

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-569

Filed 19 February 2025

Union County, No. 20 JT 143

IN THE MATTER OF: J.D.S.

Appeal by Respondent-mother from an order entered 20 February 2024 by Judge Stephen V. Higdon, in Union County District Court. Heard in the Court of Appeals 14 January 2025.

Plyler, Long, & Corigliano LLP, by Ashley J. McBride, Union County Department of Social Services, Petitioner-Appellee.

NC GAL Appellant Counsel Matthew D. Wunsche for the Guardian ad Litem.

Parent Defender Wendy Sotolongo, by Deputy Parent Defender Annick Lenoir-Peek, for Respondent-Appellant Mother.

WOOD, Judge.

Respondent-mother (“Mother”) appeals the trial court’s order terminating her

parental rights to J.D.S. (“Jaxson”) on 20 February 2024.^{1,2} After careful review, we affirm the trial court’s order.

I. Factual and Procedural Background

Jaxson was born at home on 17 August 2020. After the birth, Mother brought him to the hospital for medical care, and both Jaxson and Mother tested positive for Amphetamines.

DSS filed a juvenile petition in Union County District Court on 20 August 2020 alleging Jaxson was a neglected juvenile. DSS had received reports from the hospital that staff were concerned about Mother’s methamphetamine use. Hospital staff reported that on 17 August 2020 Mother had added apple juice to her urine specimen for drug testing, prompting medical staff to retrieve another specimen through a catheter. Medical staff also reported concerns with Mother sleeping through scheduled feedings even when prompted by medical staff, causing the feedings to be missed by three to four hours. Approximately a year prior, on 22 August 2019, Mother’s three older children entered DSS custody due to neglect and Mother had not substantially complied with the identified needs of substances abuse, mental health, domestic violence, safe family relationships and understanding medical and developmental needs of the children.

¹ A pseudonym is used to protect the identity of the juvenile pursuant to N.C. R. App. P. 42(b).

² Respondent-father is not a party to the appeal.

On 21 August 2020, the trial court ordered that Jaxson be placed in the non-secure custody of DSS due to substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.

On 26 August 2020, a non-secure custody hearing was held. The trial court continued custody with DSS giving Mother supervised visitation for a minimum of one hour per week. The trial court ordered Mother to comply with drug testing, address substance abuse, mental health, parenting skills, domestic violence, and safe family relationships and demonstrate understanding of the medical needs of the children. Additionally, the trial court found that Mother's aunt ("Aunt") was the current placement for the three older siblings, however, the placement was being monitored because Aunt had allowed others to stay with the juveniles without informing DSS, preventing DSS from conducting criminal background checks prior to the interactions. The trial court ordered Aunt to provide clarity on her schedule and any need for assistance in caring for the other siblings and ordered that Jaxson have contact with his siblings. Placement was left to the discretion of DSS, and reunification was set as the permanent plan.

On 2 September 2020, another non-secure custody hearing was held. The trial court found that placement in Aunt's care would be difficult due to the needs of the three older siblings, all of whom were under the age of six. However, another aunt

resided in South Carolina and an ICPC Home study was ordered. Additionally, the trial court ordered Mother to receive domestic violence counseling in addition to the other previously ordered services.

On 23 September 2020, another non-secure custody hearing was held. Mother's godsister testified that she was hired by Aunt to help care for the children Mondays through Thursdays. However, the trial court found that the arrangement was not a "solid alternative childcare plan" for Jaxson because he has medical needs and because the older siblings have therapeutic needs that require a great deal of time. The trial court continued placement with DSS. The trial court also ordered Mother to continue working on her plan with DSS and to continue her one hour per week visitation.

