NO. COA10-422

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2010

IN THE MATTER OF:

Wake County
No. 07 JA 705

J.D.,
a minor child.

Appeal by Respondent-Appellant Mother from order dated 9 January 2009 and order dated 1 September 2009 by Judge Eric Chasse in District Court, Wake County; and appeal by Respondent-Appellant Father from order dated 9 January 2009 and order dated 3 September 2009 by Judge Eric Chasse in District Court, Wake County. Heard in the Court of Appeals 7 September 2010.

Office of the Wake County Attorney, by Roger A. Askew and Mary Elizabeth Smerko, for Wake County Human Services, Petitioner-Appellee.

Pamela Newell for Guardian ad Litem.

Duncan B. McCormick for Respondent-Appellant Mother.

Richard E. Jester for Respondent-Appellant Father.

McGEE, Judge.

Respondent-Mother and Respondent-Father, the biological parents of J.D., appeal from orders terminating their parental rights. In its orders terminating their parental rights, the trial court made the following findings of fact. Respondent-Father and

Respondent-Mother lived in Cary, North Carolina before they moved to Belgium, where J.D. was born in 2001. Respondent-Father and Respondent-Mother were not married. Respondent-Father absconded with J.D. and returned to the United States without Respondent-Mother's consent. Later in 2001, Respondent-Father obtained an order from the Juvenile and Domestic Court of Hampton, Virginia, granting him custody of J.D. Respondent-Father subsequently married and moved with his wife (Stepmother) and J.D. to Wake County. Meanwhile, Respondent-Mother returned to the United States and resided in New York before moving to Texas in 2006. During this period of time Respondent-Mother was not aware of the whereabouts of J.D. or Respondent-Father.

Wake County Human Services (Petitioner) filed a juvenile petition on 2 October 2007, alleging that J.D. was a neglected juvenile. Soon afterward, Petitioner learned Respondent-Mother's identity and made contact with her. At a hearing on 16 April 2008, J.D. was adjudicated as neglected.

In an order entered 9 January 2009, the trial court found that reunification efforts with both parents were futile and ordered that adoption be pursued as the permanent plan for J.D. Petitioner filed a motion to terminate the parental rights of both parents on 19 February 2009. The trial court conducted separate adjudication hearings as to each parent and a joint dispositional hearing. The trial court filed an order terminating Respondent-Mother's parental rights on 1 September 2009 and filed an order terminating Respondent-Father's parental rights on 3 September 2009.

Respondent-Mother filed notice of appeal from the 9 January 2009 order ceasing reunification efforts and from the 1 September 2009 order terminating her parental rights. Respondent-Father filed notice of appeal from the 9 January 2009 order ceasing reunification efforts and from the 3 September 2009 order terminating his parental rights.

I. Respondent-Mother's Appeal

A. 9 January 2009 Permanency Planning Order

Respondent-Mother first contends that the trial court erred by ceasing reunification efforts. After a permanency planning and placement review hearing on 10 December 2008, the trial court entered an order dated 9 January 2009 concluding that adoption, as recommended by Petitioner and the guardian ad litem in their reports to the trial court, was in the best interests of J.D. The trial court found that Respondent-Mother: (1) had not made significant progress in complying with court orders since the time of the last hearing, (2) had seen J.D. only twice since the filing of the action in October 2007, (3) had not fully complied with mental health recommendations, (4) had not engaged in any mental health treatment, and (5) had not provided documentation of substance abuse treatment. The trial court also found that Respondent-Mother had been residing at a shelter and was not likely to be able to provide a safe and stable environment for J.D. The trial court noted that while Respondent-Mother reported she intended to relocate to North Carolina to be nearer to J.D., she resumed a live-in relationship with a man who had a history of

substance abuse. The trial court also noted that Petitioner denied Respondent-Mother's request for assistance in moving. The trial court lastly found that it was not likely that Respondent-Mother would be able to provide a safe home for J.D. within a reasonable time. The trial court concluded that reunification efforts with Respondent-Mother were futile and inconsistent with J.D.'s health, safety and need for a permanent home and that the best interests of J.D. was cessation of reunification efforts.

The purpose of a permanency planning hearing is to "develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-907(a) (2009). "'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 R.A.H.*, 182 N.C. App. 52, 57-58, 641 S.E.2d 404, 408 (2007) (citation omitted).

Respondent-Mother argues that the finding of fact stating that she has had minimal contacts with J.D. since the filing of the petition is not supported by competent evidence. Respondent-Mother also argues the trial court erred by concluding that Petitioner made reasonable efforts to reunite her with J.D. Respondent-Mother further argues that the findings of fact do not support the trial court's conclusions of law that (a) Respondent-Mother had not made significant progress, (b) it was unlikely Respondent-Mother would be able to provide a safe home within a reasonable time, (c) reunification efforts would be futile and inconsistent with J.D.'s

health, safety and need for a permanent home, and (d) ceasing reunification efforts and establishing a plan of adoption was in J.D.'s best interests.

> At any permanency planning review, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review.

