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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1151

Filed 18 June 2024

Surry County, Nos. 20JT140-41

IN THE MATTER OF: A.Z., L.Z.

Appeal by respondent-father from order entered 17 May 2023 by Judge Gretchen H. Kirkman in Surry County District Court. Heard in the Court of Appeals 28 May 2024.

*Anne C. Wright, for respondent-appellant-father.*

*The Law Office of Partin & Cheek, P.L.L.C., by R. Blake Cheek, for Surry County Department of Social Services.*

*James N. Freeman, Jr., for guardian ad litem.*

FLOOD, Judge.

Respondent-Father appeals a trial court order terminating his parental rights to his minor children, A.Z. (“Amy”) and L.Z. (“Luke”).<sup>1</sup> After careful review of the Record, we conclude that several of the trial court’s unchallenged findings of fact

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<sup>1</sup> Pseudonyms have been agreed upon by the parties and are used to protect the identities of the juveniles in accordance with N.C.R. App. P. 42.

support the conclusion that Amy and Luke were neglected. Accordingly, we affirm the trial court's termination of Respondent-Father's parental rights.

### **I. Facts and Procedural Background**

On 9 October 2020, following allegations of physical abuse, Surry County Department of Social Services ("DSS") arrived at a residence where Amy and Luke lived with their mother<sup>2</sup> and Respondent-Father, the latter of whom is Spanish-speaking. During an investigation, a DSS social worker observed "marks on several parts of [Amy's] body where she had been hit with [a] cord." Amy confided in the social worker that she was afraid of Respondent-Father because he hits her, had shown her his penis, and digitally penetrated her vagina. While the social worker continued to speak with the family, emergency medical services was twice called due to Amy's blood sugar being alarmingly high, the second time resulting in Amy being transported to Brenner Children's Hospital. Due to the social worker's observations during this investigation, both parents were arrested and charged with misdemeanor child abuse, though the charges against Respondent-Father were later dismissed.

The following day, on 10 October 2020, the trial court adjudicated Amy and Luke as neglected juveniles and entered an order for nonsecure custody. Subsequently, Respondent-Father entered into a case plan with DSS, which included "enrolling [in] and completing [a] parenting skills course, displaying learned

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<sup>2</sup> Mother did not appeal from the trial court's termination of parental rights order and is therefore not a party to this appeal.

parenting skills, attending Daymark for [a] mental health assessment and following all recommendations, obtain[ing] a psychological assessment, and obtain[ing] safe and stable housing.”<sup>3</sup>

On 5 August 2021, a permanency planning hearing was held, after which the trial court entered an order, finding that Respondent-Father had completed a parenting skills class and had maintained a job as well as safe and suitable housing. The trial court additionally found that Respondent-Father had completed his comprehensive clinical assessment at Daymark on 16 February 2021, and that the clinician had recommended that he engage in individual therapy but he “ha[d] not engaged in any therapy or other treatment programs.”

Respondent-Father continued to progress in his case plan by attending a two-day psychological evaluation, on 8 and 23 September 2021. Licensed psychologist Dr. Angela de Varona evaluated Respondent-Father and concluded that he “did not take responsibility for the events that led to the loss of custody of his children . . . seemed invested in presenting himself in a good light and demonstrated poor insight into his behavior.” Dr. de Varona further opined that Respondent-Father’s “denial of difficulties indicates poor prognosis for change[.]” Finally, Dr. de Varona suggested Respondent-Father would benefit from additional parenting classes so that he may

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<sup>3</sup> Daymark is a comprehensive community provider of mental health and substance abuse services which includes assessments and referrals. Daymark Recovery Services, <http://www.daymarkrecovery.org> (last visited May 21, 2024).

learn specific skills for protecting his children.

At the permanency planning hearing held on 3 March 2022, the trial court changed the primary plan from reunification to adoption, with a secondary plan of reunification. In its order, the trial court again found that Respondent-Father had made some progress in his case plan but continued to deny the need for engagement in therapy and other treatment programs.

On 8 March 2022—five days after the permanency planning hearing and thirteen months after being told he should participate—Respondent-Father inquired about individual therapy through Daymark but was informed that no Spanish-speaking therapists were on staff. In July of 2022, Respondent-Father located a Spanish-speaking therapist through Valera Counseling (“Valera”) and initiated contact between Valera and DSS, but after several months of DSS attempting to finalize a contract, Valera inexplicably ceased all communication.

On 22 July 2022, DSS filed a motion to terminate Respondent-Father’s parental rights. A few weeks later, on 9 August 2022, Respondent-Father was pulled over during a routine traffic stop and was found to be in possession of “six baggies of green marijuana” and “nine baggies of what appeared to be methamphetamine.” The substance that appeared to be methamphetamine was field tested and came back with a positive read for methamphetamine. Respondent-Father admitted to the Spanish-speaking officer that the marijuana was his and that he smoked “a large amount of marijuana because of the pain” he suffered from an injury. Respondent-

Father was arrested and charged with felony possession with intent to sell, manufacture, and deliver a Schedule II controlled substance and marijuana; felony maintaining a dwelling, vehicle, or place for controlled substances; misdemeanor possession of drug and marijuana paraphernalia; and unsealed wine or liquor in passenger area.

