

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-364

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

IN THE MATTER OF:

A.J.

Mecklenburg County
No. 05 J 83

Appeal by respondent mother from judgment entered 14 July 2005 by Judge Louis A. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 19 October 2006.

Mecklenburg County Attorney's Office, by J. Edward Yeager, Jr., for Mecklenburg County Department of Social Services, Youth and Family Services, petitioner-appellee.

Womble Carlyle Sandridge & Rice, PLLC, by Murray C. Greason, III, for Guardian ad Litem.

Jon W. Myers, for respondent-mother-appellant.

JACKSON, Judge.

A Juvenile Petition alleging neglect and dependency was filed 2 December 2002, based upon the fact that Diann J. ("respondent") was presently in jail for assault with a deadly weapon, and that her child, A.J., had been placed in a temporary placement by respondent. The Mecklenburg County Department of Social Services ("DSS") initially placed A.J. in foster care on 27 November 2002. The basis for the allegations of neglect and dependency stemmed

from several incidents in which respondent had failed to control her anger and had assaulted several people, including A.J.'s father. In December 2000, respondent's parental rights were terminated for another child, based upon housing issues, acts of violence by respondent, and respondent's anger management issues.

On 13 January 2003, A.J. was adjudicated neglected and dependent as to respondent. In a case plan adopted by the trial court, respondent was ordered to have a parenting capacity evaluation, complete a mental health assessment and follow through with all recommendations for therapy, and "refrain from all violent acts and threats and learn appropriate ways of expressing her anger." Respondent was allowed visitations with A.J., however the visitations were suspended on multiple occasions due to her becoming angry and confrontational with DSS workers. Over the course of the two years in which A.J. was in foster care with DSS, respondent became very angry with, and threatened, multiple social workers and therapists. When she disagreed with how her case was being handled, or how one of her therapists testified at a review hearing, she repeatedly left threatening messages on the professionals' voice mail systems, or would verbally threaten them in person.

Respondent's various therapists and psychologists state that she does not suffer from any psychosis, but that her condition is chronic and severe, in that she is unable to control her anger, she lacks impulse control, and she regularly fails to accept responsibility for these types of problems. Respondent's

therapists also reported that at all times she felt that her behavior was justified and that she was being singled out. On 1 February 2005, DSS filed a petition to terminate respondent's parental rights as to A.J. In the petition, DSS alleged the following grounds for termination of respondent's parental rights: (1) neglect, in that respondent has failed to provide proper care, supervision, and discipline for A.J. and has abandoned A.J.; (2) respondent has willfully left A.J. in foster care for more than twelve months without showing to the satisfaction of the trial court that she has made reasonable progress in correcting the conditions which lead to the removal of A.J.; (3) for a continuous period of six months next preceding the filing of the petition, respondent willfully has failed to pay a reasonable portion of the cost of care for A.J. although physically and financially able to do so; and (4) respondent's parental rights with respect to another child have been terminated involuntarily by a trial court and respondent lacks the ability or willingness to establish a safe home for A.J. Following hearings on the petition, held 27 April 2005 and 28 June 2005, the trial court found that grounds to terminate respondent's parental rights existed, and that it was in A.J.'s best interest that respondent's rights be terminated. The trial court terminated respondent's parental rights based upon grounds (1), (2), and (4) as listed above. Respondent appeals from the order entered 14 July 2005 terminating her parental rights to A.J.

Respondent first contends the trial court erred in failing to *sua sponte* appoint a guardian ad litem for her during her termination of parental rights proceeding.

North Carolina General Statutes, section 7B-1101, in effect at the time of respondent's hearing, provides in part that:

a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

- (1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1111(6), and the incapability to provide proper care and supervision pursuant to that provision is the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or another similar cause or condition.

N.C. Gen. Stat. § 7B-1101(1) (2003). Our courts have held that although a petition to terminate a parent's rights may not specifically seek to terminate based upon a finding of dependency pursuant to section 7B-1111(a)(6), an individual may still be entitled to the appointment of a guardian ad litem when the trial court considers evidence of the parent's mental health issues. When there was "some evidence that tended to show that respondent's mental health issues and the child's neglect were so intertwined at times as to make separation of the two virtually, if not, impossible[,]" this Court has held that a guardian ad litem was required to be appointed. *In re J.D.*, 164 N.C. App. 176, 182, 605 S.E.2d 643, 646, *disc. review denied*, 358 N.C. 732, 601 S.E.2d 531 (2004); *see also In re L.W.*, __ N.C. App. __, __, 623 S.E.2d 626, 629 (quoting *In re T.W., L.W., E.H.*, 173 N.C. App. 153, 159-60, 617

S.E.2d 702, 706 (2005) ("reference to N.C. Gen. Stat. § 7B-1111(a)(6) in an order terminating parental rights is not necessary to trigger a trial court's duty to appoint a guardian ad litem where a respondent's 'mental instability and her incapacity to raise her minor children were central factors in the court's decision to terminate her parental rights' and where it was 'clear that the trial court believed respondent was unable to care for or parent the minor children due, in part, to her mental illness.'"), *disc. review denied, appeal dismissed*, 360 N.C. 534, 633 S.E.2d 818 (2006).

