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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-536

No. COA22-72

Filed 2 August 2022

Guilford County, No. 20 JT 641

IN THE MATTER OF:

F.C.H.

Appeal by respondent from order entered 19 October 2021 by Judge Angela Foster in District Court, Guilford County. Heard in the Court of Appeals 12 July 2022.

Jeffrey L. Miller, for Respondent-Appellant Father.

No brief filed for Petitioner-Appellee Mother.

No brief filed for Guardian ad Litem.

STROUD, Chief Judge.

¶ 1 Respondent-father ("Father") appeals from an order terminating his parental rights as to his daughter. Because several of the trial court's findings of fact were not supported by the evidence presented in this case and the remaining findings of fact do not support the trial court's conclusions of law as to neglect and abandonment, we reverse.

I. Background

¶ 2 This factual background is based upon Mother's petition and the evidence Mother presented at trial, since Father did not appear or present evidence.[1] Minor-daughter Fiona[2] was born to Petitioner-mother ("Mother") in May 2019 in Guilford County. Mother and Father met while both were attending Alcoholics Anonymous. They were not married to one another but "had a 2 ½ to 3 year living arrangement" together prior to Fiona's birth. At the time they discovered Mother was pregnant, Father and Mother were attempting to reconcile their relationship as Father had learned Mother had been involved in a romantic relationship with a co-worker who could have potentially been the father of Fiona. Father was present during Fiona's birth and his name appears on her birth certificate despite the uncertainty at the time of her birth as to whether he actually was the biological father.

¶ 3 Mother alleged that sometime in April or May of 2019, shortly before Fiona's birth, Father "was intoxicated [and] punched [Mother] in the face and tackled [her] when she was seven (7) months pregnant." Mother claimed this incident caused her to go into early labor, leading to Fiona's premature birth, although Mother did not present any medical records or evidence from a physician to support her allegation as

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[1] We note neither Mother nor the Guardian ad Litem have filed briefs with this Court on appeal.

[2] Pseudonyms are used throughout this opinion to protect the identity of the Minor Child.

to the cause of her preterm labor and delivery. However, Fiona did test positive for marijuana upon birth. According to the Guardian ad Litem, Father "became extremely emotional when asked about any domestic violence between the parties and flatly denied any physical abuse."

¶ 4 According to the Guardian ad Litem, Mother admitted Father was sober and assisting in taking care of Fiona for the first two months of her life, while they were still living together. Mother alleged that when Fiona was roughly two-months-old, Father became intoxicated one day and drove with Fiona in the car to run an errand while Mother was sleeping. Mother claims she discovered this when she awoke from her nap, causing her to leave from the parties' shared residence with Fiona. Father "adamantly denies this account of the separation." This was the last time Father saw or had contact with Mother or the minor child.

¶ 5 The record reveals that after her separation from Father, Mother became engaged to a woman she met in Alcoholics Anonymous. As of the date of the termination hearing, Fiona was living with Mother and her new fiancé, who Fiona had begun referring to as "Da," and who "plans to adopt" Fiona.

¶ 6 When Fiona was just over one year old, on 25 June 2020, Mother filed the instant verified petition to terminate Father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(7). Mother's petition alleged a Domestic Violence Protective Order (DVPO) was entered against Father in May 2020, roughly a month

before Mother filed the termination petition and a year after the alleged domestic violence incident seven months into her pregnancy which she claimed led to Fiona's premature birth. Although the DVPO is not in the record on appeal and was not presented at the trial, Mother testified about the terms of the DVPO. She testified that under the DVPO, Father was ordered not to contact Mother or Fiona in any manner, directly or indirectly, including through a member of Mother's family, and to stay away from their residence. Mother's petition to terminate Father's parental rights also alleged Father has a history of substance abuse, which Mother alleged she believed has continued. Mother testified at trial that although she had not seen Father since she left the home in July 2019, she believed he was still using drugs based on "what [she had] heard from [their] mutual friends" and her visual observations of Father at a 2 March 2021 pretrial conference. The petition also alleged several criminal convictions of Father during the previous ten years, for Speeding to Elude Arrest, Driving while Impaired (Level 3), Driving while License Revoked, Felony Probation Violation, Hit and Run/Property Damage, Possession of Marijuana Paraphernalia, Resisting Public Officer, and Driving while Impaired (Level 1). Mother sought to terminate Father's parental rights to Fiona pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and (a)(7) (abandonment) in light of these allegations as well as the allegation that Father does not have stable housing and had failed to show care for or support of Fiona since July 2019.

