IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-354

Filed: 4 October 2016

Buncombe County, Nos. 12 JT 266; 13 JT 332

IN RE: R.K.C., J.O.C., Minor Juveniles.

Appeal by respondent from orders entered 17 November 2015 by Judge Fritz Y. Mercer in Buncombe County District Court. Heard in the Court of Appeals 12 September 2016.

John C. Adams for petitioner-appellee.

Mercedes O. Chut for respondent-appellant.

Amanda Armstrong for guardian ad litem-appellee.

ENOCHS, Judge.

Respondent ("Father") appeals from the trial court's orders terminating his parental rights as to his sons "Riley" and "Jonathan."[1] Although the court also terminated the parental rights of the boys' mother ("Mother"), she is not a party to this appeal. Father also petitioned this Court for a writ of certiorari seeking to appeal orders appointing a Guardian *ad litem* ("GAL") to assist him during the adjudication of this case. Because he failed to preserve this issue for appellate review in the trial

[1] We adopt the pseudonyms for the minor children used by Father in his brief to this Court. *See* N.C.R. App. P. 3.1(b).

court, we deny his petition. Furthermore, because the trial court properly found grounds for the termination of Father's parental rights, we affirm the trial court's orders.

Factual Background

On 9 August 2012, approximately two months before Riley's second birthday, the Buncombe County Department of Social Services ("DSS") received a Child Protective Services ("CPS") report accusing Mother and Father (collectively, "parents") of "cooking methamphetamine (meth) in the basement of their home and [of] smoking meth" in Riley's presence. The report noted "a 'strong odor' " in the basement of the home and described "syringes, a gun, an axe and other tools" lying within Riley's reach in the living room.

Given the nature of the allegations, DSS social workers visited the residence with members of the Buncombe County Sheriff's Office on the evening of 9 August 2012. They observed "large amounts of trash and other hazards" intermingled with children's toys strewn outside of the home. The social workers could hear footsteps and "a child crying inside the home" but waited for approximately two hours before the parents acknowledged their knocks at the door. The parents came outside with Riley to speak to the officers but refused to allow anyone inside the home. Father accused DSS of " 'harassment' " and claimed the family "did not hear the officers because they 'had been sleeping[.]' " Interviewed separately, Mother "appeared to be

very nervous and scared" and disclosed that Father "sometimes . . . yells at her and 'throws things at her' " and had "threatened to take [Riley] from her if she 'said anything.' "

Unable to verify conditions in the home, DSS arranged a kinship placement for Riley with his paternal grandmother ("Grandmother"). Mother stayed with Riley in Grandmother's home on the night of 9 August 2012. The following day, Father "engaged in a physical altercation" with Grandmother when she asked him to leave her residence. When Grandmother threatened to call law enforcement, Father "took the house phone from her and threw it against the wall, breaking it." He then crushed Grandmother's cell phone in her hand. Law enforcement arrived and removed Father from the property.

DSS received a second CPS report on 10 August 2012 stating that Father had thrown a hammer at Mother the previous weekend while Riley was in the home. The report alleged that Father had broken Mother's cell phone "in a rage" and "had threatened to harm [Mother], while she was holding [Riley] . . . ." It further alleged that Father "abuses drugs and alcohol," locks Mother in the home without a phone when he leaves the premises, "and threatens to take [Riley] if [Mother] talks to anyone about these issues."

On 13 August 2012, Grandmother advised DSS "that she cannot keep [Riley] safe, due to [Father's] behaviors, and that she would no longer be able to provide

kinship placement for [Riley]." She also "stated that [Father] is a diagnosed paranoid schizophrenic."

Both Mother and Father participated in a Child and Family Team ("CFT") meeting at DSS on 14 August 2012. Mother told a social worker that Father refused to let her visit Riley without him and "was 'making her choose between him and [Riley].' " Mother also claimed that Father " 'destroyed all her stuff' by throwing it in the front yard because she wouldn't come home with him [from Grandmother's home] on August 9th." Father acknowledged receiving disability benefits for schizophrenia but denied using drugs or engaging in domestic violence with Mother. He explained that he "didn't want to let government agents into his home because they would 'plant things.' " The CFT meeting yielded a safety plan in which the parents agreed to allow Riley to remain with Grandmother and to submit to hair follicle drug screens. Father also agreed to allow the social worker into their home. Later on 14 August 2012, however, Father contacted DSS and revoked his consent to Riley's placement with Grandmother, claiming he had been " 'hoodwinked' . . . into signing the paperwork." At Father's request, DSS placed Riley with his paternal aunt ("Aunt") on the evening of 14 August 2012.

