

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1400

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IN THE MATTER OF:

D.O.A.,
A Minor Child.

Henderson County
No. 06 J 89

Appeal by Respondent from order entered 25 August 2006 by Judge David K. Fox in District Court, Henderson County. Heard in the Court of Appeals 17 January 2007.

Carol Ann Bauer for Respondent-Appellant.

Law Office of Frank Jackson, by James Lamar Palmer, for Petitioner-Appellee.

McGEE, Judge.

Petitioner is the biological mother of D.O.A., a minor child, and Respondent is D.O.A.'s biological father. Petitioner filed a petition on 2 June 2006 to terminate Respondent's parental rights to D.O.A. Petitioner alleged, *inter alia*, that Respondent (1) willfully neglected D.O.A within the meaning of N.C. Gen. Stat. § 7B-1111(a)(1), and (2) failed to legitimate D.O.A. and "failed to provide any financial support or consistent care with respect to [D.O.A.] and [Petitioner], as contemplated by [N.C. Gen. Stat. §] 7B-1111(a)(5)." Respondent filed an answer on 21 June 2006.

Following a hearing, the trial court entered an order on 25 August 2006 terminating Respondent's parental rights. The trial court made numerous findings of fact and concluded that Respondent "willfully neglected [D.O.A.] within the meaning of [N.C. Gen. Stat.] § 7B-1111(a)(1)." The trial court also concluded that "Respondent ha[d] failed to legitimate [D.O.A.], and [had] failed to provide substantial financial support or consistent care with respect to [D.O.A.] and [Petitioner], as contemplated by [N.C. Gen. Stat. §] 7B-1111(a)(5), despite having the ability to do so." The trial court further concluded that "the best interests of [D.O.A.] would be served by having . . . Respondent's parental rights terminated[,]" and the trial court ordered that Respondent's parental rights to D.O.A. be terminated. Respondent appeals.

I.

Respondent first argues the trial court erred by not bifurcating the termination of parental rights proceeding into distinct adjudication and disposition phases. Termination of parental rights is a two-step process. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). At the adjudication stage, the trial court determines whether there is clear, cogent and convincing evidence to support at least one of the statutory grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a). *Id.* If a ground for termination is proven, the trial court proceeds to the disposition stage where it exercises its discretion in determining whether termination is in the best interests of the child. *Id.* "However, so long as the [trial]

court applies the different evidentiary standards at each of the two stages, there is no requirement that the stages be conducted at two separate hearings." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004) (citing *In re White*, 81 N.C. App. 82, 344 S.E.2d 36, *disc. review denied*, 318 N.C. 283, 347 S.E.2d 470 (1986)).

In the present case, the trial court concluded that grounds existed to terminate Respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(5). The trial court then separately concluded that "the best interests of [D.O.A.] would be served by having . . . Respondent's parental rights terminated." Therefore, the trial court applied the appropriate standard at each stage of the proceeding, and we overrule this assignment of error.

II.

Respondent next argues that several of the trial court's findings of fact were not supported by clear, cogent and convincing evidence. The standard for appellate review of a trial court's determination that grounds exist for termination of parental rights is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and whether its conclusions of law are supported by those findings. *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 174, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001).

Respondent challenges the trial court's following findings of fact:

14. . . . Respondent could have spent time with [D.O.A.] and could have provided financial support, but has substantially failed to do so.

. . .

17. . . . Petitioner has not been secreting [D.O.A.] from . . . Respondent.

. . .

19. . . . Petitioner has had sole custody of [D.O.A.] pursuant to a court order in file number 03 CVD 430, Henderson County, which (prior to this termination order) gave . . . Respondent certain rights of visitation, which he has generally not exercised.

20. . . . Respondent has given . . . Petitioner a few hundred dollars of child support in the spring of 2004, during a period of time that he was not incarcerated. However, otherwise any child support payments have not been consistent and have not been made since 2004.

21. . . . Respondent has not been a meaningful source of financial support for [D.O.A.].

. . .

26. . . . Respondent has worked and earned some money while in the Department of Correction[], but has not sent any of his earnings for the support of [D.O.A.]

27. . . . Respondent is in good health, has earned money both while incar[cerated] and while not incarcerated, and has not paid any support for the benefit of [D.O.A.] since 2004, and very minimal before that time.

. . .

34. . . . Respondent is not under any disabilities and was employed at High Pasture Land Surveying and at some construction jobs in early 2006, but did not provide any financial support for the benefit of [D.O.A.] in the form of child support.

35. During those times when . . . Respondent was not in jail, . . . Respondent would sometimes not show up for scheduled visitations and would regularly be late, which had a negative effect on [D.O.A.].

36. That [Respondent's] relationship with [D.O.A.] and . . . [Respondent's] involvement in [D.O.A.'s] life has been sporadic, regardless of whether incarcerated or not, and [Respondent] has not been a primary caregiver since 2001.

37. . . . Respondent has failed to legitimate [D.O.A.], and failed to provide substantial financial support or consistent care with respect to [D.O.A.] and [Petitioner], as contemplated by [N.C. Gen. Stat. §] 7B-1111(a) (5).

Respondent does not appear to challenge the evidentiary basis of the trial court's findings of fact. Rather, Respondent argues "the trial court's findings of fact do not tell the story in its entirety but just tell a selected view slanted against [Respondent]. Therefore, the trial court's finding[s] of fact[] are not based on clear, cogent, and convincing evidence as presented at trial." However, the trial court had the duty "to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984). When reviewing a record on appeal, a trial court's findings of fact are conclusive if supported by clear, cogent and convincing evidence, even if there was conflicting evidence before the trial court. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988).

