

NO. COA14-541

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2015

IN THE MATTER OF:

A.B. and J.B.

Mecklenburg County  
Nos. 10 JA 548-49

Appeal by respondent-mother from order entered 27 January 2014 by Judge Elizabeth Trosch in Mecklenburg County District Court. Heard in the Court of Appeals on 25 November 2014.

*Mecklenburg County Department of Social Services, Youth and Family Services, by Senior Associate Attorney Keith S. Smith, for petitioner-appellee.*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender J. Lee Gilliam, for respondent-appellant mother.*

*Parker Poe Adams & Bernstein LLP, by Deborah L. Edney, for guardian ad litem.*

STROUD, Judge.

Respondent-mother appeals from an order entered 27 January 2014 that terminated her parental rights to her minor children A.B. ("Alexis") and J.B. ("Jacob").<sup>1</sup> Because the trial court's order is internally inconsistent and thus unreviewable by this

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<sup>1</sup> Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

Court, we reverse the order and remand this matter to the trial court for the entry of a new order.

# I. Background

The Mecklenburg County Department of Social Services, Youth and Family Services ("DSS") initiated the underlying juvenile case by filing a petition on 8 September 2010, alleging the juveniles were neglected and dependent. DSS asserted that respondent had an extensive history of taking Jacob to the emergency room for unnecessary treatment and that she was beginning to show a similar pattern with Alexis. DSS further stated that Alexis had recently been hospitalized because she had consumed some of Jacob's seizure medicine, suggesting that respondent had given the medicine to Alexis. Additionally, DSS reported that respondent was overwhelmed and overly stressed from parenting the juveniles, missed numerous appointments to address Jacob's behavioral issues, was unemployed and struggled financially, and had difficulty following doctors' instructions when providing routine treatments to the children at home. DSS took non-secure custody of the juveniles that same day.

On or about 5 November 2010, DSS entered into a mediated agreement with respondent, establishing a case plan for reunification with the juveniles. Respondent's case plan

required her to: (1) continue participating in an anger management program and demonstrate the skills learned; (2) complete parenting classes and demonstrate the skills learned; (3) maintain legal and stable employment providing sufficient income to meet the juveniles' basic needs; (4) maintain an appropriate, safe, and stable home for herself and the juveniles; (5) maintain weekly contact with her social worker; (6) cooperate with the guardian ad litem; and (7) attend the juveniles' medical and therapy appointments when able to do so. DSS and respondent also agreed to supervised visitation with the juveniles three times per week and a tentative holiday visitation plan.

After hearings on or about 7 January and 17 February 2011, the trial court entered an adjudication and disposition order holding that Alexis and Jacob were neglected juveniles. The court adopted concurrent goals of reunification and guardianship and set forth a case plan for respondent. The trial court adopted the mediated case plan developed by the parties and specifically directed respondent to undergo a complete psychological evaluation, obtain a domestic violence evaluation, and participate in counseling services or therapy.

DSS worked towards reunification of the juveniles with respondent, but in review and permanency planning orders entered 13 May and 31 August 2011, the trial court found respondent needed to further address her mental health and anger management problems. In a permanency planning order entered 19 January 2012, the court found that respondent had made some positive changes in that she was managing her anger, was "emotionally balanced" around the juveniles, and had realized that she needed "batterer's intervention treatment." But the court found that respondent still needed to complete her parenting capacity evaluation, show she could manage her mental health problems, and complete her domestic violence program. The court further found that there were no likely prospects for guardianship or permanent custody of the juveniles and set the permanent plan for the juveniles as reunification or adoption.

On 25 April 2012, the trial court entered a permanency planning order that ceased further efforts towards reunification of the juveniles with respondent, concluding respondent had failed to alleviate the conditions that caused the juveniles to be placed in the care and custody of DSS. The court directed that a Child Family Team ("CFT") meeting be held within thirty days of the order to develop recommendations for a permanent

placement for the juveniles, and that DSS refrain from moving to terminate respondent's parental rights until after the court received the recommendations from the CFT. The trial court entered an order on 27 June 2012, directing DSS to proceed with an action terminating respondent's parental rights to the juveniles.

