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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-824

Filed: 21 March 2017

New Hanover County, No. 14 JT 84

IN THE MATTER OF: I.S.D.

Appeal by respondent father from orders entered 22 April 2015 and 10 May 2016 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 20 February 2017.

*Dean W. Hollandsworth, for petitioner-appellee New Hanover County Department of Social Services.*

*Mercedes O. Chut, for respondent-appellant father.*

*Blake H. Larsen, for guardian ad litem.*

CALABRIA, Judge.

Respondent (“Father”) appeals from the trial court’s orders ceasing reunification efforts and terminating his parental rights as to the minor child “Irina.”[1] Irina’s mother (“Mother”) relinquished her parental rights during the course of these

[1] The parties agreed to the use of this pseudonym to protect the juvenile’s privacy. *See* N.C.R. App. P. 3.1(b).

proceedings and is not a party to this appeal. For the reasons set forth below, we affirm.

## I. Factual and Procedural Background

On 16 April 2014, New Hanover County Department of Social Services ("DSS") obtained non-secure custody of three-year-old Irina and her older half-sister, A.N.A.,[2] and filed a petition alleging that they were neglected juveniles. DSS placed Irina in non-relative kinship care with Rebecca and Frank V.

By agreement of the parties, the trial court adjudicated the children neglected on 25 July 2015 based, *inter alia*, on the following stipulated facts:

> [Mother] has mental illness and substance abuse issues . . ., and she has not obtained treatment to deal with either issue. [Irina] was born [in May,] 2010 and tested positive for marijuana. . . . [Irina] has resided with [Rebecca and Frank V.] for most of her life, . . . . [Mother] has not provided any monetary support for the children. [Mother], when visiting with the children, has exposed them to [Father], with whom she has engaged in domestic violence in the past. . . .

The court further found that "[Father] does acknowledge his past involvement with [DSS] has been negative[,]" and that Rebecca V. had advised the court that Irina "has had difficulties since visiting with [Father]."

The trial court continued Irina in the legal custody of DSS, approved her ongoing placement with Rebecca and Frank V., and ordered that the child "receive

[2] Paternity testing completed on 7 January 2015 revealed that A.N.A. is not Father's child.

counseling with Shell[e]y Chambers[.]" The court ordered Father to fulfill the terms of his Family Services Agreement ("FSA"), which included successfully completing the Domestic Violence Offender Program ("DVOP"); obtaining a parenting assessment and a substance abuse assessment and following any recommendations; submitting to random drug screens; and obtaining a psychological evaluation by Dr. Len Lecci and complying with any recommended treatment. Father was awarded supervised visitation with Irina contingent upon his adherence to the FSA and with "[t]he lengths of the visits . . . contingent upon the anxiety exhibited by the child as observed by the supervisor of the visit."

At the initial review hearing held 17 September 2014, the trial court received evidence of inappropriate conduct by Father during visitations and of Irina's decompensating behaviors following their visits. The court adopted the recommendation of DSS and the guardian ad litem ("GAL") to suspend Father's visitation with Irina until (1) Father completed his court-ordered psychological evaluation with Dr. Lecci and (2) the child's therapist, Ms. Chambers, recommended a resumption of visits.

The trial court held a permanency planning hearing on 25 March 2015. In the resulting order entered 22 April 2015, the court found that further efforts to reunite Irina with either of her parents "would be clearly futile and inconsistent with [her] health, safety, and need for a safe, permanent home within a reasonable period of

time and, as such, efforts by [DSS] at reunification . . . should be ceased." Upon the additional finding that "the parents have acted inconsistently with their constitutionally protected parental status," the court determined that changing Irina's permanent plan from reunification to adoption was in her best interest. Father filed timely notice preserving his right to appeal the order.

DSS filed a petition to terminate Father's parental rights as to Irina on 6 August 2015. After a hearing on 1 and 3 February 2016, the trial court entered an order terminating Father's parental rights on 10 May 2016. The court adjudicated three grounds for termination: (1) neglect, (2) failure to make reasonable progress in correcting the conditions that led to Irina's removal from the home, and (3) dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6) (2015). The court further determined that termination of Father's parental rights was in the best interest of the child. Father filed timely notice of appeal from the termination order and from the permanency planning order that ceased reunification efforts and changed Irina's permanent plan to adoption. *See* N.C. Gen. Stat. § 7B-1001(a)(5)(a) (2015) (allowing appeal from "[t]he order eliminating reunification as a permanent plan together with an appeal of the termination of parental rights order").

## II. Order Ceasing Reunification Efforts

Father first claims the trial court erred by ceasing reunification efforts without making adequate findings of fact. *See* N.C. Gen. Stat. §§ 7B-507(b)(1), -906.1(d)(3)

(2015).[3] He further contends the court based its findings of fact on incompetent evidence. We disagree.

