

Department of Social Services ("DSS") filed a juvenile petition alleging the children were neglected juveniles, in that the children were exposed to ongoing domestic violence, sexual abuse, unsanitary living conditions, and were without housing. DSS obtained non-secure custody of the children on that date. The parties submitted to voluntary mediation on 17 July 2008. The matter came on for adjudication on 22 July 2008, and based upon the admitted facts, the children were adjudicated neglected.

Review hearings were held on 21 October 2008, 10 February 2009, 12 May 2009, and 11 August 2009. On 28 October 2009, DSS filed a petition to terminate respondent-mother's parental rights. DSS alleged grounds existed to terminate respondent-mother's parental rights on the basis of neglect and willfully leaving the children in foster care or placement outside the home for more than twelve months without showing reasonable progress. A pretrial hearing was held on 12 January 2010. The termination of parental rights hearing was held on 10 February 2010. By order entered 30 March 2010, respondent-mother's parental rights were terminated. Respondent-mother appeals.

Respondent-mother first argues that the trial court erred by failing to make a proper inquiry into whether she needed a guardian *ad litem* ("GAL") and erred in failing to appoint her a GAL. She claims the trial court was required to consider her need for a GAL at the termination hearing due to her inability to accurately recall her children's dates of birth, her lack of understanding of why she needed to participate in domestic violence counseling, her

lack of insight into her children's educational needs, her low I.Q., and mental health issues contained in the record.

The Juvenile Code provides that

[o]n motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17 if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.

N.C. Gen. Stat. § 7B-1101.1(c) (2009). "A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*." *In re J.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d 45, 49 (2005) (citing *Rutledge v. Rutledge*, 10 N.C. App. 427, 432, 179 S.E.2d 163, 166 (1971)). An incompetent adult is defined as

an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

N.C. Gen. Stat. § 35A-1101(7) (2009). This Court has defined "diminished capacity" in the juvenile context as a "lack of 'ability to perform mentally.'" *In re Reinhardt*, 121 N.C. App. 201, 204, 464 S.E.2d 698, 701 (1995) (quoting *Taber's Cyclopedic Medical Dictionary* 278 (16th ed. 1989)), *overruled on other grounds*

by *In re Brake*, 347 N.C. 339, 340-41, 493 S.E.2d 418, 419-20 (1997). “Whether the circumstances . . . are sufficient to raise a substantial question as to the party’s competency is a matter to be initially determined in the sound discretion of the trial judge.” *J.A.A.*, 175 N.C. App. at 72, 623 S.E.2d at 49 (quoting *Rutledge*, 10 N.C. App. at 432, 179 S.E.2d at 166).

In this case, at the 11 August 2009 review hearing, respondent-mother’s attorney requested a GAL be appointed for respondent-mother. The trial court appointed attorney Scott Rosenberg as respondent-mother’s GAL. Respondent-mother’s attorney and her GAL appeared at the 12 January 2010 pretrial hearing. At the 12 January 2010 pretrial hearing, respondent-mother’s GAL advised the court that respondent-mother fully understood the juvenile court proceedings, was able to clearly answer his questions, realized what was at stake in the termination proceedings, and had more capability than was originally thought. After considering the opinion of respondent-mother’s GAL and reviewing psychological reports, “the [trial] court [did] not find that there [was] a reasonable basis to believe that [r]espondent/mother [was] incompetent or [had] diminished capacity and [could not] adequately act in her own interest.” Respondent-mother’s attorney did not challenge this determination by the trial court at the pretrial hearing, nor was the issue of a GAL for respondent-mother raised at the start of the 10 February 2010 termination hearing.

We are not persuaded that respondent-mother's claimed lack of knowledge of parenting issues, domestic violence counseling, and her children's ages required the trial court to reinvestigate the need for a GAL. The same is true of her low I.Q. and mental health issues, which were already addressed by the pre-trial hearing, where respondent's then-GAL testified respondent no longer needed a GAL. Furthermore, a trial court is not required to appoint a guardian *ad litem* "in every case where substance abuse or some other cognitive limitation is alleged." *In re H.W.*, 163 N.C. App. 438, 447, 594 S.E.2d 211, 216 (2004). We find nothing in the record that would cause the trial court to reevaluate its prior findings, and we find no new issues presented by respondent's behavior at the termination hearing that would require the trial court to inquire into her need for a GAL. In sum, we are unable to conclude there was substantial evidence of circumstances that would have raised a question for the trial court at the termination hearing that respondent-mother was incompetent or had diminished capacity. The trial court did not abuse its discretion when it did not appoint respondent-mother a GAL.

