IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-421

No. COA21-657

Filed 21 June 2022

Watauga County, No. 19 JT 2

IN THE MATTER OF: A.M.

Appeal by respondent-father from order entered 12 August 2021 by Judge Hal Harrison in Watauga County District Court. Heard in the Court of Appeals 10 May 2022.

di Santi Capua & Garrett, PLLC, by Chelsea Bell Garrett, for Petitioner-Appellee Watauga County Department of Social Services.

Leslie C. Rawls for Respondent-Appellant-Father.

Ward & Smith, P.A., by Mary V. Cavanagh, for the Guardian ad Litem-Appellee.

CARPENTER, Judge.

¶ 1 Respondent-Father appeals from an order (the "Order") terminating his parental rights as to his minor child, Alex.[1] After careful review, we conclude clear,

[1] A pseudonym has been used to protect the identity of the minor child.

cogent, and convincing evidence supports at least one ground for the termination of Respondent-Father's parental rights. Thus, we affirm the Order.

I. Factual & Procedural Background

¶ 2 On 7 September 2018, the Watauga County Department of Social Services ("DSS") received a report from the Florida Department of Children and Families Services ("CFS") after CFS learned Respondent-Mother[2] and Respondent-Father (collectively, "Respondent-Parents") were relocating to North Carolina with Alex to abscond CFS involvement. The report detailed a domestic violence incident that arose over a dispute between Respondent-Parents concerning the custody of Alex, who was approximately four months old at the time. The report stated Respondent-Mother called law enforcement for assistance after Respondent-Father threatened to slit her throat. Respondent-Father "was combative, manic, and uncooperative at the scene and banged his head repeatedly on the rear of the patrol car." Respondent-Father was charged with domestic assault, although the charge was later "amended," and Respondent-Father was released. Respondent-Mother "declined to press charges" against Respondent-Father despite informing officers "[he had] put her in the hospital several times from violence." Following the incident, Respondent-Mother filed a restraining order against Respondent-Father, ordering him not to contact

[2] Respondent-Mother is not a party to this appeal.

Respondent-Mother and not to go to Respondent-Mother's home without a law enforcement officer present. Respondent-Mother later told DSS the allegations regarding the 7 September 2018 domestic violence incident were false.

¶ 3 Also on 7 September 2018, DSS located Respondent-Mother and Alex in Boone, North Carolina, at the home of Alex's paternal grandparents. DSS later completed a home visit and determined the grandparents' home was a safe environment for the juvenile to reside. Respondent-Mother entered a safety plan with DSS in which she agreed "she would have no contact with [Respondent-Father], or [if] she chose to have contact with [Respondent-Father,] she would ensure [Alex] remained with [his paternal grandmother]."

¶ 4 On 4 January 2019, DSS filed a petition alleging Alex is a neglected and dependent juvenile on the basis he does not receive proper care, supervision, or discipline from his parents; he has not been provided necessary medical care; and he lives in an environment injurious to his welfare. The petition included allegations regarding the 7 September 2018 incident, and alleged Respondent-Parents had been "difficult to contact or communicate with" throughout DSS's assessment process. In November and December 2018, DSS was unable to contact Respondent-Mother or confirm where she and Alex were living.

¶ 5 The petition further alleged DSS was concerned about Respondent-Parents' substance abuse and continued domestic abuse; the family's lack of stable housing;

the possibility Respondent-Parents were communicating with one another and living together; Respondent-Mother's failure to adhere to the safety plan; and the health, safety, and well-being of Alex. In late December 2018, Respondent-Mother informed DSS she had been living in Avery County but stated she would return to the paternal grandparents' home in Watauga County on 2 January 2019 and would be available for a social worker visit. As of 3 January 2019, DSS was not able to visit the family at the grandparents' home or otherwise confirm the family's location.

