appoint a guardian ad litem for the children. Respondent-mother does not otherwise challenge the trial court's adjudication of the existence of grounds to terminate her parental rights or its determination that termination was in the children's best interests.

A. Jurisdiction

¶ 6 **[1]** We first address respondent-mother's argument that the trial court lacked subject-matter jurisdiction over the petition to terminate her parental rights to Mariel. "Whether or not a trial court possesses subject-matter jurisdiction is a question of law that is reviewed de novo.

Challenges to a trial court's subject-matter jurisdiction may be raised at any stage of proceedings, including for the first time before this Court." *In re A.L.L.*, 376 N.C. 99, 101 (2020) (cleaned up) (quoting *In re T.R.P.*, 360 N.C. 588, 595 (2006)).

¶ 7 Respondent-mother argues the District Court in Robeson County lacked subject-matter jurisdiction over the petition to terminate her parental rights to Mariel because the District Court in Wake County obtained and retained exclusive jurisdiction "over Mariel" in Mariel's underlying juvenile case, in which the District Court in Wake County granted petitioner guardianship of Mariel in June 2016. Respondent-mother thus asserts the order entered by the District Court in Robeson County terminating her parental rights to Mariel must be vacated. *See In re T.R.P.*, 360 N.C. at 590 ("Subject[-]matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest, and in its absence a court has no power to act[.]"). We disagree.

¶ 8 This Court recently rejected a similar jurisdictional argument in *In re A.L.L.*, in which the respondent argued "the Davie County District Court lacked subject-matter jurisdiction to enter an order terminating her parental rights because the Davidson County District Court had previously entered a permanency-planning order establishing [the] petitioners as [the juvenile's] legal permanent guardians." *In re A.L.L.*, 376 N.C. at 103. In that case, we recognized "[a] trial court's subject-matter jurisdiction over a petition to terminate parental rights is conferred by N.C.G.S. § 7B-1101." *Id.* at 104. That section provides,

> [t]he court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion.

N.C.G.S. § 7B-1101 (2019). This Court further explained,

> [i]t is well-established that a court's jurisdiction to adjudicate a termination petition does not depend on the existence of an underlying abuse, neglect, and dependency proceeding. Indeed, although the Juvenile Code permits petitioners to seek termination in the same district court that is simultaneously adjudicating an underlying abuse, neglect, or dependency petition, the statutory language does not mandate

> filing in a single court. Thus, . . . a trial court lacks jurisdiction over a termination petition if the requirements of N.C.G.S. § 7B-1101 have not been met, even if there is an underlying abuse, neglect, or dependency action concerning that juvenile in the district in which the termination petition has been filed. However, if the requirements of N.C.G.S. § 7B-1101 have been met in one county, then a district court in that county has jurisdiction, even if an abuse, neglect, or dependency action is pending in another county.

In re A.L.L., 376 N.C. at 105 (cleaned up) (quoting *In re E.B.*, 375 N.C. 310, 317 (2020)). Accordingly, we held the trial court had jurisdiction in *In re A.L.L.* when "the petitioners were [the juvenile's] legal permanent guardians who filed their petition in the district court in the county where they resided with [the juvenile], satisfying the requirements of N.C.G.S. § 7B-1101." *Id.*

¶ 9 In the present case, it is undisputed that petitioner was Mariel's legal permanent guardian and that petitioner filed the termination petition in the District Court in Robeson County, the county in which petitioner resided with Mariel. Therefore, the requirements of N.C.G.S. § 7B-1101 were satisfied so as to confer jurisdiction over the termination petition in the District Court in Robeson County. Accordingly, we overrule respondent-mother's argument that the District Court in Robeson County lacked subject-matter jurisdiction over the petition to terminate her parental rights to Mariel.

B. Guardian ad Litem

¶ 10 **[2]** We next address respondent-mother's argument that the trial court erred by failing to exercise its discretion to appoint a guardian ad litem (GAL) for the children. The appointment of a GAL for a juvenile in termination proceedings is governed by N.C.G.S. § 7B-1108. That section provides, in relevant part:

> (b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile . . . .
>
> (c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations . . . ; but

> the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

N.C.G.S. § 7B-1108(b)–(c) (2019).

¶ 11 It is undisputed that respondent-mother did not file an answer or response to the termination petitions. Therefore, the trial court was not required to appoint a GAL pursuant to N.C.G.S. § 7B-1108(b). However, respondent-mother contends the trial court failed to exercise its discretion under N.C.G.S. § 7B-1108(c) to appoint a GAL absent an answer or response because the trial court was under a mistaken belief that it could not do so. Due to the trial court's alleged misapprehension of the law, respondent-mother contends the termination orders must be reversed and remanded in order for the trial court to exercise its discretion under N.C.G.S. § 7B-1108(c). Again, we disagree.

¶ 12 First, although the trial court considered appointing a GAL in deciding whether to grant respondent-mother's motion to further continue the termination hearing, no party moved for the trial court to appoint a GAL for the children, nor was there any objection to the lack of a GAL. Thus, respondent-mother failed to preserve this issue for appellate review. *See In re A.D.N.*, 231 N.C. App. 54, 65–66 (2013) (reiterating that "in order to preserve for appeal the argument that the trial court erred by failing to appoint the child a GAL, a respondent must object to the asserted error below" (citing *In re Fuller*, 144 N.C. App. 620, 623 (2001); *In re Barnes*, 97 N.C. App. 325, 326 (1990))), *disc. rev. denied*, 367 N.C. 321 (2014); *see also* N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . . .").[3]

¶ 13 Moreover, assuming arguendo the issue was preserved, the record does not "undoubtedly show the trial court mistakenly believed [it] could

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3. We note that respondent-mother asserts the matter should be reviewed on appeal despite her failure to raise the issue or an objection in the trial court. She relies on the Court of Appeals' decisions in *In re Fuller*, 144 N.C. App. 620 (2001), and *In re Barnes*, 97 N.C. App. 325 (1990). In those cases, however, the court did not hold that challenges to the trial court's failure to appoint a GAL were preserved for appellate review; the court instead invoked Rule 2 of the North Carolina Rules of Appellate Procedure to suspend the appellate rules in order to reach the issue of whether the trial court committed prejudicial error by failing to comply with the statutory mandate that a GAL shall be appointed when an answer is filed contesting a termination petition. *In re Fuller*, 144 N.C. App. at 623; *In re Barnes*, 97 N.C. App. at 326–27.

not appoint a guardian ad litem since an answer was not filed[,]" as asserted by respondent-mother. The transcript of the termination hearing shows that respondent-mother's attorney moved to continue the termination hearing for a second time when the matter was called on 29 June 2020 due to respondent-mother's absence. Although respondent-mother was not physically present, she participated by telephone. In considering the motion to continue, the trial court identified various considerations, including that respondent-mother indicated she was contesting termination of her parental rights despite her prior indecisiveness and failure to file an answer. The trial court indicated it believed it was better practice to have a GAL involved if respondent-mother was contesting the matter and acknowledged that the reason there was not yet a GAL involved was because respondent did not file an answer. However, the trial court indicated it wanted to hear from the parties before deciding how to proceed. The transcript shows that the trial court remained concerned about further delay in the proceedings after hearing from the parties, and the trial court ultimately denied the motion to continue and proceeded without appointing a GAL after respondent-mother indicated the only evidence she could offer was her own testimony, which the trial court allowed by telephone.[4] The record does not indicate the trial court was under a misapprehension of the law or failed to exercise its discretion. We overrule respondent's argument.

III. Conclusion

¶ 14 Having overruled respondent-mother's arguments that the trial court lacked subject-matter jurisdiction over the petition to terminate her parental rights to Mariel and that the trial court erred in failing to exercise its discretion to appoint a GAL for the children, and because respondent-mother does not challenge the trial court's adjudication of the existence of grounds to terminate her parental rights or determination that termination was in the children's best interests, we affirm the trial court's orders terminating respondent-mother's parental rights to Mariel and Audrey.

AFFIRMED.

4. Respondent-mother does not challenge the trial court's denial of her motion to continue.

IN RE S.C.L.R.

[378 N.C. 484, 2021-NCSC-101]

IN THE MATTER OF S.C.L.R.

No. 371A20

Filed 27 August 2021

1. Termination of Parental Rights—pleadings—sufficiency—private termination action—reference to court order

The petition in a private termination of parental rights action comported with statutory pleading requirements (N.C.G.S. § 7B-1104(2)) where the petition stated petitioners' names and address, alleged that custody had been granted to them, and referenced the custody order establishing that the child had resided with them for two years.

2. Termination of Parental Rights—grounds for termination—willful abandonment—sufficiency of findings—willfulness

The Supreme Court rejected a mother's argument that the trial court failed to make any factual finding that her conduct was willful and therefore that the court erred by concluding her parental rights were subject to termination on the grounds of willful abandonment. Even though it was labeled as a conclusion of law, the trial court did make a finding that the mother had willfully abandoned the child. In addition, the Court rejected the mother's challenge to the sufficiency of the findings because the findings reflected that she had failed to do anything to express love, affection, and parental concern during the determinative period.

3. Termination of Parental Rights—grounds for termination—willful abandonment—failure to pay for care required by decree or custody agreement—sufficiency of findings

In a private termination of parental rights action, the evidence did not support the trial court's finding that the father, who was incarcerated during the relevant time period, had willfully abandoned his child where the father testified that he spoke with his daughter every other weekend and where the petitioner, who had custody of the child, testified that the father called on Christmas. Even if the father's testimony were found not credible, the petitioner's testimony did not establish willful abandonment. The evidence also did not support the trial court's finding that the father had willfully failed to pay for care, support, or education as required by a decree or custody agreement where there was no evidence of any decree or custody agreement making such a requirement.

Justice EARLS concurring in part and dissenting in part.

Justice ERVIN joins in this concurring in part and dissenting in part opinion.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) and on writ of certiorari pursuant to N.C.G.S. § 7A-32(b) to review an order entered on 21 May 2020 by Judge Larry J. Wilson in District Court, Cleveland County. This matter was calendared for argument in the Supreme Court on 21 June 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

No brief for petitioner-appellees.

Sydney Batch for respondent-appellant father.

Jeffrey L. Miller for respondent-appellant mother.

BARRINGER, Justice.

¶ 1 Respondents appeal from the trial court's order terminating their parental rights to S.C.L.R. (Sue).[1] After careful review, we affirm the order as to respondent-mother and reverse the order as to respondent-father.

I. Background

¶ 2 Petitioners brought Sue home from the hospital after her birth in the spring of 2017. Petitioners came to provide for Sue through a friend of petitioners who worked with Sue's paternal grandmother. At the time of Sue's birth, both respondents were incarcerated, and the paternal grandmother wanted to find an alternative to foster care. Respondents assigned temporary custody of Sue to petitioners pursuant to a consent order entered on 15 May 2017. Permanent custody was granted by the trial court to petitioners in Cleveland County File No. 17-CVD-814 (the Custody Action) by order signed on 27 June 2019. Sue has been in petitioners' care and custody since they took her home from the hospital in May 2017.

¶ 3 Petitioners filed a verified petition to terminate respondent-mother's parental rights to Sue on 5 August 2019. Petitioners subsequently filed

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

an amended verified petition to terminate respondent-mother's and respondent-father's parental rights to Sue on 26 August 2019. Petitioners sought termination pursuant to N.C.G.S. § 7B-1111(a)(4) and (7).

¶ 4 The trial court held the termination-of-parental-rights hearing on 26 February 2020. Following the hearing, the trial court entered an order on 21 May 2020 in which it determined that grounds existed to terminate respondents' parental rights pursuant to the grounds alleged in the petition. The trial court further concluded it was in Sue's best interests that respondents' parental rights be terminated. Accordingly, the trial court terminated respondents' parental rights.

¶ 5 Respondents gave timely notice of appeal pursuant to N.C.G.S. § 7B-1001(a1)(1). Respondent-mother's notice of appeal, however, improperly designated the Court of Appeals as the court to which appeal was being taken. Respondent-mother filed an amended notice of appeal on 25 June 2020 in which she correctly designated this Court as the court to which appeal was being taken. On 22 September 2020, respondent-mother filed a petition for a writ of certiorari seeking review of the trial court's order terminating her parental rights. On 19 October 2020, we allowed respondent-mother's petition for writ of certiorari.

II. Compliance with N.C.G.S. § 7B-1104(2)

¶ 6 **[1]** Respondents first argue that the trial court lacked jurisdiction to terminate their parental rights because the verified petition fails to allege "facts sufficient to identify the petitioner or movant as one authorized by [N.C.]G.S. [§] 7B-1103 to file a petition or motion." N.C.G.S. § 7B-1104(2) (2019). Because we conclude that the allegations in the petition are sufficient to comply with N.C.G.S. § 7B-1104(2) and respondents do not dispute that petitioners in fact were persons authorized by N.C.G.S. § 7B-1103(a) to file a petition for termination of respondents' parental rights, we decline to address whether the legislature has limited the trial court's jurisdiction to petitions filed with allegations sufficient to comply with N.C.G.S. § 7B-1104(2).

¶ 7 Subsection 7B-1103(a) of the General Statutes of North Carolina provides the following:

> (a) A petition or motion to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed by one or more of the following:
>
> . . . .

> (5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the petition or motion.

N.C.G.S. § 7B-1103(a) (2019).

¶ 8 A petition or motion to terminate parental rights shall state "[t]he name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by [N.C.]G.S. [§] 7B-1103 to file a petition or motion." N.C.G.S. § 7B-1104(2).

¶ 9 Respondents have not challenged the trial court's finding in the termination-of-parental-rights order that Sue has resided with petitioners since she came home from the hospital after her birth in May 2017. Respondents also testified to this effect at the termination-of-parental-rights hearing. Unchallenged findings are deemed to be supported by the evidence and are binding on appeal. *See In re Z.L.W.*, 372 N.C. 432, 437 (2019). Thus, this appeal does not involve a dispute concerning whether petitioners are in fact persons "with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the petition or motion." N.C.G.S. § 7B-1103(a)(5). Consequently, whether petitioners were authorized by statute to file a petition for termination of respondents' parental rights is not at issue. Instead, this appeal only raises whether a statutory pleading requirement was met.

¶ 10 When we look at the petition, it is apparent that petitioners did provide their names and address but did not include an allegation using the specific language of N.C.G.S. § 7B-1103(a)(5). However, as N.C.G.S. § 7B-1104(2) does not require specific language for compliance, our analysis does not end here. *See* N.C.G.S. § 7B-1104(2).

¶ 11 Instead, we must consider whether the provision of petitioners' names, address, and other facts in the petition are "sufficient to identify . . . petitioner[s] as . . . one authorized by [N.C.]G.S. [§] 7B-1103 to file a petition [for termination of parental rights]." N.C.G.S. § 7B-1104(2). Among other things, the petition alleged "[t]hat custody was given to the [p]etitioners in Cleveland County File No.: 17-CVD-814 by Order of this [c]ourt dated February 12, 2019 that was subsequently filed June 24, 2019; that since prior to the entry of this Order, the respondents have not had any contact with the minor child." The petition also identified that Sue resides with petitioners in Cleveland County.

¶ 12 In the Custody Action, respondents are the defendants, and petitioners are the plaintiffs.[2] Petitioners commenced the Custody Action by complaint after Sue's birth when Sue remained in the hospital. Respondents accepted service, and petitioners and respondents consented to the entry of an order by the trial court in the Custody Action on 15 May 2017. The trial court found "[t]hat the parties agree that the minor child should be placed in the temporary legal and physical care, custody[,] and control of the [petitioners], subject to the [respondents] exercising supervised visitation upon their release [from incarceration]" and ordered "[t]hat the [petitioners] shall have the temporary legal and primary physical care, custody[,] and control of [Sue] subject to [respondents] exercising supervised visitation for a minimum of one hour each week upon [their] release." Later, upon petitioners' request, the parties were heard by the trial court on 12 February 2019. The trial court upon hearing the testimony of the parties and reviewing the evidence found that Sue "ha[d] been placed with [petitioners] since she was an infant," and petitioners "have provided excellent care for [Sue], since being vested with temporary custody." Thereafter, the trial court ordered that "[petitioners] shall have the permanent sole care, custody[,] and control of [Sue]." The order was signed on 27 June 2019.

¶ 13 Since the foregoing findings of fact and orders of the trial court in the file identified by the petition establish that petitioners have had Sue in their legal care, custody, and control since 15 May 2017 and the petition to terminate the parental rights of respondents was filed on 26 August 2019, we conclude the petition contains "facts sufficient to identify the petitioner or movant as one authorized by [N.C.]G.S. [§] 7B-1103 to file a petition or motion." N.C.G.S. § 7B-1104(2). Specifically, the aforementioned facts reflect that Sue "has resided [with petitioners] for a continuous period of two years or more next preceding the filing of the petition." N.C.G.S. § 7B-1103(a)(5). Thus, we find no merit in respondents' first argument.

III. Challenges to Findings of Fact and Conclusions of Law

¶ 14 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

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2. This Court has ordered that the Complaint, dated 15 May 2017; Acceptance of Service by respondent-mother, dated 15 May 2017; Acceptance of Service by respondent-father, dated 15 May 2017; Order, dated 15 May 2017; and Custody Order, dated 27 June 2019, from Cleveland County File No. 17-CVD-814 be added to the record on appeal, pursuant to Rule 9(b)(5)(b) of the North Carolina Rules of Appellate Procedure.

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).

¶ 15 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. at 437.

¶ 16 As pertinent to both respondents' arguments on appeal, the trial court's termination-of-parental-rights order found that:

> 2. The [r]espondent[-mother] is a resident of Cleveland County, North Carolina.
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> 3. The respondent[-father] is currently incarcerated in Piedmont Correctional Institut[ion] in Salisbury, North Carolina.
>
> . . . .
>
> 5. This action was filed on August 26, 2019 by the petitioners . . . .
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> . . . .
>
> 7. The [c]ourt finds that custody was given to the [p]etitioners in Cleveland County File No.: 17-CVD-814 by Order of this [c]ourt dated February 12, 2019 that was subsequently filed June 24, 2019; that since prior to the entry of this Order, the respondents have not had any contact with the minor child, and since the time the child was taken into physical custody of the [p]etitioners[,] the child has resided with the [p]etitioners; that the minor child has resided with the petitioners since she initially came home from the hospital after her birth.
>
> 8. The [c]ourt would find that the [r]espondents have had no meaningful contact with the minor child;

> that neither respondent has . . . supported the minor child financially or emotionally and has not bonded with the minor child; that the respondent[-]father is currently incarcerated with a projected release date of February 2026; that given his length of incarceration along with the impossibility of him being an involved role in the minor child's life, the minor child needs stability; that he has abandoned the minor child and it is also in the minor[ ] child's best interests to have permanence with the [p]etitioners.
>
> 9. That the respondent[-]mother has struggled ongoing with substance abuse issues and has abandoned the minor child; that she has also failed to support the minor child's needs financially; she has not had any visitation with the minor child dating back to November of 2018, 12 months prior to the filing of this action. She testified to being gainfully employed but has not provided any financial support for the well-being of the minor child whatsoever.
>
> 10. That grounds pursuant to N.C.[G.S.] [§] 7B-1111(a)(4) and 7B-1111(a)(7) exist as evidenced by the testimony elicited and findings of fact set forth above.
>
> . . . .
>
> 12. The [c]ourt would find the grounds for abandonment and failure to provide support stated in the petition have been proven and would find therefore that grounds for termination of parental rights exists as alleged and proven.

¶ 17 The trial court then in conclusion of law three, concluded based on the aforementioned findings of fact that, "[a]t the time of the filing of this action, the respondent[-]father and respondent[-]mother have willfully abandoned the child for at least six consecutive months immediately preceding the filing of this petition; ha[ve] willfully failed without justification to pay for the care and support of the minor child; [and] that the respondents have neglected the minor child."

A. Respondent-mother's Arguments

¶ 18 **[2]** Respondent-mother challenges the trial court's conclusion that the ground of willful abandonment pursuant to N.C.G.S. § 7B-1111(a)(7)

existed by first arguing that there are no findings of fact indicating that respondent-mother's conduct was willful as none of the trial court's findings of fact contain the word "willful."

¶ 19 A trial court may terminate parental rights pursuant to this statutory ground when "[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion." N.C.G.S. § 7B-1111(a)(7) (2019). The willfulness of a parent's conduct is a question of fact to be determined by the trial court from the evidence and is not a conclusion of law. *In re K.N.K.*, 374 N.C. 50, 53 (2020). Regardless of the label given by the trial court, this Court is "obliged to apply the appropriate standard of review to a finding of fact or conclusion of law." *In re J.S.*, 374 N.C. 811, 818 (2020). Thus, the trial court's placement of a finding of willfulness in its conclusions of law is immaterial to our analysis. *Id.*

¶ 20 Because the trial court did find that "[a]t the time of the filing of this action, the . . . respondent[-]mother ha[s] willfully abandoned the child for at least six consecutive months immediately preceding the filing of this petition," albeit labeled as a conclusion of law, respondent-mother's argument that the trial court's termination-of-parental-rights order lacked a finding of willfulness is without merit.[3]

¶ 21 Next, respondent-mother challenges portions of findings of fact 7, 8, and 9 on the basis that "[t]he dates and reasons for [respondent-mother's] lack of contact [with Sue] are not stated, explained, or resolved by the trial court in any manner." Respondent-mother does not challenge the findings of fact for lack of evidentiary support but rather asserts that "[t]here are potential explanations which could be made which would be inconsistent with a willful intent to abandon Sue."

¶ 22 As findings not challenged for their lack of evidentiary support are deemed to be supported by the evidence and are binding on appeal and because respondent-mother has not challenged the evidentiary basis for any of the findings of fact, we must consider all findings of fact binding on appeal as to respondent-mother. *See In re Z.L.W.*, 372 N.C. at 437. Yet, even if challenged by respondent-mother for lack of evidentiary support, the testimony at the termination hearing supports the trial court's findings.

