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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-84

Filed: 7 August 2018

Mecklenburg County, Nos. 15 JT 534, 553, 674

IN THE MATTER OF: B.V., B.V., B.V.

Appeal by respondents from order entered 2 October 2017 by Judge David H. Strickland in Mecklenburg County District Court. Heard in the Court of Appeals 12 July 2018.

Senior Associate County Attorney Kathleen Arundell Jackson for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Alan D. Woodlief, Jr., for guardian ad litem.

Patrick S. Lineberry for respondent-appellant mother.

Mercedes O. Chut for respondent-appellant father.

TYSON, Judge.

Respondent-father and Respondent-mother separately appeal from an order terminating their parental rights in the minor children "Bethany," "Blaine," and "Bridgette." We affirm.

I. Factual and Procedural Background

On 14 October 2015, Mecklenburg County Youth and Family Services ("YFS") obtained nonsecure custody of three-year-old Bethany, two-year-old Blaine, and Respondent-mother's four other children by men other than Respondent-father. In a juvenile petition filed the same day, YFS alleged the children were neglected and dependent and described the agency's involvement with Respondent-mother dating back to 2009 "for issues of substance abuse, inappropriate care, inappropriate supervision, inappropriate living conditions, poor hygiene, lack of food, and lack of stable housing." The petition alleged, *inter alia*, that Bethany, Blaine, and two of Respondent-mother's other children had each tested positive for marijuana at birth. Respondent-mother also admitted to smoking marijuana while pregnant with Bridgette.

The petition described all of the children's fathers as "not providing any financial support for their children" or "engaging in any consistent visitation with [them]." The petition listed Respondent-father's address as unknown.

On 18 November 2015, Respondent-father was charged with kidnapping the pregnant Respondent-mother and assaulting her by strangulation. Bridgette was born in mid-December 2015. She was placed in nonsecure custody on 16 December 2015, upon YFS' filing of a juvenile petition alleging neglect and dependency in case number 15 JA 674. The juvenile petition filed in 15 JA 674 is not included in the record on appeal. The record contains the non-secure custody order entered in 15 JA

674 on 16 December 2015. Respondents acknowledged in their briefs to this Court that a juvenile petition in 15 JA 674 was also filed on 16 December 2015 as alleged by YFS in its motion to terminate Respondents' parental rights. Respondent-father was served with the petitions and summons in Mecklenburg County Jail on 16 December 2015.

The trial court adjudicated Respondents' children neglected and dependent juveniles by order entered 1 March 2016. Respondents stipulated to adjudicatory facts as largely consistent with YFS' allegations, but asserted that Respondent-father "did provide some financial support and visited with his children until he was incarcerated," and that it was two of Respondent-mother's children by other fathers who had tested positive for marijuana as newborns.

The trial court identified the main barriers to Respondents' reunification with their children as "substance abuse; inappropriate care, supervision and living conditions; and lack of stable housing." The court ordered Respondents to comply with the conditions of their Family Services Agreements ("FSA").

Respondent-mother's FSA required her to complete an assessment with the Women's Commission Program, attend parenting classes, submit to a drug screen and assessment at the McCleod Center and follow any recommendations, and remain in contact with her YFS social worker and other service providers. The record shows YFS was unable to make contact with Respondent-father to complete his FSA until

11 August 2016. The FSA required him to: (1) complete an assessment through Families in Recovery Stay Together ("FIRST") and follow its recommendations; and, (2) engage in substance abuse and domestic violence treatment through New Options for Violent Actions ("NOVA"). The social worker scheduled a FIRST assessment for Respondent-father on 11 August 2016, but he failed to show up for the appointment.

At a permanency planning hearing held on 14 July 2016, the trial court found both Respondents were neither actively participating in the case plans nor cooperating with YFS, were not making sufficient progress on the case plans, and were "acting in a manner inconsistent with the health and safety" of their children. The court established a primary permanent plan for the children of guardianship and a secondary plan of reunification with a parent or adoption.

Following a subsequent permanency planning hearing held 14 October 2016, the trial court changed the children's primary permanent plan to adoption, relieved YFS of efforts toward reunification, and directed the agency to file for the termination of Respondents' parental rights within 60 days. The court's order noted Respondent-mother's positive drug screen on 12 August 2016 and Respondent-father's recent arrest for "serious offenses." The court found that Respondent-father "is not in compliance with anything" required by his FSA.

