NO. COA14-614
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

IN THE MATTER OF: C.D.J., T.A.J.

New Hanover County
Nos. 12 JT 178-79

Appeal by respondents from orders entered 30 September 2013 and 18 March 2014 by Judge Melinda H. Crouch in New Hanover County District Court. Heard in the Court of Appeals 20 October 2014.

Regina Floyd-Davis for petitioner-appellee.

Wait Law, P.L.L.C., by John L. Wait, for respondent-appellant mother.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for respondent-appellant father.

ELMORE, Judge.

Respondents appeal from orders ceasing reunification efforts and terminating their parental rights as to their minor children T.A.J. ("Tracy") and C.D.J. ("Charlie").[1] We affirm.

I. Procedural History

[1]The parties stipulated to these pseudonyms to protect the juveniles' privacy.

Tracy and Charlie were born in June 2009 and September 2010, respectively. On 10 July 2012, New Hanover County Department of Social Services ("DSS") obtained non-secure custody of the children and filed a juvenile petition alleging that they were neglected. The petition alleged that respondent-father had engaged in multiple acts of domestic violence against respondent-mother in the presence of the children since May 2012. The petition also cited respondent-father's "history of alcohol abuse" as a concern.

The district court adjudicated Tracy and Charlie neglected juveniles on 14 September 2012. The court found that DSS received a child protective services report regarding domestic violence on 8 May 2012, but that respondent-mother denied the report. However, in a meeting with DSS social worker Ruth Massey on 13 June 2012, respondent-mother "acknowledged that she had been physically abused by [respondent-father] on more than one occasion . . . [and] indicated injuries to her tailbone, chest and hand as a result of said violence[.]" The court made the following findings regarding the events of July 2012:

> 6. That on July 5, 2012, [respondent-mother] . . . was seen at the Cape Fear Hospital Emergency Department . . . by Dr. Michael Ward[,] who noted bruising to [her] face, numerous bruises on her legs, an area of redness at the suprasternal notch and a

swollen right hand. . . . [Respondent-mother] presented with pain about the mouth and teeth, pain in the neck, back and mandible, pain in the hand which, pursuant to a diagnostic test, revealed an old fracture which appeared to be less than six months old. [Hospital records] also reflected that [respondent-mother] reported being hit in the face with fists.

. . .

8. That Detective Tim Kelly . . . contacted [respondent-mother] to offer assistance in obtaining a Domestic Violence Restraining Order. [She] indicated an intent to consider the same; however, she later called Detective Kelly requesting information of how to have the No-Contact provision of [respondent-father's] bond dropped. On July 9, 2012, [DSS] conducted an unannounced home visit and subsequently found [respondent-father] and [respondent-mother] in their home together.

9. That [respondent-mother] did, in fact, appear before a Judge requesting that the No-Contact provision be dropped. The Judge denied her request.

10. That on this date, [respondent-mother] asserts that [respondent-father] has only "pushed her once," and that no other domestic violence has occurred. She asserts that there was no domestic violence incident on July 4, 2012, and . . . attributes any injury sustained by her to her "tripping and hitting her head on the baby's high chair."

11. [Respondent-father] asserts that he has "never, ever laid a hand on [respondent-mother]."

12. . . . [Respondent-mother] is the victim

> of repeated acts of domestic violence perpetrated upon her by [respondent-father]. [Charlie] and [Tracy] witnessed the acts of domestic violence which occurred on July 4, 2012. The Juveniles resided in an environment injurious to their welfare.

The court noted that Charley and Tracy "exhibit aggressive behaviors towards each other" and "were removed from their initial foster care placement at the request of the foster parents."

The district court ordered respondent-mother to comply with her Family Services Agreement ("FSA"), including the recommendations of the Domestic Violence Shelter and her psychological evaluation, and to "obtain and maintain safe and stable housing." The court ordered respondent-father to enter into an FSA with DSS, obtain a substance abuse assessment and psychological evaluation, submit to random drug screens, and complete parenting classes and the Domestic Violence Offender Program. Both respondents were ordered to "refrain from contacting each other and . . . abide by any Order of the Court related to no contact between them."