N.C. Gen. Stat. § 7B-907(b) (2009). During the hearing, "[t]he court may consider any evidence, including hearsay evidence as defined in [N.C.]G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." *Id.*

In the case before us, the trial court admitted as evidence a summary of the case prepared by the social workers in charge of the case. This summary showed that Petitioner maintained consistent contact with Respondent-Mother by telephone and e-mail and also made a referral for psychological evaluation, which Respondent-Mother completed; however, Respondent-Mother had not fully complied with the recommendations for mental health and substance abuse treatment, and had not engaged in any mental health treatment since the date of the last hearing. The summary also showed that although Respondent-Mother stated she desired to relocate to North Carolina so she could parent J.D., she had resumed living in Texas with a boyfriend who had a substance abuse problem and an alleged history of domestic violence. Between October 2007 and December 2008, Respondent-Mother twice visited with J.D. Petitioner

assisted Respondent-Mother with a portion of her travel costs for these two visits. Petitioner offered to assist Respondent-Mother with the cost of traveling to North Carolina for monthly visits on the condition that Respondent-Mother comply with her agency service agreement. From July 2008 to December 2008, Respondent-Mother did not visit J.D. and did not comply with her case plan. The social workers also expressed concern that Respondent-Mother had three other children for whom she had taken no responsibility, in that her parental rights to each child had either been relinquished or involuntarily terminated.

We hold this evidence supports the trial court's findings and that the findings support the trial court's conclusions of law. We therefore affirm the permanency planning order that ceased reunification efforts between Respondent-Mother and J.D.

B. Termination of Parental Rights Order

A hearing in a termination of parental rights proceeding consists of an adjudication phase and a disposition phase. *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 173 (2001). At the adjudication stage, the petitioner has the burden of establishing by clear and convincing evidence the existence of at least one statutory ground for termination pursuant to N.C. Gen. Stat. § 7B-1111. *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002). We review a trial court's order to determine whether the findings of fact are supported by clear, cogent and convincing evidence and whether the findings of fact support the conclusions of law. *In re J.S.L.*, 177 N.C. App. 151, 154, 628

S.E.2d 387, 389 (2006). Our review of a conclusion of law is *de novo*. *Id.*

The trial court's findings of fact stated that Respondent-Mother had serious problems with substance abuse from 1995 until 2006, during which time her "lifestyle was not conducive to raising a child." Respondent-Mother was involved in relationships with abusive men, including Respondent-Father, who physically abused her while she was pregnant with J.D. Respondent-Mother's first child, born in 1998, was removed from her custody by child welfare officials in New York. Respondent-Mother relinquished her rights to that child. Respondent-Mother's second child was born in 2000 and was also removed from Respondent-Mother's custody because of Respondent-Mother's drug abuse. During the time Respondent-Mother's two children were in foster care, she met Respondent-Father, moved to Belgium, and gave birth to J.D. Respondent-Mother returned to the United States. She resided in New York and at the home of her mother (the maternal grandmother) in New Jersey.

The trial court also found that a New York court issued an order on 21 February 2003, terminating Respondent-Mother's parental rights as to her second child on the ground she had abandoned the child. Respondent-Mother's fourth child was born in 2003. Respondent-Mother and her fourth child resided with the maternal grandmother between 2003 and 2006. The maternal grandmother asked Respondent-Mother to leave in 2006 because of suspected drug usage. The maternal grandmother obtained custody of the fourth child. Respondent-Mother eventually moved to Texas and, in 2007, moved in

with a man who had a drinking problem and who assaulted her.

The trial court found that soon after Petitioner informed Respondent-Mother of the filing of the juvenile petition in this matter in October 2007, Respondent-Mother indicated she wanted to work with Petitioner toward gaining custody of J.D. Petitioner began working with Respondent-Mother to develop a case plan toward reunification. Three months after the filing of the petition, Respondent-Mother came to North Carolina to complete a psychological evaluation with Dr. Karin Yoch (Dr. Yoch) and to visit with J.D. According to the social worker who supervised the visit, it went well after J.D. overcame her initial apprehensions. Dr. Yoch made recommendations as to treatment options and strategies to help Respondent-Mother overcome her addiction to cocaine. Dr. Yoch recommended that Respondent-Mother enroll in a comprehensive parenting class which addressed issues of neglect and abuse. Dr. Yoch believed that Respondent-Mother's strengths were her intelligence, her willingness to work with Petitioner in preparing to parent J.D., and her recent choices to change her lifestyle. In Dr. Yoch's opinion, Respondent-Mother was "capable of achieving vocationally and obtaining the stability and consistency she wants."

As part of her case plan, Respondent-Mother was authorized to have monthly supervised visits with J.D. and to have monitored telephone contact with her at least two times per week. From February 2008 until November 2008, Respondent-Mother had monitored phone contact with J.D. twice a week and J.D. called Respondent-

Mother once a week. Respondent-Mother sent J.D. letters, cards, and gifts.

In June 2008, Petitioner requested a home study of Respondent-Mother's residence in Texas, but officials in that state would not conduct a study because of concerns about the lengthy criminal history of Respondent-Mother's boyfriend. Respondent-Mother expressed an interest in relocating to North Carolina in an effort to be reunified with J.D., but at the time the trial court entered its order ceasing reunification efforts, she had not relocated. Respondent-Mother expressed ambivalence about moving to North Carolina. At one time she asked Petitioner to pay for a one-way plane ticket to North Carolina so she could relocate, but she later changed her mind and asked for a round-trip ticket. After July 2008, all of Respondent-Mother's requests for travel assistance were denied by Petitioner. As late as December 2008, Respondent-Mother expressed a desire to remain in Texas.

The trial court found that Respondent-Mother attended therapy in Texas on a regular basis until August 2008, when her attendance became sporadic. She eventually stopped going to therapy and asserted she could not afford to pay for therapy. The trial court noted its concern that Respondent-Mother "did not make a greater commitment to continue her therapy."

