IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-697

Filed: 26 March 2019

Buncombe County, No. 15 JA 278

IN THE MATTER OF: A.A.J.

Appeal by Respondent from order entered 4 April 2018 by Judge Susan M. Dotson-Smith in District Court, Buncombe County. Heard in the Court of Appeals 26 February 2019.

Hanna Frost Honeycutt for Petitioner-Appellee Buncombe County Department of Health and Human Services.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Joseph L. Gilliam, for Respondent-Appellant Father.

Michael N. Tousey for Guardian ad Litem.

McGEE, Chief Judge.

I. Factual and Procedural History

A.A.J. "was conceived in Ohio during a relationship between Respondent-Mother and Respondent-Father ('Respondent')." Respondent-Mother left Ohio with her boyfriend ("Jackson") while she was still pregnant. Respondent testified that he was aware that he was the likely father of A.A.J. prior to Respondent-Mother leaving Ohio. Respondent never attempted to contact Respondent-Mother, and had no

involvement in A.A.J.'s life until nearly a year after he was served, on 24 February 2016, with the juvenile summons in this matter—which alleged that A.A.J. had been neglected by Respondent-Mother and Jackson. Neither Respondent-Mother nor Jackson were participating in this matter by the time the 4 April 2018 order was entered, and they are not participants in this appeal.

A.A.J. was placed with a maternal aunt by the Buncombe County Department of Social Services ("DSS") as a "safety resource placement" in 2015. A juvenile petition alleging neglect was filed 28 September 2015 and A.A.J.—then five years old—was adjudicated neglected. This matter was heard on 28 January 2016, with the Adjudication Judgment and Initial Dispositional Order entered 4 March 2016. In this order, Jackson was identified as the "putative father," and Respondent was not noticed of the hearing nor mentioned in the order. The trial court ruled that A.A.J. was a neglected juvenile, and ordered that A.A.J. would "remain in the custody of [Respondent-Mother and Jackson] and in her current safety resource placement" with her aunt. Respondent-Mother identified Respondent as a potential father of A.A.J. after adjudication, but sometime prior to 23 February 2016, and Respondent was served on 24 February 2016, in Ohio, with the juvenile summons alleging A.A.J. had been neglected by Respondent-Mother and Jackson. Following a 1 March 2016 hearing, resulting in a 4 May 2016 First Appearance Order, the trial court found: "Though properly served, [Respondent] has not appeared before this Court, and he

has not contacted the Buncombe County Clerk of Court, or any other party, to request court-appointed counsel, or to indicate he wishes to participate in these proceedings."

DSS moved on 23 February 2016 for the trial court to conduct a permanency planning review hearing and grant custody of A.A.J. to DSS, in part because her "safety resource placement [was] unable to continue to provide placement[.]" This and other matters were heard on 22 March 2016, and resulted in a 21 April 2016 review order. In the review order, the trial court found that A.A.J. "has had no contact with [Respondent] putative father. [Respondent] is scheduled for a paternity test in March 2016. [Respondent] has indicated that if he is determined to be the biological father of [A.A.J.], that he would like to have his home assessed and establish contact with [A.A.J.]." However, Respondent did not attend the hearing, had "not appeared before [the trial court] and he did not contact the Buncombe County Clerk of Court, or any other party or court officer, to request that he be appointed an attorney in this matter or to indicate that he wanted to participate in these proceedings." The trial court ordered custody of A.A.J. "be awarded to" DSS, and that "placement [of A.A.J.] is hereby sanctioned in the home of" a female family friend of Jackson's ("Carson"). The trial court also ordered "[t]hat the home of [Respondent] putative father shall be assessed for safety."

Following a 29 April 2016 review hearing, resulting in a 3 June 2016 review order, the trial court again noted that Respondent "has not been participating in this

matter." Despite Respondent's lack of participation in the proceedings, DSS recommended that the trial court order A.A.J. to "begin a trial home visit [with Respondent] as soon as possible" "if the home of [Respondent] is deemed safe[.]" The trial court ordered that if Respondent was confirmed as A.A.J.'s biological father, an Interstate Compact on the Placement of Children ("ICPC") home study would be ordered for his Ohio home. Further, Respondent was given "a minimum of one hour of supervised visitation with [A.A.J.] per week." Respondent did not take advantage of this opportunity for visitation.

A review hearing was conducted on 16 August 2016, and a review order entered 7 October 2016, in which the trial court found that Respondent was still not participating in the proceedings, even though "DNA paternity testing completed March 17, 2016 confirmed that [he was] the biological father of" A.A.J. The trial court noted that A.A.J. had engaged in worrisome sexualized behavior, stating that DSS was "made aware that [A.A.J.] straddled a 2-year old female's head at daycare and began grinding on the child's face. When asked why she did this, [A.A.J.] stated that she saw [Respondent-Mother and Jackson] do it. She also rubbed her privates to the point that they are raw. At this time, mental health is being set up for [A.A.J.] to address" these issues.

In the 7 October 2016 order, the trial court noted that Respondent had "expressed that he wants to visit [A.A.J.] and that he wants [her] to reside with him

in his home." Respondent was living "with his mother [("Grandmother")] in his own home in Middleton, Ohio." The trial court noted that despite Respondent's statements, "he has not made any attempt to remain in contact with" DSS. The assigned social worker ("social worker") contacted Respondent "to request that he provide financial assistance to [Carson for A.A.J.'s care] and [Respondent] got very angry and hung up on" the social worker. When the social worker called Respondent back, he did not answer or respond to her voicemail message. Respondent had never visited A.A.J., there is no record evidence that he had attempted to contact her by any means, and his visitation privileges were "suspended." However, the 7 October 2016 order appears to be the first order in which the trial court established the "secondary permanency plan" for A.A.J. as "custody to [the] non-removal" parent—meaning Respondent.

The trial court held another permanency planning review hearing on 17 November 2016. The corresponding review order was entered on 2 February 2017. The trial court found that A.A.J. was developing an attachment to Carson—calling her "Neva," and that A.A.J. "need[ed] constant reassurance that she is not going to [have to] leave [Carson's] home." By the time of the 17 November 2016 hearing, "[t]he ICPC home study on [Respondent] was approved." Respondent continued to express his desire to visit A.A.J. and have her come live with him in Ohio. However, DSS reported having difficulty maintaining contact with Respondent, stating it had left

"messages and it takes [Respondent] several weeks to respond." Further, Respondent refused to discuss providing monetary assistance for A.A.J.'s care, and "hung up upon [DSS] twice. The third time [Respondent] said he would not provide money but would send clothes. [DSS] had to get correct sizes[,]" but when DSS "attempted to contact [Respondent] to advise of sizes and the approved ICPC home study," Respondent did not return its calls. Nonetheless, the trial court found and concluded:

> Pursuant to N.C.G.S. § 7B-903.1(c) [Respondent] is capable of providing proper care and supervision for [A.A.J.] in a safe home. Therefore it is in the best interest of [A.A.J.] that the [trial] court sanction[] a trial home placement of [A.A.J.] in the home of [Respondent], to begin on November 17, 2016 and not to exceed a period of six months or until subsequent court review.

