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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-404

Filed 16 May 2023

Wake County, Nos. 20 JT 20–22

IN THE MATTER OF: J.R., J.R., J.R., Jr.

Appeal by respondents from order entered 10 February 2022 by Judge Lori Christian in Wake County District Court. Heard in the Court of Appeals 4 April 2023.

*Mary Boyce Wells, for Petitioner-Appellee Wake County Health and Human Services.*

*Michelle FormyDuval Lynch, for Guardian Ad Litem.*

*Rebekah W. Davis, for Respondent-Appellant-Father.*

*Mercedes O. Chut, for Respondent-Appellant-Mother.*

CARPENTER, Judge.

Respondent-Parents appeal the trial court’s order terminating their parental rights to the minor children, J.R. (“Julia”)<sup>1</sup>, J.R. (“Jake”), and J.R., Jr. (“Josh”). Both parents argue the trial court erred in adjudicating the existence of grounds to terminate parental rights. Upon review, we conclude the trial court did not err in adjudicating the existence of grounds for termination under N.C. Gen. Stat. § 7B-

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<sup>1</sup> Pseudonyms are used to protect the identities of the juveniles and for ease of reading.

1111(a)(1) and affirm the termination order.

### **I. Factual & Procedural Background**

On 22 January 2020, Wake County Health and Human Services (“WCHHS”) filed petitions alleging six-year-old twins Julia and Jake and seven-year-old Josh were neglected and dependent juveniles and obtained nonsecure custody of the children.

The petitions alleged, and court records show, that the family was first involved with social services in New York where Julia, Jake, Josh, their older sibling, and their younger sibling, Jill, were removed from the Respondent-Parents’ custody due to abuse and neglect and placed in foster care, where they remained for approximately three years. New York court records show that Julia, Jake, Josh, and Jill were returned to Respondent-Father’s care on a “Trial Discharge[]” by March 2019 and to his custody on a “Final Discharge[]” in July 2019.<sup>2</sup> Shortly after the return of the children to Respondent-Father’s custody, Respondent-Father moved with the children to North Carolina. Respondent-Mother remained in New York. She never regained custody of the children and had not seen the children since they moved to North Carolina.

On 3 December 2019, WCHHS became involved upon receipt of a report from a school employee alleging Jake had been choked and hit in the stomach by

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<sup>2</sup> In an order entered in March 2020, the New York court ordered it did not have continuing jurisdiction over the children following their “Final Discharge[]” to Respondent-Father in July 2019.

Respondent-Father. The petitions alleged, upon WCHHS's investigation, the children described abuse they received when they lived in New York and displayed signs of past abuse, and Jake admitted to being spanked with a belt. The record, however, indicates that Jake recanted the allegations of physical abuse by Respondent-Father, which resulted in the report to WCHHS, and WCHHS did not observe Jake to have recent injuries. WCHHS noted the children appeared "somewhat malnourished and underweight," but that Josh reported there was plenty of food in the home.

The petitions provided that WCHHS subsequently received a call from the Raleigh Police Department Homicide Division on 21 January 2020 reporting Jill, who was five years old, was found deceased in a closet in the home. The petitions explained that neither Respondent-Father nor his girlfriend had an explanation for Jill's death and were unable to determine precisely when she entered the closet, but that "[t]he child had apparently been in the closet for some time and had died." An autopsy revealed Jill had a crayon in her stomach and a suction cup and a decorative rock in her throat. The petitions indicated the children knew Jill was in the closet, but Respondent-Father and his girlfriend told the children not to disturb them, and the children obeyed. WCHHS alleged in the petition that Respondent-Father's "failure to properly supervise the deceased child is concerning for the safety of the other children."

The juvenile petitions were heard together on 24 June and 8 and 9 July 2020. On 17 August 2020, the trial court entered an order adjudicating the children to be neglected juveniles based on findings of fact consistent with events described in the petition. The trial court additionally found: the children were not in school at the time of Jill's death because they had not received required immunizations, and it was unreasonable for it to take from September 2019 to January 2020 to get the children vaccinated; although Respondent-Father was home at the time of Jill's death, he left the children unsupervised for an extended period while he played video games, watched a movie, and slept in his bedroom for the greater part of the daytime hours from 6:30 a.m. until approximately 1:00 p.m.; Jill's death did not occur in the night when there was a reasonable expectation the children would be asleep; and Respondent-Father or his girlfriend should have been awake to supervise the children; Respondent-Father admitted to law enforcement that it was completely normal for the adults to leave the children to do what they want in the house while the adults were sleeping; the children were too young to supervise themselves for extended periods of time; Jill's cause of death was determined to be asphyxia due to upper airway obstruction; the children were aware Jill was in danger but were afraid to disturb Respondent-Father and the girlfriend; the children disclosed that they were put in the attic for punishment; Respondent-Father and the girlfriend had failed to provide care or seek medical attention for prior sickness and injuries to the children; and Josh was observed to have a swollen jaw and eye at the time of the filing

of the petition, which he blamed on a teacher, even though he had not been to school in recent days.

