IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-181

Filed: 1 August 2017

Ashe County, Nos. 15 JA 15-20

IN THE MATTERS OF: A.C., N.B., P.B., R.B., B.B., S.B.

Appeal by respondents from orders entered 27 April 2016 and 19 September 2016 by Judge William F. Brooks in Ashe County District Court. Heard in the Court of Appeals 13 July 2017.

Grier J. Hurley for petitioner-appellee Ashe County Department of Social Services.

N. Elise Putnam for respondent-appellant father.

Miller & Audino, LLP, by Jay Anthony Audino, for respondent-appellant mother.

Paul W. Freeman, Jr., for guardian ad litem.

TYSON, Judge.

Respondent-mother and Respondent-father (collectively, "Respondents") appeal from the trial court's "Juvenile Adjudication Order" adjudicating their minor children "Ashley," "Nick," "Penny," "Rommy," "Burt," and "Susan" to be abused and neglected, and from the "Juvenile Disposition Order" awarding custody and

placement authority to petitioner, Ashe County Department of Social Services ("DSS"), and relieving DSS of further efforts toward reunification. We affirm the orders in part, reverse in part, and remand for further proceedings.

I. Factual Background

Respondents are husband and wife. Respondent-father is the step-father of Respondent-mother's daughter, Ashley, who was born prior to the marriage in October 2002. Ashley's father did not appeal. The remaining five children were born during Respondents' marriage—twins Burt and Susan in February 2009, Rommy in May 2010, and twins Nick and Penny in December 2011.

On 13 July 2015, DSS received a child protective services ("CPS") report that Respondent-father was naked in an upstairs room with 12-year-old Ashley. The report further accused Respondents of driving under the influence of marijuana with the children in the car, and leaving the children unsupervised or under the supervision of Ashley, who is developmentally disabled.

DSS CPS investigator Amy Fenstemaker and social worker Alice Langstaff went to Respondents' residence. Respondents denied the report's allegations and refused to allow Fenstemaker and Langstaff into their home. After speaking to Respondents and several children on the front porch, Fenstemaker and Langstaff arranged for Respondent-mother and the children to move into a hotel room temporarily.

DSS continued the investigation the following day. When Fenstemaker and a social worker went to Respondents' residence to obtain clothing for Respondent-mother and the children, Respondent-father showed them a video stored on his tablet computer. In the video, Ashley and a young boy were dancing together in a "sexual" manner with their genitals exposed. The video also depicted Ashley with her pants down and straddling the leg or foot of an unseen person. The size of the foot and the amount of hair on the leg indicated they did not belong to a young child.

Respondent-father voluntarily surrendered the tablet to law enforcement, claiming he did not know who had shot the video or the identity of the person to whom the displayed leg and foot belonged. When asked why he did not delete the video, Respondent-father replied that Respondent-mother had "told him to save it in case they ever got in trouble with DSS so that they could prove the kids' sexualized behaviors."

Fenstemaker and the social worker also visited Respondent-mother at the hotel room. During the visit, Fenstemaker observed a naked, three-year-old Penny place a pillow on the floor, straddle it, and begin masturbating in a stylized, "extremely sexualized" manner. Five-year-old Rommy, who was playing with Respondent-mother's cell phone, "positioned himself on the floor" below Penny and began videotaping her. Respondent-mother noticed the children's behavior and intervened. Fenstemaker and the social worker examined Respondent-mother's

phone and confirmed that Rommy "had actually taped . . . [Penny] dancing naked on the floor and the pillow."

Fenstemaker asked Respondent-mother about the video on the tablet Respondent-father had surrendered to them. After an initial denial, Respondent-mother admitted she was aware of the video and had instructed Respondent-father to preserve it "just in case they ever needed it." Like Respondent-father, Respondent-mother denied knowing whose leg and foot was depicted in the video.

On 15 July 2015, DSS obtained nonsecure custody of Respondents' children and filed juvenile petitions, which alleged they were abused and neglected. In addition to the events described above, the petitions noted the family had been the subject of multiple prior CPS reports involving abuse and neglect; Ashley was developmentally delayed; and Nick had been diagnosed with failure to thrive and had "ongoing health concerns."