¶ 23 Petitioner Mr. C. testified that the last contact respondent-mother had with Sue was 1 November 2018 and that respondent-mother had not

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3. Unlike respondent-father, respondent-mother did not challenge the evidentiary basis for a finding of willfulness, even as an alternative argument. Her argument on appeal as to willfulness is limited to the absence of a finding of willfulness.

reached out by telephone, social media, or any other type of contact to try to have contact with the child after that date. Respondent-mother also testified that she had not had any contact with Sue since 1 November 2018 and acknowledged that she knew where petitioners resided and did not file anything regarding visitation with Sue. Respondent-mother also testified that she had last reached out to petitioners regarding the minor child in August 2019, but then changed her story, later testifying that she had reached out by text every month since August 2019. When questioned, she conceded that she had no documentation or proof to support her claim of texting petitioners and admitted that she was served with the petition in this matter in August 2019.[4] Mr. C. testified that petitioners are the sole means of financial support for Sue and neither respondent has provided financial support or any other support. Respondent-mother agreed, testifying that she had not done anything to support the child, financially or otherwise, and acknowledged she had not sent any letters, cards, or anything else to Sue. Respondent-mother, however, had been and was gainfully employed.

¶ 24 Because the testimony provides clear, cogent, and convincing evidence to support the trial court's findings, if respondent-mother had challenged the evidentiary basis of the findings, the findings of the trial court would still be conclusive as to respondent-mother even though her testimony might sustain findings to the contrary. *See In re J.A.M.*, 370 N.C. 464, 466–67 (2018) (per curiam) (reversing the Court of Appeals decision for misapplying the standard of review for challenged findings of fact). It is the province of the trial court "to pass upon the credibility of the witnesses," determine "the weight to be given their testimony," and ascertain "the reasonable inferences to be drawn therefrom." *In re D.L.W.*, 368 N.C. 835, 843 (2016) (cleaned up).

¶ 25 Respondent-mother's argument, however, instead challenges the inadequacy of the findings of fact to support the trial court's conclusion of law that the ground for termination pursuant to N.C.G.S. § 7B-1111(a)(7) exists. We review de novo whether the findings of fact to which we are bound support the conclusion of law. *See, e.g.*, *In re C.B.C.*, 373 N.C. at 19; *In re Moore*, 306 N.C. 394, 404 (1982). To support termination pursuant

4. As the amended petition was filed on 26 August 2019, we consider for this matter the determinative period for assessing N.C.G.S. § 7B-1111(a)(7) to be 26 February 2019 to 26 August 2019. *See In re N.D.A.*, 373 N.C. 71, 77 (2019) ("[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." (quoting *In re D.E.M.*, 257 N.C. App. 618, 619 (2018))).

to N.C.G.S. § 7B-1111(a)(7), the trial court's findings of fact must show willful abandonment, which this Court has described as a determination to forego all parental duties and parental claims by withholding love, care, presence, filial affection, support, and maintenance, *see*, *e.g.*, *In re A.G.D.*, 374 N.C. 317, 319–20 (2020), during the six-month period immediately preceding the filing of the petition, N.C.G.S. § 7B-1111(a)(7).

¶ 26 In this matter, the trial court found that the respondent-mother "ha[d] *willfully* abandoned [Sue] for at least six consecutive months immediately preceding the filing of this petition," and further found that respondent-mother "ha[d] not had any contact with [Sue since prior to 12 February 2019]," "had no meaningful contact with [Sue]," "ha[d] not supported [Sue] financially or emotionally," "ha[d] not bonded with [Sue]," "[had] be[en] gainfully employed but ha[d] not provided any financial support for the well-being of [Sue] whatsoever," "ha[d] struggled ongoing with substance abuse issues," "ha[d] not had any visitation with [Sue] dating back to November of 2018, 12 months prior to the filing of this action," and "[was] a resident of Cleveland County, North Carolina" where petitioners with Sue also resided. (Emphasis added.)

¶ 27 Here, the trial court's findings of fact support the trial court's conclusion of law. *See In re C.B.C.*, 373 N.C. at 23 (affirming termination of parental rights for willful abandonment where the "findings demonstrate[d] that in the six months preceding the filing of the termination petition, respondent made no effort to pursue a relationship with [the juvenile]"). Willful abandonment is generally evidenced by conduct and, as in this case, a lack of conduct. *See Pratt v. Bishop*, 257 N.C. 486, 503 (1962) ("To constitute an abandonment within the meaning of the adoption statute[,] it is not necessary that a parent absent himself continuously from the child for the specified six months, nor even that he cease to feel any concern for its interest. If his conduct over the six months period evinces a settled purpose and a wil[l]ful intent to forego all parental duties and obligations and to relinquish all parental claims to the child[,] there has been an abandonment within the meaning of the statute."). "Abandonment is not an ambulatory thing the legal effects of which a delinquent parent may dissipate at will by the expression of a desire for the return of the discarded child." *Id.* at 502 (quoting *In re Blair's Adoption*, 141 A.2d 873, 879 (Pa. 1958)). Notably, respondent-mother "[b]y h[er] own admission . . . had no contact with [Sue] during the statutorily prescribed time period." *In re E.H.P.*, 372 N.C. 388, 394 (2019) (rejecting respondent's argument that his inaction was justifiable on account of a temporary custody judgment, "conclud[ing] that respondent's conduct me[t] the statutory standard for willful abandonment," and "affirm[ing]

the trial court's adjudication pursuant to N.C.G.S. § 7B-1111(a)(7)"). The trial court's findings of fact reflect that respondent-mother "failed to do anything whatsoever to express love, affection, and parental concern for [Sue] during the relevant six-month period." *In re A.G.D.*, 374 N.C. at 327.

¶ 28 Nevertheless, respondent-mother maintains that "[t]he dates and reasons for [respondent-mother's] lack of contact [with Sue we]re not stated, explained, or resolved by the trial court in any manner." This assertion is misplaced. The trial court need not have made any additional findings of fact, as contend by respondent-mother, to support a conclusion of law pursuant to N.C.G.S. § 7B-1111(a)(7) because the findings of fact do not "identif[y] multiple possible impediments to respondent-mother's ability to contact and provide support to [Sue]." *In re K.C.T.*, 375 N.C. 592, 601 (2020).[5] Here, the trial court resolved the reason for respondent-mother's lack of contact: it concluded that respondent-mother willfully abandoned Sue.

¶ 29 Since only one ground is necessary to support a termination of parental rights, we affirm the portion of the trial court's order terminating respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(7) as the findings of fact support the conclusion of law and decline to address

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5. In *In re K.C.T.*, this Court reversed and remanded for additional findings of fact by the trial court where the trial court's original findings of fact "identifie[d] multiple possible impediments to respondent-mother's ability to contact and provide support to [the juvenile]" but failed "to explore the interplay between these impediments and [the] respondent-mother's intent." 375 N.C. at 601–02. In that matter, the trial court had found that the respondent-mother "ha[d] been diagnosed with bipolar disorder, oppositional defiant disorder, attention deficit disorder, and mental retardation," "ha[d] an IQ in the range of 40–45," "lacked a driver's license," "relied on her family and public transportation for travel," "lived in a different county than petitioners," "was unemployed," and "relied on supplemental security income." *Id.* at 601. Similarly, exercising judgment anew, this Court in *In re N.D.A.*, 373 N.C. 71 (2019), vacated and remanded for proper findings of facts by the trial court where the trial court's findings of fact "consisted of nothing more than a recitation of the relevant portion of respondent-father's testimony without making any determination as to whether the relevant portion of respondent-father's testimony was credible." *Id.* at 78, 84. Significantly, the "respondent-father [had] testified that he had no relationship with petitioner sufficient to persuade him that he had the ability to contact her directly, that he believed that he was not permitted [to] do so, and that, even though he knew that petitioner lived in his community, he did not know her address and could not send [the juvenile] any cards, letters, or gifts for that reason." *Id.* at 79. The respondent-father's testimony was also unchallenged. *Id.* at 78.

Since, in this case, the findings of fact support the conclusion of law pursuant to N.C.G.S. § 7B-1111(a)(7) without the conflicts or disharmony in the findings of fact as present in the previously discussed matters, we affirm the termination of parental right's order as to respondent-mother rather than reversing and remanding for additional findings of fact.

respondent's remaining arguments concerning the trial court's conclusion pursuant to N.C.G.S. § 7B-1111(a)(4). *See* N.C.G.S. § 7B-1111(a).

B. Respondent-father's Arguments

¶ 30 **[3]** Respondent-father contends that parts of findings of fact seven, eight, ten, and twelve and conclusion of law three are not supported by competent evidence but only elaborates on the basis for his challenge for parts of findings of fact seven and eight and the finding of willfulness in conclusion of law three.

¶ 31 We agree that the challenged finding of willfulness as to respondent-father is not supported by clear, cogent, and convincing evidence. Mr. C., when asked whether "you all have contact with the [respondent-]father," responded that he called on Christmas morning. Mr. C. testified that Sue does not talk to respondent-father when he calls but that he does talk to him, and they communicate well. Mr. C. further explained that he communicates with respondent-father's mother and Sue visits with respondent-father's mother on occasion. Mr. C. acknowledged that respondent-father has been incarcerated since before Sue's birth and that Sue was almost three at the time of the termination-of-parental-rights hearing. When testifying, respondent-father explained that he asks about Sue's health and well-being when he calls petitioners and he speaks with Sue every other weekend when Sue is with his mother. Respondent-father testified at the termination hearing that a year ago he called his mom who put Sue on the phone and told Sue to tell respondent-father her Bible verse. Respondent-father stated that Sue, who would have been less than two at the time, responded, "For nothing shall be impossible with God." Even if we disregarded all of respondent-father's testimony as not credible, the testimony from Mr. C. concerning respondent-father does not provide clear, cogent, and convincing evidence of the willful intent during the determinative period needed for termination of respondent-father's parental rights. Mr. C.'s testimony that respondent-father, who he acknowledged has been incarcerated since before Sue's birth, called on Christmas and he got on well with respondent-father is not evidence that the respondent-father willfully determined to forego his parental duties during the determinative period of 26 February 2019 to 26 August 2019. Without a finding of willfulness sufficiently supported by the evidence, the trial court's conclusion of law that the ground for termination pursuant to N.C.G.S. § 7B-1111(a)(7) exists cannot stand.

¶ 32 As argued by respondent-father, the other ground for termination found by the trial court, under N.C.G.S. § 7B-1111(a)(4), also lacks

evidentiary support. Subsection 7B-1111(a)(4) of the General Statutes of North Carolina requires the "willful[ ] fail[ure] without justification to pay for the care, support, and education of the juvenile, as required *by the decree or custody agreement*." N.C.G.S. § 7B-1111(a)(4) (emphasis added). The testimony at the hearing did not reference a decree or custody agreement requiring payment for care, support, or education, and no exhibit to this effect was admitted at the termination hearing or attached to or referenced in the verified petition.

¶ 33 Since the testimony at the termination-of-parental-rights hearing does not provide clear, cogent, and convincing evidence supporting the challenged findings of fact of the trial court necessary to support the trial court's conclusions of law for any ground for termination as to respondent-father, we reverse the portion of the trial court's order terminating respondent-father's parental rights.

IV. Conclusion

¶ 34 For the reasons set forth in this opinion, we affirm in part and reverse in part the trial court's termination-of-parental-rights order, affirming the order as to the termination of respondent-mother's parental rights and reversing the order as to the termination of respondent-father's parental rights.

AFFIRMED IN PART; REVERSED IN PART.

Justice EARLS concurring in part and dissenting in part.

¶ 35 I join the portion of the majority opinion holding that the allegations in the termination petition were sufficient to comply with the requirements of N.C.G.S. § 7B-1104(2). I also join the portion of the majority opinion holding that there is not clear, cogent, and convincing evidence to support the findings of fact necessary to uphold the trial court's determination that grounds existed to terminate respondent-father's parental rights. However, I dissent from the portion of the majority opinion affirming the trial court's order terminating respondent-mother's parental rights.

¶ 36 The majority is correct that a trial court may only terminate a respondent-parent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(7) upon a finding that the parent "willfully abandoned" his or her child. N.C.G.S. § 7B-1111(a)(7) (2019). Yet the majority ignores the requirement that in order to terminate parental rights pursuant to N.C.G.S. § 7B-1111(a)(7), "the trial court must make adequate evidentiary find-

ings to support its ultimate finding as to whether willful intent exists." *In re K.C.T.*, 375 N.C. 592, 601 (2020) (citing *In re N.D.A.*, 373 N.C. 71, 78 (2019)). Although the trial court did enter a conclusion of law that respondent-mother "willfully abandoned [Sue] for at least six consecutive months immediately preceding the filing of this petition," the trial court did not make any findings assessing whether respondent-mother's conduct towards Sue was willful. The only findings of fact the trial court entered relevant to this ground were either purely factual descriptions of respondent-mother's conduct or conclusory recitations of the legal standard:

> 7. The Court finds that . . . since prior to the entry of [the order granting custody of Sue to petitioners], the respondents have not had any contact with the minor child, and since the time the child was taken into physical custody of the Petitioners the child has resided with the Petitioners; that the minor child has resided with the petitioners since she initially came home from the hospital after her birth.
>
> 8. The Court would find that the Respondents have had no meaningful contact with the minor child; that neither respondent has . . . supported the minor child financially or emotionally and has not bonded with the minor child . . . .
>
> 9. That the respondent mother has struggled ongoing with substance abuse issues and has abandoned the minor child; that she has also failed to support the minor child's needs financially; she has not had any visitation with the minor child dating back to November of 2018, 12 months prior to the filing of this action. She testified to being gainfully employed but has not provided any financial support for the well-being of the minor child whatsoever.
>
> 10. That grounds pursuant to [N.C.G.S. §] 7B-1111(a)(4) and 7B-1111(a)(7) exist as evidenced by the testimony elicited and findings of fact set forth above.
>
> . . . .
>
> 12. The Court would find the grounds for abandonment and failure to provide support stated in the

> petition have been proven and would find therefore that grounds for termination of parental rights exists as alleged and proven.

There is no language in these findings suggesting that the trial court examined respondent-mother's circumstances and determined her conduct reflected a "purposeful, deliberative and manifest willful determination to forego all parental duties and relinquish all parental claims to the child." *In re A.G.D.*, 374 N.C. 317, 319 (2020) (cleaned up) (quoting *In re N.D.A.*, 373 N.C. at 79). Absent such language, the only way the majority can reach its legal conclusion that respondent-mother willfully abandoned her child is by "improperly find[ing] facts in this case, which is a job reserved for the trial court." *In re E.B.*, 375 N.C. 310, 325 (2020) (Newby, J., concurring in result only).

¶ 37 The majority attempts to rationalize its journey beyond the order the trial court actually entered by noting that there are no "conflicts or disharmony in the findings of fact." According to the majority, because the trial court did not make findings of fact indicating the existence of circumstances calling into question the willfulness of respondent-mother's conduct, then the trial court "need not have made any additional findings of fact" regarding willfulness. This tautological reasoning ignores the trial court's affirmative obligation to enter findings of fact supporting its legal conclusion that a respondent-parent acted willfully, an obligation which cannot be met by failing to make the necessary findings. Further, a trial court's order containing findings of fact which are not in "conflict[ ] or disharmony" is not the same as a trial court's order containing findings of fact supporting the conclusion of law that an alleged ground for terminating parental rights has been proven by clear, cogent, and convincing evidence. A parent's constitutional right to the care and custody of their child cannot be extinguished merely because the trial court has entered an internally coherent order if that order is devoid of the findings necessary to justify the exercise of the trial court's authority. In this case, although the findings of fact contained in the trial court's order are not mutually contradictory, they are also not sufficient to sustain its ultimate legal conclusion.

¶ 38 At most, the findings of fact in this case support the conclusion of law that respondent-mother failed to maintain an active relationship with her child. The findings of fact do not support the conclusion that her purported abandonment was willful. Abandonment alone—as opposed to willful abandonment—is not a statutorily enumerated ground for terminating parental rights. *See* N.C.G.S. § 7B-1111(a). This distinction is no mere technicality. It is necessary to assure adequate protection for a

parent's "fundamental liberty interest." *In re Montgomery*, 311 N.C. 101, 106 (1984) (quoting *Santosky v. Kramer*, 455 U.S. 745, 758–59 (1982)).

¶ 39 We have consistently enforced the requirement that a trial court make findings addressing willfulness. For example, we recently vacated an order which contained findings indicating that the respondent-father "had not had any contact with [the juvenile or the juvenile's guardian], had not visited with [the juvenile], had not provided any financial support for [the juvenile], and had not sent any cards, gifts, or tokens of affection to [the juvenile]" but which did not contain "any findings of fact concerning respondent-father's ability to visit with [the juvenile], to contact [the guardian] or [the juvenile], or to pay support during the relevant time period," because the order "fail[ed] to adequately address the extent to which respondent-father's acts or omissions were willful." *In re N.D.A.*, 373 N.C. at 78–79. The majority's unwillingness to do the same here is inconsistent with our precedents and disregards a "fundamental right" of "critical[ ] importan[ce]." *In re A.K.*, 360 N.C. 449, 457 (2006).

¶ 40 Having concluded that the trial court's findings of fact do not support the conclusion that respondent-mother willfully abandoned Sue, I would reach the trial court's determination that a ground existed to terminate respondent-mother's parental rights under N.C.G.S. § 7B-1111(a)(4) for failure to pay support. Here, the trial court's findings of fact do not support the legal conclusion that this ground for termination was established. A trial court is not entitled to find the existence of this ground for termination unless the record reflects that the petitioner is one of the juvenile's parents, there is an order requiring the payment of support, and the support order was "enforceable during the year before the termination petition was filed." *In re C.L.H.*, 2021-NCSC-1 ¶ 13 (2021) (cleaned up). A careful review of the record establishes that neither petitioner was one of the juvenile's parents. In addition, the record is devoid of any evidence tending to show that either parent was under an order to pay support to petitioners at any time, and it is devoid of evidence that respondent-mother "*willfully* failed without justification to pay for the care, support, and education of the juvenile." N.C.G.S. § 7B-1111(a)(4) (emphasis added). As a result, the trial court erred by terminating respondent-mother's rights pursuant to N.C.G.S. § 7B-1111(a)(4).

¶ 41 Because its findings do not establish the existence of every element of the two grounds asserted to justify terminating respondent-mother's parental rights, the trial court has failed to properly find that petitioners have met their burden of "prov[ing] the facts justifying the termination by clear and convincing evidence." N.C.G.S. § 7B-1111(b). As the major-

ity aptly explains in reversing the order terminating respondent-father's parental rights, "[w]ithout a finding of willfulness sufficiently supported by the evidence, the trial court's conclusion of law that the ground for termination pursuant to N.C.G.S. § 7B-1111(a)(7) exists cannot stand." In addition, the trial court's findings do not support the conclusion that the requirements for terminating parental rights pursuant to N.C.G.S. § 7B-1111(a)(4) have been met. Under these circumstances, our obligation is to reverse the trial court's insufficient order, not to create facts to fill in its deficiencies. As a result, I would reverse the trial court's order with respect to respondent-mother and remand this case to the District Court, Cleveland County, for further proceedings not inconsistent with this dissenting opinion, including the entry of a new order containing adequate findings of fact addressing the issue of whether respondent-mother willfully abandoned the juvenile. Therefore, I respectfully dissent from the portion of the majority opinion affirming the termination of respondent-mother's parental rights.

Justice ERVIN joins in this opinion concurring in part and dissenting in part.

IN THE MATTER OF Z.G.J.

No. 339A20

Filed 27 August 2021

1. Termination of Parental Rights—subject matter jurisdiction—standing—petition filed by department of social services

The trial court had subject matter jurisdiction to terminate a mother's parental rights where the county department of social services (DSS) had standing to file the termination petition because it had been given custody of the child by a court of competent jurisdiction (N.C.G.S. § 7B-1103(a)). The social worker's testimony that she was the petitioner, when considered in context, did not mean that the petition was filed in the social worker's individual capacity.

2. Termination of Parental Rights—adjudication evidence—sufficiency—adoption of allegations in petition—oral testimony

The trial court did not err, in determining whether grounds existed to terminate a mother's parental rights, when it relied on a social worker's oral testimony that adopted the allegations in the

termination petition. In so doing, the trial court did not improperly rely on the petition itself as the only adjudication evidence.

3. Termination of Parental Rights—grounds for termination—neglect—failure to make reasonable progress—dependency—determinative time period

The trial court erred in concluding that a mother's parental rights were subject to termination on the grounds of neglect, failure to make reasonable progress, and dependency where the trial court relied solely on evidence of circumstances existing more than a year before the hearing—a social worker's oral testimony adopting the allegations in the termination petition—in making its factual findings. There was no evidence from the determinative time period for each of the grounds for termination, and evidence presented during the disposition hearing could not cure the error.

4. Termination of Parental Rights—grounds for termination—failure to pay a reasonable portion of the cost of care—sufficiency of findings—determinative time period

The trial court erred in concluding that a mother's parental rights were subject to termination on the grounds of failure to pay a reasonable portion of the cost of care where the court's findings did not specifically address the six-month period immediately preceding the filing of the termination petition.

Justice BARRINGER concurring in part and dissenting in part.

Chief Justice NEWBY and Justice BERGER join in this concurring in part and dissenting in part opinion.

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

Lauren Vaughan for petitioner-appellee Iredell County Department of Social Services.

Stephen M. Schoeberle for appellee Guardian ad Litem.

Jeffrey L. Miller for respondent-appellant mother.

HUDSON, Justice.

¶ 1 Respondent appeals from the trial court's orders terminating her parental rights to her minor child Z.G.J. (Ann).[1] She raises four main arguments on appeal: (1) that the social worker who signed the termination of parental rights petition lacked standing to file the petition; (2) that the trial court improperly relied only on the termination petition when assessing whether grounds existed to terminate respondent's rights; (3) that the trial court's findings of fact do not support its determination that respondent's parental rights were subject to termination based on neglect, willfully leaving Ann in foster care or a placement outside the home for more than twelve months without making reasonable progress toward correcting the conditions that led to her removal, willfully failing to pay a reasonable portion of Ann's cost of care for the six months preceding the filing of the petition, and dependency; and (4) that respondent received ineffective assistance from her trial counsel. After review, we conclude the trial court's findings of fact do not support its conclusion that grounds for termination existed, and we reverse the termination orders.

I. Background

¶ 2 Petitioner Iredell County Department of Social Services (DSS) became involved with Ann's family beginning in August 2016 after DSS received a Child Protective Services (CPS) report alleging that Ann's parents were using a variety of drugs in front of Ann, engaging in domestic violence, and failing to supervise Ann, who was not yet two years old. DSS began providing services to the family but only received minimal cooperation with these services.

¶ 3 In the ensuing months, DSS received three more CPS reports which included more allegations of substance abuse and domestic violence by Ann's parents. The last of these reports was received on 14 February 2017 and reflected that respondent had overdosed and was found lying on the ground next to a vehicle where Ann was strapped into her car seat inside. Witnesses reported that both of Ann's parents had been shooting up heroin in the back of the vehicle. Both parents were charged with misdemeanor child abuse. The next day, DSS filed a petition alleging that Ann was an abused and neglected juvenile and obtained nonsecure custody.

