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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-715

Filed: 15 January 2019

New Hanover County, No. 16 JT 316

IN THE MATTER OF: N.J.M.G.

Appeal by respondent-mother from order entered 26 March 2018 by Judge J.H. Corpening II in New Hanover County District Court. Heard in the Court of Appeals 6 December 2018.

Jennifer G. Cooke for petitioner-appellee New Hanover County Department of Social Services.

Parker Poe Adams & Bernstein LLP, by Matthew W. Wolfe and E. Bahati Mutisya, for guardian ad litem.

Leslie Rawls for respondent-appellant mother.

BERGER, Judge.

Respondent-mother appeals from the trial court's order terminating her parental rights in the minor child "Nadia."[1] The order also terminates the parental rights of Nadia's legal father and putative biological father, neither of whom is a party to this appeal. Because the trial court's findings of fact support its conclusion that

[1] We use the pseudonyms chosen by the parties to refer to the juvenile and her siblings.

Nadia was likely to experience a repetition of neglect if returned to respondent-mother's custody, we affirm.

Factual and Procedural Background

Of respondent-mother's five older children, four ("Queenie," "Andrew," "Edward," and "Charles") were adjudicated neglected juveniles on February 12, 2016 in New Hanover County District Court file numbers 15 JA 80, 276, and 307-08. The trial court relieved DSS of further reunification efforts with regard to these children in October 2016 and granted custody of Edward and Charles to their father. The fifth child, "Abe," entered DSS custody on August 2, 2016 in file number 16 JA 204.

On November 16, 2016, the New Hanover County Department of Social Services ("DSS") obtained nonsecure custody of newborn Nadia and filed a juvenile petition alleging she was neglected and dependent. Respondent-mother stipulated to the following facts supporting the trial court's adjudication of Nadia as neglected after a hearing on January 11, 2017:[2]

> . . . [Nadia] does not receive proper care, supervision, or discipline from [her] parent . . . and lives in an environment injurious to [her] welfare in that . . . [DSS] has been working with this family for over one year on issues of substance abuse, mental health issues and parenting deficiencies. Respondent-Mother has been diagnosed with cannabis use disorder, mild[,] and adjustment disorder with mixed disturbance of emotions and conduct. She is not participating in mental health services as recommended by her provider because of staff issues. She

[2] DSS dismissed the allegation of dependency.

> denies being diagnosed with any mental health issues. Respondent-Mother has five other children and does not have custody or supervised contact with any of those children. Three of those children remain in the custody of [DSS]. Respondent-Mother lacks stable housing and employment. Respondent-Mother left her [hospital] room [on 16 November 2016] without notifying staff that the baby was in the room alone. She disappeared for a period of time, hospital staff could not find her.

See N.C. Gen. Stat. § 7B-101(15) (2017).

In its "Order on Adjudication and Disposition" entered January 27, 2017, the court ordered respondent-mother to comply with the conditions of her Family Services Agreement ("FSA"), which included participation in recommended services to address her mental health and substance abuse issues; submitting to random drug screens at the request of DSS or the guardian ad litem ("GAL"); and obtaining and maintaining a "verifiable income" and stable housing. Respondent-mother was granted two hours of weekly supervised visitation. The court also authorized Nadia's placement with her maternal grandmother in lieu of her existing foster placement.

DSS placed Nadia with her grandmother on January 11, 2017. In February 2017, respondent-mother relocated from New Hanover County to Duplin County, North Carolina, moving into her girlfriend's residence. Respondent-mother continued to visit Nadia while the child remained with her grandmother. On July 14, 2017, however, DSS removed Nadia from this placement and returned her to foster care due to the grandmother's marijuana use and "concerns about her mental health and stability." Other than one additional visit facilitated by the DSS social

worker at respondent-mother's home on July 27, 2017, respondent-mother attended no further visitation with Nadia after the child left her grandmother's care.

The trial court held a permanency planning hearing on August 31, 2017. Upon finding that respondent-mother "has failed to make adequate progress within a reasonable amount of time," the court established a permanent plan for Nadia of adoption with a concurrent plan of reunification and directed DSS to initiate proceedings for the termination of parental rights.

