

NO. COA06-1168

ELEVENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

IN THE MATTER OF:

C.M., Jr.,

A Minor Child.

BRIEF FOR THE GUARDIAN AD LITEM
(IN RESPONSE TO MOTHER'S BRIEF)

INDEX

TABLE OF CASES AND AUTHORITIES	i
STATEMENT OF THE FACTS	1
ARGUMENT	6
I. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT C.M., JR. WAS A NEGLECTED CHILD	6
II. INCORPORATING REPORTS FROM THE SOCIAL WORKER, GUARDIAN AD LITEM AND PSYCHOLOGIST INTO THE DISPOSITION ORDER WAS NOT ERROR	15
III. THE TRIAL COURT DID NOT ERR IN CEASING REUNIFICATION EFFORTS AND VISITATION WITH THE PARENTS	18
IV. THE ASSIGNMENTS OF ERROR NOT ADDRESSED BY APPELLANT MOTHER SHOULD BE DEEMED ABANDONED	29
CONCLUSION	29
CERTIFICATE OF SERVICE	30

TABLE OF CASES AND AUTHORITIES

Chicora County Club, Inc. v. Town of Erwin, 128 N.C. App. 101, 493 S.E.2d 797 (1997), disc. rev. denied, 347 N.C. 670, 500 S.E.2d 84 (1998).	28
Clark v. Clark, 301 N.C. 123, 371 S.E.2d 58 (1980)	28
In re A.B., --- N.C. App---, 635 S.E.2d 11 (2006)	10
In re A.D.P., ---N.C. App. ---, 628 S.E.2d 260 (2006)	17
In re A.K., --- N.C. App. ---, ---S.E.2d --- (WL23900732006)	10
In re D.L., 166 N.C. App. 574, 603 S.E.2d 376 (2004)	17
In re Gleisner, 141 N.C. App. 47, 539 S.E.2d 362 (2000)	24
In re Harton, 156 N.C. App. 655, 577 S.E.2d 334 (2003)	17
In re Helms, 127 N.C. App. 505, 491 S.E.2d 672 (1997)	14,23,28
In re Ivey, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003)	16
In re J.C.S., 165 N.C. App. 509, 598 S.E.2d 658 (2004)	16
In re McLean, 135 N.C. App. 387, 521 S.E.2d 121 (1999)	11
In re M.R.D.C., 166 N.C. App. 693, 698, 603 S.E.2d 890, 893 (2004), disc. review denied, 359 N.C. 321, 611 S.E.2d 413 (2005)	16,18
In re Pittman, 149 N.C. App. 756, 763-64, 561 S.E.2d 560, 566 (2002)	6,15
In re Reyes, 136 N.C. App. 812, 526 S.E.2d 499 (2000)	16
In re Safriet, 112 N.C. App. 747, 752, 436 S.E.2d 898,901-902(1993)	11,12
In re Shermer, 156 N.C. App. 281, 576 S.E.2d 403 (2003)	13,14,16
In re Shue, 311 N.C. 586, 319 S.E.2d 567 (1984)	18
In re Weiler, 158 N.C. App. 473, 582 S.E.2d 134 (2004)	18
Koufman v. Koufman, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)	6,19
Liborio v. King, 150 N.C. App. 531, 564 S.E.2d 272 (2002)	29
Macon Co. DSS v. Rholetter, 162 N.C. App. 653, 592 S.E.2d 237 (2004)	18,23
Wade v. Wade, 72 N.C. App. 372, 375-6, 325 S.E.2d 260, 266 (1985)	6

STATUTES

N.C. Gen. Stat. § 7B-101(15) (2005)	7
N.C. Gen. Stat. § 7B-507(b) (2005)	23
N.C. Gen. Stat. § 7B-903 (2005)	18,23
N.C. Gen. Stat. § 7B-907 (2005)	28
N.C.R.A.P., Rule 28(b) (6)	29

STATEMENT OF THE FACTS

Baby C.M., Jr., born in June of 2005, is the natural child of Jennifer M. and Clarence M. (R p. 59). Jennifer M. and Clarence M. are both mildly mentally retarded. (R p. 116, 117). The mother also has been diagnosed with mood disorder. (R p. 106). The father reads at a second grade level. (R p. 118). In addition to counsel, both parents were appointed a guardian ad litem for all court proceedings. (Ad. T p. 11).

