IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-111

Filed: 1 October 2019

New Hanover County, No. 17 JT 114

IN THE MATTER OF: J.V.

Appeals by Respondent-Mother and Respondent-Father from Order entered 7 November 2018 by Judge J. H. Corpening, II in New Hanover County District Court. Heard in the Court of Appeals 5 September 2019.

Regina Floyd-Davis for petitioner-appellee New Hanover County Department of Social Services.

William A. Blancato for petitioner-appellee guardian ad litem.

Richard Croutharmel for respondent-appellant mother.

Mark L. Hayes for respondent-appellant father.

HAMPSON, Judge.

Factual and Procedural Background

Both Respondent-Mother and Respondent-Father (collectively, Respondent-Parents) appeal from an Order on Termination of Parental Rights (Termination

Order) terminating their parental rights to their child Jarvis.[1] The Record tends to show the following:

Respondent-Mother gave birth to Jarvis on 13 April 2017 at New Hanover Regional Medical Center (Hospital). Respondent-Father is identified as the child's father on his birth certificate. Although Respondent-Parents are not married, they were living together prior to these proceedings. On 15 April 2017, Lisa Onaki (Onaki), a social worker with the New Hanover County Department of Social Services (DSS), was called to the Hospital because Jarvis and Respondent-Mother had tested positive for benzodiazepines. Earlier that morning, several Hospital nurses had also reported finding Jarvis asleep with a T-shirt wrapped around his head and face. The nurses indicated that Respondent-Mother was asleep and unresponsive; therefore, they removed Jarvis from Respondent-Parents' room. Onaki also testified she was familiar with Respondent-Mother's history with DSS, as she had lost her previous four children to DSS.[2]

Based on these events, DSS obtained nonsecure custody of Jarvis on 17 April 2017. The same day, DSS filed a Juvenile Petition alleging Jarvis was neglected and dependent, based on Jarvis testing positive for benzodiazepines, Respondent-Mother's history of substance abuse issues, the T-shirt incident, and the fact that

[1] A pseudonym has been used to protect the identity of the juvenile and for ease of reading.

[2] At the time of the Juvenile Petition, Respondent-Mother's parental rights had been terminated as to three of her four other children.

"Respondent-Father [was] aware of Respondent-Mother's substance abuse history and plan[ned] to allow her to provide full time care for [Jarvis]." The trial court entered an Order (Adjudication Order) adjudicating Jarvis to be a neglected juvenile on 31 July 2017.

In its Adjudication Order, the trial court ordered Respondent-Mother to comply with the following terms of her Case Plan: (1) successfully complete parenting classes; (2) demonstrate an understanding of the needs and symptoms of children born positive to narcotics; (3) obtain appropriate daycare; (4) obtain gainful employment; (5) obtain appropriate housing; (6) complete a Comprehensive Clinical Assessment and comply with any recommendations for treatment; (7) sign releases of information for DSS with all treatment providers; (8) comply with the Treatment Accountability for Safer Communities (TASC) program; and (9) comply with her probation requirements. In accordance with Respondent-Father's Case Plan, the trial court ordered him to: (1) successfully complete parenting classes; (2) demonstrate an understanding of the needs and symptoms of children born positive to narcotics; (3) obtain appropriate daycare; (4) maintain gainful employment; (5) maintain appropriate housing; and (6) participate in psychoeducational groups for partners of substance abusers.

The trial court subsequently held a series of permanency planning hearings. After an initial permanency planning hearing was held on 11 October 2017, the trial

court entered an Order on Permanency Planning Hearing (November 2017 PPH Order) on 13 November 2017. At this hearing, DSS expressed concerns about Respondent-Father's "limited abilities, including his illiteracy." Therefore, in its November 2017 PPH Order, the trial court ordered DSS to refer Respondent-Father to the Literacy Council; however, literacy classes were never added to his Case Plan. On 26 March 2018, the trial court entered an Order on Subsequent Permanency Planning Hearing (March 2018 PPH Order), which ordered the permanent plan for Jarvis to be changed to a primary plan of adoption with a concurrent plan of reunification.

On 25 April 2018, DSS filed a Petition to Terminate Parental Rights (TPR Petition) alleging Respondent-Mother's parental rights should be terminated on the grounds of neglect, willful failure to make reasonable progress, and her prior termination of parental rights to three of her children and her inability or unwillingness to establish a safe home. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (9) (2017).[3] As to Respondent-Father, the TPR Petition sought termination of his parental rights on the grounds of neglect, willful failure to make reasonable progress, and failure to establish paternity judicially. *See id.* § 7B-1111(a)(1), (2), (5).

