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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-570

Filed 5 March 2024

Greene County, Nos. 19 JT 15–16

IN THE MATTER OF:

K.E., Jr., & K.E.,

Juveniles.

Appeal by respondent-father from orders entered 24 January 2023 by Judge Annette W. Turik in Greene County District Court. Heard in the Court of Appeals 18 December 2023.

*Gay P. Stanley for petitioner-appellee Greene County Department of Social Services.*

*Ogletree, Deakins, Nash, Smoak & Stewart, P.C., by Vanessa N. Garrido, for guardian ad litem.*

*Parent Defender Wendy C. Sotolongo, by Deputy Parent Defender Annick Lenoir-Peek, for respondent-appellant father.*

GORE, Judge.

Respondent-father appeals the trial court's orders which terminated his parental rights to his twin minor children K.E., Jr., (Kegan<sup>1</sup>) and K.E. (Karim). He

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<sup>1</sup> Pseudonyms are used to protect the minor children's identities and for ease of reading.

argues that the court erred by concluding that his rights were subject to termination under N.C.G.S. § 7B-1111(a)(1)–(2). After review, we overrule respondent-father’s challenges and affirm the termination orders.

## **I. Background**

This case began in September 2019, when respondent-mother left ten-month-old twins Kegan and Karim and their eight-year-old sister without an adult caretaker in a home that was in disarray. Respondent-father was not home at the time because he was receiving inpatient intensive substance abuse treatment. On 11 September 2019, petitioner Greene County Department of Social Services (DSS) filed petitions alleging Kegan and Karim were neglected and dependent juveniles, obtained non-secure custody of both children, and placed them in foster care. On 2 December 2019, the trial court adjudicated both children as neglected juveniles.

The first permanency planning hearing was held on 11 January 2021. In its 19 April 2021 written orders from that hearing, the trial court found that respondent-father had been ordered to comply with a case plan with the following requirements: obtain mental health and substance abuse assessments and follow any resulting recommendations; attend and participate in parenting classes and demonstrate the skills learned; obtain and maintain stable housing and employment; participate in Family Drug Treatment Court; submit to random drug testing; attend and participate in anger management counseling and a victim empowerment class; and cooperate with DSS and the GAL, including by immediately informing them of any changes in

addresses or phone numbers. The court also found that respondent-father was making progress on these requirements. However, respondent-father could not legally drive so he would not be able to get the children to their medical and therapy appointments. The court established a primary permanent plan of reunification with a secondary plan of guardianship. Respondent-father was awarded six hours of biweekly unsupervised visitation.

The next permanency planning hearing was held on 26 July 2021. In its 13 September 2021 orders from that hearing, the trial court found that respondent-father had recently been charged with assault against his girlfriend and with sexual assault on his girlfriend's niece. As a result, the girlfriend obtained a domestic violence protective order against respondent-father, which disrupted his housing. The court ordered respondent-father to comply with his case plan, including by obtaining further anger management therapy and "a non-self-reporting mental health evaluation" and added a new requirement that he obtain a sex offender evaluation. The permanent plan was changed to a primary plan of guardianship with a secondary plan of reunification. Respondent-father's visitation was suspended, as he was incarcerated; he was ordered to set up supervised visitation with DSS upon his release.

The trial court held another permanency planning hearing on 6 December 2021. In its 21 March 2022 orders from that hearing, the court found that respondent-father was not making adequate progress on his case plan in that he did not have

stable housing, had not completed anger management, had not completed a sex offender evaluation, was not following the recommendations of his mental health assessment, and did not have a driver's license. The primary permanent plan was changed to adoption with a secondary plan of guardianship. The trial court ordered DSS to file a termination petition within sixty days.

On 12 May 2022, DSS filed petitions to terminate respondent-father's parental rights to Kegan and Karim on the grounds of neglect, willful failure to make reasonable progress to correct the conditions of removal, and willful failure to pay a reasonable portion the children's care. *See* N.C.G.S. § 7B-1111(a)(1)–(3) (2021). The petitions included allegations that Kegan was “medically fragile and suffers from Autism, seizures, and developmental delays” and that Karim was “medically fragile and suffers from seizures and developmental delays.” DSS claimed that respondent-father had not attended the children's medical appointments and had not shown he could provide proper medical care for either child. DSS also alleged that although respondent-father was working, he was in his third job since his release from jail in August 2021; that respondent-father did not have stable housing; that he had not completed an anger management course or sex offender evaluation; that despite completing parenting classes, he was unable to demonstrate the skills he should have learned in those classes; and that he still did not have a valid driver's license.

