IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1111

Filed: 19 March 2019

Surry County, Nos. 16 JT 97-105

IN THE MATTER OF: A.D.S., N.V.S., C.D.S., H.D.S., F.D.S., S.V.S., V.D.S., D.V.S., V.D.S.

Appeals by Respondent-Mother and Respondent-Father from an Order entered 23 July 2018 by Judge William F. Southern, III in Surry County District Court. Heard in the Court of Appeals 28 February 2019.

Susan Curtis Campbell for petitioner-appellee Surry County Department of Social Services.

James N. Freeman, Jr. for guardian ad litem.

Lisa Anne Wagner for respondent-appellant mother.

Christopher M. Watford for respondent-appellant father.

HAMPSON, Judge.

Factual and Procedural Background

Both Respondent-Mother and Respondent-Father (collectively, Respondent-Parents) appeal from an "Order of Adjudication and Disposition (Termination of

Parental Rights)" (Termination Order) terminating their parental rights to their children. The facts and procedural history pertinent to the instant appeal are as follows:

Respondent-Parents have nine children together—Amy, Nick, Callie, Holly, Fanny, Steve, Val, David, and Vivian[1] (collectively, the children). On 28 October 2016, Respondent-Parents were living with their nine children, who were all minors at the time, in a single motel room with two double beds at the Starlite Motel in Mount Airy. At approximately 3:00 a.m. that morning, the children were performing "chores" in the bathroom of their motel room while Respondent-Father talked on the telephone with Respondent-Mother, who was working out of the county. An altercation occurred between the siblings, resulting in five-year-old Callie being knocked unconscious. Respondent-Father called 911.

When EMS arrived, Callie was awake and responsive. EMS transported Callie to Northern Hospital of Surry County for further evaluation. Upon arrival, doctors noted multiple bruises and abrasions around her forehead, both eyes, and her left cheek and ear; bite marks to her left forearm and leg; and multiple bruises in various stages of healing on her torso and legs. Based on the child's condition, doctors immediately contacted Surry County Department of Social Services (DSS) and law enforcement.

[1] Pseudonyms have been used to protect the identities of the juveniles.

On 31 October 2016, DSS filed juvenile petitions alleging that all nine children were neglected. In addition to the events surrounding Callie's hospitalization, the petitions alleged the children had not received medical or dental care in over a year and several school-age juveniles reported during interviews with DSS that they could not read or write. On 31 October 2016, DSS received nonsecure custody of all nine children. Respondent-Father was also arrested and charged with five counts of Misdemeanor Contributing to the Delinquency of a Minor.

On 23 March 2017, the children were adjudicated neglected. Respondent-Parents entered into a Family Services Agreement (Case Plan) to address the issues that led to the children's removal. Specifically, Respondent-Parent's Case Plan required them to: find and maintain appropriate housing and employment; attend and complete parenting classes; complete mental health evaluations and participate in any recommended counseling and treatment; and locate social support to help with caring for their children. On 23 March 2017, the trial court entered a Juvenile Disposition Order that retained the children in the custody of DSS, provided Respondent-Parents with supervised visitation once per week for one hour, and required Respondent-Parents to comply with the Case Plan.

Respondent-Parents failed to comply with the Case Plan. Throughout the life of the case, Respondent-Parents were reluctant to provide DSS with details regarding their housing and employment. At numerous times, DSS did not have a physical

address for Respondent-Parents, as Respondent-Father had told DSS "it was none of [their] business." Respondent-Father reported he was disabled but failed to provide verification of any disability or pending claim for disability. In August of 2017, Respondent-Parents reported cleaning houses; however, neither provided any verification of this employment. With respect to parenting classes, Respondent-Parents attended several classes, but neither Respondent-Mother nor Respondent-Father ever completed a parenting program. Although both parents obtained mental health evaluations, neither followed through with their recommended treatment.

In addition to not complying with the Case Plan, Respondent-Parents' behavior during visitations with the children was often times inappropriate. Respondent-Parents spent visitation "interrogating the children about what was happening in their lives in their foster homes, instructing them not to listen to social workers or their foster parents, [and] not to talk to therapists." Respondent-Parents also spoke negatively of the two oldest children, David and Vivian, both to the other children and to David and Vivian directly, instructing the other children not to talk to David and Vivian and referring to David and Vivian as "stupid" and "retarded." After 27 June 2017, Respondent-Father stopped attending visitations.

