Chapter 7B Juvenile Code Case Update

Associate Justice Tamara Barringer
Supreme Court of North Carolina

June 2022

Findings of Fact

Recitation of Testimony

In re D.T.H., 378 N.C. 576, 2021-NCSC-106 (Reversed and Remanded).

"As a result, given our inability to determine whether the contents of Finding of Fact No. 9, taken in its entirety, represent a factual determination by the trial court rather than the mere recitation of the maternal grandfather's testimony, we are compelled to disregard Finding of Fact No. 9 in determining whether the trial court's findings of fact adequately support its determination that respondent-father's parental rights in David were subject to termination." *Id.* ¶ 8 (cleaned up).

"In view of the fact that Finding of Fact No. 11(b) consisted of nothing more than a recitation of respondent-father's testimony, it is not, in actuality, a finding of fact at all. While the record contains conflicting evidence concerning the nature and extent of respondent-father's attempts to contact David and the extent to which the maternal grandparents successfully interposed obstacles to any efforts that respondent-father might have made to contact his son, it is not the role of this Court, rather than the trial court, to resolve such disputed factual issues." *Id.* ¶ 12 (cleaned up).

Determination of Credibility

In re D.L.W., 368 N.C. 835 (2016) (Reversed).

"Although there was conflicting testimony regarding the details of these encounters, the trial judge had the responsibility to pass upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *Id.* at 843 (cleaned up).

Relying on Evidence from the Dispositional Phase for Adjudicatory Findings

In re Z.J.W., 376 N.C. 760, 2021-NCSC-13 (Reversed in Part, Vacated and Remanded in Part).

"Although the trial court was not required to deem respondent-father's testimony to be credible, it appears that the trial court predicated the challenged portions of its findings of fact upon testimony presented by the maternal aunt at the dispositional phase of the proceeding to the effect that respondent-father had not made any contact with the mother's family until he had been provided with her e-mail address by the Nash County DSS in 2018. In the event that the trial court relied upon this dispositional evidence as support for its adjudicatory finding that respondent-father had not made any efforts to locate the mother or

Jill since their departure from Buncombe County, we agree with longstanding Court of Appeals precedent that it was error to do so." *Id.* ¶ 17 (cleaned up).

The Judge Who Presided Over the Hearing Must Make the Findings of Fact

In re E.D.H., 2022-NCSC-70 (Affirmed).

"One of 'the duties to be performed by the court under these rules,' N.C.G.S. § 1A-1, Rule 63, is finding the facts, stating the conclusions of law, and directing the entry of judgment pursuant to Rule 52. Thus, this Court has interpreted Rules 52 and 63 together to provide that a substitute judge cannot find facts or state conclusions of law in a matter over which he or she did not preside. See In re C.M.C., 373 N.C. 24, 28 (2019). Conversely, and respondent concedes, if Judge Houston made the findings of fact and conclusions of law that appear in the order before retiring and Chief Judge Byrd did nothing more than put his signature on the order and enter it ministerially, the order is valid." *Id.* ¶ 13.

Sufficient Findings to Conduct Meaningful Appellate Review

In re B.F.N., 2022-NCSC-68 (Vacated and Remanded).

"However, despite allegations that respondent had "abandoned and neglected" the children and had not made any inquiry about the wellbeing of the children in over two years, the trial court's findings fail to offer an assessment regarding the issue of whether respondent neglected the children by abandonment. This Court has previously held that when the trial court denies a petition at the adjudicatory stage pursuant to N.C.G.S. § 7B-1110(c), the order must allow for appellate review of the trial court's evaluation of each and every ground for termination alleged by the petitioner. Without findings addressing whether respondent's acts or omissions amounted to willful neglect and refusal to perform the natural and legal obligations of parental care and support, this Court is precluded from conducting meaningful appellate review on this ground." *Id.* ¶ 25 (cleaned up)

Indian Child Welfare Act

In re A.L., 378 N.C. 396, 2021-NCSC-92 (Affirmed in Part and Remanded).