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1. A pseudonym chosen by the parties is used to protect the identity of the minor child and for ease of reading.

¶ 4 On 21 March 2017, the parties entered into consent adjudication and disposition orders. Ann was adjudicated to be abused and neglected. In order to remedy the issues which led to Ann's removal, respondent was ordered to enter into and comply with a case plan, to cooperate with DSS and the guardian ad litem, to submit to substance abuse and domestic violence evaluations and comply with any resulting recommendations, to submit to random drug screens, to not use any illegal drugs and only use prescription medications in the manner prescribed, to not engage in domestic violence, and to not engage in criminal activity. Respondent was granted supervised visitation for two hours per week, with the opportunity for additional supervised visitation in the community if she submitted three consecutive negative drug screens.

¶ 5 The first permanency planning hearing was held on 12 September 2017. In the order that resulted, the trial court found that respondent was currently in jail awaiting trial on new criminal charges involving drug use and theft and that she had not made any progress on her case plan. The court established a primary permanent plan of guardianship, with a secondary plan of custody with a relative.

¶ 6 The next permanency planning hearing occurred on 5 December 2017. The parties agreed to a consent order which included findings that respondent had been released from jail and had begun to "lay some groundwork" for her case plan. The primary permanent plan was changed to reunification with a secondary plan of adoption.

¶ 7 The permanent plans remained unchanged through the 1 May 2018 permanency planning hearing. However, in its order from that hearing, the trial court found that respondent had tested positive for opiates and that she was not making adequate progress on her case plan within a reasonable period of time.

¶ 8 On 21 August 2018, DSS filed a petition to terminate respondent's parental rights on the grounds of neglect, willfully leaving Ann in foster care or a placement outside the home for more than twelve months without making reasonable progress toward correcting the conditions that led to her removal, willfully failing to pay a reasonable portion of Ann's cost of care for the six months preceding the filing of the petition, and dependency. *See* N.C.G.S. § 7B-1111(a)(1)–(3), (6) (2019). DSS social worker Toia Johnson verified the petition.

¶ 9 The trial court conducted a termination hearing on 24 September 2019. During the adjudication phase, Johnson was the only witness, and she testified that she would adopt the allegations in the termination petition as her testimony. There were no objections to entering the petition

into the record, and respondent's counsel declined to cross-examine Johnson. At the conclusion of the adjudicatory phase, the trial court rendered its decision that grounds existed to terminate respondent's parental rights. The case then proceeded to the dispositional phase.

¶ 10 Respondent did not arrive until midway through the disposition hearing. She was permitted to testify and recounted some of her progress, including her plan to enter into an in-patient substance abuse treatment program. On cross-examination, respondent admitted that she was addicted to heroin and that she had failed to satisfy many of the conditions of her case plan. After hearing the evidence and the arguments of counsel, the trial court rendered its determination that termination of respondent's parental rights was in Ann's best interest.

¶ 11 On 30 April 2020, the trial court entered two written orders terminating respondent's parental rights to Ann.[2] In its adjudication order, the court concluded that all four grounds for termination alleged by DSS existed, and in its disposition order, the court concluded that termination was in Ann's best interests. Respondent appeals.

II. Standing

¶ 12 **[1]** Respondent's first argument is that the trial court lacked subject matter jurisdiction to terminate her parental rights because the termination petition was not filed by a party with standing. "Standing is a necessary prerequisite to a court's proper exercise of subject matter jurisdiction." *In re A.S.M.R.*, 375 N.C. 539, 542 (2020) (cleaned up).

> The existence of subject matter jurisdiction is a matter of law and cannot be conferred upon a court by consent. A court's lack of subject matter jurisdiction is not waivable and can be raised at any time, including for the first time upon appeal. We review questions of law de novo.

In re N.P., 376 N.C. 729, 2021-NCSC-11, ¶ 5 (cleaned up). "This Court presumes the trial court has properly exercised jurisdiction unless the party challenging jurisdiction meets its burden of showing otherwise." *In re L.T.*, 374 N.C. 567, 569 (2020).

¶ 13 To have standing to file a termination of parental rights case, a petitioner or movant must fall within one of the seven categories set out in

2. The trial court's orders also terminated the parental rights of Ann's father, but he did not appeal the orders and is therefore not a party to this appeal.

N.C.G.S. § 7B-1103 (2019). Further, N.C.G.S. § 7B-1104 requires the petition or motion initiating a termination action to include "facts sufficient to identify the petitioner or movant as one authorized by G.S. 7B-1103 to file a petition or motion." N.C.G.S. § 7B-1104(2) (2019).

¶ 14 Section 7B-1103(a)(3) authorizes a termination petition to be filed by "[a]ny county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent jurisdiction." The termination petition in this case alleged standing based on this provision:

> The petitioner is Toia Johnson, a social worker employed by the Iredell County Department of Social Services, whose address is Post Office Box 1146 / 549 Eastside Drive, Statesville, North Carolina 28687[.] The petitioner qualifies to bring this Petition to Terminate Parental Rights under N.C. Gen. Stat. §7B-1103(a)(3), as the Iredell County Department of Social Services has been given custody of the above-referenced juvenile by a court of competent jurisdiction, as set forth in the order attached hereto as "Exhibit #1" and incorporated herein by reference.

Johnson also executed a sworn verification of the petition, in which she identified herself as "Social Worker Iredell County Dept. of Social Services."

¶ 15 Respondent does not dispute that DSS had been given custody of Ann by a court of competent jurisdiction at the time the termination petition was filed. Instead, she argues that since "Ms. Johnson stated under oath that she was the petitioner in this matter[,]" the petition must have been filed in Johnson's individual capacity. As an individual, Johnson did not satisfy any of the categories in N.C.G.S. § 7B-1103(a) that provide standing to file a termination petition. Respondent contends the termination orders should therefore be vacated.

¶ 16 Respondent provides an untenable interpretation of Johnson's verified allegation describing the basis of her standing to file the termination petition. Her interpretation necessarily ignores the portions of the allegation where Johnson explicitly identified herself as "a social worker employed by the Iredell County Department of Social Services," where Johnson listed her address as that of DSS, and where Johnson alleged she had standing to file the petition under N.C.G.S. § 7B-1103(a)(3), which applies only to certain organizations such as departments of social services. Considering this additional context, the logical conclusion

is that Johnson filed the termination petition in her capacity as a representative of DSS. Since it is clear from the record that the termination petition was filed by DSS, an organization with standing under N.C.G.S. § 7B-1103(a)(3), respondent cannot meet her burden of showing that the trial court lacked subject matter jurisdiction to consider and rule upon the petition to terminate her parental rights.

III. Evidence Supporting Grounds for Termination

¶ 17 Respondent next raises a series of arguments regarding the evidence supporting the trial court's adjudication of grounds for termination. She contends that Johnson's oral adoption of the allegations from the termination petition resulted in the trial court improperly relying on the petition itself as the only adjudication evidence. Respondent further argues that the trial court's findings, to the extent they were supported by competent evidence, failed to support the existence of any of the four grounds for termination.

A. Adjudication Evidence Presented by DSS

¶ 18 **[2]** As part of any termination of parental rights proceeding, the trial court must adjudicate the existence of any of the grounds for termination alleged in the petition. At the adjudication hearing, the trial court must "take evidence [and] find the facts" necessary to support its determination of whether the alleged grounds for termination exist. N.C.G.S. § 7B-1109(e) (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).

¶ 19 The adjudication hearing in this case was brief. Johnson was called to the stand, and the DSS attorney began his direct examination:

> Q. Ms. Johnson, would you please state your name for the Court?
>
> A. Toia Johnson, former foster care social worker.
>
> Q. And were you in fact the social worker for [Ann]?
>
> A. Yes, I was.
>
> Q. And up to the filing of the petition, were you the social worker for [Ann]?
>
> A. Yes, I was.

> Q. And did you in fact sign a verification for the petition that was filed in this matter?
>
> A. Yes, I did.
>
> Q. And being that you've already signed a verification, have you in fact reviewed the contents of the juvenile petition to terminate parental rights–
>
> A. Yes, I have.
>
> Q. – for this child? And after reviewing the contents, are you satisfied that the contents are true and accurate to the best of your knowledge?
>
> A. Yes, they are.
>
> Q. Would you adopt those contents as your testimony for today?
>
> A. Yes, I would.

The DSS attorney then offered the petition into the record, and it was admitted without objection. The attorney next had Johnson verify the information in Ann's birth certificate before ending his questioning. Neither the trial court nor the other parties asked Johnson any further questions.

¶ 20 Respondent contends that DSS's proffer of evidence amounted to submitting the allegations from its verified petition as its only adjudication evidence. She notes that the Court of Appeals has repeatedly reversed juvenile orders that were based solely on documentary evidence and argues we should reach the same result here. *See, e.g.*, *Thrift v. Buncombe County DSS*, 137 N.C. App. 559, 562–64 (2000) (reversing a neglect adjudication that was based only on the verified allegations in the juvenile petition); *In re A.M.*, 192 N.C. App. 538, 542 (2008) (reversing a termination of parental rights order that was based "solely on the written reports of DSS and the guardian ad litem, prior court orders, and oral arguments by the attorneys involved in the case"); *In re N.G.*, 195 N.C. App. 113, 118 (2009) (reversing a termination order where DSS offered only a court report as evidence and "presented no oral testimony to carry its burden of proof").

¶ 21 Respondent's argument ignores the salient difference between the above Court of Appeals' cases and this case: here, DSS offered live witness testimony. The lack of oral testimony was a determinative factor in the prior Court of Appeals' holdings cited by respondent. As the court explained in *In re A.M.*:

> In the case *sub judice*, the trial court entered an order based solely on the written reports of DSS and the guardian *ad litem*, prior court orders, and oral arguments by the attorneys involved in the case. DSS did not present any witnesses for testimony, and the trial court did not examine any witnesses. We conclude, therefore, that the trial court failed to hold a proper, independent termination hearing. Consideration of written reports, prior court orders, and the attorney's oral arguments was proper; however, in addition the trial court needed some oral testimony. *See* [N.C.G.S.] § 1A-1, Rule 43(a). However, this opinion should not be construed as requiring extensive oral testimony. We note that the trial courts may continue to rely upon properly admitted reports or other documentary evidence and prior orders, as long as a witness or witnesses are sworn or affirmed and tendered to give testimony.

In re A.M., 192 N.C. App. at 542.

¶ 22 In this case, DSS called Johnson as a witness and tendered her to give testimony. While Johnson's testimony was not extensive, she orally reaffirmed, under oath, all of the allegations from the termination petition. Respondent was given the opportunity to cross-examine Johnson with respect to any of these allegations, and she declined to do so. In light of Johnson's testimony, the trial court conducted a proper adjudication hearing in accordance with N.C.G.S. § 7B-1109(e), and it did not err by relying on Johnson's testimony adopting the allegations in the termination petition when it entered its adjudication order.

B. Grounds for Termination

¶ 23 Respondent also contends that the trial court's findings of fact did not support its conclusions of law that four grounds for termination existed. Ultimately, we conclude that errors related to each of the four grounds require reversal.

¶ 24 When reviewing the trial court's adjudication of grounds for termination, we examine whether the court's findings of fact "are supported by clear, cogent and convincing evidence and [whether] 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)). Any unchallenged findings are "deemed supported by competent evidence

and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407 (2019). The trial court's conclusions of law are reviewed de novo. *In re C.B.C.*, 373 N.C. 16, 19 (2019).

1. Neglect

¶ 25 **[3]** The first ground for termination found by the trial court was neglect under N.C.G.S. § 7B-1111(a)(1). This subsection allows for parental rights to be terminated if the trial court finds that the parent has neglected their child to such an extent that the child fits the statutory definition of a "neglected juvenile." N.C.G.S. § 7B-1111(a)(1) (2019). A neglected juvenile is defined, in relevant part, as a juvenile "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C.G.S. § 7B-101(15) (2019).

> Termination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of a likelihood of future neglect by the parent. When determining whether such future neglect is likely, the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.

In re R.L.D., 375 N.C. 838, 841 (2020) (cleaned up).

¶ 26 In its termination order, the trial court concluded that the neglect ground existed because there was a likelihood of future neglect if Ann were returned to respondent's care. It is well established that when deciding whether future neglect is likely, "[t]he determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re Ballard*, 311 N.C. 708, 715 (1984).

¶ 27 However, the only evidence offered by DSS at adjudication was Johnson's testimony adopting the termination petition, which was filed on 21 August 2018. The termination hearing did not occur until more than thirteen months later, on 24 September 2019. Thus, the allegations in the petition do not shed any light on respondent's fitness to care for Ann at the time of the termination hearing, and the trial court erred by

relying on the stale information in the petition as its only support for this ground.[3] *See Ballard*, 311 N.C. at 715.

¶ 28 Both DSS and the guardian ad litem attempt to supplement the evidence presented during the adjudication hearing with respondent's testimony during the disposition hearing in order to salvage the trial court's adjudication of this ground. We reject this attempt, as we have previously held that dispositional evidence cannot be used to support the trial court's adjudicatory determinations. *See In re Z.J.W.*, 376 N.C. 760, 2021-NCSC-13, ¶ 17 ("In the event that the trial court relied upon this dispositional evidence as support for its adjudicatory finding[,] . . . we agree with longstanding Court of Appeals precedent that it was error to do so."). Respondent's testimony in this case occurred after the trial court had already rendered its adjudicatory decision and moved to the dispositional phase of the hearing, and as a result, the testimony could not provide competent evidence to support the already-rendered adjudication.

¶ 29 Since there was no competent evidence from which the trial court could determine respondent's fitness to care for Ann at the time of the adjudication hearing, the court's conclusion that "the probability of repetition of neglect is high should the minor child be returned to the care of" respondent is unsupported. Accordingly, the trial court's adjudication of the neglect ground must be reversed.

2. Willful Failure to Make Reasonable Progress

¶ 30 The trial court also found respondent's rights were subject to termination under N.C.G.S. § 7B-1111(a)(2), which permits the court to terminate parental rights if the 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).

> Termination under this ground requires the trial court to perform a two-step analysis where it must determine by clear, cogent, and convincing evidence whether (1) a child has been willfully left by the

3. Respondent notes that, even though no evidence was admitted regarding circumstances after August 2018, many of the trial court's findings could be interpreted to "suggest events or facts occurring or existing after August 2018 . . . or at the time of the termination hearing[.]" We agree that all such findings are erroneous, and thus we disregard any finding that implicates post-petition evidence or events, as there is no competent evidence to support such findings. *See In re J.M.J.-J.*, 374 N.C. 553, 559 (2020) (disregarding adjudicatory findings of fact not supported by clear, cogent, and convincing evidence).

> parent in foster care or placement outside the home for over twelve months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.

In re Z.A.M., 374 N.C. 88, 95 (2020). A parent's reasonable progress "is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights." *In re J.S.*, 374 N.C. 811, 815 (2020). Thus, this ground must fail for the same reason as the trial court's adjudication of the neglect ground. The most recent evidence of respondent's progress was more than thirteen months before the termination hearing. There was no competent evidence regarding respondent's progress for the period leading up to the termination hearing.[4] Accordingly, we reverse this ground for termination as well.

3. Dependency

¶ 31 As a third ground for termination, the trial court found that respondent's parental rights were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(6). That subsection permits a parent's rights to be terminated upon a showing that (1) "the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and . . . there is a reasonable probability that such incapability will continue for the foreseeable future[,]" and (2) "the parent lacks an appropriate alternative child care arrangement." N.C.G.S. § 7B-1111(a)(6) (2019). Like the adjudication of grounds pursuant to subsections (a)(1) and (2), an adjudication of dependency as a ground for termination under subsection (a)(6) must be based on an examination of the parent's ability to care for and supervise their child at the time of the adjudication hearing. *See In re C.L.H.*, 376 N.C. 614, 2021-NCSC-1, ¶ 12 (reversing an adjudication under N.C.G.S. § 7B-1111(a)(6) because "the trial court made no finding of fact, and there was no evidence presented, that at the time of the termination hearing respondent suffered from any condition which rendered him incapable of providing proper care or supervision" to his child). As with the prior two grounds for termination, the only competent evidence presented to support the dependency ground was from at least thirteen months prior to the hearing, and thus, there was no evidence presented as to respondent's condition at the time of the termi-

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4. As with neglect, the GAL cites a portion of respondent's dispositional testimony as support for this ground. We reiterate that dispositional evidence cannot be used to support the adjudication of termination grounds. *See In re Z.J.W.*, 376 N.C. 760, 2021-NCSC-13, ¶ 17.

nation hearing. Consequently, the trial court erred by adjudicating this ground for termination, and the trial court's adjudication of dependency is also reversed.

4. Willful Failure to Pay a Reasonable Portion of Ann's Cost of Care

¶ 32 **[4]** Finally, the trial court found that respondent's parental rights were subject to termination under subsection (a)(3), which provides:

> The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, 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.

N.C.G.S. § 7B-1111(a)(3) (2019). In this case, the termination petition was filed on 21 August 2018, and the relevant period for this ground was therefore 21 February through 21 August 2018.

¶ 33 The trial court made the following finding with respect to this ground:

> Respondent Mother has been employed at times during this case and always remained able bodied however she has paid zero dollars of child support for [Ann] since she came into care. Zero dollars is not a reasonable amount of child support based on Respondent Mother's actual income nor her ability to earn. Respondent Mother has willfully failed to pay a reasonable cost of care for the juvenile.

This finding is not adequately tailored to the relevant six-month period. In *In re K.H.*, we determined a similar finding failed to support an (a)(3) adjudication:

> In the TPR order, the trial court made factual findings that respondent "worked at Shoe Show as well as Cook Out in 2018 and has not paid any monies towards the cost of care for the juvenile"; that "at various points in time, [respondent] was employed, although that employment was part-time"; that "[respondent] is physically and financially able to pay a reasonable

> portion of the child's care, and thus has the ability to pay an amount greater than zero"; that "[respondent] has [not] made a significant contribution towards the cost of care"; and that "[t]he total cost of care for [Kaitlyn] through June 2018 is $14,170.35."
>
> However, none of these findings—nor any others related to this ground for termination—address the specific, relevant six-month time period from 8 February 2018 to 8 August 2018. Therefore, we conclude that the trial court's findings of fact are insufficient to support its conclusion of law that there were grounds to terminate respondent's parental rights under N.C.G.S. § 7B-1111(a)(3), which specifically requires that "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." N.C.G.S. § 7B-1111(a)(3) (emphasis added). Accordingly, we reverse the trial court on this issue.

In re K.H., 375 N.C. at 616–17 (2020). Similarly, the trial court's finding in this case references respondent's sporadic employment "at times during this case," and this reference covers a period of more than eighteen months, from 15 February 2017, when the initial juvenile petition was filed, until 21 August 2018, when the termination petition was filed. The trial court's finding does not specifically address the six-month period prior to the filing of the termination petition and therefore fails to demonstrate that respondent "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." N.C.G.S. § 7B-1111(a)(3). Accordingly, this ground for termination is unsupported and must be reversed.[5]

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5. The dissent argues "the facts in *In re K.H.* are distinct from this case" and would distinguish the present case on the ground that "this case does not involve a minor parent." We need not delve into the "nuances in *In re K.H.*," namely that "the factual findings that the respondent was a minor and had lived with her child in the same foster care placement, both as minors," to conclude those facts were irrelevant to our holding. The trial court's findings were insufficient to support the conclusions of law because they failed to "address the specific, relevant six-month time period" required by G.S. § 7B-1111(a)(3), *In re K.H.*, 375 N.C. at 616. The respondent's status as a minor had no bearing upon the

IV. Conclusion

¶ 34 The termination of parental rights petition was filed by DSS through its representative, Johnson, and DSS had standing to file a petition under N.C.G.S. § 7B-1103(a)(3). The trial court did not err in relying upon the allegations in the termination petition when making its findings of fact, as the petition was introduced through the testimony of Johnson and was subject to cross-examination. However, by relying solely on the evidence from a termination petition that was filed thirteen months prior to the hearing, the trial court erred by concluding grounds for termination existed under subsections (a)(1), (2), and (6), since each of those grounds requires evaluating the evidence as of the time of the termination hearing. Moreover, the trial court's finding of fact with respect to subsection (a)(3) was insufficient to show that respondent willfully failed to pay an adequate portion of Ann's cost of care for a continuous period of six months immediately preceding the filing of the termination petition. In light of the foregoing, the orders terminating respondent's parental rights must be reversed.[6] Since we are reversing the termination orders, we need not address respondent's final argument, that she received ineffective assistance from her trial counsel.

REVERSED.

Justice BARRINGER concurring in part, dissenting in part.

¶ 35 While I concur with the majority's holdings that the termination-of-parental-rights petition was filed by the Iredell County Department of Social Services (DSS) through its representative, that DSS had standing to file a petition under N.C.G.S. § 7B-1103(a)(3), and that the trial court did not err in relying upon the allegations in the termination petition when making its findings of fact, I would affirm the trial court's order terminat-

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Court's decision to reverse, *see id.* at 616–17, and was, therefore, *obiter dicta*. *See Hayes v. City of Wilmington*, 243 N.C. 525, 537 (1956) ("Official character attaches only to those utterances of a court which bear directly upon the specific and limited questions which are presented to it for solution in the proper course of judicial proceedings. Over and above what is needed for the solution of these questions, its deliverances are unofficial." (cleaned up)).

6. Although respondent did not specifically challenge the trial court's disposition order, that order necessarily must be reversed since the adjudication order has been reversed. *See* N.C.G.S. § 7B-1110(a) ("*After an adjudication that one or more grounds for terminating a parent's rights exist*, the court shall determine whether terminating the parent's rights is in the juvenile's best interest." (emphasis added)).

ing respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(3). Respondent's ineffective of assistance counsel claim is without merit, and the findings of facts support the trial court's conclusion of law concerning termination under N.C.G.S. § 7B-1111(a)(3). Therefore, I respectfully concur in part and dissent in part.

I. Background

¶ 36 DSS received reports that respondent, after shooting up heroin in the back of a vehicle, had overdosed and was found lying on the ground next to a vehicle where the juvenile, Ann, was strapped into her car seat inside. After receiving this report, DSS filed a petition alleging that Ann was an abused and neglected juvenile and obtained nonsecure custody. On 21 March 2017, respondent consented to the adjudication and dispositional order that adjudicated Ann to be an abused and neglected juvenile.