¶ 7 On 8 July 2020, the Guilford County Sheriff's Department served Mother's verified petition and summons on Father by leaving a copy with an individual identified as "Carmen" at an alternative address listed for Father on the summons. At a 25 August 2020 pretrial hearing, the trial court appointed a guardian ad litem for Fiona and ordered that Father's provisional court-appointed attorney remain his provisional counsel for the time being. Father was absent from the August 2020 pretrial hearing, but his counsel informed the trial court he had been in contact with Father and that Father would be contesting Mother's termination petition.

¶ 8 Thereafter, the Guardian ad Litem filed two reports with the trial court. The first report, which is not dated but appears to have been prepared in October of 2020, states that Father reported he had entered the TROSA[3] residential treatment program after he and Mother separated and he was discharged in April 2020. Upon being discharged from TROSA, Father created a Facebook account. Mother testified she immediately filed the above-referenced complaint for a DVPO when she learned Father was no longer at TROSA by seeing his Facebook page, although Father had not contacted her at the time. The Guardian ad Litem's first report further states:

> [Father] reports he has an extensive family support system which includes five siblings and numerous nieces and nephews along with three other children of his own. He

[3] TROSA is "an extensive two-year program" that, according to the Guardian ad Litem, is "a program that every individual . . . who has a drug problem and is incarcerated wants to go to."

> happily reported that the due date of his first grandchild is [December 2020]. He reported his family was a strong support system for both he and [Mother] during her pregnancy.

The Guardian ad Litem also reported that according to Father, if he was confirmed as the father, "he wants to be in his daughter's life and wants to have an active role in helping to raise [Fiona.]"

¶ 9 The second and most recent Guardian ad Litem report states that Father was living at the Caring Services Rehab Program in High Point. The Guardian ad Litem reported Father informed him "that due to a restraining order placed against him, (referring to the DVPO) he has not had any contact with [Fiona]." The Guardian ad Litem reported that at that time, Father was employed as a machinist and had been working with his sponsor and attending morning Alcoholics Anonymous meetings on a daily basis. According to the Guardian ad Litem, "[d]ue to the outstanding restraining order and the absence of a relationship with [Fiona's] mother, [Father] was a bit guarded with regard to providing information as to where he is employed."

¶ 10 Mother's petition to terminate Father's parental rights was heard before the Honorable Angela C. Foster in Guilford County District Court on 17 August 2021. Father did not appear at the 17 August 2021 termination hearing. Father's appointed trial counsel moved to continue the hearing stating he had been unable to make contact with Father or Father's criminal attorney in High Point and that Father may

therefore be unaware of the hearing. Petitioner objected, stating "respondent father participated in the last court date via text message with his attorney . . . . There's no reason for him to not be here today." The trial court denied Father's motion for a continuance and proceeded to hear evidence on the termination proceeding.[4]

¶ 11 By order entered 19 October 2021, the trial court entered an order terminating Father's parental rights to Fiona under the statutory subsections 7B-1111(a)(1) (neglect) and (a)(7) (abandonment) of the North Carolina Juvenile Code. Father appeals.

II. Analysis

¶ 12 Father first argues the evidence before the trial court was insufficient to support several of the court's findings upon which it relied in terminating his parental rights pursuant to subsections 7B-1111(a)(1) (neglect) and (a)(7) (abandonment). Father argues that without these unsupported findings of fact, the trial court erred in concluding grounds existed to terminate his parental rights. We agree.

A. Standard of Review

¶ 13 "As part of any termination of parental rights proceeding, the trial court must adjudicate the existence of any of the grounds for termination alleged in the petition."

