

## Termination of Parental Rights: Summaries of NC Supreme Court Opinions (Nov. 20, 2020-Feb. 5, 2021)

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## Jurisdiction: Standing

[In re K.S.-D.F.](#), 375 N.C. 626 (2020)

**Held: Affirmed**

- **Facts:** DSS initiated a juvenile action in 2008 when it filed a petition alleging the juveniles were neglected. In 2009, the juveniles were adjudicated neglected and ultimately a permanent plan of guardianship was achieved in 2010. The court retained jurisdiction but waived further reviews. In 2016, DSS filed a motion for review due to the children being returned to their mother by the guardians. DSS obtained an order for nonsecure custody. Permanency planning hearings were conducted, and in 2018 DSS filed a motion to terminate parental rights. The TPR was granted, and respondents appeal, arguing DSS lacked standing to file the TPR and the court abused its discretion in determining TPR was in the child’s best interests.
- Respondent’s argument that the court lacked jurisdiction to order a nonsecure custody order upon a motion for review instead of a petition because nonsecure custody provisions only apply pre-adjudication has no merit. Jurisdiction is based on the filing of a properly verified petition and extends through all stages of the action. Here the court obtained jurisdiction in 2008 when the petition was filed such that the trial court had jurisdiction to enter the nonsecure custody order in 2016 giving DSS custody. DSS had standing to file the TPR petition.

[In re A.S.M.R.](#), 375 N.C. 539 (2020)

**Held: Affirmed**

- **Facts:** Respondent challenges the underlying neglect adjudication order for alleged evidentiary errors and insufficient findings, arguing that the defects in that order make the order invalid and result in DSS not having custody of the juvenile. Respondent’s additionally raise the failure to include findings addressing UCCJEA subject matter jurisdiction in the underlying adjudication order is a jurisdictional defect such that the order is void. Based on these errors, respondent argues DSS lacks standing to file a TPR.
- “Respondents are precluded from contesting the validity of the trial court’s [neglect] adjudication order in the present appeal, which is an appeal only of the trial court’s subsequent termination order.” Sl.Op. at 4. By failing to appeal the neglect adjudication order, respondent

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has abandoned any non-jurisdictional challenges to that order. A TPR proceeding is separate and distinct from an underlying adjudication of a juvenile's abuse, neglect, or dependency proceeding. In examining prior court of appeals opinions that addressed non-jurisdictional challenges to prior adjudication orders in TPR actions, "we conclude that the principals set out in Wheeler and its progeny are correct. For the reasons set out in those decisions, a respondent's failure to appeal an adjudication order generally serves to preclude a subsequent collateral attack on that order during an appeal of a later order terminating the parental rights." Sl.Op.at 8. See *In re Wheeler*, 87 N.C. App. 189 (1987). The adjudication order granted custody to DSS, and DSS had standing to file the TPR.

- Quoting a previous opinion, *In re L.T.*, 374 N.C. 567, 569 (2020), "the trial court is not required to make specific findings of fact demonstrating its jurisdiction under the UCCJEA, but the record must reflect that the jurisdictional prerequisites of the Act were satisfied when the court exercised jurisdiction." Sl.Op. at 11. "[T]he lack of explicit findings establishing jurisdiction under the UCCJEA does not constitute error because the record unambiguously demonstrates that 'the jurisdictional prerequisites in the Act were satisfied.'" *Id.* Here, the record reflects NC was the children's home state at all relevant times and NC had jurisdiction in the adjudication proceeding.

[In re A.L.L.](#), 376 N.C. 99 (2020)

**Held: Reversed**

**Concur in part, Dissent in Part, Newby, J.**

- Facts: The juvenile was adjudicated dependent in an underlying juvenile action based on circumstances related to mother's mental health issues. During the course of the underlying dependency action, mother was ordered to comply with her case plan, which she did but she was still engaging in inappropriate behaviors and had parenting deficits. Ultimately the court appointed permanent guardians for the juvenile under G.S. 7B-600, achieving a permanent plan. The guardians filed the TPR petition so they could adopt. The TPR was granted on the grounds of dependency and willful abandonment. Mother appeals both grounds and argues the court lacked subject matter jurisdiction.
- Subject matter jurisdiction is a question of law that is reviewed de novo. Subject matter jurisdiction may be raised at any stage of the proceedings, including on appeal. When the court lacks subject matter jurisdiction, its orders are void.
- Respondent argues the Davie County district court lacked subject matter jurisdiction because the Davidson County district court previously entered a permanency order that awarded guardianship to the petitioner and Davie County's action would override the Davidson County's permanency planning order. The Davie County district court had subject matter jurisdiction. Subject matter jurisdiction in a TPR is governed by G.S. 7B-1101, and the petitioners had standing to initiate the TPR under G.S. 7B-1103, which they did in the county where they resided with the juvenile. Jurisdiction in a TPR does not require an underlying abuse, neglect, or dependency action. Additionally, the Juvenile Code does not require a TPR action to be filed in the same district court as an A/N/D action if one exists. If the requirements of G.S. 7B-1101 exist, the court has jurisdiction even if an A/N/D action is pending in another county.

## Indian Child Welfare Act (ICWA): Compliance with notice provisions

[In re N.K.](#), 375 N.C. 805 (2020)

### **Held: Remanded (ICWA issue)**

- **Facts:** Mother appeals the termination of her parental rights, arguing the trial court failed to comply with the ICWA requirements involving notice to the tribes. Based on a reason to know an Indian child may be involved, DSS sent notice to several tribes and the Bureau of Indian Affairs. The Eastern Band of Cherokee Indians responded there was no affiliation. Responses were not received from other tribes the notice had been sent to. The court determined the child was not an Indian child.
- The court relies on its earlier opinion, *In re E.J.B.*, 375 N.C. 95, 846 S.E.2d 472 (2020).
- The notices that were sent to the tribes are not part of the record such that the appellate court cannot determine whether the notices are sufficient under the ICWA regulations. There is no indication as to whether DSS contacted the BIA for assistance after the other tribes failed to respond.
- Remanded for further proceedings to address whether the notice provisions of ICWA were complied with prior to the entry of the TPR and whether the child is an Indian child.

## Personal Jurisdiction: Service by Publication, Rule 4(j1)

[In re S.E.T.](#), 375 N.C. 665 (2020)

### **Held: Vacated**

- **Facts:** This is a TPR initiated by petitioner-mother against respondent father. A summons was issued but was returned by the sheriff as unserved with a notation that respondent had no address located within the county and that respondent was not at the address provided and had been banned from that address. Petitioner sought an order for service by publication, which was granted. Notice of service by publication was made. Respondent did not answer or appear at the hearing, and the TPR was granted. Father appealed, arguing the order was void as the court did not have personal jurisdiction over him due to the failure to comply with Rule 4(j1) of the Rules of Civil Procedure.
- “A defect in service of process by publication is jurisdictional, rendering any judgment or order obtained thereby void.” Sl.Op. at 6. Here, the court had no personal jurisdiction over respondent.
- Service by publication in a TPR must comply with both the provisions of G.S. 7B-1106 (which requires court findings and approval before publication) and G.S. 1A-1, Rule 4(j1). The statutory requirements for service by publication is strictly construed.
- Rule 4(j1) requires that after service is completed an affidavit be filed with the court that contains information specified in the rule including the circumstances warranting service by publication. A failure to file the affidavit that complies with the requirements of Rule 4(j1) is reversible error. The affidavit executed by the publisher does not satisfy the Rule 4(j1) requirements as it did not address the circumstances warranting service by publication. The G.S. 7B-1106 motion for publication that was signed by petitioner’s attorney under Rule 11 does not satisfy the affidavit requirement of Rule 4 (j1). Documents not under oath are not affidavits.

## GAL for Respondent Parent

### Sua Sponte Inquiry on Competency

The standard of review for whether an inquiry concerning a respondent parent's incompetency and whether a GAL should be appointed is an abuse of discretion. Substantial deference to the trial court is appropriate given that the trial judge interacts with the litigant and has a better basis for assessing that litigant's mental condition versus an appellate court's review of a cold, written record. The evaluation of competency involves more than a diagnosis by a mental health professional. The litigant's behavior and lucidity demonstrate the litigant's understanding of the situation and ability to assist their attorney and address important issues.

In re Q.B., 375 N.C. 826 (2020)

#### **Held: Affirmed**

- Facts: In 2017 in an underlying neglect and dependency case, DSS arranged for mother to complete a psychological evaluation. The evaluation reported mother had an intellectual disability that caused clinical impairment of her functioning (IQ=63). DSS requested a hearing on mother's need for a Rule 17 GAL. After hearing, the court determined that although mother was low functioning, she was not incompetent and in need of a Rule 17 GAL because she understood the role of the court and parties and the court's function to determine the juvenile's status. The child was adjudicated neglected and dependent. Separately, DSS had an adult protective case for mother. In 2018, mother was adjudicated incompetent and a different county DSS was appointed as the guardian of her person (GOP) under G.S. Chapter 35A. Adult Protective Services remained in place and as part of the disposition in the juvenile case, mother was ordered to comply with the APS recommendations. Ultimately, DSS initiated a TPR, and a hearing was held in 2019. The TPR was granted, and mother appeals arguing the court abused its discretion by failing to sua sponte conduct a 2<sup>nd</sup> inquiry into whether mother required a Rule 17 GAL for the TPR hearing based on new evidence that existed after the first inquiry, including the adjudication of incompetency, appointment of a GOP, and role of APS.
- Similar to *In re T.L.H.*, 368 N.C. 101 (2015), "the record contains 'an appreciable amount of evidence tending to show that [respondent] was not incompetent' at the time of the termination hearing." SI.Op. at 12. There had been an earlier inquiry where respondent was found to not be incompetent; her competency is supported by her attendance at all the hearings enabling the court to observe her capacity; her testimony at the TPR hearing indicated she understood the nature of the proceeding and she responded in an appropriate and lucid manner to questions about her parenting and her case plan; the social workers testified to respondent's complying with many of her case plan provisions (e.g., obtain housing, follow APS recommendations, complete a parenting program, attend visits), showing respondent understood what she needed to do to reunify with her daughter; and two months before the TPR hearing, the GOP was changed to a limited guardianship.
- "Neither mental health limitations nor a low IQ constitute per se evidence of a lack of competency for purposes of Rule 17." SI.Op.at 16. The adjudication of incompetency and appointment of a GOP and an APS services counselor do not mandate a sua sponte competency determination. The role of a GOP and Rule 17 GAL differ; the GAL duties are "solely for purposes

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of assisting a parent during a particular juvenile proceeding” and are much more limited than the role of a GOP. Sl.Op.at 17. As a result, the court typically limits the scope of examination of incompetency for the purposes of a Rule 17 GAL appointment to “whether the parent is able to comprehend the nature of the proceedings and aid her attorney in the presentation of her case.” *Id.* “Thus, it follows that an individual can simultaneously be found incompetent under Chapter 35A yet not require a GAL under Rule 17.” Sl.Op.at 18. There was no abuse of discretion.

- There is no requirement in Rule 17(c) that requires a DSS to request a GAL appointment for a respondent parent it believes is incompetent.

[In re N.K.](#), 375 N.C. 805 (2020)

**Held: Remanded (ICWA issue)**

- Facts: There is an underlying neglect and dependency action. Ultimately, DSS files a petition to TPR, which is granted. Mother appeals. One of her challenges is that the court failed to conduct a competency hearing of mother on its own motion to determine whether she needed a Rule 17 GAL.
- The standard of review for whether an inquiry concerning a respondent parent’s incompetency and whether a GAL should be appointed is an abuse of discretion. Substantial deference to the trial court is appropriate given that the trial judge interacts with the litigant and has a better basis for assessing that litigant’s mental condition versus an appellate court’s review of a cold, written record. The evaluation of competency involves more than a diagnosis by a mental health professional. The litigant’s behavior and lucidity demonstrate the litigant’s understanding of the situation and ability to assist their attorney and address important issues.
- G.S. 7B-1101.1(c) authorizes the appointment of a Rule 17 GAL for a respondent parent who is incompetent. Looking to the definition of G.S. 35A-1101(7), an incompetent adult “lacks sufficient capacity to manage the adult’s own affairs or to make or communicate important decisions concerning the adult’s person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.” Sl.Op. at 6.
- A trial just must inquire into the litigant’s competency when there is a substantial question about the litigant’s competency.
- Although the respondent mother did not testify at the TPR hearing, she was present for the hearings in the underlying neglect and dependency action as well as the TPR hearing, giving the judge ample opportunity to observe her demeanor and behavior throughout the proceedings.
- The record contains ample evidence showing mother was not incompetent, such as her entering into a service agreement with DSS; participating in negotiating a stipulation regarding the juvenile’s status as neglected and dependent; verified the answer to the TPR petition; served as her own payee for her social security benefits; acknowledged her need for treatment, expressed a preference for certain providers, and participated in treatment programs; attend visits; was consistently available to the court, DSS, and the child’s GAL; and expressed a preference for her child to be placed with relatives.

