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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1091

Filed 21 October 2026

Durham County, No. 20JA000115-310

IN THE MATTER OF: K.J.

Appeal by Respondent-Father from Order entered 7 August 2025 by Judge Doretta Walker in Durham County District Court. Heard in the Court of Appeals 27 August 2026.

Parent Defender Annick Lenoir-Peek, by Assistant Parent Defender Jacky Brammer, for Respondent-Appellant-Father.

Joint Brief filed by Patrick A. Kuchyt, for Petitioner-Appellee Durham County Department of Social Services; and K&L Gates, LLP, by Sophie M. Goodman, for the Guardian ad Litem.

ARROWOOD, Judge.

Respondent-Father (“Father”) appeals from a Permanency Planning Hearing Order awarding guardianship of the minor child Kelly¹ to her paternal grandmother. For the following reasons, we affirm the Order.

I. Introduction

¹ A pseudonym is used to protect the identity of the minor child.

Kelly was born to Respondent-Mother (“Mother”) on 2 October 2018. No father is listed on her birth certificate. Alamance County Department of Social Services (“Alamance DSS”) began an investigation after receiving a report on 9 November 2019 that Mother made a video of herself knocking Kelly to the ground, and it began an investigation. Mother admitted to Alamance DSS that she made the video to upset Mr. J, Kelly’s putative father, because he started dating her sister. Alamance DSS established a safety plan wherein Kelly would reside in Durham with her maternal grandmother (“Ms. G”) and transferred the matter to Durham County Department of Social Services (“Durham DSS” or “DSS”).

On 25 August 2020, Durham DSS filed a petition alleging that Kelly was neglected, listing Mother and Mr. J as her parents. Mr. J passed away in late 2020 without establishing paternity. The court adjudicated Kelly neglected on 20 October 2021.

On 15 December 2021, Father contacted Durham DSS claiming to be Kelly’s father and seeking custody. However, he did not provide DSS any other information about himself, such as his address, except that “he was more than capable of providing for [Kelly] and made twice as much money as the social worker.” In its Permanency Planning Review (“PPR”) Order filed 14 June 2022, the court found that he is a truck driver living in Dallas, Texas, and that he only had sex with Mother once, paying her for the meeting after meeting her online.

Father arranged an unverified DNA test and sent Ms. G a document which

convinced her that he was Kelly’s father, and she allowed him to visit Kelly four times. After the fourth visit, Kelly reported to Ms. G that Father “pulled her gown up and bit[] me on my butt.” Ms. G then contacted police and child protective services and obtained a restraining order against Father. The court was nevertheless “very disturbed” by Ms. G’s decision to allow the visits “[d]espite DSS recommendations that [Father] not have visitation until he goes through the proper procedures” and the court ordered that Father have no contact or visitation with Kelly. The court found that he “had not visited with [Kelly] or provided monetary support.”

Father refused DSS requests for a DNA test four times between May and August 2022. Father filed an affidavit admitting paternity on 1 September 2022 and claimed, “I have been heavily involved from the very beginning [and] [Mother] has never had to buy[] as much as one diaper or baby wipe or anything, as I provided those things [m]ainly from eBay[.]” The same day, he sent Ms. G a text that he was “coming to get [Kelly]” but did not follow through.

Complying with a court order, Father finally requested that Durham DSS arrange a paternity test on 7 September 2022. He completed the test on 30 September 2022 and received the results on 11 October 2022. Three days later, he hid behind the stairs of Ms. G’s apartment and grabbed Kelly, attempting to take her. Ms. G obtained another restraining order and attempted to press charges for assault and kidnapping. Father signed a complaint for custody and visitation on 15 October 2022 and filed it four days later. On 5 January 2023, the court again

ordered that he have no contact or visitation with Kelly. The court found that since the October encounter with Father, Kelly was “exhibiting a lot of anxiety and fear, especially about leaving the home.” The Guardian ad Litem (“GAL”) later reported that Kelly was “afraid to sleep by herself since the incident” and had “become afraid of pick-up trucks that look similar to the truck in which [Father] placed her.”

