NO. COA08-901

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

IN THE MATTER OF:

A.N., A.W., and I.N.

Wake County
Nos. 06 JT 92, 93, 94

Appeal by respondents from order entered 25 April 2008 by Judge Monica Bousman in Wake County District Court. Heard in the Court of Appeals 26 January 2009.

Office of the Wake County Attorney, by Scott W. Warren, Roger A. Askew, and Mary Elizabeth Smerko, for petitioner-appellee Wake County Human Services.

Hal Morris, for Guardian ad Litem.

Richard E. Jester, for respondent-appellant father M.D.

Betsy J. Wolfenden, for respondent-appellant mother.

Mercedes O. Chut, for respondent-appellant father A.W.

MARTIN, Chief Judge.

Respondents each appeal from the order of the trial court terminating their respective parental rights to the minor children A.N., born in 2000, A.W., born in 2002, and I.N., born in 2004. Respondent-mother M.W. is the biological mother of all three children, respondent-father A.W. is the biological father of the minor child A.W. and presumptive father of I.N., and respondent-

father M.D. is the biological father of I.N.[1] Respondent-mother married respondent-father A.W. in 2001 but they separated in 2005.

Wake County Human Services ("WCHS") became involved in this case in 2005 upon reports of neglect and abuse of the minor children by respondent-mother based on her perceived mental instability and behaviors such as hitting the children with a belt and locking them in a closet. Two reports were substantiated in June 2005. After the second substantiation, respondent-mother and the three children began living at the Raleigh Rescue Mission and respondent-mother began receiving services from WCHS.

On 7 February 2006, WCHS filed a juvenile petition alleging neglect and dependency upon learning that respondent-mother and the minor children were asked to leave the Rescue Mission. The petition alleged that respondent-mother was unable or unwilling to comply with the program's requirements, and that she was not properly supervising the children. Non-secure custody was granted to WCHS the same day, and the minor children were initially placed in foster care. On 16 February 2006, the children were placed with respondent-mother's brother and his wife, who were already raising three children of their own.

At the adjudication hearing held on 15 March 2006, respondent-mother stipulated to neglect and dependency. None of the fathers were present at the hearing, and none were available to take the

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[1] A.N.'s biological father M.A. was subject to a separate petition for the termination of parental rights, and during the pendency of these cases he voluntarily relinquished his rights as father of A.N. He is therefore not a party to this appeal.

children or otherwise provide for them. The court noted that respondent-father A.W. was incarcerated in Harnett County Jail and had no contact with the children since August 2005, nor had he paid any child support. Further, respondent-father M.D. was incarcerated in a federal prison in Virginia, had no contact with his child since the child's birth, and had not paid child support. The trial court adopted concurrent plans of reunification with respondent-mother, or adoption. The court ordered respondent-mother to: (1) complete a psychological evaluation and follow all treatment recommendations, (2) obtain and maintain stable and safe housing, (3) obtain and maintain stable employment, (4) attend supervised visitations, (5) pay child support, (6) complete a substance abuse assessment, and (7) sign releases to allow WCHS to communicate with her providers. The respondent-fathers were ordered to complete their respective terms of imprisonment and to contact WCHS to develop case plans and follow all recommendations if they wished to be reunified with their children.

At the review hearing held on 7 June 2006, the trial court noted respondent-mother's inconsistent progress on her case plan. After completing the psychological evaluation with Dr. Karin Yoch respondent-mother missed her next appointment with Dr. Yoch, missed one of three court-ordered drug screens, missed two of four group sessions with a Pre-Treatment Group, had three different jobs during the review period, and had trouble maintaining a stable residence. Respondent-mother also missed a visitation with her daughters and did not call the social worker until forty-five

minutes after the visit was scheduled to begin. The trial court noted that none of the fathers had contacted WCHS to request visitation or develop a case plan.

The next review hearing was held on 30 November 2006. At that time the trial court found that respondent-mother continued to make progress, albeit inconsistently. Although she completed a Pretreatment Substance Abuse Group and had clean drug screens, she was late for a session with Dr. Yoch and was not consistently attending appointments for individual therapy. Respondent-mother missed five of eleven scheduled visits with the minor children and struggled during the visitations she did attend with providing proper supervision and structure for the children. Further, she had lived in three different residences and had at least three different jobs during the review period since the last court hearing. The trial court ordered respondent-mother to continue with her case plan and added a requirement that she attend a parenting education program and demonstrate the skills she learned at visitation. The court also stated that respondent-fathers A.W. and M.D. could not have visitation until they entered a case plan with WCHS.