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- There was no abuse of discretion for failing to conduct an inquiry into whether a GAL was needed.

### Duties and Participation

[In re J.E.B.](#), \_\_\_ N.C. \_\_\_ (Feb. 5, 2021)

**Held: Affirm**

**Dissent, Morgan**

- **Facts:** There is an underlying abuse and neglect action. DSS filed a petition to terminate respondent mother's rights. At the TPR hearing, mother's appointed Rule 17 GAL and court-appointed attorney were present. The attorney sought to withdraw, but his motion was denied. The attorney stated that himself, the GAL, and respondent would determine what strategy they would use to present evidence. At times, the Rule 17 GAL cross-examined witnesses and made a part of the closing argument; mother's attorney served as counsel during the proceeding. The TPR was granted. Mother appeals arguing the Rule 17 GAL violated G.S. 7B-1101.1(d) – the GAL shall not act as the parent's attorney – and alternatively, she was denied ineffective assistance of counsel.
- In a TPR, parents must be provided with “ ‘fundamentally fair procedures’ consistent with the Due Process Clause of the Fourteenth Amendment.” ¶ 10.
- This is a question of statutory interpretation, which is reviewed de novo. “The goal of statutory interpretation is to determine the meaning that the legislature intended upon the statute’s enactment.” ¶ 11.
- G.S. 7B-1101.1(a)-(c) provides a parent who is indigent with the right to court-appointed counsel, and a GAL when certain conditions are met. G.S. 7B-1101.1(d) states “[t]he parent’s counsel shall not be appointed to serve as the guardian ad litem and the guardian ad litem shall not act as the parent’s attorney.” The language is unambiguous. The statutory mandate is that the attorney and GAL for the parent not be the same person so that respondent receives the benefit of both. We do not read the phrase “act as the parent’s attorney” in isolation; the phrase has the same function as the sentence before it that the parent attorney shall not be appointed as the GAL. The statute does not prevent the GAL from conducting cross-examination or presenting arguments before the court – essentially, assist counsel in the presentation of evidence. Further, “respondent’s appointed attorney did not functionally abdicate his responsibilities, leaving the guardian ad litem to ‘act as the parent’s attorney’ in the absence of the parent’s actual legal counsel.” ¶ 14. The statute was not violated.
- Mother’s claim of ineffective assistance of counsel is unsupported.
- **Dissent:** Although concurring with the majority that the statute requires two separate people, the dissent discusses statutory interpretation. The majority does not follow the fundamental tenet of statutory construction to give the words their plain and simple meaning. Although each person here performed their assigned statutory duties, the GAL also acted as mother’s attorney. There was a violation of the statute resulting in prejudice to mother to warrant a vacate and remand for a new TPR hearing.

[In re W.K.](#), 376 N.C. 269 (2020)

**Held: Affirmed**



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- Facts: Respondent father appeals the termination of his parental rights to his two children, arguing his Rule 17 GAL did not participate sufficiently to meet statutory requirements of the GAL role such that the trial court abused its discretion in conducting the TPR hearing. (The father also challenges the ground of neglect, which is determined to have been supported by the findings that were based on clear and convincing evidence).
- The role of an appointed Rule 17 GAL and appointed counsel for the respondent parent differ. See G.S. 7B-1101.1(d) (they may not be the same person). Neither Rule 17 nor G.S. 7B-1101.1 specify the exact duties of a GAL. Father's asking the GAL, what's your name, standing alone, does not mean the GAL did not satisfy his statutory duties. There was no evidence indicating the question meant the GAL had not met with the respondent or failed to appropriately interact with respondent or represent respondent's interests during the TPR process. Although respondent argues the GAL could have been more active at the TPR hearing, respondent has not identified any action the GAL could have taken that would have improved a favorable result in the TPR. Nothing shows the GAL did not adequately assist respondent and protect his due process rights, and the appellate court "will not presume error from a silent record." Sl.Op. at 10. Respondent has not shown any reversible error by his Rule 17 GAL.

## Continuance

[In re A.J.P.](#), 375 N.C. 516 (2020)

**Held: Affirmed**

**Dissent: Earls, J.**

- Facts: The juvenile was adjudicated a dependent juvenile based on circumstances due to mother's substance use and criminal activity and putative father's criminal activity and inability to care for their infant and lack of an appropriate alternative child care arrangement. Mother and putative father executed a relinquishment. It was later discovered putative father was not the biological father and a TPR on unknown fathers was initiated. Respondent father contacted DSS to indicate he might be the father, and he was determined to be so. Father was incarcerated but entered into a family services plan and the dependency case continued. Eventually DSS filed a TPR alleging father had willfully left the juvenile in foster care and failed to make reasonable progress and willfully abandoned the juvenile. The TPR petition was filed in April 2019 and the hearing was continued in May 2019 because respondent father's attorney withdrew due to a conflict of interest and a new attorney was appointed and needed time to prepare. The TPR hearing was scheduled for July 2019 and at the beginning of the hearing father's attorney requested a continuance so he could review a previous order that was not included in the court file. The request was denied. The court held the hearing and concluded both grounds existed. Father appeals.
- Because the motion to continue was not based on a constitutional right, the standard of review is an abuse of discretion.
- Continuances are addressed by G.S. 7B-803 and 7B-1109(d). To continue a TPR hearing beyond the 90-day statutory period, father was required to show extraordinary circumstances existed to support a second continuance. There was no such showing. There were numerous references in the court file to the order father's attorney did not have. The court did not abuse its discretion.



[In re S.M.](#), 375 N.C. 673 (2020)

**Held: Affirmed**

- **Facts:** The six children had been adjudicated neglected based on dirty conditions in the home, poor hygiene, lack of schooling, domestic violence, and substance abuse. A case plan addressing these issues, the need for a mental health assessment, and a psychosexual evaluation by father due to allegations of sexual abuse of one of the children was ordered. After the parents' noncompliance with the case plan, DSS filed TPR petitions alleging neglect and failure to correct the conditions. On the day of the TPR hearing, 89 days after the TPR was filed, father's attorney moved for a continuance because the psychosexual evaluation had been received the day before. The court denied the request based on the father's choosing to significantly delay obtaining the evaluation. The TPR was granted, and both parents appeal challenging the best interests determination. Father also challenges the court's denial of his motion to continue the hearing. Mother challenges the grounds as well.
- Father argues the denial of the continuance violated his constitutional right to due process, and combined with the right to counsel and to confront witnesses, includes a reasonable time to prepare for the hearing. When the motion is based on a constitutional right, it is a question of law that is reviewed de novo. Otherwise, the denial of a motion to continue is reviewed for an abuse of discretion.
- Father did not raise the constitutional issue at the hearing requesting the continuance but instead states the continuance was needed so father could respond to the evaluation by following the recommendations. As such, father waived this argument such that an abuse of discretion review is appropriate.
- G.S. 7B-1109(d) addresses continuances in a TPR with the chief consideration being whether the continuance will further substantial justice. Continuances are not favored, and the party seeking the continuance has the burden of showing the grounds to continue exist. Father failed to prove extraordinary circumstances for the proper administration of justice existed such that the hearing should be continued beyond the 90-day time limit. Father's procrastination was the reason for the delay in the psychosexual evaluation and did not rise to extraordinary circumstances. There was no abuse of discretion.

## Attorney for Respondent Parent

### Withdrawal of Counsel; Knowing and Voluntary Waiver

[In re K.M.W.](#), 376 N.C. 195 (2020)

**Held: Reversed and Remanded for a new hearing**

**Dissent, Morgan, J. and Newby, J.**

- **Facts:** There is an underlying neglect action, where mother was represented by court-appointed counsel. DSS filed a TPR petition against respondent mother. Mother's attorney in the underlying neglect action filed a motion to withdraw in the TPR actions (but to remain in the neglect action) as mother had retained her own counsel with a back payment award of SSI. At a hearing, mother confirmed that she wished to retain her own counsel and waive her right to court-appointed counsel. Mother signed a waiver of counsel form at the hearing. The court granted the motion to withdraw and mother's privately retained attorney filed answers to the

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TPR petitions. At a scheduled permanency planning hearing, mother did not appear but her court-appointed attorney did. The court relieved the court-appointed attorney as he had not had contact with his client for months. The privately retained attorney filed a motion to withdraw in the TPR actions. At the hearing on his motion where mother did not appear, he stated his reason for withdrawal was that it was mother's request. The court granted the motion to withdraw. Mother was mailed the notice of TPR hearing that noted her attorney had been discharged. Mother arrived several minutes after the TPR hearing started and after the social worker started to testify. The court did not inquire as to whether mother was represented by counsel or whether she wished to have counsel appointed or to represent herself. Mother did represent herself. The TPR was granted and mother appealed, arguing the court erred by allowing her attorney to withdraw without providing her proper notice and allowing her to proceed pro se without making an inquiry as to whether she wished to have counsel.

- Standard of review of a withdrawal of a parent's attorney in a TPR is an abuse of discretion. But, the " 'general rule presupposes that an attorney's withdrawal has been properly investigated and authorized by the court,' so that, '[w]here an attorney has given his client no prior notice of an intent to withdraw, the trial judge has no discretion.' " Sl.Op. 23. Whether a parent has waived or forfeited their right to counsel in a TPR is based on statutory criteria and is reviewed de novo.
- Federal and state law establish that "[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." Sl.Op. at 22. Under N.C. law, that includes a statutory right to counsel in TPR proceedings – G.S. 7B-1101.1.
- A parent may waive that right " 'after the court examines the parent and makes findings of fact sufficient to show that the waiver is knowing and voluntary.' N.C.G.S. § 7B-1101.1(a1)." *Id.* The court inquiry is not required when a litigant forfeits that right "by engaging in 'actions [which] totally undermine the purposes of the right itself by making representation impossible and seeking to prevent a trial from happening at all[,]'" such as engaging in "egregious dilatory or abusive conduct." Sl.Op. at 23-24.
- Here, the court erred by allowing the privately retained attorney to withdraw from the TPR proceeding. When the parent is absent from the hearing on the motion to withdraw, the court must inquire into efforts the attorney made to contact the parent to ensure the parent's rights are adequately protected. Nothing in the record shows that mother was served with a copy of the motion to withdraw. The trial court did not make an inquiry into whether she was served with the motion; whether the attorney informed his client of his intent to withdraw, and what efforts he made to ensure mother understood what he was proposing to do or to protect her statutory right to counsel.
- The court erred by allowing mother to represent herself without inquiring about whether she wished to appear pro se. Her signing the waiver of counsel form related to her ability to employ privately retained counsel and was not a waiver of her right to any and all counsel. She did not indicate on the form she wished to represent herself. The court had an obligation to make the inquiry at the time she appeared for the hearing (albeit late). There was not a knowing and voluntary waiver after an examination by the court in accordance with G.S. 7B-1101.1(a1). Her conduct was not egregious such that she forfeited her right to counsel.
- As with criminal cases, a showing of prejudice is not required for appellate relief on this issue.

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- Mother is entitled to a new hearing where her statutory rights to counsel are adequately protected.
- Dissent: Although agreeing that mother's conduct was not egregious to warrant forfeiture of counsel, her conduct constituted a waiver of counsel. She repeatedly failed to appear for hearings, was not in contact with her court-appointed counsel, appeared for the TPR hearing after it started, and left the courtroom without explanation for a period of time during the TPR hearing. The requirements imposed on trial courts by the majority should be a best practice for implementation and should not result in error if the trial court fails to follow them.