The termination petitions were heard from 14–15 November 2022. At the hearing, DSS stated it was not going forward on the ground of failure to pay under

N.C.G.S. § 7B-1111(a)(3). On 24 January 2023, the trial court entered an order concluding that there were grounds to terminate respondent-father’s parental rights under N.C.G.S. § 7B-1111(a)(1)–(2) and that termination was in Kegan’s and Karim’s best interests. Respondent-father appeals.<sup>2</sup>

## **II. Grounds for Termination**

Respondent-father argues that the trial court erred by concluding that two grounds existed to terminate his parental rights.

When reviewing the trial court’s adjudication of termination grounds, the “sole question for the reviewing court is whether the trial court’s conclusions of law are supported by adequate findings and whether those findings, in turn, are supported by clear, cogent, and convincing evidence.” *In re A.J.L.H.*, 384 N.C. 45, 53 (2023) (citing *In re E.H.P.*, 372 N.C. 388, 392 (2019)). Any unchallenged findings are “deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407 (2019). The trial court’s conclusions of law are reviewed de novo. *In re C.B.C.*, 373 N.C. 16, 19 (2019).

We first consider respondent-father’s challenges to neglect under N.C.G.S. § 7B-1111(a)(1). A parent’s rights may be terminated based on this ground if that parent neglects their child such that the child meets the statutory definition of a “neglected juvenile.” N.C.G.S. § 7B-1111(a)(1) (2021). A juvenile can be defined as

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<sup>2</sup> Respondent-mother’s parental rights were also terminated, but she did not appeal the termination orders and is not a party to this appeal.

“neglected” when their parent “[d]oes not provide proper care, supervision, or discipline[,]” “[h]as not provided or arranged for the provision of necessary medical or remedial care[,]” or “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C.G.S. § 7B-101(15) (2021).

When the juvenile has been removed from their parent’s custody for a significant time, “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 (2022) (citation omitted). “When determining whether such future neglect is likely, the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.” *In re R.L.D.*, 375 N.C. 838, 841 (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 (1984). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.A.*, 374 N.C. 865, 870 (2020) (citation omitted).

In this case, respondent-father does not dispute that Kegan and Karim were previously adjudicated neglected. Thus, we focus on whether the trial court properly determined there was a likelihood of future neglect if the twins were returned to respondent-father’s care.

#### **A. Challenges to Findings of Fact**

Respondent-father challenges several of the trial court's findings of fact.<sup>3</sup> He divides these challenges among what he describes as the "four main areas" of his case plan: substance abuse, mental health, parenting/visitation/ability to address the children's needs, and housing and employment. We consider each category in turn.

### ***1. Substance Abuse***

The trial court made these findings<sup>4</sup> specifically addressing respondent-father's substance abuse:

50. That the father has completed a substance use evaluation. . . .

59. That the father has submitted to random drug screens in [c]ourt. He recently began attending Carolina Treatment Center and is seen there for prescription medication for substance abuse [dis]order.

60. That the father had a relapse in January 2022. He has been on medication since that time. . . . However, he does not know his last sober date before his relapse in January and cannot say how long he was sober prior to that relapse.

61. That the father acknowledges that he has struggled with substance use since the age of 15 years old. His substance use has resulted in four Cherry Hospital inpatient admissions in 2004, 2006, 2017, and July, 2019 at the time of the filing of the Abuse, Neglect, Dependency Petition. . . .

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<sup>3</sup> We limit our review of respondent-father's challenged findings to those findings which are necessary to our determination of whether the trial court properly found neglect as a ground for termination. *See In re T.N.H.*, 372 N.C. at 407 ("Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights.").

<sup>4</sup> The trial court entered two termination orders that are nearly identical. For simplicity, we quote the challenged findings from Kegan's termination order in 19 JT 15.

