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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-519

Filed 02 May 2023

Davie County, Nos. 20 JT 31-35

IN THE MATTER OF: L.R.-A, A.R.-A, C.R.-A, E.R.-A & E.R.-A.

Appeal by Respondent-Father from order filed 8 April 2022 by Judge Jon W. Myers in Davie County District Court. Heard in the Court of Appeals 22 February 2023.

Benjamin J. Kull for Respondent-Father.

Clemmons Family Law, by Holly M. Groce, for Petitioner-Appellee Davie County Department of Social Services.

Michelle FormyDuval Lynch for Petitioner-Appellee Guardian ad Litem.

CARPENTER, Judge.

Respondent-Father appeals from an Order terminating his parental rights to the minor children, Lilliana, Alexander, Camilla, Eric, and Elizabeth (collectively, “the Juveniles”). The Juveniles’ mother died of unnatural causes on or about 3 June 2020. Respondent-Father was convicted of hit and run resulting in serious injury or death in connection with her death. On appeal, Respondent-Father argues the trial court erred in terminating his parental rights as to the Juveniles, or alternatively,

two of the Juveniles. After careful review, we affirm the Order terminating Respondent-Father's parental rights based on neglect.

I. Factual and Procedural Background

This case involves five siblings. Their names¹ and approximate ages at the time of the 31 January 2022 termination hearing, were: Lilliana, fourteen years old; Alexander, twelve years old; Camilla, ten years old; Eric, five years old; and Elizabeth, three years old. Respondent-Father is the biological father of the Juveniles. Between 2008 and 2018, law enforcement received nine reports regarding Respondent-Father and the mother for domestic violence, assault on a female, and damage to property. Davie County Department of Health and Human Services ("DCDHHS") became involved with the family in this case on 3 June 2020, immediately after the Juveniles' mother passed away. At that time, Respondent-Father was not living in the home the Juveniles shared with their mother, and he was not welcome there.

In its petition filed 10 August 2021, DCDHHS alleged that Respondent-Father's parental rights should be terminated based on two separate grounds: (1) past neglect plus a likelihood of future neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); and (2) willfully leaving the Juveniles in foster care for more than twelve months, without making reasonable progress under the circumstances towards

¹ Pseudonyms were used to protect the identities of the minor children. See N.C. R. App. P. 42(b).

correcting the conditions that resulted in the Juveniles' removal, pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). The factual allegations supporting these two claims were identical.

The termination hearing took place on 31 January 2022. The trial court heard testimony from Lilliana, Alexander, Camilla, three law enforcement officers, and Chris Warriner (the "Social Worker"). Lilliana testified that she had observed domestic violence in the past, including witnessing Respondent-Father hit her mother, herself, and her siblings. She testified that on the night her mother passed away in June 2020, Respondent-Father came to their house, and he had been drinking. Her mother met him at the front door and asked him, "[w]hat do you want?" Lilliana recalled seeing her mother walking out towards her father's car, then leaving. The Juveniles were scared and hoped that their father was not going to hurt their mother. Lilliana then put her siblings to bed and waited for her mother to return home. Later that night, Respondent-Father returned to the home and instructed Lilliana to call the police after he left, which she did. The next day, the police discovered the mother's body on the side of Highway 801. Her cause of death was a "very significant" injury to the head.

Respondent-Father was found and arrested a day or two later. He was convicted of hit and run resulting in serious injury or death, which requires that the driver "knows or reasonably should know: (1) [t]hat the vehicle which he or she is operating is involved in a crash; and (2) [t]hat the crash has resulted in serious bodily

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injury, as defined in [N.C. Gen. Stat. §] 14-32.4, or death to any person” N.C. Gen. Stat. § 20-166(a) (2021). DCDHHS was granted nonsecure custody of the Juveniles, who were later moved to kinship placements. On 15 January 2021, the trial court entered an amended order adjudicating the Juveniles as neglected and dependent. On 31 October 2021, Respondent-Father completed his sentence and was transferred to federal custody due to his immigration status, where he remained as of the 31 January 2022 termination hearing.

