377 N.C.—No. 1 Pages 1-96

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

MAY 21, 2021

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OF
NORTH CAROLINA

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SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 19 MARCH 2021

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CHILD ABUSE, DEPENDENCY, AND NEGLECT

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TERMINATION OF PARENTAL RIGHTS—Continued

No-merit brief—termination on multiple grounds—both parents—The trial court's order terminating the parental rights of a mother based on neglect and willful failure to make reasonable progress and of a father based on neglect, willful failure to make reasonable progress, and willful failure to pay a reasonable portion of the cost of the children's care was affirmed where their attorneys filed no-merit briefs and the order was based on clear, cogent, and convincing evidence supporting the grounds for termination. **In re R.D.M., 94.**

SCHEDULE FOR HEARING APPEALS DURING 2021

NORTH CAROLINA SUPREME COURT

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

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

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

AT

RALEIGH

IN THE MATTER OF A.M.L., G.J.L., B.J.B., J.E.B., T.R.B., JR.

No. 69A20

Filed 19 March 2021

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

The trial court properly terminated the parental rights of respondent-mother for willful failure to make reasonable progress to correct the conditions which led to the removal of the children where the evidence showed that respondent left the children in foster care for sixteen months, she never obtained the required substance abuse assessment (despite losing custody of the children due to substance abuse issues), she repeatedly failed drug screens, and she did not comply with any of the mental health aspects of the case plan.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 26 November 2019 by Judge Jeanie R. Houston in District Court, Wilkes County. This matter was calendared for argument in the Supreme Court on 11 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Erika Leigh Hamby for petitioner-appellee Wilkes County Department of Social Services.

IN RE A.M.L.

[377 N.C. 1, 2021-NCSC-21]

Poyner Spruill LLP, by John Michael Durnovich and Christopher S. Dwight, for appellee Guardian ad Litem.

Sydney Batch for respondent-appellant mother.

BARRINGER, Justice.

¶ 1 Respondent-mother appeals from the trial court's 26 November 2019 orders terminating her parental rights in her minor children A.M.L. (Allie),[1] G.J.L. (Gregory), T.R.B., Jr. (Teddy), J.E.B. (Johnson), and B.J.B. (Braxton).[2] Upon careful consideration, we affirm the trial court's orders terminating respondent-mother's parental rights.

I. Factual and Procedural Background

¶ 2 The Wilkes County Department of Social Services (DSS) first became involved with respondent-mother almost a decade and a half before the ultimate termination of her parental rights. In July of 2005, DSS conducted a family assessment based on allegations of neglect. At that time, respondent-mother's eldest child, Allie, was barely one year old, while her little brother, Gregory, was only a few months old. Since that first assessment, respondent-mother has incurred more than a dozen subsequent DSS assessments, subjecting Allie and Gregory, as well as their younger brothers Teddy, Johnson, and Braxton, to multiple placements in foster care, three placements in case management, and numerous case decisions for services needed or services recommended.

¶ 3 On 25 January 2018, DSS received a report alleging drug use in respondent-mother's home while her five children—thirteen-year-old Allie, twelve-year-old Gregory, ten-year-old Teddy, three-year-old Johnson, and three-year-old Braxton—were locked in a room. DSS's investigation confirmed the allegations. Allie and Gregory reported that their parents invited strange men into the home, permitted drug use in the home, used drugs themselves, and locked the children in a room for hours at a time, leaving Allie to care for her younger siblings. Further, respondent-

1. Pseudonyms are used throughout this opinion to protect the identities of the juveniles.

2. While the parental rights of the children's fathers were also terminated, neither father appealed the trial court's termination orders nor are they parties to this appeal. The trial court terminated the parental rights of Teddy, Johnson, and Braxton's father in the same 26 November 2019 orders that terminated respondent-mother's parental rights. As for Allie and Gregory's father, the trial court terminated his parental rights by a different order entered in a separate termination hearing.

mother encouraged Allie and Gregory to use marijuana, and Gregory, influenced by the encouragement, used marijuana.

¶ 4 In response, DSS attempted to place the children in safety resource placements. However, both placements failed—the first caregiver was unable to care for the children and the second disregarded the safety plan and allowed the parents unsupervised time alone with the children. As a result, DSS obtained nonsecure custody of the children and filed juvenile petitions alleging that the children were neglected juveniles. After a hearing on 19 March 2018, the trial court entered a disposition order on 28 June 2018 adjudicating the children to be neglected juveniles, ordering custody of the children to remain with DSS, and granting supervised visitation to respondent-mother on the condition that she pass random drug screens.

¶ 5 DSS prepared a case plan that required respondent-mother to take parenting classes, complete a substance abuse assessment and follow any treatment recommendations, complete a mental health assessment and follow any treatment recommendations, participate in a recovery group, obtain and maintain appropriate housing and employment, complete random drug screens, attend a group designed to assist with special needs children, develop knowledge of Johnson's diagnosis and needs, attend all visitations, sign a voluntary support agreement, remain in contact and attend meetings with DSS, refrain from criminal activity, and provide written statements as to why the children were placed in DSS custody.

¶ 6 In the permanency planning and review orders entered after a 25 June 2018 hearing, the trial court found that respondent-mother had made no progress on her case plan. After signing the case plan, respondent-mother had failed two drug screens (testing positive for methamphetamine and OxyContin), been incarcerated twice in the prior three weeks, failed to comply with any of DSS's requests, maintained minimal contact with the social worker, and only visited once with all five children. In addition, since the children entered custody on 31 January 2018, respondent-mother had incurred twenty-six criminal charges. As a result, the trial court left custody of the children with DSS, set the primary plan for the children as adoption with a secondary plan of custody with an approved caregiver, and relieved DSS of further efforts towards reunification.

¶ 7 In an order filed following the next permanency-planning hearing on 4 February 2019, the trial court found that respondent-mother had made "very little progress" on her case plan and still "need[ed] significant sub-

stance abuse and mental health treatment." Due to its assessment, the trial court made no changes to custody, visitation, or the children's permanent plans.

¶ 8 On 4 March 2019, DSS filed petitions to terminate respondent-mother's parental rights due to her neglect and willful failure to make reasonable progress under N.C.G.S. § 7B-1111(a)(1) and (2). In addition, DSS alleged that grounds existed to terminate respondent-mother's parental rights in Teddy, Johnson, and Braxton for dependency under N.C.G.S. § 7B-1111(a)(6). The trial court held the termination hearing on 13 June and 1 July 2019.

¶ 9 On 26 November 2019, the trial court entered orders terminating respondent-mother's parental rights. After making extensive findings of fact, the trial court concluded that grounds existed to terminate respondent-mother's parental rights in each child pursuant to N.C.G.S. § 7B-1111(a)(1), (2), and (6) and that it was in each child's best interests to terminate respondent-mother's parental rights. Respondent-mother appeals from these termination orders.

II. Standard of Review

¶ 10 The Juvenile Code provides a two-step process for termination of parental rights consisting of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109 to -1110 (2019). During the adjudicatory stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence that one or more grounds for termination exists. N.C.G.S. § 7B-1109(e)–(f). If the petitioner meets this burden, the matter proceeds to the dispositional stage where the trial court must determine whether termination of parental rights is in the children's best interests. N.C.G.S. § 7B-1110(a).

¶ 11 This Court reviews the trial court's adjudication of grounds to terminate parental rights under N.C.G.S. § 7B-1111(a) "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re N.G.*, 374 N.C. 891, 895 (2020) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). If a finding of fact is supported by clear, cogent, and convincing evidence, it "is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379 (2019). Meanwhile, 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). Finally, this Court reviews de novo "whether a trial court's findings of fact support its conclusions of law." *In re J.S.*, 374 N.C. 811, 814 (2020).

III. Analysis

¶ 12 Respondent-mother challenges all three grounds for termination adjudicated by the trial court. Since "an adjudication of any single ground for termination under N.C.G.S. § 7B-1111(a) will suffice to support a trial court's order terminating parental rights," this Court need only uphold one of the statutory grounds adjudicated by the trial court. *In re L.M.M.*, 375 N.C. 346, 349 (2020).

¶ 13 The second ground adjudicated for the termination of respondent-mother's parental rights was for willfully leaving her children in foster care or placement outside the home without making reasonable progress, per N.C.G.S. § 7B-1111(a)(2). To terminate parental rights under this provision, the trial court must find that respondent-mother (1) "willfully left the juvenile[s] in foster care or placement outside the home for more than 12 months," and (2) respondent-mother did not show "reasonable progress under the circumstances . . . in correcting those conditions which led to the removal of the juvenile[s]." N.C.G.S. § 7B-1111(a)(2) (2019).

¶ 14 In adjudicating grounds for the termination of respondent-mother's parental rights, the trial court made the following findings of fact:[3]

> 16. The minor child[ren have] remained in the care and custody of the Wilkes County Department of Social Services continuously since January 31, 2018 and therefore, [have] been in the care and custody of [DSS] for approximately sixteen (16) months at the time of this hearing.
>
> . . . .
>
> 18. Investigator Norwood spoke to [Allie] who indicated that there was active drug use in the home, some drug use in front of the children, Respondent Mother encouraged the older children to use marijuana, and [Allie] and her siblings were locked in a room while she was made to provide care for them.
>
> . . . .

3. The quoted language comes from the order terminating respondent-mother's parental rights in Allie. While the trial court entered separate orders for each child, the orders are nearly identical as to the findings and conclusions related to respondent-mother.

20. At the time of the report the family was living in a house on Boone Trail. [Allie] got an award from school and was excited to show her mother and step-father. She went into the bathroom and saw Mother with a needle in her arm and step-father with a cloth around his arm.

21. [Allie] confirmed that Respondent Mother and her step-father were aware that the children had been offered marijuana by a cousin and they allowed at least one of the children to use marijuana.

. . . .

26. After the minor child[ren] w[ere] placed into the care and custody of [DSS], a Family Services Case Plan was developed on February 27, 2018 for Respondent Mother to address the conditions that led to the minor child[ren]'s removal from the home specifically: substance abuse, parenting skills, and mental health.

27. Respondent Mother signed her Family Services Case Plans with [DSS] on May 1, 2018, after the minor child[ren] had been in care for over four months.

28. Prior to May 1, 2018 Respondent Mother was not cooperating with the agency, she was not maintaining contact with the Social Worker, and was not utilizing visitation with the minor child[ren].

. . . .

33. Subsequent to the minor child[ren] coming into the care of [DSS], Respondent Mother obtained 26 new criminal charges in four surrounding counties. These charges included breaking and entering, simple possession of controlled substances, and larceny. She spent some time in jail after initially being charged, but she did not have any lengthy period of incarceration.

. . . .

35. [DSS] sent referrals for substance abuse and mental health assessments to Daymark Recovery in May 2018. Respondent Mother did not complete assessments with Daymark until approximately March 2019 while in Case Management with her new child. This assessment appeared to be only a substance abuse assessment, and did not appear to include a mental health assessment.

36. Respondent Mother tested positive for buprenorphine at the time of her assessment with Daymark in March 2019. When questioned about being positive for buprenorphine, she told the assessors that she was participating in treatment with Rowan Psychiatric. Due to her reported compliance with Rowan Psychiatric, she was not given any recommendations by Daymark other than to continue in treatment.

37. [DSS] was unaware of the mother's participation with Rowan Psychiatric until receiving the assessment from Daymark Recovery. [DSS] cannot verify that the mother completed an assessment at Rowan Psychiatric, or that she was receiving the comprehensive treatment including medication and counseling.

38. The Social Worker requested Respondent Mother's records from Rowan Psychiatric. The Social Worker received records for Respondent Mother, but those records primarily consisted of drug screen results. Most screens were negative, but the records did indicate that the mother tested positive for oxymorphone in November 2018. Respondent Mother began attending Rowan Psychiatric in September 2018.

. . . .

46. Respondent Mother was requested to attend Recovery Seekers or a similar group for individuals in recovery. She has not participated in such a group.

47. Respondent Mother was to participate in random drug screens to demonstrate compliance with substance abuse treatment, and appropriate use of medication. Mother was called for approximately twenty-three random drug screens.

    a. She *failed to show* for screens eight times . . . .

    b. Respondent Mother appeared and *passed* drug screens nine times . . . .

    c. Respondent Mother appeared and *failed* drug screens five times on the following dates: February 6, 2018 failed for methamphetamine, July 16, 2018 failed for amphetamine, October 1, 2018 failed for oxymorphone, November 6, 2018 failed for oxymorphone, and May 16, 2019 failed for amphetamine and methamphetamine.

48. Respondent Mother asserted that she believed she failed the May 16, 2019 drug screen due to taking Zyrtec and Sudafed for allergies and congestion. The [c]ourt did not find this assertion compelling.

. . . .

55. Respondent Mother indicates that she attends Rowan Psychiatric for Subutex treatment, and states that she has appointments once a month to receive her medications, attend counseling, and see her doctor. She indicates that she is drug tested when she visits the doctor, and that she is receiving treatment for bi-polar as well.

56. Respondent Mother acknowledged that she did not inform the Social Worker about her participating in treatment at Rowan Psychiatric or the prescription medication(s) she received as part of that treatment.

. . . .

60. Respondent Mother claims to be drug free for 6 to 7 months, but failed drug screens in November 2018 and May 2019.

61. Respondent Mother tends to overstate her periods of sobriety. . . .

. . . .

64. Respondent Mother attributed [her] late start working on the Case Plan to not having a hard copy of the Case Plan to reference. The [c]ourt did not find this persuasive as Respondent Mother had participated in multiple cases of Case Management with [DSS] in the past and had always been able to complete those items timely.

65. Respondent Mother and her husband in fact completed their Voluntary Services Plan for their newest child within 60 days.

66. The minor child[ren] . . . have been in the care of [DSS] on two other occasions due to similar allegations regarding substance abuse. On both occasions Respondent Mother complied with her Family Services Case Plan and the children were returned to her care only to reenter care again due to the same or similar concerns of substance abuse.

67. Respondent Mother admitted that even without a hard copy Case Plan to reference, due to her past involvement with [DSS] she was aware that she would need to take parenting classes, and address her substance abuse concerns.

. . . .

69. Though Respondent Mother purports to have been working a substance abuse treatment plan through Rowan Psychiatric since September 2018, she has failed at least three drug screens since September 2018.

70. Respondent Mother reports that she is being treated for bipolar though her records received

> from Rowan Psychiatric do not reveal a mental health assessment or any mental health treatment.
>
> . . . .
>
> 72. Respondent Mother has not adequately addressed her substance abuse or mental health issues . . . .

¶ 15 After making these findings, the trial court concluded

> [t]hat upon clear, cogent, and convincing evidence that the minor child[ren have] been willfully left in foster care for more than twelve (12) months without Respondent Mother making reasonable progress to correct the conditions that led to [their] removal, specifically substance abuse, parenting skills, and mental health. Considering that Respondent Mother has made very little progress on her Family Services Case Plan, and there is no evidence she has adequately addressed these issues outside of a Case Plan, and she ultimately did not maintain a stable bond between herself and the minor child[ren]. Therefore, the Petitioner has shown that grounds exist pursuant to N.C.G.S. § 7B-1111(a)(2) to terminate Respondent Mother's parental rights.

¶ 16 On appeal, respondent-mother concedes that she left her children in foster care for sixteen months, exceeding the twelve months required to terminate parental rights under N.C.G.S. § 7B-1111(a)(2). However, respondent-mother contests several of the trial court's findings of facts, as well as its conclusion to terminate her parental rights, arguing that she substantially complied with the case plan.

A. Challenge to the Trial Court's Finding That There Was Time Available for Respondent-Mother to Complete the Case Plan

¶ 17 Respondent-mother begins by challenging the trial court's findings concerning her lack of progress before signing the case plan on 1 May 2018. According to respondent-mother, she was not provided a copy of her case plan when DSS first created it on 27 February 2018. However, the trial court considered this assertion in its findings of fact, noting that respondent-mother had successfully completed two previous case plans and thus "was aware that she would need to take parenting classes[ ] and address her substance abuse concerns." Moreover, respondent-mother

testified that she knew from the beginning that, regardless of the case plan, she needed to address her substance abuse issues. Yet despite this knowledge, respondent-mother did not point to a single action taken prior to 1 May 2018 that addressed either her parenting or substance abuse issues.

¶ 18 Additionally, the trial court noted that respondent-mother's alleged "late start working on the Case Plan" was not persuasive because she had previously completed two other case plans in a timely manner. The record supports this determination. DSS created the case plan on 27 February 2018. Even if respondent-mother did not receive a copy of the case plan until 1 May 2018, she was without a physical copy for at most sixty-two days. In comparison, the termination hearing occurred a full year after 1 May 2018, on 13 June and 1 July 2019, giving respondent-mother ample time to comply with the case plan after she signed it. Accordingly, the trial court did not err by finding that respondent-mother had sufficient time—namely an entire yea—to make reasonable progress on the case plan, regardless of the two months she may have been without a physical copy.

¶ 19 In a similar vein, respondent-mother challenges finding of fact 28—that she was not cooperating with DSS, not maintaining contact with the social worker, and not visiting her children prior to 1 May 2018. This finding of fact has no impact on our analysis. Accordingly, we decline to address respondent-mother's assignment of error regarding finding of fact 28. As previously noted, even ignoring the two months that elapsed between the case plan's creation and the day it was signed, respondent-mother still had more than a full year to make reasonable progress on the case plan. Regardless of her behavior during the two months when she allegedly was unable to contact the social worker or visit the children, her actions during the next year were sufficient to support the trial court's finding that she failed to make reasonable progress on her case plan.

B. Challenge to the Trial Court's Finding That Respondent-Mother Did Not Make Progress on the Case Plan

¶ 20 Respondent-mother's primary argument is that her actions in the year before the termination hearing contradict the trial court's findings that she made very little progress on her case plan. However, the trial court acknowledged these actions in its findings of fact; they simply were not enough to comprise reasonable progress. After careful review, we hold that the trial court's conclusion that grounds for termination of respondent-mother's parental rights existed under N.C.G.S. § 7B-1111(a)(2) was supported by the findings of fact, and so we affirm.

¶ 21 As this Court has recognized, "in order for a respondent's noncompliance with her case plan to support the termination of her parental rights, there must be a nexus between the components of the court-approved case plan with which the respondent failed to comply and the conditions which led to the child's removal from the parental home." *In re J.S.*, 374 N.C. at 815–16 (cleaned up) (quoting *In re B.O.A.*, 372 N.C. at 385). In this case, the nexus is respondent-mother's substance abuse, which directly led to the children's removal on 31 January 2018 and had previously led to her losing custody of the children on multiple other occasions. Accordingly, the case plan created by DSS was tailored to help respondent-mother overcome her substance abuse issues, as well as address her parenting skills and mental health struggles. While respondent-mother emphasizes the progress she made on the parenting skills portion of the case plan, the trial court's findings focused on the true gravamen of her case—her substance abuse—as well as her mental health struggles. Since "we review only those findings needed to sustain the trial court's adjudication," we address only her substance abuse and mental health issues. *See In re J.S.*, 374 N.C. at 814.

¶ 22 As previously noted, respondent-mother's substance abuse has resulted in DSS's recurring involvement with the family and the children's placement in DSS custody on multiple prior occasions. Respondent-mother testified that she had attempted recovery numerous times and agreed with Allie's testimony that she has been in a cycle of recovery and relapse. In its findings, the trial court noted that respondent-mother had been "in recovery on at least three prior occasions" and had "admit[ed] and acknowledged a history of substance abuse in her written statements as to why the children were brought into care, as well as during conversation with the Social Worker."

¶ 23 Although respondent-mother recognized that her substance abuse resulted in losing custody of her children, she failed to make adequate progress to address it during the sixteen months following the children's removal. Respondent-mother's case plan required her to complete a substance abuse assessment, submit to drug screens, and participate in a group recovery program. In May 2018, DSS referred respondent-mother to Daymark Recovery for a substance abuse assessment as part of the case plan concerning Allie, Gregory, Teddy, Johnson, and Braxton, but respondent-mother never went. Instead, it was not until she was completing her case plan regarding a different child, her infant born on 18 January 2019, that respondent-mother went to Daymark Recovery for an assessment in March 2019. In addition, although respondent-mother was required to attend a recovery group, she never participated in one.

¶ 24 Even more concerning, respondent-mother repeatedly failed drug screens throughout the pendency of her case, including one less than a month before the 13 June 2019 termination hearing. Of the more than twenty random drug screens DSS requested, respondent-mother failed five screens, did not show up for an additional eight screens, and passed only nine. Moreover, the trial court's findings reveal that out of the five drugs screens respondent-mother failed, three of them occurred after respondent-mother purported to have begun participating in substance abuse treatment through Rowan Psychiatric in September 2018.[4] The most recent failed screen—at which respondent-mother tested positive for amphetamine and methamphetamine—occurred on 16 May 2019, less than one month before the termination hearing. While respondent-mother asserted that this failed screen was due to taking Zyrtec and Sudafed for allergies and congestion, the trial court gave little weight to the explanation, specifically stating that it "did not find this assertion compelling."