DSS reported on 9 May 2023 that Father had not engaged in services and “has declined to do so.” DSS reported on 2 August 2023 that he “declined to maintain ongoing contact with the Agency[,]” that it made unsuccessful attempts to contact him, and that his “whereabouts are unknown.” DSS continued to attempt contact throughout the summer and fall of 2023 but received reports from the other parties that “he is not going to participate in any services that he feels are not necessary.”

The GAL reported that Kelly “continues to be fearful that her father will return” and “looks out the window continuously and points out any cars she does not recognize from the neighborhood.” The GAL reached Father and reported that he “would like to obtain full custody” but “was unable to provide a plan of care when prompted about where [Kelly] would stay and who would watch her if she were to live with him[,]” he was not willing “to take any classes or complete any examinations,” and he suggested that he would homeschool Kelly. He also told the GAL “he should be exempted from classes, examinations, and work and income verification because he has a degree in psychology and because he can be seen in his truck during virtual court hearings.”

Following PPR hearings in August and December 2023, the court found that Kelly's placement with Ms. G was "not meeting the child's needs" because Ms. G "has been isolating the child due to her own fears" and "has not been taking advantage of resources for the juvenile or providing her with socialization." She was not in daycare or preschool and was missing developmental milestones, and the court found that her telehealth therapy had not properly addressed the October 2022 incident or other concerns. The court found that Father "continues to minimize the [e]ffect his actions in October of 2022 had on [Kelly] and does not see how it traumatized her." The court ordered that Father undergo a mental health evaluation, engage in parenting classes, and show that he maintained employment and housing.

The court "was disturbed by the testimony of Ms. G and would move [Kelly] immediately, if she felt it would not cause more harm than to abruptly move [her.]" The court found that Kelly's paternal grandmother ("Ms. N") was suitable and willing to take placement and ordered that visitation begin immediately before transitioning to placement with her if the visits go well.

Kelly moved in with Ms. N in Rocky Mount on 23 February 2024 and began attending daycare. Ms. N told the GAL that she would not allow Father to visit Kelly unless visitation was granted, and she reported that Father became very angry that she did not disclose which daycare Kelly attended but that she was "able to hold the boundary" with him. Father continued to tell the GAL that he would not complete any parenting classes, and the GAL reported that he violated the court's prohibition

on giving Kelly gifts. DSS reported that he “contacted [Ms. N’s] employment and made threatening statements to her coworkers.”

Following the 8 July 2024 PPR hearing, the court found that Kelly was “adjusting well to the new placement” and attending therapy, and that Father “has not engaged in any services since the last hearing” and was “not contacting DSS or the social worker.” It found that he expressly refused to comply with ordered services, that “[h]e is acting in a manner inconsistent with the juvenile’s health and safety[,] and that “[r]eunification efforts with [Father] would be unsuccessful and inconsistent with the juvenile’s health and safety.” The court permitted him to make a video for Kelly that may be shown to her in therapy if deemed appropriate, but it otherwise ordered him not to contact her care providers and to attend intensive anger management classes.

Following the 4 December 2024 PPR hearing, the court found the placement continued to go well, that she had successful virtual visits with Father since October 2024, that Father was maintaining contact with the social worker, and that he had completed parenting classes and a mental health assessment. The court ordered in-person visitation and gave Father “another review period to complete services and come up with an appropriate care plan[.]”

At the PPR hearing on 5 May 2025, DSS argued that permanent placement with Ms. N was in Kelly’s best interest. At the time of the hearing, Mother was living at Horizons, a substance rehabilitation facility in Chapel Hill, and was facing pending

criminal charges in Wake, Alamance, and Orange Counties. Ms. N testified that Father's visits were irregular but going well. Social worker Lacaecia Smith testified that Kelly's relationship with Ms. N was "awesome[.]" that she was doing well in school, and that her mental health needs were met. However, she testified that Father had refused to provide her his address, and though she did not object to unsupervised visitation, the Department was not in favor of granting him custody because it was unable to do a home assessment without knowing his address.