¶ 37 Over a year later, on 21 August 2018, DSS filed a verified petition to terminate respondent's parental rights. DSS alleged as grounds for termination N.C.G.S. § 7B-1111(a)(1)–(3) and (6). On 10 October 2018, respondent was personally served with the summons and the petition to terminate respondent's parental rights. Respondent never filed an answer or other responsive pleading.

¶ 38 At the termination hearing, Toia Johnson, a former foster care social worker for DSS, testified that she was the social worker for Ann up until the filing of the termination petition, that she had verified the termination petition, that she had reviewed the contents of the termination petition, that the contents of the termination petition were true and accurate to the best of her knowledge, and that she adopted the allegations in the termination petition as her testimony. Then, counsel for DSS introduced and moved to admit the termination petition into evidence. Counsel for respondent informed the trial court that she had no objection to the admission of the termination petition into evidence. No other party objected to the admission, and the trial court admitted the termination petition into evidence. DSS informed the trial court that this concluded its evidence for adjudication. After hearing from the respondent parents' trial counsel that as to the adjudication phase they were not tendering evidence or argument, the trial court found "by clear, cogent, and convincing evidence that grounds exist[ed] to terminate the parental rights of the [r]espondent [p]arents, specifically as alleged in the petition to terminate parental rights."

¶ 39 The trial court then ordered that the matter proceed to disposition. At the disposition stage of the termination hearing, the trial court heard the evidence, including respondent's testimony in which she admitted

that she was addicted to heroin, that she had failed to satisfy many of the conditions of her case plan, and that she was and had been continuously employed except for the brief time she spent in the county jail before making bond. Then, the trial court heard the arguments of counsel, including from respondent's trial counsel. Upon the conclusion of counsels' arguments, the trial court orally made findings of fact to be supplemented by a written order, concluded that termination was in the best interest of Ann, and terminated the rights of respondent to Ann.[1]

¶ 40 The trial court then signed written orders consistent with its oral holdings addressing adjudication and disposition. Respondent appealed.

II. Ineffective Assistance of Counsel

¶ 41 Respondent contends that she was denied the effective assistance of counsel because her trial counsel "failed to object to the introduction of the [termination] petition as evidence [at] the termination[-]of[-] parental[-]rights [hearing]."

> 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., 377 N.C. 29, 2021-NCSC-25, ¶ 35 (cleaned up).

¶ 42 Respondent alleges that the termination petition was inadmissible because a party may not introduce and have admitted into evidence its own pleading. Respondent also claims prejudice, asserting that the termination petition was the only evidence supporting the trial court's adjudication.

¶ 43 Respondent's argument of ineffective assistance of counsel fails to show that "there is a reasonable probability that, but for counsel's er-

1. The trial court's orders also terminated the parental rights of Ann's father, but he did not appeal the orders and is therefore not a party to this appeal.

rors, there would have been a different result in the proceedings." *In re G.G.M.*, ¶ 35. Here, Johnson, who verified the termination petition, testified. She testified that the contents of the termination petition were true and accurate to the best of her knowledge and adopted the allegations in the termination petition as her testimony. Johnson's testimony provides the same support for the trial court's adjudication as the admission of the termination petition, and respondent has not argued or shown Johnson's testimony to be improper. Therefore, respondent has failed to carry her burden to show that she received ineffective assistance of counsel.

III. Grounds for Termination

¶ 44 Respondent presents arguments for each of the grounds found by the trial court as a basis for termination of respondent's parental rights to Ann. However, as competent evidence supports the findings of fact, and the findings of fact support the trial court's conclusion of law for termination of respondent's parental rights to Ann pursuant to N.C.G.S. § 7B-1111(a)(3), I would affirm the termination-of-parental-rights order on this ground. To terminate parental rights, a finding of only one ground is necessary. N.C.G.S. § 7B-1111(a) (2019); *see also In re A.R.A.*, 373 N.C. 190, 194 (2019). Thus, respondent's remaining arguments concerning the other grounds need not be addressed.

¶ 45 When reviewing a trial court's adjudication under N.C.G.S. § 7B-1111, this Court "determine[s] 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). "Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407 (2019) (citing *Koufman v. Koufman*, 330 N.C. 93, 97 (1991)).

¶ 46 Subsection 7B-1111(a)(3) of the General Statutes of North Carolina provides that a trial court may terminate the parental rights upon concluding that

> [t]he juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, 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.

N.C.G.S. § 7B-1111(a)(3). "[I]rrespective of the parent's wealth or poverty," a parent is required "to pay a reasonable portion of the child's foster care costs." *In re Clark*, 303 N.C. 592, 604 (1981). "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." *Id.*

¶ 47 Respondent first challenges finding of fact 24 as "insufficient on its face," stating that the last sentence is a conclusion of law, the term "child support" rather than "foster care" is used, and there is no mention of the six-month period preceding the filing of the termination-of-parental-rights petition. Second, respondent alleges that there is no evidence of a child support order, respondent's actual income, the dates of respondent's employment, or her place of employment or earnings during the six-month period preceding the filing of the termination-of-parental-rights petition.

¶ 48 Respondent's challenges are misplaced. This Court reviews findings of fact to determine whether they are supported by clear, cogent, and convincing evidence, and if they are, the findings of fact of the trial court are deemed conclusive. *In re J.A.M.*, 370 N.C. 464, 466–67 (2018) (per curiam) (reversing the Court of Appeals decision for misapplying the standard of review for challenged findings of fact). Appellate courts "are bound by the trial courts' findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *In re Montgomery*, 311 N.C. at 110–11.

¶ 49 Respondent's arguments do not dispute the sufficiency of the evidence for what the trial court found as facts. In paragraph 24 of the order on adjudication of the termination-of-parental-rights hearing, the trial court found by clear, cogent, and convincing evidence the following:

> Respondent [m]other has been employed at times during this case and always remained able bodied however she has paid zero dollars of child support for [Ann] since she came into care. Zero dollars is not a reasonable amount of child support based upon [r]espondent [m]other's actual income [ ]or her ability to earn. Respondent [m]other has willfully failed to pay a reasonable cost of care for the juvenile.

¶ 50 Respondent correctly observes that the trial court used the term "child support" but does not dispute the evidentiary basis for the finding

that respondent paid "zero dollars of child support." Respondent also correctly observes that the findings of fact do not refer to the relevant six-month period applicable to N.C.G.S. § 7B-1111(a)(3) but does not dispute the evidentiary basis for the finding that respondent "has paid zero dollars of child support for [Ann] since she came into care."

¶ 51 Additionally, respondent complains that there is no evidence of a court order requiring child support payments or a child support order and no evidence of respondent's numerical amount of income, place of employment, or dates of employment, during the relevant six-month period or otherwise. However, because the trial court did not find there was a court order or child support order or the specific figures, places of employment, or dates of respondent's employment, these are not challenges of the trial court's findings of fact and the evidentiary support for them.

¶ 52 Contrary to respondent's argument, it is also well established that "[t]he determination that respondent acted 'willfully' is a finding of fact rather than a conclusion of law." *In re J.S.*, 374 N.C. 811, 818 (2020) (citing *Pratt v. Bishop*, 257 N.C. 486, 501 (1962)). Thus, the last sentence of the trial court's finding of fact, finding willfulness, is reviewed as a finding of fact for the sufficiency of the evidence. *See id.* (applying the appropriate standard of review to a finding of willfulness even when mislabeled as a conclusion of law).

¶ 53 However, even if properly challenged, Johnson's testimony adopting the allegations in the petition supports the findings of fact made by the trial court in paragraph 24. Johnson's testimony, as also set forth in the verified petition concerning N.C.G.S. § 7B-1111(a)(3), was as follows:

> [t]he above-named juvenile has been placed in the custody of the Iredell County Department of Social Services and in a foster home, and the [r]espondent [m]other, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
>
> i. [The respondent parents had funds available to them to pay for services and treatments through respondent mother's reported employment and respondent father's disability benefits.]
>
> ii. [Ann] has been placed in the custody of the Iredell County Department of Social Services and in a foster home since February 15, 2017.

> iii. The total estimated cost of care for [Ann] from February 15, 2017 through July 31, 2018 is $24,933.84.
>
> iv. The [r]espondent [m]other has paid $0.00 in support for the benefit of [Ann].
>
> v. The [r]espondent [m]other is able-bodied and has reported being employed or searching for employment throughout the pendency of the underlying action.

¶ 54 Respondent's contention instead is best understood as arguing that for the reasons argued in her brief and previously summarized, the findings of fact are not sufficient to support the conclusion of law.

> This Court reviews de novo the issue of whether a trial court's adjudicatory findings of fact support its conclusion of law that grounds existed to terminate parental rights pursuant to N.C.G.S. § 7B-1111(a). Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the trial court.

In re T.M.L., 377 N.C. 369, 2021-NCSC-55, ¶ 15 (cleaned up).

¶ 55 This Court has already held that "[t]he absence of a court order, notice, or knowledge of a requirement to pay support is not a defense to a parent's obligation to pay reasonable costs, because parents have an inherent duty to support their children." *In re S.E.*, 373 N.C. 360, 366 (2020). Thus, the absence of a finding regarding a court order or child support order does not defeat a conclusion of law pursuant to N.C.G.S. § 7B-1111(a)(3).

¶ 56 Further, the use of the term "child support" is not confusing or inappropriate in the context presented in this termination-of-parental-rights order. While the trial court could have used the term "cost of foster care," we understand what the trial court found when it used the term "child support" in its finding of fact. *See generally* N.C.G.S. § 7B-1111(a)(3) (establishing that "willfully fail[ing] to pay a reasonable portion of the cost of care for the juvenile" is a ground for terminating parental rights).

¶ 57 Finally, as the majority cites, this Court in one case, *In re K.H.*, 375 N.C. 610 (2020) concluded that "the findings of fact [were] insufficient to support [the trial court's] conclusion of law that there were grounds to terminate respondent's parental rights under N.C.G.S. § 7B-1111(a)(3)"

because "none of these findings . . . address the specific, relevant six-month time period from 8 February 2018 to 8 August 2018." *Id.* at 617. However, the facts in *In re K.H.* are distinct from this case. This Court summarized the facts in *In re K.H.* as follows:

> In 2017 a sixteen-year-old mother and her nine-month-old baby were taken into custody by the Cabarrus County Department of Social Services (DSS) and placed in the same foster home. After six months together, the child was moved to a different foster home apart from her mother. Less than eight months later, DSS filed a motion to terminate respondent-mother's parental rights to her child.

Id. at 611.

¶ 58 One of the grounds for termination was N.C.G.S. § 7B-1111(a)(3). *Id.* at 612. In that matter, "the relevant six-month period of time during which the trial court [had to] determine whether respondent was able to pay a reasonable portion of the cost of [the child's] care but failed to do so was from 8 February 2018 to 8 August 2018." *Id.* at 616. The trial court had found that

> respondent worked at Shoe Show as well as Cook Out in 2018 and has not paid any monies towards the cost of care for the juvenile; that at various points in time, respondent was employed, although that employment was part-time; that respondent is physically and financially able to pay a reasonable portion of the child's care, and thus has the ability to pay an amount greater than zero; that respondent has not made a significant contribution towards the cost of care; and that the total cost of care for [the juvenile] through June 2018 is $14,170.35.

Id. at 616–17 (cleaned up).

¶ 59 The trial court in *K.H.* had also found that the respondent was a minor when the juvenile proceeding was initiated, that the respondent lived with her child in the same foster care placement, both as minors for a period in 2017 and in 2018, and that respondent turned eighteen years old only weeks before the termination hearing.

¶ 60 In contrast, as reflected in the trial court's findings of facts, this case does not involve a minor parent. Thus, the nuances of *In re K.H.*—the

factual findings that the respondent was a minor and had lived with her child in the same foster care placement, both as minors—are not before this Court. While the majority dismisses these factual findings as not determinative to this Court's holding in *In re K.H.*, construing the decision to *not* turn on these factual findings leads to an absurd result: findings by a trial court that a respondent, despite having the ability to pay cost of care, "has not paid any monies towards the cost of care for the juvenile" fails to satisfy N.C.G.S. § 7B-1111(a)(3). Inherently, a finding that a respondent has never paid monies for the cost of care would encompasses "[the] period of six months immediately preceding the filing of the petition or motion." N.C.G.S. § 7B-1111(a)(3). Thus, the findings of fact do "address the specific, relevant six-month time period from 8 February 2018 to 8 August 2018." *In re K.H.*, 375 N.C. at 617.

¶ 61 In this matter, the finding of fact that respondent had "always remained able bodied however she has paid zero dollars of child support for [Ann] since she came into care" covers the relevant six-month period. The trial court further found that the amount of zero was "not a reasonable amount of child support based upon [r]espondent-[m]other's actual income [ ]or her ability to earn" and that she "willfully failed to pay." While the trial court does not precisely name the relevant six-month period, nothing in N.C.G.S. § 7B-1111(a)(3) requires an express reference where the plain language and context of the trial court's findings of fact address and encompass the relevant six-month period. This Court has recognized this principle in *In re L.M.T.*, 367 N.C. 165 (2013) and *In re H.A.J.*, 377 N.C. 43, 2021-NCSC-26. A trial court's findings of fact need to "address the necessary statutory factors" but need not use "the precise statutory language." *In re H.A.J.*, ¶ 16 (addressing sufficiency of findings to satisfy N.C.G.S. § 7B-906.2(d)); *see also In re L.M.T.*, 367 N.C. at 168 (addressing sufficiency of findings to satisfy former N.C.G.S. § 7B-507(b)(1) (2011)); *cf. In re K.R.C.*, 374 N.C. 849, 861 n.7 (2020) ("Because the order *sub judice* lacks any ultimate findings addressing the gravamen of N.C.G.S. § 7B-1111(a), we need not consider the degree to which our holding in *In re L.M.T.* applies to an adjudicatory order entered pursuant to N.C.G.S. §§ 7B-1109(e) and -1110(c).").

¶ 62 Thus, exercising judgment anew, the binding findings of fact support the trial court's conclusion of law pursuant to N.C.G.S. § 7B-1111(a)(3). As respondent has not challenged the best interest determination, the termination of respondent's parental rights to Ann should be affirmed on the ground of N.C.G.S. § 7B-1111(a)(3).

IV. Conclusion

¶ 63 For the foregoing reasons, the decision of the trial court should be upheld on the ground for termination of N.C.G.S. § 7B-1111(a)(3). Accordingly, I respectfully dissent.

Chief Justice NEWBY and Justice BERGER join in this concurring in part and dissenting in part opinion.

ORDER AMENDING THE GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS

Pursuant to section 7A-34 of the General Statutes of North Carolina, the Court hereby amends Rule 6 of the General Rules of Practice for the Superior and District Courts.

* * *

Rule 6. Motions in Civil Actions

~~All motions, written or oral, shall state the rule number or numbers under which the movant is proceeding. (See Rule 7 of Rules of Civil Procedure.)~~

~~Motions may be heard and determined either at the pre-trial conference or on motion calendar as directed by the presiding judge.~~

~~Every motion shall be signed by at least one attorney of record in his individual name. He shall state his office address and telephone number immediately following his signature. The signature of an attorney constitutes a certificate by him that he has read the motion; that to the best of his knowledge, information and belief, there are good grounds to support it; and that the motion is not interposed for delay. (See Rule 7(b)(2); also Rule 11).~~

~~The court in civil matters, on its motion or upon motion by a party, may in its discretion order that argument of any motion be accomplished by means of a telephone conference without requiring counsel to appear in court in person. Upon motion of any party, the court may order such argument to be recorded in such manner as the court shall direct. The court may direct which party shall pay the costs of the telephone calls. Conduct of counsel during such arguments may be subject to punishment as for direct criminal contempt of court.~~

An attorney scheduling a hearing on a motion must make a good-faith effort to request a date for the hearing on which each interested party is available. This requirement does not apply if a motion is properly made ex parte. An attorney's failure to comply with this requirement is an adequate ground on which the court may grant a continuance.

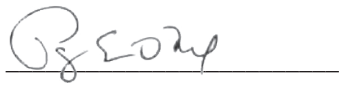
* * *

This amendment to the General Rules of Practice for the Superior and District Courts becomes effective on 1 September 2021.

This amendment shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

GENERAL RULES OF PRACTICE

Ordered by the Court in Conference, this the 25th day of August 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of August 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ORDER AMENDING THE RULES FOR COURT-ORDERED ARBITRATION

Pursuant to section 7A-37.1 of the General Statutes of North Carolina, the Court hereby amends Rule 6 of the Rules for Court-Ordered Arbitration.

* * *

Rule 6. Arbitration Hearings

(a) *Hearing Scheduled by the Court.* Arbitration hearings shall be scheduled by the court and ~~held in a courtroom, if available, or in any other public room suitable for conducting judicial proceedings and~~ shall be open to the public. Arbitration hearings may be conducted by audio and video transmission only if the court and the arbitrator follow the requirements applicable to judicial officials in N.C.G.S. § 7A-49.6 ("Proceedings conducted by audio and video transmission").

(1) *Scheduling.* The court shall schedule hearings with notice to the parties to begin within 60 days after:

(i) the docketing of an appeal from a magistrate's judgment,

(ii) the filing of the last responsive pleading, or

(iii) the expiration of the time allowed for the filing of such pleading.

(b) *Date of Hearing Advanced by Agreement.* A hearing may be held earlier than the date set by the court, by agreement of the parties with court approval.

(c) *Hearings Rescheduled; Continuance; Cancellation.* A hearing may be scheduled, rescheduled, or continued to a date after the time allowed by this rule only by the court before whom the case is pending, and may be upon a written motion filed at least 24 hours prior to the scheduled arbitration hearing, and a showing of a strong and compelling reason to do so. In the event a consent judgment or dismissal is not filed with the clerk and notice provided to the court more than 24 hours prior to the scheduled arbitration hearing, all parties shall be liable for the arbitrator fee in accordance with Arb. Rule 5. Any settlement reached prior to the scheduled arbitration hearing must be reported by the parties to the court official administering the arbitration. The parties must file dismissals or consent judgments prior to the scheduled hearing to close the case without a hearing. If the dismissals or consent judgments are not filed before the scheduled hearing, the parties should appear at the hearing to have their agreement entered as the award of the arbitrator.

(d) *Prehearing Exchange of Information*. At least 10 days before the date set for the hearing, the parties shall exchange:

(1) Lists of witnesses they expect to testify;

(2) Copies of documents or exhibits they expect to offer in evidence; and

(3) A brief statement of the issues and their contentions.

Parties may agree in writing to rely on stipulations and/or statements, sworn or unsworn, rather than a formal presentation of witnesses and documents, for all or part of the hearing. Failure to comply with Arb. Rule 6(n) may be cause for sanctions under Arb. Rule 6(o). ~~Each party shall bring to the hearing and provide to the arbitrator a copy of these materials.~~The parties shall provide a copy of these materials to the arbitrator before the hearing begins, and each party shall ensure that it has a copy of the materials for use during the hearing. These materials shall not be filed with the court or included in the case file.

(e) *Exchanged Documents Considered Authenticated*. Any document exchanged may be received in the hearing as evidence without further authentication; however, the party against whom it is offered may subpoena and examine as an adverse witness anyone who is the author, custodian, or a witness through whom the document might otherwise have been introduced. Documents not so exchanged may not be received if to do so would, in the arbitrator's opinion, constitute unfair, prejudicial surprise.

(f) *Copies of Exhibits Admissible*. Copies of exchanged documents or exhibits are admissible in arbitration hearings.

(g) *Witnesses*. Witnesses may be compelled to testify under oath or affirmation and produce evidence by the same authority and to the same extent as if the hearing were a trial. The arbitrator is empowered and authorized to administer oaths and affirmations in arbitration hearings.

(h) *Subpoenas*. N.C. R. Civ. P. 45 shall apply to subpoenas for attendance of witnesses and production of documentary evidence at an arbitration hearing under these rules.

(i) *Authority of Arbitrator to Govern Hearings*. Arbitrators shall have the authority of a trial judge to govern the conduct of hearings, except the arbitrator may not issue contempt orders, issue sanctions or dismiss the action. The arbitrator shall refer all contempt matters and dispositive matters to the court.

(j) *Law of Evidence Used as Guide*. The law of evidence does not apply, except as to privilege, in an arbitration hearing but shall be

considered as a guide toward full and fair development of the facts. The arbitrator shall consider all evidence presented and give it the weight and effect the arbitrator determines appropriate.

(k) *No Ex Parte Communications With Arbitrator*. No ex parte communications between parties or their counsel and arbitrators are permitted.

(l) *Failure to Appear; Defaults; Rehearing*. If a party who has been notified of ~~the date, time and place of~~ the hearing fails to appear, or fails to appear with counsel for cases in which counsel is mandated by law, without good cause therefor, the hearing shall proceed and an award may be made by the arbitrator against the absent party upon the evidence offered by the parties present, but not by default or dismissal for failure to appear. If a party is in default for any other reason but no judgment has been entered upon the default pursuant to N.C. R. Civ. P. 55(b) before the hearing, the arbitrator may hear evidence and may issue an award against the party in default. The court may order a rehearing of any case in which an award was made against a party who failed to obtain a continuance of a hearing and failed to appear for reasons beyond the party's control. Such motion for rehearing shall be filed with the court within the time allowed for demanding trial de novo stated in Arb. Rule 9(a).

(m) *No Record of Hearing Made*. No official transcript of an arbitration hearing shall be made. The arbitrator may permit any party to record the arbitration hearing in any manner that does not interfere with the proceeding.

(n) *Parties Must Be Present at Hearings; Representation*. All parties shall be present at hearings ~~in person~~ or be represented at hearings through counsel. Parties may appear pro se as permitted by law.

(o) *Sanctions*. Any party ~~failing to attend an arbitration proceeding in person or through counsel~~who fails to be present at an arbitration hearing and is not represented at the arbitration hearing through counsel shall be subject to those sanctions available to the court in N.C. R. Civ. P. 11, 37(b)(2)(A)–37(b)(2)(D) and N.C.G.S. § 6-21.5 on the motion of a party, report of the arbitrator, or by the court on its own motion.

(p) *Proceedings in Forma Pauperis*. The right to proceed in forma pauperis is not affected by these rules.

(q) *Limits of Hearings*. Arbitration hearings shall be limited to one hour unless the arbitrator determines at the hearing that more time is necessary to ensure fairness and justice to the parties.