The court also specifically found Respondent-Father and the girlfriend were aware of the children's developmental delays, their potential to injure themselves, including their tendency to put inappropriate objects in their mouths, and their need for greater supervision, based on prior incidents in the home. Nevertheless, Respondent-Father and the girlfriend "were habitually unavailable to spend time with the children during waking hours" and left the children unsupervised despite a warning from a social worker that "these children had to be supervised at all times." Lastly, the court found that Respondent-Mother resides in a substance-abuse treatment center in New York and was unable to provide care for the children.

Upon adjudicating the children neglected, the court ordered WCHHS to retain custody of the children and for Respondent-Parents to comply with case plans. The case plans required both parents to: complete a parenting program and demonstrate skills and lessons learned in the program; obtain and maintain housing suitable for the children and provide documentation of housing; obtain and maintain income sufficient to meet the needs of the children and provide documentation; visit with the children in compliance with a visitation agreement; and maintain regular contact with WCHHS. Respondent-Mother was additionally required to obtain a mental-health assessment and adhere to medication management protocols; follow recommendations of the substance abuse program at Odyssey House; refrain from

use of illegal or impairing substance and submit to random drug screens; and complete a domestic violence education program. Respondent-Father was additionally required to obtain a psychological evaluation, refrain from illegal activity, and follow recommendations from his criminal case. Respondent-Mother was allowed virtual visitation with the children upon recommendation of the children's therapists. Respondent-Father was not allowed visitation so long as his conditions of release on felony child-abuse charges prohibited contact with the children and until recommendation by the children's therapists as well as further review by the court.

On 2 October 2020, Respondent-Father pled guilty to two counts of "negligent child abuse resulting in serious bodily injury," a Class E Felony. *See* N.C. Gen. Stat. § 14-318.4(a)(4) (2021). He received an intermediate sentence whereby he was sentenced to a suspended term of 25 to 42 months and placed on 60 months of supervised probation, with the requirement that he spend 21 January 2021, 21 January 2022, 21 January 2023, and 21 January 2024 in custody at Wake County Detention Center.

The juvenile matter came on for a permanency-planning hearing on 4 January 2021. In the court's order entered on 1 March 2021, the court found that neither parent was in a position to safely parent the children, it was unlikely the children would be able to be returned home within the next six months, and none of the children's therapists recommended contact between Respondent-Parents and the

children because of the children's trauma. The court accepted the recommendations of WCHHS and established a primary plan of adoption with a secondary plan of reunification.

As of the next hearing on 28 June 2021, the trial court found Respondent-Parents were still not making adequate progress despite some efforts, and the children needed more care and supervision than Respondent-Parents could provide. With regard to Respondent-Father, the court found that he continued to somewhat cooperate with his plan, and that WCHHS and the guardian ad litem ("GAL") were available to the court. But Respondent-Father denied responsibility for the children being brought into care; instead, he believed the children had been brainwashed and were untruthful in their disclosures of physical abuse, denying he ever used physical discipline. With regard to Respondent-Mother, the court found that she was not cooperating with her plan, WCHHS, or the GAL, and was unavailable to the court; she had an open case in New York concerning the children's older sibling and an infant sibling; and she had not provided verification of services, housing, or income. The court ordered WCHHS to take necessary steps to pursue the permanent plans.

On 23 August 2021, WCHHS filed a motion to terminate the parents' parental rights to Julia, Jake, and Josh on grounds of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and willful failure to make reasonable progress pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). The termination motion was heard on 12 January 2022. On 10 February 2022, the trial court entered an order, adjudicating the existence of both

alleged grounds for termination with respect to each parent and concluding it was in the children's best interests to terminate parental rights. Accordingly, the trial court terminated Respondent-Parents' parental rights as to all three children. Respondent-Father and Respondent-Mother appealed separately.

## **II. Jurisdiction**

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

## **III. Issue**

The issue on appeal is whether the trial court erred in terminating Respondent-Mother's and Respondent-Father's parental rights.

## **IV. Analysis**

### **A. Standard of Review**

At the adjudicatory stage of a termination proceeding, "the trial court must determine whether any of the grounds for termination delineated in N.C. [Gen. Stat.] § 7B-1111(a) have been shown to exist on the basis of clear, cogent, and convincing evidence." *In re S.C.C.*, 379 N.C. 303, 308, 864 S.E.2d 521, 525 (2021) (citing N.C. Gen. Stat. § 7B-1109(e)–(f) (2019)). "The existence of a single ground for termination is sufficient to support a trial court's adjudication decision." *Id.* at 303, 684 S.E.2d at 525; *see also* N.C. Gen. Stat. § 7B-1111(a) (2021) (allowing termination upon a finding of "one or more" grounds).