The trial court further found that Respondent-Mother moved to Wake County on 29 January 2009 in an effort to strengthen her bond with J.D. and to put herself in a position to care for J.D. She initially resided in a hotel and later in a boarding house. With

the maternal grandmother's financial assistance, Respondent-Mother rented a one-bedroom apartment in early June 2009. The trial court also found that "[t]he apartment is suitable for [Respondent-Mother] and [J.D.], but the court cannot find that the housing is stable, since it was obtained weeks prior to the hearing . . . for termination of parental rights." From the time J.D. was placed in foster care until the time of the termination hearing, Respondent-Mother presented negative drug screens every time when tested. Respondent-Mother completed a parenting class in Texas and another parenting class in North Carolina after she relocated here in early 2009.

Respondent-Mother found employment as a telecommunications operator. She quit that job in April, saying it was too stressful. The next month she obtained a part-time job working at a McDonald's restaurant. Respondent-Mother applied for SSI benefits due to multiple health problems. She is HIV positive and has asthma and hepatitis. The trial court found that Respondent-Mother's health problems do not preclude her from caring for J.D.

After ordering in December 2008 that reunification efforts cease and adoption be pursued, the trial court authorized Respondent-Mother to have telephone contact with J.D. beginning in February 2009 and to have visitations with J.D. beginning in April 2009. J.D. looked forward to the interactions and Respondent-Mother communicated appropriately during the visits.

The trial court also found that Respondent-Mother was receiving individual counseling from a licensed social worker who

had extensive experience in substance abuse treatment. Respondent-Mother's attendance had been consistent. Based upon his observations of Respondent-Mother, the social worker testified that he had no concerns about Respondent-Mother's ability to parent J.D. Respondent-Mother had made some progress in therapy. The social worker also testified that Respondent-Mother continued to maintain sobriety and aggressively sought to obtain better employment for herself and for the benefit of J.D. However, the trial court ultimately found that "there was not sufficient testimony provided to show that [Respondent-Mother] had made significant progress in her therapy, or that the issues presented in Dr. Yoch's evaluation had been addressed."

The trial court found that Dr. H.D. Kirkpatrick (Dr. Kirkpatrick) conducted a forensic psychological evaluation of Respondent-Mother on 20 April 2009. Dr. Kirkpatrick noted that nothing indicated Respondent-Mother was psychiatrically unstable or currently engaged in high risk behavior. Dr. Kirkpatrick concluded, as did Dr. Yoch, that there were no psychological or physical barriers to prevent Respondent-Mother from being able to parent J.D. While they noted that Respondent-Mother minimalized her actions in relinquishing her rights to her other children, they also observed that she had a strong desire to reunify with J.D. and to complete necessary services in order to do so. Dr. Kirkpatrick concluded that Respondent-Mother had alleviated many of the risk factors that caused her to lose her other children and had worked hard to comply with most of all of the conditions and requirements

expected of her. Dr. Kirkpatrick also observed an "emergent bond" between Respondent-Mother and J.D. during a visit he witnessed.

The trial court made the following ultimate findings of fact:

> 55. That [J.D.] has been in care since October, 2007, and [Respondent-Mother] has not made reasonable progress, in light of the circumstances, to correct the conditions which led to the removal of [J.D.] The [c]ourt is mindful that [Respondent-Mother] has made efforts to obtain housing, obtain and maintain employment suitable for herself and [J.D.], as well as complete other [c]ourt-ordered services. However, [Respondent-Mother] was not in a position to provide a safe home for [J.D.] at the time [J.D] was removed from the home of [Respondent-Father and Stepmother], and from October, 2007, until the hearing on this motion, had not put herself in a position to provide a safe, stable home for [J.D.].
>
> 56. That a [c]ourt of competent jurisdiction ordered the termination of [Respondent-Mother's] parental rights to her older child, and she is not able to provide a safe home for [J.D.] at this time.
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> 57. That because [Respondent-Mother] made some progress by attending therapy, moving to Raleigh, beginning to visit, maintaining sobriety, completing two parenting classes [,] engaging in therapy and obtaining employment, there is insufficient evidence to find that there will be a repetition of neglect if [J.D.] were placed in [Respondent-Mother's] home.

The trial court concluded there was sufficient evidence establishing the existence of grounds to terminate Respondent-Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) (2009) ("The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable

progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile."), and N.C. Gen. Stat. § 7B-1111(a)(9)(2009) ("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."). Respondent-Mother challenges the existence of both grounds on appeal.

1. Failure to Make Reasonable Progress

To terminate a parent's rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), Petitioner must show by clear and convincing evidence that the parent (1) willfully left the child in placement outside the home for more than twelve months, and (2) as of the time of the termination hearing, failed to make reasonable progress under the circumstances to correct the conditions that led to the child's removal. *In re O.C. & O.B.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005). A trial court's order must contain adequate findings of fact as to whether the parent acted willfully and as to whether the parent made reasonable progress under the circumstances. *See In re C.C., J.C.*, 173 N.C. App. 375, 384, 618 S.E.2d 813, 819 (2005). Our Court has stated that "[w]illfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re McMillon*, 143 N.C. App. at 410, 546 S.E.2d at 175 (citation omitted). "A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the

children." *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). However, "[a] parent's failure to fully satisfy all elements of the case plan goals is not the equivalent of a lack of 'reasonable progress.'" *In re J.S.L.*, 177 N.C. App. at 163, 628 S.E.2d at 394 (citation omitted).

Respondent-Mother contends the trial court erred by concluding that grounds existed to terminate her parental rights pursuant to N.C.G.S. § 7B-1111(a)(2). Respondent-Mother argues the trial court failed to make any findings to show that she was unwilling to make the effort to correct the conditions which led to the removal of J.D. from the home. Respondent-Mother also argues the findings and evidence presented at the hearing do not support a conclusion that she was unwilling to make the effort.