Next, respondent-mother challenges the trial court's conclusion that grounds exist to terminate her parental rights. Respondent-mother argues the trial court erred in concluding that respondent-mother neglected the children within the meaning of N.C. Gen. Stat. § 7B-1111(a) (1) where there was insufficient evidence to show that the neglect was ongoing or likely to recur.

We review the trial court's order to determine "whether the trial court's findings of fact are based on clear, cogent, and convincing evidence and whether those findings support the trial court's conclusion that grounds for termination exist pursuant to N.C. Gen. Stat. § 7B-1111." *In re C.W.*, 182 N.C. App. 214, 219, 641 S.E.2d 725, 729 (2007). Findings of fact that are not challenged on appeal are deemed supported by the evidence and are binding upon this Court. *See In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003).

The Juvenile Code provides for termination of parental rights where "[t]he parent has . . . neglected the juvenile. The juvenile shall be deemed to be . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-101." N.C. Gen. Stat. § 7B-1111(a)(1) (2009). A neglected juvenile is defined 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.

N.C. Gen. Stat. § 7B-101(15) (2009). "Where termination of parental rights is sought upon allegations of neglect, the court may consider evidence of neglect occurring before custody has been taken from the parents, but termination may not be based solely on conditions of neglect which may have previously existed, but no longer exist." *In re White*, 81 N.C. App. 82, 90, 344 S.E.2d 36, 41

(1986). "The court must also consider evidence of any change in condition up to the time of the hearing, but this evidence is to be considered in light of the evidence of prior neglect and the probability of repetition of neglect." *Id.* "In cases of this sort, the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future . . . neglect of a child based on the historical facts of the case." *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

Here, the trial court made the following relevant and unchallenged findings of fact:

21. The juveniles . . . were adjudicated to be "Neglected" juveniles by Order entered September 4, 2008, in Juvenile Files 08-JA-210 through 08-JA-215

. . . .

24. Respondent/mother does not have appropriate, stable housing for herself and the juveniles, in that: Except for her short stay at Florence Crittenton Home, Respondent/mother has resided at her father's home since May 2008. Respondent/mother admits, and the court finds, that her father's home is not big enough for her children. There are three bedrooms in this home, and Respondent/mother lives there with her father, step-mother, and two brothers. Respondent/mother does not have appropriate sleeping arrangements for the juveniles. DSS previously evaluated this home and found it was not suitable for the juveniles.

. . . .

26. Respondent/mother is unemployed and has not maintained any employment since the juveniles have been in DSS custody. Her

last employment was in 1999, when she worked in housekeeping at a motel.

27. Respondent/mother has only applied for two jobs during the last six weeks.
28. Since the juveniles were removed from her custody, Respondent/mother has not taken steps to obtain her General Educational Development (GED) diploma.
29. Although Respondent/mother has been referred to Vocational Rehabilitation, she has not availed herself of Vocational Rehabilitation services. Respondent/mother testified that she has an upcoming appointment with Vocational Rehabilitation to begin services.

. . . .

32. Respondent/mother has failed to maintain employment or sufficient income to provide for the juveniles' basic needs for food, shelter, clothing, education and health care. Other than her upcoming appointment, Respondent/mother has not taken any steps to improve her job skills or further her education.
33. Immediately prior to the juveniles coming into DSS custody, Respondent/mother was in a relationship with [T.B.] off and on for eight years[.] [T.B.] was residing with Respondent/mother and the juveniles three to four nights per week. There was ongoing domestic violence between [T.B.] and Respondent/mother. [T.B.] "beat on" Respondent/mother, cut her and burned her. The juveniles were present in the home when the domestic violence occurred and the juveniles witnessed the domestic violence.

. . . .

37. Respondent/mother has failed to successfully complete Domestic Violence counseling, and this Court is not convinced that Respondent/mother has attained sufficient insight into domestic violence and the effect of domestic

violence on the juveniles. Respondent/mother did not begin regularly receiving domestic violence counseling until after September 23, 2009, over sixteen (16) months after the juveniles were removed from her care. While Respondent/mother has been attending domestic violence counseling at Phoenix Counseling since late September 2009, she has not successfully completed her treatment.