The mother, Jennifer M., is the natural mother of an older child, N.M. (R p. 102). Harnett County Department of Social Services (HCDSS) removed N.M. from the mother in May of 2004 when N.M. was three (3) months old and living in a roach infested house owned by Clarence M.'s mother. (R p. 116). Baby N.M. was observed with live and dead roaches in his diaper. (R p. 116). At that time, Jennifer M. and Clarence M. were not married but living together in his mother's home. (R p. 116). Clarence M. is not the natural father of N.M. (R p. 21). HCDSS began a plan of reunification for N.M. with the mother which included participation in the Parents as Teachers Program, parenting classes, vocational rehab, mental health referrals, transportation and visitation. (R p. 117). The mother failed to comply with her service agreement and the court ceased reunification efforts with N.M. on 24 February 2005. (R p. 117). The parental rights of the

mother, Jennifer M., to N.M. were involuntarily terminated on 9 September 2005. (R p. 117).

After the birth of baby C.M., Jr. in June of 2005, HCDSS classified the baby as being at "high safety risk" and began intensive case management services for that child which included weekly visits by the social worker. (R p. 117, R p. 60, R p. 111). HCDSS entered service plans with both parents. (R p. 117). These plans required the father or paternal grandmother to provide continuous supervision of baby C.M. when in the mother's care and never allow her to be alone with the baby; for the parents to obtain appropriate furniture and supplies for the baby and for the mother to continue the services from the previous case plan. (R p. 117). At first, the parents were able to continue with the baby in their custody. (R p. 117). Within a few months, however, the mother began missing mental health appointments, service providers were unable to contact the family, the parents would be missing or hiding when HCDSS came to assist with transportation, the father was placed on probation due to traffic violations and the father failed to obtain his psychological evaluation. (R p. 117, 107).

The paternal grandmother who was supposed to assist in supervising Jennifer M., did not know where the parents were on several occasions. (R p. 107). In November of 2005, while in the parents' care, baby C.M., Jr. had a

serious respiratory infection. (R p. 117). The father was warned by day care personnel and the social worker of the baby's obvious illness but did not seek treatment for him. (R p. 118, 61). The baby was finally treated for R.S.V. (R p. 79). On 2 December 2005, HCDSS filed a petition alleging C.M., Jr. to be a neglected child. (R p. 2).

The father is employed four days a week painting transformers and the mother is unemployed. (R p. 108). The father has not driven a car in three years due to revocation of his license from traffic violations and relies on his mother for transportation to work. (R p. 109, 82). On one occasion, the father arrived at the daycare intending to transport the baby home by hanging the bassinet from his handle bars. (R p. 109). The parents initially lived with the father's mother, but moved into their own mobile home next door to the mother's family in 2005. (R p. 79). The mother, Jennifer M. is now pregnant again and her third child is expected in September 2006. (R p. 67). Both of her children, N.M. and C.M., Jr. have been identified as developmentally delayed and are receiving services. (R p. 104).

Dr. David Rademacher, psychologist, evaluated both parents. He reported that "There is concern about Mr. M.'s ability to be the primary care resource for a child. It is realistic to expect Mr. M. will need ongoing assistance and supervision to successfully meet his child's needs and to

assure the child's safety. Cognitive delays are not likely to change over time." (R p. 108). Dr. Rademacher reported that the mother had been hospitalized at least three times in mental health hospitals when younger. (R p. 19). He opined that the mother would only show improvement in her parenting skills and abilities through ongoing support and role modeling on a long term basis. (R p. 116, 24). Dr. Rademacher's recommendation stated that "If the M.'s were to have custody of their child, there would have to be present a strong support system of competent adults in regular contact with their household. . . and this supervision should be considered a long term need. Based upon the history presented, it does not appear realistic that extended family would be able to provide appropriate support." (R p. 84).

At adjudication, the mother had attended only one mental health appointment, had not participated in vocational rehab, the father had not obtained his psychological evaluation and the mother had not contacted the Child Developmental Services Agency. (R pp. 12-13). The trial court adjudicated baby C.M., Jr. neglected on 27 January 2006. (R p. 62) At that time, the court entered a temporary disposition pending the father's psychological evaluation. (R p. 62). The temporary disposition placed C.M., Jr. in the custody of HCDSS and continued visitation with the parents. (R p. 64). C. M., Jr. was placed into the same foster care as his brother, N.M. (R p.

67).