Respondent-father argues that the portion of finding 59 that states he “recently” began attending Carolina Treatment Center (CTC) is unsupported because “his medical records show that he had been receiving suboxone at this facility since at least August 2021.” Respondent-father’s medical records from CTC, which were entered into evidence at the termination hearing, reflect that he began taking buprenorphine in August 2021, that he briefly stopped around the time of his relapse in January 2022, and that he then resumed thereafter. We agree with respondent-father that, by the time of the termination hearing in November 2022, it was inaccurate to refer to this ongoing treatment as beginning “recently,” and we disregard that portion of the finding. *See In re L.H.*, 378 N.C. 625, 635–36 (2021) (disregarding factual findings not supported by the record). However, the remainder of the finding is supported by the evidence.

Respondent-father does not contend that finding 60 and the portion of finding 61 discussing his prior inpatient admissions are unsupported by the evidence, and thus, they are binding on appeal. *See In re T.N.H.*, 372 N.C. at 407.

## **2. Mental Health**

The trial court made these findings about respondent-father’s mental health treatment:

47. That the father obtained a mental health assessment at Family Works by video in April 2020, where he was diagnosed with mood disorder and schizophrenia. He then obtained a second mental health assessment at Harvest House which diagnosed him with adjustment disorder. He



has recently been diagnosed by Dixon Social Interactive with mood disorder and schizophrenia.

48. That the father has not consistently attended therapy for his mental health as recommended by his mental health assessments and ordered by the [c]ourt.

49. That the father has not provided any certificates or documentation that he has completed any anger management classes or addressed anger management in his therapy. He started addressing anger management with a therapist at Family Works in April 2020, but did not complete that as the therapist passed away, and the father stopped attending that facility.

50. . . . [Respondent-father] refused to sign a release for DSS to obtain any of his records.

. . . .

53. That the father was ordered on July 6, 2021, to obtain a sex offender evaluation. He has not yet completed a sex offender evaluation. He did not start the evaluation process until May 13, 2022, at Dixon Social Interactive after the Petition for Termination of Parental Rights was filed.

. . . .

61. . . . Cherry Hospital has diagnosed the father with schizophrenia, adjustment disorder, mood disorder, antisocial personal disorder, opioid disorder, unspecified bipolar disorder and substance abuse induced depressive disorder. The father has not sought regular and consistent treatment for any of those diagnos[e]s.

62. That the father has not completed an anger management or abuser treatment program as ordered by the [c]ourt in previous A/N/D [c]ourt orders.

Respondent-father argues that the termination hearing evidence does not support these findings, as it instead shows he consistently attended mental health therapy

and was addressing his anger management through this therapy.

At the termination hearing, DSS social worker Serina Simmons testified that respondent-father had “been inconsistent with [his] therapy” and that he had not obtained anger management treatment. The trial court also took judicial notice of its prior orders in the underlying neglect cases, and in its orders from the most recent permanency planning hearing, the court had found that respondent-father “ha[d] not completed anger management” and was “not following the recommendations of his mental health assessment[.]” This evidence is sufficient to support the trial court’s findings regarding respondent-father’s inconsistent mental health treatment. To the extent respondent-father argues there was evidence to the contrary, the trial court was permitted to disregard that evidence in its role as trier of fact. *See In re J.T.C.*, 273 N.C. App. 66, 70 (2020) (quotation mark and citation omitted) (“It is well-established, however, that [c]redibility, contradictions, and discrepancies in the evidence are matters to be resolved by the trier of fact[.]”); *see also In re S.C.R.*, 198 N.C. App. 525, 531 (2009) (quotation marks and citations omitted) (“If the trial court’s findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.”).

Respondent-father also specifically challenges finding of fact 53, which states that he failed to obtain a court-ordered sex offender evaluation. He notes the record includes a STATIC-99 assessment completed by Dixon Social Interactive Services on 3 August 2022 and that this assessment should be considered “sufficient since his

score was sufficiently low not to require a cost-prohibitive assessment.” There was conflicting evidence at the termination hearing regarding the status of respondent-father’s sex offender evaluation. When asked if respondent-father had provided a copy of a sex offender evaluation to DSS, social worker Simmons initially testified that although she had not seen it, the evaluation “was provided to the Courts.” However, Simmons later stated that respondent-father had not completed the evaluation. Respondent-father also testified that he had completed his portion of the evaluation and that Dixon had submitted the evaluation to the courts, but he acknowledged he could not provide any documentation demonstrating his completion.