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[4] Father also raised an argument regarding ineffective assistance of counsel on appeal, but we will not address this issue based upon our determination that the order must be reversed based upon other grounds.

In re Z.G.J., 378 N.C. 500, 2021-NCSC-102, ¶ 18. This means "the trial court must take evidence and find the facts necessary to support its determination of whether the alleged grounds for termination exist." *Id.* When on appeal a parent challenges the sufficiency of the evidence to support an order terminating his parental rights, "we look to see whether there is clear, cogent and convincing competent evidence to support the findings. If there is such competent evidence, the findings are binding upon us on appeal." *In re B.D.*, 174 N.C. App. 234, 246, 620 S.E.2d 913, 921 (2005) (citation omitted); *see also* N.C. Gen. Stat. § 7B-1109(f) (2021). We then review the supported findings to determine *de novo* whether the findings in turn support the trial court's conclusions of law. *In re A.W.*, 377 N.C. 238, 2021-NCSC-44, ¶ 9; *In re Z.G.J.*, ¶ 24 ("The trial court's conclusions of law are reviewed de novo."). The burden of proof is on the petitioner to establish grounds to terminate the respondent's parental rights. N.C. Gen. Stat. § 7B-1109(f); *see also* N.C. Gen. Stat. § 7B-1111(b) ("The burden in these proceedings is on the petitioner or movant to prove the facts justifying the termination by clear and convincing evidence.").

B. Challenges to Findings of Fact

¶ 14 North Carolina General Statutes Section 7B-1111(a) enumerates eleven grounds under which trial courts are authorized to terminate an individual's parental rights. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(11) (2021). The determination whether a ground exists to terminate parental rights is the first stage of a statutorily required

two-stage proceeding. *In re T.J.C.*, 225 N.C. App. 556, 560, 738 S.E.2d 759, 762 (2013). If the trial court concludes a ground exists to terminate parental rights, the court proceeds to determine whether it is in the best interests of the child to terminate the respondent's parental rights, consistent with N.C. Gen. Stat. § 7B-1110. *Id.* at 560, 738 S.E.2d at 762-63.

¶ 15 Mother's petition alleged only two of these grounds, neglect under Section 7B-1111(a)(1), and abandonment, under Section 7B-1111(a)(7). The trial court concluded both grounds existed, and Father challenges both on appeal.

1. Neglect

¶ 16 N.C. Gen. Stat. § 7B-1111(a)(1) allows termination of parental rights upon a finding that "[t]he parent has . . . neglected the juvenile." N.C. Gen. Stat. § 7B-1111(a)(1) (2021). The juvenile code defines a "neglected" juvenile in part as

> [a]ny juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker does any of the following:
>
> a. Does not provide proper care, supervision, or discipline.
>
> b. Has abandoned the juvenile.
>
> c. Has not provided or arranged for the provision of necessary medical or remedial care.
>
> . . . .
>
> e. Creates or allows to be created a living environment

that is injurious to the juvenile's welfare.

N.C. Gen. Stat. § 7B-101(15) (2021).

¶ 17 Even where there is evidence a respondent has neglected the child in the past, our caselaw emphasizes "[t]ermination of parental rights for neglect may not be based solely on past conditions which no longer exist." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). Rather, "[t]ermination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of a likelihood of future neglect by the parent." *In re Z.G.J.*, ¶ 25 (citation omitted). Thus, "[i]f the child is removed from the parent before the termination hearing, then 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 T.J.C.*, 225 N.C. App. at 561, 738 S.E.2d at 763 (citing *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)) (quotation omitted). "Certainly, termination of parental rights for neglect may not be based solely on conditions which existed in the distant past but no longer exist." *In re Ballard*, 311 N.C. at 714, 319 S.E.2d at 231-32. It is the petitioner's burden to prove those conditions still exist. *See In re Z.G.J.*, ¶ 18.

¶ 18 Here, there was no prior adjudication of neglect, as Mother's petition to terminate Father's parental rights was the first proceeding to address this issue.

