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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-97

Filed 19 December 2023

Chatham County, No. 17 JT 37

IN THE MATTER OF:

H.R.M.

Appeal by Respondent-Mother from order entered 27 September 2022 by Judge Sherri Murrell in Chatham County District Court. Heard in the Court of Appeals 20 July 2023.

Amanda C. Knight for the Petitioner-Appellee.

Benjamin J. Kull for the Respondent-Appellant.

STADING, Judge.

Respondent-Appellant (“Mother”) appeals from the trial court’s order terminating her parental rights to her minor child pursuant to N.C. Gen. Stat. § 7B-1111 (2021). For the reasons set forth below, we vacate the trial court’s order terminating Mother’s parental rights and remand for further proceedings.

I. Background

“Henry” was born to Mother in March 2017.¹ At birth, he was addicted to cocaine and had chlamydia of the lungs. Subsequently, Henry was adjudicated neglected and dependent. He was placed with his paternal grandparents—Veronica and Clyde Scotton (“petitioners”). Throughout the proceedings, Mother was represented by legal counsel.

The trial court held two permanency planning hearings and determined that the permanency plan would be guardianship with a secondary plan of reunification. On 9 August 2018, the trial court held a third hearing to “develop or review the plan to achieve a safe, permanent home for the juvenile within a reasonable period of time.” On 19 September 2018, the trial court entered a permanency planning order containing findings regarding Mother’s minimal participation in court ordered treatment and her failure to visit Henry since July 2017. As a result, the trial court concluded that “[the] permanent plan has been achieved[,]” “concurrent planning is no longer required[,]” and appointed petitioners as Henry’s guardians. However, the trial court provided that Mother “shall be allowed supervised visitation with [Henry] at the [Chatham County] Visitation Center for a minimum of 1 hour once a month[,]” but Mother “shall have no contact with [petitioners] and all scheduling shall be done through the Visitation Center.”

¹ Henry is a pseudonym to protect the identity of the minor child. See N.C. R. App. P. 42.

On 13 June 2022, petitioners filed a petition to terminate Mother’s parental rights, alleging three grounds for termination: N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (7). The trial court held a termination hearing on 26 September 2022. On the same day, petitioners filed a “voluntary dismissal of termination of parental rights claim with respect to [Father].” Mother was served with notice of the hearing but did not attend. Her attorney of record was nonetheless present at the hearing and notified the court that she (Mother’s counsel) tried to contact Mother to no avail.

At the hearing, the trial court heard testimony from petitioner-grandmother (“Grandmother”). Grandmother testified that until February 2020, Mother exercised visitation with Henry at the visitation center. However, to navigate COVID-19 restrictions, the center closed and only held electronic virtual visitations. In accordance with the pending guardianship order, the center’s supervisor contacted Grandmother and asked for permission to schedule a virtual visit between Mother and Henry. Grandmother agreed to the virtual visit but did not hear from the center again. Grandmother also testified that she believed that Mother tried to contact the center once about scheduling virtual visits, but she (Grandmother) “guess[ed] [Mother] hasn’t tried to get in touch with the visitation center[.]” In any event, Mother has not seen Henry since February 2020. The trial court did not hear testimony from anyone at the center, and Mother’s counsel did not present evidence, but did cross-examine Grandmother.

On 27 September 2022, the trial court entered an order terminating Mother's parental rights to Henry. In its order, the court made several findings of facts, including:

1. This is an action involving one minor child, [Henry]. The minor child was born at University of North Carolina Medical Center in Chapel Hill, North Carolina on March . . . 2017. . . .
...
4. [Mother] was served with the Petition to Terminate Parental Rights on June 23, 2022, via service by Sheriff.
5. [An attorney] was appointed as [Mother's] counsel and has attempted to make contact with [Mother] on several occasions since her appointment in this matter. Said attorney also represented [Mother] in the DSS abuse and neglect action. [Maternal grandmother] contacted said attorney following her appointment in the [Termination of Parental Rights] matter and left a message. Counsel returned her call several times, but was unable to leave a message because the voice mail box was full. [Mother] has not made any other attempts to contact her appointed counsel, has not filed any responsive pleading in this matter and has not appeared in court on either of the two properly noticed court dates.
6. . . . [Father's] last known address is . . . North Carolina.
...
7. . . . [Mother's] last known address is . . . North Carolina.
...
8. Respondents were never married but were involved in a romantic relationship of which one (1) minor child was born[.]
9. On July 27, 2017, the minor child was adjudicated neglected and dependent in the Chatham County, North Carolina action . . . bearing file number 17-JA-37. After the third permanency planning hearing in the matter, the Court entered a Permanency Planning Order (hereinafter referred to as "PPO") on September 19, 2018, which took effect on August 9, 2018 and appointed Petitioners as guardians of the person of the minor child.

...

12. The facts are sufficient to warrant a determination that grounds exist pursuant to N.C.G.S. § 7B-1111(a) for termination of [Mother's] parental rights as follows:

a. [Mother] has neglected the minor child, as determined by N.C.G.S. § 7B-1111(a)(1). The minor child was adjudicated neglected [on 27 July 2017]. .

..

b. [Mother] has willfully left the minor child in placement outside the home for more than twelve (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 minor child, which constitutes grounds for termination of parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).

c. [Mother] has willfully abandoned the minor child for at least six consecutive months immediately preceding the filing of this petition, which constitutes grounds for termination of parental rights pursuant to N.C.G.S. § 7B-1111(a)(7). [Mother] was entitled to supervised visitation with the minor child in the guardianship order. While [Mother] participated in some visitations prior to the pandemic beginning in March 2020, [Mother] has failed to make good faith efforts to see or otherwise contact the minor child since February 2020. At some point in 2020, [Mother] contacted the visitation center regarding her visits with the minor child and the visitation center reached out to Petitioners to see if they would agree to allowing the minor child to visit with [Mother] via zoom since the visitation center was closed at that time. Petitioners agreed to zoom visitations, but [Mother] failed to follow through in setting up such visitation and Petitioners did not hear anything further regarding visitation.

13. Petitioners have been the minor child's primary [caretakers] for the majority of his life and have provided a safe, stable and loving home for the minor child. The minor child is thriving in their care.

...

17. The minor child has expressed wanting to be fully in Petitioner's family[.]

18. Petitioners intend to adopt the minor child and have taken steps to begin that process with DSS. . . .

19. It is in the best interest of the minor child that [Mother's] rights be terminated in that Petitioners wish to adopt the minor child, change his surname to their own, and ensure that he feels as though he is part of their family and grows up in the environment he deserves.

Thus, the trial court concluded that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (7) to terminate Mother's parental rights, and that it was in Henry's best interest for Mother's parental rights be terminated. Mother filed a notice of appeal on 14 November 2022.

II. Jurisdiction

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

III. Analysis

Mother raises the following issues on appeal: (1) whether certain findings of fact are actually conclusions of law; (2) whether certain findings of fact are supported by clear, cogent, and convincing evidence; (3) whether termination under N.C. Gen. Stat. § 7B-1111(a)(7) must be reversed because the findings of fact do not answer the "integral" question of whether Mother ever acted with the requisite "willful intent;" (4) whether termination under N.C. Gen. Stat. § 7B-1111(a)(1) must be reversed because the trial court made no findings of fact or conclusions of law on the likelihood

of future neglect; (5) whether termination under N.C. Gen. Stat. § 7B-1111(a)(2) must be reversed because the trial court made no findings of fact identifying the conditions that led to Henry's removal or amount of Mother's progress toward correcting those conditions; (6) whether this matter must be remanded to dismiss the termination petition because petitioners presented insufficient evidence to support their claims; and, in the alternative, (7) whether the termination order must be reversed because Mother received ineffective assistance of counsel at the termination hearing.

