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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-602

Filed 21 March 2023

Henderson County, Nos. 19 JT 116-17

IN THE MATTER OF: E.G.R, Jr. & K.I.R.

Appeal by Respondents from judgment entered 30 March 2022 by Judge Mack Brittain in Henderson County District Court. Heard in the Court of Appeals 22 February 2023.

Assistant County Attorney Susan F. Davis, for Henderson County Department of Social Services, Petitioner-Appellee.

GAL Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem.

Jason R. Page, for Respondent-Mother.

Kimberly Connor Benton, for Respondent-Father.

WOOD, Judge.

Respondents Father and Mother (collectively, “Parents”) appeal the order

terminating their parental rights to their children, Mary and John.¹ After careful review of the record and applicable law, we affirm the trial court's order.

I. Factual and Procedural Background

Mary was born in November of 2016. In 2018, Mary was diagnosed with failure to thrive. After Mary's diagnosis, Buncombe County Department of Social Services ("DSS") became involved with the family, and the case was sent to in-home services from August 2018 until May 2018. Buncombe County DSS worked with Parents but alleged that Parents were not following through with Mary's medical appointments or remedial care. In addition, DSS became concerned about a lack of adequate housing for Mary, Parents' minimal income, the occurrence of domestic violence in the home, and that Parents suffered from mental health as well as substance abuse issues.

On 14 June 2019, Buncombe County DSS transferred the case to Henderson County DSS where the family had relocated. As part of the in-home services being offered, Parents were required to complete mental health assessments and follow any recommendations of the assessments. Additionally, Parents were to engage in educational courses focused on parenting a child with special needs and developmental delays. On 8 July 2019, Mary underwent dental surgery due to severe dental decay, at which time the medical provider required a follow-up visit with Mary

¹ We refer to the juveniles by the parties' stipulated pseudonyms.

every two weeks following the surgery. Shortly after, on 15 July 2019, Mary was hospitalized due to not eating and was later diagnosed with failure to thrive a second time. Mother did not make follow-up medical appointments or dental appointments for Mary despite being told to do so by Mary's medical providers. Mary was removed from Parents' home and placed in a temporary safety kinship placement with her maternal aunt on 5 September 2019.

John was born in October 2019 and was diagnosed with Atrial Septal Defect ("ASD"), a birth defect of the heart in which there is a hole in the upper chambers and a critical congenital heart defect. Shortly after, on 18 October 2019, Henderson County DSS filed petitions alleging John and Mary were neglected in that Parents were not able to properly care for their special medical needs, including not following through with medical appointments and orders, and that the children lacked a safe and appropriate environment.

In the petition, DSS alleged that the hospital staff was not comfortable discharging John to Parents because there were concerns that Parents would not follow through with medical appointments and with proper medical care. Fueling these concerns were observations that while John was in the hospital, Parents turned off their child's medical monitor, advised other parents to "stick a pacifier in Jack Daniels when the babies start to teeth," and Mother stated that her child does not need to see a cardiologist although he had a critical congenital heart defect.

DSS also alleged that Parents had not supplied Mary with Ensure as medically

recommended in order to help her gain weight since 25 June 2019, Mary had been out of her reflux medication since 29 July 2019, and from 2 August to 5 August 2019, Mary went without the powder formula (EleCare) she needed to help her gain weight after her second failure to thrive diagnosis. The petition alleged that Parents continued to not follow through with recommendations from Buncombe County DSS to address the needs of the family or of the children in the home. The petition further alleged that the “[l]ack of progress on the in-home plan, continued statements that the juveniles have no medical issues, and a failure to assure medical care for the juveniles continue with the family and can cause a significant likelihood of injury or medical threat to the juveniles.” Upon the filing of the petition, John was placed in the custody of DSS and placed with a foster family. Mary remained placed with her maternal aunt.

On 11 June 2020, DSS and Parents entered into a consent adjudication order finding the children to be neglected. Contained within the consent adjudication order were findings that Parents had not obtained mental health assessments or engaged in parenting education for children with developmental delays and special needs; Parents were not ensuring Mary was eating properly or that she attended medical and dental appointments, thus causing her to be diagnosed with failure to thrive; Parents failed to understand the risks associated with John’s heart defect and did not follow his doctor’s orders; and Parents were not able to properly supervise the children and lacked a safe and appropriate residence. The trial court accepted the

stipulations and adjudicated the children neglected juveniles and granted custody of the children to Henderson County DSS.

In the disposition order filed 11 August 2020, the trial court found issues related to substance abuse and mental health, parenting knowledge and ability, the children's welfare, and life instability for both Parents. Incorporating DSS's Disposition Reports by reference, the trial court found that Mother completed a comprehensive clinical assessment on 10 January 2020 and was diagnosed with "Major depressive Disorder, moderate, recurrent episode, with anxious distress" and was "recommended for outpatient therapy through the parenting group." To achieve reunification, the trial court ordered Mother to: obtain a Comprehensive Clinical Assessment and follow all recommendations; submit to two random drug screens in the first month, and if failed, "the random screens shall continue"; attend individual counseling and medical appointments to address her psychosomatic and fainting issues and follow all recommendations; complete a parenting program; attend all the children's appointments and comply with all recommendations made; attend all visitations with her children; exhibit and demonstrate that she can feed, comfort, and meet the basic needs of her children during visitations; obtain stable income and pay child support through the Child Support Enforcement Agency; obtain safe and appropriate housing; maintain contact with the social worker and provide the social worker with her physical address; and, not engage in any criminal activity. Father's requirements were nearly identical.

