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NO. COA01-1317

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

In Re: JORDAN BLAKE RAMSEY,
A minor child

Henderson County
No. 99 J 157-T

Appeal by respondent mother from order entered 24 May 2001 by Judge Laura J. Bridges in Henderson County District Court. Heard in the Court of Appeals 22 May 2002.

*No brief filed for petitioners.*

*Brynne Vanhettinga for respondent mother.*

BRYANT, Judge.

On 24 November 1999, petitioners Genevieve and Frank Ward filed a petition to terminate the parental rights of respondents Brandi and Christopher Ramsey as to respondents' minor child, Jordan Blake Ramsey. Petitioners alleged willful abandonment as grounds for termination. Prior to the filing of the 24 November 1999 petition, petitioners were granted custody of the minor child by consent order entered on 27 September 1996.

The termination matter was heard at the 20 February 2001 and 8 March 2001 sessions of Henderson County District Court, Juvenile Court Division, with the Honorable Laura J. Bridges presiding. By

order filed 24 May 2001, respondents' parental rights as to the minor child were terminated. Respondent mother (respondent) filed notice of appeal on 31 May 2001.

**Standard of review**

At the trial court level,

> [t]here is a two-step process in a termination of parental rights proceeding. *In re Montgomery,* 311 N.C. 101, 316 S.E.2d 246 (1984). In the adjudicatory stage, the trial court must find that at least one ground for the termination of parental rights listed in N.C. Gen. Stat. § 7A-289.32 (now codified as section 7B-1111) exists. N.C. Gen. Stat. § 7A-289.30 (1998) (now codified as N.C. Gen. Stat. § 7B-1109). In this stage, the court's decision must be supported by clear, cogent and convincing evidence with the burden of proof on the petitioner. *In Re Swisher,* 74 N.C. App. 239, 240, 328 S.E.2d 33, 35 (1985). We note that Chapters 7A and 7B interchangeably use the "clear, cogent and convincing" and the "clear and convincing" standards. It has long been held that these two standards are synonymous. *Montgomery,* 311 N.C. at 109, 316 S.E.2d at 252. Once one or more of the grounds for termination are established, the trial court must proceed to the dispositional stage where the best interests of the child are considered. There, the court shall issue an order terminating the parental rights unless it further determines that the best interests of the child require otherwise. N.C. Gen. Stat. § 7A-289.31(a) (1998) (now codified as section 7B-1110(a)). *See also In re Carr*, 116 N.C. App. 403, 448 S.E.2d 299 (1994).

*In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001).

The standard of review on appeal is whether the trial court's findings of fact are supported by clear, cogent and convincing evidence, and whether those findings support the trial court's

conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed, rev. denied by* 353 N.C. 374, 547 S.E.2d 9 (2001).

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On appeal, respondent presents five arguments. As to each argument, we disagree. The order terminating respondent's parental rights as to the minor child is affirmed.

**I.**

First, respondent argues that the trial court violated her due process rights and committed reversible error when it independently procured her criminal record and considered the same in its decision. Specifically, respondent argues that the trial court completely ignored substantial evidence tending to rebut allegations in the petition, and only based its decision upon evidence of which she had no opportunity to object to its admission.

The trial transcript and depositions considered by the trial court reflect a multitude of references to respondent's criminal history, including the following:

1. "What were you on probation for? Forgery and uttering."

2. "So you were convicted of an assault, and you were put on probation. (Deponent nods head)."

3. "I got a probation violation for drug paraphernalia and I'm on probation now for it."

4. "And, um, then I was in jail for this assault on his parents back in April. May, May. May."

5. "She reported her [sic] she has been arrested for forgery and also for an 'assault I didn't do.'"

As the record reflects, evidence had been presented to the trial court detailing respondent's criminal record. Most notably, respondent herself provides accounts of her criminal history via deposition testimony. We conclude that respondent's due process rights were not violated by the trial court's independent procurement of her criminal record, as the criminal record clarified and verified what had already been presented to the trial court.

As to respondent's assertion that the trial court violated her due process rights and committed error when it considered her criminal record when rendering its decision, we disagree.

In a termination of parental rights (TPR) case, once grounds for termination have been established by clear, cogent, and convincing evidence, the trial court *shall* order termination unless it is in the best interest of the child for termination not to be ordered. *See* N.C.G.S. § 7B-1110 (2001). A respondent's criminal record might not be directly relevant as to whether that respondent willfully abandoned[1] the minor child at issue. However, this Court on a prior occasion has affirmed an order of TPR when that respondent's criminal record and malfeasances were considered

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[1] N.C.G.S. § 7B-1111(a)(7) (2001) defines willful abandonment as, "The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion."

pertinent as to whether it was in the best interest of the child for termination not to be ordered. *See, e.g., In re Blackburn*, 142 N.C. App. 607, 543 S.E.2d 906 (2001). In this case, the trial transcript reflects:

BY MS. VAN HETTINGA:

> Your Honor, I have to state for the record -- the pleading state -- the grounds are abandonment. What [her] conviction record looks like for five years in the past has nothing ---

BY THE COURT:

> It goes to credibility -- credibility, best interest. It goes to it.

Notwithstanding whether it was error for the trial court to consider respondent's criminal record in rendering its decision, there exists sufficient evidence that respondent has left the minor child in petitioners' care and custody for a period of five years; is without a permanent home; and has provided virtually no financial support for the minor child's care. Moreover, the respondent mother admitted that it was in the minor child's best interest for the minor child to remain in petitioners' care. We find that even if it was error for the trial court to consider evidence of respondent's criminal record, this error was not prejudicial and did not violate respondent's due process rights. The correlating assignment of error is overruled.