A. Findings of Facts as Conclusions of Law

Mother first argues that the following portions of finding of fact no. 12 contain determinations that are conclusions of law:

12. The facts are sufficient to warrant a determination that grounds exist pursuant to N.C.G.S. § 7B-1111(a) for termination of [Mother's] parental rights as follows:

- a. [Mother] has neglected the minor child, as determined by N.C.G.S. § 7B-1111(a)(1).
- b. Respondent-mother has willfully left the minor child in placement outside the home for more than twelve (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 minor child, which constitutes grounds for termination of parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).
- c. [Mother] has willfully abandoned the minor child for at least six consecutive months immediately preceding the filing of this petition, which constitutes grounds for termination of parental rights pursuant to N.C.G.S. § 7B-1111(a)(7).

This Court has previously noted that “any determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law,” and that any determination reached through “logical reasoning from the evidentiary facts” should be classified as a finding of fact. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (citations omitted). We have also held that “[t]he trial court’s classification of its own determination as a finding or conclusion does not govern our analysis.” *In re J.T.C.*, 273 N.C. App. 66, 73, 847 S.E.2d 452, 458 (2020). And, if a trial court mislabels “conclusions of law as findings of fact, findings of fact which are essentially conclusions of law will be treated as such on appeal.” *In re J.O.D.*, 374 N.C. 797, 807, 844 S.E.2d 570, 578 (2020) (internal quotation marks and citation omitted).

The above-listed portions of finding of fact no. 12 recite the statutory grounds for termination of Mother’s parental rights to Henry under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (7). These portions are better classified as conclusions of law. Thus, this Court will review the portions of finding of fact no. 12 *de novo*. *See In re Z.D.*, 258 N.C. 441, 443, 812 S.E.2d 668, 671 (2018).

B. Findings Based on Clear, Cogent, and Convincing Evidence

Mother next argues that certain findings of fact are not supported by clear, cogent, and convincing evidence. Specifically, she argues that there is insufficient evidence to support the following statements within finding of fact no. 12: “At some point in 2020, Respondent-mother contacted the visitation center regarding her visits

with the minor child”; that Mother “has failed to make good faith efforts to see or otherwise contact the minor child since February 2020”; and that Mother “failed to follow through in setting up such [virtual] visitations[.]” She also claims that other details from the trial court’s findings are not based on sufficient evidence: Henry’s birthplace in finding no. 1, Father’s last known address in finding no. 6, Mother’s last known address in finding no. 7, respondent-parent’s relationship in finding no. 8, information about the underlying neglect and dependency adjudication in finding no. 9, and Henry’s history of residences in finding no. 11.

“The trial court has the duty of evaluating the weight and credibility of the evidence and, in a [termination of parental rights] case, before making a finding of fact, the trial court must be sufficiently satisfied with the evidence to be able to find the facts by clear, cogent, and convincing evidence.” *In re S.I.D.-M.*, 288 N.C. App. 154, 165, 885 S.E.2d 344, 351 (2023) (citation omitted). It is the sole province of the trial court to weigh evidence and draw any reasonable inferences from it. *In re K.L.T.*, 374 N.C. 826, 843, 845 S.E.2d 28, 41 (2020). “If a different inference may be drawn from the evidence, the trial court alone determines which inferences to draw and which to reject.” *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (internal quotation marks and citations omitted). “Such inferences, however, cannot rest on conjecture or surmise. This is necessarily so because an inference is a permissible conclusion drawn by reason from a premise established by proof. Accordingly, an appellate court may review the reasonableness of the inferences

drawn by the trial court from the evidence.” *In re K.L.T.*, 374 N.C. at 843, 845 S.E.2d at 41 (internal quotation marks and citation omitted).

