IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-27

Filed: 17 July 2018

Forsyth County, No. 15 JT 255

IN THE MATTER OF: A.R.

Appeal by respondents from order entered 16 October 2017 by Judge Denise S. Hartsfield in Forsyth County District Court. Heard in the Court of Appeals 28 June 2018.

Assistant County Attorney Theresa A. Boucher for petitioner-appellee Forsyth County Department of Social Services.

J. Thomas Diepenbrock for respondent-appellant mother.

Jeffrey William Gillette for respondent-appellant father.

Robinson, Bradshaw & Hinson, P.A., by Ty Shaffer and Travis S. Hinman, for guardian ad litem.

BERGER, Judge.

Respondent-mother and respondent-father appeal from the trial court's order terminating their parental rights to A.R. ("Adam").[1] Respondent-father and

[1] Pseudonyms are used throughout to protect the identity of the children pursuant to N.C.R. App. P. 3.1(b), and for ease of reading.

respondent-mother contend the trial court erred in finding a ground of neglect to terminate their parental rights to Adam. After careful review, we affirm the trial court's order.

In October 2015, Adam was born four weeks premature to respondent-mother. Adam weighed three pounds and thirteen ounces, and both he and respondent-mother tested positive for cocaine when he was born. Adam suffered from withdrawal symptoms based upon his prenatal exposure to cocaine.

Respondent-mother, who had an extensive history of substance and alcohol abuse, was in and out of rehabilitation and was hospitalized for "detox" during her pregnancy. She had a history of engaging in prostitution to obtain drugs and had been diagnosed with depression, substance abuse mood disorder, and unspecified bi-polar disorder. During Adam's hospitalization, respondent-mother was briefly released from the hospital. On or about November 3, 2015, she was hospitalized again. Respondent-mother had engaged in prostitution to obtain cocaine and as a result, her C-section had become infected.

Respondent-mother and respondent-father were involved in a two-year relationship with a history of domestic violence. A Child Protective Services ("CPS") report stated that in August 2015, respondent-father assaulted respondent-mother with a belt while she was pregnant with Adam. Respondent-mother became unconscious and had to be hospitalized. Respondent-father doubted whether he was

Adam's biological father due to respondent-mother's history of prostitution. However, the trial court ordered respondent-father to submit to a paternity test, and test results certified that he was the biological father of Adam.

On November 6, 2015, respondent-mother acknowledged to Forsyth County Department of Social Services ("FCDSS") that she was not prepared to care for Adam. On November 12, 2015, Adam was released into the care of a maternal cousin.

On November 20, 2015, FCDSS obtained nonsecure custody of Adam and filed a juvenile petition alleging neglect. The petition claimed that "[t]he presence of domestic violence, lack of housing, alcoholism, lack of mental health treatment and extensive substance use in particular which makes [*sic*] affects the safety and wellbeing of [Adam]."

The juvenile petition was heard on February 5, 2016. Although respondent-father attended the hearing, respondent-mother was not present. The trial court adjudicated Adam to be a neglected juvenile pursuant to N.C. Gen. Stat. § 7B-101(15) (2017) and continued legal custody of Adam with FCDSS. Both respondent-mother and respondent-father were granted weekly supervised visitation. Respondent-mother was ordered to: (1) complete a psychological evaluation and parenting capacity assessment and follow recommendations; (2) complete parenting classes and demonstrate a positive change in her parenting abilities and judgments; (3) complete a substance abuse assessment and follow all recommendations for treatment; (4)

submit to random drug screens as requested by FCDSS; (5) fully participate in a domestic violence assessment and classes, and to demonstrate positive, healthy, and non-violent relationships; (6) alert FCDSS within twenty-four hours of a change in address, telephone numbers, or employment; and (7) sign the necessary release forms to allow FCDSS to monitor her progress.