"This Court recognized that for all child custody proceedings occurring after 12 December 2016, the ICWA imposes a duty on the trial court to ask each participant whether the participant knows or has reason to know that the child is an Indian child. 'Th[is] inquiry is made at the commencement of the proceeding and all responses should be on the record.' 25 C.F.R. § 23.107(a). In this matter, as in *In re M.L.B.*, nothing in the record reflects the trial court making this inquiry or the participants' responses. Therefore, the trial court did not comply with 25 C.F.R. § 23.107(a). Because the trial court did not comply with 25 C.F.R. § 23.107(a), the trial court could not comply with other requirements in the ICWA and could not determine whether the trial court had reason to know Arden is an Indian child." *Id.* ¶ 26 (cleaned up).

"As the determination of whether there is reason to know that Arden is an Indian child cannot be made on the record before us, we remand to the trial court. On remand the trial court must ask each participant whether the participant knows or has reason to know

that Arden is an Indian child on the record and receive the participants' response on the record. If there is reason to know that Arden is an Indian child, the trial court must comply with 25 C.F.R. § 23.107(b) and conduct a new hearing on termination of respondent's parental rights. DSS must also comply with 25 U.S.C. § 1912(a) and 25 C.F.R. § 23.111(d) as the party seeking termination of parental rights. If there is not a reason to know that Arden is an Indian child, such as if Arden is only eligible for membership in the Lumbee tribe, then the trial court should enter an order to this effect and the termination of respondent's parental rights order to Arden signed February 25, 2020, remains undisturbed." *Id.* at ¶ 28 (cleaned up).

Also, *In re M.L.B.*, 337 NC 335, 2021-NCSC-51 (Reversed and Remanded).

Jurisdiction

Verification of a Petition to Terminate Parental Rights

In re O.E.M., 379 N.C. 27, 2021-NCSC-210 (Vacated and Remanded).

"The precise question before us is whether DSS' failure to verify its motion deprived the trial court of subject matter jurisdiction to conduct termination proceedings. In *In re T.R.P.*, this Court held that a party's failure to verify a petition alleging that a juvenile was neglected was a fatal jurisdictional defect. 360 N.C. 588, 588, 636 S.E.2d 787 (2006). Although *In re T.R.P.* addressed a party's failure to verify a juvenile petition, we hold today that the requirement contained in subsection 7B-1104 is also jurisdictional as applied to a motion in the cause for termination. Accordingly, we conclude that DSS' failure to verify its motion in the cause deprived the trial court of subject matter jurisdiction, and we vacate the order terminating respondent-father's parental rights in Oscar." *Id.* ¶ 2.

Standing

In re A.A., 2022-NCSC-66 (Affirmed).

"In sum, the record in this case indicates that Amy continuously resided with petitioner—whether with or without the father—from at least late 2013 through 13 May 2019, the date on which the petition to terminate parental rights was filed. This period of more than five years not only encompasses but clearly exceeds the "continuous period of two years" preceding the filing of the petition as specified in the statute which defines those persons who have standing to file a petition for termination of parental rights. N.C.G.S. § 7B-1103(a)(5). Nothing in the Juvenile Code requires a petitioner to utilize any specific language in a petition for termination of parental rights to establish the party's standing to bring the termination proceeding. Similarly, no authority in the Juvenile Code or precedent from this Court requires the trial court to make a specific finding of fact regarding a petitioner's standing; therefore, it is of no consequence that the trial court did not elect to enter an explicit recognition of petitioner's standing to initiate the case, especially since respondent-mother did not raise the issue during either the adjudication or the disposition hearing." *Id.* ¶ 17.

Exercising Jurisdiction Over or Conducting a Hearing for a Termination Proceeding While a Case is on Appeal

In re J.M. & J.M., 377 N.C. 298, 2021-NCSC-48 (Vacated in Part, Affirmed in Part).

