NO. COA09-591

NORTH CAROLINA COURT OF APPEALS

Filed: 17 November 2009

IN THE MATTER OF:

	Chatham County
A.M.	Nos. 07 JT 7
J.M.	07 JT 8

Appeal by respondents from order entered 28 January 2009 by Judge Beverly Scarlett in Chatham County District Court. Heard in the Court of Appeals 7 September 2009.

Lisa W. Reynolds, P.C., by Lisa W. Reynolds; and Northen Blue, LLP, by Carol J. Holcomb, for petitioner-appellee.

Carol Ann Bauer for respondent-appellant mother.

David A. Perez for respondent-appellant father.

N.C. Administrative Office of the Courts, by Appellate Counsel Pamela Newell Williams, for guardian ad litem.

GEER, Judge.

Respondent parents appeal from the order terminating their parental rights to their minor children, "Aaron" and "Jenny."[1] Respondent father argues that the trial court abused its discretion in only continuing the termination of parental rights hearing for a week when his newly-retained counsel was out of town for the week before the hearing and in denying his court-appointed counsel's

[1]The pseudonyms of Aaron and Jenny are used throughout this opinion to protect the minors' privacy and for ease of reading.

motion to withdraw. Based upon our review of the record, we hold, under the circumstances of this case, that the trial court did not abuse its discretion in denying the motion to continue the hearing for more than a week and, therefore, also did not err in denying the motion to withdraw in order to ensure that respondent father had counsel who would be prepared to proceed.

We further find unpersuasive respondent father's contention that the trial court erred in determining that grounds existed to terminate his parental rights. We hold that the record contains evidence amply supporting the trial court's findings that respondent father had not resolved issues relating to domestic violence, substance abuse, and mental health, such that there was a probability that the prior neglect would reoccur if the children were restored to the father's custody.

Both parents additionally argue that, in any event, the trial court abused its discretion in actually terminating their parental rights. We hold that the trial court's findings are supported by the evidence and establish that termination was in the children's best interests. We, therefore, affirm.

Facts

In December 2006, when Aaron was one year old and Jenny was eight years old, the Chatham County Department of Social Services ("DSS") received a report that respondents were operating a methamphetamine laboratory in their home and were too high to care for their children. A subsequent investigation produced no evidence of a methamphetamine lab, but it raised other concerns

about the children's welfare. The home was extremely cluttered, boxes were stacked everywhere, dirty dishes were littered about the kitchen, and little food was available. The children's grandparents confirmed that the home was often unkempt. The investigation also revealed that Jenny had been excessively absent from or tardy for school, having had nine absences and thirteen unexcused tardies for the school year. Attempts by school officials to meet with the parents were unsuccessful.

DSS obtained non-secure custody of the children on 18 January 2007. On 18 January 2007, DSS filed juvenile petitions alleging that Aaron and Jenny were neglected juveniles based on a serious incident of domestic violence and respondents' failure to follow an established safety plan. The petition alleged that prior to its filing, DSS had attempted to place the children in a kinship placement, but that respondent mother would not agree to the placement, although respondent father was willing to do so. Upon obtaining custody, DSS placed the children with their maternal grandparents.

In an order entered 2 May 2007, the trial court adjudicated the children to be neglected children. The trial court found:

> Respondents/parents have a history of drug use, and domestic violence. The juveniles have both witnessed the violence and have been victims of the violence between their parents. The juveniles have witnessed Respondent/father threaten Respondent/mother with a gun. They have seen Respondent/father physically abuse Respondent/mother. On at least one occasion, Respondent/mother held a child while Respondent/father physically assaulted her.

The court found that placement of the children with their maternal grandparents was meeting the children's needs and ordered that placement remain with the grandparents.

Following a permanency planning hearing on 12 July 2007, the trial court concluded that the permanent plan for the children should be adoption. The court entered its order on 11 September 2007, finding that respondent mother had missed meetings with the DSS social worker, the treatment team, and the children's therapist; had refused assistance to address the domestic violence she acknowledged had occurred; and did not report for 15 drug screens even though she could not have visitation until she passed a drug screen. The court found that respondent father had missed meetings with the DSS social worker, the therapeutic team, and the children's therapist; had failed to present for drug screens on 10 days; had reported for a drug screen, but was unable to provide a urine sample on one occasion; and had tested positive for methamphetamines on one occasion, but denied drug use.

On 5 September 2007, DSS filed motions to terminate respondents' parental rights. The trial court entered an order terminating the parental rights ("TPR order") on 18 February 2008. Neither parent attended the TPR hearing. Following an appeal by respondents, this Court, on 2 September 2008, reversed the TPR order and remanded for further proceedings, explaining:

> [T]he trial court entered an order based solely on the written reports of DSS and the guardian *ad litem*, prior court orders, and oral arguments by the attorneys involved in the case. DSS did not present any witnesses for testimony, and the trial court did not

> examine any witnesses. We conclude, therefore, that the trial court failed to hold a proper, independent termination hearing. Consideration of written reports, prior court orders, and the attorney's oral argument was proper; however, in addition the trial court needed some oral testimony.