On 5 January 2018, the trial court entered a Permanency Planning Hearing Order ceasing reunification efforts with Respondent-Parents, terminating the visitation rights of Respondent-Parents, and changing the children's permanent plan

of care to termination of parental rights and adoption. Although neither Respondent-Parent was present at this permanency planning hearing, both Respondent-Parents were represented by court-appointed counsel.

On 26 January 2018, trial counsel for Respondent-Father (First Counsel) filed a Motion to Withdraw as Counsel, which failed to include a certificate of service showing Respondent-Father was notified of First Counsel's pending withdrawal. On 26 January 2018, the trial court entered an Order to Withdraw allowing First Counsel's withdrawal and appointing a new attorney (Second Counsel) as Respondent-Father's subsequent counsel. However, this Order also failed to include any certificate of service or other document showing Respondent-Father received notice of this withdrawal and replacement of counsel.

On 28 February 2018, DSS filed a petition to terminate Respondent-Parents' parental rights to the children. DSS provided Respondent-Parents notice of their Motion for Termination of Parental Rights by mailing copies of the Motion to Respondent-Parents' respective attorneys, with Second Counsel receiving Respondent-Father's notice. The Record shows on 5 April 2018, a preliminary hearing was held which Second Counsel attended on behalf of Respondent-Father; however, the Record fails to show whether Respondent-Father attended this preliminary hearing. On 3 May 2018, the trial court conducted a permanency planning hearing that Second Counsel attended on behalf of Respondent-Father, but

Respondent-Father did not attend this hearing, which set the termination hearing for 27 June 2018. Although DSS served Second Counsel with notice of this termination hearing, the Record does not show whether Respondent-Father ever received any notice of the pending termination hearing.

A hearing on the Motion for Termination of Parental Rights was conducted on 27 June 2018. Neither Respondent-Parent was present at the hearing, although each of their attorneys appeared on their behalf. At the beginning of the hearing, Respondent-Mother's attorney brought her client's absence to the trial court's attention and made a motion to continue the action. Second Counsel joined in the motion to continue after informing the trial court he was unsure if Respondent-Father was aware of the termination hearing. Specifically, Second Counsel told the trial court the following:

> [SECOND COUNSEL]: Judge, on behalf of [Respondent-Father], I would join in the motion [to continue], tell the Court I think the file shows that this matter was originally one in which [First Counsel] had represented [Respondent-Father]. I was appointed to represent him once [First Counsel] was released, back in January. Since then, I'll tell the Court I've had no contact with him, have no contact information for him. I don't know whether, to what extent, my appointment was communicated to him. Don't know whether he is even aware of this proceeding today. I know the motion was -- the motion for TPR was served on me as his attorney of record. But again, I don't know whether he is aware of that at all. There are some addresses indicated in the file, but I understand that they are not good addresses anymore, so I have no way to get in touch with him. I did see him here in the courthouse at one point. I don't remember exactly when it was, but within the last couple of months, and introduced

> myself to him, and asked that he get in touch with my office so that I could speak with him about that matter. But other than that, I've had no contact with him. I don't know if he had my contact information at the time, so again, it would be my motion to continue as well.

After hearing brief arguments from counsel for DSS, the trial court denied Respondent-Parents' motions to continue, at which point Second Counsel made a motion to withdraw. The trial court declined to address Second Counsel's motion to withdraw. Thereafter, Respondent-Parents' attorneys remained present in the courtroom but did not actively participate in the termination hearing. The trial court concluded that grounds existed to terminate Respondent-Parents' parental rights. The trial court further concluded it was in the children's best interest that Respondent-Parent's parental rights be terminated, even though it acknowledged the low likelihood of adoption for David and Vivian. On 23 July 2018, the trial court entered the Termination Order terminating Respondent-Parents' parental rights to the children.

Issues

Respondent-Father asserts the trial court erred by denying Second Counsel's motion to continue the termination hearing and failing to address Second Counsel's motion to withdraw where serious issues of notice were raised, resulting in Respondent-Father being denied his right to fundamentally fair procedures.

