NO. COA10-651

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

IN THE MATTER OF:

M.C., T.C., and E.M.

Wake County
Nos. 08 JT 615, 616, 617

Appeal by respondents from order entered 19 March 2010 by Judge Monica M. Bousman in District Court, Wake County. Heard in the Court of Appeals 1 November 2010.

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

Pamela Newell, for guardian ad litem.

Appellate Defender Staples Hughes, by Assistant Appellate Defender J. Lee Gilliam, for respondent-appellant mother.

Windy H. Rose, for respondent-appellant father.

STROUD, Judge.

Respondent-father and respondent-mother each appeal from the trial court's order terminating their parental rights to the minor children M.C.("Michael"), born in 2000, E.M.("Eric"), born in 2003, and T.C.("Taylor"), born in 2005.[1] Respondent-father argues he was not given proper notice of the motion for termination of parental rights. Respondent-mother challenges the grounds for termination

[1] We will refer to the minor children M.C., E.M., and T.C. by the pseudonyms Michael, Eric, and Taylor, to protect the children's identity and for ease of reading.

and the best interest determination of the trial court. After careful consideration, we affirm the trial court's order.

I. Background

Respondent-mother is the biological mother of all three children. Respondent-father is the biological father of Eric and Taylor. The father of Michael is not a party to this appeal, although his parental rights to Michael were terminated by the same termination order at issue in this appeal.

On 25 September 2008, Wake County Human Services ("WCHS") filed a juvenile petition alleging that Michael, Eric, and Taylor were neglected juveniles. WCHS alleged in the petition that in January 2008 it had received this matter as a transfer from the Bertie County Department of Social Services ("Bertie County DSS") on 8 April 2008, where there had been reports of neglect of the children by respondents since 2005 and Bertie County DSS had provided services to address respondents' substance abuse and domestic violence problems. WCHS alleged that it had received a report from Bertie County DSS, dated 14 January 2008, that respondent-mother had threatened to kill Michael and that there was no food in the home. The petition further alleged that on 9 September 2008, WCHS received a report that respondent-father raped and physically assaulted respondent-mother while the children were in the home. One of the children reported seeing respondent-father holding down respondent-mother. Further, WCHS alleged that at the time of this alleged rape and assault, respondent-mother was "severely intoxicated" and Michael saw her "beating her head

against the wall[.]" Respondent-father denied raping respondent-mother. WCHS also alleged that it received a report dated 24 September 2008 stating that respondent-mother had been drunk since 4 September, that respondent-father drank excessively and smoked marijuana, and respondents fought in front of the children. This report also stated that when respondent-father abused alcohol, he would hit Michael and Eric "with an open fist and closed fist on the arms, chest and head." WCHS also alleged that respondent-mother took Taylor to the home of a registered sex offender, and that when she was intoxicated, she sometimes took the children out late at night to drug houses. It was also alleged that Taylor had "Fetal Alcohol Syndrome" but had "missed appointments with a CSC worker and a neurologist" and the tubes in her ears had recently fallen out but respondents had "not taken her to a doctor." Michael had asthma, but when "he purposely took too much of his inhalant" and complained about his heart racing, respondents "were reluctant to take him to a hospital." On 25 September 2008, the trial court entered an "order for non-secure custody and notice" giving WCHS immediate custody of the children. By order dated 20 October 2008, the trial court continued nonsecure custody with WCHS, permitted respondents visitation with the children, and ordered WCHS to "continue to make reasonable efforts to eliminate the need for placement outside the home."

Following a hearing on 18 November 2008, the trial court on 1 December 2008 entered an order adjudicating the children as neglected; continued custody of the children with WCHS; and ordered