A termination of parental rights hearing was held on 23 July 2018. During this hearing, DSS presented testimony from Onaki and Jenny Webb (Webb), a DSS

[3] This Statute was amended in 2018 with an effective date after the termination hearing. *See* N.C. Gen. Stat. § 7B-1111 (Supp. 2018).

social worker who handled Jarvis's case after Onaki's initial contact with Respondent-Parents. During this hearing, Webb testified that around April 2018, she started having concerns about Respondent-Mother's mental stability, as she talked about Webb knowing more about her life than she did, her belief that people were controlling her phone, and her belief that Respondent-Father had multiple jobs when he, in fact, only had one job. Webb also testified that she had considered having Respondent-Mother involuntarily committed, which was a suggestion Respondent-Father purportedly agreed with. However, Webb never sought to have Respondent-Mother involuntarily committed, as she was incarcerated shortly thereafter.

As for Respondent-Parents' compliance with their respective Case Plans, Webb testified that Respondent-Mother failed to comply with the majority of her Case Plan requirements. With regard to Respondent-Father's Case Plan, Webb testified that he completed parenting classes; maintained gainful employment and appropriate housing; regularly attended weekly visitations and was appropriate during these visits and in his interactions with Jarvis; and regularly attended co-dependency education classes, although Webb asserted he had not made any progress in these classes. Webb also testified that Respondent-Father had submitted documentation from a daycare that had agreed to enroll Jarvis "when the time comes." Lastly, Webb expressed concern that Respondent-Father "has shown [DSS] that he intends to stay

with [Respondent-Mother] and support her and doesn't have a true understanding of her needs."

After hearing testimony from these two social workers regarding Jarvis's conditions and Respondent-Parents' progress with their respective Case Plans, the trial court concluded that all three grounds alleged in the TPR Petition existed to terminate the parental rights of Respondent-Mother and that two of the three grounds alleged in the TPR Petition existed to terminate the parental rights of Respondent-Father.[4] On 7 November 2018, the trial court entered its Termination Order terminating Respondent-Parents' parental rights to Jarvis. Both Respondent-Parents filed timely Notices of Appeal.

Issues

(I) Respondent-Mother argues the trial court erred by (A) failing to address whether to appoint a guardian *ad litem* (GAL) for her during the TPR hearing and (B) concluding it was in Jarvis's best interest to terminate her parental rights. (II) Respondent-Father asserts the trial court erred by finding both grounds existed to terminate his parental rights to Jarvis.

Analysis

I. Respondent-Mother's Appeal

A. GAL Inquiry

[4] The trial court granted Respondent-Father's Motion to Dismiss the TPR Petition as to the grounds that he failed to establish paternity judicially.

Respondent-Mother argues the trial court abused its discretion by failing to intervene *sua sponte* and conduct an inquiry during the termination hearing to determine whether a GAL should be appointed to represent her. Specifically, Respondent-Mother contends that her history of substance abuse and psychological disorders, Webb's testimony—indicating she considered having Respondent-Mother involuntarily committed in April 2018—and Respondent-Mother's testimony at a different child's termination hearing suggest she lacked capacity and was not competent during the termination hearing.

Section 7B-1101.1(c) of our General Statutes provides: "On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, Rule 17." N.C. Gen. Stat. § 7B-1101.1(c) (2017). This Court has stated: "A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*." *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d 45, 49 (2005) (citation omitted). "[T]rial court decisions concerning both the appointment of a guardian *ad litem* and the extent to which an inquiry concerning a parent's competence should be conducted are reviewed on appeal using an abuse of discretion standard." *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (citation omitted); *see White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985)

("A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason . . . [or] upon a showing that [the trial court's decision] was so arbitrary that it could not have been the result of a reasoned decision." (citation omitted)).

In *In re T.L.H.*, our Supreme Court held:

> [W]hen the record contains an appreciable amount of evidence tending to show that the litigant whose mental condition is at issue is not incompetent, the trial court should not, except in the most extreme instances, be held on appeal to have abused its discretion by failing to inquire into that litigant's incompetence.

