

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-301

Filed 18 April 2023

Mecklenburg County, No. 20 JT 44

IN THE MATTER OF: A.S.

Appeal by Respondent from order entered 18 October 2021 by Judge Reggie E. McKnight in Mecklenburg County District Court. Heard in the Court of Appeals 30 January 2023.

*Kristina A. Graham for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services Division.*

*Matthew D. Wunsche for guardian ad litem.*

*Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky L. Brammer, for respondent-appellant father.*

MURPHY, Judge.

Respondent-father appeals the trial court's order terminating his parental rights to his minor child A.S. ("Alan").<sup>1</sup> After careful review, we affirm.

**I. Background**

On 27 January 2020, Mecklenburg County Department of Social Services,

---

<sup>1</sup> A pseudonym is used to protect the juvenile's identity and for ease of reading.

Youth and Family Services Division (“YFS”) filed a juvenile petition alleging that Alan was a neglected juvenile. The petition alleged YFS most recently became involved with the family following a 12 August 2019 report of Alan’s mother appearing “extremely high” and not supervising twenty-one-month-old Alan at a restaurant; Alan’s mother admitted to using Xanax on that day and admitted to subsequent heroin use; Respondent was incarcerated on charges of possession of methamphetamine, communicating threats, driving while intoxicated, and possession of drug paraphernalia; and the family had a history of involvement with YFS, beginning with a May 2018 report of substance abuse and domestic violence between Respondent and Alan’s mother, which Alan witnessed. YFS obtained nonsecure custody of Alan and formalized his placement with his paternal grandmother, where he had resided since March 2019.

On 5 March 2020, Respondent entered into a mediated petition agreement, wherein he acknowledged his incarceration and the May 2018 YFS report, and he recognized the paternal grandmother’s prior care for Alan and supported continued placement with her.

Following a hearing on 11 March 2020, the trial court entered an order on 19 March 2020 adjudicating Alan a neglected juvenile, based on the mediation agreement with Respondent and the mother’s stipulations to the facts of the juvenile petition. The court identified reunification as the primary plan and adoption as the secondary plan. The court found that substance abuse, mental health, and domestic

violence were issues that needed to be remediated prior to reunification and ordered Respondent to comply with YFS's proposed Family Services Agreement (the "case plan"). Respondent's case plan required he complete Families in Recovery Stay Together ("FIRST"), substance abuse, and domestic violence assessments and follow all recommendations; submit to random drug screens; resolve substance abuse issues and remain drug free on an ongoing basis; participate in and complete parenting classes focusing on the effects of substance abuse and domestic violence on children; gain and maintain employment; attend and participate in appointments or meetings related to Alan's wellbeing, education, and mental health services; provide at least monthly updates to the social worker on his progress; and sign release of information forms for all providers. The court continued YFS's custody of Alan and his placement with the paternal grandmother and allowed Respondent two hours of supervised visitation twice a week.

On 12 March 2020, Respondent's social worker submitted a FIRST referral, and Respondent was scheduled to complete the assessment on 25 March 2020. However, Respondent failed to appear, and on 1 June 2020, FIRST closed Respondent's case after being unable to contact him. In April 2020, Respondent enrolled in a substance abuse treatment program, but he was discharged prior to completing the program.

Following a review hearing on 27 October 2020, the trial court entered an order on 7 December 2020 finding that Respondent had made no progress on his case plan.

The court amended Respondent's case plan to include obtaining stable housing and ordered Respondent to comply with all his case plan requirements. Alan's custody and placement remained unchanged, but the court reduced Respondent's visitation to one hour per week. The court set concurrent primary plans of adoption and guardianship, with a secondary plan of reunification.

At the 10 December 2020 permanency planning hearing, the court found that Respondent had failed to make progress on "any aspect" of his case plan, failed to cooperate with YFS, and failed to exercise visitation with Alan. However, the court retained reunification as a secondary plan, and did not conclude that termination of parental rights was in Alan's best interests at that time.

In February 2021, Respondent again entered detox and began inpatient substance abuse treatment. On 28 February 2021, he transferred to a twenty-eight-day residential program, but he left in early March.

On 29 March 2021, YFS filed a motion to terminate parental rights. The motion alleged five grounds for the termination of Respondent's parental rights: neglect pursuant to N.C.G.S. § 7B-1111(a)(1), willful failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2), failure to pay a reasonable portion of costs for Alan's care pursuant to N.C.G.S. § 7B-1111(a)(3), dependency pursuant to N.C.G.S. § 7B-1111(a)(6), and willful abandonment pursuant to N.C.G.S. § 7B-1111(a)(7).

At the 30 March 2021 permanency planning hearing, the court found that

Respondent had not been making adequate progress, having “just recently begun to address” his substance abuse.

Following a hearing on 28 July 2021, the trial court entered an order on 18 October 2021 terminating Respondent’s parental rights. The court determined grounds existed to terminate Respondent’s parental rights under N.C.G.S. § 7B-1111(a)(1)-(3) and (6). The court also concluded that termination of Respondent’s parental rights was in Alan’s best interests. Respondent timely appealed.