YFS filed a motion to terminate Respondents' parental rights on 12 December 2016. On 16 February 2017, Respondent-father completed a FIRST assessment. The

assessor recommended that Respondent-father submit to random drug screens and "follow up with NOVA after [his pending criminal charges] resolve." After one negative drug screen on the day of his FIRST assessment, Respondent-father tested positive for cocaine on 14 March 2017.

The trial court held a termination hearing on 30 August 2017 and entered its order terminating Respondents' parental rights on 2 October 2017. Respondents did not attend the hearing, but were represented by counsel.

The court found three grounds for terminating Respondent-mother's rights as to each child: (1) neglect, (2) willful failure to pay a reasonable portion of the children's cost of care, and (3) dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (3), (6) (2017). With regard to Bethany and Blaine, the court found an additional ground for terminating Respondent-mother's parental rights based on her failure to make reasonable progress to correct the conditions that led to their removal from the home. *See* N.C. Gen. Stat. § 7B-1111(a)(2) (2017). The court adjudicated the same grounds for terminating Respondent-father's parental rights, excluding the willful failure to pay a portion of their cost of care under § 7B-1111(a)(3). At disposition, the court found that terminating both Respondents' parental rights was in the best interests of the children. *See* N.C. Gen. Stat. § 7B-1110(a) (2017). Respondents filed timely notices of appeal from the order.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(6) (2017).

III. Standard of Review

"A proper review of a trial court's finding of neglect entails a determination of (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact[.]" *In re Gleisner,* 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citation and internal quotation marks omitted).

The trial court's conclusions of law are reviewable *de novo* on appeal. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation and internal quotation marks omitted).

IV. Respondent-mother's appeal

A. No-Merit Brief

Appellate counsel for Respondent-mother filed a no-merit brief on her behalf, in which counsel states he has made a conscientious and thorough review of the record on appeal and concluded no issue of merit exists upon which to base an argument for relief and asserts to raise any argument on appeal would be frivolous. In accordance with Rule 3.1(d), counsel sent a letter to Respondent-mother on 15 March 2018, advising Respondent-mother of counsel's inability to find error to assert, of counsel's request for this Court to conduct an independent review of the record,

and of Respondent-mother's right to file her own arguments directly with this Court. Counsel asserts he provided Respondent-mother with copies of all relevant documents to enable her to file her own arguments with this Court. Respondent-mother has not filed written arguments with the Court. A reasonable time for her to have done so has passed.

Pursuant to North Carolina Rule of Appellate Procedure 3.1(d), counsel request this Court conduct an independent examination of the case. N.C.R. App. P. 3.1(d). In addition to seeking review pursuant to Rule 3.1(d), Respondent-mother's appellate counsel directs this Court's attention to potential issues with regard to the trial court's conclusions of law on grounds to terminate Respondents' parental rights and whether termination of Respondents' parental rights is in the children's best interests.

Respondent-mother's counsel observes that the record on appeal lacks a return of service confirming Respondent-mother's receipt of YFS' motion to terminate her parental rights. The record includes proof of service upon Respondent-mother and her counsel of both YFS' motion and the notice required by N.C. Gen. Stat. § 7B-1106.1 (2017). *See* N.C. Gen. Stat. §§ 1A-1, Rule 5(b), 7B-1102(b) (2017).

Appellate counsel further acknowledges that any defect in service would be waived by the general appearance made by Respondent-mother's trial counsel, who participated without objection in the termination hearing. *See In re K.J.L.*, 363 N.C.

343, 347, 677 S.E.2d 835, 838 (2009). Although the record does not show that YFS gave Respondent-mother actual notice of the date, time, and place of the pretrial and termination hearings, as is statutorily required by N.C. Gen. Stat. § 7B-1106(b)(5), any error was waived by her counsel's general appearance and participation at the hearings. *See In re T.D.W.*, 203 N.C. App. 539, 545-46, 692 S.E.2d 177, 180-81 (2010) ("conclud[ing] that respondent-mother has waived the right to object to any deficiencies in the notice of the [termination] hearing that was provided to her by the failure of her trial counsel to lodge a notice-based objection during the course of that hearing").

B. Analysis

The trial court concluded grounds existed to terminate Respondent-mother's parental rights pursuant to N. C. Gen. Stat. § 7B-1111(a)(3). A court may terminate parental rights where "[t]he juvenile has been placed in the custody of a county department of social services . . . , or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so." *Id.*

The trial court's uncontested findings show Respondent-mother: (1) made no contributions towards the cost of the children's care, (2) reported wages of greater than zero in 2016; and, (3) she never reported any type of disability that would

preclude her from employment. These findings were supported by social worker Donna Davis' testimony at the termination hearing.