This Court reviews "a trial court's adjudication under N.C. [Gen. Stat.] § 7B-1109 'to determine whether the findings are supported by clear, cogent and



convincing evidence and the findings support the conclusions of law.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). “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 B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019) (citing *In re Moore*, 306 N.C. 394, 403–04, 293 S.E.2d 127, 132 (1982)). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). “Moreover, we review only those findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.” *Id.* at 407, 831 S.E.2d at 58–59. “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

#### **B. Neglect Under N.C. Gen. Stat. § 7B-1111(a)(1)**

A trial court may terminate parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) upon a finding that the parent has neglected their child such that the child meets the statutory definition of a “neglected juvenile.” N.C. Gen. Stat. § 7B-1111(a)(1). By definition, a juvenile is “neglected” when their parent “[d]oes not provide proper care, supervision, or discipline” or “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15) (2021). “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[.]” *Id.*

“When a child has been out of the parent’s custody for a significant period of time by the point at which the termination proceeding occurs, neglect may be established by a showing that the child was neglected on a previous occasion and the presence of the likelihood of future neglect by the parent if the child were to be returned to the parent’s care.” *In re J.D.O.*, 381 N.C. 799, 810, 874 S.E.2d 507, 517 (2022). “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 R.L.D.*, 375 N.C. 838, 841, 851 S.E.2d 17, 20 (2020) (citation omitted). “Relevant to the determination of probability of repetition of neglect is whether the parent has made any meaningful progress in eliminating the conditions that led to the removal of the children.” *In re O.W.D.A.*, 375 N.C. 645, 654, 849 S.E.2d 824, 831 (2020). However, “a parent’s compliance with his or her case plan does not preclude a finding of neglect.” *In re J.J.H.*, 376 N.C. 161, 185, 851 S.E.2d 336, 352 (2020) (citation omitted). “The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding.*” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984).

In this case, the trial court concluded grounds existed to terminate the parental rights of both Respondent-Parents pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) based

on ultimate findings that the children were previously neglected and that there was a high probability of repetition of neglect if the children were returned to either parent's care. The trial court supported its ultimate findings with findings about Respondent-Parents' issues—including domestic violence, physical and emotional abuse, parenting issues, lack of housing and income, and Respondent-Mother's mental health and substance abuse—while the children spent almost three years in New York foster care. The trial court also adopted findings from the 17 August 2020 adjudication order detailing WCHHS's involvement due to suspected abuse, the removal of the children from Respondent-Father's care in January 2020 following Jill's death, and the adjudication of the children as neglected juveniles. The trial court then issued findings about Respondent-Parents' progress towards addressing their issues before the children could reunify with them and about the children's continued need for heightened care, therapy, and stability to reach and maintain their developmental goals.

On appeal, both Respondent-Parents acknowledge the children were previously adjudicated neglected but contest the trial court's determination that there is a likelihood of a repetition of neglect if the children were returned to their respective care. We address Respondent-Father's and Respondent-Mother's appeals in turn.

***1. Respondent-Father's Appeal***

Respondent-Father challenges findings made by the trial court and argues the

evidence and findings did not support the court's determination that there was a likelihood of repetition of neglect if the children were returned to his care.<sup>3</sup>

In support of the determination that there was a likelihood of repetition of neglect if the children were returned to Respondent-Father's care, the trial court issued findings about Respondent-Father's circumstances since the prior neglect. The trial court found Respondent-Father pled guilty to two counts of felony child neglect resulting in serious bodily injury, and the court addressed the steps identified as necessary for the children to be returned to his care. Although the trial court found Respondent-Father was in compliance with requirements of his criminal case and aspects of his case plan, including that he was employed and earned sufficient income, maintained contact with WCHHS, and submitted to a psychological evaluation, the trial court's findings indicate he was slow to follow through with other recommendations and had not sufficiently demonstrated that it was safe for the children to have contact with him, much less return to his care.

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<sup>3</sup> We note that Respondent-Father asserts the trial court's determinations that he had not made reasonable progress and that there was a likelihood of repetition of neglect are incorrectly labeled as findings because they required the exercise of judgment and are therefore conclusions of law fully reviewable on appeal. The determinations are not findings of evidentiary fact; they are ultimate findings. See *In re N.D.A.*, 373 N.C. 71, 76, 833 S.E.2d 768, 772–73 (2019), *abrogated by In re G.C.*, \_\_ N.C. \_\_ n.3, 884 S.E.2d 658 n.3 (2023) (“[A]n ultimate finding is a finding supported by other evidentiary facts reached by natural reasoning.”). “Regardless of whether statements . . . are classified as findings of ultimate facts or conclusions of law, that classification decision does not alter the fact that the trial court's determination concerning the extent to which a parent's parental rights in a child are subject to termination on the basis of a particular ground must have sufficient support in the trial court's factual findings.” *In re N.D.A.*, 373 N.C. at 76–77, 833 S.E.2d at 773. We thus review the trial court's ultimate findings to determine whether they are supported by the evidentiary facts found by the trial court based on the evidence.

The trial court specifically found as follows:

18. . . . [Respondent-Father] reports that he is still in a relationship with [his girlfriend] but that he recently moved in with some friends. [Respondent-Father] has not provided an address for this new residence and does not consider this to be a possible home for the children. The [c]ourt cannot find that [Respondent-Father] has housing that is appropriate for the children. Nor can the court confirm that [Respondent-Father] does not reside with [his girlfriend].

. . . .

21. [Respondent-F]ather's visits were suspended due to pending criminal charges, the terms and conditions of his probation and the orders of the [c]ourt in the juvenile matter. He failed to make sufficient progress in his treatment for visits with the children to be safe for their mental health. The children remain terrified of [Respondent-Father].

. . . .