"There is no question the trial court violated N.C.G.S. § 7B-1003(b) by exercising jurisdiction to conduct the hearing on the motion to terminate respondent-father's parental rights to Jazmin while disposition of his appeal from the remand orders was pending and by entering the order terminating respondent-father's parental rights to Jazmin on 22 January 2020. Both DSS and the GAL agree that the trial court violated N.C.G.S. § 7B-1003(b). The contested issue on appeal is the effect of the violation." *Id.* ¶ 19.

"While we again acknowledge that N.C.G.S. § 7B-1003(b) does not divest the trial court of subject matter jurisdiction over the juvenile proceeding as a whole, we emphasize that N.C.G.S. § 7B-1003(b) does constrain the trial court's exercise of its subject matter jurisdiction in termination proceedings. Specifically, the relevant statutory language unambiguously prohibits the trial court from doing two things regarding termination proceedings while an appeal is pending: exercising jurisdiction and conducting hearings. Where jurisdiction is statutory and the General Assembly requires the Court to exercise its jurisdiction in a certain manner, to follow a certain procedure, or otherwise subjects the court to certain limitations, an act of the court beyond these limits is in excess of its jurisdiction." *Id.* ¶ 21 (cleaned up).

In re B.B., S.B., S.B., 2022-NCSC-67 (Affirmed).

"In this matter, after respondent filed her notice of appeal and before this Court took any action, the trial court entered an amended order with multiple additional findings of fact. Several of these findings of fact are neither findings of fact mentioned in the trial court's oral ruling nor duplicative of other findings of fact in the original termination-of-parental-rights order. Thus, we are not persuaded that these changes corrected a clerical mistake or error arising from oversight or omission. Rather, we conclude that the trial court exercised jurisdiction by entering a termination-of-parental-rights order that made substantive changes when the trial court lacked jurisdiction to do so under N.C.G.S. § 7B-1003(b). As a result, the amended termination-of-parental-rights order is void, and we only consider the original termination-of-parental-rights order that was entered on 29 October 2020 and the 23 February 2022 order entered after remand and pursuant to this Court's order. *Id.* ¶ 17 (cleaned up).

N.C.G.S. §7B-1111. Grounds for Terminating Parental Rights

§ 7B-1111 (a)(1): "The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101."

Likelihood of Repetition of Neglect

In re B.R.L, 2022-NCSC-49 (Affirmed).

"However, respondent did not follow the case plan and address the issues that led to Brian's removal. First, respondent never successfully completed a DVOP. Nor did respondent obtain appropriate housing. Respondent also did not address her mental health needs. In

addition, while respondent obtained CCAs, she did not fully follow the recommendations she received from them, such as completing a substance abuse intensive outpatient program. Respondent's visitation with Brian was sporadic. Finally, respondent refused to submit to several requested drug screens and repeatedly tested positive for alcohol use despite respondent's alcohol abuse being one of the reasons for Brian's removal. Thus, the trial court found that the concerns that originally brought Brian into DSS's care remained unaddressed. Given these findings, the trial court's determination that there was a likelihood of repetition of neglect was supported." *Id.* ¶ 13.

In re B.R.L. 379 N.C. 15, 2021-NCSC-119 (Reversed and Remanded).

"In this case, respondent does not dispute that there was a finding of prior neglect. She contends, however, that the trial court order does not establish that it recognized its duty to assess the likelihood of 'future neglect. Respondent argues that the trial court failed to make any determination of future neglect and that the court found and concluded only that respondent has neglected the child." *Id.* ¶ 22 (cleaned up).

"We agree that the trial court's adjudication order is devoid of any determination of a likelihood of future neglect should Billy be returned to respondent's care. Indeed, the trial court made very few findings of fact directly related to respondent's ability to care for Billy at the time of the termination hearing or regarding any change in respondent's circumstances since the initial neglect adjudication. The only factual finding that directly addresses respondent's current circumstances and her ability to care for Billy is finding of fact 88, in which the court found that respondent was not physically disabled but was unemployed, did not have a driver's license, did not have a vehicle, and did not have stable housing. Although the trial court found that Billy was previously adjudicated neglected, the court did not make any finding regarding the likelihood that Billy would be neglected if he was returned to respondent's care, a finding which was necessary to sustain the conclusion that respondent's parental rights were subject to termination based on neglect." *Id.* ¶ 23.