Throughout the hearing, Father repeatedly interrupted and lodged objections although he was represented by an attorney and warned by the court. In his testimony, he opposed DSS's request to grant Ms. N guardianship and requested legal custody of Kelly. Asked about his care plan, he said that although he travels for work, he didn't see a need for daycare, and that she could attend online school from his truck. He testified that he owned a mobile home in Dallas but when asked how often Kelly would sleep at the home, he repeatedly refused to answer the question, tried to plead the Fifth, and had to be ordered to answer, "On average three nights[.]" In closing, DSS argued that Father was not in substantial compliance with court orders and had only provided "at most a concept of a plan," and was therefore "acting in a manner that is inconsistent with his constitutionally protected status as a parent." Mother and the GAL joined DSS's recommendations to grant guardianship to Ms. N with visitation to Father and to close the case.

In closing, Judge Walker stated, "This case has been interesting. Both parents

seem to be getting [themselves] together. But these parents have acted inconsistent with their parental rights.” She stated that she had been taking diligent notes throughout the hearing, noting that Father was “impulsive. . .erratic, volatile, arbitrary” and hadn’t “take[n] advantage” of the ordered services, concluding: “His plan is not in this child’s best interest. His plan has many holes in it. His plan provides no stability for this child. His plan was inappropriate. . . . I have some serious concerns.”

In its Order, the court found that Father failed to substantiate his claim that he was receiving mental health treatment, leaving the court with “no indication of [his] treatment goals or that the treatment provider has seen any of this Court’s orders. . . . Father is not demonstrating that he has learned from his mental treatment.” The court found that he had spoken with Kelly approximately weekly and visited in person approximately monthly, but that they had “never spent more than twenty-four consecutive hours together in her lifetime.” Because he had not provided his home address prior to the hearing or any relevant document and initially gave an incorrect address in his testimony, he had “prevented the parties and this Court from being able to verify his residence and assess the safety and suitability of the home.” Further, during the review period, he provided a false address to the social worker, and when she tried for clarification, he “stated that he would be asking for a continuation of the Permanency Planning Hearing until about September and at this time he would be prepared to give his address.”

In its findings, the court outlined Father’s care plan as explained at trial, noting that he “was evasive and combative during his testimony[,]” “ha[s] not looked into daycare or alternative plans for care if that is needed” and “did not have a plan if the juvenile did not want to go with him[,]” and “has not spoken with the juvenile’s therapist about her mental health needs and was dismissive of her continuation in therapy.” In addition, the court found that by not cooperating with the GAL, the court, or DSS, he was acting in a manner inconsistent with [Kelly’s] health and safety[.]” The court concluded that it was in Kelly’s best interests to grant Ms. N full custody and guardianship and that both Father and Mother acted “in a manner inconsistent with their constitutionally protected status as parents,” and waived future review due to Kelly’s stable placement. The court ordered unsupervised visitation for Father within Nash County. Father appealed.

II. Discussion

A. Standard of Review

Appellate review of a permanency planning order is “limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law.” *In re J.H.*, 244 N.C. App. 255, 268 (2015). The trial court’s findings of fact are conclusive on appeal if unchallenged, *Adams v. Tessener*, 354 N.C. 57, 65–66 (2001), or if supported by competent evidence in the record, *see In re L.R.L.B.*, 377 N.C. 311, 315 (2021).

B. Relevant Law

We review *de novo* the conclusion that a parent is acting in a manner inconsistent with their constitutionally protected status and determine whether the conclusion is “supported by clear and convincing evidence.” *In re B.R.W.*, 381 N.C. 61, 76 (2022). “The clear and convincing standard requires evidence that should fully convince. This burden is more exacting than the preponderance of the evidence standard generally applied in civil cases, but less than the beyond a reasonable doubt standard applied in criminal matters.” *Scarborough v. Dillard’s, Inc.*, 363 N.C. 715, 721 (2009) (cleaned up) (quotes omitted).

The interest at issue in this case is Father’s “liberty interest in the companionship, custody, care, and control” of his biological daughter, as protected by the Due Process Clause of the Fourteenth Amendment. *Price v. Howard*, 346 N.C. 68, 74, (1997). Because this is a “paramount constitutional right[,]” the government may interfere with this custody and control “only upon a showing that the parent is unfit to have custody” or “where the parent’s conduct is inconsistent with his or her constitutionally protected rights.” *Adams*, 354 N.C. at 62 (2001) (citing *Price*, 346 N.C. at 84 (1997)).