By the 17 May 2007 review hearing, the minor children had been moved to foster care due to reports of physical abuse in the relative placement. At the time of the hearing, respondent-mother was living in a one-bedroom apartment and was gainfully employed. The trial court found that respondent-mother was more consistent in attending visitation with the children, but she was not consistent

in attending therapy sessions. She missed five appointments with her therapist between 6 March 2007 and 30 April 2007. The court stressed to respondent-mother that she needed to make progress in therapy and in her parenting skills in order for reunification to occur. The court noted that respondent-father A.W. had not contacted WCHS since the last court hearing, and that respondent-father M.D.'s projected release date from prison was 2 May 2011. The court continued to insist that respondent-father A.W. contact WCHS to establish a case plan. Respondent-mother's requirements remained the same, with an additional requirement that she maintain regular contact with the social worker.

The next review hearing was held on 13 September 2007. The trial court noted that respondent-mother was living in a rooming house, which was not an appropriate home for herself or the children, she had had several jobs during the pendency of the case and had not provided documentation of her current job to WCHS, she had not been consistent in attending therapy, and she was unable to provide adequate structure and supervision for the children during visitation. None of the fathers were able to provide a safe home for the children within a reasonable amount of time. The court therefore determined that reunification efforts with any of the parents would be "futile and inconsistent with the children's health, safety and need for a safe permanent home within a reasonable time." The court changed the permanent plan to adoption, and ordered WCHS to "take all necessary steps to attain the plan of adoption of the children within a reasonable time."

On 14 November 2007, WCHS filed a motion for the termination of parental rights of respondent-mother and respondent-fathers A.W. and M.D. By this time DNA testing had confirmed that respondent-father M.D. was the biological father of the minor child I.N., who was born to respondent-mother while she was married to respondent-father A.W. In the motion, WCHS alleged as a ground for termination that all three respondents neglected the minor children and that neglect would be likely to continue if the children were placed in their care pursuant to N.C.G.S. § 7B-1111(a)(1). WCHS also alleged that respondent-mother and respondent-fathers A.W. and M.D. wilfully left the minor children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress was being made to correct the conditions which led to the removal of the children from the home pursuant to N.C.G.S. § 7B-1111(a)(2). Finally, WCHS alleged that respondent-father M.D. had not prior to the filing of the petition established paternity or legitimated the minor child I.N. or provided substantial financial support or consistent care pursuant to N.C.G.S. § 7B-1111(a)(5).

On 12 December 2007, respondent-father M.D. filed a motion to change the permanency plan from placement with a non-relative to placement with his mother, Theresa Thorpe. Besides this motion, none of the respondents filed an answer to the motion to terminate parental rights. A hearing was held on the motion to change the plan on 4 January 2008. The trial court found that WCHS had made reasonable efforts to return the children to a safe home, that WCHS

had some concerns regarding the Thorpes as placement options, and that there was insufficient evidence for the court to change the permanent plan. The court thus determined that the permanent plan should remain adoption, but ordered WCHS to conduct a formal home study of the Thorpes.

The termination hearing was held on 29 January, 13 February, 26 February, and 28 February 2008. At the termination hearing, WCHS presented testimony from WCHS social worker Jennifer Willoughby, psychologist Karen Yoch, Parents as Teachers educator Patricia Williams, and the respective therapists for respondent-mother and for the minor children. Respondent-mother and respondent-father M.D. each testified, as did two of the children's paternal grandmothers, respondent-mother's sister, and a friend of respondent-mother. Upon hearing all of the evidence, the trial court determined that the following grounds were proven: (1) as to respondent-mother, neglect and failure to make reasonable progress while leaving the children in foster care for more than twelve months; (2) as to respondent-father M.D., neglect, failure to make reasonable progress, and failure to legitimate; and (3) as to respondent-father A.W., neglect and failure to make reasonable progress.

The trial court then heard evidence in the disposition phase regarding the best interests of the minor children. Testimony was taken from social worker Jennifer Willoughby, guardian ad litem Anita Williams, each of the respondents, and two relatives. After hearing the evidence, the trial court determined that termination

of all three respondents' parental rights was in the best interests of the minor children, and ordered that the parental rights be terminated.

