377 N.C.—No. 3 Pages 220-383

GENERAL RULES OF PRACTICE; EFILING PILOT PROJECT; PRACTICAL TRAINING OF LAW STUDENTS; RULES OF PROFESSIONAL CONDUCT; RULES OF PROFESSIONAL CONDUCT

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

JULY 6, 2021

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

CASES REPORTED

FILED 23 APRIL 2021

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APPEAL AND ERROR

Rule 2—untimely pro se brief—termination of parental rights—In a termination of parental rights case, the Supreme Court exercised its authority under Appellate Rule 2 to consider a father's untimely pro se brief where his counsel filed a no-merit brief but failed to inform him of the exact deadline for submitting a pro se brief. **In re J.M., 298.**

CHILD ABUSE, DEPENDENCY, AND NEGLECT

Adjudication of dependency—sibling died from suspected abuse—sufficiency of findings—The trial court properly adjudicated a child dependent upon sufficient evidence and findings that multiple experts reviewed the parents' explanation of the cause of fatal injuries to a sibling in the home and concluded the attributed cause could not have resulted in the injuries sustained by the sibling; that, because all the potential caregivers named by the parents believed the sibling died by accidental means, they could not provide a safe home for the child; and that respondent-mother herself could not care for the child based on her denial that the sibling died from abuse. **In re A.W., 238.**

Adjudication of neglect—sibling died from suspected abuse—evidence and findings—The trial court properly adjudicated a child neglected upon sufficient evidence and findings that, after a sibling died in the home of suspected abuse, the parents coordinated their stories, provided an implausible explanation regarding the cause of the sibling's injuries, and planned to deceive the court about the nature of their relationship and to conceal the true cause of the sibling's injuries. The findings supported the court's determination that respondent-mother's home was an injurious environment where the child was at substantial risk of impairment. **In re A.W., 238.**

Permanent plan—ceasing reunification efforts—notice—sufficiency of findings—In a consolidated adjudication and disposition and termination of parental rights proceeding, respondent-mother necessarily had sufficient notice that the permanent plan would be under review. The trial court's order ceasing reunification efforts between respondent-mother and her child was supported by sufficient evidence and findings that respondent-mother worked with respondent-

father to conceal the cause of injuries sustained by a sibling in the home (which led to the sibling's death), that respondent-mother refused to acknowledge the sibling suffered abuse, and that the parents' proposed alternative placements were inappropriate because none of the potential caregivers believed the sibling was abused. **In re A.W., 238.**

Effective assistance of counsel—termination of parental rights—failure to show prejudice—Respondent-father was not entitled to relief from the trial court's order terminating his parental rights where he claimed to have received ineffective assistance of counsel. Respondent failed to show any prejudice resulting from counsel's allegedly deficient performance and there was nothing counsel could have done to overcome the undisputed evidence of neglect. **In re N.B., 349.**

Indian Child Welfare Act—termination of parental rights—inquiry required —In a termination of parental rights case, the trial court erred by conducting a hearing without complying with the inquiry requirements of the Indian Child Welfare Act and related federal regulations. The court was directed on remand to ensure compliance with the Act. **In re M.L.B., 335.**

Best interests of the child—bond with mother—abuse of discretion analysis—The trial court did not abuse its discretion by determining that it was in the best interests of the children to terminate respondent-mother's parental rights where, although respondent claimed and the court found that the children were bonded with respondent, the court also found that the children felt safe in their placements, respondent did not provide healthy parental boundaries and she threatened physical violence during visitation sessions, there was a high likelihood that the children would be adopted by their caregivers, the children were thriving in their placements, and respondent's testimony that she would not use drugs or consume alcohol if the children were returned to her was not credible. **In re A.M., 220.**

Denial of motion to continue—abuse of discretion analysis—due process—In an termination of parental rights action, the trial court did not abuse its discretion in denying respondent-father's counsel's motion to continue the termination hearing due to respondent's absence where the hearing had previously been continued twice because the parents were absent, it had been five months since the filing of the petition, respondent's unexplained absence did not amount to an extraordinary circumstance meriting a further continuance beyond the 90-day time-fame set out in N.C.G.S. § 7B-1109(d), respondent could not show he was prejudiced by the denial given his counsel's advocacy, and—based on the unchallenged findings—it was unlikely that the result would have been different had the hearing been continued. **In re J.E., 285.**

Effective assistance of counsel—failure to advise—appeal of termination case—meritless—Where a father's parental rights were terminated and his attorney filed a no-merit brief on appeal, the Supreme Court rejected the father's pro se argument alleging that he received ineffective assistance of counsel. Even assuming

counsel rendered deficient performance by failing to notify the father that he needed to contribute to the cost of his child's care, the father could not establish prejudice because ignorance did not excuse his failure to fulfill his inherent parental duty to provide support; further, there was no merit in his argument that counsel should have pursued a second appeal in his son's termination case, because his son's case was not before the trial court on remand (only his daughter's case was). **In re J.M., 298.**

Findings of fact—sufficiency of competent evidence—exhibit not admitted during hearing—The trial court's order terminating respondents' parental rights to their daughter on multiple grounds was reversed where the court's findings were not supported by clear, cogent, and convincing evidence. Although the department of social services tendered three witnesses who gave testimony, the challenged findings of fact contained information not from their testimony but from an exhibit which was not admitted into evidence during the hearing and which was presumed to be inadmissible incompetent evidence for purposes of the appeal. **In re M.L.B., 335.**

Grounds for termination—failure to make reasonable progress—The trial court properly determined that grounds existed to terminate respondent-mother's parental rights based on her failure to make reasonable progress to correct the conditions that led to the removal of the children—substance abuse, domestic violence, and homelessness—where, although respondent had acquired a structurally safe and appropriate residence and had participated in substance abuse support groups and abstained from using marijuana for a year, the unchallenged findings of fact showed respondent had multiple positive drug tests, consistently failed to comply with drug screens, failed to complete substance abuse treatment and domestic violence counseling, and was involved in repeated acts of domestic violence involving the consumption of alcohol. **In re A.M., 220.**

Grounds for termination—failure to make reasonable progress—compliance with majority of case plan—An order terminating a mother's parental rights to her son was reversed where the trial court's findings of fact did not support its conclusion that she willfully failed to make reasonable progress in correcting the conditions leading to the child's removal from the home. Although the trial court properly considered the mother's partial noncompliance with the "parenting skills" component of her case plan with the Department of Health and Human Services, the court's remaining findings showed the mother had made reasonable progress by fully complying with the remaining components of her case plan, including those addressing her substance abuse, domestic violence issues, mental health, and housing situation. **In re D.A.A.R., 258.**

Grounds for termination—failure to make reasonable progress—relevant time period—poverty exception—An order terminating a father's parental rights was affirmed where the trial court's findings of fact supported a conclusion that he willfully failed to make reasonable progress in correcting the conditions leading to his children's removal (N.C.G.S. § 7B-1111(a)(2)). The order contained sufficient findings regarding the father's lack of progress up to the date of the termination hearing (the relevant time period under the statute), and the "poverty exception" in section 7B-1111(a)(2) did not require the court to enter specific findings addressing whether poverty was the "sole reason" for the father's failure to make reasonable progress where the father presented no evidence that he was impoverished. **In re T.M.L., 369.**

Grounds for termination—failure to pay a reasonable portion of the cost of care—incarceration—no contribution—Where a father's parental rights were terminated and his attorney filed a no-merit brief on appeal, the Supreme Court rejected the father's pro se argument challenging the trial court's conclusion that the grounds of willful failure to pay a reasonable portion of the cost of care (N.C.G.S. § 7B-1111(a)(3)) existed to terminate his parental rights. Although he was incarcerated, he earned some money working and received some from friends and family, yet he contributed nothing to the cost of his child's care during the relevant six-month time period. **In re J.M., 298.**

Grounds for termination—neglect—findings—sufficiency—The trial court properly terminated respondent-mother's rights to her children on the ground of neglect (N.C.G.S. § 7B-1111(a)(1)) where its findings of fact, including those regarding respondent's lack of progress in her parenting skills and the children's trauma under respondent's care, were supported by clear, cogent, and convincing evidence. The evidence and findings amply demonstrated a likelihood of future neglect, based on respondent's history of failing to meet her children's basic needs, her inability to protect them from physical and sexual abuse, and her lack of progress in resolving those issues. **In re M.J.B., 328.**

Grounds for termination—neglect—incarceration—likelihood of future neglect—The trial court's termination of respondent-father's parental rights based on neglect was affirmed where the children had been previously adjudicated to be neglected and the unchallenged findings established a lack of changed circumstances and a likelihood of repeated neglect. Although respondent was incarcerated or absconding for much of the time after the original adjudication of neglect, he was not incarcerated for the entirety of the case and his incarceration was not the sole evidence of neglect. Respondent failed to complete his case plan addressing the issues that led to the adjudication of neglect (substance abuse, mental health, and housing) or to remain in contact with DSS, he failed to regularly visit the children or check on their well-being, and his probation violations and criminal activity continued up until the month before the hearing. **In re J.E., 285.**

Grounds for termination—neglect—incarceration—likelihood of future neglect—The trial court's termination of respondent-father's parental rights on the basis of neglect due to a likely repetition of neglect was affirmed where respondent was incarcerated, the child had been placed in foster care due to neglect caused by domestic violence and respondent's use and distribution of drugs while the child was in respondent's care prior to his incarceration, respondent was only involved in the child's life in a limited way when he was not incarcerated, and he made no attempt to contact the child during his incarceration except for a single letter and had limited contact with DSS. **In re N.B., 349.**

Grounds for termination—neglect—likelihood of future neglect—The trial court properly determined respondent-mother's parental rights were subject to termination on the basis of neglect where the children had been previously adjudicated to be neglected (due to respondent's housing instability, her drug use and incarceration, domestic violence, and her leaving the children with inappropriate caretakers who subjected the children to physical and sexual abuse) and where—although respondent had made some progress towards satisfying the requirements of her case plan—there was a likelihood of future neglect due to respondent's failure to establish stable housing free from substance abuse, her lack of contact with the children, and her inability to meet the children's trauma-related needs. **In re N.B., 349.**

Grounds for termination—neglect—likelihood of future neglect—sibling died of suspected abuse—The trial court properly terminated respondent-mother's parental rights to her child based on neglect where, after a sibling suffered injuries in the home that led to her death from likely abuse, respondent-mother failed to acknowledge the non-accidental cause of the sibling's injuries, provided an implausible explanation for those injuries, and maintained a relationship with respondent-father. The court's findings supported its conclusion that neglect was likely to reoccur if the child were returned to respondent-mother's care. **In re A.W., 238.**

Grounds for termination—willful abandonment—incarceration—failure to contact child—The trial court properly determined that a father's parental rights were subject to termination on the grounds of willful abandonment (N.C.G.S. § 7B-1111(a)(7)) where it was undisputed that the father, who had been incarcerated for approximately six years when the termination petition was filed, had made no contact with his daughter during his incarceration. He failed to seek his daughter's contact information from relatives (other than a single unsuccessful attempt to ask the sister of his daughter's caregiver for the caregiver's phone number—years outside the determinative period) or to otherwise display any interest in her welfare. The father's incarceration and alleged ignorance of how to contact his child could not negate the willfulness of his abandonment. **In re M.S.A., 343.**

No-merit brief—failure to pay a reasonable portion of the cost of care—The termination of a father's parental rights on the grounds of willful failure to pay a reasonable portion of the cost of care was affirmed where counsel filed a no-merit brief and the termination order was supported by competent evidence and based on proper legal grounds. **In re J.M., 298.**

No-merit brief—neglect—failure to make reasonable progress—The termination of a father's parental rights to his three children—on the grounds of neglect and willful failure to make reasonable progress in correcting the conditions that led to the children's removal—was affirmed where the father's counsel filed a no-merit brief and the termination order was supported by clear, cogent, and convincing evidence and based on proper legal grounds. **In re P.M., 366.**

No-merit brief—neglect—failure to make reasonable progress—The termination of a mother's parental rights on the grounds of neglect and willful failure to make reasonable progress was affirmed where the mother's counsel filed a no-merit brief and the termination order was supported by clear, cogent, and convincing evidence and was based on proper legal grounds. **In re G.D.H., 282.**

No-merit brief—neglect, failure to make reasonable progress, and abandonment—The termination of the incarcerated respondent-father's parental rights on the grounds of neglect, willfully leaving the children in a placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to their removal, and willful abandonment was affirmed where respondent's counsel filed a no-merit brief and the termination order was supported by clear, cogent, and convincing evidence and was based on proper legal grounds. **In re A.R.W., 234.**

No-merit brief—pro se brief—weight of evidence—Where a father's parental rights were terminated and his attorney filed a no-merit brief on appeal, the Supreme Court rejected the father's pro se argument asking the Court to reweigh the evidence. **In re J.M., 298.**

Permanency planning—findings of fact—challenged on appeal—On appeal from the trial court's order terminating a mother's parental rights and from an earlier permanency planning order, the mother's challenges to several portions of a finding of fact in the permanency planning order—regarding her positive tests for alcohol, her lack of compliance with drug screens, her failure to maintain stable housing, and incidents of domestic violence—were rejected. The trial court's error in finding that she received three—rather than two—sanctions in drug treatment court was harmless where the evidence established two sanctions. **In re L.R.L.B., 311.**

Permanency planning—required findings—insufficient—remedy—The trial court erred in a permanency planning order by failing to make all the written findings required by N.C.G.S. § 7B-906.2(d); specifically, even though there were sufficient findings addressing subsections (d)(1), (2), and (4), there were no findings concerning subsection (d)(3)—whether the mother "remain[ed] available to the court, the department, and the guardian litem." Where the trial court substantially complied with the statute, the appropriate remedy was to remand the matter for entry of the necessary findings and determination of whether those findings affected the decision to eliminate reunification from the permanent plan (rather than vacation or reversal of the permanency planning order or termination order). **In re L.R.L.B., 311.**

Subject matter jurisdiction—during pendency of appeal—order void—The trial court lacked subject matter jurisdiction to proceed with the termination of a father's parental rights in his daughter while his appeal of the adjudicatory and dispositional orders (which had been entered on remand from the Court of Appeals) was pending, so the order was void. The Supreme Court rejected the guardian ad litem's argument that the father should be required to prove prejudice in order to prevail on appeal. **In re J.M., 298.**

SCHEDULE FOR HEARING APPEALS DURING 2021

NORTH CAROLINA SUPREME COURT

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

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

IN RE A.M.

[377 N.C. 220, 2021-NCSC-42]

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

No. 380A20

Filed 23 April 2021

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

The trial court properly determined that grounds existed to terminate respondent-mother's parental rights based on her failure to make reasonable progress to correct the conditions that led to the removal of the children—substance abuse, domestic violence, and homelessness—where, although respondent had acquired a structurally safe and appropriate residence and had participated in substance abuse support groups and abstained from using marijuana for a year, the unchallenged findings of fact showed respondent had multiple positive drug tests, consistently failed to comply with drug screens, failed to complete substance abuse treatment and domestic violence counseling, and was involved in repeated acts of domestic violence involving the consumption of alcohol.

2. Termination of Parental Rights—best interests of the child—bond with mother—abuse of discretion analysis

The trial court did not abuse its discretion by determining that it was in the best interests of the children to terminate respondent-mother's parental rights where, although respondent claimed and the court found that the children were bonded with respondent, the court also found that the children felt safe in their placements, respondent did not provide healthy parental boundaries and she threatened physical violence during visitation sessions, there was a high likelihood that the children would be adopted by their caregivers, the children were thriving in their placements, and respondent's testimony that she would not use drugs or consume alcohol if the children were returned to her was not credible.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 15 May 2020 by Judge V.A. Davidian III in District Court, Wake County. This matter was calendared for argument in the Supreme Court on 19 March 2021, but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

IN RE A.M.

[377 N.C. 220, 2021-NCSC-42]

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

Coats+Bennett, PLLC, by Gavin B. Parsons, for appellee Guardian ad Litem.

Dorothy Hairston Mitchell for respondent-appellant mother.

MORGAN, Justice.

¶ 1 Respondent-mother appeals the order terminating her parental rights to her minor children "Adam," born in October 2011, and "Efia," born in March 2014.[1] Because clear, cogent, and convincing evidence supported at least one ground for the termination of respondent-mother's parental rights, and because it was not an abuse of discretion for the trial court to determine that termination of respondent-mother's parental rights was in the best interests of the children, we affirm the trial court's order.

I. Factual and Procedural Background

¶ 2 Respondent-mother, the father, and their son Adam have been involved with Wake County Human Services (WCHS) since 2012. In 2013 and 2014, WCHS received reports which detailed the parents' instances of substance abuse, as well as respondent-mother's physical confrontations with the childcare providers for Adam and Efia. When Efia was born in 2014, both she and respondent-mother tested positive for marijuana. In April 2015, WCHS received a report that the parents were homeless and that the children's maternal grandparents, who themselves had been the subject of several prior child protective services (CPS) reports regarding the care of Efia, were allowing Adam and Efia to reside with them. The parties agreed that the children would continue to reside with the maternal grandparents pursuant to a safety assessment, and WCHS closed the case in May 2015 with services recommended.

¶ 3 In March 2016, WCHS received a report indicating that respondent-mother was arrested and charged with assault after she "drunkenly confronted the father with a knife while pushing [Efia] in a stroller." Respondent-mother had failed to comply with a medication regimen prescribed for her depression and had expressed thoughts of

1. We use pseudonyms to protect the identities of the minor children and for ease of reading.

suicidal ideation. WCHS initiated in-home services for the family and requested that respondent-mother comply with a substance abuse assessment. While respondent-mother initially engaged in residential substance abuse treatment with the children, she was discharged from the program for noncompliance in September 2016. Following the discharge, a maternal relative came forward to provide support for the juveniles, and WCHS closed its case in November 2016.

¶ 4 WCHS received a report on 20 April 2017 that respondent-mother and the maternal grandmother had physically assaulted each other in front of Adam and Efia, prompting respondent-mother and the children to move into a Salvation Army shelter with the assistance of CPS. Shortly thereafter, respondent-mother and the father participated in another affray which occurred in front of the children. This fracas resulted in respondent-mother's arrest. While respondent-mother was incarcerated, the children resided with the father for a few days before returning to their maternal grandmother's home.

¶ 5 Following respondent-mother's release from incarceration, a social worker met with respondent-mother and the children at the home of the maternal grandmother. Respondent-mother was "visibly impaired and smelled of alcohol," and "accused the [maternal] grandmother of substance abuse" before producing drug paraphernalia from the maternal grandmother's cigarette pack. WCHS removed the juveniles from the home, as efforts to consult with the parents concerning a proper familial placement for the children were unsuccessful. WCHS filed juvenile petitions on 19 June 2017 alleging that the children were neglected juveniles, and WCHS subsequently filed an amended juvenile petition regarding both children on 28 June 2017. The trial court entered orders granting nonsecure custody of the children to WCHS on 19 June 2017 pursuant to the first juvenile petitions and authorizing WCHS to place the children in a licensed foster care home.

¶ 6 On 13 September 2017, respondent-mother and the father consented to an adjudication that the children were "neglected juveniles" as defined by N.C.G.S. § 7B-101(15). In its consent order on adjudication and disposition which was issued on the same date as the adjudication, the trial court allowed WCHS to retain legal custody of the children and ordered respondent-mother to: (1) follow all recommendations of a substance abuse assessment; (2) refrain from the use of illegal or impairing substances and submit to random drug screens; (3) obtain and maintain housing sufficient for herself and her children that is free of transient household members and substance abuse, and provide proof of such housing; (4) obtain and maintain legal income sufficient to meet

her needs and the needs of her children, and provide proof of such income to WCHS on at least a monthly basis; (5) engage in a domestic violence assessment through Interact and follow all recommendations; (6) complete a psychological evaluation and follow all recommendations; (7) follow the terms of her probation and refrain from further illegal activity; (8) comply with a visitation agreement during her visits with the children; and (9) maintain regular contact with the social worker at WCHS, notifying WCHS of any change in situation or circumstances within five business days. The trial court further ordered WCHS to continue to make reasonable efforts to eliminate the need for placement of the children outside of the home.

¶ 7 Following an April 2018 permanency planning hearing, the trial court entered a 24 May 2018 order in which it found that respondent-mother and the father had been incarcerated from February to mid-March 2018. The trial court acknowledged that respondent-mother was pregnant at the time of the hearing, and determined that after respondent-mother and the father's respective releases from incarceration, the parents were residing together in a boarding house that was not appropriate for the children. Respondent-mother had been diagnosed with severe alcohol use disorder and severe cannabis use disorder in early remission, as well as post-traumatic stress disorder, anxiety, and depression. While respondent-mother denied using marijuana since her release from incarceration and upon learning that she was pregnant, the trial court noted that she had tested positive for marijuana twice in April 2018 and had admitted to consuming alcohol since her release from jail. The trial court established that "[n]either parent has consistently demonstrated a willingness to address the chronic substance abuse and domestic violence that has dominated their family for quite some time." As for the children's current placements, the trial court found that the placements were appropriate and were meeting the needs of the juveniles. The tribunal also found that the children had bonded with their caregivers, who were willing to provide long-term care for both children. The trial court concluded that a primary plan of adoption with a secondary plan of reunification would serve the children's best interests.

¶ 8 On 3 July 2018, WCHS filed a motion to terminate the parental rights of respondent-mother and the father to the children, asserting, under N.C.G.S. § 7B-1111(a)(1), (2), and (3), the grounds of (1) neglect, (2) failure to show reasonable progress in correcting the conditions which initially led to the removal of the children from the home, and (3) willfully failing to pay a reasonable portion of the cost of care for the children despite the ability to do so.

¶ 9 Following an April 2019 permanency planning hearing, the trial court entered a 2 May 2019 order in which it found that respondent-mother had acquired a residence which was structurally sufficient for a child. However, a GAL volunteer visiting the residence observed a person in the living room who was visibly impaired to the point of unconsciousness, and the GAL volunteer likewise noticed that the parents also appeared to be impaired. Nevertheless, the family exhibited a strong bond during visitations with the children, and the parents exhibited an ability to provide appropriate care for the juveniles for short periods of time in structured, supervised settings. The trial court changed the primary plan for the children from adoption to guardianship with the secondary plan remaining reunification.

¶ 10 In a 19 September 2019 order which was entered following a July 2019 permanency planning hearing, the trial court found that respondent-mother maintained adequate housing, did not receive consistent income, attended weekly therapy sessions and met with a psychiatrist to receive treatment for her mental health issues, and missed three random drug screens in March and May 2019. On 14 April 2019, law enforcement officers responded twice to reports of domestic violence at respondent-mother's residence, which resulted in law enforcement officers removing the father from the home. The trial court also found that "any progress made by either parent [wa]s generally short-lived. Neither parent ha[d] made adequate progress in a reasonable period of time to alleviate the conditions that led to the children's initial removal from the home." The trial court further found that Adam was doing well in his placement, that Efia was receiving services appropriate for her needs, and that each child's respective caregiver intended to adopt when possible. The trial court changed the primary plan for the children from guardianship back to adoption with the secondary plan remaining reunification.

¶ 11 On 9 January and 4 February 2020, the trial court conducted a hearing on WCHS's motion to terminate respondent-mother's and the father's parental rights to the children. In an order entered 15 May 2020, the trial court found the existence of grounds to terminate respondent-mother's parental rights under N.C.G.S. § 7B-1111(a)(1), (2), and (3), and further concluded that it was in the children's best interests to terminate respondent-mother's parental rights. *See* N.C.G.S. § 7B-1110(a) (2019).[2] Accordingly, the trial court granted WCHS's motion to terminate respondent-mother's parental rights to the juveniles in the 15 May 2020 order, from which respondent-mother appeals to this Court.

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2. The father relinquished his parental rights to the children and is not a party to this appeal.

¶ 12 On appeal, respondent-mother challenges each of the three grounds which were found to exist by the trial court as a basis upon which to terminate her parental rights. Respondent-mother likewise opposes the trial court's conclusion that termination of her parental rights was in the children's best interests.

II. Legal Standard

¶ 13 The North Carolina General Statutes set forth a two-step process for the termination of parental rights. After the filing of a petition for the termination of parental rights, a trial court conducts a hearing to adjudicate the existence or nonexistence of any grounds alleged in the petition as set forth under N.C.G.S. § 7B-1111. N.C.G.S. § 7B-1109(e) (2019). Then, following an adjudication that at least one ground exists to terminate the parental rights of a respondent-parent, the trial court will determine whether terminating the parental rights of the respondent-parent is in the child's best interests. N.C.G.S. § 7B-1110(a).

¶ 14 We review a trial court's adjudication that a ground exists to terminate parental rights under N.C.G.S. § 7B-1111 "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "Unchallenged findings of fact 'are deemed supported by competent evidence and are binding on appeal.' " *In re J.S.*, 374 N.C. 811, 814 (2020) (quoting *In re T.N.H.*, 372 N.C. 403, 407 (2019)). "[A]n adjudication of any single ground for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order." *Id.* at 815 (first citing *In re B.O.A.*, 372 N.C. 372, 380 (2019); then citing *In re Moore*, 306 N.C. 394, 404 (1982)).

¶ 15 In the present case, the trial court concluded that clear, cogent, and convincing evidence established the existence of all three alleged grounds to terminate respondent-mother's parental rights under N.C.G.S. § 7B-1111(a)(1)–(3).

¶ 16 Pursuant to N.C.G.S. § 7B-1111(a)(2), a trial court may terminate parental rights upon a finding that "[t]he parent has willfully left the [child] 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 [child]." N.C.G.S. § 7B-1111(a)(2) (2019). "Only reasonable progress in correcting the conditions must be shown." *In re J.S.*, 374 N.C. at 819 (quoting *In re L.C.R.*, 226 N.C. App. 249, 252 (2013)). "[T]he nature and extent of the parent's reasonable

progress . . . is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights." *Id.* at 815 (emphasis omitted) (quoting *In re A.C.F.*, 176 N.C. App. 520, 528 (2006)); *see also In re Ballard*, 311 N.C. 708, 715 (1984) ("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*.").

¶ 17 A factor consistently recognized as relevant in the determination of whether grounds exist for the termination of parental rights pursuant to N.C.G.S. § 7B-1111(a)(2) is whether a parent has complied with a judicially adopted case plan. *See In re B.O.A.*, 372 N.C. at 384. Generally speaking, we have held that "a trial judge should refrain from finding that a parent has failed to make reasonable progress . . . in correcting those conditions which led to the removal of the juvenile simply because of his or her failure to fully satisfy all elements of the case plan goals." *In re S.M.*, 375 N.C. 673, 685 (2020) (extraneity omitted) (quoting *In re B.O.A.*, 372 N.C. at 385). However, a respondent-parent's " 'extremely limited progress' in correcting the conditions leading to removal" of the children from their care in the first place, especially when the remedy for such conditions is memorialized in the respondent-parent's case plan, will support a trial court's ultimate determination that grounds exist to terminate that parent's rights under N.C.G.S. § 7B-1111(a)(2). *In re A.B.C.*, 374 N.C. 752, 760 (2020) (quoting *In re B.O.A.*, 372 N.C. at 385).

¶ 18 "If [the trial court] determines that one or more grounds listed in section 7B-1111 are present, the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights." *In re A.R.A.*, 373 N.C. 190, 194 (2019) (extraneity omitted) (quoting *In re D.L.W.*, 368 N.C. 835, 842 (2016)). We review the trial court's assessment of a child's best interests for abuse of discretion. *In re A.R.A.*, 373 N.C. at 199. A trial court's determination will remain undisturbed under an abuse of discretion standard so long as that determination is not "manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re A.U.D.*, 373 N.C. 3, 6–7 (2019) (quoting *In re T.L.H.*, 368 N.C. 101, 107 (2015)).

III. Adjudication

¶ 19 **[1]** Respondent-mother does not challenge any of the findings of fact made by the trial court in its determination that grounds existed for the termination of respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2). On the other hand, respondent-mother argues that although she "did not correct *all* the conditions that led to the children's

removal, she . . . made 'reasonable progress under the circumstances.' " We disagree with respondent-mother's depiction of her compliance with her case plan.

¶ 20 In its unchallenged Findings of Fact 15–22, the trial court detailed the conditions which led to the children's removal from the home; namely, "substance abuse, domestic violence and homelessness." In its 13 September 2017 consent order, the trial court ordered respondent-mother to comply with a case plan referred to as the "Out of Home Family Services Agreement" to address the reasons for the children's removal from her care. In unchallenged Finding of Fact 27, the trial court delineated the terms of the Agreement relating to the conditions which led to the removal of the juveniles from respondent-mother's home:

> 27. [In its 13 September 2017 consent order,] [t]he [court] ordered [respondent-]mother to comply with the following conditions:
>
> a. Follow all recommendations from a substance abuse assessment through [WCHS].
>
> b. Refrain from using illegal or impairing substances and submit to random drug screens.
>
> c. Obtain and maintain housing sufficient for herself and the children free of transient household members and substance use.
>
> . . . .
>
> e. Complete a domestic violence assessment through Interact and follow recommendations.

A review of the record convinces us of the nexus between the court-ordered conditions and the bases for the children's removal. *See In re E.B.*, 375 N.C. 310, 323–24 (2020) ("There must be a nexus between the components of the court-approved case plan with which respondent failed to comply and the conditions which led to the juvenile's removal from the parental home." (extraneity omitted) (quoting *In re B.O.A.*, 372 N.C. at 385)).

¶ 21 The trial court's unchallenged findings of fact also describe respondent-mother's failures to comply with the conditions set forth in the 13 September 2017 consent order during the almost twenty-eight-month period between entry of the order and the 9 January 2020 hearing on WCHS's motion to terminate respondent-mother's parental rights:

30. . . . . [Respondent-]mother twice tested positive for marijuana in April [2018] while pregnant [with a third child] and admitted that she continued to drink alcohol.

. . . .

32. Throughout 2018, [respondent-]mother did not consistently comply with random drug screens or provide information to WCHS to verify her treatment progress or participation in . . . domestic violence education. . . .

. . . .

35. [Respondent-]mother moved into an apartment . . . in March 2019. . . . [But] during a home visit in 2019, the GAL volunteer observed a person in the home that was visibly impaired to the point of unconsciousness while [respondent-]mother . . . w[as] present.

36. . . . . [Respondent-]mother continued to attend therapy sessions, but consistently refused to comply with random drug screens.

37. On April 14, 2019, Raleigh police responded to two domestic violence calls at [respondent-]mother's home. . . .

38. On August 5, 2019, [respondent-]mother was involved in a physical altercation with the children's maternal grandmother . . . .

39. On September 14, 2019, Raleigh police again responded to a report of domestic violence at [respondent-]mother's residence . . . . Tellingly, [respondent-]mother was openly drinking alcohol while talking to the police. When asked about the alcohol by the police officer, [respondent-]mother simply explained that she could hold her liquor.

. . . .

42. On September 19, 2019, [respondent-]mother completed another substance abuse assessment. During the interview with the assessor, [respondent-]mother insisted that she had not used drugs or alcohol

> for three years despite testing positive for marijuana the month prior. [Respondent-]mother had refused to comply with any additional drug screens. . . .
>
> 42.[3] On December 11, 2019, Raleigh police once again responded to [respondent-]mother's home after [respondent-]mother reported that she had been physically assaulted by her houseguest. [Respondent-]mother knowingly allowed a male gang member to stay in her home for a few days. After drinking some amount of alcohol, she confronted the guy and demanded that he leave the home. [Respondent-]mother stated that the man became upset when she asked him to leave and jumped on top of her while holding a knife to her cheek. She hit him in the head with a glass bottle and was able to call 911. The houseguest, on the other hand, told police that [respondent-]mother pulled a knife on him and bit him in the face.
>
> . . . .
>
> 44. [Respondent-]mother has not complied with domestic violence counseling or educational programs . . . as previously ordered by the [c]ourt. Additionally, there is no evidence before the [c]ourt that [respondent-]mother has completed substance abuse treatment . . . .

¶ 22 While the trial court recognized that respondent-mother was able to acquire a structurally safe and appropriate residence, the trial court simultaneously found that the father—who was a frequent focus of the domestic violence issues within the family—"spent a significant amount of time in the home" and that both parents continued to "exhibit concerning judgment and behaviors" within that environment, as evidenced by the aforementioned GAL volunteer who discovered an unidentified, unconscious, and impaired person in respondent-mother's apartment. Further, law enforcement officers responded to respondent-mother's apartment on three occasions for domestic violence incidents involving the father after respondent-mother's acquisition of the structurally appropriate housing. Just one month prior to the termination hearing, respondent-mother allowed a male gang member to reside

3. The trial court's order reflects two findings of fact numbered 42.

with her, precipitating yet another domestic violence incident when respondent-mother became intoxicated and asked the male to leave.

¶ 23 Although respondent-mother testified that she had participated in substance abuse support groups and had abstained from marijuana use for at least a year, the trial court's unchallenged findings of fact detail respondent-mother's multiple positive tests for marijuana, her consistent refusal to comply with drug screens, her failure to complete substance abuse treatment and domestic violence counseling programs, and repeated acts of domestic violence involving her which incorporated the consumption of alcohol.

¶ 24 Despite respondent-mother's contention on appeal that "it is clear that [she] made reasonable progress in correcting the conditions that led to the children's removal," the recounted findings of fact of the trial court support the conclusion that, even crediting respondent-mother's inconsistent engagement with a few court-ordered resources, she failed to make reasonable progress toward correcting the substance abuse and domestic violence issues which led to the removal of the children from her care. *See In re J.S.*, 374 N.C. at 815 ("A respondent's prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of lack of progress sufficient to warrant termination of parental rights under section 7B-1111(a)(2)." (extraneity omitted) (quoting *In re J.W.*, 173 N.C. App. 450, 465–66 (2005), *aff'd per curiam*, 360 N.C. 361 (2006))); *In re Z.A.M.*, 374 N.C. 88, 99 (2020) (upholding a termination of parental rights based on N.C.G.S. § 7B-1111(a)(2) when "viewing the evidence as a whole, it appear[ed] that the trial court correctly concluded that respondent-father's three-month period of sobriety was outweighed by his continuous pattern of relapse" over a twenty-two-month period). Therefore, the trial court's adjudication that the ground exists, as embodied in N.C.G.S. § 7B-1111(a)(2), that respondent-mother has willfully left her children 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 juveniles is supported by clear, cogent, and convincing evidence. As a result, we affirm the trial court's determination as to the existence of at least one ground upon which to terminate respondent-mother's parental rights.

¶ 25 "In light of our conclusion that the trial court properly adjudicated a ground for terminating respondent-mother's parental rights under N.C.G.S. § 7B-1111(a)(2), we deem it unnecessary to address respondent-mother's contentions" regarding the grounds of neglect and failure to pay a rea-

sonable portion of the cost of care under N.C.G.S. § 7B-1111(a)(1) and (3), respectively. *In re S.M.*, 375 N.C. at 687 (citing *In re A.R.A.*, 373 N.C. at 194).

IV. Disposition

¶ 26 **[2]** Respondent-mother also challenges the trial court's conclusion that termination of her parental rights was in the children's best interests. In her sole argument before this Court concerning the best interests determination, respondent-mother contends that the trial court "completely disregarded the strong bond between [her] and the children in favor of the alleged bond between the children and their foster parents." In support of this contention, respondent-mother directs our attention to portions of the trial court's Findings of Fact 53 and 55 which state that "the children are bonded with their mother" and "love their mother," along with several examples in the record which acknowledge the positive reactions of the children upon their reunions with respondent-mother during visitation sessions.

¶ 27 If a trial court adjudicates the existence of one or more grounds for terminating parental rights, it then progresses to the dispositional phase of the proceedings where it "shall determine whether terminating the parent's rights is in the juvenile's best interest[s]" and shall consider the following criteria:

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

N.C.G.S. § 7B-1110(a). The trial court shall then make written findings of fact as to those criteria which are relevant to its determination. *In re Z.A.M.*, 374 N.C. at 99. We review a trial court's assessment of a child's best interests for abuse of discretion. *See In re A.R.A.*, 373 N.C. at 199. "[A]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the

result of a reasoned decision." *Id.* (alteration in original) (quoting *In re T.L.H.*, 368 N.C. at 107).

¶ 28 In making its best interests determination, the trial court must consider all of the factors in N.C.G.S. § 7B-1110(a), even though it is not required to expressly make written findings as to each. *See In re A.R.A.*, 373 N.C. at 199 ("It is clear that a district court must consider all of the factors in section 7B-1110(a). The statute does not, however, explicitly require written findings as to each factor." (extraneity omitted) (quoting *In re A.U.D.*, 373 N.C. at 10)).

¶ 29 At the conclusion of the termination of parental rights hearing on 4 February 2020, the trial court acknowledged each of the six factors set forth in N.C.G.S. § 7B-1110(a) and reasoned that the matter would be resolved by its evaluation of the quality of the bond between the children and respondent-mother, and the quality of the bond between the children and the proposed adoptive parents. In its subsequent 15 May 2020 order terminating respondent-mother's parental rights, the trial court made findings of fact which addressed individually the six factors enumerated in N.C.G.S. § 7B-1110(a)(1)–(6). Once again, respondent-mother fails to challenge the trial court's findings of fact, which are therefore deemed to be supported by competent evidence and hence are binding on appeal. *See In re J.S.*, 374 N.C. at 814.

¶ 30 While respondent-mother argues that the trial court disregarded the bond between herself and the children in favor of the bond between the children and their foster parents, "the bond between parent and child is just one of the factors to be considered under N.C.G.S. § 7B-1110(a), and the trial court is permitted to give greater weight to other factors." *In re Z.L.W.*, 372 N.C. 432, 437 (2019); *see also In re A.J.T.*, 374 N.C. 504, 512 (2020) (upholding a trial court's decision to terminate the respondent-parent's parental rights to a child despite the trial court's finding that the child "is very bonded" with respondent-mother when "[i]t [wa]s clear . . . [the trial court] considered several factors in making the best interests determination").

¶ 31 Here, in accordance with its requirement to consider the bond between the children and respondent-mother as a relevant factor in the determination of the juveniles' best interests regarding the issue of the termination of respondent-mother's parental rights, the trial court found that "[b]oth children acknowledge and love their mother, but both children have stated that they feel safe and secure in their current placements." The trial court also found that, despite the existence of a bond between respondent-mother and the children, "[respondent-]mother

does not provide healthy parental boundaries" as evidenced by threats of physical violence which were made by respondent-mother during her visitation sessions with the juveniles. Contrary to respondent-mother's contention that the trial court "completely disregarded" this factor which is contained in N.C.G.S. § 7B-1110(a)(4), it appears that the trial court weighed the evidence in the record which it considered to be relevant to the factor, recognized the bond between respondent-mother and the children through referencing the bond in its findings of fact, and ultimately assigned greater weight to other factors identified in N.C.G.S. § 7B-1110(a) in concluding that the termination of respondent-mother's parental rights would serve the best interests of the children. This evaluation of the factors which are listed in N.C.G.S. § 7B-1110(a) has been recognized by this Court to properly be within the purview of the trial court. *See In re Z.L.W.*, 372 N.C. at 437; *In re A.J.T.*, 374 N.C. at 512.

¶ 32 Notably, the trial court addressed N.C.G.S. § 7B-1110(a)(1)–(2) by recognizing the age of each child and finding that there was "a high likelihood that both children w[ould] be adopted" because Adam and Efia were placed with a caregiver who "intend[ed] to adopt as soon as possible." In conformance with N.C.G.S. § 7B-1110(a)(3), the trial court found that "[t]erminating the rights of [respondent-]mother w[ould] help accomplish the primary plan of adoption for these children and help achieve permanence . . . following years of uncertainty and instability." As to the quality of the relationship between the children and their proposed adoptive parents which is the factor embodied in N.C.G.S. § 7B-1110(a)(5), the trial court found that "[Efia] ha[d] developed a strong bond with her [caregiver] and the other children in the home and [wa]s considered a part of the family." Adam was also seen as thriving in his placement, and despite being placed in separate homes, the children were able to spend significant time together due to the efforts of their respective families. As to other relevant considerations, the trial court found, in accordance with N.C.G.S. § 7B-1110(a)(6), that between October 2019 and the termination of parental rights hearing on 9 January and 4 February 2020, respondent-mother missed several visits with the children without explanation. Within its fact-finding responsibility, the trial court determined that despite respondent-mother's testimony that she would not use drugs or consume alcohol if the children were returned to her care, "her actions speak volumes louder than her words and the [trial court] finds that her pronouncements are not credible." *See In re D.L.W.*, 368 N.C. at 843 ("The trial judge had the 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." (extraneity omitted) (quoting *Knutton v. Cofield*, 273 N.C.

355, 359 (1968))). Consequently, we are not inclined to view the trial court's conclusion that the best interests of the juveniles were served by the termination of respondent-mother's parental rights as an outcome which was arbitrary or manifestly unsupported by reason. *See In re A.U.D.*, 373 N.C. at 6. In our analysis, the trial court appropriately exercised its discretion to weigh the statutory factors contained in N.C.G.S. § 7B-1110(a) in order to properly conclude that it was in the best interests of the children to terminate the parental rights of respondent-mother.

V. Conclusion

¶ 33 We are satisfied that the trial court's determination that grounds existed to terminate the parental rights of respondent-mother under N.C.G.S. § 7B-1111(a)(2) was supported by clear, cogent, and convincing evidence. Further, we are convinced that the trial court's conclusion that the termination of the parental rights of respondent-mother was in the best interests of the children was neither arbitrary nor manifestly unsupported by reason. Therefore, we affirm the trial court's 15 May 2020 order terminating respondent-mother's parental rights.

AFFIRMED.

IN THE MATTER OF A.R.W., H.N.W., AND S.L.W.

No. 271A20

Filed 23 April 2021

Termination of Parental Rights—no-merit brief—neglect, failure to make reasonable progress, and abandonment

The termination of the incarcerated respondent-father's parental rights on the grounds of neglect, willfully leaving the children in a placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to their removal, and willful abandonment was affirmed where respondent's counsel filed a no-merit brief and the termination order was supported by clear, cogent, and convincing evidence and was based on proper legal grounds.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered 12 March 2020 by Judge Monica M. Bousman in District Court, Wake

County. This matter was calendared for argument in the Supreme Court on 19 March 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Robin E. Strickland for petitioner-appellees.

Leslie Rawls for respondent-appellant father.

NEWBY, Chief Justice.

¶ 1 Respondent, the biological father of the minor children, A.R.W. (Amy), H.N.W. (Hazel), and S.L.W. (Susan)[1], appeals from the trial court's order terminating his parental rights. Counsel for respondent has filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We conclude the issues identified by counsel in respondent's brief are meritless and therefore affirm the trial court's order.

¶ 2 This is a private termination of parental rights action filed by the children's legal custodians, Mr. and Mrs. W (petitioners). On 20 December 2013, Wake County Human Services (WCHS) filed a petition alleging that Amy and Hazel were neglected and dependent juveniles. The petition alleged that on or about 12 March 2013, WCHS received a report that respondent assaulted the mother in the presence of the children. Respondent was "reported to have kicked and choked [the mother] and pulled her out of the car by her hair." The mother entered into a Safety Plan placing the children in the maternal great-grandmother's home.

¶ 3 On 28 January 2014, respondent consented to the entry of an order adjudicating Amy and Hazel to be neglected juveniles based on their living in an injurious environment due to the parents' domestic violence and substance abuse issues. The trial court ordered respondent to enter into and comply with an Out of Home Services Agreement to address the reasons for the children's removal. The trial court ordered respondent to have one hour of supervised visitation every other week.

¶ 4 Following a hearing on 21 April 2014, the trial court entered an order adopting a permanent plan of reunification.

¶ 5 On 25 September 2014, when the mother was eight months pregnant with Susan, she reported that respondent abducted, assaulted, and raped her at gunpoint. Respondent later pled guilty to first-degree kid-

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

napping and is currently serving a sentence of a minimum of eight years to a maximum of ten years, eight months in custody. His projected release date is 23 September 2022.

¶ 6 In September 2014, Amy and Hazel were removed from the maternal great-grandmother's home due to her poor health, and they were placed with petitioners, who are licensed foster parents. Subsequently, the trial court suspended respondent's visitation on 14 November 2014. The trial court found that respondent was not in compliance with his Out of Home Services Agreement. On 5 February 2015, the trial court ceased reunification efforts with respondent.

¶ 7 In March 2015, Amy and Hazel were returned to the mother's home. Petitioners visited with Amy and Hazel "from time to time" and provided childcare when requested by the mother. On 21 September 2016, the mother passed away from an apparent heroin overdose. Following the mother's death, Amy, Hazel, and Susan went to live with the maternal great-grandmother until November 2016, when she was admitted to the hospital. Thereafter, petitioners assumed fulltime care of all three children. The children have resided with petitioners since November 2016.

¶ 8 The maternal grandfather and his wife filed a complaint for custody of the children in District Court, Wake County, and petitioners intervened. On 27 February 2017, the trial court entered a Temporary Custody Order granting petitioners temporary physical and legal custody of the children. Following a hearing on 27 November 2017, the trial court entered an order on 17 May 2018 granting petitioners permanent physical and legal custody of the children. Nevertheless, petitioners and the children have maintained relationships with the maternal grandparents.

¶ 9 On 12 July 2019, petitioners filed petitions to terminate respondent's parental rights to the children alleging the grounds of neglect, willfully leaving the children in a placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to their removal, and willful abandonment. *See* N.C.G.S. § 7B-1111(a)(1)–(2), (7) (2019). Following a hearing held on 13 February 2020, the trial court entered an order on 12 March 2020 terminating respondent's parental rights. The trial court concluded grounds existed to terminate his parental rights based on the grounds of neglect and willful failure to make reasonable progress. The court noted that despite the earlier order requiring respondent to demonstrate changes learned relating to domestic violence, to resolve criminal matters, and to be of lawful behavior, respondent was found guilty of multiple infractions during his incarceration. These infractions included gang behavior, as-

sault on staff, possessing a weapon, and coordinating an assault. The trial court further concluded it was in the children's best interests that respondent's parental rights be terminated. *See* N.C.G.S. § 7B-1110(a) (2019). Respondent appealed from the termination order.

¶ 10 Counsel for respondent has filed a no-merit brief on respondent's behalf under Rule 3.1(e) of the Rules of Appellate Procedure. In her brief, counsel identified four issues that could arguably support an appeal but also explained why she believed these issues lacked merit. Counsel also advised respondent of his right to file *pro se* written arguments on his own behalf and provided him with the documents necessary to do so. Respondent filed a *pro se* brief asking this Court to reverse the trial court order terminating his parental rights and reiterating some of his testimony at the termination hearing. Specifically, respondent stated that he loves his children, he took classes while incarcerated to become a better parent and person, he wrote and called his children while he was incarcerated, petitioners hung up the phone when he tried to call the children the last time, and he has been incarcerated for most of the children's lives. Respondent noted his aunt as a potential caregiver for the children, an argument that the trial court previously considered at length and rejected in its order. Respondent did not, however, present any reviewable legal arguments in his brief.

¶ 11 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, 831 S.E.2d 341, 345 (2019). After considering the entire record and respondent's *pro se* brief and reviewing the issues identified in the no-merit brief, we conclude that the 12 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 respondent's parental rights.

AFFIRMED.

IN RE A.W.

[377 N.C. 238, 2021-NCSC-44]

IN THE MATTER OF A.W.