In the 23 December 2020 review order, the trial court made several findings as to Mother's progress on her case plan. Mother completed a Grandis Evaluation on 22 January 2020 and was diagnosed with schizophrenia. The Grandis Evaluation specifically stated, "[M]other demonstrates significant depression and anxiety It seems that she has some significant mental [health] issues that severely impact her insight and judgement, which can impact [her] ability to care for her children and keep them safe." The Evaluation further recommended that she "engage in psychiatric evaluation and regular medication management appointments for close monitoring of her psychotropic medication."

Additionally, the trial court found that Mother was inconsistent with taking her medications; engaged with individual therapy, but with a therapist who did not specialize in domestic violence relationships; had been unsuccessful in obtaining employment after first being released from her job at Cook Out in September 2020 and, in October 2020, was hired and fired from Ingles after discovery of her criminal history; refused to submit to an initial drug screen until 23 September 2020, where she tested positive for marijuana; attended weekly virtual parenting classes; participated in the children's medical appointments by phone due to COVID-19 restrictions; was \$150.00 in arrears on child support; had attended some scheduled visits; demonstrated the ability to comfort the children during visits, but there were "concerns in regards to the mother meeting the basic needs of the juvenile[s] during visits, especially in regards to the special needs" of the children; lived with Father in

a motel that Mother disclosed is not an appropriate environment for the children; and, maintained contact with the social worker and signed authorizations for the release of medical information.

The trial court found Father submitted to a Grandis Evaluation on 19 March 2020. The Evaluation recommended that Father “would benefit from receiving comprehensive mental health services aimed at individuals with intellectual deficits.” Father was recommended to engage in individual therapy and to undergo a comprehensive neurological evaluation, but he had not followed up with additional appointments. Although Father was requested to submit to a drug screen starting on 21 July 2020, he did not submit to a drug screen until 23 September 2020, at which point he tested positive for marijuana. The court found that Father was employed and participating in virtual parenting classes, although he missed three meetings; attended three out of the nineteen visitations allowed with his children; was \$138.46 in child support arrears; was unemployed after working at Cook Out; and during visitations with Mary and John, deferred to Mother to take care of the children. For John, the trial court set a primary plan of termination of parental rights and adoption and a secondary plan of reunification with Parents. For Mary, the plans were reversed, with reunification with Parents as the primary plan and termination of parental rights and adoption as the secondary plan.

On 25 January 2021, DSS filed a motion to terminate Parents’ parental rights to John. On 4 May 2021, DSS filed a voluntary dismissal of the motion because

Parents were unable to attend John's therapy appointments due to the COVID-19 pandemic and DSS believed it was in the best interest of the children for Mary and John to have the same plan: a primary plan of reunification with Parents, and a secondary plan of adoption.

In a review order filed 14 June 2021, the trial court found that Parents had not made significant progress toward reunification since the previous hearing. Parents failed to submit samples for numerous drug screens, missed numerous appointments for the children, and fell further in arrears on child support. Parents also continued to have difficulty in getting the children to eat and were also concerned about the stability of their motel residence. The trial court set a primary plan of reunification for both children with Parents and a secondary plan of termination of parental rights and adoption.

In a 9 December 2021 review order, the trial court found that the compliance and actions of Parents were not sufficient to remedy the conditions which led to the children's removal. Parents continued to refuse to submit samples for several drug screens, missed appointments for the children, and remained in arrears on child support. The court found that Mother had not participated in peer support group and her case was being closed due to her lack of progress. Mother also faced being discharged from Family Preservation Services because of her lack of progress. Additionally, Mother still suffered from fainting spells and failed to fill a prescription for medication intended to decrease those episodes. The trial court found that

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Parents continued to bring foods to their children that are choking hazards; continued to have difficulty in getting the children to eat, to the point where Mother became frustrated, impatient, and made eating a negative experience; and were themselves concerned about the stability and safety of their motel residence. The court found that Parents were provided with the application for the local Housing Authority three times, but they failed to fill it out. DSS also provided Parents with other housing options that they did not pursue, and it offered to help with a security deposit or provide financial assistance so that Parents could have stable housing. The court found that while Parents had the opportunity to engage with some of the children's specialized needs services, such as occupational, physical, speech, feeding, and play therapy, Parents failed to consistently implement the skills being demonstrated. The trial court set a primary plan of adoption and a secondary plan of reunification with Parents. On 14 December 2021, DSS filed petitions to terminate Parents' parental rights, based upon the grounds of neglect and willful failure to make reasonable progress.

The termination hearing took place on 3 March 2022. At the adjudication portion of the hearing, Ms. Hudgens, the social worker, testified that as of the time of the termination hearing, there were still issues with Parents' housing and lack of participation in the children's medical care. Ms. Hudgens testified that both Mary and John have significant special needs, explaining that John has global developmental delays, does not speak at two and a half years of age, has issues with

swallowing and his sucking reflex, has poor motor skills, and his right foot sticks out almost perpendicular to his left foot. Ms. Hudgens explained that Mary also has significant global developmental delays, has made progress in her speech, but does not possess the amount of language expected for a five-year-old, has eating issues, and has finally learned from feeding therapy how to chew food in the last four months.