23. [Respondent-F]ather engaged in individual mental health counseling sporadically and was discharged from therapy due to missing multiple appointments. [Respondent-F]ather did not feel that he needed therapy. He did re-engage in therapy by the time of the permanency planning hearing in June 2021[,] and after the filing of the motion to terminate his parental rights was filed in August 2021[,] he began attending counseling regularly. He has not been able to demonstrate that he has benefitted from counseling.

24. [Respondent-F]ather had not identified a support person as of December 2021 but had identified a support person by the time of the hearing that has known [him] for many years. The support person reported that he is available to speak with [Respondent-Father] and that [Respondent-Father] does call him from time to time to talk. [Respondent-Father's] supporter does not speak with

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[Respondent-Father] regularly but is available if [Respondent-Father] reaches out.

25. [Respondent-F]ather also participated in parenting education as he had in New York prior to New York placing the children in his custody[,] but clearly he did not benefit from the parenting education he received in New York[,] and he has not demonstrated that he benefitted from parenting education that he received in North Carolina.

26. [Respondent-F]ather testified at this hearing that he made a mistake in not watching [Jill] closely the day that [Jill] died but still does not understand his part in [Jill's] death. [Respondent-F]ather denies knowing that [Jill] put objects in her mouth prior to her death. The hearing on adjudication found that he did know this prior to her death. [Respondent-F]ather denies the repeated abuse that all the children were subjected to as found in the adjudication order. [Respondent-F]ather denies the well documented history of domestic violence in the home. [Respondent-F]ather believes himself to have always been a great father to the children except for a brief lapse[,] and this is simply untrue. [Respondent-F]ather is not credible when he denies the long history of abuse and maltreatment the children have suffered[,] and his testimony proves that he has not accepted responsibility for the long history of maltreatment the children have suffered in his care.

27. [Respondent-F]ather also testified at this hearing that the children reported to him repeatedly that they were being abused in New York while they were placed in his grandmother's care and that he told them to "stop fibbing." [Respondent-Father] never reported the children's reports to him and justified not reporting this at the hearing by saying, "it could have come back on me". Even now [he] does not understand the need to make the safety of his children a priority.

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37. [The children's] therapist . . . tried to contact [Respondent-Father's] therapist but was unable to speak

with him. [The children's therapist] was able to review [Respondent-Father]'s psychological evaluation[,] and there were many concerns . . . that indicated that the children would not benefit from having contact with [Respondent-F]ather. [Respondent-Father] had not progressed to a point at which he was ready to take responsibility for his treatment of the children[,] and the children could easily regress if their emotional safety was not maintained.

In challenging the adjudication of grounds under N.C. Gen. Stat. § 7B-1111(a)(1), Respondent-Father asserts the trial court's findings about his therapy, his parenting education, and his refusal to accurately describe and take responsibility for Jill's death are erroneous. Specifically, he argues findings of fact 21, 23, 24, 25, and 26, among others, are not supported by evidence. We address his arguments to the extent the challenged findings are relevant to neglect under N.C. Gen. Stat. § 7B-1111(a)(1). We note, however, that in arguing the findings are unsupported by or contrary to evidence, Respondent-Father tends to rely on his own testimony that conflicts with other evidence. As stated above, "[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." *See In re B.O.A.*, 372 N.C. at 379, 831 S.E.2d at 310. "[I]t is the trial judge's duty to consider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn from the testimony[.]" *see In re T.N.H.*, 372 N.C. at 411, 831 S.E.2d at 61, and this Court "lacks the authority to reweigh the evidence that was before the trial court." *See In re A.U.D.*, 373 N.C. 3, 12, 832 S.E.2d 698, 704 (2019).

Respondent-Father contends finding of fact 21 concerning his lack of “sufficient progress” to begin visits and the children’s fear of him was unsupported by evidence. He argues there was evidence he took responsibility for Jill’s death, he was making progress towards visits, and the children’s opinion of him was based on the views of the children’s foster parents and therapists, since “[h]e was never given the chance to apologize to the children or to deal with their perception or fear of him.” His arguments are misdirected. It is undisputed that Respondent-Father’s visitation was suspended by orders entered in his criminal case and the juvenile case, and that visits would only be allowed upon recommendation by the children’s therapists. The record is clear that the children’s therapists never recommended visits. The therapist working with Julia and Jake testified about the extensive trauma the children experienced and that the children’s progress had been “very slow”; that interaction between the children and Respondent-Parents was counterproductive in their trauma-focused treatment; and that visitation and treatment with the parents was not beneficial to the children unless Respondent-Parents accepted responsibility and received necessary treatment. As found in finding of fact 37, the therapist testified that she and Respondent-Father’s therapist exchanged initial messages to discuss Respondent-Father’s progress, but no further conversation occurred after the initial exchange. Nevertheless, the therapist noted “red flags all over the place” upon review of Respondent-Father’s psychological assessment and explained the facts that the children did not feel safe with Respondent-Father and were terrified of him would be



factors she considered in contemplating whether contact between the children and Respondent-Father was appropriate. Her testimony indicates that was not yet a contemplation. Finding of fact 21 is supported by the evidence. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

