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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-261

Filed: 5 September 2017

Burke County, No. 15 JT 100

IN THE MATTER OF: S.S.T.

Appeal by Respondent-Mother from order entered 15 December 2016 by Judge Wesley W. Barkley in Burke County District Court. Heard in the Court of Appeals 10 August 2017.

Chrystal S. Kay, for petitioner-appellee Burke County Department of Social Services.

Reeves DiVinere Wright, by Anné C. Wright, for respondent-appellant.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for guardian ad litem.

HUNTER, JR., Robert N., Judge.

Respondent, the mother of the juvenile S.S.T. (“Sarah”)¹, appeals from an order terminating her parental rights. On appeal, Respondent argues the trial court erred

¹ We use a pseudonym to protect the identity of the juvenile and for ease of reading. See N.C.R. App. P. 3.1(b) (2016).

by terminating her parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6) (2016) and made findings of fact unsupported by the evidence. We affirm.

I. Factual and Procedural Background

On 5 June 2015, Respondent contacted the Burke County Department of Social Services (“DSS”) and sought assistance finding immediate housing. Respondent claimed she and Sarah lived with a man who “kept propositioning her for sexual favor[s] and [was] threaten[ing] to kick her and the minor child out if she [did] not perform the sexual favors.” Shortly thereafter, on 7 June 2015, the Burke County Sheriff’s Department went to the residence and found Respondent naked on the floor and “foaming at the mouth.” First responders, who were already at the home when DSS arrived, took Respondent to the emergency room. Respondent was later flown to Carolinas Medical Center in Charlotte, North Carolina.

Previously, DSS unsuccessfully attempted to contact Sarah’s putative father and believed he was denying paternity. On 8 June 2015, DSS filed a petition alleging Sarah to be a dependent juvenile. DSS based the petition on the suspicious circumstances surrounding Respondent’s injuries, which left Sarah’s current residence unsafe, and because DSS could not identify an alternative placement. On the same day, DSS obtained non-secure custody of Sarah.

On 2 July 2015, DSS filed a second petition, this time alleging neglect and dependency. This petition alleged the following narrative. On 11 January 2015,

IN THE MATTER OF: S.S.T.

Opinion of the Court

while Respondent was eighteen weeks pregnant with Sarah, she went to the emergency room complaining of cramping and lower abdominal pain. Respondent admitted she used narcotics throughout her entire pregnancy, specifically that she consumed seven to eight Percocets each day. She last used narcotics the previous evening. Respondent tested positive for benzodiazepines, oxycodone, and tetrahydocannabinol. On 21 February 2015, Respondent went to the emergency room again, this time for “suicidal ideation.” Doctors in the emergency department diagnosed Respondent with schizophrenia, as a drug abuser, and determined her to be a “suicide risk[.]” DSS further alleged Respondent had a “long extensive history” of bi-polar disorder, depression, schizophrenia, and post-partum stress disorder.

Regarding Respondent’s injuries from 7 June 2015, Respondent suffered a severe head injury, which required emergency surgery to remove a large hematoma and a blood clot from her brain. Respondent remained in a coma for several days after the surgery and suffered from paralysis on the entire left side of her body, which affected her speech, vision, and ability to walk. Respondent required the use of a wheelchair following her release from the hospital. DSS further noted the Burke County Sheriff’s Department had closed the investigation regarding her injuries and stated foul play was not responsible.

The petition additionally alleged Respondent suffered from chronic homelessness, had not had stable housing for years, and did not have family support.

IN THE MATTER OF: S.S.T.

Opinion of the Court

Respondent suffered from substance abuse issues, which she would neither admit to, nor had she fully addressed. On 22 January 2015, Respondent was found in a home where marijuana, methamphetamine, and mushrooms were found, and she was charged with several drug related offenses.² DSS referred Respondent to a substance abuse treatment program, but she refused to attend and claimed she would address her substance abuse issues on her own.