In the Order, the trial court did not find that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(2), reasoning that “Respondent Father did not willfully leave the [Juveniles] in foster care as he has been incarcerated for the duration of this case.” The trial court determined grounds did exist under N.C. Gen. Stat. § 7B-1111(a)(1), reasoning “that the [Juveniles] have been neglected and there is a high likelihood of the repetition of neglect” based on three factors: “the extensive history of violence with both the mother and the [Juveniles] that the [Juveniles] have observed and fear”; “the fact that Respondent Father has been deported twice and returned to the United States illegally”; and “the lack of corrective action taken by Respondent Father.”

II. Jurisdiction

This Court has jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2021).

III. Issues

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The issues on appeal are: (1) whether the challenged findings of fact are supported by clear, cogent, and convincing evidence; (2) whether the findings of fact support the trial court’s conclusion to terminate for neglect, where the findings do not explicitly state how the Juveniles are likely to meet the definition of “neglected juvenile” in the future; (3) alternatively, whether the trial court reached an irreconcilable conclusion that termination based on neglect was warranted, but termination based on willful failure to make reasonable progress was not warranted; and (4) alternatively, if the trial court’s adjudication of neglect must be reversed as to Camilla and Eric, whether the dispositional stage should be vacated and remanded to the trial court for determination of whether separating the intact sibling group is in the Juveniles’ best interests.

IV. Analysis

A. Standard of Review

“Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020); *see also* N.C. Gen. Stat. §§ 7B-1109(e), 1110(a) (2021). “[A]n adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019); *see also* N.C. Gen. Stat. § 7B-1110(a). Thus, “if [an appellate] Court upholds the trial court’s order in which it concludes that a particular ground for termination exists, then we need not review any

remaining grounds.” *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

“We review a trial court’s adjudication that a ground exists to terminate parental rights under [N.C. Gen. Stat.] § 7B-1111 to determine whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law.” *In re A.M.*, 377 N.C. 220, 225, 856 S.E.2d 801, 806 (2021) (citations and quotation marks omitted). “Findings of fact not challenged by [the] respondent are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings necessary to support the trial court’s determination that grounds existed to terminate [the] respondent’s parental rights.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) (citations omitted). “A trial court’s finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding.” *In re A.L.*, 378 N.C. 396, 400, 862 S.E.2d 163, 166 (2021) (citation omitted).

“[W]hether a trial court’s adjudicatory findings of fact support its conclusion of law that grounds existed to terminate parental rights . . . is reviewed *de novo* by the appellate court.” *In re M.R.F.*, 378 N.C. 638, 641, 862 S.E.2d 758, 761–62 (2021) (emphasis added and citation omitted). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the [trial court].”

In re T.M.L., 377 N.C. 369, 375, 856 S.E.2d 785, 790 (2021) (quoting *In re C.V.D.C.*, 374 N.C. 525, 530, 843 S.E.2d 202, 205 (2020) (alteration in original)).

At the dispositional stage, “[t]he trial court’s determination of a child’s best interests under [N.C. Gen. Stat.] § 7B-1110(a) is reviewed only for abuse of discretion.” *In re G.G.M.*, 377 N.C. 29, 37, 855 S.E.2d 478, 484 (2021) (quoting *In re J.S.*, 374 N.C. at 822, 845 S.E.2d at 66). “An abuse of discretion is a decision manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 37, 855 S.E.2d at 484 (quoting *In re K.N.K.*, 374 N.C. 50, 57, 839 S.E.2d 735, 740 (2020)).

B. Termination of Parental Rights

1. Findings of Fact 9(c), 9(i), 9(j), 9(l), 9(o), 9(u), 9(v), 9(z), 9(bb)

In his first series of arguments, Respondent-Father contends findings of fact 9(c), 9(i), 9(j), 9(l), 9(o), 9(u), 9(v), 9(z), and 9(bb) are not supported by clear, cogent, and convincing evidence. We address each challenged finding in turn.²

² In the Amended Pre-Adjudication and Adjudication Order, filed on 15 January 2021 after a hearing on 17 August 2020, the district court stated the following:

Respondent Father Head [sic] has stated he is stipulating to the facts as set forth in the Exhibit A attached to the Juvenile Petition and modified verbally in court and to a finding that the juveniles are neglected and dependent juveniles. The Court has inquired of Respondent Father if this is his stipulation and he answered in the affirmative.