### Ineffective Assistance of Counsel

In re T.N.C., 375 N.C. 849 (2020)

**Held: Affirmed**

- Facts: The children were adjudicated neglected in an underlying action. DSS filed a TPR petition, alleging neglect and failure to make reasonable progress (G.S 7B-1111(a)(1)-(2)). At the time of the TPR hearing, mother was incarcerated but she was present at the hearing and represented by an attorney. Mother's attorney made a short cross-examination of the one DSS witness (the social worker) at the adjudicatory stage of the hearing and gave a conciliatory closing argument at the adjudication and dispositional stages. The TPR was granted, and respondent mother appeals arguing she had ineffective assistance of counsel such that the TPR proceeding was fundamentally unfair.
- G.S. 7B-1101.1(a) provides parents who are indigent with the right to appointed counsel in TPR cases. Appointed counsel must provide effective assistance. Ineffective assistance of counsel claims require the parent to show that (1) the counsel's performance was deficient and (2) the deficiency was so serious that it deprived her of a fair hearing, meaning that but for counsel's errors there is a reasonable probability there would have been a different result.
- Although a substantial amount of the tone of mother's counsel's advocacy was acquiescent in nature, it did not rise to a level of disparagement of mother before the court causing an adverse impact on the court like the case in *State v. Davidson*, 77 N.C. App. 540 (1985). Mother's counsel mentioned multiple facts in her favor, including some progress on her case plan, her bond with her children, and her desire to keep her parental rights as well as emphasizing her positive traits, like she has been easy to deal with and does not make excuses. Mother's counsel unequivocally asked the court to rule in his client's favor.
- Mother has failed to show her counsel's performance was deficient by the tone of the closing arguments or brevity of the cross examination, and as such, mother cannot show prejudice she suffered in the proceeding. The strength of the undisputed evidence does not show a reasonable probability the outcome would have been different.

### ADJUDICATION:

Standard of review of an adjudication is whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the findings support the conclusions of law.

Conclusions of law are reviewed de novo. An adjudication of a single ground is sufficient to support a TPR order.

### Standard of Proof: Clear, Cogent, and Convincing

In re B.L.H., 376 N.C. 118 (2020)

#### **Held: Affirmed**

- Facts: A TPR was granted on several grounds: G.S. 7B-1111(a)(1), (2), (5), and (7). Respondent father appeals raising a single issue – the court erred by failing to affirmatively state the statutory standard of proof in its TPR order.
- A court does not commit reversible error by failing to explicitly state the statutory burden of proof set forth in G.S. 7B-1109(f) in its written TPR order if the trial court explicitly states the proper standard of proof in open court at the hearing. “We hold the trial court satisfies the announcement requirement of N.C.G.S. § 7B-1109(f) so long as it announces the ‘clear, cogent, and convincing’ standard of proof either in making findings of fact in the written termination order or in making such findings in open court.” Sl.Op. at 14.
- Here, at the close of the TPR hearing, the court stated it makes the following findings of fact by clear, cogent and convincing evidence, reciting the facts, and concludes TPR grounds existed. The order does not state that standard and does not indicate a different standard was applied.
- Statutory construction involves ascertaining and effectuating the intent of the legislature by looking at the language of the statute, the spirit of the act, and what the act seeks to accomplish. A statute must be considered as a whole so that none of the provisions are rendered useless or redundant, if possible, since it is presumed mere surplusage was not intended. Statutes addressing the same subject matter should be construed *in pari materia* and reconciled, if possible, to give effect to each.
- G.S. 7B-1109(f) specifies that all findings shall be based on clear, cogent, and convincing evidence without providing whether the trial court must announce that standard. We hold “the statute implicitly includes a requirement that the trial court announce the standard of proof it is applying in making findings of fact in a termination proceeding.” Sl.Op.at 9. This enables the appellate court to determine whether the proper heightened standard was applied and gives effect to the language by making it enforceable rather than have it be mere surplusage. G.S. 7B-1109(f) advances the purpose of Article 11, Termination of Parental Rights (G.S. 7B-1100) to provide judicial procedures that adequately protect the rights of parents and to protect juveniles from the unnecessary severance of the parental relationship. In looking at G.S. 7B-807 and -2411, those statutes require the court find the allegations in the petition be proved by clear and convincing evidence and “the court shall so state.” Sl.Op. at 12. When construed together, we conclude the Legislature intended the same requirement for TPR actions.

### Neglect: G.S. 7B-1111(a)(1)

Neglect requires a showing of neglect as defined by G.S. 7B-101(15) at the time of the TPR hearing (current neglect) or if the child has been separated from the parent for a long period of time, a TPR for neglect must be based on a showing of past neglect and a likelihood of future neglect by considering the evidence of changed circumstances given the history of neglect by the parents between the time of the past neglect and the TPR hearing.

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- A showing of past neglect is not necessary in every case. G.S. 7B-1111(a)(1) does not require a showing of past neglect if the petition can show current neglect. Any interpretation of *In re D.L.W.*, 368 N.C. 835 (2016) to create such a requirement is disavowed. *In re R.L.D.*, 375 N.C. 838, fn 3 (2020); *see also In re K.P.-S.T.*, 375 N.C. 797, fn 5(2020); *In re W.K.*, 376 N.C. 269, fn 5 (2020).

## Findings

### [In re A.S.T.](#), 375 N.C. 547 (2020)

#### **Held: Affirmed**

- **Facts:** The juvenile had been adjudicated neglected based on conditions related to his parents' substance use. During the underlying neglect case, respondent father made some progress on his case plan but continued to struggle with alcoholism and substance use. Due to criminal activity during the underlying case, respondent father entered an Alford plea to the charges and was incarcerated. DSS filed the TPR action on the grounds of neglect and failure to make reasonable progress. The TPR was granted and father appeals. This opinion focuses on the ground of neglect.
- In challenging the court's findings, respondent "overly emphasized his successes and minimized his failings" regarding progress on his case plan. Sl.Op. at 10. The court findings that father inconsistency with complying with his case plan prior to his incarceration are supported by clear and convincing evidence, including the social worker's testimony.
- "[A]n Alford plea is not the saving grace for defendants who wish to maintain their complete innocence..." Sl.Op. at 10. "By entering the Alford plea, respondent 'agreed to be treated as . . . guilty whether or not he admitted guilt.'" Sl.Op. at 11. Here, the respondent's Alford plea that resulted in his 2+ year incarceration supports the finding that he "voluntarily made himself unavailable to care for [the juvenile] for a substantial portion of [the juvenile's] life." *Id.*
- The conclusion of law is reviewed de novo, which allows the appellate court to consider the matter anew and substitute its judgment for that of the trial court. The appellate court is not limited to the trial court's statements. In concluding neglect exists, the court's findings show the juvenile was adjudicated neglected due to his parents' substance abuse issues and that respondent father failed to appreciably address the issues and that during his incarceration, respondent failed to contact the juvenile and had limited contact with the social worker. These findings support the conclusion that respondent previously neglected the juvenile and that there is a likelihood of future neglect if the juvenile were returned to his care.

### [In re N.K.](#), 375 N.C. 805 (2020)

#### **Held: Remanded (ICWA issue)**

- **Facts:** There is an underlying neglect and dependency case. This TPR was granted on the grounds of neglect. Respondent mother appeals, raising as one argument that the findings in the TPR order resemble the language of findings in other orders and reports that were subject to lower evidentiary standards than the TPR adjudication standard of clear, cogent, and convincing evidence and were admitted into evidence at the TPR hearing but should not have been used to support the findings in the TPR.
- Quoting *In re T.N.H.*, 372 N.C. 403, 410 (2019), the "trial court may take judicial notice of findings of fact made in prior orders, even when those findings are based on a lower evidentiary

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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.” The court must also receive some oral testimony and make an independent determination about the evidence presented. *Id.* Here, the court took judicial notice of the reports and orders and heard live testimony from the DSS social worker. After reviewing the record (the reports, orders, and live testimony), the findings have adequate evidentiary support and are in the proper form.

- Although mother had financial difficulties, the record shows her rights were not terminated solely on the basis of poverty. There was a combination of factors including her substance abuse, mental health, and domestic violence issues and her failure to complete treatment to address those issues or follow through on referrals to assist her with her financial difficulties.
- Willfulness is not required for a showing of neglect. Mother’s mental health issues do not preclude a neglect determination. A parent’s inability to adequately provide for their child may be “*by reason of mental infirmity or by reason of willful conduct on the part of the parent....*” Sl.Op.at 19.
- The unchallenged findings support the conclusion of neglect.

[In re S.R.F.](#), \_\_\_ N.C. \_\_\_ (Feb. 5, 2021)

**Held: Affirmed**

- Facts: The juvenile was adjudicated neglected and dependent based on circumstances involving domestic violence and substance use. Eventually DSS filed for a TPR, which was ordered. Mother appeals the TPR order challenging the findings as unsupported by the evidence and the adjudication of the grounds as unsupported by the findings. This opinion focuses on the ground of neglect.
- Uncontested findings are binding on appeal. Some of the findings that mother challenges are unsupported by the evidence, but the errors are harmless given the related findings and supporting evidence (e.g. the dispositional order did not have an express directive for mother to address domestic violence as the finding states but other findings state respondent mother signed a case plan that required her to engage in domestic violence treatment which she did not do). When disregarding improper findings, full credit is given to proper findings.
- The findings support the conclusion of past neglect and a likelihood of repetition of neglect. Failure to make progress on a case plan is indicative of a likelihood of future neglect. Mother did not meaningfully engage in her case plan that included domestic violence and substance abuse services, parenting classes, obtaining stable housing and employment, visiting with the juvenile, and failure to provide financial support. Attendance at a substance abuse program with a brief period of sobriety is insufficient to negate the court’s determination of a likelihood of future neglect.

Likelihood of Future Neglect

[In re C.L.H.](#), \_\_\_ N.C. \_\_\_ (Feb. 5, 2021)

**Held: Reverse in part, vacate and remand in part**

**Dissent, Barringer. J. joined by Newby, J. and Berger, J.**

- Facts: This is a private TPR where mother is petitioner and father is respondent parent. In 2011, the parties entered into a consent order for child support, where respondent father was

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required to pay a set amount. In 2018, after father overdosed during a visit with the child, mother obtained a modified Ch. 50 custody order granting her sole physical and legal custody. The TPR was granted on the grounds of neglect, willful failure to pay child support, and dependency. Father appeals, challenging the grounds.

- The finding that the child was not cared for during father’s medical incident related to a drug overdose or other condition was not supported by the evidence and is disregarded. The evidence shows the child went to his grandfather who called for help. Even if supported by the evidence, the finding does not indicate how the incident impacted the juvenile (e.g., harm or substantial risk of harm), other than the absence of care. Assuming *arguendo* that incident constituted prior neglect, there was no findings showing the likelihood of future neglect. Reversed.

[In re O.W.D.A.](#), 375 N.C. 645 (2020)

**Held: Affirmed**

- Facts: Child was adjudicated neglected and father was ordered to comply with a case plan that addressed his substance use, criminal activity, lack of stable housing and income, need for parenting classes, and cooperation with DSS. After adoption was designated as the primary permanent plan, DSS filed a petition to terminate father’s parental rights. Father’s rights were terminated on the ground of neglect, and respondent father appeals.
- Father is collaterally estopped from arguing the basis for the underlying neglect adjudication was his incarceration. For the underlying neglect adjudication to which father consented, he stipulated that he used drugs, was on probation, which was violated, has an extensive criminal history, was unemployed, and had no stable income or housing. Father did not appeal that order.
- The court’s finding of past neglect and the likelihood of future neglect was based on his failure to comply with his case plan, which included a period of time where he was not incarcerated. The court also considered evidence of the father’s changed circumstances, which was his incarceration. Although father made minimal progress (he started taking parenting classes), the court is “within its authority to weigh the evidence and determine that these eleventh-hour efforts did not outweigh the evidence of his persistent failures to make improvements while not incarcerated, and to conclude that there was a probability of neglect....” Sl.Op. at 13.



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[In re B.E.](#), 375 N.C. 730 (2020)

**Held: Affirmed**

- **Facts:** The three children were adjudicated neglected and dependent in an underlying juvenile action. Mother and father were ordered to comply with their case plans. Eventually, DSS filed a TPR motion, and the TPR was granted on the grounds of neglect, failure to make reasonable progress, and dependency. Respondent mother challenges the grounds. This opinion focuses on the ground of neglect.
- The findings support the determination that there is a high likelihood of repetition of neglect if returned to respondent mother. Despite being ordered to not discuss the case with the children, mother has continued to do so in a way that has impeded their ability to make emotional progress. She does not have insight into the effects of father's severe alcohol abuse and physical abuse on the children. Mother needs counseling for mental health issues but will not continue with counseling. The evidence (mother's and social worker's testimony) supports the findings. To the extent a portion of a finding is not supported, it is disregarded on review. There is a nexus between mother's childhood trauma and her own parenting such that addressing her earlier trauma in mental health counseling was recommended, and the court's consideration of her failure to do so as a factor in determining the likelihood of future neglect was not error. The court's consideration of the failed trial home placement with mother that occurred before the TPR was not error. Although mother made progress on the cleanliness of the home and completed parenting classes, she did not resolve the primary risk to the children – father's continued presence in the home.