Ms. Hudgens testified about Parents' progress in their case plans. Mother submitted to a level of care assessment in November 2019, but did not comply with the recommended services of individual therapy and medication management. Mother completed a Comprehensive Clinical Evaluation and was recommended for outpatient therapy and to participate in a parenting and peer support group. Ms. Hudgens testified that Mother completed a Grandis Evaluation and was diagnosed with schizophrenia, "other specified depressive disorder and other specified trauma and stressor related disorder." During the termination hearing, Ms. Hudgens read aloud the following from the Grandis Evaluation: "[Mother] seems to lack the capacity to think logically and coherently being for the most part not as capable as most people to coming to reasonable conclusions about relationships between events and of maintaining a connective flow of associations in which ideas follow each other in a comprehensible manner." The Grandis Evaluation recommended Mother for medication management, individual therapy, vocational training, and parenting classes.

Ms. Hudgens reported that Mother did not complete vocational training,

although she did obtain employment and engaged in parenting and individual therapy until October 2021 when she was discharged due to no further growth or progress. She engaged in peer support through an emotional management support group and had inconsistently engaged with medication management from October 2020 to October 2021, when she stopped taking and refilling her medications. As a result, Mother continued to suffer from her fainting condition. Mother was inconsistent in submitting to drug screens and was unable to produce a negative test result on two consecutive screens. Ms. Hudgens testified that during visitations, she observed Mother become frustrated by her children's behaviors and respond by sitting "on the floor, arms crossed, pouting" and not engaging with them.

Ms. Hudgens testified that Father had completed a level care assessment and was recommended to complete 90 hours of substance abuse intensive outpatient therapy and dialectical behavioral therapy in November 2019. In March 2020, Father completed a Grandis Evaluation and was recommended to complete cognitive behavioral therapy and to get a neurological evaluation. Father declined all of the recommended services. Similar to Mother, Father also was inconsistent in submitting to his drug screens as he frequently refused to submit samples and was unable to test negative on two consecutive drug screens. Ms. Hudgens further explained that Father was discharged from a parenting support group based on his inconsistent attendance and failure to make progress. Father also struggled to accommodate the children's special eating needs, including giving the children foods

that are considered choking hazards and failing to encourage the children to learn how to feed themselves using eating therapy techniques. Father did not consistently utilize the techniques with which John has been taught to communicate, including sign language. Parents also did not consistently attend the children's medical and therapy appointments, where they could learn what their children's needs were and how to address them.

Ms. Hudgens testified that because Parents had acknowledged that their current residence in a motel was inappropriate for the children during every meeting over the past two years, DSS had addressed the housing issue by providing Parents applications for housing assistance, alerting them about available rental properties, and providing information about housing discrimination because of potential issues with Father's criminal history. At the hearing, the children's occupational therapist testified that Parents did not follow the feeding methods that she attempted to teach them to address the children's special needs and did not consistently attempt to respond to the sign language signals that therapists taught the children so that they could communicate their needs.

The trial court found grounds to terminate both Father's and Mother's parental rights to Mary and John based on neglect and willful failure to make reasonable progress. At disposition, the trial court concluded that the termination of Parents' parental rights was in the children's best interests. Both Parents filed a notice of appeal on 28 April 2022.

II. Analysis

Termination of parental rights proceedings are a two-step process: an adjudicatory stage and a disposition stage. N.C. Gen. Stat. §§ 7B-1109, 7B-1110; *In re A.U.D.*, 373 N.C. 3, 5, 832 S.E.2d 698, 700 (2019). During the adjudication stage, the petitioner must prove by “clear, cogent, and convincing evidence” one or more grounds for termination exist under N.C. Gen. Stat. § 7B-1111(a). N.C. Gen. Stat. § 7B-1109(e)-(f); *In re A.U.D.*, 373 N.C. at 5, 832 S.E.2d at 700. If the petitioner proves at least one ground exists to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a), “the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights.” N.C. Gen. Stat. § 7B-1110; *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citation omitted).

This Court reviews an adjudication order finding grounds exist to terminate parental rights to determine “whether the trial court’s findings of fact are supported by clear, cogent, and convincing evidence and whether those findings support the trial court’s conclusions of law.” *In re A.B.C.*, 374 N.C. 752, 760, 844 S.E.2d 902, 908 (2020) (citation omitted). “[A]ppellate courts are bound by the trial courts’ findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.” *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984) (internal citations omitted). Unchallenged findings are deemed binding on appeal. *In re K.N.K.*, 374 N.C. 50, 53, 839 S.E.2d 735, 738 (2020)

(citation omitted). “On appeal, this Court may not reweigh the evidence or assess credibility.” *In re K.G.W.*, 250 N.C. App. 62, 67, 791 S.E.2d 540, 543 (2016) (quoting *Kelly v. Duke Univ.*, 190 N.C. App. 733, 738-39, 661 S.E.2d 745, 748 (2008)).

This court reviews only those challenged “findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58-59 (2019) (citation omitted). A finding of only one ground under N.C. Gen. Stat. § 7B-1111(a) “is necessary to support a termination of parental rights.” *In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019). The court’s conclusions of law are subject to *de novo* review on appeal. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation omitted)

A court’s determination of a juvenile’s best interest at the dispositional phase is reviewed solely for abuse of discretion. *In re Z.L.W.*, 372 N.C. 432, 435, 831 S.E.2d 62, 64 (2019) (citations omitted). An abuse of discretion occurs “where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (citation omitted).

