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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1033

Filed 15 October 2024

Cabarrus County, Nos. 20 JT 82–83

IN THE MATTER OF T.J.A., E.M.A.

Appeal by respondent-father from order entered 9 August 2023 by Judge Nathaniel M. Knust in Cabarrus County District Court. Heard in the Court of Appeals 6 September 2024.

*Hartsell & Williams, PA, by E. Garrison White, for petitioner-appellee Cabarrus County Department of Human Services.*

*Ellis & Winters LLP, by Chelsea Pieroni and Steven A. Scoggan, for the guardian ad litem.*

*Emily Sutton Dezio for respondent-appellant father.*

FLOOD, Judge.

Respondent-Father appeals from an order terminating his parental rights to his children, Tia and Eva<sup>1</sup> (collectively, the “children”). Specifically, Respondent-Father contends (A) the trial court failed to make sufficient findings of fact to support

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<sup>1</sup> Pseudonyms are used to protect the identities of the minor children pursuant to N.C.R. App. P. 42(b).

its adjudication that the children were neglected, and in turn, these findings fail to support grounds for termination of his parental rights. Additionally, Respondent-Father argues (B) the trial court erred in determining it was in the children's best interests to sever the parent-child bond. Upon our review, we hold the trial court's findings are sufficient, and there is sufficient evidence to support grounds for termination under N.C. Gen. Stat. § 7B-1111 based on a finding of a likelihood of future neglect. We also hold the trial court properly found it was in the children's best interests to sever Respondent-Father's parental rights.

### **I. Factual and Procedural Background**

Cabarrus County Department of Human Services ("DHS") obtained nonsecure custody of three-year-old Tia and five-year-old Eva upon filing petitions on 26 May 2020, alleging they were neglected and dependent juveniles.<sup>2</sup> The petitions detailed child protective services' ("CPS") long history of involvement with the family, including DHS's receipt of nineteen CPS reports with concerns of substance abuse, domestic violence, mental health, parenting, lack of supervision, the children's hygiene, and the poor condition of the home the children were living in with their mother. DHS repeatedly recommended and offered services to the family, but issues in the home continued.

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<sup>2</sup> The petitions also discussed Tia's and Eva's older half-sister who lived with them in the home of their mother. Respondent-Father is not the sibling's father, however, and the sibling is thus not a subject of this appeal.

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DHS received the latest CPS report on 18 May 2020, approximately one week before filing the petitions. The report alleged that the children were allowed to be outside unsupervised until nine o'clock in the evening, the home was filthy, and the children did not regularly bathe, had not received proper dental care, and were not being provided regular nutritious meals. DHS investigated and confirmed the report on 19 May 2020, at which time the mother admitted she could not care for the children. Due to the deplorable condition of the home, lack of supervision, improper care, and persistent reports with the same concerns, DHS removed the children from the home and placed them with a temporary safety provider ("TSP"). Because the TSP was only willing to care for the children for a short time, DHS had concerns with returning the children to the home, and there were no identified family or support persons willing to assist with caring for the children long-term, DHS filed the petitions and obtained nonsecure custody the following week, on 26 May 2020.

The petitions came on for an adjudication and disposition hearing on 16 July 2020, at which time the parents agreed to stipulations, and the trial court considered evidence. The stipulations were filed on 23 July 2020, before the trial court entered its adjudication and disposition order on 4 August 2020. The order included findings detailing the history of CPS's involvement with the family, consistent with DHS's allegations and the parents' stipulations. The trial court ultimately found that the children did not receive proper care, supervision, or discipline; were not provided necessary medical or remedial care; lived in an environment injurious to their

welfare; and that the parents had not identified alternative placements for the children.

Based on these findings, the trial court adjudicated Tia and Eva neglected and dependent juveniles and ordered that they remain in DHS custody. The trial court allowed Respondent-Father visitation and ordered him to engage in services to remediate the issues leading to the children's removal and demonstrate behavior changes to reunify with the children. Specifically, Respondent-Father was ordered to: complete parenting and psychological evaluations and comply with recommendations; attend an approved parenting course; obtain and maintain housing suitable for the children for a minimum of six months; verify sufficient income to provide for the children for a minimum of six months; follow the visitation plan; attend the children's medical, dental, and educational appointments; sign requested releases so DHS could confer with providers about his compliance and progress; and maintain contact with the social worker every other week regarding his progress and the status of the case.