DSS filed petitions to terminate respondent's parental rights to the juveniles on 25 July 2012. DSS alleged grounds existed to terminate respondent's parental rights based on neglect, abandonment, failure to make reasonable progress to correct the conditions that led to the juveniles' removal from her care and custody, and willful failure to pay a reasonable portion of the cost of care for the juveniles while they were placed outside of her home. See N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (7) (2013). The trial court heard the petitions on 25 March and 11 April 2013. At the conclusion of the hearing, the court found one ground to terminate respondent's parental rights: failure to make reasonable progress to correct the conditions that led to the juveniles' removal from her care and custody. However, the court concluded that terminating respondent's parental rights was not in the best interests of the juveniles and directed respondent's counsel to prepare a

proposed order for the court and circulate the order to all parties.

On 23 September 2013, before the trial court had entered an order on the termination petitions, DSS filed a "Motion for Relief from Order and Motion to Consider Additional Evidence" pursuant to North Carolina Rule of Civil Procedure 60. See *id.* § 1A-1, Rule 60 (2013). DSS asked that the trial court reconsider its best interests conclusion based on allegations that respondent had misled the court by providing inaccurate information and testimony at the termination hearing, and that she had failed to comply with her case plan since the termination hearing. The trial court allowed the motion and held an additional hearing on 1 October and 4 November 2013 in which it allowed DSS to present additional dispositional evidence as to the best interests of the juveniles.

By order entered 27 January 2014, the trial court terminated respondent's parental rights to the juveniles. The Court found that respondent had failed to make reasonable progress to correct the conditions that led to the juveniles' removal from her care and custody, and concluded that it was in the juveniles' best interests to terminate her parental rights. Respondent filed timely notice of appeal.

## II. Termination Order

### A. Standard of Review

Termination of parental rights proceedings are conducted in two stages: adjudication and disposition. *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). "In the adjudication stage, the trial court must determine whether there exists one or more grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)." *In re D.H.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 753 S.E.2d 732, 734 (2014); see also N.C. Gen. Stat. § 7B-1109(e) (2013). This Court reviews a trial court's conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court's findings of fact, and whether the findings of fact support the court's conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. rev. denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). "If the trial court's findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary." *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (quotation marks omitted), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009). However, "[t]he trial court's conclusions of law are fully reviewable *de novo* by

the appellate court." *In re S.N., X.Z.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (quotation marks omitted), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

"If the trial court determines that at least one ground for termination exists, it then proceeds to the disposition stage where it must determine whether terminating the rights of the parent is in the best interest of the child, in accordance with N.C. Gen. Stat. § 7B-1110(a)." *D.H.*, \_\_\_ N.C. App. at \_\_\_, 753 S.E.2d at 734. The trial court's determination of the child's best interests is reviewed only for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "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).

#### B. Analysis

Respondent argues that the trial court erred in concluding that she had not made reasonable progress towards correcting the conditions that led to the removal of the juveniles from her care. Respondent contends that the trial court's findings of fact are contradictory and do not support its conclusions of law. Respondent further argues that the trial court's



conclusion of law that it is in the juveniles' best interests to terminate respondent's parental rights is internally contradictory. We agree and remand this matter to the trial court for the entry of a new order.

The trial court concluded that respondent willfully left the juveniles in foster care for more than twelve months without showing the court that she made reasonable progress toward correcting the conditions that led to the removal of the juveniles from her home. See N.C. Gen. Stat. § 7B-1111(a)(2). In working toward reunification with the juveniles, respondent was directed to: (1) complete a parenting education program and demonstrate the skills learned; (2) complete a domestic violence counseling and batterer's intervention program; (3) obtain a psychological evaluation and fully engage in therapy; (4) maintain appropriate visitations with the juveniles; (5) maintain appropriate and safe housing; (6) maintain employment; and (7) maintain contact with DSS. The court's order is silent regarding respondent's history of contact with DSS during the case and indicates that the court is satisfied with respondent's progress in the area of parenting education, but the court's findings on respondent's progress in the areas of visitation and employment are contradictory. The court identified mental

health and domestic violence as its primary concerns regarding respondent's progress towards correcting the conditions that led to the removal of the juveniles from her care, but it made contradictory findings regarding her progress in those areas as well.

The court made the following findings that support its conclusion that respondent failed to make reasonable progress toward addressing her mental health problems:

20. The respondent mother has engaged in therapy; however, the respondent mother's participation in therapy has not been consistent.

. . . .

26. . . . [That during therapy that started in October 2010, respondent] was not completely forthcoming about the circumstances that brought the children into custody or the issues of violence in her relationships with [Mr. P.] or [Mr. C.] and that [respondent's therapist, Ms. Linda Avery,] concluded that [respondent] had not made discernible progress in achieving goals that they had set for treatment.

