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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-518

Filed 19 December 2023

Rowan County, Nos. 19 JT 153-55

IN THE MATTER OF: I.K., K.B., J.B.

Appeal by Respondent-Father from Order entered 23 February 2023 by Judge James F. Randolph in Rowan County District Court. Heard in the Court of Appeals 21 November 2023.

*Jane R. Thompson for Petitioner-Appellee Rowan County Department of Social Services.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for Guardian ad litem.*

*Robinson & Lawing, LLP, by Christopher M. Watford, for Respondent-Appellant Father.*

PER CURIAM.

Respondent, father of I.K. (Ian)<sup>1</sup>, appeals from an order terminating his parental rights. Based on the reasons stated herein, we affirm.

**I. Background**

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

Ian was born in November 2016. On 20 December 2019, Rowan County Department of Social Services (DSS) obtained nonsecure custody of Ian and his two half-siblings K.B. (Katie) and J.B. (Jack) and filed a juvenile petition alleging them to be neglected and dependent juveniles.<sup>2</sup> The petition alleged that DSS received five reports in the fall of 2019 regarding concerns about the children’s welfare in the care of their mother and Respondent.<sup>3</sup> The reports alleged drug abuse, physical abuse, domestic conflict, improper supervision, school truancy, and untreated mental health issues. Katie and Jack reported that the mother and Respondent would go into their bathroom or bedroom and close the door for long periods of time, “crush pills and snort them[,]” and argue loudly and frequently. In September 2019, another child of Respondent’s was living in the family home, was out late “running the roads” with Jack, and was hit by a car. Jack had left the family home on numerous occasions without Respondent knowing his whereabouts.

The petition further alleged that the family home was unclean and disorderly. There was “no flooring in the home, only plywood.” On 6 September 2019, the mother and Respondent were charged with four counts of contributing to the delinquency of a juvenile based on the poor conditions of the home after law enforcement officers observed “filthy conditions, a lack of food, rotten food smeared on the walls and floor, piles of trash in corners, dirty dishes piled on the counters, insufficient sleeping

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<sup>2</sup> Katie and Jack are not subjects of this appeal.

<sup>3</sup> Ian’s mother is not a party to this appeal.

spaces, and unsanitary toilets.” School personnel and DSS had observed Katie and Jack wearing shoes or clothes that were “too big or dirty[,]” and they had missed numerous days of school without a valid excuse. Jack had been hospitalized repeatedly for suicidal ideations and violent behavior, and the mother failed to ensure that he took his medications and allowed Jack to miss critical psychiatric appointments. The mother and Respondent refused to sign safety plans, allow access to their home at times, or submit to requested drug screens. On more than one occasion, they stated they would not complete any services recommended by DSS and were unable to provide an appropriate care provider.

Following a hearing on 6 February 2020, the trial court entered an Order adjudicating Ian to be neglected and dependent and continuing DSS’s custody of Ian. Respondent was ordered to: complete an Adult Holistic Assessment with Genesis and comply with all recommendations; submit to all random drug screens requested by DSS or service providers; obtain and maintain safe, sanitary, and stable housing; and sign releases of information so that DSS, the Guardian ad litem (GAL), and the courts could review any assessment or treatment progress. Respondent was allowed weekly supervised visitation with Ian for a minimum of two hours.

Multiple scheduled permanency planning hearings were continued in this matter for various reasons, including closures due to the COVID-19 pandemic. The first permanency planning hearing did not take place until 15 October 2020. The 15 October 2020 hearing began but was then continued until 12 November 2020 so

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Respondent could complete a hair follicle drug screen, enroll in drug treatment and provide proof, and engage in parenting classes. Following two more continuances, the permanency planning hearing was completed on 18 February 2021. The trial court entered an Order on 9 April 2021, finding that Respondent had twice cancelled an Adult Holistic Assessment and had yet to reschedule. DSS was unable to obtain Respondent's substance abuse treatment records, and Respondent declined to help DSS obtain his records. Respondent refused all drug screens until 13 February 2020, when he tested negative for all substances except buprenorphine. Pursuant to a court-ordered hair follicle drug screen on 16 October 2020, Respondent tested positive for amphetamines and methamphetamines. Respondent had been referred for parenting education through the Triple P Parenting program, and the parenting instructor reported he "usually no-show[ed] or cancel[ed] about three to four times a month" and met with her once a month.