DSS conducted a home visit of the parents' residence on 17 August 2012. During the home visit, Father demanded that Riley's hair follicle test be performed "today" in Father's presence. According to Aunt, Mother had visited her the previous

day with instructions "to 'buzz off' all of [Riley's] hair." When contacted by phone on 20 August 2012, Father "refused to allow [Riley] to be taken for the hair follicle test because 'it was too short notice.' " Father contacted Aunt the following day and announced that he was revoking his consent to the kinship placement in order to " 'get before a judge quicker.' "

On 22 August 2012, DSS filed a juvenile petition in 12 JA 266 alleging that Riley was neglected. DSS obtained nonsecure custody of Riley, placed him in foster care, and took him for his hair follicle test on 23 August 2012. The test results showed that Riley's "hair was positive for Amphetamine . . . and positive for Methamphetamine . . . ." DSS filed a new juvenile petition in 12 JA 266 on 10 September 2012 alleging abuse, neglect, and serious neglect. *See* N.C. Gen. Stat. § 7B-101(1), (15), and (19a) (2015).

After a hearing on 8 November 2012, the trial court adjudicated Riley an abused and neglected juvenile by order entered 22 January 2013.[2] The court designated Mother and Father as responsible individuals and ordered that they be placed on the responsible individuals list. *See* N.C. Gen. Stat. § 7B-101(18a). The court continued Riley in DSS custody and sanctioned his placement with Aunt, subject to the requirement that she and her husband contact law enforcement if Father came to their home. Both parents were ordered to obtain substance abuse,

[2] The court also entered an adjudication of serious neglect in the alternative to the adjudication of abuse.

mental health, and parenting capacity evaluations and comply with all recommendations; submit to a hair follicle drug screening; and comply with any DSS requests for drug testing. Each parent was awarded one hour of weekly supervised visitation with Riley, on the condition that they submit a clean drug screen 24 hours prior to each scheduled visit. If the drug screen was positive, the visit would be cancelled.

At the time of the initial permanency planning and review hearing on 25 January 2013, Father had "completed no services" and had not visited Riley, having tested positive for methamphetamine and amphetamines in December 2012. Father's visitation had been suspended at a CFT meeting on 16 December 2012 based on his positive drug test as well as his "stalking behaviors towards [Mother] and his inability and unwillingness to engage in services." The trial court established a permanent plan of reunification for Riley and restored Father's one hour of weekly supervised visitation, subject to his submission of a clean drug screen if requested by DSS.

At the next permanency planning hearing on 26 June 2013, Riley had been removed from Aunt's care "due to threats made by [Father]" and was residing in foster care. The court noted Riley's "significant speech delays" and other medical issues but found that "the degree of [Riley's] brain damage due to his high exposure from methamphetamine has not been calculated." The court further found that Father

"has not engaged with [DSS] since February 2013" when he "refused to comply with a drug screen in order to visit with [Riley]." Father contacted DSS again in May 2013 to request a visit and was informed that he would need to submit a clean drug screen. He did not contact DSS thereafter.

After a hearing on 20 September 2013, the trial court changed Riley's permanent plan to adoption with a concurrent plan of guardianship, relieved DSS of further reunification efforts, and directed DSS to "pursue termination of parental rights." The court noted that Mother was pregnant and had identified Father as one of two possible fathers of the child. Father had failed to engage in any court-ordered services and had not sought visitation with Riley since the previous hearing. The court further found that Father had "not provided the social worker with his current address[,]" was unemployed and had paid no child support, and had "pending criminal charges for resisting [a] public officer and felony possession of methamphetamine."

DSS filed a petition to terminate Mother and Father's parental rights as to Riley on 19 November 2013, in 12 JT 266. The petition asserted the following five grounds for termination of Father's rights: abuse and/or neglect; failure to make reasonable progress with his case plan; failure to pay a reasonable portion of Riley's

cost of care; dependency; and abandonment.[3] *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3), (6), and (7) (2015).