"In summary, we reverse the trial court's order terminating parental rights but remand the case for further proceedings not inconsistent with this opinion, including, if appropriate, the entry of a new order containing proper findings of fact and conclusions of law addressing whether grounds exist pursuant to N.C.G.S. § 7B-1111(a)(1) to support the termination of respondent's parental rights in Billy. The trial court may, in the exercise of its discretion, receive additional evidence on remand if it elects to do so." *Id.* ¶ 25.

Past Neglect Need Not Be the Fault of the Parent

In re C.S., 380 N.C. 709, 2022-NCSC-33 (Affirmed).

"Respondent asserts that the trial court had no foundation for finding past neglect in finding of fact one—that "[respondent] has neglected the juvenile." According to respondent, the trial court could not have found past neglect when there was no evidence that respondent had custody of Carl in the past or was responsible for any neglect Carl experienced. Respondent argues that the trial court wrongly considered respondent's incompletion of his case plan as evidence of past neglect. Without a finding of past neglect, respondent further contends that the trial court could not have relied on the incompletion of his case plan to determine that there was a likelihood of future neglect." *Id.* ¶ 15.

"This Court has long recognized that evidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights. In subsequent cases, we clarified that it is not necessary that the parent whose rights are subject to termination be responsible for the prior adjudication of neglect. Here, there was a prior adjudication of neglect. The trial court both took judicial notice of this prior adjudication of neglect and admitted it into evidence. Respondent never objected, either to the original adjudication or to its admission into evidence. Accordingly, the trial court did not err in finding past neglect in this case." *Id.* ¶ 16 (cleaned up).

Failure to Make Progress in Completing a Case Plan Is Indicative of a Likelihood of Future Neglect

In re M.J.S.M., 257 N.C. App. 633 (2018).

"A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *Id.* 373 (cleaned up).

In re M.A., 374 N.C. 865 (2020) (Affirmed).

"The trial court's order reflects a clear understanding of the lengthy history of domestic violence in the family home and respondent-father's failure to make reasonable progress toward addressing the principal obstacle toward reunification that had been identified in the trial court's initial adjudication and disposition order. For that reason, we hold that the trial court's findings support its determination that "[t]here is a strong probability of repeated neglect of [Maria], [Brenda,] and [Andrew] should they be returned to the care[,] custody and control of ... [respondent-father]" and that respondent-father's parental rights in the children were subject to termination on the grounds of neglect pursuant to N.C.G.S. § 7B-1111(a)(1). *Id.* 874.

Adjudicating Grounds Not Alleged in the Petition

In re D.R.J., 2022-NCSC-69 (Reversed).

"Unlike in *In re Quevedo* and *In re Hardesty*, the termination motion in the present case does not even contain a "bare recitation" of the statutory grounds for termination pursuant to N.C.G.S. § 7B-1111(a)(1) or (2). While the GAL contends that the termination motion's sentence representing that the "parents have done nothing to address or alleviate the conditions which led to the adjudication of this child as a neglected juvenile[,]" which was located in the paragraph beginning "Per G.S. 7B-1111(a)(6) both parents are incapable of providing for the proper care and supervision of the juvenile such that the juvenile is a dependent juvenile" is sufficient, nonetheless this statement does not adequately allege the statutory language for an adjudication of the existence of grounds to terminate parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) or (2). . . . Therefore, we reject the GAL's assertion here that the termination motion's above-referenced sentence, even when coupled with the incorporation of prior orders, was "sufficient to warrant a determination" that grounds for terminating parental rights existed under N.C.G.S. § 7B-1111(a)(1) or (2). *See* N.C.G.S. § 7B-1104(6). We also rebuff DSS's contention that respondent-father's notice of potential adjudication pursuant to subsection (a)(2) "was more than sufficient" based upon the motion to terminate incorporating "generally all of the prior orders and court reports and specifically" the adjudication order, the dispositional order, and the 3 September 2020

permanency planning order. To hold otherwise would nullify the notice requirement of N.C.G.S. § 7B-1104(6) and contravene the delineation of specific grounds for terminating parental rights. The consequence of such a decision would require a respondent parent to refute any termination ground that could be supported by any facts alleged in any document attached to a termination motion or petition." *Id.* ¶ 18.