The trial court then ordered that DSS "make reasonable efforts towards finalizing the primary and secondary permanency plans and place [A.A.J.] in a timely manner in accordance with the primary and secondary permanency plans specified above, [and] shall complete any steps necessary to finalize the primary and secondary plans[.]" DSS proposed that A.A.J. "slowly transition to [Respondent's] home due to her age and that she has never met" Respondent. DSS recommended following "a transition plan developed by [DSS] and [A.A.J.'s] therapist[,]" which would "begin with phone contact once [Respondent] contacts" DSS, and then "for [Respondent] to visit [A.A.J.] in her home so she feels [more] comfortable." DSS wanted to "ensure that [A.A.J.] transition[ed] to [Respondent's] home with as little trauma as possible."

Despite the date given for the trial placement to occur—the same date the review hearing was conducted—it does not appear that the trial court intended A.A.J. would be immediately placed with Respondent in Ohio, as it also ordered that "the Child and Family Team [('CFT')] and [A.A.J.'s] therapist shall have discretion to create a transition plan for [A.A.J.] into the home of" Respondent.

The next review hearing was conducted on 17 February 2017 and the review order signed on 13 June 2017 but, because the file-stamp is illegible, it is uncertain when this order was entered. Respondent was present at the 17 February 2017 hearing, where he indicated that he wanted to proceed *pro se*. The trial court found that though A.A.J. was still residing with Carson, A.A.J. would "be moved from the kinship placement to a licensed foster home in the near future" because Carson would "not be able to provide permanency in the event that [Respondent] is not granted custody." A.A.J. was "aware of the move and ha[d] met the potential foster family [(the 'Coles')]" because A.A.J. had been "doing respite every weekend with the [Coles]" in order to provide Carson some relief. The trial court noted that A.A.J. was seeing a therapist who was attempting to help A.A.J. deal with her current life changes and prior sexual abuse.

The trial court indicated that Respondent and Grandmother were planning on visiting A.A.J. "during the week of February 3, 2017." The trial court noted that DSS wanted Carson to supervise the visit due to concerns that Respondent might allow

Respondent-Mother "to have contact with" A.A.J. because A.A.J. had "stated that [Respondent] told her that when she goes to live with him, she will be able to see" Respondent-Mother, and DSS had seen "Facebook messages between" Respondent and Respondent-Mother. All contact between A.A.J. and Respondent-Mother had been suspended following the 16 August 2016 hearing, and all subsequent review orders had maintained suspension of any visitation or contact between A.A.J. and Respondent-Mother. In addition, the trial court found that Respondent had "had minimal contact with [DSS] or [A.A.J.] and continue[d] to hang up on" the social worker.

Specifically, DSS "spoke with [Respondent] in November 2016 about the importance of building a relationship with [A.A.J.], including phone calls, FaceTime, and visits[,]" but the social worker "determined that [Respondent] had not been contacting [A.A.J.] and [the social worker] called him to . . . inquire why this had not happened. [Respondent] hung up on" the social worker. Whether to allow supervised visitation between Respondent and A.A.J. was left in the discretion of the CFT, but the trial court ordered that if visitation was allowed, Respondent could not "allow any communication between [A.A.J.] and [Respondent-Mother]." Further, the trial court found "that [Respondent's] failure or refusal to cooperate with the plan may result in an order of the court . . . that reunification efforts . . . cease." The trial court ordered that Respondent "shall complete a parenting class and have a minimum of one phone

call[] a week with" A.A.J. The trial court concluded that "placement of [A.A.J.] in the home of . . . [Respondent] would be contrary to the health and safety of [A.A.J.]."

At a 6 June 2017 hearing, Respondent—who was present—requested and received court-appointed counsel. The next permanency planning review hearing was conducted on 6 July 2017, and the corresponding review order was entered 10 August 2017. Respondent attended this hearing with his attorney. A.A.J. continued to reside with Carson at this time, though A.A.J. was having "weekend, respite visits with" the Coles, who were interested in adopting her. Respondent "relocated to Asheville temporarily" in June of 2017, was living in a motel, and had found work at a fast food restaurant. The trial court found that A.A.J.'s "behavior had been improving until two weeks ago[,]" and that she was displaying "concerning behaviors at afterschool also." Carson testified "that she believe[d] it [was] because [A.A.J.] [was] aware that summer could mean that she would be placed with [Respondent]." The social worker interviewed A.A.J. in May 2017, and asked her where she would prefer to live. A.A.J. stated that her first choice was Carson, her second choice was the Coles, and her third choice was an aunt.

Respondent's drug screen was positive for marijuana use, and the trial court ordered Respondent to complete a Comprehensive Clinical Assessment ("CCA"). The trial court found that though Respondent's contact with A.A.J. had been inconsistent prior to moving to Asheville, "[i]n April 2017, [Respondent] began calling [A.A.J.] all

of the time. If he did not receive an answer, he would call [Carson's] phone numerous times." Respondent participated in the April 2017 meeting of the CFT/Permanency Planning Action Team ("PPAT") meeting by phone, and was provided a schedule of appropriate times to call A.A.J. However, Respondent did not attend the May 2017 CFT/PPAT meeting, and he did not adhere to the phone schedule when making calls. Further, "[w]hen [A.A.J.] had phone contact with [Respondent], there was little engagement and minimal conversation." DSS requested the Respondent have "face-to-face visit[s] with [A.A.J.] at least once a month[,]" but that "ha[d] not occurred."

At a 6 June 2017 visit with Respondent and Grandmother, A.A.J. jumped into a pool without proper flotation devices, and had to be pulled out by her foster brother. Respondent visited with A.A.J. again on 14 June 2017. Apparently Ms. Cole was supervising this visit, and she stated that A.A.J.

> expressed that she did not want to visit [with Respondent] and wanted [Ms. Cole] to be present. [A.A.J.] teared up prior to the visit because she did not want to go. After the visit, [Ms. Cole] stated that she had never witnessed [A.A.J.] so uncomfortable around an adult. [A.A.J.] refused to engage with [Respondent] and refused a gift he purchased for her. [A.A.J.] asked that the visit end early.

Respondent visited with A.A.J. again on 22 June 2017, but was "thirty minutes late to the visit, which was slated for two hours." Respondent "engaged [A.A.J.] by bringing her chocolate, roses, and a diary. [A.A.J.] sat by [Respondent] and laughed with him. [Respondent] read [A.A.J.] a book and called [Grandmother] via FaceTime.