The trial court further found that while photos provided by Respondent showed the family home had been remodeled, DSS had been unable to visit the home. DSS had scheduled at least five attempts to see the home, but the family either cancelled or failed to answer the door at the scheduled times. On 1 February 2021, a DSS social worker was briefly able to see the living room and noticed the construction in the living room was complete, "though many items were cluttered around the space." The trial court found Respondent had stated "many times that he does not need to comply" with the case plan, had never taken any responsibility for his actions, and continued

to deny that his children were hurt by his neglect. The trial court established the primary permanent plan as adoption with a secondary plan of reunification. Respondent's supervised visitation was reduced to monthly visitation for two hours, and Respondent's phone calls, including weekly family Zoom calls, were suspended until Respondent could show significant compliance with his case plan.

On 9 September 2021, DSS filed a petition to terminate Respondent's parental rights. DSS alleged grounds existed to terminate Respondent's parental rights for neglect and willfully leaving Ian in foster care or placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to his removal. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(2) (2021).

A permanency planning hearing was held on 16 September 2021, and the trial court entered an Order on 16 November 2021, finding Respondent submitted to a drug screen on 15 September 2021 and tested positive for buprenorphine, alcohol, and marijuana. Respondent had not completed his Adult Holistic Assessment nor participated consistently in any treatment. While Respondent claimed he was voluntarily hospitalized in August 2021, the mother reported that he was hospitalized “for brain damage due to drug use.” Respondent signed a release on 16 September 2021 so that DSS could access his medical records. On 10 June 2021, a DSS social worker conducted a visit to the family's home and found it to be in “much disarray, and the odor of cat feces was overwhelming.” Respondent participated sporadically in the Triple P Parenting program but was discharged due to being unresponsive. He

re-engaged in the program and had attended two sessions in August 2021, but he missed the most recent session “due to a no-show” and had not rescheduled.

A subsequent permanency planning hearing was held on 24 March 2022, and the trial court entered an Order on 22 September 2022, finding that Respondent had been hospitalized from 16 to 20 August 2021 for psychotic symptoms and received the diagnosis of psychoactive substance-induced psychotic disorder. Upon discharge from the hospital, he did not comply with the hospital’s recommendation that he continue outpatient treatment. On 27 August 2021, he was charged with breaking and/or entering. Although he had not received any substance abuse treatment, Respondent’s drug screens had been negative for substances since October 2021. DSS conducted visits to the family home on 18 October 2021 and 7 January 2022 and observed it to be appropriate. The mother and Respondent continued to live together.

The Petition to Terminate Respondent’s Parental Rights came on for hearing on 8 April, 19 May, 15 July, 28 July, 30 September, and 17 November 2022. On 23 February 2023, the trial court entered an Order adjudicating the existence of both grounds alleged by DSS. The trial court also concluded that it was in Ian’s best interests that Respondent’s parental rights be terminated, *see* N.C. Gen. Stat. § 7B-1110(a) (2021), and terminated his rights. Respondent appeals.

## **II. Analysis**

On appeal, Respondent argues the trial court erred by denying his counsel’s Motion to Continue the termination hearing. Respondent also challenges the trial

court's adjudication of the existence of grounds to terminate his parental rights in Ian. We address each argument in turn.

**A. Motion to Continue**

Respondent argues that the trial court erred by denying his counsel's Motion to Continue made during the adjudicatory portion of the termination hearing. We are not persuaded by his arguments.

N.C. Gen. Stat. § 7B-1109(d) provides:

The court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

N.C. Gen. Stat. § 7B-1109(d) (2021). “Furthermore, [c]ontinuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it. The chief consideration is whether granting or denying a continuance will further substantial justice.’” *In re S.M.*, 375 N.C. 673, 680, 850 S.E.2d 292, 299–300 (2020) (citation omitted).