368 N.C. at 108-09, 772 S.E.2d at 456 (citation omitted).

Here, Respondent-Mother requests this Court take judicial notice of her testimony in a separate, unrelated termination proceeding where she purportedly made statements calling into question her mental capacity. However, because the transcript Respondent-Mother requests this Court take judicial notice of is from a separate appeal involving a different child from a different father and because Respondent-Mother did not raise this issue at the termination hearing, we decline Respondent-Mother's request. *See, e.g.*, *Citifinancial, Inc. v. Messer*, 167 N.C. App. 742, 748, 606 S.E.2d 453, 457 (2005) (Steelman, J., concurring) ("The role of an appellate court is to review the rulings of the lower court, not to consider new evidence or matters that were not before the trial court.").

Respondent-Mother next argues her history of substance abuse and psychological disorders, which included opioid and benzodiazepine use disorder, major depressive disorder, post-traumatic stress disorder, and cannabis use disorder, "may have deteriorated her cognition[,]" requiring the trial court to appoint a GAL. However, "evidence of mental health problems is not per se evidence of incompetence to participate in legal proceedings." *In re J.R.W.*, 237 N.C. App. 229, 234, 765 S.E.2d 116, 120 (2014) (citations omitted). Indeed, "the trial court is not required to appoint a guardian *ad litem* in every case where substance abuse or some other cognitive limitation is alleged." *In re J.A.A.*, 175 N.C. App. at 71, 623 S.E.2d at 48 (citation and quotation marks omitted). Rather, "[a] trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*." *Id.* at 72, 623 S.E.2d at 49 (citation omitted).

In this case, our review of the record before the trial court reveals the trial court did not abuse its discretion by not inquiring *sua sponte* into whether to appoint a GAL for Respondent-Mother.

> [A]n allegation that parental rights are subject to termination based upon incapability stemming, directly or indirectly, from a parent's diagnosable mental health conditions does not automatically necessitate the appointment of a parental guardian *ad litem*. Although the sort of mental difficulties that might support the termination of a parent's parental rights on the grounds of incapability may well show that the parent is likely to be incompetent, such an inference is not necessarily correct.

In re T.L.H., 368 N.C. at 110-11, 772 S.E.2d at 457. Here, beyond the allegations of substance abuse and mental health-related grounds for termination, the remaining record and evidence presented to the trial court at the hearing did not "raise a *substantial* question as to whether [Respondent-Mother was] *non compos mentis*." *In re S.R. & N.R.*, 207 N.C. App. 102, 108, 698 S.E.2d 535, 540 (2010) (emphasis added) (citation and quotation marks omitted). Consequently, the trial court did not abuse its discretion in this case by not inquiring *sua sponte* into the appropriateness of the appointment of a GAL for Respondent-Mother. *See In re T.L.H.*, 368 N.C. at 112, 772 S.E.2d at 458.

B. Best Interest Determination

Respondent-Mother next asserts the trial court abused its discretion by concluding it was in Jarvis's best interest to terminate Respondent-Mother's parental rights where the trial court failed to make the statutorily required findings concerning the bond between Respondent-Mother and Jarvis.[5]

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

[5] Respondent-Mother does not challenge the portion of the trial court's Termination Order concluding grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a); therefore, we affirm this portion of the Termination Order.

Stat. § 7B-1110(a) (2017). The trial court must consider the following factors in making its determination and make written findings regarding any that are relevant:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

Id. A factor is considered relevant if there is conflicting evidence concerning the factor presented at the termination hearing, such that it is placed in issue. *In re H.D.*, 239 N.C. App. 318, 327, 768 S.E.2d 860, 866 (2015) (citation omitted).

Here, Respondent-Mother contends, correctly, that the trial court failed to make any findings concerning the bond between her and Jarvis. *See* N.C. Gen. Stat. § 7B-1110(a)(4). At the termination hearing, Webb testified that although she did not believe Respondent-Mother had a bond with Jarvis, Webb did state that Respondent-Mother had attended visitations with the child and her interactions during these visits were appropriate. During the best interest phase of the hearing, the GAL for Jarvis testified similarly that Respondent-Mother had been to a lot of visits with Jarvis and her interactions were appropriate. The GAL for Jarvis also

testified Jarvis recognizes Respondent-Mother "after a while" and that it takes "him a little longer to warm up to her" as opposed to Respondent-Father. This evidence was sufficient to put this statutory factor in issue and require the trial court to make a finding with respect to the bond between Respondent-Mother and Jarvis. Because the trial court failed to do so, we must "remand for entry of appropriate findings pursuant to N.C. Gen. Stat. § 7B-1110(a)." *In re J.L.H.*, 224 N.C. App. 52, 60, 741 S.E.2d 333, 338 (2012) (citation omitted).