After 30 minutes, [A.A.J.] approached [the social worker] and stated that she wanted to go home. [Respondent] acted appropriately and support[ed A.A.J.] leaving." DSS reported that since "visitation began in May, [A.A.J.'s] anxiety and behaviors have increased[,]" including crying more and being more defiant. DSS expressed concerns about A.A.J. moving to Ohio with Respondent "due to her anxiety and her consistent statement that she does not want to live with" Respondent. DSS also noted that Respondent had "been encouraged since fall 2016 to build a relationship with [A.A.J.] and he has not [done] so." The trial court noted that Respondent could not remember A.A.J.'s birth date, even though "he admits that he has known that [A.A.J.] was his daughter since conception."

The trial court expressed that it had "many concerns regarding this case, including that [Respondent] was slow to begin engagement with [A.A.J.] which led to an inability to create a transition plan for [her] into [Respondent's] home." However, the trial court determined that it was "possible and likely that [A.A.J. could] be placed with [Respondent] within the next six months if [Respondent] complies with court-ordered services[.]" The trial court again found that Respondent was "capable of providing proper care and supervision of [A.A.J.] in a safe home; therefore, it is in [A.A.J.'s] best interest that the [c]ourt sanction[] the trial home placement of [A.A.J.] in [Respondent's] home," which will "begin at the discretion of the [CFT] on or after July 6, 2017" and, in addition, that "a transition plan be created." The trial court

further "sanction[ed] unsupervised and overnight visitation" between Respondent and A.A.J., finding that Respondent was capable of "providing proper care and supervision" for limited periods of time. However, Respondent was prevented from taking A.A.J. to his motel until the CFT determined if it was an appropriate place for unsupervised visits. The trial court ordered that "if [Respondent] [was] consistent with visits over six weeks," the CFT would have the discretion "to allow one overnight visit per week." Respondent was also ordered to "submit to a [CCA] and follow all recommendations."

In this order the trial court changed the primary permanency plan from reunification with Respondent-Mother to "custody with the non-removal parent," meaning Respondent, and instructed DSS to "continue[] to work with" Respondent to achieve this goal. The secondary plan was changed to adoption.

DSS filed a "Motion to Review Visitation Plan" on 28 July 2017. In this motion, DSS stated that Respondent had "been having unsupervised visitation with [A.A.J.] since it was sanctioned by the [c]ourt at the last hearing on July 6, 2017[,]" but that "[d]uring the last unsupervised visit, [Respondent] lacked transportation and admitted that he hitchhiked with [A.A.J.] to [Carson's] home." Due to this incident, DSS "unilaterally suspended unsupervised visits" between A.A.J. and Respondent, and requested a review hearing "to review [Respondent's] visitation plan." DSS's motion was heard on 16 August 2017. The trial court found in its 9 September 2017

order that Respondent had "lacked transportation and hitchhiked with" A.A.J. The trial court found that Respondent "expressed regret about hitchhiking with [A.A.J.] and understands that it was not appropriate." Since the time DSS suspended unsupervised visits, DSS had supervised one visit between Respondent and A.A.J. DSS reported that A.A.J. had "been unwilling to stay for the entire two hour visit. During visits, [Respondent] brings snacks and gifts for [A.A.J.]. [Respondent] tries to engage [A.A.J.]." The trial court noted DSS's "ongoing concerns" regarding Respondent's judgment, and that DSS did "not feel that unsupervised visits with [A.A.J.] [were] appropriate due to safety concerns." DSS further requested that Respondent be ordered to "engage in therapy to address his parenting skills and safety issues regarding parenting a small child." The trial court found that it was "in the best interest of [A.A.J.] that [Respondent] meet with [her] therapist and engage in parenting classes to facilitate a bond with [A.A.J.,]" and "that [Respondent's] visits with [A.A.J.] remain supervised[.]"

Respondent filed a Motion to Remove Respite Foster Parents and Motion to Place Minor With Family on 29 August 2017, seeking to remove the Coles as A.A.J.'s "respite foster parents," and requesting that A.A.J. be immediately placed with Grandmother in their Ohio home. Respondent noted that he was not listed in the juvenile petition in this matter, that he was living in Ohio at the time the petition was filed, and he was not involved in the actions that led to removal of A.A.J. from

Respondent-Mother's home. Respondent alleged that he had "a constitutionally protected right, as a parent, to the care and custody of [A.A.J.]." "That, though Respondent [], the non-removal parent, had these constitutionally protected rights to his daughter, [A.A.J.] was not placed with [him] in 2016." That Grandmother "has completed two home studies, both of which have had positive results." That in 2016, partly based upon the first home study in Ohio, "this [c]ourt ordered that [DSS] create a transition plan to place [A.A.J.] with [Respondent's] family in Ohio." That A.A.J. has never been placed with him or Grandmother in their Ohio home. That in response to DSS's statements that Respondent should have more "face-to-face" visitation with A.A.J. prior to proceeding with a trial placement in Ohio, Respondent moved from Ohio to Asheville "in order to facilitate more face-to-face contact with" A.A.J. That the social worker "testified on the 6th of July, 2017, that there was no therapeutic input that had discouraged the placement of [A.A.J.] with [her] paternal family in Ohio[.]" And that prior to moving to Asheville, Respondent had "already completed a parenting class, had telephone contact with [A.A.J.] and had travelled to North Carolina previously to visit with [A.A.J.]."

Respondent further contented that his visits with A.A.J. had been positive, and he attached photos of A.A.J. smiling as she interacted with Respondent during his visits. He contended that his Ohio home was appropriate and a safe environment for A.A.J., and that there was "no legitimate reason to maintain [A.A.J.] in an out of

family placement at this time." Respondent requested that A.A.J. "be immediately moved to [Grandmother's] home in Ohio."[1]

Respondent's motion was heard on 27 October 2017, and the review order was entered on 22 November 2017. The trial court found that the photographs of A.A.J. with Respondent and Grandmother "clearly depict no hesitation on [A.A.J.'s] part when interacting with [] Respondent [] and [Grandmother,]" that the room in Respondent's Ohio home was age appropriate for A.A.J., and that the two ICPC home studies of Respondent's home had been positive. It was noted that Grandmother travelled from Ohio to be "at every court hearing since February of this year," and that Grandmother's testimony was credible, and she had testified that A.A.J. has been "happy, playful and communicative" during visits. The trial court found that Respondent and Grandmother wanted A.A.J. to live with them; that in Ohio A.A.J. would attend schools with her cousins; that she would have access to continuing "therapeutic care and extra curriculars[;]" and that A.A.J. "would have all her needs met and be with family who loves her in Ohio." The trial court found Respondent had not "made consistent strides" with respect to his plan, but that Grandmother "was and is an appropriate placement." The trial court also noted that "[a]t the November 2016 hearing, the [trial court] ordered that [A.A.J.] be placed with [Respondent] and

[1] Respondent also asked the trial court to remove the Coles as A.A.J.'s respite foster parents, arguing that they had been violating their fostering agreement with DSS by attempting to sabotage his efforts to gain custody of A.A.J.