WCHS to "make reasonable efforts to prevent the continued removal of the children from the parents['] care and to promptly place the children in a safe home." The trial court found that respondents had suitable housing for themselves and the children; respondent-mother had met with a psychiatrist and was due to begin an anger management program in January 2009; respondent-mother did not comply with a request for a drug screen on 30 October 2008; both respondents were attending a "Strengthening Families" program; and respondent-father had tested positive for "use of barbiturate and cannabis" and was referred for a substance abuse assessment. The trial court ordered respondent-mother to: (1) complete drug treatment, follow all recommendations, and abstain from any alcohol and illegal drug use; (2) complete a psychological evaluation and follow all recommendations and participate with and follow through with her mental health services; (3) submit to random drug screens; (4) complete a parenting group and demonstrate effective parenting skills; (5) complete anger management classes; (6) complete a domestic violence program; (7) visit with the children regularly; (8) maintain stable employment; and (9) maintain stable housing sufficient for herself and the children. The trial court ordered respondent-father to: (1) establish paternity for Eric; (2) complete anger management classes; (3) submit to random drug screens; (4) visit with the children regularly; (5) complete a psychological evaluation and follow all recommendations including enrolling in a domestic violence offender program; (6) follow recommendations from his substance abuse assessment and abstain

from any alcohol and illegal drug use; (7) maintain employment; and (8) maintain stable housing.

At a review hearing held on 5 February 2009, the trial court found that respondent-mother was engaging in ordered services and had been clean from substance abuse since 26 December 2008. Respondents had filed petitions alleging domestic violence against each other, but neither one pursued the matter. Respondent-father tested positive for "the use of barbiturate and cannabis[.]" The trial court authorized a permanent plan of reunification.

The next review hearing was held on 24 September 2009. The trial court found that on 17 June 2009, respondent-mother relapsed into alcohol abuse, she refused a drug screen on 10 July 2009, and there were reports that she had been drinking on other occasions. Respondent-mother was consistently visiting with the children, and had enrolled in a program for domestic violence, as well as in anger management counseling and family therapy. However, she had not obtained stable housing, nor had she secured stable employment. With regard to respondent-father, the trial court found that he had not made significant progress in complying with the orders of the court. The trial court found that reunification efforts were futile and authorized a change in the permanent plan to adoption. The court ordered WCHS to cease reunification efforts.

On 8 December 2009, WCHS filed a motion to terminate respondents' parental rights. The grounds alleged as to respondent-mother were: (1) neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); (2) failure to make reasonable progress to correct

the conditions which led to the removal of the children pursuant to N.C. Gen. Stat. § 7B-1111(a)(2); and (3) incapability of providing proper care for the children such that they are dependent children pursuant to N.C. Gen. Stat. § 7B-1111(a)(6). The grounds alleged as to respondent-father were: (1) neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); (2) failure to make reasonable progress pursuant to N.C. Gen. Stat. § 7B-1111(a)(2); and (3) failure to legitimate or establish paternity as to Michael pursuant to N.C. Gen. Stat. § 7B-1111(a)(5).

The matter came on for hearing on 4 March 2010. Respondent-father was not present. At the start of the hearing, respondent-father's attorney moved to withdraw from the case and stated that he had not had contact with his client since July 2009. Respondent-father's attorney informed the court that he had tried to contact respondent-father at addresses provided by WCHS and by respondent-mother, but all correspondence was returned to the attorney without having been delivered to respondent-father. The trial court allowed the attorney to withdraw from the case.

In the adjudication phase of the hearing, testimony was elicited from respondent-mother, WCHS foster care social worker Peggy Bryant, and from Pat Vanscoy, WCHS certified substance abuse counselor. Gina Gialanella, therapist to both Michael and Eric, began to testify, but the parties decided to stipulate to the following facts, which were read into the record and became finding of fact 21 in the court's termination order:

> 21. That the long term and chronic pattern of substance abuse, domestic violence,

> inappropriate discipline and instability of the mother and [respondent-father] caused the children to suffer severe emotional harm. [Michael] has been diagnosed with attachment disorder, Post Traumatic Stress Disorder, and depression. [Eric] has been diagnosed with Post Traumatic Stress Disorder and ADHD and has academic and behavior problems stemming from anxiety. [Taylor] is afflicted with Fetal Alcohol Syndrome and dwarfism. In therapy, the children have discussed incidents which happened in the home with the mother and [respondent-father], which have caused the children to be aggressive and anxious. [Eric] and [Michael] are engaged in ongoing, intensive mental health therapy, and meeting weekly with their therapist.

After hearing the evidence, the trial court determined that clear, cogent, and convincing evidence was presented to prove the grounds of neglect and failure to make reasonable progress as to both respondent-mother and respondent-father.