The trial court commenced the adjudicatory hearing on 26 February 2016 and received testimony from Fenstemaker. The court recessed for the day during Respondents' cross-examination. When the hearing resumed on 23 March 2016, counsel for DSS informed the court that the parties had "agreed to some stipulated facts" for purposes of the adjudication. DSS, Respondents, and counsel for Ashley's biological father confirmed their stipulations "to these facts as a basis for an

adjudication of abuse and neglect." The trial court accepted the parties' stipulations and adjudicated the six children as abused and neglected juveniles.

In its "Juvenile Adjudication Order" entered 27 April 2016, the trial court found as follows:

> 6. That the parties stipulated to the following findings of fact:
>
> a). the mother admitted to one incident of domestic violence when she was rendered unconscious. The children observed two incidents of the mother being rendered unconscious;
>
> b). the mother and [Respondent-father] permitted through lack of supervision, access to pornography and videotaping the children's simulated sexual activities;
>
> c). the above has caused [Ashley] serious emotional damage in that it has escalated her pre-existing mental health diagnoses;
>
> d). the mother and [Respondent-father] have not properly supervised the children;
>
> e). the mother and [Respondent-father] have not provided the necessary counseling, medical treatment or services needed to promote healthy emotional or physical well-being of the children;
>
> f). the mother and [Respondent-father] admitted to using marijuana and alcohol while the children were in the home. When using alcohol the domestic violence increases;
>
> g). the children were left alone in the home; and
>
> h). [Ashley's father] has had limited contact with [Ashley] through her lifetime.

The court concluded that all six children were abused juveniles as defined by N.C. Gen. Stat. § 7B-101(1)(d) (Supp. 2016). This conclusion was based on the following finding:

> 7. The Court finds as a fact that all six children . . . are abused [juveniles] in that [Respondents] permitted through lack of supervision access to pornography and videotaping the children's simulated sexual activities in violation of NCGS 14-190.5.

The court also adjudicated Ashley as an abused juvenile pursuant to N.C. Gen. Stat. § 7B-101(1)(e) (Supp. 2016), "in that the lack of supervision, pornography and videotaping, created serious emotional damage to the child[.]"

The court also concluded the six children were neglected juveniles under N.C. Gen. Stat. § 7B-101(15) (Supp. 2016), because they were denied proper care, supervision, and discipline and "resided in an environment injurious to their welfare due to the domestic violence and lack of supervision."

After announcing its decision to adjudicate the children abused and neglected "upon the stipulated facts" on 23 March 2016, the court proceeded to the dispositional hearing. The court received additional evidence regarding disposition on four dates between 23 March 2016 and 29 July 2016.

The "Juvenile Disposition Order" entered 19 September 2016 maintained the children in DSS' custody. The trial court relieved DSS of further efforts toward reunification with Respondents, based upon the following findings:

> 58. . . . [A]ggravated circumstances exist due to the mother and [Respondent-father] having committed or encouraged the commission of, or allowed the continuation of, sexual abuse, chronic physical or emotional abuse and acts, practices or conduct that have increased the enormity or added to the injurious consequences of the abuse or neglect.
>
> 59. Thus, the Court finds that reasonable efforts for reunification as defined in NCGS 7B-101 shall not be required.

The court further ordered that Respondents "be allowed a good-bye visit for closure" but otherwise "shall not be allowed visitation with the children." Respondents filed timely notice of appeal on 5 October 2016.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(5) (2015).

III. Issues

Respondent-father contends the trial court erred in its adjudication order where: (1) the guardian *ad litem* did not agree to the stipulated findings of fact; (2) the other findings were not supported by clear, cogent, and convincing evidence; and (3) the trial court concluded Rommy, Burt, Susan, Penny, and Nick were abused juveniles. Respondent-father further contends the trial court erred when it ceased reunification efforts and denied Respondent-father visitation without making the statutorily required findings.

Respondent-mother argues the trial court violated her due process rights when it failed to conclude adjudication and disposition hearings within the statutory mandate and then ordered DSS to cease reunification efforts based upon lack of contact. Respondent-mother also argues the trial court erred when it ceased reunification efforts even after she had substantially complied with her safety plan.

IV. Standard of Review

> On appeal from the trial court's disposition order, we must determine (1) whether the trial court's findings of fact are supported by clear and convincing evidence, and (2) whether its conclusions of law are supported by the findings. Unchallenged findings are binding on appeal. The conclusion that a juvenile is abused, neglected, or dependent is reviewed de novo.

In re J.D.R., 239 N.C. App. 63, 66, 768 S.E.2d 172, 174-75 (2015) (citations omitted).