We find the facts and holdings of *In re C.C., J.C.* and *In re J.S.L.* are instructive. In the case of *In re C.C., J.C.*, the mother whose parental rights were terminated by the trial court, pursuant to N.C.G.S. § 7B-1111(a)(2), did the following with respect to her case plan: attended family education sessions; continued to contact the instructor after the sessions ended for advice and for parenting videos; completed another parenting class on her own volition and at her own expense; obtained appropriate housing; improved and maintained the conditions of her home so that they were appropriate for her children; attended therapy and made progress; and intensified her efforts as time passed. *In re C.C., J.C.*, 173 N.C. App. at 383-84, 618 S.E.2d at 819. We noted that the order was "devoid of any finding" that the mother was unwilling

to make the effort to make reasonable progress. *Id.* at 383, 618 S.E.2d at 819. Our Court held that, because the trial court's order did not contain adequate findings of fact to show the mother acted willfully or to reflect consideration of mother's progress, the trial court erred by concluding she willfully left the children in foster care without making reasonable progress in correcting the conditions which led to the removal of the children. *Id.* at 384, 618 S.E.2d at 819.

In the case of *In re J.S.L.*, the father testified that he completed all of the requirements of his case plan. *In re J.S.L.*, 177 N.C. App. at 161, 628 S.E.2d at 393. The trial court's findings showed that the father completed anger management classes, resided in a mobile home owned by his paternal grandfather, received financial assistance in paying for the utilities, and visited the children weekly. *Id.* at 162, 628 S.E.2d at 393. In reversing the termination of the father's parental rights, our Court concluded the trial court failed to make adequate findings of fact to support a conclusion that the father willfully left the children in foster care without making reasonable progress. *Id.* at 164, 628 S.E.2d at 394. We noted that the trial court's findings suggested "substantial cooperation and progress by respondent father with DSS to attend classes, find work, and to provide a safe home for his children, in the face of harsh economic conditions[.]" *Id.* at 163-64, 628 S.E.2d at 394.

The trial court's findings in the case before us show that Respondent-Mother has attempted to comply with every condition

established by Petitioner. She moved from Texas to North Carolina to be near J.D.; she regularly visited J.D. after she moved to this State; she maintained regular contact with J.D.; she obtained employment and suitable housing with the financial assistance of the maternal grandmother; attended therapy sessions; attained and maintained sobriety; and completed two parenting classes. Indeed, all of these achievements, in the trial court's view, prevented it from finding that any neglect will be repeated. Nonetheless, the trial court concluded that Respondent-Mother failed to make reasonable progress. We conclude that the trial court's findings of fact do not support its conclusion of law. We hold the trial court erred by terminating Respondent-Mother's parental rights based on N.C.G.S. § 7B-1111(a)(2).

2. Rights to Another Child Having Been Terminated and Incapable or Unwilling to Provide Safe Home

To terminate parental rights pursuant to N.C.G.S. § 7B-1111(a)(9), a petitioner must show: "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." N.C.G.S. § 7B-1111(a)(9). "Termination under § 7B-1111(a)(9) thus necessitates findings regarding two separate elements: (1) involuntary termination of parental rights as to another child, and (2) inability or unwillingness to establish a safe home." *In re L.A.B.*, 178 N.C. App. 295, 299, 631 S.E.2d 61, 64 (2006). Respondent-Mother argues the evidence does not support a finding of fact that she is unable or unwilling to establish a

safe home. A safe home is defined in the Juvenile Code as "[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect." N.C. Gen. Stat. § 7B-101(19) (2009).

The trial court's findings show that in June 2009, Respondent-Mother, with the maternal grandmother's financial assistance, rented a one-bedroom apartment which was suitable for Respondent-Mother and J.D. The trial court also found that Respondent-Mother's health issues did not preclude her from caring for J.D. The trial court further found that:

> That because [Respondent-Mother] made some progress by attending therapy, moving to Raleigh, beginning to visit, maintaining sobriety, completing two parenting classes [,] engaging in therapy and obtaining employment, there is insufficient evidence to find that there will be a repetition of neglect if [J.D.] were placed in [Respondent-Mother's] home.

The findings show that the sole basis for the trial court's conclusion that Respondent-Mother was unable to provide a safe home for J.D. was that, although Respondent-Mother had rented an apartment, the trial court could not "find that the housing [was] stable, since it was obtained weeks prior to the hearing . . . for termination of parental rights."

The focus in a termination of parental rights action pursuant to N.C.G.S. § 7B-1111(a)(9) is whether the parent is either unable or unwilling to provide a "safe home" for the child, as defined under N.C.G.S. § 7B-101(19). *See In re V.L.B.*, 168 N.C. App. 679, 684-85, 608 S.E.2d 787, 791 (2005); *see generally In re C.N.C.B.*

___ N.C. App. ___, ___, ___ S.E.2d ___, ___, 2010 WL 3002026, at *4 (2010) (unpublished opinion) ("It is well-established that the trial court can weigh a parent's past failure to obtain mental health treatment in its determination of whether the parent lacks the ability to establish a safe home."); *In re D.J.D., D.M.D., S.J.D., J.M.D.*, 171 N.C. App. 230, 241-42, 615 S.E.2d 26, 34 (2005) ("clear, cogent and convincing evidence regarding [the respondent-father's] incarceration and his inability to suggest alternate arrangements for his children, supports the trial court's conclusion that respondent was unable to establish a safe home[.]"); *In re A.L.P.*, 182 N.C. App. 528, 642 S.E.2d 550, 2007 WL 968737(2007) (unpublished opinion); *In re M.L.B.*, 167 N.C. App. 370, 605 S.E.2d 266, 2004 WL 2793493(2004) (unpublished opinion). The parties do not cite, and our research has not revealed, case law permitting termination of parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(9) on the sole basis that a parent obtained housing for a child just weeks before the termination hearing.

