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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1127

Filed: 20 March 2018

Cabarrus County, Nos. 14 JT 137-38

IN THE MATTER OF: I.I.C., Jr., S.I.C.

Appeal by respondent from orders entered 10 March 2016 by Judge William G. Hamby, Jr., and 6 July 2017 by Judge Christy E. Wilhelm in Cabarrus County District Court. Heard in the Court of Appeals 21 February 2018.

Hartsell & Williams, PA, by H. Jay White and Austin "Dutch" Entwistle III, for petitioner-appellee Cabarrus County Department of Social Services.

Rebekah W. Davis for respondent-appellant.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

DAVIS, Judge.

S.R.[1] ("Respondent") appeals from the trial court's order terminating her parental rights to her two minor children ("Summer" and "Ike"). After a thorough

[1] Pseudonyms and initials are used throughout this opinion to protect the identity of the juveniles and for ease of reading.

review of the record and applicable law, we affirm in part, reverse in part, vacate in part, and remand for further proceedings.

Factual and Procedural Background

Respondent gave birth to Summer in August 2009 and to Ike in October 2012. The children's father was murdered in New York while Respondent was pregnant with Ike, and Respondent was placed in the witness protection program. After his death, Respondent and Summer moved to Concord, North Carolina.

At an early age, Summer was diagnosed with Glanzmann's Thrombasthenia, a bleeding disorder that requires monthly medical appointments, blood transfusions, and prompt medical attention if bleeding occurs. She also required "daily doses of NovoSeven, through a port on her chest to prevent bleeding."

On 25 March 2013, Cabarrus County Department of Human Services ("CCDHS") received a report that Summer was not being taken to her medical appointments. On 22 October 2013, it was reported that Respondent and the children's uncle[2] were driving a car while Summer and Ike were sitting in the back seat "not wearing seat belts, with the windows rolled up with the odor of marijuana in the car."

[2] Although CCDHS states in its appellate brief that this man was Respondent's boyfriend, Rashad Jones, the trial court's 16 April 2015 order states that the man was actually Respondent's brother and the children's "maternal uncle."

Respondent began dating a man named Rashad Jones after moving to North Carolina. On 30 October 2014, CCDHS received and investigated a Child Protective Services ("CPS") report that Respondent had been the victim of an act of domestic violence by Jones and that she had sustained a black eye. After DSS learned of this incident, "[a] safety plan was agreed upon that Mr. Jones would not be around the children."

On 7 November 2014, CCDHS received a report that Respondent had directed Ike to hit Summer in the medical port on her chest. On 10 November 2014, CCDHS received a report that Summer had "arrived at school with a busted lip and bruises on her forehead, side, torso and back." CCDHS investigated both reports, and a doctor at a child advocacy center conducted a medical examination of Summer. He stated that "although [Summer] has a bleeding disorder, the location of the bruising on [Summer]'s stomach was from non-accidental trauma and consistent with child physical abuse."

On 10 November 2014, CCDHS filed two juvenile petitions in Cabarrus County District Court, alleging that Summer and Ike were neglected juveniles. The reports alleged that (1) Summer was not being taken to her medical appointments; (2) domestic violence had occurred between Respondent and Jones; (3) Respondent had violated the safety plan in allowing Jones to see the children; (4) Summer was being

physically abused; and (5) Respondent had directed Ike to hit Summer. The children were removed from Respondent's home and placed in foster care.

A hearing on the petitions was held on 12 March 2015 before the Honorable William G. Hamby, Jr., and an adjudication order was entered on 16 April 2015. The trial court adjudicated Summer to be abused and neglected and Ike to be neglected. The court established a case plan for Respondent, continued the children in the custody of CCDHS, set the permanent plan for the juveniles as reunification, and allowed Respondent to have weekly supervised visitation.

Pursuant to an order entered by Judge Hamby on 3 September 2015, CCDHS was permitted to "exercise discretion in beginning unsupervised visits" between Respondent and the children. Between August and October 2015, Respondent attended Ike's routine dental appointment, met with a doctor regarding treatment plans for Summer, accompanied Ike on a "well/sick" visit to a pediatric doctor, and visited Summer several times while she was hospitalized during the month of September "due to an infection in her port."

In late November 2015, Respondent was staying at the home of a friend ("Marie"), and CCDHS began attempts to enter into a safety plan with her in order to begin unsupervised visits at Marie's home. On 25 November 2016, a CCDHS social worker arrived at Marie's home and smelled the "over powering [sic] aroma of marijuana." Respondent claimed that she had not been using drugs and agreed to a

drug test. However, "she could not produce a urine sample." CCDHS advised her that visitation would not be able to occur in Marie's home or in Respondent's vehicle due to its concern as to the presence of illegal substances. That same day, Respondent told CCDHS "that she was not going to be able to do this anymore . . . [and] she was done with CCDHS and her kids just needed to go with their aunt."

During her unsupervised visits, it was reported that Respondent had "curs[ed] in front of the children, blam[ed Summer] for the family being involved with CCDHS, and . . . left the premises with the children after being specifically told not to transport the children." In October 2015, Respondent brought Jones' biological daughter to Ike's birthday party and "was observed to be [F]ace[T]iming with [Jones]" at the party.

Around the same time, Respondent was "allowed to FaceTime and call the children at their foster homes." During one FaceTime conversation, Summer reportedly asked Respondent why she had never met Jones' daughter before, and Respondent told her it was because Jones was not allowed to see Summer and Ike. However, Ike reported that he had seen Jones and "shared a Gatorade with him during an unsupervised visit." Respondent also posted pictures of herself with Jones on social media during this period.