V. Respondent-Father's Appeal

A. Adjudication Order

Respondent-father claims the trial court erred in adjudicating the children abused and neglected.

1. Stipulated Findings of Fact

Respondent-father challenges Findings 6(a)-(h), in which the trial court found the facts to which Respondents and DSS stipulated at the adjudicatory hearing on 23 March 2016. He notes N.C. Gen. Stat. § 7B-807(a) (2015) requires "each party

stipulating to [the facts]" to either sign a written stipulation or confirm the stipulation orally in open court. Inasmuch as "the juvenile is a party" in an abuse and neglect proceeding, N.C. Gen. Stat. § 7B-601(a) (2015), Respondent-father argues that "it was necessary for the [children's] guardian ad litem to stipulate to the findings of fact." Because the guardian *ad litem* ("GAL") did not join Respondents and DSS in stipulating to the facts in Findings 6(a)-(h), Respondent-father insists "[t]he adjudication order must be reversed."

"[S]tipulations are judicial admissions and are therefore binding in every sense, preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish an admitted fact." *In re I.S.*, 170 N.C. App. 78, 86, 611 S.E.2d 467, 472 (2005) (alteration original) (citation and quotations marks omitted). "Once a stipulation is made, a party is bound by it and he may not thereafter take an inconsistent position." *Rural Plumbing and Heating, Inc. v. H.C. Jones Construction Co.*, 268 N.C. 23, 31, 149 S.E.2d 625, 631 (1966).

"A party to a stipulation who desires to withdraw or repudiate it should seek to do so by motion in the cause on notice to the opposite party. And delay in asking for relief may defeat the right to withdraw or set aside." *Thomas v. Poole*, 54 N.C. App. 239, 242, 282 S.E.2d 515, 517 (1981).

We do not agree that a stipulation at the adjudicatory stage of an abuse, neglect, or dependency proceeding is invalid to all parties, if fewer than all enter into it. The statute upon which Respondent-father relies, provides as follows:

> (a) If the court finds from the evidence, including *stipulations by a party*, that the allegations in the petition have been proven by clear and convincing evidence, the court shall so state. A record of specific stipulated adjudicatory facts shall be made by either reducing the facts to a writing, signed by *each party stipulating to them* and submitted to the court; or by reading the facts into the record, followed by an oral statement of agreement from *each party stipulating to them*.

N.C. Gen. Stat. § 7B-807(a) (emphasis supplied). The plain language of this subsection contemplates "stipulations by a party" or by multiple parties. The statute does not require "all parties" to agree to a stipulation. *Id.*

Respondent-father stipulated to each of the facts included in Findings 6(a)-(h). He failed to subsequently move to withdraw or repudiate his stipulation; nor did he object to the trial court's reliance upon these stipulated facts based on the lack of an oral or written statement of agreement from the GAL. *See* N.C. R. App. P. 10(a)(1).

While the GAL did not expressly stipulate to Findings 6(a)-(h), she does not contest any of these findings on appeal and affirmatively opposes Respondent-father's argument in her brief to this Court. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (ruling that uncontested findings of fact are binding on appeal). Having entered his own stipulations in full compliance with the formal

requirements of N.C. Gen. Stat. § 7B-807(a), and not having withdrawn therefrom, Respondent-father remains bound and cannot assert the GAL's lack of assent in the record to withdraw his own. His argument is overruled.

2. Trial Court's Additional Findings

Respondent-father next contends the trial court erred by finding adjudicatory facts to which the parties did not stipulate. He specifically excepts to the following finding:

> 7. The Court finds as a fact that all six children . . . are abused children in that [Respondents] permitted through lack of supervision access to pornography and videotaping the children's simulated sexual activities in violation of NCGS 14-190.5.

Respondent-father acknowledges that a determination that a child is abused is in the nature of a conclusion of law "and should be treated as such" on *de novo* appellate review. However, he points to two objectionable facts included in Finding 7.

First, Respondent-father asserts that "the court made an additional finding of fact in [Finding] 7 that the parents *videotaped* 'the children's simulated sexual activities[.]'" (emphasis supplied). This assertion mischaracterizes Finding 7. The trial court *did not* find Respondents had engaged in the videotaping. Rather, Finding 7 merely restates *verbatim* the stipulated fact in Finding 6(b), that Respondents "permitted through lack of supervision" both (1) the children's "access to

pornography" and (2) the "videotaping [of] the children's simulated sexual activities." This argument is overruled.