Mother gave birth to Jonathan in November 2013. DSS obtained nonsecure custody of Jonathan on the day he was born and filed a juvenile petition alleging neglect and dependency. After summarizing the parents' CPS history with regard to Riley, the petition alleged that neither Mother nor Father had made "any progress in addressing the issues that caused [Riley] to be removed from their care." It further alleged that Mother's parental rights to another child had been terminated in Alabama in 2008.

Upon Mother and Father's stipulation to the allegations in the petition, the trial court adjudicated Jonathan a dependent juvenile on 13 June 2014. In a permanency planning order entered 11 July 2014 and amended 15 July 2014, the court established a permanent plan for Jonathan of adoption concurrent with a plan of guardianship and suspended Father's visitation "until [he] engages in services and provides proof to [DSS]." The court noted that Jonathan was placed in the same foster home as Riley and was "very bonded to the foster parents and his sibling . . . ."

At a subsequent permanency planning hearing on 19 September 2014, the trial court found that Mother was again pregnant and that Father's "last drug screen was

[3] DSS asserted the same grounds for terminating Mother's parental rights except that, in lieu of abandonment, the petition alleged that her parental rights to another child had been involuntarily terminated in Alabama in 2008, and she was unable or unwilling to provide a safe home for Riley. *See* N.C. Gen. Stat. § 7B-1111(a)(9).

positive for methamphetamine and amphetamine." The court also found the children's foster placement "no longer appropriate, as [Riley's] behaviors and stability have declined." The court left the children in DSS custody and, with the parties' agreement, sanctioned their return to Grandmother's care.

On 13 January 2015, DSS filed a petition to terminate both Mother and Father's parental rights as to Jonathan in 13 JT 332, and an "Amended Termination of Parental Rights Petition" with regard to Riley in 12 JT 266. The petitions alleged the same statutory grounds for terminating Father's parental rights as were raised in the original petition filed in 12 JT 266 on 19 November 2013.[4] *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6), and (7). Riley and Jonathan were transitioned from Grandmother's care into a pre-adoptive foster home on 12 March 2015.

After a series of continuances, the trial court held a hearing on the termination petitions on 8 September 2015. By orders filed 17 November 2015 and served 23 November 2015, the court found grounds to terminate Father's parental rights based on neglect, lack of reasonable progress, dependency, and abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6), and (7). At disposition, the court determined that Riley and Jonathan's best interests would be served by terminating Father's parental rights. Father filed timely notice of appeal from the termination orders.

[4] Both petitions filed on 13 January 2015 alleged abandonment as a ground for terminating Mother's parental rights, *see* N.C. Gen. Stat. § 7B-1111(a)(7), in addition to each of the grounds previously raised in the petition filed on 19 November 2013 in 12 JT 266.

Analysis

I. Appointment of Guardian *ad Litem*

Father first claims the trial court erred by appointing a GAL to represent him in the termination proceedings without making the findings of fact required by Rule 52(a) of the North Carolina Rules of Civil Procedure to support its determination that he was incompetent. *See also* N.C.R. Civ. P. 17; N.C. Gen. Stat. § 7B-1101.1(c) (2015). Father concedes the Juvenile Code does not provide him with a right of appeal from the orders appointing his GAL. *See* N.C. Gen. Stat. § 7B-1001(a) (2015); *In re J.R.W.*, 237 N.C. App. 229, 232, 765 S.E.2d 116, 119 (2014), *disc. review denied*, 367 N.C. 813, 767 S.E.2d 840 (2015). Nonetheless, he contends that these interlocutory orders are reviewable on appeal from the final judgments. Alternatively, Father has petitioned this Court to review the orders by writ of certiorari pursuant to N.C.R. App. P. 21(a)(1).