This Court stressed, however, that "this opinion should not be construed as requiring extensive oral testimony."

The Court of Appeals opinion was filed in the trial court on 10 September 2008. On the same date, DSS filed a Notice of Termination of Parental Rights Hearing, setting the hearing for 23 October 2008. On 20 October 2008, David A. Perez, who had represented respondent father on appeal, filed a notice of appearance on behalf of respondent father and a motion for a continuance, explaining that Mr. Perez had longstanding plans to be out of state from 23 October 2008 "until the following week" and requesting that the hearing be continued until 11 December 2008. The trial court allowed the motion to continue, but only until 29 October 2008. The court also denied respondent father's court-appointed counsel's oral motion to withdraw. On 29 October 2008, respondent father filed a second motion for a continuance on the grounds that Mr. Perez had returned from his trip at 9:00 p.m. on 28 October 2008. This motion was denied.

After conducting hearings on 29 October 2008 and 2-4 December 2008, the trial court entered an order on 28 January 2009 terminating respondents' parental rights. The court found that grounds existed to terminate based on neglect and on an incapacity to parent.

In support of its conclusions of law, the trial court found that the initial petition was filed after DSS received a report of domestic violence that indicated "Respondent father had wielded a gun, shot at the trees, referring to the trees [as] Respondent mother's head." The court found that "[s]evere domestic violence has occurred in [respondents'] home, in front of the children. Both Respondent mother and Respondent father minimize the nature and extent of domestic violence in the household." Further, when respondent mother was hospitalized for a car accident, the nursing staff told respondent mother that they believed she was involved in a domestic violence relationship. The trial court then noted that prior to December 2007, respondent father had failed to seek treatment for domestic violence and respondent mother failed to take advantage of the opportunity for domestic violence counseling.

With respect to respondent father's drug usage and mental health, the trial court found that respondent father has chronic back pain and, at one point, became addicted to Oxycontin, but now uses methadone. The court also found that respondent father "has issues with substance abuse." The court found that respondent father was not taking his prescribed anti-depressants and had not continued in therapy or treatment for his mental health issues. The trial court wrote: "This Court questions the stability of his mental health."

With respect to respondent mother, the trial court found that she was admitted by her father to John Umstead Psychiatric Hospital after she made a threat to kill herself or others. During her stay

at the hospital, she was diagnosed with poly-substance dependence and panic disorder, although respondent mother denied problems with substance abuse. Upon admission to the hospital, however, respondent mother's drug screen was positive for amphetamines and opiates. The mother has overmedicated on her Xanax and her substance dependence "has led her to being described as 'space-e', 'zoned-out' and 'zombie like.'" The court further found that during respondent mother's testimony, "[h]er responses to questions were not logical, were mumbled and often without clarity." As a result, the trial court indicated that it "questions her mental health status."

The trial court found that neither parent has agreed to residential treatment for drug use, and both parents deny that they are substance dependent. The court did note that respondent father attempted to obtain drug treatment at Freedom House, but was denied. The court found that he did not follow through with a second treatment recommendation. In addition, the trial court found that "[n]either parent availed themselves" of a psychological evaluation scheduled to be completed by Dr. Karin Yoch and paid for by DSS.

The trial court found that respondents' conduct had affected the children. Specifically, Jenny felt unsafe because of people her parents allowed into the home, and Jenny's therapist diagnosed her with post-traumatic stress disorder. At the start of therapy, she exhibited a trauma level of nine, but, with therapy and placement outside of the home, her level of trauma decreased to a

six. The trial court found that Jenny "is suffering from the trauma she experienced in her home and it is likely that her emotional status will continue for the foreseeable future." The court found that "[i]t is unlikely that Respondent parents can provide the kind of structure that these children need. The children need predictability and stability."

The trial court found that Aaron has spent more than half of his life in the care of his maternal grandparents. Jenny's attendance and grades have improved while she has been living with her grandparents. The court found that she is now less combative and has learned skills of cooperation. The court found that "[b]oth children need a loving, structured environment, which the maternal grandparents have provided." Finally, the court found that both children are likely candidates for adoption with the maternal grandparents being the prospective adoptive parents. The trial court, therefore, concluded that it was in the best interests of the children that respondents' parental rights be terminated. Respondents timely appealed from the TPR order.

I

Respondent father first challenges the trial court's order continuing the case only until 29 October 2008 and its denial of respondent father's second motion to continue. A trial court's decision whether to grant a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. *In re Humphrey*, 156 N.C. App. 533, 538, 577 S.E.2d 421, 425 (2003). Continuances are generally disfavored, and the

"'chief consideration is whether granting or denying a continuance will further substantial justice.'" *Id.* (quoting *Doby v. Lowder*, 72 N.C. App. 22, 24, 324 S.E.2d 26, 28 (1984)). More specifically, the governing statute for termination of parental rights hearings provides:

> The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-803 (2007).

