

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-932

Filed 7 October 2026

Rockingham County, Nos. 17JT000126-780, 24JT000148-780

IN THE MATTER OF: L.A.G.O., K.T.W.O.

Appeal by Respondent-Father from orders entered 13 June 2025 by Judge James A. Grogan in Rockingham County District Court. Heard in the Court of Appeals 21 May 2026.

Robinson & Lawing, LLP, by Christopher M. Watford, for Respondent-Appellant-Father.

No brief filed on behalf of Petitioners-Appellees.

CARPENTER, Judge.

Respondent-Father appeals the trial court's 13 June 2025 orders terminating his parental rights to his two children, Lucy and Kevin (collectively, the "Juveniles").¹ By way of a petition for writ of certiorari ("PWC"), Respondent-Father requests that we review whether the trial court erred in its conclusions that grounds existed to terminate his parental rights based on neglect, willful failure to make reasonable progress, and prior involuntary termination of parental rights. After careful review, we grant Respondent-Father's PWC and reverse the orders.

I. Factual & Procedural Background

¹ Pseudonyms are used to protect the identities of the Juveniles in accordance with N.C. R. App. P. 42(b) (2025).

On 9 October 2024, the Juveniles' former foster parents ("Petitioners") filed petitions seeking to terminate Respondent-Father's parental rights, alleging neglect, willful failure to make reasonable progress, dependency, and prior involuntary termination of parental rights. Petitioners also alleged that termination was in the Juveniles' best interests and that they wished to adopt the Juveniles. On 25 March 2025, the trial court held a termination hearing, where the evidence tended to show the following.

Lucy was born in April 2017 to Respondent-Father and Mother, who is not a party to this appeal. On 31 July 2017, following substance abuse concerns, the Rockingham County Department of Social Services ("DSS") obtained nonsecure custody of Lucy and placed her in foster care with Petitioners, where she remained for approximately one year. In 2018, Lucy returned to Respondent-Father's and Mother's care, but Respondent-Father and Mother continued to rely on Petitioners for child care, often leaving Lucy with them for extended periods of time. Kevin was born in July 2020. Immediately following Kevin's birth, Respondent-Father and Mother began leaving both Juveniles with Petitioners for irregular and lengthy intervals.

The visitation arrangement continued until August 2022. That month, Mother obtained a domestic violence protective order against Respondent-Father on behalf of herself and the Juveniles. Thereafter, she "got up one morning" and left Respondent-Father for "[his] brother who is a drug head." In response, Respondent-Father asked

Petitioners to take temporary custody of the Juveniles because he “couldn’t let them go to a drug house.” Petitioners thereafter sought and obtained emergency custody through a Chapter 50 civil action based on concerns related to Mother’s substance abuse.

Petitioners have maintained custody since 2022, with Respondent-Father exercising supervised visitation every other weekend. Respondent-Father acknowledged that he had taken no legal action to regain custody beyond speaking with his attorney and attending visitation.

Aside from the Juveniles, Respondent-Father testified that he had six additional children and had voluntarily “signed over all of [his] rights” to five of them. Respondent-Father’s youngest child, born in April 2024, resided with him and his girlfriend.

Two months after the termination hearing, but before entering an order, the trial court recalendared the matter on its own motion. During that hearing, the trial court informed the parties that it had researched the veracity of Respondent-Father’s testimony that he *voluntarily* relinquished his parental rights to five of his other children and found his testimony was “at a minimum inaccurate.” The trial court reopened the evidence “to take judicial notice of all prior court files that are kept by Rockingham County Clerk of Superior Court’s office involving termination of parental rights and the respondent parents,” and provided three file numbers of previous termination proceedings involving Respondent-Father. Counsel for Respondent-

Father objected, arguing that Petitioners had the burden of proof and that the trial court's investigation undermined the appearance of the trial court's impartiality. The trial court responded, "I believe that the Court has an obligation to correct the situation where inaccurate at least[,] at worst untruthful testimony is given."

On 13 June 2025, the trial court entered orders terminating Respondent-Father's parental rights to each Juvenile. In the termination orders, the trial court made the following relevant findings and conclusions:

10. That Respondent-Father has exercised his supervised custodial visitation rights every other weekend with the minor child, virtually every opportunity except when Petitioners were out of town.