In December 2015 and January 2016, Respondent did not notify CCDHS of any progress on her case plan or her continued relationship with Jones. She repeated her

desire of wanting to be "done" with CCDHS. Because she had told CCDHS not to contact her, she was not informed of Ike's doctor's appointment in January 2016. CCDHS informed Respondent of a February appointment for Ike eight days in advance, and Respondent stated that "she would like to be informed o[f] the appointment in enough time to take off work for the appointment." She did, however, visit Summer while she was hospitalized in late December and early January but was unable to attend Summer's medical appointments due to work conflicts.[3]

On 11 February 2016, a permanency planning hearing was held. On 10 March 2016, the trial court entered an order ceasing reunification efforts and changing the juveniles' permanent plan to "adoption, with a secondary goal of legal guardianship."

On 25 May 2016, CCDHS filed a motion to terminate Respondent's parental rights. In June 2016, Respondent informed CCDHS that her cousin's family (the "Severs") was willing to serve as an alternative placement for the children. An adjudication hearing was conducted on 16 December 2016 before the Honorable Christy E. Wilhelm in Cabarrus County District Court, and a dispositional hearing was held on 20 January 2017.

On 6 July 2017, the trial court entered an order (the "TPR Order"), determining that grounds existed for termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), and (a)(6). The court concluded that it was in both children's best interests for

[3] Respondent reported that she was working full time at McDonald's and had at some point been working part time at Cook Out.

Respondent's parental rights to be terminated. Respondent filed a notice of appeal from the 10 March 2016 order ceasing reunification efforts[4] and from the 6 July 2017 TPR Order.

Analysis

"Termination of parental rights is a two-stage proceeding. At the adjudication stage the petitioner must show by clear, cogent and convincing evidence that grounds exist to terminate parental rights." *In re J.W.*, 173 N.C. App. 450, 456-57, 619 S.E.2d 534, 540 (2005) (citation and quotation marks omitted), *aff'd per curiam*, 360 N.C. 361, 625 S.E.2d 780 (2006). "In the adjudicatory stage, the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists." *Id.* at 457, 619 S.E.2d at 540 (citation and quotation marks omitted). "A finding of any one of the grounds enumerated [in section 7B-1111], if supported by competent evidence, is sufficient to support a termination." *Id.* (citation and quotation marks omitted).

"Once a trial court has concluded during the adjudication phase that grounds exist for termination of parental rights, it must decide in the disposition phase whether termination is in the best interests of the child." *In re D.R.F.*, 204 N.C. App.

[4] Respondent does not make any specific arguments regarding the trial court's 10 March 2016 order in her appellate brief. Thus, she has abandoned any challenges to that order. *See* N.C. R. App. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

138, 141, 693 S.E.2d 235, 238, *disc. review denied*, 364 N.C. 616, 705 S.E.2d 358 (2010). On appeal,

> we must determine whether the [trial court's] findings of fact are supported by clear, cogent and convincing evidence, and whether the findings support the court's conclusions of law. If there is competent evidence, the findings of the trial court are binding on appeal. An appellant is bound by any unchallenged findings of fact. . . . We review conclusions of law *de novo*.

In re B.S.O., 234 N.C. App. 706, 707-08, 760 S.E.2d 59, 62 (2014) (internal citations and quotation marks omitted). In the event that "we determine that the court properly found one ground for termination under N.C. Gen. Stat. § 7B-1111(a), we need not review the remaining grounds." *Id.* at 708, 760 S.E.2d at 62 (citation omitted).

In her appeal, Respondent argues that the trial court erred by determining that (1) grounds existed to terminate her parental rights as to both Summer and Ike based on N.C. Gen. Stat. § 7B-1111(a)(6) (dependency); N.C. Gen. Stat. § 7B-1111(a)(1) (neglect); and N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make reasonable progress to correct the conditions that led to the removal of the juveniles); and (2) it was in the children's best interests to terminate her parental rights. We address each argument in turn.

I. Dependency (N.C. Gen. Stat. § 7B-1111(a)(6))

N.C. Gen. Stat. § 7B-1111(a)(6) states that a trial court may terminate parental rights based on dependency where "the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future." N.C. Gen. Stat. § 7B-1111(a)(6) (2017). A juvenile is "dependent" under N.C. Gen. Stat. § 7B-101 when he is "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. Gen. Stat. § 7B-101(9) (2017). "Under this definition, 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 P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

Respondent challenges the trial court's adjudication that the children were dependent. Specifically, she contends that the trial court erred by making an adjudication of dependency despite its findings that Respondent had provided an appropriate alternative childcare placement. CCDHS and the guardian *ad litem* concede that the trial court's findings do not support a finding of dependency.

Finding No. 45 stated as follows:

> 45. Twenty (20) months after the juveniles had been in care and after this motion to terminate parental rights was filed, [Respondent] identified the Severs as placement options.

This finding demonstrates that Respondent had, in fact, identified an alternative placement option for Summer and Ike. Thus, in order to find that the juveniles were dependent, the trial court would have needed to make a finding determining that Respondent's alternative placement was inappropriate. However, the trial court did not do so. Accordingly, we reverse the trial court's determination that termination of Respondent's parental rights was warranted under N.C. Gen. Stat. § 7B-1111(a)(6).

II. Neglect (N.C. Gen. Stat. § 7B-1111(a)(1))

Respondent also challenges the trial court's determination that grounds existed to terminate her parental rights based on neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). N.C. Gen. Stat. § 7B-1111(a)(1) provides that a court may terminate parental rights where "[t]he parent has abused or neglected the juvenile." N.C. Gen. Stat. § 7B-1111(a)(1). Under this provision, "[t]he juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101." *Id.*

The term "neglected juvenile" is defined by N.C. Gen. Stat. § 7B-101 as follows:

> (15) Neglected juvenile. — A juvenile who does not receive

> proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. . . .

N.C. Gen. Stat. § 7B-101(15).