Father contends the trial court's findings used to support its conclusion of neglect are not supported by the evidence and the findings do not address the possibility of repetition of any alleged prior neglect. The trial court made the following findings regarding Father:

> 8. On May 4, 2021, an Order Establishing Child Support/Medical was entered by the Honorable Ashley Watlington-Simms ordering Respondent to pay child support to the Petitioner in the amount of $440.00 per month and an arrears payment of $2,664.00 to be paid at a rate of $20.00 per month until paid in full in Guilford County File No. 20 CVD 6768. Respondent has made no payments of child support to the Petitioner. In addition, Respondent has made no payments towards the juvenile's out of pocket medical expenses as required by the Order.
>
> 9. Respondent has not made a child support payment since the child's birth.
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> 10. As of today's date, Respondent's child support arrears total approximately $4,424.00 which includes the $2,664.00 arrears which remains unpaid. Respondent has reported through his counsel that he is employed.
>
> 11. On May 13, 2020, a Domestic Violence Protective Order was entered by the Honorable Angela Fox in Guilford County File no. 20 CVD 520258 in which Respondent-Father admitted that he is a recovering alcoholic and has substance abuse problems. When Respondent-Father appeared at this hearing he denied paternity of the juvenile and showed no desire to be a father to the juvenile. The Respondent Father has abided by the Domestic Violence Protective Order and did have the ability to contact the juvenile and/or pursue a child custody action outside of the confines of the Domestic Violence Protective Order.

12. Respondent has not consistently exercised visitation with the juvenile since July 2019, and Respondent has not inquired about the well-being of the juvenile since July 2019 other than a vague inference about the juvenile when contacting the Petitioner after the filing of this action.

13. Respondent has made no effort to establish a relationship with the juvenile and his interest is more in the Petitioner and her life.

14. Respondent lacks stable, safe, and appropriate housing for the juvenile.

15. Since the filing of this Petition Respondent Father completed DNA testing and is the biological father of this juvenile.

16. Respondent is not providing the juvenile with financial support and is not otherwise providing the juvenile with any of her basic physical needs.

17. Petitioner suffered domestic violence by Respondent Father throughout her pregnancy and as a result of this violence the juvenile was born premature. Further, Petitioner suspects that after the juvenile was born Respondent Father did drive under the influence with the juvenile in the vehicle and put the juvenile in harms way.

18. That Petitioner did produce evidence of Respondent Father's criminal record which includes two DWI convictions within a 12 month period . . . .

19. Respondent's longstanding lifestyle and illicit drug use and history of domestic violence has created an environment that was and remains injurious to the juveniles' [sic] welfare.

20. During the six (6) consecutive months immediately

> preceding the filing of this Petition, Respondent has failed to perform any of the natural and legal parental obligations of care and support for the juvenile, withheld his love and presence from the juvenile, and deprived the juvenile of the opportunity to display filial affection. Respondent's conduct during the six (6) months preceding the filing of the Petition was wholly inconsistent with his constitutionally protected status as a parent and evinced a purposeful intention to forego his parental rights and responsibilities to the juvenile.
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> 21. Petitioner has taken no efforts to block or hinder Respondent's attempt for visitation or contact with the juvenile.
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> . . .
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> 23. The Court finds clear, cogent, and convincing evidence that Respondent neglected the juvenile in the past by his abandonment of his parental duties, failure to inquire about welfare of juvenile, failure to provide cards, gifts for the juvenile, and failure to pay adequate support and it is foreseeable that Respondent's neglect of the juvenile will continue in the future.
>
> 24. The Court finds by clear, and cogent, and convincing evidence that for a period of more than six (6) months next preceding the filing of the Petition, specifically from December 25, 2019, through June 25, 2020, the Respondent did willfully abandon the juvenile as defined by N.C.G.S. § 7B-1111(a)(7).

¶ 19 The evidence before the court at trial included the Guardian ad Litem's two reports and testimony of Mother and the Guardian ad Litem. We conclude the trial court's challenged findings are either unsupported by clear, cogent, and convincing evidence or are irrelevant to the requisite finding of a likelihood of future neglect and

thus do not support the trial court's conclusions of law.