11. The Court reopened evidence for hearing . . . after Respondent-Father testified in Court . . . that his parental rights had never previously been involuntarily terminated. The Court reviewed whether said testimony was accurate after the [25 March 2025] hearing and determined that it was not and that Respondent-Father's rights had previously been involuntarily terminated. The Court finds that Respondent-Father's testimony from [25 March 2025] was at best "incorrect[.]"

. . . .

13. Grounds existed to terminate Respondent-Father's parental rights to the juvenile in that Respondent-Father:

a. Neglected the juvenile as defined in [section] 7B-101(15)(ii)(a)(b)(c) and (e), specifically:

i. Respondent-Father failed to take steps necessary to safely reunite with the minor child;

Opinion of the Court

b. Failed to show to the satisfaction of the Court, reasonable progress under the circumstances in correcting the conditions which led to the removal of the juvenile as defined in [section] 7B-1111(2), specifically, Respondent-Father provided no adequate evidence of steps he has undertaken to reunite with his minor child and provided no plan on how he intends to reunite with the minor child;

c. Has had his parental rights, with respect to other children, terminated involuntarily by a Court of competent jurisdiction and Respondent-Father lacks the ability and/or willingness to establish as safe home for the juvenile as defined by [section] 7B-1111(9); specifically in Rockingham County[.]

Counsel for Petitioners served Respondent-Father with termination orders on 17 June 2025. Respondent-Father filed notice of appeal on 15 July 2025—one day too late. On appeal, Respondent-Father filed a PWC, which he later amended to correct clerical errors.

II. Jurisdiction

As an initial matter, Respondent-Father concedes his notice of appeal was untimely and requests this Court grant his PWC. Specifically, he contends that he directed his counsel to appeal the trial court’s order, but his counsel misapprehended the deadline to file the notice of appeal. He argues his counsel’s misapprehension of the deadline amounts to extraordinary circumstances because his parental rights are of paramount importance.

“ ‘Any party entitled to an appeal . . . may take appeal by filing notice of appeal with the clerk of superior court in the time and manner set out in’ [section] 7B-1001(b)

and (c)” *In re H.R.P.*, 297 N.C. App. 339, 343, 910 S.E.2d 738, 743 (2024) (quoting N.C. R. App. P. 3.1(b) (2023)). “Failure to comply with the requirements of Rule 3.1(b) is, therefore, a jurisdictional defect requiring dismissal.” *Id.* at 343, 910 S.E.2d at 743 (citing *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 193–94, 197, 657 S.E.2d 361, 362–63, 365 (2008)).

This Court may reach the merits, however, by granting a PWC. *See* N.C. Gen. Stat. § 7A-32(c) (2025); *see also In re S.D.H.*, 296 N.C. App. 392, 397–98, 908 S.E.2d 868, 874–75 (2024) (granting the respondent’s PWC following his Rule 3.1 violation). A writ of certiorari is a “prerogative writ” that we may issue to “aid our jurisdiction.” *In re S.D.H.*, 296 N.C. App. at 397, 908 S.E.2d at 874 (citing N.C. Gen. Stat. § 7A-32(c)).

Issuing a writ of certiorari is an extraordinary measure. *See Cryan v. Nat’l Council of YMCAs*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023). Accordingly, the petitioner must satisfy a two-factor test. *Id.* at 570, 887 S.E.2d at 849. “First, a writ of certiorari should issue only if the petitioner can show ‘merit or that error was probably committed below.’” *Id.* at 572, 887 S.E.2d at 851 (quoting *State v. Ricks*, 378 N.C. 737, 741, 862 S.E.2d 835, 839 (2021)). “Second, a writ of certiorari should issue only if there are ‘extraordinary circumstances’ to justify it.” *Id.* at 572–73, 887 S.E.2d at 851 (quoting *Moore v. Moody*, 304 N.C. 719, 720, 285 S.E.2d 811, 812 (1982)). “‘We require extraordinary circumstances because a writ of certiorari is not intended as a substitute for a notice of appeal.’” *State v. Martinez*, 390 N.C. ___, 933

S.E.2d 759, __ (2026) (quoting *Cryan*, 384 N.C. at 572–73, 887 S.E.2d at 851). “ ‘There is no fixed list of extraordinary circumstances that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or wide-reaching issues of justice and liberty at stake.’ ” *Id.* at __, 933 S.E.2d at __ (quoting *Cryan*, 384 N.C. at 573, 887 S.E.2d at 851). Ultimately, “the decision to issue a writ of certiorari rests in the sound discretion of the presiding court.” *Cryan*, 384 N.C. at 573, 887 S.E.2d at 851 (citing *Ricks*, 378 N.C. at 740, 862 S.E.2d at 838).