No. 24A20

Filed 23 April 2021

1. Child Abuse, Dependency, and Neglect—adjudication of neglect—sibling died from suspected abuse—evidence and findings

The trial court properly adjudicated a child neglected upon sufficient evidence and findings that, after a sibling died in the home of suspected abuse, the parents coordinated their stories, provided an implausible explanation regarding the cause of the sibling's injuries, and planned to deceive the court about the nature of their relationship and to conceal the true cause of the sibling's injuries. The findings supported the court's determination that respondent-mother's home was an injurious environment where the child was at substantial risk of impairment.

2. Child Abuse, Dependency, and Neglect—adjudication of dependency—sibling died from suspected abuse—sufficiency of findings

The trial court properly adjudicated a child dependent upon sufficient evidence and findings that multiple experts reviewed the parents' explanation of the cause of fatal injuries to a sibling in the home and concluded the attributed cause could not have resulted in the injuries sustained by the sibling; that, because all the potential caregivers named by the parents believed the sibling died by accidental means, they could not provide a safe home for the child; and that respondent-mother herself could not care for the child based on her denial that the sibling died from abuse.

3. Child Abuse, Dependency, and Neglect—permanent plan—ceasing reunification efforts—notice—sufficiency of findings

In a consolidated adjudication and disposition and termination of parental rights proceeding, respondent-mother necessarily had sufficient notice that the permanent plan would be under review. The trial court's order ceasing reunification efforts between respondent-mother and her child was supported by sufficient evidence and findings that respondent-mother worked with respondent-father to conceal the cause of injuries sustained by a sibling in the home (which led to the sibling's death), that respondent-mother refused to acknowledge the sibling suffered abuse, and that the parents'

proposed alternative placements were inappropriate because none of the potential caregivers believed the sibling was abused.

4. Termination of Parental Rights—grounds for termination—neglect—likelihood of future neglect—sibling died of suspected abuse

The trial court properly terminated respondent-mother's parental rights to her child based on neglect where, after a sibling suffered injuries in the home that led to her death from likely abuse, respondent-mother failed to acknowledge the non-accidental cause of the sibling's injuries, provided an implausible explanation for those injuries, and maintained a relationship with respondent-father. The court's findings supported its conclusion that neglect was likely to reoccur if the child were returned to respondent-mother's care.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 19 November 2019 by Judge Benjamin S. Hunter in District Court, Franklin County. This matter was calendared for argument in the Supreme Court on 19 March 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Gena Walling McCray for petitioner-appellee Franklin County Department of Social Services.

Matthew D. Wunsche for appellee Guardian ad Litem.

Anné C. Wright for respondent-appellant mother.

BERGER, Justice.

¶ 1 Respondent-mother appeals from the trial court's order adjudicating her child A.W. (Abigail)[1] a neglected and dependent juvenile and the trial court's order terminating her parental rights in Abigail based on neglect and dependency. After careful review, we affirm the trial court's orders.

Background

¶ 2 In January 2017, A.M.W. (Anna)[2] was born to respondents. In March 2017, the Franklin County Department of Social Services (DSS) received

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

2. Anna is not a subject of this appeal.

a Child Protective Services (CPS) report that Anna was admitted to the emergency room on 11 March 2017 with significant, unexplained injuries. Anna suffered a severe traumatic brain injury, "bleeding around the brain, subdural hemorrhages, as well as some other fluid collections which [were] indicative of old hematomas[.]" In addition, she had fractured ribs in various stages of healing, a ruptured spleen, internal bleeding, and a fracture in one of her legs. Neither respondent provided an explanation that could account for Anna's injuries. On 15 March 2017, Anna died as a result of blunt force injuries to her head. Her autopsy ruled her death a homicide.

¶ 3 Dr. Benjamin Alexander, an expert in pediatrics and pediatric abuse, treated Anna prior to her death and concluded as follows:

> The pattern and nature of this unfortunate infant's injuries are characteristic of those seen in young infants who are abused by adult caregivers. Injuries this severe are due to very high forces such as might typically be seen in a high-velocity motor vehicle accident, or a fall from a second story window. This assortment of injuries does not occur due to any disease or condition—they are obviously traumatic. Without any history of trauma offered, it must be concluded that this child was abused by an adult who is concealing the truth.
>
> The pattern of lateral rib fractures in conjunction with subdural hematomas is typically seen in infants who have been grasped around the chest and violently shaken. In addition, the bilateral skull fractures indicate that the infant's head was smashed against a hard object.
>
> Rupture of the spleen, in the absence of rare infections or malignancy (which this child does not have), is due to a traumatic cause. The infant was most likely struck forcefully in the upper abdomen or back to cause this injury.
>
> The metaphyseal fracture seen in the distal tibia is typically associated with a forceful, violent twisting force applied to the foot or lower leg.
>
> Because the rib fractures and distal tibia fracture demonstrate some early evidence of healing, which

> is not normally seen before seven days after an injury and therefore before the onset of neurologic symptoms associated with the current head injury, I believe this child was abused on multiple occasions. Also the presence of low-density fluid collections, as would be seen with resorbing blood, may also be an indicator of multiple episodes of shaking.

¶ 4 In March 2018, Abigail was born to respondents. On 16 March 2018, DSS obtained nonsecure custody of Abigail and filed a petition alleging her to be a neglected and dependent juvenile. The petition alleged that Abigail was a neglected juvenile in that her sibling, Anna, died in the care of respondents as a result of suspected abuse and neglect. Respondents reported they were the only caregivers and gave no explanation for Anna's injuries. Respondent-father was incarcerated on charges related to Anna's death, and respondent-mother's involvement in Anna's death had not been ruled out. Because of the nature of Anna's injuries and death, Abigail was at substantial risk of abuse and neglect if she remained in respondents' care and supervision. The petition also alleged that respondents were unable to provide for Abigail's care or supervision because of the aforementioned neglect and lacked an appropriate alternative childcare arrangement. DSS later amended the petition to add allegations that after Anna's death, respondent-father reported that the family dog had caused Anna's injuries. However, respondent-father's account did not explain Anna's injuries. In addition, respondent-mother remained in a relationship with respondent-father after Anna's death, became pregnant with Abigail, and regularly visited respondent-father in jail.

¶ 5 On 29 August 2018, DSS filed a motion to terminate respondent-mother's parental rights in Abigail. DSS alleged that respondent-mother had neglected Abigail, and there was no indication that she was willing or able to correct the conditions that lead to Anna's death and the injurious environment that was present in her home, *see* N.C.G.S. § 7B-1111(a)(1) (2019), and respondent-mother was incapable of providing for the proper care and supervision of Abigail such that Abigail was a dependent juvenile, *see* N.C.G.S. § 7B-1111(a)(6) (2019).

¶ 6 Both the juvenile petition and motion to terminate respondent-mother's parental rights in Abigail came on for hearing eight times between January and August 2019. On 19 November 2019, the trial court entered orders concluding that Abigail was a neglected and dependent juvenile and finding that any efforts toward reunification with respondent-mother would be unsuccessful and contrary to Abigail's health, safety,

and need for a permanent home within a reasonable period of time. The trial court ordered that Abigail remain in the custody of DSS and set the primary permanent plan as adoption with a secondary plan of custody with a court approved caretaker. Also, on 19 November 2019, the trial court entered a separate order concluding that grounds existed to terminate respondent-mother's parental rights in Abigail pursuant to N.C.G.S. § 7B-1111(a)(1) and (6). The trial court determined that it was in Abigail's best interests that respondent-mother's parental rights be terminated, and the court terminated her parental rights. *See* N.C.G.S. § 7B-1110(a) (2019).

¶ 7 On 13 December 2019, respondent-mother entered notice of appeal to the Court of Appeals of North Carolina from the 19 November 2019 adjudication and disposition orders and to this Court from the 19 November 2019 order terminating her parental rights. On 12 March 2020, respondent-mother filed a motion in this Court for consolidation of the actions on appeal and, alternatively, a petition for discretionary review of the adjudication and disposition orders. By order entered 18 March 2020, this Court allowed the motion for consolidation of the actions on appeal and dismissed as moot the petition for discretionary review.

Analysis

¶ 8 On appeal, respondent-mother argues the trial court erred in adjudicating Abigail a neglected and dependent juvenile. She also argues that the trial court erred in ceasing reunification efforts and failing to make reunification part of Abigail's permanent plan. Respondent-mother further contends that the trial court erred by adjudicating grounds for termination of her parental rights based on neglect and dependency. We address each argument in turn.

I. Adjudication of Neglect and Dependency

Standard of Review

¶ 9 We review a district court's adjudication under N.C.G.S. § 7B-1111(a) to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings needed to sustain the trial court's adjudication. The issue of whether a trial court's findings of fact support

> its conclusions of law is reviewed de novo. However, an adjudication of any single ground for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order.

In re J.S., 374 N.C. 811, 814–15, 845 S.E.2d 66, 70–71 (2020) (cleaned up).

Adjudication of Neglect

¶ 10 **[1]** A "neglected juvenile" is defined, in pertinent part, as a child

> 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[.] . . . In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect[.]

N.C.G.S. § 7B-101(15) (2019). "In order to adjudicate a juvenile neglected, our courts have additionally required that there be some physical, mental, or emotional impairment of the juvenile or a *substantial risk of such impairment* as a consequence of the failure to provide proper care, supervision, or discipline." *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (cleaned up) (emphasis added).

¶ 11 Respondent-mother challenges several findings of fact as not being supported by the evidence. Respondent-mother contests the following portions of the trial court's findings 17, 24, 28, 30, 34, and 36, which provide that she and respondent-father worked together to develop an explanation for Anna's injuries:

> 17. On May 24, 2017, the respondent[s] offered to law enforcement an explanation of [Anna's] injuries that defies all medical evidence, and it is clear to the Court that the *respondents worked together to develop the explanation*. Through video-taped statements and reenactments, the respondent[s] indicated that [Anna's] head injuries were caused when the parents' dog, a large Great Dane, jumped on the respondent-father's arm while he was holding [Anna], causing him to lose his grip on [Anna]. [Anna] started to fall, and although [respondent-father] caught her before he fully dropped her, [Anna's] head hit the tiled floor in the kitchen. *[Respondents] both stated that the*

mother was asleep in the next room when this incident occurred.

. . . .

24. During this trial, all three experts, including the respondent-mother's expert, Dr. Owens, reviewed the reenactments and statements the parents provided to law enforcement and the Department, and each confidently concluded that the injuries that [Anna] sustained to her head could not have been caused by *the event described by the parents*. Each also confidently concluded that there were still no explanations given for the leg fracture and the left rib fractures showing signs of healing. All three experts agreed that the skull fractures were similar to what you might see from a severe automobile accident, a drop from a second-story window or by something broad hitting or crushing the baby's skull. The parents presented no evidence that offered a plausible explanation for the severe head injuries. The parents presented no evidence that offered any explanations for the injuries to the left ribs and the leg which occurred 7 to 14 days before the head injuries. Dr. Alexander and Dr. Douglas ruled out any medical condition which would have accounted for the broken bones. There was no evidence presented on medical conditions that might account for the broken bones.

. . . .

28. [Respondent-mother] presented evidence on July 10, 2019 of the hardness of the floor, pictures of the size of the Great Dane compared to [the] size of [respondent-father], and [respondent-mother] brought the dog to Court as evidence of the dog's size and disposition. *[Respondent-mother], throughout this trial, presented evidence that [Anna] died because of the dog.*

. . . .

30. No explanation by either parent accounts for the multiple injuries over time or the injuries that caused [Anna]'s death. [Anna]'s death was caused by an act

of one or both of the respondents. From March 11, 2017 to May 24, 2017, the parents provided no explanation of what happened to [Anna]. When the parents presented an explanation on May 24, 2017, it defied all medical evidence and it defied all reason. *It is clear that the parents were coordinating their statements.* In March 2018, the father altered his explanation in ways that he thought would conform to the child's injuries, but it did not explain the injuries. The parents' have remained unified in their stance that their dog caused the head injury, and they still have not provided an explanation for the other injuries. *The parents have been consistently unified in not revealing to law enforcement, [DSS], or this Court, what happened to [Anna].*

. . . .

34. There are other indications, in addition to [Anna]'s death, that the environment is injurious. The mother admitted taking Concerta and other prescription drugs that were not prescribed to her, and neither the mother, nor the mother's close friend, believe that this was concerning or inappropriate. The mother admitted allowing a heroin addict to live with her while [respondent-father] was incarcerated, and indicated that if he died of an [overdose] while in her home, she would conceal the body from law enforcement. The father indicated in conversations with the mother that he was acquainted with heroin use. *The mother and father showed a willingness and plan to deceive authorities in these proceedings.*

. . . .

36. Based upon the foregoing, aggravating factors exist that prevent reunification with either parent in this matter in that the juvenile's sibling died in the home due to abuse, and *the mother and father have consistently worked together to conceal what happened to [Anna].* This conduct increases the enormity and adds to the consequences of the neglect of [Abigail] because there is no means by which this

> Court can address what caused the death of [Anna] and thereby [e]nsure the safety of [Abigail].

Specifically, respondent-mother asserts that she did not and could not have offered an explanation of the events causing Anna's injuries because she was asleep in another room at the time Anna was injured.

¶ 12 The foregoing portions of the challenged findings are supported by clear and convincing evidence in the record. In a 14 March 2017 interview with law enforcement, respondent-mother recounted her suggestion to a doctor who treated Anna that Anna's injuries could have been caused by respondents' large dog, a Great Dane. At the adjudicatory hearing, respondent-mother rejected the medical examiner's conclusion in Anna's autopsy report that her death was a homicide. She testified that she personally believed that respondent-father "was holding her wrong, and getting the bottle made, and he wasn't holding her right, and holding her with his one arm, and she slipped out of his arms. That's what I think." Furthermore, she introduced a video of the tile floor in her house where Anna's injuries allegedly occurred to demonstrate that it was "hard as a rock" and brought her Great Dane to the courthouse to demonstrate its size and that "accidents can happen." This evidence provides ample support for the trial court's determination that respondent-mother offered an explanation, one involving respondents' Great Dane, for the source of Anna's injuries. *See In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167–68 (2016) (stating that it is the trial judge's duty to consider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn therefrom).

¶ 13 In addition, the trial court's findings that respondents coordinated their stories with one another in an attempt to conceal what really caused Anna's injuries is supported by the evidence. During respondent-mother's 14 March 2017 interview with law enforcement, she reported that after a doctor detailed the extent of Anna's numerous injuries, she spoke with respondent-father:

> And I'm like well how did it happen? And he's like I don't know. I'm like can it be from our dog, you know. Like we have – we have some dogs and our biggest dog's a Great Dane and he's jumped on – jumped on the bed and has cracked me in my nose to where I'd be screaming for [respondent-father] to come in. And one time I wound up bleeding but he never broke my nose.

Considering respondents' conversation, in light of the unchallenged findings that Anna was severely abused while she resided in respondents' care and Dr. Alexander's conclusion that Anna was abused by an "adult who is concealing the truth," the trial court made the reasonable inference that respondents worked together to develop an explanation for Anna's injuries in an attempt to conceal the truth.

¶ 14 Respondent-mother also contests the portion of finding of fact 27, which provides that "[t]he conversation between [respondents] in December 2018 showed an intent to collude to deceive this Court about their relationship and that they were coordinating their testimony for Court." She argues that there is no evidence that she was conspiring with respondent-father to provide false testimony. The record demonstrates otherwise. In a December 2018 conversation between respondents, respondent-mother informed respondent-father that she was "going to take off my ring for the trial" and explain that they are taking a "break to, you know, think about things and stuff[,]" and respondent-father accepted her plan. Yet, at the time of the termination hearing, respondent-mother admitted that respondents continued to be in a relationship. Thus, the challenged portion of the trial court's finding of fact 27 is supported by clear and convincing evidence.

¶ 15 Respondent-mother argues that the trial court's finding of fact 31, which provides that Abigail was "born into the same injurious environment that resulted in [Anna]'s death[,]" is not supported by clear and convincing evidence. Yet, the trial court's unchallenged findings that no explanation by either parent accounted for Anna's injuries, Anna's death was caused by an act by one or both respondents, respondents were still together and planned to remain together, and Abigail's proposed caregivers would not protect her or follow a safety plan for Abigail support the trial court's finding that Abigail was born into the same injurious environment as Anna.

¶ 16 Respondent-mother challenges the portions of finding of fact 34 in which the trial court found that there were other factors besides Anna's death that indicated the existence of an injurious environment, namely respondent-mother's use of non-prescribed drugs, and allowing a heroin addict to live in the home while respondent-father was incarcerated. Respondent-mother contends that she only took Concerta twice to help her study and that she had only taken Gabapentin twice. She argues that there was no evidence that she was caring for Anna or Abigail at the times when she took these drugs and that her use of these drugs was not sufficient in and of itself to support an adjudication of neglect. She also argues that allowing a friend of respondent-father to live with her for a

month does not show that her home was an injurious environment for Abigail. Because, as we detail below, the contested portions of finding of fact 34 relating to respondent-mother's drug use and allowing a heroin addict to live in her home are not necessary to support the trial court's adjudication of neglect, we decline to review respondent-mother's challenges. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) ("[W]e review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." (citing *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 132, 133 (1982)).

¶ 17 Next, respondent-mother argues that the trial court's findings of fact do not support its adjudication that Abigail was a neglected juvenile. She contends that Abigail was not at substantial risk of impairment living in a home with respondent-mother. We are not convinced.

¶ 18 This Court has held that

> [a] court may not adjudicate a juvenile neglected solely based upon previous [DSS] involvement relating to other children. Rather, in concluding that a juvenile "lives in an environment injurious to the juvenile's welfare," N.C.G.S. § 7B-101(15), the clear and convincing evidence in the record must show current circumstances that present a risk to the juvenile.

In re J.A.M., 372 N.C. 1, 9, 822 S.E.2d 693, 698 (2019). "In neglect cases involving newborns, 'the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.' " *Id.* at 9, 822 S.E.2d at 698–99 (citation omitted).

¶ 19 Here, although the trial court considered the fact that Abigail lived in the same home where Anna died as a result of an act of one or both respondents, this was not the sole basis for the trial court's conclusion that Abigail was a neglected juvenile. Rather, the trial court also found the presence of other factors demonstrating that Abigail presently faced a substantial risk in her living environment: respondent-mother continued to provide the implausible explanation that her dog caused Anna's head injury; respondent-mother failed to provide an explanation that accounted for Anna's other injuries; there were no means by which the court could determine what caused Anna's death and "thereby insure the safety of [Abigail]"; respondent-mother continued to be in a relationship with respondent-father; and respondents colluded to deceive the court about the status of their relationship. In conjunction with the fact that Anna died in the home at the hands of one or both respondents, the

findings of respondent-mother's ongoing failure to recognize and accept the cause of Anna's injuries and resulting death, and her continued relationship with respondent-father, establish that respondent-mother was unable to ensure Abigail's safety and that Abigail was at a substantial risk of impairment. Respondent-mother did not remedy the injurious environment that existed for Anna, and the trial court properly concluded that Abigail was a neglected juvenile.

Adjudication of Dependency

¶ 20 **[2]** A "dependent juvenile" is defined as a juvenile "in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." N.C.G.S. § 7B-101(9) (2019). "In determining whether a juvenile is dependent, 'the trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.' " *In re K.D.C.*, 375 N.C. 784, 795, 850 S.E.2d 911, 920 (2020) (quoting *In re B.M.*, 183 N.C. App. 84, 90, 643 S.E.2d 644, 648 (2007)).

¶ 21 First, respondent-mother challenges the portion of finding of fact 24, which states that "all three experts, including the respondent-mother's expert, Dr. Owens, reviewed the reenactments and statements the parents provided to law enforcement and [DSS], and each confidently concluded that the injuries that [Anna] sustained to her head could not have been caused by the events described by [respondents]." She argues that Dr. Owens testified that while the explanation provided by respondent-father was unlikely to have caused Anna's injuries, it was not impossible. Dr. Owens, a forensic pathologist initially testified that the explanation that respondents' dog jumped on respondent-father and caused Anna's head to hit the floor was "not likely" to explain the fractures to Anna's head. However, Dr. Owens subsequently explained that the force of Anna's head hitting the floor while respondent-father was holding her did not explain the head fractures she sustained. Dr. Owens also testified that "[i]t would require a more accelerated force or a fall from a greater height[.]" Thus, the trial court's finding of fact 24 is supported by the evidence. *See In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019) (stating that "[a] trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding.").

¶ 22 Respondent-mother also contends that finding of fact 33 is not supported by the evidence. This finding provides as follows:

> 33. Despite the clear medical evidence presented that [Anna] died of non-accidental means and that no explanation given by either parent matches the injuries, all potential caregivers identified by the parents assert that [Anna] died by accidental means. Not one of them believed that [Anna] was abused. Each family member and friend believed and testified that [Anna] died from an accident, even after being presented with clear and convincing medical evidence that contradicted their belief. One caregiver summarized the overall attitude of all of the parents' family and friends when he said, "If [respondent-mother] said it, I believe it." Based upon their testimonies, it is clear that the proposed caregivers would not protect [Abigail] and would not follow a safety plan for [Abigail.]"

¶ 23 Four individuals, including Abigail's paternal uncle and three of respondents' friends, testified during the adjudicatory phase of the hearing. The paternal uncle testified that he did not believe respondent-father "murder[ed Anna] intentionally." Two of respondents' friends testified that they believed Anna's injuries were accidental. A fourth individual testified that she believed respondents' explanation of the cause of Anna's injuries "could have been true" and "the story kind of made sense." Because none of these individuals believed Anna had been abused, the trial court reasonably inferred that they would not follow a safety plan for Abigail. Accordingly, the trial court's finding of fact 33 is supported by the evidence.

¶ 24 Respondent-mother also challenges that the following portion of the trial court's finding of fact 35: "There is no protective parent and no protective relative or kinship provider that could provide a safe home for [Abigail]." Specifically, respondent-mother argues that any of the potential placements would provide a home where respondent-father would not be present. This argument, however, disregards an important aspect of why the trial court reasoned no protective relative or kinship provider could provide a safe home for Abigail – the fact that no potential caregivers identified by respondents believed that Anna had been abused. The trial court reasonably inferred from the evidence that the potential caregivers' failure to acknowledge the intentional nature of

Anna's injuries and death would impede their ability to provide a safe environment for Abigail.

¶ 25 Next, respondent-mother argues that the trial court erred by adjudicating Abigail a dependent juvenile because she was able to care for Abigail herself, and alternatively, if respondent-mother could not provide care, Abigail was not dependent because she provided appropriate alternative child care options. Her arguments are unpersuasive.

¶ 26 Here, the trial court reasonably found that respondent-mother was unable to properly care for and supervise Abigail because Anna died in the home due to abuse, and respondents worked together to conceal what happened to Anna. Thus, there was "no means by which this Court can address what caused the death of [Anna] and thereby [e]nsure the safety of [Abigail]." Moreover, respondent-mother planned to remain in a romantic relationship with respondent-father while he was in jail on charges related to Anna's death. As previously discussed, the trial court also made findings, which were supported by the evidence or reasonable inferences drawn from the evidence, that the potential caregivers respondents offered were inappropriate because none of them believed that Anna was abused, that they would not protect Abigail, and that they would not follow a safety plan for Abigail. These findings support the trial court's conclusion that Abigail was a dependent juvenile.

II. Reunification

¶ 27 **[3]** Respondent-mother argues that the trial court erred in ceasing reunification efforts with her and failing to make reunification part of Abigail's permanency plan. Her arguments are meritless.

¶ 28 "When a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, the court on its own motion or motion of a party may consolidate the action pursuant to G.S. 1A-1, Rule 42." N.C.G.S. § 7B-1102(c) (2019). Under Rule 42, "when actions involving a common question of law or fact are pending in one division of the court, the judge may order a joint hearing or trial of any or all the matters in issue in the actions[.]" N.C.G.S. § 1A-1, Rule 42(a) (2019). Here, the juvenile neglect and dependency proceeding was pending when the motion to terminate respondent-mother's parental rights was filed. *See In re R.B.B.*, 187 N.C. App. 639, 644, 654 S.E.2d 514, 518, *disc. review denied*, 362 N.C. 235, 659 S.E.2d 738 (2007) (stating that "the juvenile code presents no obstacle to simultaneous hearings on an abuse, neglect, and dependency petition and a termination of parental rights petition.").

¶ 29 First, respondent-mother argues that she had no notice that the permanent plan would be one of the subjects of the consolidated adjudication and disposition and termination of parental rights hearing. Yet, the record confirms that in a "Statutory Notice and Motion for Termination of Parental Rights", filed 29 August 2018 and sent to respondent-mother, she was notified that DSS was recommending the permanent plan be adoption. We also agree with the guardian *ad litem* that in a hearing where a parents' rights in their child are subject to termination, the parent has necessarily been informed that the child's permanent plan is at issue.

¶ 30 Next, respondent-mother argues that the trial court erred in ceasing reunification efforts and failing to make sufficient findings to support removing reunification from the permanent plan. N.C.G.S. § 7B-901(c) provides that

> (c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:
>
> > (1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:
> >
> > . . . .
> >
> > > f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

N.C.G.S. § 7B-901(c)(1) (2019).

¶ 31 Here, the trial court made the following findings in its disposition order:

> 3. Based upon the evidence presented in the adjudication phase of this case and the additional evidence presented in the disposition phase of this case,

> aggravating factors exist that prevent reunification with either parent in this matter in that [Abigail's] sibling died in the home due to abuse, and the mother and father have consistently worked together to conceal what happened to [Anna]. This conduct increases the enormity and adds to the consequences of the neglect of [Abigail] because there is no means by which this Court can address what caused the death of [Anna] and thereby [e]nsure the safety of [Abigail].
>
> 4. Any effort to reunify the parents with this juvenile would be clearly unsuccessful and inconsistent with the juvenile's health and safety and need for a safe, permanent home within a reasonable period of time.

¶ 32 Respondent-mother challenges finding of fact 3. She does not contest the finding that Anna died in the home due to abuse. Rather, she argues that there was no evidence presented that she worked with respondent-father to conceal what happened to Anna. As previously discussed, however, there is sufficient evidence in the record that respondents continued to provide an implausible explanation for Anna's injuries and death and worked together to conceal the truth. Under these circumstances—respondent-mother's failure to acknowledge that Anna died due to abuse, her involvement with respondent-father to conceal the truth, and her continuing romantic relationship with respondent-father—the trial court's finding that respondent-mother's conduct increased the enormity and added to the consequences of neglect is supported by the evidence. Therefore, the trial court properly determined that reasonable efforts for reunification would be unsuccessful and inconsistent with Abigail's welfare.

¶ 33 Lastly, respondent-mother reiterates many of her prior arguments that the trial court should have placed Abigail in a kinship or nonrelative kinship placement. As previously discussed, however, the trial court appropriately declined to place Abigail in respondents' proposed alternative placements because not one of them believed Anna had been abused, and the trial court reasonably inferred that their failure to acknowledge the intentional nature of Anna's injuries and death would hinder their ability to provide a safe environment for Abigail.

III. Grounds for Termination

¶ 34 **[4]** Respondent-mother argues that the trial court erred by adjudicating 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, 839 S.E.2d 792, 796–97 (2000) (citing N.C.G.S. §§ 7B-1109, 1110 (2019)). "At the adjudicatory stage, the petitioner bears the burden of proving by 'clear, cogent, and convincing evidence' the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes." *In re A.U.D.*, 373 N.C. 3, 5–6, 832 S.E.2d 698, 700 (2019) (quoting N.C.G.S. § 7B-1109(f) (2019)). "A trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. at 379, 831 S.E.2d at 310. Unchallenged findings are deemed to be supported by the evidence and are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

¶ 35 Here, the trial court determined that grounds existed to terminate respondent-mother's parental rights based on neglect and dependency. N.C.G.S. § 7B-1111(a)(1), (6) (2019). Because "an adjudication of any single ground for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order," we need only examine whether grounds existed to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1). *In re J.S.*, 374 N.C. at 814–15, 845 S.E.2d at 70–71.

Neglect

¶ 36 A trial court may terminate parental rights if it concludes the parent has neglected the juvenile within the meaning of N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1) (2019). In certain circumstances, the trial court may terminate a parent's rights based on neglect that is currently occurring at the time of the termination hearing. *See, e.g.*, *In re K.C.T.*, 375 N.C. 592, 599–600, 850 S.E.2d 330, 336 (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, 833 S.E.2d 768, 775 (2019) (cleaned up). In this situation, "evidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights[,]" but "[t]he trial court must also consider any evidence of changed conditions in light

of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 231 (1984); *see also* N.C.G.S. § 7B-101(15) ("In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect[.]"). 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, 851 S.E.2d 17, 20 (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 838, 851 S.E.2d at 20 n.3.

¶ 37 In the present case, Abigail was not in respondent-mother's physical custody at the time of the termination hearing which began on 31 January 2019. DSS obtained nonsecure custody of Abigail on 16 March 2018, shortly after her birth. In terminating respondent-mother's parental rights, the trial court relied upon: the abuse and neglect of Anna while in respondents' care; respondent-mother's failure to provide a plausible explanation for Anna's injuries; respondents' coordination of their statements explaining Anna's injuries and their combined actions in concealing the truth about what happened to Anna; and respondent-mother's continued romantic relationship with respondent-father and her intent to deceive the court about their relationship. The trial court found that Anna's death in respondents' home and respondents' joint concealment of what caused Anna's injuries and death "increases the enormity and adds to the consequences of the neglect of [Abigail] because there is no means by which this Court can address what caused the death of [Anna] and thereby [e]nsure the safety of [Abigail]." The trial court further found that any efforts to reunify respondents with Abigail would be unsuccessful and inconsistent with Abigail's health, safety, and need for a safe, permanent home within a reasonable time, and found that there was a probability of abuse or a repetition of neglect in respondents' home. The trial court concluded that respondent-mother had neglected Abigail in that she created an environment injurious to Abigail's welfare and "there is no indication or evidence that the mother is willing or able to correct the circumstances that lead to the death of [Anna] and the injurious environment of the juvenile."

¶ 38 Respondent-mother challenges multiple findings of fact made by the trial court as not being supported by the evidence. The trial court's findings of fact 7 through 40 in its termination order, however, are identical

to the trial court's findings of fact 5 through 38 in its order adjudicating Abigail a neglected and dependent juvenile, and respondent-mother reasserts challenges to the same findings of fact that we have already addressed above.

¶ 39 Respondent-mother next argues that the findings of fact do not adequately support the trial court's conclusion that grounds had been proven to terminate her parental rights based on neglect. She asserts that the present case is distinguishable from *In re D.W.P.*, 373 N.C. 327, 838 S.E.2d 396 (2020).

¶ 40 In *In re D.W.P.*, this Court affirmed an order terminating a mother's parental rights on the basis of neglect. The mother's eleven-month-old son was treated for a broken femur and had numerous other factures that were in the process of healing. The mother attributed his fractured femur to the family's seventy-pound dog and suggested the children's biological father had inflicted the older injuries. *Id.* at 328, 838 S.E.2d at 399. Based upon the boy's young age and multiple fractures for which the mother and her fiancé could provide no plausible explanation, the Guilford County Department of Health and Human Services (GCDHHS) filed a petition and obtained nonsecure custody of both children. *Id.* at 328, 838 S.E.2d at 399. The trial court terminated the mother's parental rights, concluding that "her neglect continued, and . . . she was likely to neglect the children in the future." *Id.* at 329, 838 S.E.2d at 400. The trial court focused on the mother's refusal to honestly report how her son's injuries occurred and believed GCDHHS was unable to provide a plan to ensure that injuries would not occur in the future without knowing the cause of the injuries. *Id.* at 329, 838 S.E.2d at 400.

¶ 41 In affirming the trial court's conclusion that neglect was likely to reoccur if the children were returned to the mother's care, this Court noted in *D.W.P.* the troublesome nature of the mother's "continued failure to acknowledge the likely cause of [her son's] injuries." *Id.* at 339, 838 S.E.2d at 406. This Court also noted that despite the mother's recognition that her fiancé could have caused her son's injuries, she re-established a relationship with him that resulted in domestic violence and "refuse[d] to make a realistic attempt to understand how [her son] was injured or to acknowledge how her relationships affect her children's wellbeing." *Id.* at 340, 838 S.E.2d at 406.

¶ 42 Respondent-mother contends that respondent-father is incarcerated and does not pose a threat; that the historic injuries suffered by the son in *In re D.W.P.* were more extensive than those suffered by Anna; that respondent-mother was not criminally charged in relation to Anna's

injuries like the mother in *In re D.W.P.*; and that respondent-mother recognized that the respondent-father must not be allowed back in the home with Abigail.

¶ 43 Here, as in *In re D.W.P.*, respondent-mother failed to acknowledge the intentional nature of Anna's injuries, never provided a plausible explanation for Anna's injuries and resulting death, and continued to be in a romantic relationship with respondent-father with the intentions to remain together. In addition, DSS could not provide a plan to ensure that injuries would not occur in the future without respondent-mother's acknowledgement that Anna's death was not accidental. Accordingly, the trial court's conclusion, that neglect was likely to reoccur because there was no indication respondent-mother was willing or able to correct the circumstances that led to Anna's death or Abigail's injurious environment, is supported by the evidence and findings of fact.

¶ 44 Because the evidence supports the findings of fact and the findings of fact support at least one ground for termination of respondent-mother's parental rights, we need not address termination of respondent-mother's parental rights based on dependency. *In re B.O.A.*, 372 N.C. at 380, 831 S.E.2d at 311. Furthermore, respondent-mother does not contest the trial court's dispositional determination that it was in Abigail's best interests to terminate her parental rights. The trial court's order terminating respondent-mother's parental rights in Abigail is affirmed.

AFFIRMED.

IN RE D.A.A.R.

[377 N.C. 258, 2021-NCSC-45]

IN THE MATTER OF D.A.A.R., S.A.L.R.

No. 224A20

Filed 23 April 2021

Termination of Parental Rights—grounds for termination—failure to make reasonable progress—compliance with majority of case plan

An order terminating a mother's parental rights to her son was reversed where the trial court's findings of fact did not support its conclusion that she willfully failed to make reasonable progress in correcting the conditions leading to the child's removal from the home. Although the trial court properly considered the mother's partial noncompliance with the "parenting skills" component of her case plan with the Department of Health and Human Services, the court's remaining findings showed the mother had made reasonable progress by fully complying with the remaining components of her case plan, including those addressing her substance abuse, domestic violence issues, mental health, and housing situation.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from order entered on 6 February 2020 by Judge William B. Davis in District Court, Guilford County. This matter was calendared in the Supreme Court on 19 March 2021 but was determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

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

Wyrick Robbins Yates & Ponton LLP, by Sean S. Planchard, for appellee Guardian ad Litem.

Sean P. Vitrano for respondent-appellant mother.

ERVIN, Justice.

¶ 1 Respondent-mother Amanda R. appeals from the trial court's order terminating her parental rights in D.A.A.R.,[1] a minor child born in May

1. "D.A.A.R." will be referred to throughout the remainder of this opinion as "Daniel," which is a pseudonym used to protect his identity and for ease of reading. Daniel's older

2013.[2] After careful consideration of respondent-mother's challenges to the trial court's termination order in light of the record and the applicable law, we conclude that the trial court's order should be reversed.

I. Factual and Procedural Background

¶ 2 On 26 July 2017, the Guilford County Department of Health and Human Services filed juvenile petitions alleging that Daniel and Sara were neglected and dependent juveniles and obtained the entry of orders taking them into nonsecure custody. The process that led to the filing of these juvenile petitions began when DHHS received a child protective services report on 7 April 2017 describing an incident of domestic violence between the parents during which the father held a gun to respondent-mother's head. In the course of the ensuing investigation, DHHS learned of substance abuse by both parents, having been told, among other things, that respondent-mother "was selling her Suboxone medication and buying urine to pass drug screens in order to receive more Suboxone." In addition, the parents failed to attend scheduled meetings with DHHS personnel and vacated their residence without informing DHHS that they intended to do so. On 30 May 2017, the father was charged with the commission of numerous felonies, including robbery with a dangerous weapon and possession of a firearm by a felon.[3]

¶ 3 After leaving Sara in the care of a family friend for what was supposed to be a single night, respondent-mother was "nowhere to be found" when the friend attempted to return Sara to her on the following day. In addition, respondent-mother was reported to be homeless and living in a hotel. However, respondent-mother was ultimately found with Daniel in the home of a former neighbor after DHHS received a report that respondent-mother and the former neighbor had been engaging in substance abuse in Daniel's presence. On 24 July 2017, respondent-mother was arrested and taken into custody by officers of the High Point Police Department at the neighbor's residence. Although respondent-mother agreed to place Daniel with her grandmother pending her release from the Guilford County Detention Center and to participate in a child and

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sister, "S.A.L.R.," was also a subject of the trial court's order and will be referred to using the pseudonym "Sara" throughout the remainder of this opinion for the same reasons.

2. The challenged trial court order also terminated the parental rights of the father Jesse B. in both children. Although the father noted an appeal to this Court from the trial court's termination order, he subsequently sought leave from this Court to withdraw his appeal, a request that this Court allowed on 15 July 2020.

3. The father was eventually convicted of committing serious criminal offenses and was serving a lengthy prison sentence at the time of the termination hearing.

family team meeting with DHHS, she failed to attend the child and family team meeting, which had been scheduled for 26 July 2017.

¶ 4 After a hearing held on 16 November 2017 for the purpose of considering the issues raised by the neglect and dependency petitions, Judge Angela C. Foster entered an order on 8 January 2018 finding that Daniel and Sara were neglected and dependent juveniles and continued them in DHHS custody. Judge Foster's order determined that the barriers to the children's reunification with the parents included their "volatile relationship and history of domestic violence," their untreated "mental health and substance abuse issues," and the lack of stable housing that was suitable for them and the children. Judge Foster noted that, even though respondent-mother had been participating in weekly visitation sessions with the children, she had not attended the adjudication hearing, with her current location being unknown. As a result, Judge Foster ordered respondent-mother to enter into a service agreement with DHHS "and [to] begin complying with the terms and conditions of that agreement, if she desires reunification." Respondent-mother was authorized to have one hour of supervised visitation with the children each week.

¶ 5 Respondent-mother finally entered into a family services agreement with DHHS on 26 January 2018. The family services agreement between DHHS and respondent-mother was intended to address issues relating to substance abuse; domestic violence; emotional and mental health; housing, environmental, and basic physical needs; and parenting skills.

¶ 6 Following a hearing held on 8 February 2018, Judge Foster entered a permanency planning order on 26 March 2018 in which she established a primary permanent plan for the children of reunification with the parents and a secondary plan of adoption. After a hearing held on 8 March 2018, Judge Foster authorized Daniel and Sara to visit their maternal aunt and uncle in another state[4] pending final approval of the aunt and uncle's residence pursuant to the Interstate Compact on the Placement of Children. The children arrived at their aunt and uncle's residence on 30 March 2018 and were allowed to remain in this out-of-state placement after DHHS presented the approved ICPC home study to Judge Foster on 5 April 2018.

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4. The trial court granted respondent-mother's request that her current state of residence, which is the same as the state in which the children's maternal aunt and uncle live, not be disclosed to respondent-father. As a result, we will refrain in this opinion from specifying the state to which respondent-mother relocated after leaving North Carolina in May 2018 and in which the maternal aunt and uncle reside.

¶ 7 At the next permanency planning hearing, which was held on 3 May 2018, DHHS advised Judge Foster that it had not heard from respondent-mother since the February hearing and that her current location remained a mystery. In light of respondent-mother's failure to make any progress toward satisfying the requirements of her family services plan and the father's apparent lack of interest in the children, Judge Foster entered an order on 2 July 2018 in which she changed the primary permanent plan for the children to one of adoption, with a secondary plan of reunification. In addition, Judge Foster suspended respondent-mother's visitation with the children and directed DHHS to initiate termination of parental rights proceedings against respondents within the next sixty days.

¶ 8 On 4 May 2018, respondent-mother entered a six-month residential substance abuse treatment program in the state in which the children were living with their maternal aunt and uncle. Sara was returned to North Carolina on 25 June 2018 and lived in an emergency shelter on a temporary basis. In a consent order entered on 25 July 2018, Judge Foster allowed respondent-mother to have fifteen minutes of supervised telephone contact with Sara twice each week. On 8 August 2018, Sara was placed with her maternal great aunt and uncle in Rowan County, with Daniel having joined Sara in this placement on 9 August 2018. Throughout this period of time, respondent-mother remained in the residential substance abuse treatment program which she had entered on 4 May 2018.

¶ 9 At the next permanency planning hearing, which was held on 20 September 2018, respondent-mother reported that she was scheduled to complete in-patient substance abuse treatment on 30 October 2018, had been attending weekly parenting classes and individual and group therapy, and intended to take a domestic violence education course. In a permanency planning order entered on 21 November 2018, Judge Foster found that, while respondent-mother had "begun to maintain regular contact with [DHHS,]" she had yet to begin paying child support relating to the children. In light of her progress in substance abuse treatment, respondent-mother asked Judge Foster to stay the initiation of termination of parental rights proceedings. In view of respondent-mother's delay in entering into a family services agreement with DHHS and a determination that respondent-mother "ha[d] not begun to fully engage with the components," Judge Foster denied respondent-mother's request and determined that "[i]t is in the best interest of the juveniles that termination of parental rights be pursued by the Department against the parents[.]"

¶ 10 On 29 January 2019, respondent-mother filed motions seeking to have her visitation rights with Daniel and Sara reinstated and to have the initiation of the termination of the parental rights proceeding stayed. In support of this motion, respondent-mother provided information concerning her progress toward satisfying the conditions of her family services agreement, which included the completion of a six-month inpatient substance abuse rehabilitation program; the completion of a sixty-day intensive outpatient substance abuse treatment program; the submission of negative drug screens on a consistent basis since 26 June 2018; her ongoing attendance in substance abuse intensive outpatient treatment; the completion of a four-hour domestic violence course; the completion of parenting classes; and the leasing of a rent-subsidized residence that was suitable for the children as of 20 November 2018. Respondent-mother asserted that she had "maintained her sobriety since April 2018" and had demonstrated overall "stability for several months" and claimed that her supervised phone calls with Sara "appear to be going well."

¶ 11 On 30 April 2019, before respondent-mother's motions had been heard and decided, DHHS filed a petition seeking to have the parents' parental rights in Daniel and Sara terminated. According to the allegations set out in the termination petition, respondent-mother's parental rights in the children were subject to termination on the basis of neglect, N.C.G.S. § 7B-1111(a)(1), and willfully leaving the children in a placement outside the home for more than twelve months without making reasonable progress toward correcting the conditions that had led to the children's removal from the family home, N.C.G.S. § 7B-1111(a)(2).

¶ 12 Judge Foster held another permanency planning hearing on 2 May 2019 and, in an order entered on 22 July 2019, maintained the children's primary permanent plan of adoption. After making findings that acknowledged respondent-mother's progress toward satisfying the requirements of her family services agreement, Judge Foster determined that "[t]he conditions that [had] led to the juveniles coming into custody have not been corrected," that respondent-mother "is not in full compliance with the components [of] her service agreement," and that respondent-mother had "not made adequate progress with the components of that agreement within a reasonable period of time." Among other things, Judge Foster held that respondent-mother had not seen Daniel since "on or about February 8, 2018"; that she "is unemployed, and . . . does not have a source of income"; and that she "has significant mental health and substance abuse issues, and . . . needs to demonstrate her ability to maintain her sobriety." Although Judge Foster denied respondent-mother's motion to stay the termination of parental rights

proceeding, she precluded the termination hearing from beginning prior to a permanency planning hearing scheduled for 22 August 2019. Judge Foster also granted respondent-mother an additional two-hour visitation session with Sara each month[5] while ordering that respondent-mother's visitation with Daniel should "remain[ ] suspended until such time as visits are recommended by the juvenile's therapist."

¶ 13 On 15 May 2019, the guardian ad litem filed a motion for review in which she sought to have all contact between respondent-mother and the children suspended in response to unauthorized contact that had occurred between respondent-mother and Sara. After holding a hearing for the purpose of considering the issues raised by the guardian ad litem's motion for review on 30 May 2019, Judge Foster entered an order suspending all "visitation, phone calls or any other form of communication or contact between [respondent-mother] and the juveniles" on 27 June 2019. In her order, Judge Foster found that Sara, along with several other children, had run away from the group home in which she had been placed with several other juveniles on 12 May 2019; that the employees of the group home had filed a missing person's report and notified DHHS of Sara's unauthorized departure from her placement without permission on 13 May 2019; and that DHHS had notified respondent-mother of Sara's disappearance by e-mail before inquiring if respondent-mother had heard from Sara. Judge Foster further found that respondent-mother had responded to a social worker's e-mail by stating that "she had not heard from her daughter" and that respondent-mother had remained in contact with the social worker until 5:42 p.m. on 13 May 2019, at which point respondent-mother asked the social worker to "keep [her] posted." In addition, Judge Foster found that, unbeknownst to DHHS,[6] respondent-mother "was present in North Carolina on May 13, 2019 due to a criminal court appearance in Davidson County" and that, after receiving a phone call from Sara, respondent-mother had arranged to meet Sara and the other juveniles at approximately 7:00 p.m. on 13 May 2019 for the ostensible purpose of "pick[ing] up all the children, feed[ing] them and tak[ing] them some-

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5. In spite of the fact that Judge Foster had formally authorized the resumption of respondent-mother's visitations with Sara at the 2 May 2019 permanency planning hearing, the record reflects that respondent-mother participated in supervised visits with Sara on 9 March 2019, 6 April 2019, and 4 May 2019.

6. As respondent-mother pointed out at the termination hearing, the written report submitted by the guardian ad litem in advance of the 2 May 2019 permanency planning hearing stated that "[respondent-mother] currently has pending charges in Davidson County with an upcoming court date of May 13, 2019."

where." Judge Foster found that, "[w]ithin ten to twenty minutes of the phone call," respondent-mother had arrived at the location at which she had arranged to meet Sara in a vehicle driven by her pastor, Joseph Divinsky, that was also occupied by Sara's maternal grandmother, and "physically forced [Sara] into [the] vehicle[.]" Judge Foster also found that, instead of contacting DHHS, law enforcement officers, or employees of the group home for the purpose of alerting them about the juveniles' location, respondent-mother had taken Sara to buy clothes and eat dinner before staying with Sara overnight in a Salisbury hotel. Finally, Judge Foster found that respondent-mother had only contacted DHHS for the purpose of having Sara returned to her placement after missing two phone calls from the social worker on the morning of 14 May 2019.[7] Based upon these findings, Judge Foster determined that respondent-mother had "violated the Court's prior orders by having contact with [Sara] outside of the court-ordered visitation and by having Joseph . . . in the presence of [Sara]" and suspended all visitation and other forms of contact between respondent-mother and Sara.

¶ 14 The trial court held a pre-trial hearing in the termination proceeding on 8 July 2019 and set the matter for hearing on 30 September 2019. On the afternoon of 8 July 2019, respondent-mother filed a motion in which she sought review of the children's permanent plan on the grounds that she had maintained stable housing and sobriety for more than eight months, had "renewed her cosmetology license and expect[ed] to have employment soon," and had obtained a favorable result from an ICPC home study. Judge Foster denied respondent-mother's motion for review by means of an order entered on 12 September 2019.

¶ 15 Another permanency planning hearing commenced on 22 August 2019 and concluded on 20 September 2019. In an order entered on 17 October 2019, Judge Foster found that the ICPC home study that had been ordered for respondent-mother's residence had been denied on or about 9 August 2019 and that respondent-mother remained unemployed and lacked a source of income. Judge Foster noted that respondent-mother "had previously reported that she was receiving financial assistance from [Joseph's] Everlasting Arms Ministry" and "is currently engaged to Joseph[.]" Based upon these and other findings,

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7. Although the trial court found in the termination order that respondent-mother had contacted DHHS on 15 May 2019, the undisputed evidence established that respondent-mother had phoned the social worker on the morning of 14 May 2019, a fact that suggests that the trial court's reference to initial contact having been made on 15 May 2019 is nothing more than a clerical error.