This Court has held that "[w]here . . . a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect." *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citation omitted). "This is because requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible." *Id.* (citation omitted). However, "[a]lthough prior adjudications of neglect may be admitted and considered by the trial court, they will rarely be sufficient, standing alone, to support a termination of parental rights, since the petition must establish that neglect exists at the time of hearing." *Id.* (citation omitted).

"[T]he trial court must also consider evidence of changed conditions in light of the history of neglect by the parent and the probability of a repetition of neglect." *Id.* (citation omitted). "A parent's failure to make progress in completing a case plan is

indicative of a likelihood of future neglect." *In re C.M.P.*, __ N.C. App. __, __, 803 S.E.2d 853, 859 (2017) (citation omitted).

Respondent's arguments can be divided into three categories: (1) CCDHS's petition to terminate parental rights was inadequate as it did not allege facts actually supporting a determination of neglect; (2) several findings in the TPR Order were unsupported by the evidence; and (3) the remaining unchallenged findings in the TPR Order do not support an adjudication of neglect under N.C. Gen. Stat. § 7B-1111(a)(1). We address each category in turn.

A. Adequacy of Juvenile Petitions

Respondent first argues that CCDHS did not sufficiently allege facts in the juvenile petition to put her on notice that neglect would be a ground for termination of her parental rights. N.C. Gen. Stat. § 7B-1104 provides, in pertinent part, as follows:

> The petition . . . shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:
>
> . . . .
>
> (6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

N.C. Gen. Stat. § 7B-1104 (2017).

This Court has held that a petitioner's "bare recitation of the alleged statutory *grounds* for termination does not comply with the requirement . . . that the petition state *facts* which are sufficient to warrant a determination that grounds exist to warrant termination." *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002) (citation, quotation marks, and ellipsis omitted). "While there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue." *Id.*

In the present case, the petition filed by CCDHS stated the broad proposition that Summer and Ike had been neglected. However, the petition did not set out specific facts evidencing the basis for this assertion.

CCDHS and the guardian *ad litem* contend, however, that Respondent has waived this issue for appellate review because she failed to make a motion to dismiss CCDHS's petition on this basis in the trial court. We agree. "The Rules of Civil Procedure apply to proceedings for termination of parental rights, . . . and a Rule 12(b)(6) motion may not be made for the first time on appeal." *In re H.L.A.D.*, 184 N.C. App. 381, 392, 646 S.E.2d 425, 434 (2007), *aff'd per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008); *see also* N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . . .").

Respondent did not object in the trial court to the insufficiency of the allegations in the juvenile petitions. Thus, she has waived this issue for appellate review. *See H.L.A.D.*, 184 N.C. App. at 392, 646 S.E.2d at 433 (holding that respondent did not adequately preserve for appeal issue regarding legal insufficiency of TPR petition where he did not make motion to dismiss on that basis).

B. Findings of Fact

On appeal, we review a trial court's order terminating parental rights to determine whether the court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings, in turn, support its conclusions of law. *In re Shepard,* 162 N.C. App. 215, 221, 591 S.E.2d 1, 6, *disc. review denied,* 358 N.C. 543, 599 S.E.2d 42 (2004). Unchallenged findings of fact are binding on appeal. *See In re Humphrey,* 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("Findings of fact to which a respondent did not object are conclusive on appeal." (citation omitted)).

Respondent challenges several findings of fact that the trial court utilized to demonstrate a probability of the repetition of neglect. The pertinent findings by the trial court on this issue stated as follows:

> 17. In order to address issues that currently placed [Summer] and [Ike] at risk, the court entered a disposition order containing the case plan for [Respondent] to:
>
> a. Complete a psychological evaluation and follow through with all recommendations.

b. Participate in counseling with a CCDHS approved provider in order to address concerns regarding domestic violence, the effects of power and control in relationships and self esteem. The counseling shall also address the loss of her children's father to death. [Respondent] will follow through with all recommended treatment.

c. Refrain from engaging in domestic violence and shall provide a home free of domestic violence.

d. Attend an approved parenting course appropriate for the age of her children. She will learn how to utilize appropriate discipline, and how abuse/neglect can affect her children; she will also demonstrate an understanding age [sic] appropriate expectations and demonstrate the ability to make decisions in order to protect her children.

e. Maintain suitable housing for the placement of [Summer] and [Ike].

f. Provide verification that she has sufficient income to provide for [Summer] and [Ike]. [Respondent] shall provide financial support for [Summer] and [Ike] pursuant to NC Law.

g. Attend [Summer] and [Ike]'s medical and dental appointments.

h. Sign releases of information as requested by CCDHS in order for CCDHS to communicate with her treatment providers.

i. Contact the assigned social worker every other week regarding the status of the case and her progress with the court-ordered tasks. All

> changes in address, employment, and residence or events that will affect one's ability to comply with this order such as illness, hospitalizations, incarceration etc. shall be reported immediately. If she receives the assigned social worker's voicemail, she must leave a message providing the date and time of her call and phone number where she can be reached. If she does not have a phone she should schedule regular office contacts with the social worker.
>
> j. Utilize her own transportation or the bus system to make any scheduled appointments or meetings. The assigned social worker may assist with transportation by providing bus tokens. [Respondent] shall discuss all transportation problems with the social worker at least 24 hours in advance to avoid missing any scheduled appointments[.]

18. Of the case plan, [Respondent] only completed a portion of the Triple P parenting class in June, 2015; however, there was no significant follow-up following June, 2015.

19. [Respondent] was compliant in providing her transportation although there had been issues prior to nonsecure custody was [sic] granted to CCDHS as it relates to transportation of [Summer] to her medical appointments.

20. [Respondent] paid child support and arrears payment with minimal amount and varied hours of employment.

21. The remaining portions of the case plan [Respondent] either did not attempt or upon an attempt did not successfully complete.

22. As of April 7, 2015 [Respondent] had not

completed the psychological evaluation.