A. Termination of Parental Rights based upon Willful Failure to Make Reasonable Progress.

The trial court terminated Mother’s and Father’s parental rights based upon the ground that Parents willfully left Mary and John 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 children pursuant to N.C. Gen. Stat. §7B-1111(a)(2).

A finding that a parent acted willfully for purposes of section 7B-1111(a)(2) does not require a showing of fault by the parent. “A [parent’s] prolonged inability to improve [his or her] situation, despite some efforts in that direction, will support a finding of willfulness regardless of [his or her] good intentions, and will support a finding of lack of progress sufficient to warrant termination of parental rights.” *In re B.J.H.*, 378 N.C. 524, 530, 862 S.E.2d 784, 791 (2021) (citation omitted). A “finding of willfulness is not precluded even if the [parent] has made some efforts to regain custody of the children.” *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995) (citation omitted). In order for a parent to “avoid the termination of his or her parental rights under § 7B-1111(a)(2)” the parent is required to “make reasonable progress under the circumstances towards correcting those conditions that led to the child being placed in [DSS] custody, irrespective of whoever’s fault it was that the child was placed in [DSS] custody in the first place.” *In re A.W.*, 237 N.C. App. 209, 217, 765 S.E.2d 111, 115-16 (2014) (cleaned up).

A parent’s progress is evaluated “for the duration leading up to the hearing on the motion or petition to terminate parental rights.” *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006). Our Supreme Court has held “parental compliance with a judicially adopted case plan is *relevant* in determining whether grounds for

termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)” provided that “as long as a particular case plan provision addresses an issue that, directly or indirectly, contributed to causing the juvenile’s removal from the parental home, the extent to which a parent has reasonably complied with that case plan provision is, at minimum, relevant to the determination of whether that parent’s parental rights . . . are subject to termination for failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2).” *In re B.O.A.*, 372 N.C. 372, 384-85, 831 S.E.2d 305, 313-14 (2019) (emphasis added). Accordingly, we look at Mother’s and Father’s progress in correcting the conditions which resulted in Mary and John being placed in the custody of DSS. *In re A.W.*, 237 N.C. App. at 217, 765 S.E.2d at 115-16.

1. Mother’s Appeal.

a. Finding of Fact 83 and Mother’s Mental Health.

Mother argues that her failure to make reasonable progress to correct the conditions which led to the removal of her children was as a result of her mental health struggles, which she alleges the trial court minimized or ignored. Mother challenges the trial court’s determinations that: Parents were “unable” to make eating a positive experience; “[i]t has been a struggle for the parents to use signs on a consistent basis” such that Mother and Father missed a signal that John wanted water; and that Parents were “not successful in learning” what the speech language pathologist assistant was trying to teach them. As to these challenged findings, Mother argues that they do not suggest willfulness, and seemingly suggests that it

was her mental health that contributed to these issues. We disagree.

In consideration of a parent's mental health, our Supreme Court explained that, just as "incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision, behavior emanating from a parent's mental health conditions may supply grounds for terminating parental rights." *In re A.L.L.*, 376 N.C. 99, 112, 852 S.E.2d 1, 10-11 (2020) (cleaned up).

Here, Mother's mental health was considered throughout the life of the case as services were offered to Mother in order to address her psychological diagnoses of schizophrenia, depression, and anxiety disorder. As a part of Mother's case plan for reunification, Mother was required to obtain a Comprehensive Clinical Assessment from a certified provider acceptable to Henderson County DSS and provide the assessor with truthful and accurate information; follow and complete all of the recommendations from the assessment; and "attend individual counseling and medical appointments to address her psychosomatic and/or other fainting issues/spells, follow all recommendations from the counselor and physician including any medication prescription(s) recommended, and continue said treatment until released by both the counselor and physician." In consideration of Mother's mental health, additional services were provided to her such as parenting classes and having the children's therapists attend visitations so as to "educate the parents to the needs of each juvenile and how to address the juveniles' special needs."

The record evidence indicates that the trial court did not minimize the status

of Mother's mental health, but instead, made several services available to her to meet her needs and to teach her how to be a better parent so as to meet the needs of her children. However, it was Mother who failed to engage in or take advantage of these services offered to address her mental health. For instance, Mother obtained a level of care assessment on 18 November 2019, where it was recommended that she receive individual therapy and medication management, but she was not compliant with those services that were offered and was later discharged from the program. When Mother completed a Comprehensive Clinical Assessment and Grandis Evaluation, it was recommended that she receive outpatient therapy, participate in a parenting and peer support group, medication management, individual therapy, vocational training and parenting classes. The record shows that Mother initially participated but then exhibited inconsistent and minimal participation in engaging in these mental health and parenting services: she did not complete vocational training; she participated in parenting and individual therapy until October 2021 when she was discharged due to no further growth or progress; she inconsistently engaged with medication management from October 2020 to October 2021, but stopped taking and refilling her medications.