Following a hearing on 24 September 2015, in an order entered 8 October 2015, the trial court adjudicated Sarah as a neglected and dependent juvenile based on facts agreed to by the parties. The trial court set an initial permanent plan of reunification.

The trial court held a review hearing on 14 January 2016. The trial court found Respondent admitted herself to Grace Hospital twice, once for depression, and once for depression and anxiety. During her second stay, Respondent tested positive for amphetamines and benzodiazepines. Respondent signed a case services plan in December 2015, but as of the hearing, still had not done the following: (1) submitted a substance abuse assessment; (2) submitted to random drug screens; (3) obtained a psychological assessment; or (4) obtained and maintained stable employment, income, housing, and transportation, as required by the case plan. Respondent moved to Waynesville, North Carolina, attended parenting classes at Futures, and “stated in Court that she is in a better place in her life[.]” Even though visitation had

² The petition did not reveal who found Respondent on 22 January 2015.

IN THE MATTER OF: S.S.T.

Opinion of the Court

been authorized since 5 November 2015, Respondent failed to visit Sarah. The trial court set a primary permanent plan of adoption, with a secondary plan of reunification.

The trial court held another review hearing on 10 March 2016. Between 9 December 2015 and the hearing, Respondent only completed the parenting classes required by her case plan. Respondent reported she completed substance abuse and psychological assessments, but DSS had not received either assessment. Respondent did not have stable housing and lived with her new boyfriend, Jonathan,³ in Valdese, North Carolina. Respondent admitted she used methamphetamines in Waynesville and tested positive, via a hair follicle test, for methamphetamines and opiates. Respondent's urine also tested positive for opiates. In an order entered 7 April 2016, the trial court found the following:

25. The respondent parents are not making progress on their family service case plan within a reasonable time. The juvenile has not been in the parents' care since June, 2015. The respondent mother has only completed her parenting classes and still has not address[ed] the major issues of her substance abuse and her mental health issues. The respondent father has not contacted the Department.

26. The respondent parents are not actively participating in completing their family service case nor cooperating with the Department and Guardian Ad Litem. The respondent[] mother has not consistently maintain[ed] contact with the Department. The respondent father has never contacted the Department.

³ We use this pseudonym to further protect the identity of the juvenile.

IN THE MATTER OF: S.S.T.

Opinion of the Court

The trial court kept the plan as a primary plan of adoption, with a secondary plan of reunification.

The trial court held another permanency planning review hearing on 16 June 2016. The trial court found Respondent completed parenting classes, a comprehensive clinical assessment, and a substance abuse assessment. Respondent was diagnosed with major depression and opioid dependence in early partial remission. She participated in group therapy and individual therapy. Respondent continued to relapse into prescription pain pill substance abuse, and she admitted that she “struggles with abusing her pain medicine[.]” One of Respondent’s drug screens came back “diluted”, which the court “consider[ed] . . . a positive drug screen.” Other drug screens returned negative, but Respondent “was surprised because she ha[d] been taking her Klonpin.” Although Respondent lived with her new husband and his grandparents, she “had significant instability in her housing since the outset of this matter.” The trial court further found Respondent failed to gain employment, was working towards her GED, and failed to visit Sarah since she entered DSS’s care. The trial court kept the plan as a primary plan of adoption, with a secondary plan of reunification.

On 2 August 2016, DSS filed a petition to terminate Respondent’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), (2) (failure to make reasonable progress), (3) (failure to pay support), and (6) (dependency). On 18

IN THE MATTER OF: S.S.T.

Opinion of the Court

October 2016, 3 November 2016, 29 November 2016, and 1 December 2016, the court held termination hearings. DSS's evidence tended to show the following.