The case was set for the final disposition on 24 March 2006. (R p. 114). Both parents gave notice of appeal from this interlocutory order. On 23 March 2006, the parents moved to continue the disposition hearing due to the death of C.M.'s grandmother and the court granted their motion. (R p. 102, 96). After a hearing on 21 April 2006, the trial court entered a final disposition order continuing custody of C.M., Jr. with HCDSS, ceasing, visitation and ceasing reunification efforts with the parents. (R p. 119). This order was filed on 12 May 2006. (R p. 114). The parents each gave timely notice of appeal from this order.

I . THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT C. M. , JR. WAS A NEGLECTED CHILD. MOTHER'S ASSIGNMENT OF ERROR NO.2 (R p. 144)

Standard of review: In reviewing a trial court's findings of neglect, the appellate court must determine whether the findings of fact are supported by clear, convincing evidence and whether the legal conclusions are supported by the findings of fact. *In re Pittman*, 149 N.C. App. 756, 763-64, 561 S.E.2d 560, 566 (2002).

A. Findings of Fact Conclusive on Appeal: The Respondent does not assign error or argue error in her brief to any of the findings of fact in the adjudication order and only assigns error to finding 2 and 3 in the

dispositional order (incorporating the reports of the social worker and the guardian ad litem). All the remaining findings are deemed to be supported by competent evidence and are conclusive on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). An appellate court's review of the sufficiency of the evidence is limited to those findings of fact specifically assigned as error. *Wade v. Wade*, 72 N.C. App. 372, 375-6, 325 S.E.2d 260, 266 (1985).

B. Evidence of events prior to C.M. Jr.'s birth are relevant pursuant to N.C.G.S. Sec. 7B-101(15). A neglected juvenile is defined in N.C. Gen. Stat. Sec. 78-101(15) as:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. Sec. 7B-101(15) (2005). This statute specifically states that: In determining whether a juvenile is a neglected juvenile, it is relevant whether that child lives in a home where another juvenile has dies as a result of abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult that regularly lives in the home. N.C. Gen. Stat. Sec. 7B-101 (15) (2005).

In this case, it is undisputed that C.M. Jr.'s sibling, N.M. was neglected and that the mother's parental rights that child have been terminated. (R p. 117). This undisputed fact makes the testimony and evidence of event prior to C.M., Jr.'s birth relevant and appropriately considered pursuant to the plain meaning of N.C. Gen. Stat. Sec. 7B-101(15) (2005).

C. Findings support the Conclusion of Neglect. In this case, the trial court made undisputed findings in its adjudication order that:

5. During the spring of 2005, N.M., an older sibling of the juvenile lived with the mother together with the father here in the home of the father's mother, Doris M. On or about May 26, 2005, said juvenile was removed from the mother's custody because of an unsanitary condition of the home and the presence of roaches on and about the juvenile. . .The sibling was adjudicated neglected and dependent on June 11, 2005 and custody was awarded to the petitioner (DSS). The parental rights of the mother to said sibling was terminated by the court at a hearing on September 9, 2005.

6. Upon the urging and making of appointments, the mother complied with the FSCP to the following extent, to wit; the juvenile has attended medical appointments for shots and well-baby checks and received WIC services; the mother has attended the intake appointment at Sandhills Mental Health Center. The mother failed to participate in vocational rehabilitation services; she missed 2 appointments for counseling. The service providers were unable to make contact with the parents. Notwithstanding efforts by the social worker to assist the father in getting transportation, the father failed to participate in a psychological evaluation as scheduled.

12. On attempted home visits, the social worker on occasions was unable to find the mother and child at home or at the home of Doris M. who was the alternative person helping

with the mother's supervision while caring for the juvenile.

13. On or about November 7, 2005, the social worker made a home visit and found the juvenile and the mother. at home and the child was noticeably sick - labored breathing, crying inconsolably and refusing to take his bottle. Although the social worker telephoned the father about the need for the child to be seen by his pediatrician, the parents delayed in seeking medical attention. Later the child was diagnosed with a respiratory infection.

14. DSS extended services to the parents to improve and develop their parenting skills. . . The parents failed or otherwise refused to take advantage of the services offered.

(R p. 60-62). In its Dispositional order, the court made the following findings:

6. DSS began working with the mother herein during May 2004 when an older sibling (a three month old child of the mother) was removed from the mother's care on or about May 25, 2004 when the agency discovered the mother and child living in a roach infested house maintained by the paternal grandmother (live and dead roaches observed in the child's diaper). At that time, the mother and father and the older sibling lived with the grandmother in her home. Sometime thereafter, the mother and father were married. After the adjudication in 2004 (in the sibling's case), DSS worked with the family in an effort to reunite the sibling with them.