[Grandmother], finding that such placement was in [A.A.J.'s] best interests." However, the trial court pointed out that it had "ordered that the CFT would have discretion in creating that transition plan." The trial court further found:

> [] There is little evidence to support that progress was made on the transition to a kinship provider, nor was [there] progress toward a trial home placement. It is clear that the move to Ohio would have disrupted a placement and that [A.A.J.] has had several providers locally, but has benefitted from visits with her half siblings. However, the Court finds that relying on [Respondent's] progress toward reunification as a condition precedent to allowing the kinship placement in an [ICPC] approved home, has denied a willing relative [Grandmother] the time to become the steady home placement.

The trial court further found that Respondent moved to North Carolina to try and do the things necessary to gain custody of A.A.J., even though he had no support in this state, and his desire was to move back to Ohio. The trial court noted Respondent "has not gone [back to Ohio] because [A.A.J.] is still in North Carolina."

The trial court then addressed the conduct of the Coles, and a letter provided by the Coles to the trial court. After quoting certain inappropriate parts of the letter, the trial court found: "It troubles this Court that in a case plan of reunification, a minor child who has already had disrupted placements requiring respite, would have made further progress on identifying a pre-adoptive placement than on the transition plan which was court ordered, and on an ICPC which approved a relative." The trial court recognized that A.A.J. had "been placed in a dilemma where she has, at least

since approximately February or March, had to choose between her own family and reunification, and the [Coles] as a potential adoptive placement. The Court is alarmed with the weight being given to [A.A.J.'s] opinion as she is seven, and under the influence of [Carson and the Coles]." The trial court found that Carson had "not participated in much shared parenting, per her own testimony and exhibits entered by [Respondent]."

However, the trial court then went on to conclude "by clear and convincing evidence" that Respondent had

> abrogated his constitutionally protected status as a parent, in that after [A.A.J.] was born, he let her leave the state without taking any action to support [her] or establish his paternity, and after the petition was filed, he did not get involved in this case for almost a year, and once DNA results returned, he still delayed his involvement.

The trial court's additional findings of fact in support of this conclusion were: "[T]hat although [Respondent] had made significant efforts to demonstrate that he is fit and proper to have [A.A.J.] and that it would be in her best interest, those efforts are still falling short at this time." The trial court found that though visits between Respondent and A.A.J. began well, "as time has progressed, and [A.A.J.] has voiced her desire to stay with the pre-adoptive respite parents [the Coles] and her current placement provider [Carson], she has not wanted to stay for the full visits and has anxiety about feeling trapped in the location of the visits." A.A.J.'s therapist reported "that [A.A.J.] has anxiety surrounding her living situation and placement[,] . . . [she]

has become more defiant at school and in therapy sessions. [Respondent] met with [A.A.J.'s therapist] and it was recommended that he attend a parenting skills class and have a parenting capacity assessment completed." A.A.J.'s therapist recommended that the trial court "heed to [A.A.J.'s] expressed concerns in visits with" Respondent, and stated that a "parenting capacity assessment and parenting skills classes are recommended for [Respondent] based on apparent lack of parenting experience and concerns expressed by [A.A.J.] and [CFT] about visitations" with Respondent. The therapist further stated that if A.A.J. were to be placed with Respondent, "family therapy is recommended." Respondent had been "ordered to participate in another parenting class after he completed a CCA that was ordered . . . in July of 2017. [Respondent] has not completed another class." Respondent "made arrangements to attend the Strong Fathers class in September 2017, however he has not completed that class." Respondent's "unwillingness to get the recommended testing, assessments, and classes completed are all examples of why reunification cannot happen at this time." The trial court further found that Respondent had "demonstrated on the witness stand that he just does not understand some basic questions about parenting like childcare issues, and transportation needs":

> [] Respondent [] presented himself again before the [c]ourt in May of 2017 and was assigned counsel at that time. The [c]ourt finds [Respondent] presents as less educated, and less sophisticated as a parent, and did not present himself

> articulately until he received court appointed counsel. Once counsel was appointed, it appears [Respondent] was able to better understand what he needed to do to reunify with [A.A.J.]. However, the father still presents with an inability to comply with certain court orders, and he has a lack of basic comprehension in some areas of parenting. He [h]as not completed [certain] [c]ourt ordered [assessments, tests, and classes, and] he has placed [A.A.J.] in a stranger's car without a carseat.

Although Respondent expressed remorse concerning his hitchhiking and failure to use a car seat with A.A.J., he did not demonstrate that he understood the dangers to A.A.J. associated with his actions. The trial court was also primarily concerned with the failure of Respondent to organize more visits with A.A.J. in preparation for any potential placement of A.A.J. with Respondent or Grandmother in Ohio—particularly in light of A.A.J.'s obvious anxiety surrounding both visits with Respondent and the potential that she might have to move to Ohio. Further, the trial court "informed [Respondent] . . . that failure or refusal to cooperate with the plan may result in an order . . . that reunification efforts . . . cease." This warning was also included in prior permanency planning orders regarding the steps Respondent would need to take to facilitate temporary placement of A.A.J. with Respondent or Grandmother, and potentially a grant of custody.

The trial court concluded that though Respondent had "abrogated his constitutionally protected status as a parent[,] . . . since that abrogation he has demonstrated a commitment to [A.A.J.] and has taken proactive steps to assert his

rights as a parent." In light of Respondent's attempts, though unsuccessful, to gain custody of A.A.J., the trial court concluded that termination of parental rights "should not be considered at this time[.]" The trial court also concluded that though Grandmother was willing to provide placement for A.A.J., "the court would find that an immediate transition would be contrary to the best interest of" A.A.J. The trial court ordered continued placement with Carson "for a short period of time." Custody of A.A.J. remained with DSS "while the child transitions to either Ohio or the pre-adoptive placement." The trial court concluded that, if certain conditions were met, it would be "in the best interest of [A.A.J.] . . . [that] placement . . . be with [Grandmother] and that [Respondent] be allowed to be present in the same home and have extended supervised visitation[.]" The permanency plans were changed to, first, guardianship with a relative [Grandmother], second, custody with a court-approved caretaker and, third, adoption. The Coles remained the pre-adoptive, respite caretakers of A.A.J., though DSS was instructed to "work with [Carson] and [the Coles] to encourage more consistent communication between [A.A.J.] and [Respondent] and [Grandmother]."