In the present case, DSS filed the Petition to Terminate Respondent's Parental Rights on 9 September 2021. The adjudicatory portion of the termination hearing

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was held over four days—8 April, 19 May, 15 July, and 28 July 2022. Respondent was present during the first three days of the hearing. At the conclusion of the hearing on 15 July 2022, the trial court stated the next hearing date would occur on 28 July 2022 and it would begin no earlier than 11:00 a.m. The trial court stated the hearing would “be at the end of the hall and up one floor, courtroom number 5.”

The 28 July 2022 hearing began at 11:38 a.m., and neither Respondent nor the mother were present. At the start of the hearing, counsel for Respondent informed the trial court that she had spoken with Respondent, and “[h]e is on his way here, about 30 minutes out.” Respondent believed that if the mother had entered inpatient treatment, the hearing would be continued to another day. Counsel for the mother stated that she did not know where the mother was and had sent an email to her at 11:00 a.m. but had not received a response. The hearing proceeded, DSS’s last witness concluded her testimony, and DSS rested. Counsel for DSS noted that while Respondent “indicated he was going to be here approximately 20 minutes ago[,]” he had not yet arrived to court. Thereafter, counsel for Respondent and the mother made a motion to dismiss, and the GAL and DSS opposed the motion. While counsel for DSS was making her argument, she stated, “even if [the mother] is in rehab, where is [Respondent]?” Respondent’s counsel responded by stating that Respondent was downstairs and that she had “told him to wait.” The trial court then denied the motion to dismiss.

Counsel for Respondent informed the trial court “we’re not agreeing to move on to Disposition. We want the opportunity to present.” Respondent’s counsel stated:

[Counsel for Respondent]: Okay. My client is downstairs, so I would want to just confirm if he’s, he needs to be present in the courtroom.

[Counsel for DSS]: I, I don’t have any reason to think he’s downstairs.

[Counsel for Respondent]: Okay. Let me tell him to come back. I don’t know where he’s at. I told him just to wait downstairs, that we were doing that motion. And see if he still wants to testify. Can I have five minutes so I can step outside?

[Trial court]: Well, either he’s downstairs with the phone in his hand or he isn’t, so . . .

. . . .

[Counsel for Respondent]: Give me two minutes to see if he answers me.

[Trial court]: All right.

The trial court stated that Respondent and the mother “knew clearly” that the hearing would start at 11:00 a.m. and they had failed to give their attorneys “any reason why they’re not here.” The trial court noted that it was now “almost 10 until 1:00 [p.m.] They’re still not here.” Then, the following exchange occurred:

[Counsel for Respondent]: Your Honor, I would ask for us to come back after lunch break. [Respondent] has indicated that he’s here. He said: I’m here, are y’all on lunch? I said: No; come in. But again, if he doesn’t have his phone on him, and he’s made it in the building, or if he’s outside—

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[Trial court]: He's a grown man. He can walk into the courtroom at any time. No, we're not coming back after lunch. What we're going to do is pick a date for the second part of this.

....

[Counsel for Respondent]: . . . I apologize, Your Honor. I'm just going to rest and renew my argument from Motion to Dismiss. I don't have anything else to present, the witnesses at this time, Your Honor.

[Trial court]: There's nothing for you to apologize for. You've gone, both of you, above and beyond to try to get two adults here, for what should be the most important day of their life. But they're not here and they're not providing any evidence as to why they're not here. And we're almost three hours after they were supposed to be here. They're notified in open court to be here. At least one of you has had contact with them. They were served with notice to be here and they are not here. So this is done until the next court date. It sounds like it's going to be October.

Respondent appeared and testified during the dispositional phase of the hearing which took place on 30 September and 17 November 2022.