During the disposition phase of the hearing, the trial court heard evidence from Ms. Gialanella and from Ms. Bryant, and the guardian *ad litem* submitted a report. The trial court stated it had considered the factors enumerated in N.C. Gen. Stat. § 7B-1110, and determined that termination of respondents' parental rights is in the best interests of the children. The trial court ordered that respondents' parental rights to the minor children be terminated. From the order entered, respondents appeal.

II. Standard of review

Proceedings to terminate parental rights are conducted in two parts: (1) the adjudication phase, governed by N.C. Gen. Stat. § 7B-1109 (2009), and (2) the disposition phase, governed by N.C. Gen. Stat. § 7B-1110 (2009). *In re Blackburn*, 142 N.C. App. 607,

610, 543 S.E.2d 906, 908 (2001). Upon review of an order terminating parental rights, this Court must determine (1) whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and (2) whether the court's findings of fact support its conclusions of law that one or more statutory grounds for termination exist. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001); *see also* N.C. Gen. Stat. § 7B-1111(a) (2009). 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). Once a trial court has determined at the adjudication phase that at least one ground for termination exists, the case moves to the disposition phase where the trial court decides whether a 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; N.C. Gen. Stat. § 7B-1110(a). The trial court is not required to terminate parental rights, but has the discretion to do so. *In re Tyson*, 76 N.C. App. 411, 419, 333 S.E.2d 554, 559 (1985). Therefore, this Court reviews the trial court's determination for abuse of discretion. *Id.*

III. Respondent-father's argument

Respondent-father's sole argument on appeal is that he did not receive proper notice of the motion to terminate his parental rights. He points out that the certificate of service on the motion shows it was mailed to an address in Raleigh, although

evidence was presented that he had moved to Connecticut. Respondent-father contends that mailing to an old address constituted insufficient notice. He acknowledges that his attorney was served with the motion but argues that since there was no evidence that the attorney gave notice to respondent-father, the court erred in terminating respondent-father's parental rights where sufficient notice was lacking and where respondent-father was not represented at the termination hearing. We do not agree with these contentions.

Regarding motions for termination of parental rights, N.C. Gen. Stat. § 7B-1102(b) provides:

> A motion pursuant to subsection (a) of this section and the notice required by G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:
>
> (1) Service must be in accordance with G.S. 1A-1, Rule 4, if one of the following applies:
>
> a. The person or agency to be served was not served originally with summons.
>
> b. The person or agency to be served was served originally by publication that did not include notice substantially in conformity with the notice required by G.S. 7B-406(b)(4)e.
>
> c. Two years has elapsed since the date of the original action.
>
> (2) In any case, the court may order that service of the motion and

> notice be made pursuant to G.S. 1A-1, Rule 4.

N.C. Gen. Stat. § 7B-1102(b) (2009). Here, the original juvenile petition was filed on 25 September 2008, and the return of service indicates that respondent-father was personally served with the petition on 30 September 2008. The motion to terminate respondent-father's parental rights was filed on 8 December 2009, less than two years since the date of the original action. Thus, none of the exceptions listed in N.C. Gen. Stat. § 7B-1102(b)(1) apply. Nor did the trial court order that service of the motion to terminate be made pursuant to N.C. Gen. Stat. § 1A-1, Rule 4. Therefore, service of the motion was subject to the provisions of N.C. Gen. Stat. § 1A-1, Rule 5.

Rule 5 of the North Carolina Rules of Civil Procedure allows for service of a motion to be made upon the party's attorney of record. N.C. Gen. Stat. § 1A-1, Rule 5(b) (2009). Respondent-father does not dispute that his court-appointed attorney of record, Brian Demidovich, was properly served with the motion to terminate respondent-father's parental rights, and the certificate of service attached to the motion indicates that the attorney was duly served by first class mail. Service of a motion on an attorney of record precludes a party from claiming inadequate notice under N.C. Gen. Stat. § 1A-1, Rule 5. *Griffith v. Griffith*, 38 N.C. App. 25, 29, 247 S.E.2d 30, 33, *cert. denied*, 296 N.C. 106, 249 S.E.2d 804 (1978). Since respondent-father was correctly served pursuant to N.C. Gen. Stat. §§ 1A-1, Rule 5, and 7B-1102,

his argument that he did not receive proper notice of the motion to terminate his parental rights has no merit.