While Mother argues that her challenged findings do not suggest willfulness on her part, the record evidence further shows that Mother's assessments did not indicate that her mental health would cause the deficiencies of her progress in the reunification plan. The trial court found, as unchallenged findings of fact, that

Mother “has an average IQ[,]”; “completed high school and went to some college”; “was able to secure employment” and works approximately 30 hours a week; is current with her child support obligation; and Mother was able to demonstrate, with the instruction of an occupational therapist, the correct hand-over-hand technique in feeding her children. Thus, the competent evidence in the record suggests that the court considered Mother’s progress on her reunification plan in light of her mental health.

Mother also alleges that the evidence does not support Finding of Fact 83 which states,

HCDSS has made extraordinary efforts to help the parents address the special needs of the juveniles by bringing the therapist[s] to the visits to educate the parents to the needs of each juvenile and how to address the juveniles’ special needs. Despite these efforts, the parents failed to demonstrate the ability to meet the needs of these two juveniles.

Mother argues that “nothing in the record reflects that DSS or the court inquired into the specific type of services for the parents, or programs such as the N.C. Innovations Waiver, which could provide help for the children” and there is “no reference to services available through local management entities, which are responsible for the management and oversight of the public system of mental health at the community level, including care coordination and financial management.” We disagree.

We have previously determined that “[a]ny order placing or continuing the placement of a child in the custody of the department of social services must include

findings that the department of social services ‘has made reasonable efforts to prevent or eliminate the need for placement of the juvenile.’ ” *In re C.M.S.*, 184 N.C. App. 488, 493, 646 S.E.2d 592, 595 (2007) (citation omitted). In this case, the record evidence demonstrates that DSS made reasonable efforts in working with Parents in order to eliminate the need for the placement of their children: throughout the life of the case, DSS referred Parents for Medicaid; made referrals for mental health assessments and treatment for Parents; paid for both Parents to undergo Grandis Psychological Evaluations; referred Mother to medical appointments and medication management; attempted to assist Parents with housing; arranged visitation with the children; and facilitated and participated in Child and Family Team Meetings with Parents. The evidence also reflects that DSS went to great efforts to help Parents understand and address their children’s special needs by having several therapists, including the children’s occupational therapist and speech language pathologist, attend visitation sessions, so that Parents could understand how to appropriately and safely care for their children. Therefore, we find that there is competent evidence to support this finding and Mother’s argument is overruled.

b. Mother’s Poverty affecting deficiencies in her progress.

Next, Mother argues that “the deficiencies in [her] progress that are not a direct result of the failure to consider her mental illness, are due to her poverty.” According to Mother, because parental rights may not be terminated for the sole reason that the parents are unable to care for the children on account of their poverty

pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), “[i]f the issues resulting from [her] mental illness were ignored, poverty would be the sole remaining issue” and thus, this is impermissible. In support of her contention, Mother seems to suggest that DSS did not provide her and Father with appropriate financial assistance in relation to housing, rent, food, and medical bills. We disagree.

The record reflects that DSS referred Mother and Father to the Hendersonville Housing Authority and Western Carolina Community Action in order to help Parents find housing opportunities. DSS further provided Mother and Father with a list of low-income rentals, and the social worker would contact Parents when she saw a private rental. The trial court also found that DSS “was willing to pay a portion of the [rental] deposit if the parents found an appropriate home.” Additionally, the evidence shows that at the time of the termination hearing both Mother and Father were employed at Pizza Hut; were current with their child support obligations; were able to maintain the same residence at a motel, for over a year, paying \$1,200.00 a month in rent; bought a new car; and Mother no longer qualified for using the Free Clinic Services for her medication because she had obtained full-time employment. Based upon the record evidence, Mother’s deficiencies in her progress were not solely based upon poverty.

2. Father’s Appeal

c. Findings of Fact 25-31.

First, Father challenges findings of fact 25-31 arguing that they are

unsupported from the evidence presented during the termination of parental rights trial and instead, appear to be taken from the June 2020 adjudication of neglect order.

The contested findings are as follows:

25. In 2018, [Mary] was diagnosed with Failure to Thrive in Buncombe County.

26. On 14 June 2019, Buncombe County made a case decision and transferred this case to Henderson County for In-Home services. The parents were to complete mental health assessments and follow recommendations. The parents were to engage in education around parenting a child with developmental delays and special needs. The parents did not complete the requested services.

27. On 15 July 2019, [Mary] went to the hospital for not eating during the day. The mother did not address the failure to eat, or its cause, with the physician.

28. On 15 July 2019, the mother was requested to make a medical appointment for [Mary]; however, she did not follow through with doing this.

29. On 23 July 2019, [Mary] was diagnosed with Failure to Thrive for the second time.

30. On 28 August 2019, no follow-up visit with the physician had been scheduled regarding [Mary's] dental surgery that took place on 8 July 2019 where the medical provider stated a follow-up was required every two (2) weeks following the surgery.

31. Parents failed to follow doctor's orders when the Juvenile [John] was born. [John] was born with a hole in his heart. Parents failed to understand the risk involved with the child's diagnosed medical condition and had turned off the child's medical monitor in the hospital.