¶ 25 Respondent-mother argues that she made such substantial progress in addressing her substance abuse that the trial court erred by finding sufficient grounds to terminate her parental rights. In support of this contention, respondent-mother relies on her own testimony that she completed a substance abuse assessment at Rowan Psychiatric and was participating in treatment. The trial court considered this evidence in making its decision. However, the trial court found respondent-mother's assertions were undermined by her failure to report any of this treatment to DSS—and, more importantly, the fact that DSS's record request to Rowan Psychiatric revealed primarily drug screen results.

¶ 26 According to the social worker's testimony, Rowan Psychiatric reported that respondent-mother was not participating in a full substance abuse program and had not completed a substance abuse assessment. Instead, respondent-mother was only participating in a methadone treatment program. Based on the social worker's testimony and the records Rowan Psychiatric provided DSS, which consisted primarily of drug screen results, the trial court found that DSS could not "verify that [respondent-mother] completed an assessment at Rowan Psychiatric, or that she was receiving comprehensive treatment."

¶ 27 The second focus of the trial court's findings was respondent-mother's mental health issues. On appeal, respondent-mother does not challenge any of the trial court's findings concerning her failure to make

4. The findings further show that two of respondent-mother's missed drug screens occurred after she purported to have been seeking treatment at Rowan Psychiatric.

reasonable progress toward improving her mental health. Therefore, these findings "are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. at 407.

¶ 28 While N.C.G.S. § 7B-1111(a)(2) does not require parents to "fully satisfy all elements of the case plan goals," they must at least make more than " 'extremely limited progress' in correcting the conditions leading to removal." *In re B.O.A.*, 372 N.C. at 385 (quoting *In re J.S.L.*, 177 N.C. App. 151, 160, 163 (2006)). The findings above show that despite respondent-mother recognizing that her substance abuse issues were the primary reason she kept losing custody of her children, she still failed to show reasonable progress under her case plan, particularly in correcting the conditions which led to the removal of her children. Respondent-mother frequently skipped drug screens; failed a number of the drug screens, including one less than a month before the termination hearing; did not participate in any support group; and, at best, participated in only limited treatment. These facts, combined with respondent-mother's noncompletion of any of the mental health aspects of the case plan, support the trial court's conclusion that she failed to make reasonable progress to remedy the conditions that led to the children's removal, regardless of respondent-mother's steps toward improving her parenting skills.

C. Challenge to the Trial Court's Finding of Willfulness

¶ 29 Respondent-mother also challenges the trial court's conclusion that her failure to make reasonable progress was willful. This Court has already 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. at 818. In addition, a "finding that a parent acted 'willfully' for [the] purposes of N.C.G.S. § 7B-1111(a)(2) does not require a showing of fault by the parent." *Id.* at 815 (cleaned up) (quoting *In re Oghenekevebe*, 123 N.C. App. 434, 439 (1996)). It simply requires respondent-mother's "prolonged inability to improve her situation, despite some efforts in that direction." *Id.* (quoting *In re J.W.*, 173 N.C. App. 450, 465 (2005)).

¶ 30 The evidence reviewed above already establishes respondent-mother's prolonged failure to improve her situation. Further, respondent-mother's willfulness was confirmed by her ability to complete the case plan for her infant child. While respondent-mother argues that DSS's determination not to seek custody of that child contradicts the trial court's decision to terminate her parental rights in the rest of the children, it actually highlights her willfulness. After all, respondent-mother completed the case plan concerning her infant child, leading DSS to

not seek custody of the newborn. In contrast, as discussed above, respondent-mother did not make reasonable progress on the case plan concerning the rest of her children. Moreover, the trial court noted that on two previous occasions respondent-mother had timely completed her assigned case plans. Given this evidence, we uphold the portion of the trial court's orders finding that respondent-mother's failure to make progress on the case plan in this case demonstrated willfulness.

IV. Conclusion

¶ 31 The trial court did not err by terminating respondent-mother's parental rights. Contrary to respondent-mother's arguments, the trial court's findings involving the ample time respondent-mother had to make progress on her case plan, her failure to adequately address her substance abuse and mental health issues, and the willfulness of her actions were all supported by clear, cogent, and convincing evidence. When considered in conjunction with respondent-mother's admission that the children were in DSS custody for more than twelve months, the findings support the trial court's conclusion that grounds for termination existed under N.C.G.S. § 7B-1111(a)(2). Since respondent-mother has not challenged the trial court's determination that termination was in the best interests of the five children, the trial court properly terminated her parental rights in Allie, Gregory, Teddy, Johnson, and Braxton. As a result, we affirm the orders of the trial court.

AFFIRMED.

IN RE A.R.P.

[377 N.C. 16, 2021-NCSC-22]

IN THE MATTER OF A.R.P.

No. 308A20

Filed 19 March 2021

Termination of Parental Rights—no-merit brief—abandonment

The termination of a father's parental rights on grounds of abandonment was affirmed where his 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 7 April 2020 by Judge John K. Greenlee in District Court, Gaston County. This matter was calendared in the Supreme Court on 11 February 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 mother.

Sydney Batch for respondent-appellant father.

NEWBY, Chief Justice.

¶ 1 Respondent-father appeals from the trial court's order terminating his parental rights to A.R.P. (Ansley).[1] Counsel for respondent-father has filed a no-merit brief under Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We conclude that the issues identified by counsel in respondent-father's brief as arguably supporting the appeal are meritless and therefore affirm the trial court's order.

¶ 2 This case arises from a private termination action filed by petitioner, Ansley's biological mother, to terminate the parental rights of respondent. Petitioner and respondent were married in January 2004, separated in July 2016, and divorced in September 2018. Ansley was the sole child born from their marriage.

¶ 3 On 29 April 2019, petitioner filed a petition to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(7) (2019). Petitioner alleged that respondent had "not seen [Ansley] in over two years despite the fact that [Ansley] and Petitioner still live in the same home which

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

[respondent] formerly occupied with them, and has paid no child support for [Ansley] in over that same period of time." Respondent filed an answer denying the material allegations of the petition.

¶ 4 Following a hearing held on 12 December 2019, the trial court entered an order on 7 April 2020 in which it determined grounds existed to terminate respondent-father's parental rights for abandonment. N.C.G.S. § 7B-1111(a)(7). The trial court further concluded it was in Ansley's best interests that respondent-father's parental rights be terminated. Accordingly, the trial court terminated respondent-father's parental rights. Respondent-father appeals.

¶ 5 Counsel for respondent-father has filed a no-merit brief on her client's behalf under Rule 3.1(e) of the Rules of Appellate Procedure. Counsel identified two issues that could arguably support an appeal but also explained why she believed these issues lack merit. Counsel has advised respondent-father of his right to file *pro se* written arguments on his own behalf and provided him with the documents necessary to do so. Respondent-father has not submitted written arguments to this Court.

¶ 6 We carefully and independently review issues identified by counsel in a no-merit brief filed under Rule 3.1(e) in light of the entire record. *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). After conducting this review, we are satisfied the trial court's 7 April 2020 order is supported by clear, cogent, and convincing evidence and based on proper legal grounds. Accordingly, we affirm the trial court's order terminating respondent-father's parental rights.

AFFIRMED.

IN RE B.T.J.

[377 N.C. 18, 2021-NCSC-23]

IN THE MATTER OF B.T.J.

No. 230A20

Filed 19 March 2021

Termination of Parental Rights—grounds for termination—neglect—likelihood of future neglect—substance abuse and unstable housing and employment

The trial court's termination of respondent-mother's parental rights based on neglect due to a likelihood of future neglect was affirmed where the child was previously adjudicated neglected, respondent had made only limited progress on the issues that led to the prior adjudication, her substance abuse continued after the child entered DSS custody, her housing situation remained unstable, and she was unable to maintain stable employment.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 18 February 2020 by Judge Charlie Brown in District Court, Rowan County. This matter was calendared for argument in the Supreme Court on 11 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Jane R. Thompson for petitioner-appellee Rowan County Department of Social Services.

McGuireWoods LLP, by Anita Foss, for appellee Guardian ad Litem.

Wendy C. Sotolongo, Parent Defender, by J. Lee Gilliam, Assistant Parent Defender, for respondent-appellant mother.

HUDSON, Justice.

¶ 1 Respondent-mother appeals from the trial court's order terminating her parental rights to her minor child B.T.J. (Blake).[1] Since we conclude that the trial court properly adjudicated at least one ground for termination, we affirm the termination order.

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

¶ 2 On 25 August 2017, the Rowan County Department of Social Services (DSS) filed a juvenile petition alleging that Blake was neglected and dependent. On that date, DSS responded to respondent-mother's hotel room after receiving a report that she had overdosed on heroin in Blake's presence. Eleven days earlier, respondent-mother had obtained a domestic violence protective order against Blake's father which also forbade him from having contact with Blake. As a result, neither of Blake's parents could provide care for him. DSS also alleged that Blake's parents both had an "intense and significant" history of substance abuse, which had previously necessitated a referral for in-home services on two occasions. DSS obtained nonsecure custody of Blake and placed him in foster care.

¶ 3 On 15 February 2018, the trial court, with the consent of all parties, entered an order adjudicating Blake as a neglected and dependent juvenile. Respondent-mother was ordered to maintain safe and stable housing, comply with the recommendations of her substance abuse and mental health assessments, submit to random drug screens, participate in Blake's treatment if recommended by Blake's therapist, and sign releases of information needed to monitor her treatment progress. The order also provided respondent-mother with one hour of supervised visitation per week.

¶ 4 On 4 April 2018, respondent-mother was found guilty of a felony drug charge, misdemeanor larceny, misdemeanor second-degree trespassing, and misdemeanor child abuse. She was placed on thirty months of supervised probation. On 18 May 2018, respondent-mother was incarcerated, and she remained so until she entered inpatient substance abuse treatment on 24 October 2018. After her release from treatment on 21 January 2019, she continued to test positive for various controlled substances on 4 February 2019, 18 February 2019, 7 June 2019, and 1 July 2019.

¶ 5 On 29 July 2019, DSS filed a petition seeking to terminate respondent-mother's parental rights on the grounds of neglect and willfully leaving Blake in a placement outside the home for more than twelve months without making reasonable progress toward correcting the conditions that led to his removal. *See* N.C.G.S. § 7B-1111(a)(1)–(2) (2019). In addition to chronicling respondent-mother's drug use, DSS also alleged that respondent-mother had difficulty maintaining consistent housing, employment, and visitation with Blake.

¶ 6 After a two-day hearing in early November 2019, the trial court entered an order on 18 February 2020 which terminated respondent-

mother's parental rights. The trial court concluded that DSS had proven both alleged grounds for termination and that termination was in Blake's best interests. Respondent-mother appealed.[2]

¶ 7 On appeal, respondent-mother challenges both grounds for termination found by the trial court. She argues that in light of the severity of her addiction and the amount of time she was incarcerated while this case progressed, the trial court failed to adequately credit the progress she made in remedying the problems which led to Blake's removal and the neglect adjudication.

¶ 8 When considering a petition to terminate parental rights, the trial court first makes an adjudicatory determination based on the alleged grounds for termination. *See* N.C.G.S. § 7B-1109 (2019). "At the adjudicatory stage, the petitioner bears the burden of proving by 'clear, cogent, and convincing evidence' the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes." *In re A.U.D.*, 373 N.C. 3, 5–6 (2019) (quoting N.C.G.S. § 7B-1109(f) (2017)). "If a trial court finds one or more grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), it then proceeds to the dispositional stage," *id.* at 6, at which it "determine[s] whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a) (2019).

¶ 9 We review a trial court's adjudication of grounds to terminate parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "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)). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19 (2019).

¶ 10 Subsection 7B-1111(a)(1) permits a trial court to terminate a parent's rights if that parent is neglecting their child. A neglected juvenile is one "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2019).

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2. Blake's father's parental rights were also terminated in the 18 February 2020 order, but he did not appeal the trial court's order and is therefore not a party to this appeal.

¶ 11 In some circumstances, the trial court may terminate a parent's rights based on neglect that is currently occurring at the time of the termination hearing. *See*, *e.g.*, *In re K.C.T.*, 375 N.C. 592, 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, in other instances, 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) (cleaned up). In such situations, "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 that neglect exists as a ground for termination if it concludes the evidence demonstrates "a likelihood of future neglect by the parent." *In re R.L.D.*, 851 S.E.2d 17, 20 (N.C. 2020) (citation omitted). 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's care. *Id.* at 20 n.3.

¶ 12 There were no allegations in this case that respondent-mother was currently neglecting Blake at the time of the termination hearing. However, it is undisputed that Blake was out of respondent-mother's custody for an extended period of time and that he was previously adjudicated to be a neglected juvenile. Thus, our review focuses on whether the trial court correctly determined that there is a likelihood of future neglect if Blake is returned to respondent-mother's care.

¶ 13 When assessing whether there is a likelihood of future neglect, "the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing." *In re Z.V.A.*, 373 N.C. 207, 212 (2019) (citing *In re Ballard*, 311 N.C. at 715). "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re Z.V.A.*, 373 N.C. at 212 (quoting *In re Ballard*, 311 N.C. at 715).

¶ 14 Blake was previously adjudicated to be a neglected juvenile after he witnessed respondent-mother overdose on heroin in the hotel room

where they were residing together, at which time he was in her care. In order to address the underlying causes of this adjudication, respondent-mother was ordered to complete a remediation plan which required her to participate in treatment for her drug addiction and stabilize her living situation. The termination order includes numerous unchallenged findings of fact clearly describing the limited progress respondent-mother made on this plan which are binding for purposes of appellate review. *In re T.N.H.*, 372 N.C. at 407. As described below, these binding factual findings reflect that respondent-mother had not adequately addressed her issues and at the time of the termination hearing, the likelihood of future neglect was "very high," as the trial court properly determined.

¶ 15 First, the unchallenged findings show that respondent-mother's substance abuse issues continued after Blake entered DSS custody. She was inconsistent in engaging in treatment until she entered Black Mountain Substance Abuse Treatment Center for inpatient treatment from 24 October 2018 to 21 January 2019. However, two weeks after respondent-mother completed this inpatient treatment program, she once again tested positive for controlled substances—and continued to do so. She tested positive for cocaine and marijuana on 4 February 2019, for buprenorphine without a prescription on 18 February 2019, for marijuana on 7 and 28 June 2019, for marijuana and alcohol on 1 July 2019, and for alcohol on the first day of the termination hearing on 7 November 2019. Thus, while respondent-mother had no positive drug screens for approximately four months before the termination hearing was held, she had multiple positive screens in the weeks and months prior to that period, including soon after her discharge from inpatient drug treatment. Moreover, the four-month period of sobriety immediately prior to the termination hearing corresponded with respondent-mother's regular attendance at Rowan Treatment Associates, where she was receiving methadone treatment.

¶ 16 The trial court's unchallenged findings also reflect that respondent-mother's housing situation remained unstable. The trial court found that respondent-mother "changed homes several times during the history of this case" and proceeded to list more than a half-dozen such changes. By the time of the termination hearing, respondent-mother had been living in a one-bedroom trailer with her new husband for about two months. This housing situation was unsuitable, however. Respondent-mother's lease for that trailer only permitted three individuals to live there, and her stepdaughter was living with her and her husband every other weekend. During those times, Blake could not also reside in the trailer without violating the terms of the lease. Thus, as the trial court properly

determined, respondent-mother's housing at the time of the termination hearing was inadequate.

¶ 17 The trial court's unchallenged findings also discuss other areas of concern. Respondent-mother was unable to maintain stable employment. She was fired from two separate jobs, with one of the firings resulting from her bringing her stepdaughter to work on a hot day without permission from her employer. Respondent-mother also withheld relevant information from DSS and her treatment provider. She did not inform DSS of her employment situation, her marriage, or her living situation, including that her stepdaughter stayed in her home on a regular basis. Respondent-mother did not sign a release of information for Rowan Treatment Associates, and she did not tell her treatment provider about her involvement with DSS or that a release was needed.

¶ 18 When the termination hearing occurred, Blake had been in foster care for more than twenty-six months. While respondent-mother can point to some signs of progress in the months immediately preceding the termination hearing, these were merely her first steps toward addressing her issues. Troublingly, respondent-mother had relapsed just two weeks after leaving inpatient drug treatment and repeatedly tested positive for a variety of controlled substances over a five-month period. At the time of the termination hearing, respondent-mother had only been consistent with a treatment regimen and gone without a positive drug screen for four months, and she had only been in her current housing for two months, which was inadequate. She had not established stable employment. The trial court properly determined that respondent-mother's tenuous, limited progress on the issues that directly led to Blake's prior adjudication was neither enough to rectify these issues nor enough to diminish the probability that Blake would likely be neglected again if he returned to her care. In *In re O.W.D.A.*, 375 N.C. 645 (2020), we noted that "evidence of changed conditions must be considered in light of the history of neglect by the parents and the probability of a repetition of neglect," 375 N.C. at 648 (quoting *Smith v. Alleghany Cnty. Dep't of Soc. Servs.*, 114 N.C. App. 727, 732 (1994)), and we held that although the respondent-father in that case may have made some recent, minimal progress on his case plan, "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." *Id.* at 654. The same reasoning applies here. Taken together, the trial court's unchallenged findings support its conclusion that "[t]he probability of a repetition of neglect of the juvenile if returned to the home or care of [respondent-mother] . . . is very high."

¶ 19 Therefore, we conclude the trial court properly determined that respondent-mother's parental rights could be terminated based on neglect. Because we conclude this termination ground is supported, we need not address respondent-mother's arguments as to N.C.G.S. § 7B-1111(a)(2), the remaining ground found by the trial court. *See In re A.R.A.*, 373 N.C. 190, 194 (2019) ("[A] finding of only one ground is necessary to support a termination of parental rights . . . ."). We affirm the trial court's order terminating respondent-mother's parental rights.

AFFIRMED.

IN THE MATTER OF C.R.L., K.W.D.

No. 196A20

Filed 19 March 2021

Termination of Parental Rights—delayed termination hearing—statutory violation—petition for a writ of mandamus—proper remedy

An order terminating respondent-father's parental rights to his two children on multiple grounds was affirmed where, even though the trial court committed reversible error by holding the termination hearing thirty-three months after the department of social services filed the termination petitions (which violates the requirement under N.C.G.S. § 7B-1109 to hold the hearing no later than ninety days after a petition is filed), respondent-father failed to file a petition for a writ of mandamus during that thirty-three-month delay to address the issue.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 10 February 2020 by Judge Roy Wijewickrama in District Court, Jackson County. This matter was calendared for argument in the Supreme Court on 11 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Jane R. Thompson for petitioner-appellee Jackson County Department of Social Services.

Leah D'Aurora Richardson for appellee Guardian ad Litem.

Peter Wood for respondent-appellant father.

HUDSON, Justice.

¶ 1 Respondent-father appeals from the trial court's order terminating his parental rights to his minor children C.R.L. (Craig) and K.W.D. (Kent).[1] He argues that the trial court committed reversible error by holding the termination hearing more than ninety days after the Jackson County Department of Social Services (DSS) filed its petitions to terminate his parental rights, in violation of N.C.G.S. § 7B-1109. After reviewing this claim, we conclude that the issue should have been addressed by the filing of a petition for writ of mandamus while the termination petitions were still pending; consequently, we affirm the termination order.

¶ 2 DSS became involved with this family after receiving a child protective services (CPS) report that the children's mother tested positive for both methamphetamine and amphetamine in the weeks prior to and at the time of Kent's birth. A DSS social worker investigating the CPS report learned that the parents previously had their parental rights to two older children terminated in New Jersey. The parents agreed to place Craig and Kent in a kinship placement with family friends. Kent suffered from multiple health problems as he went through withdrawal from the drugs to which he was exposed. On 28 May 2015, the family friends informed DSS that they would be unable to provide long-term kinship care for Craig and Kent.

¶ 3 On 8 June 2015, DSS filed juvenile petitions alleging that Craig was a neglected juvenile and Kent was an abused and neglected juvenile. In addition to the facts above, DSS alleged that both parents had recent positive drug screens, that they were living in a camper with the children's maternal grandparents, and that they were currently unemployed. On 26 August 2015, the trial court entered a consent adjudication order concluding that both children were neglected juveniles. On 26 October 2015, the trial court entered a disposition order which indicated that both parents had entered case plans with DSS and they were addressing the issues identified therein. Both parents were awarded supervised visitation three hours per week.

¶ 4 On 18 January 2017, the trial court entered a permanency planning review hearing order in which it found that respondent-father's whereabouts were no longer known to DSS and that DSS did not know how to

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

reach him. The trial court suspended visitation with respondent-father until he provided two consecutive negative drug screens. Although respondent-father was located by the next permanency planning review hearing, his visitation remained suspended as the neglect case progressed because the trial court repeatedly concluded that continuing the suspension was in the children's best interests.