DSS called Respondent. DSS first became involved with Sarah because Sarah tested positive for drugs at birth and Respondent asked DSS for help leaving a friend's home. On 6 June 2015, Respondent went out drinking and left Sarah with her friend's sister. Respondent suffered a head injury that evening. Respondent believed her injury was a result of her witnessing a murder while pregnant with Sarah. As a result of her head injury, Respondent had brain surgery and stayed in the hospital from 7 June 2015 to 2 July 2015. Respondent was strictly wheelchair-bound from July 2015 until December 2015.

Because Respondent struggled controlling "how and when" she took certain medication, her husband administered all her medication. Following doctor's orders, she was weaning herself off of pain pills, even though she suffered from pain every day. When asked about her history of abusing prescription medication, Respondent described the history as lasting "a pretty good while." At the hearing, Respondent "honestly [could not] tell" the court the last time she abused prescription pills. However, she remembered telling A Caring Alternative employee she misused pain medication the weekend before, on 3 October 2016. Additionally, on 16 September 2016, Respondent and her husband argued at a hospital because her husband suspected she was "crushing and snorting" her medication. Respondent also admitted

IN THE MATTER OF: S.S.T.

Opinion of the Court

she used a week's worth of medication over a weekend in May 2016. In all, Respondent abused her prescription medication "[a]bout seven or eight times" since May 2016, the last time being in October.

Although Respondent did not recall drinking in "months and months", she admitted to drinking too much in August 2016. Respondent attended her first AA meeting approximately a month before the hearing. Respondent's husband also struggled with alcohol, and last drank in September 2016. Respondent admitted to using methamphetamine and smoking marijuana, although the last time she smoked was "a month or so, a couple of months ago."

After DSS served her with its petition to terminate parental rights, Respondent "had a nervous breakdown" and stayed in the hospital from 9 August 2016 to 19 August 2016. Also in August 2016, Respondent moved into a three bedroom mobile home with her husband. Her husband worked with a roofing company, but Respondent did not work.⁴

DSS next called Andi Brymer, a caseworker at A Caring Alternative treatment center. DSS tendered Brymer as an expert in substance abuse counseling. Respondent had been Brymer's client since February 2016. The goal of "ACT teams" is to prevent people from being in long-term facilities for mental health. On 2 March

⁴ Respondent testified at the first portion of the hearing, on 18 October 2016. At the 29 November 2016 hearing, Ms. Singleton testified Respondent's husband no longer worked at the roofing company. Instead, Respondent's husband worked at Salvation Army on weekends and at EJ Victor, a business in Morganton.

IN THE MATTER OF: S.S.T.

Opinion of the Court

2016, Brymer performed a comprehensive clinical assessment on Respondent. Respondent informed Brymer of her legal, mental, and substance abuse issues. Brymer diagnosed Respondent with major depression and opioid dependence in early/partial remission.

Respondent set goals with Brymer, one of which was to regain custody of Sarah. Respondent also set a goal to not abuse medication; however, on several occasions, she “overuse[d]” her medication by taking all her medication for the week in one weekend. Respondent failed to report some of this medication abuse to the ACT team. When asked by staff members or other group members about the overuse, Respondent became upset and yelled at others. At the time of the hearing, Respondent had not used pain medication for two weeks.

When Respondent was hospitalized in August 2016, Brymer visited her in the hospital. Upon entering the emergency room, Respondent was suicidal. Respondent also had another hospitalization in September 2016.

Respondent told Brymer her husband drank “three or four drinks” in September, not just one beer. Additionally, Respondent told Brymer her husband relapsed twice and drank, contradicting Respondent’s prior testimony.

DSS recalled Brymer to the stand at the 1 December 2016 hearing. Brymer believed Respondent progressed in maintaining a stable residence, and testified:

I’ve watched her, you know, progressively find more and more stable residence from when I first started with her.

IN THE MATTER OF: S.S.T.

Opinion of the Court

She was in an environment that she feared could jeopardize her sobriety and was also outside some recommendations of DSS. They moved with [her husband]'s other grandparents, which was a better environment, but not ideal. But now they are living in their own home, which has been the best situation yet.

