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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-945

Filed 20 June 2023

Guilford County, Nos. 17 JT 333, 18 JT 421, 20 JT 94

IN THE MATTER OF: J.A.H., B.A.H., B.A.H.

Appeal by Respondent-father and Respondent-mother from order entered 2 September 2022 by Judge Tonia A. Cutchin in Guilford County District Court. Heard in the Court of Appeals 6 June 2023.

Mercedes O. Chut for Petitioner-Appellee Guilford County Department of Health and Human Services.

Garron T. Michael for Respondent-Appellant father.

Anné C. Wright for Respondent-Appellant mother.

Brittany T. McKinney for guardian ad litem.

GRIFFIN, Judge.

Respondent-father and Respondent-mother appeal from the trial court's order terminating their parental rights to James, Brooke, and Brianna.¹ Both Father and

¹ We use pseudonyms for ease of reading and to protect the identity of the juveniles. See N.C. R. App. P. 42(b).

Mother argue the trial court erred in terminating their parental rights because there was insufficient evidence to support a conclusion that grounds existed for termination under N.C. Gen. Stat. §§ 7B-1111(a)(1), (a)(2), or (a)(6). We disagree and hold there existed sufficient evidence to support a conclusion that grounds existed for termination and affirm the trial court.

I. Factual and Procedural History

Father and Mother have three children—James, Brooke, and Brianna—who were born in 2017, 2018, and 2020, respectively. Rowan County Department of Social Services first became involved with the family in 2017 upon receiving a report alleging domestic violence between the parents and feeding and hygiene concerns with James. Rowan County then transferred the matter to Guilford County Department of Social Services (“GCDSS”) where the family was residing. T. Fox was the social worker assigned to the matter.

On 15 December 2017, GCDSS received a report of an alleged physical altercation between the parents while James was in the car. GCDSS received non-secure custody of James and, on 18 December 2017, he was placed in foster care. Mother had previously been diagnosed with schizophrenia, other specified trauma and stress related disorder, other specified anxiety disorder, cannabis use disorder, and alcohol use disorder.

Both parents entered into case plans on 12 January 2018. On 26 March 2018, the trial court entered an initial adjudication and disposition order for James where

both parents stipulated he was neglected. On 24 April 2018, Mother and Father entered into updated case plans. On 3 May 2018, the court held a permanency planning hearing ordering the parents to comply with their case plans and to complete parenting classes and domestic violence programs.

In September 2018, the parents again entered into updated case plans. On 25 November 2018, Brooke was born and, on 30 November 2018, GCDSS filed a petition alleging she was a neglected and dependent juvenile based on Mother's mental health concerns and domestic violence. Mother began outpatient treatment but failed to complete domestic violence classes and missed visits with the children. Father missed visits with the children and fell asleep during several of the visits he did attend.

On 10 May 2019, Brooke was adjudicated neglected and dependent. A permanency planning was held for both James and Brooke on 25 July 2019. Then, on 9 December 2019, GCDSS filed a petition seeking termination of parental rights for both James and Brooke alleging grounds of neglect and willful failure to make reasonable progress on behalf of both parents.

On 8 October 2020, Mother gave birth to Brianna and, on 12 October 2020, GCDSS filed a petition for Brianna. Brianna was adjudicated neglected on 23 February 2021. On 25 October 2021, GCDSS filed a motion to terminate parental rights to Brianna alleging grounds of neglect, willful failure to make reasonable progress, willful failure to pay a reasonable portion of the cost of care, and

dependency.

On 11 July 2022, 14 July 2022, and 15 July 2022, the termination of parental rights matters as to all three children came on for hearing. On 2 September 2022, the trial court entered an order terminating each parent's parental rights. Both parents filed notice of appeal on 8 September 2022.

II. Analysis

Father and Mother both contend the trial court erred in terminating their parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), (a)(2), and (a)(6) as there was insufficient evidence to support a conclusion that grounds for termination existed under §§ 7B-1111(a)(1), (a)(2), or (a)(6). We disagree.