A. Standard of Review

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). Findings supported by competent evidence, as well as any uncontested findings, are binding on appeal. *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009); *In re C.M.*, 183 N.C. App. at 212, 644 S.E.2d at 593. A trial court abuses its discretion only when its "ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007) (citation and quotation marks omitted), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008).

"A trial court may cease reunification efforts upon making a finding that further efforts 'would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time[.]' " *In re C.M.*, 183 N.C. App. at 214, 644 S.E.2d at 594 (quoting N.C. Gen. Stat. § 7B-

[3] Both the 25 March 2015 permanency planning hearing and the resulting order ceasing reunification efforts predate the 1 October 2015 effective date of the Juvenile Code amendments enacted in 2015 N.C. Sess. Laws 320, 334-35, ch. 136, § 18. In addressing Father's argument, we apply the statutes in effect at the time reunification efforts were ceased.

507(b)(1)). We have characterized the "finding" of futility or inconsistence contemplated by N.C. Gen. Stat. § 7B-507(b)(1) as an "ultimate finding[,]" which the trial court must find " 'specially.' " *In re I.R.C.*, 214 N.C. App. 358, 363-64, 714 S.E.2d 495, 499 (2011) (quoting *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003)). Moreover, this ultimate finding must derive " 'through processes of logical reasoning from the evidentiary facts' " found by the court. *Id.* at 362, 577 S.E.2d at 498 (quoting *Harton*, 156 N.C. App. at 660, 577 S.E.2d at 337). Put differently, "the determination that grounds exist to cease reunification efforts under N.C.G.S. § 7B-507(b)(1) is in the nature of a conclusion of law that must be supported by adequate findings of fact." *In re E.G.M.*, 230 N.C. App. 196, 211, 750 S.E.2d 857, 867 (2013).

B. Analysis

Father acknowledges the trial court made the ultimate finding that further reunification efforts "would be clearly futile and inconsistent with [Irina's] health, safety, and need for a safe, permanent home within a reasonable period of time . . . ." He argues, however, that the court's "boiler plate" invocation of the statutory standard[4] is unsupported by the court's evidentiary findings, "because they are too general and do not show logically why further reunification efforts would be futile or contrary to Irina's best interests."

[4] Although Father refers to N.C. Gen. Stat. § 7B-906.1(d)(3) rather than the statutory provision authorizing the court to cease reunification efforts, N.C. Gen. Stat. § 7B-507(b)(1), the language is the same.

As an initial matter, we agree with Father that many of the trial court's ostensible findings constitute mere recitations of witness testimony or other statements made by individuals, rather than affirmative findings of fact. This Court has made clear that " 'verbatim recitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge,' " *In re L.B.*, 184 N.C. App. 442, 450, 646 S.E.2d 411, 415 (2007) (quoting *In re Green*, 67 N.C. App. 501, 505 n.1, 313 S.E.2d 193, 195 n.1 (1984)), and we reaffirm that principle here. Therefore, we disregard these reiterative findings and confine our review to those facts actually found by the court. *See generally In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (providing that "erroneous findings unnecessary to the determination do not constitute reversible error" where "ample other findings of fact support" it). However, in assessing whether the trial court's findings support its decision to cease reunification efforts, we will examine the findings in both the 22 April 2015 permanency planning order and the 10 May 2016 order terminating Father's parental rights. *In re L.M.T.*, 367 N.C. 165, 170, 752 S.E.2d 453, 456-57 (2013). Based on the appellate court's mandate in N.C. Gen. Stat. § 7B-1001(a)(5)(a) to "consider both orders 'together,' " our Supreme Court clarified in *L.M.T.* that "incomplete findings of fact in the cease reunification order may be cured by findings of fact in the termination order." *Id.*

In the 22 April 2015 permanency planning order, the court made the following affirmative findings in support of its decision to cease reunification efforts:

> 2. . . . [Father] completed a psychological evaluation with Dr. Len Lecci; completed the DVOP Program; completed a substance abuse assessment and submitted paystubs in September 2014 verifying employment. [Father's] visitation was suspended at a prior hearing due to the trauma it was causing for [Irina] evidenced by her behaviors escalating after the visits as reported by the foster parents. . . .
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> 8. [DSS] has made reasonable efforts to prevent or eliminate foster care placement and reunify the family . . . .
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> 9. It is not possible to return custody of [Irina] to [Father] today nor is it likely reasonable progress can be made within the next six months sufficient to enable reunification . . . .
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> . . . .
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> 12. [DSS] has made reasonable efforts to implement the specific permanent plan of reunification . . .; however, it would be in the best interest of [Irina] for the permanent plan to be changed to adoption as the parents have acted inconsistently with their constitutionally protected parental status . . . .
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> 13. . . . [E]ven though the Respondent-Parents have made some progress since the last hearing, the neglect has been ongoing for [Irina and A.N.A.'s] entire lives. . . . [Father] has not been honest and forthcoming with the providers of his services and further was not truthful as to his alcoholic consumption prior to the substance abuse assessment as shown by the drug screen that was positive for alcohol metabolites; was minimally engaged during

> DVOP services and is diagnosed with a serious psychological disorder, Antisocial Personality Disorder for which there is no effective treatment. Due to the trauma induced by visitation by [Father], [Irina] is not ordered to participate in such visitation, as it remains not recommended by her therapist, [Ms.] Chambers. . . .