We need not address the court's additional conclusions that grounds existed to terminate Respondent-mother's parental rights pursuant to 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 conditions which led to removal). "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." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (citation omitted).

No showing supports the trial court abused its discretion in concluding termination of Respondent-mother's parental rights is in the children's best interests. *See* N.C. Gen. Stat. § 7B-1110(a). The order terminating Respondent-mother's parental rights is affirmed.

V. Respondent-Father's Appeal

Respondent-father's appeal challenges the trial court's adjudication of grounds to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a). He objects to nineteen of the court's enumerated findings of fact in support of its adjudications, and more specifically adjudicatory findings 20-22, 26-27, 34, 40-41, 43, 45, 64-68, and 71-74. Respondent-father further argues that the court's findings fail to support its conclusions of law under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6) that he neglected

all three of his children, that he failed to make reasonable progress to correct the conditions leading to Bethany and Blaine's removal, or that his children are dependent. *See* N.C. Gen. Stat. § 7B-101(9), (15) (2017) (defining juvenile dependency and neglect, respectively).

A. Trial Court's Findings of Fact

We review the trial court's adjudicatory findings to determine whether they are supported by relevant and admissible evidence to meet the clear and convincing evidence standard of proof. *In re B.S.O.*, 234 N.C. App. 706, 707-08, 760 S.E.2d 59, 62 (2014); N.C. Gen. Stat. § 7B-1111(b) (2017). In the exercise of his discretion, "[t]he 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." *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985).

Applying these principles, we need not address Respondent-father's objections to the trial court's credibility and adjudicatory findings insofar as he: (1) questions the credibility of YFS social worker Donna Davis, who testified at the hearing; (2) purports to identify "discrepancies" between the hearing testimony and the written record; or, (3) concedes that a particular finding is "accurate" but nevertheless "misleading" under his preferred or asserted interpretation of the evidence.

Where "ample other findings of fact support an adjudication . . . , erroneous findings unnecessary to the determination do not constitute reversible error." *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). Consistent with *In re T.M.*, we review only those findings of fact, which are necessary to support or fail to support the trial court's adjudication.

The trial court made the following findings of fact pertinent to our inquiry:

> 11. The [Respondent-father] did not appear for the [termination] hearing.
>
> 12. The children . . . were adjudicated neglected and dependent on January 26, 2016 . . . .
>
> 13. The Court found at Disposition that the problems that needed to be addressed to achieve reunification included substance abuse, inappropriate care; supervision and living conditions; and lack of stable housing.
>
> . . . .
>
> 18. The Court ordered YFS to develop a FSA for the father at the Disposition hearing.
>
> . . . .
>
> 20. At the time of the Disposition hearing, the father was being held in the Mecklenburg County Jail. The assigned social worker, Donna Davis, attempted to visit the father at the Union County Jail on February 12, 2016 but was unable to see him. She attempted to visit him again on February 20, 2016 and was told he was released to Mecklenburg County. She contacted his mother and learned that he was on an ankle monitor; however, when she contacted his probation officer she was informed that the case was closed.

. . . .

23. A proposed FSA was included in the May 24, 2016 [YFS] Court Summary for [Respondent-father]. It included the following requirements:

- Complete an assessment with [FIRST] and follow all recommendations;
- Engage in substance abuse and domestic violence services and follow all recommendations.

24. In June, 2016, YFS learned that the parents had violated the court's orders in regards to contact with the children. The children were removed from the paternal grandmother's care as a result of the violation . . . .

. . . .

26. A [team meeting] was held . . . on June 30, 2016.

27. Ms. Davis planned to go over the father's case plan with him at the [meeting]; however, he was arrested on the same date.

. . . .

34. The father failed to attend visits with the children on September 14, 2016, September 22, 2016 and October 6, 2016.

. . . .

40. As of the October 14, 2016 [permanency planning] hearing, the father had not engaged in substance abuse treatment.

41. As of the October 14, 2016 hearing, the father had not engaged in domestic violence counseling.

. . . .

43. The father completed a FIRST assessment on February 16, 2017. It was recommended that he be assigned to a color and with random drug testing; he was to engage in domestic violence services through [NOVA].

44. On March 13, 2017, the father tested positive for cocaine.

. . . .