Judge Foster ordered DHHS to "pursue termination of parental rights against [the parents] as soon as possible."

¶ 16 The trial court held a three-day termination of parental rights hearing between 30 September 2019 and 28 October 2019 and entered an order terminating the parents' parental rights in Daniel and Sara on 6 February 2020. In its termination order, the trial court determined that respondent-mother's parental rights in the children were subject to termination on the grounds that she had willfully left them in an out-of-home placement for more than twelve months without making reasonable progress toward correcting the conditions that led to their removal from her home, N.C.G.S. § 7B-1111(a)(2),[8] and that DHHS had failed to establish that respondent-mother's parental rights in the children were subject to termination on the grounds of neglect, N.C.G.S. § 7B-1111(a)(1). After considering the statutory dispositional factors delineated in N.C.G.S. § 7B-1110(a), the trial court concluded that, while the termination of respondent-mother's parental rights would be in Daniel's best interests, the same would not be true with respect to Sara.[9] As a result, the trial court terminated respondent-mother's parental rights in Daniel while leaving her parental rights in Sara intact. Respondent-mother noted an appeal to this Court from the trial court's termination order.

II. Substantive Legal Analysis

¶ 17 In seeking relief from the trial court's termination order before this Court, respondent-mother contends that the trial court erred by concluding that her parental rights in Daniel were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2). We believe that respondent-mother's contention has merit.

A. Relevant Legal Principles

¶ 18 According to well-established North Carolina law,

> [w]e review a district court's adjudication under N.C.G.S. § 7B-1111(a) to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of

8. The trial court determined that respondent-father's parental rights in the children were subject to termination for neglect, N.C.G.S. § 7B-1111(a)(1); willful failure to make reasonable progress toward correcting the conditions that had led to their removal from the family home, N.C.G.S. § 7B-1111(a)(2); failure to establish paternity, N.C.G.S. § 7B-1111(a)(5); and abandonment, N.C.G.S. § 7B-1111(a) (7).

9. The trial court concluded that the termination of the father's parental rights would be in both children's best interests.

> law. Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal. . . .
>
> The issue of whether a trial court's findings of fact support its conclusions of law is reviewed de novo. . . .

In re J.S., 374 N.C. 811, 814–15 (2020) (cleaned up). As a result, the ultimate issue raised by respondent-mother's challenge to the trial court's termination order is whether the findings of fact that the trial court made in the course of determining that respondent-mother's parental rights in Daniel were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2) have adequate record support and whether the trial court's properly supported findings of fact establish that respondent-mother had willfully failed to make reasonable progress toward correcting the conditions that had resulted in Daniel's removal from the family home.

¶ 19 According to N.C.G.S. § 7B-1111(a)(2), a parent's parental rights in a child are subject to termination in the event that "[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). "[A]n adjudication under N.C.G.S. § 7B-1111(a)(2) requires that a child be left in foster care or placement outside the home pursuant to a court order for more than a year at the time the petition to terminate parental rights is filed," *In re J.S.*, 374 N.C. at 815 (cleaned up), with the reasonableness of the parent's progress to be assessed as of the date of termination hearing. *Id.*

¶ 20 As this Court has previously stated,

> a finding that a parent acted willfully . . . does not require a showing of fault by the parent. A respondent's prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness regardless of her good intentions, and will support a finding of lack of progress sufficient to warrant termination of parental rights.

In re J.S., 374 N.C. at 815 (cleaned up). On the other hand, "a trial judge should refrain from finding that a parent has failed to make 'reasonable progress . . . in correcting those conditions which led to the removal of the juvenile' simply because of his or her failure to fully satisfy all

elements of the case plan goals.' " *In re A.B.C.*, 374 N.C. 752, 760 (2020) (quoting *In re B.O.A.*, 372 N.C. 372, 385 (2019)). Moreover, while a parent's "compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)[,]" *In re B.O.A.*, 372 N.C. at 384,

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

In re J.S., 374 N.C. at 819, 845 S.E.2d at 73 (cleaned up).

B. Analysis of the Trial Court's Findings of Fact

¶ 21 The trial court made the following uncontested findings of fact concerning the circumstances that led to the children's placement outside the family home and the initial response that respondent-mother made to the children's placement in DHHS custody:

2. . . . [L]egal and physical custody of the juveniles has remained with [DHHS] continuously since July 26, 2017.

> 3. . . . [In a]pproximately, May 2018, [respondent-mother] left the state of North Carolina for various purposes and reasons, including seeking residential treatment placement in the state where [she] currently resides, being that it was closer to her children, who were placed at the time in the state where the mother currently resides, and removing herself from close geographic proximity to any location where she may encounter [respondent-father]. . . .
>
> . . . .

> 9. The conditions which led to the juveniles coming into custody include but are not limited to domestic violence between the parents, prior Child Protective Services (CPS) history in Randolph County, the mother's mental health issues, the parents' history of unstable housing, and the parents' substance abuse issues.
>
> . . . .
>
> 12. The mother has had an opportunity to correct the conditions that led to the juveniles' removal from the home, including but not limited to being offered a service agreement with the Department. [Respondent-mother] willfully delayed entering into a service agreement because she insisted on entering into the agreement along with [respondent-father]. Due to [respondents'] history of domestic violence, the Department would not allow a dual service agreement.

According to the trial court, respondent-mother "ultimately entered into the service agreement with the Department on January 26, 2018, and it was last updated in January 2019."

¶ 22 Next, the trial court made findings that detailed the progress that respondent-mother had made in addressing the five components of the family services agreement that she entered into with DHHS. The trial court's findings with respect to each of these issues can be summarized as follows:

1. Substance abuse

¶ 23 The trial court found that respondent-mother had enrolled in a six-month residential substance abuse program on 4 May 2018, had successfully completed the program on 30 October 2018, had "enrolled herself into an intensive outpatient substance abuse program" after completing inpatient treatment, and had completed all three phases of intensive outpatient treatment by 30 April 2019. In addition, the trial court found that respondent-mother "continues to work with Baptist Health regarding her ongoing mental health treatment and therapy" and had submitted a sufficient number of consecutive negative drug screens to satisfy DHHS that the drug screening process could be discontinued. As a result, the trial court determined that "[respondent-mother was] in compliance with this component of her case plan."

2. Domestic violence

¶ 24 The trial court found respondent-mother had left North Carolina in early May 2018 for the purpose, at least in part, of "remov[ing] herself from close geographic proximity to any location where she may encounter [the father]." In addition to extricating herself from her relationship with the father, the trial court found that respondent-mother had completed a four-hour domestic violence course in her current state of residence in October 2018, that she had completed "an eight-hour domestic violence class and counseling" on 5 April 2019, and that "[n]o other domestic violence courses were recommended" for respondent-mother. As a result of her participation in this educational and treatment process and the fact that she had not been involved in any incidents of domestic violence since leaving North Carolina, the trial court found that respondent-mother was "in compliance with this portion of her case plan."

3. Emotional and Mental Health Needs

¶ 25 The trial court found that respondent-mother "is actively engaged in therapy and treatment regularly and has consistently done so from the time she left the State of North Carolina, up to and through the date of this hearing." As a result, the trial court concluded that respondent-mother was "in compliance with this component of her case plan."

4. Housing, Environment, and Basic Physical Needs

¶ 26 The trial court made the following findings of fact with respect to issues relating to housing, the environment in which respondent-mother lived, and respondent-mother's ability to satisfy her basic physical needs and those of the children:

> [Respondent-mother] was ordered to obtain and maintain a suitable home for the juveniles and . . . maintain all utilities without service interruption for 6 months and pay the rent each month on time . . . .
>
> In approximately May of 2018, [respondent-mother] . . . entered into a residential treatment program for approximately six months. At the completion of the program, [she] . . . obtained housing on November 20, 2018 in her current state of residence. [Respondent-mother] provided [DHHS] Social Worker [Aricia Ross-Clayton] with a copy of her lease as proof of residence with the juveniles' names on the lease. She

currently receives a stipend to help with utilities from the state [where] she resides as well as clothes, food and financial assistance from a local charity. An ICPC home study request was completed by the County Department of Human Services in the state where she is currently residing on August 27, 2019. The ICPC home study was completed and the home was appropriate with working utilities. However, the ICPC home study was denied due to [respondent-mother's] current criminal history. The local authorities were notified that [respondent-mother] was the biological parent and they denied the ICPC home study contrary to their policies for a biological parent on the basis of previous criminal history.

Approximately one week after the hearing held on October 1, 2019, Social Worker Ross-Clayton received a letter from Jessica Doherty with the Department of Social Services in [respondent-mother's] current state of residence regarding exceptions to the ICPC home study policy in regard to biological parents. Ms. Doherty indicated that their Department would be willing to monitor the mother's home, due to her being the biological parent, despite prior CPS or criminal history.

However, this error was not discovered within a sufficient period of time to be corrected without requiring the execution of a completely new ICPC Home Study, which could take several months. The juveniles have been in the custody of [DHHS] for a period in excess of two years and continuing custody for the purpose of conducting a new ICPC home study will continue to prolong the juveniles' placement with [DHHS] without permanence.

. . . .

. . . [Respondent-mother] is in compliance of this component of her case plan. The only caution by the Court is that [she] is not currently earning sufficient income to maintain housing independently without external assistance, but . . . there is no reason to

> think the home is not stable for the indefinite period in the future.

As a result of the fact that no party to this proceeding has challenged the sufficiency of the evidentiary support for these findings, they are binding upon us for purposes of appellate review. *See Koufman v. Koufman*, 330 N.C. 93, 97 (1991).

¶ 27 On the other hand, respondent-mother does challenge the sufficiency of the evidentiary support for the portion of Finding of Fact No. 20(a)(1) stating that she had "fail[ed] to provide housing currently acceptable and appropriate for the juveniles to have any possibility of being placed in her care" lacks sufficient evidentiary support. According to both the record evidence and the trial court's findings of evidentiary fact, however, respondent-mother had leased a residence that was suitable for herself and the children and had working utilities since November 2018. As of the time of the termination hearing, respondent-mother had maintained occupancy of this residence for a period of almost one year. For that reason, the trial court expressly found that respondent-mother was "in compliance of this component of her case plan" and that "there [was] no reason to think the home is not stable for the indefinite period in the future."

¶ 28 As is reflected in its findings of fact, the trial court's concern about the stability and sufficiency of respondent-mother's housing arrangements did not stem from any deficiency in the condition of the premises that respondent-mother occupied or respondent-mother's ability to continue leasing those premises. Instead, the trial court's concern about respondent-mother's housing arrangements rested solely upon the unfavorable result of the ICPC home study. However, the unfavorable result in question rested upon an error made by the relevant agency in the state in which respondent-mother resided coupled with the trial court's unwillingness to tolerate the additional delay in achieving permanency for the children that would inevitably result from the performance of another ICPC home study. In other words, the trial court's findings indicate that the necessity for the second home study resulted from an error made by the relevant agency in the state in which respondent-mother resided rather than from respondent-mother's conduct. As a result, we conclude that the challenged portion of Finding of Fact No. 20(a)(1) relating to respondent-mother's failure to provide acceptable housing lacks sufficient evidentiary support, so that we will disregard the relevant portion of that finding of fact in evaluating whether the trial court's findings of fact support its determination that respondent-mother's pa-

rental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2).[10] *See In re S.D.*, 374 N.C. 67, 75 (2020).

5. Parenting Skills

¶ 29 The trial court found that respondent-mother was in "partial compliance" with the component of her family services agreement that was intended to address issues relating to parenting skills. The trial court found that, while respondent-mother had failed to complete the Parenting Assessment Training Education Program prior to leaving North Carolina, she had completed "a parenting class through . . . an agency in her state and county of residence . . . on October 29, 2018," "[i]n lieu of the PATE program." In addition, the trial court found that respondent-mother had completed a "Nurturing Parenting Program" on 20 February 2019. According to the trial court, the parenting courses that respondent-mother had completed provided "no opportunity for the instructor to observe [her] directly interact with the [children] in order to evaluate her ability to put the skills and knowledge she learned into action in an actual parenting situation."

¶ 30 In addition, the trial court found that respondent-mother had obtained a "parenting psychological assessment through [a provider] located in her current state of residence" on 22 April 2019. According to the trial court, no treatment had been recommended for respondent-mother, with the assessor having reported that respondent-mother "shows no problematic concerns regarding her current parenting or past substance abuse history."

¶ 31 The trial court further found that respondent-mother had not visited Daniel since February 2018 and that her visitation with the children remained in a state of suspension at the time of the termination hearing. In spite of the fact that respondent-mother had been allowed to visit with the children in the aftermath of their removal from the family home, the trial court found that she had "stopped showing up to her visits and subsequently her visits with the [children] were suspended from May 3,

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10. In its brief before this Court, DHHS posits that respondent-mother might not be able to renew her subsidized lease at the expiration of her current lease term. The trial court expressly found, however, that there was "no reason to think the home is not stable" for the foreseeable future. As the Court of Appeals has correctly determined, reliance upon such speculative concerns does not suffice to demonstrate a lack of reasonable progress for purposes of N.C.G.S. § 7B-1111(a)(2). *See In re Nesbitt*, 147 N.C. App. 349, 359 (2001) ("conclud[ing] that the petitioner has failed to meet its burden of demonstrating by clear, cogent and convincing evidence the absence of reasonable progress related to housing to support termination of [the respondent-mother's] parental rights").

2018 until March 7, 2019, when her visitation with [Sara] was reinstated on a monthly basis. Although the trial court found "no evidence of concern" in connection with the supervised visits that respondent-mother had with Sara in March, April, and May 2019, those visits were suspended on 30 May 2019 "due to [her] actions in response to [Sara] running away from Nazareth Children's Home."

¶ 32 Respondent-mother argues that a portion of Finding of Fact No. 12(a) that describes her handling of the "runaway incident" during 13–14 May 2019 lacks sufficient evidentiary support. Even though respondent-mother has not disputed the sufficiency of the evidence to support the manner in which the trial court described her actions during the "runaway incident" or its finding that her "contact with [Sara] during that time violated the existing court orders that limited her to specifically scheduled and supervised visitations" and prohibited Sara from "being in the presence of [Joseph,]" respondent-mother objects to the trial court's determination that the manner in which she responded to this situation "indicates clear issues related to [respondent-mother's] parenting skills, reflecting that [she] is not in full compliance with this component of her case plan."

¶ 33 As an initial matter, we note that the trial court did not find "clear issues related to [respondent-mother's] parenting skills" based solely upon her decision to keep Sara in her custody overnight on 13–14 May 2019 instead of immediately notifying law enforcement officials, DHHS, and employees of the group home that she had located Sara and was providing care for her. Among other things, the trial court also pointed to respondent-mother's actions after the children entered DHHS custody, including "the suspension of her visitation *on two separate occasions*," as indicating the existence of unaddressed deficiencies in respondent-mother's parenting skills. (Emphasis added). Aside from the fact that respondent-mother does not challenge the sufficiency of the evidence to support the trial court's findings concerning the initial suspension of her visitation rights at the time of the 3 May 2018 permanency planning hearing, we note that the 2 July 2018 permanency planning order reflects dissatisfaction with respondent-mother's ongoing substance abuse problems and the absence of any meaningful progress toward satisfying the requirements of her family services plan.

¶ 34 As far as the "runaway incident" is concerned, we are not unsympathetic to respondent-mother's contention that her primary concern at the time that she arranged to meet her daughter on the evening of

13 May 2019 was for Sara's physical and emotional well-being.[11] On the other hand, we are prohibited by well-established principles of North Carolina law from looking behind the trial court's determination that respondent-mother's failure to contact DHHS until the following morning reflected poor judgment on respondent-mother's part and violated prior court orders given that the trial court's evaluation of respondent-mother's conduct is reasonable and constitutes nothing more than permissible fact-finding that has adequate evidentiary support. *See generally In re D.L.W.*, 368 N.C. 835, 843 (2016) (recognizing that the trial court has the responsibility, acting in its capacity as the trier of fact, to weigh and draw reasonable inferences from the evidence).

¶ 35 Similarly, we reject respondent-mother's contention that the trial court erred by considering the "emergency decisions regarding her runaway teenage daughter" and her initial "delay in entering a case plan" after the children had been taken into DHHS custody to be relevant to the issue of whether respondent-mother's parental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2). As far as the first of these two objections is concerned, it is clear to us that the making of "emergency decisions" is an inherent part of parenting and may appropriately be considered by a trial court in the course of evaluating a parent's parenting skills. In addition, we note that, instead of faulting respondent-mother for making a split-second decision under the influence of the stress of Sara's disappearance, the trial court's findings reflect a failure of judgment on the part of respondent-mother that occurred over a period of more than twelve hours, during which respondent-mother withheld information concerning Sara's locations from her lawful custodians.

¶ 36 In the same vein, we hold that a parent's delay in signing a case plan or attempting to address the conditions leading to a child's removal from the home has indisputable relevance to an evaluation of the willfulness of a parent's conduct and the reasonableness of that parent's progress in correcting the conditions that had led to a child's removal from the family home for purposes of N.C.G.S. § 7B-1111(a)(2). *See In re I.G.C.*, 373 N.C. 201, 206 (2019) (affirming a trial court's determination that a parent's parental rights were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2) on the grounds that the trial court's findings demonstrat-

11. As an aside, we note that the trial court did not find that respondent-mother had been in contact with Sara prior to respondent-mother's last e-mail exchange with the social worker at 5:42 p.m. on 13 May 2019.

ed that "respondent-mother waited too long to begin working on her case plan and that, as a result, she had not made reasonable progress toward correcting the conditions that led to the children's removal by the time of the termination hearing"); *In re Moore*, 306 N.C. 394, 405 (1982) (affirming a trial court's determination that a parent's parental rights were subject to termination for failure to make reasonable progress where the "respondent left the children in foster care for more than four years," "did not visit or communicate with them or make any serious effort to do so" during the first three years of their time in foster care, and "made arrangements to visit the children and manifested some efforts to arrange a place for the children to live with her" only after the termination petition had been filed). Although the trial court is, of course, required to consider any progress that the parent might have made up to and including the date of the termination hearing in determining the reasonableness of his or her efforts to eliminate the conditions that had led to a child's removal from the family home, *see In re I.G.C.*, 373 N.C. at 206, it should also evaluate the reasonableness of any progress that the parent has made in light of the amount of time that the parent had been given to make that progress. *See In re J.S.*, 374 N.C. 811, 820–21 (2020) (stating that, "[i]n light of . . . the fact that respondent was afforded almost three years to achieve a home environment suitable for her children, we conclude that the trial court did not err by finding that respondent failed to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2) under these conditions and by finding that her failure to do so was willful").

¶ 37 Finally, we have no hesitation in rejecting respondent-mother's suggestion that the trial court was not entitled to evaluate the parenting decisions that she made relating to Sara in evaluating the reasonableness of her progress with regard to Daniel. As the trial court's findings reflect, the conditions that led to the children's removal from the family home and the requirements set out in respondent-mother's family services agreement with DHHS were not child-specific. As a result, to the extent that respondent-mother's interactions with Sara shed light upon the nature and extent of her parenting skills, evidence concerning those interactions was equally relevant to an evaluation of the progress that respondent-mother had made in correcting the conditions that had led to Daniel's removal from the family home for purposes of N.C.G.S. § 7B-1111(a)(2). *Cf. In re Allred*, 122 N.C. App. 561, 564 (1996) (concluding that the parent's prior neglect of four older children was admissible for the purpose of shedding light upon the issue of whether a different child was likely to be neglected in the event that that child was returned to the parent's care); *cf. also* N.C.G.S. § 7B-101(15) (2019) (providing

that, "[i]n determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home"). The relevance of respondent-mother's inactions with Sara is particularly obvious in this case given the absence of any interactions between respondent-mother and Daniel since February 2018. As a result, we reject respondent-mother's challenge to the relevant portion of the trial court's findings.

C. Reasonableness of Respondent-Mother's Progress

¶ 38 In light of our determinations with respect to respondent-mother's challenges to the trial court's findings of evidentiary fact, we move to a consideration of her contention that the trial court's findings do not support its determination that she willfully failed to make reasonable progress toward correcting the conditions that had led to the children's removal from her home pursuant to N.C.G.S. § 7B-1111(a)(2). Although this Court and the Court of Appeals have previously characterized this and related grounds for termination as both an "ultimate finding" and a "conclusion" of law, we review the sufficiency of the trial court's findings to support its determination that a parent's parental rights in a child are subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2) using a de novo standard of review regardless of the manner in which the trial court's decision is ultimately characterized. *See In re A.B.C.*, 374 N.C. at 761 (holding that the "unchallenged findings of fact support the trial court's conclusion that respondent failed to make reasonable progress to correct the conditions that led to the removal of [the juvenile] from her care" (footnote omitted)); *In re W.K.*, 376 N.C. 269, 273 (2020) (characterizing a trial court's determination of "neglect" for purposes of N.C.G.S. § 7B-1111(a)(1) as an "ultimate finding"); *see also In re Z.D.*, 258 N.C. App. 441, 449 (2018) (stating that, "[b]ecause the evidence and findings were insufficient to support the trial court's ultimate finding that Respondent failed to make reasonable progress, we hold the findings do not support the conclusion that grounds existed pursuant to N.C.[G.S.] § 7B-1111(a)(2) to terminate Respondent's parental rights"); *In re J.S.L.*, 177 N.C. App. 151, 163 (2006) (stating that "[t]he trial court failed to make findings of fact to support a conclusion that respondent father 'willfully left the [children] in foster care for more than 12 months without showing . . . reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the [children]' " (alterations in original) (quoting N.C.G.S. § 7B-1111(a)(2))).

¶ 39 In its termination order, the trial court stated that respondent-mother's parental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2) because:

> The mother has willfully left the juveniles in foster care or placement outside of the home for more than 12 months without showing to the satisfaction of the Court that reasonable progress under the circumstances ha[s] been made in correcting those conditions, which led to the removal of the juveniles. This finding is not based on the reason that the mother cannot care for the juveniles on the account of poverty, but is based solely on the fact [of] the mother's delayed engagement in her case plan as noted in this order[;] the failure of her to provide housing currently acceptable and appropriate for the juveniles to have any possibility of being placed in her care[; t]he likelihood, that if this ground were not found, and this case continues under the current circumstances, the juveniles will simply remain in the custody of [DHHS] indefinitely with no ability to make progress towards any reunification nor adoption, and would not be able to make progress on any existing permanent plan; as well as the evidence concerning the mother's parental decision making from the runaway incident set forth in the findings of fact.

For the reasons set forth above, we will disregard the trial court's reference to respondent-mother's supposed "failure . . . to provide housing currently acceptable and appropriate for the juveniles to have any possibility of being placed in her care," *see In re S.D.*, 374 N.C. at 83, in evaluating the validity of the trial court's determination that respondent-mother's parental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2).

¶ 40 According to respondent-mother, "the record and undisputed findings of fact establish that [she] made significant and reasonable progress in resolving the conditions that brought the children into DHHS custody." We are unable to dispute the validity of this argument given that the record evidence and the trial court's findings establish that respondent-mother had made consistent and sustained progress toward correcting the conditions that had led to the children's removal from the family home beginning in May 2018, when she left North Carolina and en-

tered residential substance abuse treatment in the state in which the children were, at that time, residing. Among other things, respondent-mother removed herself from proximity to respondent-father, an action that had the effect of significantly reducing the likelihood of continued domestic violence between the parents. By the time of the termination hearing, respondent-mother had maintained her sobriety for approximately seventeen months and had maintained housing that was suitable for herself and the children for approximately twelve months. During the same period of time, respondent-mother had availed herself of multiple opportunities to obtain education and treatment relating to her substance abuse, mental and emotional health, domestic violence, and parenting skills problems. As a result, the record evidence and the trial court's findings establish that respondent-mother had addressed each of the direct or indirect causes for the children's removal from her home. *Cf. In re K.D.C.*, 375 N.C. 784, 794–95 (2020) (reversing a trial court determination that the parent's parental rights were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2) on the grounds that the record failed to show that the parent had failed to comply with the provisions of her case plan that were intended to address her substance abuse problems and established that the parent's failure to complete parenting classes was mitigated by her completion of a "Mothering class"). As a result, after conducting the required de novo review, we hold that the trial court's findings of fact simply do not support a determination that respondent-mother had willfully left the child in foster care or a placement outside the home without showing to the satisfaction of the court that reasonable progress under the circumstances had been made in correcting the conditions that had led to the child's removal pursuant to N.C.G.S. § 7B-1111(a)(2).

¶ 41 In urging this Court to affirm the trial court's order, the guardian ad litem emphasizes the fact that Daniel had been in DHHS custody for twenty-seven months as of the time of the termination hearing and argues that this case is similar to *In re I.G.C.*, in which, even though the parent had been given two years within which to correct the conditions that had resulted in the child's removal from the home, the bulk of her progress had been made "between the court's cessation of reunification efforts and the termination hearing." 373 N.C. at 204. The guardian ad litem notes that, in upholding the trial court's determination that the parent's parental rights were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2) in *In re I.G.C.*, we pointed to the presence of "findings which showed that respondent-mother *waited too long* to begin working on her case plan and that, as a result, she had not made reasonable progress toward correcting the conditions that led to the children's removal by the time of the termination hearing." *Id.* at 206 (emphasis added).

¶ 42 The facts in this case are, however, clearly distinguishable from those at issue in *In re I.G.C.* The trial court's findings in this case show that respondent-mother began to make significant progress in May 2018 and had continued to do so up to the time of the termination hearing, making her actions quite unlike the "limited achievements" of the parent in *I.G.C.*, who "failed to complete the recommended treatment needed to fully address the core issues of substance abuse and domestic violence which had played the largest roles in the children's removal." *In re I.G.C.*, 373 N.C. at 205. In addition, the parent in *In re I.G.C.* "failed to obtain stable housing for at least six months[,]" *id.* at 205, 835 S.E.2d at 435, and acknowledged at the termination hearing that "she would not feel comfortable having the children returned to her care for another 'year, year and a half' because she feared the possibility that she would relapse." *Id.* at 205. Simply put, this case simply does not involve last-minute, limited steps taken by a parent faced with the looming prospect of having his or her parental rights terminated of the type that existed in *I.G.C*, *cf. In re O.W.D.A.*, 375 N.C. 645, 653–54 (2020) (concluding that a parent's "eleventh-hour efforts" that resulted in "some minimal progress during his most recent incarceration" were insufficient to "outweigh the evidence of his persistent failures to make improvements while not incarcerated" for the purpose of determining the "probability of repetition of neglect" under N.C.G.S. § 7B-1111(a)(1)); "[e]xtremely limited progress" by a parent, *In re Nolen*, 117 N.C. App. 693, 700 (1995), or the "prolonged inability" of a parent "to improve her situation, despite some efforts in that direction[,]" *In re B.S.D.S.*, 163 N.C. App. 540, 546 (2004). On the contrary, the trial court's properly supported findings demonstrate the existence of sustained and largely successful efforts by respondent-mother to satisfy the requirements of her case plan.

¶ 43 As both DHHS and the guardian ad litem point out, an analysis of the trial court's findings reflects that the sole unresolved issue that respondent-mother faced at the time of the termination hearing involved her failure to fully demonstrate sufficient improvement in her parenting skills. Admittedly, respondent-mother had not visited Daniel since February 2018. For that reason, respondent-mother had not been able to show, in a practical setting, that she had been able to actually achieve the positive results that one might have predicted based upon her successful completion of parenting courses in October 2018 and February 2019 and the favorable parenting assessment that she received in April 2019. On the other hand, the record reflects that respondent-mother unsuccessfully requested the trial court to reinstate her visitation rights relating to Daniel in January 2019 in light of the substantial progress that she claimed to have made in satisfying the requirements of her family

services agreement and that she lacked the ability to require the trial court to allow her to visit with Daniel. *See In re K.L.T.*, 374 N.C. 826, 840, (2020). Moreover, as respondent-mother notes in her reply brief, the trial court had been amenable to allowing the resumption of her visits with Daniel at the time of the 2 May 2019 permanency planning hearing in the event that Daniel's therapist viewed the prospect of such visits in a favorable light, an event that had not occurred as of 30 May 2019, when Judge Foster suspended her contact with the children in the aftermath of the "runaway incident." Finally, the record contains no indication that Daniel's therapist had any concerns about respondent-mother's progress in satisfying the requirements of her family service agreement or her parenting skills or any indication that anything untoward had occurred during respondent-mother's three supervised visits with Sara in March, April, and May 2019.

¶ 44 Although the trial court was, as we have already indicated, fully entitled to consider respondent-mother's actions during the "runaway incident" in assessing whether her parental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2), her actions on that occasion must be viewed in the context of her overall success in addressing the principal causes for the children's removal from her home, including her problems with substance abuse, domestic violence, mental health, and housing instability, and her partial success in satisfying the parenting skills component of her family services agreement. *See In re K.D.C.*, 375 N.C. at 794–95. After considering the trial court's properly supported findings in their entirety, we conclude that respondent-mother's serious error of judgment at the time of the "runaway incident" is not sufficient, without more, to support the trial court's conclusion that respondent-mother had willfully failed to make reasonable progress toward correcting the conditions that had led to the children's removal from the family home. As a result, the trial court's properly supported findings of fact, considered in their entirety, simply do not suffice to support its determination that respondent-mother's parental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2).

¶ 45 Our decision that the trial court's termination order should be reversed is bolstered by the trial court's determination that respondent-mother's parental rights in the children were not subject to termination for neglect pursuant to N.C.G.S. § 7B-1111(a)(1) in view of DHHS' failure to prove that the children would probably experience future neglect if they were returned to respondent-mother's care. In view of the fact that respondent-mother was not required to show that her

immediate reunification with the children would be appropriate in order to preclude a determination that her parental rights in the children were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2), *see In re J.S.*, 374 N.C. at 819–20,[12] the trial court's conclusion that DHHS had failed to show a likelihood of further neglect tends to suggest that respondent-mother had, in fact, made adequate progress in correcting the conditions that had led to the children's removal from the family home. As a result, for all of these reasons, the trial court's order terminating respondent-mother's parental rights in Daniel is reversed.

REVERSED.

12. We do not, of course, wish to be understood as holding that a parent could never be required to be able to immediately reunify with the children in order to avoid a finding that his or her parental rights in the children were not subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2); we simply hold that, no such requirement could have been appropriately imposed in this case.

IN RE G.D.H.

[377 N.C. 282, 2021-NCSC-46]

IN THE MATTER OF G.D.H., J.X.W.

No. 351A20

Filed 23 April 2021

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

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

On writ of certiorari pursuant to N.C.G.S. § 7A-32(b) to review an order entered on 6 April 2020 by Judge V.A. Davidian III in District Court, Wake County. This matter was calendared in the Supreme Court on 19 March 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, Senior County Attorney, for petitioner-appellee Wake County Human Services.

Cranfill Sumner & Hartzog LLP, by Laura E. Dean, for appellee guardian ad litem.

Mary McCullers Reece for respondent-appellant mother.

PER CURIAM.

¶ 1 Respondent-mother appeals from the trial court's order terminating her parental rights to her minor children G.D.H. (Glen)[1] and J.X.W. (Jermaine).[2] Counsel for respondent-mother has filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We conclude that the issues identified by counsel as arguably supporting the appeal are meritless, and therefore we affirm the trial court's order.

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

2. The trial court also terminated the parental rights of Glen and Jermaine's father. However, he is not a party to this appeal.

¶ 2 On 4 October 2018, Wake County Human Services (WCHS) obtained nonsecure custody of Glen, Jermaine, and their older sibling T.I.R. (Thomas)[3]. WCHS filed a juvenile petition alleging that the children were neglected in that they did not receive proper care, supervision, or discipline; they were not provided necessary medical care; and they lived in an environment injurious to their welfare. The petition further alleged that WCHS had an extensive history with respondent-mother and her nine children dating back to 1995, having received twenty-seven Child Protective Services (CPS) reports with concerns of respondent-mother's chronic vagrancy, failure to provide for her children's basic needs, and improper discipline. WCHS received the most recent CPS report on 26 July 2018. The report alleged that respondent-mother had improperly disciplined Thomas by intentionally closing a car door on his leg and hitting him on the head with a hammer. Respondent-mother's actions raised concerns about her mental health and her ability to care for the children. The petition also alleged that WCHS continued to have serious concerns about respondent-mother's improper discipline, care, and supervision of the children; respondent-mother's unstable housing and income; the children's missed medical appointments; the children's excessive absences from school; and the children's poor hygiene. The petition went on to allege that respondent-mother had arranged for the children to live with relatives at various times while she attempted to obtain appropriate housing. However, respondent-mother failed to obtain such appropriate housing even when she had ample opportunities to do so; consequently, the relatives who had provided care for the children were no longer either willing or able to continue to do so. WCHS had also received reports of concerns about the commission of substance abuse by respondent-mother.

¶ 3 On 2 May 2019, the trial court entered an order adjudicating the children to be neglected juveniles. The children remained in the custody of WCHS. The trial court ordered respondent-mother to enter into and to comply with an Out of Home Family Services Agreement with WCHS that included requirements for respondent-mother to: (1) comply with recommendations of a substance abuse assessment, including random drug screens; (2) complete a psychological evaluation and follow recommendations; (3) engage in parenting education and demonstrate learned skills in visits with the children and in her decision making; (4) maintain and provide verification of lawful income sufficient to meet her needs and the needs of the children; (5) obtain, maintain, and provide verification of suitable housing; (6) resolve pending legal matters and

3. Thomas is not a subject of this appeal.

refrain from further criminal activity; (7) establish, and comply with, a visitation agreement; (8) maintain contact with WCHS and timely notify WCHS of changes in circumstances. The trial court also authorized respondent-mother to have supervised visitation with the children for a minimum of one hour per week.

¶ 4 In a permanency planning order entered after a 12 June 2019 hearing, the trial court set the primary permanent plan for the children as reunification with a concurrent permanent plan of adoption. However, in a permanency planning order entered after the next hearing, which was conducted on 23 September 2019, the trial court changed the primary permanent plan for the juveniles to adoption with a secondary plan of reunification upon finding that respondent-mother had not cooperated with recommended services or made progress toward reunification. Specifically, the trial court found that respondent-mother failed to follow through with parenting classes and was dismissed from her parenting program; submitted to substance abuse assessments but had not complied with recommended services or requested drug screens; had not provided documentation of her reported employment; failed to turn herself in for a probation violation, which resulted in her arrest; failed to follow through with mental health assessments and appointments; had been released from the DOSE program for domestic violence due to nonattendance; and had fabricated the death of her mother as an excuse to miss a review meeting on 21 August 2019.

¶ 5 On 31 October 2019, WCHS filed a motion to terminate respondent-mother's parental rights to Glen and Jermaine for neglect and for willful failure to make reasonable progress. *See* N.C.G.S. § 7B-1111(a)(1)–(2) (2019). The termination motion was heard on 19 February 2020 and 2 March 2020. In an order entered on 6 April 2020, the trial court determined that both grounds existed to terminate respondent-mother's parental rights as alleged in the motion. The trial court also concluded that termination of respondent-mother's parental rights was in the children's best interests. Accordingly, the trial court terminated respondent-mother's parental rights to Glen and Jermaine. Respondent appealed.

¶ 6 Due to the incorrect identification contained in respondent-mother's initial notice of appeal of the court to which she was appealing and of the order from which she was appealing, coupled with the untimeliness of her amended notice of appeal, respondent-mother filed a petition for writ of certiorari on 3 September 2020. We allowed respondent-mother's petition for writ of certiorari on 5 October 2020 in order to review the termination of parental rights order.

¶ 7 Counsel for respondent-mother has filed a no-merit brief on respondent-mother's behalf under Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. In the brief, counsel identified two issues that could arguably support an appeal but also offered explanations for counsel's belief that these issues lacked merit. Counsel also advised respondent-mother of the right to file pro se written arguments on respondent-mother's own behalf and provided the parent with the documents necessary to do so. Respondent-mother has not submitted written arguments to this Court.

¶ 8 This Court independently reviews issues identified by counsel in a no-merit brief filed pursuant to 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 by counsel in the no-merit brief, we are satisfied that the 6 April 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 the parental rights of respondent-mother.

AFFIRMED.

IN THE MATTER OF J.E., F.E., D.E.

No. 262A20

Filed 23 April 2021

1. Termination of Parental Rights—denial of motion to continue—abuse of discretion analysis—due process

In an termination of parental rights action, the trial court did not abuse its discretion in denying respondent-father's counsel's motion to continue the termination hearing due to respondent's absence where the hearing had previously been continued twice because the parents were absent, it had been five months since the filing of the petition, respondent's unexplained absence did not amount to an extraordinary circumstance meriting a further continuance beyond the 90-day time-fame set out in N.C.G.S. § 7B-1109(d), respondent could not show he was prejudiced by the denial given his counsel's advocacy, and—based on the unchallenged findings—it was unlikely that the result would have been different had the hearing been continued.

IN RE J.E.

[377 N.C. 285, 2021-NCSC-47]

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

The trial court's termination of respondent-father's parental rights based on neglect was affirmed where the children had been previously adjudicated to be neglected and the unchallenged findings established a lack of changed circumstances and a likelihood of repeated neglect. Although respondent was incarcerated or absconding for much of the time after the original adjudication of neglect, he was not incarcerated for the entirety of the case and his incarceration was not the sole evidence of neglect. Respondent failed to complete his case plan addressing the issues that led to the adjudication of neglect (substance abuse, mental health, and housing) or to remain in contact with DSS, he failed to regularly visit the children or check on their well-being, and his probation violations and criminal activity continued up until the month before the hearing.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 4 March 2020 by Judge Charlie Brown in District Court, Rowan County. This matter was calendared for argument in the Supreme Court on 19 March 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.

Alston & Bird, LLP, by Caitlin C. Van Hoy, for appellee Guardian ad Litem.

Anné C. Wright for respondent-appellant father.

HUDSON, Justice.

¶ 1 Respondent, the father of the minor juveniles J.E. (Jeff),[1] F.E. (Fred), and D.E. (Dan), appeals from the trial court's order terminating his parental rights.[2] Upon careful review of the record and arguments, we affirm.

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

2. The order also terminates the parental rights of the children's mother. However, she is not a party to this appeal.

I. Factual and Procedural Background

¶ 2 On 8 December 2017, the Rowan County Department of Social Services (DSS) filed a juvenile petition alleging that Jeff, Fred, and Dan were neglected and dependent juveniles and obtained nonsecure custody of the children. The juvenile petition also contained allegations concerning the children's mother's oldest child, D.P. (Doug).[3] The petition alleged that DSS received a report on 6 December 2017 with concerns regarding the welfare and safety of Doug and Fred after the parents left them in the care of a neighbor in Rowan County on 5 December 2017 to attend a court date in Wilmington. The parents later called the neighbor asking the neighbor to care for the children overnight, and the neighbor called law enforcement on 6 December 2017 reporting that he could not reach the parents and could no longer care for the children. It was reported that law enforcement responded and found Doug and Fred present at the home where the family had been squatting, which was "in very poor condition." Specifically, the home smelled strongly of feces and rotten food; there were dirty diapers, coke bottles containing a yellow bubbly substance, sticky carpet, and visible mold throughout the home; drug paraphernalia was in plain sight; and a 55-gallon drum with fermenting mash was located in the kitchen. It was also reported that Doug and Fred smelled strongly of urine, body odor, and filth; Doug's hair was "severely cut short in the front"; and Fred suffered from severe diaper rash requiring an antibiotic and had numerous scratches on his neck and torso.

¶ 3 The petition further alleged that the parents returned from Wilmington on 7 December 2017, dropped Jeff and Dan off with their aunt, and told the aunt that they were concerned they would be arrested for child abuse and did not have money to make bond; the parents told a social worker that they were both suffering from mental health issues, the mother was severely depressed, respondent's health was declining, and they were struggling to care for the four children; the parents had acknowledged their house was a "wreck"; the parents indicated they did not plan to return to Rowan County until they could afford to make bond; the mother had previously been hospitalized for mental health issues and had been diagnosed with bipolar disorder and post-traumatic stress disorder; respondent is hostile and aggressive with authority figures and bullies and threatens people to get what he wants; and both parents have drug issues.

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3. Respondent is not Doug's father, and therefore this appeal does not concern Doug.

¶ 4 The petition also indicated the parents had a significant history with child protective services in Rowan County, Anson County, and Union County and had previously faced criminal charges. The petition provided that DSS had received nine reports since the family moved to Rowan County in June 2016 with concerns including: lack of supervision; failure to take Doug to counseling and to provide him with proper schooling; domestic violence between the parents in front of the children; safety hazards for the children at the home; the parents driving without licenses; and failure to follow up with critical medical appointments for the children. The petition also alleged the parents were charged with misdemeanor child abuse, possession of marijuana, and possession of drug paraphernalia in May 2016; respondent was additionally charged with traffic offenses; and respondent was on probation after pleading guilty to "several offenses" in July 2017. Lastly, the petition alleged the children have been negatively impacted by their unsafe, unhealthy, and unstable home environment.

¶ 5 An Out of Home Family Services Agreement (case plan) was developed for and signed by respondent at a Child and Family Team Meeting on 23 February 2018. The case plan included requirements for respondent to address his substance abuse and mental health issues, complete parenting education, obtain and maintain appropriate housing, and demonstrate the ability to care for the children and meet their needs.

¶ 6 After the hearing on the juvenile petition was continued on 1 March 2018 and 12 April 2018, the juvenile petition came on for hearing on 17 May 2018. On that date, the parents stipulated that the children were neglected and dependent juveniles based on the allegations in the juvenile petition. As part of the stipulations, respondent again agreed to terms and conditions consistent with his case plan.

¶ 7 On 3 July 2018, an adjudication and disposition order was entered adjudicating the children to be neglected and dependent juveniles based upon the parents' stipulations. In addition to the stipulations, the trial court found that the parents were on probation after pleading guilty to child abuse charges in January 2018, and respondent was charged with driving while license revoked on 22 February 2018. The trial court's findings also acknowledged respondent's entry into the case plan and detailed his participation in initial assessments which resulted in recommendations for services, but the trial court found that respondent had either refused or had yet to follow through with recommended services and DSS could not confirm respondent's participation in services for which respondent reported participation. The trial court continued custody of the children with DSS, ordered that the initial permanent plan

be set at the first permanency planning review hearing, and allowed the parents supervised visitation "at a minimum of twice per month for two hours." Furthermore, in accordance with respondent's case plan, the trial court ordered respondent to abide by the conditions of his probation/parole; follow all recommendations from his substance abuse, mental health, and any psychiatric or psychological assessments; obtain and maintain safe, sanitary, and stable housing and provide proof of such to DSS and the guardian ad litem (GAL); make diligent efforts to obtain and/or maintain stable employment and provide proof of such to DSS and the GAL; participate in medication management services and take medication as prescribed; submit to random drug screens; participate in recommended services for the children; enroll in and complete a parenting education program approved by DSS; and sign releases of information to DSS, the GAL, and the trial court.

¶ 8 The matter came on for the first permanency planning review hearing on 13 September 2018. In an order entered on 31 October 2018, the trial court found respondent had been arrested on 18 June 2018 for three counts of misdemeanor probation violation and was presently incarcerated. DSS retained custody of the children, and the trial court set the primary permanent plan for the children as reunification with a secondary plan of adoption. Respondent's visitation was not changed.

¶ 9 After the matter came back on for another permanency planning review hearing on 24 January 2019, the trial court entered an order on 21 March 2019 that changed the primary permanent plan for the children to adoption with a secondary plan of reunification. The trial court found respondent had not made any further progress on his case plan and had been absconding or incarcerated for much of the case.

¶ 10 On 2 July 2019, DSS filed a petition to terminate the parents' parental rights to Jeff, Fred, and Dan. DSS alleged that grounds existed to terminate respondent's parental rights for neglect pursuant to N.C.G.S. § 7B-1111(a)(1) and for failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2). On 15 August 2019, respondent filed a response to the petition opposing the termination of his parental rights.

¶ 11 After continuances on 26 September 2019 and 7 November 2019, the termination petition was heard on 2 December 2019 after the trial court denied the parents' motions to further continue the matter. On 4 March 2020, the trial court entered an order terminating respondent's and the mother's parental rights. The trial court concluded that both grounds alleged in the petition existed to terminate respondent's parental rights, *see* N.C.G.S. § 7B-1111(a)(1)–(2) (2019), and that it was in the

best interests of the children to terminate respondent's parental rights. Respondent appeals.

II. Analysis

A. Motion to Continue

¶ 12 **[1]** Respondent first argues the trial court erred in denying his motion to continue the termination hearing on 2 December 2019 and proceeding in his absence. "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) (quoting *State v. Jones*, 342 N.C. 523, 530–31 (1996)).

¶ 13 On appeal, respondent contends the denial of his motion to continue deprived him of a fair hearing under the circumstances. Respondent seeks de novo review arguing that he was deprived of a fundamentally fair hearing in violation of his right to due process. He emphasizes his participation in the juvenile proceedings up to the termination hearing and argues, "[c]onsidering the fact that [he] had consistently participated in the proceedings prior to the termination hearing and the likelihood that he did not know the hearing was taking place, he had a critical need for procedural protection and his attorney's motion to continue should have been granted."

¶ 14 However, there is no indication in the record that respondent's counsel moved to continue the termination hearing in order to protect respondent's constitutional rights. There is no mention of the need to continue due to a lack of notice or in order to ensure due process. Although the transcript of the proceedings is incomplete, the transcript shows that upon inquiry from the trial court respondent's counsel confirmed that his only objection to proceeding with the termination hearing was respondent's absence. A parent's absence from termination proceedings does not itself amount to a violation of due process. *See In re C.M.P.*, 254 N.C. App. 647, 652 (2017) ("[T]his court has held that a parent's due process rights are not violated when parental rights are terminated at a hearing at which the parent is not present."); *In re Murphy*, 105 N.C. App. 651, 656–57 (holding a parent's due process rights were not violated when the termination hearing was conducted in the parent's absence), *aff'd per curiam*, 332 N.C. 663 (1992). Accordingly, respondent has waived any argument that the denial of the motion to continue

violated his constitutional rights, and we review solely for an abuse of discretion. *In re S.M.*, 375 N.C. at 679 (citing *In re A.L.S.*, 374 N.C. at 516–17).

> "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). Moreover, "[r]egardless of whether the motion raises a constitutional issue or not, a denial of a motion to continue is only grounds for a new trial when defendant shows both that the denial was erroneous, and that he suffered prejudice as a result of the error." *Walls*, 342 N.C. at 24–25, 463 S.E.2d at 748.

In re A.L.S., 374 N.C. at 517.

¶ 15 In reviewing for an abuse of discretion, we are guided by the Juvenile Code, which provides that "[c]ontinuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice." N.C.G.S. § 7B-1109(d) (2019). "Furthermore, '[c]ontinuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it. The chief consideration is whether granting or denying a continuance will further substantial justice.' " *In re S.M.*, 375 N.C. at 680 (alteration in original) (quoting *In re D.W.*, 202 N.C. App. 624, 627 (2010)).