Respondent-father challenges the court's statement in Finding 7 that Respondents violated N.C. Gen. Stat. § 14-190.5 (2015). Noting the parties' stipulated facts made "no mention" of N.C. Gen. Stat. § 14-190.5, he argues "it was error for the court to make this additional finding of fact as it was not proven by clear, cogent, and convincing evidence." Respondent-father again mischaracterizes the trial court's finding. The court did not find that Respondents themselves violated N.C. Gen. Stat. § 14-190.5, but found through lack of supervision over their children, they had "permitted" conduct, which violated the statute.

Moreover, the determination that a given set of facts meets a particular legal standard is a conclusion of law. *See In re Everette*, 133 N.C. App. 84, 85, 514 S.E.2d 523, 525 (1999) ("A 'conclusion of law' is a statement of the law arising on the specific facts of a case which determines the issues between the parties."). As "stipulations as to the law are of no validity," the fact that Respondents did not stipulate to violating or permitting a violation of N.C. Gen. Stat. § 14-190.5 is not dispositive. *State v. Phifer*, 297 N.C. 216, 226, 254 S.E.2d 586, 591 (1979).

The trial court was free and required to reach its own independent conclusions of law based upon the stipulated facts. Because this portion of Finding 7 is "more

appropriately categorized as a conclusion of law, we will review the finding as a conclusion." *In re M.K.*, 241 N.C. App. 467, 474, 773 S.E.2d 535, 540 (2015).

3. Conclusions of law

Respondent-father challenges the trial court's conclusion that Nick, Penny, Rommy, Burt, and Susan are abused juveniles under N.C. Gen. Stat. § 7B-101(1)(d). He excepts to the court's statement in Finding 7 that Respondents "permitted through lack of supervision access to pornography and videotaping the children's simulated sexual activities in violation of NCGS 14-190.5." *See* N.C. Gen. Stat. § 7B-101(1)(d).

Respondent-father does not contest Ashley's adjudication of abuse under N.C. Gen. Stat. § 7B-101(1)(e) based on the stipulated finding that Respondents' actions "created serious emotional damage" to her. He also does not contest the children's adjudication as neglected juveniles under N.C. Gen. Stat. § 7B-101(15).

"Abused juvenile" is defined, in part, as one whose parent or caretaker:

> d. Commits, *permits*, or encourages the commission of a violation of the following laws *by*, *with, or upon* the juvenile: . . . preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5[.]

N.C. Gen. Stat. § 7B-101(1)(d) (emphasis supplied).

The statute does not require a parent to *commit* the violation of N.C. Gen. Stat. § 14-190.5 in order for a child to be deemed abused. Under N.C. Gen. Stat. § 7B-

101(1)(d), a juvenile is also deemed abused if the parent *permits or encourages the commission of* a violation of N.C. Gen. Stat. § 14-190.5 either *by* the juvenile, *with* the juvenile, or *upon* the juvenile. *Id*.

After careful review, we conclude the stipulated facts found by the trial court do not establish a violation of N.C. Gen. Stat. § 14-190.5 by, with, or upon Respondents' children to support the trial court's conclusion. The statute at issue provides as follows:

> Every person who *knowingly*:
>
> (1) Photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture *for the purpose of dissemination*; or
>
> (2) Models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture *for the purpose of dissemination*,
>
> shall be guilty of a Class 1 misdemeanor.

N.C. Gen. Stat. § 14-190.5 (emphasis supplied). For purposes of this section, a person "disseminates" obscene material if he:

> (1) Sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or
>
> (2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or
>
> (3) Publishes, exhibits or otherwise makes available anything obscene; or

> (4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide: any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication of the obscene.

N.C. Gen. Stat. § 14-190.1(a) (2015).

The facts found by the trial court do not establish a violation of N.C. Gen. Stat. § 14-190.5, which requires an act to be committed both "knowingly" and "for the purpose of dissemination." There was no stipulation or finding that Respondents had knowingly permitted or encouraged the "videotaping [of] the children's simulated sexual activities" for the purpose of dissemination as defined by N.C. Gen. Stat. § 14-190.1(a), or that the children themselves had engaged in the videotaping of their simulated sexual activities for the purpose of dissemination. *See In re I.S.*, 170 N.C. App. at 86, 611 S.E.2d at 472 ("agree[ing] that the stipulation made by respondent's attorney did not encompass all of the elements attributed to it by the trial court").

