NO. COA05-1515

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

IN THE MATTER OF: Stanly County
R.D. Nos. 01 J 16, 03 J 42

Appeal by respondent mother from order entered 3 February 2005 by Judge Christopher W. Bragg in Stanly County District Court. Heard in the Court of Appeals 15 August 2006.

John Webster, for petitioner-appellee Stanly County Department of Social Services.

Vita A. Pastorini, for petitioner-appellee Guardian ad litem.

Mercedes O. Chut, for respondent-appellant.

TYSON, Judge.

T.D. ("respondent") appeals from order entered terminating her parental rights of her minor child, R.D. We affirm.

I. Background

A. Consent Adjudication Order

Respondent is the mother of eight children. By 1993, four of her children were living with foster parents. On 3 April 2001, the Stanly County Department of Social Services ("DSS") became involved with respondent and her four remaining children, R.D., A.G., T.G., and S.C., after DSS substantiated that the children were neglected by inappropriate discipline. DSS found that respondent bit R.D. on his right cheek leaving teeth marks when he was nine years old.

DSS reported respondent had "continuously exhibited her lack of ability to exercise control and authority over her children" since 29 August 2001. Respondent disciplined R.D. by hitting him with a broomstick, choking him, and throwing him to the floor. Respondent also allowed her boyfriend to "whoop" her children. R.D. told DSS that respondent's boyfriend took him to a park and tied his hands to a truck with a rope. Respondent's boyfriend then held R.D. by his feet and beat him with a belt buckle. R.D. begged DSS not to mention this incident to his mother because he was afraid he would be beaten again. When DSS asked respondent about the incident, she first stated that R.D. was lying. After further discussion, respondent admitted that she did let her boyfriend take R.D. to the park to "whoop" him "because when you whoop them at home, they scream and cut up like somebody's killing them."

On 10 September 2001, DSS received a telephone call from respondent in which she stated "[she] can't take it anymore and DSS and the system could have the children because they don't listen and want to do what they want to do." DSS arrived at respondent's home and found her yelling and cursing at her children.

On 13 September 2001, DSS went to respondent's home to transport her to a 9:00 a.m. appointment to discuss her children's misconduct. When DSS arrived, they realized respondent was scheduled to meet with R.D.'s school counselor at 8:30 a.m. Respondent was cursing and belligerent. Respondent stated, "F--k you and I ain't going to no school for no meeting, y'all wanted the children now you got them." DSS transported respondent to R.D.'s

school to discuss R.D.'s vision problems. Respondent was uncooperative and walked out of the meeting. As respondent left the meeting, she told DSS "the State can have them." Respondent saw R.D. in class and told him "wherever you go listen to the person and behave."

DSS filed a Juvenile Petition on 14 September 2001 alleging R.D. was an abused, neglected juvenile. R.D. was removed from respondent's home and placed in non-secure DSS custody. On 21 March 2002, respondent stipulated that her children were neglected juveniles as defined by N.C. Gen. Stat. § 7B-101 in a consent adjudication order. R.D. remained in legal and physical custody of DSS. The court ordered respondent to visit with R.D. at least once per month and to attend all treatment planning sessions at Alexander Children's Center. Respondent was also required to participate in any family counseling deemed necessary. Respondent was further ordered to submit to a mental health assessment and to follow any recommended classes or counseling.

B. Mental Health Evaluation

Respondent was ordered to have a mental health assessment on 15 May 2002, but failed to appear until 15 July 2002. When the assessment was completed, it was recommended respondent be scheduled for a psychological evaluation. Respondent was examined twice on 26 July and 2 August 2002 and was diagnosed with Personality Disorder and antisocial and narcisstic traits. Respondent was also found to suffer from an alcohol and cocaine dependence which were in full sustained remission. The

psychological evaluation stated "it [was] unlikely that court-ordered treatment would result in a positive outcome given she [did] not see herself as carrying any responsibility for the current situation." Respondent described herself as a good parent and vehemently denied abusing her children. Respondent saw herself as being unfairly targeted by Piedmont Behavioral Healthcare. It was recommended that respondent continue to attend parenting classes and a women's anger management class.