¶ 6 On 4 January 2019, the trial court ordered Alex into the nonsecure custody of DSS, and he was placed into a licensed foster home. On 18 March 2019, the trial court adjudicated Alex a neglected and dependent juvenile. In a 28 May 2019 disposition order, the trial court ordered Respondent-Father to follow a case plan prepared by DSS, which included, *inter alia*: submitting himself to alcohol and drug testing, completing substance abuse and mental health treatment plans, and finding suitable employment and housing.

¶ 7 In spring 2019, Respondent-Father was convicted of felony assault by strangulation against Respondent-Mother and was sentenced to five months' incarceration. While in custody, Respondent-Father maintained contact with DSS and participated in his case plan to the extent possible.

¶ 8 Between July 2019 and September 2020, the trial court held multiple permanency planning hearings on the matter and entered corresponding orders.

Until the 15 September 2020 hearing, the primary permanency plan for the juvenile remained reunification with a secondary plan of adoption.

¶ 9 Following the 15 September 2020 hearing, the trial court entered a 9 February 2021 order in which it found, *inter alia*: (1) Respondent-Father "technically completed most of his case plan by attending therapeutic programs to which he was referred for treatment"; (2) Respondent-Father lied to the court and DSS regarding his relationship with Respondent-Mother; (3) at the 15 September 2020 hearing, Respondent-Father admitted he would test positive for "alcohol/other substances"; (4) Respondent-Parents "are destructive to each other and [are] unable to stay apart which risks the health and safety of the Juvenile"; (5) Respondent-Parents are unable to "make lasting changes over such a long period of time of receiving services designed to address their issues" while the trial court and DSS monitored their progress; and (6) it is not possible for Alex to be reunified with Respondent-Parents within the next six months. The trial court then concluded a primary plan of adoption with a concurrent plan of guardianship was in the juvenile's best interest and relieved DSS of its reunification efforts.

¶ 10 On 26 March 2021, DSS filed a motion seeking to terminate the parental rights of Respondent-Parents pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), N.C. Gen. Stat. § 7B-1111(a)(2), N.C. Gen. Stat. § 7B-1111(a)(3), and N.C. Gen. Stat. § 7B-1111(a)(6). The motion alleged, *inter alia*: Respondent-Parents continued to be in contact with

one another, in violation of the trial court's recommendations; Respondent-Father needed an "intensive domestic violence treatment" beyond the typical batterers' intervention program; and Respondent-Parents failed to remain sober, as required by their respective case plans.

¶ 11 On 22 July 2021, a hearing was held on DSS's motion to terminate Respondent-Parents' parental rights. The DSS social worker ("Social Worker") assigned to the case was tendered as an expert in the field of social work. Social Worker testified Respondent-Father entered a case plan following his release from prison, in which he agreed to remain sober, submit weekly drug screens, complete an assessment, follow treatment recommendations, obtain suitable housing, remain in contact with DSS, sign releases with treatment providers, attend visitation with Alex, and complete a domestic violence offender treatment. In addition to the case plan requirements, Respondent-Father was to stay away from Respondent-Mother pursuant to the recommendations of the trial court due to the "extreme violence between the two," as evidenced by multiple domestic violence incidents. **{T p 30}.** Although Social Worker admitted Respondent-Father had substantially complied with DSS's requirements and was "checking off the boxes" of his case plan, Social Worker testified Respondent-Father failed to stay away from Respondent-Mother throughout the case. Thus, DSS's "concern [was] the probability of a repeated measure and the probability of a further instance of domestic violence."

¶ 12 Social Worker provided testimony regarding Respondent-Parents' contact with one another during the case. Respondent-Mother admitted to DSS she "had a relationship with [Respondent-Father] of varying degrees throughout the case plan" and the case history. When Respondent-Father was released from prison, Respondent-Mother picked him up and provided him alcohol. At one point during the case, Respondent-Mother was living with Respondent-Father and later requested her landlord help remove Respondent-Father from her apartment. On one occasion in September 2020, Respondent-Father followed Respondent-Mother from an apartment where she lived, into a convenience store. Respondent-Mother asked the store clerk to call the police after Respondent-Father refused to leave her alone and tried to follow her towards the restroom. Law enforcement arrived at the scene, but Respondent-Father could not be located.