The court expressly found that further reunification "efforts would be clearly futile and inconsistent with [Irina's] health, safety, and need for a safe, permanent home within a reasonable period of time and, as such, efforts by [DSS] at reunification . . . should be ceased."

The trial court's evidentiary findings of fact[5] are supported by the testimony of DSS social worker Michelle Smith and the following documents received into evidence without objection: the DSS "Report to the Court"; Dr. Lecci's psychological evaluation of Father with addendum; Dr. Lecci's psychological evaluation of Mother; Father's "Comprehensive Clinical Assessment" performed by Coastal Horizons on 14 January 2015; Father's DVOP intake and evaluation dated 11 September 2014 and a progress update signed by DVOP facilitator Sara Jablonski on 5 January 2015; a letter from Ms. Chambers; and a negative drug screen submitted by Father on 31 December 2014. Father did not testify at the permanency planning hearing but adduced letters

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[5] Portions of the quoted findings, such as the court's statement that the respondent-parents "have acted inconsistently with their constitutionally protected status" are more properly classified as conclusions of law. *See, e.g.*, *David N. v. Jason N.*, 359 N.C. 303, 306, 608 S.E.2d 751, 753 (2005). We include these passages to show the inferences drawn by the court from the facts and to illuminate the "processes of logical reasoning" that led to the court's ultimate findings. *Harton*, 156 N.C. App. at 660, 577 S.E.2d at 337.

from two employers attesting to his character and work ethic and a substance abuse assessment from Wake County performed by Wake County Human Services on 29 December 2014 in a case involving his daughter E.D.B.

The trial court's evidentiary findings provide an adequate basis for its decision to cease reunification efforts. Specifically, the court noted the longstanding nature of Father's neglect of Irina, the traumatic effect of his behavior on the child, his refusal to participate honestly in his court-ordered evaluations and treatment, and his unfavorable prognosis for beneficial change due to his diagnosed Antisocial Personality Disorder. The court's ultimate finding that further reunification efforts would be "futile and inconsistent with [Irina's] health, safety, and need for a safe, permanent home within a reasonable period of time" follows logically from the evidentiary facts. We are thus satisfied the court met the requirements of N.C. Gen. Stat. § 7B-507(b)(1).

The termination order includes additional findings of fact pertinent to the court's decision to cease reunification efforts, to wit:

> 5. . . . Dr. Lecci performed a psychological evaluation on [Father] . . . and completed the evaluation on October 29, 2014. . . . [Father] denied any DSS involvement with his [four] other children until confronted with contrary information concerning extensive DSS involvement and then he acknowledged there were DSS investigations on them. . . . [Father] characterized himself as an effective parent to his children. . . . He had an extremely elevated score on an objective measure of defensiveness/lying in his responses on the MMPI II testing . . . . [Father's] diagnosis

of Antisocial Personality Disorder is indicative of extensive lying and a complete disregard for social or moral standards by the subject. Adaptive change is unlikely . . . due to this diagnosis; Dr. Lecci did not make any recommendations for treatment in the evaluation for [Father], as he lacked insight into his issues and did not acknowledge any problems with his own behavior. . . .

6. . . . Ms. Chambers has been providing therapy for the children since shortly after the Department took custody of the Juveniles. . . . The children exhibit a high level of anxiety; posttraumatic stress and adjustment disorders; behavioral problems and bed wetting. [Irina] also has been sexually acting out. Both children are happy in their current placements. Visitation for [Father] was suspended with [Irina] after the Juvenile stated to Ms. Chambers that her father had hurt her; hurt her mother; and that she had been present during the domestic violence in the household and that the Juvenile stated that [Father] was following the foster parent's vehicle after leaving a visitation at DSS. . . . Both children fear [Father] and [Irina's] fear is illustrated by a drawing she made . . . and the statement she made to Ms. Chambers while drawing the picture, saying that she was happy not to visit with [Father] because he used to be mean to her.