Respondent-Father also argues finding of fact 23 concerning his participation in therapy was contrary to the evidence. To the extent Respondent-Father asserts the finding is contrary to evidence, it appears he disagrees with the portion of the finding that “[h]e has not been able to demonstrate that he has benefitted from counseling” based on his own account of his participation in therapy. In regard to his demonstration of progress, it is evident that Respondent-Father was not able to show benefits in the interaction with the children since his visits were suspended. Additionally, the social worker testified that since Respondent-Father began more consistently engaging in therapy in August 2021, Respondent-Father’s therapist was working through Respondent Father’s own traumas and feelings but had not addressed Respondent-Father’s part in Jill’s death and the children’s trauma. The social worker indicated it was unclear whether Respondent-Father “understands the significance of [the children’s] trauma in the treatment that they have gone through and will need.” She testified that the extent of Respondent-Father’s progress was that he was engaging in therapy more regularly and openly. Furthermore, as discussed below, Respondent-Father had not fully acknowledged his role in the children’s trauma or accepted responsibility. Finding of fact 23 is supported by the

evidence. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

Respondent-Father contends the trial court's finding in finding of fact 24—that he did not talk to his support person regularly and did not identify a support person until the termination hearing—is unsupported by evidence. He asserts there was evidence that he identified a capable support person well before the termination hearing, and that he spoke to a support person on a weekly basis. We are not entirely persuaded. Although testimony was presented that the support person spoke with Respondent-Father once per week, the recommendation in the psychological evaluation report was for a support person to provide direction and guidance in Respondent-Father's daily living and decisions. Additionally, the support person testified that he spoke with Respondent-Father less often than he did before he was asked to be a support person, explaining that he did not want to push Respondent-Father away. The trial court's finding that contact was not regular is a reasonable inference given the recommendation and the reduced contact with the support person. Additionally, Respondent-Father inaccurately describes the trial court's finding when he asserts it found he did not identify a support person until the hearing. The court found that he had identified the person "by the time of the hearing." To the extent the trial court found Respondent-Father had not identified the person as of December 2021, we agree the date is erroneous. Respondent-Father acknowledges he initially provided an incorrect phone number for the support person in November 2021, but the social worker testified at the termination hearing in

January 2022 that Respondent-Father provided a correct phone number for the support person “last month,” indicating the number was provided in December 2021. Thus, we disregard the December date in the finding. The significance of the finding, however, remains. It was recommended that Respondent-Father identify a support person in his psychological report from February 2021; he did so the month before the termination hearing, but the support person lived in New York, only spoke to Respondent-Father once per week by phone and was not involved in Respondent-Father’s daily living and decisions as recommended.

Respondent-Father also contends finding of fact 25—that he “clearly . . . did not benefit from the parenting education he received in New York, and he has not demonstrated that he benefitted from parenting education that he received in North Carolina”—is contrary to the evidence. We hold the finding is supported by the evidence. First, it is a reasonable inference that Respondent-Father did not benefit from parenting education in New York based on the facts that within a year of the children being returned to his custody in New York, Respondent-Father moved to North Carolina with the children, WCHHS became involved due to reports of child abuse, and the children were removed from Respondent-Father’s care following Jill’s death, which resulted in Respondent-Father’s conviction of felony child neglect. Second, regarding parenting education in North Carolina, the social worker testified that although Respondent-Father completed various programs and reported he learned a lot from the classes, he “hasn’t talked about how it would affect his

parenting” and “didn’t really give much insight to what he’s been learning and how it relates to these children.” The social worker explained that, while Respondent-Father acknowledged a mistake related to Jill’s death, he seems to view it as a singular mistake, and has not acknowledged any physical discipline or other maltreatment the children disclosed in assessments. The social worker testified that while Respondent-Father had completed services, she had to explain to him “about it not just being about completing services and checking the box, it’s about showing your understanding and communicating and really rectifying the issues that brought the children into care.” She stated Respondent-Father demonstrated a “lack of understanding of the children’s needs and their treatment and . . . showing the responsibility for what happened.” Finding of fact 25 is supported by the evidence. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

The last finding challenged by Respondent-Father as not supported by the evidence is finding of fact 26, concerning his lack of understanding of his role in Jill’s death and his continued denial of the history of abuse and maltreatment suffered by the children. Respondent-Father argues his guilty plea to felony child neglect shows that he took responsibility, and he asserts the fact that it was not a more serious offense establishes Jill’s death was an accident, reducing his culpability. He relies on his own testimony that he has shown remorse and accepted accountability for his mistake. Since there is evidence to support the finding, we must disagree.