In the case before us, none of the trial court's findings address the following issues: whether Respondent-Mother is (1) unwilling or unable to establish a home (2) in which J.D. would not be at substantial risk of physical or emotional abuse or neglect. We hold the trial court's findings of fact in the case before us are therefore insufficient to support a conclusion regarding whether Respondent-Mother is unable or unwilling to establish a safe home. We therefore reverse the trial court's order terminating Respondent-Mother's parental rights and remand to the

trial court to make appropriate findings related to Respondent-Mother's ability or willingness to obtain a home for J.D. in which J.D. would not be "at substantial risk of physical or emotional abuse or neglect."

3. Authentication of Out-of-State Official Records

Respondent-Mother also contends that the trial court erred by admitting evidence of the 2003 order entered by a New York court terminating her parental rights as to another child. She argues the order should have been excluded because it was not properly authenticated. We agree.

The self-authentication of documents is governed by N.C. Gen. Stat. § 8C-1, Rule 902, which provides:

> Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
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> (1) Domestic Public Documents Under Seal.--A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory or insular possession thereof, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.
>
> (2) Domestic Public Documents Not Under Seal.--A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
>
> . . .

> (4) Certified Copies of Public Records.--A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this State.

N.C. Gen. Stat. § 8C-1, Rule 902 (2009).

Rules governing the authentication of out-of-state official records are also found in the North Carolina Rules of Civil Procedure as well as in Title 28 of the United States Code. Each of these rules requires the attestation of a public official as to the authenticity of the document, accompanied by the seal of that official's office, if available. *See* N.C. Gen. Stat. 1A-1, Rule 44 (2009) ("If the office in which the record is kept is without the State of North Carolina but within the United States . . . the certificate may be made by a judge of a court of record of the political subdivision in which the record is kept, authenticated by the seal of the court, or . . . by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office."); 28 U.S.C. § 1738 (2006) ("The records and judicial proceedings of any court of any . . . State, ... or copies thereof, shall be proved or admitted in other courts within the United States . . . by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.");

see also Thelen v. Thelen, 53 N.C. App. 684, 690, 281 S.E.2d 737, 741 (1981) ("The document in question bears the signature of the Clerk of the Circuit Court for Howard County, Maryland and an attestation by the presiding judge but neither certificate is affixed with the official seal of the Circuit Court of Howard County. Defendant is correct - this document does not satisfy G.S. 1A-1, Rule 44 which mandates the requirements for authentication of an out-of-state official record."). Our Courts have recognized the authenticity of documents not bearing such a seal, but the authenticity of those documents has been supported by affidavit or other testimony. *See Freeman v. Pacific Life Ins. Co.*, 156 N.C. App. 583, 589, 577 S.E.2d 184, 188 (2003) ("We agree that 28 U.S.C. § 1738 is not the exclusive means to authenticate an out-of-state judgment to be accorded full faith and credit. . . . Rule 44(c) of the N.C. Rules of Civil Procedure states that official records may be authenticated 'by any method authorized by any other applicable statute or by the rules of evidence at common law.' Here, the judgment was authenticated through the affidavit of [an] attorney.") (citation omitted).

In the case before us, Petitioner proffered a true copy of an order terminating Respondent-Mother's parental rights as to another of her children. Petitioner alleged the order was entered in the Family Court of the County of Bronx in New York. The order was signed by the presiding judge and dated 7 February 2003. The copy of the order proffered by Petitioner bore a stamp containing the following language:

> This is to [illegible]
>
> True Copy _____.
> Made in the [illegible] such copy and shown by the records of the family court of the state of New York [illegible] the City of New York for the County of Bronx.

The stamp bore the signature of the clerk of court and was dated 21 February 2003. There was no seal visible on the copy of the order included in the record, nor was there any affidavit accompanying the copy of the order in verification of its authenticity. Because there was no seal affixed to the clerk's certification, nor was there an affidavit attesting to the authenticity of the copy of the order, we find the authentication insufficient. *See Thelen*, 53 N.C. App. at 690, 281 S.E.2d at 741.

Petitioner contends that "the [o]rder was corroborated by other evidence, was certified by the Clerk of Court of the Family Court of New York, County of Bronx and indeed that the order constitutes an official court record of a judicial proceeding[] of another court[.]" Petitioner also claims that the facts evidenced by the order were corroborated by Respondent-Mother's testimony at the hearing. We do not disagree with Petitioner as to these points. However, none of these arguments addresses the insufficient authentication provided to the copy of the order that Petitioner offered at the hearing. We therefore hold it was error for the trial court to admit the copy of the order.

As neither ground relied upon by the trial court in terminating Respondent-Mother's parental rights is supported by the findings of fact, the order terminating her parental rights must be

reversed. We remand to the trial court to make proper findings as to Respondent-Mother's ability or willingness to provide J.D. with a safe home.

II. Respondent-Father's Appeal

The trial court's findings of fact with respect to Respondent-Father show that J.D. was in Respondent-Father's legal custody at the time she was removed from his home in 2007, following the filing of the juvenile petition. Petitioner first became involved with Respondent-Father and J.D. in 2006 when it received a report that J.D. was living in an injurious environment. Petitioner investigated and could not substantiate the report because of a lack of cooperation with the investigation on the part of Respondent-Father and Stepmother. A charge of assault against Respondent-Father for the attempted strangulation of Stepmother was dismissed. Stepmother testified at the termination hearing that the police officers misunderstood her statements because she speaks with a French accent.