After an initial permanency planning hearing on 2 May 2013, the district court found that respondents "recently revealed that they did in fact, engage in domestic violence, and that they had continued to maintain a relationship, despite

statements to the contrary[,]" and that respondent-mother had obtained a domestic violence protective order ("DVPO") against respondent-father in January 2013. While noting that respondent-mother had completed empowerment classes, obtained employment, and was living with her sister and nephew, the court expressed "concerns relative to [her] compliance with her medication regimen[,]" which "include[d] Adderall, Xanax, Paxil, Risperdal, Trazadone, and Cogentin[,]" as well as Hydrocodone and Hydromorphone. The court found that respondent-father had been referred to the Domestic Violence Offender Program on 21 August 2012 but "did not begin classes until March of 2013 . . . [and] has completed seven of the required twenty-six classes" as of 2 May 2013. Although he had obtained a substance abuse assessment in September 2012, respondent-father had failed to attend intensive outpatient treatment as recommended and had refused six of nine drug screens requested by DSS. The court repeated its directives to respondents to adhere to their FSAs and to "refrain from contacting each other[.]"

The district court held a permanency planning review hearing on 4 September 2013. In an order entered 30 September 2013, the court found that respondents had failed, after fourteen months, to adequately address the issues of housing and

domestic violence that led to Tracy and Charlie's placement in foster care. It noted respondent-father's ongoing refusal to acknowledge his acts of violence against respondent-mother and found that his "lack of admission causes concern regarding the high likelihood of a repetition of the same." Moreover, despite having "denied contact[,]" respondents had "continued a covert relationship" in defiance of the court's previous orders. Respondent-mother had failed "to maintain consistent mental health treatment" or stable housing and was living with respondent-father's sister in a residence that housed convicted felons, in violation of her probation. Respondent-mother also had "a pending charge for probation violation for failure to notify her probation officer of a change in residence." Based on these circumstances, the court determined that further reunification efforts by DSS "would be futile and inconsistent with the [j]uveniles' health, safety, and need for a safe, permanent home within a reasonable period of time." *See* N.C. Gen. Stat. § 7B-507(b)(1) (2013). The court also changed the children's permanent plan from reunification to adoption.

Respondent-father filed timely notice preserving his right to appeal the order ceasing reunification efforts on 14 October 2013.

DSS filed a petition to terminate respondents' parental rights on 20 November 2013. After hearing evidence, the district court entered a termination order on 18 March 2014. The court adjudicated grounds to terminate respondents' parental rights based on their neglect of Tracy and Charlie, and on respondents' failure to make reasonable progress in the twelve months that preceded DSS's filing of the petition. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2) (2013). The court further concluded that Tracy and Charlie's best interests would be served by termination. Respondents filed timely notice of appeal from the court's order. Respondent-father also noted his appeal from the order ceasing reunification efforts entered on 30 September 2013.

II. Respondent-Father's Appeal

A. Order Ceasing Reunification Efforts

Respondent-father first claims the district court erred in ceasing reunification efforts under N.C. Gen. Stat. § 7B-507(b)(1). Even accepting the court's findings of fact as true, he argues, they fail to support the court's decision.

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence,

whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). Findings supported by competent evidence, as well as any uncontested findings, are binding on appeal. *Id.* at 212, 644 S.E.2d at 593. A trial court abuses its discretion only when its "ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007) (citation and quotation marks omitted), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008).

"A trial court may cease reunification efforts upon making a finding that further efforts would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *In re C.M.*, 183 N.C. App. at 214, 644 S.E.2d at 594 (citations and internal quotation marks omitted). Although characterized by statute as a "finding[,]" "the determination that grounds exist to cease reunification efforts under [N.C. Gen. Stat.] § 7B-507(b)(1) is in the nature of a conclusion of law that must be supported by adequate findings of fact." *In re E.G.M.*, __ N.C. App. __, __, 750 S.E.2d 857, 867 (2013).