1. *Finding of Fact No. 12*

At the hearing, the only evidence that the trial court heard regarding any attempt by Mother to contact the visitation center came from Grandmother’s testimony: “I guess she hasn’t tried to get in touch with the visitation center [because] all her visits [were] through the visitation center” and “[Mother] has contacted the visitation center once since COVID, and [the visitation center] contacted me and asked me about Zoom[.]” There was no evidence from the visitation center showing that Mother contacted the center or failed to make efforts to contact Henry through the center. Nor was there evidence suggesting that Mother failed to follow through in setting up virtual visits. The trial court nevertheless appears to have taken Grandmother’s testimony as true and accurate and used it to draw the inferences contained in finding of fact no. 12. However, Grandmother’s testimony and findings inferred from it are not supported by clear, cogent, and convincing evidence, since they are based on surmise and conjecture and were not drawn by a premise established by proof. *See id.*

Black’s Law Dictionary defines “conjecture” as “[a] guess; supposition[.]” and “surmise” as “[an] idea based on weak evidence[.]” *Conjecture, Black’s Law Dictionary* (7th ed. 1999); *Surmise, Black’s Law Dictionary* (7th ed. 1999). Grandmother’s testimony fits squarely within these definitions. While this Court recognizes that the

trial court was free to evaluate the weight and credibility of Grandmother's testimony to create a reasonable inference, the trial court remained responsible for ensuring that its inferences contained in the findings were reasonable and drawn from "a premise established by proof." *In re K.L.T.*, 374 N.C. at 843, 845 S.E.2d at 41. It cannot be said that the testimony of Grandmother meets this standard. Grandmother did not speak to anyone at the visitation center after they contacted her about Mother exercising virtual visits. Nor did Grandmother confirm the number of times Mother reached out to the center. And though Mother did not attend the hearing and her trial counsel did not proffer evidence to rebut Grandmother's testimony, it was improper to accept Grandmother's "guess" as true without having a reasonable basis for doing so. Therefore, since portions of finding of fact no. 12 are statements based on conjecture or surmise, they are not supported by clear, cogent, and convincing evidence.

2. Findings of Fact Nos. 1, 6, 7, 8, 9, and 11.

Contrary to Mother's claim that finding of fact no. 1 is not based on evidence presented by petitioners, the transcript of the proceeding shows that Grandmother did testify to the town and hospital where Henry was born.

As for findings of fact nos. 6 and 7, Mother is correct that evidence was not presented showing the parents' last known addresses. Though the prior "Permanency Planning Order" was attached and incorporated by reference in the verified "Petition to Terminate Parental Rights," the transcript shows that neither the order, nor its

contents, were admitted into evidence—either by judicial notice or testimony of its underlying contents. *See In re S.M.*, 375 N.C. 673, 690, 850 S.E.2d 292, 306 (2020) (holding that a finding of fact about a Guardian ad Litem report was not supported by competent evidence since “the transcript does not show that the GAL report was admitted into evidence by the trial court during the hearing”); *see also In re J.W.*, 173 N.C. App. 450, 455, 619 S.E.2d 534, 539 (2005) (holding that “a court may take judicial notice of earlier proceedings in the same cause[.]” (citing *In re Byrd*, 72 N.C. App. 277, 279, 324 S.E.2d 273, 276 (1985), *aff’d*, 360 N.C. 361, 625 S.E.2d 780 (2006)). In this context, absent introduction into evidence by some mechanism, the trial court cannot consider the contents of the petition or attached order. *See In re I.D.*, 239 N.C. App. 172, 174, 769 S.E.2d 846 (2015) (stating: “This Court has held that ‘[a]s the link between a parent and child is a fundamental right worthy of the highest degree of scrutiny, the trial court must fulfill all procedural requirements in the course of its duty to determine whether allegations of neglect are supported by clear and convincing evidence.’” (quoting *In re Shaw*, 152 N.C. App. 126, 129, 566 S.E.2d 744, 746 (2002)). Therefore, we conclude that there was not clear, convincing, and cogent evidence to support these findings by the trial court. The record still does not reflect any controversy concerning the relevance of the parents’ addresses as to the ultimate determination of any ground for termination cited by the trial court.

Similarly, the challenged portion of finding of fact no. 8—the nature of the parents’ relationship—is inconsequential in considering the grounds for termination.