There is no “bright line” test on the latter question, but in our fact-specific analysis we “must consider both the legal parent’s conduct and his or her intentions vis-à-vis the child.” *In re A.W.*, 280 N.C. App. 162, 174 (2021). “Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy,” but “[o]ther types of conduct, which must be viewed on a case-

by-case basis, can rise to this level so as to be inconsistent with the protected status of natural parents.” *In re B.R.W.*, 381 N.C. at 77.

When examining a legal parent’s conduct to determine whether it is inconsistent with his or her constitutionally-protected status, the focus is not on whether the conduct consists of “good acts” or “bad acts.” Rather, the gravamen of “inconsistent acts” is the volitional acts of the legal parent that relinquish otherwise exclusive parental authority to a third party.

Mason v. Dwinnell, 190 N.C. App. 209, 228 (2008). “[E]vidence of a parent’s conduct should be viewed cumulatively.” *Owenby v. Young*, 357 N.C. 142, 147 (2003).

Finally, the volitional conduct sufficient for a court to conclude that a parent acted inconsistently with his constitutional parental rights meets a lesser standard than necessary for the court to conclude that those rights should be terminated: “[C]onduct inconsistent with the parent’s protected status . . . need not rise to the statutory level warranting termination of parental rights.” *Price*, 346 N.C. at 79. For example, failing to complete ordered services can support the termination of parental rights as this is indicative of future neglect. *In re R.L.R.*, 381 N.C. 863, 869 (2022) (citation omitted).

C. Sufficient Findings Supported the Court’s Conclusion that Father’s Conduct was Inconsistent with his Parental Rights

Father challenges the court’s factual findings #5, #38, #39, #42, #43, and #44, and the remaining findings of fact are binding. As an initial matter, finding of fact #5 merely states that the Court re-adopts findings from previous Orders in this case,

from which Father did not appeal, so these earlier findings remain binding here as well. The court can take judicial notice of prior orders' factual findings, even when they are based on a lower evidentiary standard, because "where a judge sits without a jury, the trial court is presumed to have disregarded any incompetent evidence and relied upon the competent evidence." *In re T.N.H.*, 372 N.C. 403, 410 (2019) (citing *Munchak Corp. v. Caldwell*, 301 N.C. 689, 694 (1981)).

Finding #38 states: "The Respondent Father is not cooperating with [DSS, the GAL], or this Court." There was ample evidentiary support for this finding: He failed to make himself available in response to DSS's communications and expressed objections to the court's ordered services when the GAL discussed his progress with him. Accordingly, this finding is binding on appeal. Findings #42 and #43 are also binding, because there was evidence that Father failed to either "consistently communicat[e] with DSS or the GAL[.]" "adequately compl[y] with the court ordered services[.]" or "provide a safe home[.]" and that it would be contrary to Kelly's "health and safety" if she were released to his home. Father failed to provide DSS or the GAL with a verified home address, preventing the court from verifying that his home was safe, and he never produced records showing engagement with recommended mental health treatments. Likewise, Finding #44 is binding, as the record and transcript clearly show that Father had "additional time to complete services and come up with a care plan for the juvenile, but he did not use this time to meet these requirements" before the hearing. Father was provided fifteen months to complete all his ordered

services, and the court even continued the case in order to give him an extra opportunity to come into full compliance, but he failed to do so.

“If the objective reasonable person, examining the totality of the circumstances, would understand how the trial court’s written findings lead to its conclusion . . . those findings are sufficient.” *In re L.C.*, 387 N.C. 475, 481 (2025). It is proper to evaluate the “reasonableness of any progress that the parent has made in light of the amount of time that the parent had been given to make that progress.” *In re D.A.A.R.*, 377 N.C. 258, 275 (2021). More than forty months elapsed between Father’s first contact with DSS and the appealed Order, which the court filed more than two years after its first Order that he engage in services. However, for every positive step that Father took to comply with the court and behave in accordance with his constitutional parental rights, he took two steps in the opposite direction.

