NO. COA10-652

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

IN RE:

O.L.S.,
Minor Child.

Richmond County
No. 07 J 135

Appeal by respondents from order entered 2 March 2010 by Judge William C. Tucker in Richmond County District Court. Heard in the Court of Appeals 13 October 2010.

Deane, Williams & Deane, by Jason T. Deane, for petitioner-appellee.

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

Robert W. Ewing for respondent-appellant father.

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

GEER, Judge.

Respondent parents appeal from an order of the district court terminating their parental rights to the minor child O.L.S. ("Olivia").[1] We hold that the trial court's findings of fact, based on sufficient evidence, support its conclusion of law that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1) (2009) (neglect) to terminate respondent parents' parental rights.

[1]The pseudonym "Olivia" is used throughout this opinion to protect the minor's privacy and for ease of reading.

Because respondent parents have not further challenged the trial court's decision that termination is in Olivia's best interests, we affirm.

Facts

On 26 November 2007, the Richmond County Department of Social Services ("DSS") received a report that respondent mother had given birth to Olivia, and respondent mother had tested positive for opiates. Olivia did not test positive for opiates or any other substances. A social worker met with respondent parents at the hospital, and they agreed together on a plan of care requiring Olivia's maternal grandmother to stay with the family and supervise Olivia's care. On 14 December 2007, however, the maternal grandmother had to leave the home and return to Johnston County to care for her own mother.

On 16 December 2007, with Olivia at home, respondent parents engaged in a verbal altercation that escalated into physical violence. Respondent father had refused respondent mother's request that he give her a pain pill. When respondent mother got a cell phone to call someone to pick her up, respondent father grabbed the phone and hit respondent mother in the head. After respondent mother released the phone, respondent father continued to hit respondent mother. In response, respondent mother hit respondent father in the nose with her fist. Respondent mother then picked Olivia up from her bassinet, and respondent father grabbed respondent mother's neck with his hand, squeezing until respondent mother put Olivia down.

Afterwards, while respondent father was getting dressed, respondent mother grabbed Olivia and ran out of the house to a neighbor's home. The neighbor drove respondent mother and Olivia to the home of respondent mother's aunts. Later that day, DSS completed a safety assessment and authorized kinship placement with the aunts. The next morning, however, on 17 December 2007, DSS conducted a child protective services ("CPS") history check and discovered that the aunts had open CPS cases.

The same day, citing respondent mother's substance abuse and respondent parents' domestic violence, DSS filed a juvenile petition alleging that Olivia was an abused, neglected, and dependent juvenile. Although DSS initially placed Olivia in foster care, she was ultimately moved to the home of a family friend. Following a hearing on 19 February 2008, the trial court entered an order on 28 February 2008 adjudicating Olivia to be a neglected juvenile and directing that she remain in the home of the family friend.

The trial court conducted a dispositional hearing on 18 March 2008. In an order entered 1 April 2008, the trial court ordered that legal and physical custody remain with DSS, but changed Olivia's physical placement to the home of her maternal grandmother. Respondent mother was allowed to live in the home with the maternal grandmother and Olivia provided that respondent mother met certain conditions. Respondent father refused any visitation in open court. Both respondent parents were ordered to

fully comply with their Family Services Case Plan for Reunification.

One month later, on 18 April 2008, respondent mother left the grandmother's home with Olivia because a registered sex offender was sometimes living there. Respondent mother and Olivia moved back to respondent father's home. DSS immediately removed Olivia from the home and placed her in foster care.

In May 2008, another incident of domestic violence occurred that caused respondent mother to move to a domestic violence shelter. On 30 May 2008, however, respondent mother returned to respondent father's residence. Nevertheless, on 29 July 2008, respondent parents, in open court, represented that they had separated, that the relationship was concluded, and that they were no longer interested in reconciling with each other.

On 12 September 2008, another domestic violence incident occurred. Respondent father punched or kicked respondent mother in the stomach at least three times, knowing that she was pregnant and causing her to miscarry. Respondent father refused to allow respondent mother to leave the home for two days, but on 14 September 2008, respondent mother went to the emergency room and a D&C was performed. Upon release from the hospital, respondent mother returned to respondent father's residence.