As for finding of fact no. 9, since the “Permanency Planning Order” was not admitted into evidence, some portions of this finding are supported by competent evidence from testimony at the hearing, while other portions are not. Evidence contained in the record—Grandmother’s testimony—provides for a reasonable inference by the trial court that Henry was adjudicated neglected and dependent, there was a permanency planning hearing, and that petitioners acquired guardianship in 2018. But in the foregoing analysis, we pay no heed to the remainder of this finding since it is not supported by clear, cogent, and convincing evidence.

C. Willful Abandonment

We next consider Mother’s contention that the trial court’s ground for termination under N.C. Gen. Stat. § 7B-1111(a)(7) must be reversed because the findings of fact do not address whether Mother acted with the requisite willful intent. Mother argues that the trial court did not make findings of fact that show she acted with the requisite “willful intent” because the findings only establish that she has not had contact with Henry during the requisite period.

“At the adjudicatory stage of a termination of parental rights hearing, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that at least one ground for termination exists.” *In re O.J.R.*, 239 N.C. App. 329, 332, 769 S.E.2d 631, 634 (2015) (citations omitted); *see also* N.C. Gen. Stat. § 7B-1109(f) (2021). The trial court may terminate a party’s parental rights upon a finding that “[t]he parent has willfully abandoned the juvenile for at least six consecutive months

immediately preceding the filing of the petition or motion[.]” N.C. Gen. Stat. § 7B-1111(a)(7). “[A]lthough the trial court may consider a parent’s conduct outside the six-month window in evaluating a parent’s credibility and intentions, the ‘determinative’ period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition.” *In re J.D.C.H.*, 375 N.C. 335, 338, 847 S.E.2d 868, 872 (2020) (citation omitted). Petitioners filed this petition on 13 June 2022, so the relevant six-month period is between 13 December 2021 and 13 June 2022.

“[I]f a parent withholds his presence, his love, his care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child.” *In re B.C.B.*, 374 N.C. 32, 35, 839 S.E.2d 748, 752 (2020) (citing *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962)). The word “willful” encompasses more than a mere intention, but also purpose and deliberation. *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986). “The willfulness of a parent’s actions is a question of fact for the trial court.” *In re K.N.K.*, 374 N.C. 50, 53, 839 S.E.2d 735, 738 (2020) (citing *Pratt*, 257 N.C. at 501, 126 S.E.2d at 608). “The findings must clearly show that the parent’s actions are wholly inconsistent with a desire to maintain custody of the child.” *In re C.J.H.*, 240 N.C. App. 489, 503–04, 772 S.E.2d 82, 92 (2015).

Here, the evidence does not support the trial court’s finding that Mother willfully abandoned Henry during the relevant six-month period. “Abandonment

implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child. The word willful encompasses more than an intention to do a thing; there must also be purpose and deliberation.” *In re Adoption of Searle*, 82 N.C. App. at 275, 346 S.E.2d at 514 (internal quotation marks and citations omitted). “Thus, termination based on abandonment requires findings that show more than a failure of the parent to live up to his or her obligations as a parent in an appropriate fashion.” *In re D.M.O.*, 250 N.C. App. 570, 572–73, 794 S.E.2d 258, 861 (2016). While there is no evidence that Mother tried to contact Henry during the relevant period or provide any support, Mother’s failure to do so is insufficient—on its own—to warrant abandonment. *See Pratt*, 257 N.C. at 501–02, 126 S.E.2d at 608 (“Certainly a continued wil[l]ful failure to perform the parental duty to support and maintain a child would be evidence that a parent had relinquished his claim to the child. However, a mere failure of the parent of a minor child in the custody of a third person to contribute to its support does not in and of itself constitute abandonment. Explanations could be made which would be inconsistent with a wil[l]ful intent to abandon.”). Moreover, the permanency planning order prohibited Mother from contacting petitioners directly, so Mother’s conduct may be subject to other explanations. *See id.*; *see also In re E.B.*, 375 N.C. 310, 319, 847 S.E.2d 666, 673 (2020) (refusing to find abandonment when the “respondent's actions indicated an intent to let his sister complete the ICPC process and assume custody of Ella, not an intent to abandon Ella to DSS.”); *In re Matherly*,