8. Under the plan of reunification of the older sibling with the respondent mother, DSS entered into a service plan with her incorporating in the plan among other things the basic recommendations of Mr. Rademacher to include participation in the Parents as Teachers Program, parenting classes, vocational rehabilitation, mental health referrals, transportation and visitation to continue parent child relationship. The mother failed to comply with terms of the agreement and the court ceased reunification efforts on February 25, 2005. Rights of the parents to the older sibling were terminated on September 9, 2005.

(R p. 116-117).

This case is similar to *In re A.B.*, --- N.C. App ---, 635 S.E.2d 11 (2006) in which a finding of neglect was upheld where a baby was taken into DSS custody upon release from the hospital due to neglect and abuse of older siblings. The trial court in *A.B.* made findings that the baby was living in a home where another child was abused or neglected and that the parent had not taken steps to comply with the trial court's orders regarding those children. *Id.* Likewise, in the case sub judice, the trial court made findings that a previous child was neglected and the mother failed to comply with her case plan, both for the first child and for baby C.M., Jr. *Cf. In re A.K.*, --- N.C. App. ---, --- S.E.2d --- (WL 2390073 2006) (Court erred in finding neglect based upon abuse or neglect of a sibling where the trial court did not make findings of parent's progress and considered only the prior orders of the court).

Decisions finding neglect also require that "there be some physical, mental or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision or discipline in order to adjudicate a juvenile neglected." *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-902 (1993). In making this determination, "the decision of the trial court must of necessity be

predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the *In re McLean*, 135 N.C. App. 387, 521 S.E.2d 121 case." (1999).

In the case at bar, the M.'s case was classified as "high risk" by HCDSS, which required weekly monitoring by the agency. (R p. 111). At disposition, the social worker's report stated that "The high safety risk level that existed at the onset of this case remains." (R p. 111). Dr. Rademacher reported that "If the M.'s were to have custody of their child, there would have to be present a strong support system of competent adults in regular contact with their household. . . and this supervision should be considered a long term need. Based upon the history presented, it does not appear realistic that extended family would be able to provide appropriate support." (R p. 84). The trial court made the undisputed findings listed above and then concluded that "Return and/or placement of the juvenile in the home of the parents would be contrary to his welfare." (Conclusion 2, R p. 119).

While this language is not the exact language used in *Safriet*, it does impart the connotation of that language and shows that the court did in fact conclude that there was a substantial risk of impairment or harm to baby C.M., Jr. if returned to his parents' custody. This conclusion is supported by the findings of fact which are supported by the mother's failure to complete

her case plan and by Dr. Rademacher's report and recommendations.

D. The mother had sufficient time to address her case plan. Respondent mother argues that she only had a month to address her case plan which did not provide adequate time to make an assessment of her ability to comply with it. (Mother's brief, page 9). However, in this case, the mother had actually been working with HCDSS for several years (since May of 2004) at the time of the hearing. She had a previous case plan with sibling N.M. (R p. 116). When baby C.M., Jr. was born in September of 2005, the mother continued services under N.M.'s case plan and had an existing initial case plan dated 26 August 2005. (R p. 12, 60). HCDSS immediately began intensive services when C.M., Jr. was born which included weekly visits to the home. Thereafter, the case plan was reviewed and updated on 22 November 2005. (R p. 12). The plan was again reviewed and updated on 20 December 2005. (R p. 71). Though updated, the case plan continued to have similar requirements, to wit, for the mother to follow through with mental health counseling, to use community resources to enhance parenting skills such as the parents as teachers class and to learn and demonstrate good parenting skills. (R pp. 71-72). At adjudication, the mother had attended only one mental health appointment, had not participated in vocational rehab, the father had not obtained his psychological evaluation and the

mother had not contacted the Child Developmental Services Agency. (R pp. 12-13). The mother argues that her case is similar to *In re Shermer*, 156 N.C. App. 281, 576 S.E.2d 403 (2003). However, in the *Shermer* case, the father was incarcerated until March 23, 2001. His case plan was explained to him July 5, 2001, signed July 31, 2001 and not scheduled to begin until October 2001 although he began to work on it early. His termination hearing was held in September of 2001. The court held that a hearing date 19 days after the signing of the case plan did not allow adequate time for an assessment of his progress. *Id.*

This is not the case for Jennifer M. She had had a case plan with HCDSS for several years at the time of the hearing. The court made a specific finding that the mother "failed to comply with the terms of the agreement" for her older son. (R p. 117). While it is true that HCDSS updated the plan, it did not change the substantive requirements of it or require the mother to do anything drastically different from the prior plans. The court then made specific findings that the mother had not complied with her case plan in that she had not participated in vocational rehabilitation and had missed two appointments from counseling. (R p. 61). Based upon her two year history with HCDSS and the evidence presented at adjudication of her failure to complete some of the terms of her current case plan, the court

did not err in making an assessment as to the mother's failure to comply with her case plan in C.M., Jr.'s case.