The matter was again heard on 13 and 14 March 2018, with a review order entered on 4 April 2018. The trial court found as fact that Grandmother "enjoys being a grandmother to [A.A.J.], but has not demonstrated her ability to safeguard [A.A.J.] if [A.A.J.] was placed with [Grandmother] full time[;]" that the trial court was

concerned with Grandmother's "ability to set appropriate boundaries with" Respondent regarding A.A.J.; that Grandmother "did not provide appropriate supervision to [A.A.J.] during [A.A.J.'s] visit to Ohio[;]" that Grandmother "prioritizes [Respondent] over [A.A.J.]" in a manner that results in insufficient supervision of A.A.J.; and that she failed to "grasp the trauma that [A.A.J.] has endured and the safeguards that are needed to protect" her.

The trial court found that Carson had testified at the hearing; that Carson had "adequate financial resources to provide for [A.A.J.] and is aware of other resources for financial support if she were unable to meet the financial needs of [A.A.J.] in the future[;]" that she "underst[ood] the legal significance of being appointed [A.A.J.'s] guardian, . . . she has adequate resources to care appropriately for [A.A.J.], and is able and willing to provide proper care and supervision of [A.A.J.] in a safe home." The trial court also found that A.A.J. "has been doing well in this placement and this placement is in her best interests." The trial court then ordered that "guardianship of [A.A.J.] is hereby granted to [] Carson, and [] Carson will hereby have the authority to authorize necessary medical, dental, psychiatric, psychological, educational, and assessment services for" A.A.J. The trial court also relieved DSS "of efforts towards reunification with [Respondent]." Custody and control over A.A.J. was given to Carson, who had determined that she would be capable of caring for A.A.J. until

A.A.J. reached the age of majority. However, the trial court ordered that Respondent and Grandmother maintain certain visitation rights.

The trial court again concluded that Respondent "has acted contrary to his constitutionally protected status as a parent." The trial court found that the facts demonstrated Respondent's continued failure to make progress toward taking responsibility for A.A.J., and his unwillingness to do the things necessary to develop appropriate parenting skills. For example, the trial court found that Respondent "has failed to provide adequate financial support for [A.A.J.] despite the fact that he is gainfully employed. Respondent [] has provided less than $100 in child support." The trial court also found that, after the October 2017 review hearing, A.A.J. spent Christmas vacation with Respondent and Grandmother in Ohio. Prior to the visit, the social worker "went over the safety plan for sexually reactive children and indicated that [A.A.J.] ha[d] requested her own room with a lock[.]" A.A.J. reported that there was no door on the room she had to sleep in, and that she had to share the room with Respondent, which "made [her] very uncomfortable." A.A.J. also reported that Respondent and Grandmother fought to such a degree that she "made multiple calls to multiple people, including the guardian ad litem," for support. A.A.J. was not supervised at night, and several times she and her six-year-old cousin were awake and unsupervised late at night while Respondent and Grandmother were sleeping. The trial court found that A.A.J. "has a history of sexually reactive behaviors and it

appears that she was not appropriately supervised during her Christmas visit in Ohio." The trial court found that Respondent did not "have any understanding of sexual reactivity. This lack of understanding would make it difficult for [Respondent] to ensure the safety of [A.A.J.]." For example, Respondent testified as follows concerning the sleeping arrangements during A.A.J.'s Christmas visit in Ohio:

> Q Did you have visitation with your daughter over the Christmas break in Ohio?
>
> A Yeah.
>
> Q And did you stay at your mom's house during that visitation?
>
> A Yes.
>
> Q Did you sleep in the bed with your daughter –
>
> A No.
>
> Q – and a female cousin?
>
> A No.
>
> Q You never slept in the same bed as her?
>
> A No.
>
> Q Would it surprise you that [A.A.J.] reported that you did?
>
> A We slept on the floor one time.
>
> Q You and [A.A.J.]?
>
> A And my niece.

Q And your niece all on the floor in what room?

A In their bedroom.

Q Are there beds in that bedroom?

A Yeah.

Q And for what reason did you all elect to sleep on the floor if there's beds?

A Because there's more space.

Q And so how did everyone sleep on the floor?

A With their eyes closed.

Q I understand that. But in what position did –

A I don't – I don't remember. We were just watching a movie. What's wrong with that?

Q So were you laying on the floor as well?

A Yes.

Q Okay. And was [A.A.J.] to your right or left?

A I'm not sure. I was next to my niece because I knew you all would freak out. I mean, I don't understand why you're freaking out.

Q Okay. So your niece was next to you?

A Yes.

Q So where was [A.A.J.]?

A On the other side of her.

Q On the other side of your niece?

A Yes.

Q Okay. Would it surprise you that [A.A.J.] indicated that you slept in the bed with her and your niece?

A Yeah, it would.

Q And do you recall [A.A.J.] removing your hand from her because your hand was on her back?

A No.

Q Would it surprise you that [A.A.J.] said that – that incident made her feel uncomfortable?

A No, I don't know.

Q You don't know? Are you aware of [A.A.J.]'s history with sexual reactivity?

A Yeah.

. . . .

Q Okay. And Ms. Honeycutt asked you questions about your daughter. About did you know that she has been sexually reactive and you said yes; is that correct?

A Yeah.

Q Do you know what that means?

A No.

Q So how do you – if you don't know what – what it means, how do you know if she has that as an issue or not?

A All right. Well, then I guess I don't know.

In addition, the trial court found that Respondent failed on multiple occasions to call to confirm that he would be attending his weekly two-hour supervised visitation with A.A.J. at DSS and, more importantly, "[a]lthough he is allowed to have two additional hours of community visits with [A.A.J.] per week, [Respondent] has made no attempts to request visits outside his two hours" per week supervised at DSS. Respondent "was unable to offer an explanation for his failure to exercise all offered visitation with [A.A.J.], or his failure to complete court-ordered services." Concerning this apparent lack of interest in additional visitation time, Respondent testified: "Q And you've got the ability to have some more visits, you just don't use it?" "A Yeah." The trial court found that A.A.J. had continued "to express that she does not want to attend weekly visits with" Respondent. A.A.J. reported that she was constantly admonishing Respondent for using inappropriate language around her, that Respondent "watched an R-rated movie" with her that "gave her nightmares[,]" and that Respondent came to one visitation wearing a shirt depicting an obscene hand gesture. Respondent's conduct suggested he was either being "intentionally evasive," or that he cannot demonstrate an appropriate "protective capacity" with respect to A.A.J.

