Contents

Abuse, Neglect, Dependency

Parent Representation

Ineffective assistance of counsel

In re N.N., ___ N.C. App. ___ (October 15, 2024)

Held: Affirmed in Part; Vacated and Remanded in Part

- Facts: Mother and Father claim ineffective assistance of counsel during the adjudication of their infant as abused and neglected. At the adjudicatory hearing, neither parent's counsel presented evidence, made objections, moved to dismiss the petition, or made any arguments.
- A claim of ineffective assistance of counsel (IAC) requires a respondent to show that counsel's performance was deficient and deprived the respondent of a fair hearing such that there is a reasonable probability that there would have been a different result in the proceeding but for counsel's deficiency.
- Parents did not receive IAC. Review of the transcript suggests that both counsel strategized not to contest the adjudication and instead focus on arguing to continue reunification efforts with parents at disposition. As both parents were each facing two felony charges related to the infant's injuries alleged in the abuse and neglect petition, counsel's strategy to have parents not testify and for counsel not to contest the evidence offered by DSS at the adjudicatory hearing was reasonable. Both counsel actively participated in the dispositional portion of the hearing by cross-examining witnesses, making objections and arguments to the court, and thereby demonstrated their thorough understanding of the facts and issues of the case. There is no reasonable probability that the result would have been different if counsel had performed differently; the evidence is sufficient to find the child suffered unexplained, non-accidental injuries while in the sole care of the parents and support the adjudications.

In re N.R.R.N., ___ N.C. App. ___ (February 5, 2025)

Held: Affirmed in Part and Vacated in Part

- Facts: Mother and Father claim ineffective assistance of counsel during the adjudication of their infant as abused and neglected. At the adjudicatory hearing, neither parent's counsel presented evidence, made objections, moved to dismiss the petition, or made any arguments. Both parents had felony child abuse charges pending. Counsel did fully participate in the dispositional hearing following the adjudication.
- A claim of ineffective assistance of counsel (IAC) requires a respondent to show that counsel's performance was deficient and deprived the respondent of a fair hearing such that there is a reasonable probability that there would have been a different result in the proceeding but for counsel's deficiency.
- Parents did not receive IAC. Review of the hearing transcript suggests the decision not to contest the adjudication and instead argue against ceasing reunification efforts at disposition was a permissible strategy. Mother and Father were both facing felony charges relating to the abuse of the child's sibling and therefore risked offering incriminating evidence if the adjudication were contested. At disposition, Mother's counsel cross-examined the social worker, argued against ceasing reunification efforts, and requested an increase in visitation with the child. Father's counsel also argued against ceasing reunification efforts. Parents cannot show prejudice as there was sufficient evidence presented to conclude the child was neglected based

on the sibling's previous adjudication and the parents' failure to acknowledge the sibling's harm or ensure the harm would not occur again.

Adjudicatory Hearing

Evidence; Use of stipulations against objecting party

In re T.C., ___ N.C. App. ___ (July 2, 2025)

Held: Vacated and Remanded

- Facts: Mother appeals the adjudication of Mother and Father's two children as abused and neglected. At the adjudication hearing Father stipulated to twenty-three allegations, the majority of which concerned Mother's alleged conduct giving rise to the petitions. The stipulation was signed by Father, Father's counsel, DSS and the GAL. Mother did not sign the stipulation and her attorney objected to the stipulation and expressed Mother's desire to present evidence on the merits of the case. DSS argued the stipulation was sufficient to prove the facts for adjudication, over Mother's objection, since Father had knowledge of the facts alleged. The court accepted the stipulation, noted Mother's objection, and concluded the children were abused and neglected based solely on the stipulation. After disposition, where the court granted Father sole custody of the children and converted the matter into a GS Chapter 50 custody order, Mother appealed.
- Appellate courts review abuse and neglect adjudications to determine "whether the trial court's findings of fact are supported by 'clear and convincing evidence.' " Sl. Op. at 11 (citation omitted). The findings must then "support the trial court's conclusion[s] of law." Sl. Op. at 11 (citation omitted). Conclusions of law are reviewed de novo.
- G.S. 7B-807 "allows factual stipulations made by a party to be used in support of an adjudication." Sl. Op. at 12 (citation omitted). "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." G.S. 7B-807(a). "[A] stipulation by one respondent parent may not bind another respondent parent who is not a party to the stipulation and objects to its use." Sl. Op. at 13 (adopting the reasoning stated in *In re E.P.-L.M.*, 272 N.C. App. 585, 605 (2020) (Murphy, J. concurring), holding that "[s]tipulations do not extend beyond what was agreed to, and do not extend to parties who did not agree to them either.")
- The trial court's findings of fact are not supported by clear and convincing evidence and therefore its conclusions of law are not supported. Mother did not agree to or sign the stipulation, specifically objected to the trial court accepting the stipulation as evidence, and argued to present evidence on the merits of the case. The trial court's findings recite the stipulated facts concerning Mother's conduct alleged in the petitions. The trial court received no other evidence at the adjudication hearing. The stipulation did not extend to Mother and therefore was not competent evidence to establish the findings of fact. Adopting the statement from the concurring opinion in *In re E.P.-L.M.*, the court of appeals held that "[u]sing the 'stipulation' here as evidence against Mother despite her not being a party to it was improper, and the trial court erred in considering the 'stipulation' as evidence against her." Sl. Op. at 17, citing *In re E.P.-L.M.*, 272 N.C. App. at 608.
- Arguments that Mother did not preserve the issue are "entirely unsupported and border on frivolous" and are unappreciated. Sl. Op. at 9.
- The adjudication and disposition orders are vacated and the matter is remanded to the trial court to hold an adjudicatory hearing where the parties can present evidence regarding the allegations in the petitions.

Due process: Evidence; Stipulation

In re B.C., ___ N.C App. ___ (March 19, 2025) (per curiam)

Held: Affirmed in Part, Vacated in Part

- Facts: Mother appeals the trial court's order adjudicating her two children as abused, neglected, and dependent based on findings that Mother coached the children regarding sexual abuse allegations against Father, subjected the children to unnecessary evaluations, failed to cooperate with professionals and ignored court orders, and actively interfered with DSS's investigation of the allegations against Father. This summary addresses Mother's arguments that her due process rights were violated at the adjudicatory hearing because (1) she was prohibited from presenting a full defense and relevant evidence concerning the sexual abuse allegations against Father during the adjudicatory hearing, and (2) the court impermissibly relied on Father's stipulation that the sexual abuse allegations existed but Father denied were true.
- The court did not improperly prohibit Mother from presenting a full defense and relevant evidence during the adjudication hearing. Sustained objections to Mother's evidence, including her own testimony and witness testimony, were based on the form of the evidence presented rather than to prohibit Mother from presenting evidence related to the sexual abuse allegations against Father. Sustained objections were for leading questions, questions asked and answered, and impermissible hearsay. Further, the record shows that the allegations against Father were referred to and discussed throughout the hearing by most witnesses. Findings of fact in the adjudication order include that the allegations against Father were still under investigation by DSS, Mother had interfered with and hampered that investigation, and that whether or not the sexual abuse happened, Mother's handling of the situation had traumatized the children.
- G.S. 7B-807(a) allows the trial court to accept the parties' stipulations to adjudicatory facts. "*A record of specific stipulated adjudicatory facts shall be made* by either party 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*." Sl. Op. at 24, *quoting* G.S. 7B-807 (emphasis added in original). Father's stipulation was legally sufficient under G.S. 7B-807. Father's counsel stated for the record in open court that Father stipulated to the fact that sexual abuse allegations had been made against him as alleged in the petitions and denied the allegations as true. The trial court did not improperly rely on Father's stipulation for the purpose of clarifying the bases of the petitions – the concern for the children's well-being due to Mother's actions and interference with the DSS investigation and related court orders. The petitions state, the DSS supervisor testified, and the court found that the petitions were filed due to these concerns.

Evidence

In re K.E.P., ___ N.C. App. ___ (April 16, 2025)

Held: Affirmed

- Facts: Mother sought and was awarded civil custody of the child at issue in 2019. Thereafter, Cumberland DSS received five reports, and Sampson DSS received three reports, of Father's maltreatment of the child. The first report was not investigated and the others were unsubstantiated. Both counties performed child medical examinations (CME) which raised concern for the frequency that the child was presented to the emergency department with requests of evaluations for concerns of sexual abuse. Sampson DSS sought a child and family

forensic evaluation (CFE) that determined it was highly improbable that the child had been sexually abused as alleged and instead concluded that it was highly likely the child sustained some emotional abuse by Mother and her family. Sampson DSS filed a juvenile petition alleging the child abused and neglected, obtained nonsecure custody, and placed the child with Father. At the adjudicatory hearing the court received testimony from DSS staff of both counties and the medical professionals who performed the CME and CFE. The trial court admitted into evidence the CME and the five child welfare reports received by Cumberland DSS. The child was adjudicated abused and neglected. Mother appeals, challenging the sufficiency of the evidence supporting several findings of fact.

- Appellate courts review adjudication orders to determine "whether the trial court's conclusions of law are supported by adequate findings and whether those findings, in turn, are supported by clear, cogent, and convincing evidence." Sl. Op. at 5 (citation omitted).
- The Rules of Evidence apply at adjudication. When an evidentiary objection is properly preserved, "a party may argue on appeal that any findings supported solely by inadmissible evidence are infirm and cannot support the trial court's conclusions of law." Sl. Op. at 5 (citation omitted). Mother's challenges to the findings are broadside and lack reference to her evidentiary objections at trial, acknowledgement of testimonial evidence which support the findings, and lack citation to legal authority. Assuming, *arguendo*, that Mother's challenges to the trial court's findings were properly before the court, the challenges are overruled as follows.
- Rule 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 802 provides that hearsay is inadmissible except as provided by the Rules of Evidence or by statute. Rule 803(6) provides that business records of regularly conducted activity are not excluded by the hearsay rule if properly authenticated. The foundation "must be laid by a person familiar with the records and the system under which they are made" in order "to satisfy the court that the methods, the sources of information, and the time of preparation render such evidence trustworthy." Sl. Op. at 9 (citations omitted). The person who made the records is not required to authenticate the records. So long as the records are admissible under the business records exception, a DSS worker can "properly testify about the [juvenile records kept by DSS] and their significance."
- The five child welfare reports received by Cumberland DSS were properly admitted into evidence under the business records exception to the hearsay rule. Mother does not argue that the reports were not properly authenticated or were improperly admitted under the business records exception, and therefore those arguments are abandoned. Mother's only argument is that the findings based on the child welfare reports were admitted only "for explaining the background of [Sampson DSS's] investigation" and should be treated as "non-substantive evidentiary findings". Sl. Op. at 7, 10. The court of appeals determined this argument lacks merit. Sampson DSS consistently maintained that the reports were offered into evidence pursuant to the business records exception to the hearsay rule. The record shows the trial court admitted the reports under this exception, and Mother's counsel acknowledged that the child welfare reports were being offered as substantive evidence during the proceeding by objecting and renewing that objection to the trial court's admission of the reports on the grounds of "authentication, hearsay, and no business record exception." Sl. Op. at 10. Mother erroneously cites cases concerning admissible nonhearsay, rather than hearsay properly admitted, to

support her argument. Challenged findings are supported by the properly admitted child welfare reports.

- Rule 803(4) provides that out-of-court statements "made for purposes of medical diagnosis or treatment and describing medical history" are not excluded by the hearsay rule. The CME was offered and admitted into evidence in this case on the grounds that it contained information that formed the basis of the expert witness's opinions and that the out-of-court statements contained in the CME were admissible hearsay as statements made for the purpose of a medical evaluation or treatment. Mother argues that evidence that forms the basis for an expert's opinion is not admissible for the truth of the matter asserted. Though the CFE and other hospital and medical records upon which the CME was partially based were not admitted into evidence, the trial court explained that "any statements [in the CME] made by other individuals were done as the basis of preparing [the expert], conducting her examination and . . . the foundation of her conclusions." Sl. Op. at 12. As such the CME was admitted for a dual purpose as both a basis for expert testimony and as statements made for purposes of medical treatment. Mother's counsel acknowledged this when counsel objected to the admission of the CME for "lack of foundation, hearsay, and various other violations of [Mother's] constitutional state and federal rights." Sl.Op. at 12. Mother does not challenge the admission of the CME into evidence or any statements contained in the CME and therefore those arguments are abandoned. The trial court properly considered the CME, including its descriptions of the child's medical history, as admissible hearsay when making its findings of fact and those challenged findings are supported by the evidence.
- Other challenged findings are supported by the evidence, including social worker testimony, or disregarded. Challenged findings that are unnecessary to support the conclusions of law are disregarded. The trial court did not err in reciting witness testimony in its findings where the findings of fact indicate the trial court evaluated witness credibility and resolved factual disputes. Appellate courts will not reweigh the evidence. Findings that are conclusions of law are treated as conclusion of law on appeal.

Collateral estoppel; Rule 12(b)(6) motion to dismiss

In re A. D. H., ___ N.C. App. ___ (September 3, 2024)

Held: Vacated and Remanded

- Facts: This action involves simultaneous proceedings of a civil custody dispute between Mother and Father where DSS intervened and a juvenile action alleging the child at issue abused, neglected, and dependent. The child made statements to classmates and her school counselor that Father sexually abused her. A report was made to DSS resulting in an assessment that included the child's interview at a child advocacy center and a child medical evaluation (CME). In the custody case, the trial court ultimately found that father did not sexually abuse his daughter and did not engage in any inappropriate activities with his daughter. The court entered a permanent child custody order (CCO) granting Father primary legal and physical custody because of concerns mother was coaching the child. The order also included a provision that no one but the child's current therapist could discuss past sexual abuse allegations with the child. During its assessment, DSS filed an interference petition alleging that Father was refusing to allow the child to participate in a subsequent recommended CME. The trial court dismissed the interference petition (IPO) with prejudice after finding that (1) counsel for DSS stated the investigation could be completed without the CME and (2) reiterating facts in the CCO. The child made subsequent disclosures of Father's sexual abuse. DSS filed a juvenile petition alleging the

child abused, neglected, and dependent based on statements the child made both before and after entry of the CCO and IPO. Among various motions, Father filed a Rule 12(b)(6) motion to dismiss for failure to state a claim; a motion to dismiss pursuant to the doctrines of *res judicata* and collateral estoppel; and a motion *in limine* to be allowed to examine the social worker. The trial court granted the motion *in limine*, and after Father examined the social worker, granted the 12(b)(6) and preclusion motions, and dismissed the petition. DSS appeals.

- Whether a trial court is barred by collateral estoppel is a question of law reviewed de novo. "Collateral estoppel will apply when: (1) a prior suit resulted in a final judgment on the merits; (2) identical issues were involved; (3) the issue was actually litigated in the prior suit and necessary to the judgment; and (4) the issue was actually determined." Sl. Op. at 11 (citation omitted). "Collateral estoppel cannot apply to a proposition proven in a prior action when the subsequent action involves a *higher* standard of proof." Sl. Op. at 13 (emphasis in original). "[W]here a party fails to establish a fact in a prior case under a lower burden of proof, collateral estoppel applies to preclude a subsequent finding that the same fact has been established under a higher standard of proof." Sl. Op. at 16-17.
- The trial court did not err in determining factual issues alleged in the juvenile petition which were determined in the PPO and IPO were collaterally estopped. The standard of proof in a child custody case is preponderance of the evidence, while the standard of proof for an interference order or an abuse, neglect, or dependency adjudication order under G.S. 7B-805 is clear and convincing evidence - a higher standard than preponderance of the evidence. In this case, the findings in the PPO and IPO that allegations of Father's sexual abuse made prior to those orders were unfounded prevent the juvenile court from making contrary findings of whether Father abused the child. In the CCO, allegations of Father's sexual abuse were not proven under a preponderance of the evidence standard during the child custody proceedings and therefore cannot be proven under the higher standard required in the juvenile proceedings. In the IPO, allegations of Father's sexual abuse of the child made prior to the order were not proven by clear and convincing evidence and therefore cannot be proven under the same standard in the juvenile proceeding.
- Though most of the factual issues in the juvenile petition were correctly ruled estopped, the trial court erred in dismissing the entire petition based on the doctrine of collateral estoppel. The juvenile petition alleges further instances of abuse taking place after entry of the CCO and IPO, supported by evidence after entry of those orders, which are not estopped from the CCO and IPO orders.
- A trial court's ruling on a Rule 12(b)(6) motion to dismiss is reviewed de novo, without assessing the trial court's reasoning, to determine if the allegations in the complaint are sufficient to state a claim upon which relief may be granted. "[G.S.] Chapter 7B specifically provides that a valid petition must include 'allegations of facts sufficient to invoke jurisdiction over the juvenile[,]' including allegations that the juvenile is abused, neglected, or dependent[,]" as defined under G.S. 7B-701(1), (15), and (9). Sl. Op. at 19, *quoting* G.S. 7B-402.
- The juvenile petition contained sufficient allegations to state a claim that the child was abused, neglected, and dependent despite the findings of abuse precluded by the CCO and IPO. The remaining factual allegations include Father's more recent sexual abuse; a specific allegation of Father committing a criminal sex offense against the child that constitutes improper supervision and creating an injurious environment; and neither parent being appropriate caregivers due to allegations of Father's sexual abuse and accusations of Mother coaching the child to accuse Father of sexual abuse, and no other caregivers being available. The trial court erred in granting the Rule 12(b)(6) motion because of allegations related to events that occurred after the CCO and IPO.

- The court of appeals vacated the order dismissing the petition and remanded the matter to the trial court to resolve all of Father's unmooted and potentially relevant motions remaining and consider whether any allegations remain thereafter for purposes of Rule 12(b)(6).

Adjudication

Findings of fact; Reciting evidence; Credibility determinations

In re L.C., ___ N.C. ___ (May 23, 2025)

Held: Reversed (court of appeals opinion)

Dissent, Riggs, J.

- Facts and procedural history: This case is on discretionary review from the court of appeals. Mother appealed the trial court's order adjudicating the child at issue neglected. In Mother's initial appeal, she challenged eight findings as unsupported by the evidence. The court of appeals vacated and remanded the adjudication order, holding the findings were insufficient to support the trial court's conclusion of neglect. This summary addresses the supreme court's review of the trial court's lack of credibility determinations as to the evidence in its findings.
- The trial court must resolve material disputes when making its findings, including determining the credibility of witness testimony. "[W]hen recited evidence is a statement against interest . . . we may assume that the trial court found it credible without the trial court expressly characterizing it as such." Sl. Op. at 11 (referencing Rule 804(b)(3) of the Rules of Evidence providing that declarant statements against interest are exceptions to the rule against hearsay). Because this is a narrow exception to the rule, the best practice is to "err on the side of too much detail when making credibility determinations and written findings of fact." Sl. Op. at 11, n.10.
- The trial court did not err in reciting Mother's testimony admitting to her use of controlled substances during her pregnancy in its findings of fact without stating whether it found the evidence credible. A reasonable woman would not admit to using illegal substances while pregnant unless she had done so. The trial court did not need to explicitly state it found Mother's testimony credible based on the statement being against Mother's interest.
- Dissent: The court of appeals did not err in vacating and remanding the adjudication order based on insufficient findings. "The trial court cannot simply 'describe testimony' or 'infer,' and it is not the job of the appellate courts to reweigh the evidence afterwards." Dissent at 18.

Abuse; Neglect; Dependency: Findings of fact

In re B.C., ___ N.C App. ___ (March 19, 2025) (per curiam)

Held: Affirmed in Part, Vacated in Part

- Facts: DSS became involved with the family when Mother reported to the police that Father physically and sexually abused their two children. Mother told the police that she became concerned about the children sleeping with their Father upon discovering that the children had been masturbating. During forensic interviews with the DSS investigator, neither child reported sexual abuse or domestic violence. Though the investigator did not find Mother's report credible, DSS assisted Mother in obtaining a DVPO and entered a safety plan with Mother. Mother then made, and shared with DSS, an audio recording of herself talking to the children about the allegations against their Father. DSS became concerned that Mother was coaching the children and advised Mother not to ask the children leading questions about the allegations

against Father. Mother subsequently took video recordings of the two children masturbating and shared the video with DSS in order to request another forensic interview with one of the children. After the DSS investigator declined, Mother received a referral for medical examinations and forensic interviews from a pediatrician's office. During these interviews one of the children stated Father would "rub his private[s]" while she was sleeping with him, and the other reported that Father sometimes punched or hit her. Both children again denied being touched inappropriately and reported their belief that the examination was a result of the parents getting a divorce. DSS's investigation later revealed that six months prior to Mother's police report, Mother communicated with a "spiritual adviser" where she was told her children had been sexually abused in their past lives and the resulting trauma could only be relieved through orgasm. Forensic investigations in the civil custody case resulted in concern for the consistency of the allegations against Father and the potential damage to the children's relationship with their Father. While the investigation into the allegations against Father were ongoing, DSS ultimately filed a petition alleging the children abused, neglected, and dependent based on Mother's behavior upon learning that Mother testified in the civil custody case describing the video recording of the children masturbating and a "ceremony" she conducted with the children where photos of Father were burned. The children were adjudicated on all three grounds. The trial court ordered that the children remain in the custody of DSS and kinship placement. Mother appeals the trial court's adjudication and disposition order.

- Abuse, neglect, and dependency adjudications are reviewed on appeal to "determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." Sl. Op. at 6. Conclusions of law are reviewed de novo.
- Recitations of the pleadings or other sources (in this case the expert witness's report) in the trial court's findings is not per se reversible error. The reviewing court must examine "whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case." Sl. Op. at 8 (citation omitted). Findings of fact that describe testimony are permissible "so long as the court ultimately makes its own findings, resolving any material disputes." Sl. Op. at 8 (citation omitted). The trial court acts as fact-finder and determines the weight of the evidence. Appellate courts cannot reweigh the evidence.
- Challenged findings are supported by clear, cogent, and convincing evidence, including testimony of Mother and the forensic examiner, and reports from the forensic examiner and DSS. The court made explicit credibility findings resolving disputed material facts. It is not error to include resources an expert consulted in forming their opinion and those resources need not be admitted or admissible into evidence. The court properly adopted the findings and recommendations of the forensic report after determining credibility. The findings do not show unreconciled inconsistencies. The court used a process of logical reasoning when making findings that used the wording of evidentiary materials as well as its own independent findings of fact.
- An abused juvenile is one whose parent "[c]reates or allows to be created serious emotional damage to the juvenile[, as] . . . evidenced by [the] juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others." G.S. 7B-101(1)e. A neglected juvenile is one whose parent has "[c]reate[d] or allow[ed] to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15)(e). Appellate courts have required

"that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." Sl. Op. at 17 (citation omitted).

- The abuse and neglect adjudications are supported by the findings. Findings include that Mother coached the children regarding allegations of sexual abuse against Father; took actions to subject the children to unnecessary evaluations; acted to alienate the children from their Father; failed to cooperate with professionals and ignored court orders regarding the forensic evaluation; actively interfered with DSS's investigation; attempted to record the children masturbating and discussed their behavior with others; and did not acknowledge the impact her actions had on her children. Further findings state that Mother's actions caused or escalated significant emotional harm and distress to the children, whether or not the sexual abuse allegations against Father are true.
- A dependent juvenile is one who is "in need of assistance or placement because . . . the juvenile's parent . . . is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." G.S. 7B-101(9). The challenged finding that both parents lacked the ability to provide an appropriate alternative child care option is disregarded. The record does not contain evidence of either parents' offer or lack of alternative child care options for the children. The children were in kinship placement at the time of the adjudication hearings and that placement was continued at disposition. Without making findings regarding the availability of alternative child care arrangements, the dependency adjudication is unsupported and that portion of the order is vacated.
- Mother's only challenge to the disposition order was that the order was based on the unsupported and erroneous adjudicatory findings. Having affirmed the abuse and neglect adjudications, the disposition order is left undisturbed.

In re L.B., ___ N.C. App. ___ (November 19, 2024)

Held: Vacated and Remanded

- Facts: Mother appeals the adjudication of her infant son as abused, neglected and dependent and her two-year old daughter as neglected and dependent. Both children live in the home with Mother and Mother's husband who is not the biological father of the children. DSS filed the juvenile petitions and obtained nonsecure custody of the children following the infant sustaining bruising on his head, neck, back and stomach and a prior history with DSS. Mother and her husband did not seek medical attention for the injuries. Mother claimed the bruising occurred at daycare. The children were adjudicated and the court ordered continued custody with DSS at initial disposition. Mother argues the findings are insufficient to support the adjudications.
- A reviewing court determines whether the findings are supported by clear and convincing evidence and whether the findings support the conclusions of law. Conclusions of law are reviewed de novo.
- An abused juvenile is one "whose parent, guardian, custodian, or caretaker . . . [i]nflicts or allows to be inflicted upon the juvenile serious physical injury by other than accidental means" or "[c]reates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means." G.S. 7B-101(1). Appellate courts have upheld abuse adjudications where a child suffered unexplained, non-accidental injuries and "clear and convincing evidence *supported the inference* that the respondent-parents inflicted the child's injuries or allowed

them to be inflicted." Sl. Op. at 4 (citation omitted) (emphasis in original). No finding of a pattern of abuse or the presence of risk factors is required. Here, the findings of fact that the infant suffered multiple bruises are insufficient to support the inference that respondent-parents inflected or allowed the injuries. There were no findings made as to the severity of the bruises or whether they were sustained by non-accidental means. The court found that Mother and her husband claimed that the bruises were on the infant when they picked him up from daycare but the court made no findings as to the credibility of their statements. The court erred in adjudicating the infant abused.

- A dependent juvenile is one whose "parent, guardian or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." G.S. 7B-101(9). Appellate courts have held that "a child cannot be adjudicated dependent where she has at least '*a parent*' capable of [providing care or supervision or an appropriate alternative child care arrangement]." Sl. Op. at 7 (citation omitted) (emphasis in original). Where parents do not live in the same home, the trial court must make both findings as to both parents. Here, the children lived with Mother and her husband, a caretaker. Their Father was listed on the petition as "whereabouts unknown" on the petition, but Father was served, appeared and was represented at the hearing. The court recited the statutory definition of dependency in its findings and made no further findings regarding Mother or Father's ability to provide care or supervision to the children or that Mother or Father lacked an alternative child care arrangement. Without these findings addressing both Mother and Father's ability to provide care or supervision to the children and lack of alternative child care arrangement, the findings do not support the adjudication of either child as dependent.
- A neglected juvenile is one "whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision, or discipline[,]" "[h]as abandoned the juvenile," or "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15). Appellate courts have required there be some physical, mental or emotional impairment or a substantial risk of such impairment to support a neglect adjudication. "In determining whether a child is neglected based upon the abuse or neglect of a sibling, the trial court *must* assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case." Sl. Op. at 10 (citation omitted) (emphasis in original). Here, the trial court made no findings to show the children's parents or caretaker did not provide proper care, supervision, or discipline, abandoned the children, or created or allowed the children to live in an injurious environment. The finding of the infant's multiple bruises, standing alone, is insufficient to support a conclusion the infant was neglected. The finding that Mother and her husband led the children and placed them in DSS's car does not show willful abandonment. The only findings as to the sibling included that she lived in the same home as the infant, was "emotionless" and "singing in the back seat" when DSS drove the children away from the home. The court made no findings as to the substantial risk of future abuse or neglect of the sibling based on the historical facts of the case as required to adjudicate a child as neglected based on the abuse of another child in the home. Adjudication of the sibling based on the unsupported abuse and neglect adjudication of the infant was erroneous.
- The court vacated and remanded the adjudication and disposition orders over Mother's argument that the petitions must be dismissed. The court held that the record contains evidence that could support the adjudications and therefore dismissal is not required. The court

pointed to evidence that Mother and her husband continued to take the infant to the daycare where he sustained the injuries without any reasonable explanation as to why they would continue to subject the child to a potentially injurious environment.

Abuse; Neglect; Findings of fact

In re K.E.P., ___ N.C. App. ___ (April 16, 2025)

Held: Affirmed

- Facts: Mother sought and was awarded civil custody of the child at issue in 2019. From 2018 to 2021, Cumberland DSS received five reports concerning Father's maltreatment of the child, the first of which was not investigated and four of which were determined to be unsubstantiated. Cumberland DSS sought a child medical examination (CME) after the fifth report. The doctor performing the CME raised concern that the child had been evaluated for sexual allegations twice before and further physical examination could be traumatic for the child. In 2021, Mother and the child moved to Sampson County to live with the child's maternal grandmother and step-grandfather. The same year, Sampson DSS received a report that Father had sexually abused the child. Sampson DSS sought a CME which determined the allegations were unsubstantiated and raised concern for the frequency that the child was presented to the emergency department with requests of evaluations for concerns of sexual abuse. Later in 2021, Sampson DSS received two more reports alleging Father's maltreatment of the child. Sampson DSS sought a child and family forensic evaluation (CFE) which determined it was highly improbable that the child had been sexually abused as alleged and instead concluded that it was highly likely the child sustained some emotional abuse by Mother and her family. Sampson DSS attempted to implement a safety plan for the child to reside with Father but Mother refused. Sampson DSS filed a juvenile petition alleging the child abused and neglected, obtained nonsecure custody, and placed the child with Father. The child was adjudicated abused and neglected. The disposition order granted sole legal and physical custody to Father and the court entered a custody order to that effect under G.S. 7B-911. Mother appeals, arguing some findings lack necessary clarity to support the adjudications and that the court failed to determine whether the reports of suspected sexual abuse were made in bad faith. Mother's evidentiary challenges are summarized separately.
- Appellate courts review adjudication orders to determine "whether the trial court's conclusions of law are supported by adequate findings and whether those findings, in turn, are supported by clear, cogent, and convincing evidence." Sl. Op. at 5 (citation omitted).
- An abused juvenile is one whose parent, guardian, custodian or caretaker "[c]reates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others." G.S. 7B-101(1)e. A neglected juvenile is one whose parent, guardian, custodian, or caretaker "[d]oes not provide proper care, supervision, or discipline" or "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15)a., e.
- The unchallenged findings combined with the challenged findings that are supported by clear and convincing evidence support the court's adjudication of the child as abused and neglected. The court of appeals determined the binding finding that Mother either took the child for emergency room visits and exams or gave permission for the child to receive medical treatment during the emergency room visits resolves any alleged ambiguity in the findings as to who took

the child to the emergency room visits and exams, and satisfies the "allows to be created" elements of the definitions of abused and neglected juveniles under G.S. 7B-101(1)e. and 7B-101(15)e.