IV. Respondent-mother's arguments

A. Grounds for termination of parental rights

Respondent-mother contends the trial court erred in concluding that the grounds of neglect and failure to make reasonable progress justify terminating her parental rights to the minor children.

As only one ground for termination is required to uphold an order terminating a respondent's parental rights, N.C. Gen. Stat. § 7B-1111(a) (2009), we begin by evaluating the ground of neglect.

A trial court may terminate parental rights upon finding that a parent has neglected the minor child. N.C. Gen. Stat. § 7B-1111(a)(1) (2009). A child is neglected if he or she

> does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law . . . .

N.C. Gen. Stat. § 7B-101(15) (2009). In determining neglect, the court must consider "the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (emphasis in original). Although evidence of a past adjudication of neglect is admissible, "[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." *Id.* This is

especially true where the parent has not had custody of the child for quite some time. *Id.* at 714, 319 S.E.2d at 231.

Respondent-mother argues that the trial court's findings of fact 43, 45, 46, 47, and 50 are not supported by clear, cogent, and convincing evidence in the record.[2] Upon careful review of the trial court's order, it appears that findings 37 through 49 are relevant to the trial court's determination regarding whether grounds existed to terminate respondent-mother's parental rights for neglect pursuant to N.C. Gen. Stat. § 7B-1111(a) (1). As respondent-mother challenges only findings 43, 45, 46, and 47, the trial court's remaining relevant findings of fact, unchallenged by respondent-mother, are binding on appeal. *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005).

1. The Trial Court's Findings of Fact

a. Finding No. 43

Respondent-mother challenges the portion of the trial court's finding No. 43, which finds, "That the mother has not demonstrated that she has successfully engaged in substance abuse treatment[.]" She argues that this finding was not supported by clear, cogent, and convincing evidence in the record. Pat Vanscoy, a certified

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[2] In her brief, respondent-mother challenges these specific findings of fact in her first argument that the trial court erred in concluding that she had failed to make reasonable progress to correct the conditions which led to the removal of the children pursuant to N.C. Gen. Stat. § 7B-1111(a) (2) and incorporated the same arguments challenging these findings in her second argument challenging the trial court's conclusion of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a) (1), in that she had failed to make reasonable progress to correct the conditions which led to the removal of the children.

substance abuse counselor with WCHS Child Protective Services, testified that she was counseling respondent-mother, following her diagnosis for severe alcoholism. Ms. Vanscoy testified that respondent-mother was required to attend "bi-monthly individual counseling, . . . weekly Relapse Group [meetings], two AA meetings a week" and to have a bi-monthly evaluation by psychiatrist, Dr. Leslie Hocking. Ms. Vanscoy stated that respondent-mother had missed several of these individual counseling sessions, by cancelling them before the session or by not showing up. Specifically, respondent-mother cancelled sessions on 17 November 2008, 2 February 2009, 1 December 2009, and 24 February 2010; she did not show up for sessions on 22 December 2008 and 14 October 2009. Ms. Vanscoy also testified that respondent-mother initially would not come to group therapy. After respondent-mother's relapse, Ms. Vanscoy again recommended group relapse therapy and respondent-mother attended the first four meetings in July 2009 but did not attend any subsequent meetings. Ms. Vanscoy summarized that respondent-mother was not meeting her treatment goals. Respondent-mother admitted that she had not participated in group relapse therapy, even though this was part of her treatment plan. This testimony shows that respondent-mother was not consistently attending substance abuse counseling, as ordered by the court, and that she was refusing to participate in group counseling as recommended by the counselors. Accordingly, we hold that there was clear, cogent, and convincing evidence in the record to support the trial court's finding No. 43., "That the mother [had] not

demonstrated that she has successfully engaged in substance abuse treatment[.]"

b. Finding No. 45

Respondent-mother next contends that the trial court's finding No. 45 is not supported by clear, cogent, and convincing evidence in the record. Finding No. 45 states:

> 45. That the mother has tested negative for drug/alcohol in urine screen requests that she complied with, the last being on December 9, 2009. However, she did not comply with screening requests in August and November of 2009 or the most recent request in January 2010.