North Carolina General Statute, section 7B-1111, offers several grounds under which an individual's parental rights may be terminated. N.C. Gen. Stat. § 7B-1111 (2021). Termination proceedings occur in two phases—the adjudication phase and the dispositional phase. *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003). At the adjudication phase, the trial court's findings “must be supported by clear, cogent, and convincing evidence, and the findings must support a conclusion that at least one statutory ground for the termination of parental rights exists.” *In re J.A.P.*, 189 N.C. App. 683, 687–88, 659 S.E.2d 14, 18 (2008). At the dispositional phase, the trial court must consider whether termination is in the best interests of the child. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001).

We review a trial court's termination order to determine “whether the findings

of fact are supported by clear, cogent and convincing evidence and whether [the] findings, in turn, support the conclusions of law.” *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 5 (2004). Then, based on the findings which support the grounds for termination, we consider “whether the trial court abused its discretion in finding termination to be in the best interest of the child.” *Id.* at 222, 591 S.E.2d at 5 (citing *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 225 (1995)).

A. Father’s Contentions

Father contends the trial court erred in terminating his parental rights as there was insufficient evidence to support a conclusion that grounds existed for termination under N.C. Gen. Stat. §§ 7B-1111(a)(1), (a)(2), or (a)(6). Specifically, regarding section (a)(2), Father argues there is insufficient evidence to support Findings of Fact 37, 38, 44-46, 48, 49, 50-53, 55, 56, and 58, and therefore insufficient evidence to support a conclusion that grounds existed for termination under N.C. Gen. Stat. § 7B-1111(a)(2).

Under North Carolina General Statute, section 7B-1111(a)(2), the trial court may terminate a parent’s parental rights upon finding “[t]he parent has willfully left [their children] in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the [children].” N.C. Gen. Stat. § 7B-1111(a)(2). Thus, the court must perform a two-part analysis and determine, by clear and convincing evidence: “(1) a child has

been willfully left by the parent in foster care or placement outside the home for over twelve months, and (2) as of the time of the hearing, the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.” *In re L.C.R.*, 226 N.C. App. 249, 250–51, 739 S.E.2d 596, 597–98 (2013) (citations omitted).

Willfulness, in this context, is something less than willful abandonment and is not precluded even where the parent has made some efforts to regain custody of the children. *In re Shepard*, 162 N.C. App. at 224, 591 S.E.2d at 7 (internal marks and citations omitted). Moreover, the nature and extent of a parent’s reasonable progress “is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights.” *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006). When considering a parent’s reasonable progress, “parental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist[.]” *In re B.O.A.*, 372 N.C. 372, 384, 831 S.E.2d 305, 313 (2019).

Finding of Fact 37

Father argues Finding of Fact 37 is unsupported by the evidence, specifically taking issue with the portion of the Finding which states, “[Father] was diagnosed with pancreatitis and was hospitalized overnight but failed to report his hospitalization to GCDSS.” However, at the termination hearing, Fox testified: “As far as the Department is aware, [Father] has reported his hospitalizations.” Further, the court, in reciting its findings at the hearing stated:

The Court will find that [Father] is also receiving pain management from Bethany Medical Center. He did sign his release and report hospitalization when he was hospitalized October the 11th, 2019. He at that time was diagnosed with pancreatitis (sic) and was hospitalized overnight.

This evidence does not support the trial court's Finding as both Fox's testimony and the statements of the trial court reflect Father reported his hospitalization.

Thus, Finding of Fact 37 is not supported by competent evidence and is therefore erroneous.

Finding of Fact 38

In Finding of Fact 38, the trial court found:

[Father's] failure to comply with recommendations of medical providers has resulted in his falling asleep during visits and missing visits. He has left the hospital against medical advice. [Father] is not in compliance with this task.