¶ 5 DSS filed termination petitions on 22 March 2017, alleging that respondent-father's parental rights to Craig and Kent were subject to termination on three grounds: that respondent-father had neglected the children; that he willfully left the children 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 their removal from the home; and that his parental rights with respect to another child had been terminated involuntarily and he lacked the ability or willingness to establish a safe home. *See* N.C.G.S. § 7B-1111(a)(1), (2), (9) (2019). After the petitions were filed, the trial court ordered DSS to notice the case for hearing in orders entered on 4 October 2017, 23 August 2018, 21 May 2019, and 25 July 2019. However, the termination petitions were not heard until 9 and 10 December 2019, approximately thirty-three months after they were filed.

¶ 6 On 10 February 2020, the trial court entered an order terminating respondent-father's parental rights.[2] The order included a finding noting that the matter came on for hearing more than ninety days after the filing of the petitions and attempting to provide an explanation for the delay. The trial court concluded that all three grounds for termination alleged by DSS existed and that termination was in Craig's and Kent's best interests. Respondent-father appealed.

¶ 7 Respondent-father's sole challenge to the termination order is that it was entered after a termination hearing that was conducted thirty-three months after DSS filed the termination petitions. He contends that this delay violated N.C.G.S. § 7B-1109, which sets out the following requirements for when a termination-of-parental-rights adjudicatory hearing shall occur:

> (a) The hearing on the termination of parental rights shall be conducted by the court sitting without a jury and shall be held in the district at such time and place

2. The order also terminated the parental rights of Craig and Kent's mother. She is not a party to this appeal.

> as the chief district court judge shall designate, but no later than 90 days from the filing of the petition or motion unless the judge pursuant to subsection (d) of this section orders that it be held at a later time. Reporting of the hearing shall be as provided by G.S. 7A-198 for reporting civil trials.
>
> . . . .
>
> (d) The court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

N.C.G.S. § 7B-1109(a), (d). All of the parties agree that this statute was violated in this case, since the termination hearing was held well beyond ninety days after DSS filed the termination petitions and no continuances for extraordinary circumstances were requested or granted to permit this delay.[3] But, as this Court has previously held, this statutory violation should have been remedied *while it was occurring* by the filing of a petition for writ of mandamus. *See In re T.H.T.*, 362 N.C. 446, 454 (2008) ("Mandamus is the proper remedy when the trial court fails to hold a hearing or enter an order as required by statute.").

¶ 8 In *In re T.H.T.*, this Court emphasized the importance of swiftly resolving child welfare cases, noting that "in almost all cases, delay is directly contrary to the best interests of children, which is the 'polar star' of the North Carolina Juvenile Code." *Id.* at 450 (quoting *In re Montgomery*, 311 N.C. 101, 109 (1984)). The trial court in *In re T.H.T.*

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3. In the termination order, the trial court made a finding of fact which attempted to explain why the hearing occurred more than ninety days after the petitions were filed. This finding is immaterial because it cannot cure the violation, which requires the issuance of written orders continuing the hearing during the period of delay, and no such orders were entered in this matter. *See* N.C.G.S. § 7B-1109(d) (2019).

had failed to enter adjudication and disposition orders before the statutory deadlines, and this Court concluded that the respondent's failure to file a petition for writ of mandamus during the delay was fatal to her appeal:

> We hold that in appeals from adjudicatory and dispositional orders in which the alleged error is the trial court's failure to adhere to statutory deadlines, such error arises subsequent to the hearing and therefore does not affect the integrity of the hearing itself. Thus, a new hearing serves no legitimate purpose and does not remedy the error. Indeed, a new hearing only exacerbates the error and causes further delay. Instead, a party seeking recourse for such error should petition for writ of mandamus.

Id. at 456. While in this case the error occurred prior to, rather than after, the hearing at issue, the reasoning underlying our holding in *In re T.H.T.* applies with equal force here. In both situations, "the availability of the remedy of mandamus ensures that the parties remain actively engaged in the district court process and do not 'sit back' and rely upon an appeal to cure all wrongs." *Id.* at 455. Moreover, unlike "a lengthy appeal" which "exacerbates the error and causes further delay[,]" "[m]andamus provides relatively swift enforcement of a party's already established legal rights." *Id.* at 455–56.

¶ 9 In this case, respondent-father failed to file a petition for writ of mandamus at any point during the thirty-three months between the filing of the termination petitions and the termination hearing, and he offers no explanation for this failure. Instead, he sat on his rights and allowed the delay to continue without objection. At this juncture, granting relief based only on this violation of the statutory deadline would merely exacerbate the delay below. As we noted in *In re T.H.T.*, "[w]hen the integrity of the trial court's decision is not in question, a new hearing serves no purpose, but only 'compounds the delay in obtaining permanence for the child.' " *Id.* at 453 (quoting *In re J.N.S.*, 180 N.C. App. 573, 580 (2006)).

¶ 10 Respondent-father argues that the violation of N.C.G.S. § 7B-1109 in this case created a delay that was so egregious that it should be considered presumptively prejudicial. He further argues that the significant delay necessarily diminished his bond with his sons while at the same time strengthening their bond with their foster family, which in turn impacted the trial court's determination of Craig's and Kent's best interests.

In making these arguments, respondent-father fails to grapple with both his own inaction while the alleged prejudice was occurring and this Court's decision in *In re T.H.T.*—a decision he does not acknowledge in his brief and thus makes no attempt to distinguish from this case. But respondent-father's disregard of this Court's precedent does not relieve us of our obligation to apply it: if respondent-father believed he was being harmed by the trial court's delay in violation of N.C.G.S. § 7B-1109, the proper recourse was a petition for writ of mandamus. *See In re T.H.T.*, 362 N.C. at 456. It is now too late to obtain relief from the statutory violation, and a new hearing would be both futile and unfair. This argument is overruled.

¶ 11 "In cases such as the present one in which the trial court fails to adhere to statutory time lines, mandamus is an appropriate and more timely alternative than an appeal." *Id.* at 455. Here, respondent-father did not file a petition for writ of mandamus while the termination petitions were pending, and therefore, he missed his opportunity to remedy the violation of N.C.G.S. § 7B-1109. Since respondent-father raises no other exceptions to the trial court's order, we affirm the order terminating his parental rights.

AFFIRMED.

IN THE MATTER OF G.G.M., S.M.

Nos. 248A20 and 249A20

Filed 19 March 2021

1. Termination of Parental Rights—grounds for termination—abandonment—willful intent—sufficiency of findings and evidence

The trial court properly terminated a father's rights to his two children on grounds of willful abandonment (N.C.G.S. § 7B-1111(a)(7)) where the court's findings of fact—supported by clear, cogent, and convincing evidence—established that the father did not contact the children for five and a half years before the termination petition was filed (with the exception of one brief interaction) and provided no care or financial support during that time, which supported the court's conclusion that he intended to abandon the children. Although the father testified that he stopped seeing the children out of fear for their safety after he was injured in an unsolved shooting,

the weight and credibility of this evidence could not be reassessed on appeal.

2. Termination of Parental Rights—best interests of children—statutory factors—sufficiency of evidence—weight and credibility

The trial court did not abuse its discretion by determining that termination of a father's parental rights was in the best interests of his two children where the court's findings addressed the relevant dispositional factors in N.C.G.S. § 7B-1110(a) and were supported by competent evidence (which the court properly weighed and assessed for credibility). The court found the father willfully abandoned his children by having no contact with them for five and a half years, and the children lacked a bond with their father but had a close relationship with their grandparents, who had provided for all their educational, emotional, and financial needs in the father's absence and had filed a civil action seeking custody of the children.

3. Termination of Parental Rights—effective assistance of counsel—no showing of prejudice

Respondent-father's claim that he received ineffective assistance of counsel at a termination of parental rights hearing—arguing his counsel failed to make any objections during the hearing and failed to introduce certain evidence that could have helped his case—was rejected because he failed to show he was prejudiced as a result of his counsel's allegedly deficient conduct.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 9 March 2020 by Judge Christy E. Wilhelm in District Court, Cabarrus County. This matter was calendared for argument in the Supreme Court on 11 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Seth B. Weinshenker for petitioner-appellees.

Ashley A. Crowder for respondent-appellant father.

EARLS, Justice.

¶ 1 Respondent, the father of G.G.M. (George) and S.M. (Sarah)[1], appeals from the trial court's orders terminating his parental rights on the

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

grounds of neglect and willful abandonment. Because we hold the trial court did not err in concluding that grounds existed to terminate respondent's parental rights based on willful abandonment and that termination of his parental rights was in the children's best interests, we affirm the trial court's orders.

¶ 2 Petitioners are the maternal grandmother and step-grandfather of George and Sarah. Respondent and the children's mother met in high school. They were living together when George was born in May 2008 but they were never married. The parents' relationship ended in February 2009, and the mother and George moved in with petitioners. The mother was pregnant with Sarah at the time.

¶ 3 The parents initiated a Chapter 50 custody action, and in an order filed on 6 April 2010, the mother was granted primary custody of George with respondent having scheduled visitation. In a Temporary Order Modifying Visitation filed on 20 August 2010, the trial court modified respondent's visitation to allow only for supervised visits.

¶ 4 The mother moved out of petitioners' home with the children in October 2010. However, the mother had financial issues, and in October 2011 the children went to live with petitioners until the mother could improve her situation. The children have resided with petitioners ever since.

¶ 5 On 17 March 2011, the mother filed a petition to terminate respondent's parental rights to George. In an order filed on 9 December 2011, the trial court found grounds to terminate respondent's parental rights based on neglect and his willful failure to pay a reasonable portion of the cost of care for George but did not find that it was in George's best interests to terminate respondent's parental rights. Accordingly, the trial court did not terminate his parental rights at that time.

¶ 6 In November 2013, shots were fired into respondent's home while he was inside with his now fiancée. No one was injured, and the perpetrator was never caught. On the morning of 27 December 2013, respondent was shot multiple times while on his way to work. The perpetrators were never identified. After he was released from the hospital, respondent lived with his aunt in Atlanta, Georgia, for a few months before coming back to North Carolina, where he has remained.

¶ 7 Respondent did not have any contact with the children after he was released from the hospital in late December 2013 until 30 June 2019 when he came to petitioners' home with two police officers without any prior arrangement or notice that he was coming. The reason for his visit on

30 June 2019 was that he learned that the Cabarrus County Department of Human Services ("DHS") had opened an investigation of the mother for alleged physical abuse of George and Sarah. George came outside of the home, gave his father a hug, and spoke with him briefly, but petitioners did not allow respondent to take either child with him. In response to respondent's unannounced visit, petitioners obtained an *Ex Parte* Custody Order on 3 July 2019 which maintained physical custody with petitioners and ordered respondent to have no contact with the children.

¶ 8 Approximately one week after his 30 June 2019 visit, respondent again came to petitioners' home with a law enforcement officer and sought to take the children. Petitioners showed the officer the *Ex Parte* Custody Order, and respondent left the home without seeing either child.

¶ 9 On 16 July 2019, petitioners filed petitions seeking to terminate respondent's parental rights to George and Sarah on the grounds of neglect and willful abandonment. *See* N.C.G.S. § 7B-1111(a)(1), (7) (2019). On 15 August 2019, respondent filed an answer opposing the termination of his parental rights. Following a hearing held on 10 February 2020, the trial court entered orders on 9 March 2020 concluding that respondent's parental rights were subject to termination on both grounds alleged in the petitions and that termination of respondent's parental rights was in George's and Sarah's best interests. Accordingly, the trial court terminated respondent's parental rights. Respondent appealed from both orders. On 9 June 2020, respondent filed a motion seeking to consolidate the appeals from the trial court's orders terminating his parental rights. We allowed the motion on 10 June 2020 and consolidated the cases for appeal.

I. Adjudication Stage Issues

¶ 10 **[1]** Respondent argues the trial court erred by concluding that grounds existed to terminate his parental rights based on neglect and willful abandonment. We review a trial court's adjudication that grounds exist to terminate parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "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)). "Moreover, we review only those findings necessary to support the trial court's

determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. at 407 (citing *In re Moore*, 306 N.C. 394, 404 (1982)). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19 (2019). "[A] finding of only one ground is necessary to support a termination of parental rights . . . ." *In re A.R.A.*, 373 N.C. 190, 194 (2019).

¶ 11 A trial court may terminate a parent's parental rights 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). "Abandonment implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child." *In re Young*, 346 N.C. 244, 251 (1997) (quoting *In re Adoption of Searle*, 82 N.C. App. 273, 275 (1986)). "[I]f a parent withholds his presence, his love, his care, the opportunity to display filial affection, and wil[l]fully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child." *Pratt v. Bishop*, 257 N.C. 486, 501 (1962).

¶ 12 "Whether a biological parent has a willful intent to abandon his child is a question of fact to be determined from the evidence." *In re B.C.B.*, 374 N.C. 32, 35 (2020) (quoting *In re Adoption of Searle*, 82 N.C. App. at 276). "[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." *In re N.D.A.*, 373 N.C. 71, 77 (2019) (quoting *In re D.E.M.*, 257 N.C. App. 618, 619 (2018)).

¶ 13 In this case respondent's relevant conduct is essentially the same as it relates to each child. The trial court's findings of fact supporting its adjudications are essentially identical in each termination order, other than the juvenile's name. To examine the relevant matters pertaining to the adjudication of grounds involving both children, the discussion below refers to the findings of fact and conclusions of law as enumerated in the trial court's termination order entered in George's case but is equally applicable to Sarah.

¶ 14 Respondent first challenges finding of fact 16 as not being supported by the evidence. In finding of fact 16, the trial court found:

> Pursuant to [N.C.G.S. §] 7B-1111(a)(7), the Respondent has willfully abandoned the minor child . . . for a period of time of at least six months prior to the filing

> of Petitioners' Petition to Terminate the Parental Rights of the Respondent on July 16, 2019. The Findings of Fact above show that Respondent has willfully neglected and refused to perform the natural and legal obligations of parental care, support and maintenance for the minor child. The Findings of Fact above show that Respondent has willfully withheld his presence, his love, his care for the minor child, and the opportunity to display filial affection. The Findings of Fact above show that Respondent has shown a purpose and deliberation in his intent to abandon the minor child. The Findings of Fact above show that Respondent has willfully abdicated his parental role to the Petitioners since October 2011. This finding of willful abandonment is made by clear, cogent and convincing evidence.

¶ 15 Respondent acknowledges that he had no contact with the children from late December 2013 until 30 June 2019. However, respondent argues that his actions do not amount to willful abandonment because he "had neither the deliberate intent nor purpose to abandon the minor children." Respondent points to his testimony that his lack of contact with the children during the five and one-half year period was due to his fear for his safety and the safety of his children after he was injured in an unsolved shooting in December 2013. Respondent argues that he had a reasonable belief that the mother and her associates were the perpetrators of the shooting "given the tense nature of the relationship between [the m]other and [respondent]" and that the shooting was in "direct retaliation for his seeking to modify the Temporary Custody Order for the minor children." He argues that it was due to this "grave concern" that he did not seek visitation with the children following his release from the hospital. Therefore, he argues that finding of fact 16 was not supported by clear, cogent, and convincing evidence, and as a result, the trial court erred in concluding that grounds existed based on willful abandonment.

¶ 16 The trial court's findings of fact establish that respondent "made no attempt whatsoever to contact" the children or to participate in the children's lives from late December 2013 through 30 June 2019, a period of over five years. The trial court found that respondent did not send any cards or letters to the children or petitioners, did not send any gifts, did not purchase clothing or other items for the children, and did not provide any financial assistance to petitioners for the children's benefit. The trial court found that respondent knew where petitioners lived but

did not attempt to see the children from late December 2013 to 30 June 2019. The trial court also found that petitioners maintained the same phone number and email address since 2013; however, respondent never asked them for this information in order to contact the children. The trial court's findings indicate that, from December 2013 until the filing of the petition to terminate his parental rights in July 2019, respondent failed to provide support and maintenance, did not write or call his children, did not send them gifts, and did not otherwise act as a parent. These findings demonstrate that respondent "willfully withheld his love, care, and affection from [the children] and that his conduct during the determinative six-month period constituted willful abandonment." *In re C.B.C.*, 373 N.C. at 23.

¶ 17 Respondent contends that his lack of contact for the five and one-half year period following the December 2013 shooting was not "wholly inconsistent with a desire to maintain custody of the minor children." He argues that he "had neither the deliberate intent nor purpose to abandon the minor children" but rather "made a choice, albeit a very difficult and sacrificial choice, to keep his children safe and free from the fear of harm." Respondent relies on his testimony that he did not seek custody or visitation after being released from the hospital following the December 2013 shooting due to his fear for his safety and the safety of the children. He contends the trial court "did not doubt the veracity or credibility" of his testimony. Thus, he argues the evidence did not demonstrate that he willfully abandoned the children.

¶ 18 However, in reviewing a trial court's adjudication of grounds to terminate parental rights, our review is limited to "whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re C.B.C.*, 373 N.C. at 19 (quoting *In re Montgomery*, 311 N.C. at 111). It is the trial court's "responsibility to 'pass[ ] upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom.' " *In re A.R.A.*, 373 N.C. at 196 (alteration in original) (quoting *In re D.L.W.*, 368 N.C. 835, 843 (2016)). Because "the trial court is uniquely situated to make this credibility determination . . . appellate courts may not reweigh the underlying evidence presented at trial." *In re J.A.M.*, 372 N.C. 1, 11 (2019).

¶ 19 Here, the trial court weighed the evidence and ultimately determined that respondent's conduct during the determinative period showed his willful intention to abandon the children. *See In re K.N.K.*, 374 N.C. 50, 53 (2020) ("The willfulness of a parent's actions is a question of fact for the trial court."). The trial court made specific findings regarding the two

shootings in November and December 2013. Specifically, regarding the December shooting, the trial court found that

> [o]n December 27, 2013 the Respondent was shot with a firearm several times while on his way to work at approximately 7:00 a.m. The unidentified perpetrators were never caught. After getting out of the hospital, Respondent went to live with his Aunt in Atlanta, Georgia for a few months in 2014, and then came back to North Carolina. However, the Respondent did not attempt to contact the minor child[ren], or to re-establish his relationship with the minor child[ren] upon his return from Georgia.

This finding, along with the trial court's other findings, demonstrates that the trial court acknowledged that respondent had been injured in an unsolved shooting but ultimately determined that his failure to contact the minor children upon his return to North Carolina was willful and that his conduct during the determinative period constituted willful abandonment.

¶ 20 We hold the trial court's findings of fact support its ultimate finding and conclusion that respondent willfully abandoned the children. The trial court's findings demonstrate that respondent had no contact with the children for a period of over five years prior to the filing of the termination petition on 16 July 2019, with the exception of one brief interaction with one of the children. The trial court's findings also demonstrate that respondent provided no support to the children and withheld his love, care, and affection from the children. The trial court was entitled to consider respondent's years-long absence from the children's lives when determining respondent's credibility and intent to abandon his children during the six months preceding the filing of the petition. *See In re N.D.A.*, 373 N.C. at 77. Therefore, the trial court did not err by concluding that grounds existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(7).

II. Disposition Stage Issues

¶ 21 **[2]** Respondent also challenges the trial court's conclusions that it was in George's and Sarah's best interests to terminate his parental rights.

¶ 22 At the dispositional stage of a termination proceeding, the trial court must "determine whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a) (2019). In doing so, the trial court

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

Id. Although the trial court must consider each of the factors in N.C.G.S. § 7B-1110(a), written findings of fact are required only "if there is conflicting evidence concerning the factor, such that it is placed in issue by virtue of the evidence presented before the district court." *In re A.R.A.*, 373 N.C. at 199 (cleaned up) (quoting *In re H.D.*, 239 N.C. App. 318, 327 (2015)).

¶ 23 "The trial court's dispositional findings are binding on appeal if supported by any competent evidence. The trial court's determination of a child's best interests under N.C.G.S. § 7B-1110(a) is reviewed only for abuse of discretion." *In re J.S.*, 374 N.C. 811, 822 (2020) (citations omitted). "An abuse of discretion is a decision manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *In re K.N.K.*, 374 N.C. at 57.

¶ 24 Respondent does not challenge the trial court's findings regarding the children's ages and concedes that subsection (a)(3) is not applicable in this case because DHS is not involved and, therefore, there is no permanent plan for the children. Respondent does challenge the trial court's other dispositional findings of fact as not being supported by competent evidence.

¶ 25 Respondent first challenges finding of fact 18(2) regarding the children's likelihood of adoption. In both orders the trial court found the following: "Though there was no testimony regarding adoption, the [c]ourt takes judicial notice that there is a pending custody action by the Petitioners, in which they are seeking custody of the two minor children, [George and Sarah], from both the Respondent and the biological mother . . . ." Respondent contends this finding is not supported by competent evidence because there is no evidence in the record that petitioners are seeking adoption and "nothing in the record to support any likelihood of adoption of either minor child." However, the trial court did not find that there was a likelihood of adoption. Rather, the trial court recognized that no evidence was presented regarding adoption and took judicial notice of the pending civil custody action filed by petitioners seeking custody of the children. This finding is supported by competent evidence. The trial court is not required to find a likelihood of adoption in order for termination to be in a child's best interests. *See In re M.M.*, 200 N.C. App. 248, 258 (2009), ("[N]othing within [N.C.G.S.] § 7B-1110 . . . requires that termination lead to adoption in order for termination to be in a child's best interests."), *disc. review denied*, 364 N.C. 241 (2010).