The district court's findings reflect respondents' continued concealment of a clandestine relationship in violation of the court's orders and their shared unwillingness to acknowledge respondent-father's violence toward respondent-mother. Inasmuch as Tracy and Charlie had spent fourteen months in foster care without sufficient progress by respondents to allow a trial home placement, the court further found that it would not be possible to return Tracy and Charlie to the home "within the next six months, due to the Respondent-Parents[']continued relationship and denial of the domestic violence which precipitated the Juveniles' removal." *See* N.C. Gen. Stat. §§ 7B-907(b)(1) (2011), 7B-906.1(e)(1) (2013). With regard to respondent-father, the court found that his "lack of admission to domestic violence has remained throughout the period that the Juveniles have been in care . . . [and] causes concern regarding the high likelihood of a repetition of the same." These findings support the court's conclusion under N.C. Gen. Stat. § 7B-507(b)(1) that further reunification efforts "would be futile and inconsistent with the Juveniles' health, safety, and need for a safe, permanent home within a reasonable period of time." *See In re T.J.C.*, __ N.C. App. __, __, 738 S.E.2d 759, 762, *disc. review denied*, 366 N.C. 592, 743 S.E.2d 194 (2013).

Respondent-father claims the district court erred in relying on domestic violence as a reason to cease reunification efforts, absent any evidence that his assaulting respondent-mother in Tracy and Charlie's presence had an adverse impact on the children. We reject his assertion. Included in DSS's report to the court was a letter from Tracy's therapist, Whitney Philemon, who reported that Tracy "continues to show behaviors that *are typical for children that have been exposed to violence*, many changes of caregivers, and significant stress[.]" (Emphasis added). Among these behaviors were "physical and verbal aggression, anxiety, defiance, difficulty with emotion regulation, poor boundaries, and impulsivity." DSS social worker Alexa Alvarado testified that both children continued to be "very aggressive towards each other" in a manner requiring "100 percent supervision[,]" and that Tracy was the "most aggressive" and the "instigator between the two of them." Foster care consultant Jasmine Patrick also described Tracy as "very aggressive towards [Charlie]" and reported Tracy pushing and biting her brother. Patrick averred that both children were attending weekly therapy with Philemon to address "their aggressive behavior[.]"

Respondent-father also suggests "there was no evidence of

any domestic violence since [respondents] began living apart in 2012." While the district court made no findings of such additional violence, we note Alvarado's testimony that respondent-mother obtained a DVPO against respondent-father in January 2013 and told Alvarado "that she was frightened for her life" and that "[respondent-father was] going to her place of work, he was leaving her threatening messages and that she was afraid of him[.]" In her DVPO complaint, respondent-mother accused respondent-father of leaving harassing messages on her phone, threatening to "bury her[,]" and coming to her workplace while intoxicated to demand her schedule from her co-workers. Respondent-father's argument is overruled.

Respondent-father next challenges certain "key findings" in the order ceasing reunification efforts on the ground that they are unsupported by evidence. He first disputes the court's assessment that he "has not maintained accountability for his actions with respect to the domestic violence" against respondent-mother. Ample competent evidence supports this finding. In his own testimony, respondent-father refused to acknowledge physically assaulting respondent-mother and characterized their conflicts as involving only "emotional abuse" and "emotional . . .[a]s opposed to physical violence[.]"

Both DSS and the guardian ad litem reported that the director of respondent-father's Domestic Violence Offender Program, Sara Jablonski, "was concerned" and "didn't feel like he was being accountable and owning what actions have occurred in the past that l[e]d him to attend that program." Jablonski's most recent progress report for respondent-father, dated 22 August 2013, stated that he "takes some responsibility for [his] actions" but "blames others[,]" and "minimizes" and "externalizes" his abusive behavior. While respondent-father notes he had yet to complete the Domestic Violence Offender Program at the time of the 4 September 2013 hearing, we believe the fourteen-month period between the July 2012 incident and the permanency planning hearing provided him more than enough opportunity to come to terms with his actions.