Father argues there is insufficient evidence to support the statement within this Finding which notes he is not in compliance with the portion of his case plan which requires him to follow medical recommendations to ensure he is able to adequately care for his children. Nevertheless, Fox testified Father received a recommendation to have a tonsillectomy to help manage his sleep apnea but did not follow through with the procedure, failed to advise GCDSS as to his discharge recommendations after being hospitalized with pancreatitis, and failed to advise GCDSS as to how he was treating his pancreatitis altogether.

Such evidence is sufficient to support the trial court's Finding. The trial court did not err in Finding of Fact 38.

Finding of Fact 44

Father takes issue with several portions of Finding of Fact 44. Father first contends there is insufficient evidence to support the portion of the Finding which states: "[Father] would be prompted to change the children's diapers, but, instead, [Father] would often smell the diapers to determine if changing was necessary." At the hearing, Fox testified Father would change the diapers but had to be prompted to do so. Further, the community service support technician, Graves, testified she saw Father change the diapers, but if he did not change them, he would check them. As such, this portion of Finding of Fact 44 is supported by competent evidence.

Next, Father suggests there is insufficient evidence to support the portion of Finding of Fact 44 which states: "On June 8, 2022, [James] kicked and slapped [Father], and [Father's] natural reaction was to slap the juvenile back during this visitation." However, Father testified:

[James] raised over and just hit me in the face and my hand just went up and down and I hit him and it wasn't intentionally. It was just that he did hit me in the face real hard and my arm reacted before I had a chance to, you know, stop me from doing what I did. It wasn't an intentional act.

Father's testimony here indicates his arm acted without intention, hitting James. Thus, it can be said Father's natural reaction was to hit James back. Because the

evidence is sufficient to support this portion of the Finding, the trial court did not err.

Additionally, Father argues there was insufficient evidence to support the portion of the Finding which states: “[Father] has completed anger management, but he cannot show, or has not shown, the skills he has learned in anger management or how to parent his children. [Father] is not compliant with this task.” However, Fox testified:

Q: Have you seen any behavior changes since he’s come out of the anger management class?

A: No.

Q: Have you seen any behavior changes since he took PATE and Healthy Start?

A: No.

This evidence supports this challenged portion of the trial court’s Finding. Therefore, the trial court did not err. As each challenged portion of this Finding is supported by competent evidence, the trial court did not err in Finding of Fact 44.

Finding of Fact 45

Father contends there is insufficient evidence to support Findings of Fact 45 which states, in relevant part, “[Father] is able to work 40 hours per week despite being on disability.” Yet, Father testified stating:

Q: And you think you’re able to work 40 hours a week?

A: Sure. I’m able to work more than that.

This testimony serves as sufficient evidence to support the trial court’s Finding and

therefore, the trial court did not err.

Finding of Fact 46

Father contends there is insufficient evidence to support the portion of Findings of Fact 46 which states, “[t]here are continued domestic violence incidents reported by [Mother].” However, Fox testified there were ongoing concerns as to domestic violence in the relationship, and that there were continued allegations of domestic violence. As such, there exists evidence sufficient to support the Finding. Therefore the trial court did not err.

Finding of Fact 48

Father argues the trial court erred in Finding of Fact 48 which states, “[Father] is not willing to accept coaching from CSST [G]raves and is not willing to follow recommendations from GCDSS[.]” At the hearing, Graves specifically testified as to several incidents where Father was not willing to follow her recommendation, noting Father told her “[she] was not going to be telling him what to do with his kids and if he wanted those kids to drink out of their cup, it was okay because they are his kids[.]” Further, Graves testified that “[w]henever [she] told him that the baby was supposed to have a bottle, he told [her] that the baby would let him know when it was time[.]” Such evidence is sufficient to support the trial court’s Finding. Thus, the trial court did not err.

Findings of Fact 49 and 51

Father takes issue with Findings of Fact 49 and 51 arguing there is insufficient

evidence to support the trial court's finding that Father has not demonstrated behavior changes. However, Fox specifically testified she had not seen any behavior changes in Father, even after his participation in anger management classes and PATE and Healthy Start. This is sufficient evidence to support Findings of Fact 49 and 51 and therefore the trial court did not err.