§ 7B-1111 (a)(2): "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. No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty."

There Must Be a Finding that the Child Was in Foster Care or Placement Outside the Home for More than 12 Months

In re M.R.F., 378 N.C. 638, 2021-NCSC-111 (Reversed).

"We hold that the evidence and the trial court's findings of fact fail to establish an essential fact required for an adjudication under N.C.G.S. § 7B-1111(a)(2); namely, that Margot had been in a court-ordered placement outside the home for at least twelve months at the time the petition to terminate respondent-father's parental rights was filed. Therefore, the trial court's adjudication of this ground cannot be sustained." *Id.* ¶ 17 (cleaned up).

Willfulness Is a Finding of Fact that Does not Require Fault by the Parent

In re A.M.L., 377 N.C. 1, 2021-NCSC-21 (Affirmed).

"Respondent-mother also challenges the trial court's conclusion that her failure to make reasonable progress was willful. This Court has already established that the determination that respondent acted 'willfully' is a finding of fact rather than a conclusion of law. In addition, a finding that a parent acted 'willfully' for the purposes of N.C.G.S. § 7B-1111(a)(2) does not require a showing of fault by the parent. It simply requires respondent-mother's prolonged inability to improve her situation, despite some efforts in that direction. *Id.* ¶ 29 (cleaned up).

"The evidence reviewed above already establishes respondent-mother's prolonged failure to improve her situation . . . . Given this evidence, we uphold the portion of the trial court's orders finding that respondent-mother's failure to make progress on the case plan in this case demonstrated willfulness." *Id.* ¶ 30 (cleaned up).

Reasonable Progress in Correcting the Conditions that Led to the Child's Removal

In re A.M., 377 N.C. 220, 2021-NCSC-42 (Affirmed).

"Despite respondent-mother's contention on appeal that 'it is clear that [she] made reasonable progress in correcting the conditions that led to the children's removal,' the recounted findings of fact of the trial court support the conclusion that, even crediting respondent-mother's inconsistent engagement with a few court-ordered resources, she failed

to make reasonable progress toward correcting the substance abuse and domestic violence issues which led to the removal of the children from her care." *Id.* ¶ 24 (cleaned up).

§ 7B-1111 (a)(3): "The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so."

Finding Concerning the Relevant Six-Month Period

In re Z.G.J., 378 N.C. 500, 2021-NCSC-102 (Reversed).

"The trial court made the following finding with respect to this ground: Respondent Mother has been employed at times during this case and always remained able bodied however she has paid zero dollars of child support for [Ann] since she came into care. Zero dollars is not a reasonable amount of child support based on Respondent Mother's actual income nor her ability to earn. Respondent Mother has willfully failed to pay a reasonable cost of care for the juvenile. This finding is not adequately tailored to the relevant six-month period." *Id.* ¶ 33.

Ability to Earn

In re J.M., 373 N.C. 352 (2020) (Affirmed).

"Moreover, as discussed above, the evidence establishes respondent-mother was working at a Popeyes restaurant at the beginning of the six-month period but quit the job of her own accord. The record also establishes that any fault for the lapse in respondent-mother's medication lies with her, as she chose to not seek another provider until her symptoms worsened to the point that she needed to be hospitalized. Respondent-mother cannot assert a lack of ability to pay for her children's support, when that lack was due to her own conduct." *Id.* 178 (cleaned up).

§ 7B-1111 (a)(4): "One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by the decree or custody agreement."