The matter came before the trial court for a regularly scheduled review on 24 September 2020. In a review order entered on 28 October 2020, the trial court found Respondent-Father had made progress, but the progress was insufficient for the children to be returned to his care. Specifically, Respondent-Father had scheduled evaluations and had completed a parenting assessment, which resulted in a recommendation for him to complete a minimum of eight to ten weeks of parenting

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and life skills sessions, with the possibility that more sessions would be recommended. Respondent-Father did not have suitable independent housing—he lived with his mother and aunt, and he was aware the house was deemed not suitable for the children due to his mother’s background. Respondent-Father also had not provided verification of income. Respondent-Father was participating in visitation, cooperating with DHS, and attending some of the children’s appointments. Respondent-Father was ordered to continue working on his case plan, and the trial court set a primary goal of reunification with a secondary goal of adoption.

Despite Respondent-Father’s initial progress, it appears continued progress was limited, and the trial court changed the primary goal for the children to adoption with a secondary goal of reunification in November 2022.

In the order from the final permanency planning hearing just months before the termination proceedings, the trial court addressed Respondent-Father’s progress. The trial court found that Respondent-Father: completed cognitive awareness and life skill classes but continued to be forgetful as a result of a traumatic brain injury; completed parenting classes but continued to have difficulty parenting and would need continued support and assistance with parenting as a result of his intellectual disability; declined outpatient therapy and never showed up for peer support; missed some appointments for the children; still lacked independent housing suitable for the children, as he continued to reside with his mother and aunt; did not contact DHS

regularly; and did not ask about the children's wellbeing and needs when he communicated with DHS. Ultimately, the trial court found:

It is not possible for the juveniles to be placed with their father within the next six months due to his unacceptable housing, incomplete mental health treatment, and limited functioning. [Respondent-Father] has made limited progress on his case plan[,] and he continues to have difficulties in setting boundaries and engaging with his children.

On 10 March 2023, DHS filed a motion to terminate Respondent-Father's parental rights. DHS alleged that grounds existed to terminate Respondent-Father's parental rights for neglect, willful failure to make reasonable progress, and dependency. DHS also alleged that it was in the best interests of the children to terminate Respondent-Father's parental rights so a permanent plan of adoption could be pursued.

The motion to terminate parental rights came on for hearing on 29 June 2023. On 9 August 2023, the trial court entered an order terminating Respondent-Father's parental rights in the children, upon its determination that each of the alleged grounds for termination existed and that it was in the children's best interests to terminate parental rights. Respondent-Father timely appealed.

## **II. Jurisdiction**

This Court has jurisdiction under N.C. Gen. Stat. § 7B-1001(a)(7) (2023).

## **III. Analysis**

On appeal, Respondent-Father challenges the trial court's determinations at both the adjudicatory and dispositional stages. Specifically, at the adjudication stage, Respondent-Father first argues the adjudicatory findings are merely recitations of the allegations in the motion to terminate parental rights, and second, that there is insufficient evidence to support grounds for termination under N.C. Gen. Stat. §§ 7B-1111(a)(1), (2), or (6). At the dispositional stage, Respondent-Father argues the trial court erred in determining it was in the children's best interests to sever the parent-child bond. We address each challenge, in turn.

### **A. Adjudication**

Respondent-Father first challenges the trial court's adjudication of grounds to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a).

This Court reviews an adjudication of grounds for termination "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. The trial court's conclusions of law are reviewable de novo on appeal." *In re K.J.E.*, 378 N.C. 620, 622, 862 S.E.2d 620, 621–22 (2021) (citation omitted). "Unchallenged findings are deemed to be supported by the evidence and are binding on appeal." *In re K.N.K.*, 374 N.C. 50, 53, 839 S.E.2d 735, 738 (2020) (citation and internal quotation marks omitted).

"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) (2023). “[A]n 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.” *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020).

1. Findings of Fact

Respondent-Father first takes issue with the trial court’s adjudicatory findings of fact. He contends the adjudicatory findings addressing his actions and disability are merely recitations of the allegations in the motion to terminate parental rights, and do not demonstrate an independent judicial reconciliation of the evidence and arguments. We disagree.

“In all actions tried upon the facts without a jury[,] . . . the court shall find the facts specifically and state separately its conclusions of law thereon[.]” N.C. Gen. Stat. § 1A–1, Rule 52(a)(1) (2023). The trial court “shall take evidence, find the facts, and . . . adjudicate the existence or nonexistence of any of the circumstances set forth in [N.C. Gen. Stat. §] 7B-1111 which authorize the termination of parental rights of the respondent.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 59 (2019) (quoting N.C. Gen. Stat. § 7B-1109(e) (internal quotation marks omitted)). In adjudicating the evidence,

the trial court must, through processes of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support the conclusions of law. These findings must be more than a recitation of allegations. They must be the specific ultimate facts . . . sufficient for

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the appellate court to determine that the judgment is adequately supported by competent evidence.