DSS filed a petition to terminate the parental rights of Nadia's parents on October 5, 2017. The trial court held a hearing on the petition on February 19, 2018 and entered an "Order Terminating Parental Rights" on March 26, 2018. The court concluded "that the Respondent-Parents have neglected [Nadia], and there is a high probability that the neglect will continue in the foreseeable future." *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2017). The court further concluded that it is in Nadia's best interest that her parents' rights be terminated. *See* N.C. Gen. Stat. § 7B-1110(a) (2017).

Standard of Review

Respondent-mother challenges the trial court's adjudication of grounds to terminate her parental rights based on neglect under N.C. Gen. Stat. § 7B-1111(a)(1). "In reviewing the trial court's decision, we must determine whether the findings of fact are supported by clear, cogent and convincing evidence, and whether the findings

support the court's conclusions of law." *In re B.S.O.*, 234 N.C. App. 706, 707-08, 760 S.E.2d 59, 62 (2014). It is the trial court's role as fact-finder to weigh the evidence, assess the credibility of witnesses, and resolve any conflicts or discrepancies in the testimony. *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). Moreover, where competing inferences may reasonably be drawn from the evidence, it is the exclusive province of the trial court to "determine which inferences shall be drawn and which shall be rejected." *Id.* at 480, 539 S.E.2d at 366. Accordingly, "[i]f there is competent evidence, the findings of the trial court are binding on appeal." *In re B.S.O.*, 234 N.C. App. at 708, 760 S.E.2d at 62 (citation and quotation marks omitted). We review the trial court's conclusions of law *de novo*. *Id.*

Analysis

Respondent-mother takes exception with adjudicatory facts found by the trial court. The court made the following findings pertinent to her appeal:

> 6. That [DSS] consistently worked with Respondent-Mother since October 2015 on issues of substance abuse, mental health issues and parenting deficiencies concerning multiple children. Respondent-Mother has been diagnosed with cannabis use disorder, mild[,] and adjustment disorder with mixed disturbance of emotions and conduct. She failed to participate in mental health services as recommended by her provider. The assigned social worker was in the home three times per week to support the family in an effort to prevent removal. Respondent-Mother would not cooperate with intensive in home services or follow recommendations from her mental health providers. Her home was consistently dirty. The children's behaviors were out of control, and Respondent-

Mother failed to manage the children appropriately. Subsequently, Respondent-Mother lost legal custody of four other children prior to [Nadia's] birth. Later, she lost custody of another child through delinquen[cy] court. Two of those children remain in the custody of [DSS]. Legal custody of two other children was granted to their father, and one child has reached the age of majority. [Nadia] was born [i]n November . . . 2016. At the time of [Nadia's] birth, Respondent-Mother lacked stable housing and employment. She continued working with [DSS] on a case plan of reunification with her other children. Upon [Nadia's] birth, Respondent-Mother left the hospital room without notifying staff that the baby was in the room alone. She disappeared for a period of time, and hospital staff could not find her. Respondent-Mother lacked stability to be able to provide appropriate care for [Nadia], and [she] was removed from her mother's care days after her birth.

. . . .

10. Respondent-Mother entered a Family Services Agreement for [Nadia] that was identical to her pre-existing Family Service Agreement for her older children. It included obtaining an updated Comprehensive Clinical Assessment, participation in parenting classes, submitting to random drug screens, executing medical releases on behalf of the [DSS] and Guardian ad Litem, obtaining and maintaining verifiable income and obtaining and maintaining a stable residence.

11. That [DSS] had difficulty maintaining contact with the Respondent-Mother. Over the course of [its] involvement with her, [she] has obtained employment with various employers such as the House of Raeford and McDonalds; however, her employment is not consistent or stable. She reports current employment at McDonalds in Wallace with a minimum of twenty hours per week.