Respondent concedes that DSS did not seek to terminate her parental rights based on an allegation of dependency and her incapability of caring for A.J., nor did DSS argue dependency at her termination of parental rights hearing. However, she contends the evidence presented at the hearing regarding her anger management and impulse control issues was sufficient to put the trial court on notice that she should have been appointed a guardian ad litem. We disagree. DSS' petition seeking to terminate respondent's parental rights neither alleged dependency nor tended to show that respondent was incapable of caring for A.J. due to mental health issues. The sole statement in the petition which relates in any way to respondent's behavior states, "The respondent mother has not engaged in and completed therapy and has not made such behavioral changes that she can appropriately care for the minor child." We hold this statement alone is insufficient

to invoke the requirements of section 7B-1101 and to require the appointment of a guardian ad litem for respondent.

Further, the psychological evaluation of respondent states that respondent is an "angry woman who . . . seemed to be experiencing some depressive symptoms, but who was in touch with reality and was not evidencing any symptoms of a major psychiatric disorder." The psychological tests performed indicated that respondent does not have chronic difficulty with anger control, she tends to alienate herself by externalizing blame onto others, and she has difficulty accepting responsibility for her own actions. While one of respondent's former psychologists categorized her condition as "chronic and severe," he did not categorize her as mentally ill. Respondent's second psychologist testified that respondent is an angry individual, who displays poor judgment and poor emotional control. In his opinion, respondent does not have any type of psychosis or organic brain damage, but she does have chronic difficulty controlling her anger and has interpersonal alienation impulse control difficulties.

Therefore, while much of the evidence at respondent's hearing focused on her inability to control her behavior, this does not rise to the level of evidence of a mental illness or an incapability to provide care for A.J. due to "mental retardation, mental illness, organic brain syndrome, or another similar cause or condition." Thus, the trial court was not required to appoint a guardian ad litem for respondent, and did not err in failing to do so. Respondent's assignment of error is overruled.

Respondent next contends the trial court erred in finding and concluding that her parental rights should be terminated based upon findings of 1) neglect; 2) willfully leaving A.J. in foster care for more than twelve months without making reasonable progress in correcting the circumstances which led to A.J.'s removal; and 3) her parental rights with respect to another child had been terminated involuntarily by a court of competent jurisdiction, and she lacks the ability or willingness to establish a safe home for A.J. As "[a] finding of any one of the separately enumerated grounds under N.C. Gen. Stat. § 7B-1111 that is supported by clear, cogent, and convincing evidence is sufficient to terminate[,]" we therefore need not address each of the grounds for termination of respondent's parental rights. *In re Howell*, 161 N.C. App. 650, 656, 589 S.E.2d 157, 160-61 (2003) (citing *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990)); see N.C. Gen. Stat. § 7B-1111(a) (2005).

"[T]he party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). "On appeal, the trial court's decision to terminate parental rights is reviewed on an abuse of discretion standard[.]" *In re J.L.K.*, 165 N.C. App. 311, 317, 598 S.E.2d 387, 391 (citing *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001)), *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314 (2004). "The standard of review of a termination of parental rights is whether the trial court's findings of fact are

supported by clear, cogent, and convincing evidence and whether the findings of fact support its conclusions of law." *In re J.G.B.*, ___ N.C. App. ___, ___, 628 S.E.2d 450, 454 (2006) (citing *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001)). Findings of fact not assigned as error or argued on appeal are deemed to be supported by sufficient evidence, and are binding on appeal. N.C. R. App. P. 28(b)(6) (2006); see also *In re Clark*, 159 N.C. App. 75, 83 n.5, 582 S.E.2d 657, 662 n.5 (2003) (citing *In re Caldwell*, 75 N.C. App. 299, 301, 330 S.E.2d 513, 515 (1985)). However, we review a trial court's conclusions of law *de novo*. *In re D.H.*, ___ N.C. App. ___, ___, 629 S.E.2d 920, 922 (2006) (quoting *Starco, Inc. v. AMG Bonding and Ins. Services*, 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996)).

Respondent's parental rights were terminated based upon a finding that pursuant to North Carolina General Statutes, section 7B-1111(a)(2), she "willfully left the juvenile in foster care or placement outside the home for more than 12 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) (2005). Although respondent did assign error to nine of the trial court's nineteen findings of fact, she presents argument on appeal challenging only finding of fact nineteen, thus respondent's assignments of error not argued on appeal are deemed abandoned, and the findings of fact for which no argument is

presented are deemed to be supported by competent evidence and are binding on appeal. N.C. R. App. P. 28(b)(6) (2006); *J.G.B.*, ___ N.C. App. at ___, 628 S.E.2d at 455.