- The Juvenile Code does not require that a parent's report of suspected abuse be made in bad faith in order to adjudicate a child as abused or neglected. In arguing that the court erred in failing to determine the reports to DSS were made in bad faith, Mother cites to G.S. 7B-309, which grants immunity to persons making a report of suspected child abuse or neglect in good faith. An adjudication of abuse or neglect does not concern the liability of a parent and therefore making good faith reports in cooperation with G.S. 7B-309 "cannot provide 'cover' against an adjudication of abuse or neglect." Sl. Op. at 7. "[T]he determinative factors [with regard to neglect] are the circumstances and conditions surrounding the child, not the fault or culpability of the parent." Sl. Op. at 17 (citation omitted). "[W]hen a parent's reports of sexual abuse precipitate further investigation in an ongoing juvenile case, the proper focus of the trial court in an adjudication hearing is on the effect of those reports – and their investigation – on the child, not the sincerity of the parent's reporting." Sl. Op. at 18 (relying on *In re B.C.*, ___ N.C. App. ___ (March 19, 2025), noting in both cases a parent misunderstood the focus of the adjudicatory proceedings).
- Mother raised no independent arguments concerning the disposition order and private custody order. Those orders are also affirmed.

Abuse and Neglect; Necessary medical care; Substantial risk of serious physical injury

In re A.D.W., ___ N.C. App. ___ (April 16, 2025)

Held: Affirmed

- Facts: The child at issue was diagnosed with Type 1 Diabetes at thirteen months old. When the child was approximately nine years old, DSS received a report alleging improper care of the child's medical needs after the child was admitted to the ICU with a dangerously high blood sugar level. DSS found the child had been hospitalized three times in the prior six months for diabetic ketoacidosis, had been determined to have another condition impacting his body's ability to move insulin, and that the parents expected the child to manage his diabetes on his own and blamed the child's poor eating habits for his hospitalizations. Following this hospitalization Father repeatedly missed the child's medical appointments, despite recommendations and support offered by DSS that included transportation and substance use treatment for Father. The child was subsequently hospitalized again. Father entered into a Family Services Agreement and agreed to temporary safety placement of the child with their neighbor. After this placement, the child was subsequently hospitalized three times in the same month due to diabetic ketoacidosis and elevated blood sugar. A Child Medical Exam (CME) found the child had many admissions secondary to medical neglect and that the child's life was at risk because of mismanagement of his diabetes. Father was present for the CME but appeared to be under the influence of substances and could not answer simple questions. That same day, DSS received another report alleging improper discipline, improper medical and remedial care, injurious environment and domestic violence stemming from an incident at the home where Father hit, grabbed, slapped, threw, and yelled at the child when his blood sugar reading was high. At a later Child and Family Team meeting Father refused to take responsibility for the management of the child's condition, again blamed the child, refused to discuss other placement options for the child, and was unaware of the child's next medical appointment when asked. Father contacted DSS and agreed to reengage in substance use treatment, drug screens,

and comply with medical appointments. When DSS visited with the neighbor and the child a few days later, the child again had a dangerously high blood sugar reading. Father was contacted and initially refused but eventually called EMS at the request of the DSS supervisor. The child was again hospitalized. After this hospitalization, Father was to take the child to his diabetes management appointment scheduled for three days after the incident but rescheduled the appointment. At this time the neighbor returned the child to Father. DSS conducted a school visit the following week and learned of concerns for the child's elevated blood sugar levels after returning home, and new concerns at school, including the child missing the school bus and calling the school for someone to get him, appearing "shut down", and writing a note asking God to kill him. Father was contacted by DSS and again blamed the child for not taking care of his diabetes, stated his need to reschedule his substance use and mental health assessment that DSS had referred him to, and refused a drug screen, admitting he had used cocaine the previous day. DSS filed a petition alleging the juvenile abused and neglected and obtained nonsecure custody. The child was adjudicated abused and neglected. Father appeals.

- Appellate courts review an adjudication of abuse or neglect "to determine whether the findings of fact are supported by 'clear and convincing evidence,' and whether the trial court's findings support its conclusions of law." Sl. Op. at 10. Unchallenged findings are binding on appeal. Conclusions of law are reviewed de novo. Father did not challenge any findings of fact on appeal and therefore they are binding.
- An abused juvenile is one "whose parent . . . [c]reates or *allows to be created a substantial risk of serious physical injury* to the juvenile by other than accidental means." Sl. Op. at 11 quoting G.S. 7B-101(1)b. (emphasis in original). Appellate precedent holds that when "a parent is aware of the existence of the risk and 'fail[s] to take the necessary steps to protect [the] minor" the parent has allowed a substantial risk to be created. "Serious physical injury" is not defined by G.S. Chapter 7B. The court of appeals has looked to the definition provided in the felony child abuse statute, G.S. 14-318.4, defining the term as "an injury that causes 'great pain and suffering.' " Sl. Op. at 12 (citation omitted). The court of appeals also looked to Black's Law Dictionary, defining "physical" injury as "[p]hysical damage to a person's body." (12th ed. 2024). "When a parent is aware of their child's serious medical issue and fails to provide or acquire the necessary medical care, which causes injury to the child and places the child at risk of serious physical harm or death, this failure can constitute both abuse and neglect of the child." Sl. Op. at 18.
- The findings of fact support the trial court's conclusion that the child is an abused juvenile. Evidence, including testimony from medical providers and DSS staff, demonstrate Father was aware of the risk to the child's life and health associated with the child's diabetes being unmonitored by an adult and failed to take any necessary steps to protect the child. The child was repeatedly admitted to the ICU for multiple days, at times near death, and suffered acute kidney damage due to Father's inaction, refusal to take responsibility for monitoring and managing the child's diabetes, and blaming the child for his inability to care for himself. The CME determined the child was at high risk for death and further organ damage due to mismanagement of the child's diet, blood sugar, and medication administration. The court of appeals likened these facts to *In re K.B.*, 253 N.C. App. 423 (2017) and *In re D.L.*, 213 N.C. App. 217 (2011) (unpublished), where the court affirmed abuse adjudications where the parent failed to medicate and supervise their child, resulting in the child inflicting serious self-harm (*In re*

K.B.), and when the parent realized their child was severely malnourished and did not seek health care for the child, resulting in the child suffering a heart attack (*In re D.L.*).

- A neglected juvenile is one "whose parent . . . "[d]oes not provide proper care, supervision, or discipline[;] [h]as not provided or arranged for the provision of necessary medical or remedial care[;] or "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15). There must be evidence of current circumstances that present a risk to the child to support a conclusion that the child lives in an injurious environment. Additionally appellate court have required there be "some physical, mental, or emotional impairment of the juvenile or *a substantial risk of such impairment* as a consequence of the failure to provide 'proper care, supervision, or discipline." Sl. Op. at 14-15 (citation omitted) (emphasis in original). Neglect can be found where there is "a pattern of conduct either causing injury or potentially causing injury to the juvenile." Sl. Op. at 15 (citation omitted). "When a parent is aware of their child's serious medical issue and fails to provide or acquire the necessary medical care, which causes injury to the child and places the child at risk of serious physical harm or death, this failure can constitute both abuse and neglect of the child." Sl. Op. at 18.
- The findings support the trial court's conclusion that the child is a neglected juvenile. Father was repeatedly informed of the risk associated with the child's diabetes not being monitored by an adult, was educated how to monitor and medicate the child, witnessed the child's repeated hospitalizations for diabetic ketoacidosis and refused to accept responsibility for monitoring and managing the child's diabetes, including missing the child's medical appointments and failing to continuously monitor his diet, blood sugar levels, and medication administration. The child suffered acute kidney damage and was determined to be at high risk for further organ damage or death due to the mismanagement of his diabetes. The findings establish Father's pattern of conduct caused the child injury and placed the child at risk for serious injury or death.

Neglect; Abuse; Substantial risk of harm

In re N.N., ___ N.C. App. ___ (October 15, 2024)

Held: Affirmed in Part; Vacated and Remanded in Part

- Facts: Mother and Father appeal the adjudication of their infant as abused and neglected. The child was born prematurely and spent four months in the NICU. DSS established a safety plan with the parents after receiving a report of Father mishandling the newborn and that hospital staff had asked each parent to leave due to their failure to follow NICU protocols. DSS received a second report that Father mishandled the newborn while in the NICU after instruction on safe handling. Both parents denied mishandling the child. The child was discharged to the parents from the NICU. At a home visit five days later, the social worker observed the child as healthy and doing well. Two days after the home visit, Parents brought the child to the ER for concerns with her eating and constipation. Upon arrival to the ER the child had stopped breathing and had to be revived multiple times. Testing revealed the child had multiple severe injuries which a physician later determined were non-accidental and highly concerning for abusive head trauma resulting in a near-fatal event. Parents denied causing the child's injuries and did not give any explanation for the injuries. DSS filed the abuse and neglect petition and obtained nonsecure custody of the child. The child was hospitalized for three months and placed in foster care upon discharge. At the adjudicatory hearing, DSS only offered as evidence the testimony of the social

worker who testified as to the truth and accuracy of the allegations in the petition, which was then admitted into evidence without objection. Parents nor DSS offered any additional evidence. Mother and Father appeal the adjudication order, arguing the findings are unsupported by the evidence, the only evidence presented was inadmissible, and that the parents' inability to explain the child's injuries cannot alone support the adjudications.

- Appellate courts review an adjudication order "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." Sl. Op. at 8 (citation omitted). Conclusions of law are reviewed de novo.
- An abused juvenile is one whose parent "inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means". Sl. Op. at 8, *quoting* G.S. 7B-101(1). Appellate courts have upheld abuse adjudications where the child sustains unexplained, non-accidental injuries and clear and convincing evidence supports "the inference that the respondent-parents inflicted the injuries or allowed them to be inflicted." Sl. Op. at 9 (citation omitted).
- A neglected juvenile is one whose parents "[d]o not provide proper care, supervision, or discipline [or c]reate or allow[ ] to be created a living environment that is injurious to the juvenile's welfare." Sl. Op. at 9, *quoting* G.S. 7B-101(15). A court must find "some physical, mental, or emotional impairment of the juvenile or substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." Sl. Op. at 9 (citation omitted). For newborns, "the decision of the [district] court must of necessity be predictive in nature, as the [district] court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case." Sl. Op. at 9 (citation omitted).
- Relying on the supreme court's ruling in *In re Z.G.J.*, 378 N.C. 500 (2021) (upholding the adjudication of grounds to terminate parental rights), the court of appeals held that the trial court did not err in relying on the brief live testimony of the social worker where the social worker testified as to the truthfulness and accuracy of the allegations in the petition and the court admitted the verified petition into evidence. The social worker is not required to "adopt" the contents of the petition during live testimony in order for the court to rely on the contents of the petition as evidence. Parents were given the opportunity but declined to cross-examine the social worker or dispute the allegations, and stated they had no objection to admitting the verified petition as evidence. Parents failed to preserve any argument as to the admissibility of the testimony or petition as evidence on appeal.
- The court rejected Father's argument that the trial court erred in basing its adjudication solely on finding that the parents could not explain the child's injuries. The court permissibly inferred and made findings that parents inflicted or allowed to be inflicted the child's severe injuries based on the evidence in the petition and reaffirmed by the social worker's testimony of Father's handling of the child in the NICU, the parents being asked to leave the NICU, the child's severe injuries following a visit from the social worker two days earlier when the child appeared healthy, and the parents' admission that the child was in their sole care when the injuries were sustained.

In re N.R.R.N., ___ N.C. App. ___ (February 5, 2025)

Held: Affirmed in Part and Vacated in Part

- Facts: DSS filed a juvenile petition and obtained nonsecure custody of the infant at issue two days after her birth. The petition was primarily based on injuries sustained by the infant's sibling one year earlier and the failure by Mother and Father to offer any explanation for the sibling's severe injuries. The sibling was adjudicated abused and neglected, affirmed by the court of appeals. *In re N.N.*, ___ N.C. App. ___ (October 15, 2024). The infant at issue was adjudicated abused and neglected after the court found the infant was at substantial risk of harm based on the severe unexplained injuries of the sibling at around the same age as this juvenile. Mother and Father appeal, arguing the findings are not supported by sufficient evidence and the findings are insufficient to support the adjudication of the infant as abused. They challenge the court's reliance on testimony by the DSS social worker that relied on the verified petition, the court's use of verbatim language from the allegations in the petition in 10 of its 15 findings, and that the clear, cogent, and convincing standard requires more analysis from the trial court.
- An adjudication order is reviewed to "determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." Sl. Op. at 3 (citation omitted). Conclusions of law are reviewed de novo.
- "[I]t is not per se reversible error for a trial court's fact findings to mirror the wording of the petition or other pleading . . ." Sl. Op. at 6 (citation omitted). The reviewing court must determine whether the record shows the trial court found ultimate facts necessary to dispose the case based on the evidence before it through logical reasoning, "regardless of whether they mirror the language used in the petition." Sl. Op. at 7 (citation omitted). Here, in reviewing the findings, some of which were verbatim recitations of allegations in the petition, the court independently made the ultimate findings of fact, using logical reasoning based on the evidence before it.
- "Where a prior order adjudicates a sibling to be abused and neglected, and DSS relies upon the prior order in allegations regarding another sibling's risk of being subjected to similar harms, the trial court may rely upon this evidence in making its findings of fact." Sl. Op. at 11-12 (citation omitted). The trial court properly relied on the prior abuse and neglect adjudication and disposition orders of the sibling relating to the unexplained nonaccidental injuries she sustained while in parents' exclusive care at a similar age
- The trial court's findings are supported by clear, cogent and convincing evidence, including the limited testimony of the social worker, the petition, and the adjudication and disposition orders of the sibling. The social worker testified to the truth and accuracy of the petition's allegations and attested to their truth and accuracy at the time of the hearing. Neither parents' counsel objected to admission of the petition into evidence, presented any evidence opposing the allegations in the petition, or elected to cross-examine the social worker, noted by the court in its adjudicatory findings. A court may rely on the allegations in the petition that are testified to by the DSS social worker as true. There are no magic words the social worker must testify to.
- Clear and convincing evidence is the same standard as clear, cogent, and convincing evidence. The court rejected Mother's argument about how a court considers the sufficiency of the evidence under the clear and convincing standard, by citing to a California Supreme Court case that resolvedg a split in California appellate opinions. North Carolina has no such split of authority and the court of appeals is bound by precedent of the NC supreme court.
- A neglected juvenile is one whose parent, guardian or caretaker "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15)(e). A court may consider the abuse or neglect of another juvenile who lives in the home Clear and

convincing evidence must exist in the record showing "current circumstances that present a risk to the juvenile." Sl. Op. at 15 (citation omitted). An adjudication of abuse or neglect cannot be solely based on the adjudication of a sibling. However, the court does not have to wait for actual harm to occur if there is a substantial risk of harm to the child in the home. "[T]he evaluation must of necessity be predictive in nature, as the trial court must assess whether there is substantial risk of future abuse or neglect of a child based on the historical facts of the case." Sl. Op. at 15, *quoting In re A.J.L.H.*, 384 N.C. 45, 55 (2023). "[A] critical factor is whether the respondent *indicates a willingness to remedy the injurious environment that existed with respect to the older child* . . . [which may be shown by] failing to acknowledge the older child's abuse . . ." Sl. Op. at 16, *quoting In re A.J.L.H.*, 384 N.C. at 56 (emphasis added in original). Here, the trial court properly adjudicated the infant as neglected. Neither parent provided an explanation for the sibling's near-fatal injuries sustained in their exclusive care in the few days after the sibling's discharge from the NICU; acknowledged the injurious environment created for the sibling; or taken steps to remedy that injurious environment, as demonstrated by their failure to present any evidence in opposition to the allegations in the petition. Being the same age as the sibling when her serious injuries occurred, and with neither parent providing an explanation for the sibling's serious injuries, the infant at issue was at a substantial risk of physical harm.

- An abused juvenile is one whose "parent, guardian, custodian, or caretaker . . .creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means[.]" G.S. 7B-101(1). Unlike adjudicating a child as neglected based on prior abuse or neglect of a sibling, there is "no caselaw supporting the notion that past abuse of a sibling – either standing alone or joined with some other factors – can serve as sufficient grounds for *also* finding a sibling presently abused." Sl. Op. at 19 (emphasis in original). There must be direct action of the parent harming the child or placing the child at substantial risk of harm. Here, the trial court made no findings that the infant has been subjected to harm by her parents or that she faced a substantial risk of harm due to her parents' care or supervision. Findings of the serious injuries sustained by the sibling and the parents' inability to explain those injuries are insufficient to support the adjudication of the infant as abused. The abuse adjudication is reversed.

Neglect; Dependency; Findings of fact; Appellate review

In re A.J., ___ N.C. ___ (August 23, 2024)

Held: Reversed Court of Appeals; Remanded

- Facts and procedural history: This appeal involves the adjudication of three children as neglected, and also the two older children as dependent, based on three incidents reported to DSS. The reported incidents involved interactions between Mother and one of the older children. The first incident alleged an altercation between Mother and the older child, where the child refused to exit the car; Mother attempted to remove the child from the car; the child locked herself in the car; Mother broke the car window to unlock the car, slapped and hit the child with a belt, and choked and threatened to kill the child. A second incident alleged Mother choked the child and threw her out of the car. The third incident alleged Mother locked the child out of the house following an argument; when a social worker arrived, law enforcement had handcuffed Mother to calm her down, which was witnessed by the youngest juvenile who was visibly upset, while the older child sought safety at a neighbor's. The trial court based some of its findings on inadmissible hearsay consisting of statements made by the child to the social workers. The trial court also made findings about mother's mental and emotional health, some of which was based on mother's behavior during the adjudicatory hearing. The court of appeals disregarded the trial court's findings of fact based on the inadmissible hearsay statements of the

child and held the unsupported findings were insufficient to conclude the children neglected and the two older children dependent. The court of appeals reversed the order with instructions to the trial court to dismiss the petitions. DSS and the Guardian ad litem jointly petitioned the supreme court for discretionary review.

- Appellate review: An adjudication order is reviewed to determine "whether the trial court's conclusions of law are supported by adequate findings and whether those findings, in turn, are supported by clear, cogent, and convincing evidence." Sl. Op. at 4 (citation omitted). "Assuming an evidentiary objection is properly preserved, a party may argue on appeal that any findings supported solely by inadmissible evidence are infirm and cannot support the trial court's conclusion of law." Sl. Op. at 5. The reviewing court must disregard a finding that lacks sufficient support in the record and examine whether the remaining findings support the trial court's determination. If the remaining findings are insufficient, the court must determine "whether there is sufficient evidence in the record that *could* support the necessary findings." Sl. Op. at 5 (emphasis in original). If there is sufficient evidence in the record that could support the necessary findings, the reviewing court must vacate the order and remand the case for entry of a new order. "This permits the trial court, as fact finder, to decide whether to enter a new order with sufficient findings based on the record or to change the court's conclusions because the court cannot make the necessary findings." Sl. Op. at 2. "An appellate court may remand for entry of an order dismissing the matter only if the trial court's findings are insufficient and the evidentiary record is so lacking that it cannot support any appropriate findings on remand." Sl. Op. at 6.
- The court of appeals did not complete the full appellate analysis of the trial court's findings before determining the findings did not support the adjudications and reversing and remanding the case for dismissal. After disregarding several findings as unsupported by clear, cogent, and convincing evidence (due to the findings being based on the inadmissible hearsay statements of the child), the court of appeals failed to determine whether the remaining findings of fact were sufficient to support either adjudication, and if not, whether there was sufficient evidence in the record that *could* support the necessary findings.
- "A neglected juvenile is one whose parent, guardian, custodian, or caretaker 'does not provide proper care, supervision, or discipline' or who 'creates or allows to be created a living environment that is injurious to the juvenile's welfare.' " Sl. Op. at 11, *quoting* G.S. 7B-101(15). When the juvenile is not currently residing in the parent's home, the trial court must determine "whether there is a substantial risk of future neglect based on the historical facts of the case." Sl. Op. at 11. The supreme court rejected the court of appeals categorical statement that corporal punishment without physical marks or injury is not neglect and instead recognized the need for a case-specific analysis stating, "[t]here are scenarios where discipline of a child can constitute neglect when the discipline causes little or no physical injury." Sl. Op. at 13, n. 5.
- "A dependent juvenile is one whose 'parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.' " Sl. Op. at 11, *quoting* G.S. 7B-101(19). The trial court "must consider the conditions as they exist at the time of the adjudication as well as the risk of harm to the child from return to a parent. . . when considering whether a juvenile is dependent." Sl. Op. at 12 (citation omitted).
- Challenged findings supported solely by the child's statements to social workers were properly disregarded as unsupported by clear, cogent, and convincing evidence, including that Mother used a shovel to smash the car window, choked the child, and threatened to kill the child during the first reported incident; that Mother choke-slammed the child and threw her out of the car in the second reported incident; and that Mother locked the child out of the house (as opposed to leaving the child outside) during the third reported incident. The remaining portions of the trial

court's findings relating to the first and third reported incidents are supported by clear, cogent, and convincing evidence, including Mother's own admissions and the testimony of social workers and law enforcement.

- Challenged findings regarding Mother's mental health condition are unsupported by the evidence. The record does not include expert testimony from a qualified health professional or admissible documentary evidence of a past diagnosis typically required for a finding that a person suffers from a mental illness. Social worker testimony and the trial court's observations of Mother's behavior do not support a finding that Mother had been diagnosed with a mental health condition. Noting *In re L.N.H.*, 382 N.C. 536 (2022), the trial court considers the existence or nonexistence of the conditions in the petition, which "focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party." Sl. Op. at 9, n. 4. The remaining finding that Mother exhibited extremely hostile and aggressive behavior and refused to follow the recommended case plan to address those issues is supported by the evidence.
- The remaining, properly supported findings are insufficient to support the trial court's adjudication of the three children as neglected and the older two children as dependent. The remaining supported findings show Mother's pattern of putting her child in situations that are potentially injurious to her welfare (leaving child outside and why child was locked in car); Mother exhibiting hostile and aggressive behavior during the reported incidents, acknowledging the need for a mental health assessment but later refusing to do so and denying having any mental health issues; and Mother lacking an alternative child care arrangement. These "bare findings" do not demonstrate "how these incidents established that the children were not receiving proper care, supervision, or discipline, or were living in an injurious environment . . . [but] [i]mportantly, there is clear, cogent, and convincing evidence in the record that *could* support the necessary findings." Sl. Op. at 13 (emphasis in original). The proper disposition is to vacate and remand the order to the trial court to enter a new order on the existing record or conduct further necessary proceedings in its discretion.

Neglect, Dependency: Dismissal of Petition

In re G.B.G., ___ N.C. App. ___ (February 19, 2025)

Held: Dismissed in Part; Affirmed in Part

- Facts: Mother and Father are the biological parents of a one-year old. Mother consented to DSS's request for Mother's fifteen-year old daughter (shared with a different father) to live with Mother, Father, and the younger child. DSS received a report of concerns for domestic violence in the home, Father's alcohol addiction, and the older child's behavioral issues that included engaging in altercations in the home and incidents of self-harm. After an investigation substantiated these allegations and additionally found concerns with the conditions of the home, DSS ultimately filed petitions alleging both children neglected and dependent. The trial court adjudicated the older child neglected, dismissed the allegation of dependency as to the older child, and dismissed the neglect and dependency petition as to the younger child. DSS appeals, challenging the dismissal of the petition as to the younger child as neglected and dependent.
- An appellate court reviews an adjudication of abuse, neglect, or dependency "to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by findings of fact." Sl. Op. at 10 (citation omitted).
- G.S. 7B-101(15) defines a neglected juvenile as one "whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision, or discipline[, or] [c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15)(ii)a.,

e. Appellate courts have "additionally required that there be some physical, mental, or emotional impairment of the juvenile *or a substantial risk of such impairment* as a consequence of the failure to provide proper care, supervision, or discipline." Sl. Op. at 13 (citation omitted) (emphasis in original). G.S. 7B-101(15) provides that "it is relevant whether the juvenile lives in a home where another child has been subjected to abuse or neglect by an adult who regularly lives in the home." However, to conclude a child lives in an injurious environment, "the clear and convincing evidence in the record must show current circumstances that present risk to the juvenile." Sl. Op. at 15 (citation omitted).

- Adjudication hearings are "designed to adjudicate the existence or nonexistence of any of the conditions alleged in the petition." G.S. 7B-802. "This inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party." Sl. Op. at 16 (citation omitted). The court properly considered evidence that Father suffered from alcohol addiction, entered rehabilitation and began abstaining from alcohol. Father testified that he received treatment and stopped drinking after DSS was involved but before the petition was filed. This testimony about events that occurred before the petition was filed was uncontroverted.
- The trial court's findings that the conditions of the home, which included cleaning products being left on the counter and stove and clutter, were not a danger to the one-year child were based on reasonable inferences the trial court made based on the evidence presented. "The trial court determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom." Sl. Op. at 17 (citation omitted).
- The trial court's findings support the conclusion that the younger child is not a neglected juvenile. Findings regarding domestic violence in the home included that no evidence was presented that suggests the child witnessed the domestic violence incidents or had been affected by the incidents. The record lacks evidence that the child was at risk of harm due to domestic violence as findings showed arguments had become less frequent since Father was actively engaged in alcohol abstinence and regularly attending AA meetings. The adjudication of the sibling as neglected is relevant. However, the facts surrounding the older sibling's adjudication are "inherently different" and are insufficient to adjudicate the younger child as neglected: the sibling was fifteen versus this child's age of one-and-a-half; the sibling suffered untreated mental health issues for which parents provided no reasonable treatment; the sibling engaged in self-harm twice; and the sibling was exposed to and participated in domestic conflicts in the home.
- G.S. 7B-101(9) defines a dependent juvenile as one "in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative childcare arrangement." Findings of fact must be made as to both parents' ability to provide care or supervision and both parents' availability of alternative child care arrangements. If one parent is capable of providing or arranging for the child's care and supervision, the child cannot be adjudicated dependent.
- The trial court's conclusion that the child was not a dependent juvenile is supported by the findings, including that both parents lived with the child in the home and the conditions of the home did not present a danger to the child. No evidence in the record suggested that the cleaning supplies found on the counters in the home were accessible or hazardous to the child; that Father's alcohol consumption affected the child; or that the child was present or harmed

during domestic arguments, which were also found to have been less frequent with Father's engagement in treatment. The facts suggest at least one parent was able to supervise or care for the child.

Neglect; Findings; Impairment or substantial risk of impairment

In re L.C., ___ N.C. ___ (May 23, 2025)

Held: Reversed (court of appeals opinion)

Dissent, Riggs, J.

- Facts and procedural history: The supreme court granted the petition for discretionary review filed by DSS and the GAL in this case following the decision of the court of appeals vacating and remanding the trial court's neglect adjudication order. The child's circumstances involvedalleged the juvenile and subsequently born twin siblings testing positive for substances at birth, Mother and her live-in partner's substance use, the juvenile finding Mother's needle, Mother's and her live-in partner's violation of the juvenile's safety plan, and mother's erratic and hostile behavior toward DSS. Note, Mother relinquished her rights to the twins; this action solely involves the older sibling. At the adjudication hearing, the DSS social worker testified that Mother refused drug screening for herself and the juvenile but admitted to using substances and having a history of addiction; appeared agitated and was uncooperative with DSS's involvement; and discussed concerns regarding rats in the home. The juvenile was adjudicated neglected and Mother appealed. The court of appeals held the trial court's findings of fact were insufficient to support its conclusion that the juvenile was neglected because there are no evidentiary findings showing the juvenile suffered any physical, mental, or emotional impairment, or that there was a substantial risk of impairment. The sole issue before the supreme court is whether the trial court's findings support its conclusion that the child is a neglected juvenile.
- Adjudication orders are reviewed "to determine whether the findings are supported by clear, cogent[,] and convincing evidence and the findings support the conclusions of law." Sl. Op. at 7 (citation omitted). Conclusions of law are reviewed de novo.
- A neglected juvenile is one whose parent or legal guardian "[d]oes not provide proper care, supervision, or discipline" or "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15). Appellate precedent also requires "that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." Sl. Op. at 7-8 (citation omitted). The trial court is only required to "make written findings of fact sufficient to support its conclusion of law of neglect[,]" and is not required to make "a specific written finding of a substantial risk of impairment." Sl. Op. at 8, *quoting In re G.C.*, 384 N.C. 62, 69 (2023). The supreme court has directed that "[t]he ultimate findings of fact that [the child] does not receive proper care, supervision, and discipline from her parents is supported by the trial court's evidentiary findings of fact and *reached by natural reasoning* from the evidentiary findings of fact." Sl. Op. at 8, *quoting In re G.C.*, 384 N.C. at 67 (emphasis in original). This standard means that "[i]f the objective reasonable person, examining the totality of the circumstances, would understand how the trial court's written findings lead to its conclusion of neglect, those findings are sufficient." Sl. Op. at 9.

- The trial court's findings of fact are sufficient to support its conclusion of neglect, including that the child tested positive for substances at birth; Mother admitted to using substances at the time of the twin siblings' birth; Mother was concerned there was a rat infestation in the home; the child had access to unsecured needles; Mother admitted to her history of substance use and continued use of a combination of illegal substances; Mother was uncooperative with DSS with regards to drug testing of herself and the juvenile as well as entering into a safety plan; and Mother violated the safety plan two days after signing the plan. The totality of these findings demonstrate that the juvenile lacked proper care, supervision, or discipline and lived in an injurious environment.
- The court of appeals ruled that the finding addressing Mother's belief there existed a rat infestation in the home was insufficient since the finding did not specify whether the rats actually existed or were hallucinations of Mother, nor whether the child's resulting impairment was physical, mental, or emotional. The supreme court held that "a trial court does not need to specify whether the impairment in question is physical, mental, or emotional." Sl. Op. at 9, n.9. The trial court "merely needs to conclude the existence of impairment (or a substantial risk thereof) based on a reasonable interpretation of the evidentiary findings." Sl. Op. at 9, n.9.
- Dissent: The court of appeals did not err in vacating the trial court's adjudication order. The trial court must assess that there is some physical, mental, or emotional impairment of the child or a substantial risk of such impairment resulting from the failure to provide proper care, supervision, or discipline. When "the trial court does not make a specific written finding of impairment, then it must make findings of fact sufficient to demonstrate impairment." Dissent at 14. If on review findings of fact can support multiple conclusions, the trial court has not made sufficient evidentiary findings from which a conclusion of law can be naturally reasoned. Here, the trial court's findings lacked determinations regarding credibility of the evidence or the impact of the findings on the child. A reasonable interpretation of the findings do not demonstrate the child was impaired or was at substantial risk of impairment. Appellate courts cannot reweigh the evidence or make the findings required of the trial court. The statutory requirements are "more than mere formalism"; they safeguard the interest of protecting children from abuse and neglect and the constitutional rights of parents and children. Dissent at 19.