Father first contacted DSS in December 2021 but expressly declined to become a party to the case and would not take a court-ordered paternity test until nine months later. Soon after filing his affidavit admitting paternity and thereby becoming a party to the case as Kelly’s putative father, he “attempted to take [Kelly] from the maternal grandmother by grabbing her” after hiding outside their apartment. This decision brought about foreseeable trouble for Kelly: She began exhibiting “a lot of anxiety and fear, especially about leaving the home” and Ms. G became afraid to enroll the child in school or daycare outside the home, diminishing her progress and development.

In April 2023, the court ordered Father to complete a mental health evaluation, participate in subsequent mental health recommendations, take parenting classes, and prove he had housing and employment, but in August 2024, the court found that even though it had been fifteen months, he had “not engaged in any services since the last hearing” and ordered him to take “intensive anger management classes.” During that time, Kelly settled in with Ms. N and the court found that she was adjusting and catching up developmentally as a result.

In January 2025, the court acknowledged that Father made progress: after long refusing to even communicate with DSS and expressly disputing the necessity of the ordered services, he took important steps to comply by proving employment and completing a parenting class. As a result, the court was exceedingly generous in giving him additional time to comply fully and “come up with an appropriate care plan” for Kelly. In the meantime, Kelly’s placement was “going well[,]” and she was “meeting all educational expectations.”

When Father had the opportunity to present in court an “appropriate care plan” more likely to be in Kelly’s best interests than the ongoing placement with Ms. N, he proposed the following. Although he had not spent more than 24 continuous hours with Kelly in her life, he asked to assume full custody within a week and relocate with her to Texas, where he claimed to rent a property that the court was unable to verify. Kelly would thereafter reside at home in Texas about half the time and otherwise sleep in Father’s truck. She would stop attending school in person and

commence an online education, but Father had not yet identified any such service nor explained how she would continue to engage in age-appropriate social activities on the road. He had never spoken with Kelly's therapist, let alone any pediatricians or other health providers in the Dallas area. Moreover, he offered no alternative should this "plan" not work out. In addition, he failed to produce any records confirming his own ongoing mental health care and was "not demonstrating that he has learned from his mental treatment" and the court made no findings that he had even begun the required "intensive" anger management course.

After Father's initial conduct, the court was forbearing and patient with him, granting him ample time and opportunity to show an understanding of Kelly's needs and the desire to meet them. However, Father remained recalcitrant as to the required services, and his care plan demonstrated an ongoing failure to appreciate the responsibilities of parenthood. Having taken this case's facts in their totality and reflected upon the seriousness of this result, we must agree that sufficient findings supported the court's conclusion that Father's volitional conduct was inconsistent with his parental rights. Therefore, we reject Father's arguments that the findings do not support this conclusion and that he therefore remains entitled to custody of Kelly.

D. The Court Did Not Improperly Consider Socioeconomic Status

Father next argues that the court's findings as to his housing and childcare plan were insufficient, because a parent's socioeconomic status is irrelevant to such

determinations. However, courts must verify the adequacy of a parent's housing to assess whether he can provide a safe environment for the child, and our Courts have upheld the termination of parental rights where parents were unable to identify adequate housing. *In re J.J.H.*, 376 N.C. 161, 171 (2020).

DSS could not verify Father's housing because, after giving them a false commercial address, he expressly declined to tell them where he lived in Texas and did not give a residential address until the final hearing, although he was fully employed and making financial contributions to Kelly's care, and he had over a year to be transparent about his housing status. Accordingly, the court did not inappropriately consider his socioeconomic status in its determination. The court acknowledged his refusal to cooperate in any assessment or verification of his housing following its order to obtain such housing.

E. Father Fails to Show that the Court Relied on Incompetent Evidence

Father next argues that the court relied on incompetent evidence and improper findings made before he was a party to the action. Indeed, the court's first findings about Father occurred before he was officially a party to the action, to the effect that, first, he informed DSS he wanted to take custody of Kelly but refused to do so "until the CPS case was closed," that he then inserted himself into Kelly's life in the meantime on the basis of an unverified DNA test, and that Ms. G received a restraining order against him after Kelly claimed he bit her on the butt. Father did not become a party to the case until, at the earliest, 1 September 2022, after he filed

his affidavit, which constituted “an admission of paternity and ha[d] the same legal effect as a judgment of paternity for the purpose of establishing [his] legal duty to support” Kelly.

