

FREQUENTLY CITED CASES

DSS Attorneys' Winter Conference 2020
Tips for Writing Briefs for the North Carolina Court of Appeals and Supreme Court
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Standards of Review

The Court reviews a trial court's adjudication decision pursuant during a termination of parental rights proceeding in order to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law," *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)

When reviewing an initial adjudication of abuse or neglect, the court must determine 1) whether the findings of fact are supported by clear and convincing evidence and 2) whether the court's conclusions of law are supported by the findings of fact. *In re Gleisner*, 141 N.C.App. 475, 480, 539 S.E.2d 362, 365 (2000).

The trial court's findings of fact, supported by clear and convincing evidence, in an abuse and neglect proceeding are deemed conclusive on appeal, even where some evidence supports a contrary finding. *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E. 2d 453, 455 (2013); *Knutton v Cofield*, 273 N.C. 355, 359, 160 S.E. 2d 29,33 (1968); *In re Helms*, 127 N.C.App. 505, 511, 491 S.E.2d 672, 676 (1997); *In re N.G.*, 186 N.C. App. 1, 4, 650 S.E.2d 45, 47 (2007)

The trial court's findings of fact become binding on appeal when a respondent fails to specifically argue in her brief that they were unsupported by the evidence. *In re T.N.H.*, 372 N.C. 403, 407; 831 S.E.2d 54, 58 (2019); *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005).

The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed solely for abuse of discretion. *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citing *In re L.M.T.*, 367 N.C. 165, 171, 752 S.E.2d 453, 457 (2013); *In re Montgomery*, 311 N.C. at 110, 316 S.E.2d at 252).

Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. *In re A.U.D.*, 373 N.C. 3, 6-7, 832 S.E.2d 698, 700-701 (2019); *In re T.L.H.*, 368 N.C. 101, 107, [*7] 772 S.E.2d 451, 455 (2015) (citing *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)).

Neglect

However, even where the trial court makes no finding that a juvenile has been impaired or is at substantial risk of impairment there is no error if the evidence would support such a finding. See *In re H.N.D.*, 205 N.C. App. 702, 706, 696 S.E.2d 783, 786 (Wynn, J., dissenting) (holding that reversal was improper despite lack of ultimate finding where all the evidence supported adjudication of neglect based on substantial risk of impairment), *rev'd per curiam for reasons stated in dissent*, 364 N.C. 597, 704 S.E.2d 510 (2010); *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003).

TPR

Motions in the cause and original petitions for termination of parental rights may be sustained irrespective of earlier juvenile court activity. Simply put, a termination order rests upon its own

merits. *In re R.T.W.* 359 N.C. 539, 552, 614 S.E.2d 489, 497 (2005); *In re O.C.*, 171 N.C. App. 457, 615 S.E.2d 391 (2005); *In re E.X.J.*, 191 N.C. App. 34, 45, 662 S.E.2d 24, 30-31 (2008).

A parent's failure to correct within a reasonable period of time the conditions giving rise to the original neglect of the child has been held to be neglect sufficient to support termination of parental rights. *In re D.L.W.*, 368 N.C. 835, 846, 788 S.E.2d 162, 169 (2016); *In re Parker*, 90 N.C. App. 423, 368 S.E.2d 879 (1988).

A trial court may take judicial notice of findings of fact 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. *In re T.N.H.*, 372 N.C. 403, 410; 831 S.E.2d 54, 60 (2019); *Munchak Corp. v. Caldwell*, 301 N.C. 689, 694, 273 S.E.2d 281, 285 (1981).

It is a well established presumption that, in a bench trial, the trial court will disregard any incompetent evidence. *In re T.N.H.*, 372 N.C. 403, 410; 831 S.E.2d 54, 60 (2019); *In re Huff*, 140 N.C. App. 288, 298, 536 S.E.2d 838, 845 (2000); *In re S.D.J.*, 192 N.C. App. 478, 487, 665 S.E.2d 818, 824, 2008

It is well established that "[a] single ground . . . is sufficient to support an order terminating parental rights." *In re J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006). Therefore, if this Court determines that the evidence and findings of fact support the trial court's conclusion that grounds for termination of parental rights exist pursuant to N.C. Gen. Stat. 7B-1111(a)(1), this Court need not review the trial court's finding that grounds to terminate the Appellant's parental rights pursuant to N.C. Gen. Stat. 7B-1111(a)(6) also exist. *In re E.H.P.* 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019); *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003)

At the dispositional stage, a court is *required* to issue an order of termination unless it "determines that the best interests of the child require that the parental rights of such parent not be terminated." *In re Pierce*, 356 N.C. 68, 74, 565 S.E.2d 81, 86 (2002); N.C. Gen. Stat. 7B-1110(b) (2011).

For this reason, in the context of a termination of parental rights proceeding, the children's best interests are paramount, not the rights of the parent. *In re Smith*, 56 N.C. App. 142, 287 S.E.2d 440, cert. denied, 306 N.C. 385, 294 S.E.2d 212 (1982).

However, this Court has held that "the absence of an adoptive placement for a juvenile at the time of the termination hearing is not a bar to terminating parental rights." *In re A.R.A.*, ___ N.C. ___, 835 S.E.2d 417, 424 (2019); *In re D.H.*, 232 N.C. App. 217, 223, 753 S.E.2d 732, 736 (2014). This Court

A trial court is not required to find that a child is adoptable before terminating a parent's parental rights. See *In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983).