51. As of the April 18, 2017 [permanency planning] hearing, the father had not complied with the color line drug testing through FIRST.

52. As of the April 18, 2017 hearing, the last time the father had visited the children since [sic] November 2016. He had missed several visits prior to his incarceration on November 27, 2016 and then was released on February 1, 2017, but still made no attempts to visit with his children.

. . . .

57. The parents' visitation was suspended until they engaged in their case plan objectives.

58. The father testified at the [April 18, 2017] hearing that he was employed as a dishwasher at the Music Factory.

. . . .

61. The father has made no contributions towards the cost of the children's care.

. . . .

65. Since April 18, 2017 through the termination of parental rights hearing date, the father has not submitted to random drug screens through the FIRST program's color line.

> 66. Since April 18, 2017 through the termination of parental rights hearing date, the father has not provided any verification that he has submitted to a substance abuse assessment and successfully completed treatment.
>
> 67. Since April 18, 2017 through the termination of parental rights hearing date, the father has not provided any verification that he has completed domestic violence counseling through the NOVA program or another approved program.
>
> 68. Since April 18, 2017 through the termination of parental rights hearing date, the father has not maintained contact with Ms. Davis.
>
> . . . .
>
> 72. In the past six months, neither parent has contacted YFS to inquire as to the children's well-being.
>
> 73. In the past six months, neither parent has sent letters, cards or gifts to the children.
>
> 74. Neither parent did anything to remember any of the children's birthdays . . . . Neither parent did anything for any of the children for Christmas, 2016.

To the extent Respondent-father does not contest these findings, they are presumed to be supported by the evidence and are binding upon appeal. *See In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982).

1. Finding of Fact 23

Respondent-father challenges Finding 23 as unsupported by the evidence. Inasmuch as the review hearing scheduled for 24 May 2016 was continued by the

trial court, he contends there is no evidence that his FSA "became effective" on that date. We agree with Respondent-father's argument that the May 2016 review hearing was continued until 14 July 2016, and that the "proposed" FSA included in YFS' court summary was, by definition, not yet finalized. Finding 23 accurately describes the contents of the *proposed* FSA. However, the record evidence shows Respondent-father entered into his *actual* FSA on 11 August 2016.

The 11 August 2016 FSA is substantively identical to the proposed FSA, requiring Respondent-father "to complete an assessment with the FIRST Program and follow recommendations" and "engage in substance abuse and domestic violence services and follow the recommendations." Given Respondent-father's subsequent non-compliance with these conditions, Finding 23's focus on the proposed FSA rather than the executed FSA is in error, but not prejudicial.

2. Findings of Fact 40 and 41

Respondent-father next objects to statements in Findings 40 and 41 that he had failed to obtain substance abuse treatment or domestic violence counseling as of 14 October 2016. He argues that "neither YFS [n]or the court had imposed those requirements by 14 October 2016." As discussed above, Respondent-father's FSA was adopted on 11 August 2016 and required him to "engage in substance abuse and domestic violence services and follow the recommendations." To the extent we are asked to parse the argued distinctions between "treatment," "counseling," and

"services," any asserted error in these findings is not shown to be prejudicial to Respondent-father.

3. Finding of Fact 52

Respondent-father next challenges the portion of Finding 52 that he "made no attempts to visit with his children" after he was released from incarceration on 1 February 2017. He argues he both obtained a FIRST assessment and called Ms. Davis to request visitation following his release. The trial court's findings acknowledge these actions. Finding 43 notes Respondent-father's completion of a FIRST assessment on 16 February 2017. Finding 45 states Respondent-father phoned Ms. Davis on 20 March 2017 to request visitation and "started screaming and yelling" at her when she "directed [him] to contact his attorney."

The record shows that, following the 14 October 2016 permanency planning hearing, the trial court directed that Respondents' visitation be suspended if Respondents missed three consecutive weekly visits. The evidence at the termination hearing tended to show Respondent-father last visited the children in November 2016 and that he was incarcerated shortly thereafter until 1 February 2017. At the time of his release, his right to visitation was suspended by court order.

Given this circumstance, the trial court could reasonably find that Respondent-father was obliged to seek relief from the court and that neither obtaining a FIRST assessment nor phoning his social worker qualified as an "attempt to visit his

children." Moreover, Finding 52 is supported by the following testimony from Ms. Davis:

> Q. From February 1, 2017, did [Respondent-father] make any attempts to visit his children through the April 18th [hearing] date?
>
> A. No.