Finally, the DSS court report, which DSS offered into evidence during its case-in-chief, acknowledged that respondent-father “recently completed his Sexual Offender Evaluation within the last month or two although he has had a year to complete the assessment.” It appears the trial court resolved this conflict by treating respondent-father’s STATIC-99 assessment by Dixon as “start[ing] the evaluation process,” and we cannot say that this was not a reasonable inference the court could draw from the evidence as the trier of fact. The remainder of the finding, including that respondent-father did not take steps to obtain the evaluation until long after he was ordered to do so (and after the termination petition was filed), is sufficiently supported by the evidence.

In addition, respondent-father challenges finding 61 because it lists mental health diagnoses “that pre-date the twin[s]’ birth in 2019” and that “the more

accurate diagnos[e]s would be the more recent ones contained in the file.” This is a challenge to the relevancy of the information in this finding; it is not an evidentiary challenge to the finding itself. Since respondent-father does not contend this finding is unsupported by the evidence, we consider it binding on appeal.

### ***3. Parenting, Visitation, and Children’s Needs***

The trial court made multiple unchallenged findings regarding the medically fragile conditions of both Kegan and Karim. It found that Kegan “has been diagnosed with autism, seizures, and developmental delays, among other things[,]” which required “speech therapy, food therapy, play therapy, sign language, ABA therapy, cognitive behavioral therapy, and occupational therapy, as well as treatment and evaluation for seizures.” The court further found that Karim “has been diagnosed with seizures and developmental delays, among other things[,]” which “required speech therapy, food therapy, and occupational therapy” and that he also was “currently being evaluated for ADHD and has been referred for an autism evaluation and an evaluation by a psychiatrist.”

The trial court also made the following findings relevant to respondent-father’s parenting, visitation, and ability to appropriately care for the children’s needs:

29. That the juvenile[s] ha[ve] several appointments per week for medical doctors as well as therapy and [are] also seen for dental care. The foster parents take the [juveniles] to all of their appointments. Neither of the parents have attended any appointments of the juvenile[s] or have shown any interest in attending any of the appointments.

....

44. That neither of the parents have attended the juvenile[s'] therapy and learned soothing techniques or interventions for behaviors, seizures, choking or other problems that may arise. The parents do not understand the juvenile[s'] special needs and/or how to provide appropriate care for the [juveniles].

....

51. That the father has completed parenting classes but is not able to demonstrate skills learned. The father is not able to manage all three of his children during visitations or manage the special needs of th[ese juveniles]. He has been observed to become agitated with the juvenile[s'] behaviors . . . during their visits.

52. That the father has repeatedly left the older child . . . in charge of the [juveniles] during visitation despite being aware that the TEDI BEAR professionals have previously recommended that [the sister] should not be left alone with younger children.

....

64. That the Greene County DSS social worker has provided information to the father for classes and other resources for parents of children with autism; however, the father has not taken advantage of any of these resources. The father has attended one support group session online. He did not follow up or continue with the group because he was busy, but told the social worker if the kids were to be placed with him, he would find time for it.

65. That the father has not attended any medical or therapy appointments of the juvenile[s]. He has not asked for a ride or transportation assistance or asked for any of the appointments to be rescheduled in order for him to be able to attend an appointment. He participated online in an appointment, but could not state the type of appointment, when it was, or how long ago it was.

66. That the father disputed the fact that he was provided dates and times of appointments by the Department of Social Services or the foster parents, but he has no information about any steps he took to get that information or any other information from the juvenile[s] medical providers.

67. That the father knew the juvenile[s] had a lot of needs, but he was not sure of all of [their] needs or what kind of therapies [they are] receiving. The father knew that the [juveniles] started out with problems chewing their food, but he was not sure which one was having trouble with chewing food now even though he brings snacks for the children to the visits.