(1) A written application for a substantial enlargement of time for a hearing must be filed with the court and the arbitrator if the arbitrator has been assigned, and must be served on opposing parties at the earliest practicable time, and no later than the date for prehearing exchange of information under Arb. Rule 6(d). The court will rule on these applications after consulting the arbitrator if an arbitrator has been assigned.

(2) An arbitrator is not required to receive repetitive or cumulative evidence.

(r) *Hearing Concluded.* The arbitrator shall declare the hearing concluded when all the evidence is in and any arguments the arbitrator permits have been completed. In exceptional cases, the arbitrator has discretion to receive post-hearing briefs, but not evidence, if submitted within three days after the hearing has been concluded.

(s) *Motions.* Designation of an action for arbitration does not affect a party's right to file any motion with the court.

(1) The court, in its discretion, may consider and determine any motion at any time. It may defer consideration of issues raised by motion to the arbitrator for determination in the award. Parties shall state their contentions regarding pending motions referred to the arbitrator in the exchange of information required by Arb. Rule 6(d).

(2) Pendency of a motion shall not be cause for delaying an arbitration hearing unless the court so orders.

(t) *Binding Hearing.* All parties to an action may agree that any award by the arbitrator be binding. Such agreement shall be in writing on a form promulgated by the Administrative Office of the Courts and shall be executed by all parties. The consent shall be filed with the clerk's office in the county in which the action is pending. Parties consenting to a binding hearing may not request a trial de novo after the arbitration award is issued. Once all parties agree to binding arbitration, no party may dismiss an appeal from a magistrate's award or dismiss the action in full except by consent. The clerk or court shall enter judgment on the award at the time the award is filed if the action has not been dismissed by consent.

Comment

Arb. Rule 6(a) references N.C.G.S. § 7A-49.6 ("Proceedings conducted by audio and video transmission"). That statute was added to the General Statutes by Session Law 2021-47.

The 60 days in Arb. Rule 6(a)(1) will allow for discovery, trial preparation, pretrial motions, disposition and

calendaring. A motion to continue a hearing will be heard by a judge mindful of this goal. Continuances may be granted when a party or counsel is entitled to such under law, e.g. N.C. R. Civ. P. 40(b); rule of court, e.g. ~~N.C. Prac. R.~~Gen. R. Prac. 3; or customary practice.

Under Arb. Rule 6(c), both parties are responsible for notifying the court personnel responsible for scheduling arbitration hearings that a consent judgment or dismissal has been filed. The notice required under Arb. Rule 6(c) should be filed with the court personnel responsible for scheduling the arbitration hearings. Failure to do so will result in assessment of the arbitrator fee. The "court official administering the arbitration" is the arbitration coordinator, judicial assistant or other staff member managing the arbitration program, as may vary from county to county.

Arb. Rule 6(d)(~~3~~) contemplates that the arbitrator shall return all evidence submitted when the hearing is concluded and the award has been made. Original documents and exhibits should not be marked in any way to identify them with the arbitration to avoid possible prejudice in any future trial.

For purposes of Arb. Rule 6(g), the arbitrator shall have such authority to administer oaths if such authorization is consistent with the laws of North Carolina.

As articulated in Arb. Rule 6(i), the arbitrator is to rule upon the evidence presented at the hearing, or lack thereof. Thus an arbitrator may enter a $0 award or an award for the defendant if the evidence presented at the hearing does not support an award for the plaintiff.

Arb. Rule 6(n) requires that all parties be present ~~in person~~ or represented through counsel. The presence of the parties or their counsel is necessary for presentation of the case to the arbitrator. Rule 6(n) does not require that a party or any representative of a party have authority to make binding decisions on the party's behalf in the matters in controversy, beyond those reasonably necessary to present evidence, make arguments and adequately represent the party during the arbitration. Specifically, a representative is not required to have the authority to make binding settlement decisions.

Arb. Rule 6(n) sets forth that parties may appear pro se, as permitted by law. In accordance with applicable state law, only parties that are natural persons may appear pro se at arbitrations. Any business, corporation, limited liability corporation, unincorporated association or other professional parties, including but not limited to, businesses considered to be a separate legal entity shall be represented by counsel in accordance with the North Carolina General Statutes. See Case Notes Below.

The rules do not establish a separate standard for pro se representation in court-ordered arbitrations. Instead, pro se representation in court-ordered arbitrations is governed by applicable principles of North Carolina law in that area. See Arb. Rule 6(n). Conformance of practice in court-ordered arbitrations with the applicable law is ensured by providing that pro se representation be "as permitted by law."

The purpose of Arb. Rule 6(q) is to ensure that hearings are limited and expedited. Failure to limit and expedite the hearings defeats the purpose of these rules. In this connection, note the option in Arb. Rule 6(d) for use of prehearing stipulations and/or sworn or unsworn statements to meet time limits.

Under Arb. Rule 6(r), the declaration that the hearing is concluded by the arbitrator formally marks the end of the hearing. Note Arb. Rule 7(a), which requires the arbitrator to file the award within three days after the hearing is concluded or post-hearing briefs are received. The usual practice should be a statement of the award at the close of the hearing, without submission of briefs. In the unusual case where an arbitrator is willing to receive post-hearing briefs, the arbitrator should specify the points to be addressed promptly and succinctly. Time limits in these rules are governed by N.C. R. Civ. P. 6 and N.C.G.S. §§ 103 4, 103-5.

Under Arb. Rule 6(s)(1), the court will rule on prehearing motions which dispose of all or part of the case on the pleadings, or which relate to procedural management of the case.

No party shall be deemed to have consented to binding arbitration unless it is documented on the proper form, which is executed after the filing date of the action. No executed contract, lien, lease or other legal document, other than the proper form designating the arbitration as binding, shall be used to make an arbitration binding upon either party.

Case Notes.

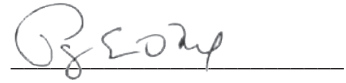
For note discussing representation of parties who are not living human beings, *see Lexis Nexis v. Travishan Corp.*, 155 N.C. App. 205, 573 S.E.2d 547 (2002).

* * *

These amendments to the Rules for Court-Ordered Arbitration become effective on 1 October 2021.

These amendments shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 25th day of August 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of August 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ORDER AMENDING THE RULES FOR MEDIATED SETTLEMENT CONFERENCES AND OTHER SETTLEMENT PROCEDURES IN SUPERIOR COURT CIVIL ACTIONS

Pursuant to subsection 7A-38.1(c) of the General Statutes of North Carolina, the Court hereby amends the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions. This order affects Rules 4, 8, 9, 10, and 15.

* * *

Rule 4. Duties of Parties, Attorneys, and Other Participants in Mediated Settlement Conferences

(a) **Attendance.**

(1) **Persons Required to Attend**. The following persons shall attend a mediated settlement conference:

a. Parties to the action, to include the following:

1. All individual parties.

2. Any party that is a nongovernmental entity shall be represented at the mediated settlement conference by an officer, employee, or agent who is not the entity's outside counsel and who has been authorized to decide whether, and on what terms, to settle the action on behalf of the entity, or who has been authorized to negotiate on behalf of the entity and can promptly communicate during the conference with persons who have decision-making authority to settle the action; provided, however, that if a specific procedure is required by law (e.g., a statutory pre-audit certificate) or the entity's governing documents (e.g., articles of incorporation, bylaws, partnership agreement, articles of organization, or operating agreement) to approve the terms of the settlement, then the representative shall have the authority to negotiate and make recommendations to the applicable approval authority in accordance with that procedure.

3. Any party that is a governmental entity shall be represented at the mediated settlement

conference by an employee or agent who is not the entity's outside counsel and who: (i) has authority to decide on behalf of the entity whether and on what terms to settle the action; (ii) has been authorized to negotiate on behalf of the entity and can promptly communicate during the conference with persons who have decision-making authority to settle the action; or (iii) has authority to negotiate on behalf of the entity and to make a recommendation to the entity's governing board, if under applicable law the proposed settlement terms can be approved only by the entity's governing board.

Notwithstanding anything in these rules to the contrary, any agreement reached which involves a governmental entity may be subject to the provisions of N.C.G.S. § 159-28(a).

b. A representative of each liability insurance carrier, uninsured motorist insurance carrier, and underinsured motorist insurance carrier, which may be obligated to pay all or part of any claim presented in the action. Each carrier shall be represented at the mediated settlement conference by an officer, employee, or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of the carrier, or who has been authorized to negotiate on behalf of the carrier, and can promptly communicate during the conference with persons who have decision-making authority.

c. At least one counsel of record for each party or other participant whose counsel has appeared in the action.

(2) **Attendance Required Through the Use of Remote Technology**. Any party or person required to attend a mediated settlement conference shall attend the conference using remote technology; for example, by telephone, videoconference, or other electronic means. The conference shall conclude when an agreement is reduced to writing and signed, as provided in subsection (c) of this rule, or when an impasse is declared. Notwithstanding

this remote attendance requirement, the conference may be conducted in person if:

a. the mediator and all parties and persons required to attend the conference agree to conduct the conference in person and to comply with all federal, state, and local safety guidelines that have been issued; or

b. the senior resident superior court judge, upon motion of a party and notice to the mediator and to all parties and persons required to attend the conference, so orders.

(3) **Scheduling**. Participants required to attend the mediated settlement conference shall promptly notify the mediator after designation or appointment of any significant problems that they may have with the dates for conference sessions before the completion deadline, and shall inform the mediator of any problems that arise before an anticipated mediated settlement conference session is scheduled by the mediator. If a scheduling conflict in another court proceeding arises after a conference session has been scheduled by the mediator, then the participants shall promptly attempt to resolve the conflict under Rule 3.1 of the General Rules of Practice for the Superior and District Courts, or, if applicable, the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina on 20 June 1985.

(4) **Excusing the Attendance Requirement**. Any party or person may be excused from the requirement to attend a mediated settlement conference with the consent of all parties and persons required to attend the conference and the mediator.

(b) **Notifying Lienholders**. Any party or attorney who has received notice of a lien, or other claim upon proceeds recovered in the action, shall notify the lienholder or claimant of the date, time, and location of the mediated settlement conference, and shall request that the lienholder or claimant attend the conference or make a representative available with whom to communicate during the conference.

(c) **Finalizing Agreement.**

(1) If an agreement is reached at the mediated settlement conference, then the parties shall reduce the terms of

the agreement to writing and sign the writing, along with their counsel. By stipulation of the parties and at the parties' expense, the agreement may be electronically recorded. If the agreement resolves all issues in the dispute, then a consent judgment or one or more voluntary dismissals shall be filed with the court by such persons as the parties shall designate.

(2) If the agreement resolves all issues at the mediated settlement conference, then the parties shall give a copy of the signed agreement, consent judgment, or voluntary dismissal to the mediator and to all parties at the conference, and shall file the consent judgment or voluntary dismissal with the court within thirty days of the conference, or within ninety days if the State or a political subdivision of the State is a party to the action, or before expiration of the mediation deadline, whichever is later. In all cases, a consent judgment or voluntary dismissal shall be filed prior to the scheduled trial.

(3) If an agreement that resolves all issues in the dispute is reached prior to the mediated settlement conference, or is finalized while the conference is in recess, then the parties shall reduce the terms of the agreement to writing and sign the writing, along with their counsel, and shall file a consent judgment or voluntary dismissal disposing of all issues with the court within thirty days of the conference, or within ninety days if the State or a political subdivision of the State is a party to the action, or before expiration of the mediation deadline, whichever is later.

(4) A designee may sign the agreement on behalf of a party only if the party does not attend the mediated settlement conference and the party provides the mediator with a written verification that the designee is authorized to sign the agreement on the party's behalf.

~~(4)~~(5) When an agreement is reached upon all issues, all attorneys of record must notify the senior resident superior court judge within four business days of the settlement and advise who will file the consent judgment or voluntary dismissal.

(d) **Payment of the Mediator's Fee**. The parties shall pay the mediator's fee as provided by Rule 7.

(e) **Related Cases**. Upon application of any party or person, the senior resident superior court judge may order that an attorney of record or a party in a pending superior court civil action, or a representative of an insurance carrier that may be liable for all or any part of a claim pending in superior court, shall, upon reasonable notice, attend a mediation conference that may be convened in another pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered under this rule. Any attorney, party, or representative of an insurance carrier that properly attends a mediation conference under this rule shall not be required to pay any of the mediation fees or costs related to that mediation conference. Any disputed issue concerning an order entered under this rule shall be determined by the senior resident superior court judge who entered the order.

(f) **No Recording**. There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

Comment

Comment to Rule 4(a). Parties subject to Chapter 159 of the General Statutes of North Carolina—which provides, among other things, that if an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, then the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been pre-audited to assure compliance with N.C.G.S. § 159-28(a) and that an obligation incurred in violation of N.C.G.S. § 159-28(a) or (a1) is invalid and may not be enforced—should, as appropriate, inform all participants at the beginning of the mediation of the preaudit requirement and the consequences for failing to preaudit under N.C.G.S. § 159-28.

Comment to Rule 4(c). Consistent with N.C.G.S. § 7A-38.1(*l*), if a settlement is reached during a mediated settlement conference, then the mediator shall ensure that the terms of the settlement are reduced to writing and signed by the parties, or by the parties' designees, and ~~their~~ by the parties' attorneys before ending the conference. No settlement shall be enforceable unless it has been reduced to writing and signed by the parties or by the parties' designees.

Cases in which an agreement upon all issues has been reached should be disposed of as expeditiously as possible. This assures that the mediator and the parties move the case toward disposition while honoring the private nature of the mediation process and the mediator's duty of confidentiality. If the parties wish to keep the terms of the settlement confidential, then they may timely file with the court closing documents that do not contain confidential

terms (e.g., voluntary dismissal or a consent judgment resolving all claims). Mediators will not be required by local rules to submit agreements to the court.

Comment to Rule 4(e). Rule 4(e) clarifies a senior resident superior court judge's authority to order a party, attorney of record, or representative of an insurance carrier to attend proceedings in another forum that are related to the superior court civil action. For example, when there are workers' compensation claims being asserted in a case before North Carolina Industrial Commission, there are typically additional claims asserted in superior court against a third-party tortfeasor. Because of the related nature of the claims, it may be beneficial for a party, attorney of record, or representative of an insurance carrier in the superior court civil action to attend the North Carolina Industrial Commission mediation conference in order to resolve the pending claims. Rule 4(e) specifically authorizes a senior resident superior court judge to order a party, attorney of record, or representative of an insurance carrier to attend a proceeding in another forum, provided that all parties in the related matter consent and the persons ordered to attend receive reasonable notice of the proceeding. The *North Carolina Industrial Commission Rules for Mediated Settlement and Neutral Evaluation Conferences* contain a similar provision, which provides that persons involved in a North Carolina Industrial Commission case may be ordered to attend a mediated settlement conference in a related matter.

* * *

Rule 8. Mediator Certification and Decertification

(a) The Commission may receive and approve applications for certification of persons to be appointed as superior court mediators. In order to be certified, an applicant must satisfy the requirements of this subsection.

(1) The applicant must complete: (i) at least forty hours of Commission-certified trial court mediation training, or (ii) at least forty hours of Commission-certified family and divorce mediation training and a sixteen-hour Commission-certified supplemental trial court mediation training.

(2) The applicant must have the following training, experience, and qualifications:

a. An attorney-applicant may be certified if he or she:

1. is a member in good standing of the North Carolina State Bar; or

2. is a member similarly in good standing of the bar of another state and eligible to apply

for admission to the North Carolina State Bar under Chapter 1, Subchapter C, of the North Carolina State Bar Rules and the Rules Governing the Board of Law Examiners and the Training of Law Students, 27 N.C. Admin. Code 1C.0105; demonstrates familiarity with North Carolina court structure, legal terminology, and civil procedure; provides to the Commission three letters of reference about the applicant's good character, including at least one letter from a person with knowledge of the applicant's professional practice; and possesses the experience required by this subsection; and

3. has at least five years of experience after date of licensure as a judge, practicing attorney, law professor, or mediator, or has equivalent experience.

b. A nonattorney-applicant may be certified if he or she:

1. has, as a prerequisite for the forty hours of Commission-certified trial court mediation training, completed a six-hour training provided by a Commission-certified trainer on North Carolina court organization, legal terminology, civil court procedure, the attorney–client privilege, the unauthorized practice of law, and the common legal issues arising in superior court civil actions;

2. has provided to the Commission three letters of reference as to the applicant's good character, including at least one letter from a person with knowledge of the applicant's experience qualifying the applicant under subsection (a)(2)(b)(3) of this rule; and

3. has completed either:

i. a minimum of twenty hours of basic mediation training provided by a trainer acceptable to the Commission and, after completing the twenty-hour training, has mediated at least thirty disputes over

the course of at least three years, or has equivalent experience, and possesses a four-year college degree from an accredited institution, and has four years of a high or relatively high level of professional~~,~~ or management~~, or administrative~~ experience of an executive nature in a professional, business, or governmental entity; or

ii. ten years of a high or relatively high level of professional~~,~~ or management~~, or administrative~~ experience of an executive nature in a professional, business, or governmental entity, and possesses a four-year college degree from an accredited institution.

Any current or former attorney who is disqualified by the attorney licensing authority of any state shall be ineligible for certification under subsections (a)(2)(a) and (a)(2)(b) of this rule.

(3) The applicant must complete the following observations:

a. **All Applicants**. All applicants for certification shall observe two mediated settlement conferences, at least one of which shall be of a superior court civil action.

b. **Nonattorney-Applicants.** Nonattorney-applicants for certification shall observe three mediated settlement conferences, in addition to those required under subsection (a)(3)(a) of this rule, that are conducted by at least two different mediators. At least one of the additional observations shall be of a superior court civil action.

c. **Conferences Eligible for Observation**. Conferences eligible for observation under subsection (a)(3) of this rule shall be those in cases pending before the North Carolina superior courts, the North Carolina Court of Appeals, the North Carolina Industrial Commission, the North Carolina Office of Administrative Hearings, or the federal district courts in North Carolina that are ordered to

mediation or conducted by an agreement of the parties which incorporates the rules of mediation of one of those entities.

Conferences eligible for observation shall also include those conducted in disputes prior to litigation that are mediated by an agreement of the parties and incorporate the rules for mediation of one of the entities named above.

All conferences shall be conducted by a certified superior court mediator under rules adopted by one of the above entities and shall be observed from their beginning to settlement or when an impasse is declared. Observations shall be reported on a Certificate of Observation – Mediated Settlement Conference Program, Form AOC-DRC-07.

All observers shall conform their conduct to the Commission's policy on *Guidelines for Observer Conduct*.

(4) The applicant must demonstrate familiarity with the statutes, rules, and practices governing mediated settlement conferences in North Carolina.

(5) The applicant must be of good moral character and adhere to the Standards of Professional Conduct for Mediators when acting under these rules. On his or her application(s) for certification or application(s) for certification renewal, an applicant shall disclose any:

a. pending criminal charges;

b. criminal convictions;

c. restraining orders issued against him or her;

d. failures to appear;

e. ~~pending or~~ closed grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country;

f. disciplinary action taken against him or her by a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country, including, but not limited to, disbarment,

revocation, decertification, or suspension of any professional license or certification, including the suspension or revocation of any license, certification, registration, or qualification to serve as a mediator in another state or country, even if stayed;

g. judicial sanctions imposed against him or her in any jurisdiction; ~~or~~

h. civil judgments, tax liens, or bankruptcy filings that occurred within the ten years preceding the date that the initial or renewal application was filed with the Commission.~~;~~ or

i. pending grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country.

~~A mediator shall report to the Commission any of the above-enumerated matters arising subsequent to the disclosures reported on the initial or renewal application for certification within thirty days of receiving notice of the matter.~~

If a matter listed in subsections (a)(5)(a) through (a)(5)(h) of this rule arises after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter.

If a pending grievance or complaint described in subsection (a)(5)(i) of this rule is filed after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter or, if a response to the grievance or complaint is permitted by the professional licensing, certifying, or regulatory body, no later than thirty days after the due date for the response.

As referenced in this subsection, criminal charges or convictions (excluding infractions) shall include felonies, misdemeanors, or misdemeanor traffic violations (including driving while impaired)

under the law of North Carolina or another state, or under the law of a federal, military, or foreign jurisdiction, regardless of whether the adjudication was withheld (prayer for judgment continued) or the imposition of a sentence was suspended.

(6) The applicant must submit proof of qualifications set out in this rule on a form provided by the Commission.

(7) The applicant must pay all administrative fees established by the NCAOC upon the recommendation of the Commission.

(8) The applicant must agree to accept the fee ordered by the court under Rule 7 as payment in full of a party's share of the mediator's fee.

(9) The applicant must comply with the requirements of the Commission for completing and reporting continuing mediator education or training.

(10) The applicant must agree, once certified, to make reasonable efforts to assist applicants for mediator certification in completing their observation requirements.

(b) No mediator who held a professional license and relied upon that license to qualify for certification under subsections (a)(2)(a) or (a)(2)(b) of this rule shall be decertified or denied recertification because that mediator's license lapses, is relinquished, or becomes inactive; provided, however, that this subsection shall not apply to any mediator whose professional license is revoked, suspended, lapsed, relinquished, or whose professional license becomes inactive due to disciplinary action or the threat of disciplinary action from his or her licensing authority. Any mediator whose professional license is revoked, suspended, lapsed, or relinquished, or whose professional license becomes inactive, shall report the matter to the Commission.

(c) A mediator's certification may be revoked or not renewed at any time it is shown to the satisfaction of the Commission that a mediator no longer meets the qualifications set out in this rule or has not faithfully observed these rules or those of any district in which he or she has served as a mediator. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible for certification under this rule. No application for certification renewal shall be denied on the grounds that the mediator's training and experience does not meet the training and experience required

under rules which were promulgated after the date of the applicant's original certification.

Comment

Comment to Rule 8(a)(2). Commission staff has discretion to waive the requirements set out in Rule 8(a)(2)(a)(2) and Rule 8(a)(2)(b)(1), if the applicant can demonstrate sufficient familiarity with North Carolina legal terminology, court structure, and procedure.

Comment to Rule 8(a)(2)(b)(3). Administrative, secretarial, and paraprofessional experience will not generally qualify as "a high or relatively high level of professional or management experience of an executive nature."

* * *

Rule 9. Certification of Mediation Training Programs

(a) Certified training programs for mediators who are seeking certification as a mediator for matters in superior court shall consist of a minimum of forty hours of instruction. The curriculum of such programs shall include the following topics:

(1) Conflict resolution and mediation theory.

(2) Mediation process and techniques, including the process and techniques of trial court mediation.