In a meeting between Aunt and DSS on 28 September 2020, Aunt agreed to produce a plan by 2 October 2020 for DSS outlining how she could care for Jaxson in addition to the other three children. DSS did not receive the plan until 19 October 2020. The plan included significant support from another individual who would be relied upon to take Jaxson to and from daycare during the weekdays as well as to take Jaxson to any necessary appointments but lacked clarification as to how all his medical and therapy appointments would be managed. Additionally, Aunt suggested that she would retire from her job, if necessary, to provide care for Jaxson but did not outline how she would financially support herself and four children without her income.

On 21 October 2020, another non-secure custody hearing was held. The trial court again noted that placement with Aunt was considered but not deemed appropriate by DSS because of the needs of all four children. The trial court continued placement with DSS and ordered Mother continue receiving one hour per week visitation.

An adjudication and initial disposition hearing was held 18 November 2020. Mother stipulated to the findings of fact to support Jaxson being adjudicated as neglected as defined in N.C. Gen. Stat. § 7B-101(15) in that the juvenile lives in an environment injurious to the welfare of the juvenile. These facts include that Jaxson was born at home and both Mother and Jaxson tested positive for methamphetamine; Father admitted to using Adderall without a prescription; and Jaxson's three older siblings were previously adjudicated neglected and dependent due to domestic violence and substance abuse which the parents have not addressed. Additionally, Mother stipulated to the findings of fact to support Jaxson being adjudicated dependent as defined by N.C. Gen. Stat. §7B-101(9) in that the juvenile's parents, guardians or custodians are unable to provide for the care or supervision of the juvenile and lack an appropriate alternative childcare arrangement. These facts include that due to substance abuse the parents are unable to properly provide for the juvenile; there is not an alternative appropriate childcare arrangement for the juvenile; and DSS cannot ensure the safety of the juvenile in his current placement without the intervention of the court. Additionally, the trial court found that

Mother's housing was in jeopardy because she continued to allow father on the property in violation of her lease and that Jaxson had begun displaying some neurological issues, possibly due to his drug exposure. The trial court adjudicated Jaxson as neglected and dependent.

A review hearing was held 19 January 2021. The trial court found Mother had been evicted from her home and had not provided DSS with proof of a new address. In addition, Mother had participated in only one visitation since mid-December. The trial court ordered Jaxson remain in the custody of DSS and the plan of care to be reunification. The trial court ordered continued visitation with Mother and his siblings.

At the permanency planning hearing held on 7 April 2021, the trial court modified the permanent plan to a primary plan of reunification with guardianship being the secondary permanent plan.

A permanency planning hearing was held on 3 August 2021. The trial court found that Mother sporadically participated in mental health services but had not received treatment since early July. In addition, Mother had been arrested four times, 1 June, 21 June, 1 July and 14 July, for various reasons including possession of methamphetamine. Mother had been inconsistent in attending visits with Jaxson, failing to show for three of the last four possible visits. The trial court also found although multiple family members had expressed interest in caring for Jaxson, DSS has determined that none of these options are appropriate. DSS reported that on 25

June 2021 it received a phone call from the Union County Judicial Center reporting Father was sitting in superior court with one of the children and Aunt was not present and Father was going to be arrested. The DSS social worker responded to the court immediately and retrieved the child. The child reported the siblings were with Mother. DSS was able to track down Mother, who along with an unknown friend, did have the siblings. The children had been removed from the parents' custody as of 9 June 2021, and the current court order did not allow parents to have any unsupervised interaction with the children. When Aunt was located late in the afternoon, she stated that she did not know where the children were and was shocked, they were with Mother and an unknown friend. Aunt later admitted she knew the children were with Mother and a friend but felt this was prudent parenting. All three children were removed from Aunt's care and placed in Jaxson's foster home. During this transition DSS received reports from service and educational providers that Mother had been seen dropping off and picking up the children alone. The older children also reported Father had been attending family events in Aunt's home even though he was ordered to have visitation separate from Mother and supervised by DSS. A Child Protective Services investigation was conducted, and Mecklenburg County Youth and Family Services was tasked with completing it in order to avoid a conflict of interest. The trial court ordered the primary permanent plan for Jaxson to be changed to adoption with a secondary plan for guardianship. The trial court

suspended visitation between Jaxson and his parents and recommended DSS file a petition for termination of parental rights.