Evidence that a Parent Was Awarded Custody of the Juvenile by Judicial Decree or Parental Agreement

In re M.R.F., 378 N.C. 638, 2021-NCSC-111 (Reversed).

"Petitioner testified at the termination of parental rights hearing that she is Margot's maternal grandmother and not Margot's parent. Petitioner represented that she had been granted guardianship of Margot and that the mother has no meaningful relationship with the child. There is no evidence in the record that the mother was awarded custody of the juvenile by judicial decree or has custody by agreement of the parents' or that respondent-

father was required by the decree or custody agreement to pay for Margot's care, support, and education, as required for an adjudication under N.C.G.S. § 7B-1111(a)(4). Consistent with this dearth of any custodial determination is the lack of any findings by the trial court on such matters. Accordingly, we hold the trial court erred in concluding this ground existed to terminate respondent[-father]'s parental rights." *Id.* ¶ 21 (cleaned up).

§ 7B-1111 (a)(5): "The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights, done any of the following: (a.) Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services. The petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and the Department's certified reply shall be submitted to and considered by the court. (b.) Legitimated the juvenile pursuant to provisions of G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific purpose. (c.) Legitimated the juvenile by marriage to the mother of the juvenile. (d.) Provided substantial financial support or consistent care with respect to the juvenile and mother. (e.) Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding."

§ 7B-1111 (a)(6): "That 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."

N.C.G.S. § 7B-101(9)
Dependent juvenile. - A juvenile 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 child care arrangement.

Appropriate Alternative Child Care Arrangement

In re D.T.H., 378 N.C. 576, 2021-NCSC-106 (Reversed and Remanded).

"A careful review of the termination order establishes that the trial court failed to make any findings of fact that address the issue of whether respondent-father lacked an appropriate child care arrangement. In addition, careful scrutiny of the record satisfies us that the parties did not elicit any evidence that tends to show that respondent-father lacked an appropriate alternative child care arrangement." *Id.* ¶ 26.

§ 7B-1111 (a)(7): "The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion."

Willful Abandonment

In re M.E.S., 379 N.C. 275, 2021-NCSC-140 (Affirmed).

"Respondent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filling of this petition or motion in that he has failed to have any visitation or to seek visitation through the existing custody action, made no attempt to have any contact with the minor child, or make any inquiries regarding her welfare since June 2012." *Id.* ¶ 10.

The Relevant Period

In re K.J.E., 378 N.C. 620, 2021-NCSC-109 (Vacated and Remanded).

"Upon review, the trial court's sparse findings in the adjudicatory stage are insufficient as they do not address respondent's behavior within the relevant six-month period. Apart from the trial court's ultimate determination in finding of fact ten that the Respondent has willfully abandoned the minor child for at least six (6) consecutive months immediately preceding the filing of this Petition only finding of fact nine references the relevant period. Finding of fact nine notes that respondent provided financial support solely through involuntary wage withholding during the "relevant six (6) month period" but nevertheless fails to address the amount withheld or any other attendant circumstances." *Id.* ¶ 9 (cleaned up).

"We note that evidence was presented during the adjudicatory stage of the termination hearing from which the trial court could have made additional findings of fact that might support a conclusion that grounds existed to terminate respondent's parental rights based on willful abandonment. However, the trial court distinguished its findings of fact in the adjudicatory portion of its order from its findings of fact in the dispositional portion. Indeed, the trial court made such additional findings in the dispositional portion of the termination order." *Id.* ¶ 11.

"Because the trial court only moves to the dispositional stage if it adjudicates one or more grounds for termination during the adjudicatory stage, and because there are different evidentiary standards and burdens in the two stages, we do not consider the trial court's findings of fact that are clearly labeled as dispositional findings to support the adjudication of grounds to terminate respondent's parental rights." *Id.* ¶ 11 (cleaned up).

"Thus, because the trial court failed to make proper findings on adjudication, we vacate the trial court's order terminating respondent's parental rights based on willful abandonment under N.C.G.S. § 7B-1111(a)(7) and remand the matter for further factual findings on this ground." *Id.* ¶ 12.