Neglect; Substantial risk of future neglect; Necessary medical care

In re K.C., ___ N.C. App. ___ (August 20, 2024)

Held: Affirmed

- Facts: Mother appeals the adjudication of her one-year-old child as neglected. DSS first became involved in this case due to the child's meconium testing positive for amphetamines and methamphetamines at birth and Mother's positive urine screen at the time of the child's birth. During his first year of life, the child developed several serious health conditions that required medical care in addition to regular wellness visits including jaundice, an abscess, a hernia, and MRSA. DSS regularly communicated or attempted communication with Mother to engage Mother in substance use treatment and assist Mother in arranging transportation to some of the child's necessary medical appointments. DSS filed a petition alleging the child neglected based on the child's positive meconium test, unsuccessful attempts to engage Mother in substance use treatment, Mother's failure to consistently communicate with DSS, and Mother's failure to attend a substantial number of the child's necessary medical appointments. The child

was adjudicated neglected based on Mother's failure to provide proper care, failure to provide or arrange necessary medical care, and allowing the creation of an injurious environment. Mother challenges the findings of fact relating to her attempts to obtain substance use and mental health assessments and her provision of necessary medical care, and argues the remaining findings do not support a conclusion of neglect.

- A neglect adjudication is reviewed "to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by findings of fact." Sl. Op. at 6 (citation omitted). The determination of whether a child is neglected is a conclusion of law reviewed de novo.
- "The Juvenile Code defines a neglected juvenile as '[a]ny juvenile less than 18 years of age . . . whose parent . . .does not provide proper care, supervision, or discipline[,] . . .has not provided or arranged for the provision of necessary medical or remedial care[,] . . .[or] created or allowed to be created a living environment that is injurious to the juvenile's welfare.' " Sl. Op. at 8-9, *quoting* G.S. 7B-101(15)a.,c., and e. A court must find "some physical, mental, or emotional impairment of the juvenile or substantial risk of such impairment as a consequence of the failure to provide 'proper care, supervision, or discipline.' " Sl. Op. at 9 (quoting In re Stumbo, 357 N.C. 279 (2003)). For newborns, "the decision of the court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case." Sl. Op. at 9 (citation omitted). While the record must show clear and convincing evidence of "current circumstances that present a risk" to the child, the court has discretion in determining whether there is risk for a particular kind of harm given the child's age and environment. "Health assessments of a parent can help the trial court determine the 'current circumstances' of a child's environment." Sl. Op. at 11. A parent's mental health is a fixed and ongoing circumstance that is relevant in assessing the child's environment and whether there is a substantial risk of harm to the child that may lead to an adjudication of neglect. "When an infant has substantial health concerns, sporadically attending necessary medical appointments and procedures can pose a 'substantial risk' of harm." Sl. Op. at 13.
- The findings of fact are supported by clear and convincing evidence and the conclusion that the child was neglected is supported by the findings. The child was at substantial risk of harm based on Mother's failure to provide proper care and arrange necessary medical care for the child, and the child living in an injurious environment. The evidence shows Mother never completed the requested substance use assessment and only completed a mental health assessment the week before the adjudication hearing, over a year since the child's birth. Mother's failure to complete a substance use assessment after the child and Mother tested positive for substances at the time of the child's birth and her failure to timely complete the requested mental-health assessment impact her ability to provide adequate care for the child. The court determined that without these health assessments Mother cannot address her fixed and ongoing health issues and therefore poses a substantial risk of harm to the child. Additionally, the evidence shows that Mother cancelled or did not show up for 24 of the child's 41 medical appointments within the child's first year of life, including necessary surgical appointments to remove the child's hernia, despite Mother qualifying for Medicaid and its transportation services and evidence that she was able to arrange transportation from family, a social worker, or EMS when necessary. Missing a substantial number of the child's necessary medical appointments constitutes failure to provide necessary medical care. The combined evidence of the child's positive meconium test, Mother's failure to complete the substance use assessment or timely complete the mental health assessment, and Mother's failure to ensure the child's attendance for necessary medical appointments "fully convinces that [the child's] environment was injurious to his welfare." Sl. Op. at 14.

Initial Disposition

Parent's Rights; Preserve for appeal

In re K.C., ___ N.C. ___ (December 13, 2024)

Held: Reversed

Dissent: Riggs, J., joined by Earls, J.

- Facts and procedural history: This case arises from Father's appeal of an initial disposition order temporarily placing his child with their paternal aunt and uncle after the child was adjudicated neglected based on circumstances created by Mother in Mother's home. At the disposition hearing, neither Father nor Mother objected to the child's temporary placement based on constitutional grounds. The trial court's order examined the issue on its own and found both parents had acted inconsistently with their constitutional rights as parents. Father appealed, challenging the trial court's determination that he had acted inconsistently with his parental status. The court of appeals held that Father, who was the "non-offending parent," had preserved his constitutional argument for appellate review by opposing DSS's recommendation of the placement and arguing for his ability to care for the child during the hearing. Sl. Op. at 5. In vacating the disposition order and remanding for a new hearing, the court of appeals determined the trial court's findings did not support a conclusion that Father had forfeited his constitutionally-protected status as a parent such that trial court was required to place the child with father. DSS filed a notice of appeal based on the dissenting opinion, which determined "findings concerning the constitutional standard were 'premature and unnecessary to the trial court's disposition decision awarding temporary custody to relatives.' " Sl. Op. at 6 (citation omitted). DSS also petitioned for discretionary review of additional issues concerning the scope of the constitutional right to parent and the applicable legal test for that right at initial stages of juvenile proceedings. The supreme court allowed the PDR and later entered a special order allowing review of whether Father properly preserved the constitutional issue for review.
- Parents have a "constitutionally protected paramount interest in the companionship, custody, care and control of his or her child." Sl. Op. at 7-8 (citation omitted). Custody may be awarded to a nonparent only when the parent has acted inconsistently with their constitutionally-protected status as a parent. "[I]n most juvenile cases, the underlying facts that support the adjudication of abuse, neglect, or dependency also will satisfy the constitutional criteria." Sl. Op. at 9. However there are rare cases where the Juvenile Code authorizes removal of the child from their parent that would be unconstitutional as applied to a particular parent. "[A] parent's argument concerning his or her paramount interest to the custody of his or her child, although afforded constitutional protection, may be waived on review if the issue is not first raised in the trial court." Sl. Op. at 10, *citing In re J.N.*, 381 N.C. 131, 133 (2022). "[A] parent who merely argues against a child's removal, or against the child's placement with someone else, does not adequately preserve the constitutional issue. To preserve it, the parent must inform the trial court and the opposing parties that the parent is challenging the removal on *constitutional grounds* and articulate the basis for the constitutional claim." Sl. Op. at 12 (emphasis in original). The "waiver principle applies even if the trial court addresses the issue on its own initiative in its order." Sl. Op. at 2.

    - *Note*: The supreme court expressly overruled the preservation holdings of the court of appeals in *In re B.R.W.*, 278 N.C. App. 382 (2021), *aff'd on other grounds*, 381 N.C. 61 (2022) and all resulting court of appeals holdings that followed, holding the issue was preserved when the parent opposed the child's removal on any grounds without expressly making a constitutional argument.
- Father did not preserve the constitutional claim for appellate review. Father concedes he did not argue the relative placement would violate his constitutional right as a parent to the trial court. Father's appeal was solely based on the trial court's determination as to his constitutional status as a parent, and since the issue is waived as a matter of law and not subject to appellate review, the court of appeals erred by addressing the constitutional issue.
- The supreme court addressed the propriety of ruling on the preservation issue when the issue was not presented in DSS's notice of appeal, PDR, or brief, referencing that precedent does not require the court to rule on an issue not properly raised and determined in the trial court. The court further reasoned that the supreme court is tasked with allowing discretionary review on its own motion pursuant to G.S. 7A-31(a) when the court of appeals' decision appears to be in likely conflict with a supreme court decision such that the supreme court has the "responsibility to ensure the consistency of the State's jurisprudence and prevent competing lines of precedent . . ." Sl. Op .at 14.
- Dissent: The issue of preservation was not properly before the court and the court should have addressed the merits of Father's appeal. Even if Father waived his constitutional argument, the court could have invoked Appellate Rule 2 to reach the merits of the case. The decision of the court of appeals should be affirmed and the case remanded to the trial court for further findings as to the effect of Father's parenting on the child, specifically regarding Father's criminal history, the pending domestic violence charge against Father, and Father's home. Other findings relating to Father's clothing, employment, and tendency to move are impermissible as they relate to Father's socioeconomic status.

In re T.S., III, ___ N.C. App. ___ (May 7, 2025)

Held: Dismissed

- Facts and procedural history: This case is on remand from the supreme court and arises from a permanency planning order granting guardianship of Mother's two children to their paternal grandmother. At the permanency planning hearing, Mother specifically argued that the trial court's consideration of guardianship was premature given her progress on her case plan in the recent months and would prohibit reunification with her children. The trial court's order ultimately found by clear and convincing evidence that Mother was unfit and was acting inconsistently with her constitutionally protected status as a parent and granted guardianship of the children to their paternal grandmother. On Mother's initial appeal, the court of appeals vacated and remanded the PPO. *In re T.S., III.*, ___ N.C. App. ___ (2024); summarized here. The court of appeals determined the trial court's findings of fact did not support its determination that Mother was unfit or acted inconsistently with her constitutionally protected status as a parent such that guardianship was in the children's best interests. DSS and the GAL petitioned the supreme court for discretionary review. The supreme court allowed the petition without opinion "for the limited purpose of vacating the Court of Appeals decision below, . . . , and remanding the matter to that court for reconsideration in light of *In re K.C.*, [386 N.C. 690 (2024)]." Sl. Op. at 5. The issue on remand is whether Mother waived appellate review of her constitutional argument.

- Parents have a "constitutionally-protected paramount interest in the companionship, custody, care, and control of his or her child" and are presumed to be fit and to act in their child's best interests. Sl. Op. at 8 (citations omitted). Interference with their constitutionally protected status requires a third-party to overcome this presumption by the requisite burden of proof. A parent's argument as to their constitutional right to the custody of their child may be waived on review if the issue is not raised at the trial court first. In *In re K.C.*, 386 N.C. 690 (2024), the supreme court reviewed its prior holding in *In re J.N.*, 381 N.C. 131 (2022). *In re K.C.*, 386 N.C. 690; summarized here. Supreme court precedent states that a parent who merely argues against placement and for reunification does not adequately preserve the issue. Instead, "the parent must inform the trial court and the opposing parties that the parent is challenging the removal on constitutional grounds and [to] articulate the basis for the constitutional claim." Sl. Op. at 9, *quoting In re K.C.*, 386 N.C. at 697. These preservation requirements apply even if the trial court considers a parent's constitutional claim on its own initiative in the order.
    - *Note*: *In re K.C.* reversed the court of appeals preservation analysis in *In re B.R.W.*, 278 N.C. App. 382 (2021), and all subsequent holdings relying thereon.
- Mother waived appellate review of her constitutional argument. Mother had notice of the recommendations of DSS and the GAL to the court to grant guardianship of her children to their paternal grandmother. At the permanency planning hearing Mother argued against the guardianship, specifically stating it was premature considering her recent progress on her case plan and that awarding guardianship would prohibit her reunification with the children. Mother failed to specifically argue that the disposition violated her constitutionally protected status as a parent, as required under the supreme court's precedent in *In re J.N.* Mother cannot raise the issue for the first time on appeal and therefore Mother's unpreserved constitutional challenges are dismissed.

Reasonable efforts not required

In re N.N., ___ N.C. App. ___ (October 15, 2024)

Held: Affirmed in Part; Vacated and Remanded in Part

- Facts: The child was born prematurely and spent four months in the NICU. DSS established a safety plan with the parents after receiving a report of Father mishandling the newborn and that hospital staff had asked each parent to leave due to their failure to follow NICU protocols. DSS received a second report that Father mishandled the newborn while in the NICU after instruction on safe handling. Both parents denied mishandling the child. The child was discharged to the parents from the NICU. At a home visit five days later, the social worker observed the child as healthy and doing well. Two days after the home visit, Parents brought the child to the ER for concerns with her eating and constipation. Upon arrival to the ER the child had stopped breathing and had to be revived multiple times. Testing revealed the child had multiple severe injuries which a physician later determined were non-accidental and highly concerning for abusive head trauma resulting in a near-fatal event. Parents denied causing the child's injuries and did not give any explanation for the injuries. DSS filed the abuse and neglect petition and obtained nonsecure custody of the child. The child was hospitalized for three months and placed in foster care upon discharge. The child was adjudicated abused and neglected. At initial disposition, the court ordered that reunification efforts were not required due to aggravating factors in G.S. 7B-901(c). Mother and Father appeal the initial disposition order. The adjudication was affirmed, summarized separately.

- An appellate court reviews an initial disposition order directing that reunification efforts are not required to determine whether the court made the appropriate findings, whether the findings are based on credible evidence, and whether the findings support the court's conclusion. Dispositional conclusions of law are reviewed for an abuse of discretion.
- G.S. 7B-901(c)(1) states that if a trial court "places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification . . . shall not be required if the court makes written findings of fact . . that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of . . . chronic physical or emotional abuse [upon the juvenile] . . . [or] any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect." Chronic abuse is not defined by G.S. Chapter 7B but is commonly defined as "lasting a long time or recurring often." Sl. Op. at 20 (citation omitted). To find an aggravated circumstance of conduct that increased the enormity of the injurious consequences of the abuse or neglect, there must be evidence "*in addition to the facts that [give] rise to the initial adjudication of abuse and/or neglect*." Sl. Op. at 22 (citation omitted) (emphasis in original).
- Findings do not support the conclusion that aggravating circumstances exist based on the chronic physical or emotional abuse of the child. No findings indicate the child was subject to recurring acts of physical abuse or abuse lasting over a long period of time. Findings show a severe incident of physical abuse where testing revealed skull fractures and brain and spinal bleeding, among other injuries, but no healed injuries were revealed that would indicate the child suffered injuries on multiple occasions. While there were two reports of the parents mishandling the infant in the NICU, there are no findings of injuries during that time and the child was discharged to the parents from the NICU.
- Findings do not support the conclusion that parents' conduct increased the enormity or added to the injurious consequences of the child's abuse and neglect, which must be based on something other than what led to the adjudication. The evidence and findings of the child's serious and life-threatening injuries, subsequent hospitalization and medical needs all arise from the same facts that support the abuse and neglect adjudications.
- Portions of the disposition order directing that reasonable efforts for reunification are not required are vacated and remanded to the trial court to enter appropriate findings addressing whether efforts to reunify parents with the child are required under G.S. 7B-901(c). The court of appeals notes that there is sufficient evidence in the record to support a determination that reunification efforts are not required because the parent has committed a felony assault resulting in serious bodily injury to the child under G.S. 7B-901(c)(3)(iii), as both parents had pending felony child abuse charges at the time of the dispositional hearing.

In re N.R.R.N., ___ N.C. App. ___ (February 5, 2025)

Held: Affirmed in Part and Vacated in Part

- Facts: The infant at issue was adjudicated abused and neglected based on the adjudication of her sibling as abused and neglected. The sibling suffered a near-fatal event while in the exclusive care of Mother and Father in the week following her discharge from the NICU. Mother and Father have never explained how the sibling's injuries occurred or taken steps to remedy the injurious environment which caused the sibling's harm. At initial disposition for the infant at issue, the trial court found aggravating circumstances existed and ordered DSS to cease

reunification efforts. Mother and Father appeal the dispositional order, arguing the court abused its discretion.

- Appellate courts review an order ceasing reunification efforts "to determine whether the trial court made the appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the court's conclusions, and whether the trial court abused its discretion with respect to disposition." Sl. Op. at 28 (citation omitted). Conclusions of law are reviewed de novo.
- For juveniles placed in DSS custody, the trial court is required to make written findings of one of the listed circumstances in G.S. 7B-901(c) to order that reasonable efforts towards reunification are not required at initial disposition. One possible circumstance is that "a court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of . . . any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect." G.S. 7B-901(c)(1)f. The supreme court has interpreted "any other act, practice or conduct" used to cease reunification efforts to require actions of the parent that are in addition to the facts relied on to adjudicate the juvenile as abused or neglected. The trial court erred in determining aggravating circumstances existed to cease reunification efforts under G.S. 7B-901(c)(1)f., and that portion of the disposition order is vacated. The findings supporting the court's conclusion is limited to Father's continued failure to explain the sibling's severe physical injuries. Findings of the parents' failure to offer an explanation of the sibling's injuries were heavily relied upon in adjudicating the infant as abused and neglected based on substantial risk of harm, and therefore cannot also be an "other" act increasing the enormity or adding to the injurious consequences of the abuse or neglect of the infant.
- Another circumstance that can be used to cease reasonable efforts is that "a court of competent jurisdiction determines or has determined that . . . the parent has committed a felony assault resulting in serious bodily injury to the child or another child of the parent[.]" G.S. 7B-901(c)(3)(iii). "Based on the Supreme Court's holdings in *In re L.N.H.*, [382 N.C. 536 (2022), interpreting the 2018 legislative amendments to G.S. 7B-901(c)(3)(iii)] a trial court conducting a juvenile adjudication and disposition for neglect and/or abuse is a 'court of competent jurisdiction' to weigh the evidence in determining the existence of felony child assault for the purpose of ceasing reunification efforts." Sl. Op. at 33 The trial court does not have to wait for felony assault charges to be resolved by another tribunal. If the court has "ample evidence to find by clear, cogent and convincing evidence the existence of a felony child assault, it may make the appropriate findings of fact" to cease reunification efforts." Sl. Op. at 33. The trial court properly determined aggravating circumstances existed to cease reunification efforts under G.S. 7B-901(c)(3)(iii). The trial court was a court of competent jurisdiction with ample evidence to determine the existence of felony child assault against the sibling.

Cease reasonable efforts; Exclude reunification; Preservation; Appellate mandate

In re H.G., ___ N.C. App. ___ (December 17, 2024)

Held: Affirmed

- Facts: This is the third appeal involving father and his three children. The children were adjudicated abused, neglected and dependent based on Father sexually abusing the youngest child, abusing the two older children, and Father's nephew sexually abusing the two older siblings. The disposition hearings were bifurcated due to Father seeking reunification with the

youngest child only. At the disposition hearing for the youngest child, the court continued custody with DSS, relieved DSS of the obligation to make further reasonable efforts toward reunification, and found reunification was not in the best interest of the child due to Father's sexual abuse. Father appealed the adjudication order (the second appeal), which the court of appeals vacated and remanded for the trial court to make findings of fact resolving conflicting evidence and gave the court discretion to hold an additional hearing on evidentiary matters. The trial court conducted a hearing on remand to discuss the procedural posture of the case and entered new adjudication and disposition orders continuing custody of the child with DSS, providing for no visitation between Father and the youngest child, and again ceasing reunification efforts based on Father's sexual abuse. Father appeals, arguing the trial court abused its discretion by eliminating reunification as a permanent plan at initial disposition and arguing he did not receive proper notice. Father further argues that the trial court abused its discretion by not holding a new hearing on remand.

- "[W]hen a party fails to appeal a ruling on a particular issue, he is then bound by that failure and may not revisit the issue in subsequent litigation." Sl. Op. at 8 (citation omitted). Father did not raise the issues of notice or elimination of reunification as a permanent plan at initial disposition in his prior (second) appeal. Since the events that gave rise to the issues occurred at the disposition hearing that took place before Father's second appeal, and the issues were unchallenged in that appeal, Father waived his right to appeal the issues in this subsequent appeal. However, the court examined the issue assuming, *arguendo,* Father's appeal was properly before the court.
- Dispositional choices are reviewed for an abuse of discretion.
- The initial dispositional hearing was not a permanency planning hearing, but an order at initial disposition that relieves DSS of reunification efforts impacts a court's subsequent permanency planning order. "[G.S.] 7B-906.2(b) operates to exclude reunification as a permanent plan once the trial court makes findings of aggravated factors under [G.S.] 7B-901(c) at [initial] disposition." Sl. Op. at 9*, citing In re R.G.*, 292 N.C. App. 572 (2024). G.S. 7B-906.2(b) permits exclusion of reunification from a child's permanent plans "at any time, including immediately following disposition," such that reunification "need not be a permanent plan for a juvenile, at all, if findings were made under [G.S.] 7B-901(c)." Sl. Op. at 10, *citing In re R.G.*, 292 N.C. App. at 579.
- Notice was not required to exclude reunification as a permanent plan at initial disposition under G.S. 7B-901(d), as notice is only required for permanency planning hearings. Counsel's argument that notice is customarily given "is not a substitute for statutory compliance." Sl. Op. at 11.
- The trial court did not abuse its discretion by choosing not to hold an additional hearing on remand. The court of appeals gave the trial court discretion on whether to hold another hearing to make additional findings. The trial court determined the evidence presented at the initial disposition hearing was sufficient to make the required findings that Father sexually abused the child and to cease reasonable efforts. The court was not required to receive new evidence and any evidence offered by Father of his actions taken since the action commenced would not have changed the sexual abuse finding.

Visitation

Improper delegation of judicial authority; Ch 50 order via 7B-911; ADA Claim

In re A.J.J., ___ N.C. App. ___ (July 2, 2025)

Held: Affirmed in Part, Vacated in Part, Remanded in Part

- Facts: The child at issue was adjudicated neglected and dependent. During permanency planning the child was placed with the child's paternal uncle and his girlfriend. Mother was living in Rocky Mount and the child in Greenville. The trial court ultimately granted legal and physical custody of the child to the uncle and his girlfriend (custodians), terminated jurisdiction, and transferred the case to a Chapter 50 proceeding. The trial court entered a Chapter 50 order that granted Mother weekly phone calls and monthly supervised visitation with the child at a location agreed upon by the custodians and Mother. The order granted the custodians discretion to transition to unsupervised visits as well as to cease visits if the visits or contact triggered regressive behavior in the child or 'causes discord between the [Custodians] that may lead to possible placement disruption.' Sl. Op. at 21. Mother appeals, arguing the trial court abused its discretion by granting the custodians the discretion to modify or cease visitation. Mother further argues the visitation order does not accommodate her physical disability under the Americans with Disabilities Act.
- Appellate courts review a trial court's order regarding visitation for an abuse of discretion.
- Because the order for visitation was included in the Ch. 50 order, the visitation provisions of G.S. 7B-905.1 do not apply. The trial court properly terminated jurisdiction in the Chapter 7B proceeding under G.S. 7B-911 and opened a new Chapter 50 civil custody case. Therefore, caselaw governing the award of visitation in civil custody orders applies. Caselaw under G.S. Chapters 7B and 50 "draw the same conclusion with respect to the trial court's improper delegation of authority to award visitation of a minor child." Sl. Op. at 20-21, n.5. The Chapter 50 order improperly delegates the judicial authority of modifying or ceasing visitation to the custodians.
- The visitation provisions of the Chapter 50 order are vacated and remanded.
- Mother waived her argument that the court should have considered her physical disability and apply the Americans with Disabilities Act to the visitation provision when addressing the location of the visits. "Claims that DSS violated the Americas with Disabilities Act must be asserted at the time the service plan is adopted to be preserved for appeal." Sl. Op. at 23 (citation omitted). Mother did not raise this argument at the hearing and cannot argue it for the first time on appeal.

No visitation; Minimum outline; Delegation of authority

In re D.E., ___ N.C. App. ___ (March 5, 2025)

Held: Affirmed

- Facts: The child was adjudicated neglected based on Father and Mother's substance use and domestic violence between them. At disposition custody was ordered to DSS, placement continued with the foster parents who had the child placed with them at nonsecure custody, and both parents were granted supervised visitation of two hours per week. A subsequent permanency planning order awarded primary care and guardianship to the foster parents. The trial court found visitation with Father would not be in the best interests of the child and denied Father visitation. The PPO also authorized, but did not require, the foster parents to allow Father supervised visitation. Father appeals the PPO, challenging the court's conclusion regarding visitation as unsupported. Father also argues the trial court failed to comply with the

minimum outline requirements for ordering visitation and improperly delegated the court's authority to set visitation.

- Dispositional determinations, including visitation, are reviewed for an abuse of discretion. Permanency planning orders are reviewed to determine whether there is competent evidence to support the findings and whether the findings support the conclusions of law. Conclusions of law are reviewed de novo. The trial court's determinations as to the weight of the evidence and the inferences to be drawn therefrom are not subject to appellate review.
- G.S. 7B-905.1 requires an order continuing placement outside of the home to "provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety, *including no visitation*." Sl. Op. at 6 (emphasis in original). Appellate courts have upheld "limitations on parental visitation rights when a trial court's findings support its conclusions that visitation would be inconsistent with the best interests of the juvenile." Sl. Op. at 7. Findings that the parent has not made adequate progress with their case plan support a conclusion that visitation would not be in the best interests of a juvenile.
- The findings of fact support the trial court's conclusion that it is not in the child's best interests to award Father visitation. While the court found a bond existed between the child and Father, other findings showed Father had not made progress on his case plan regarding his substance use and domestic violence, including that Father had not participated in substance use or mental health treatment; had positive drug screenings and missed or failed to cooperate with several other screenings; was terminated from the domestic violence education program due to failure to comply with their drug screening; and was charged with assault on Mother in two separate incidents. Binding findings also showed Father had not exercised visitation rights granted in the disposition order and had blocked the foster parents from communicating with him.
- An order removing parental custody or continuing placement outside of the home must "establish a visitation plan for parents unless the court finds that the parent has forfeited their right to visitation *or that it is in the child's best interest to deny visitation*." Sl. Op. at 11 (citation omitted) (emphasis in original). Here the trial court concluded that it was not in the child's best interests to award Father visitation. Therefore, the trial court was not required to provide a minimum outline for the time, place, and conditions for visitation.
- If visitation is ordered, the trial court cannot delegate its authority to set a parent's visitation rights under G.S. 7B-905.1 to a custodian. Since visitation was denied to Father, a minimum outline regarding the visits was not required. The court did authorize the foster parents/guardians to allow for supervised visitation, which is "a humane accommodation rather than an error of law." Sl. Opp. at 14 (relying on *Routten v. Routten*, 374 N.C. 571, 159-60 (2020), a civil custody case). This authorization awarded Father the opportunity to improve his communication with the foster parents at their discretion. The court noted Father has the opportunity to file a motion for review of visitation in the future.

Permanency Planning

Evidence; Oral testimony required

In re J.A.S.F., ___ N.C. App. ___ (May 21, 2025)

Held: Vacated and Remanded

- Facts: Mother challenges the permanency planning order awarding guardianship of her three children to the children's foster parents. The two older children were adjudicated neglected and dependent based on domestic violence incidents between Mother and Father occurring in the

presence of the children and concerns for the parents' mental health and substance use. During the pendency of the proceedings for the older children, Mother gave birth to a third child who was ultimately adjudicated neglected and dependent. At the final permanency planning hearing for all three children, the trial court changed all primary plans to guardianship and secondary plans to adoption. After receiving the DSS report, GAL report, and prospective guardians' affidavits, the trial court adopted the DSS recommendations and awarded guardianship of the children to the foster parents and continued Mother's supervised visitation. Mother argues the PPO was not supported by competent evidence since the trial court did not receive oral testimony at the hearing. The court of appeals did not address Mother's other arguments on appeal after determining the PPO was not supported by the evidence.

- Appellate review of permanency planning orders "is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law." Sl. Op. at 7 (citation omitted). Dispositional determinations are reviewed for abuse of discretion. Conclusions of law are reviewed de novo.
- G.S. 7B-906.1 allows the trial court to consider any evidence at permanency planning hearings "the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." G.S. 7B-906.1(c). The court of appeals has held that conclusions of law in a *permanency planning order* were made in error when the findings of fact were based solely on court reports, prior orders, and the arguments of counsel (though counsel statements are not considered evidence) and no oral testimony was received. In contrast, the court of appeals has held it was not error under an identical evidentiary standard in G.S. 7B-901(a) for an *initial disposition order* to rely on court reports and prior orders alone if "these sources of fact are sufficient to support the trial court's conclusions of law and its ultimate disposition[.]" Sl. Op. at 9 (citation omitted).
- The trial court's findings of fact were unsupported by the evidence and the conclusions of law were erroneous. The trial court relied on court reports and the prospective guardians' affidavits without any sworn oral testimony. The court of appeals rejected the argument of the GAL and DSS that the affidavits were testimonial in nature because they "fail to satisfy this Court's requirement for live 'oral testimony' at the permanency planning hearings." Sl. Op. at 11, n.4. The court of appeals acknowledged the tension between its precedential cases addressing the same evidentiary standard applicable to initial disposition and permanency planning. However, as the supreme court has not held that the oral testimony requirement is applicable to the dispositional stage of juvenile proceedings nor overruled the line of court of appeals cases imposing the requirement in permanency planning hearings, the court is bound by its precedent.

Relative placement

In re L.L., ___ N.C. ___ (December 13, 2024)

Held: Reversed

Dissent in part: Riggs, J., joined by Earls, J.

- Facts and procedural history: This case arises from the appeal of a permanency planning order awarding custody to petitioners, the child's foster parents. DSS filed a petition alleging the child was abused and neglected based on unexplained severe injuries the child sustained as a one-month-old while in the sole care of his parents. As a result of the severe injuries sustained, the

child suffers from cerebral palsy, continued seizures, developmental delay, and other disabilities requiring full-time care at home and constant medical monitoring. After the petition was filed Mother moved to Georgia and entered a case plan with DSS that included participating in the child's medical care. The child was placed with a foster family, the petitioners, upon discharge from the hospital. The child was adjudicated abused and neglected. During permanency planning, the child's maternal grandfather, who lives in Georgia, expressed interest in custody. The GAL recommended the child remain with petitioners who provide and are committed to continuing the child's intensive care. The GAL also emphasized that the child becomes unresponsive if the foster mother is not present due to the child's limited cognitive abilities. DSS recommended placement with the grandfather, who testified that he is willing and able to care for the child with his partner. No party recommended reunification. Prior PPOs and the final PPO found Respondent-Mother never plausibly explained the severe injuries or participated in the child's medical care as ordered. The court granted legal and physical custody of the child to petitioners. Respondent-Mother appealed. In vacating and remanding the PPO, the court of appeals determined the findings of fact challenged by Respondent-Mother were supported by the evidence but that the findings failed to satisfy the statutory requirements to eliminate reunification. Petitioners filed a petition for discretionary review. This summary discusses whether the PPO satisfied the requirements of G.S. 7B-903(a1) regarding priority of relative placement.