On 27 August 2021 DSS filed a Petition for Termination of Parental Rights. The hearing, originally scheduled for 1 December 2021, was continued four times due to scheduling issues and requests from Mother.

On 8 March 2022 the trial court conducted a permanency planning hearing. The trial court found since the last hearing on 3 August 2021 Mother had not made adequate progress in addressing her case plan. In addition, the trial court found Aunt had been harassing the placement provider. The trial court continued the primary permanent plan for Jaxson as adoption with a secondary plan for guardianship. The trial court ordered visitation between Jaxson and his parents continue to be suspended.

On 7 April 2022, Mother's attorney filed a motion to withdraw because she was leaving private practice. On 18 April 2022, the trial court entered an order allowing the initial attorney to withdraw and appointing a new attorney.

On 4 May 2022, a hearing on the termination of parental rights petition was held. Neither parent attended the hearing, although both had been personally served with a summons and petition. Mother's attorney made a motion to continue stating since the recent substitution he hadn't had any contact with his client. The trial court denied the motion to continue. Mother's attorney then made a motion to withdraw

which the trial court allowed. The trial court entered an order terminating Mother's parental rights on 14 June 2022. Mother filed a notice of appeal on 19 July 2022.

This Court heard Mother's appeal on 12 June 2023. The Court vacated the trial court's order to terminate parental rights and remanded to the trial court because there was no evidence in the record that Mother was given notice of the trial court's 18 April 2022 order allowing her attorney to withdraw and approving a new attorney substitute. Additionally, there was no evidence that the new attorney provided Mother with notice of his intent to withdraw. *In re J.S.*, 289 N.C. App. 629, 888 S.E.2d 408 (2023).

During the pendency of Mother's appeal, Aunt attempted to adopt Jaxon. On 22 December 2021, Aunt filed a petition for adoption of Jaxon. On 30 March 2022 the Clerk of Court of Union County filed a five-day Notice of Dismissal of Adoption based on petitioner's failure to meet statutory requirements. On 5 April 2022 Aunt filed an answer to the notice and on 8 April 2022 DSS made a motion to dismiss Aunt's petition. On 29 June 2022, the district court heard Aunt's request for reconsideration of her petition for adoption. The trial court found that DSS had removed the three oldest children from Aunt's home and although Mecklenburg County DSS did not find neglect, Aunt clearly violated the court order and did not ensure the safety of the juveniles. In addition, the trial court found the Post TPR Order findings that "the Court does not believe these placements [with family members] to be appropriate especially given the family's history of failure to ensure the safety of the juveniles and

to follow court orders” to be persuasive. The trial court confirmed the dismissal of the adoption petition. Aunt filed an appeal of the order confirming the dismissal of the adoption petition.

On 7 November 2023, DSS filed another Motion to Terminate Parental Rights. On 19 December 2023, the trial court continued the hearing for good cause because Mother had signed a relinquishment of her parental rights. On 27 December 2023, Mother signed a Revocation of Relinquishment for Adoption.

The termination of parental rights hearing was held on 11 January and 30 January 2024. Mother was present with her attorney. The trial court found grounds to terminate Mother’s parental rights based on neglect, leaving Jaxon in foster care for more than twelve months without reasonable progress in correcting the conditions which led to placement and the termination of Mother’s parental rights to her older children and her lack of ability or willingness to establish a safe home. The trial court found it was in Jaxson’s best interests to terminate the parents’ parental rights. The order terminating parental rights was filed on 20 February 2024. Mother filed notice of appeal 20 March 2024.

II. Analysis

On appeal, Mother argues the trial court’s order terminating her parental rights must be reversed because the cumulative effect of the trial court’s errors undermined the sufficiency of the hearing and because the trial court failed to make findings regarding the availability of relatives to care for Jaxson.