The trial court entered its order on 29 March 2008, but amended the order on 25 April 2008 upon motion by respondent-mother to include certain changes. From the order entered, respondents appeal and challenge the grounds for termination as well as the determination that termination of respondents' parental rights is in the best interests of the minor children.

I. Grounds for termination

Termination of parental rights cases are determined in two phases: (1) the adjudication phase, governed by N.C.G.S. § 7B-1109; and (2) the disposition phase, governed by N.C.G.S. § 7B-1110. *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003). In the adjudication phase, the petitioner has the burden of proving by clear, cogent and convincing evidence that at least one ground for termination exists. N.C. Gen. Stat. § 7B-1111(b)(2005); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). The standard of review on appeal is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the conclusions of law are supported by the findings of fact. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). Findings of fact supported by competent evidence are binding on appeal even though there may be evidence to the contrary. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). A

trial court only needs to find one statutory ground for termination before proceeding to the dispositional phase of the hearing. N.C.G.S. § 7B-1111(a); *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406 (2003). In the disposition phase, the trial court determines whether termination of parental rights is in the best interests of the child. *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908.

A. Respondent-mother M.W.

Respondent-mother contends the trial court erred (1) in concluding that she failed to make reasonable progress while leaving the minor children in foster care for more than twelve months, and (2) in concluding that respondent-mother neglected the minor children where the order did not address neglect at the time of the hearing or that repetition of neglect would probably occur in the future. Respondent-mother disputes several findings of fact as part of each argument.

Parental rights may be terminated when "[t]he 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." N.C. Gen. Stat. § 7B-1111(a)(2) (2005). Willfulness does not imply fault on the part of the parent, but may be established "'when the respondent had the ability to show reasonable progress, but was unwilling to make the effort.'" *In re O.C. & O.B.*, 171 N.C. App. 457, 465, 615 S.E.2d 391, 396 (citations

omitted) (quoting *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175 (2001)), *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005). Even if a parent has made some efforts to regain custody, a trial court may still find that he or she willfully left the child in foster care under section 7B-1111(a)(2). *Id.* (quoting *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995)) (citations omitted).

The determinative time period in this case is from November 2006 to 14 November 2007, when WCHS filed the motion to terminate parental rights. From the trial court's 25 April 2008 order, respondent-mother challenges the following findings of fact as being unsupported by the evidence:

> 29. That between March of 2006 and September of 2007, the mother made very little progress in correcting the problems which led to the removal of her children. The children were in therapy because of serious behavioral and emotional problems which necessitated several placement changes.
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> . . . .
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> 31. That the mother's visitation with the children was inconsistent in the first year after the adjudication. She missed approximately fifty percent of her visits. She did begin to visit the children more consistently beginning in February of 2007. During the visits, however, she did not demonstrate that she was applying skills learned in a parenting class which she attended and completed. The mother had trouble giving all three children attention, and difficulty in redirecting disruptive behaviors of the children. At one visit, the mother inappropriately grabbed [I.N.]'s face in an attempt to redirect the child. The mother constantly had problems in controlling the children's behavior. In the fall of 2007, the mother began to receive support services

during visitations from Pat Watkins, of the "Parents as Teachers" Program. Ms. Watkins saw some improvements in the mother's interactions with the children, but the mother still needed prompting on how to redirect her children when they became disruptive. Ms. Watkins has not worked with the mother long enough to render an opinion about the mother's overall parenting skills and ability to parent outside of a supervised setting.

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36. That the mother began to consistently engage in therapy with Lynn Pryor in August or September, 2007. She has attended sessions every other week with Ms. Pryor since that time. The sessions have dealt with issues regarding trust. There is no indication that the mother's therapy has been focused on the serious issues which were raised by Dr. Yoch in the mother's psychological evaluation. The mother needs intensive therapy, once a week, for at least eighteen to twenty four months to effectively deal with her mental health problems. The Court is especially concerned that it took the mother eighteen months from the time the children were removed from her care to when she finally committed to consistently engage in therapy. The Court is not convinced that the mother understands her children's problems or that she has accepted any accountability for their problems.