¶ 16 The termination petition was filed in this case on 2 July 2019, and respondent was served with the petition in person in court on 11 July 2019. Prior to the termination petition being called for hearing on 2 December 2019, the termination hearing had been continued twice upon motions of the parents on 26 September 2019 and 7 November 2019 due to the parents' absences. At the time of the last continuance on 7 November 2019, counsel for both parents agreed to the special setting of the termination hearing on 2 December 2019. Respondent, who was incarcerated at the time, was transported to court for the hearing on 7 November 2019 but was not brought into the courtroom because the matter was continued.

¶ 17 When the termination petition came on for hearing on 2 December 2019, exactly five months after the petition was filed, counsel for each parent was present, but neither parent was present in court. Based on the trial court's findings of fact, we are satisfied the trial court did not abuse its discretion in determining respondent's unexplained absence did

not amount to an extraordinary circumstance, as required by N.C.G.S. § 7B-1109(d), to merit continuing the termination hearing further beyond the 90-day timeframe set forth in the Juvenile Code. Respondent's attempt on appeal to explain his absence by asserting it was "likely" he did not know the hearing date is not convincing. Respondent never affirmatively asserts he did not have notice of the hearing. Furthermore, respondent does not contest the trial court's findings regarding efforts by counsel and DSS to contact him, and he offers no explanation for his lack of contact with his counsel and DSS despite him knowing that the termination hearing was pending.

¶ 18 Additionally, respondent has failed to argue, let alone establish, how he was prejudiced by the trial court's denial of his motion to continue. Given respondent's counsel's advocacy on behalf of respondent at the termination hearing and the unchallenged findings of fact supporting the termination of his parental rights discussed below, we believe it is unlikely that the result of the termination proceedings would have been different had the hearing been continued.

¶ 19 Respondent has failed to establish that the trial court abused its discretion in denying his motion to continue and that he was prejudiced thereby. Accordingly, we overrule respondent's argument that the trial court erred in denying any further continuance of the termination proceedings.

B. Grounds to Terminate Parental Rights

¶ 20 **[2]** Respondent also challenges the trial court's adjudication of the existence of grounds to terminate his parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) and (2). The Juvenile Code provides for a two-stage process for the termination of parental rights: adjudication and disposition. N.C.G.S. §§ 7B-1109, -1110 (2019). At the adjudication stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" that one or more grounds for termination exists under N.C.G.S. § 7B-1111(a). N.C.G.S. § 7B-1109(e), (f). "[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395 (2019).

¶ 21 "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.' " *Id.* at 392 (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. Moreover, we review only those findings necessary to support the trial court's determination that

grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407 (2019) (citations omitted). "The trial court's conclusions of law are reviewed de novo." *In re M.C.*, 374 N.C. 882, 886 (2020).

¶ 22 A trial court may terminate parental rights for neglect if it concludes the parent has neglected the juvenile within the meaning of N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is defined as one "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2019). As we have recently explained:

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

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

¶ 23 In this case, the trial court found that the children were previously adjudicated to be neglected and dependent juveniles. It also issued findings that detailed DSS's history of involvement with the family, the circumstances leading to the prior adjudication, the requirements of respondent's case plan that he agreed to and was ordered to complete to remedy those conditions, and respondent's failure to comply with the requirements of his case plan and to remain in contact with DSS. The trial court ultimately determined "[t]he probability of a repetition of neglect of the juveniles if returned to the home or care of [the mother] and [respondent] is very high" and concluded grounds existed to terminate respondent's parental rights for neglect.

¶ 24 Respondent now argues the trial court's conclusion that grounds existed to terminate his parental rights for neglect was "not supported by competent and sufficient findings of fact." Respondent challenges very few of the trial court's findings and instead argues the findings do not account for his circumstances at the time of the termination hearing and do not support the trial court's determination that there was a very high probability of a repetition of neglect. We disagree.

¶ 25 The trial court made the following relevant findings of fact:

> 10. In his written answer to the TPR petition, [respondent] admits that he and [the mother] have significant child protective services history in Rowan, Anson, and Union counties. He admits that nine reports were made to [DSS] beginning in June 2016, the month that he and [the mother] and the children moved to Rowan County from Anson County. He admits that the [nine] reports contained concerns including a lack of proper supervision, failure of the parents to provide proper medical attention to the children, exposure to domestic violence, untreated substance abuse and mental health issues, and an injurious, unstable, and unsanitary living environment for the children. . . .
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> . . . .
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> 12. On December 6, 2017, [the parents] left the county to attend a court date in Wilmington, NC. They left two of the four children with a neighbor. The neighbor called law enforcement stating that he could not get in touch with the parents, and he could no longer care for the children. [The parents'] home was in very poor condition. [Fred] was born prematurely and addicted to marijuana. He had multiple bruises and scratches and had severe diaper rash. Both parents signed a stipulation document at adjudication agreeing that the allegations were true. The children were adjudicated neglected.
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> 13. The parents were ordered to complete substance abuse treatment and parenting education, to obtain appropriate housing, to participate in therapy for the children, to complete mental health treatment, and to comply with [DSS]. Neither parent has met any of those requirements to date. Both parents admitted to [DSS] that they have mental health issues . . . .
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> . . . .
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> 15. [The parents] plead[ed] guilty to child abuse charges in January 2018 and were both placed on probation. [The parents'] relationship was on and off during the case. [Respondent] was an emotional

mess and obsessive about [the mother]. . . . [He] often made statements to social workers that made [DSS] question his veracity and/or lucidity. . . . [He] would write fairy tales to be given to the children. . . . [DSS] reviewed the writings and did not find them to be appropriate for the children. [Respondent and the mother] moved around from place to place and had no stable housing. . . .

16. By May 2018, neither parent was compliant with [DSS]. [Respondent] was living out of his car. . . . [He] had some visits with the children [between December 2017 and May 2018]. He would often show up late to visits[,] . . . or he would no show to visits. He would sometimes come to visits dirty and had to use [DSS's] restroom to clean himself up. [Respondent] was engaged with the children during visits, but he would cry and would often be very tearful and emotional.

17. [A new social worker] took over the case in May 2018 but did not have any communication with the parents until July 2018. Several attempts were made to locate [the parents]. . . . [Respondent] was arrested in June 2018. . . .

. . . .

19. Around the time of the January 24, 2019 court hearing, [respondent] agreed that he and [the mother] had substance abuse and mental health issues. He said he did not have a plan to reengage in a relationship with [the mother] and wanted to get his life together. [Respondent] no showed to a scheduled meeting at [DSS] on April 21, 2019. In July 2019, [respondent] contacted [the social worker] wanting to reengage in services.

. . . .

21. [A new social worker] took over the case in August 2019 and has made efforts to contact and locate [the parents] with no success. [The social worker] contacted all phone numbers listed for the parents and sent out letters to the parents' attorneys. All phone numbers were invalid. [The social worker]

> called [respondent's] employer on September 23, 2019 and October 15, 2019. On September 23, 2019, [respondent's] employer stated that [respondent] was still technically employed, but he had not spoken with [respondent] in two weeks. [The social worker] reached out to the Mecklenburg County Police Department and received documentation that [respondent] had been arrested twice. [The social worker] has been unable to have any contact with either parent.
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> 22. [Respondent] was charged with vehicle theft on August 30, 2019, and on September 3, 2019, he was arrested for larceny of a motor vehicle. [The mother] was with him at the time[ ] . . . . [Respondent] posted bail but was arrested again on November 3, 2019 for drug paraphernalia possession and bonded out on November 14, 2019. Neither parent has made any effort to make contact with the agency or the foster parents in regards to the well-being of their children.
>
> 23. . . . [The parents] are not in a position to care for the juveniles due to their lack of responsible decision making, incarcerations, mental health issues, substance abuse issues, positive drug screens, parenting issues, failure to communicate consistently, and lack of overall stability. Both parents have expressed their plans and desires on multiple occasions to get themselves together, but each has failed to follow through with services ordered by the court to help them reach their goals.
>
> 24. The barriers to a safe reunification with either parent are numerous and include the fact that both parents continue to have unaddressed substance abuse and mental health issues, they have been frequently incarcerated throughout the life of this case, they have not maintained stable housing or employment, and they have not visited regularly with the children or even checked on the children's well-being.

These findings are unchallenged by respondent and are binding on appeal. *See In re T.N.H.*, 372 N.C. at 407.

¶ 26 The above unchallenged findings of fact detail the historical facts of the case and demonstrate that, at the time of the termination hearing, respondent had failed to complete the requirements of his case plan designed to address the issues that previously resulted in the adjudication of the children as neglected juveniles. The findings also make clear that respondent's incarceration was not the sole evidence of neglect, but that his incarceration was considered along with his failure to complete his case plan requirements for substance abuse, mental health, and housing, and his failure to regularly visit with the children or check on their wellbeing. Moreover, respondent was not incarcerated for the entirety of the case, and his incarceration for much of the case was the result of his probation violations and criminal activity that continued up until the month before the termination hearing, which itself is evidence supporting a likelihood of repeated neglect.

¶ 27 Upon review of the termination order, we are satisfied that the unchallenged findings which establish a lack of changed circumstances fully support the trial court's determination that there was very high probability of a repetition of neglect if the children were returned to respondent's care. *See In re M.A.*, 374 N.C. 865, 870 (2020) ("A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect.") (quoting *In re M.J.S.M.*, 257 N.C. App. 633, 637 (2018)); *In re J.M.J.-J.*, 374 N.C. 553, 566 (2020) (upholding termination based on neglect where "the trial court's findings of fact demonstrate that respondent's circumstances had not changed so as to render him fit to care for [the child] at the time of the termination hearing"). In turn, the combination of the trial court's finding that the children were previously adjudicated to be neglected juveniles and its determination that there was very high probability of future neglect supports the conclusion that grounds existed to terminate respondent's parental rights to the children for neglect under N.C.G.S. § 7B-1111(a)(1).

III. Conclusion

¶ 28 Having held the trial court did not abuse its discretion in denying respondent's counsel's motion to continue the termination hearing and did not err in adjudicating grounds to terminate respondent's parental rights, and because respondent does not challenge the trial court's best interests determination at the dispositional stage, we affirm the trial court's order terminating respondent's parental rights to Jeff, Fred, and Dan.

AFFIRMED.

IN RE J.M.

[377 N.C. 298, 2021-NCSC-48]

IN THE MATTER OF J.M. & J.M.

No. 363PA17-2

Filed 23 April 2021

1. Termination of Parental Rights—subject matter jurisdiction—during pendency of appeal—order void

The trial court lacked subject matter jurisdiction to proceed with the termination of a father's parental rights in his daughter while his appeal of the adjudicatory and dispositional orders (which had been entered on remand from the Court of Appeals) was pending, so the order was void. The Supreme Court rejected the guardian ad litem's argument that the father should be required to prove prejudice in order to prevail on appeal.

2. Appeal and Error—Rule 2—untimely pro se brief—termination of parental rights

In a termination of parental rights case, the Supreme Court exercised its authority under Appellate Rule 2 to consider a father's untimely pro se brief where his counsel filed a no-merit brief but failed to inform him of the exact deadline for submitting a pro se brief.

3. Termination of Parental Rights—no-merit brief—pro se brief—weight of evidence

Where a father's parental rights were terminated and his attorney filed a no-merit brief on appeal, the Supreme Court rejected the father's pro se argument asking the Court to reweigh the evidence.

4. Termination of Parental Rights—grounds for termination—failure to pay a reasonable portion of the cost of care—incarceration—no contribution

Where a father's parental rights were terminated and his attorney filed a no-merit brief on appeal, the Supreme Court rejected the father's pro se argument challenging the trial court's conclusion that the grounds of willful failure to pay a reasonable portion of the cost of care (N.C.G.S. § 7B-1111(a)(3)) existed to terminate his parental rights. Although he was incarcerated, he earned some money working and received some from friends and family, yet he contributed nothing to the cost of his child's care during the relevant six-month time period.

5. Termination of Parental Rights—effective assistance of counsel—failure to advise—appeal of termination case—meritless

Where a father's parental rights were terminated and his attorney filed a no-merit brief on appeal, the Supreme Court rejected the father's pro se argument alleging that he received ineffective assistance of counsel. Even assuming counsel rendered deficient performance by failing to notify the father that he needed to contribute to the cost of his child's care, the father could not establish prejudice because ignorance did not excuse his failure to fulfill his inherent parental duty to provide support; further, there was no merit in his argument that counsel should have pursued a second appeal in his son's termination case, because his son's case was not before the trial court on remand (only his daughter's case was).

6. Termination of Parental Rights—no-merit brief—failure to pay a reasonable portion of the cost of care

The termination of a father's parental rights on the grounds of willful failure to pay a reasonable portion of the cost of care was affirmed where counsel filed a no-merit brief and the termination order was supported by competent evidence and based on proper legal grounds.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 22 January 2020 by Judge Shamieka L. Rhinehart in District Court, Durham County. This matter was calendared in the Supreme Court on 19 March 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

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

Matthew D. Wunsche, for appellee Guardian ad Litem.

Richard Croutharmel for respondent-appellant father.

HUDSON, Justice.

¶ 1 Respondent-father appeals from orders entered by the trial court terminating his parental rights to his daughter J.M. (Jazmin)[1] and to his

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

son J.M. (James). After careful review, we vacate the order terminating respondent-father's parental rights to Jazmin and affirm the order terminating respondent-father's parental rights to James.

I. Factual and Procedural Background

¶ 2 On 11 September 2015, Durham County Department of Social Services (DSS) filed a juvenile petition alleging that twenty-three-month-old Jazmin and two-month-old James were abused, neglected, and dependent juveniles. On the same day, DSS obtained nonsecure custody of the children, and the trial court approved DSS's placement of the children with their maternal grandparents, who lived in New York but regularly visited Durham.

¶ 3 The juvenile petition alleged that the mother had previously claimed, but later denied, that respondent-father hit Jazmin, and that the family had received in-home services since March 2015 due to a finding of improper care based on the mother's allegations. Months later, marks were observed on James's neck when the mother took him to a well-baby checkup on 8 September 2015. James was sent to UNC hospitals for further testing, which revealed that James had healing fractures to his ribs, tibia, and fibula; bruising to his ear and tongue; subconjunctival hemorrhages; and excoriation under his chin. The mother told the following to DSS: (1) she witnessed respondent-father "flicking" James in the chin and punching James in the stomach; (2) she witnessed respondent-father excessively discipline Jazmin by hitting her with a back scratcher and hitting her in the face; (3) there had been domestic violence between respondent-father and herself in the presence of the children; (4) respondent-father smoked marijuana in the presence of the children; and (5) she had not been forthcoming during the prior Child Protective Services investigation in February 2015. Additionally, the petition alleged James "had a history of poor weight gain due to . . . not being fed on a regular schedule[,]"and both the mother and respondent-father had mental health diagnoses.

¶ 4 In October 2015, respondent-father was arrested for child abuse related to James. In April 2017, respondent-father was convicted of felony child abuse inflicting serious injury upon James and sentenced to 92 to 123 months' imprisonment. Respondent-father's conviction was upheld on appeal. *State v. Martin*, 833 S.E.2d 263, 2019 WL 5219970 (N.C. Ct. App. 2019) (unpublished), *appeal dismissed and disc. review denied*, 374 N.C. 750 (2020).

¶ 5 Prior to the criminal proceedings, the juvenile petition was heard on 12 July 2016. In an adjudication, disposition, and permanency planning

order entered on 21 November 2016, the trial court adjudicated Jazmin to be a "seriously neglected" juvenile "due to inappropriate discipline by the father and inaction by the mother[,]" and it adjudicated James to be an abused juvenile in that respondent-father "inflicts on the child[ ] . . . serious physical injury by other than accidental means" and the mother "allows to be inflicted on the child[ ] . . . a serious physical injury by other than accidental means." The trial court continued custody of Jazmin and James in DSS with their placement with their maternal grandparents, ceased reunification efforts with the parents, suspended the parents' visitation with the children, and set the primary permanent plan for the children as guardianship with a secondary plan for adoption.

¶ 6 The children's mother relinquished her parental rights on 1 December 2016. Respondent-father appealed the adjudication, disposition, and permanency planning order on 21 December 2016.

¶ 7 In an opinion issued on 19 September 2017, the Court of Appeals: (1) affirmed the adjudication of James as an abused juvenile, given that "[t]he binding findings of fact establish[ed] that [James] sustained multiple non-accidental injuries and [r]espondent-father was responsible for the injuries[,]" *In re J.M.*, 255 N.C. App. 483, 495 (2017); (2) reversed and remanded the adjudication of Jazmin as a seriously neglected juvenile, holding that the trial court acted under a misapprehension of the law as "[t]he term 'serious neglect' pertains only to placement of an individual on the responsible individuals' list and is not included as an option for adjudication in an abuse, neglect, or dependency action[,]" *id.* at 497; and (3) vacated the portion of the order relieving DSS from making further reunification efforts because the trial court failed to follow the statutory requirements of N.C.G.S. § 7B-901(c) in the initial disposition order, *id.* at 500. This Court initially granted respondent-father's petition for discretionary review on 7 December 2017, *In re J.M.*, 370 N.C. 383 (2017), but later, on 8 June 2018, determined discretionary review was improvidently allowed. *In re J.M.*, 371 N.C. 132 (2018).

¶ 8 The trial court continued to conduct permanency planning review hearings while respondent-father's appeals were pending, but DSS was unable to proceed with the Court of Appeals' remand related to Jazmin while respondent-father's petition for discretionary review to this Court was pending.

¶ 9 On 6 August 2019, the children's guardian *ad litem* (GAL) filed separate motions to terminate respondent-father's parental rights to Jazmin and James. The motion to terminate respondent-father's parental rights to Jazmin alleged grounds existed to terminate parental rights

for neglect, willful failure to pay a reasonable portion of the cost of care, and willful abandonment. *See* N.C.G.S. § 7B-1111(a)(1), (3), (7) (2019). The motion to terminate respondent-father's parental rights to James alleged grounds existed to terminate parental rights for neglect, willful failure to make reasonable progress, willful failure to pay a reasonable portion of the cost of care, and willful abandonment. *See* N.C.G.S. § 7B-1111(a)(1)–(3), (7) (2019).

¶ 10 On 8 August 2019, the initial juvenile petition came back on for hearing in the trial court pursuant to the Court of Appeals' remand related to Jazmin. The hearing was conducted over the course of 8, 9, and 12 August 2019. On 1 November 2019, the trial court entered adjudicatory and dispositional orders (the "remand orders") that adjudicated Jazmin to be a neglected juvenile, continued her custody in DSS, suspended respondent-father's visitation, and set the permanent plan for Jazmin as adoption with secondary plans for reunification or guardianship.

¶ 11 Although the remand orders were entered on 1 November 2019, they were not served until 27 November 2019. On 9 December 2019, respondent-father filed timely notice of appeal from the remand orders to the Court of Appeals.[2] *See* N.C.G.S. § 7B-1001(b) (2019).

¶ 12 Also on 9 December 2019, after respondent-father filed his notice of appeal from the remand orders, the GAL's motions to terminate respondent-father's parental rights to Jazmin and James came on for hearing. The termination hearing was conducted over the course of 9 and 10 December 2019, and the trial court entered separate orders terminating respondent-father's parental rights to Jazmin and James on 22 January 2020. In one order, the court concluded grounds existed to terminate respondent-father's parental rights to Jazmin pursuant to N.C.G.S. § 7B-1111(a)(1), (3), and (7), and it was in Jazmin's best interests to terminate parental rights. In the other order, the trial court concluded grounds existed to terminate respondent-father's parental rights to James pursuant to N.C.G.S. § 7B-1111(a)(1)–(3) and (7), and it was in James's best interests to terminate parental rights. Respondent-father appealed from both termination orders.

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2. Respondent-father's notice of appeal included the names of Jazmin and James and the file numbers for both of their juvenile cases. However, before the appeal was docketed in the Court of Appeals, the trial court entered an order on 24 January 2020 that dismissed any appeal related to James because there were no appealable orders entered on 1 November 2019 concerning James.

II. Analysis

A. Termination of Parental Rights to Jazmin

¶ 13 **[1]** On appeal from the order terminating respondent-father's parental rights to Jazmin, respondent-father argues the trial court lacked subject matter jurisdiction to proceed with termination of his parental rights while he appealed the remand orders. We agree the trial court exceeded the statutory limits placed on the trial court's subject matter jurisdiction and hold the order terminating respondent-father's parental rights to Jazmin is void.

¶ 14 "Subject matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest, and in its absence a court has no power to act[.]" *In re T.R.P.*, 360 N.C. 588, 590 (2006) (citing *Hart v. Thomasville Motors, Inc.*, 244 N.C. 84, 90 (1956)). "Because a court must have subject matter jurisdiction in order to adjudicate the case before it, 'a court's lack of subject matter jurisdiction is not waivable and can be raised at any time.' " *In re L.T.*, 374 N.C. 567, 569 (2020) (quoting *In re K.J.L.*, 363 N.C. 343, 346 (2009)).

¶ 15 "In matters arising under the Juvenile Code, the court's subject matter jurisdiction is established by statute." *In re K.J.L.*, 363 N.C. at 345. Therefore, "the General Assembly can, within the bounds of the Constitution, set whatever limits it wishes on the possession or exercise of that jurisdiction, including limits on jurisdiction during a pending appeal." *In re M.I.W.*, 365 N.C. 374, 377 (2012).

¶ 16 As we explained in *In re M.I.W.*, "[g]enerally, N.C.G.S. § 1-294 operates to stay further proceedings in the trial court upon perfection of an appeal." *Id.* However, "[g]iven the unique nature of the Juvenile Code, with its overarching focus on the best interest of the child[,]" and in recognition "that the needs of the child may change while legal proceedings are pending on appeal[,]" the General Assembly enacted a modified approach for juvenile cases in N.C.G.S. § 7B-1003, which allows the trial court to continue to exercise jurisdiction and hold hearings pending disposition of an appeal, except that the trial court may not proceed with termination of parental rights under Article 11 of the Juvenile Code. *Id.* at 378–79. Specifically, the statute provides:

> (b) Pending disposition of an appeal, unless directed otherwise by an appellate court or subsection (c) of this section applies, the trial court shall:
>
> (1) Continue to exercise jurisdiction and conduct hearings under this Subchapter with the

> exception of Article 11 of the General Statutes; and
>
> (2) Enter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.

N.C.G.S. § 7B-1003(b) (2019).[3]

¶ 17 In *In re M.I.W.*, we considered whether the trial court had subject matter jurisdiction over a motion to terminate parental rights that was filed while the parents' appeals of a disposition order were pending. *In re M.I.W.*, 365 N.C. at 376. In analyzing N.C.G.S. § 7B-1003(b), we noted the difference between having jurisdiction and exercising jurisdiction:

> Exercising jurisdiction, in the context of the Juvenile Code, requires putting the court's jurisdiction into action by holding hearings, entering substantive orders or decrees, or making substantive decisions on the issues before it. In contrast, having jurisdiction is simply a state of being that requires, and in some cases allows, no substantive action from the court.

Id. at 379. We explained that N.C.G.S. § 7B-1003(b) does not divest the court of jurisdiction in termination proceedings during an appeal but does unambiguously prohibit the trial court from exercising jurisdiction in termination proceedings while disposition of an appeal is pending. *Id.* at 375, 378–79. The "issuance of the mandate by the appellate court," upon the conclusion of the appeal, "returns the power to exercise subject matter jurisdiction to the trial court." *Id.* at 375. Accordingly, we affirmed the termination of parental rights in *In re M.I.W.* where the motion to terminate parental rights was filed during the pendency of the parents' appeal, but the trial court did not exercise subject matter jurisdiction over the termination motion until after the mandate in the appeal had issued and the period for the parents to petition for discretionary review had expired. *Id.* at 380.

¶ 18 Unlike *In re M.I.W.*, the issue in the instant case is the trial court's exercise of subject matter jurisdiction to conduct the termination hearing pending the disposition of respondent-father's appeal from the remand orders in Jazmin's case. Here, the GAL filed the termination motion on

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3. Subsection (c) of N.C.G.S. § 7B-1003 governs the trial court's exercise of jurisdiction pending disposition of an appeal of a termination order entered under Article 11 of the Juvenile Code, and it is irrelevant to the issues presented in this case.

6 August 2019. There was no appeal pending at that time. The remand orders adjudicating Jazmin to be a neglected juvenile were later entered on 1 November 2019, and respondent-father filed notice of appeal from the remand orders on 9 December 2019.[4] Minutes after the notice of appeal was filed, the trial court commenced the termination hearing. It is evident that the trial court was aware respondent-father had filed notice of appeal from the remand orders, as the trial court indicated near the beginning of the termination hearing that the notice of appeal was in the court file. Nevertheless, the trial court continued with the termination hearing.

¶ 19 There is no question the trial court violated N.C.G.S. § 7B-1003(b) by exercising jurisdiction to conduct the hearing on the motion to terminate respondent-father's parental rights to Jazmin while disposition of his appeal from the remand orders was pending and by entering the order terminating respondent-father's parental rights to Jazmin on 22 January 2020. Both DSS and the GAL agree that the trial court violated N.C.G.S. § 7B-1003(b). The contested issue on appeal is the effect of the violation.

¶ 20 Respondent-father argues the trial court's exercise of subject matter jurisdiction to conduct the termination hearing in violation of N.C.G.S. § 7B-1003(b) renders the order terminating his parental rights to Jazmin void. DSS concedes the issue and agrees with respondent-father that the termination order must be vacated. The GAL, however, argues respondent-father should be required to demonstrate prejudice resulting from the trial court's erroneous exercise of jurisdiction, just as a showing of prejudice is generally required to prevail on claims that the trial court violated a statutory mandate. The GAL relies on this Court's distinction between "having jurisdiction" and "exercising jurisdiction" in *In re M.I.W.* and this Court's holding that N.C.G.S. § 7B-1003 prohibits only the exercise of jurisdiction and does not remove jurisdiction. *In re M.I.W.*, 365 N.C. at 379.

¶ 21 We decline to adopt the GAL's position here. While we again acknowledge that N.C.G.S. § 7B-1003(b) does not divest the trial court of

4. We take judicial notice that respondent-father's appeal from the remand orders entered in Jazmin's case was docketed and perfected in the Court of Appeals in file number COA20-153 on 2 March 2020, when the record on appeal was filed. *See State v. Thompson*, 349 N.C. 483, 497 (1998) ("This Court may take judicial notice of the public records of other courts within the state judicial system."). Once an appeal is docketed, the perfection of the appeal relates back to filing of notice of appeal. *Swilling v. Swilling*, 329 N.C. 219, 225 (1991).

subject matter jurisdiction over the juvenile proceeding as a whole, we emphasize that N.C.G.S. § 7B-1003(b) does constrain the trial court's exercise of its subject matter jurisdiction in termination proceedings. Specifically, "the relevant statutory language unambiguously prohibits the trial court from doing . . . two things regarding termination proceedings while an appeal is pending: exercising jurisdiction and conducting hearings." *Id.* at 378–79. "Where jurisdiction is statutory and the [General Assembly] requires the Court to exercise its jurisdiction in a certain manner, to follow a certain procedure, or otherwise subjects the [c]ourt to certain limitations, an act of the [c]ourt beyond these limits is in excess of its jurisdiction." *In re T.R.P.*, 360 N.C. at 590 (quoting *Eudy v. Eudy*, 288 N.C. 71, 75 (1975). Here, respondent-father properly perfected his appeal, and with knowledge of that appeal, the trial court proceeded with a hearing for termination of respondent-father's parental rights. Thus, the trial court clearly acted beyond the limitations statutorily placed on its subject matter jurisdiction.

¶ 22 When addressing appeals controlled by N.C.G.S. § 1-294, this Court has not assessed whether an appealing party was prejudiced by orders entered after a notice of appeal for civil cases. *See generally Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 581, 273 S.E.2d 247, 259 (1981). Rather, we have held that orders entered after the notice of the appeal "are void for want of jurisdiction." *Id.* The GAL has not identified any case law or statutory language that compels us to conclude anything different in this case when addressing the jurisdictional limits under N.C.G.S. § 7B-1003(b).

¶ 23 Here, where the trial court conducted the hearing on the motion to terminate respondent-father's parental rights to Jazmin while the disposition of respondent-father's appeal from the remand orders in Jazmin's case was pending, we hold the trial court acted in excess of the statutory limits on its subject matter jurisdiction set forth in N.C.G.S. § 7B-1003(b), and the resulting termination order is thus void. Accordingly, we vacate the trial court's 22 January 2020 order terminating respondent-father's parental rights in Jazmin.

B. Termination of Parental Rights to James

¶ 24 **[2]** On appeal from the order terminating respondent-father's parental rights to James, counsel for respondent-father has filed a no-merit brief on respondent-father's behalf pursuant to N.C. R. App. P. 3.1(e) (2020). Counsel identified three issues that could arguably support an appeal but also explained why he believed those issues lacked merit. Counsel also advised respondent-father of his right to file pro se written arguments on

his own behalf and provided him with the necessary documents to do so. Respondent-father has submitted a pro se brief to this Court, but he did so some sixty days after the filing of the no-merit brief, making his brief untimely. *Id.* ("The appellant . . . may file a pro se brief within thirty days after the date of the filing of counsel's no-merit brief."). Nevertheless, because counsel did not precisely inform respondent-father of the deadline to file his pro se brief, *see id.* ("Counsel must inform the appellant in writing that the appellant may file a pro se brief and that the pro se brief is due within thirty days after the date of the filing of the no-merit brief."), but instead only advised respondent-father to submit his pro se brief "immediately" if he intended to do so, we exercise our authority under N.C. R. App. P. 2 and consider respondent-father's arguments.

¶ 25 **[3]** Respondent-father spends a considerable portion of his pro se brief rearguing the evidence which led to James's removal from the home. Based on his own version of the facts, respondent-father denies any responsibility for James's injuries, challenges James's prior adjudication as an abused juvenile, and pleads for a second chance to parent James. We see no merit in respondent-father's arguments. This Court's role on appeal is not to reweigh the evidence. *In re A.J.T.*, 374 N.C. 504, 510 (2020) (citing *In re J.A.M.*, 372 N.C. 1, 11 (2019)). Furthermore, the trial court's prior adjudication of James as an abused juvenile and its findings of fact in support of the adjudication were upheld on appeal. *In re J.M.*, 255 N.C. App. 483 (2017), *disc. review improvidently allowed*, 371 N.C. 132 (2018). The prior decision on appeal is binding as the law of the case. *In re J.A.M.*, 375 N.C. 325, 332 (2020) (explaining that the Court's prior decision on appeal from an adjudication of neglect "constitutes 'the law of the case' and is binding as to the issues decided therein" during a subsequent appeal of a termination order).

¶ 26 **[4]** Respondent-father also challenges the trial court's adjudication of grounds to terminate his parental rights to James under N.C.G.S. § 7B-1111(a)(1)–(3) and (7). Respondent-father presents few cognizable legal arguments, and he cites no authority in his brief to support his contentions.

¶ 27 This Court reviews the trial court's adjudication of grounds to terminate parental rights under N.C.G.S. § 7B-1109 "to determine 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. 16, 19 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "The trial court's conclusions of law are reviewable de novo on appeal." *Id.* The adjudication of only one ground is necessary to terminate parental rights. *Id.* at 23.

¶ 28 Grounds exist to terminate parental rights pursuant to N.C.G.S. § 7B-1111(a)(3) if

> [t]he juvenile has been placed in the custody of a county department of social services, . . . and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

¶ 29 N.C.G.S. § 7B-1111(a)(3) (2019). This Court has long recognized that "[a] parent is required to pay that portion of the cost of foster care for the child that is fair, just and equitable based upon the parent's ability or means to pay." *In re Clark*, 303 N.C. 592, 604 (1981). Where a parent has the ability to pay some amount greater than zero but pays nothing, the parent has failed to pay a reasonable portion of the cost of care within the meaning of N.C.G.S. § 7B-1111(a)(3). *See In re J.A.E.W.*, 375 N.C. 112, 117–18 (2020).

¶ 30 In James's case, the trial court concluded:

> [g]rounds exist to terminate [respondent-father's] parental rights . . . to [James] under N.C.G.S. § 7B-1111(a)(3) in that [James] was placed in the custody of DCDSS and for the six months preceding the filing of the petition, [respondent-]father willfully failed to pay a reasonable portion of the cost of care for [James] although physically and financially able to do so.

¶ 31 In support of the conclusion, the trial court made findings regarding James's placement in DSS's custody and the cost of his care. The trial court also found that respondent-father was able to work while incarcerated and did in fact work various jobs while incarcerated; in the six months preceding the filing of the termination motion on 6 August 2019, respondent-father earned $60.78 from work and received $655.00 in deposits into his account from friends and family. Yet, respondent-father "contributed nothing whatsoever to the cost [of James's] care" during the relevant six-month period.

¶ 32 Respondent-father does not challenge the evidentiary basis for the trial court's findings, and the findings are thus "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)).

¶ 33 We hold the trial court's findings support the conclusion that grounds exist under N.C.G.S. § 7B-1111(a)(3) to terminate respondent-father's parental rights to James. "The trial court's conclusion that one ground existed to terminate parental rights 'is sufficient in and of itself to support termination of . . . parental rights[.]' " *In re S.E.*, 373 N.C. 360, 367 (2020) (quoting *In re T.N.H.*, 372 N.C. at 413). Therefore, we do not address the other grounds adjudicated by the trial court for termination.

¶ 34 **[5]** Lastly, respondent-father asserts allegations of ineffective assistance of counsel.

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

In re G.G.M., 2021-NCSC-25, ¶ 35.

¶ 35 Respondent-father contends his counsel was ineffective in that counsel allegedly failed to advise him of what he needed to do to regain custody of James, including the need for him to contribute to James's cost of care while respondent-father was incarcerated in order to avoid termination pursuant to N.C.G.S. § 7B-1111(a)(3). Respondent-father also faults counsel for allegedly informing the court that he consented to guardianship and for not challenging the primary permanent plan of guardianship with a secondary plan of adoption. Lastly, respondent-father contends counsel was ineffective to the extent counsel did not further pursue a second appeal of James's adjudication as an abused juvenile following the trial court's entry of the remand orders on 1 November 2019.

¶ 36 Respondent-father has not met his burden in this case to establish ineffective assistance of counsel. As to respondent-father's assertions of ineffective assistance of counsel related to the adjudication of grounds for termination, even if respondent-father's allegations of deficient performance by counsel are true, he is unable to establish the required prejudice. *See Braswell*, 312 N.C. at 563 ("[I]f a reviewing court can determine at the outset that there is no reasonable probability that

in the absence of counsel's alleged errors the result of the proceeding would have been different, then the court need not determine whether counsel's performance was actually deficient."). As explained above, the trial court's adjudication that grounds exist to terminate parental rights pursuant to N.C.G.S. § 7B-1111(a)(3) was sufficient to support termination. Given that parents have an inherent duty to provide support for their children and ignorance of the duty does not excuse a parent's failure to provide support, *see In re S.E.*, 373 N.C. at 366, respondent-father has not established prejudice based on counsel's alleged failure to advise him of his inherent duty to contribute to James's cost of care. Additionally, to the extent respondent-father contends counsel was ineffective in failing to further pursue a second appeal in James's case from the remand orders, respondent-father has not established deficient performance. Because the Court of Appeals affirmed the trial court's 21 November 2016 adjudication of James as an abused juvenile and only remanded the matter as to Jazmin's case in *In re J.M.*, 255 N.C. App. at 495, 497, James's case was not before the trial court on remand, and there was nothing in the 1 November 2019 remand orders to be appealed in James's case. There is no merit to respondent-father's ineffective assistance of counsel arguments, and, overall, we hold respondent-father's pro se arguments are meritless.

¶ 37 **[6]** In addition to reviewing respondent-father's pro se arguments, we have independently reviewed the three issues identified in the no-merit brief submitted by respondent-father's counsel under Rule 3.1(e). *In re L.E.M.*, 372 N.C. 396, 402 (2019). Upon careful consideration of those issues in light of the entire record, we are satisfied that the trial court's 22 January 2020 order terminating respondent-father's parental rights in James was supported by competent evidence and based on proper legal grounds. Accordingly, we affirm the termination of respondent-father's parental rights in James.

III. Conclusion

¶ 38 Therefore, we vacate the trial court's 22 January 2020 order terminating respondent-father's parental rights in Jazmin, and affirm the termination of respondent-father's parental rights in James.

VACATED IN PART; AFFIRMED IN PART.

Justice BERGER did not participate in the consideration or decision of this case.

IN RE L.R.L.B.

[377 N.C. 311, 2021-NCSC-49]

IN THE MATTER OF L.R.L.B.

No. 289A20

Filed 23 April 2021

1. Termination of Parental Rights—permanency planning—findings of fact—challenged on appeal

On appeal from the trial court's order terminating a mother's parental rights and from an earlier permanency planning order, the mother's challenges to several portions of a finding of fact in the permanency planning order—regarding her positive tests for alcohol, her lack of compliance with drug screens, her failure to maintain stable housing, and incidents of domestic violence—were rejected. The trial court's error in finding that she received three—rather than two—sanctions in drug treatment court was harmless where the evidence established two sanctions.

2. Termination of Parental Rights—permanency planning—required findings—insufficient—remedy

The trial court erred in a permanency planning order by failing to make all the written findings required by N.C.G.S. § 7B-906.2(d); specifically, even though there were sufficient findings addressing subsections (d)(1), (2), and (4), there were no findings concerning subsection (d)(3)—whether the mother "remain[ed] available to the court, the department, and the guardian litem." Where the trial court substantially complied with the statute, the appropriate remedy was to remand the matter for entry of the necessary findings and determination of whether those findings affected the decision to eliminate reunification from the permanent plan (rather than vacation or reversal of the permanency planning order or termination order).

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) and on writ of certiorari pursuant to N.C.G.S. § 7A-32(b) from orders entered on 31 March 2020 and 15 November 2019 by Judge Hal G. Harrison in District Court, Yancey County. This matter was calendared in the Supreme Court on 19 March 2021, but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Hockaday & Hockaday, P.A., by Daniel M. Hockaday, for petitioner-appellee Yancey County Department of Social Services.

Matthew D. Wunsche for appellee Guardian ad Litem.

Parent Defender Wendy C. Sotolongo and Deputy Parent Defender Annick Lenoir-Peek for respondent-appellant mother.

MORGAN, Justice.

¶ 1 Respondent-mother appeals from the trial court's order terminating her parental rights to her son "Liam,"[1] and from the trial court's earlier permanency planning order which eliminated reunification from Liam's permanent plan. *See* N.C.G.S. § 7B-1001(a1)(1)–(2) (2019). The termination order also terminated the parental rights of Liam's father, who is not a party to this appeal. Due to our conclusion that the permanency planning order lacked findings which address one of the four issues contemplated by N.C.G.S. § 7B-906.2(d) (2019), we remand to the trial court for the entry of additional findings. However, because the resolution of respondent-mother's claim of error concerning the trial court's permanency planning order is accomplished by remand, instead of by vacation or reversal of the permanency planning order at issue as authorized by N.C.G.S. § 7B-1001(a2), it is presently premature for this Court to consider the trial court's order terminating respondent-mother's parental rights.

I. Factual and Procedural Background

¶ 2 On 29 August 2018, Yancey County Department of Social Services (DSS) obtained nonsecure custody of Liam, who was born almost a year earlier in September 2017. DSS filed a juvenile petition seeking an adjudication that Liam was neglected. The petition alleged that DSS had received a report in July 2018 that respondent-mother had been arrested for driving while impaired as Liam rode with her in the car. In a second report dated 25 July 2018, respondent-mother accused Liam's father of engaging in domestic violence against her and sexually molesting Liam. While a DSS investigation and a forensic examination of Liam would subsequently result in a determination that no sexual abuse had occurred, DSS's first visit with the family following the receipt of the second report occurred while both parents were intoxicated and resulted in respondent-mother and Liam moving into a domestic violence shelter on the same day.

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

¶ 3 The petition further alleged that, following respondent-mother's transition to the domestic violence shelter, DSS received a series of telephone calls during the week of 20 August 2018 reporting changes in respondent-mother's behavior that raised concerns about Liam's safety. Shelter staff workers and Liam's father described respondent-mother as exhibiting "extreme paranoia, uncontrollable crying, [and] lapses in memory[,]" including occasions when she left Liam "completely unattended causing alarm to shelter staff and the agency." When DSS attempted to assist respondent-mother, she refused to cooperate with the social worker and treatment providers. Respondent-mother also refused to submit to a drug screen. Liam's father was excluded as a placement option "due to recent domestic violence incidents and ongoing concerns, a criminal history and an active substance abuse issue."

¶ 4 Respondent-mother obtained a comprehensive clinical assessment at RHA Health Services on 13 September 2018; she signed a Family Services Agreement (FSA) with DSS the following day. As part of her FSA, respondent-mother agreed to follow the recommendations of her comprehensive clinical assessment, including engaging in intermediate-level mental health and substance abuse services, along with parenting classes. Respondent-mother also agreed to obtain stable housing and employment in order to demonstrate her ability to provide for Liam's needs.

¶ 5 After adjudicatory and dispositional hearings on 15 November and 12 December 2018, the trial court entered orders on 19 February 2019 adjudicating Liam as neglected and ordering DSS to maintain custody of the child. In ordering respondent-mother to comply with the requirements of her FSA, the trial court specifically mentioned respondent-mother's compliance with requested drug screens and granted her three hours of weekly supervised visitation with Liam. At an initial review hearing on 11 March 2019, the trial court found that respondent-mother had resumed living with Liam's father and ordered both parents to submit to a domestic violence assessment and to follow any resulting recommendations in addition to complying with the existing requirements of their respective case plans.

¶ 6 The trial court held a permanency planning hearing on 14 June 2019 during which it established a primary plan of reunification for Liam with a concurrent plan of adoption. At the next review hearing on 9 August 2019, the trial court found that, while respondent-mother had "completed some portions of her case plan" including parenting classes, she had tested positive for alcohol and amphetamines, and continued to exhibit inappropriate behaviors. Specifically, the trial court noted that

respondent-mother had "acted in a disrespectful way to DSS workers and [did] not appreciate the DSS role in protecting the health, safety and welfare of her minor child[.]" The trial court ordered DSS to "promptly arrange a psychological evaluation for the respondent-mother through Grandis." Respondent-mother was admonished by the trial court and was directed to "adopt a better attitude." She was ordered to cooperate with DSS, to abstain from using illicit substances, and to "make significant progress on her DSS case plan[.]" Despite the identified concerns, the trial court maintained Liam's permanent plan as reunification with a concurrent plan of adoption.

¶ 7 Following the next review hearing on 11 October 2019, the trial court entered a permanency planning order on 15 November 2019 which relieved DSS of further reunification efforts and changed Liam's permanent plan to adoption. On 13 January 2020, respondent-mother filed notice pursuant to N.C.G.S. § 7B-1001(a1)(2)(a) (2019) to preserve her right to appeal the order eliminating reunification from the permanent plan[2].

¶ 8 On 8 January 2020, DSS filed a petition to terminate the parental rights of respondent-mother and Liam's father. The trial court held a hearing to address the petition on 12 March 2020 and entered an order terminating the parental rights of both parents on 31 March 2020. The trial court adjudicated the existence of grounds for termination under N.C.G.S. § 7B-1111(a)(1)–(2) (2019), based on respondent-mother's neglect of Liam and on her willful failure to make reasonable progress to correct the conditions that led to the juvenile's removal from the home in August 2018. After considering the dispositional factors enumerated in N.C.G.S. § 7B-1110(a) (2019), the trial court concluded that it was in Liam's best interests for the rights of both parents to be terminated.

II. Respondent-mother's Appeal

¶ 9 Respondent-mother filed her notice of appeal from the 15 November 2019 permanency planning order which eliminated reunification from Liam's permanent plan and from the 31 March 2020 termination order which terminated respondent-mother's parental rights. *See* N.C.G.S.

2. Although respondent-mother filed her notice beyond the required thirty days as established by N.C.G.S. §§ 7B-1001(a1)(2)(a) & (b) (2019), after entry and service of the order, nonetheless we allowed respondent-mother's petition for writ of certiorari to review the permanency planning order along with the order terminating her parental rights entered on 18 December 2020. *See generally In re S.C.R.*, 198 N.C. App. 525, 531 (holding respondent-parent waived appellate review under former statute authorizing appeal from order ceasing reunification efforts by failing to give timely notice of his intent to appeal), *appeal dismissed*, 363 N.C. 654 (2009).

§ 7B-1001(a1) (2019). Pursuant to N.C.G.S. § 7B-1001(a2) (2019), we "review the order eliminating reunification together with an appeal of the order terminating parental rights."

¶ 10 Respondent-mother limits her appeal to challenges to the trial court's 15 November 2019 permanency planning order. Although she does not identify any error in the order terminating her parental rights, respondent-mother contends that the alleged reversible errors in the permanency planning order require us to vacate the termination order under N.C.G.S. § 7B-1001(a2), which provides that "[i]f the order eliminating reunification is vacated or reversed, the order terminating parental rights shall be vacated."

A. Standard of review

¶ 11 Our review of a permanency planning order " 'is limited to whether there is competent evidence in the record to support the findings [of fact] and whether the findings support the conclusions of law.' The trial court's findings of fact are conclusive on appeal if supported by any competent evidence." *In re L.M.T.*, 367 N.C. 165, 168 (2013) (alteration in original) (quoting *In re P.O.*, 207 N.C. App. 35, 41 (2010)). The trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed only for abuse of discretion, as those decisions are based upon the trial court's assessment of the child's best interests. *See In re J.H.*, 373 N.C. 264, 267–68 (2020).

B. Challenged findings

¶ 12 **[1]** Respondent-mother challenges several portions of the trial court's Finding of Fact 6 in its permanency planning order, claiming that those portions are "either not supported or contrary to the evidence." Although respondent-mother offers no argument or discussion about the significance of these asserted errors, we address each of her challenges to the trial court's findings in turn. Finding of Fact 6 states, in pertinent part:

> that since the matter was last reviewed, the juvenile has remained in foster care placement; that the respondent parents have signed DSS case plans; that respondent mother has completed Triple P Parenting; obtained her [comprehensive clinical assessment]; completed intensive outpatient substance abuse treatment; is now engaged in the intermediate SA program; reports that she attends AA/NA weekly; has provided clean drug screens through RHA but has tested positive on two (2) occasions for alcohol; has participated

> in peer support and medication management through RHA; has not complied with DSS requested drug screens; has not maintained stable residence; has not maintained stable employment; has received three (3) separate sanctions through Yancey Drug Court (one (1) occasion for missed appointment and two (2) occasions for failed screens for alcohol); has not obtained her psychological evaluation (delayed scheduling the evaluation until recently); that the respondent father . . . has a pending criminal charge for assault (respondent mother is the alleged victim); . . . the respondent parents (despite current Release Order in the pending criminal matter) are currently residing with each other; that there have been recent incidents of domestic violence and continued alcohol abuse; that the parents recently were evicted from their prior residence; that the juvenile was removed from the care of the respondent parents as a result of domestic violence and substance abuse issues; that the parents have not made reasonable progress on their DSS case plan to eliminate the issues the juvenile [sic] came into custody . . . .

All portions of this finding which are not specifically contested by respondent-mother are deemed to be supported by competent evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97 (1991).