A trial court's conclusions of law are upheld when they are supported by findings of fact. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). As set forth in the arguments above, the undisputed findings show that C.M., Jr. was a neglected child as defined by N.C.G.S. Sec. 7B-101(15). These findings support the court's conclusion of law of neglect because C.M., Jr. lived in an environment injurious to his welfare and he failed to receive proper care and supervision from his parents.

II. INCORPORATING REPORTS FROM THE SOCIAL WORKER, GUARDIAN AD LITEM AND PSYCHOLOGIST INTO THE DISPOSITION ORDER WAS NOT ERROR. MOTHER'S ASSIGNMENT OF ERROR NO.5 (R p. 144)

Standard of review: In reviewing a trial court's findings of neglect, the appellate court must determine whether the findings of fact are supported by clear, convincing evidence and whether the legal conclusions are supported by the findings of fact. *In re Pittman*, 149 N.C. App. 756, 763-64, 561 S.E.2d 560, 566 (2002).

In finding 3 of its disposition order, the trial court incorporated the reports of the social worker and guardian ad litem and the psychological report of Dr. David Rademacher. (R p. 115). All of these reports were introduced into evidence at trial without objection by either parent and all of

these reports were properly admitted into evidence by the trial court. (R p. 115). "(W)here the trial court makes sufficient findings of fact relating to the situation at the time of the proceeding, it is not error for the trial court to incorporate additional information including facts found by the court in previous orders." See *In re Shermer*, 156 N.C. App. 281,285, 576 S.E.2d 403,407 (2003) (trial court takes judicial notice of past orders) and *In re Reyes*, 136 N.C. App. 812, 526 S.E.2d 499 (2000) (trial court incorporated the findings of fact of prior orders and determined that based upon this history of neglect there was a probability of repetition of neglect). In addition to the finding incorporating these reports, the trial court made 5 preliminary findings and 16 additional lengthy and specific findings of fact. (R pp. 114-119). The trial court also specifically incorporated all 15 of the findings of fact from its adjudication order (Finding 1, R p. 115). It is proper for a trial court to consider or adopt all written reports and materials submitted in juvenile dispositional proceedings. *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003). A trial court may not, however, "broadly incorporate these written reports from outside sources as its findings of fact" or use the incorporated reports "as a substitute for its own independent review." *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004); *In re M.R.D.C.*, 166 N.C. App. 693, 698, 603 S.E.2d 890, 893

(2004), *disc. review denied*, 359 N.C. 321, 611 S.E.2d 413 (2005). In this case, the court made specific findings from the testimony offered by the social worker and the Respondent father. In addition to the evidence offered at trial, the court also reviewed the reports offered without objection by the parents and formulated findings of fact based upon them. For example, findings 7, 11 and 13 come from a review of Dr. Rademacher's report and findings 12, 14 and 15 are from the social worker's report and testimony. This differs from the line of cases where the trial court did in fact delegate its fact finding duty. *See e.g., In re A.D.P.*, ---N.C. App. ---' 628 S.E.2d 260 (2006) (the trial court erred in making five findings of fact that simply incorporated five documents but failed to make any findings based upon the documents or evidence); *In re D.L.*, 166 N.C. App. 574, 603 S.E.2d 376 (2004) (written summary by DSS could not be sole basis for the trial court's findings of fact) and *In re Harton*, 156 N.C. App. 655, 577 S.E.2d 334 (2003). (Making one finding of fact and incorporating DSS and GAL reports is not making specific ultimate facts).

In the case *sub judice*, the trial court did not merely adopt the written reports as its findings. Instead, the trial judge appropriately considered the testimony offered by the social worker and Respondent father as well as the written reports entered into evidence and then made its own specific findings

of fact based upon all the evidence. By doing so, the court did not use the reports as a “substitute for its own independent review” and did not err. *In re M.R.D.C.*, 166 N.C. App. 693, 698, 603 S.E.2d 890, 893 (2004), *disc. review denied*, 356 N.C. 321, 611 S.E.2d 413 (2005).