- Whether the trial court properly considered G.S. 7B-903(a1) is reviewed for an abuse of discretion. "It is the trial court's role as fact-finder 'to pass upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom.' " Sl. Op. at 23 (citation omitted).
- When a child is placed outside of the home, placement with a relative is given statutory preference. G.S. 7B-903(a1) requires that the trial court "*shall first* consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court *shall order* placement of the juvenile with the relative *unless* the court finds that the placement is contrary to the best interests of the juvenile." Sl. Op. at 20, *citing* G.S. 7B-903(a1) (emphasis in original). The statute's language "does not require the trial court to make any written findings[,]" and "does not require any specific sequence of findings in the trial court's order." Sl. Op. at 21, 22 n.7. The supreme court reasons that "it would be functionally impossible for the trial court to determine which placement option is in the 'best interests' of the juvenile without considering and comparing all the placement options." Sl. Op. at 22.
    - *Author's Note*: Without expressly overruling prior holdings, this holding appears to supersede prior appellate holdings that require the trial court make a specific finding as to whether a relative is willing and able to provide proper care and supervision in a safe home and if the child is not placed with that relative that such placement is contrary to the child's best interests.
- Findings show that the trial court considered whether the grandfather was willing and able to care for the child and determined placement with the petitioners was in the child's best interests. The court found grandfather was employed full-time; was unable to provide the type of childcare necessary to meet the child's needs; grandfather's partner, who is not a relative,

would care for the child while grandfather was working; neither grandfather nor his partner had met with the child's doctors to understand the level of medical care required; and grandfather had not formed a bond with the child. Findings also show the child had been living with petitioners for over two years; the child has a bond with petitioners and their children; and petitioners are willing and able to provide for the child's special and intensive medical needs. In addition to grandfather's testimony, the court also considered the GAL report received into evidence recommending the child remain with the petitioners and stressing that the child's therapists agree the child's condition would severely deteriorate if removed from petitioners' care. These findings satisfy G.S. 7B-903(a1). The court did not abuse its discretion.

- Dissent: The trial court did not meet the statutory requirements and the PPO should be remanded for further findings. The legislature intended for trial courts to make findings that the court first consider whether placement with a relative would be contrary to the best interests of the child. The plain language of G.S. 7B-903(a1) mandates the trial court consider the suitability of relative placement before considering another placement and does not allow for a direct comparison between relative placement and a foster care placement. Findings show Grandfather was gainfully employed and able to provide for the child together with his partner. The court did not make a finding that placement with grandfather was not in the child's best interest before determining placement with petitioners was in the child's best interest, and therefore the court did not satisfy G.S. 7B-903(a1).

Guardianship: Parent's Rights; Preserve for appeal; Findings

In re T.S., III, ___ N.C. App. ___ (December 3, 2024), *overruled in part by* In re K.C., ___ N.C. ___ (December 13, 2024); Overruled by remanded decision May 7, 2025 (see page 22)

Held: Vacated and Remanded

- Facts: Mother appeals a permanency planning order awarding guardianship of her two children to their paternal grandmother. The children were adjudicated neglected based on improper care and supervision for which Mother was criminally charged. Permanency was achieved when the court awarded guardianship to the children's paternal aunt and uncle. Over a year later, the court dissolved the guardianship and placed the children with their paternal grandmother. At subsequent permanency planning hearings Mother was found to have made progress on her case plan, though she tested positive at one drug screening, was not regularly visiting the children, and had not completed a mental health assessment. The court changed the primary permanent plan to guardianship with a relative with a secondary plan of reunification. DSS and the GAL submitted reports requesting guardianship be awarded to the grandmother. During the following permanency planning hearing, Mother specifically argued it was premature to consider guardianship in light of her recent progress and that awarding guardianship would block reunification with her children. The trial court found by clear and convincing evidence Mother was unfit and acted inconsistently with her constitutionally-protected status as a parent and awarded guardianship to grandmother. Mother challenges several findings as unsupported by the evidence and argues the findings do not support the determination that she is unfit and acted inconsistently with her status as a parent.
- Whenever custody is awarded to a nonparent, "a finding that a parent is unfit or acted inconsistent with their constitutionally protected status [at that time] is nevertheless required, even when a juvenile has previously been adjudicated neglected and dependent." Sl. Op. at 18 (citation omitted). A parent's argument as to their constitutional right to the custody of their child may be waived on review if the issue is not raised at the trial court first. Appellate Rule 10.

Mother argued against the guardianship because it was premature and Mother should be allowed to continue making progress on her case plan. Mother did not waive her right to review because a parent cannot object to findings of facts and conclusions made in a written order entered after the hearing concluded. "If a party has presented evidence and arguments in support of her position at trial, has requested that the trial court make a ruling in her favor, and has obtained a ruling from the trial court, she has complied with the requirements of Rule 10 and she may challenge that issue on appeal." Sl. Op. at 7-8, *citing In re B.R.W.*, 278 N.C. App. 382, 399 (2021), *aff'd* 381 N.C. 61 (2022)).

- ***Author's note*: This holding is overruled by *In re K.C.*, ___ N.C. ___ (December 13, 2024), published ten days after this opinion.** The court of appeals did not discuss the supreme court's holdings in *In re J.M.*, 384 N.C. 584 (2023) and *In re J.N.*, 381 N.C. 131 (2022) regarding waiver on this issue. In these cases, the fathers waived their review of the issue when they were on notice that a permanent plan other than reunification was being recommended and argued for reunification at the permanency planning hearing. The supreme court held that the fathers failed to raise their constitutional rights when they had the opportunity to do so. Theses opinions were addressed by the supreme court in *In re K.C.* In *In re K.C.*, the supreme court held that parents must object on constitutional grounds and articulate their basis for the constitutional claim to preserve the issue for appeal, and explicitly overruled the preservation holding in *In re B.R.W.* and holdings of resulting court of appeals cases that follow it. *See In re K.C.*, ___ N.C. ___, Sl. Op. at 13.

- The court of appeals rejected DSS's argument that the doctrine of collateral estoppel waived Mother's constitutional argument when the trial court granted the first guardianship two years earlier. The trial court's prior order awarding guardianship did not include a finding or conclusion Mother was unfit or acted inconsistently with her constitutionally-protected status as a parent. Even if the determination had been made, it would not be dispositive of whether Mother was acting inconsistently with her protected status at the time the court awarded guardianship to grandmother in the order that is currently on appeal.
- Appellate courts review a permanency planning order to determine whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. G.S. 7B-906.1 allows the court to consider any evidence that is "relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." G.S. 7B-906.1(c). Conclusions of law are reviewed de novo.
- Some of the challenged findings of fact are supported by the evidence. The trial court weighs the evidence and determines credibility. Other findings of fact are unsupported by the evidence and are disregarded. "[T]he trial court did not credit uncontested evidence or adjudicate the competent conflicting evidence to support a conclusion Respondent-mother had not made adequate progress." Sl. Op. at 16. These findings relate to the court's conclusions about mother acting inconsistently with the children's health and safety and whether future reunification with mother would be successful or inconsistent with the children's need for a safe, permanent home within a reasonable period of time.
- The determination that a parent is unfit or acted inconsistently with their constitutionally-protected status as a parent is a conclusion of law reviewed de novo to determine "whether the findings of fact cumulatively support the conclusion and whether the conclusion is supported by clear and convincing evidence." Sl. Op. at 6-7 (citation omitted). In this case, Mother's uncontested evidence regarding her progress and behaviors viewed cumulatively with the remaining supported findings do not support a conclusion that she is unfit or forfeited her constitutionally-protected parental status to award guardianship and cease further hearings.

- The supreme court has recently stated in *In re A.J.*, 386 N.C. 409 (2024) that when a reviewing court determines the findings of fact are insufficient, the court must then examine whether there is sufficient evidence in the record that could support the necessary findings, and if so, vacate the trial court's order and remand for entry of a new order. Here, the court of appeals vacated and remanded for further findings and proceedings.

Custody; 7B-906.1(j) verifications

In re A.J.J., ___ N.C. App. ___ (July 2, 2025)

Held: Affirmed in Part, Vacated in Part, Remanded in Part

- Facts: The child at issue was adjudicated neglected and dependent. During permanency planning the trial court made findings of Mother's failure to make progress on her case plan, ceased reunification efforts with Mother, and placed the child with the child's paternal uncle and his girlfriend. At the final permanency planning hearing, the trial court ordered legal and physical custody of the child to the paternal uncle and his girlfriend (custodians), terminated jurisdiction, and transferred the proceeding to a Chapter 50 action. Mother appeals the permanency planning order, arguing the trial court failed to make the required verifications under G.S. 7B-906.1(j).
- Permanency planning orders are reviewed to determine "whether there is competent evidence in the record to support the findings [of fact] and whether the findings support the conclusions of law." Sl. Op. at 7 (citation omitted). A trial court can consider any evidence at a permanency planning hearing it finds to be "relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." Sl. Op. at 9 (citation omitted). Conclusions of law are reviewed de novo.
- G.S. 7B-906.1(j) requires that a trial court awarding custody to a non-parent must verify the proposed custodian (1) "understands the legal significance of the placement or appointment" and (2) "will have adequate resources to care appropriately for the juvenile." "The fact that the prospective custodian . . . has provided stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources[,]" but "does not *per se* compel a conclusion that the 'person receiving custody . . .understands the legal significance of the placement.' " G.S. 7B-906.1(j); Sl. Op. at 10 (citation omitted). Specific findings are not required but the record "must show the trial court received and considered reliable evidence that the guardian or custodian had adequate resources and understood the legal significance of custody or guardianship." Sl. Op. at 8 (citation omitted). Permanent custody orders that fail to contain the required verification must be vacated and remanded.
- The evidence shows the trial court verified that the custodians understood the legal significance of being awarded custody of the child, including social worker testimony, testimony of one of the custodians, and the GAL and DSS reports. "Evidence that a custodian understands the legal significance of the placement may consist of 'testimony from the potential [custodian] of a desire to take [custody] of the child . . . and testimony from the social worker that the potential [custodian] was willing to assume legal [custody]." Sl. Op. at 10 (citation omitted). Here, although the girlfriend did not testify, the uncle testified and spoke to the couple's willingness and ability to care for the child. The social worker recommended placement with the custodians and testified that the couple contacted DSS to communicate their desire to be assessed for placement, the social worker discussed DSS's recommendations for placement with the custodians prior to the final PP hearing, and that the couple agreed to DSS's recommendations. Supreme Court precedent holds that "when awarding custody of a juvenile to a custodial couple, the testimony of one of the custodians – without the testimony of the other – is sufficient where

the testifying custodian expresses the custodial couple understands the legal significance of the placement." Sl. Op. at 11 (citation omitted). Here, the uncle testified that he and his girlfriend could continue to meet the child's needs on a long-term basis, understood the recommendation by DSS, understood they would receive custody of the child; were willing and able to continue the child's counseling sessions, and were working on the child progressing in school. In addition, the GAL report noted the custodians had been caring for the child's medical and dental needs and had follow-up appointments scheduled for the child.

- The evidence shows the trial court verified the adequacy of the custodians' resources to care for the child. The findings show the child had been living with the custodians for more than six months at the time of the final PP hearing. The uncle and social worker testified to the couple's financial ability to meet the child's needs, including medical needs, and described the child's living space and food security at their home. Mother cites to precedent requiring evidence of income or employment. Those cases were decided before G.S. 7B-906.1(j) was amended (effective October 1, 2019) to state the fact that the prospective custodian or guardian has provided a stable placement for at least six consecutive months is evidence of their adequate resources. No evidence of the couple's employment or income was presented or required where evidence in the record sufficiently demonstrates the custodians have provided a safe home for the child for more than six months. Additionally, evidence described the child's living space and showed that the custodians are providing for and are financially able to continue to provide for the child's medical needs.

Eliminate Reunification

Required Findings

In re L.L., ___ N.C. ___ (December 13, 2024)

Held: Reversed

Dissent in part: Riggs, J., joined by Earls, J.

- Facts and procedural history: This case arises from the appeal of a permanency planning order awarding custody to petitioners, the child's foster parents. DSS filed a petition alleging the child was abused and neglected based on unexplained severe injuries the child sustained as a one-month-old while in the sole care of his parents. As a result of the severe injuries sustained, the child suffers from cerebral palsy, continued seizures, developmental delay, and other disabilities requiring full-time care at home and constant medical monitoring. After the petition was filed Mother moved to Georgia and entered a case plan with DSS that included participating in the child's medical care. The child was placed with a foster family, the petitioners, upon discharge from the hospital. The child was adjudicated abused and neglected. During permanency planning, the child's maternal grandfather, who lives in Georgia, expressed interest in custody. The GAL recommended the child remain with petitioners who provide and are committed to continuing the child's intensive care. The GAL also emphasized that the child becomes unresponsive if the foster mother is not present due to the child's limited cognitive abilities. DSS recommended placement with the grandfather, who testified that he is willing and able to care for the child with his partner. No party recommended reunification. Prior PPOs and the final PPO found Respondent-Mother never plausibly explained the severe injuries or participated in the child's medical care as ordered. The court granted legal and physical custody of the child to petitioners. Respondent-Mother appealed. In vacating and remanding the PPO, the court of appeals determined the findings of fact challenged by Respondent-Mother were supported by

the evidence but that the findings failed to satisfy the relevant statutory requirements to eliminate reunification as a permanent plan. Petitioners filed a petition for discretionary review. This summary discusses petitioners' argument that the court of appeals erred in holding the trial court failed to make sufficient findings under G.S. 7B-906.1(e), G.S. 7B-906.2(b), and G.S. 7B-906.2(d).

- Appellate courts interpret statutory provisions de novo. Dispositional choices of the trial court are reviewed for abuse of discretion.
- G.S. 7B-906.1(e) requires the trial court at each permanency planning hearing where the child is not placed with the parent to consider listed criteria and make written findings regarding those that are relevant. One of the considerations includes whether it is possible for the child to be placed with a parent in the next six months. The supreme court relied on its interpretation of identical language in G.S. 7B-1110(a), and stated "only relevant criteria require written findings" and "[t]he trial court has discretion to determine which factors were relevant." Sl. Op. at 11. Findings are not required for uncontested factors.
    - The trial court was not required to make written findings as to whether the child could be placed with Respondent-Mother in the next six months, as it was uncontested that the child could not, and such placement was never advocated by any party during the permanency planning process. The trial court did not abuse its discretion under G.S. 7B-906.1(e) by choosing not to make a written finding on this uncontested criterion. Even though not required, the trial court's consideration of the factor can be properly inferred from the findings, including that the parents were and continue to be unable to provide a plausible explanation for the child's severe injuries; the child's injuries were the result of nonaccidental trauma while in the exclusive care of his parents; and Respondent-Mother's failure to comply with her case plan that addressed the effect of the child's injuries.
- G.S. 7B-906.2(b) requires reunification be the child's primary or secondary plan unless the trial court "makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety."
- G.S. 7B-906.2(d) requires the court make written findings at each permanency planning hearing of factors "which shall demonstrate the degree of success or failure toward reunification." "[O]nly those factors which demonstrate the degree of success or failure toward reunification require written findings." Sl. Op. at 16. Written findings are not required for inapplicable factors. G.S. 7B-906.2(d) factors include whether the parent is (1) making reasonable progress on their case plan; (2) actively participating and cooperating with DSS and the GAL; (3) available to the court, DSS and the GAL; and (4) their actions are inconsistent with the health or safety of the child. Subsection (b) and (d)(4) are "synonymous" and "warrant[] the same analysis." Sl. Op. at 16.
    - *Author's Note*: This opinion holds findings on all four factors in G.S. 7B-906.2(d) are not required, which deviates from prior appellate holdings. Further, it holds a finding under G.S. 7B-906.2(b) is the same as a finding under G.S. 7B-906.2(d)(4), which is also a departure from prior appellate holdings.
- Written findings do not need to track the statutory language verbatim but "they must make clear that the trial court considered the evidence in light of whether reunification would be

clearly unsuccessful or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." Sl. Op. at 15 (citation omitted).

- The trial court satisfied the requirements of G.S. 7B-906.2(b) and G.S. 7B-906.2(d)(4). Findings demonstrating that reunification is inconsistent with the health or safety of the child include the child's severe injuries suffered from abuse while in the parents' care and that Respondent-Mother has never plausibly explained the cause of the injuries, was charged with felony child abuse, and failed to comply with trial court orders to participate in the child's medical care to become familiar with the child's extreme needs. "[T]his Court has repeatedly held that a parent's failure to offer an honest explanation for his or her child's injuries while the child was in that parent's sole custody can satisfy N.C.G.S. 7B-906.2(b) and 7B-906.2(d)(4)." Sl. Op. at 17. Therefore, the findings that Respondent failed to take responsibility for the severe abuse of the child while in Respondent's care was sufficient. The court's further findings "amount to more than enough to support the conclusion . . ."Sl. Op. at 18.
- Findings in the DSS report incorporated by reference into the PPO chronologically list all contact between the parents with the trial court, DSS, and the GAL, and detail Respondent-Mother's participation with the case plan. "When trial courts incorporate documents by reference, factual findings contained in those documents – but not their opinions or recommendations – become the findings of the trial court's order." Sl. Op. at 19 (citation omitted). The incorporated findings are sufficient to satisfy the requirements of G.S. 7B-906.2(d)(2) and (d)(4).

- Dissent: The trial court did not meet the statutory requirements to eliminate reunification under G.S. 7B-906.2(b) or (d) and the PPO should be remanded for further findings. The plain language of G.S. 7B-906.2(d) requires the court to make written findings as to *each* factor. G.S. 7B-906.2(b) and 7B-906.2(d)(4) are independent determinations that require *separate* findings. Additionally, information in the DSS and GAL reports do not satisfy the trial court's statutory obligation to make written findings.

In re N.M.W., ___ N.C. App. ___ (May 21, 2025)

Held: Affirmed in Part; Vacated in Part; and Remanded

Dissent in Part, J, Stroud

- Facts: The two siblings at issue were separately adjudicated neglected and dependent based on domestic violence, mental health, and housing concerns. In both child's proceedings, custody was continued with DSS and the court adopted primary and secondary plans of reunification and adoption. The parents made progress on their case plans, including moving into a suitable home, such that the children were returned to Mother and the younger child's Father in a trial home placement. The trial home placement was suspended after Mother voluntarily placed the children with a former foster parent following alleged domestic violence incidents with the younger child's Father. Mother and Father were ordered to re-engage in anger management, domestic violence, and couples counseling. Mother and Father were eventually evicted from their home after live marijuana plants were found in a shed on the property. The children's primary plans were subsequently changed to adoption with secondary plans of reunification and suspended visitation. DSS filed to terminate both parents' parental rights. The court ceased reunification efforts at a later permanency planning hearing. Mother's rights were terminated as

to both children and Father's rights were terminated as to the younger child. Mother appeals the PPO and TPR orders arguing that the trial court failed to make the required findings to support its conclusion to cease reunification efforts. Father's appeal of the TPR order is summarized separately.

- Orders ceasing reunification efforts are reviewed "to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." Sl. Op. at 11 (citation omitted).
- G.S. 7B-906.2(b) mandates that reunification be a primary or secondary plan "unless the court made findings under G.S. 7B-901(c) or makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." G.S. 7B-906.2(b).
- G.S. 7B-906.2(d) requires the court make written findings at each permanency planning hearing of factors "which shall demonstrate the degree of success or failure toward reunification." "[O]nly those factors which demonstrate the degree of success or failure toward reunification require written findings." Sl. Op. at 12*, citing In re L.L.*, 386 N.C. 706, 716 (2024). G.S. 7B-906.2(d) factors include whether the parent is (1) making reasonable progress on their case plan; (2) actively participating and cooperating with DSS and the GAL; (3) available to the court, DSS and the GAL; and (4) their actions are inconsistent with the health or safety of the child.
- The trial court failed to make the statutory findings and supported conclusions which demonstrate the degree of success or failure toward reunification under G.S. 7B-906.2, including whether Mother remained available to DSS and the GAL, whether Mother was acting inconsistent with her parental rights, and whether Mother was acting inconsistent with the health or safety of the juvenile. The permanency planning order and termination order are vacated and the case remanded for a new permanency planning hearing.
- Dissent: The PPO and TPR order should be affirmed. Supreme court precedent states that "incomplete findings of fact in the cease reunification order may be cured by findings of fact in the termination order." Dissent Sl. Op. at 2. The detailed findings in both orders taken together show that the trial court properly considered all of the factors required under G.S. 7B-906.2 to support a conclusion to cease reunification efforts. Findings are not required to track the statutory language verbatim. Findings in the PPO and TPR order addressed Mother's availability to DSS, the GAL, and the court throughout the case; Mother's engagement in services over the years; that Mother had prior involvement with DSS in two other states to address the same recurring domestic violence and mental health concerns; and Mother had failed to demonstrate any benefit from the near continuous services provided over the life of the case. Further, supreme court precedent requires that the case be remanded for the trial court to make additional findings rather than vacated, absent Mother showing material and prejudicial error by the trial court.

In re Q.J.P., ___ N.C. App. ___ (October 15, 2024)

Held: Vacated and Remanded; Remanded

- Facts: Mother's three children, each of whom have different fathers, were adjudicated neglected based on domestic violence incidents between Mother and the youngest child's father (father) and Mother's violations of the safety plan established with DSS. Initial

permanency planning for the two older children set their primary plans as guardianship and secondary plans as reunification with their fathers (the court notes that one of the older children's PPO has contradictory findings as to whether adoption or guardianship was identified as the child's primary plan but, importantly, the order is clear that reunification with Mother was not included as a permanent plan). The court set the younger child's primary plan as adoption and secondary plan as guardianship. Mother timely appealed the PPOs as to all three children, arguing that the court did not make the statutory findings required to eliminate reunification as a permanent plan.

- An appellate court reviews an order ceasing reunification efforts to determine whether the court made appropriate findings, whether the findings are based upon credible evidence, and whether the findings support the court's conclusions. Dispositional conclusions of law are reviewed for abuse of discretion. Violations of statutory mandates involve questions of law and are reviewed de novo.
- G.S. 7B-906.2(b) requires the court to adopt concurrent plans at each permanency planning hearing which must include reunification as the primary or secondary plan unless the court makes specific written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety. In reaching either determination to eliminate reunification as a permanent plan, the court must make written findings as to each of the factors under G.S. 7B-906.2(d): "(1) Whether the parent is making adequate progress within a reasonable period of time under the plan[;] (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile[;] (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile[;] and (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile."
- The court failed to make written findings required to eliminate reunification as a permanent plan in the PPOs for the two older children. The court made no written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety as required by G.S. 7B-906.2(b) or written findings required by G.S. 7B-906.(d)(3) and (4).The orders as to the two older children are vacated and remanded for the district court to make those findings. The court was also instructed on remand to remedy contradictory findings regarding one of the older children's permanent plans.
- The court properly made a written finding that reunification would be inconsistent with the youngest's child's health and safety under G.S. 7B-906.2(b) but failed to make a written finding regarding Mother's availability to the court, DSS and the GAL required by G.S. 7B-906.2(d)(3). However, citing similar circumstances in *In re L.R.L.B.*, 377 N.C. 311 (2021) (appeal of a TPR order), where the PPO does not include written findings as to the parent's availability under G.S. 7B-906.2(d)(3) but includes findings on the ultimate issue of eliminating reunification from the permanent plan, the remedy is to remand to the district court for entry of additional findings pursuant to G.S. 7B-906.2(d)(3). "[N]o particular finding under G.S. 7B-906.2(d)(3) is required to support the [district] court's decision." Sl. Op. at 13, *citing In re L.R.L.B.*, 377 N.C. at 325-36. If, on remand, the court's findings as to Mother's availability does not alter its ultimate finding under G.S. 7B-906.2(b), the court can amend the order to include the additional findings.

Cease reasonable efforts; Guardianship

In re M.L.H., ___ N.C. App. ___ (June 4, 2025)

Held: Affirmed

- Facts: The child at issue was adjudicated neglected based on Mother's inability to provide proper care and supervision and unsafe living conditions. The child was placed with foster parents and continued to reside in that placement throughout the case. Mother relinquished her parental rights to the child. After court-ordered DNA testing, the father's paternity was established by the court Father was incarcerated in Illinois and participated in permanency planning hearings remotely. The court adopted a primary plan of reunification and a secondary plan of guardianship with the foster parents. Permanency planning findings showed Father was incarcerated in Illinois but was scheduled and ultimately released on parole; Father had plans to live with a relative and desired to reunite with the child; the child was thriving living with the foster parents; and the foster parents were the only home the child had ever known over the three-year duration of the proceedings. Ultimately the trial court awarded guardianship to the child's foster parents after Father voluntarily returned to incarceration rather than remain on parole. Father filed written notice of appeal. Father's counsel filed a no-merit brief stating the single issue for appellate review was whether the court abused its discretion by awarding guardianship to the foster parents. Father did not submit any written arguments.
- Orders ceasing reunification efforts are reviewed "to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." Sl. Op. at 8 (citation omitted). Dispositional decisions are reviewed for an abuse of discretion.
- To eliminate reunification, findings under G.S. 7B-906.2(b) and (d) are required. "The trial court exercises discretion when making written findings under section 7B-906.2(b) but is required to make written findings for the factors that demonstrate the degree of a parent's progress, or lack thereof, toward reunification." Sl. Op. at 9 (*citing In re L.L.*, 386 N.C. 706 (2024)).
- The trial court did not abuse its discretion in ceasing reunification efforts with Father. The trial court concluded continued reunification efforts would be clearly futile and unsuccessful. Its conclusion was supported by required findings under G.S. 7B-906.2(d)(1)-(4) demonstrating Father's lack of progress toward reunification. Those findings include that Father made inadequate progress toward his case plan within a reasonable period of time and failed to actively participate in the plan or cooperate with the GAL; Father was not consistently available to the GAL though made himself available to the court; Father acted inconsistently with the child's health and safety in his decision to return to incarceration instead of continuing to work on his case plan; and that continued reunification efforts were inconsistent with the child's need for a safe and permanent home since placement with Father was not possible within six months of the PP hearing.
- The trial court properly considered Father's incarceration. A parent's incarceration alone cannot support the trial court's decision to cease reunification with the parent. "The degree to which a parent's incarceration supports the trial court's decision to cease reunification depends on the facts and circumstances of each case, including the length of incarceration and . . . whether it was voluntarily undertaken." Sl. Op. at 9. Here, Father's choice to return to incarceration instead of continuing to work towards reunification with the child "demonstrated a lack of genuine commitment to reunification and was the ultimate manifestation of neglect." Sl. Op. at 11. Father's decision to return to incarceration created the barriers that prevented him from achieving his case plan goals and is a proper consideration of the court under the circumstances.

- The trial court did not abuse its discretion by awarding guardianship of the child to the foster parents. Findings show the child had lived with the foster parents since infancy; had never met Father; was thriving and meeting all developmental milestones; and had only known the foster parents' home. The foster parents testified that they understood the legal significance of guardianship and that they have adequate resources to care for the child in compliance with G.S. 7B-906.1(j). The foster parents further testified that they are committed to facilitating a relationship between the child and Father. These findings show the court awarded guardianship based on the child's best interests.

Terminate Jurisdiction

Chapter 50 transfer

In re B.E., ___ N.C. App. ___ (November 5, 2024)

Held: Dismissed

- Facts: Mother appeals neglect adjudication and disposition orders for her six children. At the end of the dispositional orders ordering custody to the children's respective fathers, the trial court noted the cases should be transferred to a Chapter 50 proceeding but retained jurisdiction "[u]ntil [the case] is converted into a Chapter 50 custody order[.]" Sl. Op. at 7. Mother argues the trial court erred by transferring the cases to Chapter 50 actions without making required written findings under G.S. 7B-911(c).
- Whether a trial court followed a statutory mandate is a question of law reviewed de novo.
- G.S. 7B-911(c) allows a court to terminate jurisdiction in a juvenile proceeding and transfer the case to a Chapter 50 civil action by making statutorily required findings of fact, including whether there is a continued need for State intervention on the juvenile's behalf through juvenile court. The court of appeals has held that this statutory requirement "applies only when a trial court *enters* a civil custody order under [G.S. 7B-911(c)] and terminates the court's jurisdiction in a juvenile proceeding." Sl. Op. at 13 (citations omitted) (emphasis in original).
- Mother does not appeal from a civil custody order for which G.S. 7B-911(c) applies. The plain language of G.S. 7B-911(c) requires the court to make necessary findings when entering a Chapter 50 order and here, the court did not terminate jurisdiction or enter a Chapter 50 custody order. Mother's assignment of error is dismissed.

In re A.J.J., ___ N.C. App. ___ (July 2, 2025)

Held: Affirmed in Part, Vacated in Part, Remanded in Part

- Facts: The child at issue was adjudicated neglected and dependent. The trial court ultimately granted legal and physical custody of the child to the child's paternal uncle and girlfriend (custodians), terminated jurisdiction, and transferred the case to a Chapter 50 proceeding. Mother appeals, arguing the trial court erred in transferring the juvenile proceeding to a Chapter 50 action because (1) the court failed to make required findings under G.S. 7B-911(c)(1)-(2) and G.S. 50-13.2(a) in the permanency planning order and Chapter 50 order and (2) the findings of fact are unsupported by the evidence, insufficient, and conclusory.
- Trial court orders are reviewed de novo for statutory compliance.
- G.S. 7B-911(c)(1) requires the trial court to "[m]ake findings and conclusions that support the entry of a custody order in an action under Chapter 50 . . ." G.S. 50-13.2 requires the trial court to award custody "to such person . . . as will promote the interest and welfare of the child." Sl. Op. at 25. The trial court must consider and make written findings of relevant factors under G.S. 50-13.2(a) to support its custody determination. "These findings may concern physical, mental, or financial fitness or any other factors brought out by the evidence and relevant to the issue of

the welfare of the child." Sl. Op. at 26 (citation omitted). Findings may not be conclusory and failure to include "detailed findings of fact from which an appellate court can determine that the order is in the best interests of the child . . ." is a fatal defect. *Id.*

- The trial court's findings support its conclusion that custody with the uncle and his girlfriend were in the child's best interests. The findings were supported by competent evidence and included Mother's mental health history, lack of suitable housing, failure to make progress on her case plan and consistently visit with the child; the custodians' ability and desire to provide for the child; and the child's desire to remain in the placement.

- G.S. 7B-911(c)(2) requires the trial court to make a finding that "there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding." The court is not required to use the exact statutory language.
  - The trial court's PPO findings satisfy G.S. 7B-911(c)(2)(a) regarding State intervention. The trial court ultimately found that there is no longer a need for the juvenile court or DSS to remain involved with the family, ceased reasonable efforts toward reunification, and noted that the child's plan of custody had been achieved. The court ordered its jurisdiction terminated, entered a separate Ch. 50 custody order, and released the attorneys and child's GAL. The trial court's finding that state intervention is not required is supported by the record, which addressed the custodians and Mother working together regarding visitation and DSS testifying there was no reason for the court to remain involved.