## **II. Analysis**

Respondent challenges the trial court’s adjudication of grounds to terminate his parental rights and its conclusion that termination was in Alan’s best interests.

### **A. Adjudication**

We review a trial court’s adjudication that grounds exist to terminate parental rights “to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re A.S.D.*, 378 N.C. 425, 428, ¶ 8 (2021) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). “Findings of fact not challenged by [a] respondent are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407 (2019). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19 (2019). “[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395 (2019).

The trial court found four grounds to support termination of Respondent's parental rights, including willful failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2).

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

*In re Z.A.M.*, 374 N.C. 88, 95 (2020). A parent's willfulness "is established when the parent had the ability to show reasonable progress, but was unwilling to make the effort." *In re A.S.D.*, 378 N.C. at 428, ¶ 10 (cleaned up). "[P]arental 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). *In re B.O.A.*, 372 N.C. 372, 384 (2019). "[T]he reasonableness of the parent's progress 'is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights.'" *In re T.M.L.*, 377 N.C. 369, 372, ¶ 8 (2021) (quoting *In re J.S.*, 374 N.C. 811, 815 (2020)).

In its termination order, the trial court found that Respondent had entered into a case plan to address substance abuse, domestic violence, parenting, and employment. The court detailed Respondent's compliance with the case plan, finding:

13. [Respondent] has never submitted to a FIRST assessment, has not completed parenting education

classes, has not completed domestic violence classes after being recommended to do so, is currently unemployed, has not maintained contact with his social worker, and his current housing, while stable, does not support placement of [Alan].

14. [Respondent] has fully engaged in substance abuse counseling services since the filing of the TPR motion on [29 March] 2021 and is currently engaged in substance recovery counseling.

15. [Respondent] has only made significant progress toward his substance abuse since [29 March] 2021 and such progress has not been within a reasonable amount of time given [Alan] has been in the legal custody of YFS since [27 January] 2020.

16. [Respondent] has endured multiple drug relapses and overdoses between the time [Alan] came into YFS custody and [14 March] 2021, the beginning of his most recent term of sobriety.

17. [Respondent] is currently in the beginning stages of his sobriety, currently residing in a Christian-based residential support/counseling program[.]

. . . .

19. [Respondent] has willfully left [Alan] in foster care or placement outside the home for more than twelve (12) months without showing to the satisfaction of the Court any reasonable progress under the circumstances has been made in correcting those conditions which led to removal of [Alan]; specifically, substance abuse, domestic violence, unstable housing/homelessness, unemployment, and the inability to provide financial support to take care of [Alan's] basic needs[.]”

Respondent does not challenge the trial court's findings of fact, but he argues the court erred in concluding that his progress in completing his case plan was not

reasonable under the circumstances. He contends that because he began his substance abuse treatment prior to YFS filing the motion to terminate, he had not willfully failed to make progress. Moreover, Respondent contends that any lack of progress on the other requirements of his case plan were not willful, as he was constrained by the requirements of his treatment facility, as he was prohibited from working and required to live in group housing for the first six months, and by the case plan itself, as he could not begin parenting or domestic violence classes until he had completed substance abuse treatment. Respondent also suggests that the trial court “may” have failed to consider his progress up to the termination hearing, and did fail to address whether his “purported lack of reasonable progress was willful.”

We are unpersuaded by Respondent’s arguments. While reasonable compliance does not require completion of a case plan, “a parent’s ‘extremely limited progress’ in correcting the conditions leading to removal adequately supports” termination of parental rights under N.C.G.S. § 7B-1111(a)(2). *In re B.O.A.*, 372 N.C. at 385 (citations omitted). Though Respondent had made “significant progress toward his substance abuse” since 29 March 2021, the court found this progress had “not been within a reasonable amount of time given” that Alan had been in YFS’s custody since 27 January 2020. Additionally, the court found that even considering Respondent’s recent progress, he had a documented history of “relapses and overdoses” during the time Alan had been in YFS custody, and Respondent was “in the beginning stages” of sobriety. Moreover, the court found that Respondent had



failed to make any progress on the other requirements of his case plan. Respondent's limited progress on remedying his substance abuse "does not rebut his failure to" address any of the other requirements of his case plan. *See In re J.A.K.*, 258 N.C. App. 262, 271–72 (2018).