Prejudice may be presumed where the continuance denied was essential for adequate preparation, but "[w]here the lack of preparation for trial is due to a party's own actions, the trial court does not err in denying a motion to continue." *In re Bishop*, 92 N.C. App. 662, 666, 375 S.E.2d 676, 679 (1989). The same standard is used to evaluate an alleged deprivation of constitutional right to counsel. "Whether a defendant bases his appeal upon an abuse of judicial discretion or a denial of his constitutional rights, he must show both that there was error in the denial of the motion and that he was prejudiced thereby before he will be granted a new trial." *State v. Thomas*, 294 N.C. 105, 111, 240 S.E.2d 426, 432 (1978).

In this case, respondent father had court-appointed counsel who had represented him since the initial juvenile petition was

filed in January 2007. The Court of Appeals remanded this case for a new hearing in an opinion filed on 2 September 2008, and a notice of a new hearing was served on respondents on 12 October 2008, indicating that the hearing would be held on 23 October 2008. Respondent father retained Mr. Perez on 16 October 2008, and Mr. Perez filed a notice of appearance on 20 October 2008. The motion to continue filed on 20 October was argued on 23 October 2008 by another attorney because Mr. Perez had already left on his trip. At that time, the trial court denied appointed counsel's oral motion to withdraw and continued the hearing only until 29 October 2008. Because Mr. Perez was returning home on the evening of 28 October 2008, respondent father filed a second motion for a continuance that was denied.

Respondent father argues that the trial court's rulings on his motion for a continuance "deprived Respondent-Appellant/Father, at least partially but significantly, of effective assistance of counsel." On appeal, respondent father notes that Mr. Perez had only four business days in his office after being retained in order to prepare, that he had returned to the state on the evening before the hearing, and that respondent father was prejudiced because his retained counsel was not prepared to properly cross-examine the DSS social worker and Jenny's therapist, who were called to testify on 29 October 2008.

Respondent father argues that the lack of preparation of his retained counsel "result[ed] in a prejudiced and compromised cross examination, as well as a prejudiced and compromised response by

way of objection during direct examination, of two key witnesses against [respondent father]." He does not, however, identify anything specifically about either the direct examination or the cross-examination that demonstrates a lack of preparation, such as areas of cross-examination not explored or objections not made. *See State v. Tunstall*, 334 N.C. 320, 329, 432 S.E.2d 331, 337 (1993) ("To demonstrate that the time allowed was inadequate, the defendant must show how his case would have been better prepared had the continuance been granted or that he was materially prejudiced by the denial of his motion." (internal quotation marks omitted)).

To the extent that retained counsel, upon better preparation, would have asked additional questions of the witnesses, respondent father does not explain why that could not be done at the December hearing. We note that this case does not present a situation in which the new counsel was wholly unfamiliar with the case, but rather the retained counsel had actually handled respondent father's first appeal and, consequently, would have been fully aware of the issues and facts involved in the case.

Moreover, with respect to prejudice, respondent father does not address whether his court-appointed counsel — who had not been allowed to withdraw — had any reason not to be prepared to cross-examine these two witnesses. The court-appointed counsel, who had represented respondent father for a year and 10 months, also had six days to prepare for the hearing after his motion to withdraw was denied. While respondent father contends that he wanted his

retained counsel to represent him and intended to discharge his court-appointed counsel, he has not pointed to any conflict or other reason that his court-appointed counsel was unable to effectively represent him.

Finally, even though he has not identified any reason for needing to discharge his court-appointed counsel, respondent father chose to wait to retain counsel until a week before the hearing and retained an attorney who was not available to attend the scheduled hearing. The trial court explained, in denying the motion to continue:

> [G]iven the Court schedule, given the fact that we have to, um, have facilities, resources, and given the fact that there was counsel in place, and I can understand him choosing his own attorney, that's fine, well and good with me, but show me in the statute where it says that once he hires an attorney, that there is an automatic right to a continuance.
>
> . . . [S]o, un-unless you can show me statutory authority for your position, your motion is denied, and we are moving forward today, sir.
>
> . . . .
>
> . . . I hope you know and understand that, but once these matters are scheduled and because I don't have to just look at the position of the Respondents. I have a duty and obligation to look at the position of the children and to also balance that. Now, I don't know if it was articulated to you, but what I heard time and time again last week is that the kids are ready for some permanency to the point that they were ready to bu-, [sic] put the guardian on the stand, and I did everything I could do to reach a compromise and picked today's date.

