



in need of assistance. The family consisted of respondent-mother, respondent-father and their almost two-year-old child, D.F.M., Jr. DSS helped the family pay for a motel for a few nights. Thereafter, the family was able to secure housing at a shelter. On 23 January 2009, respondent-mother contacted DSS and advised that the family had moved from the shelter. When DSS visited the family, they had no money, no food, no gas for their vehicle, and only twelve diapers. Respondents admitted they did not have adequate resources to care for D.F.M., Jr. DSS filed a juvenile petition alleging D.F.M., Jr., was a neglected and dependent juvenile. D.F.M., Jr., was placed in DSS's custody.

Approximately one month after DSS took custody of D.F.M., Jr., respondent-mother gave birth to a second child, D.F.M., III. He had significant medical problems including Down Syndrome and a hole in his heart. On 26 February 2009, DSS filed a juvenile petition alleging D.F.M., III, was a neglected and dependent juvenile. D.F.M., III, was also placed in DSS's custody. On 27 May 2009, the trial court adjudicated the children neglected and dependent and continued custody with DSS.

On 24 February 2010, DSS filed a petition to terminate respondents' parental rights. DSS alleged grounds existed to terminate respondents' parental rights on the basis of neglect,

dependency, and that respondents willfully left the children in foster care for more than twelve months without showing reasonable progress under the circumstances to correct the conditions which led to the children's removal. The termination of parental rights hearing was held over several days. On 13 January 2011, the trial court entered its order terminating respondents' parental rights. Respondents appeal.

The trial court found grounds existed to terminate respondents' parental rights on the basis of neglect and that they willfully left the children in foster care. See N.C. Gen. Stat. § 7B-1111(a)(1) (2009). Respondents contend the evidence does not support termination of their parental rights on the basis of neglect. Specifically, respondents contend the evidence does not support a finding that there is a likelihood of repetition of neglect if the children were returned to their care.

"The standard for appellate review of the trial court's conclusion that grounds exist for termination of parental rights is whether the trial judge's findings of fact are supported by clear, cogent, and convincing evidence, and whether these findings support its conclusions of law." *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 174, *disc. review denied*,

354 N.C. 218, 554 S.E.2d 341 (2001). "[T]he trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997).

A neglected juvenile is defined as follows:

A juvenile 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. 244, 248, 485 S.E.2d 612, 615 (1997). If the child has been removed from the parents' custody before the termination hearing, and the petitioner presents evidence of prior neglect, including an adjudication of such neglect, 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).

In this case, the trial court made the following relevant findings of fact:

21. That despite [respondent-mother's] past history of alcohol abuse, she continued to consume alcohol. On one of the scheduled supervised visits, [respondent-mother] presented with the odor of alcohol about her breath. At this visit, Social Worker Monroe had to direct that [respondent-mother] refrain from the use of alcohol prior to exercising visitation with her children. Additionally, at one visitation, [respondent-mother] presented with scratch marks. [Respondent-mother] attributed the marks to self-mutilation following an argument between herself and her husband.

. . . .

36. That [respondent-mother] has a long history of mental health issues. She is forty-two (42) years old and has had mental health issues since she was twelve (12) years old. . . .

. . . .

43. That [respondent-father] has had several periods of employment. He has voluntarily left more than one of his employment opportunities. That [respondent-mother's parents] assisted the family financially, including paying for the truck and paying the family's cell phone bills. That the parties no longer have the truck due to their inability to pay for needed repairs. [Respondent-mother's parents] purchased transportation for the family, on 11 September 2010, approximately six (6) days ago. That on this date, [respondent-father] testified that he has employment as a school bus driver for New Hanover County

Schools, and has been so employed in a permanent capacity since August of 2010.