12. In February 2017, Respondent-Mother relocated from New Hanover County to Duplin County

with her girlfriend thus making it difficult for [her] to obtain appropriate services to address her needs. She vacillated regarding her intent to return to New Hanover County or remain in Duplin County. She did not want to live in the areas with affordable housing in Wilmington because she did not want [Nadia] in the "projects." She continues to reside in Teachey, Duplin County, North Carolina. On August 31, 2017, [DSS] transported [Respondent-Mother] to Wilmington Housing Authority. She obtained a voucher from New Hanover County Housing Authority [and] claims to have used the voucher in Duplin County. On this date, [Respondent-Mother] reports that her girlfriend no longer resides in the residence. She has maintained the residence independently since November 2017. She pays forty-eight dollars per month for rent. The social worker and Guardian ad Litem volunteer made multiple trips to [Respondent-Mother's] home in Teachey, North Carolina in attempts to support [her] participation in her case plan. [She] did not answer telephone calls and did not have voicemail. During one attempted home visit, Social Worker Zeh thought she heard the television on, however, no one answered the door. During another attempted home visit, [Respondent-Mother] spoke to Social Worker Zeh and the Guardian ad Litem volunteer, however, she denied them access to the home.

13. [Respondent-Mother] failed to obtain suitable transportation which created a barrier for reunification when she moved to Duplin County. [Nadia's putative biological father] bought [Respondent-Mother] a car to assist in her transportation issues, however, it cannot pass inspection due to a busted windshield. [DSS] has assisted [Respondent-Mother] by providing transportation to services and visitation at times. [It] was unable to provide consistent transportation because [she] lives several counties away.

14. [Respondent-Mother] completed Triple P parenting classes. . . . [DSS] continues to have concerns

regarding [her] parenting deficiencies. [She] appeared to have knowledge of how to provide basic care for a baby, however, she was unable to demonstrate any change in parenting abilities after completing her parenting classes. Her home continued to be in disarray and dirty. She claimed to have no knowledge of one of her older children smoking marijuana and drinking alcohol in her home during a visit. Over Memorial Day weekend in 2017, [DSS] received a child protective services report. Respondent-Mother had [Nadia's] older sibling [Abe] in her home on a trial home placement. Law enforcement responded to a domestic disturbance call wherein Respondent-Mother's girlfriend threatened to kill the minor child if he did not leave the home. Respondent-Mother and her girlfriend were visibly intoxicated. Law enforcement identified another intoxicated female in the home which was Respondent-Mother's seventeen year old minor daughter. Respondent-Mother failed to accept any responsibility for the behavior of the older siblings or her own behavior. [DSS] immediately stopped all unsupervised visitation for Respondent-Mother because of her substance use and the domestic discord.

15. On March 16, 2016, [Respondent-Mother] completed a Comprehensive Clinical Assessment with Coastal Horizons Center, Inc. She was diagnosed with Post[-]traumatic Stress Disorder and Cannabis Use Disorder Mild. It was recommended that she participate in individual therapy and receive a referral to a psychiatrist. [She] failed to comply with the recommendations. She refused to consider medication management. She failed to consistently engage in individual therapy. On April 25, 2017, [she] completed an updated Comprehensive Clinical Assessment with Coastal Horizons Center, Inc. Her diagnosis remained Post[-]traumatic Stress Disorder and Cannabis Use Disorder Mild. . . . Once again, it was recommended that she complete an evaluation with a psychiatrist to determine if there is a need for psychiatric medication, participate in individual therapy and group therapy. [She] did not agree

with the updated Comprehensive Clinical Assessment and initially refused to engage in the recommended treatment. [She] participated in therapy on May 16, 2017, August 3, 2017, August 30, 2017, September 14, 2017 and October 5, 2017. She did not address her Post[-]traumatic Stress Disorder diagnosis in therapy sessions. [DSS] transported [Respondent-Mother] to therapy on August 3, 2017. She failed to appear at a scheduled therapy session on August 24, 2017. [She] has been discharged from Coastal Horizons Center, Inc. due to non-compliance. Upon [her] move to Duplin County, she chose to discontinue services in New Hanover County and pursue services offered in Pender County. She attend[ed] therapy with Charles Barrett at Coastal Horizons, Inc. Her lack of transportation and this transfer caused a delay in her services and affected the amount and frequency of services available to her.