C. Anger Management

Along with the recommendation from the psychologist, respondent's behavior also indicated she needed to attend anger management classes. On 8 May 2002, R.D.'s sister was taken to the hospital because respondent had hit her in the face and on her back with a broomstick. This action led the court to conclude respondent again neglected her children by using inappropriate discipline. On 16 July 2002, respondent attended an administrative review hearing to discuss recommendations and her therapy at Piedmont Behavioral Healthcare. Respondent began arguing with a relative. R.D.'s case manager stepped in and was walking the relative out the door when respondent assaulted him while trying to hit the relative. Assault charges were filed on respondent. The trial court adopted the recommendation of the psychologist and ordered respondent to attend anger management class on 26 September 2002. The mental health counselor agreed to schedule classes that did not conflict with respondent's work schedule. Prior to 3 January 2003, respondent attended only one of five scheduled

meetings because of work. Respondent completed her anger management program on 13 May 2003 with little effect on her behaviors. On 29 May 2003, during an administrative hearing, respondent walked out of the courtroom and assaulted the guardian of R.D.'s youngest brother.

D. Parenting Class

Respondent started attending mental health counseling sessions with R.D. on 28 September 2001 at Piedmont Behavioral Healthcare. On 19 March 2002, Piedmont Behavioral Healthcare decided to use half of respondent's counseling sessions for parenting instructions because she had failed to attend parenting classes contrary to court orders.

In June 2002, respondent began attending parenting classes but stopped coming after the 8 August 2002 court date. The initial classes required attendance for ten consecutive weeks. Respondent did not attend ten consecutive parenting classes. The structure was changed to a twenty-four consecutive week period. Since respondent began participation in parenting classes, she attended a total of six sessions. Respondent failed to attend thirty-one times prior to being dismissed from the group in June 2003. Respondent stated she did not feel the need to go to the classes because she had never abused her children and did not see her part in the children being in foster care.

From June 2002 to June 2003, numerous attempts were made to get respondent to return to the group. Respondent was reminded several times, both in and out of court, of her obligation to

attend and the day and time the group met. Respondent made no further contact until she showed up unannounced on 13 October 2003 expecting to re-enter the group. Respondent had ample opportunity to attend the group sessions but chose not to avail herself of these classes. Respondent had cited transportation issues in the past as her reason for not attending.

Respondent rejoined the group on 4 November 2003. She sporadically attended classes in late 2003 and early 2004, but never attended twenty-four consecutive meetings. In the opinion of respondent's counselor, respondent had not attended enough parenting sessions to actually gain any specific knowledge about R.D.'s situation or how to handle discipline issues appropriately. The counselor stated, "Given the evidence within her chart indicating [respondent] is unlikely to benefit from treatment (i.e., her psychological evaluation, completion of anger management with a subsequent assault), even if she does attend parenting group, actual behavioral or attitudinal change is not expected."

E. Family Therapy

On 28 March 2002, respondent visited Alexander Children's Center for her first treatment team meeting. At this meeting, a long term plan of treatment, that included reunification with her children, was discussed. Following the visit, R.D. exhibited tactile and visual hallucinations. R.D. had difficulty falling asleep and became more aggressive and oppositional after seeing respondent. R.D. requested that he not be required to see respondent at their first family therapy session on 23 April 2002

but later changed his mind and stated he wanted to see respondent "a little bit." The afternoon after the meeting, R.D. was restrained and stated that he did not want to see respondent. Due to R.D.'s behavior following respondent's visits, these sessions stopped on 2 May 2002. The treatment sessions were to resume at the recommendation of R.D.'s therapist.

Alexander Children's Center staff scheduled an appointment with respondent on 17 September 2002. DSS arranged transportation for respondent, but she failed to attend because she said she was out of town for her sister's funeral. Respondent did not actually attend the funeral or call to reschedule her appointment. Respondent did not attend another therapy session until 20 December 2002. Although respondent was not following court orders, she was still offered individual therapy one day a week without R.D. being present. These individual sessions were offered to work on respondent's parenting skills and to work on and resolve the problems that had led to R.D. being placed into custody. By April 2003, respondent had only attended one family therapy session. Respondent also visited R.D. only twice after 7 January 2003.