[In re K.C.T.](#), 375 N.C. 592 (2020)

**Held: Reversed in part; Reversed and remanded in part**

**Dissent, Newby J.**

- **Facts:** After a voluntary kinship placement, petitioners in this TPR obtained a Ch. 50 civil custody order giving them sole legal and physical custody of the juvenile and no visitation with mother. More than 3 years later, petitioners filed this TPR, alleging neglect, failure to make reasonable progress, dependency, and willful abandonment. The TPR was granted on all 4 grounds, and mother appeals.
- The finding addressing the likelihood of repetition of neglect with respondent mother is unsupported by the evidence. Mother testified her disability would not make it impossible for her to care for the juvenile. Other witness testimony about mother's disability and how it could impact mother's parenting was mere supposition. Although mother has a disability, she resides with family who assist her. "[I]t is unclear how respondent-mother's disabilities, standing alone, would place [the juvenile] at risk of neglect if she returned to respondent-mother's care." Sl.Op. at 10.
- Neglect may also occur by abandonment. When deciding if the ground exists, the trial court looks to the parent's conduct over an extended time period including up to and including the date of the TPR hearing. Although mother did not seek a modification of the Ch. 50 custody order, she did send gifts, contacted the juvenile and custodians over time showing her intent to be part of her child's life.
- TPR on neglect ground must be reversed.

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- Dissent: The findings support the conclusion of neglect. The court found mother currently was unable to function without assistance from others due to her diagnosed disabilities and does not have the ability to provide proper care and supervision to the child. The majority applied the wrong standard of review.

[In re J.J.H.](#), 376 N.C. 161 (2020)

**Held: Affirmed**

**Dissent, Earls, J.**

- Facts: The juveniles were adjudicated neglected in an underlying juvenile action. Mother was ordered to comply with her case plan to address employment/income, housing, substance abuse, parenting skills, mental health, domestic violence, visitation, and child support. Although After the situation with mother deteriorated, including her assaulting the DSS social worker, the primary permanent plan was changed to adoption. DSS filed a motion to TPR, which was granted on the ground of neglect. Mother appeals the ground arguing the evidence does not support the findings and the disposition to TPR.
- The court found past neglect, current neglect, and the likelihood of repetition of neglect. “A parent’s compliance with his or her case plan does not preclude a finding of neglect.” Sl.Op. at 37. Although the court found mother made substantial efforts in complying with her case plan and loves her children, she lacked a substantial capacity for analyzing and forecasting problems and problem-solving issues when they arise and that presents a substantial obstacle to her ability to provide appropriate care to her children such that there is a high likelihood of repetition of neglect. Additionally, many of the conditions that led to the children’s removal continued to exist.
- This 54 page opinion discusses the evidence and the findings to support the likelihood of repetition of neglect based on mother’s income and her budgeting abilities; her difficulties in locating new housing to accommodate all the children and their needs while being within her budget; concern about her dogs, who are intimidating, and the children’s exposure to them as part of her housing situation; her refusal to participate in drug screens, which were a reflection of her inability to effectively respond to being frustrated in difficult situations; her parenting skills; her resistance to mental health treatment; her improper responses to stressful situations despite completing anger management counseling and a domestic violence victims program; and her parenting skills including her inability to provide adequate care and discipline and manage the children’s complex schedules involving multiple medical and school appointments to address their special needs.
- “The combination of respondent-mother’s weaknesses coupled with the challenges created by the children’s conditions provides compelling justification for a determination that a decision to return the children to respondent-mother’s care would almost certainly end in future neglect and that respondent-mother had been provided more than sufficient time to overcome the obstacles that she faced in attempting to provide adequate care for the children. Sl.Op. at 39.
- Dissent: The findings do not provide clear, cogent, and convincing support for the conclusion of neglect – the evidence does not show it is likely she will provide inadequate care. A mere possibility of future neglect is not sufficient to permanently sever the parent-child relationship. By minimizing the importance of mother’s substantial progress in her case plan, the majority

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devalues the efforts parents across the state are making to improve the parenting abilities for reunification. Poverty is a factor here (e.g., her housing is small) and is not in itself evidence of a likelihood of future neglect.

[In re R.L.D.](#), 375 N.C. 838 (2020)

**Held: Affirmed**

- Facts: The juvenile was not in respondent mother's care since 2012 but was instead in the care of relatives. There was no department of social services involvement. The relatives with whom the child had been living continuously for more than 2 years immediately preceding the filing of the petition initiated the TPR action on several grounds including neglect. The TPR was granted, and respondent mother appeals.
- The trial court's order includes unchallenged findings of mother's drug use and concerns regarding the child when in mother's care based on the child's injuries, a lack of food, and domestic violence; a lack of contact between the mother and child for several years; mother's agreement that petitioners would be guardians for the child indefinitely; the absence of any financial support from mother; intermittent text and phone contact between mother and child, some of which has been inappropriate by mother; mother's current housing situation; the child's mental health and trauma issues; and mother's failure to create a support system for the child if in her care show that the juvenile was placed in an injurious environment to her welfare and that the risks continue.
- These findings support the conclusion of a substantial risk of harm to the juvenile and the likelihood of future neglect if the juvenile was removed from the petitioners and placed with mother.

[In re K.P-S.T.](#), 375 N.C. 797 (2020)

**Held: Affirmed**

- Facts: The juveniles were adjudicated neglected in an underlying case. Father was ordered to comply with a case plan that addressed issues related to substance use, domestic violence, housing, basic physical needs for his children, parenting, employment/income, visitation and child support. Eventually, DSS filed a TPR petition, which was granted on several grounds. Respondent father appeals, arguing the findings of fact do not support the conclusions of law. This opinion focuses on the ground of neglect.
- "A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." Sl.Op.at 7.
- The court found that father delayed signing a case plan for more than one year and had not complied in an adequate and consistent manner. The findings described the deficiencies including his (1) failure to comply with recommendations of his substance abuse assessment, submit to random drug screens, take the necessary steps to regain his driver's license which had been suspended, work with a therapist to learn about the effects of domestic violence on children, update his social worker on his living situation, cooperate so the social worker could conduct a home visit, and pay court ordered child support; (2) delay of 2 years in obtaining a parenting evaluation and failure to complete the parenting program; and (3) sporadic visitation with the children and sporadic contact with the DSS social worker. These findings support the conclusion of neglect.

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- Father's seeking consideration of his compliance is a request to reweigh the evidence, which the appellate court lacks the authority to do.

[In re D.L.A.D.](#), 375 N.C. 565 (2020)

**Held: Affirmed**

**Dissent, Earls, J.**

- Facts: In 2015, father was granted custody of the juvenile in a civil custody order, after the child came for visits to father with soiled, torn, and improperly fitting clothes and excessive earwax in his ears. Mother had also tested positive for drugs. Supervised visits with mother stopped. Father initiated this TPR against respondent mother, which was granted. Respondent mother appeals, challenging the ground of neglect. Mother does not challenge the court finding of past neglect but does challenge the likelihood of future neglect.
- The findings of fact are supported by clear and convincing evidence. A finding that there was no evidence that the conditions of mother's home had changed did not shift the burden of proof to mother. This finding is the court's expression that mother did not rebut the petitioner's clear and convincing evidence that conditions of mother's home had not changed.
- The findings support the conclusion that neglect would likely continue. Although the trial court based its conclusion on the findings about there being no change in mother's home, conclusions of law are reviewed de novo. The appellate court is not limited to that finding but may look at the totality of the trial court's findings to determine if the conclusion is supported. Mother's statements to father that she wanted her parental rights terminated and an extended period where a parent does not attempt to visit their child "indicate a future propensity to be inattentive to the child." Sl.Op. at 11. An untreated substance abuse problem "could inhibit a parent's capability or willingness to consistently provide adequate care to a child." Sl.Op. at 12. Mother's recent desire to visit with the child and not have her rights terminated do not outweigh the abundant evidence that demonstrates her lack of capability or willingness to adequately care for the child.
- Dissent: The findings do not support the conclusion of the likelihood of future neglect. The findings are based on mother's past conduct and do not consider evidence of changed circumstances at the time of the termination hearing. The dissent discusses past drug use as well as the mere existence of a substance abuse problem and how that alone is insufficient to support a determination of the likelihood of neglect.

[In re D.M.](#), 375 N.C. 761 (2020)

**Held: Affirmed**

- Facts: The children were adjudicated neglected juveniles due to circumstances involving their parents' substance use and domestic violence, and improper supervision. The case plan requirements for the parents addressed these issues as well as mental health services, parenting classes, and obtaining appropriate housing. Eventually, DSS filed a TPR motion. The TPR was granted on the grounds of neglect and failure to make reasonable progress. This opinion focuses on the ground of neglect and has an extensive discussion about evidence and findings regarding progress (or lack thereof) addressing substance abuse and domestic violence.

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- The findings support the court’s determination that there was a likelihood of neglect. Portions of challenged findings that were not supported by the evidence were disregarded by the appellate court. The unchallenged findings include father’s extensive history of substance abuse which he did not start treatment for until after the TPR was filed and the hearings had begun. The findings of the extensive history of domestic violence and that father never started the recommended therapy is adequate evidence that father lacked an awareness of the effect of domestic violence on children. His own admission or expert witness testimony was not required.
- The findings addressing mother’s failure to adequately address her extensive substance abuse and domestic violence issues were supported by the evidence, and those findings support the determination of a likelihood of neglect. Although there is some evidence that might support a contrary decision, the appellate courts “lack the authority to reweigh the evidence that was before the trial court.” Sl.Op. at 29.
- The findings for each parent that address the central reasons for DSS intervention – substance abuse and domestic violence – are sufficient to support the determination of the likelihood of repetition of neglect. As such, the supreme court did not review challenges to the findings about the trial court not adequately addressing their mental health and housing issues.

#### Incarceration

[In re K.D.C.](#), 375 N.C. 784 (2020)

**Held: Reversed**

- Facts: The juveniles were adjudicated neglected in an underlying action due to circumstances created by father and mother’s incarceration. Mother was ordered to comply with a case plan. Mother was incarcerated throughout the neglect proceeding. Ultimately, DSS filed a TPR petition alleging the grounds of neglect, failure to make reasonable progress, and dependency. The TPR was granted, and mother appeals the grounds.
- Incarceration, standing alone, is neither a sword nor a shield in a TPR decision. In determining neglect, an analysis of the relevant facts and circumstances, including the length of a parent’s incarceration, must be considered. The findings of fact about mother’s failure to complete her mental health and substance abuse requirements despite having the ability to do so are not supported by clear and convincing evidence. DSS as the petitioner and not the respondent has the burden to prove mother’s non-compliance with her case plan, and the evidence presented by DSS was insufficient. Mother did complete a “mothering class,” anger management, and grief recovery classes which appear to be her attempt to comply with the component of her case plan to improve her parenting skills. Mother’s failure/inability to secure stable housing and employment so far in advance (15 months) of her release from incarceration “is difficult to consider justly as a failure to comply with her case plan.” Sl.Op.at 13. Mother maintained regular contact with her children.
- The court erred in determining there was a likelihood of repetition of future neglect.

### Failure to Make Reasonable Progress: G.S. 7B-1111(a)(2)

G.S. 7B-1111(a)(2) authorizes a TPR when the parent has willfully left the juvenile in a foster care or other placement for more than 12 months without making reasonable progress under the circumstances to correct the conditions that led to the child's removal. Willfulness involves a parent's ability to show reasonable progress but an unwillingness to make the effort. Compliance with a case plan is relevant; satisfaction of all the elements of the plan is not required, but extremely limited progress supports this ground.

### Willfully Left in Foster Care for One Year

In re K.H., 375 N.C. 610 (2020)

**Held: Reversed**

**Dissent, Newby, J.**

**Concur in part/Dissent in part, Ervin, J. and Davis, J.**

- Facts: A 16-year-old parent and her 9-month-old baby were placed in nonsecure custody with DSS. Initially, mother and infant were separated (April 5, 2017 through June 9, 2017) but then were placed in a foster home together from December 19, 2017 until August 8, 2018 when they were separated again. The infant was adjudicated neglected and dependent (the opinion does not address respondent minor mother's status as an abused, neglected, or dependent juvenile but does make reference to her also being in DSS custody). After respondent minor mother made minimal progress, DSS filed a TPR motion on August 8, 2018. The TPR was granted on three grounds: failure to make reasonable progress (7B-1111(a)(2)), failure to pay the reasonable cost of care (7B-1111(a)(3)), and dependency (7B-1111(a)(6)). Respondent mother appeals all three grounds.
- G.S. 7B-1111(a)(2) requires a two-step analysis: (1) that the child has been willfully left by the parent in foster care or placement outside the home for more than 12 months and (2) the parent has not made reasonable progress under the circumstances to correct the conditions that led to the child's removal.
- The time period for the first prong – willfully left in foster care or placement outside the home for 12 months – is based on the time from the court order placing the child outside the home to the time that the TPR petition/motion is filed. There is a finding that the juvenile has been in care for approximately 13 months, but it is unclear whether the court was including the months between the filing of the TPR motion and the TPR hearing, which should not have been considered.
- The plain meaning of foster care and placement outside the home presumes the child and parent have been physically separated. See G.S. 131D-10.2(9) (definition of "foster care"). The period of time the minor parent and juvenile were placed in the same foster home does not count toward the determinative time period since the juvenile has not actually lived apart from the parent. This interpretation supports the purpose of G.S. 7B-1111(a)(2) to provide parents with at least 12 months' notice that they must correct the conditions that led to their child's removal before having to respond to a termination of parental rights. Here, the period of time the juvenile and minor parent were separated was 10 months before the TPR motion was filed and is insufficient to support a TPR on this ground.