On 20 September 2008, respondent father hit respondent mother with his fists. Respondent mother moved to a friend's home in South Carolina, and respondent father was charged with assault on a female. At a 23 September 2008 review hearing, respondent mother

admitted that respondent parents had not previously separated — although they had told the court they had — but she claimed that after this assault, they did separate and respondent mother moved to South Carolina. Up to that point, respondent father had continued to consume alcohol, smoke marijuana, and obtain controlled substances from the streets to control pain he suffered.

Prior to the 23 September 2008 review hearing, respondent parents' social worker had warned them that their continued living together was an impediment to reunification efforts. She explained to them that they should separate and obtain individual residences in order for either one to be considered as a placement option for the minor child.

At the review hearing, the trial court similarly "admonished both parents that they must permanently separate and end any type of relationship if either one of them wanted to be considered as a placement option for the minor child[.]" The court explained that when respondent parents were together, they were not an appropriate placement option for the child. The court also ordered the parents not to have any contact with each other directly or indirectly, explaining that it was in the best interests of Olivia that they have no contact with each other. Respondent parents acknowledged to the trial court that they understood the trial court's order. The court's order entered 7 October 2008 specifically concluded that respondent parents could not provide a proper environment for the minor child if they were together.

Respondent father's criminal assault trial was conducted on 13 October 2008. Respondent parents' social worker met with the parents outside the courthouse to obtain information about their separate residences. At that time, respondent parents admitted to the social worker that they were living together, that they intended to stay together, and that they would be married as soon as respondent mother received a divorce from her first husband.

The trial court held a permanency planning hearing on 9 December 2008. In an order entered 16 December 2008, the trial court found that the "[c]ourt, on at least four occasions, has admonished the parents that they will not be considered as placement options for their child if they live together because their substance abuse and domestic violence escalates during these times." The court further found "[t]hat despite these warnings, the Respondent parents have reconciled, have lived together against the best interests of the minor child and in violation of specific Court Orders." The trial court concluded that because of respondent parents' disregard of Olivia's safety and specific court orders to stay apart if they wished to be considered as placement options, it was not reasonable to expect either one of the parents to maintain a separate household that would be a fit, proper, and safe environment for Olivia. The court, therefore, changed the permanent plan from reunification with respondent parents to a dual plan of (1) adoption through termination of parental rights and (2) relative placement with a paternal aunt. The trial court terminated respondent parents' visitation.

On 10 January 2009, respondent mother broke respondent father's door in half. She cut respondent father's hand with knife swings. Respondent parents then separated briefly again, but respondent mother soon returned to respondent father's residence.

On 31 March 2009, DSS filed a motion for termination of respondent parents' parental rights. DSS alleged the following grounds for termination as to respondent mother's rights: neglect, N.C. Gen. Stat. § 7B-1111(a)(1); willfully leaving the child in placement outside the home for more than 12 months without making reasonable progress to correct the conditions that led to removal, N.C. Gen. Stat. § 7B-1111(a)(2); and incapability of providing proper care and supervision, such that the juvenile is dependent, N.C. Gen. Stat. § 7B-1111(a)(6). The grounds alleged as to respondent father included both N.C. Gen. Stat. §§ 7B-1111(a)(1) and 7B-1111(a)(2), as well as willful failure to pay cost of care, N.C. Gen. Stat. § 7B-1111(a)(3).

Beginning in May 2009, respondent parents again were allowed visitation after it was requested by respondent father. Respondent parents were each given one hour with Olivia, but exercised their visitation on the same day. They would arrive at DSS together, visit separately, and then leave together.

Respondent mother was incarcerated in the Department of Correction from 4 August 2009 to 19 November 2009. Except for short periods of time and during this incarceration, respondent parents lived together at respondent father's residence. In addition, following her January 2008 completion of inpatient

substance abuse treatment, respondent mother continued to engage in illegal use of controlled substances — she admitted that her use continued through June 2009. Respondent father saw and observed respondent mother "high" on several occasions from December 2007 through August 2009, when respondent mother went to prison. He was aware of respondent mother's addiction and that she had not continued in any treatment.