We note with disapproval that neither the Juvenile Petition filed on 6 June 2020, its accompanying Exhibit A, nor a transcript detailing any oral modifications in open court are contained in the Record on Appeal. It is disingenuous of Respondent-Father to, on one hand, question the trial

Respondent-Father challenges the statement in finding 9(i) that “Respondent Father forced the mother to leave the house against her will,” on the basis that there was no evidence Respondent-Father “forced” the mother to leave the home. We disagree. “It is the duty of the trial court—not an appellate court—to determine the weight and veracity of the evidence and the reasonable inferences to be drawn therefrom.” *In re K.N.L.P.*, 380 N.C. 756, 762, 869 S.E.2d 643, 648 (2022) (citation omitted); *see also In re K.N.K.*, 374 N.C. at 53, 839 S.E.2d at 738 (2020) (quoting *Stancill v. Stancill*, 241 N.C. App. 529, 531, 773 S.E.2d 890, 892 (2015) (“Where the trial court sits as the finder of fact, and where different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial court.”)).

On the night in question, Respondent-Father showed up at the home drunk, uninvited, and unwelcome as the Juveniles were “getting ready to go to sleep.” Respondent-Father repeatedly called the mother, and she “wouldn’t answer.” She “finally picked up the phone,” and Respondent-Father said he needed her to go outside because he wanted to talk. When the mother opened the door, Lilliana observed Respondent-Father visibly intoxicated, “looking up at the stars.” After the mother asked Respondent-Father “[w]hat do you want?” Lilliana’s recollection of the conversation fades, but she does recall that “[the Juveniles] were all crying,” and she

court’s fact finding by attacking the sufficiency of the children’s testimony, without providing us the underlying facts to which he stipulated at a prior hearing.

dropped to the ground and “started praying that [Respondent-Father] would not hurt [her] mom, because every single time that he was with [her] mom, I just prayed that he didn’t hurt her.” After her parents left in Respondent-Father’s vehicle, Lilliana was “just . . . laying there, crying, hoping that nothing bad had happened.” Based on the circumstances of the departure, including the late hour, lack of childcare, the Juveniles’ intense fear and emotion, and Respondent-Father’s evident intoxication with intent to drive, the trial court could have reasonably inferred that the mother did not leave the home or the unattended Juveniles willingly. *See In re K.N.L.P.*, 380 N.C. at 762, 869 S.E.2d at 648. Accordingly, finding 9(i) is conclusive on appeal. *See In re A.L.*, 378 N.C. at 400, 862 S.E.2d at 166.

Respondent-Father next challenges finding 9(j)—“Respondent Father hit the minor children”—arguing it “implies” he hit each of the five Juveniles when there was no evidence that he ever hit Camilla and Eric. We disagree. Lilliana testified: “He would hit us, he would yell at us, and we just didn’t feel safe around him.”; “He hit us whenever we cried . . . Like, when he told us that, if we didn’t stop crying, he would give us a reason to cry.” Respondent-Father hit Lilliana and Alexander most frequently. Alexander testified that he got hit the most, and his father hit him “hard, with a belt.” He also testified that he saw Respondent-Father hit the youngest Juvenile, Elizabeth, with a belt because she was crying. Furthermore, Lilliana, Alexander, and Camilla all recalled an incident when Respondent-Father choked their mother while she was holding Elizabeth—an *infant of approximately one-year*

old. (emphasis added). Although Lilliana testified Respondent-Father once stated he would not hit Camilla or Eric, and Alexander testified he did not witness Respondent-Father hit Camilla or Eric, Lilliana's testimony also indicated Respondent-Father hit all the children. Accordingly, the trial court could have reasonably inferred Respondent-Father hit all the children. *In re K.N.K.*, 374 N.C. at 53, 839 S.E.2d at 738. Despite some evidence to the contrary, this challenged finding is supported by clear, cogent, and convincing evidence. *See In re A.L.*, 378 N.C. at 400, 862 S.E.2d at 166.

Finding 9(l) states that Alexander observed Respondent-Father hit his sister Elizabeth with a belt, "but [Alexander was] not sure why." Respondent-Father correctly notes the "why" is evident from the transcript—"Because she was crying." Nonetheless, we reject Respondent-Father's argument that because parents are permitted to use corporal punishment within reason, the "why" is relevant, so this finding may have improperly impacted the trial court's adjudication of neglect. Assuming *arguendo* this incident occurred the day before the mother's death, which it did not, Elizabeth would have just turned two years old. Based upon the evidence presented and the record, the trial court could have reasonably found by clear, cogent, and convincing evidence the corporal punishment in question used by Respondent-Father was beyond reasonable. Accordingly, any error in this finding is not prejudicial. *See In re L.Z.A.*, 249 N.C. App. 628, 636, 792 S.E.2d 160, 167 (2016) (no prejudicial error in finding of fact errantly specifying the sequence in which injuries

occurred, where there were multiple non-accidental injuries).