23. On July 14, 2015, [Respondent] completed a comprehensive clinical assessment at RHA. It was determine[d] that [Respondent] meets the criteria for Major Depressive Disorder and Post Traumatic Stress Disorder. [Respondent] is recommended for outpatient therapy services. [Respondent] is also recommended for a psychiatric evaluation to determine the need for medication management, and peer support to assist with her development of life skills, money management, budgeting, and obtaining housing.

24. On August 24, 2015 [Respondent] was discharged from outpatient services with RHA for refusing treatment. [Respondent] attempted to reengage in services and had a scheduled appointment with Jennifer Lochte with RHA to begin outpatient therapy on October 27, 2015. [Respondent] cancelled this appointment and rescheduled for November 4, 2015, for which she was a no-call/no show. As of this hearing, [Respondent] has not successfully completed individual counseling services.

25. On March 21, 2016 [Respondent] self-reported and solely attended an intake appointment for mental health services with RHA. Without CCDHS's collateral input, RHA found [Respondent] did not engage in the past services recommended, was evasive during the interview, and "wanted to get this over with." [Respondent] was found to have PTSD.

26. It was determine [sic] that [Respondent] meets the criteria for Major Depressive Disorder and Post Traumatic Stress Disorder. [Respondent] self-reported past trauma requiring counseling as well as domestic violence.

27. As of the date of this hearing [Respondent] has not contacted anyone at RHA for additional appointments to meet her previous recommendations as to outpatient

therapy.

28. [Respondent] has failed to attend services with RHA as well as RHA not being able to contact [Respondent] because of her phone number changing and not having independent housing.

29. It is not possible for the juveniles to return to the custody of [Respondent] inasmuch as the conditions which led to the removal of the juveniles from the home as well as the accruing conditions have not been alleviated.

30. [Respondent] demonstrated a pattern of failing to provide appropriate care for the juveniles and the Court finds that it is probable that this neglect would be repeated if custody of the juveniles was returned to [Respondent].

31. [Respondent] has not improved the situation that led to the placement of the juveniles and based on the evidence presented on this date, the juveniles would be subjected to irreparable harm if the juveniles are returned to [Respondent].

32. [Respondent] has willfully failed to pay any amount towards the cost of care for the juveniles. [Respondent] is physically and financially able to do so.

33. On November 25, 2015, CCDHS went to the home of [Marie] in an attempt to engage [Respondent] and her roommates in completing a safety plan to continue visits with the children in the home. When CCDHS arrived, there was an over powering [sic] aroma of marijuana. CCDHS was not invited into the residence, and was advised that [Respondent] was at work. CCDHS was further advised that the roommates had no idea why CCDHS was at the home. On that same date, CCDHS advised [Respondent] that visitation would not be able to occur in the home due to the concerns of illegal substances in the home. CCDHS requested that [Respondent] submit to a drug screen. [Respondent] agreed. [Respondent] went

to Genesis, however, she could not produce a urine sample. To date, [Respondent] has refused to submit to requested drug screens. [Respondent] declined a hair follicle drug screen when that request was made of her in open court this date.

34. On November 24, 2015, CCDHS was assisting [Respondent] with putting car seats in her roommate's vehicle, which she borrowed to transport the children for their visit. CCDHS smelled the odor of marijuana. CCDHS had been loaning [Respondent] car seats, as she did not have any. CCDHS arranged, on that same date, for [Respondent] to receive free car seats from the Concord Fire Department on Highway 601, Concord. [Respondent] did not attend.

35. During visitations, [Respondent] has been heard to curse in front of the children, blaming [Summer] for the family being involved with CCDHS, and has left the premises with the children after being specifically told not to transport the children. [Respondent] has also had the child of her alleged ex-boyfriend, Tank, at visits, and in the background of FaceTime conversations. During a Facetime conversation, [Summer] asked [Respondent] who [Rachel] was to her. [Respondent] advised [Summer] that [Rachel] is her step-sister. [Summer] inquired as to why, "can't I see the other children?" to which [Respondent] replied, "cause he ain't allowed to see them." [Respondent] also gave [Ike] a Christmas present from "Mommy and Daddy." [Ike] has reported he has seen Tank and shared a Gatorade with him during an unsupervised visit.

36. [Respondent] returned to a relationship with Mr. Rashard [sic] Jones, aka Tank, which causes grave concern as Mr. Jones was charged in 2013 with misdemeanor child abuse as he and [Respondent] were pulled over and it was found that [Summer] and [Ike] were not restrained in seat belts, and that marijuana was being smoked in the presence of the children while all windows were rolled up. While this case was in In-Home Services, there were

> concerns about domestic violence between Mr. Jones and [Respondent] as she had a black eye from Mr. Jones.
>
> 37. [Summer]'s medical condition reached a point that medical decisions and treatment needed to be made including bone marrow transplants. [Respondent] did not attend or participate in these discussions.
>
> . . . .
>
> 41. The Court finds that the following grounds exist to terminate [Respondent's] parental rights pursuant to NC Gen Stat. §7B-1111(a)(1); that [Respondent] neglected the juveniles within the meaning of NC Gen Stat. §7B-101(15) and that there is a likelihood that such neglect would continue in the future.

1. Findings Regarding Case Plan

Respondent first argues that several of the above-quoted findings regarding lack of progress she made on her case plan were unsupported by clear, cogent, and convincing evidence. She challenges, *inter alia*, the statement in Finding No. 18 that "[o]f the case plan, [she] *only* completed a portion of the Triple P parenting class" and the statement in Finding No. 21 that "[t]he remaining portions of the case plan [Respondent] either did not attempt or upon an attempt did not successfully complete." (Emphasis added.) She contends that the evidence instead supported a conclusion that she made reasonable progress in completing her case plan. In order to address her argument, we must examine the evidence regarding her level of compliance.