(3) Communication and information gathering skills.

(4) Standards of conduct for mediators, including, but not limited to, the Standards of Professional Conduct for Mediators.

(5) Statutes, rules, and practices governing mediated settlement conferences in North Carolina.

(6) Demonstrations of mediated settlement conferences.

(7) Simulations of mediated settlement conferences, involving student participation as the mediator, attorneys, and disputants, which shall be supervised, observed, and evaluated by program faculty.

(8) Satisfactory completion of an exam by all students, testing their familiarity with the statutes, rules, and practices governing mediated settlement conferences in North Carolina.

(9) Technology and how to effectively utilize technology during a mediation.

(b) Certified training programs for mediators who are already certified as family financial mediators shall consist of a minimum of sixteen hours. The curriculum of such programs shall include the topics in subsection (a) of this rule and a discussion of the mediation and culture of insured claims. There shall be at least two simulations as described in subsection (a)(7) of this rule.

(c) A training program must be certified by the Commission before a mediator's attendance at the program may be used to satisfy the training requirement under Rule 8(a). Certification does not need to be given in advance of attendance.

Training programs attended prior to the promulgation of these rules or attended in other states may be approved by the Commission if they are in substantial compliance with the standards set forth in this rule.

(d) To complete certification, a training program shall pay all administrative fees required by the NCAOC upon the recommendation of the Commission.

* * *

Rule 10. Other Settlement Procedures

(a) **Order Authorizing Other Settlement Procedures**. Upon receipt of a motion by the parties seeking authorization to utilize a settlement procedure in lieu of a mediated settlement conference, the senior resident superior court judge may order the use of the procedure requested under these rules or under local rules, unless the court finds that the parties did not agree on all of the relevant details of the procedure, including the items in Rule 1(c)(2), or that, for good cause, the selected procedure is not appropriate for the case or the parties.

(b) **Other Settlement Procedures Authorized by These Rules**. In addition to a mediated settlement conference, the following settlement procedures are authorized by these rules:

(1) Neutral evaluation under Rule 11 (a settlement procedure in which a neutral offers an advisory evaluation of the case following summary presentations by each party).

(2) Nonbinding arbitration under Rule 12 (a settlement procedure in which a neutral renders an advisory decision following summary presentations of the case by the parties).

(3) Binding arbitration under Rule 12 (a settlement procedure in which a neutral renders a binding decision following presentations by the parties).

(4) A summary trial (jury or non-jury) under Rule 13 (a settlement procedure that is either: (i) a nonbinding trial in which a privately procured jury or presiding officer renders an advisory verdict following summary presentations by the parties and, in the case of a summary jury trial, a summary of the law presented by a presiding officer; or (ii) a binding trial in which a privately procured jury or presiding officer renders a binding verdict following summary presentations by the parties and, in the case of a summary jury trial, a summary of the law presented by a presiding officer).

(c) **General Rules Applicable to Other Settlement Procedures**.

(1) **When Proceeding Is Conducted**. Other settlement procedures ordered by the court under these rules shall be conducted no later than the date for completion set out in the court's original mediated settlement conference order, unless extended by the senior resident superior court judge.

(2) **Authority and Duties of the Neutral.**

a. **Authority of the Neutral.**

1. **Control of the Proceeding**. The neutral, arbitrator, or presiding officer shall at all times be in control of the proceeding and the procedures to be followed.

2. **Scheduling the Proceeding**. The neutral, arbitrator, or presiding officer shall attempt to schedule the proceeding at a time that is convenient to the participants, attorneys, and the neutral. In the absence of agreement, the neutral shall select the date for the proceeding.

b. **Duties of the Neutral**.

1. **Informing the Parties**. At the beginning of the proceeding, the neutral, arbitrator, or presiding officer shall define and describe for the parties:

i. the process of the proceeding;

ii. the differences between the proceeding and other forms of conflict resolution;

iii. the costs of the proceeding;

iv. the inadmissibility of conduct and statements as provided by N.C.G.S. § 7A-38.1(*l*) and subsection (c)(6) of this rule; and

v. the duties and responsibilities of the neutral and the participants.

2. **Disclosure**. The neutral has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice, or partiality.

3. **Reporting Results of the Proceeding**. The neutral, arbitrator, or presiding officer shall report the results of the proceeding to the court using a Report of Neutral Conducting Settlement Procedure Other Than Mediated Settlement Conference or Arbitration in Superior Court Civil Action, Form AOC-CV-817. The NCAOC may require the neutral to provide statistical data for evaluation of other settlement procedures.

4. **Scheduling and Holding the Proceeding**. It is the duty of the neutral, arbitrator, or presiding officer to schedule and conduct the proceeding prior to the completion deadline set out in the court's order. The deadline for completion of the proceeding shall be strictly observed by the neutral, arbitrator, or presiding officer, unless the deadline is changed by a written order of the senior resident superior court judge.

(3) **Extensions of Time**. A party or a neutral may request that the senior resident superior court judge extend the deadline for completion of the settlement procedure. The request for an extension shall state the reasons the extension is sought and shall be served by the movant on the other parties and the neutral. If the court grants the

motion for an extension, then the order shall set a new deadline for the completion of the settlement procedure. A copy of the order shall be delivered to all parties and the neutral by the person who sought the extension.

(4) **Where the Proceeding Is Conducted**. The neutral, arbitrator, or presiding officer shall be responsible for reserving a place agreed to by the parties, setting a time for and making other arrangements for the proceeding, and for giving timely notice to all attorneys and unrepresented parties in writing of the time and location of the proceeding.

(5) **No Delay of Other Proceedings**. Settlement proceedings shall not be the cause for a delay of other proceedings in the case, including, but not limited to, the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the senior resident superior court judge.

(6) **Inadmissibility of Settlement Proceedings**. Evidence of statements made and conduct that occurs in a mediated settlement conference or other settlement proceeding conducted under this rule, whether attributable to a party, mediator, neutral, or neutral-observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or another civil action involving the same claim, except:

a. in proceedings for sanctions under subsection (c) of this rule;

b. in proceedings to enforce or rescind a settlement of the action;

c. in disciplinary proceedings before the North Carolina State Bar or any agency established to enforce the Standards of Professional Conduct for Mediators or standards of conduct for other neutrals; or

d. in proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, "neutral observer" includes persons seeking mediator certification, persons

studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at a proceeding conducted under this rule, or during its recesses, shall be enforceable, unless the agreement has been reduced to writing and signed by the parties or by the parties' designees. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a conference or other settlement proceeding.

No mediator, neutral, or neutral-observer present at a settlement proceeding shall be compelled to testify or produce evidence in any civil proceeding concerning statements made and conduct that occurs in anticipation of, during, or as a follow-up to a conference or other settlement proceeding under subsection (c) of this rule. This includes proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and during proceedings for sanctions under this section, proceedings to enforce laws concerning juvenile or elder abuse, and disciplinary hearings before the North Carolina State Bar or any agency established to enforce the Standards of Professional Conduct for Mediators or standards of conduct for other neutrals.

(7) **No Record Made**. There shall be no record made of any proceedings under these rules, unless the parties have stipulated to binding arbitration or a binding summary trial, in which case any party, after giving adequate notice to opposing parties, may make a record of the proceeding.

(8) **Ex Parte Communications Prohibited**. Unless all parties agree otherwise, there shall be no ex parte communication prior to the conclusion of the proceeding between the neutral and a party or a party's attorney on any matter related to the proceeding, except about administrative matters.

(9) **Duties of the Parties.**

a. **Attendance**. All persons required to attend a mediated settlement conference under Rule 4 shall attend

any other nonbinding settlement procedure authorized by these rules and ordered by the court, except those persons to whom the parties agree and the senior resident superior court judge excuses. Those persons required to attend other settlement procedures which are binding in nature, authorized by these rules, and ordered by the court, shall be those persons to whom the parties agree. Notice of the agreement shall be given to the court and the neutral by filing a Motion to Use Settlement Procedure Other Than Mediated Settlement Conference in Superior Court Civil Action and Order, Form AOC-CV-818.

b. **Finalizing Agreement**.

1. If an agreement that resolves all issues in the dispute is reached at the neutral evaluation, arbitration, or summary trial, then the parties to the agreement shall reduce the terms of the agreement to writing and sign it along with their counsel. A consent judgment or voluntary dismissal shall be filed with the court by such persons as the parties shall designate within fourteen days of the conclusion of the proceeding or before the expiration of the deadline for its completion, whichever is later. The person responsible for filing closing documents with the court shall also sign the report to the court. The parties shall give a copy of their signed agreement, consent judgment, or voluntary dismissal to the neutral, arbitrator, or presiding officer, and all parties at the proceeding.

2. If an agreement that resolves all issues in the dispute is reached prior to the evaluation, arbitration, or summary trial, or while the proceeding is in recess, then the parties shall reduce the terms of the agreement to writing and sign the writing along with their counsel and shall file a consent judgment or voluntary dismissal disposing of all issues with the court within fourteen days of the agreement or

before the expiration of the deadline for completion of the proceeding, whichever is later.

3. A designee may sign the agreement on behalf of a party only if the party does not attend the evaluation, arbitration, or summary trial and the party provides the neutral with a written verification that the designee is authorized to sign the agreement on the party's behalf.

~~3.~~4. When an agreement is reached upon all issues in the dispute, all attorneys of record must notify the senior resident superior court judge within four business days of the settlement and advise the judge of the persons who will sign the consent judgment or voluntary dismissal.

c. **Payment of the Neutral's Fee**. The parties shall pay the neutral's fee as provided by subsection (c)(l2) of this rule.

(10) **Selection of Neutrals in Other Settlement Procedures**. The parties may select any person to serve as a neutral in a settlement procedure authorized under these rules. For arbitration, the parties may either select a single arbitrator or a panel of arbitrators. Notice of the parties' selection shall be given to the court and to the neutral by filing a Motion to Use Settlement Procedure Other Than Mediated Settlement Conference in Superior Court Civil Action and Order, Form AOC-CV-818, within twenty-one days after the entry of the order requiring a mediated settlement conference.

The motion shall state: (i) the name, address, and telephone number of the neutral; (ii) the rate of compensation of the neutral; and (iii) that the neutral and opposing counsel have agreed upon the selection and compensation.

(11) **Disqualification**. Any party may move the resident or presiding superior court judge of the district in which an action is pending for an order disqualifying the neutral and, for good cause, an order disqualifying the neutral shall be entered. Good cause exists if the selected neutral has violated any standards of conduct of the North

Carolina State Bar or any standards of conduct for neutrals adopted by the Supreme Court.

(12) **Compensation of the Neutral**. A neutral's compensation shall be paid in an amount agreed to by the parties and the neutral. Time spent reviewing materials in preparation for the neutral evaluation, conducting the proceeding, and making and reporting the award shall be compensable time.

Unless otherwise agreed by the parties or ordered by the court, the neutral's fee shall be paid in equal shares by the parties. For purposes of this section, multiple parties shall be considered one party when they are represented by the same counsel. The presiding officer and jurors in a summary jury trial are neutrals within the meaning of these rules and shall be compensated by the parties.

(13) **Sanctions for Failure to Attend Other Settlement Procedure or Pay the Neutral's Fee**. Any person required to attend a settlement proceeding or to pay a neutral's fee in compliance with N.C.G.S. § 7A-38.1 and these rules who fails to attend the proceeding or pay the neutral's fee without good cause shall be subject to the contempt power of the court and any monetary sanctions imposed by a resident or presiding superior court judge. The monetary sanctions may include, but are not limited to, the payment of fines, attorneys' fees, the neutral's fee, expenses, and loss of earnings incurred by persons attending the proceeding. A party seeking sanctions against a person or a judge, upon his or her own motion, shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served on all parties and any person against whom sanctions are being sought. If the court imposes sanctions, it shall do so after giving notice to the person, holding a hearing, and issuing a written order that contains both findings of fact that are supported by substantial evidence and conclusions of law.

* * *

Rule 15. Definitions

(a) "Senior resident superior court judge," as used throughout these rules, refers to the judge or, as appropriate, the judge's designee.

RULES FOR MEDIATED SETTLEMENT
CONFERENCES AND OTHER SETTLEMENT
PROCEDURES IN SUPERIOR COURT CIVIL ACTIONS

The phrase "senior resident superior court judge" also refers to a special superior court judge assigned to any action designated as a mandatory complex business case under N.C.G.S. § 7A-45.4, and to any judge to whom a case is assigned under Rule 2.1 and Rule 2.2 of the General Rules of Practice for the Superior and District Courts.

(b) "NCAOC form" refers to a form prepared, printed, and distributed by the NCAOC to implement these rules, or a form approved by local rule which contains at least the same information as a form prepared by the NCAOC. Proposals for the creation or modification of a form may be initiated by the Commission.

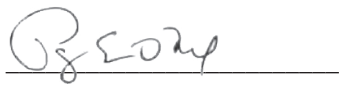
(c) "Designee," as used throughout these rules, refers to a person selected or designated to carry out a duty or role.

* * *

These amendments to the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions become effective on 1 October 2021.

This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 25th day of August 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of August 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ORDER AMENDING THE RULES OF MEDIATION FOR MATTERS BEFORE THE CLERK OF SUPERIOR COURT

Pursuant to subsection 7A-38.3B(b) of the General Statutes of North Carolina, the Court hereby amends Rule 4 of the Rules of Mediation for Matters Before the Clerk of Superior Court.

* * *

Rule 4. Duties of Parties, Attorneys, and Other Participants in Mediations

(a) **Attendance**.

(1) All persons ordered by the clerk to attend a mediation conducted under these rules shall attend the mediation using remote technology; for example, by telephone, videoconference, or other electronic means. The mediation shall conclude when an agreement is reduced to writing and signed, as provided in subsection (b) of this rule, or when an impasse is declared. Notwithstanding this remote attendance requirement, the mediation may be conducted in person if:

a. the mediator and all persons required to attend the mediation agree to conduct the mediation in person and to comply with all federal, state, and local safety guidelines that have been issued; or

b. the clerk, upon motion of a person required to attend the mediation and notice to the mediator and to all other persons required to attend the mediation, so orders.

(2) Any nongovernmental entity ordered to attend a mediation conducted under these rules shall be represented at the mediation by an officer, employee, or agent who is not the entity's outside counsel and who has authority to decide on behalf of the entity whether, and on what terms, to settle the matter.

(3) Any governmental entity ordered to attend a mediation conducted under these rules shall be represented at the mediation by an employee or agent who is not the entity's outside counsel and who has authority to decide on behalf of the entity whether, and on what terms, to settle the matter; provided, however, that if proposed settlement terms can be approved only by a governing board,

the employee or agent shall have authority to negotiate on behalf of the governing board.

(4) An attorney ordered to attend a mediation under these rules has satisfied the attendance requirement when at least one counsel of record for any person ordered to attend has attended the mediation.

(5) Other persons may participate in a mediation at the discretion of the mediator.

(6) Persons ordered to attend a mediation shall promptly notify the mediator, after selection or appointment, of any significant problems they have with the dates for mediation sessions before the completion deadline, and shall inform the mediator of any problems that arise before an anticipated mediation session is scheduled by the mediator.

(7) Any person may be excused from the requirement to attend a mediation with the consent of all persons required to attend the mediation and the mediator.

(b) **Finalizing Agreement**.

(1) If an agreement is reached at the mediation, in matters that, as a matter of law, may be resolved by the parties by agreement, then the parties to the agreement shall reduce the terms of the agreement to writing and sign the writing along with their counsel. The parties shall designate a person who will file a consent judgment or a voluntary dismissal with the clerk, and that person shall sign the mediator's report. If an agreement is reached prior to or during a recess of the mediation, then the parties shall inform the mediator and the clerk that the matter has been settled and, within ten calendar days of the agreement, file a consent judgment or voluntary dismissal with the court.

A designee may sign the agreement on behalf of a party only if the party does not attend the mediation and the party provides the mediator with a written verification that the designee is authorized to sign the agreement on the party's behalf.

(2) In all other matters, including guardianship and estate matters, if an agreement is reached upon some or all of the issues at the mediation, then the persons ordered to attend the mediation shall reduce the terms of the

agreement to writing and sign the writing along with their counsel, if any. Such agreements are not binding upon the clerk, but may be offered into evidence at the hearing of the matter and may be considered by the clerk for a just and fair resolution of the matter. Evidence of statements made and conduct occurring in a mediation where an agreement is reached is admissible under N.C.G.S. § 7A-38.3B(g)(3).

All written agreements reached in such matters shall include the following language in a prominent location in the document: "This agreement is not binding on the clerk but will be presented to the clerk as an aid to reaching a just resolution of the matter."

(c) **Payment of the Mediator's Fee**. The persons ordered to attend the mediation shall pay the mediator's fee as provided by Rule 7.

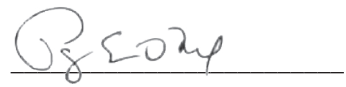
(d) **No Recording**. There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

* * *

This amendment to the Rules of Mediation for Matters Before the Clerk of Superior Court becomes effective on 1 October 2021.

This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 25th day of August 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of August 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ORDER AMENDING THE RULES OF MEDIATION FOR MATTERS IN DISTRICT CRIMINAL COURT

Pursuant to subsection 7A-38.3D(d) of the General Statutes of North Carolina, the Court hereby amends Rule 7 of the Rules of Mediation for Matters in District Criminal Court.

* * *

Rule 7. Mediator Certification and Decertification

(a) The Commission may receive and approve applications for the certification of persons to be appointed as district criminal court mediators. In order to be certified, an applicant must satisfy the requirements of this subsection.

(1) The applicant must be affiliated, at the time of application, with a community mediation center established under N.C.G.S. § 7A-38.5 as either a volunteer or staff mediator, and must have received the community mediation center's endorsement that he or she possesses the training, experience, and skills necessary to mediate criminal matters in district court.

(2) The applicant must have the following training and experience:

a. The applicant must:

1. have a four-year degree from an accredited college or university; have four years of post-high school education through an accredited college, university, or junior college; have four years of full-time work experience; or have any combination thereof;

2. have two years of experience as a staff or volunteer mediator at a community mediation center; or

3. have an Advanced Practitioner Designation from the Association for Conflict Resolution.

b. The applicant must have completed either:

1. twenty-four hours of training in a Commission-certified district criminal court mediation training program; or

2. forty hours of Commission-certified superior court or family financial mediation training

and four hours of additional training about the rules, procedures, and practices for mediating criminal matters in district court.

c. The applicant must:

1. observe at least two court-referred district court mediations for criminal matters, conducted by a mediator certified under these rules; and

2. co-mediate or solo-mediate at least three court-referred district court mediations for criminal matters, under the observation of staff affiliated with a community mediation center whose district criminal court mediation training program has been certified by the Commission under Rule 8.

The observation, co-mediation, and solo-mediation requirements set forth in this subsection may be waived in the event the applicant demonstrates that she or he has at least five years of experience mediating criminal matters in district court, and the center which the applicant has served verifies the experience claimed.

(3) The applicant must demonstrate familiarity with the statutes, rules, and practices governing mediations for criminal matters in district court in North Carolina;

(4) The applicant must be of good moral character and adhere to the Standards of Professional Conduct for Mediators when acting under these rules. On his or her application(s) for certification or application(s) for certification renewal, an applicant shall disclose any:

a. pending criminal charges;

b. criminal convictions;

c. restraining orders issued against him or her;

d. failures to appear;

e. ~~pending or~~ closed grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country;

f. disciplinary action taken against him or her by a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country, including, but not limited to, disbarment, revocation, decertification, or suspension of any professional license or certification, including the suspension or revocation of any license, certification, registration, or qualification to serve as a mediator in another state or country, even if stayed;

g. judicial sanctions imposed against him or her in any jurisdiction; ~~or~~

h. civil judgments, tax liens, and bankruptcy filings that occurred within the ten years preceding the date that the initial or renewal application was filed with the Commission.; or

i. pending grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country.

~~A mediator shall report to the Commission any of the above-enumerated matters arising subsequent to the disclosures reported on the initial or renewal application for certification within thirty days of receiving notice of the matter.~~

If a matter listed in subsections (a)(4)(a) through (a)(4)(h) of this rule arises after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter.

If a pending grievance or complaint described in subsection (a)(4)(i) of this rule is filed after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter or, if a response to the grievance or complaint is permitted by the professional licensing, certifying, or regulatory body, no later than thirty days after the due date for the response.

As referenced in this subsection, criminal charges or convictions (excluding infractions) shall include

felonies, misdemeanors, or misdemeanor traffic violations (including driving while impaired) under the law of North Carolina or another state, or under the law of a federal, military, or foreign jurisdiction, regardless of whether the adjudication was withheld (prayer for judgment continued) or the imposition of a sentence was suspended.

(5) The applicant must commit to serving as a district court mediator under the direct supervision of a community mediation center authorized under N.C.G.S. § 7A-38.5 for a period of at least two years.

(6) The applicant must comply with the requirements of the Commission for continuing mediator education and training.

(7) The applicant must submit proof of qualifications set out in this rule on a form provided by the Commission.

(b) The Mediation Network of North Carolina, or individual community mediation centers participating in the program, shall assist the Commission in implementing the certification process established in this rule by:

(1) documenting subsection (a) of this rule for the mediator and the Commission;

(2) reviewing the documentation with the mediator in a face-to-face meeting scheduled no less than thirty days from the mediator's request to apply for certification;

(3) making a written recommendation on the applicant's certification to the Commission, which shall come from center staff familiar with the applicant and the applicant's character and experience; and

(4) forwarding the documentation for subsection (a) of this rule and the recommendation to the Commission, along with the mediator's completed certification application form.

(c) A mediator's certification may be revoked or not renewed if, at any time, it is shown to the satisfaction of the Commission that a mediator no longer meets the qualifications described in this rule or has not faithfully observed these rules or those of any district in which he or she has served as a mediator. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be

ineligible for certification under this rule. Certification renewal shall be required every two years.

(d) A community mediation center may withdraw its affiliation with a mediator who has been certified under these rules. Such disaffiliation does not revoke the mediator's certification. A mediator's certification is portable, and a mediator may agree to be affiliated with a different center. However, to mediate criminal matters in district court under this program, a mediator must be affiliated with the community mediation center providing services in that judicial district. A mediator may be affiliated with more than one center and provide services in the county served by those centers.