Respondent-Father challenges related portions of findings 9(o) and 9(z),³ arguing the findings misstate the Juveniles' preferences regarding contact with him. Finding 9(o) states, in part, "Lilliana wants no further contact with the Respondent Father." Finding 9(z) states, "[t]he children are not interested in contact with [Respondent-Father]." Of the three children who testified, only Alexander was directly asked his position on future contact with Respondent-Father.

Q: And you don't want your dad to have any say in your life anymore, you don't want to have contact with him?

A: I don't want any contact.

Nevertheless, the Social Worker testified as follows.

Q: Have the children expressed to you their desires about future communication with their father, the children who are old enough to express those wishes?

A: Yes. They do not want contact with their father.

Q: They don't want to speak to him?

A: They do not.

Q: They don't want to see him?

A: They do not.

Q: They don't want him to have access to them?

A: They do not.

³ Respondent-Father's brief misattributes the challenged text to finding 9(c), when in fact, the challenged portion is located within finding 9(z).

Absent a dispositional finding that Lilliana “may be willing to have some contact with [Respondent-Father] in the future but not now,” provided he healed and corrected his behavior, there was no adjudicatory evidence that the children desire any contact with Respondent-Father. Accordingly, the challenged findings are supported by clear, cogent, and convincing evidence. *See In re A.L.*, 378 N.C. at 400, 862 S.E.2d at 166.

Findings 9(u) and 9(v) describe the limited case plan services provided to Respondent-Father during his incarceration.

(u) While incarcerated, Respondent Father has not completed any parenting education. The social worker provided him with some worksheets as classes were not available. Respondent Father indicated he would give the worksheets to his counsel, but he has not provided any to the Department. The Department provided a postage paid envelope to return the worksheets. Respondent Father has been incarcerated since the inception of this case. Respondent Father indicates that services available to him were limited because of COVID rules and restrictions.

(v) While incarcerated, Respondent Father has not completed any domestic violence or substance use training. The social worker provided him with some worksheets as classes were not available. Respondent Father indicated he would give the worksheets to his counsel but he has not provided any to the Department. The Department provided a postage paid envelope to return the worksheets. Respondent Father has been incarcerated since the inception of this case. Respondent Father indicates that services available to him were limited because of COVID rules and restrictions.

Respondent-Father maintains the Social Worker did not testify about

providing substance use worksheets. To the extent the finding implies the Social Worker provided substance use worksheets, we agree. Strictly construed, however, this portion of finding 9(v) provides that Respondent-Father did not complete substance use training while incarcerated, because “classes were not available” while services were limited during Covid, which appears to be true. Respondent-Father does not dispute that he was provided worksheets on parenting skills and domestic violence training; he did not return any worksheets to the Social Worker, despite postage-paid envelopes included with some worksheets. Accordingly, we find no prejudicial error in the implication that a third category of worksheets was provided and not returned. *See L.Z.A.*, 249 N.C. App. at 636, 792 S.E.2d at 167.

Furthermore, Respondent-Father argues the final sentence of each finding constitutes improper recitations of the evidence, rather than findings indicating whether the trial court deemed the evidence credible. To the extent the finding attributes the source of the evidence to Respondent-Father, we agree, because he did not testify at the termination hearing. “Recitations of the testimony of each witness do not constitute findings of fact by the trial judge.” *In re N.D.A.*, 373 N.C. 71, 75, 833 S.E.2d 768, 772 (2019) (emphasis omitted), *abrogated by In re G.C.*, __ N.C. __, 884 S.E.2d 658 (2023). We note, however, that Respondent-Father did not challenge the portion of findings 9(u) and (v) recognizing that “classes were not available.” As these findings stand for the same proposition as the challenged portion of the findings, we find no prejudicial error. *See L.Z.A.*, 249 N.C. App. at 636, 792 S.E.2d at 167.

