

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-997

NORTH CAROLINA COURT OF APPEALS

Filed: 16 April 2002

IN RE: SAMARAYA VALISE CIA  
MOSLEY, a Minor child

Lenoir County  
No. 00 J 110

Appeal by respondent father from order entered 5 March 2001 by Judge Joseph E. Setzer, Jr., in Lenoir County District Court. Heard in the Court of Appeals 13 February 2002.

*Gerrans, Foster & Sargeant, P.A., by Jonathon L. Sargeant, for the petitioners-appellees Samuel and Valice Mosley.*

*Wallace, Morris & Barwick, P.A., by Elizabeth A. Heath, for respondent-appellant Gregory Allen Gant.*

BRYANT, Judge.

Petitioners Samuel and Valice Mosley are the maternal grandparents of minor child Samaraya Valise Cia Mosley. On 20 July 2000, petitioners instituted this action seeking the termination of the parental rights of the natural father (respondent Gregory Allen Gant) as to the minor child. On 5 October 2000, respondent filed a response contesting whether his parental rights should be terminated.

This matter was heard at the 19 December 2000 term of Lenoir County District Court with the Honorable Joseph E. Setzer, Jr., presiding. Both the petitioners and the respondent were present

and represented by counsel. In addition, Guardian ad Litem Angela Fox, was present and represented by counsel.

By order filed 5 March 2001, respondent's parental rights were terminated pursuant to N.C.G.S. § 7B-1111(a)(7) (willful abandonment for a period of at least six consecutive months preceding filing of the termination of parental rights petition). Respondent filed notice of appeal on 23 March 2001.

---

For this Court to be vested with jurisdiction to review an appeal, it is incumbent upon the appellant to provide proper notice of appeal. See N.C. R. App. P. 3. The time and manner in which an appellant is to give notice of appeal from a termination of parental rights (TPR) case is set out in N.C.G.S. § 7B-1113.

N.C.G.S. § 7B-1113 specifies that any parent who is a party to a TPR proceeding may appeal any order of disposition provided that "notice of appeal is given in open court at the time of the hearing or in writing within 10 days after entry of the order." N.C.G.S. § 7B-1113 (1999).

In the case at bar, respondent filed notice of appeal on 23 March 2000 - 18 days after entry of the TPR order filed on 5 March 2000. The record does not indicate nor does the respondent allege that he provided notice of appeal in open court following announcement of the order. Respondent has failed to provide proper notice of appeal to this Court, therefore, our Court is without jurisdiction to review this appeal. See *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990) ("Without proper

notice of appeal, this Court acquires no jurisdiction.'") (citation omitted).

However, this Court will consider the submitting of defendant's notice of appeal and assignments of error as a *petition for writ of certiorari*; and we will grant said petition. Therefore, we will review this appeal pursuant to N.C. R. App. P. 21.

### **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 establish 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).

In the case at bar, the trial court's findings read in pertinent part:

(b) The respondent is subject to termination of his parental rights pursuant to N.C.G.S. § 7B-1111(a)(7).

6. The [trial court] finds that the respondent, Gregory Allen Gant, has had minimal contact with the minor child and made minimal efforts to contact the minor child since birth in that he has not seen the minor child for in excess of two (2) years prior [to] the hearing of this matter and has not made any substantial financial contributions to the care and support of the minor child. Even in lieu of actually visiting with the minor child, the respondent has not sent any cards, letters or gifts for holidays, birthdays or any other occasion for the minor child. For in excess of two (2) years prior to the hearing of this matter, the respondent, Gregory Gant, has made no efforts to contact or to play any role in the life of the minor child. The respondent, Gregory Gant, in his own testimony admits that he has had no contact with the minor child and provided no real financial assistance for the minor child for in excess of two (2) years prior to the hearing of this matter.

7. The [trial court] finds that while the petitioners do not believe that it is in the best interests of the minor child to have direct visitation with Gregory Gant, the petitioners have not prevented Gregory Gant from exercising his parental rights as provided by law . . . .

8. . . . The present incarceration of

Gregory Gant in the Lenoir County Jail commenced after the filing of the petition for termination of parental rights in this action, and the [trial court] finds that Gregory Gant was not incarcerated or under any legal disability during the six (6) month period immediately prior to the filing of the petition in this cause.

. . . .  
10. The [trial court] finds . . . that the petitioners have met their burden of proving grounds do exist for the termination of the parental rights of Gregory Allen Gant by clear, cogent and convincing evidence in that the Respondent, Gregory Gant, has willfully abandoned the minor child for at least six (6) consecutive months immediately preceding the filing of this Petition and is subject to termination of his parental rights pursuant to N.C.G.S. § 7B-1111(a)(7)[.]

11. The [trial court] finds that it should terminate the parental rights of Gregory Allen Gant as to this minor child and finds that termination in this case is in the best interests of the minor child.

In addition to the findings of fact, the trial court concluded that the entry of the TPR order was in the best interest of the minor child.

We find that there exists sufficient evidence to support the trial court's conclusion that respondent abandoned his daughter as that term is referenced pursuant to N.C.G.S. § 7B-1111(a)(7). In addition, it does not appear that the trial court abused its discretion in terminating respondent's parental rights. See *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 174, rev. denied by 354 N.C. 218, 554 S.E.2d 341 (2001) ("The trial court's decision to terminate parental rights, if based upon a finding of one or more of the statutory grounds supported by evidence in the record, is reviewed on an abuse of discretion standard."). Therefore, we

affirm the decision of the trial court.

AFFIRMED.

Judges WALKER and HUNTER concur.

Report per Rule 30(e).