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40. That since the September, 2007 hearing, the mother did make some progress. She admitted that at the outset of this matter, she had acquiesced to her brother and his wife keeping the children. This Court had not heard from the mother's relatives until the fall of 2007, and it appears the mother has become more receptive to the support of her sister, and the paternal grandmothers. However, as stated above, the mother has not demonstrated to the Court that she understands the nature of the children's trauma, and she has not worked on these issues in therapy. The mother will not be able to provide appropriate care of the children in a safe home within a reasonable time. She has not

> made reasonable progress under the circumstances in correcting the conditions which caused the removal of the children from her care.

In addition to these findings, respondent-mother also challenges the trial court's conclusion that she failed to make reasonable progress. As part of her argument, respondent-mother contends that the evidence shows she did make reasonable progress, that she had substantially completed her case plan by the termination hearing, and that any lack of progress on her part was not wilful. We do not agree.

First of all, we note that respondent-mother has failed to assign error to several of the trial court's findings of fact relevant to this appeal. Unchallenged findings are deemed supported by competent evidence and are binding on appeal. *In re S.N.H. & L.J.H.*, 177 N.C. App. 82, 83, 627 S.E.2d 510, 512 (2006). These uncontested findings show respondent's lack of stability with regard to housing and employment during the relevant time period, as well as respondent's inconsistent attendance at individual therapy. They also indicate that, at the time of the termination hearing, the children had been out of respondent-mother's care for 18 months and that she was not able to show that she would be able to provide a safe home within a reasonable time. Because respondent-mother has failed to challenge these findings, they are binding upon us and inform our consideration of those findings to which respondent-mother assigns error.

In regards to those findings challenged by respondent-mother, our review of the record and transcript reveals that each of these findings is supported by clear, cogent, and convincing evidence. These findings are primarily supported by the testimony of WCHS social worker Jennifer Willoughby and respondent-mother's therapist Lynn Prior. Ms. Willoughby testified that respondent-mother made little progress in demonstrating her ability to parent the children or to provide a safe home for the children within a reasonable time, the very problems which initially led to the removal of the children. Ms. Willoughby based her testimony on her own observations as well as discussions with the children's therapists. She testified that respondent-mother missed approximately half of the visits between February 2006 and February 2007, but did visit more consistently after this time. Ms. Willoughby also testified that in her opinion, respondent-mother's ability to supervise the children is "poor," that she tends to focus on one child at a time, and that she struggles to impose structure or discipline during the visits. Ms. Willoughby went on to describe one incident when respondent-mother grabbed I.N.'s face roughly to try to get her attention. When the parenting instructor explained why that action was inappropriate, respondent-mother stated that she was raised that way and was going to raise her children that way. Ms. Willoughby testified that respondent-mother appears to have a limited understanding of her children's problems, and that the progress made since September 2007 in visitation has been minimal.

These portions of Ms. Willoughby's testimony support the trial court's findings of fact 29, 31, and 40.

With regard to therapy, Ms. Pryor testified that respondent-mother's attendance in therapy was sporadic up until approximately August 2007, when respondent-mother began attending more consistently. Ms. Pryor stated that, although respondent-mother did not initially appear to understand the seriousness of the situation with her children, she had begun to make progress by time of the termination hearings in early 2008. Accordingly, Ms. Pryor's testimony supports findings of fact 36 and 40.

Turning to the trial court's conclusion that respondent-mother failed to make reasonable progress to correct the conditions which led to the removal of the children from the home, our review is limited to a consideration of whether this conclusion was supported by the findings of fact. *Huff*, 140 N.C. App. at 291, 536 S.E.2d at 840. Although respondent-mother did make some progress, the record reflects that during the relevant time period, respondent-mother had difficulty maintaining stable employment and housing, demonstrating her ability to parent the children during visitation, and consistently attending visitation and therapy. This Court has held that "[e]xtremely limited progress is not reasonable progress." *Nolen*, 117 N.C. App. at 700, 453 S.E.2d at 224-25. The standard for reasonable progress is high. *See In re Bishop*, 92 N.C. App. 662, 670, 375 S.E.2d 676, 681 (1989) (holding the trial court's finding was supported by clear, cogent, and convincing evidence where, "although respondent ha[d] made some progress in

the areas of job and parenting skills, such progress ha[d] been extremely limited"). Here, the fact that respondent-mother was beginning to make some progress by September 2007, ten months into the relevant time period and some eighteen months after the children were removed from her care, is not enough to show the trial court erred in finding she wilfully failed to make reasonable progress while leaving her children in foster care. As such, the trial court's conclusion was supported by its findings, which, as we have already stated, were based on clear, cogent, and convincing evidence.