Appeal

In re G.B.G., ___ N.C. App. ___ (February 19, 2025)

Held: Dismissed in Part; Affirmed in Part

- Facts: DSS filed petitions alleging two children neglected and dependent. The trial court adjudicated the older child neglected and dismissed the petitions as to the younger child as neglected and dependent and the older child as dependent. DSS timely filed its notice of appeal, signed by the social worker supervisor and DSS counsel. Respondents motioned to dismiss the appeal for failure of the DSS director to sign the notice of appeal. DSS alternatively petitioned for a writ of certiorari (PWC). Respondents also moved to strike the GAL's brief for failure to timely file, arguing the GAL was standing in the shoes of DSS.
- Appellate Rule 3 provides that a party entitled to appeal under G.S. 7B-1001(a) must file notice of appeal in the time and manner set out in G.S. 7B-1001(b) and (c). Failure to comply with Appellate Rule 3 is a jurisdictional defect requiring dismissal of the appeal. G.S. 7B-1001(c) requires the notice of appeal to be signed by the appealing party and their counsel. G.S. 108A-14(b) authorizes the DSS director to delegate to their staff the authority to act as the director's representative. Here, DSS's notice of appeal was not signed by the director, and instead was signed by the social worker supervisor as "Supervisor and Authorized Representative of the [DSS director]" and DSS counsel. The supervisor's signature is authorized by G.S. 108A-14(b) and is sufficient to confer jurisdiction pursuant to Appellate Rule 3 and G.S. 7B-1001. Therefore, Petitioner's PWC is dismissed as moot.
  - *Author's Note*: Appellate Rule 3(b)(2) refers to Appellate Rule 3.1, which applies to appeals of A/N/D and TPR orders.

- The court denied Respondents' motion to strike the GAL's brief since the GAL did not appeal. The GAL is a party to the appeal and, absent reference to violation of binding rules or authority, the court will not strike its brief.

Appealable Order

In re Q.J.P., ___ N.C. App. ___ (October 15, 2024)

Held: Vacated and Remanded; Remanded

- Facts: Initial permanency planning for Mother's three children, each of whom had different fathers, established permanent plans that did not include reunification with Mother. Reunification with their respective fathers was established as the secondary plan for the two older children, while the younger child's permanent plans included adoption and guardianship. Mother filed a notice of her intent to appeal the PPOs that eliminated reunification with her. Mother then filed notices of appeal of the PPOs. DSS and the GAL for the children argue the orders as to the two older children are not appealable since reunification with the fathers were included as a secondary permanent plan.
- Matters of statutory interpretation are reviewed de novo.
- G.S. 7B-1002 provides that a parent who is a nonprevailing party is a proper party for appeal from an order permitted under G.S. 7B-1001. Appellate precedent holds that the right to appeal belongs to an aggrieved party and indicates "that a parent is an aggrieved party if his or her rights have been 'directly and injuriously affected' by a district court's action.' " Sl. Op. at 10 (citation omitted). G.S. 7B-1001(a)(5) allows for the direct appeal of a permanency planning order that eliminates reunification by either a parent who is a party and timely preserves their right and files an appeal, or a party who is a guardian or custodian with whom reunification is not a permanent plan. G.S. 7B-101(18c) defines reunification as the "[p]lacement of the juvenile in the home of either parent or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order." Sl. Op. at 7-8.
- Mother's appeal of the permanency planning orders for the two older children is proper under G.S. 7B-1001(a)(5). Though reunification with their fathers was not also eliminated, the PPOs eliminated reunification with the children removed from Mother's home as a permanent plan. Mother is a party to the proceeding and timely preserved her right to appeal and appealed the PPOs that have a direct and injurious effect on Mother. The argument that the placement of the clause "from whose home the child was removed by court order" in G.S. 7B-101(18c) suggests it explicitly applies to a guardian or custodian and not a parent, such that Mother has no right to appeal, would led to an absurd result. That statutory interpretation "would require [the court] to presume that the General Assembly intended to provide a *greater right of appeal* to a guardian or custodian of a child from whose home the child was removed than to a similarly situated parent." Sl. Op. at 8 (emphasis in original). Mother's right to appeal is consistent with one of the purposes of the Juvenile Code to balance a parent's constitutional rights and the best interests of the child. The court did not address whether a parent who did not have physical custody of the child when the child was removed from the home of another parent, guardian or custodian would have the right of direct appeal.

In re G.B.G., ___ N.C. App. ___ (February 19, 2025)

Held: Dismissed in Part; Affirmed in Part

- Facts: DSS filed petitions alleging two children neglected and dependent. The trial court adjudicated the older child neglected and entered an interim dispositional order and dismissed the petitions as to the younger child as neglected and dependent and the older child as dependent. DSS filed its notice of appeal for the dismissals of the adjudications.
- The court declined to review the dismissal of the older child's dependency allegation. G.S. 7B-1001(a)(3) provides for the right to appeal an initial disposition order and the adjudication order upon which it is based. "[T]here is no right of immediate appeal from an interlocutory order, 'which does not dispose of the case . . .' " Sl. Op. at 8. Here, the court entered an adjudication and interim disposition order, which included a date for the dispositional hearing, for the older child. This temporary dispositional order is interlocutory. The adjudication and interim dispositional order is not appealable under G.S. 7B-1001(a)(3). The portion of the appeal challenging the adjudication of the older child is dismissed without prejudice.

Notice of appeal; Timing

In re N.N., ___ N.C. App. ___ (October 15, 2024)

Held: Affirmed in Part; Vacated and Remanded in Part

- Facts: Father filed his notice of appeal of an adjudication and initial disposition order thirty-one days after entry of the order. Father later filed a petition for writ of certiorari seeking review of the order.
- Notice of appeal of an adjudication and disposition order entered under Subchapter I of the Juvenile Code must be filed within thirty days pursuant to Appellate Rule 3. Appellate Rule 27 extends the deadline until the end of the next business day when that deadline falls on a weekend or legal holiday that the courthouse is closed.
    - *Author's Note*: The opinion references Appellate Rule 3; however, appeals of abuse, neglect, and dependency orders are governed by G.S. 7B-1001 and Appellate Rule 3.1. The thirty-day period is the same as that in Appellate Rule 3.
- Father's notice of appeal was timely filed. The order was entered October 27, 2023, whereby the thirtieth day thereafter was November 26, 2023 – a Sunday. Under Rule 27, the deadline was extended to Monday, November 27, 2023, the thirty-first day following entry of the order and the date Father filed the notice. The court therefore dismissed Father's PWC as moot.

Termination of Parental Rights

Subject Matter Jurisdiction

Underlying A/N/D Case; G.S. 7B-1101; Prior pending action doctrine; Transfer venue

In re S.W., ___ N.C. App. ___ (March 5, 2025)

Held: Affirmed

- Facts: Petitioner is the guardian of the child at issue. In an underlying juvenile proceeding in Cumberland County, the child was adjudicated dependent and Petitioner was appointed the child's guardian. The Cumberland trial court waived further review hearings and retained jurisdiction. Petitioner filed to terminate the parental rights (TPR) of both parents in Brunswick County where the child resided with Petitioner. Mother and the GAL filed a motion to dismiss the TPR petition arguing Brunswick County lacked subject matter jurisdiction because the

Cumberland County court had exclusive, original jurisdiction and it was a prior pending action. The GAL also filed a motion to transfer venue to Cumberland County. After holding a hearing, the Brunswick court denied each motion. The GAL appeals arguing (1) the trial court erred in denying the motions to dismiss the Petition and hold the matter in abeyance, and (2) the trial court abused its discretion in failing to transfer venue from Brunswick to Cumberland County.

- There is no right to immediate appeal from interlocutory orders. The trial court's order denying the GAL's motion to dismiss the petition for lack of subject matter jurisdiction is interlocutory and not subject to appellate review. The court of appeals treated the record and the GAL's brief as a petition for writ of certiorari with respect to the jurisdiction issue and granted the writ.
- Appellate courts review a motion to dismiss de novo to determine whether "the allegations in the complaint are sufficient to state a claim upon which relief may be granted." Sl. Op. at 7 (citation omitted). "Whether a court has subject matter jurisdiction is a question of law, reviewed de novo on appeal." Sl. Op. at 8 (citation omitted).
- The trial court has exclusive, original jurisdiction over any case involving a child who is alleged to be abused, neglected, or dependent and such jurisdiction continues until terminated by court order or until the juvenile reaches majority or is emancipated, whichever occurs first. G.S. 7B-200(a), 7B-201(a). Separately, a trial court has "exclusive, original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in . . . the district at the time of filing of the petition or motion." G.S. 7B-1101. The jurisdictional requirements for TPRs are distinct and "although the Juvenile Code permits [the] petitioners to seek termination in the same district court that is simultaneously adjudicating an underlying abuse, neglect, or dependency petition, the statutory language does not mandate filing in a single court." Sl. Op. at 9 (citation omitted). As long as the requirements of G.S. 7B-1101 are met, a district court in one county has jurisdiction even if there is an underlying abuse, neglect, or dependency action pending in another county. If a TPR petition had been filed in Cumberland County, the requirements of G.S. 7B-1101 would have to be established for Cumberland County to have jurisdiction over the TPR because "jurisdiction does not continue from the underlying juvenile proceeding to a subsequent termination proceeding." Sl. Op. at 10 (citation omitted).
- The Brunswick County court had exclusive, original jurisdiction over the TPR matter. The requirements of G.S. 7B-1101 were met as the child was residing in Brunswick County at the time the TPR petition was filed. The underlying matter governing the child's dependency adjudication and guardianship is irrelevant for jurisdictional purposes. The court rejected the GAL's argument that the Cumberland court was required to terminate its jurisdiction in order for the TPR to proceed. The GAL cited to the court's holding in a Chapter 50 civil custody case, *McMillian v. McMillian*, 267 N.C. App. 537 (2019), where the custody proceedings were automatically stayed when the trial court retained jurisdiction under Chapter 7B. Here, the underlying juvenile proceedings do not have the affect of staying the TPR action, as would be the case for a Chapter 50 action under G.S. 50-13.1 and *McMillian*.
- "[W]here a prior action is pending between the same parties for the same subject matter in a court within the state having like jurisdiction, the prior action serves to abate the subsequent action." Sl. Op. at 12 (citation omitted). The central determination for purposes of abatement by reason of the pendency of the prior action is whether "the two actions present a substantial identity as to parties, subject matter, issues involved, and relief demanded[.]" Sl. Op. at 13

(citation omitted). Here, there is no basis for the application of the prior action doctrine. The subject matter, issues, and relief demanded are distinct. The underlying dependency action concerns the child's guardianship and their appointment, while the TPR action involves and seeks to terminate all parental rights as to the child.

- Appellate courts review a trial court's determination of whether to transfer venue for an abuse of discretion. G.S. 7B-900.1(a) allows for the court to transfer venue to a different county at any time after adjudication if it finds that the forum is inconvenient, transfer is in the best interests of the juvenile, and the rights of the parties are not prejudiced by the change in venue. G.S. 1-83 allows for a change in venue "[w]hen the conveniences of witnesses and the ends of justice would be promoted by the change." Therefore, an abuse of discretion occurs when justice demands the change of venue or a "failure to grant the change of venue will deny the movant a fair trial." Sl. Op. at 15 (citation omitted).
- The trial court did not abuse its discretion in denying the GAL's motion to transfer venue. There is no showing that justice demanded a change of venue or that a failure to grant a change of venue would deny the GAL a fair trial. Travel concerns between the counties is insufficient. Findings that the child lived in Brunswick County for at least two years prior to the petition and all of the witnesses resided in Brunswick County support the trial court's denial of the motion to transfer. The trial court was not required to make any findings under G.S. 7B-900.1 or G.S. 1-83. The findings under G.S. 7B-900.1 are only required if the trial court decides to transfer venue, not when denying a motion to transfer venue. Similarly, G.S. 1-83 does not provide for what the trial court must consider when denying a motion to transfer venue.

Pleading: Name of the juvenile; G.S. 7B-1104(1)

In re A.J.B., ___ N.C. App. ___ (March 19, 2025)

Held: Vacated and Remanded

Dissent, Woods, J.

- Facts: Mother filed the petition to terminate Father's rights. The child's GAL moved to dismiss the entire petition for noncompliance with G.S. 7B-1104(1) as the petition did not state the child's full legal name as it appeared on his birth certificate but instead identified the child by his first name, middle initial, and last name. Mother failed to provide the child's birth certificate or other documentation verifying the child's name. The trial court ultimately dismissed the petition for lack of subject matter jurisdiction for noncompliance with G.S. 7B-1104. Mother appeals.
- Appellate courts review misapprehensions of law and subject matter jurisdiction de novo.
- G.S. 7B-1104(1) requires that the TPR petition "with respect to [unknown] facts[,] . . . state . . . [t]he name of the juvenile as it appears on the juvenile's birth certificate . . . ." Sl. Op. at 3. No appellate cases have addressed whether noncompliance with G.S. 7B-1104(1) deprives the trial court of subject matter jurisdiction. The court of appeals notes that"[i]t is clear that our Supreme Court jurisprudence is moving away [from] depriving trial courts of subject matter jurisdiction based on technical noncompliance in pleadings." Sl Op. at 6. The court of appeals previously interpretated a party's noncompliance with G.S. 7B-1104(5) in *In re T.M.*, 182 N.C. App. 566, 571, *aff'd per curiam*, 361 N.C. 683 (2007), and extends that interpretation to review noncompliance with G.S. 7B-1104(1). Technical noncompliance with G.S. 7B-1104(1) will not deprive the trial court of subject matter jurisdiction unless the party alleging lack of subject matter jurisdiction shows that the petitioner's noncompliance was prejudicial. Prejudice cannot

be shown where the statutory requirements are otherwise met in the record as a whole. A party cannot consent to subject matter jurisdiction. Father's responsive pleadings are immaterial and cannot confer the trial court's subject matter jurisdiction.

- Mother failed to comply with G.S. 7B-1104(1). The petition stated the child's first and last name and middle initial; did not state the child's middle name; and did not make a statement that the name stated in the petition matches the child's birth certificate. The record does not contain the child's birth certificate or any other information that the trial court could use to verify the child's identity and name.
- The trial court did not find Mother's noncompliance with G.S. 7B-1104(1) prejudiced Father such that dismissal of the petition was required. Father did not show prejudice and does not allege that the child has not been properly identified in the petition. The trial court's order dismissing the petition for lack of subject matter jurisdiction is vacated and remanded for the trial court to determine whether Father was prejudiced.
- Dissent: Mother's failure to include the child's full legal name in the petition as it appears on the child's birth certificate is a jurisdictional defect requiring dismissal of the petition. G.S. 7B-1104(1) mandates that the petitioner allege specific language and therefore examination of substantial compliance or prejudice is improper since noncompliance with the statutory mandate is fatal to the validity of the petition. This case is distinguishable from the facts of *In re T.M.* in that Mother presented no evidence from which the trial court could conclusively identify or verify the child's full legal name as it appears on the child's birth certificate to otherwise comply with the statutory requirement. Additionally, if examination of prejudice were appropriate, the juvenile is the proper party against whom to determine whether Mother's noncompliance was prejudicial. The GAL representing the child moved to dismiss the petition based on Mother's noncompliance, not Father.

Pleading

Sufficiency; Ineffective assistance of counsel

In re M.B.S., ___ N.C. App. ___ (October 1, 2024)

Held: Reversed in part

- Facts: Mother appeals order terminating her parental rights. In this private TPR action, the paternal grandmother of the child filed a petition to terminate Mother and Father's parental rights. Petitioner voluntarily dismissed the petition and filed an amended petition. The court adjudicated four TPR grounds and determined termination to be in the child's best interest. Mother argues the amended petition was insufficient to put her on notice of the grounds alleged and that she received ineffective assistance of counsel based on her counsel's failure to motion to dismiss the deficient petition.
- G.S. 7B-1104(6) requires that a TPR motion allege sufficient facts to warrant a determination that a ground exists. Although the factual allegations do not need to be "exhaustive or extensive, they must be sufficient to put a party on notice as to what acts, omission, and conditions are at issue." Sl. Op. at 6 (citation omitted).
- The alleged failure to comply with G.S. 7B-1104(6) is an issue that must be preserved for appellate review by making a timely motion to the trial court to dismiss the deficient petition. Mother's counsel failed to make a Rule 12(b)(6) motion prior to or during the TPR hearing and therefore the issue was not properly preserved for appeal.

- A claim of ineffective assistance of counsel (AIC) requires a respondent to show that (1) the counsel's performance was deficient and (2) the deficiency deprived respondent of a fair hearing such that there is a reasonable probability that there would have been a different result in the proceeding but for counsel's deficiency. Respondent Mother received IAC. Here, the TPR petition alleged five grounds: neglect; willfully leaving the child in placement outside the home for more than 12 months without showing reasonable progress; willfully failing to pay a reasonable portion of the cost of care, support, and education; dependency; and abandonment. G.S. 7B-1111(a)(1), (2), (4), (6), (7). The allegations consisted of bare recitations of the statutory grounds to TPR and did not incorporate any prior orders stating sufficient facts to support the grounds, distinguishing the case from *In re Quevedo*, 106 N.C. App. 574 (1992). The amended petition was insufficient to put respondent Mother on notice as to what acts, omissions, or conditions were at issue and the trial court would have erred in denying Mother's motion to dismiss had her counsel made the motion. Adopting the reasoning stated in *In re A.X.M.*, 264 N.C. App. 637 (2019) (unpublished), the court of appeals determined that counsel's failure to move to dismiss the petition prejudiced respondent as the trial court would have dismissed the petition or erred in failing to do so, clearly changing the result of the proceeding.

Appointment of Counsel

Withdrawal; Waive and Forfeit

In re N.M.W., ___ N.C. App. ___ (May 21, 2025)

Held: Affirmed in Part; Vacated in Part; and Remanded
Dissent in Part, J, Stroud

- Facts: Father appeals the termination of his parental rights to one child and argues he was deprived of his right to counsel. Father was appointed counsel twice in the underlying neglect and dependency proceeding. Both counsels properly withdrew in those proceedings due to harassment or threatening behavior by Father. Father waived his right to appointed counsel and proceeded pro se in the underlying matter. Upon commencement of the TPR proceedings, Father was again appointed counsel who later withdrew due to irreconcilable differences. Father requested and was again appointed counsel. Father's second appointed counsel in the TPR proceedings motioned to withdraw at the TPR hearing. The court allowed the motion and Father proceeded pro se.
- "G.S. 7B-1101.1(a) mandates parents to be represented by counsel during termination of parental rights actions, unless findings and supported conclusions show the parent has forfeited or waived such right." Sl. Op. at 7, *citing* G.S. 7B-1101.1(a). An attorney may withdraw after making an appearance with "(1) justifiable cause, (2) reasonable notice [to the client], and (3) the permission of the court." Sl. Op. at 7 (citation omitted). A court has no discretion and must grant the party affected a reasonable continuance or deny the attorney's motion for withdrawal where the attorney fails to give the client prior notice of their intent to withdraw. For waiver of a parent's right to counsel to be valid, the court must examine the parent and make findings of fact to demonstrate that the waiver is knowing and voluntary. "A parent may waive representation by counsel if findings and conclusions support his actions constitute 'egregious dilatory or abusive conduct.' " Sl. Op. at 8 (citation omitted).
- Findings show Father knowingly and voluntarily waived his right to counsel. Findings include Father's pattern of hostile and threatening behaviors towards his previously appointed counsels,

DSS, and the GAL which ultimately caused prior appointed counsel to move to withdraw. In motioning to withdraw at the TPR hearing, Father's second appointed counsel informed the trial court of Father's harassment and verbal abuse of counsel and their staff which once required staff to call the police. The trial court found Father's actions appeared to be a stalling tactic and constituted consent to counsel's withdrawal. The court conducted a colloquy to determine if Father could proceed pro se in the TPR proceedings. Father confirmed he wanted to proceed pro se, was prepared to proceed without counsel, and executed a written waiver. Further, Father's abusive conduct also presumably constituted forfeiture of counsel. TPR affirmed.

In re A.K.H., ___ N.C. App. ___ (November 5, 2024)

Held: Affirmed

- Facts: Father was appointed counsel during the child's neglect and dependency proceedings and later retained private counsel. After at permanency planning hearing, Father consented to the withdrawal of his retained counsel. Father did not participate in later permanency planning hearings or communicate with DSS. Father was appointed new counsel following the filing of the petition to terminate his parental rights (TPR) from which Father appeals. Father's rights were terminated based on three grounds. Father appeals, arguing the trial court denied his right to counsel.
- Whether a parent has forfeited or waived their right to counsel is a conclusion of law reviewed de novo.
- G.S. 7B-1101(a) mandates a parent be represented by counsel during TPR proceedings unless the parent has forfeited or waived their right to counsel. Counsel may withdraw for justifiable cause with permission of the court and reasonable notice to their client. If no notice has been provided, the court must deny the motion to withdraw or grant a reasonable continuance. A parent forfeits their right to counsel when "their actions rise to the level of 'egregious dilatory or abusive conduct.' " Sl. Op. at 8 (citation omitted).
- Father "waived and forfeited his right to counsel." Sl. Op. at 10. Father was advised of his right to counsel and elected and was awarded appointed counsel. He later retained his own private counsel who made an appearance in the neglect and dependency case. Father then consented to the withdrawal of his retained counsel. Though previously involved in the case, thereafter Father did not participate in permanency proceedings, request new appointed counsel, engage in his case plan, or communicate with DSS or the child's GAL until years later when the TPR petition was filed and he was appointed new counsel. Citing *In re T.A.M.*, 378 N.C. 64 (2021), a parent's repeated failure to communicate with appointed counsel, failure to attend multiple hearings, and avoidance of communication with DSS and other parties delay juvenile proceedings, affect judicial efficiency, and impede the overall objective of the Juvenile Code to achieve permanency for the child at the earliest possible age.

Withdrawal; Notice to parent

In re D.E.-E.Y., ___ N.C. App. ___ (February 5, 2025)

Held: Vacated and Remanded

Dissent, Stading, J.

- Facts: Mother appeals order terminating her parental rights (TPR), arguing the court abused its discretion in allowing her attorney's motion to withdraw at the TPR hearing. Mother's counsel was appointed during the underlying abuse, neglect, and dependency proceedings for Mother's three children. Mother's counsel represented Mother and was present at the pre-adjudication, adjudication, and subsequent permanency planning hearings over a two-year period. Mother

was inconsistent in appearing at these hearings. At the TPR hearing, Mother did not appear. Mother's counsel orally moved to withdraw as her counsel, noting that he had not had contact with Mother in over a year. The motion was allowed. The court found grounds existed to TPR and that termination was in the children's best interest.

- The court's determination of counsel's motion to withdraw is reviewed for an abuse of discretion.
- G.S. 7B-1101.1 gives parents a right to counsel in all TPR proceedings. After appearing in a case, an attorney cannot cease representation without "(1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court." Sl. Op. at 5 (citation omitted). "While the trial court has discretion to allow or deny an attorney's motion when there is justifiable cause and prior notice to the client, when 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.' " Sl. Op. at 5. (citations omitted). The trial court must make an inquiry into the attorney's efforts to contact the parent in considering whether reasonable notice was given.
- The trial court abused its discretion in allowing Mother's counsel to withdraw without making an inquiry as to whether counsel notified or attempted to notify Mother of his intent to withdraw. The court rejected the GAL's argument that G.S. 7B-1101.1 required the court to dismiss Mother's counsel when Mother failed to appear at the TPR hearing, noting that Mother had been represented by her counsel in the underlying case for two years at the time the TPR petition was filed and therefore, Mother's counsel at the TPR hearing was not provisional counsel subject to dismissal under G.S. 7B-1101.1.
- The TPR order is vacated and remanded for the trial court to conduct a hearing to determine whether counsel had attempted to notify Mother of his intent to withdraw and whether he had justifiable cause. If counsel gave adequate notice and had justifiable cause, the court should allow the motion and reinstate the TPR order; if counsel failed to give adequate notice or failed to show adequate justification for withdrawal, the court must conduct a new hearing and enter new TPR orders.
- Dissent: The TPR order should be affirmed. The record shows Mother's counsel had not had contact with Mother in over a year prior to the TPR hearing and had no updated contact information for Mother, and documents Mother's lack of participation, persistent absence, and minimal efforts toward correcting the conditions that led to the children's removal. *In re T.A.M.*, 378 N.C. 64 (2021) instructs the reviewing court to consider whether the trial court "reasonably balanced and honored the purpose and policy of the State to promote finding permanency for the juvenile at the earliest possible age and to put the best interest of the juvenile first when there is a conflict with those of a parent." Dissent at 1, *citing* G.S. 7B-1100(2)-(3). Here, the court put the best interests of the juvenile first and did not abuse its discretion. Mother's counsel could not provide effective assistance due to his lack of contact with Mother, and continuing the matter to appoint another attorney would further delay the proceedings.

Indian Child Welfare Act

Required inquiry; Timing

In re L.Q., ___ N.C. App. ___ (April 22, 2025)

Held: Affirmed

- Facts: Father appeals the termination of his parental rights. The underlying neglect adjudication order included findings that the trial court inquired of the participants with respect to possible

Indian heritage, the participants did not report any Indian heritage, and Father is not a member of an Indian tribe. Findings at subsequent permanency planning hearings found Father was not making progress on his case plan and ultimately changed the child's permanent plan to adoption. DSS filed a TPR petition. The pre-trial hearing was held following twelve continuances, at which time the trial court made inquiry as to whether any participant was aware of any tribal affiliation or any American Indian heritage of the child. Father's attorney responded that Father's grandmother is Blackfoot Indian. A DSS worker testified she was not aware or been given any indication of possible Indian heritage of the child or the parents. The hearing was continued. At the adjudication hearing that spanned several sessions, Father testified that he had possible Blackfoot heritage, and Father's paternal aunt testified that Father's paternal grandmother was Cherokee Indian. Neither presented documentation or identification showing the grandmother was a member of either tribe. The hearing was again continued. At the next session, DSS explained it was still waiting on letters from the Blackfeet and Cherokee tribes. The trial court gave its findings and left the evidence open for any final determination regarding the child's tribal affiliations. DSS received letters from the Blackfeet tribe and three Cherokee tribes over the next seven months. After receipt of the final letter, the trial court held a hearing where DSS entered the tribal information and responses into evidence, all indicating the child was not an Indian child, without objection. The trial court later entered its order terminating Father's parental rights based on three grounds and including a determination that the child was not an Indian child under ICWA. Father argues the trial court violated his due process rights by failing to conduct an ICWA inquiry at the commencement of the TPR proceeding. The court of appeals granted Father's petition for writ of certiorari to reach the merits of Father's untimely appeal.

- Whether a trial court complied with ICWA is reviewed de novo.
- "[S]tate courts must ask each participant in an . . . involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child [as defined in 25 U.S.C. 1903(4)]. The inquiry is made at the commencement of the proceeding and all responses should be recorded." 25 C.F.R. § 23.107(a). 25 C.F.R. § 23.107 provides that a trial court has reason to know an Indian child is involved in a proceeding if any participant, court officer, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child and requires the court to confirm and work with all relevant tribes to verify whether the child is a member. When a trial court knows or has reason to know that an Indian child is involved, the party seeking foster placement or the termination of parental rights to an Indian child must notify the Indian child's tribe of the pending proceedings. The court of appeals has "required social services agencies to send notice to the claimed tribes . . . even where it may be unlikely the juvenile is an Indian child." Sl. Op. at 11-12 (citation omitted).
- The trial court properly made the inquiry required by 25 C.F.R. 23.107 at the commencement of the TPR proceedings and complied with the notice requirements of ICWA. The inquiry took place at the pre-trial hearing held following the twelve continuances caused by COVID-19 exposures and regulations, Father or Mother's inability to be present, or a heavy docket. The inquiry at the pre-trial hearing was the trial court's first opportunity to make the inquiry into the child's possible Indian heritage. The record shows the court made the inquiry and continued the hearing upon Father's counsel responding that Father's grandmother is Blackfoot Indian. The trial court heard testimony on potential Indian heritage from Father, Mother, Father's paternal

aunt, and a social worker at subsequent hearings and no documentation of tribal affiliation was presented. DSS properly notified the four relevant tribes and received responses indicating the child is not an Indian child, which were presented to the court.

Preliminary Hearing on Unknown Parent

Amended petition; Prejudice; Incarceration

In re K.P.W., ___ N.C. ___ (October 18, 2024) (per curiam)

Held: Reversed

Dissent by Earls, J.

- Facts: The child at issue was born to Mother in 2015. In 2018, a neglect petition was filed naming Mother and the putative father – the man listed on the child's birth certificate who was not the man mother was intimate with at the time of the child's conception. Questions arose as to paternity, and DNA testing revealed the putative father was not the biological father. DSS filed a TPR petition in November 2019 listing Mother, the putative father, and "John Doe" as respondent parents. In January 2019, DSS noticed a preliminary hearing under G.S. 7B-1105 to determine the identity of the unknown parent. Days later, Mother disclosed to DSS for the first time that she believed respondent-Father to be the child's biological father. In February 2020, a preliminary hearing was held where the court received evidence of Mother's identification of respondent-Father as the child's biological father. The court entered an order granting DSS's requests to amend the TPR petition if it was determined that respondent-Father was the biological father, and to serve notice by publication for "John Doe". In April 2020, DSS located and contacted respondent-Father, who told DSS that he had been in casual contact with Mother since 2018; Mother had previously told him in 2018 that he was the child's biological father; and she had shared pictures of the child with him and he had noticed their resemblance. In February 2021, DNA testing confirmed respondent-Father was the child's biological father. In October 2021, DSS filed an amended TPR petition naming Mother and respondent-Father as the respondent parents. Respondent-Father was served and filed a pro se answer contesting the TPR, and appeared and participated in the TPR hearing. A TPR order was entered in November 2022 on the grounds of abandonment and neglect. Father timely appealed. Father argued the court's failure to follow the procedures of G.S. 7B-1105 prejudiced him.
- Procedural History: In a split decision, the court of appeals vacated the TPR order, holding that the trial court failed to follow the procedures mandated by G.S. 7B-1105 regarding the preliminary hearing for an unknown parent after the initial TPR petition was filed, specifically by failing to hold the preliminary hearing within 10 days (it was 76 days), failing to summons the respondent father once his identity was known or order publication on an unknown parent, and failing to enter an order after the preliminary hearing and instead addressing that hearing in the TPR order that was entered years later. The majority determined that the trial court's failure to follow the statutory mandate prejudiced Father by delaying his preparation for the TPR proceedings and appointment of an attorney. 291 N.C App. 310 (2023) (unpublished). The decision was then appealed to the supreme court. The supreme court reversed per curiam for reasons stated in the dissent. This summary is of the dissent in that court of appeals opinion.
- After DNA testing confirmed respondent-father was the child's biological father, the amended petition which named respondent-Father and was properly served on respondent-Father began a new TPR proceeding whereby a preliminary hearing to identify an unknown parent was not

required. Any deficiencies in the proceedings concerning the original 2019 TPR petition are irrelevant. 291 N.C. App. 310, Dillion, J. Dissent at 1 (citing *In re W.I.M.*, 374 N.C. 922, 926; "[T]he filing and serving of an amended petition with a new summons is essentially the initiation 'of a new termination proceeding.' "). Respondent-Father was not prejudiced by any failures in complying with G.S. 7B-1105 because the findings of fact show Father's "disinterest towards the child over the course of four years." Dissent at 3. The findings are sufficient to support the grounds of abandonment and neglect. Father was aware that he was very likely the child's biological father as early as 2018 and, during the three years between then and the time he was contacted by DSS, he had not sought to determine paternity, asserted any parental rights, sought a relationship with the child, or sought to improve the welfare of the child despite being aware of domestic violence in Mother's home. After DNA testing confirmed respondent-Father was the biological father, though he sent the child one or two letters through DSS, requested pictures, and offered relative placement options, he never sought to meet the child during periods he was not incarcerated or ever inquire with DSS as to her well-being. In affirming the trial court's decision that TPR was in the child's best interest, the dissent emphasized that the findings show there was no bond between respondent-Father and the child.