Respondent father cited no authority to the trial court or this Court that would require the granting of his motion for a continuance under these circumstances. Respondent father's arguments do not fall within the categories set out in N.C. Gen. Stat. § 7B-803 as warranting a continuance. Nor do these circumstances, without a showing of an inadequacy of court-appointed counsel, constitute extraordinary circumstances meriting a continuance. *See State v. Gant*, 153 N.C. App. 136, 142-43, 568 S.E.2d 909, 913 (upholding trial court's denial of motion to continue to allow retention of private counsel and ruling that defendant could either proceed with appointed counsel or represent himself "[s]ince defendant failed to timely act on his right to obtain private counsel"), *disc. review denied*, 356 N.C. 440, 572 S.E.2d 792 (2002); *State v. Montgomery*, 33 N.C. App. 693, 696-97, 236 S.E.2d 390, 392 ("The right of the accused to select his own counsel cannot be insisted upon in a manner that will obstruct an orderly procedure in the courts and deprive the courts of their inherent power to control the same."), *appeal dismissed and disc. review denied*, 293 N.C. 256, 237 S.E.2d 258 (1977). Accordingly, we conclude that respondent father has failed to demonstrate that the trial court abused its discretion in its orders regarding his motions for a continuance.

II

Respondent father also argues that the trial court erred in denying his court-appointed counsel's oral motion to withdraw. As with a motion for a continuance, the decision whether to allow

counsel to withdraw is addressed to the discretion of the trial court. *Benton v. Mintz*, 97 N.C. App. 583, 587-88, 389 S.E.2d 410, 412 (1990). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Here, the trial court was confronted with a scenario in which respondent father had, a week before the hearing, retained counsel whom he knew would not be available for the scheduled hearing date. When the trial court decided to continue the hearing only until 29 October 2008 and denied the motion to withdraw, the court explained: "[U]ntil I see that somebody else is there ready and prepared to go, I'm not going to let you out . . . . Between [retained counsel] and [court-appointed counsel], somebody will be prepared on the 29th." On 29 October 2008, the trial court, when denying the second motion for a continuance explained, "I allowed a continuance last time. I asked [court-appointed counsel] to stay in the case because I foresaw this coming . . . ." Since we have concluded that the trial court did not abuse its discretion in declining to continue the hearing beyond 29 October 2008, we must similarly conclude that it was not manifestly unreasonable to deny the motion to withdraw in order to ensure that respondent father continued to be represented by someone who was knowledgeable about the case.

Respondent father asserts that "[t]he trial court's refusal to allow [court-appointed counsel] to withdraw was erroneous and, in this instance, was very prejudicial to [respondent father]." Respondent father does not, however, identify any reason why he would be prejudiced as a result of continued representation by court-appointed counsel.

In sum, the trial court's refusal to allow appointed counsel to withdraw ensured that respondent father would have at least one prepared attorney at the hearing. Requiring respondent father to proceed with both attorneys protected his rights while also recognizing the "importance this state places on resolving these cases as quickly as possible to ensure our legal system is serving the best interests of the children." *In re T.M.*, 182 N.C. App. 566, 575, 643 S.E.2d 471, 477, *aff'd per curiam*, 361 N.C. 683, 651 S.E.2d 884 (2007). Under these circumstances, we find no abuse of discretion.

III

Respondent father points to the denial of his motion to dismiss and his court-appointed counsel's motion to withdraw and a series of statements by the trial court and argues that the trial court "made statements and rulings evincing an obvious prejudice" toward affording him a fair and impartial hearing. "[I]n order to prove bias, it must be shown that the decision-maker has made some sort of commitment, due to bias, to decide the case in a particular way." *Evers v. Pender County Bd. of Educ.*, 104 N.C. App. 1, 15,

407 S.E.2d 879, 887 (1991), *aff'd per curiam*, 331 N.C. 380, 416 S.E.2d 3 (1992).

Respondent father contends that the following remarks by the trial court suggest bias:

> I am not going to turn this into a long protracted hearing that's going to go on for days. If we do the 27th, it's going to start at 9:00; it's going to be done at Noon.
>
> We need to bring some finality to this. It's going to be done on the 29th, and between those two attorneys, whoever is the most prepared, somebody's going to be in the hot seat, and we're moving forward.
>
> Let's move forward because I only have "x" amount of time.
>
> [W]e're at a point where we need to be thinking about and figuring out what days this will be done, this is not going to be a three or four-day hearing; I'm going to let you all know that now. We're not doing that.
>
> I'm anticipating this is going to be more than enough time, okay? But, if we get bogged down, starting at Noon on the 3rd, I will be ready to do closing arguments, all right?
>
> Closing arguments start at Noon on the 3rd. I don't have any more time to devote; it's just me and a whole bunch of cases.
>
> [L]et's try to move it along because I do have people waiting. We are four hours past our time.

Respondent father argues, based on these statements, that "[t]he trial court should not be allowed to again deny Respondent-Appellant/Father a proper trial in this matter, just because the trial court was too busy or too disinterested to grant [respondent father] a full, impartial and fair hearing."