Father contends that the trial court "did not take judicial notice of the

adjudication order during the termination of parental rights trial, the adjudication order was not offered as an exhibit during this trial, and there was no testimony elicited from any witness to support these findings of fact.” Father argues that because the trial court did not take judicial notice of the adjudication order, these findings should be stricken from the termination order. While a “court may take judicial notice, whether requested or not[,]” in the present case, the record does not show that the trial court took judicial notice of the June 2020 adjudication order. N.C. Gen. Stat. § 8C-1, R. 201(c). Although we agree with Father that the trial court did not take judicial notice of the June 2020 adjudication order, there was some testimony offered at the termination hearing to support at least portions of the above-mentioned contested findings. Specifically, the trial court heard testimony from Ms. Hudgens that a reason for Mary’s adjudication as a neglected juvenile in June 2020 was due to her failure to thrive and that the trial court had found that Parents “were not addressing her failure to thrive.” Thus, there was evidence to support a portion of findings of fact 25 and 29; however, there was no evidence to support the specific dates of the diagnosis and a second diagnosis of failure to thrive.

As to finding of fact 26, the transfer of this case from Buncombe County to Henderson County for In-Home services was not specifically raised at the termination hearing. Additionally, the recommended services assigned to Parents on 14 June 2019 were not addressed at the termination hearing. Thus, this finding is not supported by competent evidence and is overruled. Regarding finding of fact 27, Ms.

Hudgens testified at the termination hearing that Mary was hospitalized on an unspecified date for not eating and for not gaining weight. No testimony was elicited to support the additional findings in finding of fact 27, and therefore, these portions are not supported by competent evidence and are overruled. For finding of fact 28, Ms. Hudgens testified that the June 2020 adjudication order was based in part on both Parents not following through with medical appointments for Mary, but there was no testimony offered to support the additional portions of this finding, therefore, they are not supported by competent evidence and are overruled. As to finding of fact 30, Ms. Stills, Mary's foster mother and maternal aunt, testified that Mary underwent dental surgery in July 2019 due to severe oral decay. However, competent evidence in the record does not support the additional findings; therefore, the remaining portions of this finding are overruled.

Concerning finding of fact 31, Ms. Hudgens testified that the June 2020 adjudication order found that John was born with a hole in his heart and that the parents failed to follow the doctor's orders for the child while at the hospital. However, there was no testimony or other evidence presented at the termination hearing that Parents failed to understand the risk surrounding John's diagnosed medical condition or that Parents had turned off John's medical monitor in the hospital; therefore, those portions of the trial court's findings are unsupported and are overruled.

d. Finding of Fact 33.

Similar to Father's first contention, he challenges the trial court's findings of fact 33(h)-(p) regarding the reunification requirements for Father because the finding appears to be taken from the July 2020 disposition order. Again, Father argues that the trial court "did not take judicial notice of the disposition order during the termination of parental rights trial, nor was it offered as an exhibit," such that there is "no competent evidence to establish these conditions were ever ordered in the disposition order." Father challenges the following sub-findings:

- h. Father shall ensure that the juveniles attend daycare/school in the absence of a valid medical excuse or in fulfillment of any required provision of this order if the juveniles are placed with the father.
- i. Father shall visit with the juveniles as allowed by the Court and demonstrate the ability to provide appropriate care and supervision for the juveniles.
- j. Father shall exhibit and demonstrate that he can feed, comfort, and meet the basic needs of juvenile during his visitation with each juvenile.
- k. Father shall obtain stable income that is sufficient to meet the family's basic needs (Income includes financial support from employment, public benefits such as Food Stamps, WIC, Medicaid, Word First, Social Security, Rent Assistance Programs, or Unemployment Benefits).
- l. Father shall obtain and maintain an appropriate and safe residence for the parent and the juveniles.
- m. Father shall maintain face-to-face contact with the social worker as requested, and such contact shall include but is not limited to Child and Family Team Meetings and Permanency Planning Meetings.
- n. Father shall provide the social worker with a physical

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residential address, a mailing address if different from the physical residential address, and a current and operational telephone number and shall update same upon any changes to any of the above listed items.

o. Father shall sign and keep current any and all releases of information necessary to allow the exchange of information between HCDSS and the provider(s).

p. Father shall not engage in criminal activity.

In making findings of fact, “the trial court may not rely solely on prior court orders and reports but must receive some oral testimony at the hearing and make an independent determination regarding the evidence presented.” *In re T.N.H.*, 372 N.C. 403, 410, 831 S.E.2d 54, 60 (2019) (citation omitted). Based upon the transcript of the termination hearing, we agree with Father that the trial court did not take judicial notice of the July 2020 disposition order and the order was never offered as an exhibit. We further agree that no evidence was presented at the hearing to establish that the conditions in finding of fact 33(h), (n), and (p) were ordered in the July 2020 disposition order. Accordingly, these sub-findings are not supported by competent evidence and are overruled.

However, upon review of the termination hearing transcript, the court received competent evidence to support the findings of the remaining conditions Father contests. Here, the trial court received testimony from the social worker who was able to provide testimony regarding Father’s case plan and his progress on the plan. During the termination hearing, the DSS attorney, on direct examination, questioned

Ms. Hudgens about each parent's progress on the reunification requirements as laid out in the July 2020 disposition order. In this line of questioning, Ms. Hudgens testified about Father's visitations with his children and that he has not implemented the skills that he has been taught in parenting classes and through working with his children's therapists, so as to not provide appropriate care.