A. Standard of Review

North Carolina sets forth a two-stage process for the termination of parental rights: adjudication and disposition. N.C. Gen. Stat. §§ 7B-1109, 1110 (2023).

At the adjudicatory stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence the existence of one or more grounds for termination under [N.C. Gen. Stat.] § 7B-1111(a). We review a district court's adjudication under [N.C. Gen. Stat.] § 7B-1109 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. If the district court determines that one or more grounds listed in section 7B-1111 are present, the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights.

In re A.R.A., 373 N.C. 190, 194, 835 S.E.2d 417, 420-21 (2019) (cleaned up). “The district court’s assessment of a juvenile’s best interest at the dispositional stage is reviewed only for abuse of discretion. 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.” *Id.* at 199, 835 S.E.2d at 423.

B. Cumulative Errors

Mother asserts that if there was “just one of these errors, then it would not be as concerning” but the cumulative effect of all the seemingly small errors requires the termination be reversed. We disagree. Our Supreme Court has made clear that it is “not inclined to expand this scarcely utilized doctrine [of cumulative error], which emanates from considerations spawned by the protections of criminal law, to this

termination of parental rights matter.” *In re J.D.O.*, 381 N.C. 799, 822, 874 S.E.2d 507, 524 (2022). Therefore, Mother’s cumulative error argument fails, and we look to her individual arguments to determine whether there was any error. Mother makes four individual arguments within her cumulative error assertion: (1) the trial court erred in terminating Mother’s rights due to her failure to file an answer; (2) the trial court erred in failing to differentiate between findings of fact and conclusions of law; (3) the trial court failed to address discrepancies in facts relying too heavily on the prevailing party’s draft order; and (4) the trial court failed to address the two grounds that DSS abandoned in their argument.

1. Failure to File an Answer

Mother asserts the trial court erred because “the trial court thought it could terminate [Mother’s] rights due to her failure to file an answer.” This contention is not supported by the record.

In the trial court’s order, finding of fact fifteen states

[Mother] has failed to file a written response to the petition within 30 days after service of the summons and petition upon her or by the date to which her time was extended to file a response after the case was remanded. Pursuant to [N.C. Gen. Stat. §] 7B-1107, the court may issue an order terminating all parental rights of [Mother] with respect to this juvenile. This court hereby terminates the parental rights to [Mother].

The trial court referenced N.C. Gen. Stat. § 7B-1107 which reads,

Upon the failure of a respondent parent to file written

answer to the petition or written response to the motion within 30 days after service of the summons and petition or notice and motion, or within the time period established for a defendant's reply by G.S. 1A-1, Rule 4(j)(1) if service is by publication, the court may issue an order terminating all parental and custodial rights of that parent with respect to the juvenile; provided the court shall order a hearing on the petition or motion and may examine the petitioner or movant or others on the facts alleged in the petition or motion.

N.C. Gen. Stat. § 7B-1107 (2023). Mother contends, a trial court must hold a hearing and cannot enter a default judgment therefore this finding was in error. *See* N.C. Gen. Stat. §7B-1109(e) (2023); *see also, In re J.N.S.*, 165 N.C. App. 536, 539, 598 S.E.2d 649, 650-651 (2004). However, the trial court's finding was merely recitation of the procedural history. The trial court held a two-day hearing, heard testimony from multiple witnesses, admitted documents and made findings of fact pursuant to N.C. Gen. Stat. § 7B-1107. Mother's argument is without merit.

2. Failure to Differentiate Findings of Fact and Conclusions of Law

Mother contends the trial court's findings of fact and conclusions of law were essentially the same but does not challenge any of the individual findings or conclusions. Therefore, this argument is without merit.

3. Lack of Oral Findings

Mother's third argument contends the trial court failed to resolve any issues in the oral ruling and relied too heavily on the prevailing party in drafting the written order.