7. . . . [Father] had one child, [E.D.B.], removed from his care by another DSS agency in North Carolina. [Irina] did not want to leave her foster mother, Rebecca [V.,] to attend visitation with [Father] . . . . On only one occasion, at the September 3, 2014 visit, did the child allow [the social worker] to leave the room at DSS during visitation and after some visits[, Irina] would experience "emotional meltdowns." On August 27, 2014, there was an incident after visitation when the social worker walked [Father] to the front of the building and he pulled his car around to the back of the agency, waved and pulled off. [Rebecca V.'s] vehicle was parked at the back of the DSS building and Ms. [V.] stated later to the social worker that [Father] followed her vehicle with her and [Irina] inside to the dance studio

where [Irina] was a student. . . . [The social worker] spoke with [Father] at the next visitation and told him he could not follow the foster parent and he denied that he followed Ms. [V.] and then he was reported by [Ms. V.] to have followed her again after that visitation on September 3, 2014. This date was the last visit for [Father] with [Irina] due to his unacceptable behavior of stalking the foster mother and his daughter. . . .

. . . .

. . . [Irina has] been in the legal custody of [DSS since April 2014] and reasonable efforts at reunification [as to Father] was ceased by order of the Court at the hearing on March 25, 2015 . . . . The Court has continued to deny visitation to [Father] during the course of this case since the hearing date of September 17, 2014 due to the negative behaviors exhibited by [Irina] after visitations, and [Father's] failure to take any responsibility for the actions that led to the suspension of visitation, including the stalking of the child and foster mother after visitations and the continued denial of domestic violence perpetrated on [Mother] and others in the past.

. . . .

11. . . . [Father] has neglected [Irina] by his actions and behaviors that have frightened the child, disrupted her psychological health and well-being and has subjected her in the past to domestic violence between him and her mother, which she has remembered and disclosed to her therapist. . . .

. . . .

13. . . . [Father] has been diagnosed with Antisocial Personality Disorder and Cannabis abuse, in partial remission in a psychological evaluation concluded on January 7, 2015. As such, he is prone to exhibit behaviors including extensive lying and a complete disregard for

> social or moral standards. Adaptive change is unlikely in those with such diagnosis and treatment was not recommended by the provider of the evaluation, Dr. Len Lecci, as it was not expected to improve the behavior upon which the diagnosis was based. . . .

Even if, *arguendo*, the permanency planning order does not adequately particularize Father's behaviors and resistance to treatment, we conclude these additional findings cure any gaps in the earlier order. *See In re L.M.T.*, 367 N.C. at 170, 752 S.E.2d at 456-57.

Father also challenges the evidentiary support for the findings in the permanency planning order insofar as the court relied on Dr. Lecci's psychological evaluation and addendum. Father contends that his diagnosis of Antisocial Personality Disorder is based entirely on Dr. Lecci's belief that Mother was more truthful than Father in responding to questions about their relationship and history of domestic violence. Citing doctrine that "it is reversible error for an expert to give an opinion about the credibility of a witness[,]" Father insists that "Dr. Lecci's determination that [Father] must be lying about domestic violence is not competent evidence."

As Father concedes, he did not object to any of the subject evidence when tendered at the permanency planning hearing. Therefore, he has "waived appellate review of this issue under North Carolina Rule of Appellate Procedure 10(a)(1)." *In re J.H.*, __ N.C. App. __, __, 780 S.E.2d 228, 239 (2015); N.C.R. App. P. 10(a)(1).

In any event, Father's argument is without merit. It is true that Dr. Lecci's report and diagnosis are grounded in part on his determination that Father did not provide truthful information and that Mother "was much more veridical" in responding to Dr. Lecci's questions during her own evaluation. However, the trial court was free to consider the bases for Dr. Lecci's diagnosis in deciding how much weight to give his opinion.[6] *See State v. Golphin*, 352 N.C. 364, 467, 533 S.E.2d 168, 235 (2000).

We reject Father's assertion that "Dr. Lecci's report makes clear that he diagnosed [Father] with Antisocial Personality Disorder only because he found [Mother] to be truthful in her account of domestic violence with [Father]" and that, therefore, Father "was lying." To the contrary, Dr. Lecci observed that Father's "evaluation was filled with internal inconsistencies, highly improbable explanations of events, and most importantly, an extremely elevated score on an objective measure of defensiveness/lying (the MMPI-2)." Dr. Lecci noted verifiable falsehoods by Father, such as his initial denial of any DSS involvement with his other children. Dr. Lecci deemed "most noteworthy" Father's "persistent denial of any problems, despite the fact that [his] offered explanations appeared disingenuous." Father was unable to provide plausible explanations for his actual circumstances: the allegations by three

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[6] Father cites to case law barring expert opinion testimony as to the credibility of a witness. *See State v. Kim*, 318 N.C. 614, 621, 350 S.E.2d 347, 351 (1986); *State v. Hannon*, 118 N.C. App. 448, 451, 455 S.E.2d 494, 496 (1995). However, Father did not testify in these proceedings.

different individuals that he engaged in "inappropriate/aggressive behavior[;]" the prior DSS involvement with his older children; the termination of his parental rights as to E.D.B.; and his own refusal to comply with "a previous court order for psychological testing" in E.D.B.'s case. Dr. Lecci noted Father's "similarly unrealistic responses when asked about other events," such as his denial of "ever experiencing *any stress at all*." (Emphasis in original). It was the combined "qualitative" evidence of Father's interview responses with the "quantitative," "fully objective" results of Father's MMPI-2 that led Dr. Lecci to his original diagnosis.