Ms. Hudgens also testified that Father has not been able to demonstrate appropriate skills in feeding, comforting, or meeting the basic needs of Mary and John during his visitations; Father did not encourage John to walk or use his motor skills; Father does not utilize sign language to communicate with his son; and Father has given foods to Mary that are choking hazards and inadvertently rewards her for not eating. Ms. Hudgens addressed Father's employment as a means of obtaining income and noted that Parents still request financial assistance from DSS. Ms. Hudgens testified that for Parents to obtain an appropriate residence for their family, she provided Henderson Housing Authority and Western Carolina Community Action housing applications to them in addition to providing a list of low rental income residences. Ms. Hudgens testified that Father maintains communication with her through visits and at meetings and that Father "signed the necessary releases of information" pursuant to the reunification requirement in finding of fact(o). Accordingly, the remaining findings of fact in the subdivisions are supported by competent evidence.

e. Findings of Fact 60, 61, 83, 85.

Next, Father challenges a number of findings related to his progress to correct the conditions which led to the removal of his children and argues that they are “unsupported [by] the evidence presented during the termination of parental rights trial” and should be stricken from the termination order. Father points this Court to arguments he made in contesting the trial court’s finding grounds to terminate his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Father challenges a portion of finding of fact 60 which states, “[Father] does not follow the recommendations from the juveniles’ therapist on how to feed the juveniles or how to engage in their various therapies.” Additionally, Father challenges a portion of finding of fact 61, which states in relevant part, “the parents have not demonstrated that they can provide appropriate care for these juveniles.” Father also contests the last sentence of finding of fact 83: “Despite these efforts, the parents failed to demonstrate the ability to meet the needs of these two juveniles[.]” and the entirety of finding of fact 85: “The parents have failed to follow the recommendations of any person treating the juvenile[s] for their special needs.”

Father argues, “While it is conceded [Parents] did not always demonstrate skills learned from the children’s therapists, [Father] did display skills learned from the therapists while they were present, and the children’s physical therapist praised his behaviors; and he was otherwise appropriate with his children during their supervised visits.” We disagree.

Father’s arguments miss the point that inconsistency in taking care of and

addressing the basic needs of his children is not enough to constitute rectifying conditions that led to Mary's and John's removal from the home. As our Supreme Court has previously stated, a parent's "prolonged inability to improve [his] situation, despite some efforts in that direction, will support a finding of willfulness 'regardless of [his] good intentions,' and will support a finding of lack of progress . . . sufficient to warrant termination of parental rights under section 7B-1111(a)(2)." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

Here, the evidence supports the trial court's findings of fact that Father failed to make progress to address the basic issues surrounding his ability to care for his children safely and appropriately. The record evidence reflects that both children have special needs and require a variety of therapies to address their needs: Mary was a failure to thrive child and diagnosed with significant global developmental delays which affect her speech and eating abilities; John was initially born with a hole in his heart and also was diagnosed with significant global developmental delays, which affect his motor skills, walking, and ability to swallow.

The trial court heard from Ms. Hudgens and many of the children's therapists about Father's ability to implement appropriate methods to care for his special needs children. At the termination hearing, Ms. Hudgens testified that although Father engaged with the children more than Mother did during visitations, he refused to follow directions in allowing John to walk and develop his motor skills, to encourage John to use eating utensils himself, or use sign language to communicate with John.

Similarly, Ms. Hudgens testified that Father provided rewards to Mary before she began to eat, so that “she was being positively reinforced to not eat” which was the exact opposite of what she needed. Ms. Hudgens also testified at the termination hearing that “it is vital for [Mary’s and John’s] development for [Parents] to follow through” with what the children are taught in their therapies, but Father has not consistently attended the children’s medical and therapy appointments.

The testimony of Ms. Smith, the occupational therapy assistant who works with John, further indicated that Father did not follow the feeding methods, such as the hand over hand technique, that she attempted to teach him so John would learn how to feed himself. Instead, Father would feed him. Ms. Smith also testified that despite Parents being taught to offer John water to facilitate his ability to swallow, Parents did not consistently do this and at one point, missed John’s non-verbal cue for a drink of water.

Further, the record evidence shows that Parents also did not consistently attempt to respond to the sign language signals that therapists taught John, so that he could communicate his needs. The testimony of Ms. Parnell, a speech pathologist, further indicated that Mary regressed after Parents were involved in her speech therapy sessions. Ms. Skora, a speech-language pathology assistant to Ms. Parnell, testified that she worked with Parents to help them gain skills necessary to support Mary in speech and language development. Ms. Skora reported that Parents did not consistently implement speech methods she taught them and testified that she spent

more time trying to manage or redirect Mary's behaviors when Parents were present than focusing on speech therapy.

Based upon the testimonies from the termination hearing, there was competent evidence presented that Parents did not consistently implement the techniques they were taught by the children's therapists in order to meet Mary's and John's basic needs. Therefore, we hold the record evidence supports the trial court's findings.

f. Finding of fact 62.

Next, Father challenges finding of fact 62 which states: "The parents were given a list of foods that the juveniles could and would eat. They were also given a list of foods that were choking hazards for the juveniles. The parents would not follow the list [of foods] and would often times bring inappropriate foods for the juveniles." Father contends that "[w]hile it is admitted the [Parents] did not always bring appropriate food to their visits, Michelle Stills testified the parents brought many of Mary's favorite foods to visits that Mary consistently ate at home," so that there is not competent evidence to support these findings. We disagree.