First, the case plan required that Respondent "[c]omplete a psychological evaluation" and "follow through with all recommendations." The trial court found that "[a]s of April 7, 2015, Respondent . . . had not completed the psychological evaluation." The evidence demonstrated that on 7 April 2015 CCDHS learned from RHA Behavioral Health Services ("RHA") that due to Respondent's work schedule, lack of independent housing, and changed phone number, Respondent had been non-compliant with attending her mental health services or maintaining contact with RHA.

However, Respondent subsequently completed a psychological evaluation on 6 June 2015. Based on that assessment, she received a report that she "ha[d] no mental health concerns" and "d[id] not meet criteria for a mental health diagnosis . . . ." The trial court's findings do not address the evidence showing that Respondent did complete a psychological evaluation and that it was reported she had no mental health concerns. We cannot tell whether the trial court overlooked this undisputed evidence or whether the court determined that the evidence was not credible.

Second, the case plan provided, in pertinent part, that Respondent would "[p]articipate in counseling with a CCDHS approved provider in order to address concerns regarding domestic violence, the effects of power and control in relationships and self-esteem." The trial court found that Respondent had not completed this

portion of her case plan and had been "discharged from outpatient services with RHA for refusing treatment."

The evidence established that on 14 July 2015, Respondent completed a comprehensive clinical assessment at RHA and was determined to "meet[ ] the criteria for Major Depressive Disorder and Post Traumatic Stress Disorder." She was recommended for outpatient therapy services as well as a psychiatric evaluation to determine the need for medication management and peer support to assist with the development of life skills, money management, budgeting, and obtaining housing. In the following months, Respondent "was discharged from outpatient therapy with RHA due to lack of attendance."

In March 2016, Respondent returned to RHA for an intake meeting, but she "did not complete any counseling." RHA reported that Respondent "was evasive" during her interview and "wanted to get this over with." RHA did not recommend any outpatient services at that time because Respondent did not meet the criteria for Major Depressive Disorder or Post Traumatic Stress Disorder. RHA also reported that Respondent had not met her previous recommendations for outpatient therapy. Having reviewed this evidence regarding Respondent's participation in counseling with the CCDHS-approved provider, we believe the trial court's findings were supported by clear and convincing evidence as to this portion of her case plan.

Third, the case plan required that Respondent refrain from engaging in domestic violence and provide a home free of domestic violence for the children. The trial court did not make any findings regarding any instances of domestic violence since November 2014 but did suggest that Respondent had not successfully completed this requirement in her case plan. CCDHS provided no evidence that either Respondent, Summer, or Ike were subjected to domestic violence since November 2014 or that domestic violence had occurred in any of the homes in which Respondent or the children were living since 2014. Rather, the only reported instances of domestic violence in the family's CPS history were the physical abuse incidents in October and November 2014 leading to the children's removal from Respondent's care. The trial court's findings on this issue, therefore, do not reflect the fact that Respondent met this requirement of her case plan.

Fourth, the case plan required that Respondent "[a]ttend an approved parenting course" and "learn how to utilize appropriate discipline, and how abuse/neglect can affect her children" as well as "demonstrate the ability to make decisions in order to protect her children." The trial court found that Respondent had completed the Triple P parenting course but that "there was no significant follow-up following June, 2015." A social worker testified that Respondent was "more in compliance" with the parenting course and that she had seen Respondent "use some positive techniques . . . working with both of the children. So in terms of her actually

using everything that's a part of the parenting courses, I didn't get that many opportunities, but I did see some strengths in some of the visits."

However, there was also testimony presented that the parenting class was "an ongoing process" as opposed to a short-term course and that Respondent had not been consistent in meeting with the instructor. A social worker testified that she had concerns "related to the way that [Respondent] is communicating with [Summer], and . . . about some of this being her fault." The social worker testified that she was worried about "the people that [Respondent was] surrounding herself with, and if she's willing to allow her children to be around people that are using substances, are unsafe, and not consider . . . how that could impact her children." Thus, the trial court's findings are supported by competent evidence on this issue.

Fifth, Respondent was required to "[m]aintain suitable housing for the placement of [Summer] and [Ike]." The trial court did not make a specific finding regarding Respondent's housing situation but found that she had not successfully completed this portion of her case plan. The evidence tended to show that in 2015 and 2016, Respondent was homeless and living at Marie's and her brother's homes. A social worker visited the home where Respondent was staying with a friend in November 2015 and smelled "an over powering [sic] aroma of marijuana." Although the social worker was not invited into the residence, Respondent was informed that "visitation [with Summer and Ike] would not be able to occur in the home due to the

concerns of illegal substances in the home." Respondent testified that from November 2015 to February 2016 she was living with her brother. However, when her brother was evicted from his home in February 2016, Respondent moved back into her friend's home. She testified that she was also on the waiting list for government-subsidized housing. The trial court's findings are thus supported by the evidence on this issue.

Sixth, Respondent was required to "provide financial support for [Summer] and [Ike] pursuant to NC Law." The trial court's findings explaining whether Respondent had provided child support for the children are contradictory. Finding No. 20 states that "Respondent . . . paid child support and arrears payment with minimal amount and varied hours of employment" while Finding No. 32 states that she "willfully failed to pay any amount towards the cost of care for the juveniles." The undisputed evidence during the hearing established that Respondent had fully paid her required child support, and the trial court made an oral finding that "Respondent has in fact met the cost of care in her child support obligations." Thus, the trial court's findings that Respondent had not complied with this portion of her case plan are unsupported by clear and convincing evidence.

Seventh, Respondent was required to "[a]ttend [Summer] and [Ike's] medical and dental appointments." The trial court found that Summer's medical condition "requires monthly medical appointments, blood transfusions and prompt medical attention if bleeding occurs[.]" The court found that "[Summer's] medical condition

reached a point that medical decisions and treatment needed to be made including bone marrow transplants. [Respondent] did not attend or participate in these discussions." The trial court made no specific finding with respect to Respondent's attendance of Ike's medical and dental appointments.