¶ 20 Father first challenges Findings of Fact 8 and 10 because the record contains no evidence of the child support order to which the Termination Order refers. Indeed, the child support order is not in the record. Mother did testify she had not received any money from Father to support Fiona. The trial court's findings in this regard are thus supported by the evidence. Mother also testified she had filed a child support action against Father. She testified regarding the outcome of the child support case, stating "[i]t was determined that [Father] would pay around $400 a month, and he has not paid." Mother emphasized it was "[a]round that number" and stated the order was entered "sometime in the past five months." Mother presented what she purported to be a screenshot of her child support website account, which she testified "says no payments have been credited to your child support case in the past 13 months." The trial court sustained Father's objection to this documentary evidence and no other indication of the child support order beyond Mother's testimony appears in the record. Thus, the evidence presented does not support Findings of Fact 8 and 10, at least as to the exact date, amounts and arrears owed, file number of the purported order, or the judge who entered the order.

¶ 21 Father next challenges Finding of Fact 11, which found:

> On May 13, 2020, a Domestic Violence Protective Order was entered by the Honorable Angela Fox in Guilford County File no. 20 CVD 520258 in which Respondent-

> Father admitted that he is a recovering alcoholic and has substance abuse problems. When Respondent-Father appeared at this hearing he denied paternity of the juvenile and showed no desire to be a father to the juvenile. The Respondent Father has abided by the Domestic Violence Protective Order and did have the ability to contact the juvenile and/or pursue a child custody action outside of the confines of the Domestic Violence Protective Order.

¶ 22 Although Mother testified about having a DVPO entered in May of 2020, roughly ten months after separating from Father, and the Guardian ad Litem reports also noted the existence of a DVPO, the DVPO is not in the record and was not admitted into evidence before the trial court.[5] There was no evidence and no testimony regarding what happened at the hearing in the domestic violence proceeding other than Mother's testimony that she "presented the hospital records" and that Father was present at the hearing during which, according to Mother, "he den[ied] [Fiona] was his child[,]" which would have been some seven months before DNA testing confirmed Father's paternity. Evidence from both Mother and the Guardian ad Litem supports the portion of the finding that Father had abided by the DVPO. But beyond the existence of a DVPO obtained in May 2020 and Father's compliance with the DVPO, Finding of Fact 11 is not supported by the evidence

[5] This is despite Mother's counsel stating "I do have a copy of it" and the Guardian ad Litem Report referencing a "Domestic Violence Order of Protection Consent Order . . . Docket No.: 20 CVD 520259." Mother's counsel represented to the trial court that both parties were pro se at the hearing and that the DVPO was not a consent order.

presented at the trial of this case.

¶ 23 In addition, the evidence which is in our record indicates the events upon which the DVPO was entered occurred during Mother's pregnancy, so these events would have little bearing upon a finding of neglect of Fiona nearly two years later, particularly since there was no evidence of any domestic violence by Father after the child's birth and he had complied with the DVPO. There is also evidence in our record regarding Father's "desire to be a father to the juvenile" in the Guardian ad Litem's first report – done before the DNA test to determine paternity – which noted Father "told this GAL that if he is confirmed as the father, he wants to be in his daughter's life and wants to have an active role in helping to raise [Fiona]." The Guardian ad Litem reported in his second report that the reason Father had not had any contact with Fiona was "due to a restraining order placed against him[.]"

¶ 24 Father next challenges Findings of Fact 12 and 13:

> 12. Respondent has not consistently exercised visitation with the juvenile since July 2019, and Respondent has not inquired about the well-being of the juvenile since July 2019 other than a vague inference about the juvenile when contacting the Petitioner after the filing of this action.
>
> 13. Respondent has made no effort to establish a relationship with the juvenile and his interest is more in the Petitioner and her life.