Absent a knowing violation of N.C. Gen. Stat. § 14-190.5 "by, with, or upon" Respondents' children "for the purpose of dissemination," the trial court's conclusion and adjudication of abuse under N.C. Gen. Stat. § 7B-101(1)(d) is erroneous. *See In re A.K.D.*, 227 N.C. App. 58, 62-63, 745 S.E.2d 7, 10 (2013) (reversing adjudication of willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7) (2015), where the respondent purported to stipulate to the adjudication, but the stipulated facts did not

establish his willfulness). We reverse the adjudications of abuse as to Nick, Penny, Rommy, Burt, and Susan. Because Ashley was separately adjudicated as abused under N.C. Gen. Stat. § 7B-101(1)(e), our ruling does not disturb her adjudication.

B. Disposition Order

1. Ceasing Reunification Efforts

Respondent-father next claims the trial court erred in relieving DSS of reunification efforts pursuant to N.C. Gen. Stat. § 7B-901(c) (Supp. 2016). We agree. We are bound by our holding on this issue in *In re G.T.*, __ N.C. App. __, 791 S.E.2d 274 (2016), *appeal docketed*, No. 420A16 (N.C. Nov. 17, 2016). *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.").

N.C. Gen. Stat. § 7B-901(c) "permits the trial court to cease reunification efforts at an initial disposition hearing under certain circumstances." *In re G.T.*, __ N.C. App. at __, 791 S.E.2d at 278. This provision provides:

> [T]he court shall direct that reasonable efforts for reunification . . . shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:
>
> (1) A court of competent jurisdiction *has determined* that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of,

> any of the following upon the juvenile:
>
> a. Sexual abuse.
>
> b. Chronic physical or emotional abuse.
>
> . . . .
>
> f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect. . . .

N.C. Gen. Stat. § 7B-901(c) (emphasis supplied).

In the case of *In re G.T.*, this Court interpreted "has determined" to mean the determination that aggravated circumstances exist "must have already been made by a trial court – either at a previously-held adjudication hearing or some other hearing in the same juvenile case, or at a collateral proceeding in the trial court" in order to support a decision to forego reunification efforts as part of an initial disposition. *In re G.T.*, __ N.C. App. at __, 791 S.E.2d at 279 ("[I]n order to give effect to the term 'has determined,' it must refer to a prior court order.").

Here, the disposition order includes a finding

> that aggravated circumstances exist due to the [Respondents] having committed or encouraged the commission of, or allowed the continuation of, sexual abuse, chronic physical or emotional abuse and acts, practices or conduct that have increased the enormity or added to the injurious consequences of the abuse or neglect.

No such finding appears in the trial court's adjudication order. The record does not contain a prior order from a collateral proceeding, which includes the requisite finding under N.C. Gen. Stat. § 7B-901(c). The disposition order, insofar as it relieves DSS of reasonable efforts to reunify Respondents with the children, must be reversed. *See id.*; *In re Civil Penalty*, 324 N.C. at 384, 379 S.E.2d at 37.

2. Visitation

Respondent-father also claims the trial court erred by denying him visitation with his biological children, without finding such visitation would be contrary to their best interests. We agree.

"An order that removes custody of a juvenile from a parent . . . or that continues the juvenile's placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile's health and safety." N.C. Gen. Stat. § 7B-905.1(a) (2015). A parent is entitled to visitation with his child "in the absence of findings that a parent has forfeited [his] right to visitation or that it is in the child's best interest to deny visitation." *In re C.P.*, 181 N.C. App. 698, 706, 641 S.E.2d 13, 18 (2007) (citing *In re Custody of Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971)).

> [E]ven if the trial court determines that visitation would be inappropriate in a particular case or that a parent has forfeited his or her right to visitation, it must still address that issue in its dispositional order and either adopt a visitation plan or *specifically determine* that such a plan would be inappropriate in light of the specific facts under

> consideration.

In re K.C., 199 N.C. App. 557, 562, 681 S.E.2d 559, 563 (2009) (emphasis supplied).

The disposition order includes the following visitation provision:

> The parents shall not be allowed visitation with the children EXCEPT that the parents may be allowed a good-bye visit for closure. The good-bye visit shall be arranged such that the children can meet with their therapist shortly before and after the visit as needed.