III. THE TRIAL COURT DID NOT ERR IN CEASING REUNIFICATION EFFORTS AND VISITATION WITH THE PARENTS. MOTHER'S ASSIGNMENT OF ERROR 6, 9 (R p. 144)

Standard of review: In reviewing a trial court's findings, the appellate court must determine whether the findings of fact are supported by competent evidence and whether the legal conclusions are supported by the findings of fact. *In re Weiler*, 158 N.C. App. 473, 466, 582 S.E.2d 134, 137 (2004); *In re J.C.S.*, 165 N.C. App. 509, 598 S.E.2d 658 (2004). Dispositional alternatives are reviewed for abuse of discretion. *In re Shue*, 311 N.C. 586, 319 S.E.2d 567 (1984). Dispositional alternatives are within the sound discretion of the trial court and are not reversible absent an abuse of discretion. N.C. Gen. Stat. Sec. 7B-903 (2003).

A. Findings of fact support the conclusions of law: In this case, the mother did not assign error to any findings of fact in the adjudication order and only assigned error to findings 2 and 3 in the dispositional order. All the remaining findings are deemed to be supported by competent evidence and are conclusive on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d

729, 731 (1991). In its dispositional findings of fact, the court found that the mother was mildly mentally retarded and experiencing mood disorders (R p. 116); that her older son was removed from her custody due to neglect (R p. 116); that the mother failed to comply with the terms of her case plan for the older child; (R p. 117); that the mother's parental rights to her older son were terminated (R p. 117); that the mother began missing appointments, hiding or being missing when DSS came to the home; (R p. 117); that the child had a serious respiratory illness that went untreated (R p. 117); that the father will need on-going assistance and supervision to meet the child's needs and ensure safety (R p. 117); that the father is also mildly mentally retarded (R p. 116); and that there is no alternative placement for the child or alternative for supervision of the child (R p. 117). The court incorporated the findings of fact from the adjudication order. (R p. 115, finding 1).

By those findings of fact, the court found that HCDSS had used intensive weekly services for the family; (R p. 60); that the mother was required to be supervised at all times when with the baby (R p. 60); that the mother failed to participate in the vocational rehabilitation services and missed 2 appointments for counseling; (R p. 61); that the father failed to obtain his psychological evaluation (R p. 61); and that the parents failed to take advantage of the services offered by HCDSS (R p. 62).

In addition to these specific findings, the court incorporated the reports of the social worker and guardian ad litem (which were introduced at trial without objection) as findings of fact and the findings of fact in the adjudication order. (R p. 115). These findings show that the mother cannot care for baby C.M., Jr. now or in the foreseeable future without significant outside assistance on a long-term and daily basis.

In her brief, the mother does not argue that she is able to care for the baby and does not dispute that she must be supervised with the child at all times. HCQSS attempted to reunify the family by beginning intensive services on a weekly basis with the family as soon as baby C.M., Jr. was born in June of 2005. (R p. 60). HCQSS worked with the family by allowing the father and paternal grandmother to supervise the mother's time with the child. However, on home visits, the social worker could not find the mother and C.M., Jr. at home and the grandmother, did not know her whereabouts. (R p. 61). After six months, the parents failed to follow through on their case plan services and HCDSS filed the petition for neglect. (R p. 61).

At the time of the dispositional hearing, it had been 9 months since HCDSS had been involved with the family. The father had made inappropriate parenting choices such as planning to take the baby home on his bicycle handle bars and failing to take the baby to the doctor even after

being advised to do so by the daycare and social worker. (R p. 61, 117, 118). After psychological evaluations, Dr. Rademacher reported that the father was also mildly mentally retarded and that there is "concern about the father's ability to be the primary care resource for a child." (R p. 118). He also reported that "If the M.'s were to have custody of their child, there would have to be present a strong support system of competent adults in regular contact with their household. . . and this supervision should be considered a long term need. Based upon the history presented, it does not appear realistic that extended family would be able to provide appropriate support." (R p. 84). The findings, evidence and reports are clear that neither of these parents is currently able to independently parent C.M., Jr. and that it is unlikely they will be able to in the foreseeable future.