¶ 25 The record supports these findings to the extent that Father did not consistently exercise visitation with the child or attempt to contact her since July

2019 when Mother left with Fiona and did not inquire about her wellbeing except on one occasion prior to Mother filing for the DVPO. Beyond this, Findings 12 and 13 are not supported by the record. Mother's own testimony indicated she fled from the home she shared with Father in July 2019 and that he entered a residential treatment program thereafter for almost a year. Mother testified her understanding was that Father was unable to contact her during his residential treatment; she testified she immediately sought the DVPO upon seeing his Facebook page in April 2020 because he may then have been able to contact her and she wanted to prevent this. Based again upon Mother's own testimony, the DVPO entirely prohibited Father from contacting her or Fiona in any way, including through a third party, and the DVPO also addressed custody of Fiona; it is apparent from Mother's testimony the custodial provisions of the DVPO did not include any visitation for Father or any means for him to arrange visitation.[6]

¶ 26 Next, Father challenges Finding of Fact 14, which states Father "lacks stable, safe, and appropriate housing for the juvenile." Mother testified she believed Father

[6] We are well aware the actual DVPO may not contain these exact provisions, but the DVPO is not in our record and the only information in the record regarding the terms of the DVPO was Mother's testimony. And we appreciate that Father technically had the legal right to attempt to establish a relationship with Fiona by filing a motion for modification of any custodial provisions in the DVPO or to file an independent action seeking custodial rights under Chapter 50, but based upon the evidence presented in this case, both Mother and Father believed the DVPO conclusively addressed Father's rights, including custodial rights, and barred him from communicating with Mother in *any* manner.

had been "couch surfing" at the time she filed the petition to terminate his parental rights, well over a year before the hearing, and stated during the hearing that she did not know whether Father had a residence at that time. Neither Guardian ad Litem report refers to Father's housing situation beyond the point of 6 October 2020 when he was living in the inpatient facility,[7] and the most recent Guardian ad Litem Report filed prior to the hearing makes no reference to Father's living situation whatsoever. Moreover, the Guardian ad Litem testified during the second phase of the termination hearing he did not have any information on whether Father had stable housing. Finding of Fact 14 is not supported by the evidence.

¶ 27 Father next challenges Finding of Fact 16. Finding of Fact 16 found that Father "is not providing the juvenile with financial support and is not otherwise providing the juvenile with any of her basic physical needs." This finding is supported in that Mother testified at the 17 August 2021 termination hearing that Father had not provided any financial support to Fiona.

¶ 28 Father next challenges Finding of Fact 17, wherein the trial court found:

> 17. Petitioner suffered domestic violence by Respondent Father throughout her pregnancy and as a result of this

[7] It is also worth noting the Guardian ad Litem report states Father "reports he has an extensive family support system which includes five siblings and numerous nieces and nephews along with three other children of his own." In the first report, the GAL did not recommend termination of Father's parental rights. In the second report, the GAL changed his recommendation based only upon the fact that Father's paternity had been established by the DNA testing, not because of any negative change in Father's circumstances.

> violence the juvenile was born premature. Further, Petitioner suspects that after the juvenile was born Respondent Father did drive under the influence with the juvenile in the vehicle and put the juvenile in harms way.

¶ 29 Specifically, Father argues Mother only testified to a single domestic violence incident and that the other incidents referred to "were not physical." Mother did testify to a particular event when Father "punched me in the face and then tackled me on the couch[,]" as well as "several" other moments throughout her pregnancy during which she testified Father had "swung at me a couple of times[.]" Moreover, as Father notes, the only evidence in the record supporting the trial court's finding that the alleged violence resulted in Fiona's premature birth was Mother's opinion that it "[a]bsolutely" caused her to go into early labor. Absent any medical records or expert testimony to that effect, we hold this does not amount to clear, cogent, and convincing evidence supporting the trial court's finding that "as a result of this violence the juvenile was born premature."[8] And even if the domestic violence caused Fiona's premature birth, this fact does not address the possibility of a repetition of neglect at the time of the hearing. The remaining portion of Finding 17 Father challenges accurately describes Mother's belief that he drove while intoxicated with

[8] According to the GAL's first report, Mother's "sober date" for alcohol was 1 May 2017 and for marijuana was 19 April 2019, and Fiona tested positive for marijuana upon her birth. This evidence would indicate Mother was continuing to abuse marijuana during her pregnancy, but again, there was no expert or medical evidence addressing any potential cause of Fiona's premature birth.