Respondent-father was ordered to: (1) complete a psychological evaluation and parenting capacity assessment and follow recommendations; (2) submit to random drug screens as requested by FCDSS; (3) complete a substance abuse assessment if he tests positive or fails to test at the request of FCDSS or the guardian *ad litem* ("GAL"); (4) complete a domestic violence assessment and classes and demonstrate knowledge gained; (5) alert FCDSS within twenty-four hours of change in his residence, telephone numbers, or employment; and (6) sign the necessary release forms to allow FCDSS to monitor his progress.

At a May 2016 review hearing, the trial court found that on March 24, 2016, respondent-mother tested positive for cocaine, benzoylecgonine, cocaethylene, and norcocaine. Respondent-mother had missed two appointments with a FCDSS social worker to discuss the need for an Out of Home Services Agreement and a Child Family Team meeting. She did not have any contact with FCDSS since April 12, 2016. Respondent-mother had only visited Adam twice since March 23, 2016, despite having weekly visitation. The trial court further found that respondent-mother had

"very minimal contact with [Adam] and did not want to have any interaction with [him]."

The trial court also found that respondent-father completed a psychological evaluation in March 2016, had tested negative on his drug screen, was found not guilty of the domestic charges against respondent-mother, had maintained contact with FCDSS and updated FCDSS of any changes, and had signed all necessary release forms as requested. Respondent-father was doing landscaping work and earning approximately $300.00 to $400.00 per week. Since March 23, 2016, respondent-father had visited Adam three times and was found to be "very responsive" to Adam. Respondent-father had also provided $465.00 to assist in caring for Adam.

A permanency planning hearing was held on September 19, 2016. The trial court found that respondent-mother had not yet fully complied with her case plan. She was living in Charlotte, North Carolina, with no stable address. Further, she was unemployed and continued to abuse alcohol and cocaine. Respondent-mother had only visited Adam on two occasions since May 18, 2016. On both occasions, she was "very disrespectful and not focused on her visits with her son." The maternal cousin was no longer interested in providing care for Adam because of respondent-mother's behavior.

The trial court also found that respondent-father was incarcerated at the Iredell County jail and had been incarcerated since July 2016. He had accumulated numerous charges including armed robbery, attempted larceny, injury to real property, habitual felon status, felony larceny, and resisting a public officer in Iredell, Catawba, Wilson, Greene, and Pitt Counties. Respondent-father had pending court dates beginning August 31, 2016 through November 7, 2016 and was facing the possibility of receiving an active sentence. Respondent-father had only visited Adam on three occasions until visitation ceased in July 2016 due to his incarceration. The trial court set the permanent plan for Adam as adoption, with a secondary plan of guardianship with a court approved individual or relative.

On January 11, 2017, FCDSS filed a petition to terminate parental rights of both respondent-mother and respondent-father on the grounds that they neglected Adam and willfully left Adam in foster care or placement outside the home for twelve months without demonstrating that reasonable progress under the circumstances was made to correct the conditions that led to Adam's removal. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2) (2017).

At a subsequent permanency planning hearing in March 2017, the trial court found that respondent-mother had completed the Substance Abuse Intensive Outpatient Program ("SAIOP") at Anuvia Prevention and Recovery Center and visited Adam eleven times out of twenty-one visitation opportunities. In November

2016, Respondent-mother began a relationship with a recovering alcoholic, and Respondent-father remained incarcerated and failed to send any letters, cards, or pictures to Adam despite being allowed to do so. The permanent plan remained as adoption with a secondary plan of guardianship with a court approved individual or relative.

A hearing on the petition to terminate parental rights was heard on July 31, 2017. The trial court concluded that both parents had: (1) neglected Adam under N.C. Gen. Stat. § 7B-1111(a)(1) and (2) willfully left Adam in foster care or placement outside of the home for more than twelve months without showing that reasonable progress had been made to correct the conditions that led to Adam's removal under N.C. Gen. Stat. § 7B-1111(a)(2). It further concluded that it was in the best interests of Adam to terminate their parental rights. *See* N.C. Gen. Stat. § 7B-1110(a) (2017). Respondents timely appealed.