We note that it was Father's counsel who initially sought the appointment of a GAL for Father in the abuse, neglect, and dependency proceeding in 12 JA 266. *See* N.C. Gen. Stat. § 7B-602 (2015). The trial court granted the motion on 28 August 2012, appointing a GAL for Father pursuant to Section 7B-602. Following our decision in *In re P.D.R.*, 224 N.C. App. 460, 469, 737 S.E.2d 152, 158 (2012), the court clarified the role of Father's GAL to be one of assistance rather than substitution. On 30 September 2013, the court removed Father's GAL in 12 JA 266, citing the

legislature's elimination of the role of assistive GAL by amendments to N.C. Gen. Stat. §§ 7B-602 and 7B-1101.1. *See also* 2013 N.C. Sess. Laws ch. 129, §§ 17, 31 (effective Oct. 1, 2013). The trial court found no "substantial question of [Father's] competency to conduct [the] litigation according to his . . . own judgment and inclination[.]" However, in subsequent orders signed on 24 and 31 January 2014, the court found Father to be incompetent for purposes of the proceedings in 12 JA 266 and 13 JA 332 and appointed a GAL to represent him.

As Father did not appeal the initial adjudication and disposition orders in this cause, the trial court's decision to appoint a GAL for Father in the underlying abuse, neglect, and dependency proceedings under N.C. Gen. Stat. § 7B-602 is not before us. *See In re O.C. & O.B.*, 171 N.C. App. 457, 463, 615 S.E.2d 391, 395 (2005) (rejecting argument that "a failure to appoint a GAL during the *earlier* adjudication proceedings impacts a *later* order on termination of parental rights"). Therefore, although the court continued to hold review hearings in 12 JA 266 and 13 JA 332 parallel to the termination proceedings in 12 JT 266 and 13 JT 332, we address only the court's appointment of a GAL for Father in the termination proceedings pursuant to N.C. Gen. Stat. § 7B-1101.1.

Section 7B-1101.1(c) 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 who is incompetent in accordance with G.S. 1A-1, Rule 17." "A trial court's decision

concerning whether to appoint a parental guardian *ad litem* based on the parent's incompetence is reviewed on appeal for abuse of discretion." *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015). "An '[a]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.' " *Id.* (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)).

DSS filed its initial petition to terminate Mother and Father's parental rights as to Riley on 19 November 2013. At the first appearance hearing on 10 January 2014, Father's counsel "moved the court to set a hearing on the need to determine if it is appropriate to appoint a guardian ad litem of substitution to assist [Father] in this matter." The court granted the motion and set a hearing date of 20 January 2014. However, there is no further indication in the record that the court considered Father's need for a GAL in the termination proceedings prior to DSS filing its subsequent petitions on 13 January 2015.

After DSS filed its petitions on 13 January 2015, it moved for the appointment of a GAL of substitution for Father. DSS averred that Father "suffers from schizophrenia, receives disability benefits for this diagnosis, and suffers from a significant addiction to controlled substances." It also noted that the court had appointed a GAL of substitution for Father "in the underlying juvenile matter" in 12 JA 266 and 13 JA 322. Following a hearing on 27 March 2015, the court appointed

Father's existing GAL in the underlying abuse, neglect, and dependency proceedings to serve as his GAL in the termination proceedings.

Regardless of whether the orders appointing the GAL are subject to appeal, *see In re J.R.W.*, 237 N.C. App. at 232, 765 S.E.2d at 119, Father's argument is not properly before this Court. "In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired . . . . It is also necessary for the complaining party to obtain a ruling . . . ." N.C.R. App. P. 10(a)(1). The record before this Court contains no suggestion that Father ever objected to the trial court's appointment of his GAL or to the GAL's performance. Nor did Father seek to remove the GAL.[5] Therefore, Father has waived appellate review of this issue.

Furthermore, " 'to obtain relief on appeal, an appellant must not only show error, but that . . . the error was material and prejudicial, amounting to denial of a substantial right that will likely affect the outcome of an action.' " *In re B.S.O.*, 234 N.C. App. 706, 713, 760 S.E.2d 59, 65 (2014) (quoting *Starco, Inc. v. AMG Bonding & Ins. Servs.*, 124 N.C. App. 332, 335, 477 S.E.2d 211, 214 (1996)). Father does not suggest any prejudice resulting from the trial court's appointment of his GAL, or from her performance. *Cf. generally In re Shepard*, 162 N.C. App. 215, 227, 591 S.E.2d 1, 9 (2004) (addressing the respondent mother's argument that her guardian "did not