27. . . . That the [respondent] mother voluntarily withdrew herself from services with Ms. Linda Avery contrary to clinical recommendations.

However, the court also made findings of fact contradicting those above:

26. That [respondent] has cooperated and

began outpatient psycho-therapy with Linda Avery on October 21, 2010; acknowledging that she needed to work on anger issues, understanding her diagnosis of mood disorder and that she wanted to regain custody of her children. . . .

27. That from the time that [respondent] began seeking mental health services, even with Ms. Avery, she acknowledged that her anger was having a negative impact on her relationships, her ability to parent her children and her life. That she could recognize that she had difficult relationships and that she externalized the blame for the difficulties in those relationships, but had expressed a desire to gain control of her emotions so that she could better parent her children. . . .

28. That the mother did appropriately seek out outpatient therapy with James McQuiston in May[] 2012 and has consistently participated in sessions with him since May 16, [2012]. Mr. McQuiston and [respondent] developed goals of reducing destructive use of anger by building skills to communicate and engaging in more constructive relationships. Mr. McQuiston testified that [respondent] has attended ten (10) sessions and that she has participated consistently with his recommendations for services and that he has observed her make progress in improving trust and recognizing the need to change. She has developed a practice of using specific tools to change her pattern of destructive decisions and has demonstrated the ability to recognize problems[,] choosing to discuss and confront them, examine them and engage in constructive processes to resolve the conflict.

29. That [respondent] has since May 2012

cooperated with medication management for her mental health.

30. That [respondent] did voluntarily participate in a psychological evaluation with Dr. Lisa Bridgewater. That Dr. Bridgewater reviewed relevant history from records of the Department of Social Services, Carolina Medical Center for both [Jacob] and [Alexis], Youth and Family Services, Family Legacy, Carolina Parenting Solutions, FIRST screening, BHC-CMC Randolph, as well as interviewed collateral contacts GAL, Amy Cole and GAL attorney, Melissa Livesay.

31. That Dr. Bridgewater then conducted a clinical interview with [respondent] and performed assessment tests including the Minnesota Multiphasic Personality inventory, Millon Clinical Multiaxial Inventory and the Child Abuse Potential Inventory. Lastly Dr. Bridgewater interviewed and observed [respondent] interacting with her children.

32. That ultimately, Dr. Bridgewater concluded that [respondent's] tests did not reveal a significant pathology and her responses indicated social avoidance as well as [a] good deal of self-doubt. That [respondent's] responses indicate chronic depression as well as periods of anxiety and reached a diagnostic impression that [respondent] suffered from a mood disorder and a tendency to be aggressive and overly reactive when she feels threatened. Dr. Bridgewater attributed these tendencies to her childhood history including coercive abuse and inconsistent parenting and concluded that [respondent's] symptoms could be alleviated by consistent engagement of ongoing therapy to address issues from her childhood which continue to impact her mood and ability to cope with relationships with

others.

33. That Dr. Bridgewater also concluded that it is possible that the repeated hospital visits that [respondent] made for [Jacob] may have presented due to her becoming overwhelmed and that under stress she may have panicked over [Jacob's] symptoms or exaggerated them in an attempt to obtain help and respite.

34. That [respondent] during the termination [of] parental rights proceedings by her testimony had demonstrated thoughtful insight into her mental health and recognizes the self-defeating cycles her aggressive coping styles have created in her life and accepts responsibility for her failure to provide a safe and nurturing environment for [Jacob] and [Alexis] in the Summer and Fall of 2010.

. . . .

42. That [respondent] has[,] for a substantial period of time and [at] least since the filing of the termination of parental rights petition[,] been able to manage her medical condition with the assistance of her physicians to a degree that she has been able to maintain employment, academic study and participate in therapeutic services with Mr. James McQuiston.

Similarly, the court made the following findings regarding respondent's lack of progress in addressing her domestic violence issues:

21. The respondent mother has been enrolled in a domestic violence batterer's program on two occasions since the Court ordered her

engagement and compliance. The respondent mother has not completed the domestic violence batterer's program.

. . . .

36. That the mother began [New Options for Violent Actions ("NOVA")] treatment on three (3) separate occasions prior to November 2012 and that she was unsuccessfully discharged and terminated in January 2012, May 2012 and September 2012 due to excessive absences.