68. That the father has not demonstrated that he would be able to get the [juveniles] to all of their numerous necessary appointments.

69. That the father has not demonstrated that he would be able to provide appropriate care to th[ese] medically fragile juvenile[s].

70. That the father blames his lack of knowledge regarding the medical conditions of his children on the Department of Social Services, and that he only see[s] the children biweekly. The father does not accept any responsibility for his own inaction or not trying to learn more about his medically fragile children and their situations. He does not take responsibility for not following the prior orders of the [c]ourt or not working his case plan in order to be in a better position to have his children returned to his care.

71. That the father does not always exercise his available visitation time with the juvenile[s]. There are times he will not call to confirm his visits, so they do not take place. He does not call the juvenile[s] as he is allowed to do. He did not call or visit the [juveniles] for their birthday three days ago on November 12.

Respondent-father first challenges these findings by arguing that his inability

to attend the children's appointments and learn about their conditions should have been attributed to DSS and its failure to provide him with information about the appointments and transportation to the appointments. However, Simmons testified that she provided respondent-father with schedules of the children's appointments "[t]hrough phone calls, text messages, and email" as well as at visits. Simmons also noted that the appointment schedule generally remained the same and that she had informed respondent-father of an appointment just the month before the termination hearing. According to Simmons, respondent-father never requested transportation from DSS, never asked for an appointment to be rescheduled so that he could attend, and generally never showed the ability to attend the appointments. Respondent-father testified that he planned to attend appointments "at least three to four times," but "something came up."

Simmons also testified that she provided respondent-father with resources for autism and that both she and a foster parent advised him about the children's behaviors. Respondent-father acknowledged he received this information and testified he attended one online autism support group session. When asked why he did not attend additional sessions, he responded that "life gets busy, and I just haven't." Respondent-father was also unable to identify the children's specific diagnoses beyond stating "[t]hey don't chew their food." When asked which of his children was currently engaged in food therapy, he stated he was not sure and admitted to "get[ting] them mixed up sometimes." The trial court's findings

regarding respondent-father's inability to properly care for the children's needs are supported by this testimony.

Respondent-father next argues that the trial court's findings regarding his inability to demonstrate the skills he should have learned in parenting classes were "not an accurate portrayal of either the social worker's or [respondent-father's] testimony." During her testimony, Simmons described an incident where Kegan was having a behavioral episode and respondent-father "just stood there and put his hands on his head[,] which is consistent with the trial court's finding that he became agitated with his children's behaviors during visits.

Respondent-father also contends that finding of fact 52 was unsupported in that it states that he left Kegan and Karim alone with their older sister "repeatedly," despite being advised not to do so. Simmons testified that both parents were aware that the twins were not to be left alone with their older sister and that during the visitation she observed, "both have walked out of the room and left [the older sister] and the twins in the room together." It is unclear whether Simmons was referring to one or multiple visitations, but as either interpretation is reasonable, we cannot find this finding to be unsupported.

Finally, respondent-father argues that the trial court's findings suggesting he "does not always" exercise his visitation and phone calls with the children are unsupported. However, Simmons testified that respondent-father missed "two handfults" of visits over the course of the case and that he "rarely" uses his allotted



video phone calls. This testimony supports the trial court's "not always" framing.

Based on the foregoing, we conclude that the trial court's findings regarding respondent-father's parenting, visitation, and ability to appropriately care for the children's needs are supported by clear, cogent, and convincing evidence.

#### ***4. Housing and Employment***

The trial court made these findings regarding respondent-father's housing and employment:

54. That the father has not maintained his own stable residence throughout the life of this case. He has had nine different residences since the A/N/D Petition was filed. Three of the residences, including the current residence, have belonged to a girlfriend. This is his third relationship since the A/N/D case began. The prior two relationships ended with the father having nowhere to live at the end of the relationship. Throughout the A/N/D case, the father has not had a residence where his name has been on the lease.

55. That at one point in the A/N/D case, the father moved to Johnston County away from this [c]ourt and his children, so that he could be with a girlfriend. The father placed his own desires before the needs of his children and his ability to complete his [c]ourt ordered plan.