16. Respondent-Mother denies current substance use. She has participated in some drug screens requested by [DSS]. The screens she participated in showed negative results. She failed to participate in one scheduled drug screen and refused hair follicle screens twice. [DSS] is not able to screen [her] frequently because of the distance. [DSS] does not have a vendor agreement with providers in Duplin County for drug screens. [Respondent-Mother] lacks transportation to travel to New Hanover for random screens. Throughout her case, she routinely refused to submit to random hair follicle screens due to her religious beliefs.

. . . .

19. While residing in New Hanover County, Respondent-Mother consistently participated in scheduled visitation with [Nadia]. Visitation was expanded to unsupervised contact, however, it later reverted to supervised contact due to safety concerns after the Memorial Day domestic violence and alcohol incident with her son. Since moving to Teachey, North Carolina, Respondent-Mother has participated in one visit facilitated

> by [DSS] wherein Ms. Zeh provided transportation. [Respondent-Mother] has not visited or seen [Nadia] since August 2017.
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> . . . .
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> 23. . . . [T]he consistent conduct of the Respondent-Parents in [Nadia's] case and her siblings' cases has been such as to demonstrate that they will not promote [Nadia's] health, physical and emotional well-being. [Respondent-Mother] lost custody of five other children and has not been able to regain custody of any of them despite [DSS's] and the Court's consistent involvement since 2015. . . . Neither parent has been able to demonstrate they are able to provide the minimum standard of care for any of their children since 2015.
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> . . . .
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> 26. . . . The Respondent-Parents neglected [Nadia] within the meaning of the statute, and there has been little progress towards reunification. There is a high probability of the repetition of neglect as determined in the underlying Juvenile Petition.

To the extent respondent-mother does not specifically contest these findings, she is bound thereby. *In re B.S.O.*, 234 N.C. App. at 708, 760 S.E.2d at 62.

We note the trial court's determination in Finding 26 of "a high probability of the repetition of neglect" is in the nature of a conclusion of law and will be reviewed accordingly. *See generally In re M.R.D.C.*, 166 N.C. App. 693, 697, 603 S.E.2d 890, 893 (2004) ("[I]f [a] finding of fact is essentially a conclusion of law . . . it will be treated as a conclusion of law which is reviewable on appeal." (citation and internal quotation marks omitted)). We must determine whether the remaining evidentiary

findings "support a conclusion of law that there is a probability of repetition of neglect if the minor child were returned to Respondent." *In re Pope*, 144 N.C. App. 32, 36, 547 S.E.2d 153, 156, *aff'd per curiam*, 354 N.C. 359, 554 S.E.2d 644 (2001); *see also In re C.M.P.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 861 (2017) ("The trial court's findings support the conclusion that there is a high probability of the repetition of neglect if the children are returned to respondent's care.").

Respondent-mother first contends Finding 6 "does not clearly identify what time periods it addresses." A review of the order shows, as respondent-mother concedes, that the finding generally summarizes events prior to Nadia's birth. The lack of specific dates attached to the events described in Finding 6 does not amount to error.

Respondent-mother challenges the evidentiary support for the statement in Finding 6 that "[s]he failed to participate in mental health services as recommended by her providers." However, this finding is consistent with respondent-mother's stipulations of fact in support of Nadia's prior adjudication as a neglected juvenile on January 27, 2017.[3] Respondent-mother specifically objects to the finding that she "failed" to participate in mental health services, rather than merely being unable to participate "due to poverty and lack of reasonable efforts" by DSS. The court's finding

[3] The court "took judicial notice of all orders in that Juvenile file bearing the File Nos. 15 JA 27, 80, 307, 308 and 16 JA 316 to the extent allowable" under North Carolina law. *See, e.g., In re W.L.M.*, 181 N.C. App. 518, 523, 640 S.E.2d 439, 442 (2007).

is supported by the stipulated fact that respondent-mother "denie[d] being diagnosed with any mental health issues" despite her diagnoses of "cannabis use disorder, mild[,] and adjustment disorder with mixed disturbance of emotions and conduct."