Overall, during her treatment of Respondent, Respondent progressed in her residential situation and substance abuse. Brymer had “no doubts” Respondent made “reasonable progress” towards fulfilling her goal of regaining custody of Sarah. However, when asked if Respondent could maintain her sobriety if Sarah was returned to her home, Brymer responded “[w]ith a lot of support.” Additionally, Respondent was still in the “beginning stages” of her sobriety.

DSS next called Rachel Butler, a social worker supervisor with DSS. Butler supervised different social workers assigned to Respondent’s case. Although Respondent worked during the pendency of the case, she did not contribute any kind of support for Sarah in the six months prior to the termination petition. In June 2016, DSS allowed Respondent to visit Sarah at Family Connections. DSS could not observe if Respondent was capable to stand, pick up Sarah, or carry Sarah because Respondent avoided those actions. Thus, DSS had “ongoing concern” about Respondent’s ability to “carry [Sarah], to pick her up, up and down off the floor and carry her[.]” At the end of the visit, Respondent cried “considerably” and was “very upset[.]”

IN THE MATTER OF: S.S.T.

Opinion of the Court

DSS rested its case, and Respondent called Joy Singleton, Respondent's Pastor's wife.⁵ As Respondent's friend, Ms. Singleton visited Respondent's home. Ms. Singleton described Respondent's current home as:

Her living situation right now, they have a three-bedroom home which would accommodate the husband and the wife as well as two separate rooms for the children. The one room specifically in [Sarah]'s case is, she has the things that she needs in that room. She has toys. She has a crib. She has diapers. They have painted her name on the door. They have painted a rocking horse for her. They have done several things for her. And they have food in the home. They have stayed constant with having their rent paid and being there, and they have kept this place up for a few months now, actually. And they are doing really good.

Additionally, Respondent and her husband kept the home clean, and Ms. Singleton never saw any drugs or alcohol in the home.

Ms. Singleton spoke to Respondent as her friend and spiritual advisor. Specifically, Respondent spoke with Ms. Singleton about Sarah, "She tells me that she loves her daughter. She wants to see her daughter. She wants her daughter to live with her. She loves her daughter as being -- I've heard it over and over again, and she cries over her daughter." In the nine months Ms. Singleton has known Respondent, Respondent has grown as a person and is more stable.

Respondent next called Joshua Singleton, the pastor of Respondent's church. Mr. Singleton also worked as a peer navigator at Burke Integrated Health, which is

⁵ In an effort to accommodate witnesses' schedules, the trial court allowed Respondent to call Singleton as a witness before DSS rested.

Opinion of the Court

affiliated with A Caring Alternative. Mr. Singleton characterized Respondent's marriage as a stable relationship. Although Respondent's husband "struggled with his occupation[,]" he currently was "at the most stable employment" working in construction. Additionally, he characterized Respondent as a "champion" and characterized her progress as follows:

Whenever I first met [Respondent], she was a bundle of mess. She was just a very unstable person at that time; spiritually, emotionally distraught. And since that time, she has gained -- she has been a recovery champion. She has gained and pursue a spiritual connection. She has done her best to make natural supports. She has done her best to try employment, as mentioned by the DSS worker earlier, the seven points that you-all asked for. She has done her best to go to the parenting classes and to submit to the drug screens, and I have just been -- it's been an honor and privilege to be able to witness the growth inside [Respondent].

In an order entered 15 December 2016, the trial court terminated Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2) and (6). Respondent filed timely notice of appeal on 28 December 2016.

II. Standard of Review

"The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citation omitted). Unchallenged findings are deemed supported by competent evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93,

97, 408 S.E.2d 729, 731 (1991) (citations omitted). Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate Respondent's parental rights. See *In re T.M.*, 180 N.C. App. 539, 540, 638 S.E.2d 236, 240-41 (2006) (citation omitted). "The trial court's conclusions of law are reviewed *de novo*." *In re L.C.R.*, 226 N.C. App. 249, 250, 739 S.E.2d 596, 597 (2013) (citation omitted).