[5] Implicit in Father's challenge to the appointment of his GAL is an assertion that Father was competent and, therefore, had the capacity to raise the issue with the trial court.

fulfill her duties as a GAL and in fact breached the duties owed to her ward"). Although the failure to appoint a GAL for an incompetent parent is reversible error *per se*, an error by the court in appointing a GAL may be harmless. *Compare In re O.C.*, 171 N.C. App. at 463, 615 S.E.2d at 395 (holding that "[i]f the trial court fails to appoint a required GAL for a parent for the proceedings *associated with the order on appeal*, such order must be reversed"), with *In re P.D.R.*, 224 N.C. App. at 470, 737 S.E.2d at 159 (remanding to determine whether the failure to designate the respondent's GAL as substitutive or assistive was prejudicial with regard to the respondent's waiver of counsel). Father's argument is overruled, and his petition for writ of certiorari is denied.

II. Amended Petition in 12 JT 266

Father's next argument concerns DSS's filing an amended petition for termination of his parental rights as to Riley in 12 JT 266. As previously discussed, DSS filed its original "Termination of Parental Rights Petition" in 12 JT 266 on 19 November 2013. On 13 January 2015, DSS filed both a "Termination of Parental Rights Petition" with regard to Jonathan in 13 JT 332 and an "Amended Termination of Parental Rights Petition" in 12 JT 266. Father avers the amended petition in 12 JT 266 contains "new factual allegations not found in the first petition[,]" including "allegations that stem from events that allegedly occurred *after* the first petition" was filed. Citing the notice requirement in Rule 15(c) of the North Carolina Rules of Civil

Procedure, Father contends that "the amended petition for Riley did not relate back to November 19, 2013."

We hold that Father's failure to object to the amended petition filed on 13 January 2015 waived appellate review of his current argument under Rule 10(a)(1). Father did not move to strike the amended petition or file any answer or response thereto. *See* N.C. Gen. Stat. § 7B-1107 (2015). Nor did he object to the trial court's consideration of the amended petition at the termination hearing. *Cf. In re G.B.R.*, 220 N.C. App. 309, 311, 725 S.E.2d 387, 388 (2012) ("*Over objection*, the trial court allowed the motion to amend the termination motions." (emphasis added)); *In re B.L.H. & Z.L.H.*, 190 N.C. App. 142, 145, 660 S.E.2d 255, 256 ("*Defendant objected*, arguing she received no notice of the allegation and that such an amendment was a substantial change to the petitions requiring additional time to prepare a defense." (emphasis added)), *aff'd per curiam*, 362 N.C. 674, 669 S.E.2d 320 (2008).

We further find that Father's briefed argument does not present any actual claim of error by the trial court. The original petition in 12 JT 266 had not been heard at the time DSS filed its "Amended Petition" on 13 January 2015. The amended petition and the accompanying summons issued on 13 January 2015 were personally served on Father and his GAL by a Buncombe County Sheriff's deputy on 26 January 2015. *See* N.C.R. Civ. P. 4; N.C. Gen. Stat. §§ 7B-1102(b), 7B-1106 (2015). Because the 13 January 2015 petition was properly served as a new pleading in the case, it

need not "relate back" to the 19 November 2013 filing date of the original petition. The 13 January 2015 filing effectively superseded the original petition.

The termination hearing was not held until 8 September 2015, nearly eight months after the amended petition was filed. We see no conceivable basis for Father to claim a denial of notice. *See* N.C. Gen. Stat. § 7B-1109(a) (2015) (requiring adjudicatory hearing within 90 days of petition's filing, unless otherwise ordered). The amended petition alleged the same statutory grounds for terminating Father's parental rights as were alleged in the original petition. *Cf. generally In re B.L.H.*, 190 N.C. App. at 147, 660 S.E.2d at 258 ("[W]here a respondent lacks notice of a possible ground for termination, it is error for the trial court to conclude such a ground exists."). Moreover, for purposes of N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and (2) (reasonable progress), the issue before the trial court is " 'the fitness of the parent to care for the child *at the time of the termination proceeding*[,]' " *In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)), and "the nature and extent of the parent's *reasonable progress* . . . leading up to the hearing on the motion or petition to terminate parental rights[,]" *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006). Regardless of when its petition was filed, DSS was free to offer evidence of events occurring up to the date of the hearing. Father's argument is overruled.