Findings of Fact 50-53, 55, 56, and 58

Father generally challenges Findings of Fact 50-53, 55, 56, and 58 noting the Findings are more accurately characterized as conclusions of law and are unsupported. Findings of Fact 50-53 state:

50. The actions of the parents, [Mother] and [Father], have been inconsistent with the constitutionally protected rights and status of a parent.

51. [Mother] and [Father] have not remedied the conditions that led to the juveniles' removal. They have not shown behavior changes, or the ability to care for the juveniles' health, safety, and welfare.

52. [Mother] and [Father] have (illegible) their parental responsibilities and have not acted in a manner consistent with their constitutionally protected right as a parent.

53. [Mother] and [Father] have willfully left the juveniles in foster care for more than 12 months without showing to the satisfaction of the [c]ourt that reasonable progress has been made in correcting the conditions that led to the juveniles' removal.

We agree with Father, that these Findings serve as conclusions of law. However, despite these Findings being better classified as conclusions of law, there still exists

evidence to support such conclusions. The trial court's Findings of Fact which Father challenges on appeal, less Finding of Fact 37 which is erroneous, along with the trial court's additional Findings which Father neglected to challenge are sufficient to support the above Findings. Therefore, the trial court did not err.

Finally, Father challenges Finding of Fact 56 which states:

Grounds exist to terminate the parental rights of [Mother] and [Father] pursuant to N.C.G.S. § 7B-1111(a)(2), given that the parents have willfully left the juveniles in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

a. The juveniles have been in foster care continuously since December 15, 2017, November 30, 2018, and October 20, 2020.

b. Despite the services that were offered to the mother and father since the juveniles came into custody, the mother and father have failed to show to the satisfaction of the [c]ourt that they made reasonable progress toward correcting the conditions which led to the removal of the juveniles.

As noted above each of the Findings Father challenges, less Finding of Fact 37, is supported by sufficient evidence and are all therefore binding. Those Findings together with the trial court's additional Findings, which Father did not challenge, support Finding of Fact 56.

Because Finding of Fact 56 is supported by competent evidence, it is sufficient to support the trial court's conclusion that grounds exist to terminate Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). Therefore, the trial court did not err in terminating Father's parental rights.

Further, because grounds exist to terminate Father's parental rights under § 7B-1111(a)(2), we need not address Father's contentions as to the trial court's Findings of Fact 55 and 58 regarding whether grounds exist for termination under N.C. Gen. Stat. §§ 7B-1111(a)(1) and (a)(6). *See In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) (“[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and ‘an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds.’” (quoting *In re Clark*, 159 N.C. App. 75, 78 n.3, 582 S.E.2d 657, 659 n.3 (2003))).

B. Mother's Contentions

Mother contends the trial court erred in terminating her parental rights as there was insufficient evidence to support a conclusion that grounds existed for termination under N.C. Gen. Stat. §§ 7B-1111(a)(1), (a)(2), or (a)(6). Specifically, as to § 7B-1111(a)(1), Mother argues the competent findings of fact do not support the trial court's determination that repetition of neglect was probable. Further, Mother explicitly challenges Findings of Fact 30 and 55.

Under North Carolina General Statute, section 7B-1111(a)(1), the trial court may terminate a parent's parental rights where "[t]he parent has abused or neglected the juvenile." N.C. Gen. Stat. § § 7B-1111(a)(1). A neglected juvenile is one who, among other things, "does not receive proper care, supervision, or discipline from the juvenile's parent, . . . [or] lives in an environment injurious to the juvenile's welfare[.]" *In re Yocum*, 158 N.C. App. 198, 204, 580 S.E.2d 399, 403 (2003).