As reflected in his "Addendum" dated 7 January 2014, Dr. Lecci did report a "greater certainty of the diagnosis for [Father]" after performing Mother's psychological evaluation on 26 November 2014. However, while Dr. Lecci found Mother "much more veridical in her responding" to questions, his conclusion was based on the correspondence between Mother's responses and the known circumstances, her willingness to disclose information that cast her in an unfavorable light, and the results of the "validity scales" of her MMPI-2 indicating a "relatively straightforward an[d] honest approach to the test." As "extensive lying" is a hallmark feature of Antisocial Personality Disorder, Dr. Lecci's observation of this behavior by Father was central to his diagnosis and, therefore, properly considered by the court in assigning weight to Dr. Lecci's diagnosis. *See State v. Marine*, 135 N.C. App. 279, 284, 520 S.E.2d 65, 68 (1999).

Father also takes exception to the trial court's reliance on the written report submitted by DSS, which describes his "extensive history with Child Protective Services dating back to 2000 that include[s] extensive domestic violence both with his children and his partner." As explained above, Father's failure to object to this evidence at the permanency planning hearing waived appellate review of its admissibility and the trial court's reliance thereon. N.C.R. App. P. 10(a)(1); *In re J.H.*, __ N.C. App. at __, 780 S.E.2d at 239. Moreover, Father's objection to the report on hearsay grounds is unavailing. A court presiding at a permanency planning hearing "may consider any evidence, including hearsay evidence . . . or testimony or evidence from any person that is not a party, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C. Gen. Stat. § 7B-906.1(c) (2015). "It is clear from the permissive language . . . that it is within the sound discretion of the trial court whether to include or exclude hearsay evidence at a permanency planning hearing and, thus, the trial court's decision is reviewed on appeal only for an abuse of discretion." *In re P.O.*, 207 N.C. App. 35, 40, 698 S.E.2d 525, 529 (2010) (applying identical provision in former N.C. Gen. Stat. § 7B-907 (repealed effective Oct. 1, 2013)). Father shows no such abuse of discretion here.

Insofar as Father separately contends "that DSS did not really work with" him and the trial court "never made a real effort to reunite him with Irina," we find his

argument unpersuasive. The trial court's characterization of Father's progress and of his prospects for reunification is entirely consistent with the court's role as "weigher of evidence" and factfinder. *Southern Bldg. Maintenance, Inc. v. Osborne*, 127 N.C. App. 327, 331, 489 S.E.2d 892, 895 (1997). That Father would urge a different view of the evidence is unsurprising but does not provide grounds for relief on appeal. While he insists "[t]he evidence shows that [he] was making an effort" and "had performed every aspect of his case plan that he was able to perform[,]" the court was free to place greater weight on Father's persistent resistance to treatment as evidenced by his dishonesty with service providers, his unwillingness to acknowledge or accept responsibility for domestic violence, his refusal to admit to inappropriate behaviors during visitations with Irina, and his diagnosis of Antisocial Personality Disorder. Accordingly, we affirm the order ceasing reunification efforts.

III. Order Terminating Parental Rights

In his appeal from the termination order, father challenges the trial court's adjudication of grounds to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6). We apply the following standard of review to these claims:

> [W]e must determine whether the findings of fact are supported by clear, cogent and convincing evidence, and whether the findings support the court's conclusions of law. If there is competent evidence, the findings of the trial court are binding on appeal. An appellant is bound by any unchallenged findings of fact. Moreover, erroneous findings unnecessary to the determination do not constitute reversible error where the adjudication is

> supported by sufficient additional findings grounded in competent evidence. We review conclusions of law *de novo*.

*In re B.S.O.*, 234 N.C. App. 706, 707-08, 760 S.E.2d 59, 62 (2014) (citations and internal quotation marks omitted). Furthermore, "any single ground . . . is sufficient to support an order terminating parental rights. Therefore, if we determine that the court properly found one ground for termination under N.C. Gen. Stat. § 7B-1111(a), we need not review the remaining grounds" found by the court. *Id.* at 708, 760 S.E.2d at 62 (citations and internal quotation marks omitted).