On 16 May 2003, respondent showed up at Alexander Children's Center unannounced and walked the halls trying to find R.D. A counselor was notified and respondent and R.D. sat down for a treatment meeting. During the session, respondent asked R.D. if he was ready to come home. R.D. left the meeting at that point. Respondent attended a therapy session in July and visited R.D. in

December 2003. In January 2004, the hearing began and no further visitation occurred.

F. R.D.'s Improved Behavior

Since R.D. was placed in non-secure custody with DSS on 14 September 2001, he was placed in twelve different foster homes before finally being placed in Alexander Children's Center on 8 March 2002. R.D. had "aggressive acting out behaviors" that led to him being discharged from each foster home. R.D. was originally placed in the psychiatric residential treatment facility unit at Alexander Children's Center. Upon arriving at the center, R.D. was exhibiting behaviors such as hyperactivity, impulsiveness, inability to focus, provoking peers to assault him, assaulting peers, oppositional behavior, difficulty falling asleep, biting himself, self-mutilation, and assaulting staff. R.D. also exhibited tactile and visual hallucinations. R.D.'s behaviors escalated after visits with respondent. Due to these behaviors, visits with respondent ceased. Telephone meetings were suggested and R.D. was allowed to call respondent every Tuesday. R.D. declined to call respondent on all but one occasion. Due to his behavior on those Tuesdays, the telephone calls were no longer offered.

R.D. was diagnosed with oppositional defiant disorder and attention deficit disorder. During therapy, R.D. slowly opened up about his thoughts and feelings about his mother and how she had treated him. In a letter, R.D. wrote:

> My mom ruined my life. My mom ruined my life by hitting me with her fist and almost beating

> me to death. Right now a lot of moms are having their kids taken away and put up for adoption and I hope that I don't have to do that. I feel sad for myself. I'm sorry for making you cry the other day because somebody said I didn't love you. I really do love you but it is better that I don't see you that way I don't have to get beaten. I told the teacher that you bit me on the face and you did and you whipped me so I don't want to get whipped when I tell the truth. I am making plans to live with someone else, another family and I want to be adopted.

R.D. indicated in therapy sessions that he was "special" because he was still alive and that his life was "special" because he was not at home. R.D. wrote a letter to the judge saying that he wanted the judge to know what his mother had done to him and he thought respondent would hurt him bad enough to kill him.

While out of his mother's care, R.D.'s behavior improved significantly. By February 2003, R.D. stepped down from his placement in the psychiatric residential treatment facility unit to a Level II placement in a family type setting. By October 2003, R.D. was performing better in the school and in a family environment.

G. Termination of Parental Rights

DSS filed the petition for termination of parental rights on 1 May 2003. The petition alleged that respondent: (1) neglected R.D. and (2) willfully left R.D. in foster care for more than twelve months without showing reasonable progress in correcting the conditions which led to his removal. The trial court entered its order terminating respondent's parental rights on both grounds on 9 February 2005. The court concluded that clear and convincing

evidence showed it was in the best interest of R.D. that respondent's parental rights be terminated. Respondent appeals.

II. Issues

Respondent argues that the trial court erred by: (1) entering findings of fact numbered 7, 10, 11, 12, 13, 14, and 15; (2) concluding she had willfully left R.D. in foster care or placement outside of the home for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made; (3) concluding she had neglected R.D. pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); (4) incorporating into its order the multiple records and documentation contained on the official evidence log; and (5) taking judicial notice of the court file.

III. Standard of Review

A termination of parental rights proceeding involves two separate analytical phases: (1) an adjudication stage and (2) a dispositional stage. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). A different standard of review applies to each phase.

"At the adjudication stage, the party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). The standard for appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings of fact support its conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc.*

rev. denied, 353 N.C. 374, 547 S.E.2d 9 (2001). "Clear, cogent, and convincing describes an evidentiary standard stricter than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt." *N.C. State Bar v. Sheffield*, 73 N.C. App. 349, 354, 326 S.E.2d 320, 323, *cert. denied*, 314 N.C. 117, 332 S.E.2d 482 (1985). We review the trial court's conclusions of law *de novo*. *Starco, Inc. v. AMG Bonding and Ins. Servs.*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996).