Respondent concedes that he has been incarcerated for more than half of D.O.A.'s life. Respondent argues that while he was in prison in 2003, he only made \$5.00 per week, the entire amount of

which was necessary to meet his personal needs. He also argues that during his most recent imprisonment, he could only afford to send two to three letters per month to D.O.A. Respondent argues that he worked at High Pasture Land Surveying for only three months, and other times worked "on and off" at different construction jobs. However, Respondent does not otherwise dispute the trial court's findings that he failed to support D.O.A. Respondent testified he was employed in prison but never sent any money to Petitioner from prison. Respondent also testified he worked various jobs in construction and surveying, but did not provide any support to Petitioner or to D.O.A. in 2005 or 2006.

Respondent further argues that while out of prison, he "never had transportation," and that lack of transportation interfered with his visitation. Respondent also asserts that while Petitioner's mother testified that D.O.A. was upset when Respondent was late for visits or did not show up, "no evidence was presented to support her hearsay statement." However, Respondent did not object to this testimony at trial, and the testimony that "[D.O.A.] was upset" is not an out-of-court statement offered to prove the truth of the matter asserted. See N.C. Gen. Stat. § 8C-1, Rule 801(c) (2005) (defining hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). After careful review of the record, we hold that the challenged findings of fact were supported by clear, cogent and convincing evidence. We overrule the assignments of error grouped under this

argument.

III.

Respondent argues the trial court erred by concluding that grounds existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). Respondent argues "[t]here was no evidence from . . . Petitioner about the probability of future neglect or about the willfulness of [Respondent's] situation."

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2005), a trial court may terminate parental rights upon a finding that "[t]he parent has . . . neglected the juvenile. The juvenile shall be deemed to be . . . neglected if the [trial] court finds the juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-101." Under N.C. Gen. Stat. § 7B-101(15) (2005), a neglected juvenile is defined as, *inter alia*, "[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker[.]"

Having determined that the trial court's findings of fact are supported by clear, cogent and convincing evidence, we determine whether the findings of fact support the trial court's conclusion that Respondent "willfully neglected [D.O.A.] within the meaning of N.C.G.S. § 7B-1111(a)(1)." The trial court found that Respondent was in the custody of the North Carolina Department of Correction with a projected release date of August 2007. The trial court also found that Respondent expected to be extradited to South Carolina upon the completion of his sentence in North Carolina. Therefore, Respondent, due to his incarceration, would not be available to

provide proper care and supervision for D.O.A. Additionally, the trial court found that "Respondent could have spent time with [D.O.A.] and could have provided financial support, but ha[d] substantially failed to do so." The trial court further found that Respondent had generally not exercised his visitation rights with respect to D.O.A. and that "Respondent ha[d] made promises to be more stable and involved with [D.O.A.], but these [promises] [had] been unfulfilled." Furthermore, the trial court found that Respondent's "involvement in [D.O.A.'s] life ha[d] been sporadic, regardless of whether incarcerated or not, and [Respondent] ha[d] not been a primary caregiver since 2001." These findings support the trial court's conclusion that Respondent neglected D.O.A. Specifically, the findings support the conclusion that Respondent's neglect of D.O.A. was willful and that there was a probability of future neglect. We overrule this assignment of error.

Because we hold the trial court did not err by concluding that Respondent neglected D.O.A., we need not address Respondent's remaining arguments pertaining to any other ground for termination. See *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 663 (2003) (stating that "where we determine the trial court properly concluded that one ground exists to support the termination of parental rights, we need not address the remaining grounds.").

IV.

Respondent also argues the trial court abused its discretion by concluding that "the best interests of [D.O.A.] would be served by having . . . Respondent's parental rights terminated."

Respondent argues that the evidence at trial showed that "when given a chance to visit with [Respondent] at the family's last Christmas gathering, [D.O.A.] hugged and kissed [Respondent] and sat in [Respondent's] lap and talked." Respondent also argues that D.O.A. wanted to know when D.O.A. could visit Respondent. Therefore, Respondent argues, the trial court abused its discretion by terminating Respondent's parental rights. "On appeal, we review the trial court's decision to terminate parental rights for an abuse of discretion." *In re C.L.C.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709 (2005), *aff'd per curiam*, 360 N.C. 475, 628 S.E.2d 760 (2006).

In the present case, the trial court found that Respondent was a registered sex offender and that Respondent was serving a prison term for failing to register as a sex offender. The trial court also found that "Respondent could have spent time with [D.O.A.] and could have provided financial support, but ha[d] substantially failed to do so." The trial court further found that "[d]uring those times when . . . Respondent was not in jail, . . . Respondent would sometimes not show up for scheduled visitations and would regularly be late, which had a negative effect on [D.O.A]." Moreover, the trial court found that Respondent's "involvement in [D.O.A.'s] life ha[d] been sporadic, regardless of whether incarcerated or not, and [Respondent] ha[d] not been a primary caregiver since 2001." On the basis of these findings, we hold the trial court did not abuse its discretion in terminating Respondent's parental rights. We overrule this assignment of

error.

Respondent has failed to set forth arguments pertaining to his remaining assignments of error, and we deem them abandoned. See N.C.R. App. P. 28(b)(6).

Affirmed.

Chief Judge MARTIN and Judge WYNN concur.

Report per Rule 30(e).