Respondent-father also takes issue with finding of fact #8, which states that Tracy and Charlie "originally came into [DSS] care due to issues involving domestic violence occurring in the presence of the Juveniles, and housing issues. The issues remain today." Respondent-father contends that there is "no evidence that housing was an issue for [him] in September 2013." While it is true that respondent-father had maintained stable housing for a period of time prior to the hearing, finding #6

acknowledges this accomplishment, while also noting that "[p]rior to June of 2013, he resided in a camper trailer at his brother['s] home until March of 2013 [, . . . and thereafter] resided with his employer in a home which could not support placement of the Juveniles." As explained in findings ##10 and 11, the court's reference to unresolved "housing issues" referred primarily to respondent-mother. We thus find no merit to respondent-father's claim.[2]

Finally, respondent-father objects to the district court's statement of "concern" that his refusal to acknowledge domestic violence make him likely to engage in such violence in the future. He insists "[t]here was no *evidence* that a general failure to admit to acts of past domestic violence creates a likelihood of future acts of domestic violence." We disagree. At the 90-day review hearing on 15 November 2012, the court received the results of respondents' psychological evaluations by Dr. Len Lecci. In his report on respondent-father, Dr. Lecci stated as follows:

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[2]Assuming, *arguendo*, that the finding was unsupported by competent evidence as to respondent-father, we conclude that the error was harmless. *See generally In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("[E]rroneous findings unnecessary to the determination do not constitute reversible error" where the court makes sufficient additional findings grounded in the evidence.).

> One factor that does not currently bode well for favorable change by [respondent-father] is that he appears to be underreporting his alcohol use and his problems with anger. . . . The ability and/or willingness of an individual to acknowledge problem(s) is an essential step to adaptive change. Thus, this will need to occur for [respondent-father].

Dr. Lecci repeated this observation in his report on respondent-mother:

> . . . [Respondent-father] denied that there were any problems with domestic violence, saying that the children were removed because his wife's friends "don't like me." The implication of this statement is that [respondent-father] has a considerably less pathological view of his own behavior relative to [respondent-mother], and this does not bode as well for adaptive change (i.e., it is difficult to have a good prognosis for change when one does not perceive a problem to exist).

The court referred to Dr. Lecci's reports in its 90-day review order entered 13 December 2012 and the initial permanency planning order entered 31 May 2013. On both occasions, respondent-father was ordered to comply with Dr. Lecci's recommendations. We believe the psychologist's expert assessment of respondent-father's prospects is sufficient to support the contested finding.

Having considered each of respondent-father's exceptions

to the order ceasing reunification efforts,[3] we hereby affirm the order.

B. Termination Order

Respondent-father claims the district court erred in concluding that grounds existed to terminate his parental rights. He argues that the court reached its conclusion based primarily on findings that he failed to acknowledge his physical abuse of respondent-mother, and that he and respondent-mother have continued their relationship. Respondent-father does not challenge these findings, or any findings included the termination order. Moreover, he agrees with the court's decision to terminate respondent-mother's parental rights in light of her unresolved substance abuse issues, her lack of stable housing, her violations of her safety plan and probation, and the fact "that she continued a relationship with [respondent-father,]" and "did not protect two other children from domestic violence[.]" By contrast, respondent-father avers, he completed most of his FSP – including substance abuse and domestic violence treatment – and did not miss any visits with his children. He argues that "'domestic violence' is not a

[3]Because we affirm the order ceasing reunification efforts, we overrule respondent-father's argument that the invalidity of this order requires us to reverse the termination order.

talismanic phrase" automatically allowing the court to terminate a parent's rights. He likewise insists that a "finding that [respondent-father] 'consistently failed to acknowledge' physical abuse is not supportive of the conclusion that grounds exist to terminate his parental rights."