Since we find that the trial court did not err in basing termination on the ground of failure to make reasonable progress pursuant to section 7B-1111(a)(2), we need not address respondent's arguments regarding the ground of neglect. *Shermer*, 156 N.C. App. at 285, 576 S.E.2d at 406. Respondent-mother's assignments of error regarding grounds for termination are therefore overruled.

B. Respondent-father M.D.

Respondent-father M.D. challenges the trial court's order terminating his parental rights on the following grounds: (1) the allegations in the motion to terminate parental rights were insufficient to provide proper notice of the grounds for termination and trial counsel provided ineffective assistance for failure to challenge the petition by answer, 12(b)(6) motion, or other objection; (2) the trial court erred in making several findings of fact and concluding as a matter of law that these findings supported the termination of respondent-father M.D.'s

parental rights under N.C.G.S. § 7B-1111(a)(1), (2), and (5); and (3) the trial court erred in shifting the burden of proof to respondent-father M.D. in finding of fact 47 when it stated that respondent had failed to offer proof of his release date from prison. We disagree with each of these arguments.

Respondent-father M.D. first argues that the allegations in the petition failed to include any "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist" pursuant to N.C.G.S. § 7B-1104(6). He contends that since the allegations did no more than recite the statutory language in section 7B-1111(a), he did not have adequate notice of the underlying reason. Respondent-father M.D. acknowledges that he did not raise this issue with the trial court, but argues that his trial counsel's representation was deficient for failing to make a motion to dismiss the petition and that he was prejudiced by this deficiency because the trial court would have granted such a motion. We do not agree.

Section 7B-1104(6) requires that facts be presented to support the allegations in a motion or petition to terminate parental rights. N.C. Gen. Stat § 7B-1104(6) (2007). However, the motion or petition is deemed to comply with the requirements of section 7B-1104(6) if it incorporates documents which provide the necessary facts to support the allegations. *See In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160 (1992). In the instant case, WCHS attached numerous documents as part of its motion to terminate, including prior juvenile orders, court summaries of six month

review hearings, and guardian ad litem court reports. These documents tended to show that respondent-father M.D. had no contact with I.N. since her birth and that, although respondent-father M.D. was contacted in federal prison and told to establish communication with WCHS to begin development of a case plan, he failed to do so. We also note that the ground of failure to legitimate pursuant to section 7B-1111(a)(5) involves four concrete alternative steps to legitimate a child. Section 7B-1111(a)(5) provides that a trial court may terminate a respondent's parental rights when:

> (5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights:
>
> > (a) Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or
> >
> > (b) Legitimated the juvenile pursuant to provision of G.S. 49-10 or filed a petition for this specific purpose; or
> >
> > (c) Legitimated the juvenile by marriage to the mother of the juvenile; or
> >
> > (d) Provided substantial financial support or consistent care with respect to the juvenile and mother.

N.C. Gen. Stat. § 7B-1111(a)(5) (2005). Here, the trial court found as fact:

> 48. That [M.D.] is [I.N.]'s biological father, but he has taken no steps to establish paternity or filed an affidavit in the central registry maintained by the North Carolina Department of Health and Human Services, he has taken no action to legitimate the child, he did not marry the mother of the child and has not provided substantial financial support or consistent care with respect to the child and her mother.

The trial court used this finding of fact to support its conclusion that grounds exist to terminate respondent-father M.D.'s parental rights for failure to legitimate pursuant to section 7B-1111(a)(5). Although the trial court's finding does track the language of section 7B-1111(a)(5), this finding, together with those documents attached to WCHS's motion to terminate, provided adequate notice to respondent-father of the grounds for termination of his parental rights. Furthermore, we conclude that these findings were proper grounds in support of the termination of respondent-father M.D.'s parental rights. Because we find that the trial court properly based termination on failure to legitimate, we need not address respondent-father M.D.'s arguments regarding section 7B-1111(a)(1) and (2). *See Shermer*, 156 N.C. App. at 285, 576 S.E.2d at 406.

