An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-624

Filed: 15 January 2019

Orange County, No. 16 JT 49

IN THE MATTER OF: A.H.

Appeal by Respondent-Father from order entered 22 March 2018 by Judge Joseph Moody Buckner in Orange County District Court. Heard in the Court of Appeals 6 December 2018.

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

Womble Bond Dickinson (US) LLP, by Jill M. White and Jamie H. Stone, for guardian ad litem.

Kathleen M. Joyce for Respondent-Appellant Father.

DILLON, Judge.

Respondent ("Father"), the father of the minor child A.H. ("Aaron"),[1] appeals from the trial court's order terminating his parental rights. Father contends that the trial court erred in concluding that grounds existed to terminate his parental rights

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

based on neglect and willful failure to make reasonable progress. For the following reasons, we affirm the trial court's order.

I. Background

In June 2016, the Orange County Department of Social Services ("DSS") filed a juvenile petition alleging one-month-old Aaron was a neglected and dependent juvenile. In the petition, DSS alleged it had been working with Aaron's mother for the past year on issues concerning her drug abuse and the resulting lack of appropriate care of Aaron and Aaron's one-year-old half-sister, Hannah.[2] The petition alleged that the mother had considered relinquishing Aaron as a "safe surrender" after his birth, but changed her mind several times. The petition further alleged that the mother has a history of mental health concerns, including post-partum depression and "explosive fits of anger where she blacks out and cannot remember what happened." DSS obtained non-secure custody of Aaron and placed him in foster care.

The petition identified Father as the putative father of Aaron. However, at the time the petition was filed, DSS had not been able to locate Father, and he was unaware of Aaron's birth. About a week after DSS obtained custody of Aaron, Father learned of Aaron's birth, and he promptly contacted DSS.

[2] A pseudonym. Because Hannah is not Father's child and not a part of this appeal, we discuss the facts only as they pertain to Aaron.

Following a July 2016 hearing on the juvenile petition, the trial court entered an order adjudicating Aaron neglected and dependent. The trial court found that the mother was not working her case plan in that she had not attended outpatient therapy to address her drug abuse, and she had not completed a parental competency evaluation or an application for housing. The court also found that Father initially denied paternity, but that he also expressed interest in establishing a relationship with Aaron if he was determined to be the biological father. The court ordered Father to submit to a paternity test within thirty (30) days, participate in a parenting program, enter into an Out of Home Family Services Agreement ("OHFSA"), and secure safe and stable housing. The court granted Father one hour of visitation per week pending the results of the paternity test.

Later in July 2016, Father entered into an OHFSA in which he agreed to participate in a parenting program, find and maintain employment, and establish safe housing. After Father tested positive for marijuana on multiple occasions, substance use treatment was added to the plan.

In October 2016, the trial court entered a custody review order, finding that the paternity test results determined Father was, in fact, Aaron's biological father. The court also found that Father wanted to work towards obtaining custody of Aaron but noted that he did not have stable independent housing. The court continued custody with DSS.

In February 2017, the trial court entered a permanency planning order, finding that Father had participated in the recommended parenting class, but had been sporadic with his visitations with Aaron. The court ordered Father to participate in random drug screens, and if he tested positive, to obtain a substance abuse assessment and follow all recommendations; maintain employment and provide DSS with his pay stubs; work with the referred social worker to secure his own safe and stable housing; and complete a home visit so DSS could assess his current home and meet the other occupants. The court adopted the permanent plan of reunification with a secondary plan of adoption.

In March 2017, the trial court entered a subsequent permanency planning order, finding that Father had been inconsistent with his contact with DSS, had only sporadically visited Aaron, and had not participated in recommended or court ordered services. The court again ordered Father to participate in random drug screens, maintain employment and provide DSS with his pay stubs, and work towards securing his own safe and stable housing. The court further ordered Father to have three supervised visits with Aaron by 20 April 2017, and to provide DSS with specific dates and times in which to conduct a home visit to assess the home and meet the other occupants. Also, the court indicated that if Father did not comply completely with the terms of the order, the permanent plan would be changed to adoption and the court would order DSS to file a motion to terminate Father's parental rights.

Following the 20 April 2017 permanency planning hearing, the court entered an order finding Father did not comply completely with the terms of the prior permanent planning order. Therefore, the court changed the permanent plan to adoption and ordered DSS to file a petition to terminate parental rights within sixty (60) days.

In July 2017, DSS filed its petition to terminate Father's parental rights to Aaron alleging the grounds of neglect and willful failure to make reasonable progress. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2) (2017).