Accordingly, any finding reached after this date was binding if supported by clear and convincing evidence, and it would have been improper to give any weight to earlier findings. But we assume that the court disregarded incompetent evidence when incorporating these findings. *See In re T.N.H.*, 372 N.C. at 410. Even if the court considered none of the earlier findings, overwhelming evidence remained to support the conclusion. Therefore, without more, Father cannot make the required showing that the court improperly relied upon incompetent evidence in reaching its conclusion.

The record is clear that the court declined to reach its conclusion until after Father had additional time to come into compliance and develop a case plan. The “objective reasonable person, examining the totality of the circumstances, would understand that the trial court’s written findings” were based, as required, upon then-existing circumstances, properly considered in the context of Father’s cumulative conduct. *In re L.C.*, 387 N.C. at 481, *see also Owenby* 357 N.C. at 147. The court had to take judicial notice of its previous findings before reaching conclusions as to his conduct, because its task was to evaluate the reasonableness of his progress “in light of the amount of time that [he] had been given to make that progress.” *In re D.A.A.R.*, 377 N.C. at 275. When the clock started ticking, Father

had more than enough time, but he idled as the months passed, permitting Kelly to remain with a third-party non-parent. During this window of time, Father gave the court an adequate accumulation of relevant findings to reach its conclusion. After all, this window included the incident of October 2022 and a fifteen-month period in which Father made no progress whatsoever, and it culminated in the hearing where Father failed to establish a realistic or reasonable care plan for his daughter.

Finally, Father contends that the court “abused its discretion when it limited [his] visitations” and he is therefore entitled to no restrictions on visitation. However, he fails to argue any supporting reasoning for this argument, and as such we decline to consider the merits. *See* N.C. R. App. P. 28.

F. Best Interests Determination

Determinations of a child’s best interests are within the sound discretion of the trial court and we review them only for an abuse of discretion. *In re J.A.P.*, 189 N.C. App. 683, 693 (2008). An abuse of discretion occurs when the court’s decision is “manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *In re Z.L.W.*, 372 N.C. 432, 435 (2019). North Carolina has long recognized that a parent’s right to legal custody yields to the interests of the child where he has

voluntarily permitted the child to remain continuously in the custody of others in their home, and has taken little interest in it, thereby substituting such others in his own place, so that they stand *in loco parentis* to the child, and continuing this condition of affairs for so long a time that

the love and affection of the child and the foster parents have become mutually engaged, to the extent that a severance of this relationship would tear the heart of the child, and mar his happiness.

In re Gibbons, 246 N.C. 273, 280 (1957).

In the present case, despite his haphazard and irregular gestures at compliance with the court's orders, Father retained the opportunity to show that he had the wherewithal to meet Kelly's needs and establish that custody with him was in her best interests, although she was succeeding in the stable placement with Ms. N. "[H]aving permitted all this to happen he claims the right, because he is the father, to sever the ties which bind this child to [Ms. N]. In this instance the welfare of the child is paramount. The dictates of humanity must prevail over the whims and caprice of a parent." *Id.* at 280–81 (quoting *Merchant v. Bussell*, 139 Me. 118, 124 (1942)). By comparison, the testimony at trial and the court's findings showed that Kelly was healthy and continuing to thrive with Ms. N. Despite the late start in her education, she was "making good grades" in school, and living in North Carolina allowed her to have biweekly visits with Mother and Ms. G and regular overnight visits with her younger biological sister.

Father has not shown that the court's ultimate decision was manifestly unsupported by reason. Accordingly, we cannot conclude that the court abused its discretion in reaching the conclusion that Ms. N's guardianship was in the best interests of the child.

IN RE: K.J.

Opinion of the Court

III. Conclusion

For the foregoing reasons, we affirm the court's Order.

AFFIRMED.

Judges FLOOD and GORE concur.

Report per Rule 30(e).