Respondent-Parents contend the trial court abused its discretion by terminating their parental rights to David after finding adoption was not likely.

Analysis

I. Respondent-Father's Motions to Continue and Withdraw

A parent is "entitled to procedures which provide him with fundamental fairness" in termination of parental rights proceedings. *In re S.N.W.*, 204 N.C. App. 556, 561, 698 S.E.2d 76, 79 (2010); *see also In re K.N.*, 181 N.C. App. 736, 737, 640 S.E.2d 813, 814 (2007) ("When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures[.]" (citation and quotation marks omitted)). "[T]his Court has consistently vacated or remanded [termination of parental rights] orders when questions of 'fundamental fairness' have arisen due to failures to follow basic procedural safeguards." *In re M.G.*, 239 N.C. App. 77, 83, 767 S.E.2d 436, 441 (2015) (citation omitted). Among those procedural safeguards are the rights to counsel and notice of the termination hearing.

In termination of parental rights hearings, respondent-parents are entitled to notice of the hearing. N.C. Gen. Stat. § 7B-1106(a)(1) (2017). Further, a "parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right." N.C. Gen. Stat. § 7B-1101.1(a) (2017). A parent's right to counsel in these types of proceedings includes the right to the effective assistance of counsel. *In re Dj.L.*, 184 N.C. App. 76, 84, 646 S.E.2d 134, 140 (2007) (citation omitted). This

Court has stated that, "after making an appearance in a particular case, an attorney may not cease representing a client without '(1) justifiable cause, (2) reasonable notice [to the client], and (3) the permission of the court.' " *In re M.G.*, 239 N.C. App. at 83, 767 S.E.2d at 440 (alteration in original) (quoting *Smith v. Bryant*, 264 N.C. 208, 211, 141 S.E.2d 303, 305 (1965)). "The determination of counsel's motion to withdraw is within the discretion of the trial court, and thus we can reverse the trial court's decision only for abuse of discretion." *Benton v. Mintz*, 97 N.C. App. 583, 587, 389 S.E.2d 410, 412 (1990) (citation omitted). However, "[w]here an attorney has given his client no prior notice of an intent to withdraw, the trial judge has no discretion" and "must grant the party affected a reasonable continuance or deny the attorney's motion for withdrawal." *Williams and Michael v. Kennamer*, 71 N.C. App. 215, 217, 321 S.E.2d 514, 516 (1984). As a result,

> before allowing an attorney to withdraw or *relieving an attorney from any obligation to actively participate* in a termination of parental rights proceeding when the parent is absent from a hearing, the trial court must inquire into the efforts made by counsel to contact the parent in order to ensure that the parent's rights are adequately protected.

In re D.E.G., 228 N.C. App. 381, 386-87, 747 S.E.2d 280, 284 (2013) (emphasis added) (citing *In re S.N.W.*, 204 N.C. App. at 561, 698 S.E.2d at 79).

In *In re S.N.W.*, the respondent was not present at the termination hearing, and the respondent's counsel notified the court that he had had no contact with respondent besides a single phone message. 204 N.C. App. at 557-58, 698 S.E.2d at

77. The trial court made no further inquiry into respondent counsel's efforts to reach the respondent, and the trial court allowed counsel not to participate in the termination hearing. *Id.* at 558, 698 S.E.2d at 77. This Court found the record presented questions as to whether the respondent was afforded mandatory procedures to ensure him the fundamental fairness required in termination proceedings. *Id.* at 561, 698 S.E.2d at 79. Under such circumstances, "the trial court should have inquired further about [counsel's] efforts: (1) to contact [the r]espondent; (2) to protect [the r]espondent's rights; and (3) to ably represent [the r]espondent." *Id.* at 559, 698 S.E.2d at 78. This Court remanded to the trial court to determine whether the respondent "was afforded . . . the proper procedures to ensure that his rights were protected[.]" *Id.* at 561, 698 S.E.2d at 79; *see also In re D.E.G.*, 228 N.C. App. at 388-89, 747 S.E.2d at 286 (holding the trial court erred by allowing the respondent-father's counsel to withdraw without any evidence that respondent-father had been notified of his counsel's intention to withdraw and without granting a continuance); *In re M.G.*, 239 N.C. App. at 84-85, 767 S.E.2d at 441-42 (reaching a similar result).