Rule 58 of the rules of civil procedure states “a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court pursuant to Rule 5. The party designated by the judge or, if the judge does not otherwise designate, the party who prepares the judgment, shall serve a copy of the judgment upon all other parties” N.C. Gen. Stat. §1A-1, Rule 58 (2023).

Rule 58 was revised in 1994 to its current language. Based on that change this Court found, “[e]ntry of judgment based upon oral rendition of judgments is no longer allowed in civil matters; currently, judgments and orders are only entered when they are reduced to writing, signed by the judge, and filed with the clerk of court.” *In re O.D.S.*, 247 N.C. App. 711, 714, 786 S.E.2d 410, 413 (2016) (cleaned up); *see also* N.C. Gen. Stat. §1A-1, Rule 58 (2023). There is no requirement for the trial court to make an oral statement and an oral statement does not limit the trial court’s written judgment. *Id.*

In support of her argument that the trial court relied too heavily on the prevailing party Mother cites to *In re A.B.*, in which this Court found “the order is the responsibility of the trial court, no matter who physically prepares the draft of the order.” *In re A. B.*, 239 N.C. App. 157, 167, 768 S.E.2d 573, 579 (2015). However, in *In re A.B.* this Court also went on to state, “[u]nfortunately, in North Carolina, the majority of District Court judges have little or no support staff to assist with order preparation, so the judges have no choice but to rely upon counsel to assist in order preparation.” *Id.* Additionally, this Court has explicitly stated “it is not *per se*

reversible error for a trial court's findings of fact to mirror the working of a party's pleading." *In re J.W.*, 241 N.C. App. 44, 45, 772 S.E.2d 249, 251 (2015). Instead, the appeals 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." *Id.*

In the case *sub judice*, the trial court made general oral statements at the end of each section of the hearing. After the dispositional phase the trial court stated, "Court's going to grant the relief requested by DSS, make the requested findings." At the ending of the best interest determination the trial court stated, "I am going to find at this point that it is in [Jaxson's] best interest to adopt the recommendations put forth both by DSS and the Guardian ad Litem." The statements were general and not formal entry of judgment but were consistent with the trial court's written order filed 20 February 2024.

The written order was very similar to the petition filled by DSS; however, it clearly laid out the evidentiary facts including the ultimate facts necessary for the disposal of the case. This included nearly twenty specific findings regarding ongoing substance use, domestic violence and parenting concerns to support the finding of neglect including four specific findings regarding the probability of repeated neglect based on the historical facts of the case. Additionally, the trial court made four more findings regarding Mother willfully leaving Jaxson in foster care without showing reasonable progress. Separate findings were made to support the fact that Mother's

rights to her three older children were previously terminated due to the same issues of substance use, domestic violence and mental health concerns and she continued to lack the ability or willingness to establish a safe home. Finally, the trial court made nearly a dozen separate findings concerning Jaxson's best interests as outlined in N.C. Gen. Stat. §7B-1110. These findings provided clear logical reasoning with evidentiary support to terminate Mother's parental rights.

Mother does not specifically contest any of the findings. She merely states that one section of the findings, 12(c), had "some disputes in the evidence." While it may be true that Mother presented differing testimony, by making findings in line with the evidence that DSS presented the trial court clearly established which evidence it found most persuasive. It is a long-standing rule of law that it is the trial court which is vested with the role of determining the credibility of the evidence. "The trial court's decisions as to the weight and credibility of the evidence, and the inferences drawn from the evidence, are not subject to appellate review." *In re J.M.*, 384 N.C. 584, 591, 887 S.E.2d 823, 828 (2023) (cleaned up). Accordingly, we find no error in the trial court's oral statements or written order.