Peggy Bryant, a WCHS social worker, testified that respondent-mother

> completed a drug screen on 2 October 16 '08 and, uh, November of '08, uh, January '09[,] June 15 and 18 of '09, uh, August 13 of '09, on July 10th of '09 [respondent-mother] did not complete a random, uh, on October 5th of '09 [respondent-mother] did not complete the screen, uh, on 6 September, well, on November 23 of '09 [respondent-mother] did not complete a screen, uh, and on December 11, '09 it was negative.

The dates Ms. Bryant stated that respondent-mother did not complete drug screenings do not match the dates listed by the trial court in its finding No. 45, so we hold that the portion of finding No. 45 as to the dates is not supported by clear, cogent, and convincing evidence in the record and was in error. However, the portion of the finding which states that respondent-mother, "did not comply with screening requests" is supported by clear, cogent, and convincing evidence as Ms. Bryant listed dates in July, October,

and November of 2009 when respondent-mother failed to comply with drug screening requests.

c. Finding No. 46

Respondent-mother next contends that the trial court's finding No. 46 is not supported by clear, cogent, and convincing evidence in the record. Finding No. 46 states:

> 46. That on several occasions, since the September 2008 adjudication, the mother demonstrated speech and actions which raised concerns about her drinking, most recently in a phone conversation with the social worker on March 3, 2010, the day before this hearing. During another phone call with the social worker in September, 2009, the mother acted in a manner the social worker believed to be caused by excessive use of alcohol.

This finding of fact is support by clear, cogent, and convincing evidence in the record. WCHS social worker Ms. Bryant testified that around the September 2009 hearing she received a phone call from respondent-mother in which she "sounded . . . under the influence[.]" Ms. Bryant testified that just before the hearing on 3 March 2010, she received a call from respondent-mother and because respondent-mother's speech was "slurred" and "altered" she believed that respondent-mother was intoxicated. Ms. Bryant testified that respondent-mother had been discharged from a homeless shelter because of an altercation with a staff member who reported that she seemed intoxicated at the time of the altercation. Accordingly, we hold that there was clear, cogent, and convincing evidence in the record to support the trial court's finding No. 46.

d. Finding No. 47

Respondent-mother next contends that the trial court's finding No. 47 is not supported by clear, cogent, and convincing evidence in the record. Finding No. 47 states:

> 47. That [Michael] has made statements that his mother had been drinking and that he wished that she would stop drinking. On or about February 20, 2010, the mother was arrested for assault on a government official and resisting arrest, when she was riding in a car with her sister, who was arrested for a DWI. The mother had become angry with the arresting officer and spit at him.

Ms. Bryant testified that Michael had reported to her and his therapist that respondent-mother had been drinking in January 2010. However, the portion of this finding stating that Michael said "he wished that she would stop drinking" is not in the record so it is not supported by clear, cogent, and convincing evidence and was in error. As to the remaining findings, respondent-mother testified that around 20 February 2010 she was arrested for resisting arrest and assaulting a government officer in Raleigh. She testified that she was riding with her sister when her sister was stopped by police and, because respondent-mother got angry at the police officer, she spit on him and was arrested. Therefore, these remaining findings in finding No. 47 are supported by clear, cogent, and convincing evidence in the record.

In summary, we hold that the portions of the trial court's findings as noted above are not supported by clear, cogent, and

convincing evidence and are in error. *Huff*, 140 N.C. App. at 291, 536 S.E.2d at 840. The remaining findings are either unchallenged or are supported by clear, cogent, and convincing evidence.

2. The Trial Court's Conclusions

Respondent-mother contends that the trial court's findings did not support its conclusion that grounds existed to terminate her parental rights based on neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). Even though we have determined that some portions of the challenged findings of fact are not supported by clear, cogent, and convincing evidence, the remaining findings not challenged by respondent-mother and those that are supported by clear, cogent, and convincing evidence are sufficient to support the trial court's conclusion that grounds existed to terminate respondent-mother's parental rights on the ground of neglect.

The minor children were adjudicated neglected in the underlying juvenile cases. Since there was a prior adjudication of neglect of each child, WCHS then had the burden to show a reasonable probability that neglect would most likely be repeated if the children were returned to respondent-mother's care. *See Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. Respondent-mother contends the evidence presented does not support a conclusion of the probability of the repetition of neglect.