Respondent first asserts that the trial court's denial of his counsel's Motion to Continue should be reviewed de novo because his due process rights were violated and he was deprived of fundamentally fair procedures. However, counsel for Respondent did not assert in the trial court that a continuance was necessary to protect a constitutional right. *See In re A.L.S.*, 374 N.C. 515, 517, 843 S.E.2d 89, 91 (2020) (stating that a motion based on a constitutional right presents a question of law, and the order of the court is reviewable). "A parent's absence from termination

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proceedings does not itself amount to a violation of due process.” *In re J.E.*, 377 N.C. 285, 290, 856 S.E.2d 818, 822 (2021) (citation omitted). Thus, we review the trial court’s denial of his motion to continue for an abuse of discretion. *See generally State v. Gainey*, 355 N.C. 73, 87, 558 S.E.2d 463, 473 (2002) (“Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal.”). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *In re A.J.P.*, 375 N.C. 516, 523, 849 S.E.2d 839, 847 (2020) (citation omitted).

Respondent contends that the trial court’s refusal to allow Respondent’s counsel to step out of the courtroom in order to locate Respondent or to continue to hear evidence after the lunch recess amounted to an abuse of discretion. We disagree.

DSS filed the petition to terminate Respondent’s parental rights on 9 September 2021 and continuing the 28 July 2022 termination hearing would have pushed the hearing far beyond the 90-day period set forth in N.C. Gen. Stat. § 7B-1109(d). Thus, Respondent was required to make a showing that extraordinary circumstances existed to warrant a continuance. *See* N.C. Gen. Stat. § 7B-1109(d) (2021). However, the Record shows that Respondent made no showing that extraordinary circumstances existed to grant a continuance of the termination hearing. Respondent had notice of the date, time, and location of the 28 July 2022 hearing. Nearly three hours after the scheduled start time, Respondent was still absent from the courtroom. Counsel expressed her belief at different times that

respondent was on his way, was “downstairs[,]” or was “here[,]” and stated that she had directed him to “come in[,]” but Respondent never entered the courtroom. Furthermore, as DSS points out, Respondent never provided any evidence that the mother was in inpatient treatment on the day of the hearing or that if she had entered inpatient treatment, the hearing would necessarily be continued. In light of the foregoing, we cannot say the trial court abused its discretion by denying Respondent’s Motion to Continue.

### **B. Grounds for Termination of Parental Rights**

Respondent challenges the trial court’s adjudication of the existence of grounds to terminate his parental rights in Ian.

When reviewing the trial court’s adjudication of grounds for termination, we examine whether the court’s findings of fact are supported by clear, cogent and convincing evidence and whether the findings support the conclusions of law. Any unchallenged findings are deemed supported by competent evidence and are binding on appeal. The trial court’s conclusions of law are reviewed de novo.

*In re Z.G.J.*, 378 N.C. 500, 508–09, 862 S.E.2d 180, 187 (2021) (internal citations, quotation marks, and brackets omitted). “[A]n adjudication of any single ground in N.C.[ Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019).

Under N.C. Gen. Stat. § 7B-1111(a)(1), a trial court may terminate parental rights if it concludes the parent has neglected the juvenile within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2021). A neglected juvenile is

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defined, in pertinent part, as a juvenile “whose parent, guardian, custodian, or caretaker . . . [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). Termination under N.C. Gen. Stat. § 7B-1111(a)(1) “requires a showing of neglect at the time of the termination hearing[.]” *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016) (citation omitted).

“[I]f the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.” *Id.* at 843, 788 S.E.2d at 167 (citation omitted). “When determining whether future neglect is likely, the trial court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.” *In re Z.A.M.*, 374 N.C. 88, 95, 839 S.E.2d 792, 797 (2020) (citing *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). The “determinative factors” in assessing the likelihood of a repetition of neglect are “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 Z.G.J.*, 378 N.C. at 509, 862 S.E.2d at 188 (quoting *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232) (emphasis in original). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.J.S.M.*, 257 N.C. App. 633, 637, 810 S.E.2d 370, 373 (2018) (citation omitted).

In adjudicating the existence of grounds to terminate Respondent's parental rights, the trial court concluded Ian was adjudicated to be a neglected juvenile on 6 February 2020 and that:

[Ian] . . . continue[s] to be neglected within the meaning of N.C.G.S. § 7B-101(15) by . . . [Respondent] in that [he has] not corrected the risk factors that brought [Ian] into care pursuant to N.C.G.S. § 7B-1111(a)(1). The probability of a repetition of neglect of [Ian] if returned to the home or care of . . . [Respondent] is very high.