Following Respondent-Father's arrest, DSS social workers requested he come into the department to discuss his most recent charges, add substance abuse assessment to his case plan, and to take a drug screen. Respondent-Father scheduled a time to come to the department on 30 August 2022 but did not show up and did not call to reschedule. While Respondent-Father did submit to a hair follicle drug screen one month later, which returned a negative result, he waited until after the first termination of parental rights hearing to contact DSS regarding modification of his case plan to include a substance abuse assessment.

A hearing on DSS's motion to terminate Respondent-Father's parental rights came on over two days on 11 January and 8 February 2023. The trial court's Adjudication Order found the following facts by clear, cogent, and convincing evidence:

49. Respondent[-]Father obtained a mental health assessment with Daymark on February 16, 2021 and he was recommended for individual therapy. Respondent[-]Father did not follow up with Daymark or [DSS] about individual therapy until March of 2022. Respondent[-]Father did not receive any form of mental health treatment for twelve (12) months following his February

16, 2021 assessment.

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52. Respondent[-]Father did not receive or attempt to receive mental health treatment between February 16, 2021 and March 2022. In this period, there were multiple court dates and court orders in the underlying case that emphasized that Respondent[-]Father needed to complete his case plan which included the individual therapy component. Respondent[-]Father was present at these court dates with his attorney and an interpreter.

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60. Respondent[-]Father has not received any mental health treatment in the twenty-six (26) months that the minor children have been in [DSS] custody.

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66. During law enforcement's investigation, Respondent[-]Father admitted to using marijuana on a daily basis to deal with his physical pain from an automobile accident. A small baggie of marijuana was found on the Respondent[-]Father's person and inside of his work vest.

....

68. [DSS] contacted Respondent[-]Father on August 22, 2022 to schedule an appointment for August 30 to add a substance abuse component to his case plan. Respondent[-]Father no-showed for the August 30 appointment.

69. On September 1, 2022, [DSS] met with Respondent[-]Father to reschedule the substance abuse appointment and Respondent[-]Father replied that he would "come when he could." Respondent[-]Father refused to schedule a time to meet with [DSS] and as of January 16, 2023, Respondent[-]Father had not contacted or [gone] went to [DSS] to discuss adding substance abuse to his case plan.

....

73. Respondent[-]Father has not completed a substance abuse assessment or any type of substance abuse

treatment. Respondent[-]Father refused to communicate with [DSS] about his criminal charges or any substance abuse issues.

....

75. Respondent[-]Father would have benefited from a substance abuse assessment and compliance with any recommended treatment.

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108. During the adjudication hearing, Respondent[-]Father testified that he wanted to take parenting classes into what he now considers, the mistreatment of the juveniles. However, he has not expressed this desire to the [c]ourt or [DSS] prior to these hearings. Respondent[-]Father has not participated in any other parenting skills courses.

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110. . . . [Respondent[-]Father] has not demonstrated any insight on how his behaviors negatively impacted the children.

Finally, the trial court found that Respondent-Father's engaging in criminal activities, lack of progress in his case plan, lack of changed circumstances in nearly two years, and failure to take responsibility for his actions indicated a reasonable probability that his inability to provide for the proper care and supervision of his children "will continue for the foreseeable future."

Following the adjudication and disposition hearings, the trial court entered an order on 17 May 2023 terminating Respondent-Father's parental rights in both Amy and Luke on the basis of neglect, dependency, and willful failure to correct the conditions underlying the removal of the minors. On 16 June 2023, Respondent-Father filed timely notice of appeal.

## **II. Jurisdiction**

This Court has jurisdiction to review the termination of Respondent-Father's parental rights pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

## **III. Analysis**

On appeal, Respondent-Father argues the trial court erred when it concluded grounds existed to terminate his parental rights based on neglect, dependency, and willfulness. Because “an adjudication of any single ground for terminating a parent’s rights under [N.C. Gen Stat.] § 7B-1111(a) will suffice to support a termination order,” our analysis will address only Respondent-Father’s arguments regarding neglect. *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citations omitted).

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

This Court reviews a trial court’s adjudication of grounds to terminate parental rights to determine “whether the findings [of fact] are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984) (citation omitted). A trial court’s “conclusions of law are reviewable *de novo* on appeal.” *In re K.D.C.*, 375 N.C. 784, 788, 850 S.E.2d 911, 915 (2020) (quoting *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019)). “Unchallenged findings ‘are deemed to be supported by sufficient evidence and are [also] binding on appeal.” *In re P.T.W.*, 250 N.C. App. 589, 594, 794 S.E.2d 843, 848 (2016) (alteration in original) (citation omitted).