Having reviewed the evidence on this issue, it is clear that Summer's medical condition resulted in her hospitalization during most of September 2015 and again in December 2015 and January 2016. She and her custodians were required to attend numerous appointments for diagnosis and treatment of her medical condition. The evidence established that Respondent — due in part to her work schedule and in part to her failure to maintain consistent communication with CCDHS — was unable to attend many of Summer's medical appointments.

She did make sporadic attempts to visit Summer while she was hospitalized, but the evidence did not demonstrate consistent attempts by Respondent to take part in conversations regarding Summer's treatments. In contrast to her failure to regularly attend Summer's significant medical appointments, the evidence demonstrated that Respondent generally attended Ike's routine medical and dental appointments when she received advance notice of those appointments from CCDHS. Thus, the trial court's findings are supported with respect to Summer's medical appointments, but they are not supported by clear and convincing evidence with respect to Ike's appointments.

Eighth, the case plan required that Respondent "[s]ign releases of information as requested by CCDHS in order for CCDHS to communicate with her treatment providers." The trial court made no finding on this issue but suggested that Respondent had not complied with this portion of her case plan. No evidence was presented tending to show that Respondent had failed to comply with this requirement. Rather, CCDHS presented evidence that Respondent had released to it information regarding her treatment and employment records. Thus, the trial court's findings are unsupported by clear and convincing evidence on this issue.

Ninth, Respondent was required to "[c]ontact the assigned social worker every other week regarding the status of the case and her progress with the court-ordered tasks." The trial court found that Respondent neither complied nor attempted to comply with this requirement. It is clear from the evidence that Respondent was generally inconsistent — and at times indignant — in her correspondence with CCDHS. The evidence established that she (1) informed CCDHS that she was "done trying" on more than one occasion; (2) told CCDHS that the children should be sent to live with a relative instead of returning to her; and (3) consistently failed to provide any updates on her progress with the case plan. Thus, the trial court's findings that Respondent did not comply with this portion of her case plan are supported by clear and convincing evidence.

Tenth, the case plan required that Respondent "[u]tilize her own transportation or the bus system to make any scheduled appointments or meetings." The trial court found that Respondent "was compliant in providing her transportation although there had been issues prior to nonsecure custody was [sic] granted to CCDHS as it relates to transportation of [Summer] to her medical appointments." Thus, the trial court properly found that this requirement had been met.

Based on the evidence presented, we cannot say that Finding Nos. 18 and 21 were wholly supported by clear and convincing evidence. The evidence tended to show that Respondent had complied with several parts of her case plan. She had (1) completed a psychological evaluation and was reported to have no mental health diagnosis; (2) received a clinical assessment dealing with domestic violence; (3) refrained from engaging in domestic violence and lived in a home free of domestic violence; (4) attended a parenting course; (5) provided financial support for Summer and Ike; (6) generally attended Ike's medical and dental appointments and sporadically attended Summer's medical appointments; (7) signed releases of information as requested by CCDHS; and (8) utilized her own transportation or the bus system to attend meetings.

Respondent's non-compliance with the case plan was limited to her failure to consistently (1) attend parenting courses; (2) attend outpatient services provided by RHA; (3) maintain safe and stable housing; (4) attend *all* of the children's medical

appointments — in particular, those concerning Summer's medical treatment; and (5) remain in communication with CCDHS about her progress. For these reasons, we disregard Finding Nos. 18, 21, 22, and 32 to the extent that they conflict with the evidence offered before the trial court. However, we find that the evidence supports Finding Nos. 23, 26, and 37.

2. Finding No. 33

Respondent challenges Finding No. 33 to the extent that it states that "[t]o date, [Respondent] has refused to submit to requested drug screens." The evidence shows that on 11 February 2016, Respondent provided a urine sample at the request of CCDHS that returned negative results. Thus, we disregard this portion of Finding No. 33.

3. Finding No. 36

Respondent challenges Finding No. 36, which states as follows:

> 36. [Respondent] returned to a relationship with Mr. Rashard [sic] Jones, aka Tank, which causes grave concern as Mr. Jones was charged in 2013 with misdemeanor child abuse as he and [Respondent] were pulled over and it was found that [Summer] and [Ike] were not restrained in seat belts, and that marijuana was being smoked in the presence of the children while all windows were rolled up. While this case was in In-Home Services, there were concerns about domestic violence between Mr. Jones and [Respondent] as she had a black eye from Mr. Jones.

Respondent argues that the court's finding that "Jones had been charged with misdemeanor child abuse and that [Respondent] and he had been smoking marijuana in the presence of the children" was unsupported by any evidence. CCDHS did not present any actual testimony or any exhibits tending to show that Jones was charged with misdemeanor child abuse. The only reference to a charge of misdemeanor child abuse originated in a 11 February 2016 CCDHS report in which CCDHS stated that Jones was "charged in 2013 with misdemeanor child abuse . . . ." The trial court's finding in its 10 March 2016 order was based on this CCDHS report.

However, no evidence was presented at the TPR hearings regarding this charge of misdemeanor child abuse. Although several CCDHS reports in 2013 and 2014 listed pending criminal charges against Jones, none of these reports stated that he had been charged with misdemeanor child abuse in 2013. Absent direct evidence to resolve these conflicts in the record, we cannot say that this evidence was clear and convincing to show that Jones was charged with misdemeanor child abuse.

The trial court also found in its 16 April 2015 order that "[o]n October 22, 2013, [Respondent], the juveniles and *maternal uncle* were in a car being driven by [Respondent] while the juveniles were not wearing seat belts, with the windows rolled up with the odor of marijuana in the car." (Emphasis added.) Thus, the 22 October 2013 incident involved a maternal uncle rather than her boyfriend. Accordingly, we

disregard these portions of Finding No. 36 that are not clearly established by the evidence.