¶ 26 Respondent next argues that finding of fact 18(4) regarding the children's bond with respondent is not supported by competent evidence. Respondent argues the finding is "solely a recital of the children's therapist['s] testimony" which was "clearly hearsay and does not fall within any exception." We disagree. Contrary to respondent's assertion, finding of fact 18(4) does not recite the therapist's testimony. The trial court specifically found that Sarah has no memory of respondent and that he is a stranger to her, and that George has some memory of respondent but does not have a bond with him. The trial court further found that the guardian *ad litem* (GAL) and the therapist "provided testimony in this regard," and that it found "such testimony to be credible." The finding demonstrates that the trial court considered the testimony of the GAL and the therapist, determined their testimony was credible, and made an independent finding regarding the children's bond with respondent based on that testimony. *See In re D.L.W.*, 368 N.C. at 843 (stating that it is the trial court's duty to consider all of the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn therefrom). Moreover, N.C.G.S. § 7B-1110(a) specifically allows the consideration of hearsay evidence in determining a child's best interests. N.C.G.S. § 7B-1110(a). Therefore, the trial court's finding is supported by competent evidence.

¶ 27 Respondent next challenges the portions of finding of fact 18(5) stating that he willfully abdicated his parenting role to petitioners since

October 2011. Respondent argues he did not make "a conscious and intentional decision to avoid his parental role" but rather that "he made the very difficult decision to put the safety of the minor children first before all other things." Therefore, he argues, this finding is not supported. However, as discussed previously, the trial court's findings demonstrate that respondent had no contact with the children for five and one-half years despite having the ability to do so. The trial court weighed the credibility of respondent's testimony and ultimately found that respondent willfully abandoned the children. Based on the evidence presented, the trial court made the reasonable inference that respondent abdicated his parenting role to petitioners by having no contact or involvement in the children's lives for over five years. We conclude that this finding is sufficiently supported by competent evidence.

¶ 28 Lastly, respondent challenges finding of fact 18(6) as not supported by competent evidence because the trial court relied heavily on the GAL's report and testimony. Respondent argues the GAL "did little to investigate [respondent]," did not visit his home or speak to his fiancée, and relied heavily on the therapist's opinion in writing her report. Respondent's challenge to the finding raises the question of whether the GAL had a sufficient basis for her testimony and is a challenge to the GAL's credibility as a witness. However, it is the duty of the trial court to determine the weight and credibility of the evidence. *In re A.R.A.*, 373 N.C. at 196. The trial court specifically found the testimony of the GAL and the therapist to be credible. Therefore, we conclude that there was sufficient competent evidence in the record to support this finding.

¶ 29 Respondent further contends the trial court abused its discretion in determining that termination of his parental rights was in the children's best interests. He argues that the findings of fact in this case are "almost identical" to the findings of fact found in *Bost v. Van Nortwick*, 117 N.C. App. 1 (1994), where the Court of Appeals determined the trial court abused its discretion in terminating the respondent-father's parental rights.

¶ 30 In *Bost*, the trial court concluded that

> [g]iven that the children are thriving under their present circumstances, the presence of a complete family structure able to meet the emotional and economic needs of the children, the expressed desire of the children not to see their father, their desire to be adopted by Jim Bost and the pain and disruption involved with any attempt at reestablishing a relationship, the

> [c]ourt finds as a fact that it would not be in the best interest of the children to follow the Guardian Ad Litem's reccommendations [sic] and furthermore that termination is in their best interest.

Id. at 8 (alterations in original).

¶ 31 Respondent argues that here, similarly, the trial court found that Sarah expressed that she "wants no relationship whatsoever with the Respondent"; that George "later expressed fears and concerns for having his place of residence and way of life changed in any way because of the Respondent"; that the children have a close and loving relationship with petitioners "who have provided for all of the child[ren's] educational, emotional, physical and financial needs, with little to no contribution from either parent, since October 2011"; and that the therapist testified the children were concerned about their placement with petitioners being disrupted. He argues that these findings "were found to be insufficient by the Court [of Appeals] in *Bost* and the decision to terminate 'in light of the paramount rights of the natural parent to help raise and support his children' was found to be an abuse of discretion," quoting *Bost*, 117 N.C. App. at 13. Thus, he contends the same standard should apply in this case.

¶ 32 However, *Bost* is distinguishable from the present case. First, the Court of Appeals in *Bost* stated that "a finding that the children are well settled in their new family unit . . . does not *alone* support a finding that it is in the best interest of the children to terminate respondent's parental rights." *Bost*, 117 N.C. App. at 8 (emphasis added). Here, however, the finding that the children were doing well with petitioners was not the sole support for the trial court's conclusion that termination was in the children's best interests. Second, while the respondent-father in *Bost* once had been unable to maintain employment or relationships with the children because he was an alcoholic, the evidence also showed that the respondent-father had ceased using alcohol a couple of years before the petition to terminate his parental rights was filed, had paid large sums of back child support, and had begun to visit the children. *Id.* at 5–6. In contrast, here respondent had not had any contact with the children, had not provided any support for the children, and had not shown any desire to be a part of the children's lives from December 2013 until two weeks before the filing of the petition to terminate parental rights on 16 July 2019. Finally, in *Bost*, the GAL and the court-appointed psychologist thought it in the best interests of the children to *not* terminate the respondent-father's parental rights. *Id.* at 9. In the present case, the GAL recommended that it *would* be in in the children's best interests to

terminate respondent's parental rights. These are all significant distinctions that explain why the ultimate conclusion by the trial court in this case is not an abuse of discretion.

¶ 33 The trial court's findings demonstrate that it considered the relevant factors under N.C.G.S. § 7B-1110(a) and made a reasoned decision based on those findings. Specifically, the trial court made findings regarding the children's ages; the pending civil custody action filed by petitioners; the children's lack of a bond with respondent after his five and one-half year absence; the children's "close and loving relationship" with petitioners "who have provided for all of the child[ren's] education, emotional, physical and financial needs"; and the negative psychological impact on the children from respondent's sudden return into their lives. These findings, along with the trial court's other findings of fact, support its conclusion that termination of respondent's parental rights was in the children's best interests.

III. Ineffective Assistance of Counsel Claim

¶ 34 **[3]** Lastly, respondent contends he received ineffective assistance of counsel at the termination hearing. Respondent argues his trial counsel was ineffective because she failed to make any objections during the termination hearing and failed to introduce any evidence of petitioners' "retaliatory seeking [of] an *Ex Parte* Custody Order against [respondent]" or of DHS's investigation of the mother. Specifically, respondent argues his counsel failed to object to the introduction of the temporary custody order into evidence and failed to make any hearsay objections, most notably during the testimony of the children's therapist. Respondent asserts that "[g]iven the constitutionally protected rights at issue, [he] was denied a fair hearing as a result of his trial counsel's failure to perform at an objectively reasonable standard."

¶ 35 "Parents have a right to counsel in all proceedings dedicated to the termination of parental rights." *In re L.C.*, 181 N.C. App. 278, 282 (cleaned up) (quoting *In re Oghenekevebe*, 123 N.C. App. 434, 436 (1996)), *disc. review denied*, 361 N.C. 354 (2007); *see also* N.C.G.S. § 7B-1101.1 (2019). "Counsel necessarily must provide effective assistance, as the alternative would render any statutory right to counsel potentially meaningless." *In re T.N.C.*, 375 N.C. 849, 854 (2020). "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." *Id.* at 33 (cleaned up) (quoting *In re Bishop*, 92 N.C. App. 662, 664 (1989)). "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 T.N.C.*, 375 N.C. at 854 (quoting *State v. Braswell*, 312 N.C. 553, 563 (1985)); *see also In re S.C.R.*, 198 N.C. App. 525, 531 ("A parent must also establish he suffered prejudice in order to show that he was denied a fair hearing."), *appeal dismissed*, 363 N.C. 654 (2009). Respondent has made no showing that he was prejudiced as a result of his counsel's alleged deficient performance. *See In re Dj.L.*, 184 N.C. App. 76, 87 (2007) (an ineffective assistance claim is meritless when "[i]t is difficult to see a defense on which respondent could have prevailed, and respondent cites no such theory on appeal."). In this case, respondent has failed to show that any of the alleged deficiencies in his counsel's performance or conduct, whether taken alone or collectively, would have resulted in a different outcome. Therefore, respondent cannot prevail on his claim of ineffective assistance of counsel.

IV. Conclusion

¶ 36 The trial court did not err in concluding that respondent's parental rights were subject to termination based on willful abandonment; nor did the trial court abuse its discretion by concluding that termination of respondent's parental rights was in the children's best interests. Respondent also failed to show he received ineffective assistance of counsel at the termination hearing. Accordingly, we affirm the trial court's orders terminating his parental rights to George and Sarah.

AFFIRMED.

IN RE H.A.J.

[377 N.C. 43, 2021-NCSC-26]

IN THE MATTER OF H.A.J. AND B.N.J.

No. 127A20

Filed 19 March 2021

1. Child Abuse, Dependency, and Neglect—permanency planning hearing—change in DSS recommendation—due process argument—notice

A respondent-mother was not materially prejudiced by the trial court's failure to continue a permanency planning review hearing after a department of social services and guardian ad litem requested a change to the permanent plan to cease reunification. Although respondent argued her due process rights were violated because she was not given sufficient notice of a new recommendation, respondent was necessarily on notice that the permanent plan could change at the hearing designated to review that plan, there was no requirement that she be given advance notice of a changed recommendation, and she failed to show how a continuance would have altered the result of the hearing.

2. Child Abuse, Dependency, and Neglect—permanency planning hearing—ceasing reunification efforts—required findings

The trial court's permanency planning order ceasing reunification efforts with respondent-mother was supported by its unchallenged findings of fact, made in accordance with the requirements of N.C.G.S. § 7B-906.2(d), which detailed respondent's lack of progress in securing stable housing and transportation, abstaining from alcohol use, attending visitation regularly, and demonstrating her participation in substance abuse treatment and domestic violence counseling.

3. Termination of Parental Rights—grounds for termination—neglect—likelihood of repetition of neglect—substance abuse

The trial court properly terminated respondent-mother's parental rights to her two children on the ground of neglect where its findings demonstrated a likelihood of the repetition of past neglect if the children were returned to respondent's care, based on her ongoing substance abuse, domestic violence between her and her partner, and lack of sustained progress on her case plan.

IN RE H.A.J.

[377 N.C. 43, 2021-NCSC-26]

4. Termination of Parental Rights—best interests of the child—statutory factors—weighing of factors

The trial court's conclusion that termination of respondent-mother's parental rights was in the best interest of her two children was supported by its unchallenged findings of fact, which addressed the statutory factors in N.C.G.S. § 7B-1110(a), and which demonstrated the court's careful consideration of the nature of the bond each child had with respondent as well as of each child's placement history as it pertained to the likelihood of being adopted. The court did not abuse its discretion by weighing certain factors more heavily than others in its final determination.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 14 January 2020 by Judge Hal Harrison in District Court, Madison County. This matter was calendared for argument in the Supreme Court on 11 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Law Offices of Jamie A. Stokes, PLLC, by Jamie A. Stokes, for petitioner-appellee Madison County Department of Social Services.

Michelle FormyDuval Lynch, for appellee Guardian ad Litem.

Deputy Parent Defender Annick Lenoir-Peek for respondent-appellant mother.

EARLS, Justice.

¶ 1 Respondent, the mother of the juveniles H.A.J. and B.N.J. ("Holden" and "Bella")[1], appeals from the trial court's orders eliminating reunification as a permanent plan and terminating her parental rights. After careful review, we affirm the trial court's orders.

I. Background

¶ 2 On 14 August 2018, the Haywood County Department of Social Services (DSS) received a report alleging that Holden and Bella were being left alone while respondent-mother visited Mr. Scott[2], with whom she

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

2. Also a pseudonym, used in this opinion to preserve confidentiality.

was in a relationship. The report further alleged that Mr. Scott, who was in the hospital receiving treatment for abscesses due to intravenous drug use, had "gotten [respondent-mother] 'hooked' on Methamphetamine." Haywood County DSS contacted Madison County DSS seeking assistance, and Madison County DSS contacted the Madison County Sheriff's Office for assistance in locating Holden and Bella.

¶ 3 On or around 6 September 2018, the Madison County Sheriff's Office located Holden and Bella in Hot Springs, North Carolina, and notified Madison County DSS. Madison County DSS interviewed Holden and Bella, and the juveniles revealed they had been hiding and fleeing from law enforcement and DSS for multiple days to avoid being removed from respondent-mother's care. Holden and Bella disclosed that they had witnessed respondent-mother and Mr. Scott "shooting drugs with needles in their bodies." The juveniles also stated they had witnessed Mr. Scott "striking the respondent mother, slinging her on the bed[,] and the respondent mother screaming for [Holden and Bella] to call 911." Respondent-mother admitted to intravenous drug use and domestic violence between herself and Mr. Scott, including one occasion where Mr. Scott attempted to choke her in bed. Accordingly, on 7 September 2018, Madison County DSS filed petitions alleging that Holden and Bella were neglected and dependent juveniles and obtained nonsecure custody.

¶ 4 Following a hearing held on 15 October 2018, the trial court entered an order on 7 November 2018 adjudicating Holden and Bella neglected juveniles. The trial court entered an interim disposition order in which it placed the juveniles in the legal and physical custody of Madison County DSS and granted respondent-mother weekly supervised visitation. On 26 November 2018, the trial court entered a disposition order in which it set the permanent plan for the juveniles as reunification with a concurrent plan of guardianship. The trial court ordered respondent-mother to comply with the requirements of her DSS case plan, which included: (1) completing the Children in the Middle Parenting Course and Seeking Safety classes; (2) having no contact with Mr. Scott; (3) attending a substance abuse intensive outpatient treatment program (SAIOP); (4) a medical evaluation; and (5) random drug screens.

¶ 5 The trial court held a review hearing on 21 February 2019. In an order entered on 21 March 2019, the trial court found that respondent-mother: (1) had resolved pending criminal charges by pleading guilty to breaking and entering, and was placed on probation; (2) had a positive screen for alcohol; (3) had participated in a domestic violence class but had not received an assessment; (4) had completed the Children in the Middle Parenting Course but not the Seeking Safety class; and (5) need-

ed to complete SAIOP and submit to random drug and alcohol screening. The trial court also found that Holden and Bella were doing well in their foster care placements but had some behavioral issues.

¶ 6 A permanency planning review hearing was held on 4 April 2019. The trial court found as fact that: (1) respondent-mother had not yet secured housing; (2) she had completed SAIOP and intermediate treatment was recommended; (3) despite treatment, respondent-mother continued to have issues with alcohol consumption; (4) respondent-mother had not yet completed the Seeking Safety class; and (5) respondent-mother had not yet received a domestic violence assessment. The trial court further found as fact that Bella was experiencing behavioral issues that were the result of prior trauma. Consequently, the trial court directed that respondent-mother's visitation with Bella "occur as therapeutically recommended."

¶ 7 The trial court held another permanency planning review hearing on 16 May 2019. On the day of the hearing, the attorney for DSS requested a change in the permanent plan for Holden and Bella to adoption with a concurrent plan of guardianship, and the attorney for the guardian ad litem concurred. Respondent-mother objected to the requested change, citing a lack of notice and due process concerns because DSS and the guardian ad litem had recently filed reports in which they had not recommended such a change. The trial court directed DSS to proceed.

¶ 8 The trial court entered an order from the hearing on 8 August 2019. In the permanency planning review order, the trial court found that since the last hearing respondent-mother: (1) had not yet secured or maintained independent housing, had been kicked out of her prior residence, and was residing with her parents; (2) had missed scheduled visitations in April 2019 and on Mother's Day 2019; (3) was continuing to use alcohol in violation of a prior court order and had received a recent DWI charge which remained pending; (4) was currently on probation for breaking and entering; (5) did not have stable transportation; (6) had completed over ninety hours of SAIOP but had not participated in an aftercare program as recommended; (7) was substituting alcohol for methamphetamine use; (8) had not obtained a domestic violence assessment; and (9) had not started the Seeking Safety course. The trial court further found that the juveniles remained in licensed foster care and were doing well in their placement and in school. The trial court determined that the return of the juveniles to their home within six months was not likely and that further efforts at achieving reunification would be futile or inconsistent with the juveniles' need for a safe, permanent home within a reasonable period. Accordingly, the trial court relieved

DSS of further reunification efforts and changed the permanent plan for the juveniles to adoption with a concurrent plan of guardianship. Respondent-mother filed notice to preserve her right to appeal.

¶ 9 On 28 June 2019, DSS filed petitions to terminate respondent's parental rights. On 14 January 2020, the trial court entered an order in which it determined that grounds existed to terminate respondent's parental rights to both juveniles due to neglect. N.C.G.S. § 7B-1111(a)(1) (2019). The trial court further concluded it was in Holden's and Bella's best interests that respondent's parental rights be terminated. Accordingly, the trial court terminated respondent's parental rights.[3] Respondent-mother appeals.

II. Permanency Planning Review Order

¶ 10 **[1]** Respondent-mother first argues the trial court erred by denying her motion to continue the 16 May 2019 permanency planning review hearing. Respondent-mother contends that she relied on the representations made by DSS and the guardian ad litem in their written reports and was not provided sufficient notice that they would be requesting a change in the juveniles' permanent plan at the hearing. Respondent-mother argues that had she been aware that their recommendations would be changing, she would have had an opportunity to present evidence as to why reunification efforts should continue. Therefore, respondent-mother argues the trial court violated her constitutional right to due process.

¶ 11 "Ordinarily, a motion to continue is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court's ruling is not subject to review." *In re A.L.S.*, 374 N.C. 515, 516–17 (2020) (quoting *State v. Walls*, 342 N.C. 1, 24 (1995)). "However, if 'a motion to continue is based on a constitutional right, then the motion presents a question of law which is fully reviewable on appeal.' " *In re S.M.*, 375 N.C. 673, 679 (2020). "To establish that the trial court's failure to give additional time to prepare constituted a constitutional violation, [the] [respondent-mother] must show 'how [her] case would have been better prepared had the continuance been granted or that [s]he was materially prejudiced by the denial of h[er] motion.' " *State v. McCullers*, 341 N.C. 19, 31 (1995) (quoting *State v. Covington*, 317 N.C. 127, 130 (1986)).

¶ 12 Here, the record demonstrates, and respondent-mother acknowledges in her brief, that the hearing was designated as a permanency

3. The district court's order also terminated the parental rights of the juveniles' fathers, including unknown fathers, but the fathers did not appeal and are not a party to the proceedings before this Court.

planning hearing. Thus, respondent-mother was on notice that the trial court could change the permanent plan for the juveniles. *See* N.C.G.S. § 7B-906.2(a) (2019) ("At *any* permanency planning hearing pursuant to G.S. 7B-906.1, the court shall adopt one or more of the following permanent plans the court finds is in the juvenile's best interests: (1) Reunification[;] (2) Adoption[;] (3) Guardianship[;] (4) Custody to a relative or other suitable person[;] (5) Another Planned Permanent Living Arrangement (APPLA)[; or] (6) Reinstatement of parental rights[.]") (emphasis added). Although respondent-mother argues that DSS and the guardian ad litem should be required to give notice of a change in recommendations in advance of the permanency planning hearing, such notice is not required by Chapter 7B. Furthermore, even if respondent-mother had been notified of the change in recommendations, as the Court of Appeals has observed, "North Carolina caselaw is replete with situations where the trial court declines to follow a DSS recommendation." *In re Rholetter*, 162 N.C. App. 653, 664 (2004).

¶ 13 We further note that after learning at the hearing that DSS and the guardian ad litem were seeking a change in the permanent plan for the juveniles, respondent-mother objected to the change in plan. While respondent-mother objected to the trial court changing the permanent plan for the juveniles at the hearing, the record does not reflect that counsel asked for the hearing to be continued. Even if we construe respondent-mother's objection as a request for a continuance, there is no evidence in the transcript demonstrating how respondent-mother was materially prejudiced by denial of the motion. *See In re A.L.S.*, 374 N.C. 515, 518 (2020) (concluding that respondent-mother failed to demonstrate prejudice where her "counsel offered only a vague description of the son's expected testimony and did not tender an affidavit or other offer of proof to demonstrate its significance."); *see also In re D.Q.W.*, 167 N.C. App. 38, 41 (2004) (concluding there was no prejudice where respondent did not explain why his counsel had inadequate time to prepare for the hearing; what specifically his counsel hoped to accomplish during the continuance; or how preparation would have been more complete had the continuance motion been granted). Respondent-mother also fails to identify in her brief any evidence, defenses, or testimony she was unable to present. Given the nature of a permanency planning hearing, as defined by statute, respondent was on notice that she needed to present all evidence relevant to her arguments concerning the proper disposition. Therefore, based upon the record before us, we conclude respondent-mother has failed to demonstrate prejudice. She has not demonstrated how her case would have been better prepared, or a different result obtained, had a continuance been granted. In these

circumstances, the trial court did not err by proceeding with the hearing and respondent-mother's due process rights were not violated.