In its adjudication order, the trial court ordered respondent-mother to: (1) complete drug treatment, follow all recommendations, and abstain from any alcohol and illegal drug use; (2) complete a psychological evaluation and follow all

recommendations and participate with and follow through with her mental health services; (3) submit to random drug screens; (4) complete a parenting group and demonstrate effective parenting skills; (5) complete anger management classes; (6) complete a domestic violence program; (7) visit with the children regularly; (8) maintain stable employment; and (9) maintain stable housing sufficient for herself and the children. At the termination hearing, the trial court considered evidence of "changed conditions 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 trial court's findings show a continuation of the behavior by respondent-mother that led to the adjudication of neglect.

The trial court's findings demonstrate that as of the date of the filing of the termination petition, respondent-mother had failed in many ways to correct the conditions which led to removal of the children. Specifically, she had missed several therapy sessions with her substance abuse counselor and refused to attend group therapy, even though it had been recommended by her counselors; she had relapsed into abusing alcohol around July 2009; her counselor recommended group relapse therapy and she only attended four times before discontinuing this attendance, contrary to her counselor's advice; following two separate phone conversations with her social worker, including one the day before the termination hearing, the social worker suspected respondent-mother had been abusing alcohol; respondent-mother had missed

several scheduled therapy sessions with her mental health therapist; respondent-mother had not maintained employment nor had she verified her efforts to find a job; she did not provide verification of her enrollment at Wake Technical College although she asserted that she was attending a program there to earn a CNA certificate; she had moved four times since the adjudication of neglect; she was discharged from the Helen Wright Center, a shelter, for disruptive behavior and violation of the rules of the center; respondent-mother was residing with her girlfriend in a residence leased to the girlfriend, who paid all the bills; on 20 February 2010, respondent-mother was arrested for assault on a government official and resisting arrest; and respondent-mother had not "demonstrated that she is able to effectively manage her children's difficult behaviors." Based on these findings, the trial court determined "[t]hat the children are neglected juveniles, and a repetition of the pattern of neglect of the mother is probable if the children would be placed in her care."

We hold that the trial court's findings of fact support its conclusions in regard to neglect and the probability of repetition of neglect in the future. Taken as a whole, the findings show that respondent-mother has a history of alcohol abuse and instability and that she has not adequately addressed those issues. The trial court did not err in concluding that the children are neglected and that there is a reasonable probability of the repetition of neglect if the children were returned to respondent-mother's care.

Since we find that the trial court did not err in its conclusion that the children were neglected, and as only one ground is needed to support termination of parental rights, we decline to address the issues raised by respondent-mother relating to the ground of failure to make reasonable progress. N.C. Gen. Stat. § 7B-1111(a); *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406 (2003).

B. Best Interests of the Child Determination

Respondent-mother also argues that the trial court abused its discretion in concluding that termination of her parental rights is in the best interests of Michael. She does not challenge the best interest determination with regard to Eric and Taylor.

The Juvenile Code provides that the trial court is required to consider these factors when determining whether termination is in the best interests of the minor children:

> (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. Gen. Stat. § 7B-1110(a). The determination by the trial court that termination is in the best interests of the children will not

be overturned absent an abuse of discretion. *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908.

Here, the trial court made the following findings relevant to the best interests of Michael:

> 53. That [Michael], age 10, [Eric] age 6 ½, and [Taylor], age 5, have lived in chaos most of their young lives and are diagnosed with serious problems as a result. These are children who desperately need permanence. They have been in care for over 18 months and the parents have not made sufficient progress to be able to provide a safe, stable home for them.
>
> 54. That the children love their mother, and are excited to see her, but she has not demonstrated that she is able to effectively provide them the structure and consistency that they need or the ability to deal with their challenging behaviors.
>
> 55. That [Michael] has no bond with [his alleged father] or any man purporting to be his father.
>
> . . .
>
> 57. That [Michael], who has had to be moved several times and hospitalized twice since coming into care, has shown some improvement through therapy. He still has outbursts in school, but has had less outbursts recently. The treatment team plans to place him in a therapeutic foster home with parents with whom he has had successful visits. He looks forward to living with a family, after spending significant time in a Level III group home.
>
> . . .
>
> 60. That it is not unlikely for children with special needs to be adopted, and the social worker has consulted with professionals who have had success in placing children with special needs in adoptive homes. It will be difficult to find the same adoptive home for all three children, and the Court cannot find

> that it is in the children's best interest to be placed together in one home.
>
> 61. That this Court sanctioned the permanent plan of adoption for these children at the September, 2009 permanency planning hearing. Termination of the parental rights of the parents will aid in the accomplishment of the permanent plan.