On appeal, respondent-mother and respondent-father contend that the trial court erred in concluding that grounds existed to terminate their parental rights. "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 A.B.*, *J.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015) (citation omitted), *disc. review denied*, 369 N.C. 182, 793 S.E.2d 695 (2016). "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 (citation and internal quotation marks omitted), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009). Unchallenged findings of fact "are conclusive on appeal and binding on this Court." *Id.* at 532, 679 S.E.2d at 909 (citation omitted). "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re J.S.L., G.T.L., T.L.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation and quotation marks omitted).

I. Respondent-mother's appeal

Respondent-mother argues that the trial court erred in terminating her parental rights to Adam on the basis of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). We disagree.

Trial courts are permitted to terminate parental rights based upon a finding that "[t]he parent has . . . neglected the juvenile . . . within the meaning of G.S. 7B-101 [(2017)]." N.C. Gen. Stat. § 7B-1111(a)(1) (2017). A "neglected juvenile" is defined as

> [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 who lives in an environment injurious to the juvenile's welfare.

N.C. Gen. Stat. § 7B-101(15) (2017).

"Where, as 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). Under such circumstances, "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." *In re Ballard*, 311 N.C. 708, 713–14, 319 S.E.2d 227, 231 (1984). However, a prior adjudication of neglect, standing alone, is not sufficient for termination of parental rights. *In re Brim*, 139 N.C. App. 733, 742, 535 S.E.2d 367, 372 (2000). "The trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect. The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232 (internal citation omitted).

In the termination order, the trial court found as follows, in pertinent part:

> 10. Following [Adam's] birth, [respondent-mother] continued to use alcohol and controlled substances and failed to effectively engage in substance abuse treatment. [Respondent-mother] failed to appear in Juvenile Court until March 15, 2017.
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> 11. [Respondent-mother] completed a psychological parenting capacity evaluation with Dr. Bert Bennett on

March 14, 2017 as was ordered by the Juvenile Court . . . .

12. Dr. Bennett recommended that [respondent-mother] engage in residential substance abuse treatment, parenting classes and random drug testing. [Respondent-mother] has failed to comply with the recommendations of that assessment. . . .

13. [Respondent-mother] completed a Comprehensive Clinical Assessment with Yovani Sanches Rivas with Amara Wellness on January 19, 2017 to be accepted into the Hope Haven residential treatment program. . . . The Treatment recommendations for [respondent-mother] were as follows:

> It is my clinical recommendation for client to complete her SAIOP, Substance Abuse Intensive Outpatient Program, and to continue to attend AA and NA meetings on a frequently [sic] basis to help client in maintaining her sobriety. It is also my clinical recommendation for client to receive medication management services for a provider to consult and monitor client's psychiatric medications to treat symptoms. It is also recommended for client to engage in group therapy after completing her SAIOP at Anuvia to continue to receive support and for client to learn effective and healthy coping skills for good mood management.

14. After she did not receive a referral to the Hope Haven program, [respondent-mother] did not return to Amara Wellness for the recommended services which were all available to her at that provider. [Respondent-mother] had two scheduled appointments for psychiatric services for which [respondent-mother] failed to appear. Additionally, she did not complete the treatment recommendations with any other provider.

15. [Respondent-mother] completed the SAICO[P] treatment program at Anuvia on March 3, 2017. However,

she failed to successfully engage in a relapse prevention program as ordered by the Juvenile Court. She has failed to maintain her sobriety to safely parent her son, [Adam].

16. On April 25, 2017, [respondent-mother] reported to the [FC]DSS social [w]orker Patricia Lutman that she had relapsed by using alcohol. She reported committing herself to Carolina Medical Center. She reported that she drank a bottle of Moscato with a girlfriend and that she was not in a treatment program at that time.