Finding of fact 26 acknowledges that Respondent-Father testified that he made

a mistake. Nevertheless, the trial court found he did not understand his part in Jill's death. This is consistent with the social worker's testimony that Respondent-Father viewed the death as a singular mistake but had not demonstrated an understanding of his role in her death. Moreover, the trial court supported its finding that Respondent-Father "still does not understand his part in [Jill's] death" by further finding that he continues to deny "knowing that [Jill] put objects in her mouth prior to her death." Even on appeal, Respondent-Father argues the children had many behavioral problems of which he disclaims responsibility and knowledge of the severity, and he continues to dispute that he knew Jill had a habit of placing objects in her mouth. As the trial court noted in finding of fact 26, however, the court had already found in the prior adjudication order that Respondent-Father knew Jill had a habit of putting objects in her mouth. That finding is binding in the termination proceeding. *See In re T.N.H.*, 372 N.C. at 409, 831 S.E.2d at 60 (explaining a "respondent is bound by the doctrine of collateral estoppel from re-litigating . . . findings of fact" from an adjudication order that was not appealed). Respondent-Father's continued objection to findings established in the prior adjudication order, along with his testimony that he still does not understand how Jill's death happened, and that her death was an accident no one could control and that could happen to anyone support the trial court's determination that Respondent-Father "still does not understand his part in [Jill's] death."

Additionally, reports and orders entered throughout the juvenile case,

including unchallenged finding of fact 27, providing that Respondent-Father ignored the children's reported allegations of abuse in New York and did not report the allegations because "it could have come back on [him,]" along with testimony presented at the termination hearing, reflect that Respondent-Father continued to deny that the children were subjected to abuse or that he ever used physical discipline, despite disclosures by the children and ample evidence to the contrary. Although the trial court considered Respondent-Father's testimony, it found he was "not credible when he deni[ed] the long history of abuse and maltreatment the children have suffered[,] and his testimony prove[d] that he ha[d] not accepted responsibility for the long history of maltreatment the children have suffered in his care." We are bound by the trial court's credibility determination and will not reweigh Respondent-Father's testimony. *See In re T.N.H.*, 372 N.C. at 411, 831 S.E.2d at 61; *In re A.U.D.*, 373 N.C. at 12, 832 S.E.2d at 704. Because there is evidence to support finding of fact 26, it is binding on appeal. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

Having reviewed the findings of fact, we now turn to Respondent-Father's argument that the findings do not support the court's determinations that he did not make reasonable progress, and that there was a likelihood of repetition of neglect. By and large, Respondent-Father relies on his own testimony that is contrary to the trial court's findings of fact. He argues he made significant progress on his case plan towards addressing the issues which led to the children's prior neglect, such that the

circumstances at the time of the termination hearing were not what they were when the juvenile petition was filed in January 2020, and there was not a likelihood of repetition of neglect if the children were returned to his care.

Although Respondent-Father did engage in service of his case plan, “a parent’s compliance with his or her case plan does not preclude a finding of neglect.” *In re J.J.H.*, 376 N.C. 161, 185, 851 S.E.2d 336, 352 (2020) (noting the respondent’s progress in satisfying the requirements of her case plan while upholding the trial court’s determination that there was a likelihood that the neglect would be repeated in the future); *see also In re Y.Y.E.T.*, 205 N.C. App. 120, 131, 695 S.E.2d 517, 525 (2010) (explaining that a “case plan is not just a check list” and that “parents must demonstrate acknowledgment and understanding of why the juvenile entered DSS custody as well as changed behaviors”).

In this case, the trial court’s findings show that despite Respondent-Father’s engagement in parenting and counseling services and compliance with aspects of his case plan, he had not demonstrated a benefit from those services and failed to fully acknowledge and show responsibility for his role in the long history of maltreatment the children suffered. As the trial court found in unchallenged finding of fact 27, “[e]ven now [Respondent-Father] does not understand the need to make the safety of his children a priority.” Furthermore, Respondent-Father does not have appropriate housing for the children. The trial court’s unchallenged findings also establish that Julia, Jake, and Josh are children with special needs who have undergone extensive

therapy and continue to require heightened levels of care to deal with their trauma. The children “require stability and a feeling of safety to be able to maintain the progress they have made” and could “easily regress if their emotional safety [is] not maintained.” We hold the trial court’s findings regarding Respondent-Father’s failure to acknowledge and understand his role in the children’s trauma, his lack of housing, and the children’s need for a heightened level of care to accommodate their special needs, support the trial court’s determination that there was a likelihood of repetition of neglect if the children were returned to Respondent-Father’s care. *See In re J.J.H.*, 376 N.C. at 185–86, 851 S.E.2d at 352–53 (upholding an adjudication of neglect as grounds for termination despite the respondent’s substantial case-plan compliance where concerns that resulted in the children’s removal continued to exist, and challenges created by the children’s conditions provided compelling justification to determine there was a likelihood of repetition of neglect). Accordingly, the trial court properly found grounds to terminate Respondent-Father’s parental rights to Julia, Jake, and Josh under N.C. Gen. Stat. § 7B-1111(a)(1) based on findings of prior neglect and the likelihood of repetition of neglect. *See In re J.J.H.*, 376 N.C. at 185–86, 851 S.E.2d at 352–53.

## ***2. Respondent-Mother’s Appeal***

Respondent-Mother also challenges findings of fact made by the trial court and argues the findings and evidence do not support the court’s determination that there was a likelihood of repetition of neglect if the children were returned to her care.