¶ 14 **[2]** We next consider respondent-mother's arguments that the trial court erred by failing to make the factual findings required by N.C.G.S. § 7B-906.2 when eliminating reunification with respondent-mother from the juveniles' permanent plan. 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." *In re L.M.T.*, 367 N.C. 165, 168 (2013) (quoting *In re P.O.*, 207 N.C. App. 35, 41 (2010)). "The trial court's findings of fact are conclusive on appeal if supported by any competent evidence." *Id.* (citing *In re P.O.*, 207 N.C. App. at 41). "At a permanency planning hearing, '[r]eunification shall be a primary or secondary plan unless,' *inter alia*, 'the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety.' " *In re J.H.*, 373 N.C. 264, 267 (2020) (quoting N.C.G.S. § 7B-906.2(b) (2019)). When making such a determination, the trial court must make written findings "which shall demonstrate the degree of success or failure toward reunification," including:

> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
>
> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
>
> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
>
> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C.G.S. § 7B-906.2(d) (2019). While "use of the actual statutory language [is] the best practice, the statute does not demand a verbatim recitation of its language." *In re L.M.T.*, 367 N.C. at 167. Instead, "the order 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." *Id.* at 167–68 (cleaned up).

¶ 15 Here, despite respondent-mother's claims to the contrary, the trial court made written findings of fact in accordance with N.C.G.S. § 7B-906.2(d). The trial court found the following as fact:

> 6. That the Court has received testimony from Bethany Wyatt (Madison County DSS); the respondent mother; and has considered the DSS Report; the GAL Report; and other documentation; that since these matters were last reviewed, the juveniles have remained placed in licensed foster care in Madison County; are doing well in placement and school; referrals for therapy have been made; the respondent mother has not secured or maintained independent housing; currently resides with her parents; testified she was kicked out of her prior residence in March, 2019; missed scheduled visitation on 04/05/19; missed scheduled Mother's Day visitation; continues to use alcohol in violation of the prior Court Order; received a recent DWI charge that remains pending (0.15 on breathalyzer); is currently on probation for Breaking and Entering conviction; does not have stable transportation; previously completed over 90 hours of SAIOP at RHA but has not participated in the aftercare program as recommended; states that she has recently re-engaged in that therapy but the Court finds the documentation she has provided on this issue is not credible and the Court gives no weight to same; is now substituting alcohol for methamphetamine use; has not obtained a DV assessment (the respondent mother testified she has had difficulty finding a provider for this service although being ordered to do so since the dispositional hearing); states she has completed DV coursework; the Court does not find the same satisfies the requirement of the DV assessment and treatment; has not started the Seeking Safety course; has not completed the TRACES peer support program; . . . that the barrier to implementing the permanent plan remains [respondent-mother's] failure to complete [her] DSS case plan requirements[.]
>
> 7. That this matter came on for permanency planning hearing. . . [and] that the [c]ourt has considered all the evidence, including the progress made and the

> current barriers to implementing the designated permanent plan of reunification.
>
> . . . .
>
> 9. That the return of the juveniles to the home of [respondent-mother] immediately or within six months is not likely; that reunification is no longer the appropriate permanent plan for the juveniles[.]
>
> . . . .
>
> 11. That the following services have been provided by the Petitioner to prevent or eliminate the need for placement of the juveniles and to place the juveniles in a timely manner in accordance with the permanent plan: facilitation of visits for respondent mother; referral to RHA for respondent mother; [and] coordination with respondent mother and case planning activities[.]
>
> 12. That reasonable efforts have been made by the Petitioner to prevent or eliminate the need for placement of the juveniles but the return of the juveniles to the home of the respondent parents is contrary to their welfare and best interests at this time.
>
> 13. That further reasonable efforts [to] prevent or eliminate the need for placement of the juvenile[s] are no longer required as the same would be clearly futile or inconsistent with the juveniles' need for a safe, permanent home within a reasonable period of time and are no longer required.

Respondent-mother does not claim that these findings are unsupported by the evidence, and we are bound by them on appeal. *See In re T.N.H.*, 372 N.C. 403, 407 (2019) (stating that "[f]indings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal."). Based on these findings of fact, the trial court relieved DSS of further reunification efforts and removed reunification from the juveniles' permanent plan.

¶ 16 The trial court's findings of fact establish that it addressed each of the factors specified in N.C.G.S. § 906.2(d). Finding of fact number 6 sets forth numerous details demonstrating that respondent-mother had not been making adequate progress or actively participating in her case plan

and had been acting in a manner inconsistent with the juveniles' health or safety. The trial court found as fact that respondent-mother had failed to maintain stable housing and transportation; had continued using alcohol in violation of prior court orders and as a substitute for methamphetamine use; had missed scheduled visitations; was recently charged with DWI and was on probation for a breaking and entering conviction; and had failed to provide documentation regarding her participation in substance abuse aftercare treatment and domestic violence counseling. *Cf.* N.C.G.S. § 7B-906.2(d)(1), (4) (2019). The trial court further found that the barrier to implementing the permanent plan of reunification was respondent-mother's failure to complete her case plan requirements. *Cf.* N.C.G.S. § 7B-906.2(d)(2) (2019). The trial court's additional findings, including the trial court's summation of respondent-mother's testimony, and its finding that DSS coordinated with respondent-mother when providing services aimed at eliminating the need for placement, demonstrated that respondent-mother remained available to the trial court and DSS. *Cf.* N.C.G.S. § 7B-906.2(d)(3) (2019). While the trial court's findings did not use the precise statutory language, the findings did 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 L.E.W.*, 375 N.C. 124, 133 (2020) (quoting *In re L.M.T.*, 367 N.C. at 167–68). Therefore, we reject respondent-mother's argument that the trial court failed to make sufficient findings of fact when eliminating reunification from the juveniles' permanent plan, and we affirm the trial court's permanency planning review order.

III. Termination Order

¶ 17 **[3]** Respondent-mother next contends that the trial court erred in concluding that grounds existed to terminate her parental rights. "Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re Z.A.M.*, 374 N.C. 88, 94 (2020) (citing N.C.G.S. §§ 7B-1109, -1110 (2019)). "At the adjudicatory stage, the petitioner bears the burden of proving by 'clear, cogent, and convincing evidence' the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes." *In re A.U.D.*, 373 N.C. 3, 5–6 (2019) (quoting N.C.G.S. § 7B-1109(f) (2019)). We review a trial court's adjudication of grounds to terminate parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*,

372 N.C. 388, 392 (2019) (quoting I*n 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).

¶ 18 The sole ground found by the trial court to support termination of respondent-mother's parental rights was neglect. *See* N.C.G.S. § 7B-1111(a)(1). A trial court may terminate parental rights pursuant to this statutory ground where it concludes the parent has neglected the juvenile within the meaning of N.C.G.S. § 7B-101. *Id.* 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). In some circumstances, the trial court may terminate a parent's rights based on neglect that is currently occurring at the time of the termination hearing. *See*, *e.g.*, *In re K.C.T.*, 375 N.C. 592, 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, in other instances, the fact that "a child has not been in the custody of the parent for a significant period of time prior to the termination hearing" would make "requiring the petitioner in such circumstances to show that the child is currently neglected by the parent . . . impossible." *In re N.D.A.*, 373 N.C. 71, 80 (2019). In this situation, "evidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights[,]" but "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715 (1984). After weighing this evidence, the court may find the neglect ground if it concludes the evidence demonstrates "a likelihood of future neglect by the parent." *In re R.L.D.*, 375 N.C. 838, 841 (2020). Thus, even in the absence of current neglect, the trial court may adjudicate neglect as a ground for termination based upon its consideration of any evidence of past neglect and its determination that there is a likelihood of future neglect if the child is returned to the parent. *Id.* at 841, n.3. In doing so, the trial court must consider evidence of changed circumstances that may have occurred between the period of prior neglect and the time of the termination hearing. *In re Z.V.A.*, 373 N.C. 207, 212 (2019) (citing *Ballard*, 311 N.C. at 715).

¶ 19 Here, the juveniles were adjudicated neglected on 7 November 2018. The trial court also found as fact in its termination order that DSS received a report regarding respondent-mother and the juveniles, and

during their first interview with respondent-mother "[s]he admitted to intravenous drug use, methamphetamine use, and domestic violence between she and [Mr. Scott]. She also admitted that [Mr. Scott] attempted to choke her in bed on one occasion." The trial court further found as fact that respondent-mother was given the opportunity to work toward reunification with the juveniles through compliance with a DSS case plan, but that she failed to comply. The trial court made the following findings of fact concerning respondent-mother's compliance with her case plan and concerning its determination that there would be a repetition of neglect should the juveniles be returned to respondent-mother's care:

> 24. At the time of the [May 16, 2019 permanency planning] hearing, the respondent mother had still not secured independent housing; had missed scheduled visitations with the juveniles five times from September 2018 until the court date; was using alcohol; had been charged with Driving While Impaired (DWI) in May of 2019 with a blood alcohol concentration of 0.15, eight (8) months after the children came into the care of the Petitioner's custody; was placed on probation for Felony Breaking and Entering stemming from an incident in December of 2018; had not completed substance abuse treatment but was engaged with intensive outpatient substance abuse treatment ("IOP") and was providing negative urine drug screens to her provider; and had not gotten her domestic violence assessment, but completed domestic violence coursework on November 15, 2018. She had also completed the Children in the Middle parenting class on November 1, 2018. The respondent mother was unable to complete the Seeking Safety course due to a lack of funding to pay for the class.
>
> 25. By March 29, 2019, [respondent-mother] completed over 100 hours of IOP. She subsequently relapsed and was charged with her DWI offense in May of 2019. She then completed 36 hours of intermediate substance abuse treatment as recommended aftercare, ending on August 19, 2019. The respondent mother provided negative urine drug screens through the substance abuse provider.
>
> . . . .

27. The respondent mother was on felony probation with a 6 to 17-month suspended sentence at the time she was charged with her pending DWI and was ordered not to consume alcohol as a probationary condition. She now has a pending felony probation violation as a result. The respondent mother was also engaged in substance abuse treatment for nine hours per week through RHA at the time of her DWI offense. The respondent mother testified that she does not currently have a driver's license and she anticipated she will lose her license once convicted of the DWI. Per the testimony of the respondent mother's probation officer, except for the violation relating to her pending DWI and possession of alcohol, the respondent mother is otherwise fully compliant and has provided consistent negative urine drug screens.

28. Since coming into the Petitioner's custody on September 7, 2018, the juvenile [Holden] has made disclosures of a long pattern of alcohol and substance abuse by the respondent mother as well as patterns of domestic violence in his presence between the respondent mother and her multiple romantic partners throughout his childhood. In addition to the initial disclosures regarding [Mr. Scott], [Holden] has described observing the respondent mother and [Bella's putative father, R.M.] getting drunk and fighting all the time, the respondent mother breaking a bottle over [R.M.'s] head, [R.M.] beating [Holden] with a belt with spikes, and receiving a beating from [R.M.] during an argument about eating beans that was so bad that [Holden] can no longer eat beans. The respondent mother acknowledged that [R.M.] did beat [Holden] because of beans and testified that this incident triggered her to leave [R.M.].

29. Both juveniles have been admitted for inpatient psychiatric treatment at Copestone since coming into the Petitioner's custody, in part as a result of behaviors exhibited in reaction to the respondent mother and the situations she has exposed them to.

30. The respondent mother . . . came to Copestone in April 2019 when [Bella] was being assessed for

admission. While at the hospital, a social worker from [DSS] smelled alcohol on the respondent mother and requested that she submit to a breathalyzer. The respondent mother agreed, then stated she was going to the restroom and left the premises without submitting to a breathalyzer and without waiting to see if [Bella] was going to be admitted. The following day, she acknowledged to [a] social work supervisor [ ] that she had been drinking.

31. The respondent mother [ ] has admitted to employees of the Petitioner that she replaced methamphetamine with alcohol after [DSS] took custody of the juveniles.

32. [Bella] was diagnosed with Static Encephalopathy, alcohol exposed, following testing by the Olsen Huff Center, which was caused by the respondent mother consuming alcohol while pregnant with [Bella]. The diagnosis indicates that [Bella] has suffered irreversible brain damage and will have life-long effects due to her exposure to substances while in utero.

33. [Holden] has been increasingly struggling with negative behaviors since coming into the custody of the Petitioner on September 6, 2018. He has had uncontrollable fits of crying and yelling; has run away from placement providers and had to be returned by law enforcement; and has had to be transported to a children's crisis center and a psychiatric inpatient unit due to his behaviors.

. . . .

35. [Holden] has increasingly resisted visiting with the respondent mother. He initially claimed sickness on his visitation days with the respondent mother and missed multiple visits from July until September 2019. At his last visit with the respondent mother in September 2019, he became extremely upset and engaged in self-harming behaviors including beating his head into the wall until he had to be taken outside and the visit ceased. He has directly stated to the respondent mother that he never wants to live with her and he blames her for the things she has put him through.

> 36. With the consent of all parties, the [c]ourt interviewed [Holden] in chambers . . . . [Holden] stated and the [c]ourt finds that [Holden] does not want to return to the custody of the respondent mother due to the experiences she has put him through.
>
> 37. [Bella] participates in therapy . . . weekly. The therapist does not support returning [Bella] to the care of respondent mother [ ] due to the behaviors exhibited by the juvenile and the unreliable environment provided by the respondent mother.
>
> 38. While the [c]ourt acknowledges that the respondent mother has made some progress on her case plan tasks, much of this progress occurred subsequent to the filing of the Petitions to terminate her parental rights in these causes. The respondent mother completed her domestic violence education classes prior to having an assessment of her level of need, and she has not completed additional classes after her assessment despite the assessment stating she is at high risk.
>
> 39. While the [c]ourt recognizes the respondent mother's recent participation in substance abuse treatment, her long-standing history of substance abuse and domestic violence with multiple partners in the presence of the children, her delayed participation in any meaningful treatment, her prior relapse while participating in similar services, the traumatic effects and impact on the children from her behaviors, and the diagnoses, behaviors, and wishes of the children all demonstrate the juveniles' continued neglect and the strong likelihood of neglect if returned to the respondent mother's custody.

To the extent these findings of fact are not challenged by respondent-mother, they are binding on appeal. *See In re T.N.H.*, 372 N.C. at 407.

¶ 20 Although respondent-mother does not argue that finding of fact 31 is unsupported by clear, cogent, and convincing evidence, she nonetheless contends the trial court's "concerns" about her substitution of alcohol for her prior drug use are unsupported. A review of the record shows that there is a factual basis for the trial court's concerns.

¶ 21 The record is replete with instances of respondent-mother's abuse of alcohol, both in the short-term and long-term. The trial court found that when Bella was being considered for admission to Copestone in April 2019, respondent-mother arrived smelling of alcohol, and despite agreeing to take a breathalyzer test, she left without taking one. Additionally, respondent-mother was arrested for DWI in May 2019, which also constituted a violation of the term of her probation requiring that she abstain from alcohol use. Holden also disclosed that respondent-mother had "a long pattern" of alcohol abuse. Furthermore, the trial court found that respondent-mother's history of alcohol abuse had a direct and deleterious impact on Bella. Bella was diagnosed with static encephalopathy, alcohol exposed, and suffered irreversible brain damage due to respondent-mother consuming alcohol while she was pregnant with Bella. Thus, the trial court could reasonably infer that respondent-mother had merely replaced her abuse of drugs with alcohol abuse. *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).

¶ 22 Respondent-mother additionally argues that the trial court relied solely on past circumstances and mistakenly discounted evidence of progress occurring after the filing of the petition to terminate her parental rights. Respondent-mother asserts that while she did not complete all aspects of her case plan, at the time of the termination hearing she had made sufficient progress towards being able to care for Holden and Bella.

¶ 23 It is apparent from the trial court's findings of fact that when determining whether there would be a likelihood of future neglect, the trial court placed heavy emphasis on incidents occurring prior to the filing of the petition to terminate respondent-mother's parental rights in June 2019. However, despite respondent-mother's arguments to the contrary, the trial court also specifically stated that it considered respondent-mother's "recent participation in substance abuse treatment" when determining that there likely would be a repetition of neglect. The trial court ultimately determined, however, that respondent-mother's last-minute progress was insufficient to outweigh her long-standing history of alcohol and substance abuse and domestic violence, as well as the impact these behaviors had on Holden and Bella. In these circumstances, we conclude that it was not error for the trial court to find that there likely would be a repetition of neglect in the future should Holden and Bella be returned to respondent-mother's care. *See In re O.W.D.A.*, 375 N.C. 645, 653–54 (2020) (stating that "evidence of changed conditions

must be considered in light of the history of neglect by the parents and the probability of a repetition of neglect," and although a 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[.]"). Accordingly, we hold that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(1) to terminate respondent-mother's parental rights.

¶ 24 **[4]** We next consider respondent-mother's argument that the trial court erred by finding that it was in Holden's and Bella's best interests to terminate her parental rights. If the trial court finds grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), it proceeds to the dispositional stage where it must "determine whether terminating the parent's rights is in the juvenile's best interest" based on the following factors:

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

N.C.G.S. § 7B-1110(a) (2019).

¶ 25 Here, the trial court made separate findings of fact addressing each juvenile's date of birth and then made the following findings concerning the factors set forth in N.C.G.S. § 7B-1110(a):

> 54. The juveniles' permanent plan has been designated [as] adoption, and there is a strong likelihood of adoption due to the age of the juveniles. Termination of the [respondent-mother's] parental rights would assist the Petitioner in achieving permanency for the juveniles and would eliminate this barrier to implementing the juveniles' permanent plan.

> 55. [Bella] has a bond with the Respondent Mother. [Bella] enjoys her visits with the Respondent Mother.
>
> 56. [Holden] is not bonded to the Respondent Mother and continues to actively resist having any contact with her, with his last visit occurring [in] July 2019.
>
> 57. The minor children were placed in a new foster home together on August 13, 2019. They remained in the same foster home until October 18, 2019, when [Holden] was removed to a separate home due to his behaviors. They now reside in separate foster homes, neither of which are pre-adoptive placements.
>
> 58. [DSS] is actively attempting to locate a new foster home for both children that will adopt them together, but no such home has been identified as of yet.
>
> 59. [Bella] was involuntarily committed into the Copestone mental health unit of Mission Hospital in April 2019, due to her behavior.
>
> 60. [Holden] was involuntarily committed into the Copestone mental health unit of Mission Hospital on July 26, 2019, due to his behavior. His hospitalization lasted for two weeks.

We review the trial court's dispositional findings of fact to determine whether they are supported by competent evidence. *In re K.N.K.*, 374 N.C. 50, 57 (2020). Dispositional findings not challenged by respondent-mother are "binding on appeal." *In re Z.L.W.*, 372 N.C. 432, 437 (2019).

¶ 26 Respondent-mother contends that while the trial court "nominally" addressed the statutory factors set forth in N.C.G.S. § 7B-1110, the findings were "pro forma" and did not address the substance of the statutory requirements. Respondent-mother asserts that consideration of Holden's and Bella's best interests weigh strongly against termination of her parental rights. Respondent-mother cites the strong bond that she had with Bella, the trial court's failure to consider whether Holden would consent to adoption, and the fact that neither juvenile was in a pre-adoptive placement. Respondent-mother cites *In re J.A.O.*, 166 N.C. App. 222, 227 (2004) to support her contention that the trial court should not have terminated her parental rights because Holden and Bella were not adoptable.

¶ 27 However, in this case, the trial court's findings of fact were not merely "pro forma." The trial court did not simply recite the statutory fac-

tors but considered them along with the facts of this case. For example, the trial court noted that Holden did not have a bond with respondent-mother and "actively resists having any contact with her." The trial court also found that Bella did have a bond with respondent-mother and enjoyed her visits with her. Furthermore, while the trial court found that there was a strong likelihood of adoption and termination would aid in achieving permanency, the trial court also recognized that the juveniles were not in pre-adoptive placements and were residing in separate foster homes, while noting that DSS was attempting to locate a new foster home that would adopt both juveniles together. Thus, respondent-mother's contention that the trial court only nominally addressed the statutory factors set forth in N.C.G.S. § 7B-1110 is without merit.

¶ 28 Second, although respondent-mother does not challenge the trial court's finding of fact 54 that there was a strong likelihood of adoption as being unsupported by the evidence, she nonetheless argues that adoption would be difficult, noting the juveniles' multiple disrupted foster placements, the fact that no pre-adoptive home has been identified, and the fact that both juveniles had been involuntarily committed for being a danger to themselves and others. Respondent-mother also contends that the trial court failed to consider whether Holden would consent to adoption. *See* N.C.G.S. § 48-3-601(1) (2019) (providing that a minor over the age of twelve must consent to adoption unless consent is not required under N.C.G.S. § 48-3-603). However, even if we agreed with respondent-mother's contentions regarding the adoptability of the juveniles, this factor alone is not dispositive. We have stated that "the trial court need not find a likelihood of adoption in order to terminate parental rights." *In re C.B.*, 375 N.C. 556, 562 (2020); *see also In re A.R.A.*, 373 N.C. 190, 200 (2019) ("[T]he absence of an adoptive placement for a juvenile at the time of the termination hearing is not a bar to terminating parental rights." (alteration in original) (quoting *In re D.H.*, 232 N.C. App. 217, 223 (2014))).