Although *In re S.N.W.* and the cited decisions that followed dealt with whether respondents were provided effective assistance of counsel, the present facts raise the same questions of fundamental fairness and require the same result. Here, the Record does not show Respondent-Father was provided any notice of First Counsel's

withdrawal on 26 January 2018. First Counsel's Motion to Withdraw as Counsel failed to include a certificate of service showing Respondent-Father was notified of First Counsel's pending withdrawal or a recitation that Respondent-Father had been notified of the Motion, as required by our case law. *See In re M.G.*, 239 N.C. App. at 83, 767 S.E.2d at 440 (requiring attorney provide client with "reasonable notice" before ceasing representation (citation omitted)). In addition, the trial court's Order to Withdraw also failed to include any documentation showing Respondent-Father received notice of the Order allowing First Counsel's withdrawal and the substitution of Second Counsel.

The Record also establishes Respondent-Father likely did not have notice of the 27 June 2018 termination hearing or his attorney's intention to seek withdrawal at this hearing. On the day of the hearing, Respondent-Father was not present, and his attorney, Second Counsel, advised the trial court that Respondent-Father likely was unaware of the termination hearing. Specifically, Second Counsel stated he had had no contact information for Respondent-Father and "no way to get in touch with him," and did not know whether his appointment or contact information was communicated to Respondent-Father. Although Second Counsel stated he spoke with Respondent briefly "within the last couple months," Second Counsel "offered no elaboration as to what discussion, if any, they had about [Respondent-Father's termination] hearing and the potential consequences that might follow if

[Respondent-Father] failed to appear." *In re M.G.*, 239 N.C. App. at 84, 767 S.E.2d at 441. Further, as in *In re S.N.W.*, the "trial court made no extended inquiry" regarding Second Counsel's efforts to communicate with Respondent-Father. The trial court's failure to inquire into Second Counsel's efforts to contact Respondent-Father was error. *See In re D.E.G.*, 228 N.C. App. at 386-87, 747 S.E.2d at 284 (holding "before . . . relieving an attorney from any obligation to actively participate in a termination of parental rights proceeding when the parent is absent . . . , the trial court must inquire into the efforts made by counsel to contact the parent" (citation omitted)).

This Court has recognized a parent may waive the right to counsel by non-participation in the termination proceeding. *See In re R.R.*, 180 N.C. App. 628, 636, 638 S.E.2d 502, 507 (2006). However, "the record before us raises questions as to whether [Respondent-Father] was afforded with the proper procedures to ensure that his rights were protected during the termination of his parental rights to the minor children." *In re S.N.W.*, 204 N.C. App. at 561, 698 S.E.2d at 79. We reiterate this Court's statement in *In re S.N.W.* that the record contains evidence "which casts doubt on [Respondent-Father's] ability to parent. Nonetheless, [Respondent-Father] is entitled to procedures which provide him with fundamental fairness in this type of action." *Id.*

"Accordingly, we remand for determination by the trial court regarding efforts by [Second Counsel] to contact and adequately represent [Respondent-Father] at the termination of parental rights hearing and whether [Respondent-Father] is entitled to appointment of counsel in a new termination of parental rights proceeding." *Id.* The trial court must inquire about Second Counsel's efforts to contact Respondent-Father and to protect Respondent-Father's rights, and Second Counsel's ability to represent Respondent-Father. *See id.* at 559, 698 S.E.2d at 78. On remand, the trial court should also consider whether Respondent-Father has waived his right to effective counsel. *See In re R.R.*, 180 N.C. App. at 636, 638 S.E.2d at 507. Because we remand the Termination Order as to Respondent-Father, we need not address his remaining argument.

II. Respondent-Mother's Appeal

As to Respondent-Mother, we note that although she was also absent from the termination hearing, Respondent-Mother does not contest that she received proper notice of the hearing. Respondent-Mother only challenges the trial court's determination that it was in David's best interest to terminate her parental rights. Therefore, we only address whether the trial court abused its discretion by determining it was in David's best interest to terminate Respondent-Mother's parental rights.[2]

[2] We note Respondent-Mother does not challenge the Termination Order regarding the seven youngest children.