The first of February 2017 was the date Respondent-father was released from incarceration. Except for the one telephone call to Ms. Davis on 20 March 2017, Respondent-father made no efforts to visit or support his children. Respondent-father's argument is overruled.

4. Finding of Fact 58

Respondent-father challenges Finding 58 as a mere recitation of his testimony at an earlier hearing, rather than an affirmative finding of fact. *See generally In re O.W.*, 164 N.C. App. 699, 703, 596 S.E.2d 851, 854 (2004) (explaining that "it is not the role of the trial court as fact finder to simply restate the testimony given"). In Finding 61, the trial court found Respondent-father had failed to pay any amount toward the children's cost of care. Finding 58 essentially treats Respondent-father's prior testimony as a sworn admission of not only being capable of earning income, but actually earning income during the pendency of the case. *See* N.C. Gen. Stat. § 8C-1, Rule 801(d)(A) (2017). We note that Ms. Davis attested to Respondent-father's prior testimony during her own testimony at the termination hearing. Further, Ms. Davis

testified that Respondent-father never told her that he had applied for disability benefits or provided any documentation that he suffered any disability. Respondent-father's argument is overruled.

5. Findings of Fact 65-68

Respondent-father objects to Findings 65-68 on the ground that there was "no evidence . . . YFS had any contact with [him] after 18 April 2017 or asked him to do anything" related to his FSA. He does not deny the literal accuracy of these findings, but contends they are "inaccurate to the extent that the[y] ascribe meaning to [his] failure to take actions no longer requested of him." We find no merit to this argument.

While the court had relieved YFS of reunification efforts prior to 18 April 2017, this fact did not bar Respondent-father from contacting YFS or independently pursuing reunification with his children by completing the requirements of his FSA or seeking relief from the court.

B. Adjudication under N.C. Gen. Stat. § 7B-1111(a)(1)

Under N.C. Gen. Stat. § 7B-1111(a)(1), "the trial court may terminate the parental rights to a child upon a finding that the parent has neglected the child." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003). A "[n]eglected juvenile" is statutorily defined, *inter alia*, as one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . ; or who has been abandoned;

. . . or who lives in an environment injurious to the juvenile's welfare . . . ." N.C. Gen. Stat. § 7B-101(15).

"A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). "Termination may not, however, be based solely on past conditions that no longer exist." *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citing *Young*, 246 N.C. at 248, 485 S.E.2d at 615).

In *In re Ballard*, 311 N.C. 708, 716, 319 S.E.2d 227, 232-33 (1984), our Supreme Court established a framework for establishing neglect by a parent, who has been without custody of the child for a significant period at the time of the hearing. We have summarized the framework in *Ballard* as follows:

> "[I]f there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to [his or] her parents."

In re J.W., 173 N.C. App. 450, 464, 619 S.E.2d 534, 545 (2005) (quoting *In re Beasley*, 147 N.C. App. 399, 404-05, 555 S.E.2d 643, 647 (2001)), *aff'd per curiam*, 360 N.C. 361, 625 S.E.2d 780 (2006). Under *Ballard*, and subject to the parents' constitutional right to the care, custody, and control of their children, "[t]he determinative factors" remain "the best interests of the child and the fitness of the parent to care for the

child *at the time of the termination proceeding*." *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232.

The trial court concluded grounds existed to terminate Respondent-father's parental rights in that Respondent-father "has neglected the children within the meaning of N.C. Gen. Stat. § 7B-101 and there is a strong probability of the repetition of neglect in the future . . . based on the historical facts of the case and the lack of progress by the parent." *See* N.C. Gen. Stat. § 7B-1111(a)(1); *In re J.W.*, 173 N.C. App. at 464, 619 S.E.2d at 545. Respondent-father challenges this conclusion as unsupported by the court's findings and the hearing evidence.

Respondent-father acknowledges the prior adjudication of neglect, but asserts that "no condition or circumstance on [his] part led [to] the initial adjudication of neglect." We disagree.

The children's status as neglected juveniles is attributable to both parents, notwithstanding Respondent-father's relative lack of involvement in their caretaking and the fact that he was incarcerated when YFS took custody of the children. *See In re M.A.W.*, 370 N.C. 149, 153-54, 804 S.E.2d 513, 516-17 (2017) (citing *In re C.L.S.*, 245 N.C. App. 75, 76, 781 S.E.2d 680, 681, *aff'd per curiam*, 369 N.C. 58, 791 S.E.2d 457 (2016)). Respondent-father's visits and his provision of "some support" for his children prior to his incarceration in December 2015 did not absolve him of his continued responsibility for their well-being.