In reviewing an adjudication under N.C. Gen. Stat. § 7B-1109(e) (2013), we must determine whether the district court's findings of fact are supported by clear, cogent and convincing evidence, and whether the findings support the court's conclusions of law. *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). "If there is competent evidence, the findings of the trial court are binding on appeal[,]" *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003), as are all uncontested findings. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). We review conclusions of law *de novo*. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006).

The district court adjudicated grounds for termination of respondent-father's parental rights based on his neglect of Tracy and Charlie under N.C. Gen. Stat. § 7b-1111(a)(1). A neglected juvenile is one who, *inter alia*, "lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen.

Stat. § 7B-101(15). In order to support an adjudication under N.C. Gen. Stat. § 7B-1111(a)(1), "[n]eglect must exist at the time of the termination hearing[.]" *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 729 (2007). Where "the parent has been separated from the child for an extended period of time, the petitioner must show that the parent has neglected the child in the past and that the parent is likely to neglect the child in the future." *Id.* (citation omitted). The determination that a child is neglected is a conclusion of law. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997).

Tracy and Charlie were adjudicated neglected on 14 September 2012, upon findings that respondent-father engaged in "repeated acts of domestic violence" against respondent-mother; that the children "witnessed the acts of domestic violence which occurred on July 4, 2012[;]" and that they "resided in an environment injurious to their welfare." In adjudicating grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(1), the district court found that respondent-father "has neglected the Juveniles, and there is a high probability that there will be a repetition of neglect, and the neglect will continue in the foreseeable future[.]"

We conclude that the juveniles' prior adjudication of

neglect, coupled with the undisputed findings of fact in the termination order, support the district court's adjudication of neglect under N.C. Gen. Stat. § 7B-1111(a)(1). Rearranged for clarity, the court's findings reflect the following:

> 32. That [respondent-mother] has been the victim of domestic violence perpetrated upon her by [respondent-father] commencing in October of 2009 when he was charged with choking [her] and slamming her on the floor, four (4) months after she gave birth to [Tracy], and continuing through the incident which led to his arrest and the children's removal in July of 2012. The domestic violence occurred in the presence of the child(ren). Additionally, in January of 2013, [respondent-mother] took out a Domestic Violence Restraining Order against [respondent-father]. Both parents indicate that there has been no further incident of assault since July 4, 2012.
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> . . .
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> 10. That on 04 July 2012, [respondent-father] physically assaulted [respondent-mother] in the presence of [Tracy] and [Charlie]. . . . Subsequent to [respondent-father's] release from incarceration on 09 July 2012, [respondent-mother] was observed on 10 July 2012 with two black eyes, a bruise on her jaw, and was observed moving slowly. Her explanation . . . was that she had been "jumped by some girls[.]"
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> . . .
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> 11. That Social Worker Ruth Massey transported [respondent-mother] to Cape Fear Hospital based on [respondent-mother's] concerns that her jaw was broken. . . .

[Respondent-mother] acknowledged that there had been on-going domestic violence throughout her relationship with [respondent-father]. She acknowledged . . . that she had suffered a broken hand, injured coccyx and possible broken ribs.

. . .

21. That [respondent-mother] and [respondent-father] have continued their relationship, despite the detriment to their reunification efforts. In January of 2013, [respondent-father] confirmed that the two parties had continued their relationship since July of 2012 when the children were first placed in [foster] care.

. . .

13. . . . . [Respondent-mother] is on probation for felony charges of Accessory to Murder. [She] was involved in a previous relationship, fraught with domestic violence, wherein her boyfriend murdered her friend. [Respondent-mother] assisted her boyfriend in leaving the scene.

. . .

22. That [respondent-mother] was arrested . . . for absconding [probation][.] . . . She informed [the probation officer] that she was leaving her home because of a domestic violence situation. [The officer] made contact with [respondent-mother] by going to [respondent-father]'s home, which is the address listed on contact information as to where [respondent-mother] would be residing.