"After an adjudication that one or more grounds for terminating a parent's rights exist" under N.C. Gen. Stat. § 7B-1111(a), the trial court must "determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2017). The trial court must consider the following factors in making its determination:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

Id.

"Evidence heard or introduced throughout the adjudicatory stage, as well as any additional evidence, may be considered by the court during the dispositional stage." *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001). "Either party may offer relevant evidence as to the child's best interests." *In re Pierce*, 356 N.C. 68, 76, 565 S.E.2d 81, 86 (2002) (citation omitted). "Such evidence may therefore include facts or circumstances demonstrating either: (1) the reasonable progress of the parent, or (2) the parent's lack of reasonable progress that occurred before or after

. . . the filing of the petition for termination of parental rights." *Id.* at 76, 565 S.E.2d at 86-87. "In determining the best interests of the child, the trial court should consider the parent's right to maintain their family unit, but if the interest of the parent conflicts with the welfare of the child, the latter should prevail." *In re Parker*, 90 N.C. App. 423, 431, 368 S.E.2d 879, 884 (1988) (citation omitted).

We review the trial court's conclusion that a termination of parental rights would be in the best interest of the child on an abuse of discretion standard. *In re V.L.B.*, 168 N.C. App. 679, 684, 608 S.E.2d 787, 791 (2005) (citation omitted). Dispositional findings are binding on appeal if they are supported by any competent evidence. *See In re C.M.*, 183 N.C. App. 207, 212, 644 S.E.2d 588, 593 (2007). We are also bound by any findings not specifically contested by the respondent. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). "As a discretionary decision, the trial court's disposition [under N.C. Gen. Stat. § 7B-1110(a)] will not be disturbed unless it could not have been the product of reasoning." *In re A.J.M.P.*, 205 N.C. App. 144, 152, 695 S.E.2d 156, 161 (2010) (citation omitted).

Respondent-Mother argues the statutory factors do not support termination in this case and the only Finding of Fact that supports terminating her parental rights is not supported by competent evidence. Specifically, Respondent-Mother challenges the trial court's Finding of Fact 72, which states, "Of equal importance, terminating the rights of the Respondents will aid . . . [David] in moving on with [his life] and in

meeting [his] potential." Respondent-Mother contends Finding of Fact 72 is not supported by competent evidence because the "only evidence presented [to support this finding] was the social worker's 'belief' that . . . termination would help David."

However, because the trial court's additional Findings of Fact, which Respondent-Mother does not contest, support the trial court's determination, we do not address Respondent-Mother's contentions regarding Finding of Fact 72. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (Where "ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error." (citation omitted)). The trial court found the following facts reflecting its consideration of the factors listed in N.C. Gen. Stat. § 7B-1110(a):

> 10. Further, the Court took judicial notice that in all prior orders, the court found that it was in the juveniles' best interest to remain in the custody and care of DSS and would be contrary to the best interest of the juveniles to be returned to either parent or the home.
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> . . . .
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> 16. The family had prior agency history, and during the course of the juvenile proceedings, multiple juveniles made disclosures about physical and sexual abuse, and neglect, that the minor children experienced while in the care of their parents, all of which were ultimately substantiated by [DSS].
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> . . . .
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> 44. [DSS] had continual concerns over the life of the case regarding the interactions between the Respondent Parents and

the minor children, as well as the children's placement providers and therapists, during supervised phone calls.

45. The social worker's testimony detailed the documented invective of the parents towards the minor children, especially [David] and [Vivian], their placement providers, and the children's therapists, during their visits and supervised telephone calls with the children, and the Court, in its findings of fact, incorporated said testimony, as if fully set forth.

. . . .

49. The Respondent Mother visited the minor children regularly, but she continued to speak negatively to and about [David] and [Vivian], and sought to to [sic] isolate the two older children from their siblings and the Respondent Parents.

. . . .

51. The Respondent Parents instructed the seven younger children to disown [Vivian] and [David].

52. The Respondent Parents threatened [Vivian] and [David] regarding their disclosures about sexual and physical abuse and neglect the children had experienced while in the care of their parents, prior to the minor children's Child Medical Exams and/or their testimony in court.

. . . .

55. The Respondent Parents were resistant and disruptive to the reunification efforts made by [DSS] during the life of these proceedings.