Respondent-father argues the general principle that incarceration, standing alone, cannot establish neglect. *See, e.g.*, *In re P.L.P.*, 173 N.C. App. 1, 10, 618 S.E.2d 241, 247 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). A parent's "[i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision." *Id.* (citation omitted). However, Respondent-father's claim that he "never allowed his incarceration to harm his bond with his children" is not supported by evidence in the record.

The trial court received no evidence that Respondent-father had contacted or attempted to contact his children during his recurring periods of incarceration. *See Whittington v. Hendren*, 156 N.C. App. 364, 368, 576 S.E.2d 372, 376 (2003) ("Although his options for showing affection are greatly limited, the [incarcerated] respondent will not be excused from showing interest in the child's welfare by whatever means available."). The record is unclear whether Respondent-father's visitation was suspended solely due to the visits with the children he missed while incarcerated between December 2016 and 1 February 2017. While Respondent-father was clearly unable to attend weekly visits with his children during his incarceration, with the exception of telephoning the social worker and yelling at her on 20 March 2017, he made no effort to see or support his children after he was released from incarceration and before his visitation privileges were suspended.

Respondent-father contends "the evidence does not show . . . any condition likely to harm a child or create a substantial risk of harm," as required to establish neglect for purposes of N.C. Gen. Stat. § 7B-101(15). *See generally In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (requiring "'some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline'" (quoting *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993)).

Because his children were not originally adjudicated neglected based on Respondent-father's use of controlled substances or involvement in domestic violence, he argues that neither his positive drug screen in March 2017 nor his non-compliance with court-ordered substance abuse and domestic violence treatment demonstrates a likelihood that he will neglect his children in the future. We disagree.

Under the *Ballard* framework, YFS was not required to adduce "'evidence of neglect [by Respondent-father] subsequent to the prior adjudication of neglect.'" *In re J.W.*, 173 N.C. App. at 464, 619 S.E.2d at 545 (quoting *Beasley*, 147 N.C. App. at 405, 555 S.E.2d at 647). Rather, the issue before the trial court was the "the fitness of the parent to care for the child *at the time of the termination proceeding*." *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. By continuing to engage in criminal activity, resulting in his incarceration, not contacting or supporting his children, and making no meaningful progress on his FSA, Respondent-father's actions demonstrate a lack of

preparedness to provide care for his children if they were returned to him. *See In re J.W.*, 173 N.C. App. at 465, 619 S.E.2d at 545.

Respondent-father's failure to seek or have any contact with his children after November 2016 also supports the trial court's conclusion that Respondent-father neglected his children under N.C. Gen. Stat. § 7B-1111(a)(1). He neither "contacted YFS to inquire as to the children's well-being" nor "sent [any] letters, cards or gifts to the children." Combined with Respondent-father's failure to provide any financial support for his children after they entered YFS custody in 2015, these facts reflect a neglect of his children to justify the termination of his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). *See In re J.L.K.*, 165 N.C. App. 311, 318-19, 598 S.E.2d 387, 392, *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314 (2004); *cf. In re T.J.F.*, 230 N.C. App. 531, 533, 750 S.E.2d 568, 569-70 (2013) (concluding that a petition sufficiently alleged the respondent-father's abandonment of the child where it "cited [his] limited contact with the child despite consistently available opportunities for involvement; his failure to have any contact with the child within the six months preceding the petition; his failure to call or write the child within the same six-month period; and his failure to provide a reasonable amount for the cost and care of the child").

Clear and convincing evidence supports the trial court's findings of fact, which support the court's conclusion that Respondent-father neglected his children

pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). In light of this conclusion, we need not consider its additional grounds for terminating Respondent-father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) and (6). *In re J.M.W.,* 179 N.C App. 788, 789, 635 S.E.2d 916, 917 (2006). We also need not address Respondent-father's argument that the trial court erred by concluding Respondent-father willfully failed to pay the cost of his children's care under N.C. Gen. Stat. § 7B-1111(a)(3). The trial court did not conclude that such ground for termination existed with respect to Respondent-father.

VI. Conclusion

Grounds exist to terminate both Respondents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a). The trial court did not abuse its discretion when it determined termination of Respondents' parental rights was in the juveniles' best interests. The trial court's orders terminating both parents' parental rights are affirmed. *It is so ordered.*

AFFIRMED.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).