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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-129

Filed 2 September 2026

Madison County, No. 25JT001008-560

IN RE:

P.J.S.

A Minor Juvenile.

Appeal by respondent-father from order entered 29 October 2025 by Judge Milton Fletcher in Madison County District Court. Heard in the Court of Appeals 21 July 2026.

Daniel Hockaday for petitioner-appellee Madison County Department of Social Services, no brief filed.

Womble Bond Dickinson (US) LLP, by Reid C. Adams, Jr., for appellee guardian ad litem.

The Law Office of Lisa Noda PLLC, by Lisa Noda, for respondent-appellant father.

GORE, Judge.

Respondent-father (“Father”) appeals from an order terminating his parental rights to the juvenile, whom we refer to by the pseudonym “Paige.” The trial court adjudicated grounds for termination based on neglect under N.C.G.S. § 7B-1111(a)(1)

and dependency arising from parental incapability under N.C.G.S. § 7B-1111(a)(6) and thereafter determined that termination was in Paige's best interests.

Father argues the trial court's findings do not support either adjudicated ground. We agree. Although the findings establish past neglect, Father's limited relationship with Paige, and his incarceration at the time of the termination hearing, they do not adequately address Father's circumstances at the time of the hearing or explain why neglect was likely to recur following his projected release approximately two months later. The findings likewise fail to establish that Father's incapability would continue for the foreseeable future or that he lacked an appropriate alternative child-care arrangement. Because the record contains evidence from which the trial court could make additional findings, we vacate the termination order and remand for further proceedings.

I. Factual and Procedural Background

Paige was born on 5 February 2024.¹ The following day, the Madison County Department of Social Services ("DSS") received a report alleging that Paige was a substance-affected infant. Mother admitted using methamphetamine, amphetamine, and fentanyl during her pregnancy, and testing confirmed that those substances were present in Paige's system at birth.

¹ Paige's birth certificate identifies her date of birth as 5 February 2024. Finding of Fact 2 in the termination order, however, states that the juvenile's birth certificate identifies a different juvenile, with a different name and birth date of 25 October 2022. The evidence presented at the termination hearing confirmed that Paige was born on 5 February 2024.

Paige remained in the neonatal intensive care unit following her birth. Because she was medically fragile, hospital staff recommended that her parents visit frequently to nurture, feed, and bond with her. The trial court found that, after Mother was discharged from the hospital, Mother and Father did not maintain regular contact with hospital staff or follow the hospital's recommendations for regular visitation and feeding. Paige subsequently lost her suck reflex and required a feeding tube, and hospital staff expressed concern about the parents' ability to care for her.

Mother identified Father as Paige's father, although no father was named on Paige's birth certificate. Mother completed a Plan of Safe Care identifying her mother, Lisa Hicks ("Grandmother"), as a potential temporary safety provider. Grandmother already had guardianship of one of Mother's other children. Upon her discharge from the hospital, Paige was placed with Grandmother, and she has remained in Grandmother's home since that time.

During DSS's investigation, Mother and Father were arrested in Buncombe County. While incarcerated, both parents signed temporary-safety-provider documentation authorizing Grandmother to care for Paige. Father supported Paige's placement with Grandmother and did not object to Grandmother continuing to care for her.

On 10 May 2024, DSS filed a juvenile petition alleging that Paige was neglected and dependent. The trial court awarded DSS nonsecure custody on 13 May

2024, and DSS thereafter maintained uninterrupted legal custody of Paige. Following a hearing on 12 June 2024, the trial court adjudicated Paige neglected and dependent.

Father remained continuously incarcerated after 10 April 2024. Although he was treated as Paige's putative father during the underlying proceeding, DNA testing did not confirm his paternity until April 2025. A DSS social worker first met with Father after the paternity results were received, in May 2025.

DSS developed a case plan for Father. The social worker acknowledged, however, that the two formal services required by the plan were unavailable to Father while he was incarcerated. The plan was later modified to require Father to undertake parenting classes following his release. Father's in-person visitation was likewise conditioned on his release from custody, and the social worker did not know whether virtual visitation had been available to him.

While incarcerated, Father sent cards to Paige and made telephone contact with Grandmother's home. He did not have in-person contact with Paige, provide financial support or other necessities for her, or contact the assigned social worker after their May 2025 meeting. The social worker testified that Father had not provided DSS with a documented or substantial plan for reunification following his release, although he had reported that he owned a business and expected to have a place to live.