The trial court made the following findings of fact, which are binding upon this Court:

6. The primary issue leading to [DSS] involvement was the mother's unresolved mental health issues, which included anger management, erratic outburst and lack of impulse control. That pattern of behavior has continued throughout the Department's involvement with the case.
7. On several occasions visits have been suspended with the respondent mother due to violent outbursts and erratic behavior directed toward [DSS] social workers, social work assistants and other professionals involved in the case.
8. Ms. J[.] received therapy from Larry Yarborough for approximately 14 months. Therapy ended after she became outraged at Mr. Yarborough, began cursing and threatening him; although she apologized, she continued leaving him violent voice mails over the next 3-4 months following her apology.
-
11. The respondent mother also completed a parenting capacity evaluation with Dr. Burce Duthie of the Behavioral Health Center. Although Dr. Duthie observed no major deficits in Ms. J[.]'s parenting abilities, he houd [sic] that she has a personality structure which could put a child in danger.
12. After Dr. Duthie testified to the results of his parenting capacity evaluation he received numerous harassing and threatening telephone calls and messages from Ms. J[.]

13. The respondent mother was also engaged in parenting classes during the underlying juvenile case. She completed parent education courses through the Family Center and was working with an in-home parent educator, Reggie Chandler, until April, 2004. At that time, the respondent mother became outraged because the social worker assistant was late bringing her child, she subsequently began cursing and threatening various officials with Youth and Family Services and visits had to be suspended. Because of her behavior, the opportunity to continue participating in the in-home parenting education program was suspended.

. . . .

15. The respondent mother, however, has never modified her behavior and demonstrated such stability that the minor child could be placed with her without placing the child at risk. As a result, the minor child has had to remain in foster care.

16. The respondent mother is also the biological mother of another child. That child was placed in the custody of Lee County DSS in 1999 and her parental rights were terminated to that child in 2000.

17. This sibling was placed in Lee County's custody due to the mother's continuing displays of anger and violent behavior in the child's presence.

These findings of fact show the ongoing struggle which DSS and respondent's therapists faced in attempting to work with respondent. Respondent repeatedly became angry, and sometimes violent, with the various workers, thereby impeding their ability to provide her with services and maintaining the instability which initially led to A.J.'s being taken into custody. Respondent's behavior did not improve over the course of the two and a half

years in which her child was in the custody of DSS. In fact, respondent and her therapist both testified that respondent had learned various techniques for dealing with and controlling her anger, however she simply chose not to utilize them. Therefore, we hold the abovementioned findings of fact, which are binding on this Court, support the trial court's conclusion that respondent has failed to make reasonable progress on correcting the conditions which led to the removal of A.J. from her care. Respondent's assignment of error therefore is overruled.

Respondent finally contends the trial court abused its discretion in concluding that A.J.'s best interests would be served by the termination of her parental rights.

"A termination of parental rights proceeding is a two-stage process.'" *In re T.D.P.*, 164 N.C. App. 287, 288, 595 S.E.2d 735, 736 (2004) (quoting *Howell*, 161 N.C. App. at 656, 589 S.E.2d at 160), *aff'd*, 359 N.C. 405, 610 S.E.2d 199 (2005). First there is an adjudicatory phase, which is followed by the disposition phase. See N.C. Gen. Stat. §§ 7B-1109 to -1110 (2005). Once the trial court has found that a ground for termination exists, the trial court then moves to the disposition phase where it must consider whether termination is in the best interests of the child. N.C. Gen. Stat. § 7B-1110(a) (2005). A trial court may terminate parental rights upon a finding that it would be in the best interests of the child to do so. *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001). However, a trial court is not required to terminate a parent's rights. When the trial court

determines that the best interests of the child require that the parent's rights not be terminated, then the court must dismiss the petition. N.C. Gen. Stat. § 7B-1110(b) (2005). We review the trial court's decision regarding the child's best interests for an abuse of discretion. *Nesbitt*, 147 N.C. App. at 352, 555 S.E.2d at 662.

Respondent specifically challenges the trial court's finding of fact nineteen, which states the trial court finds that it is in A.J.'s best interest that parental rights be terminated. In the instant case, the trial court considered the progress respondent had made in establishing a stable home and in maintaining steady employment. The trial court recognized that respondent had never tested positive for any illegal substances, had participated in therapy, and completed parenting classes as ordered. However, the trial court found, and we hold was not an abuse of the trial court's discretion, that it was in A.J.'s best interests that respondent's parental rights be terminated. The primary concern of not only DSS, but also the multiple therapists involved with respondent, always has been that respondent's inability to control her anger and her erratic outbursts create an environment in which A.J. not only is at risk of being harmed, but also one in which respondent will have great difficulty working with the various agencies and professionals involved in A.J.'s life, including the school system, daycare providers, teachers, and physicians.

Respondent testified that she has learned the techniques to control her anger and impulses, but that she fails to utilize those

techniques. As respondent has failed to address the behavioral problems which led to A.J.'s being taken into care, we hold the trial court's finding that it was in A.J.'s best interest that her parental rights be terminated was sufficiently supported by the evidence presented. Thus, the trial court did not abuse its discretion in ordering the termination of respondent's parental rights, and respondent's assignment of error is overruled.

Affirmed.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).