A community mediation center that receives or initiates a complaint against a mediator who is affiliated with its program and certified under these rules shall notify the Commission and forward a copy of the complaint to the Commission within thirty days of its receipt by the center, regardless of whether the center was able to successfully resolve the complaint. For purposes of this rule, a "complaint" is a concern raised by a mediation participant, court official, attorney, or community mediation center staff member or volunteer that suggests: (i) that the mediator may have engaged in conduct that violates these rules, the Standards of Professional Conduct for Mediators, or any local court rules adopted to implement the program in a district the mediator serves; or (ii) that the mediator has engaged in conduct that raises an issue about the mediator's character or practice. If a community mediation center withdraws its affiliation with a mediator who has been certified under these rules, then the community mediation center shall notify the Commission within thirty days of the disaffiliation. The center shall cooperate with the Commission if it investigates any such complaints.

(e) Commission staff shall notify the executive director of the Mediation Network of North Carolina, and the executive director of the community mediation center that is sponsoring the application of an applicant seeking certification as a district criminal court mediator, of any matter regarding the character, conduct, or fitness to practice of the applicant. Staff shall notify the executive director of the Mediation Network of North Carolina and the executive director of the community mediation center with whom a mediator is affiliated of any finding of probable cause by the Commission under Rule 9 of the Rules of the Dispute Resolution Commission, after review of any complaint filed against the mediator alleging an issue of character, conduct, or fitness to practice.

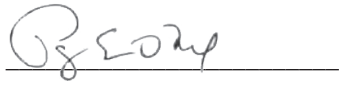
RULES OF MEDIATION FOR MATTERS
IN DISTRICT CRIMINAL COURT

* * *

These amendments to the Rules of Mediation for Matters in District Criminal Court become effective on 1 October 2021.

This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 25th day of August 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of August 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ORDER AMENDING THE RULES OF THE DISPUTE RESOLUTION COMMISSION

Pursuant to subsection 7A-38.2(b) of the General Statutes of North Carolina, the Court hereby amends Rule 10 of the Rules of the Dispute Resolution Commission.

* * *

Rule 10. The Mediator Certification and Training Committee

(a) **Appointment of the Mediator Certification and Training Committee**. The Commission's chair shall appoint a standing committee entitled the Mediator Certification and Training Committee to review the matters set forth in subsection (b) of this rule.

(b) **Matters to Be Considered by the Mediator Certification and Training Committee**. The Mediator Certification and Training Committee shall review and consider matters arising under this subsection.

(1) Commission staff may raise with the Mediator Certification and Training Committee's chair matters relating to the issuance of provisional pre-training approvals and that pertain to an applicant's education, work experience, training, or any other requirement for mediator certification unrelated to moral character, conduct, or fitness to practice, including a request that the chair review a staff determination not to issue a provisional pre-training approval.

(2) Commission staff may raise with the Mediator Certification and Training Committee's chair or the full committee matters that relate to the education, work experience, training, or other qualifications of an applicant for mediator certification unrelated to moral character, conduct, or fitness to practice. Appeals of staff determinations to deny an application based on a deficiency in the applicant's education, work experience, and/or training, or his or her failure to meet other requirements for certification unrelated to moral character, conduct, or fitness to practice, shall be brought before the full committee. Appeals shall be in writing and be sent to the Commission's office within thirty days of the date of the actual delivery of the notice of denial to the applicant or within thirty days of the date of the last attempted delivery by the U.S. Postal Service.

(3) Commission staff may raise with the Mediator Certification and Training Committee's chair or the full committee matters that pertain to applications for mediator training program certification or certification renewal that are unrelated to the moral character, conduct, or fitness to practice of training program personnel. Appeals of staff decisions to deny an application for mediator training program certification or certification renewal shall be brought before the full committee. Appeals shall be in writing and be sent to the Commission's office within thirty days of the date of the actual delivery of the notice of denial to the applicant or within thirty days of the date of the last attempted delivery by the U.S. Postal Service.

(c) **Commission Staff Review of Qualifications.**

(1) **Review of Provisional Pre-training Approvals.** Commission staff shall review requests for the issuance of provisional pre-training approvals, seeking guidance from the Mediator Certification and Training Committee chair, as necessary, and shall issue approvals in instances where the person seeking the approval appears to meet all education, work experience, and other requirements established for mediator certification by program rules and Commission policies, except that any matters relating to the moral character, conduct, or fitness to practice of the person requesting the approval shall be put before the Grievance and Disciplinary Committee or its chair under Rule 9. Staff may contact those requesting approvals, any third party or entity with relevant information about the requesting person, and may consider any other information acquired during the review process that bears on the requesting person's qualifications. If, after review, the chair determines that the person requesting the provisional pre-training approval does not meet the requisite criteria for certification established by program rules and Commission policies, then the chair shall instruct staff not to issue the pre-training approval. That determination shall be final and is not subject to appeal by the person requesting the provisional pre-training approval.

(2) **Review of Information Obtained During the Mediator Certification Process**. Commission staff

shall review all applications for mediator certification to determine whether the applicant meets the qualifications for certification unrelated to moral character, conduct, or fitness to practice set forth in program rules adopted by the Supreme Court for mediated settlement conferences or mediation programs under the jurisdiction of the Commission and any policies adopted by the Commission for the purpose of implementing those rules. Staff may contact an applicant to request additional information, may contact third parties or entities with relevant information about the applicant, and may consider any other information acquired during the review process that bears on the applicant's eligibility for certification.

(3) **Review of Mediator Training Program Certification Applications and Certification Renewal Applications**. Commission staff shall review all mediator training program applications for certification and certification renewal, including reviewing mediator training program agendas, handouts, role plays, and trainer qualifications, to ensure compliance with program rules and Commission policies relating to mediator training programs, except that any matters relating to the moral character, conduct, or fitness to practice of training program personnel shall be put before the Grievance and Disciplinary Committee or its chair under Rule 9. Staff may seek clarification and additional information from training program personnel and training program registrants and attendees, as necessary.

(d) **Mediator Certification and Training Committee Review.**

(1) **Duty to Review**. The Mediator Certification and Training Committee shall review all matters brought before it by Commission staff under the provisions of subsections (b)(2) and (b)(3) of this rule. The chair may, in his or her discretion, appoint members of the committee to serve on a subcommittee to review a particular matter brought to the committee by staff. The chair or his or her designee may issue subpoenas for the attendance of witnesses and for the production of books, papers, materials, or other documentary evidence deemed necessary to any such review. The chair or designee may contact the following persons and entities for information concerning an applicant for mediator certification, mediator training

program certification, or mediator training program certification renewal:

a. All references, employers, colleges, professional licensing or certification bodies, and other individuals or entities cited in applications and any additional persons or entities identified by Commission staff during the course of its review as having relevant information about the qualifications of an applicant for mediator certification, mediator training program certification, or mediator training program certification renewal.

b. Personnel affiliated with an applicant for mediator training program certification or mediator training program certification renewal, and those who registered for or have completed the training program.

All information in Commission files pertaining to requests for provisional pre-training approvals, initial certification applications of a mediator or mediator training program, or renewals of such certifications shall be confidential, except as provided in N.C.G.S. § 7A-38.2(h) or these rules.

(2) **Probable Cause Determination**. The members of the Mediator Certification and Training Committee who are eligible to vote shall deliberate to determine whether probable cause exists to believe that an applicant for mediator certification, mediator training program certification, or mediator training program certification renewal:

a. does not meet the qualifications for mediator certification unrelated to moral character, conduct, or fitness to practice as set forth in program rules adopted by the Supreme Court for mediated settlement conferences or mediation programs under the jurisdiction of the Commission or the policies adopted by the Commission for the purpose of implementing those rules; or

b. does not meet the requirements for mediator training program certification or mediator training program certification renewal unrelated to moral character, conduct, or fitness to practice as set forth in program rules adopted by the Supreme Court for mediated settlement conferences or mediation

programs under the jurisdiction of the Commission or the policies adopted by the Commission for the purpose of implementing those rules.

If probable cause is found, then the application shall be denied.

(3) **Authority of Mediator Certification and Training Committee to Deny an Application for Certification or Mediator Training Program Certification Renewal.**

a. If a majority of the Mediator Certification and Training Committee members who are reviewing a matter and eligible to vote find no probable cause under subsection (d)(2) of this rule, then Commission staff shall be instructed to certify the applicant for mediator certification or to certify or recertify the mediator training program.

b. If a majority of the Mediator Certification and Training Committee members reviewing a matter and eligible to vote finds probable cause under subsection (d)(2) of this rule, then the committee shall deny the application for mediator certification or mediator training program certification or mediator training program certification renewal. The committee's determination to deny the application shall be in writing, shall set forth the deficiencies the committee found in the application, and shall be forwarded to the applicant. Notification of the determination shall be by Certified Mail, return receipt requested, and such service shall be deemed sufficient for purposes of these rules. A copy of the notice shall also be sent to the applicant through the U.S. Postal Service by First-Class Mail.

c. If the Mediator Certification and Training Committee denies an application for mediator certification, mediator training program certification, or mediator training program certification renewal, then the applicant may appeal the denial to the Commission within thirty days from the date of the actual delivery of the notice of denial to the applicant or within thirty days from the date of the last attempted delivery by the U.S. Postal Service. Notification of an appeal must be in writing and directed to the

Commission's office. If no appeal is filed within thirty days as set out herein, then the applicant shall be deemed to have accepted the committee's findings and determination.

(e) **Appeal of the Denial of Application for Mediator Certification, Mediator Training Program Certification, or Mediator Training Program Certification Renewal to the Commission.**

(1) **The Commission Shall Meet to Consider Appeals**. In the discretion of the Commission's chair, an appeal by an applicant to the Commission of a Mediator Certification and Training Committee determination under subsection (d)(2) of this rule shall be heard either by (i) a five-member panel of Commission members chosen by the chair or his or her designee, or (ii) the members of the full Commission. Any members of the committee who participated in issuing the committee's determination shall be recused and shall not participate in the hearing. Under Rule 3(c), members of the Commission shall recuse themselves from hearing the matter when they cannot act impartially. No matter shall be heard and decided by less than three Commission members.

(2) **Conduct of the Hearing.**

a. At least thirty days prior to the hearing before the Commission or panel, Commission staff shall forward to the appealing party, special counsel to the Commission, if appointed, and members of the Commission or panel who will hear the matter, a copy of all documents considered by the Mediator Certification and Training Committee and the names of the members of the Commission or panel who will hear the matter. Any written challenge questioning the neutrality of a member of the Commission or panel shall be directed to and decided by the Commission's chair or designee. A written challenge shall be filed with the Commission no later than seven days from the date the person filing the challenge received notice of the members who will hear the appeal.

b. Hearings conducted by the Commission or a panel under this rule shall be de novo.

c. If, in the discretion of the Commission's chair, a panel is empaneled to hear the appeal, then the Commission's chair or designee shall appoint one of the members of the panel to serve as the presiding officer at the hearing before the panel. The Commission's chair or designee shall serve as the presiding officer at a hearing before the full Commission. The presiding officer shall have such jurisdiction and powers as are necessary to conduct a proper and efficient hearing and disposition of the matter on appeal. The presiding officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, or other documentary evidence.

d. Nothing herein shall restrict the chair of the Commission from serving on a panel or serving as its presiding officer at any hearing held under the provisions of subsection (e) of this rule.

e. Special counsel supplied by the North Carolina Attorney General, at the request of the Commission or otherwise employed by the Commission, may present evidence in support of the denial of certification or recertification.

f. The Commission or panel, through its counsel, and the applicant or the applicant's representative may present evidence in the form of sworn testimony and/or written documents. The Commission or panel, through its counsel, and the applicant may cross-examine any witness called to testify at the hearing. The Rules of Evidence shall not apply, except as to privilege, but shall be considered as a guide toward a full and fair development of the facts. Commission or panel members may question any witness called to testify at the hearing. The Commission or panel shall consider all evidence presented and give the evidence appropriate weight and effect.

g. Hearings shall be conducted in private unless the applicant requests a public hearing.

h. An applicant and any witnesses or others identified as having relevant information about the matter may appear at the hearing with or without counsel.

i. In the event that the applicant fails to appear without good cause, the Commission or panel shall proceed to hear from the witnesses who are present and make a determination based on the evidence presented at the proceeding.

j. Proceedings before the Commission or panel shall be conducted informally, but with decorum.

(3) **Date of the Hearing**. An appeal of any determination by the Mediator Certification and Training Committee to deny an application for mediator certification, mediator training program certification, or mediator training program certification renewal shall be heard by the Commission no later than 180 days from the date the notice of appeal is filed with the Commission, unless waived in writing by the applicant.

(4) **Notice of the Hearing**. The Commission's office shall serve on all parties by Certified Mail, return receipt requested, notice of the date, time, and place of the hearing no later than sixty days prior to the hearing, and such service shall be deemed sufficient for the purposes of these rules. A copy of the hearing notice shall also be sent through the U.S. Postal Service by First-Class Mail.

(5) **Ex Parte Communications**. With the exception of Commission staff, no person shall have any ex parte communication with a member of the Commission concerning the subject matter of the appeal. Communications regarding scheduling matters shall be directed to staff.

(6) **Attendance**. The presiding officer may, in his or her discretion, permit an attorney to represent a party by telephone or through video conference or allow witnesses to testify by telephone or through video conference, with such limitations and conditions as are just and reasonable. If an attorney or witness wishes to appear by telephone or video conference, then he or she shall notify Commission staff at least twenty days prior to the proceeding. At least five days prior to the proceeding, staff must be provided with the contact information of those who will participate by telephone or video conference.

(7) **Witnesses**. The presiding officer shall exercise his or her discretion with respect to the attendance and number of witnesses who appear, voluntarily or involuntarily, for

the purpose of ensuring the orderly conduct of the proceeding. At least ten days prior to the hearing, each party shall forward to the Commission's office and to all other parties the names of all witnesses who each intends to call to testify.

(8) **Rights of the Applicant at the Hearing**. At the hearing, the applicant may:

a. appear personally and be heard;

b. be represented by counsel;

c. call and examine witnesses;

d. offer exhibits; and

e. cross-examine witnesses.

(9) **Transcript**. The Commission shall retain a court reporter to keep a record of the proceeding. Any applicant who wishes to obtain a transcript of the record may do so at his or her own expense by contacting the court reporter directly. The only official record of the proceeding shall be the one made by the court reporter retained by the Commission. Copies of a tape, noncertified transcript, or record made by a court reporter retained by a party are not part of the official record.

(10) **Commission Deliberation**. The members of the Commission or panel shall deliberate to determine whether clear, cogent, and convincing evidence exists to believe that the education, work experience, training, or other qualifications of an applicant for mediator certification unrelated to moral character, conduct, or fitness to practice, fail to meet the requirements for certification set forth in program rules and/or Commission policies, or whether the qualifications of a mediator training program seeking certification or certification renewal fail to meet any of the requirements for certification or certification renewal unrelated to the moral character, conduct, or fitness to practice of mediator training program personnel set forth in program rules and/or Commission policies.

(11) **Commission Decision**. After the hearing, a majority of the Commission members hearing the appeal or the panel may find that:

a. there is not clear, cogent, and convincing evidence to support a denial of certification, and instruct

Commission staff to certify the applicant for mediator certification or to certify or recertify the applicant for mediator training program certification; or

b. there is clear, cogent, and convincing evidence that grounds exist to deny the application for mediator certification or mediator training program certification or mediator training program certification renewal.

The Commission or panel shall set forth its findings of fact, conclusions of law, and decision to deny certification or certification renewal in writing and serve its decision on the applicant within sixty days from the date the hearing is concluded. A copy of the decision shall be sent by Certified Mail, return receipt requested, and such service shall be deemed sufficient for purposes of these rules. A copy of the decision shall also be sent through the U.S. Postal Service by First-Class Mail.

(12) **Appeals**. The Superior Court, Wake County, shall have jurisdiction over appeals of Commission or panel decisions denying an application for certification of a mediator or mediator training program or mediator training program renewal. The decision denying certification or renewal of mediator training program certification under this rule shall be reviewable upon appeal if the entire record, as submitted, is reviewed to determine whether the decision is supported by substantial evidence. A notice of appeal shall be filed in the Superior Court, Wake County, no later than thirty days from the date of the actual delivery to the applicant of the decision denying certification or mediator training program certification renewal, or within thirty days from the last attempted delivery by the U.S. Postal Service.

(13) **New Application Following Denial of Initial Application for Certification or Mediator Training Program Certification Renewal**. An applicant whose application for mediator or mediator training program certification has been denied, or a mediator training program whose application for certification renewal has been denied, may reapply for certification under this rule.

Except as otherwise provided by the Mediator Certification and Training Committee, Commission, or a

panel of the Commission, no new application for mediator certification following a denial may be tendered within two years of the date of the denial of the application for mediator certification. A new application for mediator training program certification may be tendered at any time the applicant believes that the program has met the qualifications for mediator training program certification.

a. A new application following a denial shall be made in writing, verified by the applicant, and filed with the Commission's office.

b. The new application following a denial shall contain:

   1. the name and address of the applicant;

   2. a concise statement of the reasons upon which the denial was based;

   3. a concise statement of facts alleged to meet respondent's burden of proof as set forth in subsection (e)(13)(g) of this rule; and

   4. a statement consenting to a criminal background check, signed by the applicant or petitioner; or, if the applicant or petitioner is a mediator training program, by the trainers or instructors affiliated with the program.

c. The new application for certification may also contain a request for a hearing on the matter to consider any additional evidence that the applicant wishes to submit. An application from a mediator training program for certification or certification renewal may contain a request for a hearing on the matter to consider any additional evidence regarding the effectiveness of the program and/or the qualifications of its personnel.

d. Commission staff shall refer the new application to the Commission for review. In the discretion of the Commission's chair, the chair or designee may (i) appoint a five-member panel of Commission members to review the matter, or (ii) put the matter before the Commission for review. The panel shall not include any members of the Commission who were involved in a prior determination involving the applicant or petitioner. Members of the Commission

shall recuse themselves from reviewing any matter if they cannot act impartially. Any challenges questioning the neutrality of a member reviewing the matter shall be decided by the Commission's chair or designee. No matter shall be heard and decided by less than three Commission members.

e. If the applicant does not request a hearing under subsection (e)(13)(c) of this rule, then the Commission or panel shall review the application and shall decide whether to grant or deny the new application for mediator certification or mediator training program certification or certification renewal after denial within ninety days from the filing of the new application. That decision shall be final.

If the applicant requests a hearing, then it shall be held within 180 days from the filing of the new application, unless the time limit is waived by the applicant in writing. The Commission shall conduct the hearing consistent with subsection (e)(2) of this rule. In the discretion of the chair of the Commission, the hearing shall be conducted before the Commission or a panel appointed by the chair. At the hearing, the applicant may:

1. appear personally and be heard;
2. be represented by counsel;
3. call and examine witnesses;
4. offer exhibits; and
5. cross-examine witnesses.

f. At the hearing, the Commission may call witnesses, offer exhibits, and examine the applicant and witnesses.

g. The burden of proof shall be upon the applicant to establish by clear, cogent, and convincing evidence that:

1. the applicant has satisfied the qualifications that led to the denial;
2. the applicant has completed any paperwork required for certification, including, but not

limited to, the completion of an approved application form and execution of a release to conduct a background check, and paid any required certification fees; and

3. the applicant, if a mediator training program, has corrected any deficiencies as required by enabling legislation, program rules, or Commission policies, and has addressed and resolved any issues related to the qualifications of any persons affiliated with the program unrelated to moral character, conduct, or fitness to practice.

h. If the applicant has established that the conditions set forth in subsection (e)(13)(g) of this rule have been met by clear, cogent, and convincing evidence, and is entitled to have the application approved, then the Commission shall certify the applicant.

i. The Commission or panel shall set forth its decision to certify the applicant or to deny certification in writing, making findings of fact and conclusions of law. The decision shall be sent by Certified Mail, return receipt requested, within sixty days from the date of the hearing. Such service shall be deemed sufficient for purposes of these rules. A copy of the decision shall also be sent through the U.S. Postal Service by First-Class Mail.

j. The Superior Court, Wake County, shall have jurisdiction over appeals of Commission decisions to deny certification or certification renewal under subsection (e)(13) of this rule. A decision denying certification or certification renewal under this section shall be reviewable upon appeal, and the entire record, as submitted, shall be reviewed to determine whether the decision is supported by substantial evidence. Notice of appeal shall be filed in the Superior Court, Wake County, no later than thirty days from the date of the actual delivery of the decision to the applicant, or thirty days from the date of the last attempted delivery by the U.S. Postal Service. A copy of the decision shall also be sent to applicant through the U.S. Postal Service by First-Class Mail.

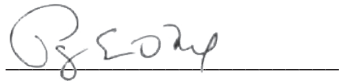
RULES OF THE DISPUTE
RESOLUTION COMMISSION

* * *

These amendments to the Rules of the Dispute Resolution Commission become effective on 1 October 2021.

This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 25th day of August 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of August 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ORDER AMENDING THE RULES FOR SETTLEMENT PROCEDURES IN DISTRICT COURT FAMILY FINANCIAL CASES

Pursuant to subsection 7A-38.4A(k) and subsection 7A-38.4A(*o*) of the General Statutes of North Carolina, the Court hereby amends the Rules for Settlement Procedures in District Court Family Financial Cases. This order affects Rules 4, 8, and 9.

* * *

Rule 4. Duties of Parties, Attorneys, and Other Participants in Mediated Settlement Conferences

(a) **Attendance**.

(1) **Persons Required to Attend**. The following persons shall attend a mediated settlement conference:

a. The parties.

b. At least one counsel of record for each party whose counsel has appeared in the case.

(2) **Attendance Required Through the Use of Remote Technology**. Any party or person required to attend a mediated settlement conference shall attend the conference using remote technology; for example, by telephone, videoconference, or other electronic means. The conference shall conclude when an agreement is reduced to writing and signed, as provided in subsection ~~(b)~~(c) of this rule, or when an impasse is declared. Notwithstanding this remote attendance requirement, the conference may be conducted in person if:

a. the mediator and all parties and persons required to attend the conference agree to conduct the conference in person and to comply with all federal, state, and local safety guidelines that have been issued; or

b. the court, upon motion of a party and notice to the mediator and to all parties and persons required to attend the conference, so orders.

(3) **Excusing the Attendance Requirement**. Any party or person may be excused from the requirement to attend a mediated settlement conference with the consent of all parties and persons required to attend the conference and the mediator.