4. Timeliness of Findings

Respondent also argues that several of the trial court's findings involve events that occurred more than a year prior to the TPR hearings and CCDHS has not demonstrated that these conditions still existed at the time of the 16 December 2016 and 20 January 2017 hearings. We disagree.

Our Supreme Court has held that "termination of parental rights for neglect may not be based solely on conditions which existed in the distant past but no longer exist." *In re Ballard*, 311 N.C. 708, 714, 319 S.E.2d 227, 231-32 (1984). "But to require that termination of parental rights be based only upon evidence of events occurring after a prior adjudication of neglect which resulted in removal of the child from the custody of the parents would make it almost impossible to terminate parental rights on the ground of neglect." *Id.* at 714, 319 S.E.2d at 231-32.

Here, many of the findings detailing events occurring in 2013, 2014, and 2015 provide a background for more recent events that could give rise to a continued likelihood of neglect. Moreover, several of the trial court's findings of fact involve events occurring in 2016 or the status of Respondent's progress with her case plan at the time of the TPR hearings. Thus, we reject Respondent's argument that the findings of fact related to events too remote in time to be relevant.

C. Neglect as Ground for Termination

Having concluded that several of the trial court's findings of fact were unsupported by clear and convincing evidence, we must now determine whether the remaining findings support the trial court's determination that the termination of Respondent's parental rights as to Summer and Ike pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) was proper.

In order to determine the conditions that gave rise to the prior neglect, the trial court took judicial notice of past orders in which both children had been adjudicated neglected. On 16 April 2015, the trial court adjudicated Ike as a neglected juvenile due to (1) domestic violence between Respondent and Jones; (2) Respondent's violation of a previous safety plan prohibiting her from allowing Jones to be around Summer and Ike; (3) Respondent directing Ike to hit Summer in the port on her chest; (4) Summer "arriv[ing] at school with a busted lip and multiple bruises" that were determined to be non-accidental and consistent with child physical abuse; and (5) the incident on 22 October 2013 during which Respondent and a maternal uncle were driving in a car with the windows rolled up and the odor of marijuana was present while the children were sitting in the back seat without seat belts on.

In the TPR Order, the trial court relied on these prior findings of neglect as to both children, as well as on its own findings that Respondent had been "missing [Summer's] appointments with specialists for a serious medical condition,

Glanzmann's Thrombasthenia. [Respondent] has repeatedly fail[ed] to ensure the child attend these appointments without plausible reasons."

Thus, in the TPR order the court properly determined that both children had a prior history of neglect. *See Ballard*, 311 N.C. at 713-14, 319 S.E.2d at 231 ("[A] prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect."). The question remains whether there was clear and convincing evidence to establish that there was a probability that the neglect would be repeated. *See Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407 (requiring evidence showing prior history of neglect and probability of repetition of neglect to terminate parental rights).

As previously discussed, the evidence demonstrated that — by the time of the TPR hearings in December 2016 and January 2017 — Respondent had attended some of the classes in a parenting course, had attended clinical assessments to deal with her past domestic violence, and had been evaluated by a psychologist at least two times. She had not been involved in domestic violence since the end of 2014. She also made all required payments of child support for both of her children.

However, Respondent's failure to attend Summer's medical appointments and her overall lack of involvement in her medical treatment tends to show that a repetition of neglect is likely. We find our decision in *In re Allred*, 122 N.C. App. 561, 471 S.E.2d 84 (1996), to be instructive. *Allred* involved a respondent-mother whose

six-year-old daughter had been born prematurely and with myotonic dystrophy. At age two, the daughter was adjudicated neglected after DSS learned that her arm had been broken due to "an external twisting motion." *Id.* at 563, 471 S.E.2d at 84. Four years later, the respondent-mother's parental rights were terminated based on neglect. *Id.*

On appeal, the respondent-mother argued that the trial court had erred by failing to make findings establishing there was a probability that neglect would reoccur at the time of the TPR hearing. *Id.* at 568, 471 S.E.2d at 88. We held that "over the four year period of time between DSS' taking custody of [the daughter] and the termination hearing, even though she made some improvements, respondent failed to improve her parenting skills to a level of appropriate care. This supports a finding of neglect." *Id.* (citation omitted). In so holding, we stated that

> [a]lthough [the daughter] is a multi-handicapped child with special needs, respondent failed to attend many of the important medical appointments scheduled to help respondent provide for the child's needs. Respondent did not pay adequate attention to the child or handle the child appropriately during supervised visitations. Respondent failed to accept the advice of social workers and others for the proper care of [her daughter]. Because of this, respondent was unable to care for the child's special needs. . . . This evidence showed respondent was not able to properly provide for [her daughter's] physical needs and both failed, and appeared unable, to correct these problems within a reasonable time. Therefore, the court properly found [the daughter] to be a neglected child.

Id. at 568-69, 471 S.E.2d at 88.

Here, the serious nature of Summer's medical condition is undisputed. Due to her Glanzmann's Thrombasthenia, even a small amount of bleeding (such as a nosebleed) requires prompt medical attention. Treatment for this disease also requires blood transfusions.

During 2015 and 2016, Respondent's work hours coupled with her inconsistency in responding to CCDHS resulted in her missing many of Summer's medical appointments during which "medical decisions and treatment needed to be made . . . ." At one point, Summer's doctors were considering whether a bone marrow transplant was needed, and Respondent did not take part in these conversations. Based on both the trial court's findings and the evidence of record on this issue, we believe the trial court properly found a likelihood that Summer would continue to be neglected in the future. There is simply no indication from the record that Respondent would be able to meet Summer's serious health needs going forward.