*In re J.W.*, 241 N.C. App. 44, 48, 772 S.E.2d 249, 253 (2015) (citations and internal quotation marks omitted). While this Court has strongly discouraged the verbatim recitation of allegations, see *In re M.K.*, 241 N.C. App. 467, 471, 773 S.E.2d 535, 539 (2015), this Court has also clarified that,

it is not *per se* reversible error for a trial court's fact findings to mirror the wording of a petition or other pleading prepared by a party. Instead, this Court will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case.

*In re J.W.*, 241 N.C. App. at 48, 772 S.E.2d at 253.

In upholding findings that contained language “cut-and-pasted” from the petitions, this Court held in *In re J.W.* that, although many of the findings of the trial court copied the wording in the petitions, the trial court had heard testimony at the hearing that supported the findings and, “through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to support its conclusions of law.” *Id.* at 49, 772 S.E.2d at 254.

In the instant case, the trial court did not frame its findings as allegations or find what witnesses or reports stated. The trial court's findings are actual findings of evidentiary and ultimate facts. Though portions of its findings mirror DHS's allegations in the termination motion, the findings are not simply “recitations” of the

motion, as Respondent-Father asserts. Only four of the ten findings identified by Respondent-Father are verbatim copies from the termination motion; the other six findings have been altered or supplemented by the trial court. These findings address actions by Respondent-Father not alleged in the termination motion and events occurring after the termination motion was filed, demonstrating the trial court considered the evidence presented at the termination hearing and did not merely copy allegations from the motion. Thus, we are satisfied the trial court's findings demonstrate that it properly performed its duty as the adjudicator of the evidence in finding the ultimate facts in the case. *See In re R.G.L.*, 379 N.C. 452, 459, 866 S.E.2d 401, 409 (2021) ("Although the findings closely track the allegations in the termination motion, there are differences between the findings and the allegations . . . that show the trial court did not merely copy the allegations from the termination motion. The modifications indicate the trial court independently reviewed and judged the evidence and issued findings based thereon."); *see also In re M.K.*, 241 N.C. App. at 471, 773 S.E.2d at 539 (holding additional findings beyond the verbatim recitations from the petition supported the adjudication).

Furthermore, the termination hearing testimony from the social worker assigned to the case addressed many of the allegations in the termination motion and supported the trial court's findings based on the motion. Respondent-Father's argument here is without merit. *See In re N.P.*, 374 N.C. 61, 65, 839 S.E.2d 801, 804 (2020).

## 2. Grounds for Termination

Respondent-Father next challenges the trial court's adjudication of grounds to terminate his parental rights, arguing there is insufficient evidence to support termination under N.C. Gen. Stat. §§ 7B-1111(a)(1), (2), or (6).

The adjudication of any ground in N.C. Gen. Stat. § 7B-1111(a)(1) is sufficient to support a termination of parental rights. *See In re R.G.L.*, 379 N.C. at 467, 866 S.E.2d at 414. Parental rights may be terminated if a parent has neglected a juvenile such that the juvenile is deemed to be a "neglected juvenile" within the meaning of N.C. Gen. Stat. § 7B-101. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2023).

A "neglected juvenile" is defined, in relevant part, as a juvenile whose 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. Gen. Stat. § 7B-101(15) (2023).

Termination based on neglect "requires a showing of neglect at the time of the termination hearing or, if 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." *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016). "When determining whether such 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 R.L.D.*, 375 N.C. 838, 841, 851 S.E.2d 17, 20 (2020) (citation omitted).

“Relevant to the determination of probability of repetition of neglect is whether the parent has made any meaningful progress in eliminating the conditions that led to the removal of the children.” *In re O.W.D.A.*, 375 N.C. 645, 654, 849 S.E.2d 824, 831 (2020). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re C.M.P.*, 254 N.C. App. 647, 655, 803 S.E.2d 853, 859 (2017). “[A] parent’s compliance with his or her 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) (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, 319 S.E.2d 227, 232 (1984) (emphasis omitted).