¶ 13 Additionally, Social Worker testified as to the domestic abuse that occurred between Respondent-Parents. Respondent-Mother "informed [Social Worker] that [Respondent-Father] ha[d] either choked her or struck her multiple times . . . prior to and after [DSS taking] custody" of Alex. According to Social Worker, Respondent-Mother told him "she'[d] been hospitalized no fewer than three times due to domestic violence situations." Moreover, some "episodes of violence [occurred] while [Alex] was in [DSS's] custody" while Respondent-Parents engaged in their case plans. During an August 2020 meeting, Respondent-Mother told Social Worker that Respondent-

Father "had choked her three times and probably struck her . . . at least six times." Respondent-Mother described Respondent-Father as "lightning fast," "very strong" and "very powerful," and stated he "would have [his] hands on her throat quickly." Although Respondent-Mother did not express to Social Worker that Respondent-Father posed "a direct threat" to Alex, she acknowledged Alex could come into "harm's way" by being in the presence of Respondent-Father's violent behaviors.

¶ 14 According to Social Worker, Respondent-Father did not show "remorse or personal responsibility for his behaviors." Rather, Respondent-Father suggested the problem was Respondent-Mother testifying regarding the abuse—not his actual participation in domestic violence. Social Worker and DSS recommended the trial court proceed with the termination of Respondent-Parents' parental rights and the adoption of Alex.

¶ 15 Alex's foster mother testified that when Respondent-Mother's relationship with Respondent-Father came up in conversation, Respondent-Mother would "always talk about how . . . [Respondent-Father] will kill [her]." She further testified that "if [Respondent-Mother] w[as] to share certain things, [it] would be like a death sentence for her." Alex's foster mother described one incident Respondent-Mother shared with her in which Respondent-Father had shown up to Respondent-Mother's friend's house and chased Respondent-Mother's male companion with a two-by-four. Alex's foster parents tried to maintain a relationship with Respondent-Father, but

Respondent-Father became controlling and insinuated they did not properly care for Alex.

¶ 16 Respondent-Mother testified she was not in a relationship with Respondent-Father but continued communicating with him by text to provide updates regarding Alex's well-being and to share songs. She also spoke with Respondent-Father in person "if [they] happen[ed] to meet." Respondent-Mother admitted on cross-examination she contacted Respondent-Father the day before the hearing to inform him of the death of a mutual friend.

¶ 17 Respondent-Father testified he lived at the Oxford House, a recovery house, while he was on parole. During his time there, he completed anger management and parenting classes, received outpatient treatment, worked a full-time job, and visited Alex. He also participated in individual therapy, group counseling, Strong Fathers courses, and a batterers' intervention program. Despite his treatment for substance abuse, he testified he "sure would" test positive for marijuana if he was tested the day of the hearing. Respondent-Father denied physically assaulting Respondent-Mother since the outset of the case and chasing Respondent-Mother's friend with a two-by-four. He expressed his "ultimate desire" was to be a father to Alex. Respondent-Father admitted to having contact with Respondent-Mother on multiple occasions, ignoring the trial court's and the social worker's recommendations.

¶ 18 On 12 August 2021, the trial court entered an order terminating the parental

rights of both Respondent-Parents. After making findings of fact, the trial court concluded grounds existed for termination of Respondent-Parents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), N.C. Gen. Stat. § 7B-1111(a)(2) (willful failure to make reasonable progress), and N.C. Gen. Stat. § 7B-1111(a)(6) (dependency). At the dispositional stage, the trial court made findings and then concluded it is in Alex's best interest that Respondent-Parent's parental rights be terminated. Respondent-Father timely appealed from the Order.