If the petitioner meets its burden of proving at least one ground for termination of parental rights exists under N.C. Gen. Stat. § 7B-1111(a), then the trial court proceeds to the dispositional phase and determines whether termination of parental rights is in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a) (2005). We review the trial court's "best interests" analysis and decision under an abuse of discretion standard. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001).

IV. Findings of Fact

Respondent argues findings of fact numbered 7, 10, 11, 12, 13, 14, and 15 are not supported by clear, cogent, and convincing evidence. We disagree.

"In a non-jury neglect adjudication, the trial court's findings of fact, [if] 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) (citing *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). 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." *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984). "If different inferences may be drawn from the evidence, the trial judge must determine which inferences shall be drawn and which shall be rejected." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365-66 (2000). Unchallenged findings of fact are binding on appeal. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982).

Here, the trial court found:

> 7. That the Department of Social Services worked with [respondent] for more than one year prior to the filing of the original Juvenile Petition on September 13, 2001. Satisfactory progress with case management services was not made within that one year period, which led the Department of Social Services to file the Juvenile Petition[.]
>
> . . . .
>
> 10. The Court received and considered multiple records and documentation that is contained on the official evidence log kept by the Clerk of Court, all of which is specifically referenced and incorporated herein.
>
> 11. Significant efforts to reunify R.D. and [respondent] were made by the Stanly County DSS including provision of transportation services, visitation resources, coordination of efforts between mental health agencies, the mother and the child, and supervision of the provision of resources for the minor child. [Respondent] was apprised at different times throughout this case of the resources available to her, including transportation, family therapy appointments, visitation times, and counseling/mental health appointments, but

that despite the efforts of the Stanly County DSS and other service providers, [respondent] absented herself from these services the majority of the time. R.D. has been in foster care and has failed to exhibit positive response to any service in that she is in no better position to care for the child today than she was at the outset of the matter.

12. Efforts were made by the staff at Alexander Children's Center and Piedmont Behavioral Healthcare/Daymark, including those mentioned above, to assist [respondent] in gaining and understanding of how to overcome the issues that led to placement of R.D. and how to accommodate the needs of R.D. based on his past and future behavioral and environmental needs. Those efforts included the provision of parenting classes, anger management classes, family therapy, visitation resources, individual therapy, assessments and evaluations.

13. Since September 2001 and up to and including the date of entry of this Order, [respondent] has consistently advised or indicated to professional personnel working with her or R.D. that she does not understand what role she played in R.D.['s] removal from her custody, and that she played no part in his removal from her care. All of the information, documentation and testimony corroborated that [respondent] held these beliefs up to and including the conclusion of this hearing.

14. From September 2001 until the present time, the Court cannot conclude or find based on the testimony and exhibits presented that [respondent] has successfully completed any of the services offered to her. More specifically, the Court does find as follows:

(a) That [respondent] attended 16 sessions of anger management classes with Cheryl Smith, but did not finish those sessions until mid May 2003 after having been Ordered to do the same no less than 12 months prior to the filing of the Termination of Parental Rights Petition. More specifically the Court finds that [respondent] showed reluctancy to complete this Court Ordered objective of

anger management classes by failing to follow through with the Court's Order to complete the necessary evaluations until the summer of 2002, months after she was Ordered to do so and after several missed or cancelled appointments. [Respondent] then did not complete anger management classes until May 2003 after having been eliminated from the group for lack of attendance in early 2003.

(b) The Court finds that it initially specifically requested Piedmont Behavioral Healthcare to provide these classes at times matching [respondent's] work schedule to assist her, and that she failed to follow through with those times when they were made specifically available to her.

(c) That upon completion of the anger management sessions, [respondent] exhibited two separate incidents of violent behavior, one in the Stanly County Courthouse following [a] hearing in this matter at the end of May 2003, and one in an administrative review meeting at the Stanly County DSS facility in July 2003 which led to criminal assault charges and an associated guilty plea by [respondent].

(d) The actions and omissions of [respondent] during and after the provision of anger management classes suggest that she has not availed herself of the same and has not learned anything from them, leading to the probability of future neglect of the child and the continued neglect of the child up to and including the entry of this Order in that she cannot present to the Court that she can properly parent R.D. The Respondent Mother has shown no quantifiable ability to control the anger issues that led to the initial removal of R.D. from her care.