None of these remarks, however, indicate a bias against respondent father. Instead, they express a desire by the trial court to move the hearing along and keep it within a specified period of time. "The trial judge has inherent authority to supervise and control trial proceedings. The manner of the presentation of the evidence is largely within the sound discretion of the trial judge and his control of a case will not be disturbed absent a manifest abuse of discretion." *State v. Davis*, 317 N.C. 315, 318, 345 S.E.2d 176, 178 (1986). Pursuant to Rule 611(a) of the Rules of Evidence, the trial court possesses the authority to control the mode and order of interrogation and presentation of evidence "so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."

Here, although respondent father broadly asserts that he was "again den[ied] . . . a proper trial in this matter," he does not specifically point to any way that the length of the trial prejudiced him. Notwithstanding the trial court's remarks, the trial court engaged in an extensive scheduling discussion on 23 October 2008 and conducted the actual TPR hearing on 29 October, 2 December, 3 December, and 4 December 2008. The hearings resulted in 807 pages of transcript (including indices), with the initial 23 October 2008 hearing amounting to only 40 pages. Indeed, at the end of the 29 October 2008 hearing, the trial court stated: "I think, uh, we have done a lot of good work today, and I appreciate

everything that everyone has done, and we are about to adjourn so this court can go eat lunch at 6:00 in the evening, and we will resume . . . on December 2nd for other evidentiary, uh, showings, and if we need to go into the 3rd, we will, but only until 12 Noon." And, yet, the trial court not only allowed the parties to go into the day of 3 December 2008, but also 4 December 2008.

The record does not support respondent father's claim that he was denied a proper hearing or a full, impartial, and fair hearing. Respondent father does not argue that the time frame of the trial prevented him from presenting any evidence, making any arguments, or in any other way obtaining a fair trial of the issues. We, therefore, hold that respondent father received a fair trial and overrule this assignment of error.

IV

Respondent father next argues that the trial court's determination that grounds existed to terminate his parental rights is not supported by findings of fact that are supported by clear, cogent, and convincing evidence. The trial court found two grounds: N.C. Gen. Stat. § 7B-1111(a)(1) (2007) (neglect) and N.C. Gen. Stat. § 7B-1111(a)(6) (incapacity to parent). On appeal, we review the order "to determine whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusion of law." *In re S.C.R.*, ___ N.C. App. ___, ___, 679 S.E.2d 905, 910 (2009). We are bound by a trial court's findings of fact "where there is some evidence to support those findings, even though the evidence might sustain

findings to the contrary." *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984).

N.C. Gen. Stat. § 7B-101(15) (2007) defines a neglected juvenile 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.

When, as here, the child was removed from the parent's home pursuant to a prior adjudication of neglect, "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). In such cases, although "there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parents." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000).

In this case, respondent father acknowledges that the children were adjudicated neglected, but challenges the trial court's determination that there was a probability of repetition of neglect if the children were returned to respondent father. The trial court, however, found that respondent father had engaged in

"[s]evere domestic violence" in front of the children, but had minimized the nature and extent of domestic violence in the household. Respondent father did not make any attempt to obtain treatment with regard to domestic violence until after December 2007, the month that his parental rights were initially terminated. Indeed, respondent father did not even attend the first TPR hearing.

In addition, the trial court found that respondent father has "issues with substance abuse," but that he denies being substance dependent and has not agreed to residential treatment. While he unsuccessfully sought treatment at one facility, he did not follow up with a second treatment recommendation. In addition, respondent father did not obtain a scheduled psychological evaluation, has not continued in therapy or treatment for his mental health issues, and does not take prescribed anti-depressants.

These findings show serious issues regarding domestic violence, substance abuse, and mental health, but little timely effort by respondent father to address these issues. While respondent father now points to evidence of efforts first undertaken a significant period of time after the first TPR hearing, the trial court was entitled to weigh the belatedness of these efforts and decide that they were not sufficient to warrant the conclusion that there was no probability of neglect in the future. *See Smith v. Alleghany County Dep't of Soc. Servs.*, 114 N.C. App. 727, 732, 443 S.E.2d 101, 104 (holding that trial court adequately considered mother's improved psychological condition and

living conditions at time of hearing even though it found, because of recency of improvement, that probability of repetition of neglect was great), *disc. review denied*, 337 N.C. 696, 448 S.E.2d 533 (1994). *Cf. In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004) (holding that where mother made some progress immediately prior to termination hearing, but such progress was preceded by a "prolonged inability to improve her situation, . . . there was sufficient evidence to support the trial court's finding of [mother's] lack of progress"); *In re Oghenekevebe*, 123 N.C. App. 434, 437, 473 S.E.2d 393, 397 (1996) (concluding that DSS proved lack of reasonable progress where parent "fail[ed] to show any progress in her therapy until her parental rights were in jeopardy").

We also note that although respondent father testified that he attended classes to deal with anger management and domestic violence, he admitted that he did not find them helpful because he believed he did not "need" the classes. This testimony supports the trial court's finding that respondent father minimized the domestic violence in his home and its decision not to give great weight to the claimed changed circumstances.