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- Dissent: Although the application of the time period is tricky in this situation, the juvenile was placed in foster care and outside mother's home for more than 12 months. During the time the juvenile and minor parent were in the same foster home, the juvenile was not in mother's custody and no evidence shows mother had responsibility for caring for the juvenile during that time, and the juvenile was not in her mother's home but was in the home of a foster family and children's home.

[In re K.C.T.](#), 375 N.C. 592 (2020)

**Held: Reversed in part; Reversed and remanded in part**

**Dissent, Newby J.**

- Facts: After a voluntary kinship placement, petitioners in this TPR obtained a Ch. 50 civil custody order giving them sole legal and physical custody of the juvenile and no visitation with mother. More than 3 years later, petitioners filed this TPR, alleging neglect, failure to make reasonable progress, dependency, and willful abandonment. The TPR was granted on all 4 grounds, and mother appeals.
- Applying the reasoning of In re A.C.F., 176 N.C. App. 520 (2006), G.S. 1111(a)(2) requires a court order that removes the juvenile and does not cover circumstances where parents leave their children in the care of another without involvement of the juvenile court. There are many reasons a parent will entrust the care of their child to others, oftentimes without implicating child welfare concerns of the State. The order here was entered under Ch. 50 and not under G.S. Chapter 7B. "A Chapter 50 civil custody order does not provide sufficient notice to a parent that their parental rights would be imperiled by their loss of custody or inform the parent what steps would be necessary to make reasonable progress and avoid termination." Sl.Op. at 4-5. TPR on this ground reversed.

Failure to Make Reasonable Progress

[In re K.D.C.](#), 375 N.C. 784 (2020)

**Held: Reversed**

- Facts: The juveniles were adjudicated neglected in an underlying action due to circumstances created by father and mother's incarceration. Mother was ordered to comply with a case plan. Mother was incarcerated throughout the neglect proceeding. Ultimately, DSS filed a TPR petition alleging the grounds of neglect, failure to make reasonable progress, and dependency. The TPR was granted, and mother appeals the grounds.
- The court must consider whether mother had the ability to make reasonable progress while she was incarcerated. Mother's inability to obtain housing or employment 15 months in advance of her release date from prison is not her failure to comply with these case plan requirements. The 15 month gap "is too remote in time to be fairly evaluated as a case plan violation." Sl.Op. at 17.
- Reasonable progress does not require full satisfaction of all the elements of the case plan but does require more than extremely limited progress. The "mothering" class respondent took while incarcerated is worthy of acknowledgement when considering whether she complied with the parenting classes requirement of her case plan and is a sufficient attempt by mother to comply with the case plan given her circumstances.



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- The findings of fact about mother's failure to complete her mental health and substance abuse requirements despite having the ability to do so are not supported by clear and convincing evidence.
- DSS did not meet its burden of proof that this ground existed.

[In re A.H.F.S.](#), 375 N.C. 503 (2020)

**Held: Affirmed**

- Facts: The juveniles had been adjudicated neglected in two separate actions (one in 2016 where the juveniles remained in the home and one in 2017 where the juveniles were removed) due to substance use, mental health issues, and conditions of the home. DSS initiated a TPR, which was granted. Respondent parents appeal, challenging the grounds. This appeal focuses on failure to make reasonable progress under the circumstances to correct the conditions that led to the juveniles' removal, the second prong of G.S. 7B-1111(a)(2).
- Regarding the conditions of removal, respondent mother is collaterally estopped from relitigating issues determined by the underlying neglect adjudication order, which included findings addressing the conditions of removal, from which she did not appeal.
- Findings that mother failed to complete her substance abuse therapy, demonstrate skills learned in parenting classes, attend the majority of the children's medical appointments, have a safe and appropriate home, and submit to the majority of her drug screens; had positive drug tests; was convicted for drug offenses, and had untreated mental health issues support the conclusion that mother failed to make reasonable progress. Challenged findings were supported by evidence. The determination of willfulness by the court is supported by clear and convincing evidence and sufficient evidentiary findings of fact.
- Although respondent father made some progress, it was not reasonable progress. The court found the home and yard were cluttered with safety hazards; the home has been broken into; the condition of the home is inappropriate for the children; father has not demonstrated how he has benefitted from the parenting classes; and father did not attend the majority of the children's medical appointments. The findings are supported by clear and convincing evidence. Although father made some progress including completing individual therapy and attending visitation, the primary condition leading to the children's removal were not remedied and are not based solely on father's continued relationship with mother.

[In re E.C.](#), 375 N.C. 581 (2020)

**Held: Affirmed**

- Facts: In 2016, three children were adjudicated dependent, due to mother's incarceration, which led to an eviction and other financial disruptions for the family at a time when no relative or caretaker could provide for the children. Mother, after her release from prison, entered into a family services agreement with DSS, which included obtaining safe and stable housing and participate in mental health treatment and parenting classes. Ultimately, DSS filed a TPR alleging 3 grounds, and in 2019, the TPR was granted on all 3 grounds. Mother appeals. This appeal focuses on G.S. 7B-1111(a)(2).
- As held in *In re B.O.A.*, 372 N.C. 372 (2019), the conditions which led to the child's removal are not limited to what was stated in the petition or an adjudication order. "The trial court in an

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abuse, neglect, and dependency proceeding ‘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 8. There was a nexus between the mother’s case plan, which she failed to comply with, and the conditions of removal. Although mother, at the time of the TPR hearing, had suitable housing, her progress on that component of her plan was limited and delayed as she did not obtain suitable housing until one month before the TPR hearing, more than 3 years after the children had been placed in DSS custody. Further, the unchallenged findings of fact establish she did not address the mental health and parenting concerns.

[In re S.M.](#), 375 N.C. 673 (2020)

**Held: Affirmed**

- Facts: The six children had been adjudicated neglected based on dirty conditions in the home, poor hygiene, lack of schooling, domestic violence, and substance abuse. A case plan addressing these issues, the need for a mental health assessment, and a psychosexual evaluation by father due to allegations of sexual abuse of one of the children was ordered. After the parents noncompliance with the case plan, DSS filed TPR petitions alleging neglect and failure to correct the conditions. The TPR was granted, and both parents appeal challenging the best interests determination. Father also challenges the court’s denial of his motion to continue the hearing. Mother challenges the grounds as well.
- The challenged findings of fact are supported by clear and convincing evidence, including the social worker’s uncontroverted testimony. To the extent that a portion of one finding was not supported by the evidence, it is disregarded.
- Mother’s progress on her case plan was not reasonable. “Having presented no evidence of her own during the hearing, respondent-mother’s completion of parenting classes and the registration of a single negative drug screen stand alone as affirmative attainments by her toward the successful fulfillment of her case plan, while the remainder of the record illustrates respondent-mother’s lack of reasonable progress in correcting the conditions which led to the removal of the children from the home.” Sl.Op.at 20.
- Regarding willfulness, there is no evidence in the record identifying any barriers that impacted mother’s ability to comply with her case plan. An inability to improve her situation despite some efforts and good intentions will support a finding of lack of reasonable progress under G.S. 7B-1111(a)(2). The findings addressing her failures to comply with her case plan demonstrate mother’s willfulness.

[In re A.J.P.](#), 375 N.C. 516 (2020)

**Held: Affirmed**

**Dissent: Earls, J.**

- Facts: The juvenile was adjudicated a dependent juvenile based on circumstances due to mother’s substance use and criminal activity and putative father’s criminal activity and inability to care for their infant and lack of an appropriate alternative child care arrangement. Mother and putative father executed a relinquishment. It was later discovered putative father was not the biological father and a TPR on unknown fathers was initiated. Respondent father contacted DSS to indicate he might be the father, and he was determined to be so. Father was

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incarcerated but entered into a family services plan and the dependency case continued to hold permanency planning hearings. Eventually DSS filed a TPR alleging father had willfully left the juvenile in foster care and failed to make reasonable progress and willfully abandoned the juvenile. The TPR was granted on both grounds, and father appeals.

- The challenged findings are supported by clear and convincing evidence.
- Although the juvenile was removed from mother's home, the court found mother and father's relationship involved the use of controlled substances, father supplied mother with those substances even throughout her pregnancy, and father was incarcerated for drug-related criminal activity. The components of father's case plan addressing substance abuse and mental health issues relate to identifying and correcting underlying traumas that cause the behaviors so a safe and secure environment for the juvenile can be created. Father contributed to the circumstances leading to the juvenile's removal such that there is a sufficient nexus between the conditions that led to her removal and the mental health and substance abuse components of father's case plan. See *In re B.O.A.*, 372 N.C. 372 (2019).
- The court considered the limitations to his completing his case plan due to his incarceration when determining his willfulness in not making reasonable progress. Although father was incarcerated, he could have completed the substance abuse portion of his case plan. He failed to provide proof that he did so. Additionally, father knew mother was pregnant but made no effort to contact her or the child after the child was born and during a period of time where he was not incarcerated. Since his involvement in the case, he has not sent cards, made calls, or requested the opportunity to see his child. He did not reach out to the child's GAL despite having contact information for the GAL.
- Dissent: The trial court failed to analyze how incarceration affected the respondent's capacity to comply with his case plan before concluding his failure to make reasonable progress was willful. Since the record could support the conclusion that grounds existed, the remedy should be vacate and remand.

[In re Z.O.G.I.](#), 375 N.C. 858 (2020)

**Held: Affirmed in part; Vacate and remand**

- Facts: The juvenile was adjudicated dependent in an underlying action based on circumstances created by mother and father's incarceration and lack of appropriate alternative child care arrangements. After his incarceration, father entered in a case plan, which included obtaining stable housing and income, learning appropriate parenting skills, and addressing his substance abuse issue. The court ordered father to comply with the case plan. Eventually, DSS filed a TPR petition on the grounds of neglect and failure to make reasonable progress. The TPR was granted and father challenges the grounds and the determination that TPR was in the juvenile's best interests. This opinion focuses on the ground of failure to make reasonable progress (affirmed) and the best interests determination (vacated and remanded).
- G.S. 7B-1111(a)(2) authorizes a TPR when the parent has willfully left the juvenile in a foster care or other placement for more than 12 months without making reasonable progress under the circumstances to correct the conditions that led to the child's removal. Compliance with a case plan is relevant. G.S. 7B-904(d1)(3) authorizes the court to order a parent to take appropriate steps to remedy the conditions that led to the juvenile's removal or adjudication.

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- Father had notice from the court of what he was required to do to show a change of conditions that led to the juvenile's removal when the court, in its permanency planning orders, consistently ordered him to comply with his case plan.
- Although father argues he made reasonable progress on his case plan by obtaining housing with his girlfriend, having the vast majority of his drug screens test negative, engaging in co-parenting with the foster parents, and consistently visiting with the juvenile, the unchallenged findings show father waited over a year after his incarceration and after the filing of the TPR petition before consistently attending visits, quit his job for an injury he never verified such that he did not have sufficient income, failed to comply with therapy recommendations regarding his parenting, and failed to address his substance use issues with his admission of his use of marijuana, support the conclusion that he failed to make reasonable progress to correct the conditions.
- The trial court determines credibility and weighs the evidence and ultimately determined the progress by father to provide adequate care and supervision in a safe home was minimal.