II. Respondent-Father

Respondent-Father challenges each of the trial court's two grounds for terminating his parental rights under N.C. Gen. Stat. § 7B-1111(a). In addressing these claims:

> [W]e review whether there is an evidentiary support for the trial court's findings and whether the trial court's conclusions are supported by its findings. The trial court's findings must be based upon clear, cogent and convincing evidence. A trial court only needs to find one statutory ground for termination before proceeding to the dispositional phase of the hearing.

In re R.B.B., 187 N.C. App. 639, 647, 654 S.E.2d 514, 520 (2007) (citations omitted).

A. N.C. Gen. Stat. § 7B-1111(a)(1)

Section 7B-1111(a)(1) of our General Statutes provides for termination of parental rights based on a finding that "[t]he parent has . . . neglected the juvenile"

within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2017). A neglected juvenile is defined as:

> A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare[.]

Id. § 7B-101(15) (2017). [6]

Generally, "[i]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child at the time of the termination proceeding." *In re L.O.K., J.K.W., T.L.W., & T.L.W.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citation and quotation marks omitted). However, when "a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible." *Id.* (citation and quotation marks omitted). "In those circumstances, a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect." *Id.* (citation and quotation marks omitted). "The trial court must also consider any evidence of changed conditions in

[6] This Statute was also amended in 2018 with an effective date after the termination hearing. *See* N.C. Gen. Stat. § 7B-101(15) (Supp. 2018).

light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (citation omitted). Thus a trial court may terminate parental rights based on prior neglect only if "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 Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted).

Here, in the Termination Order, the trial court found that Jarvis was adjudicated neglected in July 2017. Respondent-Father argues this adjudication does not pertain to him because it was based on Respondent-Mother's neglect of Jarvis and therefore there was no evidence of neglect by him. DSS, however, asserts Respondent-Father's stipulation to the prior adjudication of neglect was sufficient to support a finding of past neglect, relying on *In re M.A.W.*, 370 N.C. 149, 804 S.E.2d 513 (2017).

In *In re M.A.W.*, the juvenile was adjudicated a neglected juvenile based on the mother's history of substance abuse and mental health issues. *Id.* at 150, 804 S.E.2d at 515. At the time of this adjudication, the respondent-father was incarcerated. *Id.* Approximately a year later, DSS sought to terminate both parents' parental rights to the juvenile. *Id.* at 151, 804 S.E.2d at 515. After conducting a termination hearing, the trial court found, *inter alia*, the juvenile was neglected as defined by statute and terminated both parents' parental rights. *Id.* at 151, 804 S.E.2d at 515-16.

Thereafter, the respondent-father appealed to this Court. *Id.* at 151, 804 S.E.2d at 516.

Our Court reversed the trial court, holding that "while there was a prior adjudication of neglect, the party responsible for the neglect was the juvenile's mother, not father." *Id.* at 152, 804 S.E.2d at 516 (citation and quotation marks omitted). This Court further reasoned that "without evidence of any prior neglect, DSS failed to show neglect at the time of the hearing." *Id.* (alterations, citation, and quotation marks omitted). Accordingly, our Court reversed the trial court's order, and DSS appealed. *Id.*

Our Supreme Court reversed this Court, holding that the prior neglect adjudication based on the mother's substance abuse and mental health issues was "appropriately considered" by the trial court "as relevant evidence" during the father's termination hearing, even though the father had been incarcerated at the time of the adjudication. *Id.* at 153, 804 S.E.2d at 517. The *In re M.A.W.* Court, however, noted that "[a] prior adjudication of neglect standing alone likely will be insufficient to support a termination of parental rights in cases in which the parents have been deprived of custody for any significant period before the termination proceeding." *Id.* at 154, 804 S.E.2d at 517 (citation and quotation marks omitted); *see In re Ballard*, 311 N.C. at 716, 319 S.E.2d at 232-33 (During a proceeding to terminate parental rights, "the trial court must admit and consider all evidence of relevant circumstances

or events which existed or occurred *either before or after* the prior adjudication of neglect."). In *In re M.A.W.*, the Supreme Court concluded "the evidence of prior neglect does not stand alone." 370 N.C. at 154, 804 S.E.2d at 517.