Finding 9(z) states in part that “the Court ceased allowing phone calls” between Respondent-Father and the Juveniles. Respondent-Father argues there was no record evidence that calls were not allowed before the termination hearing. We disagree. Supervised phone calls with “the children who want[ed] it” were *initially* permitted once per week under the Disposition Order filed 17 September 2020. Testimony by the Social Worker, however, confirmed that Respondent-Father violated a subsequent court order, again not contained in the record on appeal, by attempting to phone and mail the Juveniles directly. Therefore, this challenged finding is supported by clear, cogent, and convincing evidence. *See In re A.L.*, 378 N.C. at 400, 862 S.E.2d at 166.

Finding 9(bb) states, in relevant part: “The children are all involved in therapy of some kind. . . . Trauma focused therapy is being provided for [Lilliana], [Alexander], and [Camilla].” Respondent-Father argues this finding improperly groups all five children together, and there is no evidence of “trauma focused therapy” in the record. We agree. Testimony by the Social Worker only supports a finding that Lilliana, Alexander, and Camilla were enrolled in unspecified therapy. This logically follows given the ages of Eric and Elizabeth. To the extent Eric and Elizabeth were improperly included in the first sentence of Finding 9(bb), we will not consider same in our evaluation of Respondent-Father’s additional arguments. *See In re S.R.*, 283 N.C. App. 149, 157, 872 S.E.2d 406, 412 (2022) (declining to consider unsupported findings in subsequent assessment of the trial court’s conclusions). Next, while there

is substantial evidence Lilliana, Camilla, and Alexander in particular, were traumatized by Respondent-Father's conduct, our review of the adjudicatory record reveals no evidence of specified therapy that was "trauma focused." Accordingly, we will not consider specified forms of therapy in our evaluation of Respondent-Father's additional arguments. *See id.* at 157, 872 S.E.2d at 412.

With the exception of portions of findings 9(l), (u) and (v), and (bb) in part, we conclude the findings of fact challenged by Respondent-Father are supported by clear, cogent, and convincing evidence. Additionally, we find no prejudicial error in the challenged portions of 9(l), or (u) and (v). *See L.Z.A.*, 249 N.C. App. at 636, 792 S.E.2d at 167. We will not consider the challenged portion of finding 9(bb) in our review of whether the trial court's conclusions of law are supported by the findings. *See In re S.R.*, 283 N.C. App. at 157, 872 S.E.2d at 412.

2. Findings of Fact 9(cc), 11, and 12

Respondent-Father argues that Findings 9(cc), 11, and 12 are either ultimate findings of fact or conclusions of law and must be treated as such on appeal.

Regardless of the label assigned by the trial court, we are constrained to apply the appropriate standard of review to findings and legal conclusions on appeal. *See In re J.S.*, 374 N.C. at 818, 845 S.E.2d at 73.

There are two kinds of facts: Ultimate facts, and evidentiary facts. Ultimate facts are the final facts required to establish the plaintiff's cause of action or the defendant's defense; and evidentiary facts are those subsidiary facts required to prove the ultimate facts.

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Ultimate facts are those found in that vaguely defined area lying between evidential facts on the one side and conclusions of law on the other. In consequence, the line of demarcation between ultimate facts and legal conclusions is not easily drawn. An ultimate fact is the final resulting effect which is reached by processes of logical reasoning from the evidentiary facts. Whether a statement is an ultimate fact or a conclusion of law depends upon whether it is reached by natural reasoning or by an application of fixed rules of law.

Woodard v. Mordecai, 234 N.C. 463, 470–72, 67 S.E.2d 639, 644–45 (1951) (citations omitted). In line with *Woodard*, our Supreme Court recently emphasized that “an ultimate finding is a finding supported by other evidentiary facts reached by natural reasoning.” *In re G.C.*, __ N.C. __, 884 S.E.2d 658 (2023) (citing *Woodard*, 234 N.C. 470–72, 67 S.E.2d at 644).

“A trial court’s finding of an ultimate fact is conclusive on appeal if the evidentiary facts reasonably support the trial court’s ultimate finding [of fact].” *In re G.C.*, __ N.C. __, 884 S.E.2d 658 (2023) (quoting *State v. Fuller*, 376 N.C. 862, 864, 855 S.E.2d 260, 263 (2021)). “The trial court’s conclusions of law are reviewable *de novo* on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (emphasis added and citation omitted).