Hearing

Notice; Motion to continue

In re M.R.B., ___ N.C. App. ___ (December 17, 2024)

Held: Affirmed

Dissent: Collins, J.

- Facts: Mother appeals TPR adjudication and disposition orders. The child at issue was adjudicated neglected. During permanency planning, Mother was regularly absent but represented by counsel at hearings. The child's permanent plan was changed to adoption after Mother was found to have not made sufficient progress on her case plan. Mother was present and represented at a TPR filing status hearing, after which DSS filed a motion to TPR Mother's rights the same day. DSS failed to issue notice until over two weeks after filing the TPR motion. When DSS issued the TPR notice, the notice also noticed the TPR hearing date, time and place, set for 27 days later. The morning of the TPR hearing, Mother's attorney moved to continue on the grounds that Mother's statutory 30-day window to file a written response to the TPR notice had not expired and counsel had been unable to contact Mother prior to the day of the hearing. The motion was denied. The court proceeded to hold the hearing and concluded grounds existed to TPR and that TPR was in the child's best interest. Mother argues the trial court prejudicially erred in denying her motion to continue.
- When a motion to TPR is filed in a pending juvenile proceeding, G.S. 7B-1106.1(a) requires the movant to prepare a notice to listed individuals, including parents of the juvenile. G.S. 7B-1106.1(b) lists required content of the notice: name of the juvenile, the purpose of the hearing, the parents' rights with regard to response and representation, and notice that the date, time, and place of the hearing will be mailed by the moving party upon filing of a response or 30 days from the date of service if no response if filed. Two notices are contemplated by the statute.
- Appellate case law has held that failure to provide the TPR notice required by G.S. 7B-1106.1 is necessarily prejudicial and requires a new hearing, while failure to timely serve the subsequent

notice of hearing identifying the date, time, and place pursuant to G.S. 7B-1106.1(b)(5), where the TPR notice was given, is subject to a harmless error analysis.

- DSS collapsed the notice requirements into one notice. DSS erred in untimely serving the TPR notice as it did not issue until weeks after the TPR motion was filed and prematurely issued the notice of hearing, which included the hearing date, time, and place required by G.S. 7B-1106.1(b)(5). Additionally, the hearing date noticed was a date prior to the expiration of time Mother had to respond to the TPR notice pursuant to G.S. 7B-1106.1(b). However, Mother failed to demonstrate prejudice from the untimely notice(s). The notice satisfied all the elements of G.S. 7B-1106.1. Mother (and counsel) were present at the status hearing, which was on the same day the TPR motion was filed; was served and had actual notice of the TPR hearing; did not object to the notice or move for a continuance prior to the date of the hearing; proffered no responsive pleading or defenses for which she argued she needed more time to prepare; was able to contact her counsel; and was present and testified at the hearing. Further, Mother did not challenge the adjudication of TPR grounds or the court's disposition. The court did not commit prejudicial error in denying the motion to continue.
- Dissent: Mother was prejudiced by DSS's failure to provide the statutorily required notice. The trial court committed reversible error by holding the proceeding in violation of the statutory mandates of G.S. 7B-1106.1. Mother was entitled to rely upon the 30-day time period afforded by G.S. 7B-1106.1(b)(5) to prepare her case.

Continuance

In re C.A.D., ___ N.C. App. ___ (March 5, 2025)

Held: Affirmed

- Facts: The child was adjudicated neglected and dependent based on Mother's substance use and mental health. DSS filed a motion in the underlying proceeding seeking to TPR. Mother failed to appear at the TPR hearing. Mother's counsel motioned to continue the hearing based on Mother's absence. Counsel stated that he had spoken with Mother the week before the hearing and asked her to appear since she wished to contest the action. DSS objected and the motion was denied. Mother's parental rights were terminated based on four grounds. Mother appeals, arguing the trial court abused its discretion in denying the continuance.
- Denial of a motion to continue that does not assert a constitutional basis is reviewed for abuse of discretion. Denial may be grounds for a new trial only if the respondent can show the trial court erred and that error was prejudicial.
- G.S. 7B-1109(d) governs motions to continue a TPR and requires extraordinary circumstances, when necessary for the administration of justice, for any continuance that extends beyond ninety days from the date of the initial petition. Continuances are disfavored and the burden of showing sufficient grounds is on the party seeking the continuance. "The chief consideration is whether granting or denying a continuance will further substantial justice." Sl. Op. at 5 (citation omitted).
- The trial court did not abuse its discretion. A continuance would have gone beyond ninety days from when the petition was filed and therefore Mother was required to show the existence of extraordinary circumstances and did not do so. The record shows Mother had notice of the hearing, was not present, and offered no explanation for her absence. Counsel's motion to continue was based solely on Mother's absence and therefore any argument that the denial violated Mother's constitutional rights is waived. Further, it is unlikely Mother was prejudiced by

the denial given counsel's advocacy at the TPR hearing and the unchallenged findings of fact supporting the TPR.

Continuance in violation of G.S. 7B-1109; Writ of mandamus remedy

In re L.Q., ___ N.C. App. ___ (April 22, 2025)

Held: Affirmed

- Facts: Father appeals the termination of his parental rights. DSS filed a petition to terminate Father's parental rights on August 5, 2020. Following twelve continuances, the pre-trial hearing was held on March 11, 2022. The adjudication hearing was held across multiple sessions spanning several months. Ultimately the trial court entered its order terminating Father's parental rights on October 25, 2023. Father argues the trial court violated his due process rights by continuing the case for more than 90 days before holding an initial hearing on the TPR petition in violation of G.S. 7B-1109(d). The court of appeals granted Father's petition for writ of certiorari to reach the merits of Father's untimely appeal.
- Whether a trial court complied with G.S. 7B-1109(d) is reviewed de novo.
- "A writ of mandamus is the proper remedy when the trial court fails to hold a hearing or enter an order as required by statute." Sl. Op. at 14. In *In re C.R.L.*, 377 N.C. 24 (2021), the supreme court held that failure to petition for writ of mandamus precludes an appellant from obtaining relief for violation of G.S. 7B-1109. Father "missed his opportunity to remedy the violation of [G.S.] 7B-1109." Sl. Op. at 14-15. Father failed to file a petition for writ of mandamus between the filing of the petition and the conclusion of the TPR proceedings, and offered no explanation for his failure to file the petition for writ of mandamus during the pendency of the proceedings.

Adjudication

Neglect

In re I.M.S., ___ N.C. App. ___ (May 7, 2025)

Held: Affirmed

- Facts: Mother appeals the termination of her parental rights as to one child. The child was adjudicated neglected and dependent based on concerns for Mother's ability to care for the child and concerns for Mother's mental health and substance use. At the time DSS filed the underlying petition and obtained nonsecure custody, Mother and the child had been living in a van with no air conditioning for several months during the summer heat. The adjudicatory findings included that Mother had traveled from Kentucky to North Carolina with the child, was unable to secure suitable housing, was unable to provide any food for the child other than milk, and refused to go to a shelter. Custody was continued with DSS at disposition. Mother's case plan included attending parenting classes, securing safe and suitable housing, obtaining and maintaining sufficient income, and completing a substance use and mental health assessment. During permanency planning, the court repeatedly found Mother was not making progress on her case plan and was acting inconsistently with the health and safety of the child. Ultimately the child's primary plan was changed to adoption and DSS motioned to TPR. Mother's rights were terminated on four grounds: neglect, willful placement outside of the home for more than twelve months without showing reasonable progress to correct the conditions that led to removal; dependency; and involuntary termination of parental rights to another child. Mother argues the evidence does not support the trial court's findings and conclusions that there is a likelihood of future neglect if the child were returned to Mother.

- Appellate courts review the adjudication of grounds to TPR to determine "whether the trial court's findings of fact were based on clear, cogent, and convincing evidence" and "if satisfied that the record contains the requisite evidence supporting the findings of fact, . . . whether the findings of fact support the trial court's conclusions of law." Sl. Op. at 6 (citations omitted). Conclusions of law are reviewed de novo.
- G.S. 7B-1111(a)(1) allows a trial court to TPR if the court concludes that the parent has neglected the child as defined by G.S. 7B-101(15). A neglected juvenile is one whose parent "[d]oes not provide proper care, supervision, or discipline" or "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15)(a), (e). In instances where the child and parent have been separated for a long period of time, "there must be a showing of past neglect and a likelihood of future neglect by the parent." Sl. Op. at 7 (citation omitted). "When determining whether such future neglect is likely, the [trial] court must consider evidence of changed circumstances between the period of past neglect and the time of the termination hearing." Sl. Op. at 8 (citation omitted).
- The trial court's findings of the child's past neglect and likelihood of future neglect are supported by clear, cogent, and convincing evidence, including testimony of the social worker, the GAL, the child's foster parent, and the psychotherapist who evaluated Mother, as well as the Parent Focused Parenting Evaluation (PFPE) and the GAL report. Findings included that Mother's housing instability and lack of appropriate resources were the primary reasons for removal and the bases for the child's underlying adjudication. Since the child's adjudication, Mother had not engaged in recommended or referred services throughout the life of the case; was inconsistent in visiting the child; had left the state multiple times forfeiting visitation with the child; and had ultimately moved to Florida at the time of the TPR hearing. Findings were also made as to Mother's prior history with DSS in Kentucky involving the same child, and her prior history with DSS in Florida where her five older children were removed based on concerns for substance use and her ability to care for the children, for whom her rights were ultimately terminated. The evidence shows Mother participated in the PFPE as ordered. The trial court found Mother had a low functioning IQ, was diagnosed with PTSD and substance use disorder, and lacked an understanding of her circumstances and her past. It was found that Mother would likely benefit from therapeutic intervention and further evaluation but determined these efforts would unnecessarily delay the case at a time where Mother had failed to engage in services throughout the case, failed to visit with the child, was acting inconsistent with her parental rights, had moved out of state and reunification was unlikely in six months. Mother failed to present any credible evidence of her participation in treatment or parenting classes, that she had suitable housing, or that she had gainful employment to demonstrate any change in circumstances between the child's past neglect and the TPR hearing. The findings show that the neglect experienced by the child would repeat or continue if returned to Mother.

In re J.M.V., Jr., ___ N.C. App. ___ (November 5, 2024)

Held: Affirmed

- Facts: Two children were adjudicated neglected and dependent due to improper care, supervision, discipline; lack of remedial care; and living in an injurious environment. The children share the same Mother but have different fathers; at the time of the events alleged in the neglect and dependency petitions, Mother and one of the children's Fathers lived with the children in a shelter. Following adjudication, the parents were ordered biweekly supervised visitation and entered into case plans to address issues of mental health, parenting capacity, housing, and employment. During permanency planning, the court found DSS had substantiated an allegation made by the older sibling that both parents had sexually abused him. Respondents

were placed on the Responsible Individuals List and did not petition for review. The court found Respondents had acted inconsistently with the health or safety of their children and ordered no visitation. The court also found Respondents had not actively engaged in or cooperated with their case plans, DSS or the GAL, and noted a decline in Mother's physical health. DSS filed a TPR motion and both Respondents' parental rights were terminated based on the grounds of neglect, willful failure to make reasonable progress to correct the conditions which led to the children's removal, and dependency. Respondents appeal, challenging several findings of facts as unsupported and that the findings do not support adjudication of the TPR grounds.

- A TPR adjudication order is reviewed to determine whether the findings are supported by clear, cogent and convincing evidence and whether the findings support the conclusions of law. Conclusions of law are reviewed de novo.
- All but one of Respondents' challenged findings of act are supported by clear, cogent, and convincing evidence, including social worker and supervisor testimony and Father's testimony. There is no evidence to support the finding that Father denied the juveniles' need for services to address their developmental delays. Testimony of Father and the parenting educator show Respondents acknowledged the children's speech delays and their need for services, and had discussed the delays with the parenting educator. That finding is disregarded.
- Both Respondents failed to preserve their right to challenge on appeal the social worker and supervisor's testimony on the grounds of hearsay regarding the sexual abuse allegations. Although respondents initially objected, they waived their prior objections when they failed to continue or renew their objections or object to similar testimony, and elicited some of the same testimony from the social worker during cross-examination. Father also did not challenge other findings of fact addressing the sexual abuse allegations, and those findings are binding on appeal.
- G.S. 7B-1101(a)(1) allows for the termination of a parent's rights if the parent has neglected the juvenile as defined in the Juvenile Code. G.S. 7B-101(15) defines a neglected juvenile to include a juvenile whose parent " '[d]oes not provide proper care, supervision, or discipline' or '[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare.' " Sl. Op. at 16-17, *quoting* G.S. 7B-101(15)(a), (e). When the child and parent have been separated for a period of time, neglect can be established by evidence of past neglect and the likelihood of future neglect by the parent. Failure to make progress on the case plan or to show behavioral changes necessary to ensure the safety of the juvenile can support a conclusion that there is a likelihood of future neglect. Completion of the case plan does not prevent a conclusion of likelihood of future neglect. "[P]arents are 'required to demonstrate acknowledgement and understanding of why the juvenile entered DSS custody as well as changed behaviors.' " Sl. Op. at 18 (citation omitted).
- Findings support the court's adjudication of the ground of neglect as to both Respondents. Past neglect of the child(ren) and the likelihood of future neglect if returned to the parent is supported by the findings.
    - Although Father completed most components of his case plan, he continued to deny the children were neglected or acknowledge his role in their neglect; continued to challenge the sexual abuse allegations and accused the foster parents and DSS of coaching the children to make the allegations; was unable to demonstrate improved parenting skills during visits with the children after completing the parenting class; and planned to reduce services if the children were returned despite being heavily reliant on the services for daily maintenance.
    - Mother made progress on her case plan, including engaging in therapy, completing a psychological evaluation, and attending to and improving her health. However, Mother

continued to deny the children were neglected or acknowledge her role in their neglect; denied the sexual abuse allegations; did not demonstrate changed parenting behavior during visits after completing the parenting class; and continued to suffer ongoing medical issues that created substantial challenges to parenting. The finding that Mother has not secured economic or domestic stability is irrelevant and disregarded. A parent's inability to care for their child on account of their poverty is not a willful failure to make reasonable progress under the circumstances for purposes of G.S. 7B-1111(a)(2).

In re R.H., ___ N.C. App. ___ (September 3, 2024)

Held: Affirmed

- Facts: DSS filed a neglect and dependency petition and obtained nonsecure custody of a newborn based on incidents of domestic violence between Mother and Father, including Father's violent assault of Mother while the child was in utero. Mother's four other children were previously adjudicated neglected due to domestic violence, unstable housing, and inappropriate care and supervision; Mother's rights to three of the children were ultimately terminated (the fourth child, the only other previous child of both Mother and Father, passed away post-adjudication). The child at issue was adjudicated neglected and dependent and ordered to remain in DSS custody. The court ordered a safety plan to work towards unsupervised visitation with Mother. The first permanency planning order found Mother had made significant progress on her case plan, was engaging in services and cooperating with DSS and the GAL, and granted Mother a mix of supervised and unsupervised visitation. A later permanency planning order changed the primary plan to adoption, finding that while Mother was engaging in services and cooperating, Mother was acting inconsistently with the child's health and safety, failed to consistently attend visitation with the child, and that there had been domestic violence incidents with Father at Mother's home. The trial court ordered the GAL to file a termination petition. The GAL petitioned to terminate Mother and Father's parental rights on grounds of neglect; willfully leaving the child in foster care for more than 12 months without reasonable progress to correct the conditions that led to their removal; willful failure to pay a reasonable portion of the child's cost of care; and Mother's parental rights to another child had been involuntarily terminated and Mother lacks the ability or willingness to establish a safe home. The court adjudicated each ground and found termination in the child's best interest. Mother appeals, challenging the findings and the grounds adjudicated.
- The adjudication of termination grounds is reviewed to determine whether the conclusions of law are supported by adequate findings and whether the findings are supported by clear, cogent, and convincing evidence. Conclusions of law are reviewed de novo.
- G.S. 7B-1101(a)(1) allows for the termination of a parent's rights if the parent "neglects their child such that the child meets the statutory definition of a 'neglected juvenile.' " Sl. Op. at 6. G.S. 7B-101(15) defines a neglected juvenile to include a juvenile "whose parent '[d]oes not provide proper care, supervision, or discipline[,]' or '[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare.' " Sl. Op. at 6, *quoting* G.S. 7B-101(15)(a), (e). When the child and parent have been separated for a period of time, neglect can be established by evidence of past neglect and the likelihood of future neglect by the parent if the child were to be returned to the parent's care. The trial court must consider "evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing." Sl. Op. at 6 (citation omitted). The court may describe testimony but must "ultimately make its own findings, resolving any material disputes." Sl. Op. at 8 (citation omitted). "The trial court 'determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom.' " Sl. Op. at 10 (citation omitted).

- Portions of the trial court's findings are improper recitations of testimony with no indication the trial court evaluated witness credibility and are disregarded.
- Challenged findings regarding Mother's ongoing relationship with Father and intentionally meeting Father with the child prior to the TPR hearing are supported by the evidence. The trial court found Mother's claims that the meetings with Father prior to the TPR hearing were unplanned and unintentional were not credible based on findings that Mother had a long history of hiding information of domestic violence and prior orders questioned Mother's truthfulness; concerns for Mother's truthfulness at the TPR hearing; and Mother's own testimony regarding the meetings with Father prior to the TPR hearing. The trial court reasonably inferred Mother and Father's relationship was ongoing based on evidence including Mother giving birth to another child with Father after the child at issue; testimony of law enforcement responding to a domestic violence incident stating the belief Father lived in the home; testimony of the GAL stating Father's car had been seen at the residence over time during the life of the case; and Mother admitting to taking the child on an out of state trip and to another outing where they met Father days before the TPR hearing.
- The trial court properly determined that Mother's parental rights were subject to termination based on neglect in that the child was previously neglected and there was a likelihood of repetition of neglect if the child was returned to Mother's care. Although Mother made progress on her case plan, she did not end the violent relationship with Father, which is the basis for why the child came into DSS. Mother refused to end the relationship with Father, the domestic violence continued, and Mother brought the child to meet with Father up until the time of the TPR hearing.

Neglect; Judicial Notice

In re B.A.J., ___ N.C. App. ___ (September 17, 2024)

Held: Affirmed

- Facts: Juvenile was adjudicated neglected based on the severe physical abuse and torture of an older half-sibling (juvenile's half-siblings are not the subject of this TPR) for which Mother was charged with felony child abuse. The court ordered custody to DSS and did not order reunification efforts be made after finding Mother and Father (who is the father of the juvenile subject to this TPR) committed or encouraged chronic physical abuse and torture of the sibling which the juvenile observed. The trial court adopted a primary plan of adoption. Several permanency planning hearings were held with findings showing the parents were not making progress on their case plans, were not cooperating with DSS or the GAL, and refused to admit or acknowledge the abuse and neglect they imposed on the juveniles. Mother and Father had another child and continued to reside together. Father was later incarcerated following a severe domestic violence incident with Mother where she was struck on the head with a gun and choked, and the home was shot into at least eight times. Mother failed to file a DVPO, continued to engage in calls with Father from jail, and stated her intent to reunify the family. DSS filed a motion to terminate the parents' rights based on neglect and willful failure to make reasonable progress to correct the conditions which led to the child's removal. Mother appeals the adjudication, arguing seven adjudicatory findings are unsupported by the evidence and the remaining findings are insufficient to adjudicate the TPR grounds. Mother's and Father's appeal of the disposition is summarized separately.
- The adjudication of termination grounds is reviewed to determine whether the conclusions of law are supported by adequate findings and whether the findings are supported by clear, cogent, and convincing evidence. Conclusions of law are reviewed de novo.

- The trial court can take judicial notice of findings made in prior orders "even when those findings are based on a lower evidentiary standard because where a judge sits without a jury, the trial court is presumed to have disregarded any incompetent evidence and relied upon the competent evidence." Sl. Op. at 8 (citation omitted). However, judicially noticed prior court orders and reports alone are insufficient to conclude a TPR ground exists. There must be some oral testimony at the hearing and an independent determination of the evidence presented. "[A]ppellate courts may not reweigh the underlying evidence presented at trial." Sl. Op. at 11 (citation omitted).
- Challenged findings are supported by clear, cogent, and convincing evidence. In addition to taking judicial notice of findings of fact in the dispositional and permanency planning orders (without objection), the trial court received social worker testimony, the GAL report, and twenty exhibits at the TPR hearing regarding Mother's progress and current circumstances which demonstrate that the court made an independent determination regarding the evidence presented. The court properly admitted social worker testimony of the social worker's personal recollections of Mother's statements made in a previous permanency planning hearing. The social worker was present at the hearing and heard Mother's statements regarding her engagement and truthfulness in therapy. Mother conceded the statements were admissible as statements of a party. The weight given to this testimony cannot be re-examined by the appellate court. The social worker testimony is not the same as a court relying on its own personal memory of a prior proceeding, which is not evidence a court may consider. The social worker's testimony is competent evidence.
- A trial court may infer that a parent's answer would be damaging to their claims when the parent invokes their Fifth Amendment right in a civil proceeding. A parent may not use the right as "both a shield and a sword". Sl. Op. at 13 (citation omitted). The trial court was permitted to draw an adverse inference against Mother for invoking the Fifth Amendment and refusing to answer questions at prior hearings relating to the parents' acts of torture and physical abuse. Rejecting Mother's argument that the TPR was based solely on her refusal to testify, the court held that the unchallenged, binding findings on appeal show the trial court did not terminate Mother's parental rights solely because of her refusal to answer questions about the parents' torture and abuse at prior hearings.
- G.S. 7B-1101(a)(1) allows for the termination of a parent's rights if the parent has neglected juvenile as defined in the Juvenile Code. G.S. 7B-101(15) defines a neglected juvenile to include a juvenile whose parent " '[d]oes not provide proper care, supervision, or discipline[,]' or '[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare.' " Sl. Op. at 14-15, *quoting* G.S. 7B-101(15)(a), (e). The circumstances of neglect "must exist at the time of the termination hearing." Sl. Op. at 15. When the child and parent have been separated for a period of time, neglect can be established by evidence of past neglect and the likelihood of future neglect by the parent. Failure to make progress on the case plan or to show behavioral changes necessary to ensure the safety of the juvenile can support a conclusion that there is a likelihood of future neglect.
- The findings support the conclusion that the juvenile was previously adjudicated neglected and there was a likelihood of future neglect if the child were returned to Mother's care. Though Mother completed components of her case plan, including DV services, mental health treatment, and parenting classes, and demonstrated that she had employment and housing at the time of the hearing, Mother did not admit or recognize her role in the juvenile and his siblings' abuse or neglect, acknowledge the impact of the abuse or neglect on her children, or show that she was able to rehabilitate herself from the circumstances that caused the juvenile's neglect. Mother continued to engage in a violent relationship with Father, chose not to file a

DVPO after a severe domestic violence incident with Father, failed to be honest with her therapist about the parents' severe abusive and neglectful behavior that led to the juvenile's removal, and had expressed her intent to reunify the family in the home together with Father and their younger child despite the court concluding Father committed acts of physical and emotional abuse, including torture, on the children. At two years old and not yet potty-trained, there is a substantial risk that the juvenile's bed wetting could result in the parents' severe and torturous discipline used against the half-sibling that was the reason for the juvenile entering DSS. The trial court did not err in adjudicating the ground of neglect.

Neglect; Failure to make reasonable progress

In re H.R.P., ___ N.C. App. ___ (December 31, 2024)

Held: Affirmed

Dissent: Thompson, J.

- Facts: Mother and Father appeal the termination of their parental rights (TPR). The child was adjudicated neglected in part based on circumstances created by the parents' substance use. The trial court entered a permanency planning order (PPO) awarding guardianship to the child's paternal aunt and uncle and ordering the Parents monthly supervised visitation. Approximately a year and a half later, the guardians filed to TPR based on three grounds (the uncle passed away during the proceedings, leaving guardian-aunt as sole petitioner to the appeal). At the TPR hearing, the court took judicial notice of the Adjudication Order and guardian-aunt testified that the parents had never visited the child at the ordered place for visitation; Mother was impaired at her last visit with the child, which lasted only ten minutes, and occurred over eighteen months prior to the hearing; Father was also impaired at the same visit and had occasional short visits with the child; Mother does not communicate about the child's well-being; and neither parent provides any support for the child. Both Parents testified at the hearing offering conflicting evidence as to their visitation, substance use and treatment. The court allowed Parents' motion to dismiss the petition for insufficient evidence as to the ground under G.S. 7B-1111(a)(6) but entered an order finding grounds exist to TPR under G.S. 7B-1111(a)(1) and 7B-1111(a)(2). Parents challenge several findings as unsupported by the evidence and argue that the findings do not support a conclusion that either ground exists to TPR.
- Appellate courts review the adjudication of TPR grounds to determine whether the findings of fact are supported by clear, cogent and convincing evidence and whether the findings support the conclusions of law. Judgements of the trial court will not be disturbed on appeal even if evidence supports contrary findings. Recitations of testimony are disregarded "absent an indication concerning whether the trial court deemed the relevant portion of the testimony credible." Sl. Op. at 8 (citation omitted). Conclusions of law are reviewed de novo.
- Three challenged findings are disregarded as recitations of testimony with no indication the trial court weighed the credibility of the testimony. The remaining challenged findings are supported by the evidence, including testimony of Parents and Petitioner. Though Parents' testimony conflicted with other record evidence, "the existence of contrary evidence is insufficient to overcome the trial court's judgment." Sl. Op. at 12.
- G.S. 7B-1111(a)(1) allows for the termination of parental rights when the parent has neglected the child. Neglect can include "the total failure to provide love, support, and personal contact." Sl. Op. at 15. "[W]hen a child has been separated from their parent for a long period of time, the petitioner must prove (1) prior neglect of the child by the parent and (2) a likelihood of future

neglect of the child by the parent." Sl. Op. at 14 (citation omitted). The trial court "must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing." Sl. Op. at 14 (citation omitted). A parent's failure to complete their case plan can support a finding of a likelihood of future neglect.

  - Findings support the conclusion that both parents neglected the child and there is a likelihood of future neglect by the parents. Findings showing past neglect include that the parents had not parented the child since the child's removal and had never sought a relationship with the child. Findings of the likelihood of future neglect include that the parents failed to set up visitation or consistently visit the child for over one year prior to the TPR hearing; failed to complete court ordered services offered by DSS; and failed to seek treatment for their substance use. The court considered evidence of the parents' circumstances at the time of the TPR hearing, including testimony of both parents.

- G.S. 7B-1111(a)(2) allows for the termination of parental rights when "[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." "Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." Sl. Op. at 18 (citation omitted).
  - Findings support the conclusion that grounds exist to terminate parents' rights under G.S. 7B-1111(a)(2), including Parents' failure to visit or seek a relationship with the child for over one year preceding the TPR hearing, despite their ability to contact Petitioner, and their failure to complete their court ordered services.
- Dissent: The trial court's findings are unsupported by competent evidence and do not support the conclusions that grounds exist to TPR under G.S. 7B-1111(a)(1) or (a)(2). In considering Parents' motion to dismiss for insufficiency of the evidence, the trial court acknowledged that no information was presented at the TPR hearing regarding either parent's current circumstances. Without this evidence, especially as to whether Parents are still using substances, the court could not have considered the changed circumstances as required by appellate precedent in determining whether there is a likelihood of future neglect. Further, Mother's testimony was the only competent evidence as to her changed circumstances and progress on her case plan. No evidence was presented as to Father's progress in correcting the conditions that led to removal. Petitioner failed to meet her burden at adjudication.

Failure to make reasonable progress

In re R.A.X., ___ N.C. App. ___ (April 2, 2025)

Held: Affirmed

- Facts: DSS filed a neglect petition and obtained nonsecure custody of the child based on Mother's inability to provide a safe home and the child living in an injurious environment. Father was subsequently identified and found to be the child's biological father. Father is an undocumented immigrant and testified at the adjudication hearing that he was unable to provide adequate housing or care for the child due to lack of proper identification. The child was adjudicated neglected. Father was ordered, among other actions, to take parenting classes; obtain and maintain stable housing that meets the needs of the child; participate in a substance use and domestic violence assessments and follow all recommendations; obtain and maintain proper legal identification; and demonstrate an ability to meet the child's needs. Permanency

planning findings demonstrated that Father made progress on his case plan but was unable to secure stable housing despite DSS providing Father various resources. The child's primary permanent plan was changed to adoption. DSS filed a motion to terminate Father's parental rights based on the grounds of willfully leaving the child in foster care for more than twelve months without showing that he has made reasonable progress in correcting the conditions that led to removal, and neglect. The trial court adjudicated both grounds. Father appeals, challenging six findings of fact as unsupported by the evidence and arguing that the trial court erred in relying solely on his immigration status as the basis for the adjudication and misapprehended the law relating to reasonable progress.

- An appellate court reviews the adjudication of grounds to terminate parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." Sl. Op. at 8 (citation omitted). Conclusions of law are reviewed de novo.
- G.S. 7B-1111(a)(2) allows a trial court to terminate a parent's rights (TPR) upon finding "the 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." Sl. Op. at 18. A court evaluates a parent's reasonable progress for the duration leading up to the TPR hearing. The supreme court has held that "the conditions which led to removal are not required to be corrected completely to avoid termination[,]" as only reasonable progress must be shown. Sl. Op. at 22. "[A] trial court has ample authority to determine that a parent's extremely limited progress in correcting the conditions leading to removal adequately supports a determination that a parent's parental rights in a particular child are subject to termination pursuant to GS 7B-1111(a)(2)." Sl. Op. at 23 (citation omitted). A parent's deportation is neither a sword nor a shield to the termination of the parent's rights.
- Challenged findings are supported by the evidence, including testimony of Father and the social worker and other unchallenged findings of fact. The trial court determines the weight to be given the testimony and reasonable inferences to be drawn from the evidence. The trial court properly assessed the credibility of the testimony of Father and the social worker in making its findings regarding Father's efforts to obtain stable housing. It was reasonable for the trial court to infer that if the child were returned to Father, Father would leave the child in the care of unknown adults in the home or with Mother, based on Father's testimony that he did not have care for the child during working hours and the social worker's testimony that Father and Mother were still romantically involved.
- Findings support that Father failed to make reasonable progress with his case plan. The trial court did not err in terminating Father's parental rights under G.S. 7B-1111(a)(2) based on Father's prolonged inability to obtain stable housing that meets the needs of the child. The child's removal was primarily based on both parents' inability to provide adequate housing. Supported findings show Father understood Spanish completely and through the use of interpreters at the underlying proceedings (in both Spanish and his native dialect, K'iche), understood his case plan required him to obtain stable housing. Father's living situation, for which he testified was unsuitable for a child, remained unchanged during the pendency of the underlying and TPR proceedings despite DSS providing Father information and assistance to obtain housing and legal identification specific for undocumented individuals with a criminal history. Father's limited efforts included contacting two of the 10 or more resources DSS provided which resulted in denial of his application at one housing facility due to his criminal record. Thereafter Father took no further steps to contact any other resources provided by DSS or obtain housing, despite eventually receiving identification from his home country of

Guatemala. DSS made Father aware that a formal lease agreement was not required; however, Father did not cooperate with DSS's request to visit Father's shared home or identify the other adults living in the home. The record shows Father's inability to obtain housing was primarily based on his criminal record and not his immigration status or poverty. Though Father made progress in other areas of his case plan, his limited progress in obtaining suitable housing, which was the core issue that led to the child's removal, despite being given resources and over two years to do so, was not reasonable. The court did not improperly consider whether Father could regain custody at the time of the hearing. The court addressed Father's past and current living conditions and lack of child care in the context of determining Father's progress to correct the housing issues that led to the child's removal. Father's limited progress in addressing housing, the core issue for removal, was a proper basis for the trial court to TPR and not an instance of the trial court improperly requiring Father to fully satisfy all elements of his case plan.