II. Jurisdiction

¶ 19 This Court has jurisdiction to address Respondent-Father's appeal from the Order pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Issues

¶ 20 The issues before this Court are whether: (1) the trial court's findings of fact 10(b) and 10(c) are supported by clear, cogent, and convincing evidence; (2) the trial court erred when it overruled Respondent-Father's objection to Social Worker testifying about his evaluation details; and (3) the trial court's conclusions that termination grounds existed are supported by the evidence and findings of fact.

IV. Standard of Review

¶ 21 "Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020) (citations omitted); *see also*

N.C. Gen. Stat. § 7B-1109 (2021); N.C. Gen. Stat. § 7B-1110 (2021). "[A]n adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.,* 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citations omitted); *see also* N.C. Gen. Stat. § 7B-1110(a) (2021). "We review a trial court's adjudication of grounds to terminate parental rights to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re B.T.J.*, 377 N.C. 18, 2021-NCSC-23, ¶ 9 (citations and quotations marks omitted). In reviewing the findings, we consider "only those [challenged] findings necessary to support the trial court's determination that grounds existed to terminate [the] respondent's parental rights." *In re M.C.*, 374 N.C. 882, 886, 844 S.E.2d 564, 567 (2020) (citation omitted). "Findings of fact not challenged by [the] respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citations omitted).

¶ 22 "The trial court's dispositional findings are binding . . . if they are supported by any competent evidence or if not specifically contested on appeal." *In re B.E.*, 375 N.C. 730, 745, 851 S.E.2d 307, 317 (2020) (citation and quotation marks omitted). "The trial court's assessment of a juvenile's best interest at the dispositional stage is reviewed only for abuse of discretion." *In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797 (citations omitted).

V. Analysis

¶ 23 On appeal, Respondent-Father contests two findings of fact as unsupported by clear, cogent, and convincing evidence. He also challenges three conclusions of law on the basis the evidence and findings do not support any of the three grounds the trial court found existed to terminate his parental rights. Respondent-Father does not dispute the trial court's dispositional findings; therefore, these findings are binding on appeal. *See In re B.E.*, 375 N.C. at 745, 851 S.E.2d at 317.

A. Challenged Findings of Fact

1. Finding of Fact 10(b)

¶ 24 Respondent-Father challenges only the part of finding of fact 10(b), which states, "[Respondent-Mother] had been hospitalized several times as a result of the domestic violence including while she was pregnant with the Juvenile." To support his argument this finding is unsupported by clear, cogent, and convincing evidence, Respondent-Father points to Social Worker's testimony, which provided, "I think one hospitalization [Respondent-Mother] was pregnant with [Alex] at th[e] time [Respondent-Father] hurt her." Respondent-Father argues Social Worker's "belief does not satisfy the statutory requirement of 'clear, cogent, and convincing' evidence."

¶ 25 Here, Social Worker's testimony undoubtedly supports the finding Respondent-Mother was hospitalized multiple times due to Respondent-Father's domestic violence. When asked on direct examination whether "there [had] been any

discussions with either parent regarding [Respondent-Mother] being hospitalized as a result of domestic violence," Social Worker responded, "Yes. She has told me that . . . she's been hospitalized no fewer than three times due to domestic violence situations." This testimony was not objected to at trial and constitutes "clear, cogent, and convincing evidence" to support part of the challenged finding. *See In re B.T.J.*, 377 N.C. 18, 2021-NCSC-23, ¶ 9. The finding Respondent-Mother "was pregnant" at the time of one such hospitalization is not necessary to support the trial court's conclusion that grounds existed to terminate Respondent-Father's parental rights; therefore, we disregard this finding. *See In re M.C.*, 374 N.C. at 886, 844 S.E.2d at 567. Moreover, we note the record provides ample evidence tending to show Respondent-Father's domestic violence occurred both before and after Alex was placed into DSS's custody.

2. Finding of Fact 10(c)

¶ 26 Next, Respondent-Father challenges several findings contained in finding of fact 10(c). Respondent-Father admits he was charged with assault by strangulation and served five months in prison for the conviction; however, he challenges the remaining findings as being supported only by the allegations in DSS's petition.