Here, Respondent-Father has shown merit and extraordinary circumstances warranting discretionary review. *See Cryan*, 384 N.C. at 572–73, 887 S.E.2d at 851. As discussed below, the trial court erred in terminating Respondent-Father’s parental rights on each of the three adjudication grounds. *See id.* at 572–73, 887 S.E.2d at 851. Further, although Respondent-Father instructed his counsel to appeal the trial court’s order, his counsel misapprehended the deadline and failed to appeal in a timely manner. Absent review on the merits, Respondent-Father would be substantially harmed because his fundamental parental rights hang in the balance. *See In re S.D.H.*, 296 N.C. App. at 398, 908 S.E.2d at 875; *Martinez*, 390 N.C. at __, 933 S.E.2d at __. Accordingly, we exercise our discretion and grant Respondent-Father’s PWC. *See Cryan*, 384 N.C. at 573, 887 S.E.2d at 851.

III. Issues

The issues on appeal are whether the trial court erred by adjudicating the existence of the following termination grounds: (1) neglect, (2) willful failure to make reasonable progress, and (3) prior involuntary termination of parental rights.

IV. Analysis

A. Standard of Review

In reviewing the adjudication of grounds to terminate parental rights, we must determine “whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law” that one or more grounds for termination exist.² *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (internal quotations and citation omitted). A determination that grounds exist to terminate parental rights is a conclusion of law. *See In re X.I.F.*, 297 N.C. App. 799, 810, 911 S.E.2d 769, 779 (2025). We review the trial court’s conclusions of law de novo. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the trial court.” *In re M.R.F.*, 378 N.C. 638, 641, 862 S.E.2d 758, 762 (2021) (cleaned up).

“In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry

² We note that, in October 2025, the standard of proof for termination actions was amended to “clear and convincing evidence,” but the termination orders were entered before the effective date of the amendment. *See* N.C. Gen. Stat. § 7B-1111(b) (2025).

of the appropriate judgment.” N.C. Gen. Stat. § 1A-1, 52(a)(1) (2025). Rule 52(a) requires “specific findings of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached.” *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982).

“Section 7B-1111 of our General Statutes provides that a court may terminate an individual’s parental rights ‘upon a finding of one or more’ of eleven statutory grounds.” *In re X.I.F.*, 297 N.C. App. at 806, 911 S.E.2d at 776 (quoting N.C. Gen. Stat. § 7B-1111(a) (2025)).

B. Neglect

Respondent-Father first argues that the trial court erred by concluding that he neglected the Juveniles within the meaning of section 7B-1111(a)(1). Specifically, he argues that the trial court failed to make findings regarding the likelihood of future neglect. We agree.

The trial court may terminate parental rights if it determines that the parent has neglected the juvenile within the meaning of section 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1). “Termination of parental rights based upon [neglect] requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of past neglect *and* a likelihood of future neglect by the parent.” *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016) (cleaned up) (citing *In re Ballard*, 311 N.C. 708, 713–

15, 319 S.E.2d 227, 231–32 (1984)). A juvenile is neglected when his parent or guardian: “[d]oes not provide proper care, supervision, or discipline[;] [h]as abandoned the juvenile . . . ; [h]as not provided or arranged for the provision of necessary medical or remedial care; . . . or [c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15)(ii)(a)–(c), (e) (2025).

Here, the trial court’s findings are insufficient to support its determination that Respondent-Father neglected the Juveniles. *See In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52. First, because Respondent-Father was separated from the Juveniles for nearly three years, the trial court was required to find that Respondent-Father would likely neglect the Juveniles in the future. *See In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167. The trial court, however, made no such finding. *See id.* at 843, 788 S.E.2d at 167. Second, the trial court’s findings of past neglect were insufficient and conclusory, merely providing that Respondent-Father “failed to take steps necessary to safely reunite with the [Juveniles].” The trial court made no findings as to whether Respondent-Father: failed to provide proper care, supervision, or discipline; had abandoned the Juveniles; had not provided for their medical or remedial care; or created an injurious environment. *See* N.C. Gen. Stat. § 7B-101(15)(ii)(a)–(c), (e). Because the trial court did not make sufficient findings, *see Quick*, 305 N.C. at 452, 290 S.E.2d at 658, its conclusion that Respondent-Father neglected the Juveniles is unsupported, *see In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d

at 52. Accordingly, the trial court erred in its determination that grounds existed to terminate Respondent-Father's parental rights based on neglect. *See* N.C. Gen. Stat. § 7B-1111(a)(1).