. . .

23. That during her incarceration of ninety

days for absconding from Brunswick County, [respondent-mother] placed forty-three (43) calls to [respondent-father]. . . . During said conversations, [respondents] professed their love for one another. However, in one conversation, [respondent-father] blamed [respondent-mother] for their [sic] "losing their children," citing her relatives' continued reporting of domestic violence, and her having filed for a Domestic Violence Restraining Order. [Respondent-father] was present at [respondent-mother]'s release from incarceration . . . [and] provided her transportation to his home. Both [respondents] indicate that [respondent-mother] had nowhere else to go upon her release, and both deny they have reunified their marriage. They both profess their continued love for each other. [Respondent-mother] has spent a few weeks at [respondent-father]'s home, since her release from incarceration on December 8, 2013; however, both deny continuously residing together.

. . .

24. That [respondent-mother] was the victim of domestic violence in her first marriage, and did not protect those children[.]

. . .

26. . . . . [Respondent-mother] has continued to vacillate on whether or not [respondent-father] abused her. . . . Despite [respondent-father's] completion of the Domestic Violence Offender's Program, he has consistently failed to acknowledge that he physically abused [respondent-mother]. . . . His testimony at this termination of parental rights hearing is his first acknowledgment that physical abuse occurred. While he did complete the Program, . . . his

> disclosures continued to be vague and he did not acknowledge the extent of the domestic violence or himself as the perpetrator.
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> . . .
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> 33. That when the children were taken into care they were very undisciplined and aggressive. At this time, [Tracy] is able to verbalize her anger, and calm herself. [Charlie] still needs direction; however, both children can now play independently. The[y] present with [fewer] tantrums, and anxiety.

We have previously addressed respondent-father's arguments regarding his unwillingness to acknowledge the nature of his violence against respondent-mother, and the effect of such violence on his young children. We need not repeat that discussion here.[4] We agree with the district court that the facts show a strong likelihood of future neglect if Tracy and Charlie were returned to respondent-father's care. Accordingly, his argument is overruled.

Because we uphold the district court's adjudication under N.C. Gen. Stat. § 7B-1111(a)(1), we need not review the second ground for termination found by the court. *See In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd per*

[4]We note the district court took judicial notice of its prior orders in the underlying neglect proceeding, as well as the reports submitted by DSS and the guardian ad litem and the psychological evaluations prepared by Dr. Lecci.

curiam, 360 N.C. 360, 625 S.E.2d 779 (2006).

III. Respondent-Mother's Appeal and Petition for Writ of Certiorari

Respondent-mother's sole argument on appeal challenges the district court's decision to cease reunification efforts pursuant to N.C. Gen. Stat. § 7B-507(b)(1). She concedes that she failed to designate the order ceasing reunification efforts in her notice of appeal, as required by N.C.R. App. P. 3(d), 3.1(a). Respondent-mother also failed to preserve her right to appeal the order ceasing reunification efforts by not filing notice within 30 days after entry of the order in accordance with N.C. Gen. Stat. §§ 7B-507(c), 7B-1001(b) (2013). Under these provisions, "[i]f parents fail to comply with any step of the preservation process, they have waived appellate review." *In re L.M.T.*, 367 N.C. 165, 182-83, 752 S.E.2d 453, 464 (2013) (Beasley, J., concurring) (citation omitted). Respondent-mother has petitioned this Court to allow her appeal to proceed by writ of certiorari. *See* N.C.R. App. P. 21(a).

"The writ of certiorari may be issued in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]" N.C.R. App. P.