In addition to the prior adjudication of neglect, the trial court in *In re M.A.W.* properly considered the following factors supporting termination of the respondent-father's parental rights: (1) the respondent-father's "long history of criminal activity and substance abuse"; (2) the respondent-father's testimony during the termination proceeding that he was aware of the substance abuse issues of the mother; (3) after his release from incarceration, the respondent-father's failure "to follow through consistently with the court's directives and recommendations"; and (4) the respondent-father's failure to attend weekly visitations with the child and failure to establish a bond with the child. *Id.* at 154-56, 804 S.E.2d at 517-18. Based on these findings, the Supreme Court concluded the trial court properly terminated the respondent-father's parental rights. *Id.*

Here, although the trial court "appropriately considered the prior adjudication of neglect[,]" this finding "standing alone" is not sufficient to support the trial court's determination of past neglect and a likelihood of future neglect by Respondent-Father. *Id.* at 153-54, 804 S.E.2d at 517 (citation and quotation marks omitted). Further, Respondent-Father's conduct after the adjudication of neglect on 31 July 2017 is in stark contrast to the respondent-father's conduct in *In re M.A.W.*

Specifically, here, the trial court found DSS had no concerns that Respondent-Father had any substance abuse issues, and DSS did not present any evidence that he had any criminal history. Although not going so far as to say a bond existed between Jarvis and Respondent-Father, Webb testified that "[Jarvis] absolutely knows who [Respondent-Father] is." Further, the trial court found Respondent-Father completed nearly every aspect of his Case Plan. For instance, Webb testified at the termination hearing that Respondent-Father completed parenting classes; maintained gainful employment and appropriate housing; regularly attended weekly visitations; and regularly attended co-dependency education classes. In addition, Webb testified that Respondent-Father had submitted documentation from a daycare that would take care of Jarvis while Respondent-Father was at work. Our Courts have typically looked to a "parent's failure to make progress in completing a case plan [as being] indicative of a likelihood of future neglect." *In re C.M.P.*, 254 N.C. App. 647, 655, 803 S.E.2d 853, 859 (2017) (citation omitted); *see In re M.A.W.*, 370 N.C. at 154, 804 S.E.2d at 517 (finding the father's failure to "follow through consistently with the court's directives and recommendations" when not incarcerated supported a conclusion that neglect was likely to repeat).

Rather, in its Termination Order, the trial court made several Findings of Fact that suggest Respondent-Father hoped to reunify with Respondent-Mother once she was released from incarceration and planned to leave Jarvis unsupervised with her,

and based on these Findings, the trial court concluded there is a likelihood of repetition of neglect. This concern appears to arise from two Findings of Fact in the initial Adjudication Order from 2017, which found:

> 5. That [Respondent-Mother] has made minimal progress on her Case Plan and continues to test positive for illegal substances. . . . [Respondent-Mother] has indicated that she intends to terminate her relationship with [Respondent-Father] and move in with her father so that [Respondent-Father] may have [Jarvis] returned to his care. [Respondent-Mother] has requested that her grandmother . . . be authorized to provide respite care for [Jarvis].
>
> 6. That [Respondent-Father] continues to reside with [Respondent-Mother] and maintains that [Respondent-Mother] would provide full time care for [Jarvis], given that he works second shift. [Respondent-Father] has been aware of [Respondent-Mother's] substance abuse issues for some time, but does not appear to recognize[] the depths of said addiction. He insist[s] that he does not need education regarding substance abuse or mental health. [Respondent-Father] is requesting that a home study be completed on his home; he is willing to have [Respondent-Mother] leave the residence.