¶ 13 Respondent-mother first objects to the trial court's determination that she tested positive for alcohol on two occasions, asserting that "those [positive tests] occurred several months prior to the 11 October 2019 hearing, on 22 March 2019 and 27 May 2019." While respondent-mother accurately characterizes the evidence, her observation does not undercut the evidentiary support for the trial court's finding in any way. Finding of Fact 6 reflects the trial court's summary of respondent-mother's progress through the entirety of the case, as reflected by the determinations that she had signed a DSS case plan, obtained a comprehensive clinical assessment, and completed parenting classes. The evidence introduced at the hearing showed that respondent-mother had five positive drug screens at RHA between 6 March 2019 and 2 July 2019, four of which included a positive result for alcohol. While the trial court did find that Liam had remained in his foster placement "since the matter was last reviewed," it did not purport to limit its remaining findings to that sole time interval. Therefore, the trial court's unconditional determination

that respondent-mother "tested positive on two (2) occasions for alcohol" is supported by competent evidence and is binding on appeal.

¶ 14 Respondent-mother next challenges the determination within Finding of Fact 6 that she "has not complied with DSS requested drug screens[.]" Respondent-mother represents that she submitted to drug screens as requested by DSS on 30 July 2019 and on 7 and 14 August 2019, "in addition to the multiple screens she undertook with RHA and Drug Treatment Court." However, competent evidence supports the challenged portion of the finding. DSS social worker Tammy Carpenter testified at the hearing that respondent-mother failed to comply with the agency's call-in system for drug screens, through which parents are assigned "dates and times they need to call" to be notified as to whether to appear for a drug screen that day. DSS also introduced a log of respondent-mother's call schedule for a period of time between 8 and 31 July 2019 which reflected that respondent-mother placed telephone calls to DSS on only three of the fifteen days that she was assigned to contact DSS through its call-in system. While the evidence does show that negative drug screens for respondent-mother were registered on the three dates listed by her, other competent evidence supports the finding that she was not fully compliant with DSS's drug screen requests. This challenged portion of the trial court's Finding of Fact 6 is thus binding on appeal. *See In re L.M.T.*, 367 N.C. at 168.

¶ 15 Respondent-mother also disputes the determination that she failed to maintain stable housing because the evidence "show[ed] that she had lived at the same address for over a year prior to her eviction." However, respondent-mother's argument is contradictory. As respondent-mother acknowledged in her testimony, she and Liam's father were evicted from their apartment in the weeks leading up to the 11 October 2019 permanency planning hearing. Respondent-mother testified that she stayed with her mother for a period of time thereafter, but moved into a new apartment with Liam's father two weeks before the hearing date. DSS social worker Carpenter testified that she had "no idea" where respondent-mother had resided since respondent-mother's eviction and that respondent-mother had not complied with the housing component of respondent-mother's case plan. Respondent-mother's admission that she was evicted from her home after some period of time exceeding just more than one year, followed by her two different residences shortly before the permanency planning hearing date of 11 October 2019, does not comport with the maintenance of stable housing by respondent-mother. These circumstances coupled with the testimony of the DSS social worker concerning the stability of respondent-mother's housing provide

ample credence to the trial court's determination contained in Finding of Fact 6 that respondent-mother "has not maintained stable residence."

¶ 16 Respondent-mother next challenges the trial court's finding that she received "three . . . separate sanctions" in drug treatment court. Respondent-mother correctly notes that the hearing testimony established two, rather than three, occasions for which respondent-mother was sanctioned in drug court: once for missing an appointment and once for a positive alcohol screen. We shall disregard the trial court's erroneous finding of a third sanction, which we deem to be a harmless error in light of the unequivocal existence of two separate sanctions. *See In re B.E.*, 375 N.C. 730 (2020).

¶ 17 Finally, respondent-mother likewise takes issue with the trial court's determination "that there have been recent incidents of domestic violence and continued alcohol abuse," contending that the evidence showed only one additional incident of domestic violence between her and Liam's father. As support for her stance, respondent-mother points to the arrest warrant included in the record on appeal which charges Liam's father with an assault on respondent-mother which was allegedly committed on 26 September 2019.

¶ 18 Assuming *arguendo* that the evidence showed only a single episode of domestic violence between respondent-mother and Liam's father, which was recent at the time of the trial court's determination, we discern no error. Respondent-mother's argument is based upon her convenient construction of the trial court's phraseology in its determination and does not constitute a substantive objection. We believe the phrase "recent incidents of domestic violence and continued alcohol abuse" may be fairly interpreted to combine one or more recent incidents of domestic violence with one or more recent incidents of continued alcohol abuse. We further note that, in addition to the evidence that Liam's father allegedly assaulted respondent-mother on 26 September 2019, DSS social worker Carpenter testified that the couple's landlord reported that the eviction of respondent-mother and Liam's father from their apartment transpired "because of domestic violence, yelling, arguing, people call[ing] and telling him that [respondent-mother and Liam's father] were making a fuss all the time[,] and due to finding lots of alcohol, liquor bottles outside of the residence." This testimony tends to establish a series of occurrences of domestic violence and alcohol abuse rather than, as respondent-mother contends, one solitary additional incident. Consequently, the trial court's reference to multiple "incidents" is properly supported and binding on appeal. *In re L.M.T.*, 367 N.C. at 168.

C. Sufficiency of Findings

¶ 19 **[2]** Respondent-mother claims that the trial court erred in eliminating reunification from Liam's permanent plan without making the findings of fact which are required by N.C.G.S. § 7B-906.2(d) (2019).[3] While the trial court complied with the majority of N.C.G.S. § 906.2(d)'s mandate regarding the establishment of specific findings of fact which the trial court must reduce to writing as a preface to the elimination of reunification from the permanent plan, we agree with respondent-mother that the trial court's findings are sufficiently inadequate so as to compel us to remand the case to the trial court for the entry of additional findings consistent with the mandate of N.C.G.S. 7B-906.2(d).

¶ 20 Under N.C.G.S. § 7B-906.2(b) (2019), the trial court may eliminate reunification from a child's permanent plan if the trial court "makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." *Id.* Subsection (d) of the statute further provides that, in making its determination about the appropriate permanent plan,

> the court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification:
>
> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
>
> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
>
> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
>
> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C.G.S. § 7B-906.2(d).

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3. Respondent-mother notes that the trial court's failure to include a secondary permanent plan in the 15 November 2019 permanency planning order would appear to violate N.C.G.S. § 7B-906.2(a1) and (b) (2019), under which the trial court must designate concurrent permanent plans "until a permanent plan is or has been achieved." Respondent-mother concedes, however, that the trial court established concurrent plans of adoption and guardianship at the next permanency planning hearing on 13 January 2020, "thereby rendering [her] argument moot."

¶ 21 We have held that "[t]he trial court's written findings must address the statute's concerns, but need not quote its exact language." *In re L.M.T.*, 367 N.C. at 168 (interpreting former N.C.G.S. § 7B-507(b)(1) (2011)). "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.' " *In re L.E.W.*, 375 N.C. 124, 129–30 (2020) (quoting *In re L.M.T.*, 367 N.C. at 168).

¶ 22 Moreover, when reviewing an order that eliminates reunification from the permanent plan in conjunction with an order terminating parental rights pursuant to N.C.G.S. § 7B-1001(a1)(2), "we consider both orders 'together' " as provided in N.C.G.S. § 7B-1001(a2). *In re L.M.T.*, 367 N.C. at 170. Based on this statutory directive, we concluded in *In re L.M.T.* that "incomplete findings of fact in the cease reunification order may be cured by findings of fact in the termination order."[4] *Id.* Although respondent-mother contends that a 2017 amendment to N.C.G.S. § 7B-1001 "abrogated" our ruling in *In re L.M.T.* on this issue, we find her argument unpersuasive.

¶ 23 In Session Law 2017-41, § 8, 2017 N.C. Sess. Laws 214, 233, the General Assembly amended N.C.G.S. § 7B-1001 to transfer appellate jurisdiction in termination of parental rights cases from the Court of Appeals to this Court effective 1 January 2019. The session law deleted a portion of N.C.G.S. § 7B-1001(a)(5) requiring the Court of Appeals to "review the order eliminating reunification as a permanent plan together with an appeal of the termination of parental rights order[,]" and inserted the following text in a revised version of N.C.G.S. § 7B-1001(a2):

> In an appeal filed pursuant to subdivision (a1)(2) of this section, the Supreme Court shall review the order eliminating reunification *together* with an appeal of the order terminating parental rights. *If the order eliminating reunification is vacated or reversed, the order terminating parental rights shall be vacated.*

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

S.L. 2017-41, § 8(a), 2017 N.C. Sess. Laws at 233 (emphasis added). The amended statute thus retained the requirement that the appellate court review the two orders "together" while adding language to require that if this Court vacates or reverses the order eliminating reunification from the permanent plan, we must also vacate the termination of parental rights order. *Id.*

¶ 24 As opposed to respondent-mother's interpretation, we do not construe the 2017 amendment to N.C.G.S. § 7B-1001 to alter the approach that we adopted in *In re L.M.T.*; the amendment, on its face, merely precludes a determination by this Court that a harmful error in an order eliminating reunification from a permanent plan can be rendered moot solely by the subsequent entry of an order terminating parental rights. *Cf.*, *e.g.*, *In re H.N.D.*, 265 N.C. App. 10, 19 (2019) ("hold[ing] that the question of whether the trial court erred in ceasing reunification efforts was rendered moot by the proper termination order")[5]. For this reason, we reject the argument of the guardian ad litem in the present case that the order terminating respondent-mother's parental rights "moots [respondent-mother's] arguments about the order ceasing reunification efforts." As for respondent-mother's construction of the 2017 legislative amendment and her view of the amendment's impact on *In re L.M.T.*, respondent-mother erroneously conflates a fatally defective order eliminating reunification from a permanent plan, which cannot be cured by the subsequent termination order, with an incomplete order with insufficient findings of fact, which may be cured under *In re L.M.T.* by findings of fact in the termination order.

¶ 25 In light of these observations, we recognize that the trial court's 15 November 2019 permanency planning order includes findings "that reunification is no longer the appropriate permanent plan for the juvenile" and "[t]hat further reasonable efforts to prevent or eliminate the need for placement of the juvenile are clearly futile or inconsistent with the juvenile's need for a safe, permanent home within a reasonable period of time." The trial court thus made the finding required by N.C.G.S. § 7B-906.2(b) to eliminate reunification from the permanent plan. *See In re L.E.W.*, 375 N.C. at 133. However, with regard to N.C.G.S. § 7B-906.2(d), although the trial court's findings of fact adequately address the issues reflected in N.C.G.S. § 7B-906.2(d)(1), (2), and (4), the

5. The Court of Appeals exercised its jurisdiction in the case of *In re H.N.D.* prior to the transfer of appellate jurisdiction in termination of parental rights cases from the Court of Appeals to this Court and revision of N.C.G.S. § 7B-1001(a)(2) which was accomplished by the General Assembly in Session Law 2017-41, § 8, 2017 N.C. Sess. Laws 214, 233.

tribunal's findings fail to address the issue in N.C.G.S. § 7B-906.2(d)(3), "[w]hether the parent remains available to the court, the department, and the guardian ad litem for the juvenile." As a result, we deem it to be appropriate to remand this matter to the trial court in order to rectify the order's deficiencies.

¶ 26 Consistent with N.C.G.S. § 7B-906.2(d)(1), the trial court addresses in Finding of Fact 6 whether each parent is making adequate progress within a reasonable time under the permanent plan by detailing their achievements and shortcomings in meeting the conditions of their respective case plans. The trial court goes on to make an express finding "that the parents have not made reasonable progress on their DSS case plan to eliminate the issues [since] the juvenile came into custody[.]" The trial court's determinations contained in Finding of Fact 6 also note that Liam had been in DSS custody for more than twelve months and identify "the parents' failure to comply with their case plan requirements" as "the barrier to . . . reunification[.]" To the extent that respondent-mother contends that Finding of Fact 6 shows that she "made adequate progress" by obtaining a comprehensive clinical assessment, completing parenting classes, participating in substance abuse treatment, and providing several clean drug screens, we conclude that the trial court's contrary evaluation is a reasonable view of the evidence and is therefore binding on appeal. *See generally In re D.L.W.*, 368 N.C. 835, 843 (2016) (recognizing the trial court's authority as fact-finder to weigh competing evidence and draw reasonable inferences therefrom); *see also In re J.H.*, 373 N.C. at 270 (finding "ample evidentiary support for the trial court's finding that respondent only made 'some progress' with respect to her parenting skills").

¶ 27 Similarly, with regard to N.C.G.S. § 7B-906.2(d)(2), Finding of Fact 6, in addressing whether the parents are actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile, adequately describes respondent-mother's degree of participation with her case plan and indicates her non-cooperation with DSS drug screens. This portion of the finding of fact featured the evidence adduced at the hearing of respondent-mother's inability to address the domestic violence, housing, and substance abuse issues which resulted in Liam's removal from her care. These determinations by the trial court satisfy the requirements of Section 7B-906.2(d)(2), and are analogous to the trial court's findings which were deemed to have satisfactorily addressed this subsection of the statute by the Court of Appeals in *In re N.T.*, 264 N.C. App. 753, 2019 WL 1471147, *6 (2019) (unpublished).

¶ 28 Although the trial court made no specific finding as to whether respondent-mother was "acting in a manner inconsistent with the health or safety of the juvenile" under the exact language of N.C.G.S. § 7B-906.2(d)(4), the trial court found that respondent-mother and Liam's father were residing together despite "recent incidents of domestic violence and continued alcohol abuse"—the very problems that necessitated Liam's removal from the home; that Liam's father had yet to complete his court-ordered domestic violence assessment; and that returning Liam to his parents' home would be "contrary to his welfare and best interests at this time." The trial court also concluded in its 15 November 2019 permanency planning order that further efforts to "eliminate the need for placement" of Liam outside of the home would be "inconsistent with the juvenile's need for a safe, permanent home within a reasonable period of time." Further, the termination order contains additional uncontested findings that respondent-mother failed to maintain stable housing; that she "never obtained her [court-ordered] psychological evaluation" and "was kicked out of the [drug treatment court program] for noncompliance"; and that the failure of respondent-mother and Liam's father to "eliminate those reasons the juvenile came into custody demonstrates their continued neglect of [Liam] and the probability of future neglect if [Liam] is returned to their care." *See generally In re Stumbo*, 357 N.C. 279, 283 (2003) ("requir[ing] that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment" in order for a parent's conduct to constitute "neglect"). We conclude that these findings by the trial court adequately address the substance and concerns of N.C.G.S. § 7B-906.2(d)(4) through the application of the principle in *In re L.M.T.*, 367 N.C. at 168, in which we recognized earlier that the trial court is not required to quote the exact language of N.C.G.S. § 7B-906.2(d)(4) as long as the trial court's written findings address the statute's concerns.

¶ 29 However, we agree with respondent-mother that the trial court failed to make the findings required by N.C.G.S. § 7B-906.2(d)(3), as to whether respondent-mother "remains available to the court, the department, and the guardian ad litem[.]" Aside from acknowledging respondent-mother's attendance at the 11 October 2019 permanency planning hearing and referencing her absence from the termination hearing on 12 March 2020, the trial court found no facts addressing the issue embodied in Section 7B-906.2(d)(3) with regard to respondent-mother.[6] *In re L.M.T.*, 367 N.C.

6. The permanency planning order includes a finding that Liam's father "has not maintained consistent contact with DSS[,]" thereby addressing at least part of the statutory mandate as to him.

at 168. While the record contains little evidence presented by the parties on the issue of respondent-mother's availability as contemplated by the statute, we note that DSS's written report to the trial court for the permanency planning hearing includes information about respondent-mother's attendance at court dates and scheduled visitations, as well as her failure to attend child and family team (CFT) meetings. The report submitted by the guardian ad litem also alludes to respondent-mother's failure to attend CFT meetings and states that "[t]he GAL has spoken to the parents three times but . . . has had no significant interactions in the last six months." This information contained in the respective reports of DSS and the GAL, however, does not satisfy the trial court's statutory obligation to fulfill the requirements of N.C.G.S. § 7B-906.2(d)(3) by making written findings on the issue of respondent-mother's availability.

¶ 30 Having concluded that the trial court failed to make the findings of fact required by N.C.G.S. § 7B-906.2(d)(3), the identification of the appropriate remedy for the omission has provided the next determination for this Court. In citing N.C.G.S. § 7B-1001(a2) for her assertion that the trial court's non-compliance with N.C.G.S. § 7B-906.2(d) in the order eliminating reunification from the permanent plan "requires reversal of both [the permanency planning order] and the resulting termination order," respondent-mother identifies two cases in which the Court of Appeals vacated a permanency planning order because " 'the trial court failed to make the requisite findings required to cease reunification efforts' under Section 7B-906.2(d)." *In re J.M.*, 843 S.E.2d 668, 676 (N.C. Ct. App. 2020) (quoting *In re D.A.*, 258 N.C. App. 247, 254 (2018)).

¶ 31 It is axiomatic that "this Court is not bound by precedent of our Court of Appeals[.]" *In re B.L.H.*, 376 N.C. 118, 126 (2020). Moreover, as we discuss below, we find neither *In re J.M.* nor *In re D.A.* to be instructive in our determination regarding the implementation of the directive in N.C.G.S. § 7B-1001(a2) that, "[i]f the order eliminating reunification is vacated or reversed, the order terminating parental rights shall be vacated." N.C.G.S. § 7B-1001(a2).

¶ 32 In *In re J.M.*, the respondent-mother appealed from a permanency planning order that placed her child in the guardianship of the juvenile's foster parents, waived further review hearings, and relieved DSS of reunification efforts. 843 S.E.2d at 670, 676; *see also* N.C.G.S. § 7B-1001(a)(4). Hence, the appeal was taken from a single order which transferred the child's legal custody, *see* N.C.G.S. § 7B-1001(a)(4) (2019), and did not address a subsequent order terminating the respondent's parental rights. The Court of Appeals vacated the portion of the order ceasing reunification efforts due to the trial court's failure to make findings un-

der N.C.G.S. § 7B-906.2(d)(2)–(3), while affirming the order in part as to the guardianship provisions and the waiver of further review hearings. *Id.* at 676.

¶ 33 In *In re D.A.*, the Court of Appeals vacated a permanency planning order that granted custody of the respondents' child to the juvenile's foster parents. 258 N.C. App. at 248. As in *In re J.M.*, the appeal was taken from a single order transferring the legal custody of the child. The Court of Appeals held that the trial court's findings did not support its conclusion that the father had acted inconsistently with his constitutionally protected status as a parent, the *sine qua non* of an award of permanent custody of the child to a non-parent. *Id.* at 252. While the Court of Appeals also concluded that "[t]he trial court failed to make findings related to whether [r]espondents were acting in a manner inconsistent with D.A.'s health or safety" under N.C.G.S. § 7B-906.2(d)(4), the lower appellate court further held that the trial court made "no findings that embrace the requisite ultimate finding that 'reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety' " as required to eliminate reunification from the child's permanent plan under N.C.G.S. § 7B-906.2(b). *Id.* at 254. The deficiencies in the order in *In re D.A.* materially exceeded the mere lack of findings under one of the specified issues of N.C.G.S. § 7B-906.2(d), and therefore justified the vacation of the order in the case. *Id.*; *see also In re D.C.*, 852 S.E.2d 694, 698–99 (N.C. Ct. App. 2020) ("Because the trial court ceased reunification efforts without making sufficient findings pertinent to section 7B-906.2(d) and the ultimate finding required by section 7B-906.2(b), we vacate the trial court's orders and remand for further proceedings.").

¶ 34 Due to these critical distinctions, neither *In re J.M.* nor *In re D.A.* presents this Court with correlating examples of the manner in which to settle an order's termination of a respondent's parental rights when an earlier permanency planning order does not include sufficient written findings as to one of the four issues—but does include findings on the ultimate issue—which must be addressed as a preface to the elimination of reunification from the permanent plan, where this Court must consider both orders together, adhere to N.C.G.S. § 7B-1001 (a1)(2) and the amended § 7B-1001(a2), and comply with our precedent in *In re L.M.T.*

¶ 35 We do not discern that the Legislature enacted N.C.G.S. § 7B-1001(a2) with the intention of disengaging an entire termination of parental rights process in the event that a trial court omits a single finding under N.C.G.S. § 7B-906.2(d)(1)–(4) from its trial court order which eliminates reunification from a child's permanent plan. Unlike

the specific finding that "reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety" which is required by N.C.G.S. § 7B-906.2(b) before eliminating reunification from the permanent plan, no particular finding under N.C.G.S. § 7B-906.2(d)(3) is required to support the trial court's decision. N.C.G.S. § 7B-906.2(d) merely requires the trial court to make "written findings as to each of the" issues enumerated in N.C.G.S. § 7B-906.2(d)(1)–(4), and to consider whether the issues "demonstrate the [parent's] degree of success or failure toward reunification[.]" N.C.G.S. § 7B-906.2(d). A finding that the parent has remained available to the trial court and other parties under N.C.G.S. § 7B-906.2(d)(3) does not preclude the trial court from eliminating reunification from the permanent plan based on the other factors in N.C.G.S. § 7B-906.2(d). *Cf. In re R.D.*, 376 N.C. 244, 259 (2020) (concluding that the balancing of the six dispositional factors in N.C.G.S. § 7B-1110(a) "is uniquely reserved to the trial court and will not be disturbed by this Court on appeal").

¶ 36 "[T]o obtain relief on appeal, an appellant must not only show error, but that . . . the error was material and prejudicial, amounting to denial of a substantial right that will likely affect the outcome of an action." *In re L.E.W.*, 375 N.C. at 128. It is the trial court's authority as the finder of fact to assign weight to various pieces of evidence, *In re D.L.W.*, 368 N.C. at 843, in exercising "its discretion [to] determine[e] that ceasing reunification [is] in the best interests of the child[,]" *In re J.H.*, 373 N.C. at 270. Upon considering the trial court's order that eliminated reunification from the permanent plan together with its order terminating parental rights, and determining that the trial court's order eliminating reunification may be cured upon remand to the trial court—pursuant to the application of *In re L.M.T.*—due to insufficient findings of fact contained in the order because it does not address the issue embodied in N.C.G.S. § 7B-906.2(d)(3) as to "whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile," we conclude that respondent-mother has not shown that the trial court's error was material and prejudicial so as to warrant vacating and reversing the permanency planning order at issue and vacating the termination of parental rights order.

¶ 37 We therefore believe that the appropriate remedy for the trial court's error here is to remand this matter to the trial court for the entry of additional findings in contemplation of N.C.G.S. § 7B-906.2(d)(3). *Cf. In re N.K.*, 375 N.C. 805, 825 (2020) (remanding for findings on the trial court's compliance with the Indian Child Welfare Act (ICWA)); *State v. Peterson*, 344 N.C. 172, 177–178 (1996) (holding no error in part as to

the judgment but remanding in part for further findings on suppression issue). This Court's precedent, especially our express determination in *In re L.M.T.* regarding the relationship between incomplete findings in an order which ceases reunification efforts and the findings of fact in a subsequent termination of parental rights order, authorizes such a remedy. In the event that the trial court concludes, after making additional findings, that its decision to eliminate reunification from the juvenile Liam's permanent plan in its 15 November 2019 permanency planning order was in error, then the trial court shall vacate said order as well as vacate the order terminating respondent-mother's parental rights, enter a new permanent plan for the juvenile that includes reunification, and resume the permanency planning review process. *See* N.C.G.S. § 7B-1001(a2); *cf. In re N.K.*, 375 N.C. at 825 ("In the event that the trial court determines on remand that Ned is, in fact, an Indian child, it shall vacate the trial court's termination order and proceed in accordance with the relevant provisions of ICWA." (extraneity omitted)). If the trial court's additional findings under N.C.G.S. § 7B-906.2(d)(3) do not alter its finding under N.C.G.S. § 7B-906.2(b) that further reunification efforts "are clearly futile or inconsistent with the juvenile's need for a safe, permanent home within a reasonable period of time[,]" then the trial court may simply amend its permanency planning order to include the additional findings, and the 31 March 2020 order terminating respondent-mother's parental rights may remain undisturbed. *Cf. In re N.K.*, 375 N.C. at 825 ("[If] the trial court concludes upon remand, after making any necessary findings or conclusions, that the notice requirements of ICWA were properly complied with . . . , it shall reaffirm the trial court's termination order.").

III. Conclusion

¶ 38 Respondent-mother does not identify any error in the order terminating her parental rights as to the child Liam, and we do not consider the termination order in this decision. With regard to the order eliminating reunification from Liam's permanent plan, competent evidence supports all of the trial court's findings of fact except for its finding that respondent-mother was sanctioned three times in drug treatment court; in determining from the evidence that respondent-mother was sanctioned on two occasions in drug treatment court rather than on three occasions as the trial court erroneously found, we conclude that this constitutes harmless error by the trial court. We further hold that the trial court sufficiently addressed the majority of the issues mandated by N.C.G.S. § 7B-906.2, and that this substantial compliance with the statute obviates the need for vacation or reversal of the trial court's or-

der eliminating reunification from the permanent plan, since there is the availability of a sanctioned remedy which is less drastic and more plausible. Consequently, in light of the trial court's failure to make written findings as required by N.C.G.S. § 7B-906.2(d)(3), we remand to the District Court, Yancey County, to enter such necessary findings and to determine whether those findings affect its decision to eliminate reunification from the permanent plan pursuant to N.C.G.S. § 7B-906.2(b). The trial court may receive additional evidence upon this remand as it deems appropriate within its sound discretion, and shall enter new or amended orders consistent with this opinion. *See In re K.R.C.*, 374 N.C. 849, 865 (2020).

REMANDED.

IN THE MATTER OF M.J.B. III, G.M.B., AND J.A.B.

No. 280A20

Filed 23 April 2021

Termination of Parental Rights—grounds for termination—neglect—findings—sufficiency

The trial court properly terminated respondent-mother's rights to her children on the ground of neglect (N.C.G.S. § 7B-1111(a)(1)) where its findings of fact, including those regarding respondent's lack of progress in her parenting skills and the children's trauma under respondent's care, were supported by clear, cogent, and convincing evidence. The evidence and findings amply demonstrated a likelihood of future neglect, based on respondent's history of failing to meet her children's basic needs, her inability to protect them from physical and sexual abuse, and her lack of progress in resolving those issues.

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

IN RE M.J.B.

[377 N.C. 328, 2021-NCSC-50]

Miller & Audino, LLP, by Jay Anthony Audino, for petitioner-appellee Beaufort County Department of Social Services.

Tasneem A. Dharamsi for appellee Guardian ad Litem.

Sean P. Vitrano for respondent-appellant mother.

BARRINGER, Justice.

¶ 1 Respondent-mother appeals from the trial court's 30 March 2020 orders terminating her parental rights in her minor children M.J.B. III (Mark),[1] G.M.B. (Gerry), and J.A.B. (James).[2] Upon careful consideration, we affirm the trial court's orders terminating respondent-mother's parental rights.

I. Factual and Procedural Background

¶ 2 On 28 June 2019, the Beaufort County Department of Social Services (DSS) filed juvenile petitions alleging that ten-year-old Mark, eight-year-old Gerry, and six-year-old James were neglected juveniles. The juvenile petitions outlined DSS's years of involvement with respondent-mother and her failure to properly feed, bathe, and clothe her children or protect them from harm. Throughout the children's lives, respondent-mother had been financially and emotionally dependent on various males, placing herself at risk of abuse. In addition, respondent-mother's boyfriend, who subsequently became her husband, physically abused the children. After obtaining custody of the children, DSS placed them together in a licensed therapeutic foster home due to their special needs and the substantial trauma they had experienced.

¶ 3 The juvenile petitions were heard on 30 October 2019, and the children were adjudicated to be neglected juveniles. In its adjudication order, the trial court made findings of fact consistent with the allegations in the juvenile petitions (summarized above). Accordingly, the trial court set the permanent plan for the children as reunification with a concurrent plan of adoption.

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

2. While the trial court also terminated the parental rights of the children's father, he is not a party in this case. Thus, this decision does not address the trial court's findings and orders concerning the children's father.

¶ 4 Following a permanency-planning hearing on 8 January 2020, the trial court found that respondent-mother had not made substantial progress toward resolving the need for DSS intervention. Among other things, the trial court found that the children had revealed new information about the abuse they had suffered while under respondent-mother's care—including being hit, struck, and beaten by family members and being sexually abused by respondent-mother's boyfriends, including her now husband. Therefore, the trial court changed the children's permanent plan to adoption with a concurrent plan of reunification.

¶ 5 On 22 January 2020, DSS filed a motion to terminate the parental rights of respondent-mother on grounds of neglect and dependency. *See* N.C.G.S. § 7B-1111(a)(1), (6) (2019). The termination motion was heard on 4 March 2020. On 30 March 2020, the trial court entered an adjudication order, concluding that both grounds for termination alleged in the motion existed; and a disposition order, concluding that it was in the best interests of the children to terminate respondent-mother's parental rights. Accordingly, the trial court terminated respondent-mother's parental rights. Respondent-mother now appeals.

II. Analysis

¶ 6 Respondent-mother challenges the trial court's adjudication of the existence of grounds to terminate her parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) and (6). Since "a finding of only one ground is necessary to support a termination of parental rights," we address only respondent-mother's challenge to the adjudication of neglect under N.C.G.S. § 7B-1111(a)(1). *In re A.R.A.*, 373 N.C. 190, 194 (2019). After careful review, we conclude that the unchallenged findings in this case combined with the challenged findings that are supported by clear, cogent, and convincing evidence are more than sufficient to support the trial court's determination that grounds existed to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1). Accordingly, we affirm the orders terminating respondent-mother's parental rights.

¶ 7 The Juvenile Code provides for a two-stage process for the termination of parental rights: adjudication and disposition. N.C.G.S. §§ 7B-1109 to -1110 (2019). During the adjudicatory stage, "[t]he burden in these proceedings is on the petitioner or movant to prove the facts justifying the termination by clear and convincing evidence." N.C.G.S. § 7B-1111(b); *see also id.* § 7B-1109(e)–(f). If one or more grounds exist, the trial court then proceeds to the dispositional stage where it determines whether termination of parental rights is in the children's best interests. N.C.G.S.

§ 7B-1110(a). On appeal, respondent-mother does not challenge the trial court's determination in the dispositional stage that termination was in the children's best interests.

A. Standard of Review

¶ 8 "We review a trial court's adjudication under N.C.G.S. § 7B-1111 'to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.' " *In re E.H.P.*, 372 N.C. 388, 392 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "A trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379 (2019). "Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407 (2019) (citations omitted). As for the trial court's conclusions of law, this Court reviews them de novo. *In re M.C.*, 374 N.C. 882, 886 (2020).

B. Neglect

¶ 9 A trial court may terminate parental rights for neglect if it concludes the parent has neglected the juvenile such that the juvenile is a "neglected juvenile" within the meaning of N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is defined, in pertinent part, as one "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2019). 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). However, such a showing is not required if, as in this case, the child is not in the parent's custody at the time of the termination hearing. *In re N.D.A.*, 373 N.C. 71, 80 (2019). Instead, the trial court looks to "evidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect" as well as "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). "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *Id.* "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 B.T.J.*, 2021-NCSC-23, ¶ 11 (quoting *In re R.L.D.*, 375 N.C. 838, 841 (2020)).

C. Challenges to Specific Findings of Fact

¶ 10 On appeal, respondent-mother challenges several of the specific factual findings made by the trial court and then argues that the remaining findings do not support a finding that there was a likelihood of future neglect. Below, we address only those challenges that are necessary to support the trial court's adjudication that neglect existed as a ground for termination. While respondent-mother challenges other findings of fact, those findings are unnecessary to determine that there was a likelihood of future neglect, so we do not address them.

¶ 11 Respondent-mother's first relevant challenge is to finding of fact 53: "[Respondent-mother] has participated in parenting classes, but she has been unable to make any progress. Her pre-test and post-test indicate that she did not learn anything during the entirety of the classes provided." Relying on parenting-profile evaluations completed approximately one month apart in August and September of 2019, respondent-mother contends that the trial court's finding of a lack of progress is not supported by the evidence. To the extent this contention involves the "pre-test and post-test," we agree that the evidence does not support a finding that respondent-mother "did not learn anything." Rather, the record reflects that respondent-mother's pre-test and post-test showed slight improvements in each of the five parenting constructs evaluated. Thus, we disregard that portion of the finding. *See In re J.M.*, 373 N.C. 352, 358 (2020) (disregarding a finding not supported by the evidence).

¶ 12 However, the record contains sufficient evidence to support the finding that respondent-mother has been "unable to make any progress" in her parenting skills. Regarding the tests, respondent-mother only improved her scores by one to two points, leaving her in the medium risk range for all five categories. According to the social worker, this did not indicate demonstrable change. More concerningly, the social worker testified that respondent-mother did not use any of the parenting skills taught in the class when she visited with her children. Respondent-mother does not challenge the trial court's finding that each visit "was a retraumatizing episode [for the children] evidenced by anxiety, visible tremors, nightmares, insomnia, recurrence of selective mutism, refusing to eat [and] loss of appetite, encopresis, enuresis, aggressive behaviors towards siblings, and self-injurious behaviors." Further, respondent-mother stated that she could not remember what

she learned in her parenting class other than to not raise her voice, talk calmly, and let the children help out with meals. We conclude this evidence supports the trial court's finding that respondent-mother was unable to make any progress in her parenting skills.

¶ 13 Respondent-mother's second relevant challenge is to the following emphasized portion of finding of fact 82: "Due to [respondent-mother's] . . . parental deficiencies, the juveniles have been exposed to many incidents of traumatic physical, sexual[,] and emotional abuse. *The juveniles' trauma is such that they will never likely be able to properly function if returned to* [*respondent-mother's*] . . . *care.*" (Emphasis added.) Respondent-mother contends that the therapist never made this determination and that the record otherwise lacks evidence that would support it.

¶ 14 However, the unchallenged findings of fact show that the children incurred significant trauma from the physical and sexual abuse they experienced under respondent-mother's care, as well as from her inability to provide for their physical needs like health, nutrition, and hygiene. As a result, the children exhibited substantial trauma-related behaviors. For the children to overcome their trauma and properly function, the trial court found that they would need many years of therapeutic care. Additionally, the therapist testified that they needed time in a safe environment. The unchallenged findings of fact reveal that respondent-mother failed to provide either a safe environment or even a minimally competent level of care prior to the children entering DSS custody. At the time of the termination hearing, respondent-mother still had not provided a safe environment but instead chose to maintain a romantic relationship with one of her children's abusers and live with another one of them. In addition, even if respondent-mother had progressed in her parenting skills—which she had not—she also did not believe her children had been abused, completely undermining her ability to help the children heal from that abuse. And that does not even include the therapist's testimony concerning the traumatic reactions the kids displayed after attending visitations with respondent-mother. Thus, finding of fact 82, that the children would "never likely be able to properly function" if returned to respondent-mother's care, was supported by clear, cogent, and convincing evidence.

¶ 15 Further, respondent-mother argues that finding of fact 82 is related to the trial court's best interests determination, not its adjudication of neglect. But the fact that the children would never be able to properly function if returned to respondent-mother's care establishes that returning the children to her care would place them into an environment in-

jurious to their welfare—one of the definitions of neglect. *See* N.C.G.S. § 7B-101(15). Accordingly, the trial court did not err in making this finding during the adjudicatory stage.

D. Argument Concerning Likelihood of Future Neglect

¶ 16 Respondent-mother further argues that the evidence presented at the termination hearing does not support the trial court's finding that a likelihood of future neglect existed should the children return to respondent-mother's care. However, as discussed above, the relevant findings that respondent-mother challenged were supported by competent evidence, and so we treat them as conclusive on appeal. In addition, the record contained numerous other unchallenged findings that when combined with the facts discussed above are more than sufficient to demonstrate a likelihood of future neglect.

¶ 17 Starting first with evidence of past neglect, we note that respondent-mother does not challenge any of the trial court's findings concerning her history with the children before DSS obtained custody. Accordingly, we accept as binding the trial court's findings that respondent-mother repeatedly failed to provide for her children's basic needs, including food, shelter, clothing, and hygiene. In addition, respondent-mother failed to protect the children from physical or sexual abuse, even when she knew it was occurring. This evidence is more than sufficient to support a finding of past neglect.

¶ 18 Likewise, while respondent-mother contends that she had changed her circumstances since the children entered DSS custody, the evidence presented at the termination hearing supports the trial court's finding that respondent-mother would likely neglect the children in the future if they returned to her care. As discussed above, this evidence included the fact that respondent-mother had not made any progress in her parenting skills, did not believe that her children had been abused, and continued to associate with their abusers. Accordingly, if returned to her care, the children would remain at risk of physical and sexual abuse, have unmet physical needs, and never heal from the trauma they had already endured. These facts are more than sufficient to establish a likelihood of future neglect.

III. Conclusion

¶ 19 The trial court did not err by adjudicating that grounds existed to terminate respondent-mother's parental rights for neglect pursuant to N.C.G.S. § 7B-1111(a)(1). Since the trial court needed to find only one of the grounds in N.C.G.S. § 7B-1111(a) to terminate respondent-mother's

parental rights, we need not address its adjudication of dependency as a ground for termination. *See In re A.R.A.*, 373 N.C. at 194. Having determined that grounds existed for termination and because respondent-mother does not challenge the trial court's determination of the children's best interests at the dispositional stage, we affirm the trial court's orders terminating respondent-mother's parental rights to Mark, Gerry, and James.

AFFIRMED.

IN THE MATTER OF M.L.B.

No. 243A20

Filed 23 April 2021

1. Termination of Parental Rights—findings of fact—sufficiency of competent evidence—exhibit not admitted during hearing

The trial court's order terminating respondents' parental rights to their daughter on multiple grounds was reversed where the court's findings were not supported by clear, cogent, and convincing evidence. Although the department of social services tendered three witnesses who gave testimony, the challenged findings of fact contained information not from their testimony but from an exhibit which was not admitted into evidence during the hearing and which was presumed to be inadmissible incompetent evidence for purposes of the appeal.

2. Native Americans—Indian Child Welfare Act—termination of parental rights—inquiry required

In a termination of parental rights case, the trial court erred by conducting a hearing without complying with the inquiry requirements of the Indian Child Welfare Act and related federal regulations. The court was directed on remand to ensure compliance with the Act.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 18 March 2020 by Judge William J. Moore in District Court, Robeson County. This matter was calendared for argument in the Supreme Court on 19 March 2021 but determined on the record and briefs without

oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

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

Matthew D. Wunsche for appellee Guardian ad Litem.

Wendy C. Sotolongo, Parent Defender, by Jacky Brammer, Assistant Parent Defender, for respondent-appellant father.

Robert W. Ewing for respondent-appellant mother.

BARRINGER, Justice.

¶ 1 Respondents appeal from the trial court's order terminating their parental rights to M.L.B. (Mary).[1] After careful review, we reverse the termination-of-parental-rights order and remand to the trial court for further proceedings not inconsistent with this opinion.

I. Background

¶ 2 The involvement of Robeson County Department of Social Services (DSS) with respondents and Mary commenced in February 2014. DSS had received information concerning respondents' substance abuse and ongoing domestic violence in respondents' home. As these issues continued, Mary was placed in kinship care in May 2014. DSS filed a petition alleging that Mary was a neglected juvenile on 10 December 2014. An order granting nonsecure custody to DSS was entered on 10 December 2014. On 28 April 2015, the trial court entered an order adjudicating Mary a neglected juvenile.

¶ 3 In April 2019, the trial court changed the permanent plan to adoption with a concurrent plan of guardianship. DSS filed a termination-of-parental-rights petition on 28 May 2019. DSS alleged that grounds existed to terminate respondents' parental rights pursuant to neglect, failure to make reasonable progress in correcting the conditions which led to removal, failure to pay a reasonable portion of the cost of care, and dependency. *See* N.C.G.S. § 7B-1111(a)(1)–(3), (6) (2019). DSS alleged as an additional ground that the parental rights of respondent-mother with respect to her other children had been terminated involuntarily by a court

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

of competent jurisdiction and she lacked the ability or willingness to establish a safe home. *See* N.C.G.S. § 7B-1111(a)(9).

¶ 4 The trial court held the termination-of-parental-rights hearing on 12 February 2020. At the hearing on termination of parental rights, the transcript reflects that DSS's counsel called as DSS's first witness the social worker for Mary's case from January 2019 until April 2019. During the testimony of this social worker, the transcript reflects the colloquy between DSS's counsel, the social worker, respondent-mother's counsel, and the trial court regarding a document entitled Termination of Parental Rights Timeline (Timeline):

> [DSS'S COUNSEL]: Have you, along with [another] social worker, . . . prepared an exhibit for the [c]ourt today?
>
> [SOCIAL WORKER]: I did.
>
> [DSS'S COUNSEL]: Is it true and accurate, to the best of your ability?
>
> [SOCIAL WORKER]: It is.
>
> [DSS'S COUNSEL]: Does it outline [DSS's] efforts with regard to the minor child [Mary]?
>
> [SOCIAL WORKER]: It does.
>
> [DSS'S COUNSEL]: Your Honor, we'd ask the [c]ourt to accept this witness as a —
>
> [RESPONDENT-MOTHER'S COUNSEL]: I'm going to object for the record, Your Honor.
>
> THE COURT: (Inaudible)

¶ 5 DSS called three additional witnesses, a domestic violence case worker at a healthcare facility that worked with respondent-mother from 14 November 2019 to 5 December 2019, a substance abuse counselor at a healthcare facility that oversaw a program respondent-mother commenced on 6 February 2019, and a social worker working on Mary's case since April or May 2019. The transcript does not reflect the admission of any evidence by DSS other than the testimony of the aforesaid three witnesses during the adjudicatory phase of the termination-of-parental-rights hearing.

¶ 6 On 18 March 2020, the trial court entered an order in which it determined that each ground alleged in the 28 May 2019 petition existed to

terminate respondents' parental rights and concluded it was in Mary's best interests to do so. Respondents appealed.

II. Timeline

¶ 7 **[1]** Both respondent-mother and respondent-father argue that the trial court's reliance on the Timeline referenced during the termination-of-parental-rights hearing was an error. The trial court in the termination-of-parental-rights order stated in paragraph 40 that "[t]he [c]ourt relies on and accepts into evidence the Timeline, in making these findings and finds the said report to [be] both credible and reliable."[2] Respondents both contend that the trial court's pervasive reliance on the Timeline is reflected in the findings of fact and conclusions of law in the termination-of-parental-rights order, rendering the termination-of-parental-rights order tainted and unreviewable. DSS argues that a trial court is presumed to disregard incompetent evidence in a bench trial and that there is competent evidence besides the Timeline to support the termination-of-parental-rights order.

¶ 8 DSS has neither argued that the Timeline was admissible evidence nor that respondents waived their objection to the Timeline's admissibility. Therefore, we do not address whether the Timeline was inadmissible hearsay. Instead, we presume the Timeline was inadmissible and not properly considered by the trial court. Thus, we next consider whether other evidence admitted during the termination-of-parental-rights hearing provides the bases for the trial court's findings of fact. "If either of the . . . grounds [for termination of parental rights found by the trial court are] supported by findings of fact based on clear, cogent and convincing evidence, the order appealed from should be affirmed." *In re Moore*, 306 N.C. 394, 404 (1982). When a judge sits without a jury, this Court presumes that the trial court disregards any incompetent evidence and will affirm the judgment or order if the trial court's findings are supported by competent evidence. *Munchak Corp. v. Caldwell*, 301 N.C. 689, 694 (1981).

¶ 9 DSS argues that there was overwhelming, unrebutted evidence to support the termination of parental rights, reciting the testimony of the witnesses DSS tendered at the termination-of-parental-rights hearing. However, after a thorough review of the testimony presented at the termination-of-parental-rights hearing, we cannot conclude that the testimony alone provides clear, cogent, and convincing evidence support-

2. As summarized in the background section of this opinion, the transcript does not establish that the Timeline was admitted into evidence during the termination-of-parental-rights hearing.

ing the challenged findings of fact of the trial court necessary to support its conclusions of law for any ground for termination. *See In re Moore*, 306 N.C. at 404. DSS's first witness, a social worker, testified that Mary had been in DSS care and custody since 11 December 2014. There was also testimony regarding the case plans signed by respondents, respondents' compliance with the case plans, and their progress on the conditions that led to Mary's removal from their home, among other things.

¶ 10 Yet, as highlighted by respondents in their briefs, the challenged findings of fact include a substantial amount of information that cannot be discerned from the testimony presented at the termination-of-parental-rights hearing. This information is in the Timeline. For purposes of this appeal, however, the Timeline is inadmissible incompetent evidence on which the trial court should not have relied. Therefore, the order terminating respondents' parental rights must be reversed; the testimony at the termination-of-parental-rights hearing does not provide clear, cogent, and convincing evidence supporting the challenged findings of fact of the trial court necessary to support the trial court's conclusions of law for any ground for termination.

III. Indian Child Welfare Act Proceedings

¶ 11 **[2]** Respondent-father argues that the trial court failed to comply with the Indian Child Welfare Act (ICWA) and asks this Court to vacate and remand for compliance with the ICWA. DSS concedes the record is silent as to whether the trial court considered the impact of the ICWA on this case and that the matter should be remanded to the trial court as a result. The guardian ad litem agrees that the matter should be remanded for the trial court to comply with the ICWA. We agree that the record does not reflect compliance with the ICWA, and thus we instruct the trial court on remand to comply with the ICWA.

¶ 12 In 2016, the United States Department of the Interior promulgated regulations to promote the uniform application of the ICWA codified at subpart I of 25 C.F.R. pt. 23. Indian Child Welfare Act Proceedings, 25 C.F.R. §§ 23.101–.144 (2019); Indian Child Welfare Act Proceedings; Final Rule, 81 Fed. Reg. 38,777, 38,782 (June 14, 2016) (to be codified at 25 C.F.R. pt. 23); *see also In re E.J.B.*, 375 N.C. 95, 101 (2020).

¶ 13 The provisions under subpart I do not affect proceedings initiated prior to 12 December 2016, but the provisions "apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child." 25 C.F.R. § 23.143. A child custody proceeding includes "any action resulting in the termination of the parent-child relationship." 25 U.S.C. § 1903(1)(ii).

¶ 14 Pursuant to 25 C.F.R. § 23.107(a),

> [s]tate courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

25 C.F.R. § 23.107(a).

¶ 15 As defined in 25 U.S.C. § 1903(4), " 'Indian child' means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. § 1903(4). " 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43." 25 U.S.C. § 1903(8); see Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 86 Fed. Reg. 7,554, 7,554 (Jan. 29, 2021).

¶ 16 "The inquiry into whether a child is an 'Indian child' under ICWA is focused on only two circumstances: (1) Whether the child is a citizen of a Tribe; or (2) whether the child's parent is a citizen of the Tribe and the child is also eligible for citizenship." Indian Child Welfare Act Proceedings; Final Rule, 81 Fed. Reg. at 38,804. The inquiry "is not based on the race of the child, but rather indications that the child and her parent(s) may have a political affiliation with a Tribe [as defined in 25 U.S.C. § 1903]." Indian Child Welfare Act Proceedings; Final Rule, 81 Fed. Reg. at 38,806; see also Indian Child Welfare Act Proceedings; Final Rule, 81 Fed. Reg. at 38,801 (" 'Indian child' is defined based on the child's political affiliation with a federally recognized Indian Tribe.").

¶ 17 Paragraph (c) of 25 C.F.R. § 23.107 states:

> (c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

> (1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
>
> (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
>
> (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
>
> (4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;
>
> (5) The court is informed that the child is or has been a ward of a Tribal court; or
>
> (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

25 C.F.R. § 23.107(c).

¶ 18 As the termination-of-parental-rights hearing occurred after 12 December 2016 and the trial court did not ask the participants on the record whether the participants knew or had reason to know that Mary is an Indian child, the trial court did not comply with 25 C.F.R. § 23.107(a). Since the trial court did not comply with 25 C.F.R. § 23.107(a), the trial court could not comply with 25 C.F.R. § 23.107(c) and could not determine whether it had reason to know Mary is an Indian child. *See* 25 C.F.R. § 23.107(c) ("A court, *upon conducting the inquiry required in paragraph (a) of this section*, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if . . . .").