III. Grounds for Termination under N.C. Gen. Stat. § 7B-1111(a)

Father challenges each of the four grounds for termination found by the trial court, arguing that they are unsupported by the evidence and the court's findings of fact. We apply the following standard of review to an adjudication under N.C. Gen. Stat. § 7B-1111(a):

> [W]e must determine whether the findings of fact are supported by clear, cogent and convincing evidence, and whether the findings support the court's conclusions of law. If there is competent evidence, the findings of the trial court are binding on appeal. An appellant is bound by any unchallenged findings of fact. Moreover, erroneous findings unnecessary to the determination do not constitute reversible error where the adjudication is supported by sufficient additional findings grounded in competent evidence. We review conclusions of law *de novo*.

In re B.S.O., 234 N.C. App. at 707-08, 760 S.E.2d at 62 (internal citations and quotation marks omitted). "[A]ny 'single ground . . . is sufficient to support an order terminating parental rights.' Therefore, if we determine that the court properly found one ground for termination under N.C. Gen. Stat. § 7B-1111(a), we need not review the remaining grounds" found by the court. *Id.* at 708, 760 S.E.2d at 62 (quoting *In re J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006)).

Under N.C. Gen. Stat. § 7B-1111(a)(2), grounds exist for termination of parental rights if "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." To

sustain an adjudication under N.C. Gen. Stat. § 7B-1111(a)(2), the juvenile must have been placed outside the home "pursuant to a court order" for more than a year at the time the petition to terminate parental rights is filed. *In re A.C.F.*, 176 N.C. App. at 527, 626 S.E.2d at 734. However, "the nature and extent of the parent's *reasonable progress* . . . is evaluated for the duration leading up to the [termination] hearing . . . ." *Id*. at 528, 626 S.E.2d at 735.

It is uncontested that Riley and Jonathan had been in a court-ordered placement outside their parents' home for more than one year at the time the petitions were filed on 13 January 2015. The trial court placed Riley in nonsecure custody in August 2012 and placed Jonathan in nonsecure custody in November 2013. The trial court's findings recount the parents' history of domestic violence and substance abuse, their exposure of Riley to methamphetamine and other dangers in their home, and Father's disruption of Riley's kinship placements with Aunt and Grandmother. The court further found:[6]

> 40. On November 8, 2012, the Court found [Riley] to be an abused, seriously neglected and neglected juvenile . . . .
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> 41. On November 8, 2012, the court ordered [Father] to do the following: . . . complete a substance abuse evaluation and comply with all recommendations of the evaluation; . . . have a parenting capacity evaluation and comply with all recommendations of the evaluation; . . . complete a mental health evaluation and comply with all

[6] Although the court entered separate orders in 12 JT 266 and 13 JT 332, the orders' findings are essentially identical.

recommendations of the evaluation; . . . comply with all drug testing requested by [DSS]; . . . [and] submit to urine drug screens 24 hours before visitation.

42. [Father] has not completed any services requested by [DSS] or ordered by this Court. [He] missed a number of visits with [the children] due to his failure to provide a clean drug screen prior to visits. However, when he did visit he did well.

43. [Father] is on Social Security Disability for his diagnosis of Schizophrenia. [He] did provide child support for the minor child[ren] taken from his disability benefits.

. . . .

49. On March 4, 2014, [Jonathan] was adjudicated a dependent juvenile. . . .

50. On May 8, 2014, the Court rendered a Dispositional Order . . . [which] required the respondent parents to participate in mental health services, complete assessments with RHA and follow all recommendations from the RHA assessment and complete Comprehensive Clinical Assessments and follow the recommendations.

51. Respondent parents have continued to test positive for controlled substances during [DSS's] involvement with the family. The respondent parents have failed to complete services to address their mental health and substance abuse issues.

52. [Respondents] have failed to visit consistently with the minor children. [Father's] last visit with [the children] was March 28, 2014. . . .

. . . .

> 59. The respondent parents did not maintain regular and consistent contact with [DSS], and their whereabouts and residence status was often unknown.

The court expressly found and concluded that Father "willfully left the minor child[ren] in foster care or placement outside the home for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile[s]."