III. Analysis

Respondent argues the trial court erred by concluding grounds existed to terminate her parental rights. We disagree.

N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) (citation omitted).

A "[n]eglected juvenile" is defined as:

[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) (2016). Generally, "[i]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the

IN THE MATTER OF: S.S.T.

Opinion of the Court

fitness of the parent to care for the child ‘at the time of the termination proceeding.’” *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). When, however, as here, “a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, ‘requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.’” *Id.* at 435, 621 S.E.2d at 242 (citing *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003)). “In those circumstances, a trial court may find that grounds for termination exist upon a showing of a ‘history of neglect by the parent and the probability of a repetition of neglect.’” *Id.* at 435, 621 S.E.2d at 242 (citation omitted).

The trial court made the following findings:

31. On September 24, 2016, the juvenile was adjudicated [a] neglected and dependent juvenile. The adjudication consisted of various issues of the respondent mother to include substance abuse issues, mental health issues, transient life style and housing, lack of employment, and inability to parent the juvenile.

32. There was substance abuse by the mother at the time of the birth of the juvenile and the adjudication of the juvenile. The substance abuse was in [the] form of prescription medication[,] also illegal substance [abuse] of methamphetamines, marijuana, and abuse of alcohol.

33. The respondent mother’s abuse of prescription medication, illicit substances, and illegal abuse of alcohol has continued occurred [sic] throughout the [pendency] of

Opinion of the Court

the action up to at least October 3, 2016.

34. In February, 2016 the respondent mother tested positive for methamphetamines.

35. In May, 2016 the respondent mother submitted to a drug screen and the results were diluted and the Court counted that test as a positive.

.....

37. On May 8, 2016, the respondent mother took all her medication against doctor's advice[] rather than as prescribed.

.....

40. In August, 2016 the respondent mother had an additional hospitalization due to drinking and mental health issues.

41. On September 16, 2016, the respondent mother again violated the conditions of her prescription medication and took those prescription pills in capacity and amounts outside of the prescribed amount.

42. On October 3, 2016, the respondent mother again abused her prescription medication outside of the amount as prescribed.

43. At all times the respondent mother has been truthful with her ACT team of advising them of her relapses.

.....

45. However, the respondent mother's relapses, diluted screens, and positive tests have continued even after her extensive services of her ACT team[.]

.....

Opinion of the Court

48. Despite the respondent mother receiving ten (10) months of extensive services she has continued to struggle with those substance abuse issues and mental health issues that led to the removal of the juvenile.

49. The Court finds neglect of the juvenile in September, 2015 was in part the result of [] issues of instability of housing by the respondent mother.

50. The respondent mother has had numerous unstable housing and living situations up till [sic] the time of October, 2016. This instability of housing includes periods of homelessness, a negative situation in Waynesville in which she fled from, her being asked to move from grandparent's home, living in hotels, and living with husband's family which she left.

51. Now the respondent mother has stable housing with [her husband] and has had that housing for two (2) to three (3) months.

52. The respondent mother's limited period of stability in housing for the last two (2) to three (3) months is weighed heavily against the multiple engagement[s] of unstable housing as stated prior and that also being one of the conditions that led to removal of the juvenile.

.....

56. While the respondent mother has engaged in parenting classes, had comprehensive clinical psychological evaluation, substance abuse assessment, and participated in some random drug screens she has had various issues of positive drug tests, relapses, drinking episodes, and hospitalizations.

First, regarding findings of fact 50, 51, and 52, Respondent contends the evidence demonstrates she secured stable housing in August 2016, and, thus, she

IN THE MATTER OF: S.S.T.

Opinion of the Court

lived in her current home for four to five months prior to entry of the order terminating her parental rights, as opposed to the two to three months cited in the order. We agree. The evidence demonstrates Respondent obtained housing in August 2016, and the trial court entered the order terminating her parental rights in December 2016.