But again, the court made substantial findings contradictory to its ultimate conclusion:

25. That the mother . . . did accept a referral to anger management, attended group sessions and successfully completed the program.

. . . .

35. Initially, [respondent] was not forthcoming about issues of Domestic Violence. However, she ultimately acknowledged instances of domestic violence in 2010 with [Mr. P.] and instances in 2010, July 2011, and August with [Mr. C]. After [respondent] had been properly assessed and screened for the issues of domestic violence, she was found to be a predominant aggressor who was not appropriate for victim services, but could benefit from [batterer's] intervention treatment program and was referred to NOVA, a state certified [batterer's] intervention program in Mecklenburg County.

. . . .

37. Mr. Tim Bradley of NOVA testified that

accountability for the acts of domestic violence is critical to change the pattern of violent behavior and that [respondent] has demonstrated that she takes responsibility for her role in the violence in her relationship with [Mr. C.] and other people with whom she has had violent encounters.

38. That [respondent] understands the signs of an abusive or coercive relationship. That she demonstrates thoughtful insight into the impact of her children and understands that abusive and violent relationships impact children regardless of their direct proximity [to] the conflict.

. . . .

41. That [respondent] has suffered from medical issues including Lupus, broken wrists and blood clots over the period of time that the children have been in custody as well as a pregnancy with [another child,] conditions [which] have at times interfered with her progress and services coordinated for the purposes of assisting her in alleviating the conditions that [led to] the children coming into Department of Social Services' custody.

. . . .

47. That [respondent] has demonstrated for well over a year the ability to manage her mood and communicates to resolve conflict in a peaceful constructive manner and has made significant improvement in her parenting style.

. . . .

51. That Tim Bradley of NOVA is not providing direct counseling to [respondent]

or [Mr. C.] but has had interactions with both of them in his capacity as case manager. In Mr. Bradley's opinion [respondent] has not developed enough relationship skills to be in an intimate partner relationship with [Mr. C]. That she has insights about it on some occasions and needs to develop a better ability to recognize [it] in healthy conversations early on to avoid later conflict or to remove herself to prevent altercations. That the observations of Mr. Bradley are not inconsistent with the Court['s] findings that [respondent] has exercised caution in intimacy; instead obtaining a non-intimate relationship[,] thereby limiting the risk of violence between herself and [Mr. C.,] has substantially ameliorated this risk of domestic violence as evidenced by the fact that there is no evidence of aggressive or violent encounters between them since 2011.

It is not unusual for an order terminating parental rights to include both favorable and unfavorable findings of fact regarding a parent's efforts to be reunited with a child, and the trial court then weighs all the findings of fact and makes a conclusion of law based upon the findings to which it gives the most weight and importance. But here, the trial court's ultimate conclusion of law concerning the best interests of the juveniles is also internally inconsistent. The court concluded that "it is in the best interest of the juveniles to have their mother's parental rights terminated in that severing the legal relationship would be emotionally unhealthy and damaging to the



children." Certainly, the trial court did not terminate respondent's parental rights under a belief that doing so would harm the juveniles and that emotional harm would be in their best interests.

Petitioner seeks to explain this illogical conclusion of law in its brief as follows:

The petitioner drafted in error Matter of Law #3 "That it is in the best interest of the juveniles to have their mother's parental rights terminated *in that severing the legal relationship would be emotionally unhealthy and damaging to the children.*" . . . The trial court ordered the petitioner to draft the termination order and amend the prior order prepared by [respondent's] trial counsel. The petitioner failed to edit the Matter of Law #3 to read as ordered by the trial court.

While we appreciate the candor of petitioner's counsel in attempting to take responsibility for this clearly improper conclusion of law, this argument cannot remedy the problem. First, the order is the responsibility of the trial court, no matter who physically prepares the draft of the order. See *In re T.H.T.*, 362 N.C. 446, 455, 665 S.E.2d 54, 60 (2008) (holding that, in an abuse, neglect, or dependency proceeding, a trial court has a legal duty to enter a timely written order); N.C. Gen. Stat. § 1A-1, Rule 58 (2013) (requiring a judge's signature on judgments). Second, counsel's representations regarding the

preparation of the order are not matters of record, because a brief is not a source of evidence which this Court can consider. See *Builders Mut. v. Meeting Street Builders*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 736 S.E.2d 197, 200 (2012) (“[M]atters discussed in a brief but not found in the record will not be considered by this Court.”). We also understand that the initial drafts of most court orders in cases in which the parties are represented by counsel are drafted by counsel for a party. Unfortunately, in North Carolina, the majority of District Court judges have little or no support staff to assist with order preparation, so the judges have no choice but to rely upon counsel to assist in order preparation. Considering the lack of adequate staff to address the increasing number of cases heard by our District Courts, some mistakes are inevitable.