17. On July 26, 2017, [respondent-mother] reported to [FC]DSS social worker Pat Lutman that the decision to deny her admission into Hope Haven had been overturned and she was in fact awaiting admission. Ms. Lutman contacted Hope Haven and determined that was not true and they had no contact with [respondent-mother] since the previous denial of admission.

18. [Respondent-mother] has provided no documentation to [FCDSS] or the Juvenile Court that she has engaged in counseling as recommended by Dr. Bennett and Amara Wellness.

19. [Respondent-mother] has failed to attend and successfully complete parenting classes as ordered by the Juvenile Court. She has additionally failed to utilize the concepts taught in parenting classes in visitation with her son, [Adam].

20. [Respondent-mother] has failed to attend regular visitation with her son, [Adam]. . . .

21. [Respondent-mother] has failed to submit to random drug testing at the request of [FCDSS] as ordered by the Juvenile Court to demonstrate her abstinence and compliance with treatment. . . .

. . . .

> 23. [Respondent-mother] has failed to engage in a domestic violence assessment and classes and demonstrate positive healthy non-violent relationships.
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> 24. [Respondent-mother] has failed to keep [FCDSS] aware of her changes in housing, employment and telephone numbers.
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> 25. [Respondent-mother] has signed releases for [FCDSS], at the request of that agency, when she notified the social worker of her involvement in a substance abuse program, so that her progress could be monitored on court ordered services.
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> 26. [Respondent-mother] has failed to demonstrate her ability and willingness to establish a safe and appropriate home for her and [Adam]. . . .
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> . . . .
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> 41. There is a strong probability of repeated neglect of [Adam] should he be returned to the care custody and control of [respondent-mother or respondent-father].

First, respondent-mother argues that several of the trial court's findings of fact are not supported by clear and convincing evidence. After careful review, we conclude that the challenged findings either have adequate support in the record or that the error does not invalidate the adjudication of neglect. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (holding that even if some findings of fact are not supported by evidence in the record, "[w]hen . . . ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error").

Respondent-mother argues that the portion of Finding of Fact 12 which states she failed to comply with Dr. Bennett's recommendations is not supported by the evidence because she began residential substance abuse treatment on July 26, 2017. However, unchallenged Finding of Fact 11 provides that Dr. Bennett recommended residential substance abuse treatment, parenting classes, and random drug testing. It is undisputed that respondent-mother failed to take parenting classes and failed to submit to random drug testing. Although she began residential substance abuse treatment a month prior to the termination hearing, there was clear and convincing evidence that she did not comply with all of Dr. Bennett's recommendations.

Respondent-mother disputes the portion of Finding of Fact 14 that she did not complete treatment recommendations from Amara Wellness or with any other treatment provider. In unchallenged Finding of Fact 13, the trial court found that the treatment recommendations from Amara Wellness included: (1) completing the SAIOP; (2) continuing to attend Alcoholics Anonymous ("AA") and Narcotics Anonymous ("NA") meetings on a frequent basis; (3) continuing to receive medication management services; and (4) engaging in individual or group therapy after completing the SAIOP. Unchallenged Finding of Fact 15 demonstrates that respondent-mother completed SAIOP, and the trial court found at a March 2017 permanency planning hearing that respondent-mother was attending AA and NA meetings five days per week. However, respondent-mother does not challenge the

fact that she failed to continue to receive medication management services or engage in group therapy after completing the SAIOP. Further, a therapist from Amara Wellness testified that there was no record of respondent-mother engaging in any services after the assessment. Therefore, despite completing two of the recommendations from Amara Wellness, the trial court did not err by finding that respondent-mother failed to comply with all the recommendations.

Respondent-mother challenges Finding of Fact 17, and we agree that there is no evidence in the record to support this finding. Social Worker Pat Lutman testified that she contacted Hope Haven to confirm respondent-mother's information. As Ms. Lutman described her conversation with a Hope Haven representative, respondent-mother's counsel objected, and the trial court sustained that objection. Nevertheless, inclusion of this finding was immaterial in light of the remaining findings of fact. *See In re T.M.*, 180 N.C. App. at 547, 638 S.E.2d at 240.