Father argues that the trial court's findings do not support an adjudication under N.C. Gen. Stat. § 7B-1111(a)(2), because "[n]one of the findings address any particular twelve[-]month time period or whether [Father's] failure to make progress was willful." He characterizes the court's findings as "emphasiz[ing] the events surrounding Riley's entry into DSS custody" in 2012.

We find no merit to Father's claim. The quoted findings amply demonstrate Father's failure, up to the date of the hearing, to address the mental health and substance abuse issues that led to the children's removal. Though largely uncontested,[7] the findings are supported by the testimony of the five DSS social

[7] Father identifies a potential discrepancy between Ms. Jenkins' testimony that a previous review order found that Father visited the children in June of 2014, and Finding of Fact 52 that his last visit occurred on 28 March 2014. To the extent Finding 52 is inaccurate, the error is completely harmless, given that Father had not visited the children for well over a year at the time of the termination hearing. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("When . . . ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error."). We note that Ms. Hoffart, who was assigned respondents' case from 18 August 2012 to 1 August 2014, testified that Father's "last visit . . . on [her]

workers who oversaw Father's case from August 2012 through the September 2015 termination hearing.

Father also challenges the court's determination that he acted "willfully" for purposes of N.C. Gen. Stat. § 7B-1111(a)(2), pointing to a "[l]ack of specific findings as to whether [he] had the ability to meet DSS' expectations[.]" We have construed the term "willfully" in subpart 7B-1111(a)(2) as follows:

> A finding of willfulness here does not require proof of parental fault. On the contrary, [w]illfulness is established when the respondent had the ability to show reasonable progress, but was *unwilling to make the effort*. A finding of willfulness is not precluded even if the respondent has made *some* efforts to regain custody of [her child].

In re A.W., 237 N.C. App. 209, 215-16, 765 S.E.2d 111, 115 (2014) (first emphasis added) (internal citations and quotation marks omitted). Under this standard, Father's prolonged refusal to cooperate with DSS or engage in services, as reflected in Findings of Fact 41, 42, 50, and 51, supports a finding of willfulness under N.C. Gen. Stat. § 7B-1111(a)(2). *See also In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175 (2001).

Citing our decisions in *In re J.G.B*, 177 N.C. App. 375, 628 S.E.2d 450 (2006) and *In re Matherly*, 149 N.C. App. 452, 562 S.E.2d 15 (2002), Father contends that "[t]he trial court should have made specific findings about [his] psychiatric diagnosis

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watch was March 28th of 2014." To the extent Father calls attention to similar discrepancies between the witness testimony and the details of the court's evidentiary findings, we conclude they are equally harmless.

and whether his failure to comply with court-ordered tasks . . . was willful." However, each of these cases involved parents who were themselves minor children and thus had inherent "age-related limitations." *See In re Matherly*, 149 N.C. App. at 455, 562 S.E.2d at 18 (trial court "must make specific findings of fact showing that a minor parent's age-related limitations as to willfulness have been adequately considered"); *see also In re J.G.B*, 177 N.C. App. at 383-84, 628 S.E.2d at 456-57. While a parent's mental illness must be taken into account when assessing the reasonableness of his progress under N.C. Gen. Stat. § 7B-1111(a)(2), we have not imposed the fact-finding requirements of *In re Matherly* and *In re J.G.B.* to all cases in which a parent has a diagnosed mental illness. In the case *sub judice*, the trial court heard no evidence that Father's mental illness was untreatable or that he was incapable of making any progress in addressing the issues that led to Riley and Jonathan's placement outside the home. The findings that Father failed to obtain any of his court-ordered evaluations and treatment over a period of years satisfy the willfulness requirement of N.C. Gen. Stat. § 7B-1111(a)(2).

Because we uphold the trial court's adjudication under N.C. Gen. Stat. § 7B-1111(a)(2), we need not review the remaining grounds for termination under § 7B-1111(a)(1), (6), and (7). *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426-27 (2003).

Conclusion

Father's petition for a writ of certiorari is denied. The orders terminating Father's parental rights are affirmed.

AFFIRMED.

Judges McCULLOUGH and DILLON concur.

Report per Rule 30(e).