Finding of fact 10(c) provides:

> At the beginning of DSS's involvement, Respondent-Father was charged with assault by strangulation, assault on a female, communicating threats, battery of an unborn child,

> violation of a domestic violence protective order and violation of a court order and was sentenced to approximately five (5) months of prison-time in the Department of Corrections.

¶ 27 We agree with Respondent-Father to the extent he argues there is no "clear, cogent, and convincing evidence" to support the findings he was charged with assault on a female, communicating threats, battery of an unborn child and violated a domestic violence protective order as well as a court order at the outset of DSS's involvement. *See In re B.T.J.*, 377 N.C. 18, 2021-NCSC-23, ¶ 9. Regarding the prison sentence, Social Worker testified Respondent-Father was sentenced to five months' imprisonment, and he served this five-month sentence at the Department of Corrections. Therefore, this testimony constitutes "clear, cogent, and convincing evidence," which supports the finding Respondent-Father "was sentenced to approximately five (5) months of prison-time in the Department of Corrections." *See id*.

B. Judicial Notice of Prior Disposition Order

¶ 28 Next, Respondent-Father contends the trial court erred by admitting the evaluation details of his comprehensive clinical assessment over his counsel's hearsay objection and by stating the evaluation was "referenced in a prior court order." DSS and the guardian *ad litem* both argue the trial court properly took judicial notice of a prior permanency planning order, which incorporated the facts of a 23 September

2019 DSS court report, including details of Respondent-Father's evaluation.

¶ 29 In its 7 November 2019 permanency planning order, the trial court received as evidence and incorporated by reference the facts set out in the 23 September 2019 DSS court report. The trial court then made the following pertinent finding in its 7 November 2019 order regarding the evaluation: "The Mentor evaluation suggests that [Respondent-Father] needs intensive [domestic violence] treatment and that a typical psych-education batterer's intervention program would not be able to address Respondent Father's needs."

¶ 30 At the termination hearing, counsel for DSS, counsel for Respondent-Father, and the trial court had the following exchange after Respondent-Father's counsel objected on hearsay grounds to Social Worker's testimony regarding Respondent-Father's mentor evaluation:

> [Trial court]: Do you have somebody who is going to testify?
>
> [Counsel for DSS]: Your Honor, no. We just have—I was going to ask the Court just to take notice that it was referenced in the Court's orders. I'll show you the court orders where the Court quoted. We can ask the Court to take judicial notice in a clear, cogent, and convincing standard of the mentor assessment.
>
> [Trial court]: If it's been referenced in a prior court order, it's overruled.
>
> [Counsel for DSS]: Okay. I'll—if you give me a moment, I will tell you which orders those are.
>
> [Trial court]: All right.

> . . . .
>
> [Counsel for DSS]: Your Honor, I would like to make a clarification. The mentor evaluation was admitted into evidence. But as far as an order referencing it, the admission into evidence was on June 12th of 2020. The order that references it says it was a permanency planning review order. It was clear, cogent, and convincing evidentiary standard. And one of the findings of fact—that is from September of 2019. But the findings of fact on page 3, paragraph 7, includes mentor evaluation suggests that he needs intensive DV treatment and that a typical psych education batterer's intervention program would not be able to address respondent father's needs. So it references and makes a finding as to what the recommendation is.
>
> [Trial court]: Either one of you want to be heard on that?
>
> [Respondent-Father's counsel]: I reiterate my objection as to hearsay. If Your Honor takes judicial notice, that one thing, but admitting hearsay evidence is another. So I would respectfully object.
>
> [Trial court]: Objection is overruled. Let's move on. **{T pp 31-33}.**

¶ 31 Respondent-Father provides no authority in support of his contention the trial court violated the Rules of Evidence by taking judicial notice of a prior permanency planning order, which was subject to a lower evidentiary standard. In fact, it is well-established in our state that trial courts may "take judicial notice of findings of fact made in prior orders, even when those findings are based on a lower evidentiary standard because where a judge sits without a jury, the trial court is presumed to have disregarded any incompetent evidence and relied upon the competent evidence."