Failure to Pay Reasonable Cost of Care: G.S. 7B-1111(a)(3)

In re K.H., 375 N.C. 610 (2020)

**Held: Reversed**

**Dissent, Newby, J.**

**Concur in part/Dissent in part, Ervin, J. and Davis, J.**

- Facts: A 16-year-old parent and her 9-month-old baby were placed in nonsecure custody with DSS. Initially, mother and infant were separated (April 5, 2017 through June 9, 2017) but then were placed in a foster home together from December 19, 2017 until August 8, 2018 when they were separated again. The infant was adjudicated neglected and dependent (the opinion does not address respondent minor mother's status as an abused, neglected, or dependent juvenile but does make reference to her also being in DSS custody). After respondent minor mother made minimal progress, DSS filed a TPR motion on August 8, 2018. The TPR was granted on three grounds: failure to make reasonable progress (7B-1111(a)(2)), failure to pay the reasonable cost of care (7B-1111(a)(3)), and dependency (7B-1111(a)(6)). Respondent mother appeals all three grounds.
- G.S. 7B-1111(a)(3) authorizes a TPR when the juvenile has been placed in DSS custody or foster home and the parent has for a period of 6 months immediately preceding the filing of the TPR petition/motion willfully failed to pay a reasonable portion of the cost of the juvenile's care although the parent is physically and financially able to do so.
- The relevant 6-month period is February 8, 2018 to August 8, 2018. The findings included mother worked at Show Shoe and Cook Out in 2018, was employed part-time at various points in time, is physically and financially able to pay more than zero, and had not paid anything toward the cost of the juvenile's care. Because the findings did not address the specific determinative 6-month period, the findings are insufficient to support the ground.
- Dissent in part: The proper remedy is remand and not reverse. A reversal is proper when "the record evidence is 'too scant' to support the trial court's decision, . . . , while a remand is appropriate in the event that, even if the trial court's required findings of fact are defective, the

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record contains sufficient evidence to permit the trial court to have reached the result that it deemed appropriate in the event that proper findings had been made.” Concur in part, dissent in part at 2 (citations omitted). In reviewing the record, a complete reversal is unwarranted as the trial court may be able to make the necessary findings for a termination based on G.S. 7B-1111(a)(3).

- Dissent: The findings regarding mother’s employment in 2018 and failure to pay anything toward the cost of the juvenile’s care is a broad reference to the year and includes the determinative 6-month period.

### Willful Failure to Pay Child Support: G.S. 7B-1111(a)(4)

In re C.L.H., \_\_\_ N.C. \_\_\_ (Feb. 5, 2021)

**Held: Reverse in part, vacate and remand in part**

**Dissent, Barringer. J. joined by Newby, J. and Berger, J.**

- Facts: This is a private TPR where mother is petitioner and father is respondent parent. In 2011, the parties entered into a consent order for child support, where respondent father was required to pay a set amount. In 2018, after father overdosed during a visit with the child, mother obtained a modified Ch. 50 custody order granting her sole physical and legal custody. The TPR was granted on the grounds of neglect, willful failure to pay child support, and dependency. Father appeals, challenging the grounds.
- G.S. 7B-1111(a)(4) authorizes the court to terminate parental rights for willfully failing to pay for the child’s care, support, and education as required by a court decree or custody agreement for a period of one year or more before the filing of the TPR petition.
- Agreeing with the Court of Appeals, the petitioner must prove there was an enforceable support order during the year before the TPR was filed. When there are no findings indicating either a child support order existed or the respondent failed to pay support as required by the child support order during the year before the TPR, the findings will be insufficient to support the conclusion of this ground. The source of the evidence of that order (e.g., testimony vs the order itself) is not relevant as long as it is clear, cogent, and convincing evidence.
- It is the role of the appellate court to review “the trial court’s *factual findings* to determine whether they support the trial court’s conclusions of law.” ¶ 18 (emphasis in opinion). The appellate court does not make findings of fact. Quoting previous NC Supreme Court opinions, “The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead ‘to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.’ ” *Id.* There are no findings of fact a child support order existed during the year before the TPR was filed. The record appears to have evidence that might support a conclusion under this ground (allegations and admission in the pleadings, testimony). Vacate and remand for findings and conclusion as to whether there was an enforceable child support order the year before the TPR petition was filed and whether the failure to pay was willful.
- Dissent: Addressing G.S. 7B-1111(a)(4), father failed to preserve the issue of the child support order’s existence for appeal. Additionally, the findings are sufficient. Father admitted in his answer there was a child support consent order. An admission binds the party such that the fact

is uncontested. Findings show that father had not paid support since 2015 (4 years) although he was employed.

### Dependency: G.S. 7B-1111(a)(6)

G.S. 7B-1111(a)(6) authorizes a TPR when the parent is incapable of providing proper care and supervision for the juvenile such that juvenile is dependent as defined by G.S. 7B-101(9) and that there is a reasonable probability the incapability will continue for the foreseeable future. The court must address both prongs of the definition of juvenile based on (1) the juvenile not having a parent, guardian, or custodian who is able to provide for the juvenile's care and supervision and (2) the parent, guardian, or custodian lacks an appropriate alternative child care arrangement.

### Unable to Provide Care or Supervision

In re A.L.S., 375 N.C. 708 (2020)

#### **Held: Affirmed**

- Facts: The juveniles were adjudicated neglected and dependent based on circumstances created by mother's substance use, criminal activity and pending charges, and problems regarding the appropriateness of the safety placement mother identified. During the underlying neglect and dependency action, mother was incarcerated with a term of 32 to 56 months imprisonment. DSS filed a petition to terminate mother's parental rights on several grounds, which was granted. Mother appeals, challenging the grounds. This opinion focuses on the ground of dependency.
- The findings included mother's incarceration during most of the case including at the time of the TPR hearing and her projected release date of May 2022. The possible placements mother proposed were either rejected as inappropriate or failed to complete the necessary paperwork. Based on these findings, the court concluded the ground of dependency existed.
- The appeal focuses on mother's incapability to provide care and supervision and that the incapability would continue for the foreseeable future. Although the mother could have been released sooner than the projected May 2022, any error in the court's finding of that date did not prejudice mother because the earlier possible date was at least 22 months after the TPR hearing. An extended period of incarceration regardless of an exact release date provides ample support for a determination that mother was incapable of providing care and supervision and there was a reasonable probability that the incapability would continue for the foreseeable future.
- Based on the statutory language of G.S. 7B-1111(a)(6), the trial court is not required to find the basis for the respondent's incapability of providing for the children's care based on a statutorily enumerated condition or other similar cause. The statute was amended since the court of appeals determined *In re Clark*, 151 N.C. App. 286 (2002), which was relied on in *In re J.K.C.*, 218 N.C. App. 22 (2012), that limited the condition to certain mental or physical impairments or other similar cause or condition. The current statutory language is broader and states "any other cause or condition," rather than limit it to a "similar" cause or condition. Mother's extended continued incarceration is a cause or condition.

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[In re C.L.H.](#), \_\_\_ N.C. \_\_\_ (Feb. 5, 2021)

**Held: Reverse in part, vacate and remand in part**

**Dissent, Barringer, J. joined by Newby, J. and Berger, J.**

- **Facts:** This is a private TPR where mother is petitioner and father is respondent parent. In 2011, the parties entered into a consent order for child support, where respondent father was required to pay a set amount. In 2018, after father overdosed during a visit with the child, mother obtained a modified Ch. 50 custody order granting her sole physical and legal custody. The TPR was granted on the grounds of neglect, willful failure to pay child support, and dependency. Father appeals, challenging the grounds.
- Regarding the dependency ground under G.S. 7B-1111(a)(6), there was no evidence or findings that at the time of the termination hearing the father had a condition that made him incapable of providing proper care or supervision. Reversed.

Lack of Appropriate Alternative Child Care Arrangement

[In re A.L.L.](#), 376 N.C. 99 (2020)

**Held: Reversed**

**Concur in part, Dissent in Part, Newby, J.**

- **Facts:** The juvenile was adjudicated dependent in an underlying juvenile action based on circumstances related to mother's mental health issues. During the course of the underlying dependency action, mother was ordered to comply with her case plan, which she did but she was still engaging in inappropriate behaviors and had parenting deficits. Ultimately the court appointed permanent guardians for the juvenile under G.S. 7B-600, achieving a permanent plan. The guardians filed the TPR petition so they could adopt. The TPR was granted on the grounds of dependency and willful abandonment. Mother appeals both grounds and argues the court lacked subject matter jurisdiction.
- There were no findings about the second prong of dependency – lack of an appropriate alternative child care arrangement.
- A legal permanent guardian is an appropriate alternative child care arrangement under G.S. 7B-1111(a)(6), even when the parent did not identify that person. Differing from prior Court of Appeals opinions, G.S. 7B-1111(a)(6) does not require that the parent must locate and secure the appropriate alternative child care arrangement; the issue centers on “the availability or unavailability of an appropriate alternative child care arrangement, not the parent’s success or failure in identifying one....” Sl.Op. at 12. This interpretation of the statute comports with the purpose of the Juvenile Code. “[W]hen a parent is unable to provide appropriate care, but the child is residing with another appropriate permanent caretaker, then the parent’s incapability does not itself supply a reason for the state to intervene to dissolve the constitutionally protected parent-child relationship. In this circumstance, requiring the parent to affirmatively identify an alternative child care arrangement threatens the parent’s constitutional status without serving the state’s *parens patriae* interest in the child’s safety.” Sl.Op. at 14.
- “Permanent guardianship, which provides a child with stability and the opportunity to develop durable, healthy, dependent bonds with adult caregivers, is distinct from a temporary custodial arrangement which leaves a juvenile in a state of ongoing uncertainty.” Sl.Op. at 15. “Requiring the identification of an alternative child care arrangement serves a child’s interest in



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permanency when the child is in the custody of an incapable parent or a temporary caregiver. But when the child resides with a permanent legal guardian, the parent's ability to identify an alternative child care arrangement is extraneous to the concerns animating our Juvenile Code." *Id.* Footnote 3 states: "Until a legal permanent guardianship has been established, a parent will still have reason to identify and propose an alternative child care arrangement."

- Dissent: The majority advances its own policy preference for permanent guardianship over adoption and overrules a 10-year precedent by the Court of Appeals that the parent must have taken some action to identify an appropriate alternative child care arrangement. If that court's interpretation was wrong, the legislature would have acted to correct it. DSS is in a catch-22 situation, by identifying an appropriate alternative placement for the child, they will be precluded from bringing a TPR on dependency grounds at a later date.

[In re K.D.C.](#), 375 N.C. 784 (2020)

**Held: Reversed**

- Facts: The juveniles were adjudicated neglected in an underlying action due to circumstances created by father and mother's incarceration. Mother was ordered to comply with a case plan. Mother was incarcerated throughout the neglect proceeding. Ultimately, DSS filed a TPR petition alleging the grounds of neglect, failure to make reasonable progress, and dependency. The TPR was granted, and mother appeals the grounds.
- The second prong of dependency – lack of an appropriate alternative child care arrangement – was not alleged in the petition nor found by the trial court. A trial court's failure to make both findings of dependency (defined in G.S. 7B-101(9)) will result in reversal. Even though it was undisputed that mother lacked an alternative child care arrangement (as argued by DSS and the child's GAL), there was no evidence at the TPR hearing addressing an appropriate alternative child care arrangement. With a lack of evidence and finding about this prong, the dependency ground was not established.

[In re K.C.T.](#), 375 N.C. 592 (2020)

**Held: Reversed in part; Reversed and remanded in part**

**Dissent, Newby J.**

- Facts: After a voluntary kinship placement, petitioners in this TPR obtained a Ch. 50 civil custody order giving them sole legal and physical custody of the juvenile and no visitation with mother. More than 3 years later, petitioners filed this TPR, alleging neglect, failure to make reasonable progress, dependency, and willful abandonment. The TPR was granted on all 4 grounds, and mother appeals.
- The court did not make findings about the second prong of the dependency requirement – that the parent lacked an appropriate alternative child care arrangement. The burden is on petitioners to show mother lacked an appropriate alternative child care arrangement and they provided no such evidence. TPR on this ground reversed.
- Dissent: The burden does not rest solely on petitioners to show that respondent mother did not offer an appropriate alternative child care arrangement. Respondent's failure to show an alternative child care arrangement should be considered. As such, remand is appropriate.

[In re K.H.](#), 375 N.C. 610 (2020)

**Held: Reversed**

**Dissent, Newby, J.**

**Concur in part/Dissent in part, Ervin, J. and Davis, J.**

- **Facts:** A 16-year-old parent and her 9-month-old baby were placed in nonsecure custody with DSS. Initially, mother and infant were separated (April 5, 2017 through June 9, 2017) but then were placed in a foster home together from December 19, 2017 until August 8, 2018 when they were separated again. The infant was adjudicated neglected and dependent (the opinion does not address respondent minor mother's status as an abused, neglected, or dependent juvenile but does make reference to her also being in DSS custody). After respondent minor mother made minimal progress, DSS filed a TPR motion on August 8, 2018. The TPR was granted on three grounds: failure to make reasonable progress (7B-1111(a)(2)), failure to pay the reasonable cost of care (7B-1111(a)(3)), and dependency (7B-1111(a)(6)). Respondent mother appeals all three grounds.
- **There were no findings on the second prong:** lack of an appropriate alternative child care arrangement. The findings are insufficient to support the ground.
- **Dissent in part:** The proper remedy is remand and not reverse. A reversal is proper when "the record evidence is 'too scant' to support the trial court's decision, . . . , while a remand is appropriate in the event that, even if the trial court's required findings of fact are defective, the record contains sufficient evidence to permit the trial court to have reached the result that it deemed appropriate in the event that proper findings had been made." Concur in part, dissent in part at 2 (citations omitted). In reviewing the record, a complete reversal is unwarranted as the trial court may be able to make the necessary findings for a termination based on G.S. 7B-1111(a)(6). At a minimum, the record shows a genuine issue of material fact about whether mother had an adequate alternative child care arrangement.
- **Dissent:** Agrees with dissent in part.