Respondent-mother also challenges the statement in Finding 6 that she "would not cooperate with intensive in home services or follow recommendations from her mental health providers." Read in context, this finding refers to the services provided by DSS social worker Erin Sowers from October through mid-December 2015. Ms. Sowers testified that she was in respondent-mother's home "[m]ultiple times [per] week" during this period; that respondent-mother did not obtain the comprehensive clinical assessment to which she agreed in her case plan signed on October 19, 2015; that intensive in-home services were provided for Queenie;[4] and that, despite these interventions, respondent-mother's children were removed from the home. To the extent the evidence does not show respondent-mother's lack of cooperation with a particular recommendation from her mental health service provider during this period, any error is harmless. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("When . . . ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.").

[4] Although intensive in-home services were also provided to Abe during his unsuccessful trial home placement in the Spring of 2017, we read Finding 6 as summarizing DSS's involvement with respondent-mother's family *prior to* Nadia's birth.

Respondent-mother objects to Finding 11 and Finding 13 on the ground that they are "misleading when used to support termination" of her parental rights. She does not appear to contest the accuracy of these findings, which describe DSS social worker Ms. Zeh's inability to contact respondent-mother following her move to Duplin County, respondent-mother's failure to maintain stable employment, and her lack of reliable transportation. Rather, she contends these facts cannot be used to support an adjudication of neglect, because they "resulted from her poverty." We conclude respondent-mother's argument is more properly addressed as a challenge to the trial court's conclusion of law under Section 7B-1111(a)(1) and is not a valid basis for overturning the court's fact-finding. *See generally In re B.S.O.*, 234 N.C. App. at 707-08, 760 S.E.2d at 62 (articulating the standard of appellate review for the trial court's findings of fact). To the extent she excepts to Findings 11 and 13, we find them to be supported by testimony provided at the hearing.[5]

We agree with respondent-mother that Finding 13 incorrectly describes Duplin County as "several counties away" from New Hanover County. We take judicial notice that Duplin County is located two counties away from New Hanover County to the north, as they are separated by Pender County. *See generally State v. Pallet*, 283 N.C. 705, 712, 198 S.E.2d 433, 437 (1973) ("The courts will take judicial notice of

[5] Contrary to Finding 11, respondent-mother testified she was not currently employed but had been working "[a]s of not too long ago at McDonald's" for 20 to 30 hours per week. We find this discrepancy immaterial.

municipalities, counties and other political subdivisions of the State."); *see also* N.C. Gen. Stat. § 8C-1, Rule 201 (2017). However, to the extent respondent-mother challenges the statement in Finding 13 that "[DSS] was unable to provide consistent transportation [for respondent-mother] because [she] lives [two] counties away," this finding is supported by Ms. Zeh's testimony.

Respondent-mother also contends that "[s]everal portions of [F]inding 14 are unsupported or misleading." We disagree. The finding corresponds fully to the testimony of DSS social workers Michael Pappas and Ms. Zeh that, although respondent-mother completed parenting classes, they continued to have concerns about her parenting abilities as described by the trial court. Finding 14 also acknowledges that respondent-mother displayed proper care of baby Nadia during her visitations. In general, the finding accurately recounts the "Memorial Day incident" which led to the cessation of Abe's trial home placement with respondent-mother in the Spring of 2017. Respondent-mother complains the trial court erroneously "attributes some responsibility" to her for the disruption of Abe's trial home placement. However, the evidence shows both respondent-mother and her girlfriend appeared to be intoxicated when police responded to a 911 call regarding a physical altercation between Abe and the girlfriend, and that respondent-mother later acknowledged to Ms. Zeh that she and her girlfriend were drinking. These facts are sufficient to establish respondent-mother's "responsibility" for the unsuccessful

placement, particularly in view of her substance abuse history.

Although Queenie was also present in the home during the Memorial Day incident, we agree with respondent-mother that the evidence does not support the trial court's finding that Queenie was intoxicated. We disregard this finding for the purpose of our review. *See In re T.M.*, 180 N.C. App. at 547, 638 S.E.2d at 240.