56. The Respondent Parents were unable or unwilling to attain the stability necessary for the safe return of the minor children to their care, and their lack of stability caused the bonds of the family to be further eroded during the life of this case.

> 57. Due to the Respondent Parent's willful actions, neither Respondent alleviated the conditions for which the minor children were initially removed, and the neglect of the Respondents would likely be repeated, if the minor children were returned to their care.
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> 58. During the Disposition Hearing of this matter, the court received testimony of the social worker, as to the nature of the relationship between Respondent Parents and the minor children.
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> 59. The children resided in horrendous circumstances and endured extraordinary circumstances, especially [David] and [Vivian].
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> 60. Any bonds that the older children might have with the Respondent Parents would be wholly inappropriate.
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> . . . .
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> 64. [David] is 15, and it is not likely that he would be adopted; however, his permanent plan of care is custody or guardianship with a court approved other, which is not improbable.
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> . . . .
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> 75. The Respondent Parents have not communicated with [DSS] to inquire about the health and well-being of their children since December 14, 2017.
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> . . . .
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> 78. The minor children have now been in the custody of [DSS] for 20 months, and it is in the best interest of the juveniles to have a safe, permanent home, which the Respondent Parents are unwilling or unable to provide.

Respondent-Mother does not contest these Findings of Fact on appeal; therefore, they are binding on this Court. *See Koufman*, 330 N.C. at 97, 408 S.E.2d

at 731; *see also In re Blackburn*, 142 N.C. App. at 613, 543 S.E.2d at 910 (holding a trial court can consider evidence heard during the adjudicatory stage in the dispositional stage). We hold these Findings of Fact show the trial court considered the relevant factors under N.C. Gen. Stat. § 7B-1110(a) and support the trial court's conclusion that terminating Respondent-Mother's parental rights to David was in the child's best interest. *See In re A.J.M.P.*, 205 N.C. App. at 152, 695 S.E.2d at 161.

Respondent-Mother also points this Court to *In re J.A.O.*, where this Court reversed a trial court's order terminating a mother's parental rights because this Court was "unconvinced that the remote chance of adoption . . . justifies the momentous step of terminating [the mother's] parental rights." 166 N.C. App. 222, 228, 601 S.E.2d 226, 230 (2004). Because David faced similar prospects of adoption, Respondent-Mother contends the trial court abused its discretion in terminating her parental rights. However, the facts of *In re J.A.O.* are in stark contrast to the facts here, requiring a different result.

In *In re J.A.O.*, the respondent made reasonable progress in her case plan but simply could not provide the care the child needed. *Id.* at 224-26, 601 S.E.2d at 228-29. The trial court found adoption was unlikely, given the child's disabilities, behavior problems, and age. *Id.* at 227, 601 S.E.2d at 230. Further, the guardian *ad litem* argued it was in the child's best interest not to terminate respondent's parental rights. *Id.* at 226-27, 601 S.E.2d at 229-30. Here, the trial court found that

Respondent-Mother failed to make any progress on her case plan and that any connection David had with Respondent-Mother would be "wholly inappropriate," given her repeated attempts to belittle David and alienate him from his siblings. In addition, the guardian *ad litem* argued termination of Respondent-Mother's parental rights was in David's best interest. *In re J.A.O.* is therefore inapposite.

Here, the trial court made the necessary and relevant findings under N.C. Gen. Stat. § 7B-1110(a), and those findings demonstrate a reasoned decision within the trial court's discretion. We conclude the trial court did not abuse its discretion and affirm the decision of the trial court terminating Respondent-Mother's parental rights to David.

Conclusion

Accordingly, we remand for further proceedings the portion of the trial court's 27 June 2018 Termination Order terminating Respondent-Father's parental rights. We affirm the portion of the Termination Order terminating Respondent-Mother's parental rights to David.

REMANDED; AFFIRMED IN PART.

Judge ZACHARY concurs.

Judge BERGER concurs in a separate opinion.

Report per Rule 30(e).

BERGER, Judge, concurring in separate opinion.

I concur with the majority opinion. However, I cannot agree with the majority that documentation that a parent actually received notice of an order allowing withdrawal of counsel is required for "fundamental fairness."