We find no support for Respondent's assertion that his progress was reasonable because it began prior to YFS filing the motion to terminate his parental rights. In support of his assertion, Respondent attempts to distinguish his case from *In re T.M.L.*, in which our Supreme Court concluded that the father's "last minute attempts to comply with the case plan by the time of the termination hearing" were "insufficient to constitute reasonable progress under" N.C.G.S. § 7B-1111(a)(2). *In re T.M.L.*, 377 N.C. at 380, ¶ 32. However, nothing in that case, nor in any other case, suggests that the filing date of a motion or petition to terminate parental rights is a bright-line demarcation between reasonable progress and unreasonable progress. The insufficiency of the father's "partial" progress was amplified by having occurred after the filing of the "petitions to terminate his parental rights *and* two years or more after the children's removal from the home[.]" *Id.* (emphasis added). Like the father in *In re T.M.L.*, Respondent's efforts were only partial and began more than a year after Alan was taken into YFS custody. Respondent's progress is not de facto reasonable just because it began approximately two weeks before YFS filed the motion to terminate his parental rights. Regardless of when it began, "[e]xtremely limited progress is not reasonable progress." *In re J.A.K.*, 258 N.C. App. at 272

(citation omitted). Similarly, Respondent's delay in beginning to address his substance abuse issues further refutes his assertion that he made reasonable progress. *See In re I.G.C.*, 373 N.C. 201, 206 (2019) (affirming adjudication under N.C.G.S. § 7B-1111(a)(2) when the "respondent-mother waited too long to begin working on her case plan and that, as a result, she had not made reasonable progress toward correcting the conditions that led to the children's removal by the time of the termination hearing").

Finally, the findings of fact evidence the trial court's consideration of Respondent's progress on his case plan, including his progress between the filing of the termination motion and hearing. The court found that Respondent had "fully engaged in substance abuse counselling services since the filing of the TPR motion" and was engaged "in substance recovery counseling" at the time of the termination hearing. Contrary to Respondent's assertion, the court did find that Respondent acted willfully. Moreover, the findings detailing Respondent's "prolonged inability to improve [his] situation, despite some efforts in that direction," support the trial court's finding of willfulness. *In re J.S.*, 374 N.C. at 815 (citations omitted). Accordingly, the trial court's findings support its conclusion that Respondent had willfully failed to make adequate progress in correcting the conditions that led to Alan's removal. *Id.*

#### B. Disposition

Upon a determination that grounds exist to terminate a parent's parental

rights, the trial court proceeds to the dispositional stage where it must “determine whether terminating the parent’s rights is in the juvenile’s best interest” based on:

- (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) (2021). The court must consider all the factors, but it is only required to make written findings regarding the factors that are relevant. *Id.* A factor is “relevant if there is conflicting evidence concerning the factor, such that it is placed in issue by virtue of the evidence presented before the trial court.” *In re H.D.*, 239 N.C. App. 318, 327 (2015) (cleaned up).

We review the trial court’s determination “on an abuse of discretion standard, and will reverse a court’s decision only where it is manifestly unsupported by reason.” *In re S.N.*, 194 N.C. App. 142, 146 (2008) (cleaned up), *aff’d*, 363 N.C. 368 (2009). Unchallenged dispositional findings are binding on appeal. *In re A.B.C.*, 374 N.C. 752, 762 (2020).

Respondent does not challenge the trial court’s dispositional findings, but he contends that the court erred by failing to consider his bond with Alan in accordance

with N.C.G.S. § 7B-1110(a)(4). Respondent argues that the transcript “does not show any consideration of” the statutory factors, thus the lack of findings regarding his bond with Alan is reversible error.

Respondent’s arguments are without merit. A trial court’s consideration of the statutory factors is evident where the testimony and arguments present no conflict in the evidence. *See, e.g., In re A.R.A.*, 373 N.C. 190, 200 (2019) (concluding the trial court considered the required factors and was not required to make written findings concerning the likelihood of adoption where the social worker presented testimony regarding the child’s likelihood of adoption and “there was no conflict in the evidence regarding” that factor); *In re A.K.O.*, 375 N.C. 698, 704 (2020) (concluding no written findings on the parent/child bond were required because it was undisputed). Here, there is no conflict in the evidence concerning Respondent and Alan’s bond. The paternal grandmother testified at the termination hearing that Alan “seems to be really happy around” and loved Respondent, which was supported by the guardian ad litem’s “Termination of Parental Rights Report” that was admitted as evidence. Moreover, though there is no specific finding regarding Respondent and Alan’s relationship, it is clear the court considered their bond in its finding that the paternal grandmother would continue to assist Respondent’s visitation with Alan. *See In re A.K.O.*, 375 N.C. at 704 (“We further note that while the trial court may not have made explicit findings regarding the statutory factors set forth in N.C.G.S. § 7B-1110(a)(2) and (4), its remaining dispositional findings of fact demonstrate that it

considered [the child's] bond with his parents and the likelihood of his being adopted.”). Accordingly, we conclude that the trial court was not required to make a specific finding from the uncontradicted evidence of a parent-child bond and that the trial court properly considered all the statutory factors set forth in N.C.G.S. § 7B-1110(a).

### **III. Conclusion**

The trial court's determination that grounds existed to terminate Respondent's parental rights under N.C.G.S. § 7B-1111(a)(2) was supported by the court's findings of fact and clear, cogent, and convincing evidence. Moreover, the court did not abuse its discretion in concluding that termination of Respondent's parental rights was in Alan's best interests. Therefore, we affirm the trial court's order.

AFFIRMED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).