Notably, "[w]here, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect." *In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001). For, if the petitioner was required to show the child is currently being neglected by the parent, termination of parental rights would be impossible. *Id.* Thus, the court may consider prior adjudications of neglect, but "must also consider evidence of changed conditions in light of the history of neglect by the parent, and the probability of a repetition of neglect." *Id.* ("[P]rior adjudications of neglect . . . will rarely be sufficient, standing alone, to support a termination of parental rights, since the petitioner must establish that neglect exists at the time of the hearing." (citing *In re Ballard*, 311 N.C. 708, 713–14, 319 S.E.2d 227, 231 (1984))).

Finding of Fact 30

Mother contends Finding of Fact 30 is not supported by competent evidence because she had not had any hospitalizations for her mental health since 2018, was

compliant and consistent in medication management at the time of the hearing, there had not been allegations of domestic violence in over a year, and she had consistently participated in individual therapy. Thus, Mother argues the fact that she was not engaged in more therapy was not sufficient evidence that her mental health was unstable at the time of the hearing.

The trial court's Finding of Fact 30 states:

Despite being recommended by RHA to participate in group therapy and peer support, [Mother] is resistant to using and following through with group therapy. Therefore, she is failing to comply with the recommendations. [Mother] has failed to change her behaviors and failed to comply with the recommendation from her therapy which is one of the issues that led to the juveniles' removal. Despite being diagnosed with schizophrenia and PTSD, she has failed to get help and utilize the tools to assist her. [Mother] was hospitalized in May 2018 via an involuntary commitment. She was instructed to, and did not, take her mental health medications during the first trimester of her pregnancy with [Brooke]. As of this hearing, [Mother's] mental health remains unstable, which renders her unable to provide a stable environment for the juveniles.

At the hearing, Fox testified Mother had developed a pattern of starting recommended therapy, being consistent for a period, then stopping services again. Fox noted this pattern seemed to coincide with court dates. Further, she testified as to the importance of group therapy for someone in Mother's circumstances, while indicating Mother "was resistant to those and had advised different clinicians at different times that she was not interested in completing or participating in peer

support or any other therapeutic services they were offering.” Fox further testified she had not seen any behavior changes in Mother since 2018 and that GCDSS’s concern was that Mother “with her highs and lows, her ups and downs, and how frequent they would happen, without consistent therapy or consistent mental health services, . . . it would make it difficult for her to be able to properly manage and parent her children.” Fox also stated that while Mother was, as far as she knew, doing the medication management, Mother still “continues to struggle with this relationship, whether she wants to be in this relationship, and that’s a tug of war for the children. There’s no stability. It’s back and forth; it’s off and on; it’s hot and cold.”

Such evidence is sufficient to support the trial court’s Finding of Fact 30. Further, the evidence indicated that, had Mother better taken care of her mental health, she may have been able to provide a more stable environment for the children. However, GCDSS saw no improvement or change in Mother’s behavior as she was not compliant with GCDSS’s recommendations and had neglected to implement the tools provided her thus leading GCDSS to conclude Mother was not capable of providing her children with a stable living environment.

Nonetheless, Mother, citing *In re A.L.L.* and *In re Z.D.*, also argues the trial court’s findings here, even if supported by competent evidence, were insufficient to support grounds for termination.

Mother cites to *In re A.L.L.* to support her proposition that the court was required, yet failed, to make findings regarding the severity of Mother’s mental

health condition or what symptoms or behaviors which emanated from her mental illness rendered her unable to parent or created a likelihood of future neglect.

In *In re A.L.L.*, our Supreme Court, in considering whether a parent had abandoned their child, stated:

just as incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision, behavior emanating from a parent's mental health conditions may supply grounds for terminating parental rights only upon an analysis of the relevant facts and circumstances, such as the severity of the parent's condition and the extent to which the parent's behavior is consistent with recognizable symptoms of an illness.