Respondent-Mother first argues the trial court’s findings about her issues identified during the involvement of child protective services in New York—physical and emotional abuse of the children, domestic violence, parenting issues, lack of housing and income, and her mental health and substance abuse—were not supported by clear, cogent, and convincing evidence. Respondent-Mother acknowledges that the findings are based on information in a “Court Summary” originally prepared by WCHHS on 25 February 2020, which the record shows was updated on 15 June 2020, prior to the hearing on the juvenile petition, and supported by testimony from the social worker at the termination hearing. Respondent-Mother, however, contends the evidence is not competent because the sources of the information reported by WCHHS are not clearly identified, and information reported by Respondent-Father is unreliable. We disagree.

It is clear WCHHS’s court summary and the testimony of the social worker were based on interviews and a review of records from the New York case, conducted during WCHHS’s investigation. The court summary refers to the sources, and the social worker specifically testified that “[r]ecords received during [the] investigation gave insight to the children’s foster care history.” The trial court took judicial notice of the juvenile case file, including WCHHS’s court summary and subsequent reports containing the same information, at the termination hearing, and there was no objection to the social worker’s testimony. The record evidence and termination-hearing testimony by the social worker, in addition to Respondent-Mother’s own

testimony acknowledging mental health issues, substance abuse, and domestic violence, support the trial court's findings about the issues of concern in the New York case. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

Besides identifying the issues of concern for Respondent-Mother, the trial court issued the following findings of fact:

28. [Respondent-M]other completed a residential substance abuse treatment program in July 2020. She reports that she is still in an intensive substance abuse treatment program that meets five times a week and that she has not used drugs since the year 2020.

29. [Respondent-M]other was ordered to get a mental health assessment and follow through with any recommended treatment. She had not gotten a mental health assessment or participated in mental health treatment. She reported to the WCHHS several times that she has an assessment scheduled including in August 2020, June 2021, and December 2021 but has not done so.

30. [Respondent-M]other reports that she completed a parenting curriculum in the substance abuse treatment center and that she is participating in parenting education but has not demonstrated that she has benefitted from parenting education. She has one older child, [Danielle], that was removed from her care by the State of New York that has not been returned to her care. [Respondent-M]other did not make progress towards having [Danielle] returned to her care and that child [is] going to be adopted. [Respondent-M]other gave birth to a child named [Kyle] [on] January 7, 2020[,] and [Kyle] was removed from her care at the time of his birth. [Respondent-M]other testified and the [c]ourt finds as fact that [Kyle] was returned to the mother's care and then removed again by child protective services in New York in September 2020[,] and that [Kyle] remains out of the mother's care.

31. [Respondent-M]other reported that she completed domestic violence education while in the residential treatment program.

32. [Respondent-M]other has not maintained regular contact with the WCHHS social worker. She participated in three of six scheduled meeting with WCHSS. She attended a meeting in February 2020, May 2020[,] and in September 2020. She requested a CFT meeting through her attorney in November 2021. These contacts in almost two years do not constitute maintaining regular contact with the social workers from WCHHS.

33. [Respondent-M]other has never had employment and was previously receiving SSI disability income[,] but she no longer receives disability income. She receives \$100 a month in cash assistance from the New York, \$250 a month in food stamps and medical care. She hopes to qualify for a job in traffic safety and to qualify for her own housing but this has not happened yet.

Respondent-Mother challenges each of these findings.

Respondent-Mother contends findings of fact 28, 30, and 31 are “inaccurate and misleading” to the extent the trial court found she “reports” she engaged in an intensive substance-abuse treatment, had not used drugs since 2020, and completed parenting and domestic violence programs during her residential drug-treatment program because the social worker confirmed she had done so.<sup>4</sup> We agree in part. To the extent the trial court found only that Respondent-Mother “reports” or “reported” completing a parenting curriculum and domestic violence education while in the

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<sup>4</sup> Respondent-Mother also includes finding of fact 29, but her argument does not pertain to that finding.

residential treatment program, those portions of findings of fact 30 and 31 do not fully reflect the evidence on the issue. The “reports” were corroborated when the social worker confirmed parenting and domestic violence classes had been completed. We interpret those findings to be consistent with the evidence—that Respondent-Mother had completed those programs during her residential treatment.

We reject, however, Respondent-Mother’s argument regarding finding of fact 28. The social worker testified Respondent-Mother “did complete a residential substance abuse program in New York in July 2020” and “report[ed] that she is currently in an intensive substance[-]abuse program at least five times a week.” While Respondent-Mother testified she was still in an intensive substance-abuse program, there was no confirmation to WCHHS that Respondent-Mother was currently involved in treatment, besides her reports. Regarding drug screens, Respondent-Mother reported she had not used drugs since 2020 and had been testing negative; but, again, there was no confirmation. The social worker testified the last confirmation of negative drug screens was from a New York social worker in 2020, after Respondent-Mother was discharged from the residential treatment program, and Respondent-Mother had never provided documentation of any negative screens. Finding of fact 28 is supported by the evidence. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

Respondent-Mother next contends that, though finding of fact 29 concerning her failure to follow through with a mental-health assessment is technically correct,

she asserts she did work on her mental health while in her residential treatment program. Upon review, we acknowledge testimony from Respondent-Mother that she was working on her mental health while she was in the residential treatment program. She testified, however, that there was no updated diagnosis and the mental-health treatment provided was based solely on her ADD and ADHD diagnoses from when she was a “little kid.” At other points, Respondent-Mother acknowledged she was required to complete a mental-health assessment but had not done so. She testified that she was “going to try to find a place . . . to do [her] mental health” and had told the social worker that “[her] plan was to try to make an appointment for [her] mental health[.]” The social worker also testified that Respondent-Mother was required to complete a mental health assessment and follow recommendations, and that Respondent-Mother had reported she made several appointments for assessments but had not attended the appointments. Finding of fact 29 is supported by the testimony of Respondent-Mother and the social worker and is binding on appeal.