(e) That [respondent] enrolled in, but has never completed parenting classes offered by Piedmont Behavioral Healthcare/Daymark through Connie Philbeck. [Respondent] has shown little to no improvement in her ability or understanding of how to parent R.D. and has not availed herself of this particular resource which was designed to assist her. The Court again specifically

requested that these classes be afforded to [respondent] on a consistent basis at a time that would accommodate her schedule. The Court finds that the day and time of these classes has never changed since the beginning of this matter in 2001, but that [respondent] exhibited a pattern of claiming she did not know when the classes were, [no showing] for several classes in a row. However, despite these claims [respondent] would appear after many absences at the designated time and place without instruction or prompting by Ms. Philbeck or staff at her agency.

(f) [Respondent] was offered visitation/family therapy at Alexander Children's Center beginning in March 2002 upon R.D.['s] admission there. From March 2002 until the present time [respondent] availed herself of visitation or family therapy sessions on nine total occasions. [Respondent] often offered the excuse of a lack of transportation to get to sessions, including ones that she scheduled herself.

(g) The Court finds that in February 2003 [respondent] appeared at a designated time and had a family therapy session with Gin Leggett.

(h) The Court also finds that [respondent] appeared at Alexander Children's Center in May 2003 without notice to the facility or the therapist demanding to see R.D. Following her arrival Ms. Leggett did hold an unscheduled session with [respondent] resulting in R.D. walking out of the room.

(I) There has been no evidence offered suggesting that [respondent] benefitted from any family therapy session at Alexander Children's Center prior to or since May 2003.

(j) [Respondent] did not comply to the satisfaction of the Court with any Court Order or Family Service Case Plan in this matter for at least 12 months prior to the filing of this action. [Respondent] cannot show to the Court that she has completed her own treatment based on her own psychological issues, nor that she

> has participated in the treatment of R.D. to the point where she can exhibit any understanding of how to both parent him and/or correct the conditions that led to his removal from her.
>
> [15.] Based upon the findings contained herein, and considering the extreme progress that R.D. has made through no effort of his mother, the Court finds that it would be extremely detrimental to R.D. [to be] placed with his mother and that it would be in his best interests for her parental rights to be terminated at this time.

These findings of fact are based upon clear, cogent, and convincing evidence. *In re Young*, 346 N.C. at 247, 485 S.E.2d at 614. The trial court heard the following testimony: (1) Nancy Davis, a DSS social worker; (2) Dr. Lisa Brandyberry, a psychologist who performed initial psychological evaluations of respondent; (3) Connie Philbeck, a therapist for respondent; (4) Daniel Brown, respondent and R.D.'s case manager at Piedmont Behavioral Healthcare; (5) Gin Leggett, respondent and R.D.'s individual family therapist at Alexander Children's Center; (6) Julie Douglas, respondent and R.D.'s therapist at Alexander Children's Center; (7) Gregory Biles, their original relative placement; (8) Rachel F. Hough, housing authority director; (9) Ronald Dunlap, respondent's friend; (10) Shirley Lowder, former school social worker; and (11) Carolyn Davis, respondent's neighbor. The trial court also considered psychological and psychiatric evaluations, medical records and reports, and family case plans. After a thorough review of the record and transcript, we find clear, cogent, and convincing evidence was presented to

support these findings of fact. This assignment of error is overruled.

V. Reasonable Progress

Respondent argues the trial court erred in concluding that she had willfully left R.D. in foster care or placement outside of the home for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made. We disagree.

N.C. Gen. Stat. § 7B-1111(a) (2005) states:

> The court may terminate the parental rights upon a finding of one or more of the following:
>
> . . . .
>
> (2) 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.

This Court has stated:

> At the hearing on a petitioner's motion for termination of parental rights, *the burden of proof shall be upon the petitioner or movant to prove the facts justifying such termination by clear and convincing evidence*. Thus, in order to prevail in a termination of parental rights proceeding . . . the petitioner must: (1) allege and prove all facts and circumstances supporting the termination of the parent's rights; and (2) demonstrate that all proven facts and circumstances amount to clear, cogent, and convincing evidence that the termination of such rights is warranted.

In re Baker, 158 N.C. App. at 492-93, 581 S.E.2d at 145 (emphasis supplied) (internal citations omitted).