On 14 January 2010, shortly before the termination of parental rights ("TPR") hearing, respondent parents had a disagreement that, as the trial court found, "created a substantial disturbance outside their home . . . ." Neighbors directed respondent father to get in his truck and ignore respondent mother, while respondent mother ran across the street with her belongings to a neighbor's home. She left respondent father for approximately nine days. Respondent father believed that respondent mother had taken pills and was high during this incident.

The TPR hearing was held over 26 January and 2, 3, and 5 February 2010. By order entered 2 March 2010, the trial court concluded that grounds existed under N.C. Gen. Stat. §§ 7B-1111(a)(1) and 7B-1111(a)(2) to terminate both respondent parents' parental rights. The trial court further concluded that termination of their parental rights was in Olivia's best interests. Respondent parents timely appealed from the order terminating their parental rights.

Discussion

A TPR proceeding involves two separate phases: an adjudicatory stage and a dispositional stage. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). In the adjudicatory stage, "the party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). This Court determines on appeal whether "the court's findings of fact are based upon clear, cogent and convincing evidence and [whether] the findings support the conclusions of law." *In re Allred*, 122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996).

Factual findings that are supported by the 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, 321 (1988). Any findings of fact not specifically challenged on appeal are deemed supported by competent evidence. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.").

Respondent parents argue on appeal that the trial court's determination that grounds existed to terminate their parental rights is not supported by findings of fact that are in turn supported by clear, cogent, and convincing evidence. The trial court found two grounds: N.C. Gen. Stat. § 7B-1111(a)(1) (neglect)

and N.C. Gen. Stat. § 7B-1111(a)(2) (willfully leaving the child in foster care for 12 months without making reasonable progress to correct the conditions that led to removal). We consider first the ground of neglect.

N.C. Gen. Stat. § 7B-101(15) (2009) 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 parents' 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 parents acknowledge that Olivia was adjudicated neglected, but argue that at the time of the TPR hearing, conditions had changed. They contend that the evidence

did not, therefore, support the trial court's finding that there was a probability that the neglect would recur if Olivia were returned to respondent parents. We disagree.

The trial court made unchallenged findings of fact describing respondent parents' substance abuse, especially that of respondent mother. Respondent mother has not disputed the trial court's findings that she "presented no evidence that she ever completed the courses of treatments recommended by her assessments or followed up with her substance abuse treatment, other than sporadically attending NA meetings." She also does not dispute the trial court's finding "[t]hat following her ARCA treatment, there are numerous events of illegal use of controlled substances by the Respondent mother, including admissions by her that she continued to use controlled substances through and including June of 2009."

Respondent father does not dispute the trial court's findings that he was aware of respondent mother's drug use and addiction and that she had not continued with any treatment for that addiction. With respect to his own substance abuse, respondent father has not challenged the trial court's finding that prior to respondent parents' separation in September 2008, "Respondent father had continued to use and consume alcohol, smoke marijuana, and obtain controlled substances from the streets to control his pain."

The trial court also made numerous unchallenged findings of fact regarding respondent parents' ongoing domestic violence through January 2009. Respondent parents do not dispute the findings that the trial court ordered them to separate and

establish individual residences if they wished to be considered as possible placements for their daughter. Also undisputed are findings of fact regarding the DSS social worker's warnings that they needed to separate. Further, respondent parents leave unchallenged the trial court's finding that respondent parents have lived together continuously except for brief periods of time despite the fact "[t]hat it was clear to both parents after being advised by their Social Worker, their CAT team members, and the Court that living apart was the only way they would be considered as placement options for their child . . . ."

Respondent parents, however, both challenge certain findings of fact suggesting that their substance abuse and domestic violence issues were continuing. We address first their contentions regarding substance abuse.

Respondent mother first challenges finding of fact 63, in which the trial court found "[t]hat the Respondent father testified that, on January 14, 2010, the Respondent mother appeared high, and that her actions were consistent with the way she reacts when taking pills." Respondent mother argues that this "finding" cannot support a conclusion of law because it merely recites respondent father's testimony. *See In re Green*, 67 N.C. App. 501, 505 n.1, 313 S.E.2d 193, 195 n.1 (1984) ("Such verbatim recitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge, because they do not reflect a conscious choice between the conflicting versions of the incident in question which emerged from all the evidence presented.").