In March 2018, following hearings on the matter, the trial court entered an order terminating Father's parental rights to Aaron. The court concluded grounds existed to terminate Father's parental rights as alleged in the petition, and that termination of Father's parental rights was in Aaron's best interest. Father timely appealed.

II. Analysis

A. Neglect

Father first argues the trial court erred by concluding grounds existed to terminate his parental rights based on neglect. We disagree.

The standard of review of a termination of parental rights order is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and whether those findings support the conclusions of law. *In re Huff*, 140 N.C. App.

288, 291, 536 S.E.2d 838, 840 (2000). Unchallenged findings of fact "are deemed to be supported by sufficient evidence and are binding on appeal." *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). The trial court's conclusions of law are reviewed *de novo*. *In re S.N.*, *X.Z.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (citation omitted), *aff'd*, 363 N.C. 368,677 S.E.2d 455 (2009).

Pursuant to Section 7B-1111(a)(1) of our General Statutes, parental rights may be terminated when the trial court finds that the parent neglected the child. 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).

Generally, "[i]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child 'at the time of the termination proceeding.' " *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). However, when, as here, a child has not been in the custody of the parent for a significant period of time such that it would be impossible to show that the child is currently being neglected by the parent, "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. at 713-14, 319 S.E.2d at 231. If a prior adjudication of neglect is considered, however, "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *Id.* at 715, 319 S.E.2d at 232. Thus, even where "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 . . . a probability of repetition of neglect if the juvenile were returned to [his] parents." *In re Reyes*, 136 N.C. App. 812, 814-15, 526 S.E.2d 499, 501 (2000).

Here, in the order terminating Father's parental rights, the trial court found that Aaron was adjudicated neglected in July 2016. Father does not challenge this finding, but argues this adjudication did not pertain to him as it was due to the mother's neglect of Aaron, and thus there was no evidence of neglect by Father. However, our Supreme Court rejected this argument in *In re M.A.W.*, noting that "[i]n determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent." *In re M.A.W.*, 370 N.C. 149, 154, 804 S.E.2d 513, 517 (2017); *see also In re C.L.S.*, 245 N.C. App. 75, 78-79, 781 S.E.2d 680, 682-83 (affirming termination of the father's parental rights based on neglect where the child was initially adjudicated neglected based on the mother's substance abuse and paternity was not established

until after the neglect adjudication), *aff'd per curiam*, 369 N.C. 58, 791 S.E.2d 457 (2016). In *In re M.A.W.*, our Supreme Court held that the prior neglect adjudication based on the mother's substance abuse and mental health issues was "appropriately considered" by the trial court "as relevant evidence" during the hearing to terminate the parental rights of the respondent-father, who had been incarcerated at the time of the adjudication. *In re M.A.W.*, 370 N.C. at 150-54, 804 S.E.2d at 515-17. Thus, as in *In re M.A.W.*, the trial court here "appropriately considered the prior adjudication of neglect" at the termination hearing. *Id.*

The trial court made a number of findings in support of its determination of neglect. Father does not challenge findings of fact 10-29; thus, they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). However, Father argues that findings of fact numbers 32-37 and 40 are more properly labeled as conclusions of law as they involve the exercise of judgment or the application of legal principles, and they must be treated as such. We agree that findings of fact numbers 32-37 and 40 are not evidentiary findings but rather ultimate findings. "[An] ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact. It is to be distinguished from the findings of primary, evidentiary, or circumstantial facts." *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 491 (1937)*; see also In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) ("Ultimate facts are the final resulting effect reached by processes of logical reasoning

from the evidentiary facts."). However, irrespective of whether the findings are classified as ultimate findings of fact or conclusions of law, our review is the same: they must be sufficiently supported by the evidentiary findings of fact. *See In re D.M.O.*, ___ N.C. App. ___, ___, 794 S.E.2d 858, 861 (2016) ("[A] trial court must make adequate evidentiary findings to support its ultimate finding of willful intent.").

Father further argues that the remaining findings of fact and evidence are insufficient to support the conclusion that he neglected Aaron. The trial court's evidentiary findings support its ultimate findings that Father has not demonstrated the commitment to be a full-time parent in that he did not address the identified issues and did not comply with the court's directives. Findings of fact numbers 12-18 discuss Father's repeated failure to submit to random drug screens by failing to take twenty-nine (29) drug screens over the course of the case, his continued positive drug screens for marijuana, and his failure to obtain a substance abuse assessment. Father also admitted at the termination hearing that he had a problem with marijuana use. However, he did not address this issue over the twenty (20) months Aaron was in foster care.