Finding 9(cc) states, in relevant part:

The Court finds that the children have been neglected and there is a high likelihood of the repetition of neglect in light of the extensive history of violence with both the mother

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and the children that the children have observed and fear; the fact that Respondent Father has been deported twice and returned to the United States illegally; and the lack of corrective action taken by Respondent Father. . . .

Because the trial court applied evidentiary facts through a process of natural reasoning, we conclude finding 9(cc) is an ultimate fact. *See Woodard*, 234 N.C. at 472, 67 S.E.2d at 645. Respondent-Father challenges the evidentiary facts undergirding this ultimate fact, arguing that it improperly treats the Juveniles as having identical circumstances with respect to the history of family violence and each child's fears, when only the eldest three children testified. Respondent-Father further argues it was impossible for him to have undertaken any corrective action from prison. We disagree with both contentions.

With respect to violence between Respondent-Father and the Juveniles, despite only three testifying, we incorporate our above analysis regarding finding 9(j). Lilliana gave a detailed account of her observations and emotions when Respondent-Father was present, including the night her mother died. Lilliana described Respondent-Father's daily alcohol abuse, how he "gets mad easily" when drunk, and how he had offered her and her younger siblings alcohol in the past. Lilliana was also aware Respondent-Father had been deported before due to arrests for beating her mother. Lilliana recounted an incident where Respondent-Father killed the family cat, "Simba," out of jealousy when he suspected their mother received it as a gift from another man. Alexander shared a similar memory—Respondent-Father

beating a family dog, “Charlie,” with a chain because it was barking. In response to the question why he thought he got hit by Respondent-Father most often, compared to his other siblings, Alexander testified, “I don’t know if [Respondent-Father] hated me or something like that.” Lilliana, Alexander, and Camilla testified they were scared of Respondent-Father, including on the night their mother died. Furthermore, the Social Worker testified that when Respondent-Father attempted to contact the Juveniles from prison, “the message is *strong* that they’re scared of their father.” (emphasis added). Even without the youngest two children testifying, there is clear, cogent, and convincing evidence in the record which supports the challenged evidentiary facts. *See In re G.C.*, __ N.C. __, 884 S.E.2d 658 (2023).

Next, Respondent-Father argues that corrective action was impossible given the lack of services available in prison. We disagree. Unchallenged portions of findings 9(u) and 9(v) establish that: the Social Worker provided worksheets on parenting education and domestic violence, including postage-paid envelopes, during the time prison services were restricted due to Covid; Respondent-Father indicated he would give the worksheets to his counsel, but he has not returned any to DCDHHS. These unchallenged findings of fact, which are binding on appeal, establish that Respondent-Father had an opportunity, albeit a limited one due to pandemic incarceration, to demonstrate to DCDHHS and the trial court that he was willing to take steps to comply with his case plan. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. For whatever reason, it is undisputed that Respondent-Father did not. While

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Respondent-Father's incarceration, in conjunction with the pandemic, played a role in the extent of services available to Respondent-Father, the adjudication of neglect was not impermissibly due to his incarceration. *See In re K.D.C.*, 375 N.C. 784, 792, 850 S.E.2d 911, 918 (2020). Rather, this finding is rooted in Respondent-Father's failure to avail himself of the limited resources at his disposal. Accordingly, the trial court's evidentiary finding regarding failure to take corrective action is supported by clear, cogent, and convincing evidence. *See In re G.C.*, __ N.C. __, 884 S.E.2d 658 (2023). Finding 11 states:

Based on these findings, grounds exist to terminate the parental rights of Respondent Father in that the children have been neglected and it is probable that there would be a repetition of the neglect of the children if said children were returned to the care of the Respondent Father.

Respondent-Father argues finding 11 is actually a conclusion of law and must be treated as such on appeal. We agree and will discuss this conclusion more fully below.

Finding 12 states: "Entry of an Order Terminating Parental Rights would not result in an unnecessary severance of the relationship between [Respondent-Father] to the minor children." Respondent-Father asserts that "'unnecessary severance' is part of the codified public policy of the Juvenile Code; it is not a required determination in a termination order, nor does it appear to serve any actual purpose." We agree and conclude this reference is superfluous, because legislative intent is effectuated by the Juvenile Code as enacted by the General Assembly. *See In re K.J.D.*, 203 N.C. App. 653, 664, 692 S.E.2d 437, 445 (2010) ("[T]he trial court's

reference to the ‘intent’ of the Juvenile Code was not necessary to its conclusion of law as to neglect.); *see also* N.C. Gen. Stat. § 7B-1100(2) (recognizing this State’s public policy with respect to termination of parental rights is, in part, to balance juveniles’ need for permanency while protecting juveniles from the “unnecessary severance” of a relationship with biological or legal parents).