While respondent mother is correct that this finding of fact does not constitute a proper finding as to her drug usage, we do not agree that this finding of fact is necessarily improper. By reciting respondent father's testimony, the trial court establishes respondent father's understanding of respondent mother's drug use and its relevance to their domestic violence.

Respondent mother also challenges finding of fact 68:

> Respondent father has continued his relationship with the Respondent mother, although he has found pills in her possession on several occasions which he defined as more than five but less than ten; that further, after December 17, 2007, and through August 4, 2009, when the Respondent mother went to prison, he saw and observed the Respondent mother high on several occasions, which he defined as more than ten, and that he was required during this period to hide pills because they were disappearing from his bottles. However, he did not place responsibility on the Respondent mother but was aware of the Respondent mother's addiction and that she had not continued in any treatment at that time.

We first reject respondent mother's argument that there was no clear and convincing evidence of "possession." Respondent father testified that he had found pills in respondent mother's "pocket, pocketbook, or book bag" four or five times. There is no suggestion in the testimony that anyone else had control over her "pocket, pocketbook, or book bag," and, therefore, this testimony establishes respondent mother's actual possession of the pills. *See, e.g., State v. Johnson*, ___ N.C. App. ___, ___, 693 S.E.2d 145, 148 (2010) (concluding record contained sufficient evidence of actual possession when defendant had crack cocaine in pants

pocket); *State v. Brandon*, 18 N.C. App. 483, 485, 197 S.E.2d 53, 54 (holding jury could find beyond reasonable doubt that defendant had actual possession of drugs found in pocket of his coat taken from his locked car), *cert. denied*, 283 N.C. 754, 198 S.E.2d 724 (1973).

Respondent mother is correct in asserting that the *number* of times respondent father found pills (more than five but less than 10) or saw respondent mother high (more than 10) was not supported by respondent father's testimony, and we do not consider this portion of the finding. Nonetheless, respondent father's testimony *did* support the more general finding that he had found pills in her possession on several occasions and that he had observed respondent mother high on several occasions. In addition, respondent mother does not challenge the portion of the finding noting that respondent father resorted to hiding pills because they "were disappearing" and that he was aware of respondent mother's "addiction" and failure to pursue treatment. Further, respondent mother does not dispute that respondent father believed her drug use continued through 4 August 2009 when she went to prison. Indeed, she acknowledged in her own testimony — as found by the trial court — that she was continuing to use illegal drugs through at least June 2009.

Respondent parents both challenge the portion of finding of fact 54 in which the trial court found that respondent parents "have a history of substance abuse . . . which they cannot break." Although respondent mother claims that the evidence — namely that she had completed treatment and attended NA meetings in prison —

shows she had broken her history of substance abuse, we do not believe that the trial court was required to conclude that respondent mother's cessation of drug use while in prison followed by two months of claimed sobriety (and three NA meetings) equates to resolution of respondent mother's substance abuse problem. We hold that the trial court's finding that respondent mother had "a history of substance abuse . . . which [she could not] break" is supported by undisputed findings of fact and clear and convincing evidence.

We also believe that the trial court's finding regarding respondent father's inability to break his history of substance abuse is supported. Respondent father explained in his testimony that he took medication for back pain due to a work-related injury. He had prescriptions for seven pain medications and muscle relaxers: Lorcet, Percocet, Flexeril, Norco, Soma, Vicoprofen, and Lycopro. According to respondent father, since he did not have medical insurance, he had to "jump around" to different doctors to get his prescriptions. He also explained, however, that he goes to different doctors to get more prescriptions after he has been told that he cannot have any more:

> I go to like one and they'll give me my medicine for a while and then they'll tell me they can't do it no more and then I get a referral to like Chapel Hill and then I'll go to Chapel Hill a while and then it gets so expensive I can't keep traveling back and forth there. So, I have to go back to the free clinic and then they'll give me medicine for a while and then they say they can't prescribe me narcotics and then I have to go back to Chapel Hill.

In addition, he stated that he has "bought some off the street if [he got] to hurting," and "[d]ifferent people help [him] out" with coming up for the money for those drugs. This testimony, when viewed alongside the trial court's unchallenged finding that respondent father "continued to use and consume alcohol, smoke marijuana, and obtain controlled substances from the streets to control his pain" prior to respondent parents' brief separation in September 2008, supports the trial court's inference that respondent father's substance abuse problem was ongoing.