With regard to Finding of Fact 23, respondent-mother argues that the trial court erred in finding she had failed to "demonstrate positive healthy non-violent relationships" because she was no longer living with respondent-father by the time of the May 2016 review hearing, and she was in a different relationship that the trial court previously found was supportive. We disagree.

While the trial court previously found at a permanency planning hearing that respondent-mother's new relationship was supportive, it also found that her new

partner was a recovering alcoholic and that "[a]ny distractions such as relationships could impact her road to recovery." Furthermore, at the termination hearing, a therapist from Amara Wellness testified that respondent-mother having a boyfriend in recovery "would have indicated that she doesn't have great support." Based on the foregoing, the trial court reasonably inferred that respondent-mother had failed to demonstrate she could maintain positive and healthy relationships. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) ("The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject." (citation omitted)).

Respondent-mother contests the portion of Finding of Fact 26 stating she "failed to demonstrate her ability and willingness to establish a safe and appropriate home for her and [Adam]." Respondent-mother argues that the evidence "demonstrates a strong effort" to establish residential stability by attempting to enter residential treatment programs, living with others, and living at the Palmetto House. However, from the time Adam was taken into FCDSS custody, respondent-mother has been unable to establish a safe, stable home. At the termination hearing, respondent-mother conceded that she could not provide Adam with a home. Thus, the trial court did not err by making this finding.

Second, respondent-mother argues that the trial court erred in terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), where the findings do not support the conclusion that it was probable there would be a repetition of neglect if Adam was returned to her care.

It is undisputed that Adam was previously adjudicated neglected on February 5, 2016. This Court has established that "[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., C.Q.M.P., J.A.C.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 859 (2017) (citation omitted). The trial court's findings show that respondent-mother failed to complete a vast majority of her case plan in that she failed to follow all the recommendations from her psychological evaluation and parenting capacity assessment, failed to attend and complete parenting classes, failed to complete substance abuse treatment and maintain her sobriety, failed to submit to random drug testing, failed to engage in a domestic violence assessment and classes and demonstrate positive, healthy and nonviolent relationships, and failed to alert FCDSS with any changes in housing, employment, or telephone numbers. These findings provide sufficient support for the trial court's conclusion that there was a strong probability of repeated neglect if Adam was returned to respondent-mother's care. Accordingly, the trial court properly terminated respondent-mother's parental rights to Adam on the basis of neglect.

Having determined that the trial court's termination of respondent-mother's parental rights based on neglect was fully supported by the record, we need not address respondent-mother's arguments regarding the remaining ground found by the trial court. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("A finding of any one of the enumerated grounds for termination of parental rights under N.C.G.S. 7B-1111 is sufficient to support a termination." (citation omitted)). Accordingly, the order of the trial court terminating respondent-mother's parental rights is affirmed.

II. Respondent-father's appeal

Respondent-father contends that the trial court erred by terminating his parental rights to Adam on the basis of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). We disagree.

In the termination order, the trial court found as follows, in pertinent part:

> 31. [Respondent-father] has been incarcerated in the North Carolina Department of Corrections 7 times. The dates of his incarceration are as follows:
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> a. 3/22/78 to 7/6/79
> b. 8/6/79 to 9/19/80
> c. 7/30/81 to 11/25/82
> d. 5/3/83 to 8/30/84
> e. 12/17/87 to 1/12/89
> f. 11/16/89 to 6/14/07
> g. 10/4/07 to 2/1/14
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> 32. [Respondent-father] has neglected [Adam] and his willful conduct has caused him to be removed from the child's life on a full-time basis by his repeated

incarceration. [Respondent-father] has been incarcerated for most of the child's life.