C. Reasonable Progress

Respondent-Father next challenges the trial court's conclusion that he willfully failed to make reasonable progress to correct the conditions leading to the Juveniles' removal. We agree.

The trial court may terminate parental rights upon a showing that "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than [twelve] months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2). Removal, as contemplated by section 7B-1111(a)(2), refers only to circumstances where a juvenile court "has entered a *court order* requiring that a child be in foster care or other placement outside the home." *In re K.C.T.*, 375 N.C. 592, 595, 850 S.E.2d 330, 333–34 (2020) (emphasis in original) (quoting *In re A.C.F.*, 176 N.C. App. 520, 525–26, 626 S.E.2d 729, 734 (2006)). "It is logical that the General Assembly, in adopting [section 7B-1111(a)(2)], was primarily concerned with allowing termination where a juvenile court was involved in the 'removal' of the child." *In re A.C.F.*, 176 N.C. App. at 525, 850 S.E.2d at 733.

“To allow the termination ground set forth in [section 7B-1111(a)(2)] to be triggered no matter what the cause for a child’s separation from his parent is inconsistent with affording parents notice that they are at risk of losing their parental rights.” *Id.* at 525, 850 S.E.2d at 733. Accordingly, “[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.” *In re K.C.T.*, 375 N.C. at 596, 850 S.E.2d at 334.

Here, the trial court could not find that Respondent-Father willfully failed to make reasonable progress in correcting the conditions leading to the Juveniles’ removal because Petitioners acquired custody through a Chapter 50 civil action—not through Chapter 7B. Accordingly, the Juveniles were not “removed” within the meaning of section 7B-1111(a)(2). *See In re K.C.T.*, 375 N.C. at 595, 850 S.E.2d at 333–34. Moreover, Respondent-Father did not have a case plan against which to track his progress, and the trial court made no findings as to what actions Respondent-Father should have taken to reacquire custody of the Juveniles. *See* N.C. Gen. Stat. § 7B-1111(a)(2); *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52. Thus, willful failure to make reasonable progress in correcting the conditions leading to the Juveniles’ removal could not be a basis for the termination of Respondent-Father’s parental rights. *See In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52.

D. Ex Parte Investigation

Finally, Respondent-Father challenges the trial court's conclusion that grounds existed to terminate his parental rights due to a prior involuntary termination of parental rights. Specifically, he contends that the trial court usurped the adversarial process and burden of proof by engaging in a prejudicial ex parte investigation to test the veracity of Respondent-Father's testimony. He also argues that the trial court's conclusion that he was unable or unwilling to establish a safe home is unsupported by the evidence. We agree.

"The court may terminate the parental rights upon a finding [that] . . . [t]he parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction *and* the parent lacks the ability or willingness to establish a safe home." N.C. Gen. Stat. § 7B-1111(a)(9) (2025) (emphasis added).

A "matter is the proper subject of judicial notice only if it is 'known,' well established and authoritatively settled.'" *In re R.D.*, 376 N.C. 244, 264, 852 S.E.2d 117, 132 (2020) (quoting *Hughes v. Vestal*, 264 N.C. 500, 506, 142 S.E.2d 361 (1965)); N.C. Gen. Stat. § 8C-1, Rule 201 (2025). The trial court may take judicial notice of prior orders in the underlying file, *see In re J.W., K.W.*, 173 N.C. App. 450, 455–56, 619 S.E.2d 534, 539–40 (2005), "even when those findings are based on a lower evidentiary standard, because where a judge sits without a jury, the trial court is presumed to have disregarded any incompetent evidence and relied upon the competent evidence[.]" *In re T.N.H.*, 372 N.C. 403, 410, 831 S.E.2d 54, 60 (2019).

Nevertheless, “it may not rely solely on prior court orders but must receive some oral testimony at the hearing and make an independent determination regarding the evidence presented.” *Id.* at 410, 831 S.E.2d at 60.