**Abandonment: G.S. 7B-1111(a)(7)**

G.S. 7B-1111(a)(7) authorizes a TPR when the parent has willfully abandoned the child for at least 6 consecutive months immediately preceding the filing of the TPR petition or motion. Abandonment implies conduct by the parent that manifests a willful determination to forego all parental duties and relinquish all parental claims to the child, which is demonstrated by withholding his presence, love, care, and opportunity to display filial affection and failure to pay support and maintenance. Willfulness is a question of fact. The court may consider the parent's conduct outside of the determinative 6-month period when evaluating the parent's credibility and intentions.

**Willful**

[In re N.M.H.](#), 375 N.C. 637 (2020)

**Held: Affirmed**

- **Facts:** This TPR, which was initiated by mother against respondent father, was granted on the grounds of willful abandonment and neglect. Respondent father appeals, and the opinion focuses on the ground of willful abandonment.

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- Although the trial court should have but did not use the word “willful” when addressing respondent’s conduct, when read in context and in evaluating the findings together, the order makes clear that the court applied the proper willfulness standard. The findings addressed the father’s lack of contact with petitioner and the child for 3 years before the filing of the petition despite having petitioner’s contact information as well as his failure to pursue court-ordered visitation, attempt to arrange for visitation, and failure to provide any tangible or financial support despite paying child support for his other children. The findings were supported by clear and convincing evidence and those findings support the conclusion of abandonment.

In re A.L.L., 376 N.C. 99 (2020)

**Held: Reversed**

**Concur in part, Dissent in Part, Newby, J.**

- Facts: The juvenile was adjudicated dependent in an underlying juvenile action based on circumstances related to mother’s mental health issues. During the course of the underlying dependency action, mother was ordered to comply with her case plan, which she did but she was still engaging in inappropriate behaviors and had parenting deficits. Ultimately the court appointed permanent guardians for the juvenile under G.S. 7B-600, achieving a permanent plan. The guardians filed the TPR petition so they could adopt. The TPR was granted on the grounds of dependency and willful abandonment. Mother appeals both grounds and argues the court lacked subject matter jurisdiction.
- The order does not include findings addressing the determinative 6-month period of time or stating whether respondent acted willfully. The evidence in the record does not support a willfulness finding as mother’s conduct was largely based on her severe mental illnesses. The court found mother was unable to care for her child even though she desires to do so. Her actions, although misguided, showed her attempts to demonstrate her love and affection. Her behavior must show willful intent and not just symptoms of her diagnosed mental illness. Her refusal to take prescribed medications does not make her conduct rational or volitional conduct when there was no evidence that her refusal was willful or that taking her medication would have resulted in her ability to appropriately parent.
- Like incarceration, mental illness, standing alone, is neither a sword nor a shield in a TPR action. “Our reasoning should in no way be taken to suggest that every parent who struggles with a mental health condition lacks the capacity to make choices signifying an intent to abandon one’s child.” Sl.Op. at 20. The trial court must analyze the relevant facts and circumstances including the severity of the parent’s condition and the extent that the parent’s behaviors are consistent with the symptoms of their illness.
- Dissent: The ground exists. The majority’s opinion is policy driven and relies on social science articles that were not presented to the trial court and cases from other states to address mother’s mental illness and willfulness. The result will be legal limbo for children who will be unable to be adopted when their parent suffers from significant mental illness. This is contrary to the legislative goals of permanency for a child at the earliest possible age and to facilitate and promote the integrity of adoptions.

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[In re K.C.T.](#), 375 N.C. 592 (2020)

**Held: Reversed in part; Reversed and remanded in part**

**Dissent, Newby J.**

- **Facts:** After a voluntary kinship placement, petitioners in this TPR obtained a Ch. 50 civil custody order giving them sole legal and physical custody of the juvenile and no visitation with mother. More than 3 years later, petitioners filed this TPR, alleging neglect, failure to make reasonable progress, dependency, and willful abandonment. The TPR was granted on all 4 grounds, and mother appeals.
- Willful abandonment under G.S. 7B-1111(a)(7) requires the court to focus on the parent's actions in the 6 months immediately preceding the filing of the TPR petition (unlike abandonment by neglect). The relevant period is Sept. 12, 2018 to March 12, 2019. Mother took one action during this time period: sending 3 Christmas gifts to her child. The court does not address whether mother's failure to take any other action was willful. The court's findings identify multiple possible barriers to mother's ability to contact and support her child, including her disability, receipt of SSI, lack of driver's license. The evidence may support the ground, warranting reversal and remand for further proceedings not inconsistent with this opinion.
- **Dissent:** The majority applies the wrong standard of review. The findings support the conclusion of abandonment when examining the determinative 6-month period.

6-Month Determinative Time Period

[In re C.A.H.](#), 375 N.C. 750 (2020)

**Held: Affirmed**

- **Facts:** Mother filed a TPR petition against respondent father alleging three grounds. The TPR was granted, and respondent father appeals challenging the conclusion that grounds existed. This opinion focuses on the ground of willful abandonment.
- The determinative 6-month period is Oct. 25, 2018 to April 25, 2019. The court's findings address a longer period that includes the child's birth and the parties living together; their separation and mother's obtaining a 1-year DVPO against respondent; a civil custody order awarding mother sole custody; father's incarceration but upon his release date, the right to visit with the child and to pay a child support order; mother's marriage and relocation to California with the child; father's requesting visitation and not showing up in California for the scheduled visits; mother and child's return to NC; father's child support arrearages and need for a show cause order; father's failure to seek a modification of the visitation; and after the TPR was filed, two partial payments of child support and no attempts by respondent to communicate with petitioner about the child. During the 6-month period, the findings address father's partial payment of one child support payment; failure to send money, gifts, cards, or other assistance; failure to contact mother or her husband despite have their phone numbers; and lack of contact with the child.
- The findings support the conclusion of willful abandonment. The trial court determines credibility and the weight to give the evidence. The court determined respondent's conduct during the determinative period was willful abandonment.

[In re A.J.P.](#), 375 N.C. 516 (2020)

**Held: Affirmed**

**Dissent: Earls, J.**

- **Facts:** The juvenile was adjudicated a dependent juvenile based on circumstances due to mother's substance use and criminal activity and putative father's criminal activity and inability to care for their infant and lack of an appropriate alternative child care arrangement. Mother and putative father executed a relinquishment. It was later discovered putative father was not the biological father and a TPR on unknown fathers was initiated. Respondent father contacted DSS to indicate he might be the father, and he was determined to be so. Father was incarcerated but entered into a family services plan and the dependency case continued to hold permanency planning hearings. Eventually DSS filed a TPR alleging father had willfully left the juvenile in foster care and failed to make reasonable progress and willfully abandoned the juvenile. The TPR was granted on both grounds, and father appeals.
- **Incarceration** greatly limits a parent's options for showing affection but does not excuse a parent from showing interest in his child's welfare by whatever means are available. Court must recognize the limitations on a parent when requiring them to do what they can to show appropriate concern for their child's welfare.
- **The relevant 6-month period** is April 30, 2018 to October 31, 2018 when respondent parent was incarcerated. Although **outside of this time period**, the court properly considered father's conduct in not contacting or providing care for his child from her birth until his incarceration for **determining father's credibility and intentions**.
- **The findings support the conclusion.**
- **Dissent:** The trial court failed to analyze how incarceration affected the respondent's capacity to comply with his case plan before concluding he willfully abandoned the juvenile. Undue weight was given to the period of time before the 6-month determinative time period. Since the record could support the conclusion that grounds existed, the remedy should be vacate and remand.

## Best Interests

### Standard of Review

Standard of review for the dispositional stage regarding best interests is whether the trial court abused its discretion. Dispositional findings must be supported by competent evidence.

[In re A.M.O.](#), 375 N.C. 717 (2020)

**Held: Affirmed**

- **Facts:** Because of a permanent plan of adoption in an underlying neglect action, DSS initiated a TPR against respondent mother. The TPR was granted on 3 grounds, and respondent mother appeals, challenging the court's determination that TPR is in the child's best interests and that a de novo review should be applied and that guardianship instead of adoption requiring a TPR should have been considered by the trial court.
- **Standard of review** of best interests is not de novo as respondent argues. This court has "unanimously reaffirm[ed] our application of an abuse of discretion standard of review to the



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because they could not cross-examine the GAL. The TPR was dismissed after the court determined it was not the juvenile's best interests. The agency appealed.

- G.S. 7B-1108(b)-(c) governs the appointment of a GAL in a TPR proceeding, and G.S. 7B-601 describes the duties of a GAL. One of those duties is to assist the court in its determination of the child's best interests. In some cases, a GAL is appointed to serve in a dual role: one as the juvenile's GAL and one as the juvenile's attorney advocate.
- At disposition, the court has significantly more discretion in admitting evidence than at the adjudicatory hearing because the Rules of Evidence apply at adjudicatory hearings but at the dispositional hearing, the court "may admit any evidence that it considers to be relevant, reliable, and necessary in its inquiry into the child's best interests—even if such evidence would be inadmissible under the Rules of Evidence." Sl.Op. at 9. The trial court did not abuse its discretion in admitting the GAL report as it was relevant, reliable, and necessary. G.S. 7B-1110(a) does not require the court to make explicit findings as to why it found the GAL's report to be "relevant, reliable, and necessary."
- Regarding the inability to cross-examine the GAL, the agency did not raise a constitutional due process argument before the trial court and waived that issue as a result. "[T]he dispositional stage of a termination proceeding is not adversarial" because the focus is on determining the child's best interests through evidence the trial court believes is relevant, reliable, and necessary. Sl.Op. at 13. Based on the facts, the court did not abuse its discretion. Given the language in G.S. 7B-1110(a) that explicitly allows for hearsay evidence, which is not subject to cross-examination, "our legislature has made clear that no absolute right to cross-examination exists during the dispositional stage." Sl.Op. at 14. Further, the holding in *In re J.H.K.*, 365 N.C. 171 (2011) that the GAL team representation did not mandate that the GAL attend the hearing when the attorney advocate was present at the hearing demonstrates there is no absolute right to cross-examination of a the GAL. By considering the ethical conflict under Rule 3.7 of the Rules of Professional Conduct, the court acted within its authority to resolve the issue that was presented.
- No party bears the burden of proof at the dispositional stage of a TPR proceeding.
- The trial court considered the criteria of G.S. 7B-1110(a), made written findings of the relevant factors, and gave significant weight to the catch-all factor (any other relevant consideration). The trial court determines how much weight to give to the factors. The court also determines witness credibility and determined the respondent father was more credible than respondent mother regarding his lack of knowledge of her pregnancy. The court may draw reasonable inferences from the evidence, which it did when finding the teen mom acted to hide her pregnancy from the teen dad.
- The finding that children who are adopted face harm as they try to understand who they are, where they came from, and why they are not raised by their biological parents is not supported by the evidence. Judicial notice is not appropriate as it is not well-settled or authoritatively settled. The Legislature and this Court have found adoption to advance the welfare of minors. Further, the finding is prejudicial as it may have influenced the court's ultimate best interests determination. Remand.
- Dissent: Because evidence in the record supports the best interests conclusion based on the G.S. 7B-1110(a) criteria, the conclusion does not rest on the unsupported factual finding about



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“harm,” and the court did not abuse its discretion. The order should be affirmed rather than remanded for a new dispositional order.