Although Ms. Stills, Mary's foster mother, testified that she provided Parents a list of foods Mary could eat and Parents did in fact bring many of the same foods that Mary is accustomed to eating at her foster home, this behavior was not consistent. Despite Ms. Stills warning Parents that Mary could not eat crunchy foods during the period where she did not chew food, Parents brought Mary foods

considered to be choking hazards on more than one occasion. Parents exhibited this same behavior with John. Ms. Hudgens testified that she explained to Parents about choking hazards for John because of his difficulty swallowing. Specifically, Parents were told not to bring peanut butter for him to eat. However, Parents continued to bring peanut butter and jelly sandwiches to their visits with John even after they were provided a list of approved and safe foods. Therefore, this challenged finding is supported by the record evidence and Father's argument is overruled.

3. *Parents' Shared Challenges.*

g. Finding of Fact 87 and Conclusions of Law 3(b) and 4(b).

In their individual briefs, both Mother and Father challenge finding of fact 87, which states: "The parents have willfully left the juveniles 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 juveniles." Father argues that the above finding qualifies as a conclusion of law, and both Parents contend that there is insufficient evidence to support this conclusion. Similarly, Parents both contest the trial court's conclusion that grounds existed to terminate their parental rights to Mary and John pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). Father and Mother both contend that the trial court did not review each individual parent's progress in the context of other circumstances, such as their poverty, when determining whether their progress in their case plans was reasonable.

Father argues “the court’s conclusion he willfully left his children in foster care for more than twelve months without making sufficient progress was in error because the court failed to consider his poverty as the reason for his failure to make progress.” Father refers us to the principle that a “court cannot fulfill its obligation to assess willfulness when it blinds itself to important context[.]” *In re Q.P.W.*, 376 N.C. 738, 752, 855 S.E.2d 214, 223 (2021), and that a court’s failure to consider a parent’s progress in the context of a case is “legal error.” Likewise, Mother contends that her “poverty and mental illness must be considered in determining reasonableness” of progress, and “[b]ecause the [trial court] did not do so, the order must be reversed.” We disagree.

As previously discussed, the trial court did consider Mother’s mental health when reviewing her progress on the requirements of her case plan and the court’s findings did not show that Mother’s mental health would contribute to her inability to make reasonable progress in correcting the conditions that led to her children’s removal from the home. Additionally, the trial court did in fact consider Father and Mother’s financial circumstances when reviewing their progress on their case plan’s requirements. Again, the record evidence shows that although DSS referred Mother and Father to the Hendersonville Housing Authority and Western Carolina Community Action in order to help Parents find housing opportunities, Parents were able to maintain residence at a motel, for over a year, paying \$1,200.00 a month in rent. There was competent evidence to support the trial court’s findings that both

Mother and Father were employed by Pizza Hut and had been current with their child support obligations; and Mother no longer qualified for Free Clinic Services for her medication because she had obtained full-time employment. In light of these findings, the trial court did consider Parents' financial circumstances when determining whether reasonable progress had been made towards the requirements of correcting the conditions which led to the removal of John and Mary.

Although some of the trial court's findings were not supported by competent evidence and are hereby overruled, the remaining findings, which were based on competent evidence, are sufficient to support the trial court's finding that grounds existed to terminate Mother's and Father's parental rights. Therefore, we hold there is sufficient evidence to support the trial court's findings that grounds existed to terminate Parents' parental rights; specifically, that Parents willfully left Mary and John 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 children pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Because a "finding of only one ground is necessary to support a termination of parental rights," we need not address Parents' arguments regarding the trial court's findings on the ground of neglect. *In re A.R.A.*, 373 N.C. at 194, 835 S.E.2d at 421.

B. Children's Best Interest for Termination of Mother's and Father's Parental Rights.

Finally, Mother and Father challenge the disposition portion of the termination order, arguing that the trial court improperly found it was in the children's best interests for the Parents' rights to be terminated. Parents both challenge finding of fact 13 which states: "The foster families work well together and want the juveniles to know each other. The families will continue to allow sibling visits." Parents argue that the evidence does not support the finding that the foster families wanted the siblings to know each other. Instead, Parents argue that the record evidence indicates "the foster families had not made sibling visits or their relationship a priority due to COVID-19 and because they were busy" and given the "intensive therapy schedule for these children and the continuing existence of COVID-19, there is no reason to believe sibling visits would become more common." We disagree.

If a trial court adjudicates one or more grounds for terminating parental rights, it proceeds to the dispositional phase where it "shall determine whether terminating the parent's rights is in the juvenile's best interest" and shall consider the following criteria:

- (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.

N.C. Gen. Stat. § 7B-1110(a). The trial court shall make written findings of fact as to those criteria which are relevant to its determination. *Id.* In this case, Parents' challenge to finding of fact 13 falls under the factor of "any relevant consideration." Parents do not challenge any findings of facts addressing the other relevant statutory criteria.

Here, Ms. Hudgens offered testimony addressing the sibling's relationship in the context of their foster families. When asked if the siblings have interactions together, Ms. Hudgens replied, "we've had a few sibling visits, and [the foster families] understand that that is being asked for that to continue, and they have every intention of having those children grow up together." Ms. Hudgens further affirmed that she has personally observed the foster families work well together. The trial court's finding was supported by the evidence presented at disposition. Further review of the record reveals the trial court did not abuse its discretion in finding it was in Mary's and John's best interests to terminate the Parties' parental rights.

III. Conclusion

For the above reasons, we affirm the trial court's order terminating the parental rights of Mother and Father.

AFFIRMED.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).