On 22 July 2025, Mother relinquished her parental rights to Paige, and the

period for revocation expired. In July 2025, DSS petitioned to terminate Father's parental rights, alleging neglect, dependency based on parental incapability, and abandonment under N.C.G.S. § 7B-1111(a)(1), (6), and (7).²

The trial court conducted the termination hearing on 17 September 2025. At the beginning of the hearing, Father moved for a continuance to permit him to be released and begin completing his case plan. The trial court denied the motion and proceeded with the adjudicatory hearing. At that time, Father was incarcerated for attempted trafficking in a Schedule II controlled substance and had a projected release date of 21 November 2025.

DSS presented testimony from the assigned social worker, and Father testified on his own behalf. At the conclusion of the adjudicatory stage, the trial court orally determined that DSS had established neglect and dependency based on incapability but had not established abandonment. The court then received additional evidence concerning Paige's best interests. The evidence showed that Grandmother was the only caregiver Paige had known, that Paige was bonded with Grandmother, and that Grandmother wished to adopt her.

On 29 October 2025, the trial court entered a written order terminating Father's parental rights. The court concluded that grounds existed under N.C.G.S. § 7B-1111(a)(1) and (6) but expressly declined to terminate Father's rights for

² The copy of the petition contained in the record bears no file stamp. The petition was signed on 23 July 2025 and verified before a notary on 24 July 2025.

abandonment under subsection (a)(7). At disposition, the court determined that termination would further Paige’s permanent plan of adoption and was in her best interests. Father timely appealed on 24 November 2025.

II. Standard of Review

A termination of parental rights proceeding involves an adjudicatory stage and, if a ground for termination is established, a dispositional stage. *In re Z.A.M.*, 374 N.C. 88, 94 (2020); N.C.G.S. §§ 7B-1109, -1110. At adjudication, the petitioner bears the burden of proving by “clear, cogent, and convincing evidence” that at least one ground for termination exists under N.C.G.S. § 7B-1111(a). *Id.*

We review a termination adjudication to determine whether the challenged findings are supported by clear, cogent, and convincing evidence and whether the findings support the trial court’s conclusions of law. *In re G.C.*, 384 N.C. 62, 65–66 (2023); *In re C.B.C.*, 373 N.C. 16, 19 (2019). Findings not challenged on appeal are deemed supported by competent evidence and are binding. *In re T.N.H.*, 372 N.C. 403, 407 (2019). “A trial court’s finding of an ultimate fact is conclusive on appeal if the evidentiary facts reasonably support the trial court’s ultimate finding.” *In re G.C.*, 384 N.C. at 65. Whether the findings support the conclusions of law is reviewed de novo. *Id.* at 66. A single statutory ground is sufficient to support termination. *In re E.H.P.*, 372 N.C. 388, 395 (2019).

Father challenges only the trial court’s adjudication of grounds for termination and does not separately challenge its dispositional determination.

III. Adjudication of Neglect

Father argues the trial court erred by determining that grounds existed to terminate his parental rights based on neglect under N.C.G.S. § 7B-1111(a)(1). We agree that the findings are insufficient to support the adjudication of this ground.

A trial court may terminate parental rights upon finding that the parent has neglected the juvenile within the meaning of N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1). When, as here, the juvenile has been separated from the parent for a significant period before the termination hearing, the petitioner must establish both past neglect and a likelihood of future neglect. *In re K.P.-S.T.*, 375 N.C. 797, 801 (2020). In determining whether neglect is likely to recur, the trial court must consider any changed circumstances between the period of past neglect and the termination hearing. *In re Z.V.A.*, 373 N.C. 207, 212 (2019). The determinative consideration is the parent's fitness to care for the juvenile at the time of the termination proceeding. *In re Ballard*, 311 N.C. 708, 715 (1984).

Father does not dispute that Paige was previously adjudicated neglected. A prior adjudication of neglect may establish past neglect even when the parent whose rights are at issue was not responsible for the conditions underlying that adjudication. *In re J.M.J.-J.*, 374 N.C. 553, 565 (2020). Thus, the question before us is whether the trial court's evidentiary findings reasonably support its ultimate finding that neglect was likely to recur.

The termination order recounts the circumstances surrounding Paige's birth

and DSS's initial investigation. The court found that Paige was born substance affected, remained in the neonatal intensive care unit, and required frequent visitation, nurturing, and feeding. The court further found that Mother and Father did not maintain regular contact with the hospital, did not follow the hospital's visitation recommendations, and were arrested during the investigation. Those findings concern the circumstances existing in the months following Paige's birth and support the determination of past neglect.

The court's findings concerning Father's circumstances at the time of the termination hearing were more limited. The court found:

22. The respondent father . . . has failed to maintain any bond with the juvenile, failed to provide financial assistance or other necessities for the juvenile, and is entirely unknown to the juvenile.

23. The respondent father . . . has not had any in-person contact with the juvenile since the filing of the Juvenile Petition . . . although he has sent cards to the juvenile and made telephone contact with the juvenile at his placement with the juvenile's maternal grandmother.