### Competent Evidence

[In re S.M.](#), 375 N.C. 673 (2020)

**Held: Affirmed**

- **Facts:** The six children had been adjudicated neglected based on dirty conditions in the home, poor hygiene, lack of schooling, domestic violence, and substance abuse. A case plan addressing these issues, the need for a mental health assessment, and a psychosexual evaluation by father due to allegations of sexual abuse of one of the children was ordered. After the parents’ noncompliance with the case plan, DSS filed TPR petitions alleging neglect and failure to correct the conditions. The TPR was granted, and both parents appeal challenging the best interests determination regarding one of the children. Father also challenges the court’s denial of his motion to continue the hearing. Mother challenges the grounds as well.
- Some of the challenged finding of fact is not supported by evidence and those portions are disregarded. The GAL report was not admitted into evidence but was instead distributed to the parties and the court, and the GAL did not testify. There is no competent evidence to support the court’s consideration of the GAL recommendations.
- G.S. 7B-1110(a) requires the court to consider all the factors but make written findings of only those factors where there is conflicting evidence such that it is an issue that is presented to the trial court. The exact language of the statute is not required. The court made the appropriate findings.
- Although the juvenile has mental health issues, this case is distinguishable from *In re J.A.O.*, 166 N.C. App. 222 (2004). This juvenile’s issues were less severe; mother in this case did not make reasonable progress; and there is a pre-adoptive family will to adopt all six children, including this juvenile. There was no abuse of discretion.

### Adoption vs. Guardianship

[In re A.K.O.](#), 375 N.C. 698 (2020)

**Held: Affirmed in part; vacate in part, remand**

- **Facts:** The two juveniles were adjudicated neglected and dependent. As part of achieving a permanent plan in that underlying action, DSS filed a TPR petition that was granted. Respondents appeal, challenging the best interests of the child determination. At the time of the appellate opinion, the juveniles were 17 and 9, and the analysis differs based on the age of the juveniles. For the older juvenile, the GAL recommended guardianship over adoption.
- G.S. 7B-1110(a) identifies factors the court must consider at disposition but does not require written findings of each factor, “particularly when there was no conflict in the evidence regarding those factors.” Sl.Op. at 10. Because the evidence that the older juvenile was bonded with his parents, did not wish to be adopted, and would not give his consent to adoption making it unlikely for him to be adopted was uncontested such that no written findings of those factors were required. Additionally, some findings considered those factors and the failure to use the exact statutory language is not error.

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- One factor is whether the TPR will aid in the achieving the permanent plan. The concurrent plans here were adoption and guardianship. Although TPR aids in achieving adoption, it is not legally necessary for a plan of guardianship. A finding that TPR was necessary to achieve the permanent plan of by legally freeing the juvenile for adoption or guardianship was incorrect. This appears to be a mistake of law. The proper remedy is remand for reconsideration of guardianship as a dispositional alternative.
- While a TPR would aid in achieving the plan of adoption, “the trial court should not place undue emphasis on this statutory factor when [the juvenile] will not consent to adoption and is a much older juvenile.” Sl.Op. at 11. Here, the juvenile provided a well-reasoned objection to adoption in favor of guardianship, and he is approaching the age of majority. “As a juvenile ages, the trial court should afford more weight to his wishes.” Sl.Op. at 12.
- For the sibling who is significantly younger, the same considerations are not applicable. Her consent is not required for adoption and she is in need of a permanent plan at the earliest age possible.
- Although a written finding on the undisputed evidence about the younger siblings bond with her parents was not required, “even assuming arguendo, however, that this trial court erred by failing to make a finding regarding this dispositional factor, we would decline to find reversible error because it would only delay permanence for [the juvenile].” Sl.Op. at 14.

[In re B.E.](#), 375 N.C. 730 (2020)

**Held: Affirmed**

- Facts: The three children were adjudicated neglected and dependent in an underlying juvenile action. Mother and father were ordered to comply with their case plans. Eventually, DSS filed a TPR motion, and the TPR was granted on the grounds of neglect, failure to make reasonable progress, and dependency. The court found it was in 2 of the 3 children’s best interests to TPR (resulting in the TPR of the one child to be dismissed). Respondent father challenges the best interests determination at disposition for his 15-year-old son who expressed a desire to not be adopted.
- Father argues the court failed to protect the juvenile’s statutory due process rights by not providing the juvenile with notice of the hearing and giving him an opportunity to attend the hearing and testify. “Assuming arguendo that respondent-father has standing to assert Billy’s procedural rights on appeal, we conclude he has failed to preserve this issue for our review.” Sl.Op. at 25. By characterizing the claim as “statutory due process,” father concedes the statute does not explicitly grant all the due process rights he is arguing. As such, the issue must have been preserved at trial. Some statutes governing abuse, neglect, and dependency proceedings give certain procedural rights to juvenile’s 12 and older, in addition to the right to GAL representation. G.S. 7B-1110 does not provide for notice of and the right to attend and testify at the dispositional hearing even though it expressly provides for the juvenile who is 12 or older the right to be served with a copy of the TPR order.
- A child who is 12 or older must consent to their adoption unless the court waives the consent based on a finding that it is not in the child’s best interests. G.S. 48-3-601(1); 48-3-603(b)(2). The trial court in the TPR waived the consent requirement. By considering the GAL’s and DSS social worker’s testimony about the juvenile’s preference and understanding and by finding it was not

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in the juvenile's best interest to consent to his adoption, the court considered the juvenile's preference for guardianship. The court has the authority to determine the proper weight to give the evidence.

- There was no abuse of discretion.

[In re Z.O.G.I.](#), 375 N.C. 858 (2020)

**Held: Affirmed in part; Vacated and remanded in part**

- Facts: Respondent father appeals the grounds and best interests determination of an order terminating his parental rights. This opinion focuses on the ground of failure to make reasonable progress (affirmed) and the best interests determination. In a TPR proceeding, initiated by DSS as a result of an underlying dependency action, the 13-year-old juvenile testified at the best interests phase. The juvenile stated that he had a wonderful relationship with his foster parents but that he did not want to be adopted and that he needed his father in his life. The court found a strong bond between the father and child but that the likelihood of adoption was high. The court determined the TPR was in the child's best interests. In its order, the Court "decreed that '[DHHS] shall ensure that [respondent] is allowed continued co-parenting of [the juvenile]' and that 'it hereby honors the request of [the juvenile] not [to] be adopted pursuant to N.C.G.S. § 48-3-603(b).' " Sl.Op. at 16. (*Author's Note*: The statute cited waives the requirement the juvenile who is 12 or older consent to the adoption).
- G.S. 7B-1112 addresses the effect of a TPR order, which completely and permanently terminates all the rights and obligations of the parent to the juvenile and the juvenile to the parent except for the juvenile's right to inherit from that parent until a final order of adoption is issued. The biological parent becomes a legal stranger to the juvenile.
- An order that a biological parent be allowed to continue to co-parent is contrary to a determination that it is in the child's best interests to completely and permanently sever that parent's parental rights. This suggests the court had a misapprehension of the law regarding the legal effects of a TPR. The trial court may have had a guardianship in mind, which does not require a TPR.
- When there is a misapprehension of law, remand for the application of the correct legal standard is the appropriate remedy.

G.S. 7B-1110(a) Factors

[In re J.J.H.](#), 376 N.C. 161 (2020)

**Held: Affirmed**

**Dissent, Earls, J.**

- Facts: The juveniles were adjudicated neglected in an underlying juvenile action. After the primary permanent plan was changed to adoption, DSS filed a motion to TPR, which was granted on the ground of neglect. Mother appeals the ground and the disposition to TPR.
- At a TPR disposition, "the trial court must determine the best interests of each child based upon his or her individual circumstances." Sl.Op.at 41. Here, the court made findings with respect to each child and weighed those findings when determining whether TPR was in the best interests of each juvenile. The court considered the bonds of each child with her as well as with each

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other. Although some of the children were not in a pre-adoptive placement, the absence of such a placement does not bar a TPR.

- There as no abuse of discretion.

[In re C.B.](#), 375 N.C. 556 (2020)

**Held: Affirmed**

- **Facts:** The district court entered an order that terminated respondent mother’s parental rights to her five children. This is an appeal by respondent mother, challenging the termination of her parental rights to her oldest child by arguing the court failed to make the necessary findings of fact under G.S. 7B-1110(a) to support its conclusion that termination was in that child’s best interests.
- The court addressed the finding of the child’s likelihood of adoption when it found that the child’s likelihood of adoption was unknown. The court does not need to find the child is likely to be adopted to terminate parental rights.
- Although the child had significant mental health issues, the trial court’s finding that there were no barriers to adoption other than TPR was supported by competent evidence including the social worker’s testimony that the child was improving and was likely to step down from a therapeutic foster home to a traditional foster care setting which DSS would seek to make a foster-to-adopt placement. Further, a lack of a proposed adoptive placement does not bar a TPR.
- The 12-year-old child’s consent to adoption as required by G.S. 48-3-601 may be waived by the trial court such “that the trial court was not required to make findings and conclusions concerning the extent, if any, to which [the child was] likely to consent to any adoption that might eventually be proposed.” Sl.Op. at 9.
- Regarding the bond between the child and parent, “[t]here is no requirement that the trial court make a specific finding that the parent’s relationship with the child was detrimental before it can terminate parental rights.” Sl.Op. at 10.
- This case is distinguishable from In re J.A.O., which reversed a TPR for a child with significant mental health needs. In this case, unlike *J.A.O.*, the GAL recommended adoption, the mother did not make reasonable progress, and the child’s condition was improving. Further the appellate court will not reweigh the evidence and substitute its judgment for that of the trial court. Here the court made a reasoned decision, after considering the relevant statutory criteria, to terminate mother’s parental rights. That decision was supported by competent evidence and is not an abuse of discretion.

Other Dispositional Alternatives

[In re A.H.F.S.](#), 375 N.C. 503 (2020)

**Held: Affirmed**

- **Facts:** The juveniles had been adjudicated neglected in two separate actions (one in 2016 where the juveniles remained in the home and one in 2017 where the juveniles were removed) due to substance use, mental health issues, and conditions of the home. DSS initiated a TPR, which was granted. Respondent parents appeal, challenging the grounds and best interests determination.

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One argument is that the DSS should have waited for the results of an ICPC home study before proceeding with the TPR.

- Although “consideration of placement alternatives and preserving family integrity is an appropriate consideration in the dispositional portion of the termination hearing, the best interests of the juvenile remain paramount.” Sl.Op. at 19. The court appropriately considered the dispositional factors and did not abuse its discretion in determining the TPR was in the juveniles’ best interests.
- The bond between a parent and the juvenile is just one factor the court must consider under G.S. 7B-1110(a). The trial court may give greater weight to other factors. The court giving greater weight to other factors in this case is not an abuse of discretion.

[In re N.K.](#), 375 N.C. 805 (2020)

**Held: Remanded (ICWA issue)**

- Facts: Mother appeals a TPR, arguing in part the court erred by determining the TPR was in the child’s best interests.
- The court made findings about each factor enumerated in G.S. 7B-1110(a). The court was not required to consider mother’s poverty and mental health issues even though those issues contributed to the neglect ground of the TPR. Mother has not explained how those issues related to the disposition.
- The court does not commit error at the dispositional stage of a TPR when it does not consider non-TPR-related dispositional alternatives, such as guardianship or custody. The child’s best interests are of paramount consideration. When the juvenile cannot be returned home, the juvenile needs a safe permanent home within a reasonable amount of time. The court determined this juvenile needed a safe stable home and permanent plan of care at the earliest possible stage which could be obtained by a TPR.
- The court did not abuse its discretion.

## Mandate

[In re R.L.O.](#), 375 N.C. 655 (2020)

**Held: Affirmed**

- Facts: DSS filed a petition alleging the juvenile was neglected and dependent. The child’s GAL filed a TPR petition. The court consolidated the proceedings. The children were adjudicated neglected and dependent and the court terminated the parents’ rights on all 3 grounds that were alleged in the TPR petition. The parents appealed, and the court of appeals vacated father’s TPR on the ground of neglect and remanded for additional findings about the probability of repetition of neglect and authorized the trial court to receive additional evidence in its discretion. On remand, the trial court did not receive additional evidence but did make additional findings, concluded grounds existed, and granted the TPR. Father appealed arguing the court erred by not taking additional evidence for both the grounds and disposition and that the findings do not support a likelihood of future neglect.
- Remand: “Whether or not to receive additional evidence on remand is a determination within the trial court’s discretion so long as the reviewing court’s mandate does not specify otherwise.”

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Sl.Op.at 5. The remand in this case stated, “the court may receive additional evidence as it deems appropriate,” which explicitly left that decision to the trial court. Sl.Op.at 6.

- Respondent stipulated the court could enter an order without taking additional evidence. Father argues the court abused its discretion by accepting the stipulation because it did not consider the children’s current circumstances when determining best interests. The court was not bound by that stipulation and could have taken new evidence in its discretion. Father did not demonstrate a need for new evidence beyond speculation, which is insufficient to show an abuse of discretion by the trial court. Respondent did not forecast evidence concerning the current circumstances.
- The findings support the conclusion. There was no abuse of discretion.