The trial court found that Respondent had resisted taking a drug screen, stated at a 6 March 2018 CFT meeting that he had been "clean for six months[,]" then later admitted to "using marijuana twice a month currently[.]" Respondent was arrested

on 20 February 2018 for being intoxicated and disruptive at a music club, and for possession of marijuana. According to the police report, Respondent used extremely offensive and racist slurs against a bouncer at the club and the arresting officer. When asked by DSS about the arrest, Respondent first said that he did not want to talk about the incident, then he made what appeared to be deceptive responses, stating "that he has no memory of what led to his arrest or the entire month of February 2018." Respondent "became agitated on the stand during his testimony and was unable to control his anger during the hearing."

The trial court found that Respondent continued in his failure to make "timely progress in services[,]" and though he had eventually completed a CCA—months after it had been ordered—he had not disclosed his marijuana use during the assessment. Respondent had failed to complete a Parenting Capacity Evaluation that was referred in October 2017, even though DSS offered to pay for the evaluation and provide transportation. The trial court found that Respondent had "not adequately engaged in services or demonstrated that he can provide a safe, stable home for [A.A.J.]" and therefore the trial court relieved DSS "of further reasonable efforts towards reunification with" Respondent. Further, the order—like the orders before it—expressly incorporated the findings and conclusions of all prior orders in this matter.[2]

[2] Although not specifically stated, we understand this to mean that only those prior findings or conclusions that do not conflict with the findings and conclusions in the 4 April 2018 order were incorporated by reference.

As noted above, guardianship of A.A.J. was granted to Carson, Respondent and Grandmother were given visitation and contact rights, DSS was relieved of further efforts to reunify A.A.J. with Respondent or Respondent-Mother, and further hearings were suspended indefinitely. Respondent appeals.

II. Analysis

Respondent first argues that the trial court erred in concluding he "had abrogated his constitutional rights to [A.A.J.] and also his statutory right to reunification efforts." We disagree.

It is well-settled in custody matters involving parents and non-parents:

> [T]he "Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." This parental liberty interest "is perhaps the oldest of the fundamental liberty interests" the United States Supreme Court has recognized. This interest includes the right of parents to establish a home and to direct the upbringing and education of their children. Indeed, the protection of the family unit is guaranteed not only by the Due Process Clause, but also by the Equal Protection Clause of the Fourteenth Amendment and possibly by the Ninth Amendment.

Owenby v. Young, 357 N.C. 142, 144–45, 579 S.E.2d 264, 266 (2003) (citations omitted). Therefore—in a custody dispute with a nonparent—absent a determination that a parent has acted in a manner inconsistent with his or her constitutionally protected status, the parent must prevail. *Id.* at 145, 579 S.E.2d at 266–67 (citations omitted). Relevant to the present case, our Supreme Court has held:

> The protected liberty interest complements the responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child. *The justification for the paramount status is eviscerated when a parent's conduct is inconsistent with the presumption or when a parent "fails to shoulder the responsibilities that are attendant to rearing a child."* Therefore, unless a natural parent's conduct has been inconsistent with his or her constitutionally protected status, application of the "best interest of the child" standard in a custody dispute with a nonparent offends the Due Process Clause of the United States Constitution.

Id. at 145, 579 S.E.2d at 266–67 (citations omitted) (emphasis added).

> In a custody proceeding, the trial court's findings of fact are conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary. Moreover, the trial court's determination that a parent's conduct is inconsistent with his or her constitutionally protected status must be supported by clear and convincing evidence. Conduct such as that alleged by plaintiff in the present case "must be viewed on a case-by-case basis."

Id. at 147, 579 S.E.2d at 268 (citations omitted). "'[F]ailure to maintain personal contact with the child or failure to resume custody when able' could amount to conduct inconsistent with the protected parental interests[.]" *Owenby*, 357 N.C. at 146, 579 S.E.2d at 267 (citation omitted). Further, "conduct inconsistent with the parent's protected status . . . need not rise to the statutory level warranting termination of parental rights[.]" *Price v. Howard*, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997) (citation omitted).

Respondent's conduct between late 2010 and late 2016 was clearly inconsistent with his constitutionally protected status as a parent. Despite acknowledging his paternity prior to A.A.J.'s birth, Respondent never attempted to contact Respondent-Mother after she left Ohio to inquire about A.A.J.; he never attempted to be a part of A.A.J.'s life in any manner; and he never offered any financial or other material support for A.A.J. Once Respondent received notice that A.A.J. had been removed from Respondent-Mother's custody pursuant to a juvenile petition of neglect, Respondent informed DSS that he would be interested in obtaining custody of A.A.J. if it were determined definitively that he was her biological father. However, although DNA testing conducted in March 2016 confirmed that Respondent was A.A.J.'s father, Respondent continued to ignore DSS's attempts to contact him to help facilitate some connection between him and A.A.J., and Respondent also continued to choose not to involve himself in the custody proceedings. Despite Defendant's failure to participate in the proceedings, pursuant to its 7 October 2016 order, the trial court continued to pursue Respondent as a possible placement for A.A.J.—by ordering an ICPC home study of Respondent's home in Ohio, and by changing the "secondary permanency plan" for A.A.J. to "custody to [the] non-removal" parent—Respondent. Respondent had also been given visitation and contact privileges which he chose not to pursue, and which were therefore suspended until Respondent finally began demonstrating some actual intent to try and obtain custody of A.A.J. Although DSS

continued to have difficulty contacting Respondent, and Respondent had hung up on the social worker when she inquired about Respondent helping defray the costs of supporting A.A.J. in her foster placement, because the ICPC home study on Respondent's home in Ohio was favorable, DSS and the trial court began to work toward slowly transitioning A.A.J. from Carson's care to a trial placement of A.A.J. with Respondent in Ohio. As part of this transition, Respondent was requested to establish regular phone contact with A.A.J. at Carson's home, as a means of gradually introducing himself to A.A.J. "due to her age and that she has never met" Respondent. The trial court further ordered that "the [CFT] and [A.A.J.'s] therapist [would] have discretion to create a" plan to transition A.A.J. from her placement with Carson "into the home of" Respondent.

Respondent finally participated in a permanency planning review hearing on 17 February 2017, approximately one year after he first received notice in this matter. Failure to participate in A.A.J.'s life in any manner for over six years was clearly conduct from which the trial court could have determined that Respondent had acted inconsistently with his constitutionally protected status as a father. For example, in *Adams v. Tessener*, 354 N.C. 57, 550 S.E.2d 499 (2001), our Supreme Court affirmed the trial court's conclusion that the biological father of a child had acted inconsistently with his protected status as a parent on the following facts:

> The trial court found that Tessener [the mother] informed Lackey [the biological father] of her pregnancy and the

> likelihood that he had fathered the child in September 1997. Nonetheless, according to the trial court, Lackey elected to do "nothing" about the pregnancy and impending birth. The trial court determined that Lackey never voluntarily contacted Tessener after that meeting—before or after the birth of the child—to inquire about the health and progress of the child or to inquire further about whether he had fathered the child. The trial court also found that, in June 1998, Tessener located Lackey and informed him that DSS would contact him regarding a potential child support obligation. According to the trial court, Lackey again did not pursue any inquiry about the child.
>
> The trial court's findings of fact are sufficient, when viewed cumulatively, to support its conclusion that Lackey's conduct was inconsistent with his protected interest in the child.