33. Additionally [respondent-father] has been incarcerated in the awaiting trial [sic] from August 2, 2016 to the time of this termination of parental rights hearing. He has pending felony charges in multiple counties (Pitt, Greene, and Catawba). He is currently under a $60,000 to $70,000 bond. [Respondent-father] is potentially facing a sentence, if convicted, of 47-231 months in prison. He reported that if he was facing that much time he wouldn't hesitate to relinquish his parental rights to [Adam].

34. [Respondent-father] has had no contact with the child during that time and has had only one telephone call with [FCDSS] on April 21, 2017 after having been served with the petition to terminate parental rights. During that call [respondent-father] wanted the termination proceedings to be delayed so that he could raise his child upon his release. [Respondent-father] has provided no cards, gifts or letters for the child in the period from September 2016 to the time of the termination of parental rights hearing.

35. At the time of the termination of parental rights hearing [respondent-father] is not able to provide the child with a home. He has no job but reports he does have financial resources to provide support for the child but he has failed to do so.

. . . .

38. [Respondent-father] was permitted to have up to 6 hours of supervised visits with [Adam]. In the period from November 20, 2015 to May 18, 2016, [respondent-father] visited 7 times. He has not visited with the child since July or August 2016. [Respondent-father] provided the former caregiver $465 in financial support for [Adam]. He denied providing any diapers or other supplies for [Adam].

39. After being served with the termination of parental

> rights petition and his request for a delay in the proceedings, made to the [FC]DSS social worker, [respondent-father] made no additional calls to [FCDSS] in the months of May, June, and July 2017 to inquire as to the well-being of his son. He additionally sent no cards, gifts or letters to the [FC]DSS or for the child.
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> 40. [Respondent-father's] willful and illegal conduct has caused his removal from his son and he has failed to insure the child's safe care during his periods of incarceration.
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> 41. There is a strong probability of repeated neglect of [Adam] should he be returned to the care custody and control of [respondent-mother or respondent-father].

Respondent-father challenges several of the trial court's findings of fact. As to Finding of Fact 32, respondent-father argues that because he was awaiting trial on multiple felony charges at the time of the termination hearing, he was entitled to a presumption of innocence. Specifically, he argues that "[t]o the extent the district court's finding that [respondent-father's] pretrial detention was due to willful criminal conduct, such a finding was incompatible with the fundamental principle of due process of law." Respondent-father mischaracterizes Finding of Fact 32. The trial court did not find that he was guilty of the pending charges. Rather, the trial court found that respondent-father had a history of incarcerations and had been in custody for the majority of Adam's life. It is undisputed that Adam was born in October 2015 and respondent-father had been incarcerated from August 2016 until the time of the termination hearing on July 31, 2017.

In regards to Finding of Fact 33, respondent-father argues that the trial court erroneously speculated about whether he would be convicted of the pending charges and about what sentence would be imposed. Respondent-father misconstrues the trial court's finding. The trial court did not assume respondent-father would be convicted, but instead, it stated that respondent-father was "potentially" facing a sentence on multiple, pending felony charges. Respondent-father's pending charges and potential sentence were supported by testimony at the termination hearing. In addition, respondent-father testified that he "wouldn't hesitate to relinquish custody of [Adam]" if he were to receive the maximum punishment for his pending charges.

Citing *In re D.M.O.*, ___ N.C. App. ___, 794 S.E.2d 858 (2016), respondent-father argues that this Court should disregard Findings of Fact 34 and 35 because the trial court failed to take into consideration the limitations imposed by incarceration. In *In re D.M.O.*, this Court stated that "the circumstances attendant to a parent's incarceration are relevant when determining whether a parent *willfully abandoned* his or her child, and this Court has repeatedly acknowledged that the opportunities of an incarcerated parent to show affection for and associate with a child are limited." *In re D.M.O.*, ___ N.C. App. at ___, 794 S.E.2d at 862–63 (emphasis added). Because the trial court failed to address how the respondent-mother's incarceration "might have affected her opportunities to request and exercise visitation, to attend games, or to communicate [with her child," this Court held that

the trial court's findings were inadequate to support its conclusion of willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7). *Id.* at ___, 794 S.E.2d at 864. *In re D.M.O.* is inapposite to the case *sub judice*. *In re D.M.O.* discussed what findings are necessary in light of a parent's incarceration and termination of parental rights based on the ground of willful abandonment, whereas here, the trial court terminated respondent-father's parental rights based on other grounds.