If the only problem in the order was one poorly worded conclusion of law, we might be able to determine that this conclusion of law contains a clerical error that could be remedied by a direction to correct it on remand. But the internal inconsistencies of the order go far beyond one sentence. As noted above, there are contradictory findings as to respondent’s mental health care and her domestic violence issues. In contradiction to its ultimate conclusions regarding

grounds for termination and the juveniles' best interests, the court found:

44. . . . [T]he Court has not been presented with sufficient evidence to find the substantial probability of the repetition of neglect to reach that ground [i.e., neglect]. There was no evidence presented during the termination of parental rights proceedings that there is a substantial likelihood of repetition of neglect.

. . . .

48. . . . [T]hat the safety risks and the conditions that led to the children's removal have been ameliorated to the point that the benefits of allowing an ongoing legal relationship with [respondent] outweigh the risks to the children's safety. For this reason, the Court does not find it appropriate to sever their legal relationships with her.

Since neglect was the only ground for adjudication of the children,<sup>2</sup> and the respondent's problems that caused her to neglect the children were the very conditions that led to the children's removal from respondent, it is difficult to understand why the trial court would find that there was "no evidence" of a substantial likelihood of repetition of neglect while also finding that respondent had not made progress in

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<sup>2</sup> In the termination order, the trial court found that, on 17 February 2011, the children were adjudicated neglected and dependent. But, on 17 February 2011, the trial court found only neglect.

eliminating the conditions that led to the removal of the children.

Another troubling aspect of the order is the extent of its apparent reliance upon the financial benefits conferred upon the Bryants, the potential adoptive parents, by adoption instead of guardianship. The trial court found as follows:

82. [I]f the Bryant[s] were appointed as guardians or court-appointed custodians of the juveniles, they would not be eligible for any kind of support or assistance except for anything [for which] they would qualify based on income. They would possibly be eligible for TANF benefits and they might be able to seek child support from the respondent-mother and respondent fathers.

. . . .

84. The vendor payments of \$2400 per year along with the adoption stipend of \$400 to \$600 per month per child would provide substantial financial assistance that would ensure and provide additional stability for the home of the juveniles and the Bryant[s]. Adoption would support the permanent arrangement with the Bryant[s].

N.C. Gen. Stat. § 7B-1110 sets forth the factors that the trial court should consider in determining if termination is in the best interest of the children:

In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:

(1) The age of the juvenile.

(2) The likelihood of adoption of the juvenile.

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

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

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

(6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2013).

In its findings regarding best interests, the main addition to the evidence presented at the 1 October and 4 November 2013 hearing, which was not presented at the first hearing, was the information regarding the financial assistance available to the Bryants if they adopted the children. In fact, the trial court found that

*[P]reviously there was no evidence concerning the availability of financial assistance for the Bryant[s] or the extent that such assistance would ensure safe, stable and permanence [(sic)] for [Jacob] and [Alexis] in their care. The department has provided evidence of the availability and the extent that such assistance would assist the Bryant[s].*

(Emphasis added.)

Thus, perhaps because of the inconsistencies in the other findings as addressed above, this finding regarding the availability of additional financial assistance due to adoption seems to be the factor that tipped the "best interest" scales in favor of termination of parental rights, despite its prior conclusion that termination would *not* be in the best interests of the children.<sup>3</sup> We have been unable to find any case where the financial benefits conferred upon the potential adoptive parents based solely upon adoption, as opposed to an award of guardianship or custody, constituted a "relevant consideration" in determining the best interests of the children under N.C. Gen. Stat. § 7B-1110(a)(6). We note that N.C. Gen. Stat. § 7B-1111(a)(2), which is the ground upon which the trial court terminated respondent's rights, does not permit the trial court to terminate the parental rights of a parent "for the sole reason that the parents are unable to care for the juvenile on account of their poverty." *Id.* § 7B-1111(a)(2). It is true that the trial court did not terminate based upon respondent's poverty, but instead it terminated at least in part based upon the financial benefits that would accrue to the potential