Petitioner received another report of alleged neglect in August 2007. When a social worker interviewed J.D. at her school, J.D. revealed that she was afraid for the safety of her Stepmother because of domestic violence in the home. Respondent-Father denied the allegations, refused to look at a safety assessment, refused to allow J.D. to participate in a child and family evaluation, and "informed the social worker that no one was allowed to meet with [J.D.] without a legal guardian or legal representative present." The police also received at least three calls regarding alleged

domestic violence at Respondent-Father's residence. The police records of these calls document that, when the police arrived at the home, Respondent-Father refused to allow the officers to speak with J.D. and attempted to prevent them from speaking to Stepmother.

The trial court found that J.D. "[w]as in need of removal from the home due to the impact of chronic domestic violence in the home." Stepmother made no effort to contact Petitioner to address the domestic violence problems, and Respondent-Father refused to allow access to J.D. At the time of the first nonsecure custody hearing, Respondent-Father was incarcerated in the Wake County jail on a charge of assaulting a government official. Stepmother filed for a domestic violence protective order but dismissed the action the next day.

Prior to the filing of the juvenile petition, J.D. had attended school in Wake County. School officials sought to refer J.D. to mental health services but Respondent-Father refused those services. J.D. missed twenty days of school in 2005-06. She did not enroll in school for the first thirty days of the 2006-07 school year, and she missed eight additional days of school during that school year.

Following her removal from the home, J.D. underwent a child and family evaluation conducted by the University of North Carolina Program on Child Trauma and Maltreatment. The trial court received a copy of the evaluation into evidence. The evaluation revealed that J.D. needed intensive treatment because of chronic domestic

violence in the home, and recommended that, due to J.D.'s fears, she not have contact with Respondent-Father and Stepmother until they made a sincere effort to correct the conditions which led to the removal of J.D. from their home. The evaluation also reported that J.D. presented as a "traumatized and anxious child who lived in fear that [Respondent-Father] would kill her [S]tepmother." The evaluation recommended that J.D. receive therapy from a therapist who understood trauma.

Dr. Robert Aiello, a psychologist, evaluated J.D. between September 2008 and November 2008 and diagnosed J.D. as having prolonged post-traumatic emotional disturbance as a result of events that occurred within her home. Dr. Aiello noted that J.D. expressed fear of seeing Respondent-Father and returning home.

Prior to the adjudication hearing in April 2008, Respondent-Father did not engage in any services offered to him aimed at returning J.D. to his home. He did not complete a psychological evaluation. Respondent-Father did attend a psychological session, during which a recording was made of an interaction between Respondent-Father and the psychologist, but Respondent-Father refused to sign a release. After he later signed the release, the evaluator elected not to conduct the evaluation.

In its order adjudicating J.D. as neglected, the trial court ordered Respondent-Father to: (a) complete a psychological evaluation by an evaluator approved by Petitioner and follow the recommendations of the evaluation and demonstrate skills learned; (b) complete a psychiatric evaluation; (c) engage in certified

domestic violence treatment and parenting education and follow recommendations; (d) sign all necessary releases of information; (e) engage in individual and family therapy and demonstrate knowledge gained; and (f) maintain safe and stable housing sufficient for himself and J.D.

At the ninety-day review hearing in July 2008, Respondent-Father presented evidence that he completed, or was completing, in Virginia a psychological evaluation, a psychiatric evaluation, parenting classes, an anger management class, couples counseling, domestic violence counseling, and individual counseling. Respondent-Father also completed a psychological evaluation with Dr. Susan Garvey (Dr. Garvey) in Hampton, Virginia, but because Respondent-Father revoked his consent for release of the information contained in Dr. Garvey's evaluation, the trial court did not have that information available at the review hearing.

At the conclusion of the permanency planning hearing in December 2008, the trial court found that Respondent-Father "ha[d] not demonstrated accountability for or an understanding of the emotional trauma experience[d] by [J.D.]." The trial court found that although Respondent-Father verbally stated that he took responsibility for any harm to J.D., his actions showed otherwise. Respondent-Father persistently berated the actions of Petitioner, the guardian ad litem, and the trial court. The trial court found that Respondent-Father filed motions and lawsuits against the principals involved in this matter, and his actions "demonstrate[d] a deflection of blame to everyone involved in this matter."

Even though Respondent-Father was ordered in October 2007 to undergo a psychological evaluation, he delayed having it done until June 2008. Petitioner did not receive the results until October 2008, a year after it had been ordered, because Respondent-Father refused to consent to the release of the report. Although he attended parenting classes, anger management sessions, marriage counseling, a domestic violence mediation class, and mental health counseling, Respondent-Father had not demonstrated any skills learned as a result of his attendance of those events and had not taken responsibility for his actions.

At the December 2008 hearing, Respondent-Father provided inconsistent information regarding his housing, residence and employment. At times, he said he was working; at other times, he said he was unemployed and collecting unemployment benefits; and at other times, he said he was disabled and awaiting the outcome of his appeal of an SSI disability claim. Respondent-Father failed to provide Petitioner with a reliable address where he resided. Subsequent to the December 2008 hearing, Respondent-Father "did not provide evidence that he made progress in therapy, and he continued to demonstrate behaviors which indicated that he had not accepted responsibility for the emotional trauma of [J.D.]."

At the termination of parental rights hearing, Respondent-Father provided no evidence that he had made any progress in correcting the conditions that led to the removal of J.D. from his home. Although he testified that he accepted responsibility, he continued to blame others for the removal of J.D. from his home.