“Rule 614 of the North Carolina Rules of Evidence expressly allows judges to participate by calling witnesses and questioning them.” *In re J.R.*, 383 N.C. 273, 279, 881 S.E.2d 522, 526 (2022). Yet, the trial court may not “shed its impartiality or abandon its role as an independent decisionmaker.” *Id.* at 279, 881 S.E.2d at 526. Indeed, “[w]hat makes a system adversarial rather than inquisitorial is not the presence of counsel . . . but rather, the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties.” *Id.* at 279–80, 881 S.E.2d at 526 (quoting *McNeil v. Wisconsin*, 501 U.S. 171, 181 n.2, 111 S. Ct. 2204, 2210 n.2, 115 L. Ed. 2d. 158, 170 n.2 (1991)).

Thus, “information obtained by the judge through an ex parte investigation could not constitute a basis for the requisite findings of fact.” *State v. Crocker*, 239 N.C. 446, 453, 80 S.E.2d 243, 248 (1954) (citing *In re Gupton*, 238 N.C. 303, 77 S.E.2d 716 (1953)); *see also Carolina-Virginia Fashion Exhibitors, Inc. v. Gunter*, 291 N.C. 208, 220, 230 S.E.2d 380, 388 (1976) (holding that ex parte investigations by arbitrators, for example, amount to misconduct because they act in a quasi-judicial capacity). Likewise, “a judge’s own personal memory is not evidence.” *Hensey v. Hennessy*, 201 N.C. App. 56, 67, 685 S.E.2d 541, 549 (2009). Accordingly, “the ex

parte disposition of a case by a judge for reasons other than an honest appraisal of the law and facts as disclosed by the evidence and the advocacy of both parties to the proceeding amounts to conduct prejudicial to the administration of justice” *In re Martin*, 295 N.C. 291, 303, 245 S.E.2d 766, 773 (1978).

Here, the trial court prejudicially erred by terminating Respondent-Father’s parental rights due to a prior involuntary termination of parental rights. *See In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52. First, the trial court had no evidentiary basis to adjudicate the existence of this ground beyond its own memory and investigation. *See Hennessy*, 201 N.C. App. at 67, 685 S.E.2d at 549; *In re J.R.*, 383 N.C. at 279, 881 S.E.2d at 526. Petitioners offered no admissible testimony that Respondent-Father’s parental rights were previously terminated, and the prior termination orders were not offered or admitted into evidence. Indeed, the only competent evidence on this point was Respondent-Father’s testimony about relinquishing his parental rights.

By finding facts after an inquisitorial ex parte investigation, the trial court shed its impartiality and abandoned its role as a neutral decisionmaker. *See In re J.R.*, 383 N.C. at 279, 881 S.E.2d at 526; *In re Martin*, 295 N.C. at 303, 245 S.E.2d at 773. Whether Respondent-Father’s parental rights had been involuntarily terminated was Petitioners’ burden to prove, not the role of an impartial arbiter. *See In re Martin*, 295 N.C. at 303, 245 S.E.2d at 773. Thus, the trial court’s ex parte investigation into the previous termination proceedings cannot support the trial

court's finding that Respondent-Father's parental rights were previously terminated. *See Crocker*, 239 N.C. at 453, 80 S.E.2d at 247. Accordingly, the trial court's adjudication of the existence of this ground is unsupported. *See In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52.

Moreover, the trial court failed to make findings that Respondent-Father lacked the ability or willingness to establish a safe home. *See* N.C. Gen. Stat. § 7B-1111(a)(9). Accordingly, the trial court's conclusion that grounds existed to terminate Respondent-Father's parental rights based on previous termination of parental rights is unsupported. *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52. The trial court, therefore, erred in its determination that grounds existed to terminate due to prior involuntary termination of parental rights. *See* N.C. Gen. Stat. § 7B-1111(a)(9); *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52.

V. Conclusion

The trial court erred in its conclusion that grounds existed to terminate Respondent-Father's parental rights based on neglect because its findings were insufficient.

The trial court likewise erred in concluding that Respondent-Father willfully failed to make reasonable progress to correct the conditions leading to removal because the Juveniles were not "removed." Moreover, Respondent-Father was not provided a case plan or instructions by a juvenile court before the filing of the termination petition.

Finally, the trial court erred in its conclusion that grounds existed to terminate based on prior involuntary termination of parental rights by basing its conclusion on an impermissible ex parte investigation and failing to find that Respondent-Father lacked the ability or willingness to establish a safe home.

Although one supported ground is sufficient to sustain a termination of parental rights, the trial court reversibly erred as to each of the three adjudication grounds in this case. Therefore, we grant Respondent-Father's PWC and reverse the trial court's orders.

REVERSED.

Judges ZACHARY and MURRY concur.