(b) **Scheduling**. Participants required to attend the mediated settlement conference shall promptly notify the mediator, after selection or appointment, of any significant problems that they may have with the dates for mediated settlement conference sessions before the completion deadline, and shall inform the mediator of any problems that arise before an anticipated conference session is scheduled by the mediator. If a scheduling conflict in another court proceeding arises after a conference session has been scheduled by the mediator, then participants shall promptly attempt to resolve the conflict under Rule 3.1 of the General Rules of Practice for the Superior and District Courts, or, if applicable, the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina on 20 June 1985.

(c) **Finalizing Agreement**.

(1) If an agreement is reached at the mediated settlement conference, then the parties shall reduce the essential terms of the agreement to writing.

a. If the parties conclude the mediated settlement conference with a written document containing all of the terms of their agreement for property distribution and do not intend to submit their agreement to the court for approval, then the agreement shall be signed by all parties and formally acknowledged as required by N.C.G.S. § 50-20(d). If the parties conclude the conference with a written document containing all of the terms of their agreement and intend to submit their agreement to the court for approval, then the agreement shall be signed by all parties, but need not be formally acknowledged. In all cases, the mediator shall report a settlement to the court and include in the report the name of the person responsible for filing closing documents with the court.

b. If the parties reach an agreement at the mediated settlement conference regarding property distribution and do not intend to submit their agreement to the court for approval, but are unable to complete a final document reflecting their settlement or have it signed and acknowledged as required by N.C.G.S. § 50-20(d), then the parties shall produce a written summary of their understanding and use it to guide them in writing any agreements as may be required

to give legal effect to their understanding. If the parties intend to submit their agreement to the court for approval, then the agreement must be in writing and signed by the parties, but need not be formally acknowledged. The mediator shall facilitate the production of the summary and shall either:

1. report to the court that the matter has been settled and include in the report the name of the person responsible for filing closing documents with the court; or
2. declare, in the mediator's discretion, a recess of the mediated settlement conference.

If a recess is declared, then the mediator may schedule another session of the conference if the mediator determines that it would assist the parties in finalizing a settlement.

(2) In all cases where an agreement is reached after being ordered to mediation, whether prior to, or during, the mediation, or during a recess, the parties shall file a consent judgment or voluntary dismissal with the court within thirty days of the agreement or before the expiration of the mediation deadline, whichever is later. The mediator shall report to the court that the matter has been settled and who reported the settlement.

(3) An agreement regarding the distribution of property, reached at a proceeding conducted under this section or during a recess of the mediated settlement conference, which has not been approved by a court, shall not be enforceable unless it has been reduced to writing, signed by the parties, and acknowledged as required under N.C.G.S. § 50-20(d).

(d) **Payment of the Mediator's Fee**. The parties shall pay the mediator's fee as provided by Rule 7.

(e) **No Recording**. There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

Comment

Comment to Rule 4(c). Consistent with N.C.G.S. § 7A-38.4A(j), no settlement shall be enforceable unless it has been reduced to writing and signed by the parties. When a settlement is reached during a mediated settlement conference, the mediator shall ensure that the terms of the agreement are reduced to writing and signed by the parties and their attorneys before ending the conference.

Cases in which an agreement on all issues has been reached should be disposed of as expeditiously as possible. This assures that the mediator and the parties move the case toward disposition while honoring the private nature of the mediation process and the mediator's duty of confidentiality. If the parties wish to keep the terms of the settlement confidential, then they may timely file closing documents with the court, as long as those documents do not contain confidential terms (e.g., a voluntary dismissal or consent judgment resolving all claims). Mediators will not be required by local rules to submit agreements to the court.

* * *

Rule 8. Mediator Certification and Decertification

(a) The Commission may receive and approve applications for certification of persons to be appointed as mediators for family financial matters in district court. In order to be certified, an applicant must satisfy the requirements of this subsection.

(1) The applicant for certification must have a basic understanding of North Carolina family law. Applicants should be able to demonstrate that they have completed at least twelve hours of basic family law education by:

a. attending workshops or programs on topics such as separation and divorce, alimony and postseparation support, equitable distribution, child custody and support, and domestic violence;

b. completing an independent study on these topics, such as viewing or listening to video or audio programs on family law topics; or

c. having equivalent North Carolina family law experience, including work experience that satisfies one of the categories set forth in the Commission's policy on interpreting Rule 8(a)(1) (e.g., the applicant is an experienced family law judge or board certified family law attorney).

(2) The applicant for certification must:

a. have an Advanced Practitioner Designation from the Association for Conflict Resolution (ACR) and have earned an undergraduate degree from an accredited four-year college or university; or

b. have completed either (i) forty hours of Commission-certified family and divorce mediation training; or (ii) forty hours of Commission-certified trial court mediation training and sixteen hours of Commission-certified supplemental family and divorce mediation training; and be

1. a member in good standing of the North Carolina State Bar or a member similarly in good standing of the bar of another state and eligible to apply for admission to the North Carolina State Bar under Chapter 1, Subchapter C, of the North Carolina State Bar Rules and the Rules Governing the Board of Law Examiners and the Training of Law Students, 27 N.C. Admin. Code 1C.0105, with at least five years of experience after the date of licensure as a judge, practicing attorney, law professor, or mediator, or must possess equivalent experience;

2. a licensed psychiatrist under N.C.G.S. § 90-9.1, with at least five years of experience in the field after the date of licensure;

3. a licensed psychologist under N.C.G.S. §§ 90-270.1 to -270.22, with at least five years of experience in the field after the date of licensure;

4. a licensed marriage and family therapist under N.C.G.S. §§ 90-270.45 to -270.63, with at least five years of experience in the field after the date of licensure;

5. a licensed clinical social worker under N.C.G.S. § 90B-7, with at least five years of experience in the field after the date of licensure;

6. a licensed professional counselor under N.C.G.S. §§ 90-329 to -345, with at least five

years of experience in the field after the date of licensure; or

7. an accountant certified in North Carolina, with at least five years of experience in the field after the date of certification.

c. Any person who has not been certified as a mediator pursuant to these rules may be certified without compliance with subsection (a)(2)(b) and subsection (a)(5) of this rule if

1. the applicant for certification is a member in good standing of the North Carolina State Bar or a member similarly in good standing of the bar of another state and eligible to apply for admission to the North Carolina State Bar under Chapter 1, Subchapter C, of the North Carolina State Bar Rules and the Rules Governing the Board of Law Examiners and the Training of Law Students, 27 N.C. Admin. Code 1C.0105, with at least five years of experience after the date of licensure as a judge, practicing attorney, law professor, or mediator, or must possess equivalent experience; and meets the following additional requirements:

i. the applicant applies for certification within one year from 10 June 2020;

ii. the applicant has, by selection of the parties, mediated at least ten family financial settlement cases in the North Carolina District Court within the last five years, as shown by proof satisfactory to the Commission staff; and

iii. the applicant has taken a sixteen-hour supplemental family and divorce mediation training program approved by the Commission wherein the statutes, program rules, advisory opinions, and ethics, including the Standards of Professional Conduct for Mediators, are discussed;

or

2. the applicant for certification is a nonattorney who meets one of the required licensures set forth in subsection (a)(2)(b)(2) through subsection (a)(2)(b)(7) of this rule, and meets the following additional requirements:

    i. the applicant applies for certification within one year from 10 June 2020;

    ii. the applicant has, by selection of the parties, mediated at least fifteen family financial settlement cases in the North Carolina District Court within the last five years, as shown by proof satisfactory to the Commission staff; and

    iii. the applicant has taken a forty-hour family and divorce mediation training course and the six-hour training on North Carolina legal terminology, court structure, and civil procedure course approved by the Commission.

(3) If the applicant is not licensed to practice law in one of the United States, then the applicant must have completed six hours of training on North Carolina legal terminology, court structure, and civil procedure, provided by a Commission-certified trainer. An attorney licensed to practice law in a state other than North Carolina shall satisfy this requirement by completing a self-study course, as directed by Commission staff.

(4) If the applicant is not licensed to practice law in North Carolina, then the applicant must provide three letters of reference to the Commission about the applicant's good character, including at least one letter from a person with knowledge of the applicant's professional practice and experience qualifying the applicant under subsection (a) of this rule.

(5) The applicant must have observed, as a neutral observer and with the permission of the parties, two mediations involving a custody or family financial issue conducted by a mediator who (i) is certified under these rules, (ii) has an Advanced Practitioner Designation from the ACR, or (iii) is a mediator certified by the NCAOC for custody

matters. Mediations eligible for observation shall also include mediations conducted in matters prior to litigation of family financial disputes that are mediated by agreement of the parties and incorporate these rules.

If the applicant is not an attorney licensed to practice law in one of the United States, then the applicant must observe three additional mediations involving civil or family-related disputes, or disputes prior to litigation that are conducted by a Commission-certified mediator and are conducted pursuant to a court order or an agreement of the parties incorporating the mediation rules of a North Carolina state or federal court.

All mediations shall be observed from their beginning until settlement, or until the point that an impasse has been declared, and shall be reported by the applicant on a Certificate of Observation - Family Financial Settlement Conference Program, Form AOC-DRC-08. All observers shall conform their conduct to the Commission's policy on *Guidelines for Observer Conduct*.

(6) The applicant must demonstrate familiarity with the statutes, rules, standards of practice, and standards of conduct governing mediated settlement conferences conducted in North Carolina.

(7) The applicant must be of good moral character and adhere to the Standards of Professional Conduct for Mediators when acting under these rules. On his or her application(s) for certification or application(s) for certification renewal, an applicant shall disclose any:

a. pending criminal charges;

b. criminal convictions;

c. restraining orders issued against him or her;

d. failures to appear;

e. ~~pending or~~ closed grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country;

f. disciplinary action taken against him or her by a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or

another country, including, but not limited to, disbarment, revocation, decertification, or suspension of any professional license or certification, including the suspension or revocation of any license, certification, registration, or qualification to serve as a mediator in another state or country, even if stayed;

g. judicial sanctions imposed against him or her in any jurisdiction; ~~or~~

h. civil judgments, tax liens, or bankruptcy filings that occurred within the ten years preceding the date that the initial or renewal application was filed with the Commission.; or

i. pending grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country.

~~A mediator shall report to the Commission any of the above-enumerated matters arising subsequent to the disclosures reported on the initial or renewal application for certification within thirty days of receiving notice of the matter.~~

If a matter listed in subsections (a)(7)(a) through (a)(7)(h) of this rule arises after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter.

If a pending grievance or complaint described in subsection (a)(7)(i) of this rule is filed after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter or, if a response to the grievance or complaint is permitted by the professional licensing, certifying, or regulatory body, no later than thirty days after the due date for the response.

As referenced in this subsection, criminal charges or convictions (excluding infractions) shall include felonies, misdemeanors, or misdemeanor traffic violations (including driving while impaired) under the law of North

Carolina or another state, or under the law of a federal, military, or foreign jurisdiction, regardless of whether adjudication was withheld (prayer for judgment continued) or the imposition of a sentence was suspended.

(8) The applicant must submit proof of the qualifications set out in this rule on a form provided by the Commission.

(9) The applicant must pay all administrative fees established by the NCAOC upon the recommendation of the Commission.

(10) The applicant must agree to accept the fee ordered by the court under Rule 7 as payment in full of a party's share of the mediator's fee.

(11) The applicant must comply with the requirements of the Commission for completing and reporting continuing mediator education or training.

(12) The applicant must agree, once certified, to make reasonable efforts to assist applicants for mediator certification in completing their observation requirements.

(b) No mediator who held a professional license and relied upon that license to qualify for certification under subsection (a)(2)(b) of this rule shall be decertified or denied recertification because the mediator's license lapses, is relinquished, or becomes inactive; provided, however, that this subsection shall not apply to a mediator whose professional license is revoked, suspended, lapsed, or relinquished, or whose professional license becomes inactive due to disciplinary action, or the threat of disciplinary action, from the mediator's licensing authority. Any mediator whose professional license is revoked, suspended, lapsed, relinquished, or whose professional license becomes inactive shall report the matter to the Commission.

(c) A mediator's certification may be revoked or not renewed at any time if it is shown to the satisfaction of the Commission that a mediator no longer meets the qualifications set out in this rule or has not faithfully observed these rules or those of any judicial district in which he or she has served as a mediator. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible for certification under this rule. No application for certification renewal shall be denied on the ground that the mediator's training and experience does not satisfy a training and experience requirement promulgated after the date of the mediator's original certification.

Comment

Comment to Rule 8(a)(3). Commission staff has discretion to waive the requirements set out in Rule 8(a)(3) if an applicant can demonstrate sufficient familiarity with North Carolina legal terminology, court structure, and civil procedure.

* * *

Rule 9. Certification of Mediation Training Programs

(a) Certified training programs for mediators who are seeking certification under Rule 8(a)(2)(b) shall consist of a minimum of forty hours of instruction. The curriculum of such programs shall include the following topics:

(1) Conflict resolution and mediation theory.

(2) Mediation process and techniques, including the process and techniques of mediating family and divorce matters in district court.

(3) Communication and information gathering.

(4) Standards of conduct for mediators, including, but not limited to, the Standards of Professional Conduct for Mediators.

(5) Statutes, rules, and practices governing mediated settlement conferences for family financial matters in district court.

(6) Demonstrations of mediated settlement conferences, both with and without attorney involvement.

(7) Simulations of mediated settlement conferences, involving student participation as the mediator, attorneys, and disputants, which shall be supervised, observed, and evaluated by program faculty.

(8) An overview of North Carolina law as it applies to child custody and visitation, equitable distribution, alimony, child support, and postseparation support.

(9) An overview of family dynamics, the effect of divorce on children and adults, and child development.

(10) Protocols for screening cases for issues involving domestic violence and substance abuse.

(11) Satisfactory completion of an exam by all students testing their familiarity with the statutes, rules, and practices governing settlement procedures for family financial matters in district court.

(12) Technology and how to effectively utilize technology during a mediation.

(b) Certified training programs for mediators certified under Rule 8(a) shall consist of a minimum of sixteen hours of instruction and the curriculum shall include the topics listed in subsection (a) of this rule. There shall be at least two simulations as required by subsection (a)(7) of this rule.

(c) A training program must be certified by the Commission before a mediator's attendance at the program may be used to satisfy the training requirement under Rule 8(a). Certification does not need to be given in advance of attendance. Training programs attended prior to the promulgation of these rules, attended in other states, or approved by the ACR may be approved by the Commission if they are in substantial compliance with the standards set forth in this rule. The Commission may require attendees of an ACR-approved program to demonstrate compliance with the requirements of subsections (a)(5) and (a)(8) of this rule.

(d) To complete certification, a training program shall pay all administrative fees required by the NCAOC, in consultation with the Commission.

* * *

These amendments to the Rules for Settlement Procedures in District Court Family Financial Cases become effective on 1 October 2021.

This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 25th day of August 2021.

For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of August 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ORDER AMENDING THE STANDARDS OF PROFESSIONAL CONDUCT FOR MEDIATORS

Pursuant to subsection 7A-38.2(a) of the General Statutes of North Carolina, the Court hereby amends Standard 3 of the Standards of Professional Conduct for Mediators.

* * *

Standard 3. Confidentiality

A mediator shall, subject to exceptions set forth below, maintain the confidentiality of all information obtained within the mediation process.

(a) A mediator shall not disclose to any nonparticipant, directly or indirectly, any information communicated to the mediator by a participant within the mediation process, whether the information is obtained before, during, or after the mediated settlement conference. A mediator's filing of a copy of an agreement reached in mediation with the appropriate court, under a statute that mandates such filing, shall not be considered to be a violation of this subsection.

(b) A mediator shall not disclose to any participant, directly or indirectly, any information communicated to the mediator in confidence by any other participant in the mediation process, whether the information is obtained before, during, or after the mediated settlement conference, unless the other participant gives the mediator permission to do so. A mediator may encourage a participant to permit disclosure but, absent permission, the mediator shall not disclose the information.

(c) A mediator shall not disclose to court officials or staff any information communicated to the mediator by a participant within the mediation process, whether before, during, or after the mediated settlement conference, including correspondence or communications regarding scheduling or attendance, except as required to complete a report of mediator form; provided, however, that when seeking to collect a fee for services, the mediator may share correspondence or communications from a participant relating to the fees of the mediator. Report of mediator forms are available on the North Carolina Administrative Office of the Court's website at https://www.nccourts.gov.

(d) Notwithstanding the confidentiality provisions set forth in subsections (a), (b), and (c) of this standard, a mediator may report otherwise confidential conduct or statements made before, during, or after mediation in the following circumstances:

(1) If a mediator believes that communicating certain procedural matters to court officials or staff will aid the mediation, then, with the consent of the parties to the mediation, the mediator may do so. In making a permitted disclosure, a mediator shall refrain from expressing his or her personal opinion about a participant or any aspect of the case to court officials or staff.

(2) If a statute requires or permits a mediator to testify, give an affidavit, or tender a copy of an agreement reached in mediation to the official designated by the statute, then the mediator may do so.

If, under the Rules for Settlement Procedures in District Court Family Financial Cases or the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, a hearing is held on a motion for sanctions for failure to attend a mediated settlement conference, or for failure to pay the mediator's fee, and the mediator who mediated the dispute testifies, either as the movant or under a subpoena, then the mediator shall limit his or her testimony to facts relevant to a decision about the sanction sought and shall not testify about statements made by a participant that are not relevant to that decision.

(3) If a mediator is subpoenaed and ordered to testify or produce evidence in a criminal action or proceeding as provided in N.C.G.S. § 7A-38.1(1), N.C.G.S. § 7A-38.4A(j), and N.C.G.S. § 7A-38.3B(g), then the mediator may do so.

(4) If public safety is at issue, then a mediator may disclose otherwise confidential information to participants, nonparticipants, law enforcement personnel, or other persons potentially affected by the harm, if:

a. a party to, or a participant in, the mediation has communicated to the mediator a threat of serious bodily harm or death to any person, and the mediator has reason to believe the party has the intent and ability to act on the threat;

b. a party to, or a participant in, the mediation has communicated to the mediator a threat of significant damage to real or personal property, and the mediator has reason to believe the party has the intent and ability to act on the threat; or

c. a party or other participant's conduct during the mediation results in direct bodily injury or death to a person.

(5) If a party to, or a participant in, a mediation has filed a complaint with ~~either~~ the Commission, ~~or~~ the North Carolina State Bar, or another professional licensing board established by the North Carolina General Assembly regarding a mediator's professional conduct, moral character, or fitness to practice as a mediator, then the mediator may reveal otherwise confidential information for the purpose of defending himself or herself against the complaint.

(6) If a party to, or a participant in, a mediation has filed a lawsuit against a mediator for damages or other relief regarding the mediator's professional conduct, moral character, or fitness to practice as a mediator, then the mediator may reveal otherwise confidential information for the purpose of defending himself or herself in the action.

(7) With the permission of all parties, a mediator may disclose otherwise confidential information to an attorney who now represents a party in a case previously mediated by the mediator and in which no settlement was reached. The disclosure shall be intended to help the newly involved attorney understand any offers extended during the mediation process and any impediments to settlement. A mediator who discloses otherwise confidential information under this subsection shall take great care, especially if some time has passed, to ensure that their recall of the discussion is clear, that the information is presented in an unbiased manner, and that no confidential information is revealed.

(8) If a mediator is a lawyer licensed by the North Carolina State Bar and another lawyer makes statements or engages in conduct that is reportable under subsection (d)(4) of this standard, then the mediator shall report the statements or conduct to either the North Carolina State Bar or the court having jurisdiction over the matter, in accordance with Rule 8.3(e) of the North Carolina Rules of Professional Conduct.

(9) If a mediator concludes that, as a matter of safety, the mediated settlement conference should be held in a secure location, such as the courthouse, then the mediator may seek the assistance of court officials or staff in securing a location, so long as the specific circumstances of the parties' dispute are not identifiable.

(10) If a mediator or mediator-observer witnesses concerning behavior of an attorney during a mediation, then that behavior may be reported to the North Carolina Lawyer Assistance Program for the purpose of providing assistance to the attorney for alcohol or substance abuse.

In making a permitted disclosure under this standard, a mediator should make every effort to protect the confidentiality of noncomplaining parties or participants in the mediation, refrain from expressing his or her personal opinion about a participant, and avoid disclosing the identities of the participants or the specific circumstances of the parties' dispute.

(e) "Court officials or staff," as used in this standard, includes court officials or staff of North Carolina state and federal courts, state and federal administrative agencies, and community mediation centers.

(f) The duty of confidentiality as set forth in this standard encompasses information received by the mediator and then disseminated to a nonmediator employee or nonmediator associate who is acting as an agent of the mediator.

(1) A mediator who individually or together with other professionals employs and/or utilizes a nonmediator in the practice, firm, or organization shall make reasonable efforts to ensure that the practice, firm, or organization has provided reasonable assurance that the nonmediator's conduct is compatible with the professional obligations of the mediator.

a. A mediator having direct, or indirect, supervisory authority over the nonmediator shall make reasonable efforts to ensure that the nonmediator's conduct is compatible with the ethical obligations of the mediator.

b. A mediator may share confidential files with the nonmediator provided the mediator properly supervises the nonmediator to ensure the preservation of party confidences.

c. A mediator shall be responsible for the nonmediator's actions, or inactions, that would be a violation of these standards if:

1. the mediator orders or, with the knowledge of the specific conduct, ratifies the conduct; or

2. the mediator has managerial or direct supervisory authority over the nonmediator and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action to avoid the consequences.

(2) A mediator who individually or together with other professionals employs and/or utilizes a nonmediator in the practice, firm, or organization shall make reasonable efforts to ensure that the nonmediator's conduct is compatible with the provisions set forth in subsections (c) and (d) of this standard.

(g) Nothing in this standard prohibits the use of information obtained in a mediation for instructional purposes or for the purpose of evaluating or monitoring the performance of a mediator, mediation organization, or dispute resolution program, so long as the parties or the specific circumstances of the parties' controversy are not identifiable.

Comment

Comment to Standard 3(f). Mediators may employ associates and/or assistants in their practice, including secretaries, law student interns, and paraprofessionals. The associates and assistants, whether employees or independent contractors, act for the mediator in rendition of the mediator's professional services. A mediator must give the associates and assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to a mediation case. The measures employed in supervising nonmediators should take account of the fact that nonmediators do not have mediation training and are not subject to professional discipline by the Commission.

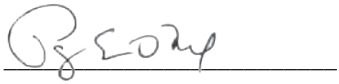
* * *

This amendment to the Standards of Professional Conduct for Mediators becomes effective on 1 October 2021.

This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

STANDARDS OF PROFESSIONAL CONDUCT
FOR MEDIATORS

Ordered by the Court in Conference, this the 25th day of August 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of August 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

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