### **B. Unchallenged Findings Regarding Neglect**



Respondent-Father argues the trial court erred in concluding that grounds existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) because several findings of fact in the Adjudication Order were not supported by clear, cogent, and convincing evidence. Respondent-Father, however, does not challenge many of the findings of fact upon which the trial court based its termination of his parental rights; accordingly, we conclude the trial court did not err.

A parent's rights may be terminated if the court finds the parent has neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2023). A juvenile shall be deemed to be neglected if their parent does not "provide proper care, supervision, or discipline" or "creates or allows to be created a living environment that is injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15)(a) and (e) (2023). If a juvenile is not in their parent's custody at the time of the termination hearing, the trial court looks to "evidence of neglect by a parent prior to losing custody of [the] child—including an adjudication of such neglect" as well as "any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). "A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *In re A.N.H.*, 381 N.C. 30, 46, 871 S.E.2d 792, 805 (2022) (citations omitted). A parent's compliance with a case plan, however, does not "preclude a finding of neglect." *In re J.J.H.*, 376 N.C. 161, 185, 851 S.E.2d 336, 352 (2020); *see also In re Y.Y.E.T.*, 205 N.C. App. 120, 131, 695 S.E.2d 517, 524 (explaining that a "case plan is not just a check

list” and that “parents must demonstrate acknowledgment and understanding of why the juvenile entered DSS custody as well as changed behaviors”).

On appeal, Respondent-Father does not challenge Findings of Fact 49, 52, 60, 66, 68, 69, 73, 75, 108, or 110; those findings are therefore deemed supported by sufficient evidence and are binding on appeal. *See In re P.T.W.*, 250 N.C. App. at 594, 794 S.E.2d at 848. While it is true that the trial court did find facts favorable to Respondent-Father regarding his ability to maintain housing and employment, Respondent-Father’s failure to make progress in his case plan is indicative of a likelihood of future neglect. *See In re J.J.H.*, 376 N.C. at 185, 851 S.E.2d at 352; *see also In re A.N.H.*, 381 N.C. at 46, 871 S.E.2d at 805. For example, unchallenged Finding of Fact 49 states that on 16 February 2021 Respondent-Father was recommended for individual therapy but “did not receive any form of mental health treatment for twelve (12) months following [the] assessment.” Further, unchallenged Finding of Fact 52 states that “there were multiple court orders in the underlying case that emphasize that Respondent[-]Father needed to complete his case plan which included the individual therapy component” and that “Respondent-Father was present at these court dates with his attorney and an interpreter.” While Respondent-Father did not directly challenge Findings of Fact 49 or 52, his arguments on appeal suggest that, because Respondent-Father did not speak English, he “did not initially understand the recommendation.” Respondent-Father, however, had several opportunities to have his obligations under the case plan

clarified for him, particularly during the permanency planning hearings on 5 August 2021 and 3 March 2022 at which an interpreter was provided, yet Respondent-Father failed to do so. Finally, unchallenged Finding of Fact 60 states that Respondent-Father, “has not received any mental health treatment in the twenty-six (26) months that the minor children have been in [DSS’s] custody.” This failure to make progress in his case plan evinces a likelihood of future neglect. *See In re A.N.H.*, 381 N.C. at 46, 871 S.E.2d at 805.

With respect to the felony drug charges, Respondent-Father does not challenge Finding of Fact 66, which states that he “admitted to using marijuana on a daily basis.” Further, Respondent-Father does not challenge Findings of Fact 68, 69, or 73 in which the trial court found Respondent-Father missed an appointment with DSS during which a substance abuse component would be added to his case plan and then later “refused to communicate with [DSS] about his criminal charges or any substance abuse issues.” Finally, Respondent-Father does not challenge Finding of Fact 75 in which the trial court found he would have “benefited from a substance abuse assessment and compliance with any recommended treatment.” Given that these unchallenged findings are deemed supported by sufficient evidence and binding on appeal, the change in condition brought about by Respondent-Father’s admitted drug use and felony drug charges, coupled with his refusal to engage with DSS in updating his case plan show a “probability of a repetition of neglect.” *See In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232.

Lastly, unchallenged Findings of Fact 108 and 110 state that, during the lifetime of this case, Respondent-Father “has not participated in any [additional] parenting skills courses” despite clinical recommendations that he do so, nor has he “demonstrated any insight on how his behaviors negatively impacted the children.” Respondent-Father’s lack of acknowledgment of how his behaviors led to Amy and Luke entering DSS custody demonstrates the high likelihood of future neglect. *See In re Y.Y.E.T.*, 205 N.C. App. at 131, 695 S.E.2d at 524.

#### **IV. Conclusion**

We hold the trial court’s findings of fact regarding neglect are supported by clear, cogent, and convincing evidence. In turn, those findings of fact support the conclusion that grounds to terminate Respondent-Father’s parental rights exist under N.C. Gen. Stat. § 7B-1111(a)(1). Accordingly, we affirm the trial court’s termination of Respondent-Father’s parental rights.

AFFIRMED.

Judges GRIFFIN and THOMPSON concur.

Report per Rule 30(e).