However, we reach a different conclusion as to Ike. The trial court's findings fail to show any inappropriate parenting behavior by Respondent with respect to Ike after November 2014. Furthermore, while Respondent did not consistently attend Summer's medical appointments, she generally attended Ike's medical and dental appointments. Thus, the evidence tended to show a change in conditions such that there was not a probability of a repetition of neglect as to him.

CCDHS argues that Respondent's relationship with Jones continued to be problematic with regard to her ability to care for Ike. Based on her ongoing relationship with Jones, CCDHS contends, there is a probability that neglect would reoccur. However, Respondent's case plan never actually required her to keep Jones away from Ike. While CCDHS and Respondent agreed to a safety plan in October 2014 providing that Jones would not be allowed around Summer and Ike, it is unclear from the trial court's findings and the evidence whether Respondent had ever been required by the court to prevent Jones from seeing the children.

In any event, CCDHS did not establish that Jones' minimal contact with Ike was likely to result in a repetition of neglect. Rather, the trial court simply found that Respondent gave Christmas presents to Ike on behalf of Jones and that Ike "shared a Gatorade" with Jones during an unsupervised visit.

Moreover, CCDHS did not establish that Jones continued to pose a threat of domestic violence toward Respondent and her children. CCDHS's original concern with Jones stemmed from his threat of violence to Respondent and the children in 2014. However, the record is devoid of evidence that since November 2014 Respondent has been involved in incidents of domestic violence or that either Summer or Ike was subjected to domestic violence during visitation.

Thus, as our analysis makes clear, we reach different conclusions with respect to Summer and Ike on the question of whether N.C. Gen. Stat. § 7B-1111(a)(1) served

as a proper ground for termination of Respondent's parental rights. In so doing, we observe that nothing in Chapter 7B precludes a trial court from terminating a parent's rights as to one child but not the other where — as here — the circumstances as to each child are materially different.

For all of these reasons, we affirm the portion of the TPR Order determining that grounds existed to terminate Respondent's parental rights to Summer based on neglect under N.C. Gen. Stat. § 7B-1111(a)(1). However, we reverse the portion of the order concluding that termination of her parental rights as to Ike was also proper under N.C. Gen. Stat. § 7B-1111(a)(1).

III. Failure to Make Reasonable Progress (N.C. Gen. Stat. § 7B-1111(a)(2))

Finally, Respondent argues that the trial court erred by finding that the termination of her parental rights as to Ike was proper under N.C. Gen. Stat. § 7B-1111(a)(2) in that she willfully left Ike in foster care or placement for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made to correct the conditions that led to Ike's removal.[5]

N.C. Gen. Stat. § 7B-1111(a)(2) provides that parental rights may be terminated where "[t]he parent has willfully left the juvenile in foster care or

[5] Having determined that a ground for termination existed as to Summer under N.C. Gen. Stat. § 7B-1111(a)(1), we need not address Respondent's argument under N.C. Gen. Stat. § 7B-1111(a)(2) as to her. *See B.S.O.*, 234 N.C. App. at 708, 760 S.E.2d at 62 (holding that should "we determine that the court properly found one ground for termination under N.C. Gen. Stat. § 7B-1111(a), we need not review the remaining grounds." (citation omitted)).

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. Gen. Stat. § 7B-1111(a)(2). However, "[a] parent's failure to fully satisfy all elements of the case plan goals is not the equivalent of a lack of reasonable progress." *In re J.S.L.*, 177 N.C. App. 151, 163, 628 S.E.2d 387, 394 (2006) (citation and quotation marks omitted).

The trial court made the following pertinent finding of fact:

> 42. The Court finds that the following grounds exist to terminate [Respondent's] parental rights pursuant to NC Gen Stat. §7B-1111(a)(2) in that the parent willfully left the juveniles 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 from the custody and care of the mother, and that [Respondent] failed to address the issues that led to placement with CCDHS by completing Court ordered tasks.

Respondent contends that the evidence supported a conclusion that she had made reasonable progress to completing her case plan as it related to Ike. As stated above, since Ike was removed from her care, Respondent has attended some therapy and parenting classes, refrained from engaging in domestic violence, made child support payments, attended Ike's medical appointments, released information to CCDHS regarding her treatment, and obtained her own method of transportation.

This evidence does not support the trial court's findings that she neither attempted to complete nor successfully completed several portions of her case plan. Thus, we reverse the trial court's finding that Respondent failed to make reasonable progress in correcting the conditions that led to Ike's removal from her care.

IV. Dispositional Phase

At the dispositional phase of the TPR hearing, the trial court made its best interests determination as to Summer in the belief that Respondent's parental rights to Ike were also being terminated. However, given the fact that we have now reversed the portion of the trial court's order terminating her parental rights as to Ike, we believe it is appropriate to vacate the dispositional portion of the order and remand this matter for a new best interests determination as to Summer during which the court can take into account our decision today. At the new dispositional hearing, the trial court may, in its discretion, receive new evidence.[6]

Conclusion

For the reasons stated above, we affirm the trial court's 10 March 2016 order. With regard to the court's 6 July 2017 TPR Order, we (1) affirm the trial court's determination that grounds existed to terminate Respondent's parental rights as to Summer based on neglect; (2) reverse the trial court's determination that grounds existed to terminate Respondent's parental rights as to Ike based on neglect; (3)

[6] Because we are remanding for a new dispositional hearing, we need not address the remaining arguments in Respondent's brief.

reverse the trial court's determination that grounds existed to terminate Respondent's parental rights as to Ike based on her failure to make reasonable progress in correcting the conditions that led to his removal; (4) reverse the trial court's determination that grounds existed to terminate Respondent's parental rights as to either child based on dependency; (5) vacate the dispositional portion of the order; and (6) remand for a new dispositional hearing as to Summer.

AFFIRMED IN PART; REVERSED IN PART; VACATED IN PART; REMANDED WITH INSTRUCTIONS.

Judges STROUD and ARROWOOD concur.

Report per Rule 30(e).