¶ 19 Therefore, on remand, the trial court "must ask each participant in [the termination-of-parental-rights proceeding] whether the participant knows or has reason to know that the child is an Indian child" on the record and receive the participants' responses on the record. 25 C.F.R. § 23.107(a). The trial court "must instruct the parties to inform the court if they subsequently receive information that provides reason to know

the child is an Indian child." *Id.* This should be done promptly upon remand before holding a new termination-of-parental-rights hearing. If there is reason to know that Mary is an Indian child, the trial court must comply with 25 C.F.R. § 23.107(b), and DSS, as the party seeking termination of parental rights, must comply with 25 U.S.C. § 1912(a) and 25 C.F.R. § 23.111(d). *See In re E.J.B.*, 375 N.C. at 104–05 (discussing notice requirements under 25 U.S.C. § 1912 and 25 C.F.R. § 23.111(d)).[3]

IV. Conclusion

¶ 20 For the reasons set forth in this opinion, we reverse the termination-of-parental-rights order and remand this case to the trial court to conduct a new hearing on termination of respondents' parental rights and to comply with the requirements of ICWA. Given our disposition of this appeal, we decline to address respondents' remaining arguments on appeal.

REVERSED AND REMANDED.

3. All participants should become familiar with the Indian Child Welfare Act of 1978, codified at 25 U.S.C. ch. 21, and the corresponding regulations, including but not limited to the regulations codified at 25 C.F.R. §§ 23.101–.144, to ensure compliance with the ICWA and to assert objections on the record if compliance in a proceeding has not occurred.

IN RE M.S.A.

[377 N.C. 343, 2021-NCSC-52]

IN THE MATTER OF M.S.A.

No. 332A20

Filed 23 April 2021

Termination of Parental Rights—grounds for termination—willful abandonment—incarceration—failure to contact child

The trial court properly determined that a father's parental rights were subject to termination on the grounds of willful abandonment (N.C.G.S. § 7B-1111(a)(7)) where it was undisputed that the father, who had been incarcerated for approximately six years when the termination petition was filed, had made no contact with his daughter during his incarceration. He failed to seek his daughter's contact information from relatives (other than a single unsuccessful attempt to ask the sister of his daughter's caregiver for the caregiver's phone number—years outside the determinative period) or to otherwise display any interest in her welfare. The father's incarceration and alleged ignorance of how to contact his child could not negate the willfulness of his abandonment.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 6 February 2020 by Judge Jimmy L. Myers in District Court, Davidson County. This matter was calendared in the Supreme Court on 19 March 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 filed for petitioner-appellee.

Edward Eldred for respondent-appellant father.

MORGAN, Justice.

¶ 1 Respondent-father appeals from the trial court's order terminating his parental rights to his minor child, M.S.A. (Mary[1]). In his sole argument on appeal, respondent-father asserts that his voluntary lack of communication with Mary from the inception of the period of his incarceration in November 2012 through the December 2019 private termination of parental rights hearing could not serve as a basis for the trial court's conclusion that grounds existed to terminate his parental

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

rights due to abandonment under N.C.G.S. § 7B-1111(a)(7) because the trial court did not find, nor does the evidence support a finding, that respondent-father's failure to contact Mary was willful. Because we conclude that clear, cogent, and convincing evidence is contained in the record to show that respondent-father admittedly ignored his ability to contact his daughter or her caretaker, we affirm the termination order.

I. Factual and Procedural Background

¶ 2 This private termination action began on 12 December 2018 when petitioner, who is Mary's maternal great, great aunt, filed a petition seeking to terminate the parental rights of both of Mary's parents.[2] On 1 March 2019, petitioner filed an amended petition alleging that Mary had resided with her continuously from October 2010 until the filing of the petition, and that she had exercised sole legal and physical custody of Mary since June 2011. Petitioner claimed that she had provided for Mary's financial, medical, emotional, and physical needs during this time of Mary's habitation with petitioner, and that petitioner would continue to be able to do so. Petitioner further alleged that respondent-father was incarcerated at the time of the filing of the petition, that he had not visited with or seen Mary since 2011, and that he had not provided financial support nor sent any gifts or correspondence to Mary for at least five years. Petitioner filed her action in order to seek the termination of the parental rights of respondent-father on the basis of willful abandonment under N.C.G.S. § 7B-1111(a)(7) (2019). Respondent-father filed an answer denying petitioner's material allegations.

¶ 3 The petition was heard during the 19 December 2019 session of District Court, Davidson County. Respondent-father did not contest petitioner's allegations that he had previously demonstrated the ability to communicate with Mary's mother and family members while incarcerated[3], but offered testimony that he did not possess actual knowledge of the information that he needed to reach Mary or petitioner. On 6 February

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2. Mary's mother is not a party to this appeal.

3. Respondent-father takes exception with the trial court's finding that he was also in regular contact with his attorney, arguing that he had simply testified that he knew how to get in contact with his attorney while incarcerated. Such an admission would appear to be detrimental to respondent-father's contention that the evidence in the record could not establish his ability to contact Mary or petitioner, as it appears that respondent-father knew how to contact a person who presumably possessed the wherewithal to obtain and relay the information to respondent-father which was necessary to contact Mary and petitioner. As explained below, however, this contested finding by the trial court is unnecessary to support the trial court's ultimate conclusion and is therefore excluded by us from any consideration.

2020, the trial court entered an order terminating respondent-father's parental rights, concluding that respondent-father had willfully abandoned Mary pursuant to N.C.G.S. § 7B-1111(a)(7) and that termination of respondent-father's parental rights was in Mary's best interests. Respondent-father appeals the trial court's order, asking this Court to decide "whether an incarcerated parent who has not had contact with his child for eight years and does not know how to contact his child may lose his parental rights on the ground of abandonment."

II. Analysis

¶ 4 The North Carolina General Statutes set forth a two-step process for the termination of parental rights. After the filing of a petition for the termination of parental rights, a trial court conducts a hearing to adjudicate the existence or nonexistence of any grounds alleged in the petition as set forth in N.C.G.S. § 7B-1111. N.C.G.S. § 7B-1109(e) (2019). The petitioner carries the burden of proving by clear, cogent, and convincing evidence that grounds exist under N.C.G.S. § 7B-1111(a) to terminate a respondent-parent's parental rights. *In re A.U.D.*, 373 N.C. 3, 5–6, (2019). Upon an adjudication that at least one ground exists to terminate the parental rights of a respondent-parent, the trial court will then decide whether terminating the parental rights of the respondent-parent is in the child's best interests. N.C.G.S. § 7B-1110(a).

¶ 5 N.C.G.S. § 7B-1111(a)(7) states, in pertinent part, that the court may terminate parental rights upon a finding that the parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. The only argument being voiced by respondent-father on this appeal concerns the trial court's adjudication that respondent-father *willfully* abandoned Mary. He contends that the trial court's findings of fact do not support its ultimate conclusion of law that he willfully abandoned Mary pursuant to N.C.G.S. § 7B-1111(a)(7).

¶ 6 When reviewing the trial court's adjudication of the existence of a ground to terminate the parental rights of a respondent-parent, we examine whether the trial court's findings of fact "are supported by clear, cogent and convincing evidence and [whether] the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). Any factual findings of the trial court left unchallenged by an appellant are "deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, (2019). We review the trial court's conclusions of law under a de novo standard. *In re C.B.C.*, 373 N.C. 16, 19 (2019).

¶ 7 Section 7B-1111(a)(7) permits the trial court to terminate a parent's rights when that "parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion." *Id.* "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 B.C.B.*, 374 N.C. 32, 35 (2020) (quoting *In re Young*, 346 N.C. 244, 251 (1997)). We have held that abandonment is evident when 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[.]" *Pratt v. Bishop*, 257 N.C. 486, 501 (1962). "Although 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)).

¶ 8 Respondent-father does not challenge the trial court's findings of fact which reflect that respondent-father "has never written letters," has never "sent gifts or cards," has never "provided financially" for Mary, and has never contacted petitioner "to inquire as to [Mary]'s well-being . . ." from the time of his incarceration in November 2012 until the filing of the amended termination petition on 1 March 2019. Nor does respondent-father dispute the trial court's findings that respondent-father had neither "made an effort to ensure that he has a relationship with the minor child," nor "reached out to [p]etitioner to inquire as to the minor child's well-being since the minor child came into [p]etitioner's custody." Instead, respondent-father contends that the trial court's remaining findings of fact do not establish the willfulness of the total nonperformance of his parental duties toward Mary, both during the relevant six-month period and in prior years.

¶ 9 In two respects, respondent-father contests the following portion of the trial court's Finding of Fact 14, which he considers to be the linchpin of the trial court's willfulness determination:

> While incarcerated, [r]espondent/father has always had the resources and ability to contact outside individuals, either through writing letters or by telephone. In fact, respondent/father stays in frequent contact with his family members and lawyers and has been in contact with respondent/mother. Respondent/father has never asked these individuals to assist him in getting in contact with Petitioner to inquire as to the

> minor child's well-being, nor has he asked for their help in maintaining a relationship with the minor child, despite having opportunities to do so.

First, respondent-father argues that he was not in "frequent contact" with his lawyers and that he had not contacted Mary's mother since 2012. Second, respondent-father contends that it is untrue that he never asked any family member for petitioner's contact information, as he testified at the hearing that he asked petitioner's sister for petitioner's telephone number and "she wouldn't give [respondent-father] that." However, respondent-father concedes that Finding of Fact 14 is otherwise accurate to the extent that it shows that he "was in frequent contact with *some* of his family members and never asked those family members to help him contact [petitioner]." Respondent-father's further admission that "he wrote [the mother] one letter in 2012 and did not hear back from [the mother]" is susceptible to the reasonable interpretation reflected in the trial court's finding that "[r]espondent-father ha[d] been in contact with respondent[-]mother." Further, although respondent-father offered uncontested testimony that he asked petitioner's sister for the telephone number of petitioner in 2012, nevertheless this evidence does not dilute the veracity of the portion of the trial court's Finding of Fact 14 that respondent-father had "never asked these individuals to assist him in getting in contact with [p]etitioner *to inquire as to the minor child's well-being*." A thorough analysis of the application of the provisions of N.C.G.S. § 7B-1111(a)(7) regarding the ground of abandonment to Finding of Fact 14 illustrates that respondent-father admits the validity of several of the circumstances which the trial court determined in the finding and that respondent-father's strongest example to support his interest in contacting petitioner—the request for her telephone number—occurred years outside of the determinative six-month statutory period. Respondent-father's assertions are largely irrelevant to the gravamen of the ground of abandonment as to whether he manifested a "willful determination to forego all parental duties and relinquish all parental claims to the child." *In re B.C.B.*, 374 N.C. at 35.

¶ 10 This Court limits its "review to those challenged findings that are necessary to support the trial court's determination that . . . parental rights should be terminated[.]" *In re N.G.*, 374 N.C. 891, 900 (2020). Thus, even after disregarding the remaining segment of the trial court's Finding of Fact 14 which is vigorously disputed by respondent-father that he "stays in frequent contact with his . . . lawyers," the remainder of the trial court's finding amply supports its conclusion that respondent-father willfully abandoned Mary.

¶ 11 Respondent-father claims that, even though he "had the ability to contact people on the outside and that he did not ask those people to help contact [petitioner]," it does not follow that he willfully abandoned Mary. This assertion suggests that respondent-father is introducing his incarceration as a mechanism by which to absolve his parental duty toward Mary and to allow him therefore to refrain from undertaking the effort to pursue parental involvement with Mary through contact with those persons with whom he communicated during his incarceration. We have previously rejected such representations which respondent-father appears to foment:

> Incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision. Although a parent's options for showing affection while incarcerated are greatly limited, a parent will not be excused from showing interest in the child's welfare by whatever means available.

In re C.B.C., 373 N.C. at 19–20 (quoting *In re D.E.M.*, 257 N.C. App. 618, 621 (2018)) (extraneity omitted).

¶ 12 Here, it is undisputed that respondent-father, at a minimum, possessed the ability to seek Mary's contact information from his relatives but declined to do so for a number of years. The trial court's unchallenged findings reflect that respondent-father did not utilize "whatever means available" to display his interest in Mary's welfare during his incarceration. *In re C.B.C.*, 373 N.C. at 19–20. Instead, respondent-father withheld his love, care, and filial affection from Mary, both in the statutorily relevant six-month period prior to the filing of the petition to terminate parental rights and in the years preceding that time span. *See Pratt*, 257 N.C. at 501. As this constitutes willful abandonment, the trial court did not err in adjudicating the existence of this ground pursuant to N.C.G.S. § 7B-1111(a)(7) in terminating respondent-father's parental rights.

III. Conclusion

¶ 13 Based on the foregoing, we conclude that the trial court properly determined that the parental rights of respondent-father were subject to termination pursuant to N.C.G.S. § 7B-1111(a)(7). Respondent-father does not challenge the trial court's conclusion that termination of his parental rights was in Mary's best interests. Consequently, we affirm the trial court's order terminating respondent-father's parental rights.

AFFIRMED.

IN RE N.B.

[377 N.C. 349, 2021-NCSC-53]

IN THE MATTER OF N.B., N.M.B., M.R.

No. 291A20

Filed 23 April 2021

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

The trial court properly determined respondent-mother's parental rights were subject to termination on the basis of neglect where the children had been previously adjudicated to be neglected (due to respondent's housing instability, her drug use and incarceration, domestic violence, and her leaving the children with inappropriate caretakers who subjected the children to physical and sexual abuse) and where—although respondent had made some progress towards satisfying the requirements of her case plan—there was a likelihood of future neglect due to respondent's failure to establish stable housing free from substance abuse, her lack of contact with the children, and her inability to meet the children's trauma-related needs.

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

The trial court's termination of respondent-father's parental rights on the basis of neglect due to a likely repetition of neglect was affirmed where respondent was incarcerated, the child had been placed in foster care due to neglect caused by domestic violence and respondent's use and distribution of drugs while the child was in respondent's care prior to his incarceration, respondent was only involved in the child's life in a limited way when he was not incarcerated, and he made no attempt to contact the child during his incarceration except for a single letter and had limited contact with DSS.

3. Constitutional Law—effective assistance of counsel—termination of parental rights—failure to show prejudice

Respondent-father was not entitled to relief from the trial court's order terminating his parental rights where he claimed to have received ineffective assistance of counsel. Respondent failed to show any prejudice resulting from counsel's allegedly deficient performance and there was nothing counsel could have done to overcome the undisputed evidence of neglect.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 9 March 2020 by Judge Joseph Moody Buckner in District Court, Orange

County. This matter was calendared for argument in the Supreme Court on 19 March 2021 but was determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

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

Olabisi A. Ofunniyin and Matthew W. Wolfe for appellee Guardian ad Litem.

Dorothy Hairston Mitchell for respondent-appellant mother.

J. Thomas Diepenbrock for respondent-appellant father.

ERVIN, Justice.

¶ 1 Respondent-mother Stacey W. appeals from the trial court's orders terminating her parental rights in N.B.[1], N.M.B., and M.R., while respondent-father Jerald B. appeals from the trial court's order terminating his parental rights in N.B. After careful review of the record in light of the applicable law, we affirm the trial court's orders.

I. Factual Background

¶ 2 On 25 July 2017, a child protective services agency in Hagerstown, Maryland, received a referral expressing concern that Natasha and Nylah had been neglected by a woman with whom they had lived in Maryland during a time in which respondent-mother had been incarcerated. At the time of the making of this referral, Natasha, Nylah, and Merise were residing in Chapel Hill with the sister of a woman that respondent-mother described as her "foster mother" and that the children referred to as their "great-aunt" despite the absence of any biological relationship between this individual and either respondent-mother or the children. The children had begun living with this individual in January 2017, when this individual had traveled to Maryland and retrieved the children in light of respondent-mother's incarceration and the inability of the persons with whom the children had initially been left to provide adequate care for them.

1. N.B., N.M.B., and M.R., respectively, will be referred to throughout the remainder of this opinion as Natasha, Nylah, and Merise, which are pseudonyms used for ease of reading and to protect the juveniles' privacy.

¶ 3 Upon learning that the children had been living in Chapel Hill for the last six months, the Maryland child protective services agency contacted the Orange County Department of Social Services, which undertook responsibility for investigating the report. At the time that DSS became involved with the children, respondent-mother, who had been released on parole, had been unable to establish consistent employment or housing while respondent-father was incarcerated.

¶ 4 In the course of the investigation, Natasha and Nylah reported that respondent-mother had frequently been incarcerated and that they had been subjected to inappropriate discipline by caretakers, had been exposed to illegal drugs, and had endured inappropriate touching. In light of these allegations of abuse, a child medical evaluation was conducted upon Natasha and Nylah on 14 September 2017. At the conclusion of the examination, the examiner expressed concern that both Natasha and Nylah had been physically and sexually abused.

¶ 5 On 3 November 2017, DSS filed juvenile petitions alleging that Natasha, Nylah, and Merise were abused, neglected, and dependent juveniles. In its petitions, DSS asserted that respondent-mother had a history of incarceration, during which the children had lived with multiple caretakers who subjected the children to excessive discipline, failed to provide the children with adequate food, and failed to provide the children with an adequate level of care. In addition, DSS alleged that the children had been physically and sexually abused while in respondent-mother's care and that respondent-mother had been released from incarceration and was threatening to remove the children from the home of their current caretaker. In order to prevent respondent-mother from taking the children into her care, DSS sought and obtained the entry of an order placing the children into nonsecure custody and allowing them to continue living with their current caretaker. Eventually, the children's caretaker became unable to care for them, so that the children entered foster care.

¶ 6 After an adjudicatory hearing held on 15 February 2018, the trial court entered an order on 26 March 2018 finding that the children were neglected and dependent juveniles. The trial court ordered that the custody of the children remain with DSS, required respondent-mother to comply with a family services agreement, and authorized respondent-mother to engage in supervised visitation with the children. In view of the fact that respondent-father continued to be incarcerated, the trial court ordered him to provide DSS with a specific release date.

¶ 7 On 19 July 2018, the trial court held an initial permanency planning hearing. On 31 August 2018, the trial court entered a permanency planning order in which it found that, while DSS had made reasonable efforts to reunify the children with their parents, neither respondent-mother nor respondent-father had been actively attempting to successfully reunify with the children or making themselves available to DSS. As a result, the trial court adopted a primary permanent plan of adoption, with a secondary permanent plan of reunification, and authorized DSS to seek the termination of the parents' parental rights in the children.

¶ 8 On 21 October 2019, DSS filed separate motions seeking to have respondent-mother's parental rights in all three children terminated based upon neglect, N.C.G.S. § 7B-1111(a)(1), and willful failure to make reasonable progress toward correcting the conditions that had led to the children's placement in DSS custody, N.C.G.S. § 7B-1111(a)(2). In addition, DSS alleged that respondent-mother's parental rights in Natasha were subject to termination based upon abandonment, N.C.G.S. § 7B-1111(a)(7). Similarly, DSS filed a motion seeking to have respondent-father's parental rights in Natasha terminated on the basis of neglect, N.C.G.S. § 7B-1111(a)(1); willful failure to make reasonable progress toward correcting the conditions that had led to Natasha's placement in DSS custody, N.C.G.S. § 7B-1111(a)(2); and dependency. N.C.G.S. § 7B-1111(a)(6).

¶ 9 On 28 November 2018, after a hearing held on 1 November 2018, Judge Beverly Scarlett entered a permanency planning order in which she found that DSS continued to have difficulty in communicating with respondent-mother, that respondent-mother had sent clothing to the children on three occasions, and that respondent-father continued to be incarcerated. In addition, Judge Scarlett reiterated the trial court's earlier conclusion that neither parent was making adequate progress toward reunification with the children. As a result, Judge Scarlett retained the existing primary permanent plan of adoption and secondary permanent plan of reunification.

¶ 10 After a hearing held on 6 February 2020, the trial court entered orders on 9 March 2020 in which it determined that respondent-mother's parental rights in all three children and respondent-father's parental rights in Natasha were subject to termination based upon neglect, N.C.G.S. § 7B-1111(a)(1), and willful failure to make reasonable progress toward correcting the conditions that had led to the children's placement in DSS custody, N.C.G.S. § 7B-1111(a)(2); that respondent-mother's parental rights in Natasha were subject to termination based upon abandonment, N.C.G.S. § 7B-1111(a)(7); and that respondent-father's parental

rights in Natasha were subject to termination for dependency, N.C.G.S. § 7B-1111(a)(6). In addition, the trial court concluded that the children's bests interests would be served by the termination of respondent-mother's parental rights in all three children and that Natasha's best interests would be served by the termination of respondent-father's parental rights.[2] Respondent-mother and respondent-father noted appeals to this Court from the trial court's termination orders.

II. Substantive Legal Analysis

A. Respondent-Mother's Appeal

¶ 11 **[1]** In seeking relief from the trial court's termination orders before this Court, respondent-mother contends that the trial court erred by concluding that her parental rights in the children were subject to termination. A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2019); *In re Montgomery*, 311 N.C. 101, 110 (1984). At the adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more of the grounds for termination delineated in N.C.G.S. § 7B-1111(a). N.C.G.S. § 7B-1109(f) (2019). This Court reviews a trial court's adjudicatory decision "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. at 111, 316 S.E.2d at 253 (citing *In re Moore*, 306 N.C. 394, 404 (1982)). In the event that the petitioner was able to prove the existence of one or more grounds for termination, "the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights." *In re D.L.W.*, 368 N.C. 835, 842 (2016) (citing *In re Young*, 346 N.C. 244, 247 (1997); N.C.G.S. § 7B-1110). "[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395 (2019).

¶ 12 A trial court may terminate parental rights for neglect pursuant to N.C.G.S. § 7B-1111(a)(1) in the event that it concludes that the parent has neglected the juvenile as that term is defined in N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1) (2019). A neglected juvenile is defined, in per-

2. At the time of the termination hearing, paternity for Nylah had not been established. As a result, a proceeding to terminate the unknown father's parental rights in Nylah had been initiated and service of the unknown father by publication was in process. Although paternity for Merise had not yet been established either, a putative father had been identified and DSS was making efforts to determine whether that individual was actually Merise's father.

tinent 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). Although the trial court is authorized to terminate a parent's parental rights in a juvenile based upon neglect that is occurring at the time of the termination hearing, *see, e.g.*, *In re K.C.T.*, 375 N.C. 592, 599–600 (2020) (stating that "this Court has recognized that the neglect ground can support termination . . . if a parent is presently neglecting their child by abandonment"), 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 a 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). As a result, the trial court is also entitled to find that the parent's parental rights are subject to termination on the basis of neglect if it concludes that the evidence demonstrates "a likelihood of future neglect by the parent." *In re R.L.D.*, 375 N.C. 838, 841 (2020). As a result, even if the record is devoid of any evidence tending to show the existence of current neglect, the trial court may find that a parent's parental rights are subject to termination based upon a determination of past neglect and a showing that a repetition of neglect is likely if the child is returned to the parent's care, *id.*, at 841, n.3, with the trial court being required to evaluate the likelihood of future neglect on the basis of an analysis of any "evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing." *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425, 430 (2019) (citing *Ballard*, 311 N.C. at 715).

¶ 13 The record reflects that the trial court found that the children were neglected in an adjudication order that was entered on 26 March 2018. In addition, the trial court found that, prior to the children's placement in DSS custody, there was a "pattern of neglect due to housing instability; substance abuse, specifically cocaine; leaving the juvenile[s] with inappropriate caretakers . . . ; and domestic violence between Respondent parents." In addition, the trial court found that, prior to the time at which DSS obtained custody of the children and while she was pregnant with Merise, respondent-mother and the children had resided at a Salvation Army shelter; that, after respondent-mother's incarceration for drug vio-

lations, she had failed to make proper arrangements for the children's care; that Merise, when she was an infant, had been "found alone in a car outside a courthouse"; that, following respondent-mother's release from incarceration, she had failed to visit with the children or provide financial assistance for their care; that respondent-mother lived in a half-way house while on parole and had failed to establish safe, stable, and suitable housing for the juveniles; that a child medical examination had resulted in a determination that Natasha and Nylah had been physically and sexually abused and that they had suffered trauma because of respondent-mother's failure to protect them; and that respondent-mother had exposed Natasha and Nylah to "multiple unsafe situations involving but not limited to inappropriate discipline, inappropriate supervision resulting in abuse, and inadequate food." Based upon these findings of fact, the trial court determined in all three termination orders that:

> Much of the neglect experienced by the juvenile[s] is directly related to Respondent mother's instability, drug use, incarcerations, and placement with multiple caretakers to whom Respondent mother entrusted that subjected the juvenile[s] to physical and sexual abuse as well as neglect.

¶ 14 According to respondent-mother, the quoted finding demonstrates that the trial court relied upon a showing of past neglect rather than upon an analysis of the circumstances that existed at the time of the termination hearing in determining that her parental rights in the children were subject to termination on the basis of neglect. Instead of evidencing a determination that respondent-mother's parental rights in the children should be terminated based solely upon evidence of past neglect, however, we interpret the quoted language as nothing more than a summary of the prior neglect to which the children had been subjected. In reaching this conclusion, we particularly note the trial court's findings that, after DSS obtained custody of the children, respondent-mother had failed to maintain consistent contact with them and did not understand or acknowledge the negative impact that the manner in which she had chosen to live and the identity of the caretakers with whom she had placed the children had had upon them.

¶ 15 The trial court's findings also reflect that respondent-mother did not enter into a case plan with DSS until 1 November 2018, which was more than a year after they had been placed in DSS custody. The trial court found that the terms and conditions set out in respondent-mother's court-ordered case plan required her to comply with a visitation agreement; resolve all of her pending legal matters; obtain and maintain hous-

ing that was sufficient for herself and the juveniles; provide verification of the stability of her housing arrangements through the provision of a lease agreement; obtain and maintain lawful employment that produced sufficient income to meet her own needs and those of the children; verify the nature and amount of her income by providing copies of pay stubs; refrain from the use of illegal or impairing substances and submit to random drug screens; comply with the requirements of her parole; obtain comprehensive mental health and substance abuse assessments and comply with any resulting recommendations; complete parenting education and demonstrate the ability to use the skills that she had learned as the result of that process; maintain consistent contact with DSS; sign releases authorizing the provision of information allowing DSS to verify her compliance with the components of her case plan; and provide certificates showing that she had satisfied the conditions of her release on parole and her compliance with the other provisions of her case plans. In addressing the extent of respondent-mother's compliance with the provisions of her case plan, the trial court made the following unchallenged findings of fact:[3]

> 54. [DSS] has had ongoing difficulty in Respondent mother signing releases for service[] providers or obtaining documentation about completed services.
>
> . . . .
>
> 59. A letter from Alternative Drug and Alcohol Counseling, LLC was admitted and received by the Court to Respondent mother's parole officer indicating successful completion of treatment. She did not previously provide this documentation. Documentation of completed drug screens was never received.
>
> 60. While on probation, Respondent mother was engaged in Potomoc Case Management Services. She did not provide documentation to or sign releases for [DSS] to obtain information about

3. There are minor variations in the numbering of the findings of fact contained in the separate different orders that the trial court entered with respect to each of the juveniles. In the interests of brevity and for ease of reference, we will quote the trial court's findings as set out in the order terminating respondent-mother's parental rights in Natasha in the text of this opinion. As a result of the fact that respondent-mother has failed to challenge any of these findings as lacking in sufficient evidentiary support, they are binding upon us for purposes of appellate review. *In re T.N.H.*, 372 N.C. 403, 407 (2019).

engagement in services or services offered by the agency.

. . . .

62. Due to lack of releases or documentation, it cannot be determined whether Respondent mother completed a comprehensive mental health assessment or whether engagement in case management services adequately addressed her mental health needs.

63. After completing parole in Maryland, Respondent mother relocated to Yonkers, New York where the maternal grandmother resides.

. . . .

65. Despite the distance from the juvenile[s], Respondent mother could have consistently communicated with [DSS], executed releases for providers, provided verification of engagement in services, and appropriately participate[d] in case planning.

. . . .

67. In June 2019, Respondent mother provided a drug and alcohol counseling letter for Alssaro Counseling Services in New York; however, [DSS] was unable to confirm that Respondent mother was engaged in their services.

68. Respondent mother subsequently indicated that she did not use Alssaro Counseling Services due to insurance issues and having to find another provider.

69. Respondent mother reports being drug tested, but she has not provided any documentation of completed negative drug screens.

70. On August 1, 2019, when Respondent mother was present for a Permanency Planning Review Hearing, [DSS] referred Respondent mother for a hair follicle drug screen.

> 71. Respondent mother failed to complete the requested hair follicle drug screen.
>
> 72. Respondent mother provided the results of a blood test from Empire City Laboratories completed on January 2, 2020; however, the test appears to be related to immunizations and communicable diseases. The test did not screen for substances.
>
> . . . .
>
> 75. Respondent mother has not completed a parenting curriculum and applied learned knowledge of skills to address her deficits.
>
> 76. Respondent mother continues to have housing instability. She reports renting a room or subletting an apartment; however, she has not provided an address to [DSS] or a copy of a lease or other housing agreement. Respondent mother receives her mail at the maternal grandmother's home.

Based upon these findings of evidentiary fact, the trial court determined that:

> Respondent mother's continued failure to maintain a safe and stable home, and her failure to assure that the juvenile[s] received proper supervision and necessary care subjects the juvenile[s] to the risks of physical and emotional harm and creates an environment injurious to [their] welfare.

The trial court also noted that Natasha and Nylah had "heightened trauma-related therapeutic needs due to Respondent mother's neglect" and that Nylah had required residential treatment for the purpose of addressing her mental health problems and accompanying behaviors. According to the trial court, the neglect that the juveniles had suffered in the past was likely to "repeat or continue" in the event that the juveniles were returned to respondent-mother's care, with this determination resting upon evidence concerning the prior neglect that the juveniles had experienced coupled with respondent-mother's failure to establish a "safe, stable, substance-free home"; her lack of contact with the juveniles; and her inability to address the juveniles' trauma-related needs.

¶ 16 In response, respondent-mother asserts that the trial court's findings do little more than restate earlier findings and that certain of them lack sufficient evidentiary support. However, the record does not support respondent-mother's contentions. For example, respondent-mother conceded that, at the time of the termination hearing, she was subletting a single room for herself, admitted that she did not have a lease, and acknowledged having lived with a friend before beginning to rent the room that she occupied at the time of the termination hearing. In light of this evidence, the trial court could have properly determined that respondent-mother had failed to establish stable housing that was suitable for both herself and the juveniles. *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, to pass upon the credibility of the witnesses, and to determine the inferences that should be drawn from that evidence).

¶ 17 In addition, the record reflects that respondent-mother's case plan required her to submit to random drug screens. According to a social worker who testified at the termination hearing, respondent-mother never submitted to random drug screens. The same social worker testified that, even though DSS had requested that respondent-mother submit to a hair follicle screen when she was in North Carolina in August 2019, she failed to do so. For that reason, the social worker testified that DSS had been unable to verify that respondent-mother had maintained sobriety. As a result, the trial court had ample justification for concluding that respondent-mother had failed to overcome her substance abuse problems.

¶ 18 As far as the issue of visitation is concerned, the record reflects that Natasha did not wish to have any contact with respondent-mother, whom she blamed for causing the circumstances in which the children found themselves. In addition, the record contains evidence tending to show that, for a period of time, Nylah lacked the stability to permit visitation with respondent-mother. A social worker testified that respondent-mother had a "strained relationship" with Merise in light of respondent-mother's "lack of involvement" with the child and asserted that respondent-mother had not seen Merise since her incarceration, which had occurred when Merise was four months old, and that Merise did not recognize respondent-mother. On the one occasion when she actually visited with Merise, respondent-mother only spent half of her allotted visitation time with the child. For all of these reasons, we hold that the record contains ample support for the trial court's determination that there had been little contact between respondent-mother and the children.

¶ 19 The record also contains sufficient evidence to support the trial court's determination that respondent-mother had failed to demonstrate the ability to deal with the juveniles' "trauma-related needs and accompanying behavior[s]." Although respondent-mother testified that she was being treated for depression, she never provided any verification that tended to show the completion of a comprehensive mental health assessment or that she had been complying with any resulting treatment recommendations. In addition, a social worker and a social work supervisor both testified that respondent-mother had a limited understanding of the mental health problems from which the children suffered. According to both the social worker and the social work supervisor, respondent-mother believed that the children "just want to come home." Moreover, the social worker testified that, in light of Natasha and Nylah's special needs, both children needed a caretaker who thoroughly understood their mental health diagnoses and related treatment needs and that respondent-mother did not appear to have these attributes. Finally, a social worker testified that she had been unable to verify that respondent-mother had completed the parenting class required by her case plan. As a result, the trial court had ample justification for concluding that respondent-mother was not prepared to address the juveniles' trauma-related needs.

¶ 20 Although respondent-mother contends that the trial court failed to give proper consideration to the progress that she had made and the extent to which her circumstances had changed since her release from incarceration and that the trial court's determination that "[t]he risk [to the juveniles of] continued mental, physical, and emotion[al] impairment if [they were] in Respondent mother's custody remains" lacked sufficient record support, we are not persuaded by this argument. The trial court's orders contain numerous findings describing the components of her case plan that respondent-mother successfully completed. For example, the trial court found that respondent-mother had successfully satisfied the terms and conditions of her parole and that respondent-mother had obtained gainful employment. According to well-established North Carolina law, however, respondent-mother's compliance with a portion of her case plan "does not preclude a finding of neglect." *In re J.J.H.*, 376 N.C. 161, 184 (2020) (citing *In re D.W.P.*, 373 N.C. 327, 339–40 (2020)); *see also In re Y.Y.E.T.*, 205 N.C. App. 120, 131 (2010) (acknowledging that a "case plan is not just a check list" and that "parents must demonstrate acknowledgement and understanding of why the juvenile entered DSS custody as well as changed behaviors"). Although respondent-mother had made some progress toward satisfying the requirements of her case plan, the trial court could reasonably

determine, based upon the prior neglect that the children had experienced, respondent-mother's failure to establish stable housing that was free from substance abuse, respondent-mother's lack of contact with the juveniles, and respondent-mother's inability to meet the children's trauma-related needs, that future neglect was likely in the event that they were returned to her care, *see In re M.A.*, 374 N.C. 865, 870 (2020) (holding that, even though the respondent claimed to have made reasonable progress toward satisfying the requirements of his case plan, the trial court's findings relating to his failure to adequately address the issue of domestic violence, which had been the primary reason for the children's removal from the family home, were, "standing alone, sufficient to support a determination that there was a likelihood of future neglect"), and that respondent-mother's parental rights in the children were subject to termination on the basis of neglect. As a result, since the trial court's conclusion that a single ground for termination exists is sufficient, in and of itself, to support termination of respondent-mother's parental rights, *In re E.H.P.*, 372 N.C. at 395, and since respondent-mother has not argued that the trial court's determination that termination of her parental rights would be in the children's best interests constituted an abuse of discretion, *see* N.C.G.S. § 7B-1110(a) (2019), we affirm the trial court's orders terminating respondent-mother's parental rights in all three children.

B. Respondent-Father's Appeal

¶ 21 **[2]** Similarly, respondent-father argues that the trial court erred by concluding that his parental rights in Natasha were subject to termination. In determining that respondent-father's parental rights in Natasha were subject to termination for neglect pursuant to N.C.G.S. § 7B-1111(a)(i), the trial court made findings of fact describing the circumstances that led to Natasha's placement in DSS custody and noting that respondent-father had been incarcerated and had failed to take any action to facilitate a placement for Natasha when she entered foster care. In addition, the trial court found that:

> 41. Respondent father is incarcerated . . . [in] Huntingdon, Pennsylvania. He has a tentative release date in 2021.
>
> 42. Respondent father has not provided any tangible items for the juvenile or otherwise provided financial assistance to support the juvenile. His ability is limited by incarceration.

> 43. Respondent father did not remain in consistent contact with [DSS] while the juvenile has been in foster care.
>
> 44. Recently, contact with Respondent father has improved. He has acknowledged and expressed remorse for his inability to protect the juvenile from abuse and neglect due to multiple inappropriate caretakers.
>
> 45. Respondent father did not correspond or sen[d] letters to the juvenile until a recent letter in which he expressed how much he cared for the juvenile and to ask for forgiveness.

¶ 22 In his initial challenge to the trial court's termination order, respondent-father argues that Finding of Fact No. 42 lacks sufficient evidentiary support. After conceding that a social worker had testified that he had failed to provide any financial assistance to Natasha's caretaker, respondent-father directs our attention to the report relating to Natasha's child medical examination, in which Natasha's caretaker had stated that respondent-father was "help[ing] out materially and financially to provide for . . . [Natasha]." As we have previously noted, however, the trial court is responsible for resolving such contradictions in the record evidence. *See In re D.L.W.*, 368 N.C. at 843. As a result, we hold that Finding of Fact No. 42 has sufficient record support.

¶ 23 Secondly, respondent-father contends that Finding of Fact No. 43 conflicts with the record evidence. In support of this contention, respondent-father points to evidence that (1) he contacted the guardian ad litem on 9 November 2017 for the purpose of offering to assume responsibility for caring for Natasha and Nylah following his release from incarceration; (2) that DSS had noted in a February 2018 court report that respondent-father had signed and returned the information release and consent forms that DSS had sent to him; and (3) that respondent-father had informed DSS on 25 October 2018 that he might be released prior to his tentative release date, that he did not wish to relinquish his parental rights, that he hoped to reunify with Natasha, and that he wanted a social worker to tell Natasha that he loved and missed her.

¶ 24 Although the record clearly reflects that respondent-father had some contact with DSS, it also supports the trial court's finding that his contacts with DSS had been inconsistent. For example, the record evidence tends to show that respondent-father had not had any contact with DSS between late 2018 and the preparation of a court report in February

2020, in which DSS had stated that "[c]ontact with [respondent-father] has been inconsistent until recently when he reached out wanting to discuss his case[.]" The court report further indicated that DSS had been able to maintain contact with respondent-father in recent months and that he had expressed remorse about his inability to care for and protect Natasha when she needed his help. Although respondent-father did send Natasha a letter in which he asked for her forgiveness and made clear how much he cared for her, the letter in question had been his first contact with Natasha after her entry into DSS custody. As a result, the record adequately supports the trial court's finding concerning the inconsistency of respondent-father's contacts with DSS.[4]

¶ 25 The trial court further found that the neglect that Natasha had experienced was likely to "repeat or continue" in the event that she was returned to respondent-father's care, with the trial court having based this finding upon the evidence concerning the neglect that Natasha had previously suffered, the fact that the neglect that led to Natasha's placement in DSS custody had occurred while he was incarcerated, and the fact that Natasha had been temporarily placed in foster care while in respondent-father's custody in 2007. In addition, the trial court found that, because of his lack of regular contact with Natasha and the fact of his incarceration, respondent-father had failed to ensure that Natasha had received appropriate care and supervision. The trial court further found that respondent-father's "criminal activity and absence from the juvenile's life constitutes abandonment resulting in his inability to protect her from abuse and neglect [which] subject[ed] the juvenile to physical and emotional harm." Finally, the trial court found that respondent-father remained incarcerated, that it was "unclear whether reentry upon release will be successful[,]" and that respondent-father "does not have the present or near future ability to establish a safe home for the juvenile."

¶ 26 In respondent-father's view, the record did not contain sufficient evidence to support a finding that Natasha experienced neglect while in his care, with the only support for this assertion consisting of references contained in child protective services reports from 2007 to 2016. According to respondent-father, the statements in question constituted mere allegations and were, for the most part, directed toward conduct in which respondent-mother had engaged. A careful review of the record reflects, however, that a social worker had testified that, in 2007,

4. We also note that the trial court softened the import of Finding of Fact No. 43 in Finding of Fact No. 44 by noting the recent improvements in the level of contact between respondent-father and DSS.

Natasha had been placed in foster care as the result of concerns relating to domestic violence, drug distribution, and respondent-father's use of drugs. In light of this evidence, the trial court was entitled to infer that neglect by respondent-father had resulted in Natasha's placement in foster care in 2007. *See In re D.L.W.*, 368 N.C. at 843.[5]

¶ 27 In addition, respondent-father argues that the trial court's references to his incarceration as having resulted in neglect or abandonment rested upon a misapprehension of law given that "[i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision," *In re Yocum*, 158 N.C. App. 198, 207–08, *aff'd* 357 N.C. 568 (2003), with the trial court having erroneously predicated its determination that he had neglected Natasha upon the mere fact of his incarceration. *Id.* Although the trial court did find that respondent-father had failed to send any tangible items for Natasha's benefit or to provide her caretakers with financial assistance, it acknowledged that respondent-father's incarceration limited his ability to do so. *Cf. In re A.J.P.*, 375 N.C. 516, 530 (2020) (stating that "[a] parent's incarceration is a circumstance that the trial court must consider in determining whether the parent has made reasonable progress toward correcting those conditions which led to the removal of the juvenile" (cleaned up)). The trial court also found that, during his period of incarceration, respondent-father made no attempt to contact Natasha, with the exception of sending a single letter, and that he had had limited contact with DSS. *See In re S.D.*, 374 N.C. 67, 75–76 (2020) (stating that "incarceration does not negate a father's neglect of his child because the sacrifices which parenthood often requires are not forfeited when the parent is in custody," so that, "while incarceration may limit a parent's ability to show affection, it is not an excuse for a parent's failure to show interest in a child's welfare by whatever means available" (cleaned up)). Finally, the trial court made the unchallenged finding that, when respondent-father was not incarcerated, "he was only involved in the juvenile's life in a limited way[.]" As a result, while the trial court did refer to respondent-father's incarceration in its findings of fact, it did so only in the context of acknowledging the limitations upon his ability to take certain steps that would have helped him develop and maintain a relationship with Natasha that resulted from his

5. Even if this finding lacked sufficient evidentiary support, any such defect would not fatally undermine the trial court's order given the absence of any dispute about whether Natasha had been adjudicated to be a neglected juvenile in 2018. *See In re M.A.W.*, 370 N.C. 149, 153 (2017) (holding that a prior adjudication of neglect based on a mother's substance abuse and mental health issues was "appropriately considered" by the trial court as "relevant evidence" in proceedings to terminate the parental rights of a father who was incarcerated at the time of the prior adjudication).

incarceration rather than basing its finding of neglect solely upon the fact that he was incarcerated. As a result, after a careful examination of the record, we hold that the trial court did not err by concluding that a repetition of neglect was likely, *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 that, although respondent-father had made some recent, minimal progress in attempting to reunify with Natasha, "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" (citation omitted)), and that respondent-father's parental rights in Natasha were subject to termination for neglect pursuant to N.C.G.S. § 7B-1111(a)(1).

¶ 28 **[3]** Secondly, respondent-father contends that he received ineffective assistance of counsel at the termination hearing. In respondent-father's view, the failure of his trial counsel to ensure that he was able to attend the termination hearing on a remote basis and the fact that his trial counsel failed to present evidence, cross-examine witnesses, lodge any objections, or advance any arguments on respondent-father's behalf constituted deficient performance that prejudiced his chances for a more favorable outcome at the termination hearing. We do not find respondent-father's argument persuasive.

¶ 29 A "parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right," in a termination of parental rights proceeding. N.C.G. S. § 7B-1101.1(a) (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, 851 S.E.2d 29, 33 (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.* (cleaned up). "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.' " *Id.* (quoting *State v. Braswell*, 312 N.C. 553, 563, 324 S.E.2d 241, 248 (1985)).

¶ 30 A careful examination of respondent-father's brief clearly demonstrates that he has failed to show that he suffered any prejudice as a result of the allegedly deficient performance of his trial counsel. Simply put, nothing in the record suggests that there was anything that respondent-father's trial counsel could have done to overcome the ob-

stacles that he faced in this case arising from the undisputed evidence that respondent father had failed to make any significant effort to prevent Natasha from entering into DSS custody and had failed to take significant steps to develop and maintain a relationship with Natasha or to remain in consistent contact with DSS once Natasha had entered DSS custody. Thus, we hold that respondent-father is not entitled to relief from the trial court's termination order on the basis of ineffective assistance of counsel. As a result, given that the trial court's determination that a single ground for termination exists is sufficient, in and of itself, to support the termination of respondent-father's parental rights in Natasha, *In re E.H.P.*, 372 N.C. at 395; the fact that respondent-father has not argued that the trial court's determination that the termination of his parental rights would be in Natasha's best interests constituted an abuse of discretion; and the fact that respondent-father's challenge to the quality of the representation that he received from his trial counsel lacks merit, we affirm the trial court's order terminating respondent-father' parental rights in Natasha as well.

AFFIRMED.

IN THE MATTER OF P.M., A.M., N.M.

No. 321A20

Filed 23 April 2021

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

The termination of a father's parental rights to his three children—on the grounds of neglect and willful failure to make reasonable progress in correcting the conditions that led to the children's removal—was affirmed where the father's counsel filed a no-merit brief and the termination order was supported by clear, cogent, and convincing evidence and based on proper legal grounds.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 9 April 2020 by Judge Joseph Moody Buckner in District Court, Orange County. This matter was calendared for argument in the Supreme Court on 19 March 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 P.M.

[377 N.C. 366, 2021-NCSC-54]

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

Q Byrd Law, by Quintin D. Byrd, for appellee Guardian ad Litem.

Richard Croutharmel for respondent-appellant father.

PER CURIAM.

¶ 1 Respondent-father appeals from the trial court's orders terminating his parental rights to the minor children P.M. (Peter), A.M. (Alice), and N.M. (Nathan) (collectively "the children").[1] Counsel for respondent-father has filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We conclude the issues identified by counsel as arguably supporting the appeal are meritless, and therefore, we affirm the trial court's orders.

¶ 2 On 23 March 2018, the Orange County Department of Social Services (DSS) obtained nonsecure custody of the children and filed petitions alleging that the children were neglected and dependent juveniles. The petitions alleged that DSS "was previously involved with the family in 2013 due to concerns [of] improper care" after the parents "left the children in the care of the maternal grandmother who was unable to provide for the children's basic needs." In February 2018, DSS became involved with the family due to concerns of sexual abuse, improper care, an injurious environment, and substance abuse. Specifically, there were concerns that two of the children were sexually abused by their paternal uncle. In addition, the children's mother[2] had "a history of heroin use[,] and the children . . . witness[ed] her suffer[ ] withdrawal symptoms."

¶ 3 Further, the petitions alleged that the parents fled North Carolina with the children to avoid criminal charges but were arrested in Illinois. The children's maternal grandmother retrieved the children from Illinois and brought them back to North Carolina. Moreover, the petitions alleged that the children "disclosed a history of domestic violence" between the parents and that the children had been "exposed . . . to [respondent-parent's] illegal activities." At the time the juvenile petitions were filed, respondent-father was serving a six-year prison sentence in the State of Illinois.

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

2. The children's mother is not a party to this appeal.

¶ 4 On 9 July 2018, the trial court adjudicated the children to be neglected and dependent juveniles. Custody of the children remained with DSS. Respondent-father was ordered to complete a mental health assessment and follow recommendations, comply with random drug and alcohol screens, participate in a parenting class, maintain contact with DSS and notify DSS of any changes in circumstances within five business days, complete a substance abuse assessment and follow recommendations, obtain and maintain sufficient legal income for himself and the children, obtain and maintain sufficient housing for himself and the children, and enroll in and complete a domestic violence class or program.