In re A.K.H., ___ N.C. App. ___ (November 5, 2024)

Held: Affirmed

- Facts: Father appeals the termination of his parental rights to one juvenile. DSS filed neglect and dependency petitions based on domestic violence in Mother's home. After the underlying neglect and dependency petition was filed, Respondent-Father was contacted by DSS and paternity was confirmed as to one of the three children. The child was adjudicated neglected and dependent. Father entered into a case plan that required several steps for him to take, and although he made some progress initially, he did not overcome issues related to his sex offender status, unsuitable housing, and lack of relationship with his daughter. DSS filed a TPR, which was stayed for three years. During the stay, Father did not attend the next three permanency planning hearings; was in arrears of child support; continued not to participate in parenting the child; and did not have contact with DSS. Father's rights were terminated based on the grounds of neglect, failure to make reasonable progress, and dependency.
- Appellate courts review a TPR adjudication order to determine whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law. Conclusions of law are reviewed de novo.
- G.S. 7B-1111(a)(2) allows a court to terminate a parent's rights when clear, cogent, and convincing evidence show the parent (1) willfully left the child in foster care or placement outside of the home for over 12 months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child. "Leaving a child in foster care or placement outside of the home is willful when a parent has the ability to show reasonable progress, but is unwilling to make the effort." Sl. Op. at 13 (citation omitted).
- Findings support the conclusion that Father willfully left the child in foster care for over 12 months and did not make reasonable progress to correct the conditions that led to the child's removal. The child remained in foster care continuously for 77 months following their removal from Mother's home. Father did not engage with DSS from 2019 until the TPR petition was filed in 2022; did not complete his case plan; and did not at any time attempt communication with the child, motion for the court to allow visitation with the child, or share in parenting the child once paternity was confirmed. The case plan sought to address the circumstances which led to the child's removal and Father's non-compliance is relevant in determining whether Father made reasonable progress.

In re K.J.D., ___ N.C. App. ___ (December 17, 2024)

Held: Affirmed

- Facts: DSS filed a neglect and dependency petition based on continued instances of domestic violence at the home in violation of a temporary safety agreement signed by Mother and Father. The child was adjudicated dependent and placed in DSS custody but physically remained in the home with the parents on a split schedule. DSS later terminated Mother's unsupervised visits and placed the child with a foster parent. Mother's case plan addressed parenting, substance use, domestic violence, employment, and housing concerns. During permanency planning, findings showed that incidents of domestic violence continued between Mother and Father, Mother denied substance use issues during her mental health assessment, and Mother failed to comply with requests for drug screens and tested positive at numerous drug screens. DSS filed a motion to TPR. Mother's rights were terminated on the grounds of willfully leaving the child in foster care for more than 12 months without making reasonable progress in correcting the conditions that led to the child's removal; neglect; failure to pay the cost of care; and failure to provide proper care and supervision. Mother appealed, challenging both the adjudication and disposition. This summary addresses the court's adjudication of the ground in G.S. 7B-1111(a)(2).
- Appellate courts review a TPR adjudication order to determine whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law. Conclusions of law are reviewed de novo.
- G.S. 7B-1111(a)(2) allows a court to terminate a parent's rights when clear, cogent, and convincing evidence show the parent (1) willfully left the child in foster care or placement outside of the home for over 12 months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child. "Voluntarily leaving a child in foster care for more than 12 months or a failure to be responsive to the efforts of DSS are sufficient grounds to find willfulness." Sl. Op. at 7 (citation omitted). "[A] parent's prolonged inability to improve his or her situation, despite some efforts and good intentions, will support a conclusion of lack of reasonable progress." Sl. Op. at 7 (citation omitted). Compliance with a judicially-adopted case plan is relevant so long as the case plan addresses issues that contributed to the child's removal.
- "[T]he trial judge . . . has the authority to order a parent to take any step reasonably required to alleviate any condition that directly or indirectly contributed to causing the juvenile's removal from the parental home." Sl. Op. at 10, *citing In re B.O.A.*, 372 N.C. 372, 381 (2019). Here, the trial court did not overreach its authority by addressing Mother's substance use in her case plan. The child was adjudicated dependent based on instances of domestic violence and remained placed in the home with both parents on a split schedule. Investigations of subsequent domestic violence incidents revealed the parents' substance use. Both parents signed a temporary safety plan that included agreeing to have a sober caregiver if they use. At a home visit, the social worker suspected Mother's boyfriend of being impaired and alone with the children while Mother was at work. After Mother refused requested drug screens then tested positive once completing a drug screen, the child was removed and placed with a foster parent. The court concluded that the child was removed from the home based on incidents of domestic violence and substance use concerns. Components addressing substance use were therefore within the court's authority.

- Findings support the conclusion Mother failed to make reasonable progress in addressing the conditions that led to removal. Testimony of the social worker and the domestic violence class instructor, along with the DSS and GAL court reports, support the court's findings that Mother consistently failed to comply with drug screenings or engage in substance use services; had numerous positive drug screens during the life of the case; although completed domestic violence classes, had not benefitted from the classes or applied them to her life as domestic violence incidents continued; had not completed a mental health assessment or engaged in therapy as ordered; and had not completed parenting classes.

Dependency

In re K.B.C., ___ N.C. App. ___ (September 17, 2024)

Held: Affirmed

- Facts: Father appeals a TPR order to his three children, all of whom had been adjudicated neglected due to lack of proper care and supervision. The children were placed in DSS custody after staying in two different temporary safety placements that had been identified by Father but who were unwilling to care long term for the children. During the case, Father was arrested and sentenced as a habitual felon, with a release date in 2032. During his incarceration, Father proposed two other possible alternative placements for the three children. One proposed caretaker was not approved by DSS, and the other could not be located. DSS filed TPR petitions as to all three children. The court found grounds existed to terminate Father's parental rights based on dependency and Father's prior TPR and inability to establish a safe home. Father appeals arguing the court based the adjudication solely on Father's incarceration.
- A court reviews the adjudication of termination grounds to determine whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the findings support the court's conclusion of law.
- G.S. 7B-1111(a)(6) allows for a court to terminate a parent's rights upon finding a parent is incapable of providing proper care and supervision such that the child is dependent under G.S. 7B-101(9) and the incapability is likely to last for the foreseeable future. The incapability may result from substance use, mental illness, or other condition that renders the parent unable to parent the juvenile. The ground of dependency "must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." Sl. Op. at 12 (citation omitted). Appellate courts have "found extended periods of incarceration can render a parent incapable of providing sufficient care and supervision to a minor child." Sl. Op. at 16.
- The findings support the conclusion that Father's rights were subject to termination based on dependency. Incarceration alone is not a sword or shield in a TPR. Here, the findings show that the court considered more than Father's incarceration; the court considered the substantial length of Father's sentence, its effect on the children, the children's physical and emotional well-being, and Father's lack of alternative child care placements. The trial court noted that during this extensive period of incarceration, Father would not be able to provide and care for the children or have a personal relationship with the children that are integral to their well-being, which the court of appeals stated is consistent with appellate precedent (citing In re A.L.S., 375 N.C. 708 (2020), e.g. In re L.R.S., 237 N.C. App. 16 (2014)). The record shows that the

children had been placed with two caretakers who were unwilling to provide long-term care, and Father's more recent proposed placements were unable to be approved or located by

Abandonment: Time Periods; Findings

In re X.I.F., ___ N.C. App. ___ (February 19, 2025)

Held: Vacated in Part, Affirmed in Part

- Facts: Father appeals the termination of his parental rights as to three juveniles. The children have continuously lived with Mother since Mother and Father's separation in 2012. Father has been incarcerated for most of the period since their separation and remains incarcerated serving a nine-year term with a release date in 2027. Since 2016, Father has had no communication or given support to the children other than sending two letters in 2022 and some money in 2018 to purchase shoes for one of the children. Mother filed the TPR. The trial court found grounds existed to terminate under G.S. 7B-1111(a)(1), (6), and (7). Father argues the court's conclusions are unsupported by the findings or the evidence. This summary addresses the two grounds addressing abandonment, G.S. 7B-1111(a)(1) and (a)(7).
- Appellate courts review the adjudication of grounds to terminate parental rights to determine whether the trial court's factual findings are supported by clear, cogent, and convincing evidence and whether the findings support the trial court's conclusions of law.
- G.S. 7B-1111(a)(1) allows the trial court to TPR where the parent has abused or neglected the child as defined in G.S. 7B-101, including neglect by abandonment. G.S. 7B-1111(a)(7) allows the trial court to TPR where the parent has "willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition[.]" The analysis for neglect by abandonment under G.S. 7B-1111(a)(1) differs from the analysis for willful abandonment under G.S. 7B-1111(a)(7). To conclude neglect by abandonment under G.S. 7B-1111(a)(1), the court must consider evidence and make findings of the parent's conduct constituting neglect by abandonment "at the time of the termination hearing." Sl. Op. at 11. In contrast, the court considers and makes findings of the parent's conduct in the six-month period immediately preceding the filing of the TPR petition when concluding whether willful neglect under G.S. 7B-1111(a)(7) exists.
- Abandonment exists "[i]f a parent withholds that parent's presence, love, care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance . . ." Sl. Op. at 20 (citation omitted).
- Incarceration is neither a sword nor a shield. In determining whether an incarcerated parent's abandonment is willful and voluntary, appellate caselaw requires the trial court to analyze (1) the options the parent had to display parental affection during the determinative period and (2) whether the parent exercised those options. "Although a parent's options for showing affection while incarcerated are greatly limited, a parent *will not be excused from showing interest in his child's welfare by whatever means available*." Sl. Op. at 21-22 (citation omitted) (emphasis in original). "Under these circumstances, a trial court must 'address, in light of his incarceration, what other efforts [respondent-father] could have been expected to make to contact [mother] and the juvenile." Sl. Op. at 22 (citation omitted).
- Rule 52(a)(1) requires the trial court to "find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." The supreme court has held that "Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to provide the ultimate facts[.]" Whereas "an ultimate finding is a finding

supported by other evidentiary facts reached by natural reasoning[,]" "any determination requiring the exercise of judgment or the application of legal principles is more properly classified as a conclusion of law." Sl. Op. at 14-15 (citations omitted). Conclusions of law mislabeled as findings by the trial court will be treated as conclusions of law on appeal. Conclusions of law are reviewed de novo.

- Here, while the trial court made findings as to Father's conduct leading up to the petition, the trial court failed to make any findings as to Father's conduct showing neglect by abandonment at the time of the TPR hearing. As a result, the conclusion that grounds existed to TPR under G.S. 7B-1111(a)(1) is unsupported by the findings and vacated.
- Father challenged findings as unsupported by the evidence; however, the findings were supported by clear and convincing evidence, including mother's and father's testimony. The trial court's ultimate findings of Father's ability and knowledge to communicate with the children and his pattern of conduct demonstrating his lack of intent to maintain a relationship with the children were naturally reached through logical reasoning based on the evidence before the court. The court is not required to explain the evidentiary basis for its ultimate findings. The portion of the finding reciting Father's testimony regarding his continued contact with another child while incarcerated, without any indication the trial court considered the credibility of the statement, is disregarded. The trial court's finding misstating the relevant six-month period under G.S. 7B-1111(a)(7) (as November to March rather than March to November) is a scrivener's error that did not substantively impact the court's reasoning or conclusions. Two challenged findings are conclusions of law and reviewed de novo.
- The findings support the court's conclusion that grounds existed to TPR under G.S. 7B-1111(a)(7). The trial court found that despite Father's incarceration, Father had the ability and knowledge to communicate with the children through letters, as he had previously done, but failed to do so during the determinative period. The court was not required to make findings as to Mother's admission that she tried to prevent Father from seeing the children when he was not incarcerated and stopped funding his prison account. Mother's wishes are "largely irrelevant" and her actions do not amount to "actively thwarting" Father's ability to have a relationship with the children. Mother testified that she never stopped Father or the children from writing and the record shows Mother had the same address and phone number as previously used by Father to send two letters and once deliver money for shoes.

Willful abandonment; Incarceration

In re D.R.W., Jr., ___ N.C. App. ___ (March 5, 2025)

Held: Affirmed

- Facts: Mother appeals the termination of her parental rights. The child at issue was adjudicated neglected based on stipulated facts regarding Mother's substance use, unstable housing, inability to ensure school attendance, and temporary placements of the child with various people for varying amounts of time. Subsequent permanency planning hearings found that the child was doing well in foster placement; Mother had not supported or contacted the child except for a single two-minute phone call; Mother had been incarcerated at various times since the child's removal; and Mother was not participating in her case plan or cooperating with DSS or the child's GAL. The trial court eliminated reunification, denied Mother visitation rights, and made adoption the child's primary plan. DSS filed a TPR petition, and the trial court adjudicated grounds to TPR based on willful abandonment and willful failure to make reasonable progress in

correcting the conditions that led to the child's removal. Mother challenges two adjudicatory findings as unsupported by the evidence and argues the trial court failed to make required findings regarding her limitations as to the willfulness of her actions.

- The adjudication of a ground to TPR is reviewed to "determine whether the findings are supported by clear, cogent and convincing evidence and [whether] the findings support the conclusions of law[.]" Sl. Op. at 9 (citation omitted). Conclusions of law are reviewed de novo.
- G.S. 7B-1111(a)(7) allows a trial court to terminate parental rights upon finding the parent "willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition." There must be evidence that the parent manifested "a willful determination to forego all parental duties and relinquish all parental claims to the child." Sl. Op. at 10 (citation omitted). Incarceration is neither a sword nor a shield. "Although a parent's options for showing affection while incarcerated are greatly limited, a parent *will not be excused from showing interest in the child's welfare by whatever means available*." Sl. Op. at 10 (citation omitted) (emphasis in original).
- Challenged findings are supported by other unchallenged, binding findings of fact and record evidence, including testimony of the social worker and Mother and the DSS and GAL court reports.
- The trial court appropriately considered Mother's history and circumstances, including her incarceration, in concluding Mother willfully abandoned the child. The findings show that Mother made no effort to contact the child in any manner during the determinative six-month period, provided no support for the child, and took no action to show any love, affection, or parental concern for the child. Despite the ability to do so, Mother never wrote to the child after requesting visitation and the court having asked her to do so, and also failed to respond to a letter the child sent to her through DSS. Mother's behavior evinces a complete failure to show any interest in the child.

Willful abandonment; Rule 17 GAL

In re K.J.P.W., ___ N.C. App. ___ (February 19, 2025)

Held: Affirmed

Dissent, Tyson, J.

- Facts: Based on the conditions of Mother's home, DSS filed a petition alleging the child neglected and obtained nonsecure custody. The child was placed with Petitioners and adjudicated neglected. Mother was granted visitation and ordered to follow DSS's recommendations for reunification, including a mental health assessment, parenting and anger management classes, and obtaining and maintaining stable housing. Guardianship was awarded to Petitioners and Petitioners ultimately filed to TPR. Mother's counsel filed a motion to appoint a Rule 17 GAL to assist Mother in the proceedings. The trial court granted the motion without further inquiry, which the court of appeals held was not an abuse of discretion. *In re K.W.*, 282 N.C. App. 734 (2022) (unpublished). Mother's rights were terminated based on willful abandonment and willful failure to pay for the child's care. Mother appeals, arguing that the appointment of a Rule 17 GAL makes Mother incompetent to take willful action constituting abandonment. The court affirmed the trial court's adjudication of the ground of willful abandonment and did not review Mother's challenge to the other ground adjudicated.
- Appellate courts review a TPR to determine "whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." Sl. Op. at 5 (citation omitted). Conclusions of law are reviewed de novo.

- G.S. 7B-1111(a)(7) allows a trial court to TPR when "[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition." Willfulness requires purpose and deliberation. "[A] trial court presented with evidence indicating that a mentally ill parent has willfully abandoned his or her child must make specific findings of fact to support a conclusion that such behavior illustrated the parent's willful intent rather than symptoms of a parents diagnosed mental illness." Sl. Op. at 8, *quoting In re A.L.L.*, 376 N.C. 99, 111-12 (2020). The appointment of a Rule 17 GAL "is not based on a person's legal incompetence" and, unlike a Chapter 35A adult guardian, the role of a Rule 17 GAL is limited to "assisting a parent during a particular juvenile proceeding . . ." Sl. Op. at 6 (citation omitted).
- The trial court's conclusion that Mother willfully abandoned the child during the determinative six months preceding the petition is supported by the findings. Binding findings include that Mother failed to consistently contact the child despite having the ability to do so; had not visited the child during the seven-month period preceding the petition; and had visited the child only once during a 14-month period. Appointment of a Rule 17 GAL to assist Mother during the TPR proceedings does not make her legally incompetent. Petitioners did not make any allegations in the petition as to Mother's mental illness or concerns for Mother's mental health, and the substance of Mother's only mental health report, completed during the underlying proceedings, was not discussed at the TPR hearing. The trial court was not required to make any specific findings as to Mother's conduct under *In re A.L.L.* since Mother's conduct was not evidenced or argued to be a manifestation of any severe mental illness. Mother testified that she had not reached out to arrange visitation during a seven-month period due to Facebook and phone problems; Mother's mother testified that Mother was caring for another child during another five-month period where Mother missed visitation; and both Mother and Mother's mother testified that Mother was working and maintained a home, and though Mother's mother was the payee of Mother's Supplemental Security Income, Mother was given the funds and used them as needed.
- Dissent: The findings do not support the conclusion of willful abandonment. Mother had been diagnosed with a moderate intellectual disability, mild persistent depressive disorder, and low intellectual functioning and adaptive skills. The trial court failed to make any findings that Mother's behavior was willful rather than symptoms of a diagnosed mental illness, as required by *In re A.L.L*. Additionally, relying on *In re E.G.R.*, 288 N.C. App. 191 (2023) (unpublished) (applying *In re A.L.L.* to the ground of willful failure to make reasonable progress), the trial court must make findings under *In re A.L.L.* to determine whether Mother's conduct in failing to provide the cost of care was willful or symptomatic of an illness. The trial court failed to make these findings and therefore the court's conclusion of willful failure to provide the cost of care is unsupported. The TPR order should be vacated and remanded for further findings on Mother's capacity and competence for willful conduct.

Dependency

In re X.I.F., ___ N.C. App. ___ (February 19, 2025)

Held: Vacated in Part, Affirmed in Part

- Facts: Father appeals the termination of his parental rights as to three juveniles. The children have continuously lived with Mother since Mother and Father's separation in 2012. Father has been incarcerated for most of the period since their separation and remains incarcerated serving a nine-year term with a release date in 2027. Mother filed the TPR, and the trial court

found grounds existed to terminate under G.S. 7B-1111(a)(1), (6), and (7). Father appeals all three grounds. This summary discusses the ground of dependency under G.S. 7B-1111(a)(7).

- Appellate courts review the adjudication of grounds to terminate parental rights to determine whether the trial court's factual findings are supported by clear, cogent, and convincing evidence and whether the findings support the trial court's conclusions of law.
- G.S. 7B-1111(a)(6) allows the trial court to TPR where the parent "is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future." G.S. 7B-1111(a)(6). G.S. 7B-101(9) defines a dependent juvenile as one "in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative childcare arrangement." The supreme court has held that a juvenile is not in need of assistance or placement where the juvenile is in the legal and physical custody of a parent at the time the petition is filed.
- Here, the petitions alleged and the court found that the children were in the custody of and resided with Petitioner, their biological mother, at the time the petitions were filed. The children are not dependent juveniles. The conclusion that grounds existed to TPR under G.S. 7B-1111(a)(6) is unsupported by the findings and vacated.

Disposition

Child's GAL duties; Best interests

In re S.D.H., ___ N.C. App. ___ (November 5, 2024)

Held: Vacated and Remanded

- Facts: Paternal grandparents were ordered legal custody of Respondent-Father's two minor children by Virginia and North Carolina courts (the juveniles have different mothers who are not parties to this appeal). Grandparents (Petitioners) filed a petition to terminate Respondent-Father's parental rights based on neglect, nonsupport, and willful abandonment. An attorney was appointed in the dual role as GAL and attorney advocate for the children. Petitioners and Respondent presented evidence at the hearing, but the GAL did not testify, submit written reports, or make recommendations to the court. The GAL did present an argument as attorney advocate. The trial court adjudicated the grounds to TPR and found termination to be in the children's best interests. Father appeals the disposition, arguing that the trial court abused its discretion by ruling termination to be in the children's best interest absent any evidence presented by the GAL.
- Appellate review of a trial court's determination of a juvenile's best interest at the dispositional stage of a TPR action is reviewed for abuse of discretion. G.S. 7B-1110(a) requires the trial court to consider factors and make written findings regarding those that are relevant in its best interest analysis.
- Whether a trial court followed a statutory mandate is a question of law automatically preserved for appeal and reviewed de novo. "A statutory mandate that automatically preserves an issue for appellate review is one that, either: (1) requires a specific act by a trial judge; or (2) leaves no doubt that the legislature intended to place the responsibility on the judge presiding at the trial, or at specific courtroom proceedings that the trial judge has authority to direct." Sl. Op. at 12

(citation omitted). G.S. 7B-1108 requires the appointment of a GAL in two circumstances, one of which applies here: when an answer is filed that denies a material allegation in the TPR petition. The GAL ensures the juvenile's best interests are represented in a contested TPR proceeding. The duties of a GAL are prescribed by G.S. 7B-601(a) and require the GAL to make an investigation to determine the best interests of the child and offer evidence recommending the best course of action to the court. The attorney advocate is a separate and distinct role responsible for providing legal advice and assistance to the GAL representing the minor child. "When 'a child [is] not represented by a guardian ad litem at a critical stage of the termination proceedings,' we 'must presume prejudice.' " Sl. Op. at 14 (citing *In re R.A.H.*, 171 N.C. App. 427, 431 (2005)). In those instances, the appropriate action is for the trial court to terminate the hearing and set a new hearing date giving an appointed GAL sufficient time to perform their statutorily prescribed duties.

- The trial court abused its discretion by ruling on disposition absent evidence from the GAL. The court of appeals agreed with Father's argument that the trial court failed to comply with a statutory mandate as the "the Juvenile Code imposes an implicit duty upon the trial court to ensure the role(s) of the guardian ad litem are performed as required by statute." Sl. Op. at 16. "In juvenile cases where a guardian ad litem is required, a trial court cannot properly consider all relevant criteria set out in Section 7B-1110(a) where it wholly lacks evidence from the guardian ad litem for the juveniles." Sl. Op. at 19. The GAL in a termination proceeding must provide evidence to aid the court in determining the child's best interests and to provide a basis for appellate review. The court makes this case analogous to *In re R.A.H.*, 171 N.C. App. 427, where the GAL was not appointed by the trial court until four days into the TPR hearing, and therefore no pretrial investigation was completed or reports produced for the record. In *In re R.A.H.*, the court of appeals held that the juvenile's best interest was not represented by the GAL at a critical stage of the proceeding, prejudice was presumed, and a new hearing was ordered to give the GAL sufficient time to perform their duties. Here, the record provides no evidence of a pre-trial investigation or prepared reports submitted by the GAL to the court to consider in its disposition ruling. The court of appeals held that the trial court could not have reached a reasoned decision absent evidence from the GAL. As in *In re R.A.H.*, the trial court should have terminated the proceeding, instructed the GAL to perform its duties, and set a later hearing to allow the GAL to investigate and develop best interest recommendations for the court to make a reasoned decision at disposition. The court of appeals remanded the case for a new disposition hearing and did not consider Father's argument that the trial court failed to consider relevant best interest factors.

Denial of TPR

In re B.B.A., ___ N.C. App. ___ (June 4, 2025)

Held: Affirmed

- Facts: Adoption agency (agency) appeals the trial court's denial of its petition to terminate Father's parental rights. Mother and Father were in a relationship in California that resulted in Mother learning she was pregnant after joining the military and moving away. Mother informed Father of the pregnancy and her desire to place the child for adoption. Father opposed placing the child for adoption, offered support to Mother, and expressed his desire to be present at the child's birth and raise the child. Mother gave Father the agency's contact information and soon after ignored Father's attempts to contact her. Father made continuous efforts to obtain

custody of the unborn child, including flying from California to North Carolina seeking to speak with the agency, moving to the State for seven months, and hiring an attorney. Despite Father and his counsel's repeated attempts, the agency refused to give Father any information. The child was born without Father's knowledge. Mother relinquished her rights the day following the birth and the agency placed the child with a prospective adoptive family. The agency filed to terminate Father's parental rights the day after the child's placement. Father learned of the child's birth nearly a month later. Subsequent paternity testing confirmed Father was the child's biological father. Father was denied his request for visitation with the child. At the time of the termination hearing, Father had not met the child. The GAL testified that Father could accommodate and care for the child; Mother testified that there was nothing to make her think Father would not be a good father; and Father testified he had a plan for the child's care and family support, but admitted he had not filed for legitimation or paternity prior to the agency filing the petition. The trial court concluded that grounds existed to terminate under G.S. 7B-1111(a)(5) but concluded it was not in the child's best interest to terminate Father's parental rights. The agency challenges the trial court's dispositional determination only, arguing four findings are unsupported by the evidence.

- Appellate courts review a trial court's determination of whether termination of a parent's rights is in the best interests of a child for abuse of discretion. Dispositional findings of fact are reviewed to determine whether they are supported by competent evidence.
- G.S. 7B-1110(a) requires the trial court to consider six factors in determining whether termination is in the child's best interests and make written findings for those that are relevant. G.S. 7B-1100(a) factors include the child's age; likelihood of adoption; whether termination will aid in achieving the child's permanent plan (not relevant for a private TPR); the bond the child has with the parent; the quality of relationship between the child and the proposed adoptive placement; and any relevant consideration. Appellate precedent requires that "[a]fter the trial court has determined grounds exist for termination of parental rights at adjudication, the court is required to issue an order of termination in the dispositional stage, *unless it finds the best interests of the child would be to preserve the parent's rights*." Sl. Op. at 8 (citation omitted) (emphasis in original).
- The unchallenged findings are sufficient to support the trial court's conclusion that termination was not in the child's best interests. These findings show Father desired and made continuous efforts to obtain custody of the child both before and after the child's birth; has a plan of care for the child and a strong support system; and had not acted contrary to his constitutionally protected right to the care, custody and control of the child. No evidence was presented to show a relationship with Father would not be in the child's best interests, though no relationship currently exists. The trial court properly considered that the existence of grounds for termination were largely due to circumstances outside of Father's control. "[H]aving a relationship with his or her biological parents is certainly relevant to a juvenile's interests[,]" and though a parent's constitutional right to custody and control of their child is not absolute, a trial court does not abuse its discretion in finding termination is not in the child's best interests when the parent has not been found to have acted contrary to that interest and instead, has "expressed an active desire to be involved in the minor child's life – before the minor child was born and continuing through to the present." Sl. Op. at 13-14 (citing *Lehr v. Robertson*, 463 U.S. 248, 262 (1983), recognizing a biological father's opportunity to "make uniquely valuable contributions to the child's development" if the father grasps the opportunity and responsibility). The trial court did not abuse its discretion in concluding, after properly considering and weighing the relevant factors under G.S. 7B-1110(a), that the "relevant consideration is that it is absolutely in the best interest for the minor child to be in the care,

custody, and control of his father and have the opportunity to bond with his paternal biological family." Sl. Op. at 8.

Best interest findings

In re K.J.D., ___ N.C. App. ___ (December 17, 2024)

Held: Affirmed

- Facts: DSS filed a neglect and dependency petition based on continued instances of domestic violence at the home in violation of a temporary safety agreement signed by Mother and Father. The child was adjudicated dependent and placed in DSS custody but physically remained in the home with the parents on a split schedule. DSS later terminated Mother's unsupervised visits and placed the child with a foster parent. Ultimately, DSS filed a motion to terminate both parents' rights. The court adjudicated four grounds and found TPR of Mother's rights to be in the child's best interest but that TPR of Father's rights was not in the child's best interest. Mother appealed, challenging the adjudication and disposition. This summary addresses Mother's dispositional challenge.
- "A finding that termination is in the best interest of the minor child is reviewed for abuse of discretion." Sl. Op. at 15 (citation omitted). G.S. 7B-1110(a) requires the trial court to consider listed criteria and make written findings only as to those that are relevant. Dispositional findings are reviewed under a competent evidence standard.
- Challenged findings are supported by competent evidence, including testimony of the social worker and Mother.
- The trial court did not abuse its discretion in determining that termination of Mother's rights was in the best interest of the child. Findings that support the court's conclusion include that Mother did not believe she had a substance use issue nor pursue substance use treatment despite numerous positive drug screenings during the life of the case; domestic violence incidents continued despite Mother's completion of domestic violence courses; and Mother failed to engage in mental health services. The court rejected Mother's argument that termination of Mother's rights could not be in the child's best interests when Father retained his parental rights. Relying on the reasoning in *In re E.F.*, 375 N.C. 88 (2020), the court held "[w]hether Father retains his parental rights, without a doubt terminating Respondent-Mother's parental rights increases the likelihood of [the child's] adoption and thus aids in achieving his permanent plan." Sl. Op. at 20. The issue is not one of whether it is unfair that Mother's rights were terminated and Father's were not.