3. Likelihood of Future Neglect

Respondent-Father next argues the trial court’s findings do not support the conclusions necessary to terminate his parental rights on the ground of neglect, because the trial court did not specify which definition(s) of “neglected juvenile” applied; therefore, it is impossible to ascertain how the Juveniles are likely to meet the definition of “neglected juvenile” in the future.

The trial court “may terminate the parental rights upon a finding . . . [t]he parent has abused or neglected the juvenile. The juvenile shall be deemed . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of [N.C. Gen. Stat. §] 7B-101.” N.C. Gen. Stat. § 7B-1111(a)(1) (2021). Our Juvenile Code defines “neglected juvenile” in relevant part, as:

Any juvenile less than 18 years of age . . . whose parent . . .
does any of the following:

a. Does not provide proper care, supervision, or discipline.

. . . .

e. Creates or allows to be created a living environment that
is injurious to the juvenile’s welfare.

. . . .

In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2021).

If the children have been separated from the parent for a long period of time, a termination of parental rights based upon neglect requires a showing of past neglect and a likelihood of future neglect by the parent. *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016) (citation omitted). “When determining whether such future neglect is likely, the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.” *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425, 430 (2019). “However, this evidence of changed conditions must be considered in light of the history of neglect by the parents and the probability of a repetition of neglect.” *Smith v. Alleghany Cty. Dep’t of Soc. Servs.*, 114 N.C. App. 727, 732, 443 S.E.2d 101, 104 (1994) (quoting *In re Ballard*, 311 N.C. 708, 714, 319 S.E.2d 227, 231 (1984)). Overwhelming evidence that a parent has chronically failed to provide a safe and healthy environment for their children over an extended period is instructive of the likelihood of future neglect. *See In re Beasley*, 147 N.C. App. 399, 407, 555 S.E.2d 643, 648–49 (2001). Furthermore,

incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision. Thus, [a

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parent]’s incarceration, by itself, cannot serve as clear, cogent, and convincing evidence of neglect. Instead, the extent to which a parent’s incarceration . . . support[s] a finding of neglect depends upon an analysis of the relevant facts and circumstances, including the length of the parent’s incarceration.

In re K.D.C., 375 N.C. at 792, 850 S.E.2d at 918 (citation omitted); *see also In re B.S.O.*, 234 N.C. App. 706, 711–12, 760 S.E.2d 59, 64 (2014) (extending the “sword nor shield” rule to deportations).

Here, the Juveniles were adjudicated neglected by order filed 15 January 2021. Therefore, our analysis turns on any changed circumstances since the past neglect, and the trial court’s conclusion of law contained in finding 11 that “it is probable that there would be a repetition of the neglect of the children if said children were returned to the care of the Respondent Father.”

At the outset, we reject Respondent-Father’s arguments that the trial court erred by failing to specify the applicable subsection of “neglected juvenile” and that this omission compels us to review the case under every subsection. Just as a single statutory ground is sufficient to sustain a termination of parental rights, *E.H.P.*, 372 N.C. at 395, 831 S.E.2d at 53, a single applicable subsection of “neglected juvenile” is sufficient to sustain an adjudication of neglect. *See* N.C. Gen. Stat. § 7B-101(15)(e) (“whose . . . parent does any of the following”). Based on the rationale of the trial court’s ultimate finding 9(cc), the trial court was clear that the extensive history of family violence that the children have observed and fear, Respondent-Father’s

history of deportations and illegal returns to the United States, and a lack of corrective action all contributed to a finding of future neglect. The trial court's attention to the extensive history of family violence and the Juveniles' resulting fear most closely aligns with creation of a living environment that is injurious to their welfare, *see* N.C. Gen. Stat. § 7B-101(15)(e); however, the evidence and findings would also support the definition of failure to provide proper care, supervision, or discipline. *See* N.C. Gen. Stat. § 7B-101(15)(a).