Based on these findings, the trial court concluded that it was in the best interests of Michael to terminate respondent-mother's parental rights.

Respondent-mother first contends that finding of fact No. 60 as it relates to Michael is not based on convincing evidence where the testimony from Ms. Bryant, the social worker, regarding adoptability of the children was only related to Eric and Taylor. However, our review of the transcript reveals that the social worker testified that she spoke with an adoption resource team staff person about all three children and their special needs, and she related that in general, there are people who are interested in adopting children with special needs. Ms. Bryant then expanded further into the specific prospects for Eric and Taylor. We do not find that Ms. Bryant's testimony regarding the general adoptability of the children was limited only to Eric and Taylor. Therefore, we conclude that finding No. 60 was supported by clear, cogent, and convincing evidence.

Respondent further cites to this Court's decision in *In re J.A.O.*, 166 N.C. App. 222, 601 S.E.2d 226 (2004) for support for her proposition that termination of her parental rights is not in

the best interests of Michael. In *J.A.O.*, this Court reversed termination of parental rights to a fourteen-year-old juvenile who:

> ha[d] a history of being verbally and physically aggressive and threatening, and he [had] been diagnosed with bipolar disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, borderline intellectual functioning, non-insulin dependent diabetes mellitus, and hypertension.

166 N.C. App. at 228, 601 S.E.2d at 230. The juvenile had been in nineteen placements since being removed from his home, and the evidence indicated that adoption would be unlikely. *Id.* at 227-28, 601 S.E.2d at 230. After balancing the remote possibility of adoption of a violent child with physical and mental health problems against the consequences of creating a legal orphan, this Court was "unconvinced that the remote chance of adoption in this case justifies the momentous step of terminating respondent's parental rights." *Id.* This Court thus concluded that the trial court had abused its discretion in determining that termination of the mother's parental rights was in the best interests of the juvenile in that case. *Id.* Respondent-mother contends that this Court should follow *J.A.O.* and conclude that Michael's behavioral issues result in only a remote possibility of adoption, that he should not be separated from a loving mother, and thus conclude that termination is not in his best interest. We are not convinced that this case is sufficiently similar to *J.A.O.* to justify such a conclusion.

The situation in the instant case differs from that in *J.A.O.* in several material ways. First, evidence was introduced in this

case that Michael was about to be "stepped down" from a group home to a therapeutic foster home, indicating improvement in his behavior. In *J.A.O.*, testimony was presented that even a Level IV home would not be able to handle the juvenile-teenager in that case. *Id.* at 227, 601 S.E.2d at 230. Second, while the guardian *ad litem* in *J.A.O.* asserted to the trial court that she did not believe termination was in the juvenile's best interests, *Id.* at 225, 601 S.E.2d at 229, the guardian *ad litem* in the case at bar recommended termination of parental rights. Further, in *J.A.O.*, the juvenile's history of violent behavior appears to have been much more extensive than that of Michael in this case, with the result that the juvenile had been through nineteen treatment centers over the course of fourteen years. *Id.* at 227, 601 S.E.2d at 230. Michael's behavioral difficulties do not rise to the same level as those of the juvenile in *J.A.O.*

In sum, we do not believe the facts of *J.A.O.* dictate reversal of the trial court's determination of best interests in the instant case, and we do not find that the trial court abused its discretion in determining that termination of respondent-mother's parental rights is in the best interests of the minor child Michael.

V. Conclusion

Based on the foregoing, we hold that respondent-father had proper notice of the motion for termination of parental rights. We also hold that the trial court did not err in finding that clear, cogent, and convincing evidence was presented to support at least one ground for termination of respondent-mother's parental rights.

Further, the trial court did not abuse its discretion in determining that termination of respondents' parental rights is in the best interests of the minor children. The trial court's order of termination is hereby affirmed.

AFFIRMED.

Judges HUNTER, Robert C. and HUNTER, JR., Robert N. concur.

Report per Rule 30(e).