This Court has also stated:

> [W]e must also determine that there was clear, cogent, and convincing evidence that (1) respondents "willfully" left the juvenile in foster care for more than twelve months, and (2) that each respondent had failed to make "reasonable progress" in correcting the conditions that led to the juvenile's removal from the home.

Id. at 494, 581 S.E.2d at 146.

Regarding willfulness, this Court has stated, "A finding of willfulness does not require a showing that the parent was at fault. Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re C.C.*, ___ N.C. App. ___, ___, 618 S.E.2d 813, 819 (2005) (internal quotations omitted).

In *In re Nolen*, the respondent mother allegedly failed to make reasonable progress. 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). This Court held the "respondent's alcoholism and abusive living arrangement [had] continued," and the "respondent [had] not obtained positive results from her sporadic efforts to improve her situation." *Id.* at 699-700, 453 S.E.2d at 224-25.

In *In re Baker*, this Court held the respondent father willfully left his child in foster care for more than twelve months without making reasonable progress towards correcting the circumstances that led to his child's removal. 158 N.C. App. 491, 494, 581 S.E.2d 144, 146 (2003). The respondent father's son had bruises on his body from "improper discipline" administered by the respondent father. *Id.* at 495, 581 S.E.2d at 147. The respondent father attended anger management classes, but the therapist who

taught the classes testified the respondent father had a limited understanding of the concepts involved. *Id.* at 496, 581 S.E.2d at 148. The respondent father did not complete parenting classes, failed to complete the requirements of the case plan, and refused to sign a DSS family plan for reunification. *Id.*

This Court has stated:

> "Extremely limited progress is not reasonable progress." *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 224-225 [(1995)]; *see also In re Fletcher*, 148 N.C. App. 228, 235-236, 558 S.E.2d 498, 502 (2002) (upholding termination of parental rights order where "although the respondent mother made some efforts, the evidence supports the trial court's determination that she did not make sufficient progress in correcting conditions that led to the child's removal"); *In re Bishop*, 92 N.C. App. 662, 670, 375 S.E.2d 676, 681 [(1989)] (holding trial court's finding was supported by clear, cogent, and convincing evidence where "although respondent has made some progress in the areas of job and parenting skills, such progress has been extremely limited").

Id.

Here, the trial court made numerous findings of fact detailing respondent's lack of reasonable progress. The court ordered respondent to: (1) visit with R.D. at least once per month; (2) attend all treatment planning sessions at Alexander Children's Center; (3) participate in any family counseling that was deemed necessary; and (4) submit to a mental health assessment and to follow any recommended classes or counseling.

The trial court found respondent sporadically attended parenting classes after being reminded of her obligation to attend. Respondent did not successfully complete the required twenty-four

consecutive sessions. Respondent also did not attend family therapy or individual therapy on a consistent basis despite the court order. Respondent continuously stated to DSS that she had never abused her children and that she did not understand why DSS was keeping R.D. in foster care. A mental health professional also testified that respondent did not take responsibility for R.D.'s removal from her custody and that respondent felt she had been unfairly targeted. Based on this information, the court concluded that respondent "failed to exhibit positive response to any service in that she [was] in no better position to care for the child today than she was at the outset of the matter."

Respondent also argues she acted appropriately in trying to place R.D. in DSS's custody because she lacked the ability to provide the resources he needed, i.e. twenty-four hour nursing assistance and a staff of trained clinicians. The trial court found:

> Efforts were made by the staff at Alexander Children's Center and Piedmont Behavioral Healthcare/Daymark, including those mentioned above, to assist [respondent] in gaining and understanding of how to overcome the issues that led to placement of R.D. and how to accommodate the needs of R.D. based on his past and future behavioral and environmental needs.

A counselor testified that at the time of the hearing, respondent had not gained any knowledge about R.D.'s situation or how to appropriately handle him. R.D. underwent numerous hospitalizations for his behaviors at the time of his placement in Alexander Children's Center, which included oppositional defiant behavior,

nightmares, tactile and visual hallucinations, and paranoia. Many of these behaviors started or increased when R.D. was forced to visit with respondent. R.D.'s behavior has significantly improved since that time.