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<sup>3</sup> We realize that may not have been the trial court's intent, considering the inconsistencies, but we are addressing the order as it now stands.

adoptive parents arising from termination and adoption. We do not mean to imply that the financial circumstances of the potential adoptive parents are irrelevant, since subsection (2) directs the trial court to consider the "likelihood of adoption" and the financial capability of the potential adoptive parents may be a factor in making this determination. We understand that ultimately the financial assistance to the potential adoptive parents may help them complete the adoption and will benefit the children. But in this particular order, where the factor of financial assistance to the potential adoptive parents seems to outweigh the close emotional bonds between the respondent-mother and children and her efforts, although imperfect, to regain custody of the children, these findings raise additional concerns about the internal consistency of the order.

### III. Rule 60 Motion

On 23 September 2013, DSS filed a "Motion for Relief from Order and Motion to Consider Additional Evidence" pursuant to North Carolina Rule of Civil Procedure 60, which is entitled "Relief from judgment or order." See *id.* § 1A-1, Rule 60. Although respondent did not appeal from the trial court's order allowing DSS's Rule 60 motion, she argues that some of the trial

court's findings in the order on appeal were based upon evidence taken at the hearing which was held as a result of the order allowing this motion and that the evidence and findings from this hearing went beyond the scope of the trial court's order.

We first note that the order was not properly based upon Rule 60. On 23 September 2013, the trial court had not yet entered a judgment or order as it had not yet reduced its findings and conclusions to writing. See *id.* § 1A-1, Rule 58 ("[A] judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court."). Because a party cannot seek relief from a non-existent order, we treat DSS's motion according to its substance as a motion to reopen the evidence, instead of a Rule 60 motion. See *Lee v. Jenkins*, 57 N.C. App. 522, 524, 291 S.E.2d 797, 798 (1982) (treating a motion as to its substance, rather than form).

It is within the discretion of the trial judge to reopen a case and to admit additional evidence after both parties have rested. *State v. Shutt*, 279 N.C. 689, 695, 185 S.E.2d 206, 210 (1971), *cert. denied*, 406 U.S. 928, 32 L. Ed. 2d 130 (1972). Respondent did not object to DSS's motion and has not argued on appeal that the order should not have been entered. The trial court allowed DSS's motion to reopen the evidence but expressly



limited the 1 October and 4 November 2013 hearing to dispositional evidence regarding the best interests of the juveniles. In addition, in response to an objection to hearsay during the hearing, the trial court noted that it "only granted the motion to reopen evidence on best interest, not grounds, and so all of this evidence [was] only being considered for that portion of the proceedings[.]"

Respondent argues that, at the 1 October and 4 November 2013 hearing, the trial court also considered adjudicatory evidence and made additional findings as to respondent's compliance with her case plan, which was beyond the scope of the trial court's order allowing additional evidence as to best interests. It does appear that the evidence at this hearing went beyond the scope of the trial court's order. But respondent did not object to the presentation of any specific evidence as being beyond the scope of the order, so she has waived any arguments on appeal in this regard. See N.C.R. App. P. 10(a)(1). Because of the internal inconsistencies in the order on appeal, we cannot discern which portions of the evidence the trial court relied upon in making its findings and conclusions. Since we must reverse and remand to the trial court for entry of a new order addressing both adjudication and

disposition, the trial court should consider the limitation of the 1 October and 4 November hearing in making its new findings of fact and conclusions of law and may in its discretion consider additional evidence and arguments from the parties. See *In re T.M.H.*, 186 N.C. App. 451, 456, 652 S.E.2d 1, 3, *disc. rev. denied*, 362 N.C. 87, 657 S.E.2d 31 (2007).

#### IV. Conclusion

The contradictory nature of the trial court's findings of fact and conclusions of law prohibit this Court from adequately determining if they support the court's conclusions of law that (1) respondent failed to make reasonable progress toward correcting the conditions that led to the removal of the juveniles from her care and custody, and (2) terminating respondent's parental rights is in the juveniles' best interests. Accordingly, we reverse the termination order and remand to the trial court for entry of a new order clarifying its findings of fact and conclusions of law.

Because we must reverse and remand this matter to the trial court, we do not address respondent's remaining arguments on appeal. The trial court may receive additional evidence on remand, within its sound discretion. *Id.*, 652 S.E.2d at 3.

REVERSED AND REMANDED.

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Judges DILLON and DIETZ concur.