Fiona in the car, although it is not a finding that Father actually drove while intoxicated with Fiona in the car. *See Long v. Long*, 160 N.C. App. 664, 668, 588 S.E.2d 1, 3 (2003) ("This Court has found that findings that merely recapitulate the testimony or recite what witnesses have said do not meet the standard set by [Rule 52(a)(1)]."). In other words, this is a finding about Mother's *belief* about Father's actions, but not a finding that Father actually drove while intoxicated with Fiona in the car. To that extent, it is therefore supported by the evidence. And again, even if Father did actually drive with Fiona in the car as Mother believed, this single event about two years prior to the termination hearing does not indicate a probability of repetition of neglect.

¶ 30 Father also challenges Finding of Fact 18, finding Mother "did produce evidence of Respondent Father's criminal record which includes two DWI convictions within a 12 month period which resulted in him being a Level 1 DWI offender." Mother did introduce evidence tending to show Father has a criminal record and that such record includes two DWI convictions. The record thus contains evidence to support this finding. However, this evidence of Father's criminal record, including convictions up to nine years prior to the child's birth, has no particular connection to neglect during any relevant time.

¶ 31 Finally, Father challenges Finding of Fact 19 in which the trial court found "Respondent's longstanding lifestyle and illicit drug use and history of domestic

violence has created an environment that was and remains injurious to the juvenile's welfare." While the record contains evidence that would tend to support the trial court's determination that Father had a "longstanding lifestyle and illicit drug use and history of domestic violence," the remaining portion of this finding is a conclusion of law. And we also note that this finding of a "longstanding lifestyle" was based only upon events long before the trial, as there were no findings of fact addressing Father's "lifestyle" during the six months preceding the filing of the petition or at the time of the trial.

¶ 32 We now consider whether the facts found by the trial court which are supported by the record support the trial court's conclusions of law regarding neglect and a likelihood of future neglect. As explained above, "[t]ermination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of a likelihood of future neglect by the parent." *In re Z.G.J.*, ¶ 25 (citation omitted). Upon considering the challenged findings above, the remaining unchallenged findings, and those supported portions of the findings, we hold the trial court erred in concluding grounds existed to terminate Father's parental rights pursuant to N.C. Gen. Stat. §7B-1111(a)(1). The record before us does not support the requisite showing of a likelihood of future neglect by Father given his separation from Fiona prior to the termination hearing.

¶ 33 The unchallenged and supported portions of the trial court's findings establish merely that (1) Father had not provided financial support to Fiona by the time of the termination hearing; (2) Father has a history of substance abuse; (3) Father has a criminal record and has on at least one occasion committed violence against Mother; and (4) Father had abided by the terms of the DVPO by not contacting Mother or Fiona during the applicable period. The findings concerning a previous lack of financial support by Father have no bearing on the likelihood of future neglect, particularly in light of his enrollment in in-patient treatment programs as well as the trial court's finding that Father is now employed. In addition, Mother did not seek to establish Father's child support obligation until after she filed the petition for termination of parental rights. Based upon Mother's own testimony, Father was not employed and was enrolled in a residential treatment program during much of the time after they separated. Findings of Fact 11 and 12 are irrelevant to the determination of future neglect for similar reasons, and also Father was subject to a protective order and his paternity was not confirmed until December 2020. Moreover, Finding of Fact 17 recounts just two incidents, the first of which occurred prior to Fiona's birth and the other in mid-July of 2019, nearly a year before Mother filed the instant 25 June 2020 petition. Findings of Fact 18 and 19 likewise refer only to Father's "history" and past criminal record, much of which occurred years prior to Fiona's birth.