56. That the father and his current girlfriend have indicated that there is room in the girlfriend's home for the children and that they have bedrooms for the children. The home has been assessed as safe. However, the father has been residing there less than six months; there is no lease; and, the father has no ownership in the house or exclusive right to occupy the house. The girlfriend's mother also resides in this home. There is reasonable concern that the father's pattern of ending relationships and ending up without appropriate housing will continue. If the children

were in his care, they would also end up without appropriate housing.

57. That the father has been employed for the majority of the underlying case. However, the father's employment has not been consistent since 2020. His employment has changed continuously, and he has had seven jobs since the case started. He is currently employed by InJoy Thrift Store, and this is his second time employed there.

Although he purports to “challenge” these findings, respondent-father does not argue that the details in these findings are unsupported by the evidence. Instead, he contends the findings show the trial court “judged him for changing homes and jobs too often,” rather than crediting him for his persistence in finding employment and housing whenever he needed them. Since respondent-father fails to challenge the evidentiary basis for these findings, they are binding. Respondent-father's broader arguments regarding the inferences that can be drawn from these findings will be addressed below as part of our determination of whether the trial court's findings support its ultimate findings and conclusions of law.

**B. Respondent-Father's Progress and the Likelihood of Repetition of Neglect**

Respondent-father challenges any remaining findings and conclusions made by the trial court to the extent they suggest he did not make adequate progress on the different components of his case plan and that his failure to make this progress would likely lead to a repetition of neglect if the children were returned to his care.

As the trier of fact, the trial court determines “the reasonable inferences to be

drawn” from the evidence. *In re D.L.W.*, 368 N.C. 835, 843 (2016) (citation omitted). The trial court’s findings and the evidence from the termination hearing show that by the time of that hearing, respondent-father had made only modest progress on his case plan, such that it was reasonable for the trial court to infer that he was likely to neglect the children if they were returned to his care.

As part of his case plan, respondent-father was ordered to obtain stable housing and employment. But during the more than three-year period Kegan and Karim were in DSS custody, respondent-father had nine separate residences and five separate jobs. He was currently living with his girlfriend, with whom he had only been in a relationship for a few months; two prior failed relationships resulted in respondent-father losing his residence.

Respondent-father was also ordered to obtain a mental health assessment and follow its recommendations, and after he was charged and convicted of assault, he was ordered to complete additional anger management and obtain a sex offender evaluation. The trial court’s findings show that respondent-father did not acknowledge many of his mental health diagnoses and did not consistently attend therapy to treat his conditions. He also failed to complete anger management and only began the process of obtaining a sex offender evaluation after the termination petition was filed.

The court’s findings also reflect that respondent-father did not attend any of the children’s therapy sessions and made no effort to do so. As a result, he was not

fully aware of the children's medical conditions or how to properly respond to these conditions and the children's behavioral issues. Contrary to his case plan requirements, respondent-father was unable to demonstrate the skills learned in the parenting classes he completed.

Based on respondent-father's circumstances at the time of the termination, the trial court could properly decided that there would be a repetition of neglect if Kegan and Karim were returned to respondent-father's care. Accordingly, the trial court properly terminated respondent-father's rights based on neglect.

Since we have concluded the neglect ground is adequately supported, we need not address respondent-father's arguments as to N.C.G.S. § 7B-1111(a)(2), the remaining ground found by the trial court. *See In re A.R.A.*, 373 N.C. 190, 194 (2019) (“[A] finding of only one ground is necessary to support a termination of parental rights[.]”).

### **III. Conclusion**

The trial court made sufficient findings of fact, supported by clear, cogent, and convincing evidence, to support its determination that respondent-father's parental rights were subject to termination under N.C.G.S. § 7B-1111(a)(1), as both Kegan and Karim were previously adjudicated neglected and there is a likelihood that neglect would be repeated if they were returned to respondent-father's care. Respondent-father does not challenge the trial court's conclusion that termination of his rights was in the children's best interests. Accordingly, we affirm the termination order.

IN RE: K.E., JR. & K.E.

*Opinion of the Court*

AFFIRMED.

Chief Judge STROUD and Judge STADING concur.

Report per Rule 30(e).