44. That Margaret Franklin, an employee of Wilmington Preparatory Academy, testified subsequent to [respondent-father]. Ms. Franklin indicated that [respondent-father] had been employed as a school bus driver for the aforementioned academy. On 07 September 2010, ten days prior to this hearing, [respondent-father] appeared for the morning shift of his employment. He failed to return to the Academy to transport the students for the afternoon shift of his employment, and was terminated on 07 September 2010. On this date, 17 September 2010, [respondent-father] was untruthful in his testimony regarding his current employment.

45. That [respondents] have made inappropriate decisions since the inception of this case. Their ability to maintain consistent housing over the past months is due to financial help from the maternal grandparents. The Court is not impressed with [respondent-father's] involvement with vocational rehabilitation services. He has voluntarily left employment at the House of Raeford on two (2) occasions, voluntarily left employment in landscaping on two (2) occasions and failed to return to work for the afternoon shift on his most recent job of driving a school bus last week. His latter action resulted in his present state of unemployment. The parents have not utilized all of the services offered by [DSS]. [Respondent-mother] has not had consistency in mental health treatment; she has taken prescribed medications, but she needed consistent individual counseling. [Respondent-mother] has requested marital counseling during therapy sessions in Minnesota and North Carolina; however, the

[respondents] have not participated in the same. All of these identified issues existed at the inception of the case.

We conclude these findings are supported by the evidence which shows that D.F.M., Jr., and D.F.M., III, are both children with special needs; there is a history of prior neglect as the children had been adjudicated neglected; respondent-mother failed to consistently attend individual counseling despite her long history of mental health issues; respondent-father's employment history was clearly unstable and respondent-mother's disability check remained respondents' most stable source of income; and respondent-mother's parents assisted respondents financially, and it is evident respondents could not live independently without financial assistance from respondent-mother's parents. The evidence and findings support the trial court's conclusion that there was a probability of repetition of neglect if the children were returned to respondents. The trial court did not err in finding grounds existed to terminate respondents' parental rights on the basis of neglect.

Respondents also challenge the termination of their parental rights on the basis that they willfully left the children in foster care. However, having determined that the trial court properly concluded grounds existed pursuant to N.C.

Gen. Stat. § 7B-1111(a)(1), we need not address the arguments related to the additional ground. *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 663 (2003).

Once the trial court has determined that a ground for termination exists, the court moves on to the disposition stage, where it must determine whether termination is in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a) (2009). "We review the trial court's decision to terminate parental rights for abuse of discretion." *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Respondent-mother argues the trial court erred in determining termination of her parental rights was in the best interests of the children where her parents were willing and able to care for the children and had been recommended for placement. We note that "[i]f a fit relative were to come forward and declare their desire to have custody of the child, the court could consider this during the dispositional phase as grounds for why it would not be in the child's best interests to



terminate the respondent's parental rights." *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005). In this case, the trial court considered placement of the children with respondent-mother's parents, but found placement with the maternal grandparents "contrary to the best interests of [D.F.M., Jr.] and [D.F.M., III]." The evidence tends to show that the maternal grandparents, at first, expressed indecision on whether they wanted the children placed with them. Furthermore, respondent-mother testified that she was physically abused and touched inappropriately by her father when she was younger. Accordingly, we conclude the trial court made a reasoned decision and did not abuse its discretion in terminating respondent-mother's parental rights.

Respondent-father also challenges the trial court's determination that termination of his parental rights was in the children's best interest. He argues the trial court abused its discretion by considering respondent-mother's ability to parent in terminating his parental rights. Respondents sought reunification with their children as a married couple. There is no indication either parent sought reunification independent of the other. Moreover, respondent-father testified respondent-mother was the primary caretaker of D.F.M., Jr., prior to his

removal, and if the children were returned to respondents, respondent-mother would be the primary caretaker of the children. We conclude it was not error for the trial court to consider respondent-mother's ability to parent. We further conclude the trial court did not abuse its discretion.

Affirmed.

Chief Judge MARTIN and Judge STEELMAN concur.

Report per Rule 30(e).