A. Admission of Evidence

Father first claims the trial court erred by admitting into evidence Dr. Lecci's psychological evaluation of Mother "and in allowing Dr. Lecci to testify about it as it contained hearsay statements of [Mother] about [Father]." However, the transcript shows that Father raised no objection when Dr. Lecci testified about his evaluation of Mother or when he recounted Mother's statements about Father's acts of violence and alcohol abuse. *See* N.C.R. App. P. 10(a)(1). Father objected only when the evaluation document was tendered into evidence and made clear his assent to the preceding testimony:

> [COUNSEL]: Judge, I'm going to object to the report coming in. *I think Dr. Lecci's testified to his findings*. It contains specific statements made by [Mother] that I'm not in a position to be able to cross-examine her if the Department wanted to present Mrs. Rhodes to make those comments, but essentially they're in there; it gives the Court an opportunity to hear testimony from Ms. Rhodes

> that I'm not otherwise in a position to cross. *I have no objection to his testimony, his findings. I think his findings are indicated in [Father]'s psychological evaluation, which indicate the importance of [Mother's] psychological evaluation.*
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> THE COURT: Objection's overruled. It's received as Petitioner's 3.

(Emphasis added). "Where evidence is admitted over objection and the same evidence has been previously admitted . . . without objection, the benefit of the objection is lost." *State v. Alford*, 339 N.C. 562, 570, 453 S.E.2d 512, 516 (1995). Father's argument is overruled.

B. Findings of Fact

Father contests several of the trial court's findings of fact as unsupported by competent evidence. Father first excepts to portions of Findings of Fact 5, 6, 7, and 11, insofar as they "relate" to him engaging in domestic violence against Mother. It appears Father's argument addresses the following italicized portions of the court's findings:

> 5. . . . A comparison of [Mother's and Father's psychological] evaluations *led Dr. Lecci to conclude that domestic violence was severe and pervasive in the relationship between [Father] and [Mother*] . . . .
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> 6. . . . Visitation for [Father] was suspended with [Irina] after *the Juvenile stated to Ms. Chambers that her father had hurt her; hurt her mother; and that she had been present during the domestic violence in the household* and that the Juvenile stated that [Father] was following the foster parent's vehicle after leaving a visitation at DSS.

> *Ms. Chambers wrote letters to the Court, which were accepted into evidence, recommending a suspension of visitation that she believed was required for [Irina] to heal from her trauma and abuse.* Both children fear [Father] . . . .
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> 7. . . . The Court has continued to deny visitation to [Father] . . . due to the negative behaviors exhibited by [Irina] after visitations, and his failure to take any responsibility for the actions that led to the suspension of visitation, including the stalking of the child and foster mother after visitations and *the continued denial of the domestic violence perpetrated on [Mother] and others in the past*.
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> . . . .
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> 11. . . . [Father] has neglected [Irina] . . . and *has subjected her in the past to domestic violence between him and her mother*, which she has remembered and disclosed to her therapist. . . .

(Emphasis added). We address each of these findings in turn.

The record reveals sufficient competent evidence to support Finding of Fact 5 regarding Dr. Lecci's hearing testimony and his psychological evaluation of Father and addendum. As previously noted, the trial court properly considered the bases for Dr. Lecci's conclusions in determining the weight to assign his expert opinion. *See Golphin*, 352 N.C. at 467, 533 S.E.2d at 235. Likewise, Finding of Fact 6 is fully supported by and consistent with Ms. Chambers' testimony at the termination hearing and her previous letters to the court.

Father objects to Finding of Fact 7 on the ground that the trial court heard no evidence he engaged in domestic violence against "others" in addition to Mother. However, this finding describes the procedural history of the case and accurately reflects information received by the court at previous hearings that resulted in the suspension of Father's visitation.[7] Specifically, DSS informed the court that Father had a history of domestic violence dating to 2000 against his daughter E.D.B. and her mother. Dr. Lecci also addressed these reports of violence from E.D.B. and her mother in Father's psychological evaluation and noted Father's denials thereof. Ms. Chambers advised the court of Irina's disclosure, at four years of age, that Father "beat her with a belt when she was at his house a long time ago." Father's exception is overruled.

Father offers no additional argument with regard to Finding of Fact 11 in his brief to this Court. We conclude the finding that Father "subjected [Irina] in the past to domestic violence between him and her mother" is supported by the stipulated facts included in the trial court's "Order on Adjudication and Disposition" entered 25 July 2014.