§ 7B-1111 (a)(8): "The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home; or has committed murder or voluntary manslaughter of the other parent of the child . . . ."

Aiding and Abetting the Murder of a Child

In re C.B.C.B., 379 N.C. 392, 2021-NCSC-149 (Affirmed).

"Here, though respondent mother was convicted of both intentional and negligent child abuse, she was not convicted of second-degree murder. Therefore, the petitioner must prove the elements of either aiding and abetting, attempt, conspiracy, or solicitation of second-degree murder to satisfy its burden here." *Id.* ¶ 10.

"Aiding and abetting occurs when (1) the crime was committed by some other person; (2) the defendant knowingly advised, instigated, encouraged, procured, or aided the other person to commit that crime; and (3) the defendant's actions or statements caused or contributed to the commission of the crime by that other person." *Id.* ¶ 11 (cleaned up).

"With respect to the second element, the communication or intent to aid does not have to be shown by express words of the defendant but may be inferred from his actions and from his relation to the actual perpetrators. Generally, an individual's failure to intervene does not make him guilty of aiding and abetting. Parents, however, have an affirmative legal duty to protect and provide for their minor children. As such, parents must take every step reasonably possible under the circumstances of a given situation to prevent harm to their children. Therefore, when a parent has actual knowledge of harm to his or her child and fails to reasonably protect the child from harm, that parent has knowingly aided the perpetrator's commission of the harm. The reasonableness of a parent's response, however, must be determined on a case-by-case basis." *Id.* ¶ 12 (cleaned up).

§ 7B-906.2. Permanent plans; concurrent planning.

(d) At any permanency planning hearing under subsections (b) and (c) of this section, the court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification:
(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.
(4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

Required Findings

In re L.B.L.B., 377 N.C. 311, 2021-NCSC-49 (Remanded).

"Aside from acknowledging respondent-mother's attendance at the 11 October 2019 permanency planning hearing and referencing her absence from the termination hearing on 12 March 2020, the trial court found no facts addressing the issue embodied in Section 7B-906.2(d)(3) with regard to respondent-mother. While the record contains little evidence presented by the parties on the issue of respondent-mother's availability as contemplated by the statute, we note that DSS's written report to the trial court for the permanency planning

hearing includes information about respondent-mother's attendance at court dates and scheduled visitations, as well as her failure to attend child and family team (CFT) meetings. The report submitted by the guardian ad litem also alludes to respondent-mother's failure to attend CFT meetings and states that "[t]he GAL has spoken to the parents three times but ... has had no significant interactions in the last six months." This information contained in the respective reports of DSS and the GAL, however, does not satisfy the trial court's statutory obligation to fulfill the requirements of N.C.G.S. § 7B-906.2(d)(3) by making written findings on the issue of respondent-mother's availability. *Id.* ¶ 29 (cleaned up).

Ineffective Assistance of Counsel:
Failure of Respondent to Demonstrate Prejudice

In re Z.M.T., 379 N.C. 44, 2021-NCSC-121 (Affirmed).

"A parent in a termination of parental rights proceeding has a statutory right to counsel pursuant to N.C.G.S. § 7B-1101.1, which inherently requires effective assistance from that counsel." *Id.* ¶ 15 (cleaned up).

"To succeed in a claim for ineffective assistance of counsel, respondent must satisfy a two-prong test, demonstrating that (1) counsel's performance was deficient; *and* (2) such deficient performance by counsel was so severe as to deprive respondent of a fair hearing. To make the latter showing, the respondent must prove that there is a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings." *Id.* ¶ 16 (cleaned up).

"Assuming without deciding that counsel's performance was deficient, respondent-mother cannot prevail on her ineffective assistance of counsel claim because she has failed to demonstrate that she was prejudiced by any alleged deficiency in performance by counsel. Respondent-mother does not argue, and therefore cannot show, that there was a reasonable probability of a different result." *Id.* ¶ 17 (cleaned up).