We, therefore, hold that the trial court's findings of fact supported its conclusion that grounds existed — neglect — to terminate respondent father's parental rights. "[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and 'an appellate court determines there is at least one ground to support a conclusion that parental rights

should be terminated, it is unnecessary to address the remaining grounds.'" *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) (quoting *In re Clark*, 159 N.C. App. 75, 78 n.3, 582 S.E.2d 657, 659 n.3 (2003)), *aff'd per curiam,* 360 N.C. 360, 625 S.E.2d 779 (2006). We, therefore, do not address respondent father's arguments regarding the conclusion that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(6) (incapacity to parent).

Respondent father, however, also argues that the trial court's findings of fact are not supported by clear, cogent, and convincing evidence. We address only those findings pertinent to the neglect determination.

Respondent father first challenges the trial court's finding that "[s]evere domestic violence has occurred in [respondents'] home . . . ." Respondent father argues that (1) the evidence did not indicate that any domestic violence was "severe"; (2) respondents denied the existence of domestic violence; (3) two of respondent father's relatives testified that they had not observed domestic violence; (4) respondent father had never been charged or investigated for domestic violence; and (5) Jenny had not mentioned any domestic violence.

The record, however, contains extensive evidence supporting the trial court's finding. Most significantly, respondent father does not challenge finding of fact 16:

> An event of domestic violence led to the filing of the Juvenile Petition in January, 2007. The Petition was filed after Chatham County DSS received a new referral regarding domestic violence in the home. According to the referral, Respondent father had wielded a

> gun, shot at the trees, referring to the trees [as] Respondent mother's head. Respondent father went into the woods behind the home with a weapon. Respondent father admits to having a gun, going to the back of the house and into the woods where he was discovered by his wife and her father. The domestic violence occurred because Respondent father was unable to find his prescribed medication and blamed Respondent mother for the missing medication. Respondent father admits he was "sick" without medication and that he tore cushions off the sofa and threw things out of the cabinets in an effort to find his medication.

Any "findings of fact to which an appellant does not assign error are conclusive on appeal and binding on this Court." *S.C.R.*, ___ N.C. App. at ___, 679 S.E.2d at 909.

In addition, the trial court took judicial notice of the court file. In the initial adjudication order, the court found: "Respondents/parents have a history of drug use, and domestic violence. The juveniles have both witnessed the violence and have been victims of the violence between their parents. The juveniles have witnessed Respondent/father threaten Respondent/mother with a gun. They have seen Respondent/father physically abuse Respondent/mother. On at least one occasion, Respondent/mother held a child while Respondent/father physically assaulted her." In the 11 September 2007 permanency planning order, the trial court found that respondent mother had "disclosed domestic violence in her relationship with [respondent father] . . . ."

Further, contrary to respondent father's assertion, Jenny told DSS social workers and her therapist about domestic violence that she observed, including (1) respondent father's pushing respondent

mother repeatedly while she was holding Aaron, causing her to drop the child who then hit his head on a flashlight; (2) respondent father's forcing her mother, Aaron, and a minor cousin to watch him shoot a gun at a tree while respondent father identified the tree as respondent mother's head; and (3) respondent father's locking the minor cousin outside in the dark and threatening to kill anyone who attempted to help him or let him inside. Jenny confessed to her therapist that she felt responsible for being removed from the home because she called for help on the day that her father pushed her mother.

Respondent mother disclosed to the DSS social worker that domestic violence was present in her relationship with respondent father, that respondent father was not interested in getting the children back, and that respondent father was trying to keep her from getting the children back. In addition, although respondent mother claimed that she suffered a hematoma near her eye as a result of a car accident, the hospital staff who examined her suspected domestic violence.[2] The trial court viewed the photographs of the injury and found that the injury did not appear consistent with a hematoma as described by respondent mother.

In addition, the maternal grandfather was present when respondent father, who was holding a baby, twice threatened to knock respondent mother to the floor. The maternal grandmother testified that respondent mother described to her an occasion on

[2]This evidence was admitted without objection.

which respondent father had dragged her from one end of the house to the other.

This evidence is sufficient to support the trial court's finding of severe domestic violence. Even though respondent father may have presented evidence to the contrary, it was solely within the authority of the trial court to determine the credibility of and the weight to be given the evidence.

Respondent father also appears to argue that because there was no evidence of continuing domestic violence after January or February 2007, this evidence could not support a finding that neglect was likely to recur. The trial court was, however, entitled to consider the fact that respondent father had not gotten domestic violence treatment until approximately 10 weeks prior to the December 2008 TPR hearing (starting roughly a week before the original 23 October 2008 hearing date). In addition, respondent father repeatedly testified that he did not find these classes helpful because he had never committed domestic violence. Given the past acts of domestic violence together with the denial of any domestic violence problem, the lack of timely treatment, and the rejection of the treatment's efficacy, the trial court could reasonably find that domestic violence would likely recur.

