NO. COA02-14

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

IN RE:
BRADLEY ETHAN SCHARFENBERGER
DOB: 02-25-93,
A Minor Child

Rutherford County
No. 00J59

Appeal by respondent mother from judgment entered 4 June 2001 by Judge Robert S. Cilley in Rutherford County District Court. Heard in the Court of Appeals 9 December 2002.

No brief for petitioner-appellee.

David W. Rogers for respondent-appellant.

CAMPBELL, Judge.

According to the brief filed by respondent mother, through counsel, petitioner Rutherford County Department of Social Services (DSS) has had legal and physical custody of the minor child, Bradley Ethan Scharfenberger, at all times since 29 January 1999. The child was diagnosed as autistic and has required special services in excess of $5,600.00 per month since he has been in the custody of DSS. Respondent mother, though employed full-time and earning $12.00 per hour, has only paid a total of $140.00 in child support during the 14-month period prior to the termination hearing. Respondent mother testified under oath that she had not

paid child support since 2 March 2000 because (1) DSS has not allowed her to visit the minor child, (2) she knows no reason why it should cost more than the $500 per month the child receives in governmental SSI benefits to care for the child, and (3) she did not have a number to call. The trial court found that the minor child was doing well in foster care. While the trial court found that the mother does have "diminished psychological capacity," the court noted that she did have the ability to provide for her own needs. The court then found that DSS had established a ground for termination under G.S. 7B-1111 in that respondent mother had failed "to pay a reasonable portion of the cost of care for the minor child for six months preceding the filing of the petition although physically and financially able to do so." The court subsequently found and concluded that it was in the best interests of the minor child that respondent mother's parental rights be terminated. Respondent mother appeals.

On appeal, respondent mother argues that the trial court erred in terminating her parental rights without first determining her mental health prognosis for the future. Counsel, however, has failed to make error appear on the face of the record. First, counsel has failed to provide a stenographic transcript of the proceedings, so as to enable the Court to review the trial court's findings of fact. The trial court's findings must, therefore, be taken as binding on appeal. *See Hunt v. Hunt*, 112 N.C. App. 722, 726, 436 S.E.2d 856, 859 (1993) (stating that "[w]here the evidence upon which the trial court based its findings is absent from the

record, it is presumed the trial court's findings of fact were supported by competent evidence[]"). Counsel has also failed to reference any transcript page number in support of respondent mother's statement of the facts, in violation of N.C.R. App. P. 28(b)(5) (2002). Finally, counsel has failed to reference any authority in support of respondent mother's argument on appeal, or indeed, to reference the assignment of error to which the argument corresponds, in violation of N.C.R. App. P. 28(b)(6) (2002).

Respondent mother has filed a collection of *pro se* exhibits and a letter to the Court. Although the letter and exhibits are not properly before the Court, *see In re Harrison*, 136 N.C. App. 831, 526 S.E.2d 502 (2000) (*Anders* doctrine not available on appeal of judgment terminating parental rights), we have reviewed respondent's filings and find them to be unpersuasive.

As respondent mother has failed to make error appear on this record, the judgment of the trial court is affirmed. *See Mims v. Mims*, 65 N.C. App. 725, 733, 310 S.E.2d 130, 136 (1984) (providing that a judgment based upon proper findings "will not be disturbed on appeal, absent error of law appearing on the face of the record").

Affirmed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).