Turning to respondent-father M.D.'s ineffective assistance of counsel argument, it is well established that "[p]arents have a 'right to counsel in all proceedings dedicated to the termination of parental rights.'" *In re L.C., I.C., L.C.*, 181 N.C. App. 278, 282, 638 S.E.2d 638, 641 (quoting *In re Oghenekevebe*, 123 N.C. App. 434, 436, 473 S.E.2d 393, 396 (1996)), *disc. rev. denied*, 361 N.C. 354, 646 S.E.2d 114 (2007). "This right includes the right to

effective assistance of counsel." *Id.* In order to show ineffective assistance of counsel, respondent must show: (1) counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) the deficient performance denied respondent a fair hearing. *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 74, 623 S.E.2d 45, 50 (2005). Here, since we have determined that the allegations for the ground of failure to legitimate were sufficiently pled and that this ground was properly used as a basis for termination of respondent-father M.D.'s parental rights, respondent-father M.D. cannot show that any alleged deficiency in his counsel's performance caused prejudice or denied him a fair hearing.

Respondent-father M.D. also disputes the trial court's finding and conclusion by raising principles of equity and arguing that it is "unfair" to hold respondent's failure to legitimate against him when he was unable to participate in the process before DNA proved his paternity just days before the motion to terminate was filed. Nevertheless, we have held that "it is not unreasonable to charge putative fathers with the responsibility to discover the birth of their illegitimate children." *In re Clark*, 95 N.C. App. 1, 9, 381 S.E.2d 835, 840 (1989), *rev'd on other grounds*, 327 N.C. 61, 393 S.E.2d 791 (1990). Here, respondent-father M.D.'s own testimony reflects that he knew of I.N.'s birth before submitting to a paternity test. During the interim, respondent-father M.D. failed, although he had opportunity to do so, to take any of the statutory steps found in N.C.G.S. § 7B-1111(a)(5) to determine that he was

I.N.'s biological father or to subsequently demonstrate his commitment to the child to the satisfaction of the trial court. Furthermore, respondent-father M.D.'s equity arguments are inapposite to the question of whether the trial court erred in finding this basis for termination. We find no merit in defendant's arguments and his assignments of error on this issue. Similarly, with regard to respondent's last argument that finding of fact 47 improperly shifts the burden of proof to him to prove his date of release from prison, this finding has no bearing on the ground of failure to legitimate and we decline to address it.

B. Respondent-father A.W.

Respondent-father A.W. raises the following issues regarding the adjudication phase: (1) whether the trial court erred in entering several findings of fact which he contends are not supported by sufficient competent evidence; (2) whether the trial court erred in concluding that minor child A.W. was neglected and in using neglect as a basis for terminating respondent-father A.W.'s parental rights; and (3) whether the trial court erred in concluding that respondent-father A.W. wilfully left the minor child A.W. in foster care for more than twelve months without making reasonable progress to correct the conditions which led to the removal of the children from their home.

The trial court made the following findings of fact with regard to respondent-father A.W.:

23. That at the time of the filing of the petition, [A.W.] (father of [A.W.] and presumptive father of [I.N.]) was incarcerated in Harnett County Jail. He had no contact with the children since August of 2005. He did not pay child support. He was not available to provide a home for the children at the time of the filing of the petition.

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41. That [A.W.] did not make contact with Wake County Human Services until his appearance at the September, 2007 hearing. He was served with the underlying petition by certified mail when he was incarcerated in March, 2006, soon after this case was initiated, and he sent a letter to the County Attorney's office, which signified that he knew about the case. The social worker assigned to this matter spoke with [A.W.] in October, 2006, but he never followed up to develop a case plan. He indicated that he was incarcerated from February, 2006 through October, 2006. [A.W.] developed a case plan after the September, 2007 hearing, but has not done anything towards compliance with the case plan.

42. That [A.W.] admitted to a chronic problem of abusing crack cocaine, marijuana, alcohol and other drugs, and that he began to engage [in] some rehabilitation about 2 months prior to the September, 2007 hearing. He was at Healing Place after his release from incarceration and resided briefly at a shelter in Raleigh, NC. In September, 2007, he was not able to tell the Court he would be able to provide a safe, stable home for the children. The Court ceased reunification efforts with [A.W.] at the September, 2007 hearing.

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44. That [A.W.] admits that he was a bad influence on the family and feels responsible for the chaotic life that the children had when they were living at home prior to the filing of the neglect petition in 2006.

> 45. That [A.W.] has made no progress in correcting the problems which caused his child to place [sic] outside of the home.
>
> 46. That [A.W.] has neglected his children and it is likely that the neglect would continue if the children were placed in his care.