Respondent father next argues that the trial court erred in finding that he "has issues with substance abuse." Respondent bases this argument solely on his claim that there is no evidence that he had an ongoing drug problem as of December 2008. As evidence that he did not have an ongoing substance abuse problem,

he points to the fact that he had been involved in substance abuse treatment at the Sanford Treatment Center from February 2008 through the time of the hearing in December 2008 and that all random drug screens he submitted were negative.

The evidence, however, also shows, based on respondent father's testimony, that while he was originally prescribed methadone for pain, the methadone does not help with the pain, and he continues taking it only to avoid becoming "sick" — a condition that he described as being worse than the flu. Respondent father admitted to DSS that, with regard to the incident in January 2007 that led to the juvenile petition, he had torn up the house because he could not find his Percocet and methadone. The trial court could reasonably infer from this evidence that respondent father takes methadone only to avoid withdrawal symptoms. In addition, respondent father admitted to having been addicted to Oxycontin about three to four years before the December 2008 hearing and that he had taken Oxycontin, Percocet, Xanax, Klonopin, Zoloft, and Prozac to address his back pain. Although respondent father at one point worked with a physician regarding medications for his back pain, he admitted that he was not having his medications managed by a physician anymore and, for the prior year, was only obtaining treatment through a methadone clinic.

In addition, while working with DSS, respondent father refused to submit to drug screens on 28 February 2007, 2 March 2007, 15 March 2007, 28 March 2007, 30 March 2007, 25 April 2007, 29 May 2007, 13 June 2007, 14 June 2007, and 20 June 2007. On 26 April

2007, he presented for a screen, but was unable to provide a sample for two hours. The following day, on 27 April, he presented again and this time tested positive for methamphetamines, but claimed that the test was in error.

Finally, respondent father does not challenge the trial court's finding of fact that "Respondent father is being treated for drug use . . . ." This evidence amply supports the finding that respondent father "has issues with substance abuse."

Father also contends that the following findings of fact are unsupported:

> 26. Neither parent has agreed to residential treatment for his/her drug use and both deny that they are substance dependent.
>
> . . . .
>
> 29. Respondent father attempted drug treatment at Freedom House but was denied. He did not follow through with the second (2nd) treatment recommendation from Social Worker Brown, which was to participate in treatment at a facility called "A Clean House."

Respondent father argues that the evidence showed that a slot in one recommended treatment program was never available and that while the social worker gave respondent father information about "A Clean House," he never referred him to that facility. Respondent father contacted that facility anyway, but a treatment slot was not available there either.

On the other hand, respondent father testified that he was not allowed to enroll in the Freedom House treatment program because of his methadone use. Respondent father has not, however, made any

effort to cease taking methadone. With respect to "A Clean House," he testified that he contacted the program once, but did not call again after they informed him that a bed was not available at that time. Respondent father did not testify to any other attempts at obtaining residential treatment. This evidence is sufficient to support the trial court's findings of fact.

Next, respondent father argues that the trial court erred in finding that he "was prescribed anti-depressants but is not taking them" and that he has "not continued in therapy or treatment for his mental health issues." This finding is supported by the evidence. Respondent father's claim that there was no evidence that he still needed the anti-depressants and mental health therapy goes to the weight and credibility of the evidence.

In a related argument, respondent father disputes the trial court's finding that he did not "avail[]" himself of an evaluation with Dr. Karin Yoch to be paid for by DSS. Respondent father asserts that he was not allowed the opportunity to be evaluated by Dr. Yoch. He signed a case plan in which he agreed to a psychological evaluation, but Dr. Yoch would not complete the evaluation until respondent father had passed his drug screens for at least one month prior to the evaluation. The evaluation was not conducted because respondent father failed to meet the drug screen requirement. Further, respondent father acknowledged at the hearing that he knew the social worker wanted him to obtain a psychological evaluation from Dr. Yoch, and he failed to do it,

explaining that he "bucked [Mr. Brown] a lot." This evidence sufficiently supports the finding of fact.

Respondent father also objects to a series of findings of fact addressing Jenny's mental health. Those findings were supported by the testimony of Jenny's therapist. Respondent father, however, argues that reliance on that testimony, which took place on 29 October 2008, is inappropriate because the trial court improperly denied his motion to continue. Since we have concluded that the trial court did not err in denying the motion to continue, and respondent father has presented no other specific argument for setting aside these findings, we hold that they are sufficiently supported by the evidence.

In short, we hold that the trial court's findings of fact pertinent to the determination that respondent father neglected the children are supported by clear, cogent, and convincing evidence. Those findings of fact in turn support the conclusion of law that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(1).