Next, as to the findings about domestic violence, respondent parents both challenge the portion of finding of fact 54 in which the trial court found that they have not broken their history of domestic violence. They each argue that because no physical violence occurred after January 2009, the evidence showed they had resolved their issues of domestic violence. With respect to the dispute in January 2010, both parents claim that it was a typical spousal dispute and actually demonstrated that they had learned and applied proper anger management techniques. We hold that the trial court's finding was properly supported.

Respondent parents do not challenge the findings detailing the previous instances of domestic violence that occurred every few months. Although there was no testimony about any physically violent episode after January 2009, respondent mother was in prison from 14 August 2009 until 19 November 2009. With respect to the 14 January 2010 incident, which respondent parents attempt to portray as relatively benign, the trial court found — and neither parent

disputes — that neighbors had to intervene and separate respondent parents. Respondent mother then left respondent father, as she had in the past after incidents of domestic violence, but then once again returned, despite the court's repeated admonitions that respondent parents needed to stay apart in order to regain custody of Olivia.

In light of respondent parents' pattern of behavior over the preceding years, the trial court was entitled to draw the inference that the January 2010 incident, which involved a "substantial disturbance" outside, suggested that respondent parents had not broken their history of domestic violence. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) ("The trial judge determines the weight to be given the testimony and the *reasonable inferences* to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject." (emphasis added)).

Significantly, neither parent specifically challenges the portion of finding of fact 54 in which the court found that respondent parents' "extremely unhealthy relationship causes these parents to be incapable of providing a safe, stable, and healthy environment for their minor child; that the Respondent parents are *unable to stay apart*, either because of emotions or motivations which is [sic] contrary to the best interests of the minor child." (Emphasis added.) We, therefore, hold that the trial court's finding that respondent parents have not broken their history of domestic violence was a reasonable inference based on their

inability to separate and the "ongoing volatility and conflict in the Respondent parents' relationship."

Respondent mother's reliance on *In re Stumbo*, 357 N.C. 279, 582 S.E.2d 255 (2003), is misplaced. Respondent mother asserts in her brief that her highly conflicting relationship with respondent father is something "'no one wants . . . to happen'" but that "'probably happens repeatedly across our state . . . no matter how conscientious or diligent the parent or care giver might be.'" This language from *In re Stumbo*, however, refers to a single instance of a toddler slipping out of a house without the awareness of the parent or caregiver, which the Supreme Court held "does not in and of itself constitute 'neglect' under N.C.G.S. § 7B-101." *Id.* at 289, 582 S.E.2d at 261. Such a "lapse," *id.*, is not analogous to the history of conflict and domestic violence in this case, which does show a probability of continued domestic violence.

Respondent father, however, also challenges findings of fact 56 and 60 on the grounds that they are based on past conditions that no longer exist. In finding of fact 56, the trial court determined

> [t]hat although the Respondent father did complete activities of his Case Plan, he was aware, and acknowledged that living with the Respondent mother and returning her to his home was contrary to the welfare of the minor child due to substance abuse by the Respondent mother and domestic violence between the parties. That this behavior between the parents, contrary to their Case Plan and Court Orders, shows that they have not corrected those conditions which led to the removal of the minor child and shows a lack of reasonable progress in correcting those conditions now and in the future. That the Respondent

> father's actions places [sic] his relationship with the Respondent mother above his responsibility for his child in providing her with a fit, proper, and safe environment.

Finding of fact 60 similarly states that "neither party complied with the directives of the Court and their Social Worker to end their relationship in order to create a safe environment for their child."

Both of these findings are supported by the multiple unchallenged findings of fact describing the many admonishments respondent parents received from the court and their social worker, in which respondent parents were directed to live apart and to have no contact with each other if they wished to be considered for restored custody of Olivia. Respondent parents were specifically warned that "they could not provide a proper environment for the minor child if they were together." Findings of fact 56 and 60 are also supported by other findings and testimony from respondent parents that they continued to live together despite these instructions. While respondent father focuses on the fact that he completed the tasks set out in his case plan, he disregards the critical point of these findings: that respondent parents placed their desire to remain together over the safety of their child.