The trial court made no finding to support a conclusion that Respondent-father had forfeited his right to visitation or that it was in his children's best interests to deny him visitation.

We reverse this portion of the disposition order and remand for entry of an appropriate visitation schedule consistent with N.C. Gen. Stat. § 7B-905.1(b), or for entry of additional findings to support the denial of visitation. *See In re M.H.B.*, 192 N.C. App. 258, 267, 664 S.E.2d 583, 588 (2008).

VI. Respondent-Mother's Appeal

A. Untimely Hearings

Respondent-mother argues the trial court violated her constitutional right to due process and abused its discretion by failing to conduct the adjudicatory and dispositional hearings within the time periods prescribed by statute. She asserts and cites N.C. Gen. Stat. § 7B-801(c) (2015), which requires the adjudicatory hearing "shall be held . . . no later than 60 days from the filing of the petition unless the judge

pursuant to G.S. 7B-803 orders that it be held at a later time." *Id.*; *see* N.C. Gen. Stat. § 7B-803 (2015) (allowing continuances for "good cause" related to discovery or the receipt of "information needed in the best interests of the juvenile," but otherwise limiting the court's authority to grant continuances to "extraordinary circumstances when necessary for the proper administration of justice or the best interests of the juvenile").

Likewise, N.C. Gen. Stat. § 7B-901(a) (Supp. 2016) provides that "[t]he dispositional hearing *shall* take place immediately following the adjudicatory hearing and *shall* be concluded within 30 days of the conclusion of the adjudicatory hearing." (emphasis supplied).

Respondent-mother argues DSS filed the petitions in this cause on 15 July 2015; the adjudicatory hearing concluded more than eight months later on 23 March 2016; and she also asserts the dispositional hearing concluded more than four months after the adjudicatory hearing on 25 July 2016. Moreover, she contends it is "not just the mere delay that requires a reversal" of the trial court's orders, but "how the trial court used the delay against [her.]"

The court suspended Respondents' visitation with the children at the pre-adjudication hearing on 28 August 2015. Respondent-mother avers DSS was unable to assess the parents' progress with their case plan by observing their interactions with the children during the extended periods it took to complete the hearings. She

argues this inability to gauge Respondents' progress led to DSS' recommendation of ceasing reunification efforts, which the trial court followed.

By either expressly consenting or raising no objection to the several continuances ordered by the trial court, Respondent-mother has waived appellate review of this issue. *See* N.C.R. App. P. 10(a)(1); *State v. Lloyd*, 354 N.C. 76, 86-87, 552 S.E.2d 596, 607 (2001) ("Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal.").

Moreover, as our Supreme Court has explained "[m]andamus is the proper remedy when the trial court fails to hold a hearing or enter an order as required by statute." *In re T.H.T.*, 362 N.C. 446, 454, 665 S.E.2d 54, 59 (2008). Respondent-mother's sole assertion of prejudice concerns the court's ceasing of reunification efforts. As we have reversed this portion of the "Juvenile Disposition Order," we conclude Respondent-mother's demand for a new hearing as a remedy for the statutory untimeliness of previous hearings is moot.

B. Ceasing Reunification Efforts

Respondent-mother separately claims the trial court also erred in ceasing reunification efforts, given the progress she has made since the petitions were filed. In light of our holding that the court lacked authority to cease reunification efforts under N.C. Gen. Stat. § 7B-901(c) and the precedent in *In re G.T.*, we need not

separately address the merits of Respondent-mother's argument on her reasonable progress and do not express an opinion thereon.

VII. Conclusion

Respondent-father does not contest Ashley's adjudication of abuse under N.C. Gen. Stat. § 7B-101(1)(e) based on the stipulated finding that Respondents' actions "created serious emotional damage" to her. He also does not contest the children's adjudication as neglected juveniles under N.C. Gen. Stat. § 7B-101(15). The court's adjudications concerning him on both Ashley and his neglect of Nick, Penny, Rommy, Burt, and Susan are affirmed.

We reverse the adjudications of abuse for Nick, Penny, Rommy, Burt, and Susan. We also reverse the portion of the "Juvenile Disposition Order" ceasing DSS' reasonable reunification efforts with Respondents. The portion of the order denying visitation to both Respondents is reversed and remanded for further proceedings consistent with the statutes and this opinion. *It is so ordered.*

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).