Father further challenges the evidentiary support for "any" of the court's findings of fact regarding his diagnosis of Antisocial Personality Disorder. We conclude the findings are fully supported by Dr. Lecci's hearing testimony and his

[7] The trial court "took judicial notice of all orders in [Irina's case file] to the extent allowed by the North Carolina Court of Appeals . . . ."

psychological evaluation of Father and addendum. We are not persuaded by Father's suggestion that Dr. Lecci's testimony does not support "so bleak a picture" of his prognosis as portrayed by the trial court's findings. Dr. Lecci testified that Father's manifestation of the disorder was particularly resistant to treatment, as follows:

> [T]his is an unusual case, in the sense that the level of defensiveness and under-reporting and denial was so high in this particular case. So, this is not a very typical case for me, in the sense that when I evaluate people, usually there's some acknowledgment — some acknowledgment of distress, some acknowledge — you know, there was — there was — there wasn't anything that was offered up, here.
>
> And so it's really that extremeness that led me to say this is just not a case where at this time the client is in a position to benefit at all from therapy.

While Father points to Dr. Lecci's concession that Father might be amendable to treatment "down the road a few years, possibly," he overlooks Dr. Lecci's subsequent testimony, "But when you have the confluence of both of those things [no acknowledgment of problems plus high score on defensiveness], it's a complete waste of resources at that point. *There's absolutely no chance of change at that time*." (Emphasis added).

Father takes exception to findings that he lacked any viable relatives with whom to place Irina. However, DSS social worker Michelle Smith testified that no appropriate relatives were identified for placement during her involvement with the case from April 2014 through March 2015 when reunification efforts were ceased.

Absent some affirmative evidence to the contrary, we find this evidence sufficient to support the court's findings.

Father contends the evidence does not support the trial court's finding that he " 'did not make sufficient progress on his case plan.' " We begin by noting that a determination of "reasonable progress" under N.C. Gen. Stat. 7B-1111(a)(2) is in the nature of an ultimate finding or mixed question of law and fact, which must be supported by the court's evidentiary findings. *See generally In re O.C.*, 171 N.C. App. 457, 465, 615 S.E.2d 391, 396 (noting that "[e]vidence and findings which support a determination of 'reasonable progress' may parallel or differ from that which supports the determination of 'willfulness' in leaving the child in placement outside the home"), *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005).

The trial court made ample evidentiary findings, each grounded in competent evidence, to sustain the court's determination that Father failed to make reasonable progress on his case plan between April 2014 and the February 2016 termination hearing. In addition to detailing the results of Father's psychological evaluation by Dr. Lecci, the court found as follows:

> 7. . . . [Father] was referred to parenting classes twice; however, the provider would not allow him to participate due to their request for him to complete the Domestic Violence Offender's Program and a substance abuse assessment prior to enrollment. He did complete a MAPP training program that was not requested or ordered by the Court, which was not the same as the ordered parenting program. He did complete the DVOP program and the

substance abuse assessment and was current on his child support obligation. . . .

. . . .

[Irina has] been in the legal custody of [DSS] for a period of one year and almost ten months and reasonable efforts at reunification . . . w[ere] ceased by order of the Court at the hearing on March 25, 2015 . . . . The Court has continued to deny visitation to [Father] during the course of this case since the hearing date of September 17, 2014 due to the negative behaviors exhibited by the child, [Irina], after visitations, and his failure to take any responsibility for the actions that led to the suspension of visitation, including the stalking of the child and foster mother after visitations and the continued denial of domestic violence perpetrated on [Mother] and others in the past. . . .

. . . .

14. . . . [Irina and A.N.A.] were removed from the legal custody of the fathers on April 16, 2014, a period of almost a year and ten months to the date of this hearing and have resided in out of home placement or foster care since removal. In that time period, none of the fathers has made sufficient progress to enable the granting of unsupervised visitation, trial placement or reunification by the Court . . . . Visitation for [Father] as to his daughter has been suspended by the Court since the September 17, 2014 hearing due to the child's adverse reaction to visitation and his misconduct. The Court ceased efforts with the fathers on March 25, 2015 and from that date to the present date, no father has made sufficient progress that would prompt the Court to reverse the cessation of reasonable efforts by [DSS] to reunite the fathers with their respective children.

As shown above, the court credited Father with completing several components of his case plan.[8] It is well-established, however, that a case plan is not merely a list of tasks to be completed but a means to the end of productive change. *See In re Y.Y.E.T.*, 205 N.C. App. 120, 131, 695 S.E.2d 517, 524 (explaining that a parent's "case plan is not just a checklist" and that "parents must demonstrate acknowledgement and understanding of why the juvenile entered DSS custody as well as changed behaviors"), *disc. review denied*, 364 N.C. 434, 703 S.E.2d 150 (2010); *see also In re D.A.H.-C.*, 227 N.C. App. 489, 500-01, 742 S.E.2d 836, 844 (2013). In assessing Father's progress, the trial court was entitled to give primary weight to his intransigence on the issue of domestic violence, a basis for Irina's original adjudication as a neglected juvenile. *See In re M.P.M.*, __ N.C. App. __, __, 776 S.E.2d 687, 694 (2015).