4. Two Grounds for Termination Were Abandoned

Mother next argues it was error for the trial court to fail to address the two grounds that DSS abandoned in its argument. DSS concedes that it abandoned two grounds for termination that had been alleged in the petition, specifically, (1) willful failure to pay a reasonable portion of the cost and care and (2) dependency. However,

DSS was not required to proceed on every ground alleged in the petition as “only one ground is necessary to support a termination of parental rights.” *In re A. R. A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019); *see also In re T.N.H.*, 372 N.C. 403, 406, 831 S.E.2d 54, 58 (2019).

DSS alleged and the trial court found three separate grounds for termination of parental rights: (1) neglect under N.C. Gen. Stat. §7B-1111(a)(1); (2) willfully leaving the juvenile in foster care for more than 12 months under N.C. Gen. Stat. §7B-1111(a)(2); and (3) the parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home under N.C. Gen. Stat. §7B-1111(a)(9). All three of these grounds were supported by clear, cogent and convincing evidence and are each individual grounds which support the termination of parental rights. Mother’s argument is without merit.

C. Findings Regarding Relatives

In addition to her assertion of cumulative errors, Mother argues the trial court erred because it did not make findings of fact during the dispositional phase concerning placement with relatives in the termination order. “The district court’s assessment of a juvenile’s best interest at the dispositional stage is reviewed only for abuse of discretion. 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. R. A.*, 373 N.C. 190, 199, 835 S.E.2d 417, 423 (2019).

Further,

In making its determination, the court may consider any evidence, including hearsay evidence as defined in [N.C. Gen. Stat. §] 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

In re N.C.E., 379 N.C. 283, 286-87, 864 S.E.2d 293, 297 (2021) (cleaned up). Our Supreme Court has held that “the trial court *may* treat the availability of a relative placement as a ‘relevant consideration’ under [N.C. Gen. Stat.] § 7B-1110(a)(6). The extent to which it is appropriate to do so in any particular proceeding is dependent upon the extent to which the record contains evidence tending to show whether such a relative placement is, in fact, available.” *Id.* at 288, 864 S.E.2d at 298 (emphasis added) (cleaned up). However,

[a] termination proceeding is governed by the statutes in Article 11. Article 11’s dispositional statute, [N.C. Gen. Stat.] § 7B-1110, gives no priority to relative placements, focusing solely upon identifying the best interests of the child. While the availability of an appropriate relative placement may be a “relevant consideration” under [N.C.

Gen. Stat.] § 7B-1110(a)(6), it is left to the trial court's discretion to weigh the various competing factors in [N.C. Gen. Stat.] § 7B-1110(a) in arriving at its determination of the child's best interests.

Id. at 293, 864 S.E.2d at 301 (cleaned up).

In the case *sub judice*, the trial court made extensive findings of fact concerning all the factors listed in N.C. Gen. Stat. § 7B-1110 including finding (H)(1) which stated “[Jaxson] has three older siblings whose kinship placement was disrupted on June 25, 2021. [Jaxson’s] foster family accepted placement of the three siblings on June 30, 2021. They adopted his three siblings on July 1, 2022.” While the trial court did not expand on the reasons why the placement of the siblings was disrupted, there was extensive testimony from the social worker as well as Aunt regarding the placement of the siblings. There was also a finding that another court had terminated the parental rights for the older three children and that the children were currently in the same home as Jaxson. We hold the trial court did not abuse its discretion when concluding that termination of Mother’s parental rights was in Jaxson’s best interest because the trial court made sufficient dispositional findings that support a reasoned decision

III. Conclusion

After careful review of the record, we hold Mother’s arguments on appeal are without merit. The trial court’s findings support its conclusion that grounds exist to

IN RE: J.D.S.

Opinion of the Court

terminate Mother's parental rights, and the trial court did not abuse its discretion when evaluating Jaxson's best interest at the dispositional stage. Therefore, we affirm the trial court's order terminating Mother's parental rights.

AFFIRMED.

Chief Judge DILLON and Judge MURRY concur.

Report per Rule 30(e).