In re A.L.L., 376 N.C. 99, 100, 852 S.E.2d 1, 3 (2020) (internal marks and citations omitted). Our Supreme Court here only intended to suggest that, similar to the trial court's consideration of a parent's incarceration, a parent's mental health condition alone cannot stand to support grounds for termination without specific analysis as to the relevant facts and circumstances surrounding their condition. Here, the trial court did not solely base their conclusion, as to the existence of grounds for termination of Mother's parental rights under § 7B-1111(a)(1), on Mother's mental health condition alone. Rather the court made sufficient findings which otherwise support such a conclusion.

Further, Mother cites to *In re Z.D.* to support her contention that the trial court's findings were too ambiguous, unspecific, and subjective to support a finding of a likelihood of repetition of neglect.

In *In re Z.D.*, our Court held the trial court's findings were too ambiguous where they discussed the mother's mental health history and diagnosis and stated her behavior during visits "was consistently concerning' and 'disturbing[,] 'adversely impact[ed] the [child,]' and 'demonstrated an ongoing and continuing inability to provide proper care.'" *In re Z.D.*, 258 N.C. App. 441, 450, 812 S.E.2d 668, 675 (2018). In holding as such, we noted the terms "concerning" and "disturbing" were subjective and could not, without further explanation of the behavior and how the behavior would impact the mother's ability to care for her child, support a finding that there was a likelihood that the child would be further neglected if returned to his mother. *Id.*

In the instant case, the trial court's findings were not ambiguous as to the likelihood of repetition of neglect if the children were returned to Mother's care. Unlike the court's findings in *In re Z.D.*, the trial court here made specific findings noting: Mother, despite recommendation, is inconsistent with therapy and even refuses group therapy; Mother has not exhibited the ability or willingness to address her mental health as she is not consistently engaged in therapy; Mother makes statements as to her relationships while in therapy then later retracts them and offers excuses for them; Mother has failed to make behavioral changes or comply with recommendations; Mother has failed to get help and utilize tools to assist her; and Mother, despite instruction, has previously neglected to take mental health medications.

Because these findings are not ambiguous or subjective, and further explain Mother's behaviors, they are sufficient to support a finding of a likelihood of repetition of neglect.

Finding of Fact 55

Mother contends the trial court erred in Finding of Fact 55 as Mother made substantial progress on her case plan, completed parenting classes and domestic violence services, and secured stable housing and income, and therefore the finding is not supported by competent evidence.

Finding of Fact 55 states:

Grounds exist to terminate the parental rights of [Mother] and [Father] pursuant to N.C.G.S. § 7B-1111(a)(1), as they relate to the juveniles, given that the parents neglected the juveniles, the neglect continues to date, and there is a likelihood of the repetition of neglect if the juveniles were returned to any parent as follows:

- a. The parents' past neglect of the juveniles was proven by clear, cogent, and convincing evidence at the adjudication hearing in the underlying case when the juveniles were adjudicated to be neglected and dependent. [GCDSS] relies upon the adjudicatory findings of fact contained in the Orders from those adjudication hearings as evidence establishing neglect of the juveniles by each of the parents. Collateral estoppel prevents the parents from being able to re-litigate those facts and issues.
- b. [Mother's] and [Father's] neglect of the juveniles has been ongoing since removal and has continued through the present date, including but not limited to their failure to comply with the terms of their case plan, and failure to demonstrate an

ability to implement the skills learned.

Regardless of whether Mother made substantial progress on her case plan, completed parenting classes and domestic violence services, and secured stable housing and income, there was sufficient evidence presented at the hearing as indicated above to support a finding of neglect and a likelihood of future neglect if the children were returned to Mother. As such, the trial court did not err in making such a Finding.

Mother makes several additional arguments as to whether there existed sufficient evidence to support a conclusion that grounds existed to terminate her parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(2) and (a)(6). However, we need not address her further contentions because, where there exists “at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds.” *In re P.L.P.*, 173 N.C. App. at 8, 618 S.E.2d at 246 (internal marks and citations omitted).

AFFIRMED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).