Finally, as with the order ceasing reunification efforts, Father criticizes the trial court's termination order as "replete with findings that recount testimony, reports and recommendations" in lieu of actually finding evidentiary facts based on the evidence. We again agree with Father that " 'verbatim recitations of the testimony of each witness' " or of reports and recommendations received into evidence " 'do not constitute findings of fact by the trial judge.' " *In re L.B.*, 184 N.C. App. at

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[8] Although Father asserts that "no evidence supports the finding that [he] willfully failed to complete parenting classes," he concedes the court did not make such a finding but instead found "that he did not complete the proper parenting classes."

450, 646 S.E.2d at 415 (quoting *In re Green*, 67 N.C. App. at 505 n.1, 313 S.E.2d at 195 n.1). However, because the termination order contains additional proper findings that support the court's adjudication under N.C. Gen. Stat. § 7B-1111(a), the presence of these invalid findings does not constitute reversible error. *See In re T.M.*, 180 N.C. App. at 547, 638 S.E.2d at 240.

C. Conclusions of Law

Father claims the trial court erred in adjudicating grounds for terminating his parental rights based on neglect under N.C. Gen. Stat. § 7B-1111(a)(1). The Juvenile Code defines a "neglected juvenile," *inter alia*, as a person under eighteen years of age "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare . . . ." N.C. Gen. Stat. § 7B-101(14)-(15) (2015). "To establish neglect as a ground for termination of parental rights, the petitioner must present clear, cogent, and convincing evidence that (1) the child is neglected as described in N.C. Gen. Stat. § 7B-101(15) above, and (2) the child 'has sustained some physical, mental, or emotional impairment . . . or there is substantial risk of such impairment as a consequence of the neglect.' " *In re C.W.*, 182 N.C. App. 214, 219-20, 641 S.E.2d 725, 729 (2007) (quoting *In re Beasley*, 147 N.C. App. 399, 403, 555 S.E.2d 643, 646 (2001)). "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). Where "the parent has been separated from the child for an extended period of time" on the date of the hearing, "the petitioner must show that the parent has neglected the child in the past and that the parent is likely to neglect the child in the future." *In re C.W.*, 182 N.C. App. at 220, 641 S.E.2d at 729.

The trial court's findings reflect Irina's prior adjudication as a neglected juvenile based, in part, on her exposure to domestic violence between Father and Mother. While Father casts the evidence of his prior neglect of Irina as "scant," the record shows that Father stipulated to the facts alleged by DSS in support of Irina's original adjudication as neglected, thereby obviating the need for a formal proffer of evidence. The court's uncontested findings further show the psychological harm, including "a high level of anxiety; posttraumatic stress and adjustment disorders; behavioral problems and bed wetting" caused by Father's neglectful conduct.

The evidence and the facts found by the trial court also support its determination that a "restoration of legal custody to [Father] of [Irina] would result in a likelihood of repetition of neglect." The findings show that Father lost his right to visitation "due to his unacceptable behavior of stalking the foster mother and his daughter" following successive visitations in August and September 2014. He subsequently "fail[ed] to take any responsibility for the actions that led to the suspension of visitation" and continued to deny his history of domestic violence. The

findings reflect Father's diagnosis of Antisocial Personality Disorder, which is characterized by "extensive lying and a complete disregard for social or moral standards" and which makes "[a]daptive change . . . unlikely." The findings reflect Dr. Lecci's opinion that Father was particularly insusceptible to treatment, in light of his diagnosis and his refusal to "acknowledge any problems with his own behavior." Finally, despite Father's claim that "[t]he record contains no evidence that he is likely to neglect Irina," Dr. Lecci testified as follows:

> Q. And in [Father's] case, how would you see [his] diagnosis impacting his parenting if he were to have [Irina] returned to his custody?
>
> A. Well, certainly when it's combined with some of the history in this particular case, *it makes it very likely there would be a repeat of some of the aggressive behavior that was reported earlier*.
>
> Q. And you did indicate that some of the history of aggression was directed towards his children?
>
> A. Correct, yeah.

(Emphasis added).

Because we uphold the trial court's adjudication under N.C. Gen. Stat. § 7B-1111(a)(1), we need not review the two additional grounds for termination of Father's parental rights found by the court under N.C. Gen. Stat. § 7B-1111(a)(2) and (6). *In re B.S.O.*, 234 N.C. App. at 708, 760 S.E.2d at 62.

## IV. Conclusion

We affirm the trial court's order ceasing reunification efforts and the order terminating Father's parental rights as to Irina.

AFFIRMED.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).