24. The respondent father is presently incarcerated . . . for attempted trafficking of a Schedule II controlled substance . . . with a projected release date of November 21, 2025.

Father challenges the findings that he failed to maintain a bond with Paige and was entirely unknown or a stranger to her. The social worker testified that she had never observed a bond between Father and Paige and that Paige would not recognize Father if she saw him. Although the order also acknowledges that Father sent cards and

made telephone contact, those limited contacts do not necessarily establish that Paige, who was approximately nineteen months old at the time of the hearing, knew Father as a parent. We therefore conclude that the evidence supports the substance of the court's findings that Father and Paige lacked a parent-child bond.

Those findings, however, do not by themselves establish a likelihood of future neglect. Finding of Fact 25 states that Father "has continued to neglect the juvenile" and that "there is a high probability of future neglect if the juvenile is returned to the care of" Father. This is an ultimate finding of fact. *See In re G.C.*, 384 N.C. at 65. It is binding only if the evidentiary findings reasonably support it. *Id.*

Father's incarceration was relevant to whether neglect was likely to recur, but incarceration alone cannot establish the ground. *In re K.N.*, 373 N.C. 274, 282 (2020). Rather, the court must examine the surrounding circumstances, including the anticipated length of incarceration and its effect on the parent's future ability to care for the juvenile. *Id.* at 282–83. In *In re J.S.*, for example, the respondent's anticipated incarceration for another twenty-eight years supported a likelihood of future neglect because he would remain unable to care for his children until well after they reached adulthood. 377 N.C. 73, 79–80 (2021).

Here, the court found that Father was expected to be released on 21 November 2025, approximately two months after the termination hearing and before Paige reached two years of age. But the order contains no findings concerning Father's anticipated circumstances following that release. It does not address his proposed

residence, employment, support system, substance use, treatment needs, criminal supervision, or plan to begin developing a relationship with Paige. Nor does it explain why Father's inability to care for Paige while incarcerated was likely to continue after his imminent release.

The order also contains no findings concerning Father's case plan or his ability to comply with it while incarcerated. The social worker testified that the services required by Father's plan were unavailable in the facilities where he was confined and that his visitation was conditioned on his release. She also testified that she had no particular reason to believe Father would refuse to comply with the plan when the required services became available. This evidence did not compel a determination in Father's favor, but it was relevant to whether his lack of progress and contact demonstrated continuing unfitness or instead resulted, at least in part, from the circumstances of his incarceration.

Other evidence could support additional findings adverse to Father. The social worker testified that Father did not contact DSS after their May 2025 meeting, did not provide financial support, and had not supplied a documented or substantial reunification plan. Father also acknowledged at the hearing that he had not been involved in Paige's life. In its oral ruling, the court questioned Father's credibility and discussed his lack of involvement and evasive testimony concerning drug use. But those matters were not incorporated into the written order or connected through evidentiary findings to the probability of future neglect.

As in *In re K.N.*, the record may contain evidence from which the trial court could have made additional findings sufficient to support a likelihood of future neglect. 373 N.C. at 283–84. It is not our role, however, to make those findings or to resolve the competing inferences presented by the evidence. The written findings must themselves demonstrate that the trial court considered Father’s circumstances at the time of the termination hearing and determined how those circumstances affected the likelihood that neglect would recur.

Even accepting the findings that Father had not supported Paige, had not developed a bond with her, and remained incarcerated at the time of the hearing, the order does not explain why those circumstances made future neglect probable following Father’s projected release two months later. The evidentiary findings therefore do not reasonably support Finding of Fact 25 or the corresponding conclusion that grounds existed under N.C.G.S. § 7B-1111(a)(1). Accordingly, the trial court erred by adjudicating neglect as a ground for termination.

IV. Adjudication of Dependency

Father next argues the trial court erred by determining that grounds existed to terminate his parental rights under N.C.G.S. § 7B-1111(a)(6). We agree. An adjudication under subsection (a)(6) requires a showing that the parent is incapable of providing proper care and supervision to the juvenile, that there is a reasonable probability the incapability will continue for the foreseeable future, and that the parent lacks an appropriate alternative child-care arrangement. *In re K.R.C.*, 374

N.C. 849, 859 (2020). Accordingly, the trial court’s findings must address both “the parent’s ability to provide care or supervision” and “the availability to the parent of alternative child care arrangements.” *Id.* (citation omitted).

Finding of Fact 26 states:

Pursuant to N.C.G.S. § 7B-1111(a)(6), the respondent father . . . is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of N.C.G.S. § 7B-101, and there is a reasonable probability that such incapability will continue for the foreseeable future.