On cross-examination, Respondent-Father testified to filing grievances against three social workers and a licensed clinical social worker who concluded that J.D. had been traumatized while residing with Respondent-Father and Stepmother. He continued to deny that domestic violence occurred in the home and to deny that J.D. had told mental health professionals and social workers that she had indeed witnessed domestic violence in the home and feared for the safety of her Stepmother. Because of this, the trial court determined that Respondent-Father "has not gained the necessary insight from services in which he has engaged, nor has he accepted the responsibility for his actions which caused the removal of [J.D.]."

The trial court further found that at the adjudication portion of the termination of rights hearing, Respondent-Father failed to present sufficient evidence to indicate that he was making any progress in therapy or that he was dealing with the issues identified by Dr. Garvey. Dr. Carolyn Fair of Healthy Family Partnership testified that, although Respondent-Father attended several parenting classes, at times he "appeared disinterested and sleepy, not engaged in class, and . . . not . . . to understand the points discussed in the class." Respondent-Father presented no evidence that he had made progress in his therapy.

As ultimate findings, the trial court found:

> 77. That this [c]ourt adjudicated [J.D.] as a neglected child, and due to [Respondent-Father's] failure to accept responsibility for his actions, his lack of progress in therapy, his behavior that resulted in his being incarcerated for 75 days between April and July

> of 2009, failure to show credible information regarding employment and stable housing, it is likely that the pattern of neglect will continue if [J.D.] were placed in his care.
>
> 78. That [Respondent-Father] has failed to make reasonable progress in light of the circumstances in correcting the problems which led to the removal of [J.D.] from his care in October, 2007; nearly 19 months elapsed between the original petition for nonsecure custody and the time of the hearing on grounds for termination.
>
> 79. That [J.D.] was emotionally abused by [Respondent-Father] and there is a risk of further abuse due [to] his failure to take responsibility for his actions, failure to demonstrate that he has learned anything regarding effective parenting or a change in behavior, and total denial of the domestic abuse which occurred in the home prior to the filing of the underlying petition.

The trial court concluded that grounds existed to terminate Respondent-Father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) based upon neglect and emotional abuse. The trial court also concluded that grounds existed to terminate Respondent-Father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) based upon Respondent-Father's failure to make reasonable progress in correcting the conditions that resulted in the removal of J.D.

A. Assignments of Error

Respondent-Father contends that forty-four of the trial court's seventy-nine findings of fact are in error. He argues various findings: (a) are based on incorrect dates, (b) attribute adult language to a child, (c) are based on hearsay, (d) consist of recitations of testimony and not facts independently found by the trial court, (e) are irrelevant, (f) are not completely accurate or

are incomplete, (g) improperly shift the burden of proof to Respondent-Father, or (h) are in fact conclusions of law. Respondent-Father also contends that the trial court's findings of fact do not support its conclusions of law that Respondent-Father neglected and emotionally abused J.D. and the neglect would continue in the future, and that Respondent-Father failed to make sufficient progress while J.D. was in foster care.

The trial court's adjudicatory order terminating parental rights must be based upon findings of fact supported by clear, cogent and convincing evidence, which establish the existence of a statutory ground for termination of rights. *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). "[O]ur appellate courts are bound by the trial court['s] findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *In re Montgomery,* 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984). Findings of fact are also binding if the appellant does not challenge them on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Even when findings are unsupported by evidence, reversible error will not result if the erroneous findings are unnecessary to the trial court's ultimate adjudication. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240-41 (2006). We need not review every ground for termination found by the trial court if we can uphold termination of parental rights on one ground. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). Thus, if the findings in question are not

germane to the ground upon which termination may be upheld, we need not review all of the challenged findings. *In re T.B.*, ___ N.C. App. ___, ___, 692 S.E.2d 182, 186 n.2 (2010).

B. Grounds for Termination

We first address the termination of Respondent-Father's parental rights based upon abuse or neglect. "The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101." N.C. Gen. Stat. § 7B-1111(a)(1) (2009). Among the ways a juvenile may be considered as abused within the statutory definition is when the juvenile's parent "[c]reates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others[.]" N.C. Gen. Stat. § 7B-101(1)(e) (2009). A neglected juvenile is defined as one

> who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2009). "A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. at 248, 485 S.E.2d at 615 (citation omitted). If the child is removed from the parent before the termination hearing,

then "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)(citation omitted).

Respondent-Father stipulated to the findings in the original adjudication of neglect that J.D. was in need of removal from the home due to the "impact of chronic domestic violence in the home," that J.D. "resided in a home in which chronic domestic violence was detrimental to her emotional health," and that a child and family services evaluation conducted by a program at the University of North Carolina "concluded that [J.D.] [was] in need of intensive treatment, and[,] due to her fears, she should not have contact with [Respondent-Father and Stepmother] until they [made] a sincere effort to correct the problems which led to the removal of [J.D.] from their care." Respondent-Father also does not challenge the following findings of fact in the trial court's order terminating his parental rights: that as of the permanency planning hearing in December 2008, Respondent-Father "had not demonstrated accountability for, or an understanding of, the emotional trauma experienced by [J.D.]"; that he had neither demonstrated any skills learned in classes or counseling ordered by the trial court, demonstrated appropriate parenting behavior, nor demonstrated any progress in anger management; and that subsequent to the permanency planning hearing in December 2008, Respondent-Father "continued to demonstrate behaviors which indicated that he had not accepted responsibility for the emotional trauma of [J.D.]."

We hold these uncontested findings support the trial court's conclusion that Respondent-Father abused or neglected J.D. and that it is likely that the pattern of neglect will continue if J.D. is returned to his care. The findings support the trial court's decision to terminate Respondent-Father's rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). This holding thus eliminates any need for us to consider Respondent-Father's challenges to the remaining findings to which he has excepted and to the other ground for termination of his parental rights.