¶ 5 Following a permanency-planning hearing on 21 March 2019, the trial court entered an order on 30 April 2019. The trial court found that respondent-father was due to be released from incarceration in Illinois on 1 June 2020 and that he would be subject to post-release supervision until 1 June 2023. He was enrolled in anger management classes, parenting classes, and substance abuse treatment. However, the trial court found that respondent-father's ability to complete the courses may be impacted as a result of him securing employment. While respondent-father accepted responsibility for the impact of his substance abuse on the children, he continued to deny any instance of domestic violence. The trial court changed the children's primary permanent plan to adoption with a secondary permanent plan of reunification and ordered DSS to pursue termination of parental rights.

¶ 6 On 4 September 2019, DSS filed petitions to terminate respondent-father's parental rights on the grounds of (1) neglect and (2) willfully leaving the children in foster care or placement outside of the home for more than twelve months without making reasonable progress to correct the conditions that led to their removal. *See* N.C.G.S. § 7B-1111(a)(1)–(2) (2019). Following a hearing on 5 March 2020, the trial court entered orders on 9 April 2020 concluding that grounds existed to terminate respondent-father's parental rights to the children based on both grounds alleged by DSS. The trial court further concluded that termination of respondent-father's parental rights was in the children's best interests. Accordingly, the trial court terminated respondent-father's parental rights. Respondent-father appeals.

¶ 7 Counsel for respondent-father has filed a no-merit brief on his client's behalf under Rule 3.1(e) of the Rules of Appellate Procedure. In his brief, counsel identified three issues that could arguably support an appeal but also explained why he believed these issues lacked merit. Counsel has advised respondent-father of his right to file *pro se* written arguments on

his own behalf and provided him with the documents necessary to do so. Respondent-father has not submitted written arguments to this Court.

¶ 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, 831 S.E.2d 341, 345 (2019). After conducting a review of the entire record and the issues identified by counsel in the no-merit brief, we are satisfied the trial court's 9 April 2020 orders are supported by clear, cogent, and convincing evidence and based on proper legal grounds. Accordingly, we affirm the trial court's orders terminating respondent-father's parental rights in the children.

AFFIRMED.

IN THE MATTER OF T.M.L. AND A.R.L.

No. 232A20

Filed 23 April 2021

Termination of Parental Rights—grounds for termination—failure to make reasonable progress—relevant time period—poverty exception

An order terminating a father's parental rights was affirmed where the trial court's findings of fact supported a conclusion that he willfully failed to make reasonable progress in correcting the conditions leading to his children's removal (N.C.G.S. § 7B-1111(a)(2)). The order contained sufficient findings regarding the father's lack of progress up to the date of the termination hearing (the relevant time period under the statute), and the "poverty exception" in section 7B-1111(a)(2) did not require the court to enter specific findings addressing whether poverty was the "sole reason" for the father's failure to make reasonable progress where the father presented no evidence that he was impoverished.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from orders entered on 7 February 2020 by Judge Larry Leake in District Court, Mitchell County.[1] This matter was calendared for argument in the Supreme

1. Although the termination orders indicate they were filed in Yancey County, the entirety of the record otherwise confirms Mitchell County to be their county of origin.

Court on 19 March 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Hockaday & Hockaday, P.A., by Daniel M. Hockaday, for petitioner-appellee Mitchell County Department of Social Services.

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

Wendy C. Sotolongo, Parent Defender, by Annick Lenoir-Peek, Deputy Parent Defender, for respondent-appellant father.

BERGER, Justice.

¶ 1 Respondent-father appeals from orders terminating his parental rights in the minor children "Troy" and "Ava."[2] The children's mother died during the course of the underlying juvenile proceedings and is not a party to this appeal. Based on our review of the record and respondent-father's arguments, we hold the trial court properly considered respondent-father's progress up to the time of the termination hearing before concluding that he willfully failed to make reasonable progress to correct the conditions that led to the children's removal from the home. *See* N.C.G.S. § 7B-1111(a)(2) (2019). We further hold the trial court did not err by failing to consider whether poverty was the "sole reason" for respondent-father's failure to correct the conditions which led to removal. *See id.* Accordingly, we affirm the trial court's orders.

I. Facts and Procedural History

¶ 2 Petitioner Mitchell County Department of Social Services (DSS) obtained nonsecure custody of the children on September 14, 2017, and filed juvenile petitions alleging that the children were neglected and dependent juveniles. The trial court adjudicated the children to be neglected and dependent juveniles on January 11, 2018. The trial court found that the mother and respondent-father had a history of substance abuse and domestic violence which had previously resulted in the children being removed from the home and placed in DSS custody. At the time the petitions were filed, the mother had removed the children from their DSS-approved safety placement with their maternal grandmother. When DSS later found the mother with the children at a medical clinic,

2. We use pseudonyms to protect the juveniles' privacy.

she was in a disoriented condition and had multiple syringes and empty pill bottles in her possession.

¶ 3 In its initial adjudication and disposition order entered on January 11, 2018, the trial court ordered respondent-father to develop a case plan with DSS and delayed any visitation by respondent-father with the children "pending the signing of his DSS case plan and random clean drug screens." Respondent-father did not sign his DSS case plan until July 18, 2018. The case plan required him to address issues of substance abuse, domestic violence, parenting skills, and housing and employment stability.

¶ 4 On November 20, 2019, DSS filed petitions to terminate respondent-father's parental rights in Troy and Ava on the ground that he had willfully left them in an out-of-home placement for a period of at least twelve months without making reasonable progress to correct the conditions which led to their removal on September 14, 2017. *See* N.C.G.S. § 7B-1111(a)(2). Respondent-father failed to file an answer to the TPR petitions within the period prescribed by N.C.G.S. § 7B-1107 (2019). The trial court held a hearing on the petitions on January 3, 2020, and entered orders terminating respondent-father's parental rights in the children on February 7, 2020. Respondent-father gave timely notice of appeal to this Court pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019).

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

¶ 5 Respondent-father now claims the trial court erred in adjudicating grounds for the termination of his parental rights for his willful failure to make reasonable progress under N.C.G.S. § 7B-1111(a)(2). As a general matter, we review a trial court's adjudication under N.C.G.S. § 7B-1109

> to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law, with the trial court's conclusions of law being subject to de novo review on appeal. Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights.

In re M.A., 374 N.C. 865, 869, 844 S.E.2d 916, 920 (2020) (cleaned up).

¶ 6 The statute at issue authorizes the trial court to terminate parental rights if the respondent-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). It further provides that "[n]o parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty." *Id.*

A. Respondent-father's progress as of the termination hearing date

¶ 7 Respondent-father first claims the trial court erred by "fail[ing] to consider evidence of [his] progress through the date of [the] hearing" in determining whether he had made reasonable progress in correcting the conditions which led to the children's removal from the home. "While the trial court was correct in making findings of fact about [his] lack of progress in the year prior to the filing of the petition to terminate parental rights," respondent-father contends the trial court "cannot discount the progress he made from August 2019 through the date of the hearing" on January 3, 2020.

¶ 8 "[A]n adjudication under N.C.G.S. § 7B-1111(a)(2) requires that a child be left in foster care or placement outside the home pursuant to a court order for more than a year at the time the petition to terminate parental rights is filed." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (cleaned up). However, the reasonableness of the parent's progress "is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights." *Id.* (quoting *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006)).

¶ 9 The trial court's findings of fact[3] refute respondent-father's assertion that the court failed to consider his progress up to the date of the termination hearing. Among the trial court's findings in support of its adjudication under N.C.G.S. § 7B-1111(a)(2) are the following:

> [B]y the time the respondent father signed his DSS case plan in July, 2018 his housing was inadequate for the [children] and had no running water; *the respondent father has made no progress in the [c]ourt's judgment* to remedy that problem; the respondent father testified *he could now remedy the housing problem* by either renting a home from $500–$600 per month or saving money for the

3. The trial court's orders are identical in all respects pertinent to respondent-father's arguments on appeal.

> purchase of a $60,000 home; the [c]ourt finds that approach by the *respondent father . . . does not provide any credible evidence to support he has any meaningful chance of securing suitable housing for the juvenile[s]*; as for employment, the respondent father has testified *he has worked "most of the time"* while not in prison; however, *the most recent employment he described began in November, 2019 at 35–40 hours per week* is inconsistent with his other testimony in which he acknowledged "no, I had not been employed by someone all the time"; . . . the [c]ourt finds *the respondent father has not obtained and maintained the necessary employment* as required by the DSS case plan; . . . the respondent father testified *he has participated in Triple P Parenting [classes] although he has provided no documentation* regarding the same; . . . the respondent father has testified *he has called approximately 50 times to DSS* to express his concerns about the juvenile[s] and gain information regarding the case; *the [c]ourt finds that testimony not credible; . . . that DSS workers have regularly and consistently reached out to the respondent father* to let him know about the juvenile[s]; that the respondent father's contact with . . . DSS . . . or efforts to comply with the DSS case plan *has been essentially nonexistent*; that the *respondent father continues to reside in his residence* in Cleveland County with his girlfriend; [and] the same *still has no running water* . . . .

(Emphases added.) The suggestion that the trial court failed to consider respondent-father's circumstances as of the termination hearing has no merit.

¶ 10 Respondent-father also accuses the trial court of "discrediting any progress [he] made . . . in the six months leading up to the termination hearing." Although respondent-father makes no reference to the trial court's actual discussion of the issue—whether in open court at the termination hearing or in its written order—our own review of the record confirms the trial court's mistaken view of the time period pertinent to an adjudication under N.C.G.S. § 7B-1111(a)(2).

¶ 11 After hearing the parties' evidence and closing arguments, the trial court announced as follows:

> The [c]ourt finds and accepts that it is charged by law with evaluating whether the Respondent-Father has made reasonable effort to accomplish the plan goals and to eliminate those barriers or matters which led to the children being taken into the custody of [DSS] in that 12-month time period between November 21, 2018, and November 20 of 2019, the time of the filing of this action. The [c]ourt has heard evidence, events both before . . . November 21, 2018, and after November 20, 2019, and makes findings relative to those events, only as they might shed light on the events and significance of what occurred in the year preceding the filing of the termination petition by [DSS].

¶ 12 The trial court included similar language in its written orders as part of finding of fact 10:

> [I]n evaluating whether the respondent father has made reasonable efforts to accomplish the plan goals and to eliminate the reasons the juvenile[s] came into DSS custody, the [c]ourt has focused on the barriers that led to the [children] being placed in DSS custody and that 12 month time period between 11/21/18 and 11/20/19 (when the TPR Petition[s] w[ere] filed); the [c]ourt has also heard evidence as to events, both before and after those dates, and made findings as to those events as may shed light on the events and significance [sic] in the year previous to the TPR Petition[s] being filed by Mitchell [County] DSS . . . .

By focusing on respondent-father's progress during the twelve-month period that preceded the filing of the TPR petitions, rather the entirety of his progress up to the date of the termination hearing, the trial court applied an incorrect standard in adjudicating the existence of grounds for terminating respondent-father's parental rights under N.C.G.S. § 7B-1111(a)(2). *See In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71 (requiring consideration of parent's progress "up to the hearing on the motion or petition to terminate parental rights" (quoting *In re A.C.F.*, 176 N.C. App. at 528, 626 S.E.2d at 735)).

¶ 13 Our conclusion that the trial court erred does not end our inquiry. "An appellant must not only show error; he must show that the error was prejudicial." *Rudd v. Am. Fid. & Cas. Co.*, 202 N.C. 779, 782, 164

S.E. 345, 347 (1932). Moreover, this Court has long held that "a correct decision of the lower court will not be disturbed because the court gave a wrong or insufficient reason therefor." *Temple v. Temple*, 246 N.C. 334, 336, 98 S.E.2d 314, 315 (1957).

¶ 14 The record shows the trial court mistakenly believed that N.C.G.S. § 7B-1111(a)(2) required it to assess respondent-father's progress during the twelve-month period between November 2018 and November 2019. However, the trial court also made findings of fact that account for respondent-father's progress up to the date of the termination hearing—albeit only in order to "shed light on the events and significance of what occurred in the year preceding the filing of the termination petition[s]." Regardless of the trial court's purpose in making these findings, they are sufficient to permit a determination of the existence of grounds for terminating respondent-father's parental rights under N.C.G.S. § 7B-1111(a)(2) because they reflect the totality of respondent-father's progress in correcting the conditions which led to the children's removal from the home up to the date of the termination hearing. *See In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71.

¶ 15 This Court reviews de novo the issue of whether a trial court's adjudicatory findings of fact support its conclusion of law that grounds existed to terminate parental rights pursuant to N.C.G.S. § 7B-1111(a). *In re M.A.*, 374 N.C. at 869, 844 S.E.2d at 920. "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the [trial court]." *In re C.V.D.C.*, 374 N.C. 525, 530, 843 S.E.2d 202, 205 (2020) (alteration in original) (quoting *In re Appeal of Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

¶ 16 Here, conclusion of law 3 states as follows:

> [R]espondent father has willfully left the [children] in foster care or placement outside the home for a period of more than 12 months without showing to the satisfaction of the [c]ourt that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the [children] as prescribed by [N.C.G.S. §] 7B-1111(a)(2).

¶ 17 Reviewing this issue de novo, we hold the trial court's findings of fact support a conclusion that respondent-father had willfully failed to make reasonable progress *at the time of the termination hearing* to correct the conditions which led to the children's removal from the home.

¶ 18 At the time of the January 3, 2020 hearing, respondent-father had been provided more than twenty-seven months to correct the conditions which led to the children's removal from the home. In his brief, respondent-father provides the following description of his DSS case plan signed on July 18, 2018:

> The plan required him to take parenting classes due to his limited parenting experiences. Because of [his] prior substance use, he was expected to complete a CCA (Comprehensive Clinical Assessment) and follow recommendations, as well as comply with requests for drug screens from DSS. [He] was to obtain a steady job to support himself and the children as well as housing appropriate for himself and the children. He would address any domestic violence concerns and follow recommendations from the CCA and attend the Batterers Intervention Program ("BIP").

¶ 19 As found by the trial court, respondent-father failed to comply with the domestic violence component of his case plan by completing BIP. Respondent-father acknowledged he was dismissed from BIP for non-attendance in late 2018. Although he purported to have signed up for the program a second time in mid-November 2019, he testified he had completed just one-third of the required classes and would need "[t]hree or four months" of additional regular attendance in order to complete the program.

¶ 20 Respondent-father argues that his failure to complete the BIP "matters only if he had not addressed the cause of the domestic violence concerns" arising from his history of domestic violence with the children's mother, which included a 2017 conviction for assault on a female against her. This argument has no merit. The trial court was empowered to require respondent-father to obtain treatment for domestic violence as a condition of his case plan. *See In re D.L.W.*, 368 N.C. 835, 845, 788 S.E.2d 162, 168 (2016) ("Subdivision 7B-904(d1)(3) authorizes the trial court to order that a parent '[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.' " (alteration in original) (quoting N.C.G.S. § 7B-904(d1)(3) (2015))). Moreover, respondent-father's failure to complete the services prescribed by his case plan is probative of his lack of reasonable progress. *See In re D.L.W.*, 368 N.C. at 844, 788 S.E.2d at 168 (holding "the Court of Appeals incorrectly concluded that re-

spondent's failure to comply with these [case plan] requirements could not justify the termination of her parental rights" pursuant to N.C.G.S. § 7B-1111(a)(2)).

¶ 21 Respondent-father's observation that he and the children's mother "were no longer together" at the time of the termination hearing is undoubtedly true, given the mother's death in 2017. However, the death of the children's mother did not absolve respondent-father of obtaining the treatment prescribed by his case plan to address his domestic violence history. *See generally In re J.S.*, 374 N.C. at 815–16, 845 S.E.2d at 71 (requiring only "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 order for noncompliance to support termination under N.C.G.S. § 7B-1111(a)(2) (cleaned up) (quoting *In re B.O.A.*, 372 N.C. 372, 385, 831 S.E.2d 305, 314 (2019))). Nor was respondent-father relieved of complying with his case plan by the fact that DSS offered no evidence of additional acts of domestic violence between respondent-father and his current girlfriend. *See id.*

¶ 22 The trial court also found respondent-father had "made no progress" to "obtain housing appropriate for himself and the children" as required by his case plan. The evidence showed respondent-father and his girlfriend had resided since 2018 in a 350-square-foot structure without bedrooms or plumbing—which DSS and the trial court had found to be inadequate.

¶ 23 As for stable employment, the trial court found respondent-father reported having full-time employment with a construction company since mid-November 2019, a period of less than two months at the time of the hearing. Respondent-father characterized his previous employment as "fairly steady" and involving "home improvements and side jobs." However, he acknowledged having been convicted of possession of a stolen firearm in March 2019, which resulted in the revocation of his probation for his 2017 conviction for assault on a female and five months of incarceration from March to July 2019. In addition, the trial court found he "has not obtained and maintained the necessary employment as required by the DSS case plan" because respondent-father admitted to lacking stable employment before DSS filed the petitions to terminate his parental rights and provided no documentation of his employment or income.

¶ 24 Respondent-father suggests his failure to maintain stable employment "was an important factor only if his lack of employment flowed

from or led to his substance abuse." To the contrary, as explained in his case plan, stable employment was important in order to allow respondent-father "to be able to support himself and the children."

¶ 25 Regarding the substance abuse component of his case plan, the trial court found respondent-father obtained a CCA on August 12, 2019, but did so "unbeknownst to DSS" and "after DSS was relieved" of reunification efforts. Although the DSS social worker received a copy of the CCA at the termination hearing,[4] she testified she had not previously seen the document, and respondent-father had provided no documentation indicating his compliance with the CCA's recommendations as required by his case plan. Respondent-father did not claim to have complied with the CCA's recommendations during his testimony at the termination hearing.

¶ 26 The trial court found respondent-father tested positive for marijuana at a drug screen performed on a court date in October 2018 and refused additional drug screens requested by DSS in October and November 2018, after which the trial court relieved DSS of reunification efforts. The trial court also found respondent-father refused a drug screen requested by DSS in December 2018, advising the social worker that "he did not have the financial means to comply."

¶ 27 Respondent-father does not contest these findings and in fact "stipulate[s] that he tested positive for marijuana when tested twice in court and admitted he would have tested positive a third time."[5] He instead implies that his continued drug use while the children were in DSS custody is insignificant because "he was not caring for the children at the time." Respondent-father likewise downplays his refusal to submit to DSS's drug screens, citing the fact that he was on criminal probation throughout the course of the juvenile proceedings and submitting to drug screens was a requirement of his probation. Respondent-father contends DSS presented no evidence contradicting his testimony "that his drug test results with probation were negative as supported by the fact that he was not violated for using drugs while on probation."

¶ 28 We offer no comment concerning the relevance of respondent-father's success in satisfying the requirements of his probation as proof of his progress in addressing the issue of substance abuse while simultaneous-

4. The CCA was not admitted into evidence at the termination hearing, and no witness described its contents.

5. During his testimony at the termination hearing, respondent-father admitted he attended previous court hearings while drunk.

ly stipulating to using marijuana and to submitting to multiple positive drug screens during the same period. The trial court could reasonably construe respondent-father's positive drug screens and refusal of requested screens as noncompliance with this component of his case plan. Moreover, it appears respondent-father never submitted the negative drug screens required to be allowed visitation with the children as provided in the initial adjudication and disposition order.

¶ 29 As for the parenting skills portion of his case plan, respondent-father appears to take issue with the trial court's finding that he "testified he has participated in Triple P Parenting [classes] although he has provided no documentation regarding the same." One DSS social worker acknowledged having "been given a copy of a certificate for a Triple P online parenting course with today's date" on the day of the hearing, indicating respondent-father's completion of the course. However, the transcript does not reflect that either DSS or respondent-father tendered this document to the trial court as evidence. We assume *arguendo* that, consistent with the testimony from the termination hearing, respondent-father had not completed any parenting classes at the time DSS filed its TPR petitions in November 2019 but had recently completed an online parenting course at the time of the termination hearing. Accordingly, we disregard the trial court's finding to the contrary for purposes of our review. *See In re S.D.*, 374 N.C. 67, 83, 839 S.E.2d 315, 328 (2020).

¶ 30 The trial court found that "[t]he failure of the respondent father to comply with the DSS case plan[ ] and eliminate the reasons the [children] came into DSS custody demonstrates his failure to make reasonable progress to correct the conditions leading to the removal of the [children] from his home." We have held that "parental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)" provided that "the objectives sought to be achieved by the case plan provision in question address issues that contributed to causing the problematic circumstances that led to the juvenile's removal from the parental home." *In re B.O.A.*, 372 N.C. at 384, 831 S.E.2d at 313–14.

¶ 31 Here, respondent-father's failure to meaningfully engage with the case plan objectives related to substance abuse, domestic violence, and suitable housing, despite being given more than twenty-seven months to do so, supports the trial court's conclusion that he willfully failed to make reasonable progress under N.C.G.S. § 7B-1111(a)(2). Respondent-father's claim that he had "addressed the areas of concern listed in his case plan, even if the trial court did not approve of the exact

manner or timeliness with which he did so" is not borne out by the record or by the trial court's uncontested findings.

¶ 32 Although the record shows respondent-father made some last-minute attempts to comply with the case plan by the time of the termination hearing—including completing a CCA, completing an online parenting course, obtaining full-time employment, and reenrolling in domestic violence treatment—he still had not completed domestic violence treatment or addressed his substance abuse issues, and he remained in housing unsuitable for the children. Respondent-father's partial steps—undertaken after DSS had filed petitions to terminate his parental rights and two years or more after the children's removal from the home—are insufficient to constitute reasonable progress under N.C.G.S. § 7B-1111(a)(2).[6] *See, e.g.*, *In re I.G.C.*, 373 N.C. 201, 206, 835 S.E.2d 432, 435 (2019) (affirming adjudication under N.C.G.S. § 7B-1111(a)(2) when the "respondent-mother waited too long to begin working on her case plan and that, as a result, she had not made reasonable progress toward correcting the conditions that led to the children's removal by the time of the termination hearing").

B. The poverty exception in N.C.G.S. § 7B-1111(a)(2)

¶ 33 Respondent-father also challenges the trial court's adjudication on the ground that the court "failed to consider whether poverty was a factor in his inability to complete his case plan." He bases his argument on the qualifying language that appears at the conclusion of N.C.G.S. § 7B-1111(a)(2): "No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty." N.C.G.S. § 7B-1111(a)(2) (2019).

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6. Respondent-father asserts he "was not required to have fully complied with his case plan by the time of the termination hearing" in order to meet the "reasonable progress" standard in N.C.G.S. § 7B-1111(a)(2). As a statement of general principle, this is true. *See In re B.O.A.*, 372 N.C. at 385, 831 S.E.2d at 314 (cautioning that "a trial judge should refrain from finding that a parent has failed to make reasonable progress in correcting those conditions which led to the removal of the juvenile simply because of his or her failure to fully satisfy all elements of the case plan goals" (cleaned up) (quoting *In re J.S.L.*, 177 N.C. App. 151, 163, 628 S.E.2d 387, 394 (2006))). However, the parent's progress must be "reasonable" under the circumstances, including the amount of time the parent has enjoyed to correct the conditions at issue. *See In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71 (2020) ("A respondent's prolonged inability to improve [his or] her situation, despite some efforts in that direction, will support a finding of willfulness regardless of [his or] her good intentions, and will support a finding of lack of progress sufficient to warrant termination of parental rights . . . ." (cleaned up) (quoting *In re J.W.*, 173 N.C. App. 450, 465–66, 619 S.E.2d 534, 545 (2005))).

¶ 34 However, respondent-father did not file an answer to the TPR petitions, and so he did not assert poverty or any other potential defense to the grounds for termination alleged under N.C.G.S. § 7B-1111(a)(2). *See generally* N.C.G.S. § 7B-1107 (2019) (authorizing the trial court upon a parent's failure to file a responsive pleading to "issue an order terminating all parental and custodial rights of that parent with respect to the juvenile; provided the court shall order a hearing . . . on [the facts alleged in] the petition or motion"). Nor did respondent-father raise the issue of poverty to the trial court during the termination hearing as a potential basis to avoid termination of his parental rights.

¶ 35 "Failure to raise an affirmative defense in the pleadings generally results in a waiver thereof." *Robinson v. Powell*, 348 N.C. 562, 566, 500 S.E.2d 714, 717 (1998); *see also* N.C.G.S. § 1A-1, Rule 8(c) (2019). However, we have not previously classified a parent's poverty as an affirmative defense and decline to do so here.

¶ 36 The precise nature of respondent-father's argument is unclear. A portion of his brief may be fairly read as asserting that an adjudication under N.C.G.S. § 7B-1111(a)(2) requires a finding by the trial court to the effect that poverty is not the cause of the parent's failure to correct the conditions which led to the children's removal. In fact, respondent-father "challenges the trial court's failure to make a required statutory finding." In support of this argument, respondent-father quotes the poverty exception in N.C.G.S. § 7B-1111(a)(2) and asserts that "[t]he trial court's failure to address this factor at all requires this Court to reverse the termination order[s]." Elsewhere, however, respondent-father appears to contend the trial court failed to make findings evincing that it considered the evidence in light of the statutory language barring termination of parental rights under N.C.G.S. § 7B-1111(a)(2) based solely on the parent's inability to care for the children on account of the parent's poverty.

¶ 37 To the extent respondent-father argues that N.C.G.S. § 7B-1111(a)(2) requires an affirmative finding by the trial court that poverty is not the sole reason of a parent's inability to care for a child as an element or "factor" of the adjudication, we find no merit to his argument.

¶ 38 Subsection (a)(2) begins by defining one of the eleven grounds authorized by N.C.G.S. § 7B-1111 for terminating parental rights:

> The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the

> circumstances has been made in correcting those conditions which led to the removal of the juvenile.

N.C.G.S. § 7B-1111(a)(2). It concludes with the following qualifier: "No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty." *Id.*

¶ 39 The poverty exception in N.C.G.S. § 7B-1111(a)(2) does not define the "elements" of this statutory ground for terminating parental rights. The exception instead establishes what is *not* a willful failure to make reasonable progress under the circumstances for purposes of N.C.G.S. § 7B-1111(a)(2). Therefore, to the extent respondent-father "challenges the trial court's failure to make a required statutory finding" about poverty or its effect on his ability to care for the children, his argument is overruled.

¶ 40 To the extent respondent-father instead complains that the trial court's findings fail to reflect its consideration of the poverty exception in N.C.G.S. § 7B-1111(a)(2), we conclude his argument is without merit.

¶ 41 Because the statutory poverty exception does not create an affirmative element or factor required to support an adjudication under N.C.G.S. § 7B-1111(a)(2), the trial court has no obligation to make specific findings on the issue in the absence of evidence tending to show that poverty is the sole reason for a parent's inability to care for the child.

¶ 42 A review of the transcript from the termination hearing shows respondent-father did not claim and the trial court heard no evidence that poverty was the "sole reason" respondent-father failed to correct the conditions which led to the children's removal from the home. N.C.G.S. § 7B-1111(a)(2). Respondent-father did not purport to provide an accounting of his income and expenses during the period between September 2017 and January 2020[7], nor did he testify he was financially unable to care for his children or comply with his case plan. His counsel likewise made no mention of poverty in his motion to dismiss at the conclusion of the evidence or in his closing argument to the trial court.

¶ 43 Respondent-father contends the trial court should have considered whether poverty was "*a factor*" or "*an issue* that affected [his] ability to remedy the conditions causing the children's removal" or "*may have*

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7. Respondent-father stated he was currently earning $400 to $450 per week at the job he had obtained in mid-November 2019. He described his previous employment as "fairly steady" but did not provide specific information about his earnings.

interfered with [his] ability to" do so. None of these formulations are consistent with the statutory standard. We conclude the trial court's findings accurately reflect the evidence of respondent-father's circumstances and fully support the trial court's determination that his lack of progress was willful. *Compare In re N.K.*, 375 N.C. 805, 816, 851 S.E.2d 321, 330 (2020) ("Although the record contains evidence tending to show that respondent-mother had experienced financial difficulties, a careful analysis of the record shows that respondent-mother's inability to care for [the child] did not stem solely from her poverty."), *with In re S.D.*, 243 N.C. App. 65, 73, 776 S.E.2d 862, 867 (2015) ("The only other factor which could support the trial court's conclusion [that respondent failed to make reasonable progress] was respondent's meager income, but again, poverty alone cannot be a basis for termination of parental rights.").

III. Conclusion

¶ 44 The trial court's findings of fact support its conclusion that grounds exist for the termination of respondent-father's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2). Respondent-father does not contest the trial court's conclusion under N.C.G.S. § 7B-1110(a) that termination of his parental rights was in the children's best interests. *See* N.C.G.S. § 7B-1110(a) (2019). Accordingly, we affirm the trial court's orders.

AFFIRMED.

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

Pursuant to section 7A-34 and section 7A-49.5 of the General Statutes of North Carolina, the Court hereby amends the General Rules of Practice for the Superior and District Courts. This order affects Rules 5, 5.1 (new rule), 22, and 27 (new rule).

* * *

~~Rule 5. Filing of Pleadings and Other Documents~~

~~(a) **Electronic Filing.** Electronic filing is available only in (i) cases that are either designated "complex business" or assigned to a Business Court judge under Rule 2.1 of these rules and (ii) cases subject to the North Carolina eFiling Pilot Project. The procedure for filing documents electronically in those cases is governed by the North Carolina Business Court Rules and by the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project, respectively. In all other cases, only paper filing is available.~~

~~(b) **Paper Filing.** Documents filed with the court in paper should be unfolded and firmly bound with no manuscript cover. They must be letter size (8 ½" x 11"), except for wills and exhibits. The clerk of superior court may require a party to refile a document that does not conform to these requirements.~~

~~In civil actions, special proceedings, and estates, documents filed with the court in paper must include a cover sheet that summarizes the critical elements of the document in a format that the Administrative Office of the Courts prescribes. The clerk of superior court may not reject the filing of a document that does not include a cover sheet. Instead, the clerk must file the document, notify the party of the omission, and grant the party no more than five days to file the cover sheet. Other than dismissing the case, the court should not act on the document before the cover sheet is filed.~~

~~Comment~~

~~The North Carolina Judicial Branch will implement a statewide electronic-filing and case management system beginning in 2021. The system will be made available across the state in phases over a five-year period.~~

~~Subsection (a) of Rule 5 of the General Rules of Practice lists those contexts in which electronic filing already exists and serves as a placeholder until the new electronic-filing and case-management system is available. As the new system is implemented, litigants should expect the General Rules of Practice, the North Carolina Business Court Rules, and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project to undergo change.~~

Rule 5. Filing of Pleadings and Other Documents in Counties with *Odyssey*

(a) **Scope.** This rule applies only in those counties that have implemented Odyssey, the Judicial Branch's new electronic-filing and case-management system. The Administrative Office of the Courts maintains a list of the counties with *Odyssey* at https://www.nccourts.gov/ecourts. In a county without *Odyssey*, a person must proceed under Rule 5.1 of these rules.

(b) **Electronic Filing in *Odyssey*.**

(1) **Registration.** A person must register for a user account to file documents electronically. The Administrative Office of the Courts must ensure that the registration process includes security procedures consistent with N.C.G.S. § 7A-49.5(b1).

(2) **Requirement.** An attorney must file pleadings and other documents electronically. A person who is not represented by an attorney is encouraged to file pleadings and other documents electronically but is not required to do so.

(3) **Signing a Document Electronically.** A person may sign a document electronically by typing his or her name in the document preceded by "/s/."

(4) **Time**.

a. **When Filed.** A document is filed when it is received by the court's electronic-filing system, as evidenced by the file stamp on the face of the document.

b. **Deadline.** If a document is due on a date certain, then the document must be filed by 5:00 p.m. Eastern Time on that date.

(5) **Relief if Emergency Prevents Timely Filing.** If an *Odyssey* service outage, natural disaster, or other emergency prevents an attorney from filing a document in a timely manner by use of the electronic-filing system, then the attorney may file a motion that asks the court for any relief that is permitted by law.

(6) **Orders, Judgments, Decrees, and Court Communications.** The court may sign an order, judgment, decree, or other document electronically and may file a document electronically. The court may also send notices

and other communications to a person by use of the electronic-filing system.

(c) **Paper Filing.** Documents filed in paper with the court should be unfolded and firmly bound with no manuscript cover. They must be letter size (8 ½" x 11"), except for wills and exhibits. The clerk of superior court may require a party to refile a document that does not conform to these requirements.

In civil actions, special proceedings, and estates, documents filed in paper with the court must include a cover sheet that summarizes the critical elements of the document in a format that the Administrative Office of the Courts prescribes. The clerk of superior court may not reject the filing of a document that does not include a cover sheet. Instead, the clerk must file the document, notify the party of the omission, and grant the party no more than five days to file the cover sheet. Other than dismissing the case, the court should not act on the document before the cover sheet is filed.

(d) **Service**. Service of pleadings and other documents must be made as provided by the General Statutes. A Notification of Service generated by the court's electronic-filing system is an "automated certificate of service" under Rule 5(b1) of the Rules of Civil Procedure.

(e) **Private Information**. A person should omit or redact nonpublic and unneeded sensitive information in a document before filing it with the court.

(f) **Business Court Cases**. The filing of documents with the North Carolina Business Court is governed by the North Carolina Business Court Rules. This rule defines how a person must file a document "with the Clerk of Superior Court in the county of venue" under Rule 3.11 of the North Carolina Business Court Rules in counties with *Odyssey*.

Comment

The North Carolina Judicial Branch will implement *Odyssey*, a statewide electronic-filing and case management system, beginning in July 2021. The system will be made available across the state in phases over a five-year period.

Rule 5 of the General Rules of Practice defines filing in those counties with *Odyssey*. Rule 5.1 defines filing in those counties without *Odyssey*.

Subsection (b)(2) of Rule 5 requires an attorney to file pleadings and other documents electronically. An attorney who seeks relief from this filing requirement for a particular document should be prepared to show the existence of an exceptional circumstance. In an exceptional circumstance, the attorney should exercise due diligence to file the document electronically before the attorney asks the court for relief.

Subsection (b)(5) of Rule 5 describes the process of asking the court for relief if an emergency prevents an attorney from filing a document electronically in a timely manner. Subsection (b)(5) should not be construed to expand the court's authority to extend time or periods of limitation. The court will provide relief only as permitted by law.

The North Carolina Business Court currently accepts filings through *eFlex*, a legacy electronic filing and case-management system. Until *Odyssey* is implemented both in the Business Court and in the county of venue, duplicate filings in Business Court cases will still be required (see Rule 3.11 of the North Carolina Business Court Rules). Subsection (f) of Rule 5 of the General Rules of Practice clarifies that in Business Court cases, Rule 5 governs filings "with the Clerk of Superior Court in the county of venue."

As *Odyssey* is implemented, litigants should expect the General Rules of Practice, the North Carolina Business Court Rules, and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project to undergo change.

* * *

Rule 5.1. Filing of Pleadings and Other Documents in Counties Without *Odyssey*

(a) **Scope**. This rule applies only in those counties that have not yet implemented *Odyssey*, the Judicial Branch's new electronic-filing and case management system. In a county with *Odyssey*, a person must proceed under Rule 5 of these rules.

(b) **Electronic Filing**. Electronic filing is available only in (i) cases that are either designated "complex business" or assigned to a Business Court judge under Rule 2.1 of these rules and (ii) cases subject to the legacy North Carolina eFiling Pilot Project. The procedure for filing documents electronically in those cases is governed by the North Carolina Business Court Rules and by the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project, respectively. In all other cases, only paper filing is available.

(c) **Paper Filing**. Documents filed in paper with the court should be unfolded and firmly bound with no manuscript cover. They must be letter size (8 ½" x 11"), except for wills and exhibits. The clerk of superior court may require a party to refile a document that does not conform to these requirements.

In civil actions, special proceedings, and estates, documents filed in paper with the court must include a cover sheet that summarizes the critical elements of the document in a format that the Administrative Office of the Courts prescribes. The clerk of superior court may not reject the filing of a document that does not include a cover sheet. Instead, the clerk must file the document, notify the party of the omission, and grant

the party no more than five days to file the cover sheet. Other than dismissing the case, the court should not act on the document before the cover sheet is filed.

Comment

The North Carolina Judicial Branch will implement *Odyssey*, a statewide electronic-filing and case management system, beginning in July 2021. The system will be made available across the state in phases over a five-year period.

Rule 5 of the General Rules of Practice defines filing in those counties with *Odyssey*. Rule 5.1 defines filing in those counties without *Odyssey*.

Subsection (b) of Rule 5.1 lists those contexts in which electronic filing exists in the counties without *Odyssey*.

As *Odyssey* is implemented, litigants should expect the General Rules of Practice, the North Carolina Business Court Rules, and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project to undergo change.

* * *

~~**Rule 22. Local Court Rules**~~

~~In order to insure general uniformity throughout each respective judicial district, all trial judges shall observe and enforce the local rules in effect in any judicial district where they are assigned to hold court. The senior resident judge shall see that each judge *assigned to hold a session of court in his district* is furnished with a copy of the local court rules at or before the commencement of his assignment.~~

Rule 22. Local Rules of Practice and Procedure

(a) **Purpose**. Local rules of practice and procedure for a judicial district must be supplementary to, and not inconsistent with, the General Rules of Practice. Local rules should be succinct and not unnecessarily duplicative of statutes or Supreme Court rules.

(b) **Enforcement**. A trial judge must enforce the local rules of the judicial district in which the trial judge is assigned to hold court. This enforcement provision does not apply to cases that are either designated "complex business" or assigned to a Business Court judge under Rule 2.1 of these rules.

* * *

Rule 27. Sealed Documents and Protective Orders

(a) **General Principles.**

(1) **"Persons" Defined**. References to "persons" in this rule include parties and nonparties who are interested in the confidentiality of a document.

(2) **"Provisionally Under Seal" Defined**. A document is "provisionally under seal" if it is filed electronically with a confidential designation in the electronic-filing system or if it is filed in paper inside of a sealed envelope or container marked "Contains Confidential Information – Provisionally Under Seal."

(3) **Open Courts**. A person who appears before the court should strive to file documents that are open to public inspection and should file a motion to seal a document only if necessary.

(4) **Scope**. This rule does not apply to documents that are closed to public inspection by operation of statute or other legal authority, nor does it apply to search warrants and other criminal investigatory documents. This rule does not affect a person's responsibility to omit or redact private information from court documents pursuant to statute or other legal authority.

(b) **Procedure for Sealing a Document**.

(1) **Filing**. A person who seeks to have a document (or part of a document) sealed by the court must file the document provisionally under seal and file a motion that asks the court to seal the document. The document must be filed on the same day as the motion.

(2) **Motion**. The motion to seal must contain:

a. a nonconfidential description of the document the movant is asking to be sealed;

b. the circumstances that warrant sealing the document;

c. an explanation of why no reasonable alternative to sealing the document exists;

d. a statement that specifies whether the document should be accessible only to counsel of record (as opposed to the parties);

e. a statement that specifies how long the document should be sealed and how the document should be handled upon unsealing;

f. a statement, if applicable, that (i) the movant is filing the document provisionally under seal because another person has designated the document as confidential and the terms of a protective order require

the movant to file the document provisionally under seal and (ii) the movant has unsuccessfully sought the consent of the other person to file the document unsealed; and

g. a statement, if applicable, that a nonparty who designated the document as confidential under the terms of a protective order has been served with a copy of the motion and notified of the right to file a brief in support of the motion.

(3) **Briefing**. A person may file a brief in support of or in opposition to the motion no later than twenty days after having been served with the motion.

(4) **Hearing**. The movant must notice a hearing on the motion as soon as practicable after the briefing period ends.

(5) **Disclosure Pending Decision**. Until the court rules on the motion, a document that is provisionally under seal may be disclosed only to counsel of record and unrepresented parties unless otherwise ordered by the court or agreed to by the parties.

(6) **Decision by Court**. The court may rule on the motion with or without a hearing. In the absence of a motion or brief that justifies sealing the document, the court may order that the document (or part of the document) be made public.

(7) **Public Version of Document**. If the movant seeks to have only part of a document sealed by the court, then the movant must file a public version of the document no later than ten days after filing the document provisionally under seal. The public version of the document may include redactions and omissions, but the redactions and omissions should be as limited as practicable. If the movant seeks to have the entire document sealed, then the movant must file a notice that the entire document has been filed provisionally under seal instead of filing a public version of the document. The notice must contain a nonconfidential description of the document.

(c) **Protective Orders**. The procedure for sealing a document in subsection (b) of this rule should not be construed to change any requirement or standard that governs the issuance of a protective order. The court may therefore enter a protective order that contains standards

and processes for the handling, filing, and service of a confidential document. To the extent that a proposed protective order outlines a procedure for sealing a confidential document, the proposed protective order should include (or incorporate by reference) the procedures described in subsection (b) of this rule. Persons are encouraged to agree on terms for a proposed protective order before submitting it to the court.

* * *

These amendments to the General Rules of Practice for the Superior and District Courts become effective on 10 May 2021.

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

Ordered by the Court in Conference, this the 21st day of April 2021.

For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 21st day of April 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ORDER AMENDING THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE NORTH CAROLINA eFILING PILOT PROJECT

Pursuant to section 7A-34 and section 7A-49.5 of the General Statutes of North Carolina, the Court hereby amends the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project. This order affects Rules 1 and 5.

* * *

~~**Rule 1. Purpose and Scope**~~

~~**1.1. Citation to Rules.** These rules shall be known as the "Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project," and may be cited as the "eFiling Rules." A particular rule may be cited as "eFiling Rule ___."~~

~~**1.2. Authority and Effective Date.** The eFiling Rules are promulgated by the Supreme Court of North Carolina pursuant to G.S. 7A-49.5. They are effective as of May 15, 2009, and as amended from time to time.~~

~~**1.3. Scope and Purpose.** The eFiling Rules apply to civil superior court cases and to foreclosures under power of sale filed on or after the effective date in Chowan and Davidson Counties. Upon addition of Wake County to the pilot project by the North Carolina Administrative Office of the Courts (the "AOC"), these rules shall apply to civil superior court cases and to foreclosures under power of sale filed in Wake County on or after the effective date of the implementation of the pilot project in Wake County, and the public announcement thereof by AOC. In addition, these rules apply to any designated case types and in any counties upon the implementation of the eFiling project in any other counties and the public announcement thereof by the AOC. In general, these rules initially allow, but do not mandate, electronic filing by North Carolina licensed attorneys and court officials of pleadings and other documents required to be filed with the court by the North Carolina Rules of Civil Procedure ("Rules of Civil Procedure"), or otherwise under North Carolina law, and permit electronic notification of the electronic filing of documents between attorneys. Initially, they do not permit electronic filing by pro se parties or attorneys not licensed by the State of North Carolina, and they do not permit electronic filing of documents in cases not initially filed electronically. Upon the addition of Alamance County or other counties to the pilot project by the AOC, the electronic filing of civil domestic violence cases by *pro se* parties, acting through domestic violence center personnel approved by the Chief District Court Judge, shall be permitted upon the implementation of the eFiling project in any such counties and the public announcement thereof by AOC.~~

~~**1.4. Integration with Other Rules.** These rules supplement the Rules of Civil Procedure and the General Rules of Practice for Superior and District Courts (the "General Rules"). The filing and service of documents in accordance with the eFiling Rules is deemed to comply with the Rules of Civil Procedure and the General Rules. If a conflict exists between the eFiling Rules and the Rules of Civil Procedure or the General Rules, the eFiling Rules shall control.~~

Rule 1. Purpose and Scope

1.1. Purpose. These rules define practice and procedure for the legacy North Carolina eFiling Pilot Project, which will phase out beginning in July 2021.

1.2. Scope. These rules apply only in those counties that (i) have not yet implemented *Odyssey*, the Judicial Branch's new electronic-filing and case management system, and (ii) still participate in the legacy North Carolina eFiling Pilot Project. The Administrative Office of the Courts maintains a list of those counties and case types to which these rules apply at https://www.efiling.nccourts.org/.

Comment

The North Carolina Judicial Branch will implement *Odyssey*, a statewide electronic-filing and case management system, beginning in July 2021. The system will be made available across the state in phases over a five-year period.

Counties that currently have access to *eFlex*, a legacy electronic-filing and case-management system, through the North Carolina eFiling Pilot Project will continue to have access to that legacy system until it is replaced by *Odyssey*.

As *Odyssey* is implemented, litigants should expect the General Rules of Practice, the North Carolina Business Court Rules, and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project to undergo change.

* * *

Rule 5. Electronic Filing and Service

5.1. Permissive Electronic Filing. Pending implementation of revised rules by the North Carolina Supreme Court, electronic filing is permitted only to commence a proceeding or in a proceeding that was commenced electronically. Electronic filing is not required to commence a proceeding. Subsequent filings made in a proceeding commenced electronically may be electronic or non-electronic at the option of the filer.

5.2. Exceptions to Electronic Delivery. Pleadings required to be served under Rule 4 and subpoenas issued pursuant to Rule 45 of the

Rules of Civil Procedure must be served as provided in those rules and not by use of the electronic filing and service system. Unless otherwise provided in a case management order or by stipulation, filing by or service upon a *pro se* party is governed by eFiling Rule 5.3.

5.3. *Pro se* Parties. ~~Except as otherwise permitted in these Rules, a party not represented by counsel shall file, serve and receive documents pursuant to the Rules of Civil Procedure and the General Rules~~. A party not represented by counsel may file electronically in civil domestic violence cases through domestic violence center personnel who have been issued an electronic identity. Service upon a party not represented by counsel may not be made by use of the electronic filing and service system.

5.4. Format. Documents must be filed in PDF or TIFF format, or in some other format approved by the court, in black and white only, unless color is required to protect the evidentiary value of the document, and scanned at 300 dots per inch resolution.

5.5. Cover Sheet Not Required. Completion of the case initiation requirements of the electronic filing and service system, if it contains all the required fields and critical elements of the filing, shall constitute compliance with the General Rules ~~as well as G.S. 7A-34.1~~, and no separate AOC cover sheet is required.

5.6. Payment of Filing Fees. Payment of any applicable filing and convenience fees must be done at the time of filing through the electronic payment component of the electronic filing and service system. Payments shall not include service of process fees or any other fees payable to any entity other than the clerk of superior court.

5.7. Effectiveness of Filing. Transmission of a document to the electronic filing system in accordance with the eFiling Rules, together with the receipt by the eFiler of the automatically generated notice showing electronic receipt of the submission by the court, constitutes filing under the North Carolina General Statutes, the Rules of Civil Procedure, and the General Rules. An electronic filing is not deemed to be received by the court without receipt by the eFiler of such notice. If, upon review by the staff of the clerk of superior court, it appears that the filing is inaccessible or unreadable, or that prior approval is required for the filing under G.S. 1-110, or for any other authorized reason, the clerk's office shall send an electronic notice thereof to the eFiler. Upon review and acceptance of a completed filing, personnel in the clerk's office shall send an electronic notice thereof to the eFiler. If the filing is of a case initiating pleading, personnel in the clerk's office shall assign a case number to the filing and include that case number in said notice.

As soon as reasonably possible thereafter, the clerk's office shall index or enter the relevant information into the court's civil case processing system (VCAP).

5.8. Certificate of Service. Pending implementation of the court's document management system, and the integration of the electronic filing and service system with the court's civil case processing system, a notice to the eFiler showing electronic receipt by the court of a filing does not constitute proof of service of a document upon any party. A certificate of service must be included with all documents, including those filed electronically, indicating thereon that service was or will be accomplished for applicable parties and indicating how service was or will be accomplished as to those parties.