Respondent father also challenges finding of fact 69, in which the court found that respondent parents "took no steps to address their domestic violence incidences, receiving no counseling . . . ." He points out that the social worker testified that respondent father completed parenting classes, completed a one-day anger management workshop, and received a mental health assessment.

Although he contends that he did take steps to correct the conditions that led to Olivia's removal, respondent father does not cite to any evidence that he actually addressed his domestic violence issues or that he received any counseling. Nor does he challenge the court's finding that "there is no evidence that he received any domestic violence counseling except for . . . a letter from Paula Colden of Family First Services[,]" other than to call this finding "misleading" because his case plan did not specifically require him to obtain domestic violence counseling.

Respondent father's reliance on the activities in his case plan overlooks the pertinent issue with respect to neglect: Is there a probability, under the circumstances, of a repetition of neglect? Regardless whether respondent father's case plan required domestic violence counseling, the lack of that counseling or any other concrete efforts to address the domestic violence — including removing himself from respondent mother's presence — supports the trial court's determination that domestic violence would likely recur in the future.

In addition, respondent parents challenge certain "ultimate findings of fact" made by the trial court. The trial court, after setting out 70 findings of fact regarding respondent parents' history with DSS and their substance abuse and domestic violence, then included 14 "ultimate findings of fact."

Respondent mother challenges the portion of ultimate finding of fact two stating that "the domestic violence incidences between the Respondent parents continued." Respondent father challenges

ultimate finding of fact four that "there is a reasonable probability that the domestic violence and conflicting relationship will continue in the future" and ultimate finding of fact six that "both parents are unable to comply with the admonitions of the Court to separate and create a fit, safe, and proper environment for their minor child, separate from the other party, and this inability will probably continue into the future." The findings of fact discussed above — both those unchallenged on appeal and those supported by the evidence — support each of these ultimate findings of fact.

Respondent parents' failure to resolve their domestic violence and substance abuse issues supports the trial court's further ultimate finding that there is a reasonable probability that those conditions would continue in the future and that neglect would recur if custody of Olivia were restored to her parents. *See In re L.B.*, 181 N.C. App. 174, 194, 639 S.E.2d 23, 33 (2007) (noting that "[r]espondent had placed the importance of her relationship with [her boyfriend] above the welfare of her child"); *In re S.N.*, 180 N.C. App. 169, 178, 636 S.E.2d 316, 321 (2006) ("The respondent father effectively chose S.N.'s mother over S.N.").

While respondent parents focus on their visits with Olivia beginning in May 2009 and their efforts after the filing of the TPR motion, 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").

While the trial court must consider evidence of changed circumstances, this evidence is to be considered "*in light of* the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232 (emphasis added). We cannot say that the trial court erred by concluding that the evidence of respondent parents' substance abuse, domestic violence, and inability to separate outweighed the evidence of respondent parents' visitation with Olivia and uncertain efforts at resolving the key issues of domestic violence and substance abuse. We, therefore, hold that the trial court

properly concluded that termination of parental rights was warranted under N.C. Gen. Stat. § 7B-1111(a)(1).

"[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 parents' arguments regarding the conclusion that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(2). Since respondent parents have not challenged the dispositional ruling that termination of their parental rights was in the best interests of Olivia, we affirm the trial court's order terminating respondent parents' parental rights.

We make one final observation, however, about the trial court's TPR order. The order appears on the stationery of counsel for DSS. As this Court stressed two years ago: "This Court has held that a trial court should not sign orders prepared on stationery bearing the name of the law firm that prepared the order, since it does not convey an appearance of impartiality on the part of the court. *See In re T.M.H.*, 186 N.C. App. 451, 652 S.E.2d 1[, *disc. review denied*, 362 N.C. 87, 657 S.E.2d 31] (2007); *Habitat for Humanity of Moore Cty., Inc. v. Board of Comm'rs of the Town of Pinebluff*, 187 N.C. App. 764, 653 S.E.2d 886 (2007)."

Heatzig v. MacLean, 191 N.C. App. 451, 461, 664 S.E.2d 347, 355, *appeal dismissed and disc. review denied*, 362 N.C. 681, 670 S.E.2d 564 (2008). We urge both trial judges and counsel to heed this admonition.

Affirmed.

Judges ROBERT C. HUNTER and CALABRIA concur.

Report per Rule 30(e).