The trial court found:

> [R.D.'s] behavior, since being placed at Alexander Children's Home in March 2002, has made significant improvements to the point where he has been stepped-up to the current level of care he is receiving from his original placement in the PRTF Unit at Alexander Children's Center . . . The court finds, based on the testimony presented, that R.D. is capable of being placed in regular foster care at this time.

This finding of fact has not been challenged on appeal. Unchallenged findings of fact are binding on appeal. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982). This finding negates respondent's argument that "only twenty-four hour nursing assistance and a staff of trained clinicians could meet his needs." If R.D. was "capable of being placed in regular foster care," respondent should have been capable of taking care of him.

We hold that the trial court's findings of fact support its conclusion. This assignment of error is overruled. In light of our holding, we do not consider the issue of whether respondent neglected R.D. *In re Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908 ("Once one or more of the grounds for termination are established" the court can address the dispositional stage.).

VI. Court Records

Respondent argues the trial court erred in incorporating into its order the multiple records and documentation contained on the

official evidence log and taking judicial notice of the entire court file. We disagree.

Respondent argues "incorporation of all exhibits as a finding of fact defies the Court's duty to evaluate evidence and resolve conflicts in the evidence."

N.C. Gen. Stat. § 7B-1109(e) (2005) provides:

> The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent. The adjudicatory order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing.

The trial court made specific findings of fact regarding respondent leaving R.D. in foster care or placement outside of the home for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made. The trial court found:

> 11. [Respondent] was apprised at different times throughout this case of the resources available to her, including transportation, family therapy appointments, visitation times, and counseling/mental health appointments, but that despite the efforts of Stanly County DSS and other service providers, [respondent] absented herself from these services the majority of the time.
>
> . . . .
>
> 14(b). The Court finds that it initially specifically requested Piedmont Behavioral Healthcare to provide [anger management] classes at times matching [respondent's] work schedule to assist her, and that she failed to follow through with those times when they were made specifically available to her.

> 14(c). That upon completion of the anger management sessions, [respondent] exhibited two separate incidents of violent behavior.
>
> 14(d). The Respondent Mother has shown no quantifiable ability to control the anger issues that led to the initial removal of R.D. from her care.
>
> 14(e). That [respondent] enrolled in, but has never completed parenting classes offered by Piedmont Behavioral Healthcare/Daymark through Connie Philbeck. [Respondent] has shown little to no improvement in her ability or understanding of how to parent R.D.
>
> 14(j). [Respondent] did not comply to the satisfaction of the Court with any Court Order or Family Services Case Plan in this matter for at least 12 months prior to the filing of this action.

These findings of fact support the trial court's conclusion, apart from its incorporation of prior court documents, that respondent willfully left R.D. in foster care or other placement for more than twelve months without making reasonable progress in accordance with N.C. Gen. Stat. § 7B-1111(a)(2). "The court [took] evidence, [found] the facts, and adjudicate[d] the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent." N.C. Gen. Stat. 7B-1109(e). This assignment of error is overruled.

Respondent also argues the court file fails to qualify for judicial notice. This Court has stated that in a proceeding to terminate parental rights, "as to the court file generally, a court may take judicial notice of earlier proceedings in the same cause." *In re Byrd*, 72 N.C. App. 277, 279, 324 S.E.2d 273, 276 (1983). The

trial court did not err by taking judicial notice of the court file. This assignment of error is overruled.

VII. Conclusion

The trial court's findings of fact numbered 7, 10, 11, 12, 13, 14, and 15 are supported by clear, cogent, and convincing evidence. The trial court's order contains sufficient findings of fact to support the conclusion that respondent willfully left R.D. in foster care for a period of twelve months without showing she had made reasonable progress to correct the circumstances that led to the removal of R.D. N.C. Gen. Stat. § 7B-1111(a)(2). Since one ground will support a termination of a respondent's parental rights, we do not review respondent's remaining assignment of error regarding neglect.

The trial court did not err by incorporating into its order the multiple records and documentation contained on the official evidence log or by taking judicial notice of the entire court file. The trial court did not abuse its discretion in terminating respondent's parental rights. The trial court's order is affirmed.

Affirmed.

Judges WYNN and HUDSON concur.

Report per Rule 30(e).