Id. at 66, 550 S.E.2d at 504–05. Our Supreme Court held that these findings were sufficient to overcome Lackey's constitutionally protected status even though Lackey had—once his paternity was established sometime after June of 1988—"executed a voluntary support agreement and ha[d] provided child support for [the child] since that time[;]" had visited the child three times in October and November of 1998; and had filed a motion to intervene, on 23 November 1998, seeking custody of the child. *Id.* at 59, 550 S.E.2d at 501. Lackey filed his motion seeking custody when his child was four months old. *Id.* In the present case, Respondent abandoned A.A.J. for six years.

In *Adams* and other cases cited, the trial court made its determination concerning the biological parent's protected status *at or near the time the biological*

parent first attempted to assert his or her constitutionally protected status by intervening in the custody proceeding. In the present case, the trial court could have made an initial determination of whether Respondent had forfeited his protected status, and then proceeded with the appropriate standard—"best interest of the child"—presuming the trial court concluded that Respondent had forfeited his protected status. *See, e.g., McRoy v. Hodges*, 160 N.C. App. 381, 585 S.E.2d 441 (2003). However, in the present case the matter proceeded without any determination regarding Respondent's constitutionally protected status until Respondent raised the issue in his 29 August 2017 motion that sought, in part, for A.A.J. to be immediately placed with Grandmother in Ohio. In response, the trial court "specifically [found] that [Respondent] abrogated his constitutionally protected status as a parent[.]" At the time the trial court made this determination, the primary permanency plan for A.A.J. was custody with Respondent in Ohio, and Respondent had been actively seeking custody of A.A.J. for nine months.[3] *See Grindstaff v. Byers*, 152 N.C. App. 288, 294–95, 567 S.E.2d 429, 433 (2002) (fact that trial court found father fit person to have liberal visitation inconsistent with conclusion that father forfeited protected status).

[3] Respondent first attended a review hearing on 17 February 2017, and the first order concluding that he had forfeited his constitutionally protected status as a parent was entered 22 November 2017—though the hearing was conducted on 27 October 2017.

We must determine how, if at all, the fact that Respondent was allowed to participate in the proceedings for approximately nine months before the trial court concluded that he had forfeited his protected status as a parent—in part based upon conduct committed prior to Respondent's engagement with this process—impacts our analysis. As is well understood:

> [C]onduct inconsistent with the parent's protected status, *which need not rise to the statutory level warranting termination of parental rights*, would result in application of the "best interest of the child" test without offending the Due Process Clause. Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy. *Other types of conduct, which must be viewed on a case-by-case basis, can also rise to this level* so as to be inconsistent with the protected status of natural parents. Where such conduct is properly found by the trier of fact, based on evidence in the record, custody should be determined by the "best interest of the child" test mandated by statute.

Price, 346 N.C. at 79, 484 S.E.2d at 534–35 (citation omitted). The majority of opinions from North Carolina that address loss of the protected status of a parent concern conduct that was recent and/or ongoing at the time the decision on the parents protected status was made. However, our Supreme Court in *Speagle v. Seitz*, 354 N.C. 525, 557 S.E.2d 83 (2001), held that a parent's prior conduct should be considered in making that determination. In *Speagle*:

> Defendant [mother] appealed the trial court's decision to the Court of Appeals, contending there was insufficient evidence to support the trial court's finding that defendant lost her constitutionally protected right to custody. The

> Court of Appeals agreed, and based on *Petersen*, it reversed the trial court's ruling and awarded custody of the child to defendant. The Court of Appeals held there existed "no evidence [d]efendant was engaging in any 'conduct inconsistent' with her protected status in August 1998, the date of the custody trial, or any time soon before that trial." The Court of Appeals thus concluded that defendant did not lose her constitutionally protected status. Therefore, the court reasoned that it was improper for the trial court to apply the best interests analysis.

Id. at 529, 557 S.E.2d at 85–86 (citations omitted). Our Supreme Court did not agree:

> [W]e do not agree with the inference contained in the Court of Appeals' opinion that custody proceedings, unlike termination of parental rights proceedings, cannot or should not be concerned with past circumstances or past actions and conduct of a parent when determining custody as between parents or between parents and nonparents. We conclude that any past circumstance or conduct which could impact either the present or the future of a child is relevant, notwithstanding the fact that such circumstance or conduct did not exist or was not being engaged in at the time of the custody proceeding. In this regard, we note that findings of fact of a parent's conduct inconsistent with that parent's protected status, whether related to past or present conduct, do not in and of themselves determine custody. A finding of inconsistent conduct merely triggers the best interests of the child analysis.

Id. at 531–32, 557 S.E.2d at 87. Respondent's abandonment of A.A.J. for the first six years of her life clearly constituted "conduct which could impact either the present or the future of" A.A.J., and this abandonment was therefore "relevant" to the trial court's determination—even though Respondent eventually chose to participate in A.A.J.'s life and to seek custody. *Id.* A.A.J. was in the position where DSS needed to

take custody of her, and place her with Carson, *precisely because Respondent was not there*—to protect her from Respondent-Mother's neglect, or to take full custody and responsibility for A.A.J. once Respondent-Mother abdicated her role as A.A.J.'s parent.

Reviewing all the relevant findings of the trial court, including Respondent's behavior prior to his participation in this proceeding, we find support for the trial court's conclusion. Perhaps the most damaging pattern of behavior revealed by the findings of fact was Respondent's inability—or unwillingness—to take the necessary steps in order to become an appropriately supportive and protective father to A.A.J. The trial court gave Respondent the chance to reenter A.A.J.'s life after six years and demonstrate that he was willing to do the work to bridge the divide those six years had created. However, Respondent did not take sufficient advantage of that opportunity.

Respondent expressed no interest in A.A.J. for the first six years of her life. He ignored the juvenile petition, which clearly indicated that A.A.J. had been living in dire circumstances, and that her future was very uncertain. DSS reached out to him to obtain DNA for a paternity test, which confirmed his paternity. Respondent stated that he wanted custody of A.A.J., but then did nothing to work toward that stated goal for nearly a year. Even though DSS made repeated attempts to reach out to Respondent in order to encourage him to initiate contact with A.A.J. and become

involved in her life: Respondent did not participate in the custody proceedings; he did not attempt to contact A.A.J. and establish a relationship; and he refused to provide any monetary support. Charitably put, Respondent's efforts prior to his move to Asheville were not expressive of a father fighting for custody of his daughter.