In her brief, the mother argues that she needs more "community support." (Mother's brief, page 16). However, for over 9 months with C.M., Jr. and for nearly 2 years in all, these parents have had assistance with or been offered assistance with parenting classes, welfare, transportation, daycare, psychological counseling, WIC, medical services and weekly social worker contact. (R p. 111). There are no family members who are willing or able to assist these parents on a daily basis in raising a child. (R p. 118, Finding 16). C.M., Jr. has already been identified as developmentally

delayed and will need additional services and attention (R p. 104) and the mother is pregnant again and will have another baby in September 2006 (R p. 67). There was no evidence presented that these parents can independently parent C.M., Jr. and appropriately care for his special needs, especially with a new baby in the home. There was no evidence presented that any amount of and mental capabilities of the parents, this argument is without merit.

A trial court's conclusions of law are upheld when they are supported by findings of fact. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). The trial court's numerous specific ultimate facts show the court's logical reasoning in making its conclusions of law. The findings made in the adjudication and disposition order support the court's conclusions of law that reunification efforts and visitation with the mother should be ceased.

B. The trial court did not abuse its discretion. Dispositional alternatives are within the sound discretion of the trial court and are not reversible absent an abuse of discretion. N.C. Gen. Stat. Sec. 7B-903 (2003). The trial court must base its dispositional order on the child's best interest. *Macon County DSS v. Rholetter*, 162 N.C. App. 653, 659, 592 S.E.2d 237, 241 (2004). N.C. Gen. Stat. Sec. 7B-507(b)(3) (2004) allows a court to cease reunification efforts where “[a] court of competent jurisdiction has

terminated involuntarily the parental rights of the parent to another child of the parent.” Here, the mother does not contest that her parental rights to N.M. were involuntarily terminated. (R p. 60, finding 5; R p. 117, finding 8, R p. 115, finding 1). This finding complies with the statutory requirement. In addition, the court concluded that "Return and/or placement of the juvenile in the home of the parents would be contrary to his welfare" (R p. 119, conclusion 2) and that "A continuation of efforts by DSS on a plan of reunification would be futile" (R p. 119, conclusion 4). This also complies with 7B-507 (b)(1) (2004) .

It is true that the mother attended parenting classes, obtained a psychological evaluation and attended medical appointments for the baby when transportation was provided to her and "upon the urging and making of appointments for her." (Adjudication order, Finding 11, R p. 61). However, simply following some of the requirements of a case plan does not demonstrate an ability to parent a small child. In a non-jury trial, the judge has a duty to consider and weigh all the evidence and to determine the credibility of the witnesses and the weight to be given their testimony. See *In re Gleisner*, 141 N.C. App. 47, 539 S.E.2d 36 (2000). The record reflects, herein, that the trial court testimony from the social worker and father in making its disposition. (Dispositional order, R p. 115, finding 3). These

parents cannot reasonably care for baby S.J.M. without intensive help that is not realistically available to them. HCDSS, in a good faith effort to reunify the parents and their child, arranged for intensive weekly services, including providing transportation, arranging appointments, arranging medical appointments, contacting service providers, arranging daycare and weekly in home visits. (R p. 12, 61). HCDSS attempted to provide services so that these parents would have one-on-one attention and guidance to see if they could possibly function or manage their daily activities in a way that a child would be safe with them.

The court made the following findings of fact:

7. [The mother achieved a composite standard score of 67 as an estimate of her IQ. . . .The mother was previously identified as a Thomas S. child. Mr. Rademacher remarks in his report that the mother has not had very good role models to serve as a support system and that further, her CAP-I scores suggest that she shares many attitudes and characteristics with parents who have been know to abuse their children. Improvement in her parenting skills and abilities will not be achieved through a short term parenting class but through on-going support and role modeling. (R p. 116).

9. After the birth of the juvenile herein, DSS offered intensive management services in order to assist the parents in maintaining the juvenile in this proceeding in their home. DSS entered into a service plan with the parents wherein continuous supervision of the child in the care of the mother was to be maintained by the father, detailed instructions were given for furniture and supplies to be obtained for the juvenile and referrals for services previously designated for the mother were continued. (R p. 117).

10. The parents were able to obtain needed furniture and supplies for the juvenile and were first able to continue with the juvenile in their custody. DSS concerns were raised when notified that the mother was missing appointments, service providers were unable to make contact with the family relative to services, the whereabouts of the mother and juvenile were unknown to the paternal grandmother (who was the person supervising placement with the mother), the parents either being missing or hiding when DSS came to assist with transportation to appointments and the father's failure to cooperate with participation in a psychological evaluation. (R p. 117).