Respondent-Mother additionally challenges finding of fact 30 to the extent the trial court found she “has not demonstrated that she had benefitted from parenting education.” We disagree. The record is clear that visitation between Respondent-Mother and the children was never recommended by the children’s therapists, so she had not demonstrated any learned parenting skills with the children. Moreover, the social worker testified that while Respondent-Mother has received updates regarding

the children in the permanency-planning hearings in which she participated, “she’s not reached out to ask specific questions” and had never demonstrated an understanding of the children’s treatment needs or asked to participate in the treatment of the children. The social worker testified that Respondent-Mother never talked about insights and parenting skills she gained from the parenting classes. The social worker opined that, “based on the little information that [Respondent-Mother has] gotten from meetings[,] I don’t think that she has a full understanding of what it would take to care for the children. We hold the evidence supports the challenged finding. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

Respondent-Mother argues finding of fact 32 is unsupported by the evidence to the extent it found she had only three contacts with WCHHS in three years. She directs this court to evidence of her participation in hearings, including but not limited to the permanency-planning hearings identified in finding of fact 32, and to evidence of telephone and email communications with WCHHS social workers. Upon review, we agree with Respondent-Mother that the final sentence in finding of fact 32—“[t]hese contacts in almost two years do not constitute maintaining regular contact with the social workers from WCHHS”—is erroneous to the extent it implies the permanency-planning hearings and “CFT meeting” identified in the finding were her only contacts with WCHHS. The trial court’s initial finding that Respondent-Mother “has not maintained regular contact with the WCHSS social worker[,]” however, is directly supported by the record and the social worker’s testimony that

Respondent-Mother has not maintained consistent contact with her and “has had minimal contact with the agency throughout the life of the case.” Besides the final sentence in finding of fact 32, the remainder of the finding is supported by the evidence. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

Lastly, Respondent-Mother admits that finding of fact 33 “is technically accurate” regarding her lack of employment, income, and independent housing, but she asserts it is misleading because “the language of finding 33 implies [she] was destitute.” We take no such implication from the finding and review the facts found. Finding of fact 33 is directly supported by the social worker’s and Respondent-Mother’s testimonies that she has never been employed, relied on government benefit programs, and, although she hoped to obtain a traffic-safety job and obtain independent housing, she had not done so. *See In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

Having reviewed Respondent-Mother’s challenges to the trial court’s findings, we turn to her contention that the findings do not support the trial court’s determination that there was a likelihood of repetition of neglect if the children were returned to her care. Respondent-Mother argues the trial court’s findings did not assess her circumstances at the time of the termination hearing or show the children would be subject to substantial risk of impairment in her care. We disagree.

Here, the findings establish that the children were removed from Respondent-Mother’s care in New York following a domestic violence incident, but numerous other

issues, including physical and emotional abuse of the children, parenting issues, lack of housing and income, mental health concerns, and substance abuse, were identified in her New York case. The children were never returned to Respondent-Mother's care. The findings establish that Respondent-Mother completed a residential substance-abuse treatment program, during which she also completed parenting and domestic-violence education. Respondent-Mother, however, had not demonstrated that she benefitted from parenting education, and, by her own reports, she was still in an intensive substance-abuse treatment program that she would continue until her counselor in the program determined it was no longer necessary. The findings also establish that Respondent-Mother never followed through with a requirement that she obtain an updated mental health assessment and follow recommendations; she had not maintained regular contact with WCHHS; she had never been employed and lived off government benefits; and she did not have independent housing suitable for the children.

We are satisfied the above findings about Respondent-Mother's circumstances at the time of the termination hearing, when considered in conjunction with findings that Respondent-Mother's oldest and youngest children had also been removed from her care in New York and never returned, and findings that Julia, Jake, and Josh suffered an extensive history of maltreatment and trauma and required a heightened level of care and therapy in order to reach and maintain developmental goals and stability, support the trial court's determination that there was a likelihood of



repetition of neglect if they were returned to Respondent-Mother's care. *See In re J.J.H.*, 376 N.C. at 185–86, 851 S.E.2d at 352–53. Accordingly, the trial court properly found grounds to terminate Respondent-Mother's parental rights to Julia, Jake, and Josh under N.C. Gen. Stat. § 7B-1111(a)(1), based on findings of prior neglect and the likelihood of repetition of neglect. *See In re J.J.H.*, 376 N.C. at 185–86, 851 S.E.2d at 352–53.

## **V. Conclusion**

Having rejected Respondent-Father's and Respondent-Mother's challenges to the trial court's adjudication of the existence of grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(1), and because neither parent challenges the trial court's best-interests determination at the dispositional stage, we affirm the order terminating their parental rights.

AFFIRMED.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).