On appeal, Respondent does not contest the fact that Ian was previously adjudicated neglected nor does he contend that any of the trial court's findings are not supported by the evidence. Instead, he challenges the trial court's conclusion that there is a likelihood of repetition of neglect if Ian was returned to his care. Specifically, Respondent argues that he addressed and is addressing the circumstances that led to Ian's removal. He points to testimony that he completed the Adult Holistic Assessment through Genesis, maintained sobriety and did not return any positive drug screens, improved the conditions of the home, executed the necessary releases, and completed multiple sessions of the Triple P Parenting program. We are not persuaded.

Here, the trial court's unchallenged finding establishes Respondent's and mother's "drug use, untreated mental health, and instability . . . created an unsafe and injurious environment" for Ian when he was under their care. In order to address these concerns, Respondent was ordered to complete an Adult Holistic Assessment

with Genesis and comply with all recommendations; submit to all random drug screens requested by DSS or service providers; obtain and maintain safe, sanitary, and stable housing; sign releases of information; and complete an approved parenting education program.

The Record evidence suggests that by the time of the second hearing date for the adjudicatory portion of the termination hearing, 19 May 2022, Respondent had completed an Adult Holistic Assessment with Genesis, and it was recommended he receive substance abuse treatment. The evidence also showed Respondent had repaired the issues with the family home and had signed releases of information. However, Respondent's compliance with a portion of his 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). Several of the major concerns that resulted in Ian's placement with DSS continued to exist at the time of the termination hearing.

The trial court's unchallenged findings, which are binding on appeal, demonstrate DSS made sixty-eight requests for Respondent to submit to drug screens, and he only submitted to fourteen of them. In October 2020, he tested positive for amphetamines and methamphetamines. In July and August of 2021, he tested positive for marijuana. Screens from September 2021 until March 2022 were negative for all substances except alcohol. Although he completed the Adult Holistic Assessment, he did not comply with the resulting recommendation that he engage in substance abuse treatment. In fact, Respondent refused to complete any substance

abuse treatment. The trial court found that, despite Respondent's negative drug screens over the past twelve months, "he continues to reside with [the mother] who is still an active drug addict with unresolved serious substance abuse issues" and "enables [the mother's] ongoing addiction by allowing her to reside in the home and financially supporting her."

The unchallenged findings further demonstrate Respondent failed to complete the Triple P Parenting program. Respondent first contacted the parenting program in June 2020 and was "very inconsistent" with his participation. Generally, the program could be completed by attending twelve to eighteen sessions within a period of ten to twelve weeks, but Respondent had only attended six sessions. He contacted the parenting program in March 2022 to schedule an appointment on 22 March 2022, but he failed to attend the appointment and did not respond to texts to reschedule. Moreover, Respondent had at least one involuntary commitment since December 2019, and he had not provided any documentation regarding any type of ongoing mental health treatment. The trial court found that Ian had been in the nonsecure custody of DSS for thirty-five months, and Respondent was "no closer to reunification today than when the petition was filed on 19 December 2019."

Although Respondent had made some progress towards satisfying the requirements of his case plan, the trial court's findings support its conclusion that based upon his unresolved substance abuse, mental health, and parenting issues, there was a probability of a repetition of neglect if Ian were returned to Respondent's

care. We affirm the trial court's determination that Respondent's parental rights in Ian were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(1). Because only one ground is necessary to support a termination of parental rights, *see In re E.H.P.*, 372 N.C. at 395, 831 S.E.2d at 53, we do not address Respondent's challenge to the remaining ground for termination adjudicated by the trial court. Respondent has not challenged the trial court's conclusion that termination of his parental rights was in Ian's best interests.

### **III. Conclusion**

The Order entered 23 February 2023 terminating Respondent's parental rights in Ian is affirmed.

AFFIRMED.

Panel Consisting of Judges MURPHY, COLLINS and HAMPSON.

Report per Rule 30(e).