In re B.A.J., ___ N.C. App. ___ (September 17, 2024)

Held: Affirmed

- Facts: Juvenile was adjudicated neglected based on the severe physical abuse and torture of an older half-sibling (the half-sibling was adjudicated abused and another half-sibling was adjudicated neglected; neither are the subject of this TPR). The trial court adopted a primary plan of adoption. Over several permanency planning hearings the court found the parents were not making progress on their case plans and refused to admit or acknowledge the abuse and neglect they imposed on the juveniles. Father of the juvenile who is the subject of this action was later incarcerated following a severe domestic violence incident with Mother for which Mother did not file a DVPO, engaged in calls with Father from jail, and stated her intent for reunification of the family with Father. Father proposed two possible relative placements that

DSS ruled out due to safety concerns. DSS motioned for TPRs and the parents' rights were terminated based on the grounds of neglect and willful failure to make reasonable progress to correct the conditions which led to the child's removal. The court of appeals affirmed the adjudication of the ground of neglect. This summary discusses Mother's and Father's appeal of the trial court's determination that terminating their parental rights was in the juvenile's best interest. Mother challenges two dispositional findings as unsupported by competent evidence; Father argues the trial court abused its discretion by not making adequate findings about the two relatives he proposed for placement.

- Dispositional findings are reviewed to determine whether they are supported by competent evidence. A trial court's best interest determination is reviewed for abuse of discretion.
- At the dispositional stage of a TPR the trial court must consider whether termination is in the juvenile's best interest by considering factors listed in G.S. 7B-1110(a). The court must make written findings of the factors it considers relevant. The trial court determines the weight of each factor, and a reviewing court "may not substitute [its] preferred weighing of the relevant statutory criteria for that of the trial court." Sl. Op. at 23 (citation omitted). The "Supreme Court has consistently held that a trial court is not required to consider potential relative placements during the dispositional phase of a TPR proceeding." Sl. Op. at 23.
- Challenged findings are supported by competent evidence. Social worker testimony and the GAL report support the court's finding that there is a bond between the child and the parents and that no evidence was presented to describe the bond or show whether the child recognized Mother and Father as his parents. Unchallenged, binding adjudicatory findings incorporated by reference into the dispositional findings show the court weighed the testimony of Father's relatives and the social worker to determine the relatives were appropriately ruled out for possible placement and that no evidence presented at the hearing warranted reconsideration of Father's proposed relative placements.
- The trial court properly considered the relevant factors of G.S. 7B-1110 and did not abuse its discretion in determining termination of Mother's and Father's parental rights were in the juvenile's best interest. Written dispositional findings of relevant factors include that the juvenile was two years old and had been in DSS custody since he was one month old; termination would aid in accomplishing the primary permanent plan of adoption; the parents' insufficient progress in addressing the conditions of the child's removal make reunification unlikely and it is not in the child's best interest to stay in DSS custody to give the parents more time to show progress or find an appropriate alternative placement; the juvenile has a bond with the parents and no evidence was presented of the type of bond or whether the child recognizes the respondents as his parents; Father missed all visits with the child during incarceration due to the DV incident with Mother; the juvenile has lived with his current foster family for 21 months and has a strong, loving bond with his foster parents and foster siblings; the foster parents have met all of the juvenile's physical, mental, emotional, and developmental needs and have expressed a desire and commitment to adopt the juvenile, making the likelihood of adoption very high.

Appeal

Notice of appeal; Signature; Jurisdiction

In re Z.A.N.L.W.C., ___ N.C. App. ___ (February 5, 2025)

Held: Dismissed

- Facts: This case involves an appeal of a TPR arising from an underlying juvenile case where mother was appointed a Rule 17 GAL. Mother's trial counsel and Rule 17 GAL filed a notice of

appeal, on behalf of Mother, of the order terminating her parental rights as to her four children. Mother was served with the TPR petition but did not file an answer or appear at the hearing. At the hearing, Mother's counsel moved to continue the hearing due to not having had any contact with Mother for some time; the motion was denied and ultimately the court entered the TPR order. Mother's counsel and Rule 17 GAL signed the notice of appeal, but Mother did not.

- Counsel's brief does not address Mother's failure to sign the notice; however, matters of jurisdiction "may be raised at any time, even for the first time on appeal or by a court *sua sponte*." Sl. Op. at 3 (citations omitted).
- G.S. 7B-1001(c) requires notice of appeal of an order terminating parental rights to be signed by both the appealing party and counsel, if any. Proper parties for appeal include "a parent, a guardian appointed under G.S. 7B-600 or Chapter 35 of the General Statutes, or a custodian . . . who is a nonprevailing party." G.S. 7B-1002. There is no reference to a GAL for the parent. Although the GAL statute has since been amended, appellate precedent has held that a GAL is not a proper party who may give notice of appeal and also cannot sign a notice of appeal in the place of the parent. The appellate rules governing notice of appeal, Rules 3 and 3A, are jurisdictional. Appeals that fail to comply with Appellate Rules 3 and 3A are insufficient to grant the court jurisdiction to hear the appeal and must be dismissed.
    - *Author's Note*: This author believes the opinion meant to cite Appellate Rules 3 and 3.1 (3.1 replaced 3A)
- Appellate precedent has found a notice of appeal without father's signature sufficient to grant the court jurisdiction where father's counsel attached a letter from father indicating his wish to appeal the TPR order at issue, resulting in "substantial compliance with the signature requirement delineated in N.C.G.S. 7B-1001(c) and N.C.R. App. P. 3.1(b)[.]" Sl. Op. at 7, *quoting In re J.L.F.*, 378 N.C. 445, 448, n.4 (2021). In this case, there was no indication mother wanted to appeal attached to the notice of appeal
- Mother's failure to sign the notice of appeal is a jurisdictional defect requiring dismissal of the appeal. The record indicates Mother was appointed a GAL but the order was not included in the appellate record, so an explanation as to why the GAL was appointed is unknown. The record shows mother had cognitive limitations and mental health and substance use issues but had not been adjudicated incompetent under G.S. Chapter 35A. The trial court found mother has the ability to make reasonable progress. The information in the record indicates Mother was not incompetent and her Rule 17 GAL is not a proper party for the appeal. Mother was required to sign the notice.

Notice of appeal; Invited error; Failure to preserve the issue

In re K.B.C., ___ N.C. App. ___ (September 17, 2024)

Held: Affirmed

- Facts: Father's parental rights for his three children were terminated. At the TPR hearing, Father called the children's GAL as a witness. The GAL testified that the GAL visited Father while incarcerated to inform Father that the children's foster family intended to adopt the children. Father signed a statement written by the GAL stating the children were well cared for by the foster family, remaining with the foster family was in their best interest, and that he had no intention to oppose a court order to achieve their adoption. Father's counsel was not present during the GAL's visit with Father nor contacted by the GAL. The signed statement was admitted

as evidence without objection. After entry of the TPR orders, Father was not served for fourteen days. Father filed notice of appeal eighteen days after service. Father challenges admission of his signed statement, arguing his rights to counsel and fundamentally fair procedures were violated at the time he signed the statement. Father also filed a petition for writ of certiorari to address defects in his appeal, including designating the appeal to the NC Supreme Court and failing to include the correct statute providing his right to appeal.

- G.S. 7B-1001(b) requires notice of appeal to be made "within 30 days after entry *and service of an order* in accordance with G.S. 1A-1, Rule 58." Sl. Op. at 6, *quoting* G.S. 7B-1001(b) (emphasis added in original). Rule 58 of the Rules of Civil Procedure tolls the time periods within which other parties must act when a party fails to serve a copy of the judgment within three days of entry. The time period is tolled "for the duration of any period of noncompliance with this service requirement." N.C. R. CIV. P. 58. Father timely filed his notice of appeal. Father was served fourteen days after entry of the TPR order at which time the thirty-day period under G.S. 7B-1001(b) began, and filed his appeal within thirty days from the date of service.
- "[A] defendant's failure to designate [the court of appeals] in a notice of appeal does not warrant dismissal of the appeal where [the court of appeals] is the only court possessing jurisdiction to hear the matter and the [opposing party] has not suggested that it was misled by the defendant's flawed notice of appeals." Sl. Op. at 6-7 (citations omitted). The court of appeals has heard appeals despite a party's failure to include the correct statute providing their right to appeal. Father's defects in his notice of appeal are non-jurisdictional. The court determined it had jurisdiction to hear Father's appeal and dismissed Father's PWC.
- "A party is not entitled to seek relief on appeal from a trial court action the party invited." Sl. Op. at 8 (citation omitted). Father called the GAL to testify and elicited testimony showing that Father signed a statement that he would not oppose an order allowing for the children's adoption. Father is not entitled to relief on appeal, even if it the evidence was admitted in error, as Father invited the error.
- Appellate Rule 10(a)(1) provides that "a party must have presented the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make . . .[and] obtain a ruling upon the party's request, objection, or motion." Father failed to preserve his argument regarding the GAL's testimony or the signed statement for appellate review. The transcript shows Father did not make an objection, motion, or request at the hearing as to the GAL's testimony or the admission of the signed statement.

Notice of Appeal

In re H.R.P., ___ N.C. App. ___ (December 31, 2024)

Held: Affirmed

Dissent: Thompson, J.

- Facts: Mother and Father filed notices of appeal for the orders that terminated their respective parental rights. One notice of appeal cited G.S. 7B-1001(a)(4) (a final order that modifies legal custody), and the other notice of appeal cited G.S. 7B-1001(a1)(a), which has been repealed.
- Notices of appeal must be filed in accordance with G.S. 7B-1001(b) and (c). N.C. R. App. P. 3.1(b). Failure to comply is a jurisdictional defect requiring dismissal. An appeal is not lost due to a jurisdictional defect if "the intent to appeal from a specific judgment can be *fairly inferred* from the notice and the appellee is not misled by the mistake." Sl. Op. at 6-7 (citation omitted and

emphasis in original). Mother and Father correctly appealed to the court of appeals and correctly indicated the TPR order from which they intended to appeal, however each cited to incorrect statutory authority under G.S. 7B-1001. Appellate Rule 3.1 does not require citation to a statutory authority, but even if the notices were jurisdictionally defective, the parents' intent to appeal the TPR order can be fairly inferred from the notices and petitioner fully participated in the appeal and therefore was not misled. Parents did not lose the appeal due to any defect in their notices.

Writ of certiorari

In re S.D.H., ___ N.C. App. ___ (November 5, 2024)

Held: Vacated and Remanded

- Facts: Respondent-Father appeals the disposition portion of a TPR order arguing that the trial court abused its discretion by ruling on disposition without receiving evidence from the children's GAL. Father timely filed his notice of appeal and amended notice of appeal. The amended notice did not comply with Appellate Rule 3 by failing to designate the TPR order appealed. Father petitioned the court for writ of certiorari, which was granted.
- A writ of certiorari is not intended to be a substitute for a notice of appeal. It may only issue if the petitioner can show merit to their argument that the trial court erred and that there are extraordinary circumstances to justify its issue. Extraordinary circumstances "generally requires a showing of substantial harm, considerable waste of judicial resources, or 'wide-reaching issues of justice and liberty at stake.' " Sl. Op. at 9 (citation omitted).
- PWC is allowed to aid in the court's jurisdiction. The court found merit to Father's argument that the court failed to comply with statutory mandates regarding the duties of a GAL, and that error could result in substantial harm to both Father's fundamental parental rights and the juveniles.

UCCJEA

Subject Matter Jurisdiction

Home state

In re B.E., ___ N.C. App. ___ (November 5, 2024)

Held: Dismissed

- Facts: Mother appeals neglect adjudication and disposition orders entered by a North Carolina court for lack of subject matter jurisdiction as to three of her six children. A Virginia court had previously entered a divorce decree that incorporated a separation agreement between Mother and Father that granted Mother custody of the three children at issue. DSS filed a petition in North Carolina in June 2023. At the adjudicatory hearing, Father testified that their two biological children had lived with Mother in North Carolina their entire lives and their adopted child resided in North Carolina for several years with the exception of a short temporary absence. Mother argues the North Carolina court lacked subject matter jurisdiction under the UCCJEA to enter the orders due to the custody order previously entered in Virginia.
- The standard of review of whether a court possesses subject matter jurisdiction under the UCCJEA is a matter of law reviewed de novo.
- The jurisdictional requirements of the UCCJEA must be met for a court to have authority to adjudicate juvenile petitions. The UCCJEA includes four bases for a trial court to obtain subject matter jurisdiction over an initial custody determination, which include obtaining jurisdiction as

a court in the child's home state or by a court of the home state of the child declining to exercise jurisdiction on the ground that another State is the more appropriate forum. G.S. 50A-201(a)(1), (2). "A child's 'home state' under the UCCJEA is the state in which the child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding, including a proceeding on abuse, neglect, or dependency allegations.' " Sl. Op. at 10 (citing G.S. 50A-102(7)).

- G.S. 50A-303 requires a trial court to recognize and enforce a child custody determination of another state only if that other state "exercised jurisdiction in substantial conformity" with the UCCJEA. The North Carolina court was not required to recognize the Virginia custody order as the order was entered without subject matter jurisdiction and was null and void under the UCCJEA.
- The North Carolina court had subject matter jurisdiction to enter the adjudication and disposition orders for the three children. The custody order in Virginia was entered in 2023 after all three children had been living in North Carolina since 2018. The Virginia court was required under the UCCJEA to determine the children's home state before entering a child custody order. North Carolina was the children's home state and North Carolina did not decline jurisdiction. Mother did not challenge the North Carolina court's finding of fact that North Carolina is the children's home state, which is binding on appeal. The court rejects Mother's argument that the court was required to look at both home state and conduct a significant connection analysis under G.S. 7B-201(a)(2) and Virginia's companion statute. Significant connection analysis is required only if there is no home state.

Modification jurisdiction

Harney v. Harney, ___ N.C. App. ___ (September 3, 2024)

Held: Affirmed

- Facts: In June 2019, the child was born in New York where Mother resides. Maternal Grandfather lives in North Carolina and traveled to be with Mother when the child was born. Shortly after the child's birth, Grandfather sought and obtained temporary custody of the child due to concerns with Mother's home and mental health. A few days later, the New York court entered a stipulation agreement with consent of Mother and Grandfather that granted both parties joint custody; noted Grandfather lived in North Carolina and named Grandfather as the child's physical custodian. The stipulation gave Mother supervised visitation rights and included provisions Mother had to address. The child lived in North Carolina with Grandfather since entry of the stipulation order. In June 2020, Grandfather filed for custody of the child in North Carolina. In July 2020, Mother filed petitions to modify and enforce the custody order in New York and motioned to dismiss Grandfather's complaint in North Carolina for lack of subject matter jurisdiction, though admitting the child lived with Grandfather in North Carolina since June 2019. In October 2020, following a hearing conducted by the presiding New York judge and the North Carolina judge, at which both parties appeared in North Carolina, the New York court declined exclusive, continuing jurisdiction, naming North Carolina as the more appropriate forum, and directing the parties to appear and cooperate in further proceedings in North Carolina. In July 2021, the North Carolina court entered a temporary custody order and held custody hearings over several months. In 2022, the North Carolina court entered a permanent custody order granting Grandfather legal and physical custody. Mother appeals. This summary discusses the subject matter jurisdiction of the North Carolina court under the UCCJEA.

- An appellate court has a duty to address subject matter jurisdiction even if not raised by any party. The standard of review of whether a court possesses subject matter jurisdiction under the UCCJEA is de novo. Mother's only argument relating to the North Carolina trial court's subject matter jurisdiction is that the North Carolina court failed to rule on her motion to dismiss. Mother cited no supporting authorities and made no argument on the issue. The court of appeals noted its duty to address jurisdiction and addressed the issue on its own.
- Under the UCCJEA, "[e]xcept as otherwise provided in G.S. 50A-204 [temporary emergency jurisdiction], a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) [home state jurisdiction] or G.S. 50A-201(a)(2) [significant connection jurisdiction] and: (1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207." Sl. Op. at 2, *quoting* G.S. 50A-203.
- North Carolina had subject matter jurisdiction to enter the custody order under the UCCJEA. The New York and North Carolina trial courts held a hearing on Mother's motions filed in New York. The New York court entered an order declining to exercise exclusive continuing jurisdiction in favor of the more appropriate forum of North Carolina in compliance with G.S. 50A-207. Mother did not appeal the New York order, and the order is binding upon North Carolina courts. North Carolina was the child's home state under G.S. 50A-201(a)(1) and the court had modification jurisdiction pursuant to G.S. 50A-203.

Civil Cases Related to Child Welfare

Judicial Review of Administrative Decision

Child Maltreatment Registry

Taylor-Coleman v. N.C. Dept. Health and Hum. Servs. Div. of Child Dev. & Early Educ., ___ N.C. App. ___ (November 19, 2024)

Held: Affirmed

- Facts and procedural history: Petitioner appeals from the superior court order affirming the final decision of the Office of Administrative Hearings (OAH). Petitioner owned and operated two licensed child care centers. DHHS, Division of Child Development and Early Education (Division) received a report of an incident at one of Petitioner's centers where a twelve-year old sexually assaulted another child. The other child was Petitioner's four-year old grandson. The Division's investigation found the volunteer supervising the children observed the incident, took the twelve-year old to Petitioner to report the incident, and Petitioner hit the child on the back of the head, yelled at him, and threatened him. The Division determined Petitioner's actions constituted child maltreatment warranting placement on the Child Maltreatment Registry and disqualification from working in child care. Petitioner filed petitions for contested hearings at OAH for her placement on the Registry. The OAH affirmed the Division's determination that Petitioner's actions rose to the level of child maltreatment and that her actions warranted placement on the Registry. Petitioner appealed to the superior court for judicial review where the court affirmed the OAH's final decision. On appeal, Petitioner argues that the grounds for her placement on the Registry were unsupported by the evidence presented at the OAH hearing.
- Appellate review of an order of the superior court affirming an administrative agency decision "is limited to determining (1) whether the superior court applied the appropriate standard of

review, and if so, (2) whether the superior court properly applied this standard." Sl. Op. at 6 (citation omitted).

- Fact-intensive issues are reviewed under the whole-record test. Petitioner in this case challenges the sufficiency of the evidence to support the conclusion that her placement on the Registry was warranted. The superior court did not err in reviewing Petitioner's appeal under the whole-record test standard of review.
- The whole-record test requires the appellate court to review all the record evidence to determine whether there is substantial evidence to justify the agency's decision. "Substantial evidence is relevant evidence a reasonable mind might accept as adequate to support a conclusion." Sl. Op. at 7 (citation omitted). It is "more than a scintilla or a permissible inference." Sl. Op. at 10 (citation omitted). The reviewing court cannot replace the agency's judgment between two reasonably conflicting views under the whole-record test. The petitioner has the burden of proof at the OAH hearing where the administrative law judge (ALJ) must determine whether the Petitioner has met its burden of showing that the Division erred. The reviewing court "must defer to the ALJ's determination about the weight and credibility assigned to the evidence and witnesses." Sl. Op. at 11 (citation omitted).
- G.S. 110-105.3(b)(3) defines child maltreatment as the commission of an act by a caregiver "that results in harm, potential for harm, or threat of harm to a child." Sl. Op. at 8. The Division considers five factors in determining whether an act of maltreatment occurred: "(1) the severity of the incident; (2) the age and development ability of the child; (3) evident disregard of consequences; (4) maltreatment history and previous similar incidents; and (5) future risk of harm." Sl. Op. at 8-9. If the Division determines child maltreatment occurred the caregiver is placed on the Registry and prohibited from being a caregiver at any licensed child care facility. G.S. 110-105.5. North Carolina appellate courts have not reviewed a caregiver's challenge to placement on the Registry, making this a case of first impression.
- There was substantial evidence to support the OAH decision. Evidence presented to support Petitioner's placement on the Registry included testimony of the Division's investigator and the investigation documentation, including interviews with the individuals involved. The judge permitted the investigator to testify about the statements made by the two children who were not called to testify, and the two facility witnesses who failed to appear at the hearing. The facility volunteer reported in her interview with the investigator that Petitioner struck and threatened the older child. The other employee witness interviewed by the investigator corroborated the volunteer's statements. The investigator testified that the older child stated in his interview that "Aunt Net" hit him, and the investigation later revealed that was the name the child called the Petitioner. The Petitioner questioned the investigator at the hearing regarding the non-testifying witness statements and the identity of who hit the older child. The ALJ determined the credibility of the witnesses and found Petitioner had not met its burden.
- The court echoed the superior court's recognition of the disparity of the laws governing the Registry, which does not allow for removal or expunction, and laws governing the Sex Offender Registry and criminal expunction, which provide the right to petition for removal and expunction. The court urges the General Assembly to address the issues raised and concerns expressed by the courts.

Substantial violation of Appellate Rules; Sanction

Harney v. Harney, ___ N.C. App. ___ (September 3, 2024)

Held: Affirmed

- Facts: Mother appeals custody order granting Grandfather custody of the child. Mother's appellate brief included three appendixes: one with a table listing challenged findings or conclusions with analysis and arguments for each, singled spaced in sans serif font; one with portions of the transcript of the proceedings; and one of an unpublished opinion cited in her brief. Mother's brief with appendixes was 73 pages and about 17,000 words. Grandfather's reply brief with appendixes was 83 pages and about 14,000 words. The summary discusses the court's determination of Mother's substantial violation of the Rules of Appellate Procedure and discretionary sanctions imposed.
- An appellate court must consider whether a violation of the Rules of Appellate Procedure is a "substantial failure" or "gross violation" of the rules. Sl. Op. at 15 (citation omitted). "If so, our Supreme Court has instructed that in our discretion, we should 'fashion [ ] a remedy to encourage better compliance with the rules' " by conducting a "fact-specific inquiry."Sl. Op. at 15-16, 17. Appellate courts may impose sanctions for substantial failure to comply with the rules or gross violation of the rules that may include monetary damages, dismissal, or "any other sanction deemed just and proper." Sl. Op. at 16-17, *quoting* N.C. R. App. Proc. 34, 25.
- Rules of Appellate Procedure:
  - 26(g)(1) provides formatting requirements, including font and spacing, for documents filed with the court.
  - Rule 28(b) requires the appellant's brief to contain a non-argumentative statement of the material facts, the appellant's argument, a statement of the applicable standard of review, and analysis with appropriate references to the record, the transcript, or exhibits. Rule 28(d) requires appendixes in limited circumstances, including necessary portions of transcripts and proceedings, and establishes formatting requirements. "The purpose of the appendix is to include parts of the transcript, evidence, statutes, or other documents necessary or helpful to understand 'the issue[s] presented in the brief' or, for the appellee, to address an issue raised in the opposing brief." Sl. Op. at 13 (referencing N.C. R. App. P. 28(d)). The purpose of the appendix "is not to extend the body of the brief." Sl. Op. at 13.
  - Rule 28(j) establishes word limits for principal briefs and reply briefs, not including appendixes.
  - Rule 30(e) requires providing a copy of an unpublished opinions cited in a party's brief or argument.
- Mother violated Rules 28(j), 28(d), and 26(g) by using an appendix to make arguments required to be included in her principal brief, by greatly exceeding the word limit permitted for a principal brief by using the appendix as an extension of her brief, and by ignoring the formatting requirements for appendixes. Mother's violation is substantial and imposed a burden on Grandfather and the court. Grandfather incurred increased costs in responding to the brief and violated the rules by adding a similar table to his reply brief to address the arguments in Mother's appendix. If Grandfather had instead motioned to strike part of Mother's brief or requested another sanction, he'd still have incurred additional costs and created additional delay in the appeal. The court spent more time in reviewing improperly extended briefs, determining how to address the issues and rule violations, and the appropriate sanction for violations. The court used its discretion to sanction Mother by not addressing or considering Mother's arguments in the improper appendix, disregarding much of her challenge to the

court's findings and conclusion that she acted inconsistently with her constitutionally protected status as a parent. The court notes Mother also violated Rule 28 by placing part of her argument in her statement of the facts. Mother's two other appendixes were proper under Rules 28 and 30. The court declined to sanction Grandfather as his violation of the rules was in response to Mother's violation and his brief otherwise complied with the rules. The court admonished both counsel to comply with the rules and stated that "if an appellant violates a rule, this does not give the appellee license to violate the rules in response." Sl. Op. at 22.

No-contact order

Workplace Violence Prevention Act; Free speech; Authority over non-parties

Durham Cnty. Dept. of Soc. Servs. v. Wallace, ___ N.C. App. ___ (September 3, 2024)

Held: Vacated and Remanded

- Facts: Former DSS employee (Respondent) appeals from a civil no-contact order entered pursuant to the Workplace Violence Prevention Act (WVPA). Respondent founded Operation Stop Child Protective Services (Operation Stop CPS) and led rallies and protests against DSS policies, especially focused on abuse and neglect practices. DSS (Petitioner) filed a complaint for a civil no-contact order on behalf of DSS and its employees to enjoin Respondent and her "followers." The complaint's allegations included Respondent's protests near the DSS office and at the Director's residence, and social media posts and hundreds of text messages sent to an employee by Operation Stop CPS advocates which caused employees to feel fearful. The trial court granted a temporary ex-parte no-contact order and following a hearing, the court found that Respondent's actions constituted harassment and issued a permanent no-contact order. The court concluded Respondent committed unlawful conduct but would still be allowed to peacefully protest and directed Respondent, among other things, to not visit or interfere with DSS, its employees, or its operations. The order further decreed that the Respondent and her "followers" must be allowed to peacefully protest so long as they are at least 25 feet from the DSS entrances while protesting, do not use amplification devices, and do not yell or chant when minor children are leaving the building when they appear to be exercising DSS supervised visitation (restrictions). Respondent appeals, arguing (1) the social media posts and text messages do not constitute harassment under the WVPA; (2) the no-contact order did not include a finding that Respondent acted with the intent to place an employee in reasonable fear of their safety as required by the WVPA; (3) the order's restrictions violate Respondent's freedom of speech under the federal and state constitutions; and (4) the WVPA does not grant the court authority to enjoin non-parties in the order.
- Appellate courts review the "trial court's record for 'competent evidence that supports the trial court's findings of fact' and the propriety of its 'conclusions of law . . . in light of such facts." Sl. Op. at 5 (citation omitted). Conclusions of law are reviewed de novo.
- The WVPA authorizes a trial court to issue a civil no-contact order "upon finding that an 'employee has suffered unlawful conduct committed by' a respondent[,]" which includes "otherwise harassing [conduct], as defined in [N.C. Gen. Stat. §] 14-277.3A. . ." Sl. Op. at 6, *quoting* G.S. 95-264(a), 95-260(3)(b). Civil harassment has five statutory elements under G.S. 14-277.3A: (1) knowing conduct (2) directed at (3) a specific person (4) that torments, terrorizes, or terrifies, and (5) serves no legitimate purpose. " 'Direct at' element also implicates Respondent's direction of third parties towards a targeted employee.' " Sl. Op. at 9. Relying on Ramsey v. Harman, 191 N.C. 146 (2008), to apply the appellate courts' interpretation of the identical statutory language and schema of G.S. Chapter 50C applicable to civil no-contact orders, for no-contact orders entered pursuant to the WVPA, the trial court must make findings of harassment

"without legal purpose and with the *intent* to place the employee in reasonable fear for the employee's safety" to determine the Respondent committed unlawful conduct. Sl. Op. at 12, *quoting* G.S. 95-260 (emphasis in original).

- Respondent's social media posts and text messages meet the statutory definition of harassment. Respondent knowingly intended to advocate for certain causes and deliberately took actions in furtherance of that objective. Respondent influenced and directed Operation Stop CPS advocates to target their efforts at specific DSS employees. The record shows the posts and texts were directed at two specific employees, the Director and a specific social worker, both named in the petition. The fourth element was not addressed by Respondent or the court. The acts may not serve a legitimate purpose based on the court's finding that Respondent intimidated the Director; the finding that numerous texts sent in a short time could also be considered an illegitimate purpose.
- Findings are insufficient to support the court's conclusion that DSS and its employees suffered unlawful conduct committed by Respondent. The court incorporated the facts alleged in the petition in its findings of fact, including protests at the main office and personal residence of an employee, intimidation of the director, and the receipt of numerous texts in a single evening by a social worker that made the social worker and their employees fearful. However the court did not make any findings concerning the content of the harassment or intimidation, or identify who sent the messages. Without these findings, the appellate court cannot review whether the conduct served a "legitimate purpose" or specific intent to "torment, terrorize, or terrify" DSS employees to constitute harassment under G.S. 14-277.3A(b)(2) and thereby conclude that Respondent engaged in unlawful conduct under the WVPA, G.S. 95-260(3)(b).
- To determine whether Respondent's constitutional right to free speech afforded by Article I of the N.C. Constitution were unconstitutionally restricted by the no-contact order, the appellate court relied on preexisting federal Free Speech Clause jurisprudence, citing State v. Petersilie, 334 N.C. 169 (1993) (expressly adopting federal free speech jurisprudence to interpret N.C. Const., Art. I, through its disposition). An analysis of "First Amendment free-speech rights and government fora requires four inquiries . . . : (1) whether the restriction affected protected speech or expressive conduct; (2) if so, whether the restriction is either content-based or content-neutral; (3) if content-neutral, which tier of judicial review below strict scrutiny applies to the restriction; and (4) which category of forum the restriction concerns." Sl. Op. at 16 (citations omitted and cleaned up). "Content-neutral restrictions of traditional and designated (collectively, 'unlimited') fora are subject to intermediate scrutiny[.]" Unlimited fora are "quintessential community venue[s], such as a public street, sidewalk, or park." Sl. Op. at 18 (citation omitted). Sl. Op. at 18. To satisfy intermediate scrutiny, "the restriction must be narrowly tailored to achieve an important or substantial government interest in a manner that allows for ample alternative channels of communication" but "need to be the least restrictive or least intrusive means [in achieving said interest]." Sl. Op. at 17-18 (citation omitted).
- The no-contact order satisfies intermediate scrutiny and does not violate Respondent's free speech rights. The effect of the WVPA through the no-contact order implicates Respondent's expressive conduct of protesting DSS's practices. Respondent challenges the WVPA and the order's restrictions as applied to her and therefore the restrictions are content-neutral. Due to the lack of precise findings in the no-contact order, the appellate court deferred determining the exact forum classification at issue here, presumed the forum to be a "quintessential community venue," and applied the most stringent applicable test – intermediate scrutiny. The content-neutral restrictions were aimed at achieving the significant public interests of protecting employee safety and preventing psychological harm to minor children visiting the DSS building. The restrictions were narrowly tailored because they promote this significant

interest and would be achieved less effectively otherwise. Finally, the order left open ample alternative channels of communication by specifically allowing Respondent to protest subject to the order's narrow restrictions.

- Appellate courts void "injunctions 'affecting [the] vested rights' of non-parties who lack any identifiable relationship to the parties or any notice of the proceedings." Sl. Op. at 13 (citation omitted). Here, the trial court did not identify any "followers" of Respondent to enjoin in the order. The portion of the order enjoining the undetermined and unnamed followers is vacated.
- N.C. R. App. P. 10(a)(1) requires Respondent to "present[ ] to the trial court a timely request, objection, or motion" stating "the specific grounds for the ruling the party desired the court to make." Respondent did not preserve her constitutional right-to-petition claim for appellate review. Respondent did not raise this claim at any point during trial or as part of an expressed objection, separate from Respondent's freedom of speech objection.