11. On January 31, 2006, the father participated in a psychological evaluation conducted by Dr. Rademacher. Mr. M. is diagnosed as mildly mentally retarded with a full scaled IQ score of 66. His cognitive abilities are limited and are likely to need assistance in interpreting and developing a response to new challenges. (R p. 117).

12. The father failed to address the juvenile's respiratory difficulties shortly prior to the juvenile's removal from the parents. The father had been warned by the day care personnel of the respiratory problem but he did nothing to obtain treatment. On another occasion, the father was going to transport the juvenile from the daycare by hanging the child's bassinette (with the child in the bassinette) on his bicycle handle bars. (R p. 117-118).

13. The father's estimated reading ability was scored at the second grade level according to the WRAT test. Mr. Rademacher stated that there was some noted discrepancy between the father's verbal IQ and his performance IQ which may be indicative of some learning disabilities. There is concern about the father's ability to be the primary care resource for a child. Cognitive delays are not likely to change over time. He will need on-going assistance and supervision to successfully meet the juvenile's needs and to assure the juvenile's safety. (R p. 118).

16. There does not appear to be any other plan offered or available for supervision of the child being placed in the home of the parents or any other relative.

(R p. 116-18). These findings support the court's conclusion that reunification is not in the child's best interest because the parents cannot keep the child safe and make appropriate day to day decisions for him now or for the foreseeable future. The findings show the court's reasoning that N.C. Gen. Stat. Sec. 78-907 (c) to limit or cease visitation if that is the "best plan of care to achieve a safe, permanent home for the juvenile." A trial court's conclusions of law are upheld when they are supported by findings of fact. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). The court here made numerous specific ultimate facts which support and demonstrate the court's logical reasoning in making its conclusions of law and order to cease reunification efforts and visitation. A trial court's exercise of discretion in ordering a disposition will not be disturbed unless the ruling "is so arbitrary that it could not have been the result of a reasoned decision." *Chicora County Club, Inc. v. Town of Erwin*, 128 N.C. App. 101, 109, 493 S.E.2d 797, 802 (1997), *disc. rev. denied*, 347 N.C. 670, 500 S.E.2d 84 (1998).

The findings of fact show that the Judge considered the best interest of baby C.M., Jr., including what was best and most safe for him. The findings

demonstrate that the Judge's dispositional decision to cease visitation and reunification efforts is not "manifestly unsupported by reason" *Clark v. Clark*, 301 N.C. 123, 371 S.E.2d 58 (1980).

III. THE APPELLANT MOTHER'S ASSIGNMENTS OF ERROR NOT ADDRESSED IN HER BRIEF SHOULD BE DEEMED ABANDONED.

MOTHER'S ASSIGNMENTS OF ERROR NO. 1, 3, 4, 7

Appellant mother failed to address assignment of error number 1, 3, 4, and 7 in her brief. Any assignments of error not addressed with argument and supported by authority in an appellate brief are deemed abandoned and are not to be considered by the reviewing court. N.C.R.A.P. Rule 28 (b)(6); *Liborio v. King*, 150 N.C. App. 531, 534, 564 S.E.2d 272, 274 (2002). Guardian ad litem respectfully requests that these assignments of error be deemed abandoned.

CONCLUSION

For the above-stated reasons, the Guardian ad litem, requests that this Court affirm the 27 January 2006 (filed 28 March 2006) Adjudication order and the 21 April 2006 (filed 12 May 2006) Disposition order entered by the Honorable Jim Love, Jr.

RESPECTFULLY SUBMITTED,
Elizabeth Myrick Boone

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Brief for the Guardian ad litem was filed with the North Carolina Court of Appeals on 25 October 2006 by mailing a copy thereof to the Honorable John H. Connell, Clerk, North Carolina Court of Appeals, Court of Appeals Building, One West Morgan Street, PO Box 2779 Raleigh, NC 27602-2779.

The undersigned further certifies that a copy of the above and foregoing Guardian ad litem's Brief has been served upon counsel of record for the parties on 25 October 2006 by placing a copy of the same in a United States Postal Service depository, first class postage prepaid, to the following persons at the following address:

Mr. Peter Wood
Attorney for mother
PO Box 3035
Raleigh, NC 27602

Mr. Marshall Woodall
Mr. Duncan McCormick
Attorneys for Harnett County DSS
PO Box 1629
Lillington, NC 27546

Ms. Susan P. Hall
Attorney for father
305 South Green Street
Morganton, NC 28655

This the 25th day of October, 2006.

Elizabeth Boone