However, as our Supreme Court has reiterated: "The trial court must also consider *any evidence of changed conditions* in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232 (emphasis added) (citation omitted). As the evidence at the termination hearing reflected, Respondent-Father's conduct since the Adjudication Order constituted "evidence of changed conditions" that the trial court failed to consider. *See id.* (citation omitted). Specifically, Respondent-Father took parenting and co-

dependency education classes, and he explored childcare options for when he was not home. Further, the trial court never ordered him to not have contact with or to separate from Respondent-Mother. In any event, the mere possibility of being left in Respondent-Mother's care, without a showing that her substance abuse issues would create an adverse impact on Jarvis, does not support termination based on neglect. *See In re Phifer*, 67 N.C. App. 16, 25, 312 S.E.2d 684, 689 (1984) ("A finding of fact that a parent abuses alcohol, without proof of adverse impact upon the child, is not a sufficient basis for an adjudication of termination of parental rights for neglect."). Moreover, the trial court's Termination Order fails to include any findings that returning Jarvis to Respondent-Father's home would result in Jarvis "not receiv[ing] proper care, supervision, or discipline . . . [or] liv[ing] in an environment injurious to [his] welfare[.]" N.C. Gen. Stat. § 7B-101(15).

Accordingly, the trial court erred by finding past neglect of Jarvis and a likelihood of future neglect by Respondent-Father. Therefore, we reverse the trial court's conclusion that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Respondent-Father's parental rights. *See In re Ballard*, 311 N.C. at 716, 319 S.E.2d at 233.

B. N.C. Gen. Stat. § 7B-1111(a)(2)

Respondent-Father next argues the trial court erred by concluding grounds existed under N.C. Gen. Stat. § 7B-1111(a)(2) to terminate his parental rights. N.C. Gen. Stat. § 7B-1111(a)(2) provides a trial court may terminate parental rights where:

> 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.

N.C. Gen. Stat. § 7B-1111(a)(2). Thus, a trial court must perform a two-part analysis and determine by clear, cogent, and convincing evidence: (1) "a child has been willfully left by the parent in foster care or placement outside the home for over twelve months" and (2) "as of the time of the hearing, . . . the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child." *In re O.C. & O.B.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005). "Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175 (2001) (citations omitted). "Moreover, though a parent's failure to fully satisfy all elements of the case plan goals is not the equivalent of a lack of reasonable progress, a parent's prolonged inability to improve her situation, despite some efforts in that direction, will support an adjudication under N.C.G.S. § 7B-1111(a)(2)." *In re A.B.*, 253 N.C. App. 29, 33, 799 S.E.2d 445, 449 (2017) (alteration, citations, and quotation marks omitted).

Here, the evidence presented at the termination hearing shows Respondent-Father complied with almost all aspects of his Case Plan. Specifically, the trial court found: Respondent-Father completed his parenting classes; maintained gainful employment and appropriate housing; regularly attended weekly visitations, at which his behavior was "appropriate on the whole"; regularly attended co-dependency education classes; and had submitted documentation from a daycare that would take care of Jarvis while he was at work.

In support of its decision, in Finding of Fact 13, the trial court found: "Respondent-Father has not made progress on his co-dependency with a substance abuser education and his literacy classes." However, Respondent-Father's Case Plan simply required him to "participat[e] in psychoeducational groups for partners of substance abusers[,]" and Webb testified that Respondent-Father regularly attended these meetings. Although Webb stated Respondent-Father "hasn't made any progress" in these classes because he did not show an "understanding of someone struggling with substance abuse," as Respondent-Father correctly points out, he was not required to meet some level of understanding; rather, Respondent-Father was required to participate in these classes, which Webb acknowledged he did. Further, as to the literacy classes, Respondent-Father was never required, as part of his Case Plan, to attend literacy classes. In any event, the Record shows he, in fact, did attend several classes. Further, no evidence was presented that DSS ever raised any

concerns about his lack of progress in co-dependency education or literacy classes with Respondent-Father.

Therefore, the evidence presented at the termination hearing illustrates Respondent-Father was overwhelmingly compliant with his Case Plan. Moreover, the Termination Order fails to include any finding of willfulness on the part of Respondent-Father. Thus, the trial court's findings do not adequately support its conclusion that Respondent-Father had willfully abandoned the minor child without making reasonable progress under the circumstances. *See id.* (citations omitted); *see also In re McMillon*, 143 N.C. App. at 410, 546 S.E.2d at 175 ("Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." (citations omitted)). Accordingly, we reverse the trial court's conclusion that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate Respondent-Father's parental rights.

Conclusion

Accordingly, for the foregoing reasons, we affirm the adjudication portion of the trial court's Termination Order as to Respondent-Mother; however, we remand the disposition portion of the trial court's Termination Order as to Respondent-Mother for further findings as required by N.C. Gen. Stat. § 7B-1111(a). As to Respondent-Father, we reverse the trial court's termination of his parental rights to Jarvis and remand the matter for continued review hearings.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).