Nevertheless, respondent-father contends that his incarceration prevented him from writing cards, letters, and pictures to Adam; providing him a stable home; and providing him financial support. This Court has stated that "[i]ncarceration alone . . . does not negate a father's neglect of his child. . . . Although his options for showing affection are greatly limited, the respondent will not be excused from showing interest in the child's welfare by whatever means available." *Whittington v. Hendren*, 156 N.C. App. 364, 368, 576 S.E.2d 372, 376 (2003) (*purgandum*).[2] Here, the trial court found at the March 2017 permanency planning hearing that respondent-father was allowed to send letters, cards, and pictures. However, respondent-father admitted that he failed to send cards, letters, or pictures to Adam.

[2] Our shortening of the latin phrase "*Lex purgandum est.*" This phrase, which roughly translates "that which is superfluous must be removed from the law," was used by Dr. Martin Luther during the Heidelberg Disputation on April 26, 1518 in which Dr. Luther elaborated on his theology of sovereign grace. Here, we use *purgandum* to simply mean that there has been the removal of superfluous items, such as quotation marks, ellipses, brackets, citations, and the like, for ease of reading.

In his brief, respondent-father further acknowledges that his failure to send letters or cards to Adam was "because he was only an infant." Respondent-father also testified at the termination hearing that although he had the ability to provide financial support, he had not done so because he "thought [FC]DSS was doing it. Nobody asked me for anything."

Respondent-father next contends that he did not neglect Adam because he was not responsible for the conduct that brought Adam into FCDSS custody, and he fully cooperated with his case plan after his paternity was established. However, the record is clear that one of the reasons DSS obtained custody over Adam was because respondent-mother and respondent-father had a history of domestic violence. A CPS report stated that respondent-father had assaulted respondent-mother while she was pregnant with Adam, and that respondent-mother lost consciousness and had to be hospitalized.

This Court has held that exposure to acts of domestic violence "may constitute an environment injurious to the juvenile's welfare." *In re M.K. (I), M.K. (II), M.K. (III), and M.K. (IV)*, 241 N.C. App. 467, 475, 773 S.E.2d 535, 541 (2015). Furthermore, although respondent-father emphasizes the fact that he completed his case plan, he disregards the crux of the trial court's findings—that respondent-father was unable and unwilling to care for Adam at the time of the termination hearing. *See In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. The trial court's determination that

evidence tending to show respondent-father had no contact with Adam for twelve months before the termination hearing, had provided no financial support for Adam since May 2016, and was unable to provide a safe and appropriate home for Adam outweighed the evidence of respondent-father's completion of his case plan. This was a decision concerning the weight of the evidence, which we are not entitled to disturb on appeal. *See In re Hughes*, 74 N.C. App. at 759, 330 S.E.2d at 218.

It is undisputed that Adam was previously adjudicated neglected, and the trial court found that there was a strong probability of a repetition of neglect should Adam be returned to respondent-father's care and custody. Based on the foregoing, the trial court did not err by concluding that respondent-father's parental rights were subject to termination for neglect. Having determined that the trial court's termination of respondent-father's parental rights based on neglect was fully supported by the record, we need not address respondent-father's arguments regarding the remaining ground found by the trial court. *See In re Humphrey*, 156 N.C. App. at 540, 577 S.E.2d at 426. The order of the trial court terminating respondent-father's parental rights is affirmed.

AFFIRMED.

Judges DILLON and DAVIS concur.

Report per Rule 30(e).