21(a)(1). Generally, "appropriate circumstances" are those in which "the right of appeal has been lost through no fault of the petitioner" or "by reason of excusable neglect[.]" *Johnson v. Taylor*, 257 N.C. 740, 743-44, 127 S.E.2d 533, 535 (1962). "Whether excusable neglect has been shown . . . depends upon what, under all the surrounding circumstances, may be reasonably expected of a party in paying proper attention to his case." *Sellers v. FMC Corp.*, 216 N.C. App. 134, 141, 716 S.E.2d 661, 666 (2011) (citations and quotation marks omitted), *disc. review denied*, 366 N.C. 250, 731 S.E.2d 429 (2012). "A litigant's carelessness, negligence, or ignorance of the rules of procedure is not excusable neglect." *Id.* Nor does *inexcusable* neglect by counsel constitute excusable neglect. *Id.* ("The test for excusable neglect generally does not allow for attorney negligence.").

Respondent-mother asserts generally that she "relied on her trial counsel to preserve all her available issues for appeal, and trial counsel failed to do so." She does not specifically allege that she intended to appeal the order ceasing reunification efforts or expressed this intention to her counsel. Moreover, respondent-mother does not attempt to show *excusable* neglect in failing to preserve her right of appeal

from the order ceasing reunification efforts under N.C. Gen. Stat. §§ 7B-507(c), 7B-1001(b). We note that respondent-father served respondent-mother with his "Notice to Preserve Right of Appeal" 14 October 2013, more than two weeks before her deadline to comply with N.C. Gen. Stat. §§ 7B-507(c) and 7B-1001(b). Despite the benefit of this example, respondent-mother did not file a similar notice and, thereafter, did not designate the order ceasing reunification efforts in her notice of appeal filed 26 March 2014. Accordingly, we deny her petition. Because respondent-mother's brief to this Court makes no claim of error in the termination order, her appeal is hereby dismissed.

Even if respondent-mother's appeal was properly before us, we would find it to be without merit. Insofar as she argues that the district court "erred by failin[g] to make any conclusion of law regarding [the] futility" of further reunification efforts under N.C. Gen. Stat. § 7B-507(b)(1), we find that the court's labeling of its explicit determination that "such efforts would be futile" as a finding of fact rather than a conclusion of law is immaterial.[5] *See In re M.R.D.C.*, 166

[5]It is also consistent with the statutory language directing the court to "make[] written *findings of fact* that . . . [s]uch efforts clearly would be futile[.]" N.C. Gen. Stat. § 7B-

N.C. App. 693, 697, 603 S.E.2d 890, 893 (2004). Moreover, the court's findings regarding respondent-mother's lack of stable housing and inconsistency in her mental health treatment, her tendency to deny respondent-father's violence against her, and her ongoing covert contact with respondent-father are supported by competent evidence and sufficient to support the court's decision to cease reunification efforts under N.C. Gen. Stat. § 7B-507(b)(1). *See In re T.J.C.*, __ N.C. App. at __, 738 S.E.2d at 762. While respondent-mother claims that the evidence failed to prove her ongoing contact with respondent-father, we note that she subsequently acknowledged such contact when she testified at the termination hearing. She admitted moving in with respondent-father upon her release from jail for a probation violation in December 2013. These admissions are reflected in the court's findings in the termination order, which are uncontested by respondent-mother and properly considered in reviewing the order ceasing reunification efforts. *See In re L.M.T.*, 367 N.C. at 170, 752 S.E.2d at 457 (concluding that "incomplete findings of fact in the cease reunification

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507(b)(1) (emphasis added). We have nonetheless held that "the determination that grounds exist to cease reunification efforts under [N.C. Gen. Stat.] § 7B-507(b)(1) is in the nature of a conclusion of law[.]" *In re E.G.M.*, __ N.C. App. at __, 750 S.E.2d at 867.

order may be cured by findings of fact in the termination order").

IV. Conclusion

We find no merit to respondent-father's appeal. We dismiss respondent-mother's appeal and deny her petition for writ of certiorari. The district court's orders are hereby affirmed.

Affirmed.

Chief Judge McGEE and Judge HUNTER, Robert C., concur.

Report per Rule 30(e).