We reject Respondent-Father's argument that continued domestic violence is impossible in light of the mother's death. Granted, it is impossible between Respondent-Father and the mother; nevertheless, Respondent-Father was criminally culpable in her premature death. Respondent-Father's prohibitively narrow reading of the trial court's findings ignores the broader family violence and resulting fear instilled in the Juveniles, which was borne out in the testimony of Lilliana, Alexander, Camilla, and the Social Worker. Furthermore, the high likelihood of repetition of neglect is established by Respondent-Father's historical, escalating conduct, as detailed by Lilliana's and Alexander's testimonies. *See In re Beasley*, 147 N.C. App. at 407, 555 S.E.2d at 648–49; *see also Smith*, 114 N.C. App. at 732, 443 S.E.2d at 104. His history of failing to comply with state and federal law, as well as showing up intoxicated, unannounced and uninvited are no less likely now that the mother is deceased. *See In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167.

We likewise reject Respondent-Father's argument that the trial court's

findings regarding violence towards the Juveniles shows nothing more than legally permissible corporal punishment. Respondent-Father cites *State v. Varner*, 252 N.C. App. 226, 796 S.E.2d 834 (2017) for the proposition that corporal punishment is legally permissible so long as no permanent injury occurs, or the intent is to gratify the parent's own evil passions. We note *Varner* is distinguishable as it pertains to criminal liability for child abuse, which has different burdens, standards, and purposes than juvenile proceedings. The trial court's findings regarding violence against the Juveniles and their resulting fear establish Respondent-Father either did not provide proper care and discipline or created an injurious living environment. See N.C. Gen. Stat. § 7B-101(15)(a), (e). In this case, we conclude the trial court's proper findings of fact support its conclusions of law, including the likelihood of future neglect. See *In re A.M.*, 377 N.C. at 225, 856 S.E.2d at 806.

There is no indication the trial court improperly considered Respondent-Father's incarceration or possible deportation. Rather, the trial court's consideration of Respondent-Father's federal incarceration, pending a possible third deportation, acknowledges the reality of his disregard for the law and its consequences, which is relevant to the likelihood of future neglect.

As discussed above, it is undisputed that Respondent-Father had access to educational worksheets provided by the Social Worker and failed to complete them; therefore, we decline to entertain Respondent-Father's challenges regarding the content of these materials.

4. Alternative Arguments

a. Incompatible Conclusions

Alternatively, Respondent-Father argues the trial court erred in finding grounds for neglect existed while declining to find that willful failure to make reasonable progress existed. Contrary to Respondent-Father's suggestion, these two distinct grounds for termination are not "indistinguishable." The intent of the General Assembly in termination cases is clear. *See generally* N.C. Gen. Stat. § 7B-1100 (2021).

Here, the trial court declined to find that Respondent-Father willfully failed to make reasonable progress with his case plan, due to the limitations of incarceration and circumstances outside his control. The required mindset of willfulness in a termination proceeding is established when the respondent had the ability to show reasonable progress but was unwilling to make the effort. *In re C.G.A.M.*, 193 N.C. App. 386, 391–92, 671 S.E.2d 1, 5 (2008). Lack of corrective action, as found in the Order, and willful failure to make reasonable progress with a case plan are separate and distinct bases. The trial court did not misapprehend the law, nor did the General Assembly in enacting the termination statutes.

b. Adjudication of Camilla and Eric

Alternatively, Respondent-Father argues the trial court's best interests disposition must be reversed as to Camilla and Eric because their evidence of neglect is entirely dependent on the other siblings' circumstances. We disagree.

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Although there is conflicting testimony as to whether Respondent-Father struck Camilla or Eric, this alone does not mean the definition of neglected juvenile is not or cannot be met. Although youthful, they were members of the same household, witnessing the same violent and traumatic events as the other children. Because the trial court based its ultimate finding regarding future likelihood of neglect, in part, on observing family violence, the trial court did not abuse its discretion in concluding that Camilla and Eric were likely to be neglected juveniles in the future if returned to Respondent-Father's care. *See In re G.G.M.*, 377 N.C. at 37, 855 S.E.2d at 484.

Having rejected Respondent-Father's alternative argument regarding Camilla and Eric, we decline to reach his contingent, alternative argument regarding the trial court's dispositional decision regarding Lilliana, Alexander, and Elizabeth.

V. Conclusion

In sum, we hold the trial court did not err in terminating Respondent-Father's parental rights based on neglect. Accordingly, we affirm the Order.

AFFIRMED.

Judges DILLON and STADING concur.

Report per Rule 30(e).