V

Lastly, respondent father and respondent mother each contend that the trial court abused its discretion in concluding that termination of their parental rights was in the best interests of Aaron and Jenny.[3] Upon adjudicating that one or more grounds exist to terminate parental rights, a court must then engage in the

[3]This contention is respondent mother's sole argument on appeal.

dispositional phase, in which it decides whether termination of parental rights is in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a) (2007); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). The court's decision may be reviewed only for abuse of discretion. *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406-07 (2003). N.C. Gen. Stat. § 7B-1110(a), however, requires that the trial court make findings of fact regarding the following: (1) the age of the child, (2) the likelihood of adoption of the child, (3) whether termination of parental rights will aid in the accomplishment of the permanent plan for the child, (4) the bond between the child and the parent, (5) the quality of the relationship between the child and the proposed adoptive parent, guardian, custodian, or other permanent placement, and (6) any relevant consideration. Neither parent argues that the trial court failed to make the findings of fact required by N.C. Gen. Stat. § 7B-1110(a).

Respondent father contends instead that he "had resolved, by the termination hearing, issues of concern which had led to the juveniles' removals and continued placement in foster care." Respondent father asserts that "[n]o substance abuse problems or concerns regarding domestic violence had existed since at least April 2007, almost 20 months before the termination hearing!" He points, in addition, to the fact that he was involved in domestic violence counseling as well as substance abuse counseling and monitoring "prior to the termination hearing." Respondent father further argues that the trial court erred in finding that "[i]t is

unlikely that Respondent parents can provide the kind of structure that these children need. The children need predictability and stability."

Given the trial court's findings, we cannot agree with respondent father's portrayal of the circumstances as of the TPR hearing, which began on 29 October 2008. As of that date, respondent father had only just started domestic violence counseling, and even two months later — after 10 sessions — he denied that the counseling was at all helpful and denied that he had ever engaged in domestic violence. The trial court was entitled to conclude that domestic violence was still a problem. Moreover, respondents only started family counseling on 1 December 2008, the day before the second day of the TPR hearing.

With respect to substance abuse, respondent father had only been in counseling for less than a year, waiting until after his parental rights had been terminated the first time.[4] As of the hearing, he continued to take methadone, but not for any medical reason or with any monitoring by a physician — he took it because he got "sick" without it. When deprived of his methadone, he had torn up his house and threatened his wife with a gun. The trial court was, therefore, also entitled to conclude that substance abuse continued to be a problem as of the TPR hearing. Finally, although mental health concerns had been an issue from the start,

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[4]In addition, respondent father also refused drug screens on 29 May 2007, 13 June 2007, 14 June 2007, and 20 June 2007, well after the April 2007 date that respondent father contends marked the end of any substance abuse issues.

respondent father had never addressed that issue, choosing instead to "buck" the social worker.

The evidence regarding respondent father's conduct from January 2007 through the commencement of the second TPR hearing raises serious questions — as the trial court found — regarding the ability of respondent father to provide structure, predictablity, and stability for the children. On the other hand, the trial court found that the maternal grandparents — who hope to adopt the children - have provided "a loving, structured environment." With respect to Jenny, who suffers from post-traumatic stress disorder as a result of observing domestic violence, the court found that since living with her grandparents, her level of trauma had decreased, her school attendance and grades had improved, and her behavior had improved. As for Aaron, he had lived more than half of his life in the care of his grandparents. While the court acknowledged the "strong bond" between the children and their parents, it also found a "strong bond" and "a loving and nurturing relationship" with the grandparents. Given these findings of fact, we cannot find manifestly unreasonable the trial court's decision that termination of respondent father's parental rights was in the children's best interests.

Respondent mother (joined by respondent father), however, further argues that the trial court should have ordered guardianship with the maternal grandparents as opposed to a termination of parental rights. Based on remarks made by the trial court following its oral ruling that the parental rights should be

terminated, respondent mother argues that the trial court was anticipating that respondent "may be back in her children's life at any time." Respondent mother asserts that "[i]t would be counterproductive to any future relationship for the trial court to have severed the minor children's bond to their natural mother."

During the court's remarks, it stressed the need for the parents to work on the issues that had led to the termination of parental rights in case the children decided that they wanted a relationship with their parents. When the entire remarks are read, however, it is apparent that the trial court was primarily addressing the possibility that once the children were no longer minors, they might choose to have contact with their parents if their parents had made progress. Although the court indicated in response to a question from respondent mother that the children could make that decision at "any time," subsequent remarks also indicated that progress might also encourage the prospective adoptive parents (the maternal grandparents) to allow contact. These remarks are not inconsistent with the trial court's written determination that the children's need for predictability and stability meant that it was in their best interests that respondents' parental rights be terminated "and that the juveniles be released for adoption."

In any event, we review the written order and whether the conclusions of law are supported by sufficient findings of fact and whether those findings are supported by competent evidence. Since we have concluded that both prongs have been met, it is our duty to affirm. The written order prevails over any oral rendering of the

trial court's decision. We, therefore, affirm the trial court's order terminating respondents' parental rights.

Affirmed.

Judges ROBERT HUNTER JR. and BEASLEY concur.

Report per Rule 30(e).