In this case, the trial court found that the children were previously adjudicated neglected on 16 July 2020. Based on safety concerns, including a lack of parenting skills, improper care, and an injurious environment, the trial court found a case plan was established for Respondent-Father to work towards reunification. The trial court issued findings about Respondent-Father’s actions and progress throughout the case and ultimately found that he had not made sufficient progress or shown sustained behavior changes necessary to address the needs of the children, such that the concerns at the time of removal were still current concerns. The trial court therefore

determined there was a high probability of repetition of neglect if the children were returned to Respondent-Father's care.

Without citation to any authority, Respondent-Father asserts that “[f]or the court to find ‘neglect,’ it must find some ability to cure the issue.” Respondent-Father appears to introduce a willfulness component to evaluate his case plan compliance for purposes of neglect, arguing he made progress in the areas of his case plan where he was able to progress, but his progress was limited by his traumatic brain injury and intellectual disability such that he could not complete the case plan. We are unpersuaded.

Our Courts have rejected the notion that termination of parental rights on grounds of neglect under N.C. Gen. Stat. § 7B-1111(a)(1) requires willfulness by a parent. *See In re N.K.*, 375 N.C. 805, 817, 851 S.E.2d 321, 331 (2020). In *In re N.K.*, our Supreme Court reiterated that,

[i]n determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent, and that, where the evidence shows that a parent has failed or is unable to adequately provide for his child's physical and economic needs, whether it be *by reason of mental infirmity* or by reason of willful conduct on the part of the parent, and it appears that the parent will not or is not able to correct those inadequate conditions within a reasonable time, the court may appropriately conclude that the child is neglected.

*In re N.K.*, 375 N.C. at 817–18, 847 S.E.2d at 331 (citations and internal quotation marks omitted) (cleaned up).

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Respondent-Father also does not dispute that the children were previously adjudicated neglected juveniles. He claims, however, the prior adjudication was the result of conduct that occurred while the children were in the care of their mother, making him a non-removal parent, and contends that the trial court has failed to make proper findings to support that there is a likelihood of repetition of neglect if the children were returned to his care, rather than their mother's.

Though Respondent-Father was a non-removal parent, the trial court's findings, supported by evidence presented at the termination hearing, establish that the safety concerns at the time of the children's removal, including lack of parenting skills, improper care, and injurious environment, were still concerns for their return to Respondent-Father's care at the time of the termination hearing. The evidence and findings establish that Respondent-Father suffers from a traumatic brain injury and intellectual disability that affect his ability to parent the children. Though he completed a psychological and parenting assessment and classes for cognitive awareness, life skills, and parenting skills, his assessments indicated he would need continued support parenting his children. Yet, the evidence and findings provide that Respondent-Father declined recommended outpatient therapy, was inconsistent with recommended peer support, was reluctant to resume peer support, and only re-engaged in peer support in April 2023, after the filing of the termination motion and just months before the termination hearing.

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Additionally, the evidence showed, and the trial court found, that while Respondent-Father consistently attended visitation with the children, he often required prompting to engage with them, and continued to have difficulty parenting them. Specifically, Respondent-Father failed to recognize when the children were acting dangerously, had difficulty setting boundaries with them, and required intervention to model appropriate behaviors. The evidence and findings also establish that Respondent-Father did not reach out to the children on birthdays and holidays, did not ask about their wellbeing when communicating with DHS, and did not attend child and family team meetings intended to evaluate the progress and needs of the family.

Furthermore, the evidence and findings demonstrate that Respondent-Father had not obtained housing suitable for the children, as he continued to live with his mother, where the children were unable to be placed due to his mother's background history. Respondent-Father takes issue with the trial court's finding that the children could not be placed in the home, arguing there was insufficient evidence to show home was unsuitable. But the Record shows that Respondent-Father acknowledged as early as September 2020 that the home was deemed unsuitable due to his mother's background history, and that he was working to find suitable housing. Nevertheless, Respondent-Father continued to reside in the unsuitable home at the time of the termination hearing, almost three years later. Lastly, evidence and findings showed that Respondent-Father relied on social security income that was

insufficient to meet the needs of the children, and he only recently re-engaged in part-time work, though the trial court found he had not provided verification of employment.

Although Respondent-Father was a non-removal parent not directly responsible for the prior adjudication of neglect, we are satisfied the evidence and the trial court's findings concerning the circumstances at the time of the termination hearing support the trial court's findings that Respondent-Father had not made adequate progress, nor shown necessary behavior changes, to alleviate the safety issues and ensure the wellbeing of the children, which in turn support the trial court's ultimate determination that there was a likelihood of repetition of neglect if the children were returned to his care. *See In re C.M.P.*, 254 N.C. App. 647, 660, 803 S.E.2d 853, 861 (2017) (upholding termination on rounds of neglect based on the parent's inadequate engagement in remedial services; lack of stable, independent housing; and lack of stable employment).