Second, when concluding grounds existed to terminate Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), the trial court stated "there is clear and convincing evidence that if the juvenile were returned to the respondent mother's care *she would continue to neglect the juvenile.*" [Emphasis added]. While the trial court may not have used the words "repeat" or "repetition," we conclude the trial court's determination that there was a probability of future neglect if Sarah was returned to Respondent's care was sufficient to uphold termination of parental rights based on neglect. *See In re D.A.H.-C.*, 227 N.C. App. 489, 501, 742 S.E.2d 836, 844 (2013) (affirming termination of parental rights where this Court concluded the trial court's findings of fact supported "its determination that there would be a substantial probability of future neglect or abuse in the event that the children were returned to Respondent–Mother's custody"). Additionally, our Court is permitted to reclassify this conclusion as a finding of fact and review it accordingly. *See In re T.H.T.*, 185 N.C. App. 337, 345, 648 S.E.2d 519, 524 (2007), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008).

IN THE MATTER OF: S.S.T.

Opinion of the Court

Respondent argues *In re L.L.O.*, ___ N.C. App. ___, 799 S.E.2d 59 (2017) and *In re E.L.E.*, ___ N.C. App. ___, 778 S.E.2d 445 (2015) require reversal of the termination order. However, unlike the order here, the orders in *L.L.O.* and *E.L.E.* were completely devoid of any statement regarding the likelihood of repetition of neglect if the juvenile were returned to the respondent-parents' homes. *L.L.O.*, ___ N.C. App. at ___, 799 S.E.2d at ___; *E.L.E.*, ___ N.C. App. at ___, 778 S.E.2d at 450-51. Thus, *L.L.O.* and *E.L.E.* are distinguished from the case *sub judice*.

Third, we conclude the trial court's findings were sufficient to support its determination that neglect would continue if Sarah was returned to Respondent's care. Respondent contends she was in "recovery," citing evidence she weaned herself from prescription pain medications, no longer used illegal substances, and actively engaged in substance abuse counseling and therapy. However, the trial court's findings also demonstrate Respondent continued to abuse her prescription medication, despite receiving intensive services, as recently as October 2016.

Respondent further cites evidence showing she maintained stable housing. However, while we have stated we agree with Respondent that the trial court's finding stating she secured stable housing for only two to three months was in error, and instead was four to five months, we conclude this minor mathematical error is not prejudicial in light of the following facts: (1) Respondent did not obtain housing until shortly before the termination hearing; (2) Respondent's lengthy history of

IN THE MATTER OF: S.S.T.

Opinion of the Court

unstable housing; and (3) unstable housing was a primary issue which led to the adjudication of neglect. Thus, the trial court was free to determine that these factors weighed heavily against Respondent. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (citation omitted) (it is the trial judge's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom").

Consequently, we conclude Respondent's long history of substance abuse and unstable housing, when compared to her relatively short period of housing stability and possible substance abuse remission, supports the trial court's finding that neglect would repeat should Sarah be returned to her care. *See In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011) (citation omitted) ("Relevant to the determination of probability of repetition of neglect is whether the parent has 'made any meaningful progress in eliminating the conditions that led to the removal of [the] children.' "). Therefore, we hold grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Respondent's parental rights.

Respondent additionally argues the trial court erred by concluding grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a) (2), and (6) to terminate her parental rights. However, because we conclude grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to support the trial court's order, we need not address the remaining

IN THE MATTER OF: S.S.T.

Opinion of the Court

grounds found by the trial court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34 (citation omitted). Accordingly, we affirm the trial court's order terminating Respondent's parental rights.

IV. Conclusion

For the reasons stated above, we affirm the trial court's order terminating Respondent's parental rights.

AFFIRMED.

Judges BRYANT and MURPHY concur.

Report per Rule 30(e).