We note that respondent-father A.W. does not challenge the trial court's findings of fact 27 and 43, which are relevant to this appeal and are deemed supported by competent evidence and binding upon us. *S.N.H.*, 177 N.C. App. at 83, 627 S.E.2d at 512. These findings provided that respondent-father A.W. had been ordered to contact WCHS to develop a case plan after his incarceration and that respondent-father A.W. is presently incarcerated upon a conviction of breaking and entering into automobiles.

As part of his argument, respondent-father A.W. contends that no evidence was presented regarding his case plan or any progress or lack of progress on the plan, nor was evidence presented regarding the probability of repetition of neglect. Instead, respondent-father A.W. argues that the only conditions which led to the removal of the children were his incarceration and failure to pay support. He contends that, since he could not "correct" his incarceration, the trial court erred in finding that he failed to make reasonable progress in correcting the conditions which resulted in the children's removal from their home. In challenging the finding and conclusion of neglect, respondent states that he provided an appropriate option for his child to be cared for until his release from prison, expected in May 2008, by presenting his mother as a placement option. He argues that no evidence was taken

to show that he could not provide appropriate care and supervision for his child A.W., and that the ground of neglect therefore does not exist. We do not agree.

Parental rights may be terminated when the parent has neglected the juvenile if the court finds the juvenile to be neglected within the meaning of N.C.G.S. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is one who "does not receive proper care, supervision, or discipline from the juvenile's parent. . . ; or who has been abandoned. . . ." N.C. Gen. Stat. § 7B-101(15) (2005). A prior adjudication of neglect may be considered by a trial court, but cannot be the sole basis for terminating parental rights. *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). Where a child has been adjudicated neglected and the parent has not had custody of the child for some time prior to the termination hearing, the court must consider evidence of neglect at the time of the hearing and any change of circumstances occurring after the adjudication. *See Bishop*, 92 N.C. App. at 670-71, 375 S.E.2d at 682. Changed circumstances may be considered "in light of the evidence of prior neglect and the probability of a repetition of neglect." *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. The court must find either that neglect continues to exist at the time of the termination hearing or that there is a clear and convincing likelihood of repetition of neglect if the child is returned to the parent. *Id.* at 714-15, 319 S.E.2d at 231-32; *Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407.

Neglect was initially established at the adjudication hearing held on 15 March 2006. The trial court's findings of fact at the termination hearing, discussed above, support a conclusion of neglect. We find these findings of fact are supported by evidence presented in the form of prior orders of the trial court, and testimony taken from WCHS social worker Jennifer Willoughby. Ms. Willoughby testified that she had contact with respondent-father A.W. by phone, when they scheduled a September 2006 appointment to set up a case plan. Respondent-father A.W. failed to make the appointment and Ms. Willoughby had no further contact with him until the 13 September 2007 review hearing. After the hearing, respondent-father A.W. expressed to Ms. Willoughby that he wanted to get involved, even though WCHS had just been relieved of pursuing reunification efforts. Ms. Willoughby created a case plan and sent respondent-father A.W. for a drug screen, but did not hear back from him, despite contacting his case manager at the shelter where respondent-father A.W. was living. She stated that although respondent-father A.W. made a case plan, he had not made any progress on the plan.

Respondent-father A.W.'s lack of any involvement with his child and his unwillingness to participate in efforts to be reunified with his child support the finding that he neglected the child and that such neglect would likely continue in the future if the child were placed in his care. The trial court therefore did not err in making its findings and in concluding that termination may be based on the ground of neglect.

Since we find that termination of respondent-father A.W.'s parental rights was properly based on the ground of neglect, we need not address respondent-father A.W.'s arguments regarding the ground of failure to make reasonable progress. *Shermer*, 156 N.C. App. at 285, 576 S.E.2d at 406.

II. Best interest

Respondent-mother and respondent-father A.W. each contend the trial court erred and abused its discretion by concluding that termination of respondents' parental rights is in the best interests of the minor children. We do not agree.