C. Judicial Notice

Respondent-Father next contends that the trial court erred by taking judicial notice of facts in the case. At the beginning of the hearing, Petitioner asked the trial court to take judicial notice of "all matters appropriate for judicial notice." The trial court granted Petitioner's request despite Respondent-Father's request to limit the taking of judicial notice only to prior orders in the case.

"A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." N.C. Gen. Stat. § 8C-1, Rule 201(b) (2009). "A court shall take judicial notice if requested by a party and supplied with the necessary information." N.C.G.S. § 8C-1, Rule 201(d). In a termination of parental rights hearing, a trial court may properly admit into evidence previous orders of

adjudication, review, and permanency planning. *In re J.W., K.W.*, 173 N.C. App. 450, 455-56, 619 S.E.2d 534, 539-40 (2005), *aff'd per curiam*, 360 N.C. 361, 625 S.E.2d 780 (2006). "In a bench trial, it is presumed that the judge disregarded any incompetent evidence." *In re Huff*, 140 N.C. App. 288, 298, 536 S.E.2d 838, 845 (2000), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001) (citations omitted).

Respondent-Father contends that the trial court did not explicitly advise the parties in his ruling of the orders of which he was taking judicial notice. Although it is the better practice for a trial court to explicitly advise the parties that it is taking judicial notice of prior orders in the case, a trial court's failure to follow this practice is not error. *In re M.N.C.*, 176 N.C. App. 114, 121, 625 S.E.2d 627, 632 (2006). In this case, the trial court did advise the parties that it was taking judicial notice of all matters properly subject to judicial notice. Moreover, in its termination order the trial court made explicit reference to the prior orders upon which it based findings. We overrule Respondent-Father's contention.

D. Guardian ad Litem

Respondent-Father next contends that the trial court erred by failing to appoint a guardian ad litem for him. He argues the trial court was required to appoint a guardian ad litem based upon (1) the testimony of Dr. Garvey in which she suggested that a guardian ad litem be appointed for Respondent-Father because he has "difficulty processing information" and he is not "aware of how much he's

hurting" his case, and (2) the trial court's own findings that Respondent-Father is delusional and paranoid, and holds distorted views.

Appointment of a guardian ad litem for a parent in a termination proceeding is governed by N.C. Gen. Stat. § 7B-1101.1(c), which provides that upon motion of a party or its own motion, a court "may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17 if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest." N.C. Gen. Stat. § 7B-1101.1(c) (2009). An "incompetent adult" is defined as

> an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

N.C. Gen. Stat. § 35A-1101(7) (2009). We have defined "diminished capacity" in the juvenile context as a "lack of 'ability to perform mentally.'" *In re M.H.B.*, 192 N.C. App. 258, 262, 664 S.E.2d 583, 586 (2008) (citation omitted).

"A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*." *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d

45, 49 (2005). Whether a substantial question as to the party's competency is raised is a determination within the trial court's discretion. *Id.* (citation omitted).

We have held that a trial court does not err by failing to appoint a guardian ad litem in a termination of parental rights proceeding when (1) the parent does not request appointment of a guardian ad litem, (2) the petition does not allege that the parent is incapable of parenting, (3) the petition does not allege that the parent is incompetent, and (4) the record does not otherwise indicate that the parent is incompetent within the foregoing definition. *In re D.H., C.H., B.M., C.H. III*, 177 N.C. App. 700, 709, 629 S.E.2d 920, 925 (2006). We have also held that a trial court does not abuse its discretion by failing to appoint a guardian ad litem when nothing in the parent's conduct at the hearing raised a question about his competency, and the parent testified on his own behalf and asserted his own interest in retaining his parental rights. *In re C.G.A.M. & J.C.M.W.*, 193 N.C. App. 386, 390, 671 S.E.2d 1, 4 (2008).

In the case before us, nothing in the motion to terminate Respondent-Father's parental rights alleged that he was incapable of parenting J.D. or that Respondent-Father was incompetent. Nothing in the record indicates that Respondent-Father is incompetent and that he has diminished capacity such that he is unable to act in his own interest. Throughout these proceedings, Respondent-Father has demonstrated competency to complete parenting classes, file a claim for disability, file motions and lawsuits

against various principals in this matter, attend and testify at various hearings, and enter into a consent order regarding J.D.'s adjudication. Notably, Respondent-Father objected when the guardian ad litem for J.D. asked the trial court to appoint a guardian ad litem for Respondent-Father at a permanency planning hearing. We hold the trial court did not err by failing to appoint a guardian ad litem for Respondent-Father.

E. Jurisdiction

Respondent-Father finally contends that the trial court erred by exercising jurisdiction over J.D. when a custody order entered by a Virginia court was still in effect at the time the juvenile petition in this matter was filed. Respondent-Father acknowledges that the Wake County District Court conferred with the appropriate Virginia court and that the Virginia court transferred jurisdiction over the matter to the courts of this State. Notwithstanding, Respondent-Father states that he makes this argument "as a reservation of rights for any future actions as to the jurisdiction of our courts being obtained by manipulation or fraud on the part of agents of the Wake County Human Services or State of North Carolina." We find no error.

III. Conclusions

We affirm the permanency planning order that ceased reunification efforts. We reverse the trial court's order terminating Respondent-Mother's parental rights and remand for additional findings. We affirm the order terminating Respondent-Father's parental rights.

As to Respondent-Mother, we affirm in part; reverse and remand in part.

As to Respondent-Father, we affirm.

Affirmed in part; reversed and remanded in part.

Judges BRYANT and GEER concur.

Report per Rule 30(e).