An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-429

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

IN THE MATTER OF:

J.McK.,
Minor Child.

Orange County
No. 04 J 92

Appeal by respondent from judgment entered 2 August 2005 by Judge Joseph M. Buckner in Orange County District Court. Heard in the Court of Appeals 18 October 2006.

*Northern Blue Law Firm, by Carol Holcomb, and Samantha H. Cabe, for petitioner-appellee Orange County Department of Social Services.*

*Terry F. Rose for respondent-appellant.*

*Epting & Hackney, by Karen Davidson, for Guardian ad Litem.*

LEVINSON, Judge.

Respondent mother appeals from an order terminating her parental rights in the minor child "Jack."[1] We affirm.

Jack, born on 18 June 2004, was respondent's fourth child. At the time of his birth, respondent's other three children were in foster care. Based on a petition alleging that he was dependent, Jack was placed in the custody of DSS when he was four days old. In an order entered 17 December 2004 the trial court adjudicated

[1]To preserve the privacy of the minor child, we refer to him throughout this opinion by the pseudonym "Jack."

Jack dependent and continued his custody with petitioner. At a permanency planning hearing a month later, the court ordered that the plan for Jack be adoption, and directed DSS to initiate proceedings for termination of parental rights. DSS moved for termination of on 14 February 2005, alleging that respondent was incapable of caring for Jack.

In June 2005 a hearing was conducted on petitioner's motion for termination of parental rights. Tina Weiler, the DSS social worker assigned to this case, testified for petitioner. Her testimony, in conjunction with documentary evidence such as court reports and transcripts of earlier proceedings, tended to show the following: (1) respondent has a long history of mental illness, and was diagnosed as suffering from severe personality disorder, panic disorder with agoraphobia, substance abuse and depressive disorder, and borderline personality disorder; (2) respondent has a long history of substance abuse and tested positive for cocaine and marijuana as recently as the month just before the termination of parental rights hearing; (3) respondent's other three children were in DSS custody, and in the opinion of several mental health professionals, respondent is highly unlikely to be able to care for her children in the foreseeable future; (4) two weeks before the termination of parental rights hearing respondent threatened to kill all the DSS personnel involved in the case; (5) respondent previously drank alcohol during her pregnancies, purportedly to make her children "retarded" and thereby make it harder for DSS to find adoptive homes for them; (6) respondent suffers from asthma,

obesity, and multiple sclerosis, and, because she did not get proper treatment for MS, her physical health deteriorated to the point where she must use a wheelchair or walker most of the time; (7) when respondent visited with Jack, she did not attend to his needs and the child did not want her to hold him; (8) respondent displayed bad judgment in her interactions with her children; and (9) there was a history of domestic violence in respondent's marriage. The social worker testified that, in her opinion, respondent was incapable of caring for Jack.

Following the hearing the trial court on 2 August 2005 entered an order terminating respondent's parental rights in Jack. From this order respondent timely appealed.

Standard of Review

"A termination of parental rights proceeding involves two separate analytical phases: an adjudicatory stage and a dispositional stage. A different standard of review applies to each step. At the adjudicatory stage, 'the party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist.'" *In re L.A.B.*, __ N.C. App. __, __, 631 S.E.2d 61, 64 (2006) (citing *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001), and quoting *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997)).

"'A finding of any one of the grounds enumerated [in section 7B-1111], if supported by competent evidence, is sufficient to support a termination.' After making a determination that one of

the grounds for termination exists, the trial court proceeds to disposition and considers the best interests of the child." *A Child's Hope, LLC v. Doe*, __ N.C. App. __, __, 630 S.E.2d 673, 677 (2006) (quoting *In re J.L.K.*, 165 N.C. App. 311, 317, 598 S.E.2d 387, 391, *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314 (2004)) (internal citation omitted). "At the dispositional stage, 'the court shall issue an order terminating the parental rights, unless it . . . determines that the best interests of the child require otherwise.'" *In re V.L.B.*, 168 N.C. App. 679, 684, 608 S.E.2d 787, 790-91, *disc. review denied,* 359 N.C. 633, 614 S.E.2d 924 (2005) (quoting *In re Matherly*, 149 N.C. App. 452, 454, 562 S.E.2d 15, 17 (2002)). On appeal, "'[w]e review the trial court's decision to terminate parental rights for abuse of discretion.'" *In re V.L.B.*, *id.* at 689, 608 S.E.2d at 791 (quoting *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002)). Further:

> this Court 'should affirm the trial court where the court's findings of fact are based upon clear, cogent and convincing evidence and the findings support the conclusions of law.' Moreover, findings of fact are conclusive on appeal if they are supported by 'ample, competent evidence,' even if there is evidence to the contrary. If unchallenged on appeal, findings of fact 'are deemed supported by competent evidence' and are binding upon this Court. 'So long as the findings of fact support a conclusion based on [the statute], the order terminating parental rights must be affirmed.'

*In re J.M.W.*, __ N.C. App. __, __, 635 S.E.2d 916, __ (2006) (quoting *In re Allred*, 122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996), *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988), *In re Padgett,* 156 N.C. App. 644, 648, 577 S.E.2d 337,

340 (2003), and *In re Oghenekevebe*, 123 N.C. App. 434, 436, 473 S.E.2d 393, 395-96 (1996)).

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With regards to the trial court's findings of fact numbers six through nine, numbers eleven through twenty, and number twenty-three, respondent argues that the court erred by making a finding that certain evidence was admitted "without objection." Respondent asserts that each of these findings of fact are erroneous, on the grounds that she in fact objected to the admission of various transcripts, court reports, and other written materials pertaining to this case. Respondent fails to articulate how this inaccuracy, assuming it exists, was prejudicial. Accordingly, the pertinent assignments of error are overruled.

In a related argument, respondent raises the issue of the admissibility of certain documents. At the hearing, the trial court admitted prior court reports and other documents from DSS case files pertinent to this case. Respondent's counsel made a perfunctory objection "for the record" to the admission of the prior reports and documents because they would be "prejudicial." However, he failed to state a legal basis, theory, or authority for exclusion of the documents. Under N.C.R. App. P. 10(b)(1), "to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." We conclude that respondent failed to preserve for

appellate review the substantive issue of the admissibility of the challenged transcripts and court reports. Accordingly, we do not reach this issue.

Respondent also argues that the record includes certain pieces of evidence that were favorable to her. However, it is a truism that "[f]indings for which there exists competent evidence are binding on appeal, even where there is evidence to the contrary." *In re Mills*, 152 N.C. App. 1, 6, 567 S.E.2d 166, 169 (2002) (citation omitted). Respondent argues further that the trial court based its ruling solely on the contents of prior orders and reports. This assertion does not account for the testimony of the DSS social worker assigned to the case. This assignment of error is overruled.

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Respondent argues next that the trial court erred by concluding that it was in the best interests of Jack for respondent's parental rights to be terminated. Respondent contends that, because no evidence was offered about Jack's situation or status at the time of the hearing, the trial court had no way to evaluate his best interests. We disagree.

Respondent's assertion does not account for evidence before the trial court indicating that "Jack is a beautiful two-month old baby. He is alert and developing appropriately despite early pre-natal exposure to illicit substances. . . . His foster parents are diligent in ensuring that he receives appropriate wellness care. He recently started day care and has adjusted nicely to this

setting.” Moreover, “the standard for appellate review of the trial court's decision to terminate parental rights is abuse of discretion.” *In re M.N.C.*, __ N.C. App. __, __, 625 S.E.2d 627, 633 (2006) (citation omitted). Based on our review of this record and the trial court’s order, we discern no abuse of discretion in the trial court's decision to terminate respondent’s parental rights.

We have reviewed respondent’s remaining contentions and find them to be without merit. For the reasons discussed above, we conclude the trial court’s order must be

Affirmed.

Judges TYSON and BYRANT concur.

Report per Rule 30(e).