Finally, respondent-mother challenges Finding 15 on the ground that it "lacks clear dates in discussing [her] response to and participating in treatment plans." Based on our review of the evidence, we conclude Finding 15 fairly summarizes respondent-mother's inconsistent engagement with mental health services from March 16, 2016 to the date of the termination hearing. However, we note respondent-mother did eventually attend a medication management appointment with a psychiatrist on August 30, 2017.

The trial court's findings of fact are supported by competent evidence, and we now look to the conclusions of law.

Under Section 7B-1111(a)(1), "[t]he 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 defined, *inter alia*, as one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who lives in an environment injurious to the juvenile's welfare . . . ." N.C. Gen. Stat. § 7B-101(15) (2017). The determination

that a child is neglected within the meaning of Section 7B-101(15) based on the facts found by the trial court is a conclusion of law we review *de novo*. *See In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997).

"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). When a child has been removed from the parent's care for a significant period at the time of the termination hearing, "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 her parents." *In re J.W.*, 173 N.C. App. 450, 464, 619 S.E.2d 534, 545 (2005) (citation and quotation marks omitted), *aff'd per curiam*, 360 N.C. 361, 625 S.E.2d 780 (2006).

Respondent-mother does not deny that Nadia was previously adjudicated a neglected juvenile. Nor does she expressly challenge the trial court's determination that "[t]here is a high probability of the repetition of neglect" if Nadia were returned to her care. *See generally In re Pope*, 144 N.C. App. at 36, 547 S.E.2d at 156 (noting the determination of "a probability of repetition of neglect" is a conclusion of law that must be supported by findings of fact). Instead, respondent-mother argues that the court's "findings cannot support the court's ultimate conclusion that termination grounds exist," because the conditions cited by the trial court "are rooted in

[respondent-mother's] poverty."

As an initial matter, we find no support for respondent-mother's blanket assumption that neglect may not exist for purposes of Section 7B-1111(a)(1) if the conditions causing the parent to neglect a child are the product of the parent's poverty. The fact that a home environment is injurious to the child's welfare, for example, would not appear to be excused merely because the injurious environment is attributable to the parent's financial circumstances. Moreover, we note that poverty is not an excuse for respondent-mother's shortcomings as a parent. She was provided resources which she did not use, and now affixes blame to circumstances completely in her control.

We recognize the explicit allowance made for a parent's poverty in Section 7B-1111(a). Though not cited by respondent-mother in her appellant's brief, the provision appears within Section 7B-1111(a)(2), as follows:

> (a) The court may terminate the parental rights upon a finding of one or more of the following:
>
> > (1) The parent has abused or neglected the juvenile. The 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.
> >
> > (2) The parent has willfully left the juvenile 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 juvenile. *Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty*. . . .

N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2017) (emphasis added).[6] As Section 7B-1111(a) includes eleven enumerated subdivisions, each prescribing a separate ground for terminating parental rights, we find it noteworthy that our legislature placed the exemption for parental poverty only in subdivision (2). *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 156 (2012) (defining the "Scope-of-Subparts Canon" of construction as follows: "Material within an indented subpart relates only to that subpart . . . ."). Also noteworthy is the lack of any poverty-based exception in the definition of "[n]eglected juvenile" in Section 7B-101(15), which is incorporated by reference into Section 7B-1111(a)(1).

We need not resolve this issue of statutory construction, because we find no merit to respondent-mother's claim that the facts supporting the trial court's adjudication of neglect are solely caused by her poverty. The evidence does show respondent-mother's lack of reliable transportation affected her ability to cooperate with DSS, maintain employment, participate in mental health services, and attend visitation. However, these transportation issues arose only after respondent-mother made the choice to move out of New Hanover County in order to live with her

[6] This statute was amended in non-pertinent part effective 1 October 2018 by N.C. Session Laws 2018-47, § 2 (June 22, 2018). We quote the text as it appeared at the time of these proceedings in the trial court.

girlfriend. Notwithstanding respondent-mother's testimony that she did not want Nadia living in "the projects" in Wilmington, the trial court could reasonably view respondent-mother's decision to relocate to Duplin County to be a matter of personal preference rather than necessity, particularly given that she chose to relocate in February 2017, three months after losing custody of Nadia.