Findings of fact numbers 23-27 discuss Father's failure to complete a proper home visit with DSS despite being given over eleven (11) months to do so. Although DSS visited the home once, Father never provided DSS with times and dates to meet one of the roommates, who had multiple charges for violent offenses, in order for DSS

to determine whether the house was safe and suitable for Aaron. Finding of fact number 26 states that Father also never contacted the housing social worker as ordered by the court in order to work towards obtaining independent housing, and his case was ultimately closed for inaction. The trial court also found that Father only attended approximately half of the scheduled visits with Aaron, and only visited Aaron twice between May 2017 and December 2017.

Thus, the evidentiary findings show that although Father complied with some parts of his OFHSA by completing a parenting course, paying child support through wage-withholding, and obtaining employment, he consistently did not follow through with DSS's and the trial court's directives and failed to address multiple issues identified by DSS in order for Father to obtain custody of Aaron. These failures as well as his failure to consistently visit with Aaron and maintain contact with DSS, support the trial court's determination that neglect would repeat should Aaron be placed in Father's care. *In re C.M.P.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 859 (2017) ("A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect."); *see also In re M.A.W.*, 370 N.C. at 154, 804 S.E.2d at 517 (finding that the father's failure to "follow through consistently with the court's directives and recommendations" when not incarcerated supported a conclusion that neglect was likely to repeat). Therefore, we hold that the evidentiary findings support findings of fact numbers 32-37 and 40 as they pertain to neglect, and those findings

in turn support the court's conclusion of neglect and a likelihood of repetition of neglect.[3] Accordingly, we hold the trial court did not err in concluding that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Father's parental rights. The finding of this statutory ground alone is sufficient in and of itself to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) ("A finding of any one of the grounds enumerated at Section [7B-1111(a)] will support a judge's order of termination.").

B. Best Interest of the Child

Father also argues the trial court abused its discretion in determining that termination of his parental rights was in Aaron's best interest. We disagree.

"After an adjudication that one or more grounds for terminating a parent's rights exist" under N.C. Gen. Stat. § 7B-1111(a), the trial court must "determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2017). The court must consider the following factors in making its determination:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in

[3] Although Father argued additional findings are more appropriately classified as conclusions of law, we review only those findings necessary to support the trial court's determination that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Father's parental rights. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (holding that erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

> the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

Id. Dispositional findings are binding on appeal if they are supported by any competent evidence. *See In re C.M.*, 183 N.C. App. 207, 212, 644 S.E.2d 588, 593 (2007). "As a discretionary decision, the trial court's disposition [under N.C. Gen. Stat. § 7B-1110(a)] will not be disturbed unless it could not have been the product of reasoning." *In re A.J.M.P.*, 205 N.C. App. 144, 152, 695 S.E.2d 156, 161 (2010).

Here, Father admits that the trial court considered these factors and made the appropriate findings, but argues that the termination order is absent any findings showing the basis for the court's determination that Aaron's best interests were served by terminating Father's parental rights.

The trial court made several findings in support of its determination that termination was in Aaron's best interest. And Father does not contest these findings, but suggests that "[s]ome disclosure of the court's reasoning would be particularly valuable here" because "the court was presented with abundant evidence of [Father's] 'positive bond[,]' love, and commitment to Aaron" and very little information about the foster parents.

While a child's bond with his father is certainly relevant to the trial court's inquiry under N.C. Gen. Stat. § 7B-1110(a)(4), this factor is by no means dispositive. The trial court's findings demonstrate that the trial court considered Father's bond with Aaron and determined that while he has a "positive bond[,]" Father's inconsistent visitation inhibited the formation of a strong bond with Aaron. For example, the trial court found that Father missed "three or four visits in a row" at times, and visited only once between May and September 2017. Contrarily, the court found that Aaron had a strong, loving bond with his proposed adoptive parents who are committed to his needs and have provided for his day to day care. The court also found that Aaron had been residing with the foster parents since he was one month old, a period of twenty (20) months, along with his half-sister Hannah. The trial court's findings of fact demonstrate that the court properly considered all of the requisite statutory factors and reached a reasoned decision based on these factors. Therefore, the trial court did not abuse its discretion in determining that termination of Father's parental rights was in Aaron's best interests.

III. Conclusion

The trial court did not err in finding that Father neglected Aaron nor did it abuse its discretion in determining that termination of Father's parental rights was in Aaron's best interest. Accordingly, we affirm the trial court's order terminating Father's parental rights to Aaron.

AFFRIMED.

Judges STROUD and BERGER concur.

Report per Rule 30(e).