In re B.J.H., 378 N.C. 524, 2021-NCSC-103, ¶ 43; *see In re J.B.*, 172 N.C. App. 1, 16, 616 S.E.2d 264, 273 (2005) (citations omitted) ("This Court has previously held that in a termination of parental rights proceeding, prior adjudications of abuse or neglect are admissible, but they are not determinative of the ultimate issue."). "A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." N.C. Gen. Stat. § 8C-1, Rule 201(b) (2021). "We have treated . . . findings of fact [made in prior orders] as sufficient to support an adjudicatory finding of fact under [N.C. Gen. Stat.] § 7B-1109(f). *In re B.J.H.*, 378 N.C. 524, 2021-NCSC-103, ¶ 43; *see In re J.M.J.-J.*, 374 N.C. 553, 558, 843 S.E.2d 94, 100 (2020) (concluding the trial court properly took judicial notice of a prior permanency planning order, which "found as fact [the] respondent tested positive for hydrocodone and oxycodone"); *see also* N.C. Gen. Stat. § 7B-1109(f) (2021).

¶ 32 Respondent-Father has not shown "the trial court failed to conduct the independent determination required at a termination hearing when prior disposition orders have been entered in the matter" and has failed to rebut the presumption the trial court relied on competent evidence in making its ultimate findings. *See In re J.B.*, 172 N.C. App. at 16, 616 S.E.2d at 273 (citation omitted); *In re B.J.H.*, 378 N.C. 524, 2021-NCSC-103, ¶ 43. In addition, Respondent-Father did not specifically challenge findings of fact 10(e)(ii)(k) and 10(e)(ii)(l)—the findings that reference

Respondent-Father's need for "intensive domestic violence treatment." Therefore, these findings "are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58 (citation omitted).

C. Willful Failure to Make Reasonable Progress

¶ 33 Respondent-Father argues the trial court erred by finding grounds existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). Rather, Respondent-Father contends "[h]e went beyond the elements [of his case plan], showed appropriate parenting skills during visits, and otherwise comported with his case plan to address the factors that led to Alex's removal from the home." He further argues "the relevant evidence on this termination ground was stale and cannot support [the termination of his parental rights]." We disagree.

¶ 34 Grounds for terminating a parent's rights to a juvenile exist under N.C. Gen. Stat. § 7B-1111(a)(2) when a "parent has willfully left the juvenile in foster care or placement outside of 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) (2021). "The word willful as applied in termination proceedings . . . has been defined as 'disobedience which imports knowledge and a stubborn resistance.'" *In re D.M.*, 171 N.C. App. 244, 252, 615 S.E.2d 669, 674 (2005) (citations omitted).

> Termination under [N.C. Gen. Stat. § 7B-1111(a)(2)] requires the trial court to perform a two-step analysis where it must determine by clear, cogent, and convincing evidence whether (1) a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.

In re Z.A.M., 374 N.C. at 95, 839 S.E.2d at 797 (2020) (citations omitted).

¶ 35 There must be a "nexus between the components of the court-approved case plan with which [the] respondent[ ] failed to comply and the conditions which led to [the juvenile's] removal from the parental home . . . ." *In re B.O.A.*, 372 N.C. 372, 385, 831 S.E.2d 305, 314 (2019) (quotation marks omitted). "[A] respondent's prolonged inability to improve h[is] situation, despite some efforts in that direction, will support a finding of willfulness regardless of h[is] good intentions, and will support a finding of lack of progress during the year preceding the DSS petition sufficient to warrant termination of parental rights under [N.C. Gen. Stat. §] 7B-1111(a)(2)." *In re J.W.*, 173 N.C. App. 450, 465–66, 619 S.E.3d 534, 545 (2005) (citation and quotation marks omitted); *see also* N.C. Gen. Stat. §] 7B-1111(a)(2).