We find no indication in the record that respondent-mother ever sought a transfer of venue to Duplin County pursuant to N.C. Gen. Stat. §§ 7B-400(d) and 7B-900.1 (2017). As recently as the subsequent permanency planning hearing on August 31, 2017, she advised Ms. Zeh and the court that she intended to move back to Wilmington. During a recess at the hearing, Ms. Zeh drove respondent-mother to the Wilmington Housing Authority to obtain a voucher for this purpose. At the termination hearing, however, respondent-mother testified that she no longer intended to leave Teachey. Asked why she had made this decision, she replied as follows:

> Because for one I couldn't find a place in Wilmington and I didn't want my daughter in the projects and for two, I was already living there, I didn't have to worry about paying deposit, move my things or mover – you know, I didn't have to worry about taking that money that could towards [*sic*] my kids on moving when I was already in a place.

The trial court could reasonably construe this testimony as reflecting respondent-mother's personal preference rather than an inability to move caused by her poverty. *See In re J.W.*, 173 N.C. App. at 463, 619 S.E.2d at 544.

Moreover, despite her professed inability to visit Nadia in the months preceding the termination hearing, respondent-mother evinced no difficulty in obtaining transportation to visit Nadia while the child lived with her grandmother. Respondent-mother also attended periodic court hearings in Wilmington. Similarly, the evidence shows respondent-mother had at least some ability to contact Ms. Zeh by phone but ceased doing so after her visit with Nadia on July 27, 2017. In the months following this visit, Ms. Zeh was unable to contact respondent-mother by phone or by visiting her residence in Teachey. When Ms. Zeh and the guardian ad litem did find respondent-mother at home, she refused to allow them inside.

We hold the trial court's findings of fact support its conclusion that respondent-mother neglected Nadia under Section 7B-1111(a)(1). Nadia was previously adjudicated neglected on January 27, 2017. The court's findings further demonstrate that she was likely to experience a repetition of neglect if she was returned to respondent-mother's care.

At the time of the termination hearing, respondent-mother had not visited Nadia for more than six months and had ceased contact with DSS and compliance with services. *See generally Whittington v. Hendren*, 156 N.C. App. 364, 368, 576 S.E.2d 372, 375-76 (2003) ("[I]n determining whether neglect has occurred, the trial judge may consider the parent's failure to provide the personal contact, love, and affection that inheres in the parental relationship."). Respondent-mother was

unemployed and, despite lacking reliable transportation, had chosen to reside at a considerable distance from her service providers and from Nadia. Respondent-mother had previously neglected at least four of her older children and had lost custody of the fifth. *See* N.C. Gen. Stat. § 7B-101(15) ("In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to . . . neglect by an adult who regularly lives in the home."). Moreover, an attempted trial home placement with Abe in the Spring of 2017 had been terminated after an incident involving alcohol consumption by respondent-mother and her girlfriend.[7] Finally, respondent-mother does not challenge the trial court's findings that her "consistent conduct . . . has been such as to demonstrate that [she] will not promote [Nadia's] health, physical, and emotional well-being," and that she has not been "able to demonstrate that [she is] able to provide the minimum standard of care for any of [her] children since 2015." Because these facts establish grounds for terminating respondent-mother's parental rights in Nadia, we affirm the trial court's order.

AFFIRMED.

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[7] Respondent-mother's assertion that the Memorial Day incident cannot constitute neglect because Nadia was not present in the home is unpersuasive. In order to show a likelihood of repetition of neglect, DSS was *not* obliged to present "evidence of neglect [by respondent-mother] subsequent to the prior adjudication of neglect." *In re J.W.*, 173 N.C. App. at 464, 619 S.E.2d at 545 (citation and quotation marks omitted). The issue before the trial court was "the fitness of the parent to care for the child at the time of the termination proceeding." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (emphasis removed). Respondent-mother's decision to engage in substance abuse during Abe's trial home placement is relevant to that inquiry.

Judges STROUD and DILLON concur.

Report per Rule 30(e).