38. Respondent/mother has failed to maintain sobriety and has failed to demonstrate the ability to remain drug and alcohol-free. Respondent/mother tested positive for cocaine, marijuana and alcohol on or about September 22, 2009. Respondent/mother continued to have positive drug and alcohol screens in October, November, and December 2009. Respondent/mother's last positive screen was on December 12, 2009, which was positive for alcohol.
39. Respondent/mother admitted this date, and the Court finds, that she struggles with alcohol and that her drinking was affecting her ability to complete her case plan. Respondent/mother admits that she uses drugs and alcohol to cope with her stress. However, Respondent/mother denied this date that she has a substance abuse problem.
40. On September 22, 2009, Respondent/mother completed a comprehensive evaluation at Phoenix Counseling and was diagnosed with Bipolar disorder, Cannabis Dependency, Alcohol Dependency and Post Traumatic Stress Disorder.
41. As a result of the September 22, 2009, evaluation, Phoenix Counseling recommended that Respondent/mother complete Substance Abuse Comprehensive Outpatient Treatment ["SACOT"] Women's Group. SACOT group meets five days per week and is a twelve-week program, and Respondent/mother is required to complete sixty sessions in order to graduate. One of Respondent/mother's requirements to

graduate from SACOT is to attend twelve Alcoholic Anonymous/Narcotics Anonymous ["AA/NA"] meetings and obtain a temporary sponsor. Phoenix Counseling also recommended that upon graduation from SACOT, Respondent/mother complete Intensive Outpatient Treatment as part of her "After-care" plan.

42. Respondent/mother began SACOT on or about September 23, 2009, but has not successfully graduated from it as of this hearing. Respondent/mother missed several group sessions and has not attended twelve Alcoholic Anonymous/Narcotics Anonymous meetings, nor obtained a temporary sponsor.
43. Respondent/mother completed a Psychological Evaluation in May 2008 with Dr. McNulty, which diagnosed Respondent/mother with Adjustment disorder with depression and anxiety, and recommended that Respondent/mother participate in individual psychotherapy to improve her coping skills and improve the quality of her significant relationships.
44. Respondent/mother has not consistently attended individual psychotherapy. From at least January 3, 2009, until September 23, 2009, Respondent/mother did not attend any individual therapy. Respondent/mother has begun attending individual therapy at Phoenix Counseling since she began services there on September 23, 2009, but has not demonstrated a significant improvement in her coping skills, as evidenced by her continued use of alcohol as a coping mechanism.
45. Respondent/mother has not attended all of her visits with the juveniles. Respondent/mother has cancelled visits and has arrived up to one hour late for visitation.

.

48. Respondent/mother has not attended any medical appointments for the juveniles since the juveniles were placed in DSS custody.
49. Respondent/mother has maintained some sporadic telephone contact with the juvenile [S.D.D.], but has failed to maintain any telephone contact with the other juveniles. Respondent/mother has failed to write any letters or send any cards to the juveniles.
50. Other than her current one hour visitation per month, Respondent/mother is maintaining no contact with the juveniles.
-
59. Respondent/mother has neglected the juveniles within the meaning of G.S. 7B-101(15) and G.S. 7B-1111(a)(1). The neglect has continued through the date of this hearing and is not due to the poverty of the Respondent/mother.
60. After considering evidence of changed circumstances and the probability of repetition of neglect, the Court finds the neglect is likely to continue if the juveniles were returned to Respondent/mother's care.

The unchallenged findings of fact support the trial court's determination that the children were neglected and that the neglect would likely recur if the children were returned to respondent-mother's care. Accordingly, the trial court did not err in concluding grounds existed to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Respondent-mother also argues that the trial court erred in concluding that respondent-mother willfully left the children in foster care where neither the findings of fact nor clear, cogent,

and convincing evidence support the conclusion. Having determined that the trial court properly concluded grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), we need not address this argument. *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 663 (2003).

Based on the foregoing, the order of the trial court is affirmed.

Affirmed.

Judges HUNTER, Robert C., and STROUD concur.

Report per Rule 30(e).