¶ 36 Respondent-Father attempts to distinguish *In re L.N.G.*, 377 N.C. 81, 2021-NCSC-29 from the instant case on the basis the trial court in this case made no findings relating to domestic violence occurring "*at the time of the termination.*" (Emphasis added). We find this argument unavailing.

¶ 37 In the Supreme Court case of *In re L.N.G.*, the Gaston County Department of Health and Human Services ("DHHS") filed a petition alleging the respondent-parents' children were neglected and dependent. *Id.* ¶ 2. The petition further alleged DHHS became involved with the family after "a series of serious domestic violence incidents" had occurred between the parents. *Id.* In late 2016, the respondent-mother agreed to a case plan addressing DHHS's concerns regarding domestic violence. *Id.* Thereafter, the respondent-parents engaged in domestic violence disputes, including one incident where the respondent-parents had "an argument in front of the children during which [respondent-father] choked [the] respondent-mother and spit in her mouth." *Id.* At 2017 and 2018 hearings, DHHS presented evidence tending to show the respondent-parents lived together and continued their relationship through September 2018, despite the respondent-mother denying such claims. *Id.* ¶ 6–7. After their ongoing relationship was brought to light, the trial court changed the permanent plan for the juveniles from reunification to adoption. *Id.* ¶ 5, 7. In July 2019, DHHS filed a petition to terminate the respondent-mother's parental rights. *Id.* ¶ 8. Following a hearing on DHHS's motion, the trial court found as fact, *inter alia*, the respondent-mother: "failed to take the necessary steps to remove herself from relationships involving domestic violence," continued her relationship with the respondent-father, failed to show her ability to protect her children, and did not inform DSS or the trial court of instances of domestic violence

that occurred in 2017 and 2018. *Id.* ¶ 14. The trial court concluded grounds existed to terminate her rights under N.C. Gen. Stat. §§ 7B-1111(a)(1)–(2). *Id.* ¶ 9.

¶ 38 In affirming the trial court's order terminating the respondent-mother's parental rights based on her failure to make reasonable progress to correct the conditions that led to her children's removal from her home, the Court reasoned the trial court:

> properly determined pursuant to the evidence presenting during the two-day hearing in January 2020 that respondent-mother did not make a reasonable effort to correct the issues attributable to her relationship with Mr. D. and the prevalence of domestic violence that led to the children's removal from her care. Instead, respondent-mother prioritized her relationship with Mr. D. while falsely and repeatedly claiming that the relationship had ended. Based upon respondent-mother's willful failure to make reasonable progress in addressing her issues with domestic violence, the trial court properly concluded that her parental rights were subject to termination under [N.C. Gen. Stat.] § 7B-1111(a)(2).

Id. ¶ 24.

¶ 39 Like the respondent-mother in *In re L.N.G.*, Respondent-Father in this case generally complied with his plan, which included completing a parenting assessment, "a comprehensive clinical assessment that addresses both mental health and substance abuse issues," and a domestic violence offender treatment program; attending Strong Fathers and batterers' prevention courses; and seeking individual and group counseling for domestic violence.

¶ 40 Nonetheless, the record indicates Respondent-Father failed to demonstrate his changed behavior as to substance abuse and domestic violence, and therefore, failed to show the conditions that led to Alex's removal were remedied. *See In re Leftwich*, 135 N.C. App. 67, 72, 518 S.E.2d 799, 803 (1999) (rejecting the respondent-mother's claims she "made significant efforts to improve her lifestyle" where the respondent-mother continued to abuse alcohol after receiving treatment). Respondent-Father refused to end his contact with Respondent-Mother despite the trial court repeatedly stating in its orders that it was "imperative that Respondents stay away from one another." Instead, he failed to remove himself from a relationship in which he engaged in domestic violence, thereby putting Alex's emotional and physical well-being at risk. Respondent-Father's testimony tends to show he did not take responsibility for his past actions and blamed Respondent-Mother for his problems. These findings support the conclusion Respondent-Father's actions were "willfull[ ]," as statutorily mandated. *See* N.C. Gen. Stat. § 7B-1111(a)(2).