5.9. Procedure When No Receipt Is Received. If a receipt with the status of "Received" is not received by the eFiler, the eFiler should assume the filing has not occurred. In that case, the eFiler shall make a paper filing with the clerk and serve the document on all other parties by the most reasonably expedient method of transmission available to the eFiler, except that pleadings required to be served under Rule 4 and subpoenas issued pursuant to Rule 45 of the Rules of Civil Procedure must be served as provided in those rules.

5.10. Retransmission of Filed Document. After implementation of the court's document management system, if, after filing a document electronically, a party discovers that the version of the document available for viewing through the electronic filing and service system is incomplete, illegible, or otherwise does not conform to the document as transmitted when filed, the party shall notify the clerk immediately and, if necessary, transmit an amended document, together with an affidavit explaining the necessity for the transmission.

5.11. Determination of Filing Date and Time. Documents may be electronically filed 24 hours a day, except when the system is down for maintenance, file saves or other causes. For the purpose of determining the timeliness of a filing received pursuant to Rule 5.7, the filing is deemed to have occurred at the date and time recorded on the receipt showing a status of "Received."

5.12. Issuance of Summons. At case initiation, the eFiler shall include in the filing one or more summons to be issued by the clerk. Upon the electronic filing of a counterclaim, crossclaim, or third-party complaint, the eFiler may include in the filing one or more summons to be issued by the clerk. Pursuant to Rule 4 of the Rules of Civil Procedure, the clerk shall sign and issue those summons and scan them into the electronic filing and service system. In civil domestic violence

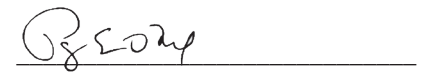
cases, magistrates are authorized to sign and issue summons electronically or in paper form. The eFiler shall print copies of the filed pleading and summons to be used for service of process. Copies of documents to be served, any summons, and all fees associated with service shall be delivered by the eFiler to the process server. Copies of civil domestic violence summons, complaints, orders, and other case documents may be transmitted by the magistrate or clerk to the sheriff electronically or in paper form for service of printed copies thereof. Documents filed subsequent to the initial pleading shall contain a certificate of service as provided in Rule 5.8. Returns of service by sheriff's personnel of civil domestic violence summons, complaints, orders, and other case documents may be transmitted to and filed with the clerk of superior court via the electronic filing system or in paper form.

* * *

These amendments to the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project become effective on 10 May 2021.

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

Ordered by the Court in Conference, this the 21st day of April 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 21st day of April 2021.

AMY L. FUNDERBURK
Clerk of the Supreme Court

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on October 23, 2020.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 1C, Section .0200, *Rules Governing the Practical Training of Law Students*, be amended as shown on following attachments:

ATTACHMENT A-1: 27 N.C.A.C. 1C, Section .0200, Rule .0201, *Purpose*

ATTACHMENT A-2: 27 N.C.A.C. 1C, Section .0200, Rule .0202, *Definitions*

ATTACHMENT A-3: 27 N.C.A.C. 1C, Section .0200, Rule .0203, *Eligibility*

ATTACHMENT A-4: 27 N.C.A.C. 1C, Section .0200, Rule .0204, *Form and Duration of Certification*

ATTACHMENT A-5: 27 N.C.A.C. 1C, Section .0200, Rule .0205, *Supervision*

ATTACHMENT A-6: 27 N.C.A.C. 1C, Section .0200, Rule .0206, *Activities*

ATTACHMENT A-7: 27 N.C.A.C. 1C, Section .0200, Rule .0207, *Use of Student's Name*

ATTACHMENT A-8: 27 N.C.A.C. 1C, Section .0200, Rule .0208, *Student Practice Placements*

ATTACHMENT A-9: 27 N.C.A.C. 1C, Section .0200, Rule .0209, *Relationship of Law School and Clinics; Responsibility Upon Departure of Supervising Attorney or Closure of Clinic*

ATTACHMENT A-10: 27 N.C.A.C. 1C, Section .0200, Rule .0210, *Pro Bono Activities*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the amendments to the Rules and Regulations of the North Carolina State Bar, as shown on Attachment A, were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on October 23, 2020.

Given over my hand and the Seal of the North Carolina State Bar, this the 11th day of February, 2021.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same are not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 21st day of April, 2021.

s/Paul Newby
Paul M. Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendments shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 21st day of April, 2021.

s/Berger, J.
For the Court

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0201 PURPOSE

The rules in this subchapter are adopted for the following purposes: to support the development of ~~clinical~~ experiential legal education programs at North Carolina's law schools in order that the law schools may provide their students with supervised practical training of varying kinds during the period of their formal legal education; to enable law students to obtain supervised practical training while serving as ~~legal interns~~ certified law students for government agencies; and to assist law schools in providing substantial opportunities for student participation and experiential education in *pro bono* service.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Effective December 8, 1994;
Amendments Approved by the Supreme Court:
June 7, 2001; March 6, 2008; September 25, 2019;
April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0202 DEFINITIONS

The following definitions shall apply to the terms used in this section:

(a) Clinical legal education program ~~—~~ Experiential educational program that engages students in "real world" legal matters through supervised practice experience. Under the supervision of a faculty member or site supervisor who is accountable to the law school, students assume the role of a lawyer either as a protégé, lead counsel, or a member of a lawyer team.

. . .

~~(c) Field placement – Practical training opportunities within a law school's clinical legal education program that place students in legal practice settings external to the law school. Students in a field placement represent clients or perform other lawyering roles under the supervision of practicing lawyers or other qualified legal professionals. Faculty have overall responsibility for assuring the educational value of the learning in the field. Supervising attorneys provide direct feedback and guidance to the students. Site supervisors have administrative responsibility for the legal intern program at the field placement. Such practical training opportunities may be referred to as "externships."~~

(c) Certified law student - A law student who is certified to work in conjunction with a supervising attorney to provide legal services to clients under the provisions of this subchapter.

(d) Government agencies - The federal or state government, any local government, or any agency, department, unit, or other entity of federal, state, or local government, specifically including a public ~~defenders~~ defender's office or a district attorney's office.

. . .

~~(g) Legal intern - A law student who is certified to provide supervised representation to clients under the provisions of the rules of this subchapter.~~

~~(h~~(g) Legal services organization - A nonprofit North Carolina organization organized to operate in accordance with N.C. Gen. Stat. § 84-5.1.

(~~i~~h) Pro bono activity —~~.~~ An opportunity while in law school for students to provide legal services to those unable to pay, or otherwise under a disability or disadvantage, consistent with the objectives of Rule 6.1 of the Rules of Professional Conduct.

(~~j~~i) Rules of Professional Conduct —~~.~~ The Rules of Professional Conduct adopted by the Council of the North Carolina State Bar, approved by the North Carolina Supreme Court, and in effect at the time of application of the rules in this subchapter.

(~~k~~j) Site supervisor —~~.~~ The attorney at a ~~field~~student practice placement who assumes administrative responsibility for the ~~legal intern~~certified law student program at the ~~field~~ placement and provides the ~~notices~~ statements to the State Bar and the certified law student's law school required by Rule .0205(b) of this subchapter. A site supervisor may also be a supervising attorney at a ~~field~~student practice placement.

(1) Externship - A course within a law school's clinical legal education program in which the law school places the student in a legal practice setting external to the law school. An externship may include placement at a government agency.

(2) Government internship - A practical training opportunity in which the student is placed in a government agency and no law school credit is earned. A government internship may be facilitated by the student's law school or obtained by the student independently.

(3) Internship - A practical training opportunity in which the student is placed in a legal practice setting external to the law school and no law school credit is earned. An internship may be facilitated by the student's law school or obtained by the student independently.

(k) Supervising attorney - An active member of the North Carolina State Bar, or an attorney who is licensed in another jurisdiction as appropriate for the legal work to be undertaken, who has practiced law as a full-time occupation for at least two years, and who supervises one or more ~~legal interns~~certified law students pursuant to the requirements of the rules in this subchapter.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court:
June 7, 2001; March 6, 2002; March 6, 2008;
September 25, 2019; April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0203 ELIGIBILITY

To engage in activities permitted by these rules, a law student must satisfy the following requirements:

. . .

(b) be certified in writing by a representative of his or her law school, authorized by the dean of the law school to provide such certification, as being of good character with requisite legal ability and legal education to perform as a ~~legal intern~~ certified law student, which education shall include satisfaction of the prerequisites for participation in the clinic, externship, or ~~field~~ other student practice placement;

. . .

(e) ~~certify~~ attest in writing that he or she has read the North Carolina Rules of Professional Conduct and is familiar with the opinions interpretive thereof.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court:
June 7, 2001; March 6, 2008; September 25, 2019;
April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0204 FORM AND DURATION OF CERTIFICATION

Upon receipt of the written materials required by Rule .0203(b) and (e) and Rule .0205(b), the North Carolina State Bar shall certify that the law student may serve as a ~~legal intern.~~certified law student. The certification shall be subject to the following limitations:

(a) Duration. The certification shall be effective for 18 consecutive months or until the announcement of the results of the first bar examination following the ~~legal intern's~~certified law student's graduation whichever is earlier. If the ~~legal intern~~certified law student passes the bar examination, the certification shall remain in effect until the ~~legal intern~~certified law student is sworn-in by a court and admitted to the bar. For the duration of the certification, the certification shall be transferrable from one student practice placement or law school clinic to another student practice placement or law school clinic, provided that (i) all student practice placements are approved by the law school prior to the certified law student's graduation, and (ii) the supervision and filing requirements in Rule .0205 of this subchapter are at all times satisfied.

(b) Withdrawal of Certification. The certification shall be withdrawn by the State Bar, without hearing or a showing of cause, upon receipt of

(1) notice from a representative of the ~~legal intern's~~certified law student's law school, authorized to act by the dean of the law school, that the ~~legal intern~~student has not graduated but is no longer enrolled;

(2) notice from a representative of the ~~legal intern's~~certified law student's law school, authorized to act by the dean of the law school, that the ~~legal intern~~student is no longer in good standing at the law school;

(3) notice from a supervising attorney that the supervising attorney is no longer supervising the ~~legal intern~~certified law student and that no other qualified attorney has assumed the supervision of the ~~legal intern~~student; or

(4) notice from a judge before whom the ~~legal intern~~certified law student has appeared that the certification should be withdrawn.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; September 25, 2019; April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0205 SUPERVISION

(a) Supervision Requirements. A supervising attorney shall:

(1) for a law school clinic, concurrently supervise an unlimited number of ~~legal interns~~certified law students if the supervising attorney is a full-time, part-time, or adjunct member of a law school's faculty or staff whose primary responsibility is supervising ~~legal interns~~certified law students in a law school clinic and, further provided, the number of ~~legal interns~~certified law students concurrently supervised is not so large as to compromise the effective and beneficial practical training of the ~~legal interns~~certified law students or the competent representation of clients;

(2) for a ~~field~~student practice placement, concurrently supervise no more than two ~~legal interns~~certified law students; however, a greater number of ~~legal interns~~certified law students may be concurrently supervised by a single supervising attorney if ~~the~~(i) an appropriate faculty ~~supervisor~~member of each certified law student's law school determines, in his or her reasoned discretion, that the effective and beneficial practical training of the ~~legal interns and~~certified law students will not be compromised, and (ii) the supervising attorney determines that the competent representation of clients will not be compromised;

(3) assume personal and professional responsibility for any work undertaken by a ~~legal intern~~certified law student while under his or her supervision;

(4) assist and counsel with a ~~legal intern~~certified law student in the activities permitted by these rules and review such activities with the ~~legal intern~~certified law student, all to the extent required for the proper practical training of the ~~legal intern~~ student and the competent representation of the client; ~~and~~

(5) read, approve, and personally sign any pleadings or other papers prepared by a ~~legal intern~~certified law student prior to the filing thereof, and read and approve any documents prepared by a ~~legal intern~~certified law student for execution by a client or third party prior to the execution thereof.~~;~~ and

(6) for externships and internships (other than placements at government agencies), ensure that any activities by the certified law student that are authorized by Rule .0206 are limited to representations of eligible persons.

(b) Filing Requirements.

(1) Prior to commencing supervision, a supervising attorney in a law school clinic shall provide a signed statement to the North Carolina State Bar (i) assuming responsibility for the supervision of identified ~~legal interns~~certified law students, (ii) stating the period during which the supervising attorney expects to supervise the activities of the identified ~~legal interns~~certified law students, and (iii) certifying that the supervising attorney will adequately supervise the ~~legal interns~~certified law students in accordance with these rules.

(2) Prior to the commencement of a ~~field~~student practice placement for a ~~legal intern(s),~~certified law student, the site supervisor shall provide a signed statement to the North Carolina State Bar and to the certified law student's law school (i) assuming responsibility for the administration of the ~~field~~ placement in compliance with these rules, (ii) identifying the participating ~~legal intern(s)~~certified law student and stating the period during which the ~~legal intern(s)~~certified law student is expected to participate in the program at the ~~field~~ placement, (iii) identifying the supervising attorney~~(s)~~ at the ~~field~~ placement, and (iv) certifying that the supervising attorney~~(s)~~ will adequately supervise the ~~legal intern(s)~~certified law student in accordance with these rules.

(3) A supervising attorney in a law school clinic and a site supervisor for a ~~legal intern~~certified law student program at a ~~field~~ student practice placement shall notify the North Carolina State Bar in writing promptly whenever the supervision of a ~~legal intern~~certified law student concludes prior to the designated period of supervision.

(c) Responsibilities of Law School Clinic in Absence of ~~Legal Intern.~~ Certified Law Student. During any period when a ~~legal intern~~certified law student is not available to provide representation due to law school seasonal breaks, graduation, or other reason, the supervising attorney shall maintain the status quo of a client matter and shall take action as necessary to protect the interests of the client until the ~~legal intern~~certified law student is available or a new ~~legal intern~~certified law student is assigned to the matter. During law school seasonal breaks, or other periods when a ~~legal intern~~certified law student is not available, if a

law school clinic or a supervising attorney is presented with an inquiry from an eligible person or a legal matter that may be appropriate for representation by a ~~legal intern~~certified law student, the representation may be undertaken by a supervising attorney to preserve the matter for subsequent representation by a ~~legal intern.~~certified law student. Communications by a supervising attorney with a prospective client to determine whether the prospective client is eligible for clinic representation may include providing immediate legal advice or information even if it is subsequently determined that the matter is not appropriate for clinic representation.

(d) Independent Legal Practice. Nothing in these rules prohibits a supervising attorney in a law school clinic from providing legal services to third parties outside of the scope of the supervising attorney's employment by the law school operating the law school clinic.

History Note: *Authority G.S. 84-7.1; 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2002; March 6, 2008; September 24, 2015; September 25, 2019; April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0206 ACTIVITIES

(a) A properly certified ~~legal intern~~ law student may engage in the activities provided in this rule under the supervision of an attorney qualified and acting in accordance with the provisions of Rule .0205 of this subchapter.

(b) Without the presence of the supervising attorney, a ~~legal intern~~ certified law student may give advice to a client, including a government agency, on legal matters provided that the ~~legal intern~~certified law student gives a clear prior explanation that the ~~legal intern~~certified law student is not an attorney and the supervising attorney has given the ~~legal intern~~certified law student permission to render legal advice in the subject area involved.

(c) A ~~legal intern~~certified law student may represent an eligible person, the state in criminal prosecutions, a criminal defendant who is represented by the public defender, or a government agency in any proceeding before a federal, state, or local tribunal, including an administrative agency, if prior consent is obtained from the tribunal or agency upon application of the supervising attorney. Each appearance before the tribunal or agency shall be subject to any limitations imposed by the tribunal or agency including, but not limited to, the requirement that the supervising attorney physically accompany the ~~legal intern~~certified law student.

(d) In all cases under this rule in which a ~~legal intern~~certified law student makes an appearance before a tribunal or agency on behalf of a client who is an individual, the ~~legal intern~~certified law student shall have the written consent in advance of the client. The client shall be given a clear explanation, prior to the giving of his or her consent, that the ~~legal intern~~certified law student is not an attorney. This consent shall be filed with the tribunal and made a part of the record in the case. In all cases in which a ~~legal intern~~certified law student makes an appearance before a tribunal or agency on behalf a government agency, the consent of the government agency shall be presumed if the ~~legal intern~~certified law student is participating in a law school externship program or an internship program of the government agency. A statement advising the court of the ~~legal intern~~certified law student's participation in an externship or

internship program ~~of~~ at the government agency shall be filed with the tribunal and made a part of the record in the case.

(e) In all cases under this rule in which a ~~legal intern~~certified law student is permitted to make an appearance before a tribunal or agency, subject to any limitations imposed by the tribunal, the ~~legal intern~~certified law student may engage in all activities appropriate to the representation of the client, including, without limitation, selection of and argument to the jury, examination and cross-examination of witnesses, motions and arguments thereon, and giving notice of appeal.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2002; March 6, 2008; April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0207 USE OF STUDENT'S NAME

(a) A ~~legal intern~~certified law student's name may properly

(1) be printed or typed on briefs, pleadings, and other similar documents on which the ~~legal intern~~certified law student has worked with or under the direction of the supervising attorney, provided the ~~legal intern~~certified law student is clearly identified as a l~~egal intern~~ student certified under these rules, and provided further that the ~~legal intern~~certified law student shall not sign his or her name to such briefs, pleadings, or other similar documents;

(2) be signed to letters written on the letterhead of the supervising attorney, legal aid clinic, or government agency, provided there appears below the ~~legal intern~~certified law student's signature a clear identification that the ~~legal intern~~ student is certified under these rules. An appropriate designation is "~~Certified Legal Intern~~Certified Law Student under the Supervision of [supervising attorney]", and

(3) be printed on a business card, provided the name of the supervising attorney also appears on the business card and there appears below the ~~legal intern~~certified law student's name a clear statement that the legal intern student is certified under these rules. An appropriate designation is "~~Certified Legal Intern~~Certified Law Student under the Supervision of [supervising attorney]."

. . . .

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2008; October 7, 2010; April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0208 ~~FIELD~~STUDENT PRACTICE PLACEMENTS

(a) A law student ~~enrolled~~participating in a ~~field~~student practice placement at an organization, entity, ~~agency, or~~ law firm, or government agency shall be certified ~~as a legal intern~~ if the law student will (i) provide legal advice or services in matters governed by North Carolina law to eligible persons ~~or government agencies~~ outside the organization, entity, ~~agency, or~~ law firm, or government agency where the student is placed, or (ii) appear before any North Carolina tribunal or agency on behalf of an eligible person or a government agency.

(b) Supervision of a ~~legal intern~~certified law student enrolled in a ~~field~~ student practice placement may be shared by two or more attorneys employed by the organization, entity, ~~agency, or~~ law firm, or government agency, provided one attorney acts as site supervisor, assuming administrative responsibility for the ~~legal intern~~certified law student program at the ~~field~~ placement and ~~providing the notices to~~filing with the State Bar and the certified law student's law school the statements required by Rule .0205(b) of this subchapter. All supervising attorneys at a ~~field~~ student practice placement shall comply with the requirements of Rule .0205(a).

History Note: *Authority G.S. 84-7.1; 84-23;*
Adopted Eff. September 25, 2019.
Amendments Approved by the Supreme Court: April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0209 RELATIONSHIP OF LAW SCHOOL AND CLINICS; RESPONSIBILITY UPON DEPARTURE OF SUPERVISING ATTORNEY OR CLOSURE OF CLINIC

. . .

(e) Engagement Letter. In addition to the consent agreement required by Rule .0206(d) of this section for any representation of an individual client in a matter before a tribunal, a written engagement letter or memorandum of understanding with each client is recommended. The writing should state the general nature of the legal services to be provided and explain the roles and responsibilities of the clinic, the supervising attorney, and the ~~legal intern~~certified law student. See Rule 1.5, cmt. [2] of the Rules of Professional Conduct ("A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.")

. . . .

History Note: *Authority G.S. 84-23;*
Adopted Eff. September 25, 2019.
Amendments Approved by the Supreme Court: April 21, 2021.

SUBCHAPTER 01C – RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

SECTION .0200 – RULES GOVERNING THE PRACTICAL TRAINING OF LAW STUDENTS

27 NCAC 01C .0210 PRO BONO ACTIVITIES

. . .

(b) Student Certification Not Required. Regardless of whether the pro bono activity is provided under the auspices of a clinical legal education program or another program or department of a law school, a law student participating in a pro bono activity made available by a law school is not required to be certified ~~as a legal intern~~ if

(1) . . .

. . . .

History Note: *Authority G.S. 84-7.1; 84-23;*
Adopted Eff. September 25, 2019.
Amendments Approved by the Supreme Court: April 21, 2021.

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

THE RULES OF PROFESSIONAL CONDUCT

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on October 23, 2020.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules of Professional Conduct of the North Carolina State Bar as set forth in 27 N.C.A.C. 02, Section .0100, *Client-Lawyer Relationship*, be amended as shown on the following attachment:

ATTACHMENT B: 27 N.C.A.C. 02, Section .0100, Rule 1.5, *Fees*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the amendments to the Rules and Regulations of the North Carolina State Bar, as shown on Attachment B, were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on October 23, 2020.

Given over my hand and the Seal of the North Carolina State Bar, this the 10th day of February, 2021.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same are not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 21st day of April, 2021.

s/Paul Newby
Paul M. Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendments shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 21st day of April, 2021.

s/Berger, J.
For the Court

CHAPTER 02 – RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0100 – CLIENT LAWYER RELATIONSHIP

27 NCAC 02 RULE 1.05 FEES

. . . .

(g) A lawyer shall not enter into an arrangement for, charge, or collect anything of value for responding to an inquiry by a disciplinary authority regarding allegations of professional misconduct by the lawyer, for responding to a Client Security Fund claim alleging wrongful conduct by the lawyer, or for responding to and participating in the resolution of a petition for resolution of a disputed fee filed against the lawyer.

COMMENT

. . . .

[13] Lawyers have a professional obligation to respond to inquiries by disciplinary authorities regarding allegations of their own professional misconduct, to respond to Client Security Fund claims alleging wrongful conduct by the lawyer, and to respond to and participate in good faith in the fee dispute resolution process. It is improper for a lawyer to charge a client for the time expended on these professional obligations because they are not legal services that a lawyer provides to a client, but rather they advance the interests of the public and the profession.

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

THE RULES OF PROFESSIONAL CONDUCT

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on October 23, 2020.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules of Professional Conduct of the North Carolina State Bar as set forth in 27 N.C.A.C. 02, Section .0700, *Information About Legal Services*, be amended as shown on the following attachments:

ATTACHMENT C-1: 27 N.C.A.C. 02, Section .0700, Rule 7.1, *Communications Concerning a Lawyer's Services*

ATTACHMENT C-2: 27 N.C.A.C. 02, Section .0700, Rule 7.2, *Communications Concerning a Lawyer's Services: Specific Rules*

ATTACHMENT C-3: 27 N.C.A.C. 02, Section .0700, Rule 7.3, *Direct Contact with Potential Clients*

ATTACHMENT C-4: 27 N.C.A.C. 02, Section .0700, Rule 7.4, *Intermediary Organizations*

ATTACHMENT C-5: 27 N.C.A.C. 02, Section .0700, Rule 7.5, Reserved

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the amendments to the Rules and Regulations of the North Carolina State Bar, as shown on Attachments C-1 to C-5, were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on October 23, 2020.

Given over my hand and the Seal of the North Carolina State Bar, this the 10th day of February, 2021.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same are not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 21st day of April, 2021.

s/Paul Newby
Paul M. Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendments shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 21st day of April, 2021.

s/Berger, J.
For the Court

CHAPTER 02 – RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0700 – INFORMATION ABOUT LEGAL SERVICES

27 NCAC RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

~~(a)~~ A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it~~:~~

~~(1)~~ contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading~~;~~. Such communications include but are not limited to a statement that

~~(2)~~ is likely to create an unjustified expectation about results the lawyer can achieve~~;~~; a statement that ~~or~~ states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or a statement that

~~(3)~~ compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

~~(b) A communication by a lawyer that contains a dramatization depicting a fictional situation is misleading unless it complies with paragraph (a) above and contains a conspicuous written or oral statement, at the beginning and the end of the communication, explaining that the communication contains a dramatization and does not depict actual events or real persons.~~

Comment

False and Misleading Communications

[1] This Rule governs all communications about a lawyer's services, including advertising ~~permitted by Rule 7.2~~. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Misleading t~~T~~ruthful statements ~~that are misleading~~ are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for

which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] ~~An advertisement~~ A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with ~~the services or fees~~ those of other lawyers or law firms may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). *See also* Rule 8.4(e) for the prohibition against stating or implying an ability to improperly influence ~~improperly~~ a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Firm Names, Letterheads, and Professional Designations

[5] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current principals or by the names of deceased or retired principals where there has been a succession in the firm's identity. The name of a retired principal may be used in the name of a law firm only if the principal has ceased the practice of law. A lawyer or law firm also may be designated by a trade name, a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased or retired lawyer who was not a former principal of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as

"Springfield Legal Clinic," an express statement explaining that it is not a public or charitable legal services organization may be required to avoid a misleading implication.

[6] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

[7] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading. It is also misleading to use a designation such as "Smith and Associates" for a solo practice.

[8] This Rule does not prohibit the employment by a law firm of a lawyer who is licensed to practice in another jurisdiction, but not in North Carolina, provided the lawyer's practice is exclusively limited to areas that do not require a North Carolina law license. The lawyer's name may be included in the firm letterhead, provided all communications by such lawyer on behalf of the firm indicate the jurisdiction in which the lawyer is licensed as well as the fact that the lawyer is not licensed in North Carolina.

[9] If law offices are maintained in another jurisdiction, the law firm is an interstate law firm and must register with the North Carolina State Bar as required by 27 N.C. Admin. Code 1E.0200 et seq.

Dramatizations

[10] Dramatizations of fictional cases in video advertisements are potentially misleading. *See* 2010 FEO 9, RPC 164. A communication by a lawyer that contains a dramatization depicting a fictional situation is not misleading if it complies with paragraph (a) above and contains a conspicuous written or oral statement, at the beginning and the end of the communication, explaining that the communication contains a dramatization and does not depict actual events or real persons.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
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CHAPTER 02 – RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0700 – INFORMATION ABOUT LEGAL SERVICES

27 NCAC 02 RULE 7.2 ~~ADVERTISING~~COMMUNICATIONS CONCERNING A LAWYER'S SERVICES: SPECIFIC RULES

(a) ~~Subject to the requirements of Rules 7.1 and 7.3, a~~A lawyer may ~~advertise~~communicate information regarding the lawyer's services through ~~written, recorded or electronic communication, including public~~any media.

(b) A lawyer shall not compensate, give, or promise anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of ~~a not-for-profit lawyer referral service that complies with Rule 7.2(d)~~an intermediary organization that complies with Rule 7.4, or a prepaid ~~or group~~ legal services plan that complies with ~~Rule 7.3(d)~~27 N.C. Admin. Code 1E.0301 et seq.; ~~and~~

(3) pay for a law practice in accordance with Rule 1.17~~.~~; and

(4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(c) A lawyer shall not state that the lawyer specializes or is a specialist in a field of practice unless:

(1) the lawyer is certified as a specialist in the field of practice by:

(A) the North Carolina State Bar;

(B) an organization that is accredited by the North Carolina State Bar; or

(C) an organization that is accredited by the American Bar Association under procedures and criteria endorsed by the North Carolina State Bar; and

(2) the name of the certifying organization is clearly identified in the communication.

(ed) Any communication made ~~pursuant to~~under this ~~r~~Rule~~, other than that of a lawyer referral service as described in paragraph (d), shall~~ must include the name and ~~office address~~contact information of at least one lawyer or law firm responsible for its content.

~~(d) A lawyer may participate in a lawyer referral service subject to the following conditions:~~

~~(1) the lawyer is professionally responsible for its operation including the use of a false, deceptive, or misleading name by the referral service;~~

~~(2) the referral service is not operated for a profit;~~

~~(3) the lawyer may pay to the lawyer referral service only a reasonable sum which represents a proportionate share of the referral service's administrative and advertising costs;~~

~~(4) the lawyer does not directly or indirectly receive anything of value other than legal fees earned from representation of clients referred by the service;~~

~~(5) employees of the referral service do not initiate contact with prospective clients and do not engage in live telephone or in-person solicitation of clients;~~

~~(6) the referral service does not collect any sums from clients or potential clients for use of the service; and~~

~~(7) all advertisements by the lawyer referral service shall:~~

~~(A) state that a list of all participating lawyers will be mailed free of charge to members of the public upon request and state where such information may be obtained; and~~

~~(B) explain the method by which the needs of the prospective client are matched with the qualifications of the recommended lawyer.~~

Comment

~~[1] To assist the public in learning about and obtaining legal services, lawyers are permitted to make known their services not only through reputation, but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services~~

~~ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers may entail the risk of practices that are misleading or overreaching.~~

[~~2~~1] This Rule permits public dissemination of information concerning a lawyer's ~~name~~ or law firm's name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.1(b) for the disclaimer required in any advertisement that contains a dramatization and see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.~~

~~[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.~~

~~[5] "Electronic communication(s)," as used in Section 7 of the Rules of Professional Conduct, refers to the transfer of writing, signals, data, sounds, images, signs or intelligence via an electronic device or over any electronic medium. Examples of electric communications include, but are not limited to, websites, email, text messages, social media messaging and image sharing. A lawyer who sends electronic communications to advertise or market the lawyer's professional services must comply with these Rules and with any state or federal restrictions on such communications. See, e.g., N.C. Gen. Stat. §75-104; Telephone Consumer Protection Act, 47 U.S.C. §227; and 47 CFR 64.~~

Paying Others to Recommend a Lawyer

[6~~2~~] Except as permitted under paragraphs (b)(1)-(b)(~~3~~4), lawyers are not permitted to pay others for recommending the lawyer's services ~~or~~

~~for channeling professional work in a manner that violates Rule 7.3.~~ A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."

[3] Paragraph (b)(1)~~, however,~~ allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons, and website designers. ~~Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rule 1.5(e)(division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's service). To comply with Rule 7.1, a lawyer must not pay a lead generator if the lead generator states, implies, or creates an impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a)(duty to avoid violating the Rules through the acts of another).~~

[4] Paragraph (b)(4) permits a lawyer to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement, or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

~~[7] A lawyer may pay the usual charges of a prepaid or group legal services plan or a not-for-profit lawyer referral service. A legal services plan is defined in Rule 7.3(d). Such a plan assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to~~

~~be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service.~~

Paying Lead Generators

[5] A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. *See* Comment [2] (definition of "recommendation"). *See also* Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

Referrals from Intermediary Organizations and Prepaid Legal Service Plans

[8~~6~~] A lawyer who accepts assignments or referrals from a prepaid ~~or group~~ legal service plan or referrals from a ~~lawyer referral service~~an intermediary organization must act reasonably to assure that the activities of the plan or ~~service~~ organization are compatible with the lawyer's professional obligations. *See* Rule 5.3, Rule 7.3, and Rule 7.4. A prepaid legal service plan assists people who seek to secure legal representation. Intermediary organizations, including lawyer referral services, are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. ~~Any lawyer who participates in a legal services plan or lawyer referral service is professionally responsible for the operation of the service in accordance with these rules regardless of the lawyer's knowledge, or lack of knowledge, of the activities of the service.~~ Prepaid l~~L~~egal service plans and ~~lawyer referral services~~intermediary organizations may communicate with the public, but such communication must be in conformity with these Rules; notably, such communication must not be false or

misleading. ~~Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. The term "referral" implies that some attempt is made to match the needs of the prospective client with the qualifications of the recommended lawyer. To avoid misrepresentation, paragraph (d)(7)(B) requires that every advertisement for the service must include an explanation of the method by which a prospective client is matched with the lawyer to whom he or she is referred. In addition, the lawyer may not allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.~~

Specialty Certification

[7] The use of the word "specialize" in any of its variant forms connotes to the public a particular expertise often subject to recognition by the state. Indeed, the North Carolina State Bar has instituted programs providing for official certification of specialists in certain areas of practice. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations are expected to apply standards of experience, knowledge, and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To avoid misrepresentation and deception, a lawyer may not communicate that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this rule. The rule requires that a representation of specialty may be made only if the certifying organization is the North Carolina State Bar, an organization accredited by the North Carolina State Bar, or an organization accredited by the American Bar Association under procedures approved by the North Carolina State Bar. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization or agency must be included in any communication regarding the certification.

[8] A lawyer may, however, describe his or her practice without using the term "specialize" in any manner which is truthful and not misleading. This rule specifically permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. The lawyer may, for instance, indicate a "concentration" or an "interest" or a "limitation."

Contact Information

[9] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address, or a physical office location.

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CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0700 - INFORMATION ABOUT LEGAL SERVICES

27 NCAC 02 RULE 7.3 DIRECT CONTACT WITH POTENTIAL CLIENTS

(a) "Solicitation" or "solicit" denotes a communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services.

(~~a~~b) A lawyer shall not ~~by in-person, live telephone, or real-time electronic contact~~ solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the ~~person contacted~~contact is with a:

(1) ~~is a~~ lawyer; ~~or~~

(2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm.; or

(3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

(~~b~~c) A lawyer shall not solicit professional employment ~~from a potential client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact~~ even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, or harassment~~, compulsion, intimidation, or threats~~.

~~(c) Targeted Communications. Unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), every written, recorded, or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the statement, in capital letters, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES" (the advertising notice), which shall be conspicuous and subject to the following requirements:~~

~~(1) Written Communications. Written communications shall be mailed in an envelope. The advertising notice shall be printed on the front of the envelope, in a font that is as large as any~~

~~other printing on the front or the back of the envelope. If more than one color or type of font is used on the front or the back of the envelope, the font used for the advertising notice shall match in color, type, and size the largest and widest of the fonts. The front of the envelope shall contain no printing other than the name of the lawyer or law firm and return address, the name and address of the recipient, and the advertising notice. The advertising notice shall also be printed at the beginning of the body of the enclosed written communication in a font as large as or larger than any other printing contained in the enclosed written communication. If more than one color or type of font is used on the enclosed written communication, then the font of the advertising notice shall match in color, type, and size the largest and widest of the fonts. Nothing on the envelope or the enclosed written communication shall be more conspicuous than the advertising notice.~~

~~(2) Electronic Communications. The advertising notice shall appear in the "in reference" or subject box of the address or header section of the communication. No other statement shall appear in this block. The advertising notice shall also appear, at the beginning and ending of the electronic communication, in a font as large as or larger than any other printing in the body of the communication or in any masthead on the communication. If more than one color or type of font is used in the electronic communication, then the font of the advertising notice shall match in color, type, and size the largest and widest of the fonts. Nothing in the electronic communication shall be more conspicuous than the advertising notice.~~

~~(3) Recorded Communications. The advertising notice shall be clearly articulated at the beginning and ending of the recorded communication.~~

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(~~d~~e) Notwithstanding the prohibitions in ~~paragraph (a)~~ this Rule, a lawyer may participate with a prepaid ~~or group~~ legal service plan ~~subject to the following:~~ in compliance with 27 N.C. Admin. Code 1E.0301 et seq. that uses live person-to-person contact to enroll members or sell subscriptions for the plan to persons who are not known to need legal services in a particular matter covered by the plan, provided that, after reasonable investigation, the lawyer must have a good faith belief that the plan is being operated in compliance with 27 N.C. Admin. Code

1E.0301 et seq., and the lawyer's participation in the plan does not otherwise violate the Rules of Professional Conduct.

~~(1) Definition. A prepaid legal services plan or a group legal services plan ("a plan") is any arrangement by which a person, firm, or corporation, not otherwise authorized to engage in the practice of law, in exchange for any valuable consideration, offers to provide or arranges the provision of legal services that are paid for in advance of any immediate need for the specified legal service ("covered services"). In addition to covered services, a plan may provide specified legal services at fees that are less than what a non-member of the plan would normally pay. The North Carolina legal services offered by a plan must be provided by a licensed lawyer who is not an employee, director or owner of the plan. A prepaid legal services plan does not include the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee.~~

~~(2) Conditions for Participation.~~

~~(A) The plan must be operated by an organization that is not owned or directed by the lawyer;~~

~~(B) The plan must be registered with the North Carolina State Bar and comply with all applicable rules regarding such plans;~~

~~(C) The lawyer must notify the State Bar in writing before participating in a plan and must notify the State Bar no later than 30 days after the lawyer discontinues participation in the plan;~~

~~(D) After reasonable investigation, the lawyer must have a good faith belief that the plan is being operated in compliance with the Revised Rules of Professional Conduct and other pertinent rules of the State Bar;~~

~~(E) All advertisements by the plan representing that it is registered with the State Bar shall also explain that registration does not constitute approval by the State Bar; and~~

~~(F) Notwithstanding the prohibitions in paragraph (a), the plan may use in-person or telephone contact to solicit memberships or subscriptions provided:~~

~~(i) The solicited person is not known to need legal services in a particular matter covered by the plan; and~~

~~(ii) The contact does not involve coercion, duress, or harassment and the communication with the solicited person is not false, deceptive or misleading.~~

Comment

[1] ~~A solicitation is a communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services.~~ Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. ~~In contrast, a~~A lawyer's communication ~~typically does not constitute~~is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to ~~Internet~~ electronic searches.

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. ~~There is a potential for abuse when a solicitation involves direct in-person, live telephone, or real-time electronic contact by a lawyer with someone known to need legal services.~~ A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services by live person-to-person contact. ~~These forms~~This form of contact subject~~s~~ a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon ~~being retained immediately~~an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for ~~abuse~~ overreaching inherent in ~~direct in-person, live telephone, or real-time electronic solicitation~~live person-to-person justifies its prohibition, ~~particularly because~~since lawyers have alternative means of conveying necessary information ~~to those who may be in need of legal services~~. In particular, communications can be mailed or transmitted by email or other electronic means that do not ~~involve real-time contact and do not~~ violate other laws ~~governing solicitations~~.

These forms of communications ~~and solicitations~~ make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to ~~direct in-person, telephone or real-time electronic~~live person-to-person persuasion that may overwhelm a person's judgment.

[4] ~~The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1.~~ The contents of ~~direct in-person, live telephone, or real-time electronic~~live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in a~~busive practices~~overreaching against a former client, or a person with whom the lawyer has a close personal, ~~or~~ family, business, or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment, or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. ~~Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also,~~ pParagraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[6] ~~But even permitted forms of solicitation can be abused. Thus, any~~A solicitation ~~which~~ that contains ~~information which is~~ false or misleading

information within the meaning of Rule 7.1, which involves coercion, duress, or harassment~~, compulsion, intimidation, or threats~~ within the meaning of Rule 7.3(~~b~~c)(2), or ~~which~~ that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(~~b~~c)(1) is prohibited. ~~Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).~~

Contact to Establish Prepaid Legal Service Plan

[7] This Rule ~~is~~ does not ~~intended to~~ prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become ~~potential~~ prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

~~[8] Paragraph (c) of this rule requires that all targeted mail solicitations of potential clients must be mailed in an envelope on which the statement, "This is an advertisement for legal services," appears in capital letters in a font at least as large as any other printing on the front or the back of the envelope. The statement must appear on the front of the envelope with no other distracting extraneous written statements other than the name and address of the recipient and the name and return address of the lawyer or firm. Postcards may not be used for targeted mail solicitations. No embarrassing personal information about the recipient may appear on the back of the envelope. The advertising notice must also appear in the "in reference" or subject box of an electronic communication (email) and at the beginning of any paper or electronic communication in a font that is at least as large as the font used for any other printing in the paper or electronic communication. On any paper or electronic communication required by this rule to contain the advertising notice, the notice must be conspicuous and should not be obscured by other objects or printing or by manipulating fonts. For example, inclusion of a large photograph or graphic image on the communication may diminish the prominence of~~

~~the advertising notice. Similarly, a font that is narrow or faint may render the advertising notice inconspicuous if the fonts used elsewhere in the communication are chubby or flamboyant. The font size requirement does not apply to a brochure enclosed with the written communication if the written communication contains the required notice. As explained in 2007 Formal Ethics Opinion 15, the font size requirement does not apply to an insignia or border used in connection with a law firm's name if the insignia or border is used consistently by the firm in official communications on behalf of the firm. Nevertheless, any such insignia or border cannot be so large that it detracts from the conspicuousness of the advertising notice. The requirement that certain communications be marked, "This is an advertisement for legal services," does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

~~[9] See Rule 7.2, cmt. [5] for the definition of "electronic communication(s)" as used in paragraph (c)(2) of this rule. A lawyer may not send electronic or recorded communications if prohibited by law. See, e.g., N.C. Gen. Stat. §75-104; Telephone Consumer Protection Act 47 U.S.C. §227; and 47 CFR 64. "Real-time electronic contact" as used in paragraph (a) of this rule is distinct from the types of electronic communication identified in Rule 7.2, cmt. [5]. Real-time electronic contact includes, for example, video telephony (e.g., FaceTime) during which a potential client cannot ignore or delay responding to a communication from a lawyer.~~

Contact to Enroll Members in Prepaid Legal Service Plan

[~~10~~9] Paragraph (~~d~~e) of this Rule permits a lawyer to participate with an organization which uses personal contact to ~~solicit~~ enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (~~d~~e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the ~~in-person or telephone~~ person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need

legal services in a particular matter, but ~~is to~~ must be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with ~~Rule 7.3(d)~~27 N.C. Admin. Code 1E.0301 et seq., as well as Rules 7.1, 7.2 and 7.3(~~b~~c). ~~See 8.4(a).~~

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CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0700 - INFORMATION ABOUT LEGAL SERVICES

27 NCAC 02 RULE 7.4 ~~COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION~~ INTERMEDIARY ORGANIZATIONS

(a) ~~A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law~~An intermediary organization is a lawyer referral service, lawyer advertising cooperative, lawyer matching service, online marketing platform, or other similar organization that engages in referring consumers of legal services to lawyers or facilitating the creation of lawyer-client relationships between consumers of legal services and lawyers willing to provide assistance. A tribunal or similar government agency that appoints or assigns lawyers to represent parties before the tribunal or government agency is not an intermediary organization under this Rule.

(b) ~~A lawyer shall not state or imply that the lawyer is certified as a specialist in a field of practice unless~~Before and while participating in an intermediary organization, the lawyer shall make reasonable efforts to ensure that the intermediary organization's conduct complies with the professional obligations of the lawyer, including the following conditions:

(1) ~~the certification was granted by the North Carolina State Bar~~ The intermediary organization does not direct or regulate the lawyer's professional judgment in rendering legal services to the client;

(2) ~~the certification was granted by an organization that is accredited by the North Carolina State Bar~~ The intermediary organization, including its agents and employees, does not engage in improper solicitation pursuant to Rule 7.3; ~~or~~

(3) ~~the certification was granted by an organization that is accredited by the American Bar Association under procedures and criteria endorsed by the North Carolina State Bar~~The intermediary organization makes the criteria for inclusion available to prospective clients, including any payment made or arranged by the lawyer(s) participating in the service and any fee charged to the client for use of the service, at the outset of the client's interaction with the intermediary organization; ~~and~~

(4) ~~the name of the certifying organization is clearly identified in the communication.~~ The function of the referral arrangement between lawyer and intermediary organization is fully disclosed to the client at the outset of the client's interaction with the lawyer;

(5) The intermediary organization does not require the lawyer to pay more than a reasonable sum representing a proportional share of the organization's administrative and advertising costs, including sums paid in accordance with Rule 5.4(a)(6); and

(6) The intermediary organization is not owned or directed by the lawyer, a law firm with which the lawyer is associated, or a lawyer with whom the lawyer is associated in a firm.

(c) If a lawyer discovers an intermediary organization's noncompliance with Rule 7.4(b)(1) – (6), the lawyer shall either withdraw from participation or seek to correct the noncompliance. If the intermediary organization fails to correct the noncompliance, the lawyer must withdraw from participation.

COMMENT

[1] ~~The use of the word "specialize" in any of its variant forms connotes to the public a particular expertise often subject to recognition by the state. Indeed, the North Carolina State Bar has instituted programs providing for official certification of specialists in certain areas of practice. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations are expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. To avoid misrepresentation and deception, a lawyer may not communicate that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this rule. The rule requires that a representation of specialty may be made only if the certifying organization is the North Carolina State Bar, an organization accredited by the North Carolina State Bar, or an organization accredited by the American Bar Association under procedures approved by the North Carolina State Bar. To insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization or agency must be included in any communication regarding the certification~~ The term "referral" implies that some attempt is made to match the needs of the prospective client with the qualifications of the recommended lawyer.

~~[2] A lawyer may, however, describe his or her practice without using the term "specialize" in any manner which is truthful and not misleading. This rule specifically permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. The lawyer may, for instance, indicate a "concentration" or an "interest" or a "limitation."~~

~~[3] Recognition of expertise in patent matters is a matter of long-established policy of the Patent and Trademark Office. A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.~~

History Note: *Authority G.S. 84-23;*
~~*Eff. July 24, 1997;*~~
~~*Amended Eff. February 27, 2003.*~~
Adopted by the Supreme Court: April 21, 2021

CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0700 - INFORMATION ABOUT LEGAL SERVICES

27 NCAC 02 RULE 7.5 ~~FIRM NAMES AND LETTERHEADS~~RESERVED

~~(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not false or misleading in violation of Rule 7.1. Every trade name used by a law firm shall be registered with the North Carolina State Bar for a determination of whether the name is misleading.~~

~~(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

~~(c) A law firm maintaining offices only in North Carolina may not list any person not licensed to practice law in North Carolina as a lawyer affiliated with the firm unless the listing properly identifies the jurisdiction in which the lawyer is licensed and states that the lawyer is not licensed in North Carolina.~~

~~(d) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm, whether or not the lawyer is precluded from practicing law.~~

~~(e) Lawyers may state or imply that they practice in a partnership or other professional organization only when that is the fact.~~

~~Comment~~

~~[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity, or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Use of trade names in law practice is acceptable so long as they are not misleading and are otherwise in conformance with the rules and regulations~~

of the State Bar. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. A firm name that includes the surname of a deceased or retired principal is, strictly speaking, a trade name. However, the use of such names, as well as designations such as "Law Offices of John Doe," "Smith and Associates," and "Jones Law Firm" are useful means of identification and are permissible without registration with the State Bar. However, it is misleading to use the surname of a lawyer not associated with the firm or a predecessor of the firm. It is also misleading to use a designation such as "Smith and Associates" for a solo practice. The name of a retired principal may be used in the name of a law firm only if the principal has ceased the practice of law.

[2] This rule does not prohibit the employment by a law firm of a lawyer who is licensed to practice in another jurisdiction, but not in North Carolina, provided the lawyer's practice is limited to areas that do not require a North Carolina law license such as immigration law, federal tort claims, military law, and the like. The lawyer's name may be included in the firm letterhead, provided all communications by such lawyer on behalf of the firm indicate the jurisdiction in which the lawyer is licensed as well as the fact that the lawyer is not licensed in North Carolina. If law offices are maintained in another jurisdiction, the law firm is an interstate law firm and must register with the North Carolina State Bar as required by 27 NCAC 1E, Section .0200.

[3] Nothing in these rules shall be construed to confer the right to practice North Carolina law upon any lawyer not licensed to practice law in North Carolina. See, however, Rule 5.5.

[4] With regard to Paragraph (e), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

History Note: *Authority G.S. 84-23;*
Eff. July 24, 1997;
Amended Eff. September 22, 2016; March 1, 2003.

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