However, as acknowledged by the trial court, Respondent eventually began to demonstrate his stated interest in A.A.J. and his stated goal of gaining custody of her. Respondent's move to Asheville demonstrated a desire for custody and constituted a significant commitment. Sadly, that physical move was by far Respondent's greatest demonstration of his commitment to A.A.J. Although, naturally, he visited with A.A.J. more regularly once he moved to Asheville, his level of contact with her was significantly less than what was afforded by the trial court and recommended by DSS. The findings also demonstrate that Respondent did not consistently engage with A.A.J. through means other than visitation, and that Respondent's interactions with A.A.J. were generally superficial—such as spending his visitation time watching television with A.A.J. on his phone. Further, Respondent's irregular contact with A.A.J. tended to make her either uncomfortable or disinterested. Respondent was undoubtedly facing a difficult situation—albeit one of his own making—because unlike Carson, who had been in A.A.J.'s life since she was an infant, Respondent was approaching A.A.J. as a stranger. Nonetheless, Respondent generally ignored the suggestions, services, and even court-ordered

resources, that could have assisted in finding a method for him to connect with A.A.J. Respondent's failure to follow the directives and suggestions of the trial court, DSS, therapists, and others, undoubtedly played a role in the CFT never reaching the level of confidence that would have been necessary for them to agree to A.A.J.'s temporary placement with Respondent in Ohio. Additionally, Respondent's failure to make the effort to learn better parenting skills and methods of connecting with A.A.J. undoubtedly contributed to her anxiety surrounding her visits with him, and prevented any real connection between them from taking place. Particularly notable was Respondent's repeated insistence on forcing A.A.J. to hug him despite her unambiguous statements that she did not like being touched in that way, and her physical responses, which clearly indicated distress. Respondent's continued failure to respect A.A.J.'s boundaries demonstrated his failure to make reasonable progress—especially in light of her history of sexual abuse. Respondent also failed to provide financial support for A.A.J., as he admitted in his March 2018 testimony:

> Q Child support. Are you paying child support?
>
> A No.
>
> Q Are you providing—where's [A.A.J.] currently living?
>
> A With [Carson].
>
> Q And have you been giving [Carson] money?
>
> A No.

> Q No?
>
> A No.
>
> Q At all?
>
> A I did once, but I haven't. I probably should.
>
> . . . .
>
> Q And if you've been working 40 hours and you have no rent, mortgage payments or anything like that, why can't you pay child support?
>
> A I mean, I guess I can.
>
> Q Then why haven't you?
>
> A I don't know.

We hold that Respondent's six year abandonment of A.A.J.; his initial refusal to participate in the custody proceedings; the limited nature of his involvement with A.A.J. when given the opportunity for much greater involvement; his lack of understanding, or apparent curiosity, concerning A.A.J.'s particular needs; his limited participation in, or completion of, court-ordered evaluations, tests, and services; and his failure to provide financial support for A.A.J.'s care despite having the ability to do so, constitute conduct sufficient to support the trial court's conclusion that Respondent had forfeited his constitutionally protected status as a parent. *Price*, 346 N.C. at 79, 484 S.E.2d at 534–35. The findings of fact of the trial court are in accord, and support this conclusion. Application of the "best interest of the child"

standard was therefore appropriate.[4] *Id.* Respondent's argument that he "was entitled to continued reunification efforts" is based on his argument concerning his protected status as a parent, and therefore also fails.

Respondent next argues that "the trial court was required to give placement priority to [Grandmother]." We disagree.

Respondent relies on N.C. Gen. Stat. § 7B-903(a1), which states:

> (a1) In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence.

N.C. Gen. Stat. § 7B-903(a1) (2017). Presuming N.C.G.S. § 703(a1) is applicable in this case, Respondent's argument still fails.[5] As Respondent notes, the trial court must first "consider whether a relative of the juvenile is willing and able to provide

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[4] Although Respondent does not make this argument, we also hold that the trial court's findings of fact support its conclusion that granting guardianship of A.A.J. to Carson was in A.A.J.'s best interests.

[5] N.C. Gen. Stat. § 7B-906.1(i) (2017) (emphasis added) ("*The court may maintain the juvenile's placement under review* **or** order a different placement, appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600, or order any disposition authorized by G.S. 7B-903, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile.").

proper care and supervision of the juvenile in a safe home." *Id.* It is only *after* finding that a relative is "willing and able" to accept a placement that the relative will be considered for placement. *Id.*

> This Court has recognized that our statutes give a preference, where appropriate, to relative placements over non-relative, out-of-home placements. However, before determining whether relative or non-relative placement is in the best interest of the juvenile, the statute first requires the trial court to determine whether the relative in question is *willing and able* to provide proper care and supervision in a safe home.

In re T.H., 232 N.C. App. 16, 29, 753 S.E.2d 207, 216 (2014) (citations omitted). The trial court made the following finding of fact: "53. [Grandmother] enjoys being a grandmother to [A.A.J.], but has not demonstrated her ability to safeguard [A.A.J.] if [A.A.J.] was placed with [Grandmother] full time." This finding satisfied the requirement that the trial court "first consider whether [Grandmother] [wa]s willing and able to provide proper care and supervision of [A.A.J.] in a safe home." N.C.G.S. § 703(a1). The trial court found that Grandmother was willing, but not able, to provide proper supervision in a safe home. Further, finding 52. states that Grandmother "does not grasp the trauma that [A.A.J.] has endured and the safeguards that are needed to protect [her]." The trial court also made additional findings of fact—many discussed above—demonstrating that it considered

Grandmother's ability to supervise A.A.J. in a safe home, and found that ability lacking.[6] This argument is without merit.

Respondent also argues that the trial court's finding that Carson would have adequate resources to appropriately care for A.A.J. was not supported by the evidence. The trial court found that Carson had "*adequate financial resources to provide for [A.A.J.]* and *is aware of other resources for financial support if she were unable to meet the financial needs of [A.A.J.] in the future*[,]" that she "understood the legal significance of being appointed [A.A.J.'s] guardian, . . . she has adequate resources to care appropriately for [A.A.J.], and is able and willing to provide proper care and supervision of [A.A.J.] in a safe home." The trial court also found that A.A.J. "has been doing well in this placement and this placement is in her best interests." We have reviewed the record and find that it supports the trial court's findings in this regard. This argument is without merit.

AFFIRMED.

Judges DAVIS and DIETZ concur.

Report per Rule 30(e).

Judge Davis concurred in opinion prior to 25 March 2019.

[6] See findings of fact 25., 26., 29., 50., 51., 54., 55., and conclusion 16.