This is an ultimate finding that must be supported by the court’s evidentiary findings.

See In re G.C., 384 N.C. at 65.

The findings establish that Father was incapable of personally caring for Paige while he remained incarcerated at the time of the termination hearing. The court found, however, that Father’s projected release date was 21 November 2025, approximately two months after the hearing. The order contains no findings concerning Father’s anticipated circumstances following his release or identifying a cause or condition that would render him unable to provide care at that time. It does not address his expected housing, employment, substance use, treatment needs, criminal supervision, or access to parental support. Nor does it explain why Father’s present inability to care for Paige while incarcerated would probably continue after his release.

A parent’s anticipated period of incarceration may support a determination of

continuing incapability when that period is sufficiently extended. *See In re A.L.S.*, 375 N.C. 708, 714 (2020) (holding that an additional twenty-two to forty-two months of incarceration supported continuing incapability). In *In re L.B.*, this Court likewise held that a minimum of ten additional years of incarceration supported the determination that the respondent's incapability would continue for the foreseeable future. 928 S.E.2d 520, 527 (N.C. Ct. App. 2026). Here, by contrast, only approximately two months remained before Father's projected release, and the court made no additional findings explaining why he would remain incapable thereafter.

The record contains evidence from which the court could have made additional findings concerning Father's preparedness to assume a parental role. Father had never personally cared for Paige, had not developed a bond with her, and provided limited details concerning how he intended to pursue reunification after his release. But the written order does not address that evidence or connect it to a determination that Father would remain incapable of providing care for the foreseeable future. The evidentiary findings therefore do not reasonably support the first ultimate finding required by subsection (a)(6).

The order is also deficient as to the required alternative child-care arrangement. Finding of Fact 18 states that "[t]he respondent parents are unable to care for the juvenile and lack an appropriate alternative child care arrangement." Finding 18 appears within the order's chronological account of DSS's initial investigation and immediately follows findings that both parents were arrested and

that Father remained incarcerated during the investigation. Even assuming Finding 18 was intended to describe Father's circumstances at the time of the termination hearing, it is an ultimate finding unsupported by any evidentiary findings concerning the availability of an alternative arrangement at that time.

Indeed, other findings establish that Father and Mother signed temporary-safety-provider documentation permitting Grandmother to care for Paige, that Paige had resided with Grandmother since leaving the hospital, and that Grandmother was ready, able, and willing to adopt her. The social worker also testified that Father supported the placement, considered Grandmother an appropriate alternative caregiver, and had not objected to Paige remaining in Grandmother's care.

These circumstances do not necessarily compel a finding that Grandmother constituted Father's appropriate alternative child-care arrangement. Paige remained in DSS custody, and the initial safety arrangement was characterized as temporary. But the relevant question is the "objective availability or unavailability" of an appropriate arrangement, not the parent's personal role in securing it. *In re A.L.L.*, 376 N.C. 99, 108 (2020). Accordingly, Grandmother's placement could not be disregarded solely because it arose through DSS involvement or because Father did not personally establish it.

This case is materially similar to *In re L.B.* There, the trial court made an ultimate finding that the respondent lacked an appropriate alternative child-care arrangement but made no evidentiary findings supporting that determination at the

time of the termination hearing. 928 S.E.2d at 528. This Court held the findings insufficient and remanded for further proceedings. *Id.* Here, Finding 18 likewise states the required ultimate fact without addressing Grandmother's availability or explaining why the existing placement did not constitute an appropriate arrangement for Father.

DSS bore the burden of proving that Father lacked an appropriate alternative child-care arrangement; Father was not required to disprove that element by producing another caregiver. *See In re K.C.T.*, 375 N.C. 592, 596 (2020). Because the order contains no evidentiary findings addressing the objective availability of Grandmother or any other potential arrangement at the time of the hearing, Finding 18 cannot support the adjudication of dependency.

The findings therefore fail to establish either that Father's incapability would probably continue for the foreseeable future or that Father lacked an appropriate alternative child-care arrangement. Accordingly, the trial court erred by adjudicating dependency as a ground for termination under N.C.G.S. § 7B-1111(a)(6).

V. Disposition

Because neither adjudicated ground is supported by sufficient findings, we need not address the trial court's dispositional determination. The proper remedy is to vacate the termination order and remand for further proceedings. *See In re K.N.*, 373 N.C. at 283–84; *In re L.B.*, 928 S.E.2d at 528.

On remand, the trial court may, in its discretion, receive additional evidence

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and enter a new order containing findings and conclusions addressing whether grounds exist under N.C.G.S. § 7B-1111(a)(1) or (6). The court should also correct the termination order's identification of a different juvenile and birth date, as well as any other clerical inaccuracies.

VACATED AND REMANDED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).