**II.**

Second, respondent argues that the admission of any evidence regarding her criminal record, unrelated to the issue of

abandonment and outside the presumptive period of abandonment, was irrelevant and unduly prejudicial. For the reasons stated in section I, we disagree and overrule the correlating assignment of error.

**III.**

Third, respondent argues that finding of fact 19 should be stricken as irrelevant and unduly prejudicial.

Finding of fact 19 reads: "Both respondents have extensive criminal records which indicated major drug addictions on the part of both respondents. Both respondents have spent time incarcerated in the local jail and the department of corrections. Both respondents have had major drug addictions."

As stated in section I, we find no prejudicial error in the trial court's consideration of respondent's criminal record in rendering its decision. *See, e.g., In re Blackburn*, 142 N.C. App. 607, 543 S.E.2d 906 (2001). Likewise, we find no prejudicial error in the trial court's consideration of respondent's prior drug addiction. Regardless of whether it was error for the trial court to consider respondent's past drug use, the trial court specifically found that respondent had left the minor child in petitioners' care and custody for a period of five years; that respondent has no permanent home; and respondent made very few financial contributions for the care and support of the minor child. Notwithstanding evidence of respondent's past drug use, there is sufficient evidence of respondent's willful abandonment and sufficient evidence that it is in the best interest of the

child to order termination of respondent's parental rights. Therefore, we find that finding of fact 19 is not unduly prejudicial, and the correlating assignment of error is overruled.

**IV.**

Fourth, respondent states that findings of fact 12, 21, 23 and 27 are unsupported by the weight of the evidence.

Findings of fact 12, 21, 23 and 27 read:

> 12. The respondent mother has another child, Brittany, whom she abandoned and has never supported. Brittany is nine years old and lives with her grandmother, Kathy, and visits with the respondent mother infrequently.
>
> . . .
>
> 21. Both respondents testified that the petitioners interfered with their relationship with the child; however, neither respondent made any attempt to regain custody of the child through any legal action. The mother respondent visited with the child only once out of five scheduled visits.
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> . . .
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> 23. Dr. Devany with the Grove Clinic evaluated the respondent mother and diagnosed her as having dysthmic disorder, generalized anxiety disorder and non-specific personality disorder with self-defeating and histrionic features. This diagnosis described almost half of the general population. Dr. Devany testified that Brandi would not be able to care for the child, without extensive treatment and long term support, and maybe, not even then. Because the respondent mother would most likely say harmful, hurtful things to the child, she should not be allowed to visit with the child without supervision and intensive structure.
>
> . . .
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> 27. The petitioners have provided the child with a stable, safe and loving home. The Petitioners protected the child by not allowing visits with the respondents when they called or came by in an altered drug induced state.

As relates to finding of fact 12, respondent only argues that her contact with her other child has been much more frequent than her contact with the minor child at issue. Otherwise, respondent has presented no evidence in contravention to finding of fact 12.

As relates to finding of fact 21, respondent admits that she has not pursued any legal action to regain custody of the minor child at issue. Moreover, respondent presents no evidence of the true number of scheduled visits she made with the minor child (during the pendency of the TPR petition).

As relates to finding of fact 23, respondent has neither denied nor disputed the evidence in support of Dr. Devany's testimony. Rather, she only emphasizes the trial court's language that she *most likely* will say harmful, hurtful things to the child. She simply states that saying harmful, hurtful things to the child would probably be minimized if there was a "working alliance" between herself and the petitioners.

As relates to finding of fact 27, respondent admits to using illegal substances in the past. She states that there is no evidence that she had been in the minor child's presence while under the influence since 1996. She also presents as evidence, Dr. Devany's testimony that Devany did not think respondent was using drugs at the time of his evaluation in August 2000.

Admittedly, it may be difficult to find direct evidence of respondent's sobriety during her alleged, attempted visits with the minor child. However, the trial court heard the testimony of the parties, and as the trier of fact, made a credibility determination

as to the accuracy of the testimony.

We conclude that respondent has not shown that findings of fact 12, 21, 23 and 27 were not supported by clear, cogent, and convincing evidence in the record. Therefore, the correlating assignments of error are overruled.

**V.**

Fifth, respondent argues that the trial court's conclusion that she willfully abandoned the minor child is unsupported by the weight of the evidence. Specifically, respondent argues that the trial court ignored evidence of respondent's involvement in an abusive relationship; there was evidence that she did not willfully withhold support and affection; the trial court ignored her attempted contacts with the minor child during the presumptive abandonment period; and the trial court ignored significant evidence that petitioners had a hostile attitude toward her.

The record reflects that since 1996, respondent has left the minor child in the care and custody of petitioners. She has not pursued any legal action to regain custody. For two years preceding the TPR hearing, respondent was obliged to make support payments in the amount of $50.00 per month according to the terms of a support order. However, respondent has paid only $150 toward support, although she has worked at times during the five years the minor child was in petitioners' custody. In addition, there was evidence that the respondent mother only visited with the minor child a few hours in 1999 and in 2000.

We find there exists clear, cogent and convincing evidence in

support of the conclusion that respondent willfully abandoned her minor child. Therefore, the order of the trial court is affirmed.

AFFIRMED.

Judges WALKER and McCULLOUGH concur.

Report per Rule 30(e).