¶ 34 Because these findings relate merely to Father's history, they do not support the requisite finding of a likelihood of repetition of neglect. *See In re Young,* 346 N.C. at 250, 485 S.E.2d at 616 ("While the evidence shows that the cleanliness of respondent's household was questionable prior to the removal of her child . . . , this was nine months prior to the filing of the petition to terminate respondent's parental rights and over a year before the termination proceeding."). The only evidence contained in the record tending to support a probability of future neglect was Mother's testimony that she "would assume so" when asked if she had any reason to know whether Father was still engaging in substance abuse. We do not consider Mother's speculation on this point clear, cogent, and convincing evidence to support the trial court's finding that Father's neglect will likely continue in the future. To the contrary, both Guardian ad Litem reports state explicitly that Father "has been sober since July, 2020," "has been involved in the Caring Services residential drug and alcohol rehab program since August 10, 2020," and "attends AA meetings each morning at 7:30 AM before work." The Guardian ad Litem's reports show Father is sober, working, and wants to be a father to Fiona.

¶ 35 In sum, because Father was separated from Fiona in July 2019, the evidence must support a showing of a likelihood of future neglect. *In re Z.G.J.*, ¶ 25. Father's absence from the termination hearing and his trial counsel's inability to make contact with him do not eliminate Mother's burden of proof to establish probability of

repetition of neglect. Because Mother did not present clear, cogent, and convincing evidence as explained to support the trial court's finding that "it is foreseeable that Respondent's neglect of the juvenile will continue in the future[,]" the trial court erred in terminating Father's parental rights on the ground of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

¶ 36 Accordingly, we now turn to whether the trial court's conclusion that grounds existed to terminate Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(7) (abandonment) was supported by the evidence.

2. Abandonment

¶ 37 Father next challenges the findings and sufficiency of the evidence to support the trial court's conclusion Father abandoned Fiona pursuant to Subsection 7B-1111(a)(7). Specifically, Father challenges Findings of Fact 21 and 23 as well as its Conclusions of Law 20, 24, 25, and 26 in arguing the trial court erred in concluding Mother had made the requisite showing of willfulness for termination of his parental rights based on abandonment.[9]

¶ 38 N.C. Gen. Stat. § 7B-1111(a)(7) allows a court to terminate an individual's parental rights upon a finding that "[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or

[9] Findings 20, 24, 25, and 26 are labeled as findings of fact in the trial court's order but are in reality conclusions of law.

motion . . . ." N.C. Gen. Stat. § 7B-1111(a)(7) (2021). Chapter 7B does not define "abandoned," however North Carolina caselaw has long emphasized that the term "willfully" "encompasses more than an intention to do a thing; there must also be purpose and deliberation." *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986). "Abandonment implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child." *Id.*

¶ 39 Here, for the same reasoning discussed above, Findings of Fact 21 and 23 are not supported by clear, cogent, and convincing evidence inasmuch as they pertain to the trial court's finding of abandonment. Findings of Fact 21 and 23 provide:

> 21. Petitioner has taken no efforts to block or hinder Respondent's attempt for visitation or contact with the juvenile.
>
> . . .
>
> 23. The Court finds clear, cogent, and convincing evidence that Respondent neglected the juvenile in the past by his abandonment of his parental duties, failure to inquire about welfare of juvenile, failure to provide cards, gifts for the juvenile, and failure to pay adequate support and it is foreseeable that Respondent's neglect of the juvenile will continue in the future.

¶ 40 Contrary to these findings, Mother testified at the hearing she removed Fiona from Father two months after Fiona's birth. Based upon Mother's own testimony, she believed Father could not thereafter contact her when he was at TROSA, and she

blocked all possibility of contact, even through a third party, once she learned he got out of treatment by obtaining the DVPO. Mother plainly testified that the 13 May 2020 domestic violence protective order entirely prohibited Father from contacting her in any manner, and Father informed the Guardian Ad Litem his understanding was the same. The entrance of a protective order, Father's intensive inpatient treatment during the months leading up to Mother's filing of the petition, and the reasoning pertaining to the findings discussed above cannot support a conclusion that Father willfully abandoned the child during the six months immediately preceding the filing of the petition. Accordingly, the trial court erred in terminating Father's parental rights pursuant to N.C. Gen. Stat. §7B-1111(a)(7).

¶ 41 Because we reverse the trial court's order of termination, we need not reach Father's remaining arguments.

III. Conclusion

¶ 42 For the foregoing reasons, we reverse the trial court's order terminating Father's parental rights.

REVERSED.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).