The trial court's findings that the children were previously neglected and that there was a high probability of repetition of neglect if the children were returned to Respondent-Father's care support the trial court's conclusion that grounds existed to terminate Respondent-Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). Because the adjudication of any ground in N.C. Gen. Stat. § 7B-1111(a) is sufficient to support a termination of parental rights, we need not address the other grounds. *See In re R.G.L.*, 379 N.C. at 467, 866 S.E.2d at 414.

## **B. Disposition**

Respondent-Father next argues the trial court erred in determining it was in the children's best interests to sever the parent-child bond. We disagree.

“After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest.” N.C. Gen. Stat. § 7B-1110(a) (2023). “The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed solely for abuse of discretion.” *In re E.S.*, 378 N.C. 8, 12, 859 S.E.2d 185, 188 (2021) (quoting *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019)).

The trial court is required to consider the following factors and make written findings regarding the factors relevant to its assessment of a juvenile's best interests: (1) the age of the juvenile, (2) the likelihood of adoption, (3) whether termination will aid in the accomplishment of the permanent plan, (4) the bond between the juvenile and the parent, (5) the quality of the relationship between the juvenile and the proposed adoptive parent or other permanent placement, and (6) other relevant considerations. *See* N.C. Gen. Stat. § 7B-1110(a).

It is clear from the termination order that the trial court considered and issued findings on all of the relevant factors in determining termination of parental rights was in the children's best interests. The trial court found that Tia and Eva were approximately six-and-a-half years old and eight-and-a-half years old, respectively; there was a high likelihood of adoption as the children were in potential pre-adoptive

homes; termination would aid in the permanent plans of adoption; there was a very little bond between the children and Respondent-Father; and both children had excellent bonds with their placements.

Though Respondent-Father asserts severing the parent-child bond is not in the children's best interests, he does not challenge any of the dispositional findings, which are therefore binding on appeal. *See In re A.H.F.S.*, 375 N.C. 503, 513, 850 S.E.2d 308, 317 (2020) (reasoning that unchallenged dispositional findings are binding on appeal). Furthermore, Respondent-Father does not argue the dispositional findings do not support the trial court's ultimate determination that termination of parental rights was in the children's best interests. Respondent-Father instead takes issue with the 10 May 2023 permanency planning order, arguing the order should be reversed because the trial court erred in eliminating reunification efforts in violation of requirements of N.C. Gen. Stat. §§ 7B-906.2(b) and (d).

Respondent-Father, however, never gave notice of appeal from the 10 May 2023 permanency planning pursuant to the requirements of N.C. Gen. Stat. § 7B-1001(a)(8), and did not have a right to appeal the order since the trial court ordered reunification remain the secondary goal and did not eliminate reunification from the permanent plan under N.C. Gen. Stat. § 7B-906.2(b), as asserted by Respondent-

Father. Thus, the permanency planning order is not properly before this Court for review.<sup>3</sup>

Upon review of the termination order, we are satisfied the trial court considered the relevant dispositional factors, made the required findings, and performed a reasoned examination of the children's best interests. *See* N.C. Gen. Stat. § 7B-1110(a). Accordingly, we hold the trial court did not abuse its discretion in determining termination of Respondent-Father's parental rights was in the children's best interests. *See In re E.S.*, 378 N.C. at 12, 859 S.E.2d at 188.

#### **IV. Conclusion**

Upon our review of the record, we hold the trial court's findings are not mere recitations of the allegations in the motion to terminate parental rights and that there is sufficient evidence to support grounds for termination under N.C. Gen. Stat. §§ 7B-1111 based on a finding of a likelihood of future neglect. We also hold the trial court properly found it was in the children's best interests to sever Respondent-Father's parental rights. Thus, we affirm the order terminating Respondent-Father's parental rights.

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<sup>3</sup> To the extent Respondent-Father's argument could be interpreted as applying the requirements of N.C. Gen. Stat. § 7B-906.2 to termination of parental rights, this Court has held N.C. Gen. Stat. § 7B-906.2 does not apply to termination proceedings. *See In re T.H.*, 266 N.C. App. 41, 45, 832 S.E.2d 162, 164 (2019) ("Section 7B-906.2 pertains to permanent plans that must be established at permanency planning hearings, while Chapter 7B, Article 11, . . . provides for the judicial procedures for terminating parental rights.").

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AFFIRMED.

Judges STROUD and STADING concur.

Report per Rule 30(e).