Once a trial court has determined that at least one ground exists to terminate a respondent's parental rights in the adjudication phase of a termination hearing, the court moves to the disposition phase where it decides whether termination is in the best interests of the child. N.C. Gen. Stat. § 7B-1110(a) (2005). In considering the children's best interests, the trial court must consider certain factors:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a)(1)-(6). The trial court exercises its discretion in determining whether termination is in the best interests of the minor child. *In re C.W. & J.W.*, 182 N.C. App. 214, 219, 641 S.E.2d 725, 729 (2007). In reviewing a trial court's disposition order, this Court must decide whether the trial court abused its discretion in concluding that termination is in the child's best interests. *Id.* "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *Chicora Country Club, Inc. v. Town of Erwin*, 128 N.C. App. 101, 109, 493 S.E.2d 797, 802 (1997) (citation and internal quotation marks omitted), *disc. review denied*, 347 N.C. 670, 500 S.E.2d 84 (1998).

In determining the best interests of the children, the trial court in the instant case found as fact that: (1) the children have complex behavioral and emotional needs and have been traumatized by long term instability; (2) the children have made positive progress in their current placements; (3) A.N. expresses the strongest bond with her mother, but the bond is not necessarily a healthy one in that A.N. feels the need to take care of her mother; (4) I.N. recognizes her mother but refers to other people as her family; (5) the children's therapists believe the children should be placed in one home with two parents who are able to deal with behavioral problems; (6) the children need a permanent, safe home; (7) the children are not currently placed in prospective adoptive homes but they have demonstrated that they are able to form bonds with new caretakers; (8) although respondent-mother states she loves her

children, none of the children have a healthy and appropriate bond with their mother; (9) neither A.W. nor I.N. have any bond with their respective fathers; (10) the children have been in foster care for more than two years, and the lack of permanence has prevented them from healing and has in fact contributed to the decline in their mental health; (11) respondent-mother will not be able to meet the needs of the children in the near future; (12) termination of the respondents' parental rights will aid in the permanent plan which is adoption; and (13) the probability of adoption of the children is high. In addition, the trial court noted that the guardian ad litem initially recommended that termination of parental rights was in the best interests of the children, but changed her mind after hearing the testimony at the hearing from respondent-mother and relatives. The court stated its perspective that the "new opinion is partially based on the needs and wishes of the mother and not on the best interest of the children."

Respondent-mother points out that both the guardian ad litem and the social worker stressed the importance of keeping the three girls together but that no one was able to say with any certainty when an appropriate adoptive home could be found. She argues that since the girls had been moved from foster home to foster home and consequently deteriorated in those homes, the best interests of the children would be to have them move back in with respondent-mother. She contends that "where there is reasonable hope that the family unit within a reasonable period of time can reunite and provide for

the emotional and physical welfare of the child, the trial court is given discretion not to terminate rights," *Blackburn*, 142 N.C. App. at 607, 543 S.E.2d at 910, and that in this case, the trial court abused its discretion in concluding that termination of respondent-mother's parental rights is in the best interests of the children. Respondent-father A.W. challenges the finding that the probability of adoption is high and argues that no evidence was presented to show that he could not parent his daughter once he is released from prison.

Despite these arguments from respondents, we find that the findings outlined above address each of the factors in section 7B-1110(a) and are supported by the evidence presented at the hearing. WCHS social worker Ms. Willoughby testified regarding the complex needs of the children, the strength and nature of the bond between the children and respondent-mother as well as between the children and their respective caretakers, the lack of any bond between A.W. and her father, respondent-father A.W., the lack of any bond between I.N. and her father, respondent-father M.D., and the need for a permanent, safe home for all three children. Ms. Willoughby testified that the girls were making progress in their respective placements, and that they needed to remain in their placements for a few more months before they would be ready to move to a prospective adoptive home. She stated that the treatment team was optimistic that they could find the right adoptive home for all three girls to remain together with parents who had the necessary

skills to work with the children's special needs, but that she could not be certain how long it might take to find such a home.

In addition to finding sufficient evidence was presented to support the trial court's findings, we also find that the findings fully support the trial court's determination that termination of respondents' parental rights is in the best interests of the minor children. Although each respondent argues that they could care for the children if given a chance, the standard of review is whether the trial court abused its discretion regarding the best interest determination. Since the evidence supports the findings, the trial court addressed the factors listed in section 7B-1110(a), and the findings support the conclusion, we conclude that the trial court did not abuse its discretion in determining that termination is in the best interests of the children.

In conclusion, the trial court did not err in terminating respondents' parental rights as to the minor children; accordingly, the order of the trial court is affirmed.

Affirmed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).