¶ 29 Furthermore, *In re J.A.O.*, cited by respondent-mother, is readily distinguishable from the instant case. In *In re J.A.O.*, the juvenile had "a history of being verbally and physically aggressive and threatening, and he ha[d] been diagnosed with bipolar disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, borderline intellectual functioning, non-insulin dependent diabetes mellitus, and hypertension." *In re J.A.O.* 166 N.C. App. at 228. The juvenile had "been placed in foster care since the age of eighteen months and ha[d] been shuffled through nineteen treatment centers over the last fourteen years." *Id.* at 227. As a result, the guardian ad litem argued at trial that the juvenile was unlikely

to be a candidate for adoption and that termination was not in the juvenile's best interests because it would "cut him off from any family that he might have." *Id.* at 228. Despite this evidence, and despite finding that there was only a "small 'possibility' " that the juvenile would be adopted, the trial court concluded that it was in the juvenile's best interests to terminate the mother's parental rights. *Id.* On appeal, the Court of Appeals reversed. The Court of Appeals balanced the minimal possibilities of adoption "against the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring" and determined that rendering J.A.O. a legal orphan was not in his best interests. *Id.*

¶ 30 Here, the juveniles have only been in foster care for thirteen months, as opposed to the many years that J.A.O. spent being "shuffled" through various treatment centers. *Id.* at 227. Additionally, while the guardian ad litem in *J.A.O.* argued that the juvenile was unlikely to be adopted and termination was not in his best interests, the guardian ad litem here stated in its report that "there is potential for both children to be successfully adopted" and advocated for termination to achieve permanence for Holden and Bella. A social worker likewise testified that she had "every hope . . . that [Holden and Bella] can be adopted together." Furthermore, while Bella did have physiological issues and both juveniles had behavioral issues that required their involuntary commitment, there is no indication that their issues were as serious as those experienced by the juvenile in *J.A.O.* *Id.* at 228. We note that a social worker testified that Holden had been moved to a new foster home and "is doing great and [has] no behavior problems. He loves it there and he gets along great with the foster dad." Moreover, as noted previously, Bella's physiological issues and both juveniles' behavioral issues can be directly attributable to respondent-mother. Consequently, respondent-mother's argument concerning the likelihood of the juveniles' adoption and the significance of that consideration in the best interests' determination is unavailing.

¶ 31 Third, respondent-mother does not challenge the trial court's dispositional finding that Holden was not bonded to her as being unsupported by the evidence. Respondent-mother instead argues that a "more accurate finding would be that he was angry with his mother. If he wasn't bonded, he wouldn't have been angry – he wouldn't have cared." However, a social worker testified that Holden "blames his mom for everything that he's already been through and that he hates her and doesn't want to live with her." Based on this evidence, the trial court could reasonably infer that Holden had no bond with respondent-mother. *See In re D.L.W.*, 368 N.C. at 843 (stating that it is the trial judge's duty to con-

sider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn therefrom).

¶ 32 Additionally, while respondent-mother may have maintained a bond with Bella, this Court has repeatedly recognized that "the bond between parent and child is just one of the factors to be considered under N.C.G.S. § 7B-1110(a), and the trial court is permitted to give greater weight to other factors." *In re Z.L.W.*, 372 N.C. at 437. This Court concluded in *In re Z.L.W.* that, based on the trial court's consideration of the other statutory factors and given the respondent's lack of progress on his case plan, "the trial court's determination that other factors outweighed [the] respondent's strong bond with [the juveniles] was not manifestly unsupported by reason." *Id.* at 438.

¶ 33 Similarly, here, it was not an abuse of discretion for the trial court to determine that other factors outweighed respondent-mother's bond with Bella. There was evidence to show that Bella is likely to be adopted, and that termination of respondent-mother's parental rights was necessary to achieve permanence. Accordingly, we conclude that the trial court properly considered the statutory factors set forth in N.C.G.S. § 7B-1110(a) and did not abuse its discretion by determining that termination of respondent-mother's parental rights was in the best interests of the juveniles.

IV. Conclusion

¶ 34 The trial court did not err by failing to grant respondent-mother a continuance of the 16 May 2019 permanency planning review hearing and the trial court made sufficient findings of fact when eliminating reunification from the juveniles' permanent plan. Furthermore, the trial court properly concluded that grounds existed to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1). Finally, the trial court did not abuse its discretion by determining that termination of respondent-mother's parental rights was in the best interests of the juveniles. Accordingly, we affirm the trial court's orders.

AFFIRMED.

IN RE I.R.M.B.

[377 N.C. 64, 2021-NCSC-27]

IN THE MATTER OF I.R.M.B.

No. 91A20

Filed 19 March 2021

Termination of Parental Rights—grounds for termination—willful abandonment—incarceration and restraining order—no emotional or material support—domestic abuse

The trial court's order terminating the parental rights of respondent-father on the grounds of willful abandonment was affirmed where respondent was aware of his ability to seek legal custody and visitation rights (and how to obtain such relief) despite the limitations of his incarceration and a restraining order prohibiting contact with the child and her mother, he did not provide any emotional or material support during the determinative period although he could have done so, and his domestic abuse of the mother which led to the restraining order supported an inference of willfulness for purposes of N.C.G.S. § 7B-1111(a)(7).

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 21 November 2019 by Judge Elizabeth T. Trosch in District Court, Mecklenburg County. This matter was calendared for argument in the Supreme Court on 11 February 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 mother.

J. Thomas Diepenbrock for respondent-appellant father.

BARRINGER, Justice.

¶ 1 Respondent-father appeals from the trial court's order entered on 21 November 2019 terminating the parental rights of respondent-father to I.R.M.B. (Isabel).[1] After a review of the record, we conclude that the trial court's unchallenged findings of fact support the trial court's conclusion to terminate respondent-father's parental rights pursuant to N.C.G.S. § 7B-1111(a)(7) (2019). Therefore, we affirm.

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

I. Factual and Procedural Background

¶ 2 In December 2013, Isabel was born to petitioner-mother and respondent-father in California. Petitioner-mother and respondent-father were never married but had an "on and off relationship" from the time Isabel was about three months old until she was a year old.

¶ 3 During their relationship, respondent-father committed at least eight acts of intimate partner violence against petitioner-mother and threatened bodily harm to petitioner-mother before and after Isabel was born. On 10 November 2014, petitioner-mother obtained a temporary restraining order from the Superior Court of California, County of Los Angeles, against respondent-father after he hit her in the face while she was driving with Isabel in the back seat. Later in November, respondent-father was incarcerated on charges unrelated to petitioner-mother and was not released until April 2017.

¶ 4 On 2 December 2014, the Superior Court of California, County of Los Angeles, issued a three-year restraining order. The restraining order prohibited respondent-father from, among other things, directly or indirectly contacting petitioner-mother or Isabel. The court also issued a child custody and visitation order granting petitioner-mother sole legal and physical custody of Isabel and prohibiting respondent-father from having visitation with Isabel.

¶ 5 On 26 December 2014, petitioner-mother and Isabel moved from California to North Carolina. Petitioner-mother and Isabel entered North Carolina's address confidentiality program, which shielded their physical address from respondent-father, and petitioner-mother discontinued her digital footprint.

¶ 6 On 14 October 2015, respondent-father, through counsel, filed a "Petition to Establish Parental Relationship" in California, seeking joint legal custody of Isabel and reasonable, supervised visitation with Isabel. On 3 December 2015, petitioner-mother filed a response to respondent-father's petition opposing joint custody and visitation.

¶ 7 On 20 June 2016, petitioner-mother filed a petition to terminate respondent-father's parental rights in District Court, Mecklenburg County. Petitioner-mother alleged that respondent-father had never exercised visitation with Isabel pursuant to an informal agreement between the parties, willfully failed to provide any financial support to Isabel and petitioner-mother, failed to provide consistent care to Isabel or petitioner-mother, never provided any emotional support to Isabel, and willfully abandoned Isabel.

¶ 8 On 12 October 2016, respondent-father filed a motion to dismiss the petition to terminate his parental rights pursuant to Rule 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure. He argued that North Carolina did not have subject-matter jurisdiction, because the child custody order was still in effect in California and respondent-father's motion to modify the child custody order was still pending. On 23 May 2017, the District Court, Mecklenburg County issued an order staying the termination of parental rights proceeding "pending the complete adjudication of the subject-matter jurisdiction issue" in the California custody proceeding. Respondent-father was released from incarceration in April 2017. In September 2017, petitioner-mother obtained a five-year extension of the California restraining order.

¶ 9 On 13 June 2018 and 13 September 2018, hearings were held in the Superior Court of California, County of Los Angeles, on petitioner-mother's request for an order finding California a forum non-conveniens. On 23 October 2018, the California Superior Court ordered that California was an inconvenient forum for custody and visitation and ordered that all future proceedings should be filed in North Carolina. The parties' case was stayed pending North Carolina's determination of jurisdiction.

¶ 10 On 15 March 2019, petitioner-mother filed a motion to vacate District Court, Mecklenburg County's 23 May 2017 order staying the termination of parental rights proceeding and requested the trial court enter judgment assuming jurisdiction over the termination of parental rights proceeding. On 3 June 2019, the District Court, Mecklenburg County found that petitioner-mother and Isabel reside in North Carolina and have significant ties to the State and concluding that it had jurisdiction over the subject matter and parties. Petitioner-mother's motions were granted; the trial court lifted the stay and assumed jurisdiction.

¶ 11 Hearings for the petition to terminate respondent-father's parental rights were held on 10 and 11 October 2019. On 21 November 2019, the trial court entered an order concluding that grounds existed to terminate respondent-father's parental rights to Isabel pursuant to N.C.G.S. § 7B-1111(a)(7). The court also determined that it was in Isabel's best interests that respondent-father's parental rights be terminated. *See* N.C.G.S. § 7B-1110(a). Respondent-father appealed.

II. Standard of Review

¶ 12 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. At the adjudicatory stage for termination of

parental rights under N.C.G.S. § 7B-1111(a), the petitioner bears the burden of proving by clear, cogent, and convincing evidence the existence of one or more grounds. 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 court must determine whether terminating the parent's rights is in the juvenile's best interests. N.C.G.S. § 7B-1110(a).

¶ 13 We review a trial court's adjudication under N.C.G.S. § 7B-1111 "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. 101, 111 (1984). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19 (2019). Unchallenged findings are deemed to be supported by the evidence and are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437 (2019).

III. Analysis

¶ 14 On appeal, respondent-father contends that (1) the trial court made findings of fact that were not supported by the evidence; and (2) the trial court's findings were insufficient to support its conclusion that respondent-father willfully abandoned Isabel pursuant to N.C.G.S. § 7B-1111(a)(7).

¶ 15 Termination under N.C.G.S. § 7B-1111(a)(7) requires proof that "[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition[.]" As used in N.C.G.S. § 7B-1111(a)(7), abandonment requires 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). The existence of willful intent "is an integral part of abandonment" and is determined according to the evidence before the trial court. *Pratt v. Bishop*, 257 N.C. 486, 501 (1962). "[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." *In re N.D.A.*, 373 N.C. 71, 77 (2019) (quoting *In re D.E.M.*, 257 N.C. App. 618, 619 (2018)).

¶ 16 In support of its conclusion that grounds existed to terminate respondent-father's parental rights based on willful abandonment, the trial court made the following pertinent findings of fact:

> 19. During the course of [petitioner-mother and respondent-father's relationship], at least from pregnancy until approximately 6 November 2014,

Respondent[-father] committed at least eight acts of intimate partner violence against Petitioner[-mother].

. . . .

35. Respondent[-father]'s statements and conduct during that period of time [from Isabel's birth to August 2014] demonstrate that he was not only unwilling to initiate action to establish a relationship and bond with the juvenile, but that he would use power and control tactics to intimidate and threaten Petitioner[-mother]. Oftentimes his contact with Petitioner[-mother], while shrouded in a motivation to visit with juvenile, ultimately served the purpose of threatening and intimidating her.

. . . .

41. Respondent[-father] continued to initiate contact with Petitioner[-mother] by text message cursing her, and denigrating her actions . . . .

. . . .

44. In response, Petitioner[-mother] again stated in a text message that she didn't feel safe and felt that the juvenile was at risk of exposure to the violence.

45. Ultimately, on or about November 10, 2014, Petitioner[-mother] sought and obtained a temporary restraining order; Respondent[-father] was served with same on November 11, 2014.

46. A hearing was held on December 2, 2014, but Respondent[-father] did not attend because he was incarcerated and in the custody of law enforcement at the time of that hearing.

47. Petitioner[-mother] obtained a permanent restraining order that remained and was in effect for a period of three years.

48. Pursuant to that restraining order, Respondent[-father] was prohibited from having any contact with Petitioner[-mother] or with the juvenile. Respondent[-father] was also prohibited from having visitation with the juvenile.

49. While the order prohibited third-party efforts to obtain Petitioner[-mother]'s address or to establish contact with her, the order did not, or would not have prohibited Respondent[-father] from initiating court proceedings or seeking the assistance of legal counsel to establish a custody arrangement, or visitation with the juvenile.

50. On or about December 26, 2014, Petitioner[-mother] moved from the State of California where she and Respondent[-father] both lived, and where the juvenile was born; she did this in order to establish a safe home for the juvenile and also to establish herself in a location where she would have family support and be able to seek employment free from Respondent[-father]'s harassment and threats to disrupt her employment. She also sought and was granted protection through a victim protection program that shielded her address from Respondent[-father].

51. Respondent[-father] voluntarily submitted himself to a law enforcement entity to serve a prison sentence and he was incarcerated from November 2014 until sometime in April of 2017.

52. During the time while incarcerated, on or about 11 February 2015, Respondent[-father] sent Petitioner[-mother] and the juvenile a Valentine's Day card. It was sent to Petitioner[-mother]'s previous address she had in the State [of] California prior to moving in December 2014, and the card was forwarded to Petitioner[-mother]'s address in Charlotte, NC. That [was] the only attempt Respondent[-father] made to establish contact with the juvenile, or to facilitate a parental bond and relationship with her.

53. Respondent[-father], through legal counsel during and while incarcerated in the State of California, initiated an action for custody and to establish paternity in November 2015 in the State of California.

54. Petitioner[-mother] was served with a Summons and other legal documents from that action. She retained legal counsel and provided her address both

to her legal counsel, to the court, and to Respondent[-father]'s legal counsel.

55. The question of whether the State of California could or should exercise jurisdiction over this custody matter was at issue; but nevertheless Respondent[-father] through legal counsel made no efforts to inquire about the juvenile's wellbeing; to request an opportunity to establish a bond or relationship with her either through letters, photographs, or to provide support for the juvenile directly or through a third-party. There was no evidence that Respondent[-father] was unable to provide any kind of emotional or material support to the juvenile from November 2015, when he initiated the paternity and custody action in the State of California, until the petition to terminate his parental rights was filed in the State of North Carolina.

56. The court finds that Respondent[-father]'s conduct even after the petition to terminate his parental rights was filed is relevant because it infers willfulness in his failure to initiate contact, inquire about the wellbeing, to attempt to provide any kind of material or emotional support to the juvenile during the 6 months immediately preceding the filing of the petition.

57. Even after the petition to terminate parental rights was initiated and continuing until the date of trial, Respondent[-father] has never made any effort in any way to seek information about juvenile's wellbeing—i.e., about what she does, what she's interested in, whether she's in school, to understand her personality, to ascertain her needs. Indeed, he has made no effort to provide any kind of emotional support to her and/or any kind of material support to the juvenile, or to Petitioner[-mother].

58. Nor has Respondent[-father] demonstrated any efforts since his release from prison in 2017 that shows a desire to seize the opportunity to be in a relationship that inures to the biological connection that Respondent[-father] has with the juvenile.

59. Respondent[-father]'s conduct, even since his release from custody in 2017, demonstrates his failure to inquire about, his failure to seek a bond and connection with, or to provide any kind of emotional and material support for the juvenile during the six months immediately preceding the filing of the petition evinces a willfulness and that he willfully abandoned his opportunity to seize the parent/child relationship, and his duties to provide for her emotionally and materially.

Respondent[-father]'s Objection

60. Respondent[-father], through his attorney of record, objects to the court's findings that Respondent[-father] willfully refused to communicate or seek information about the juvenile while the Permanent Restraining Order was in effect.

Specific Finding in Response to Noted Objection

61. Respondent[-father]'s constraints to establishing a bond or maintaining contact with the juvenile were erected and created as a result of his own unlawful misconduct. Specifically, Respondent[-father] committed repeated acts of violence, harassment and intimidation against Petitioner[-mother] in [the] year 2014. And, as a result, Petitioner[-mother] sought a[nd] received a permanent domestic violence protective order against him. In addition, Respondent[-father]'s other criminal conduct resulted in his incarceration from November 2014 through April 2017. But, despite those constraints which were created as a result of his own misconduct, there were things Respondent[-father] could have done either through legal counsel or by pursuing other litigation to inquir[e] about or seek a bond with the juvenile that he did not do.

62. And, so this court finds and concludes as a matter of law that Petitioner[-mother] has proven by clear cogent and convincing evidence grounds to terminate Respondent[-father]'s parental rights by willful abandonment pursuant to N.C.G.[S.] § 7B-1111(a)(7).

¶ 17 First, we address respondent-father's preliminary argument that a portion of finding of fact 59 and finding of fact 62 are improperly characterized as findings of fact. We agree as to finding of fact 62. However, the challenged portion of finding of fact 59, stating that respondent-father's conduct "evinces a willfulness and that he willfully abandoned his opportunity to seize the parent/child relationship, and his duties to provide for [Isabel] emotionally and materially" is a finding of fact. This Court has recognized that when addressing termination of parental rights appeals, "[t]he willfulness of a parent's actions is a question of fact for the trial court." *See In re K.N.K.*, 374 N.C. 50, 53 (2020).

¶ 18 Next, we consider whether the unchallenged findings of fact support the trial court's conclusion to terminate his parental rights based on willful abandonment pursuant to N.C.G.S. § 7B-1111(a)(7). Because we conclude the unchallenged findings of fact support the trial court's conclusion to terminate respondent-father's rights pursuant to N.C.G.S. § 7B-1111(a)(7), we need not consider respondent-father's challenge to findings of fact 56, 57, 58, and 59. Additionally, all the challenged findings of fact address respondent-father's action or inaction outside the determinative period—after the filing of the petition for termination of rights.

¶ 19 While respondent-father contends his conduct did not evince a settled purpose to forego all parental duties or to relinquish all parental claims to Isabel given that the restraining order precluded contact with Isabel and petitioner-mother, this argument is unavailing given the unchallenged findings of fact before the Court. As in *In re E.H.P.*, 372 N.C. 388, 394 (2019), the findings of fact show that respondent was aware of his ability to seek legal custody and visitation rights as Isabel's father and how to obtain such relief despite the limitations of the restraining order and his incarceration. He filed such a petition before the determinative period began on 20 December 2015 but took no further action during the determinative period.[2] He also did not provide any emotional or material support during the determinative period even though he could have. A respondent's action before the determinative period "are also relevant in interpreting whether his conduct during the window signified willful abandonment." *In re E.B.*, 375 N.C. 310, 320 (2020). Respondent-father's

2. While respondent-father argues his "actions of maintaining and pursuing the parentage, custody and visitation action he filed in October 2015 demonstrated his desire to have a relationship with his daughter," he has neither contested the relevant trial court findings of fact nor cited evidence presented at trial or testimony that support this argument. Petitioner-mother's undisputed testimony is that while respondent-father filed the referenced petition in California, it was taken off calendar and respondent-father took no further action to get the case back on the calendar or resolved. Petitioner-mother explained that all actions to reach a resolution were initiated by her.

actions as found by the trial court, which led to the entry of the restraining order, further supports a reasonable inference of willfulness for purposes of N.C.G.S. § 7B-1111(a)(7). As a result, we affirm the trial court's order terminating respondent-father's parental rights.

IV. Conclusion

¶ 20 The trial court's unchallenged findings of fact supported the trial court's order terminating respondent-father's parental rights pursuant to N.C.G.S. § 7B-1111(a)(7). Accordingly, we affirm.

AFFIRMED.

IN THE MATTER OF J.S., B.S., AND B.S.