149 N.C. App. 452, 455, 562 S.E.2d 15, 18 (2002) (“Evidence showing [] parents’ ability, or capacity to acquire the ability, to overcome factors which resulted in their children being placed in foster care must be apparent for willfulness to attach.”); *Bost v. Van Nortwick*, 117 N.C. App. 1, 18, 449 S.E.2d 911, 921 (1994) (“Our review of [the] respondent’s inability to pay child support due to his dependency on alcohol and related financial problems does not support a finding of willful abandonment.”). Accordingly, we hold that the trial court’s findings of fact do not support its conclusion that Mother’s parental rights were subject to termination based on willful abandonment.

D. Neglect

Rather than willful abandonment, the facts contained in the record better align with neglect under N.C. Gen. Stat. § 7B-1111(a)(1). But Mother contends that the trial court also erred in concluding that grounds existed to terminate her parental rights based on neglect because the trial court failed to make a finding regarding the likelihood of future neglect. Considering the contents of the order in present form, we agree with Mother on this point.

A trial court may terminate parental rights when it concludes that the parent has neglected the juvenile within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is one “whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided

necessary remedial care; or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15) (2019). In some circumstances, the trial court may terminate a parent's rights based on neglect that is currently occurring at the time of the termination hearing. *See, e.g., In re K.C.T.*, 375 N.C. 592, 599–600, 850 S.E.2d 330, 336 (2020) (“[T]his Court has recognized that the neglect ground can support termination . . . if a parent is presently neglecting their child by abandonment.”). In other instances, the fact that “a child has not been in the custody of the parent for a significant period of time prior to the termination hearing” would make “requiring the petitioner in such circumstances to show that the child is currently neglected by the parent . . . impossible.” *In re N.D.A.*, 373 N.C. 71, 80, 833 S.E.2d 768, 775 (2019). In this situation, “evidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights.” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). Yet “[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect.” *Id.* A trial court may find neglect if it concludes the evidence demonstrates “a likelihood of future neglect by the parent.” *In re R.L.D.*, 375 N.C. 838, 841, 851 S.E.2d 17, 20 (2020).

In considering the record along with excising parts of finding of fact no. 12, *supra*, we find that the adjudication order lacks a determination of a likelihood of future neglect should Henry be returned to Mother's care. *See In re C.L.H.*, 376 N.C.

614, 853 S.E.2d 434 (2021) (holding that the trial court erred in concluding the neglect ground existed where the trial court did not find that there would be a likelihood of future neglect and the findings of fact did not support such a conclusion). Though the trial court found that Henry was previously adjudicated neglected, the court did not make any findings regarding the likelihood that Henry would be neglected if he were returned to Mother's care, "a finding which was necessary to sustain the conclusion that [Mother's] parental rights were subject to termination based on neglect." *In re B.R.L.*, 379 N.C. 15, 22, 863 S.E.2d 763, 770 (2021) (citation omitted).

While the trial court's findings are insufficient to support the termination of Mother's parental rights for neglect, there may be evidence in the record from which the trial court could have made additional findings of fact that would support a finding of future neglect. On remand, the trial court may, in its discretion, amend its findings based on the existing record, or may conduct any further proceedings that it deems necessary, including taking additional evidence or hearing further arguments from the parties. *In re J.M.D.*, 210 N.C. App. 420, 429, 708 S.E.2d 167, 174 (2011).

IV. Conclusion

For the foregoing reasons, we vacate the trial court's order terminating Mother's parental rights and remand for further proceedings not inconsistent with this opinion.

VACATED AND REMANDED.

Judges ZACHARY and GORE concurs.

IN RE: H.R.M.

Opinion of the Court

Report per Rule 30(e).