¶ 41 The Order in this case, similar to the order in *In re L.N.G,* included unchallenged findings demonstrating not only did Respondent-Father not "stay away" from Respondent-Mother as directed by the trial court and DSS, but Respondent-Father also made false representations to the trial court and DSS regarding the nature and extent of his relationship with Respondent-Mother.

¶ 42 At least two findings demonstrate Respondent-Mother rejected Respondent-

Father's attempts to contact her, but Respondent-Father persisted despite Respondent-Mother's requests he leave her alone. Additionally, the trial court specifically found in an unchallenged finding the typical batterers' therapy and treatment in which Respondent-Father participated "would not address [his] needs" because "he needs intensive domestic violence treatment" that he had not received as of the date of the termination hearing. Thus, DSS had reason to believe his domestic violence pattern would continue.

¶ 43 Here, Respondent-Father's substance abuse, domestic abuse, and an inadequate living environment were conditions that led to Alex's removal. We conclude there is sufficient evidence in the record to establish a nexus between these conditions and Respondent-Father's non-compliance with the pertinent case plan components. *See In re B.O.A.*, 372 N.C. at 385, 831 S.E.2d at 314.

¶ 44 The trial court made multiple findings, not challenged by Respondent-Father on appeal, that he had failed to address his substance abuse and domestic violence problems and did not maintain suitable housing, including:

> 10(s)(ii)(u). Both Respondents have failed to successfully address their substance abuse problems. Respondent Father admitted in Court during the termination hearing that he would test positive for marijuana if tested.
>
> 10(s)(ii)(x). Respondent [F]ather stated that he completed his case plan but has continued to act in a manner that disregards or reflects no real grasp of the point of the services he received especially as to domestic

> violence/batterers prevention.
>
> 10(s)(ii)(y). Neither parent has appropriate and suitable housing as of the date of the termination hearing.

¶ 45 The trial court's findings of fact demonstrate Respondent-Father made substantial steps toward completing his case plan; however, the findings also indicate his "prolonged inability to improve" his ongoing failures to comply with substance abuse and domestic violence treatment and to maintain suitable housing. The findings of fact also show Respondent-Father did not make "reasonable progress under the circumstances" in the year preceding DSS's filing of its petition, and the findings are "sufficient to warrant termination of parental rights under [N.C. Gen. Stat. §] 7B-1111(a)(2)." *See In re J.W.*, 173 N.C. App. at 466, 619 S.E.3d at 545. Respondent-Father does not contest the trial court's findings that Alex was taken into DSS custody on 4 January 2019 and had been in custody for approximately thirty months as of the date of the termination hearing. Thus, there is "clear, cogent, and convincing evidence" that Alex was willfully left by Respondent-Father in foster care for over twelve months. *See In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797.

¶ 46 Therefore, we conclude the trial court's findings of fact support its conclusions of law that grounds existed to terminate Respondent-Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). *See In re B.T.J.*, 377 N.C. 18, 2021-NCSC-23, ¶ 9. As a result, we need not address Respondent-Father's arguments that the trial court's

conclusions that grounds existed to terminate his parental rights based on neglect and dependency were unsupported by the evidence and findings. *See In re E.H.P.,* 372 N.C. at 395, 831 S.E.2d at 53; *see also* N.C. Gen. Stat. § 7B-1110(a).

VI. Conclusion

¶ 47 We hold the trial court did not err in concluding grounds existed to terminate Respondent-Father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). Respondent-Father does not contest the trial court's conclusion that the termination of his parental rights was in the best interest of Alex. Accordingly, we affirm the Order of the trial court terminating Respondent-Father's parental rights.

AFFIRMED.

Judges STROUD and COLLINS concur.

Report per Rule 30(e).