No. 186A20

Filed 19 March 2021

Termination of Parental Rights—grounds for termination—neglect—likelihood of future neglect—incarceration

The trial court's order terminating respondent-father's parental rights was affirmed where respondent's lengthy term of incarceration (which implicated a future likelihood of neglect since he could not provide proper care, supervision, and discipline to the children while incarcerated) combined with his history of drug use and incarcerations for drug offenses, his lack of care and attention to the children when he was not incarcerated, and a history of domestic abuse between respondent and the children's mother witnessed by the children, supported the trial court's conclusion that respondent's parental rights were subject to termination on the grounds of neglect due to a likelihood of future neglect.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 21 January 2020 by Judge Joseph Moody Buckner in District Court, Orange County. This matter was calendared for argument in the Supreme Court on 11 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

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

IN RE J.S.

[377 N.C. 73, 2021-NCSC-28]

T. Richmond McPherson, III, for appellee Guardian ad Litem.

W. Michael Spivey for respondent-appellant father.

EARLS, Justice.

¶ 1 Respondent-father appeals from the orders terminating his parental rights regarding his children Brandon, Jason, and Belinda.[1] We affirm.

I. Background

¶ 2 Orange County Department of Social Services (DSS) first became involved with this family in April 2012, following a report that Jason and the children's mother, Natalie, tested positive for methadone and opiates at his birth. Natalie admitted to taking prescription pain medication that was not hers prior to coming to the hospital, abusing prescription pain medication between the birth of Brandon and Jason, and receiving methadone treatment. At the time of Jason's birth and initiation of the investigation, respondent was incarcerated following a conviction for felony drug trafficking offenses. He had been sentenced on 22 September 2009 to a term of thirty-five to forty-two months. In May 2012, the investigation was closed with services not recommended.

¶ 3 Upon his release from prison, respondent resumed selling narcotics. In March 2015, he was identified by the Orange County Sheriff's Office as a distributor of heroin, and a controlled purchase of heroin using a confidential informant was executed. In May 2015, he was arrested and charged with possession with intent to manufacture, sell, and/or distribute a schedule I substance and conspiracy to sell and/or deliver a schedule I substance. A convicted heroin supplier provided information to the FBI concerning respondent's involvement in his heroin distribution ring. During this time, respondent maintained a relationship with Natalie, and she became pregnant with Belinda.

¶ 4 DSS received another report following Belinda's birth in July 2017, as both Natalie and Belinda tested positive for benzodiazepines, cocaine, and opiates. The family was found to be in need of services, and the matter was transferred to in-home services in August 2017. Natalie later disclosed respondent gave her illicit substances, including Xanax and heroin, while she was pregnant with Belinda and during the time in-home services were being provided. Belinda remained in the hospital

1. Pseudonyms are used for the children and their mother throughout the opinion to protect identities and for ease of reading.

for approximately three months due to complications from withdrawal. Respondent rarely visited Belinda while she was in the hospital, until he was told it was necessary for him to do so in order for her to be discharged to him. Belinda was discharged to his care in October 2017.

¶ 5 Natalie was the primary caretaker of the children, under the supervision of her mother, until December 2017 when DSS received a report of a domestic violence incident between Natalie and her mother while Belinda was present. During the investigation of the incident, Brandon told DSS of prior domestic violence incidents between Natalie and respondent. The children subsequently lived with various relatives, including respondent and their maternal and paternal grandmothers.

¶ 6 In March 2018, law enforcement executed a search warrant at the house where respondent was residing with Brandon and Jason. Officers seized firearms, drugs, and drug paraphernalia. DSS filed petitions alleging all three children were neglected and obtained nonsecure custody on 7 March 2018. The children were first placed in foster care, but they were soon placed with their maternal uncle and aunt in April 2018, where they remained at the time of the termination hearing.

¶ 7 On 3 April 2018, respondent participated in an initial Child and Family Team (CFT) meeting. Respondent indicated he was "willing to do whatever" was needed to reunify with his children, though he denied the allegations and the reasons given for the children's removal. A case plan was created, identifying areas of need in parenting, substance abuse/mental health, and family relationships. The case plan recommended that respondent participate in a program to address family relationship needs, Pathways to Change, for which he did complete an assessment. However, he was unable to participate in the recommended programs because he was soon incarcerated. Respondent submitted to a drug test at the CFT meeting, and he tested positive for marijuana, heroin, and opiates.

¶ 8 Natalie attended a supervised visit with the children on 25 April 2018, where the social worker observed she had a black eye. She admitted it was caused by an altercation with respondent and also admitted to prior domestic violence incidents. Natalie obtained a domestic violence protective order on 27 April 2018.

¶ 9 Respondent was arrested on 1 May 2018 on federal charges of conspiracy to distribute heroin and fentanyl; possession with intent to distribute fentanyl; use of a communication facility to facilitate the distribution of a controlled substance; distribution of a controlled substance to a pregnant individual; possession of a firearm in furtherance

of a drug trafficking offense; and possession of a firearm by a previously convicted felon. Respondent was held without bond at the Alamance County Jail, and he remained incarcerated in various facilities throughout the juvenile proceedings. On 30 May 2018, the juvenile petition was amended to include allegations of respondent's arrest, drug use, and drug sales.

¶ 10 On 7 June 2018, the trial court held an adjudication and disposition hearing, at which the parties consented to the entry of an order upon stipulated facts adjudicating the children neglected. Respondent was permitted to have a weekly one-hour phone call with the children or a weekly one-hour supervised visit if he was released from jail. The trial court ordered respondent to provide all required information and signed releases to his social worker; submit to mental health and substance abuse assessments and comply with all recommendations; submit to random drug and alcohol screens; participate in a parenting class; and maintain sufficient legal income and appropriate housing for himself and the children.

¶ 11 At the time of the custody review hearing held on 1 November 2018, respondent was in custody at the Orange County Detention Center. He had pleaded guilty to his federal charges and was awaiting sentencing. Visitation remained unchanged, but the trial court removed the requirements that respondent submit to drug screens and maintain income and housing.

¶ 12 The matter came on for a permanency planning hearing on 21 February 2019. Respondent was incarcerated at the Alamance County Jail, awaiting his federal sentencing date of 11 March 2019. Respondent had met with his social worker while in jail for a CFT meeting and to review his case plan, but the trial court found he was unable to make progress on his case plan due to his incarceration. The court found that the children's reunification with respondent "would be unsuccessful or inconsistent with [their] health or safety and need for a safe, permanent home within a reasonable time" due to his impending, extended incarceration. The court ordered the permanent plan to be a primary plan of adoption with a concurrent, secondary plan of reunification. Respondent was allowed a weekly phone call of at least ten minutes with the children, with DSS having discretion to end the calls if respondent did not follow visitation rules or if the children's treatment team decided the calls were harmful. Respondent's case plan requirements remained unchanged.

¶ 13 The trial court held a second permanency planning hearing on 1 August 2019. Respondent was incarcerated at Williamsburg Federal

Correctional Institute following his 21 May 2019 sentencing hearing, where he was sentenced to 336 months' imprisonment for his federal convictions. Respondent was still allowed phone calls with the children, but the calls had become inconsistent after his sentencing and transfer out of state. Natalie had relinquished her parental rights in the children, and DSS had initiated termination proceedings against respondent. The permanent plan of adoption and reunification remained unchanged. Respondent was required to maintain monthly contact with his social worker and provide information as to what programs related to domestic violence and substance abuse he could participate in while incarcerated.

¶ 14 In its 20 June 2019 motions to terminate respondent's parental rights, DSS alleged two grounds for termination: neglect and willfully leaving the children in a placement outside the home for more than twelve months without a showing of reasonable progress. *See* N.C.G.S. § 7B-1111(a)(1), (2) (2019). Subsequent to the termination hearing held 9 December 2019, the trial court entered orders on 21 January 2020 that adjudicated the existence of both grounds alleged in the motions, concluded it was in the children's best interests to terminate respondent's parental rights, and terminated respondent's parental rights in all three children. Respondent appeals.

II. Analysis

¶ 15 On appeal, respondent argues the trial court erroneously adjudicated grounds for termination when it did not make findings showing his lack of progress was willful and unreasonable under the circumstances. Respondent further contends the findings were deficient because they did not establish that he was neglecting his children at the time of the termination hearing or that he would be likely to neglect them in the future.

¶ 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, (2020) (citing N.C.G.S. §§ 7B-1109, -1110 (2019)). "At the adjudicatory stage, the petitioner bears the burden of proving by 'clear, cogent, and convincing evidence' the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes." *In re A.U.D.*, 373 N.C. 3, 5–6 (2019) (quoting N.C.G.S. § 7B-1109(f)). 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) (citing *In re Moore*, 306

N.C. 394, 404 (1982)). "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)).

¶ 17 According to N.C.G.S. § 7B-1111(a)(1), a trial judge may terminate a parent's parental rights in a child in the event that it finds that the parent has neglected the child in such a way that the child has become a neglected juvenile as that term is defined in N.C.G.S. § 7B-101. A neglected juvenile is "[a]ny juvenile less than 18 years of age . . . whose parent . . . does not provide proper care, supervision, or discipline" or "who lives in an environment injurious to the juvenile's welfare[.]" N.C.G.S. § 7B-101(15) (2019). In some circumstances, the trial court may terminate a parent's rights based on neglect that is currently occurring at the time of the termination hearing. *See, e.g.*, *In re K.C.T.*, 375 N.C. 592, 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). In this situation, "evidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights[,]" but "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715 (1984). After weighing this evidence, the court may find the neglect ground if it concludes the evidence demonstrates "a likelihood of future neglect by the parent." *In re R.L.D.*, 375 N.C. 838, 841 (2020) (citation omitted).

¶ 18 Thus, even in the absence of current neglect, the trial court may adjudicate neglect as a ground for termination based upon its consideration of any evidence of past neglect and its determination that there is a likelihood of future neglect if the child is returned to the parent. *Id.* at 841, n.3. *See also*, *In re K.N.*, 373 N.C. 274, 282 (2020) (citing *In re Ballard*, 311 N.C. 708, 715 (1984) ("When determining whether future neglect is likely, the trial court must consider evidence of relevant circumstances or events that existed or occurred either before or after the prior adjudication of neglect.").

¶ 19 In this case, respondent does not dispute that there was a finding of prior neglect. However, he contends that the trial court's findings

failed to show either current neglect or a likelihood of future neglect. He asserts the trial court did not directly address whether he was doing everything he could within the limitations imposed by incarceration to care for his children, and he challenges the court's rationales for its conclusion that future neglect was likely, which were: (1) that he had not completed remedial programs and thus was likely to neglect the children if they were to return to his care; and (2) that he created the circumstances for his incarceration.

¶ 20 Specifically, respondent argues that since he will be incarcerated for the next twenty-eight years, it is neither likely nor probable that the children will be in his care again during their minority, and such "an extremely remote possibility . . . does not support a conclusion that neglect during physical care and custody of the children is likely to recur." He asserts the trial court should have assessed the issue of neglect in light of what respondent was capable of while incarcerated. He also asserts that his inability to complete remedial programs does not indicate his lack of interest in the children but instead shows a lack of access to such programs. He points out that the trial court made no findings that he declined to participate in any available programs. Finally, he argues that the trial court's finding that he was responsible for the circumstances of his incarceration only establishes a conclusion of past neglect, but does not establish a probability of future neglect, as the adjudication of neglect occurred after his commission of and his incarceration for the criminal acts.

¶ 21 "Our precedents are quite clear—and remain in full force—that '[i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision.' " *In re M.A.W.*, 370 N.C. 149, 153 (2017) (quoting *In re P.L.P.*, 173 N.C. App. 1, 10 (2005), *aff'd per curiam*, 360 N.C. 360 (2006)). How this principle applies in each circumstance is less clear. While "respondent's incarceration, by itself, cannot serve as clear, cogent, and convincing evidence of neglect[,]" it "may be relevant to the determination of whether parental rights should be terminated[.]" *In re K.N.*, 373 N.C. at 282–83. "[T]he extent to which a parent's incarceration or violation of the terms and conditions of probation support a finding of neglect depends upon an analysis of the relevant facts and circumstances, *including the length of the parent's incarceration*." *Id.* at 283 (emphasis added).

¶ 22 In the absence of evidence or findings that respondent's circumstances might change, at the time of the termination hearing it was reasonable for the trial court to expect that respondent will likely be incarcerated for twenty-eight years, until well past the time his children

reach majority. This lengthy incarceration implicates a future likelihood of neglect, as respondent cannot provide "proper care, supervision, or discipline" while he is incarcerated, N.C.G.S. § 7B-101(15), and while not the only factor, is a relevant and necessary consideration in the trial court's finding of neglect. *See, e.g.*, *In re P.L.P.*, 173 N.C. App. at 10–11, 13 (concluding that the father's incarceration, which would continue until the child reached majority, considered along with other record evidence was sufficient to support a finding that he "would continue to neglect the minor child if the child was placed in his care"). Here, the trial court considered the length of respondent's incarceration and how it implicated a change in circumstances between the original adjudication of neglect and the time of the termination hearing, as respondent had been sentenced and was confined in federal prison instead of pre-trial detainment in local detention facilities.

¶ 23 Most significantly, the trial court made additional, unchallenged findings of fact that demonstrate a future likelihood of neglect in this particular case, even acknowledging, as we must, that constructive and positive parenting can occur, and parent/child bonds can be meaningful, while a parent is incarcerated. Those findings include: (1) respondent's history of incarceration for drug offenses; (2) respondent's lack of care and attention to the children when he was not incarcerated; (3) a history of domestic violence between respondent and the children's mother that was witnessed by the children, and the long-term psychological effects on the children as a result of being exposed to violence; (4) respondent's use of illicit substances while the children were in his care; (5) respondent's lack of progress in his case plan; (6) respondent's inappropriate promises to the children in his phone calls, and the children's behavioral regression subsequent to the calls; and (7) eight months of no phone calls following respondent's sentencing—all of which were incorporated under the trial court's finding of a likelihood of future neglect. *Cf. In re K.N.*, 373 N.C. at 284 (concluding the trial court made insufficient findings to support termination due to neglect, but acknowledging there was other evidence that could have supported a finding of future neglect, including the respondent's history of drug use, extensive criminal record of drug related offenses, the uncertainty of when he would be released from prison and how that would affect his future ability to care for his child, his lack of progress with his case plan, and an incident of domestic violence). The unchallenged findings in this case and the evidence of record support the trial court's determination that respondent neglected the juveniles and that there is a likelihood of the repetition of neglect, which supports the court's conclusion that respondent's pa-

rental rights in the children were subject to termination on the grounds of neglect pursuant to N.C.G.S. § 7B-1111(a)(1).

¶ 24 Given that the existence of a single ground for termination suffices to support the termination of a parent's parental rights in a child, see *In re A.R.A.*, 373 N.C. 190, 194 (2019), we need not review respondent's challenge to grounds for termination pursuant to N.C.G.S. § 7B-1111(a)(2). As respondent has not challenged the court's determination that termination of his parental rights in this case is in the juveniles' best interests, we affirm the trial court's termination order.

AFFIRMED.

IN THE MATTER OF L.N.G., L.P.G., AND L.A.D.

No. 252A20

Filed 19 March 2021

Termination of Parental Rights—grounds for termination—failure to make reasonable progress—sufficiency of findings—domestic violence

The trial court properly terminated a mother's parental rights to her children for failure to make reasonable progress in correcting the conditions that led to the children's removal from her home (N.C.G.S. § 7B-1111(a)(2)). The findings of fact challenged on appeal, which were supported by clear, cogent, and convincing evidence, showed that the mother failed to address domestic violence issues stemming from her relationship with her youngest child's father by continuing the relationship (even though he kept on perpetuating new incidents of domestic violence), repeatedly lying to the court about having ended the relationship, and failing to attend domestic violence counseling despite her means and ability to do so.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 2 March 2020 by Judge John K. Greenlee in District Court, Gaston County. This matter was calendared for argument in the Supreme Court on 11 February 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 L.N.G.

[377 N.C 81, 2021-NCSC-29]

Elizabeth Myrick Boone for petitioner-appellee Gaston County Department of Health and Human Services.

Everett Gaskins Hancock LLP, by Katherine A. King, for appellee Guardian ad Litem.

Garron T. Michael for respondent-appellant mother.

MORGAN, Justice.

¶ 1 Respondent-mother appeals from the trial court's order terminating her parental rights to her minor children L.N.G. (Nicole), L.P.G. (Peter), and L.A.D. (Andrew).[1] After careful review, we conclude that the trial court properly adjudicated the existence of at least one ground for termination. Thus, we affirm the termination order.

I. Factual Background and Procedural History

¶ 2 This case was initiated on 15 December 2016, upon the filing of a petition by the Gaston County Department of Health and Human Services (DHHS) alleging that Nicole, Peter, and Andrew were neglected and dependent juveniles. In the petition, DHHS averred that it had been working with the family for several months due to a series of domestic violence incidents which had occurred between respondent-mother and Andrew's father, "Mr. D." Although respondent-mother and DHHS agreed to a case plan on 10 November 2016 in order to allow respondent-mother to address these matters, she and Mr. D. subsequently engaged in an argument in front of the children during which Mr. D. choked respondent-mother and spit in her mouth. Thereafter, DHHS obtained nonsecure custody of all three children.

¶ 3 On 28 February 2017, the trial court entered an order adjudicating Nicole, Peter, and Andrew as neglected and dependent juveniles after respondent-mother stipulated to the allegations in the petition. Two months later, the trial court entered a disposition order. The order established a case plan for respondent-mother which required her to complete domestic violence victim counseling, to complete parenting classes, to complete family counseling with Mr. D., to refrain from exposing the children to domestic violence, to attend and participate in any assessments with Nicole and Peter, and to comply with all recommendations resulting from therapeutic services for Nicole and Peter.

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

¶ 4 On 12 April 2017, respondent-mother filed a motion for review, seeking to have the juvenile case terminated and thereupon converted to a civil custody case under Chapter 50 of the General Statutes of North Carolina. *See* N.C.G.S. § 7B-911 (2019). In the motion, respondent-mother alleged that she had completed her case plan, that a home study had determined that respondent-mother's home was a safe and reasonable environment for her children, and that respondent-mother had ceased all communication with Mr. D. The trial court entered an order denying this motion on 27 February 2018.

¶ 5 The trial court held its first Review and Permanency Planning Hearing in the case on 23 May 2017. Based on respondent-mother's "significant progress" on her case plan, the primary permanent plan was set as reunification with a secondary permanent plan of guardianship. Respondent-mother was awarded ten hours of weekly unsupervised visitation with the children, which would increase to forty-eight hours weekly after the school year ended.

¶ 6 On 8 June 2017, DHHS filed a Motion for Review after Nicole made a report, following a visit which she had with respondent-mother, that Nicole believed Mr. D. was currently living with respondent-mother and that Mr. D. was in respondent-mother's home during the visit. When a DHHS social worker investigated these claims, Mr. D. admitted that Nicole's report was true. Consequently, DHHS asked the trial court to suspend respondent-mother's unsupervised visitation and instead to permit her to have two hours of weekly supervised visitation. At a subsequent motion hearing, respondent-mother denied that Mr. D. lived with her. On 19 September 2017, the trial court allowed DHHS's motion to change respondent-mother's visitation to two supervised hours per week.

¶ 7 At a Review and Permanency Planning Hearing conducted on 13 November 2018, DHHS presented additional evidence that challenged respondent-mother's claim that she had ended her relationship with Mr. D. In its resulting order, the trial court found that respondent-mother's neighbor had witnessed the presence of Mr. D. at respondent-mother's home repeatedly over a period of several months. It further found that a private investigator made similar observations over a ten-day period in September 2018. Hence, the primary permanent plan for the juveniles was changed to adoption with a secondary permanent plan of guardianship/reunification.

¶ 8 On 30 July 2019, DHHS filed a petition to terminate respondent-mother's parental rights to the juveniles alleging the grounds of neglect, willfully leaving her children 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 their removal, and willfully failing to pay a reasonable portion of her children's cost of care for the six months preceding the filing of the petition. *See* N.C.G.S. § 7B-1111(a)(1)–(3) (2019). The petition also alleged that respondent-mother had relocated to New York and secured employment there.

¶ 9 The hearing on the termination of parental rights petition was conducted over a two-day period in January 2020. On 2 March 2020, the trial court entered an order terminating respondent-mother's parental rights. The trial court found that grounds existed for termination pursuant to N.C.G.S. § 7B-1111(a)(1)–(2), but it dismissed the third ground which was alleged under N.C.G.S. § 7B-1111(a)(3). At the disposition stage, the trial court concluded that termination of respondent-mother's parental rights was in the children's best interests. Respondent-mother appeals.

II. Standard of Review

¶ 10 When considering a petition to terminate parental rights, the trial court first adjudicates the existence of the alleged grounds for termination. *See* N.C.G.S. § 7B-1109 (2019). "At the adjudicatory stage, the petitioner bears the burden of proving by 'clear, cogent, and convincing evidence' the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes." *In re A.U.D.*, 373 N.C. 3, 5–6 (2019) (quoting N.C.G.S. § 7B-1109(f) (2017)). "If a trial court finds one or more grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), it then proceeds to the dispositional stage," *id.* at 6, at which it "determine[s] whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a) (2019).

¶ 11 This Court reviews a trial court's adjudication of grounds to terminate parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "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)). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19 (2019).

III. Willful Failure to Make Reasonable Progress

¶ 12 Pursuant to N.C.G.S. § 7B-1111(a)(2), termination of parental rights is permitted when "[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).

> According to N.C.G.S. § 7B-904(d1)(3), a trial judge has the authority to require the parent of a juvenile who has been adjudicated to be abused, neglected, or dependent to "[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, or caretaker."

In re B.O.A., 372 N.C. 372, 381 (2019). "[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.* at 385 (quoting *In re S.N.*, 194 N.C. App. 142, 149 (2008)).

¶ 13 In this case, the children were removed from respondent-mother's care and adjudicated to be neglected and dependent based upon a series of serious domestic violence incidents perpetrated by Mr. D. during 2016. In order to correct the underlying causes of these circumstances, the trial court ordered respondent-mother to complete domestic violence victim counseling.

A. Challenged Findings of Fact

¶ 14 Respondent-mother first contends that the trial court erroneously determined that the ground of willful failure to make reasonable progress provided a basis for the termination of her parental rights because she "made substantial progress on or completed all components of her case plan." She challenges the following findings of fact,[2] either in whole or in part, which address her progress in rectifying the domestic violence issues that she experienced in her relationship with Mr. D.:

> 42. Respondent/mother failed to demonstrate the ability to protect the juveniles in that she has failed to take the necessary steps to remove herself from

2. "[W]e limit our review of challenged findings to those that are necessary to support the district court's determination that this ground of respondent-mother's willful failure to make reasonable progress existed in order to terminate her parental rights." *In re A.R.A.*, 373 N.C. 190, 195 (2019).

relationships involving domestic violence and she has not demonstrated an understanding of the traumatic impact of domestic violence in the home of the juveniles.

. . . .

47. Respondent/mother has continued a relationship with [Mr. D.] and there have been multiple documented incidents of Respondent/mother and [Mr. D.] continuing to maintain a relationship as well as additional incidents of domestic violence between them.

. . . .

64. Tony R[.], private investigator, did surveil Respondent/mother's home and did observe [Mr. D.] coming and going from Respondent/mother's home multiple times between September 20, 2018 and September 30, 2018.

. . . .

74. On November 13, 2018, Respondent/mother did attend a hearing on [DHHS's] Motion for Review regarding her visitation with the juveniles. Respondent/mother did testify under oath that she had contact with [Mr. D.] on three (3) occasions: July 2017, Christmas 2018 and September 2018. Respondent/mother did not inform the Court of having been with [Mr. D.] in November 2017 when she had a car accident. Respondent/mother did not inform the Court of [Mr. D.] being at her home on December 17, 2017 when [Mr. D.] did assault her. During her sworn testimony, Respondent/mother did not inform the Court of the incident that had occurred October 12, 2018, just one month prior to the hearing, during which [Mr. D.] did assault her and cause damage to the vehicle she was driving.

. . . .

98. The Court did not find on December 10, 2019 that Respondent/mother is unable to obtain said domestic violence victim's treatment due to her lack of funds and the Court did not order that [DHHS] pay for said treatment. Respondent/mother did testify

> and this Court does find that she has at all times been employed and does not have difficulty ensuring her bills are paid. Respondent/mother did have the means and ability to comply with domestic violence counseling but she was unwilling to make an effort despite actual knowledge that it was ordered by the Court on July 18, 2017.
>
> . . . .
>
> 101. Respondent/mother has willfully failed to participate in any further therapy for domestic violence though she was specifically ordered to do so by the Honorable Judge Pennie M. Thrower on July 18, 2017.
>
> 102. The Court also finds that after Respondent/mother completed domestic violence victims' treatment in early 2017, she continued to engage in a relationship with [Mr. D.] and multiple incidents of domestic violence between Respondent/mother and [Mr. D.] did occur. By her pattern of behavior, Respondent/mother has failed to demonstrate that she has developed the skills required to remove and protect herself and the juveniles from exposure to domestic violence.
>
> . . . .
>
> 104. The Court further finds that Respondent/mother continues to minimize the domestic violence that occurred between her and [Mr. D.].
>
> 105. The Court further finds that Respondent/mother does not fully appreciate or demonstrate concern about the negative lifelong impact that witnessing and being a part of a toxic domestic violence household has had on the juveniles.
>
> 106. The Court further finds that no reasonable progress has been made in correcting the conditions, specifically domestic violence, that brought the juveniles into [DHHS's] custody.

1. Finding of Fact 47

¶ 15 Finding of Fact 47, which states that respondent-mother maintained a relationship with Mr. D. and that it was marked by multiple new incidents

of domestic violence, was supported by several of the trial court's other findings of fact which respondent-mother has not challenged and therefore are binding on appeal. For example, the trial court found that: (1) Mr. D. assaulted respondent-mother on 15 February 2017; (2) Nicole saw Mr. D. in respondent-mother's home during a visit on 29 May 2017; (3) respondent-mother was in an automobile accident on 17 November 2017 while Mr. D. was a passenger; (4) Mr. D. assaulted respondent-mother at her home on 17 December 2017; (5) DHHS was informed in September 2018 that Mr. D. was living at respondent-mother's home; (6) respondent-mother was again driving with Mr. D. as a passenger on 12 October 2018 when they got into a physical and verbal altercation which resulted in Mr. D. punching respondent-mother in the face; and (7) Mr. D. attended respondent-mother's "launch party" in April 2019, and the two subsequently visited a museum together. Taken together, these unchallenged findings of fact amply support the trial court's Finding of Fact 47.

2. Findings of Fact 64 and 74

¶ 16 Findings of Fact 64 and 74 refer to specific additional contacts between respondent-mother and Mr. D. Private investigator Tony R. testified that he witnessed Mr. D.'s car parked near respondent-mother's apartment on 20 September 2018, that he witnessed Mr. D. and respondent-mother return together to respondent-mother's parking lot on 26 September 2018, that he witnessed Mr. D. leaving respondent-mother's parking lot on 28 September 2018, that Mr. D.'s vehicle was back in respondent-mother's parking lot on the evening of 28 September 2018, and that Mr. D.'s car was subsequently in respondent-mother's parking lot on 30 September 2018. This testimony from the private investigator fully supports Finding of Fact 64.

¶ 17 As to Finding of Fact 74, respondent-mother challenges as impossible the portion of the finding which states that respondent-mother testified on 13 November 2018 that she "had contact" with Mr. D. on Christmas 2018, since the date of 25 December 2018 had not occurred yet. Respondent-mother is correct that her testimony represented that she "invited [Mr. D.] to a Christmas party in December 2018." At the termination hearing, respondent-mother testified that the Christmas party actually occurred. While this testimony from respondent-mother herself, along with logical inferences which can be drawn therefrom, is evidence that could support the reference to respondent-mother's Christmas 2018 meeting with Mr. D., this detail in Finding of Fact 74 is unnecessary to support the trial court's ultimate determination that a ground existed which would allow the termination of respondent-mother's parental rights. Accordingly, we shall disregard the portion of Finding of Fact

74 that attributes contact between respondent-mother and Mr. D. on Christmas 2018 to respondent-mother's 13 November 2018 testimony.

3. Findings of Fact 98 and 101

¶ 18 Findings of Fact 98 and 101 address the additional domestic violence therapy that respondent-mother was ordered to undergo after it was determined that she was still involved with Mr. D. In the 13 October 2017 order referenced in the termination order,[3] the trial court ordered respondent-mother to "attend therapy to assist the juveniles with healing from the domestic violence they have witnessed and to develop a better understanding of the impact of domestic violence upon them." Respondent-mother submits that this language only requires additional *family* therapy, rather than her own individual therapy. Even assuming that respondent-mother's resourceful interpretation of the wording in the 13 October 2017 finding of fact is correct, there was still ample evidence presented at the hearing that respondent-mother was previously required to engage in additional individual domestic violence therapy and failed to do so. At the termination of parental rights hearing, a DHHS social worker specifically stated that the social worker's team had informed respondent-mother that the parent "needed to engage in further domestic violence counseling[.]" Additionally, respondent-mother does not challenge several of the other findings of the trial court on this issue, including a finding that respondent-mother had "acknowledged that she had been advised to engage in further domestic violence victims' treatment." This evidence supports the trial court's determination that respondent-mother failed to engage in further additional domestic violence therapy as required.

4. Findings of Fact 42, 102, 104, 105, and 106

¶ 19 Respondent-mother challenges Findings of Fact 42, 102, 104, 105, and 106 to the extent that they show that she failed to make reasonable progress in addressing her domestic violence issues stemming from her ongoing relationship with Mr. D. She argues that her early completion of domestic violence therapy and her months-long separation from Mr. D. after she moved to New York demonstrated that domestic violence was no longer an issue that interfered with her ability to care for her children.

¶ 20 While there is no dispute that respondent-mother completed a counseling program for domestic violence victims in early 2017, her

3. The termination of parental rights order references 18 July 2017—the date the underlying hearing occurred—but the resulting order was not entered until 13 October 2017.

subsequent behavior indicates that she failed to modify her behavior sufficiently as a result of the program. As previously noted, respondent-mother continued to maintain a relationship with Mr. D., despite the fact that he continued to perpetrate domestic violence against her. The trial court's findings reflect that Mr. D. was convicted of the criminal offense of simple assault on 17 October 2018 and the criminal offense of assault on a female on 6 December 2018, based on two separate incidents in which respondent-mother was the victim which occurred after she completed the domestic violence counseling. Respondent-mother did not report these incidents to DHHS or to the trial court. Despite receiving instructions from DHHS to attend additional domestic violence counseling, respondent-mother failed to do so. The trial court specifically found that respondent-mother "did have the means and ability to comply with domestic violence counseling but she was unwilling to make an effort."

¶ 21 The record reflects that respondent-mother repeatedly misrepresented the status of her relationship with Mr. D. The trial court's order includes seven unchallenged findings detailing respondent-mother's numerous attempts throughout the history of this case to falsely claim that her relationship with Mr. D. had ended. The trial court's findings of fact also reflect that respondent-mother was still socializing with Mr. D. as late as April 2019, which was twenty-eight months after her children entered DHHS custody and nine months before the termination of parental rights hearing.

¶ 22 Respondent-mother's false statements continued through the termination of parental rights hearing itself. The trial court, after evaluating respondent-mother's testimony, assessed her credibility as follows:

> The Court finds that Respondent/mother's testimony during this termination of parental rights hearing was not credible in that she was deceptive, manipulative and dishonest. The Court finds that Respondent/mother did repeatedly attempt to mislead the Court, she did exhibit selective memory and she did attempt to minimize and explain away her continued relationship with [Mr. D.]. The Court did caution Respondent/mother during her testimony of the consequences of perjury and contempt of court.

The trial court was pointedly clear that it did not believe respondent-mother's accounts of the character of the relationship which she shared with Mr. D. Respondent-mother's misrepresentations concerning her affiliation with her abuser, even offered in her testimony at the

termination of parental rights hearing, provided a further foundation for the tribunal's findings of fact in light of its determination of credibility, to which this Court must give deference.

¶ 23 The above-referenced evidence supports the trial court's determination that respondent-mother failed to understand or adequately address the traumatic impact of domestic violence on her children. Over the thirty-eight months that her children were in the custody of DHHS, respondent-mother failed to make meaningful progress to correct the causes of the domestic violence that led to the juveniles' removal from her home.

B. Adjudication Under N.C.G.S. § 7B-1111(a)(2)

¶ 24 As to the trial court's adjudication under N.C.G.S. § 7B-1111(a)(2), it properly determined pursuant to the evidence presented during the two-day hearing in January 2020 that respondent-mother did not make a reasonable effort to correct the issues attributable to her relationship with Mr. D. and the prevalence of domestic violence that led to the children's removal from her care. Instead, respondent-mother prioritized her relationship with Mr. D. while falsely and repeatedly claiming that the relationship had ended. Based upon respondent-mother's willful failure to make reasonable progress in addressing her issues with domestic violence, the trial court properly concluded that her parental rights were subject to termination under N.C.G.S. § 7B-1111(a)(2).

IV. Conclusion

¶ 25 Based on the foregoing analysis, we conclude that the trial court properly determined that respondent-mother's parental rights could be terminated pursuant to N.C.G.S. § 7B-1111(a)(2). Since we have determined that this termination of parental rights ground is supported, we need not address respondent-mother's arguments as to the ground of neglect under N.C.G.S. § 7B-1111(a)(1), which is the other ground found by the trial court that could substantiate the termination of respondent-mother's parental rights. *See In re A.R.A.*, 373 N.C. 190, 194 (2019) ("[A] finding of only one ground is necessary to support a termination of parental rights . . . ."). Moreover, respondent-mother does not challenge the trial court's conclusion that termination of her parental rights was in the juveniles' best interests. Consequently, we affirm the trial court's order terminating respondent-mother's parental rights.

AFFIRMED.

IN RE M.C.T.B.

[377 N.C. 92, 2021-NCSC-30]

IN THE MATTER OF M.C.T.B.

No. 275A20

Filed 19 March 2021

Termination of Parental Rights—no-merit brief—neglect—failure to pay reasonable portion of cost of care

The termination of a mother's parental rights for neglect and for failure to pay a reasonable portion of the costs for the child's care was affirmed where counsel for the mother filed a no-merit brief. The trial court's 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 13 February 2020 by Judge Christy E. Wilhelm in District Court, Cabarrus County. This matter was calendared for argument in the Supreme Court on 11 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Cynthia E. Everson for petitioner-appellee.

Sydney Batch for respondent-appellant mother.

PER CURIAM.

¶ 1 Respondent-mother appeals from the trial court's order terminating her parental rights to M.C.T.B. (Mary).[1] Counsel for respondent-mother 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 an appeal are meritless and therefore affirm the trial court's order.

¶ 2 This case arises from a private termination action filed by petitioner, Mary's maternal grandmother, to terminate the parental rights of respondent-mother.[2] Mary was born prematurely at twenty-eight weeks and spent approximately two months in the neonatal intensive care

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

2. Petitioner also sought to terminate the parental rights of Mary's father, but he is not a party to this appeal.

unit (NICU) following her birth. At the time of Mary's birth, respondent-mother had received limited prenatal care, was homeless, had unaddressed mental health issues, and did not have a plan in place for Mary's eventual discharge from the hospital. Accordingly, the Suffolk County Department of Social Services (DSS) in New York filed a petition seeking the temporary removal of Mary from respondent-mother's care, and the Suffolk County Family Court placed Mary into petitioner's care following her release from the NICU.

¶ 3 Suffolk County DSS filed a petition alleging that Mary was neglected, and the trial court continued Mary's placement with petitioner on 21 December 2011 pending further proceedings. The family court adjudicated Mary neglected on 24 April 2012, and she remained in petitioner's care. Petitioner and respondent-mother entered into a consent order awarding petitioner permanent custody of Mary on 18 July 2013.[3]

¶ 4 Petitioner and Mary moved to North Carolina in 2013. On 14 September 2016, the Suffolk County Family Court determined North Carolina was "the appropriate [home state] for determination of issues of custody regarding" Mary and relinquished continuing, exclusive jurisdiction of the matter to North Carolina. Petitioner filed a petition to terminate respondent-mother's parental rights on 18 July 2019, alleging grounds for termination under N.C.G.S. § 7B-1111(a)(1)–(3). Petitioner alleged (1) that since the initial finding of neglect, respondent-mother had provided no evidence of compliance with the requirements of the Suffolk County Family Court's adjudication order; (2) respondent-mother had not had any contact with Mary since March 2015, nor had she sent any cards or gifts; (3) there was a risk of continued neglect if Mary was returned to respondent-mother's care; (4) respondent-mother willfully left Mary in a placement outside the home for more than twelve months without a showing of reasonable progress by failing to obtain a mental health evaluation, attend psychological counseling, or participate in a parenting skills program; and (5) respondent-mother had not paid anything toward the support of Mary since 31 December 2018. Respondent-mother filed an answer denying the material allegations of the petition.

¶ 5 Following a hearing held on 17 December 2019, the trial court entered an order on 13 February 2020 in which it determined grounds existed to terminate respondent mother's parental rights due to neglect and her failure to pay a reasonable portion of costs for Mary's care. N.C.G.S. § 7B-1111(a)(1), (3) (2019). The trial court further concluded it

3. Mary's father was also a party to the consent order.

was in Mary's best interests that respondent-mother's parental rights be terminated, and the trial court terminated respondent-mother's parental rights. Respondent-mother appealed.

¶ 6 Counsel for respondent-mother has filed a no-merit brief on her client's behalf under Rule 3.1(e) of the Rules of Appellate Procedure. Counsel identified two issues that could arguably support an appeal but also explained why she believed those issues lacked merit. Counsel 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 has not submitted written arguments to this Court.

¶ 7 We carefully and independently review issues identified by counsel in a no-merit brief filed under Rule 3.1(e) in light of the entire record. *In re L.E.M.*, 372 N.C. 396, 402 (2019). After conducting this review, we are satisfied that the trial court's 13 February 2020 order is supported by clear, cogent, and convincing evidence and based on proper legal grounds. Accordingly, we affirm the trial court's order terminating respondent-mother's parental rights.

AFFIRMED.

IN THE MATTER OF R.D.M., Z.A.M., J.M.B., AND J.J.B.

No. 193A20

Filed 19 March 2021

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

The trial court's order terminating the parental rights of a mother based on neglect and willful failure to make reasonable progress and of a father based on neglect, willful failure to make reasonable progress, and willful failure to pay a reasonable portion of the cost of the children's care was affirmed where their attorneys filed no-merit briefs and the order was based on clear, cogent, and convincing evidence supporting the grounds for termination.

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 9 March 2020 by Judge Monica M. Bousman in District Court, Wake

County. This matter was calendared in the Supreme Court on 11 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

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

Kelsey V. Monk for appellee Guardian ad Litem.

Jeffrey L. Miller for respondent-appellant mother.

Sean P. Vitrano for respondent-appellant father.

EARLS, Justice.

¶ 1 Respondents, the mother of the four minor children, R.D.M., Z.A.M., J.M.B., and J.J.B.,[1] and the father of the two youngest children, R.D.M. and Z.A.M.,[2] appeal from the trial court's order terminating their parental rights. Counsel for each respondent have filed no-merit briefs pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We conclude that the issues identified by both counsel in respondents' briefs have no merit and therefore affirm the trial court's order.

¶ 2 On 10 July 2018, Wake County Human Services ("WCHS") obtained nonsecure custody of the children and filed juvenile petitions alleging they were neglected and dependent. WCHS alleged concerns related to respondent-mother's substance use and mental health, unstable housing, injurious environment, and respondents' failure to provide for the children's needs.

¶ 3 On 22 August 2018 and 2 October 2018, the trial court entered consent orders adjudicating the children to be neglected juveniles based on stipulations by respondent-mother. On 28 November 2018, the trial court adopted a primary permanent plan of reunification with a secondary permanent plan of adoption. Respondents were ordered to enter into, and comply with, case plans addressing the reasons for the children's removal.

¶ 4 Following a 14 October 2019 permanency planning hearing, the trial court entered an order on 6 November 2019 changing the permanent plan to adoption with a secondary plan of reunification. The court found

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1. Initials are used to protect the juveniles' identities.

2. The fathers of J.M.B. and J.J.B. are not parties to this appeal.

that respondents were not participating in the services ordered by the court to facilitate reunification, were not making adequate progress toward reunification, and were not cooperating with WCHS, the guardian ad litem, or the court.

¶ 5 On 18 November 2019, WCHS filed a motion to terminate respondents' parental rights on the grounds of neglect, willfully leaving the children in foster care for more than twelve months without making reasonable progress to correct the conditions that led to the children's removal, and willfully failing to pay a reasonable portion of the cost of care. Following a hearing held on 12 February 2020 and 13 February 2020, the trial court entered an order on 9 March 2020 concluding that grounds existed to terminate respondent-mother's parental rights due to neglect and willful failure to make reasonable progress, and respondent-father's parental rights due to neglect, willful failure to make reasonable progress, and willful failure to pay a reasonable portion of the cost of the children's care. The trial court further concluded that termination of respondents' parental rights was in the children's best interests. Accordingly, the trial court terminated respondents' parental rights. Respondents appealed.

¶ 6 On 16 July 2020, respondent-father filed a petition for writ of certiorari recognizing that his notice of appeal was untimely and did not contain a certificate of service. On 30 December 2020, we allowed respondent-father's petition.

¶ 7 Counsel for respondents have filed no-merit briefs on their clients' behalf under Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. In their briefs, each counsel identified several issues that could arguably support an appeal but also explained why they believe those issues lack merit. Counsel also advised respondents of their right to file a pro se brief and provided them with the documents necessary to do so. Neither respondent has submitted a pro se brief to this Court.

¶ 8 We independently review issues identified by counsel in a no-merit brief filed pursuant to Rule 3.1(e). *In re L.E.M.*, 372 N.C. 396, 402 (2019). After considering the entire record and reviewing the issues identified in the no-merit briefs, we conclude that the 9 March 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 respondents' parental rights.

AFFIRMED.

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