An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-716

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

IN THE MATTER OF:

A.G.,
A Minor Child

Pender County
No. 05 J 86

Appeal by respondent from an order entered 16 February 2006 by Judge Sandra Criner in Pender County District Court. Heard in the Court of Appeals 13 December 2006.

Regina Floyd-Davis for petitioner-appellee.

Terry F. Rose for respondent-appellant mother.

ELMORE, Judge.

This appeal arises from the district court's order, entered 16 February 2006, terminating respondent's rights to the minor child. After careful review, we affirm the order of the trial court.

A.G., a minor child, was first taken from respondent's custody in June, 2001. She was returned to respondent in November, 2002. At that time it was determined that there had been some sexual abuse of the child, though the record is unclear as to what occurred or at whose hands. The child was again taken into custody by petitioner in March, 2004, "because of her escalating sexualized behaviors at school, her masturbating in school and also her sexually acting out." Petitioner filed a petition for the

termination of respondent's parental rights on 25 September 2005. On 16 February 2006, the district court entered an order terminating respondent's rights to the minor child, from which respondent now appeals.

Respondent first claims prejudicial error in the failure to file the order terminating her parental rights within the thirty days mandated by N.C. Gen. Stat. § 7B-1110 (2006).[1] That statute states, in pertinent part:

> Any [termination] order shall be . . . entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

Id.

Petitioner concedes that this case did not comply with the statute. However, in addressing the "entry of [a] written order outside the thirty-day time limitations expressed in sections 7B-1109 and 7B-1110 . . . [this Court has] held that prejudice must

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[1] Respondent incorrectly cites to N.C. Gen. Stat. § 7B-1109(f), which addresses the burden of proof and the inapplicability of either a husband-wife or physician-patient privilege. It is likely that respondent intended to cite to N.C. Gen. Stat. § 7B-1109(e), as she quotes the language from that section. However, section 7B-1109(e) refers to an adjudicatory order, and respondent's assignment of error refers to the order terminating her parental rights. We therefore give respondent the benefit of the doubt and assume that she intended to quote from and cite to the correct statutory authority.

be shown before the late entry will be deemed reversible error." *In re C.J.B. & M.G.B.*, 171 N.C. App. 132, 134, 614 S.E.2d 368, 369 (2005) (citing *In re J.L.K.*, 165 N.C. App. 311, 315-16, 598 S.E.2d 387, 390-91 (2004), *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314 (2004); *In re B.M., M.M., AN.M. & AL.M.*, 168 N.C. App. 350, 352, 607 S.E.2d 698, 700-02 (2005)). Respondent acknowledges these holdings in her brief, and argues that she can establish prejudice. However, respondent's bald assertions that "the mother and child have not had contact with each other since December 2005 and therefore are prejudiced each day they cannot resume a relationship with each other," fails to state a legitimate claim of prejudice. Accordingly, this assignment of error is without merit.

Respondent next claims that there was insufficient evidence to support many of the trial court's findings of fact, and that the findings of fact did not support the trial court's conclusions of law. Specifically, respondent assigns error to the trial court's findings of fact Nos. 1, 6-18, and 20. For the sake of brevity, this Court will address collectively all of respondent's contentions regarding the trial court's findings of fact. For the reasons set out below, respondent's argument as to insufficient evidence must fail.

"On appeal, the trial court's decision to terminate parental rights is reviewed on an abuse of discretion standard, and we must affirm where the court's findings of fact are based upon clear, cogent and convincing evidence and the findings support the

conclusions of law." *In re J.L.K.*, 165 N.C. App. 311, 317, 598 S.E.2d 387, 391 (2004) (quotations and citations omitted).

In finding of fact No. 18, the trial court took "judicial notice of all of the Orders and court reports as set forth" in earlier proceedings. Respondent does not allege that such documents do not constitute competent evidence; she merely asserts that the trial court was neither asked to take notice nor announced that it would do so. "This Court has held '[a] trial court may take judicial notice of earlier proceedings in the same cause' and that it is not necessary for either party to offer the file into evidence." *In re M.N.C.*, 176 N.C. App. 114, 120, 625 S.E.2d 627, 632 (2006) (quoting *In re Isenhour*, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73 (1991)). *See also* N.C. Gen. Stat. § 7B-1110 (2006) ("[T]he court shall consider . . . [a]ny relevant consideration" in its determination of the child's best interests); *In re S.W.*, 175 N.C. App. 719, 726, 625 S.E.2d 594, 598 (2006) ("In subsequent proceedings to terminate parental rights on the basis of neglect, the court is permitted to consider prior adjudications of neglect involving the same parent.") (citing *In re Stewart Children*, 82 N.C. App. 651, 653, 347 S.E.2d 495, 497 (1986)).

The trial court relied extensively on the previous orders and court reports throughout its findings of fact. However, these documents are not included in the record on appeal.

> "If the appellant intends to urge on appeal that a finding or conclusion of the trial court is unsupported by the evidence or is contrary to the evidence, the appellant shall file with the record on appeal a transcript of *all evidence relevant* to such finding or

> conclusion." N.C.R. App. P. 7(a)(1) (2003). Similarly, Rule 9 of the North Carolina Rules of Appellate Procedure requires the appellant to include in the record on appeal "so much of the evidence . . . as is *necessary for an understanding* of all errors assigned." N.C.R. App. P. 9(a)(1)(e) (2003). It is the duty of the appellant to ensure that the record is complete. *See State v. Alston*, 307 N.C. 321, 341, 298 S.E.2d 631, 644 (1983). "An appellate court is not required to, and should not, assume error by the trial judge when none appears on the record before the appellate court." *State v. Williams*, 274 N.C. 328, 333, 163 S.E.2d 353, 357 (1968). Without the [previous court documents], we are unable to review plaintiff's argument that the trial court erred in making findings of fact that are unsupported by the evidence.

Hicks v. Alford, 156 N.C. App. 384, 389-90, 576 S.E.2d 410, 414 (2003) (emphasis added). Because the trial court properly based its findings of fact on evidence that respondent chose not to include in her record on appeal, we will not further consider respondent's assignments of error with regard to the trial court's findings of fact.

Moreover, "[w]here . . . appellant assigns as error that the evidence does not support the findings of fact by the trial judge, but does not include the evidence in the record on appeal, we will presume the facts found are supported by competent evidence." *Potts v. Potts*, 19 N.C. App. 193, 194, 198 S.E.2d 203, 204 (1973). The facts as found by the trial court constitute clear, cogent, and convincing evidence in support of the trial court's conclusion of law that respondent both neglected the child and willfully left the child in placement outside the home for more than twelve months without a showing of reasonable progress. Respondent's assignment

of error to that conclusion of law is therefore without merit.

Finally, respondent argues that the trial court abused its discretion in terminating her parental rights. The trial court considered the testimony of the social worker assigned to the case. The social worker testified that the child does not really discuss her mother; the child does not ask to see respondent and refers to respondent by her first name. The social worker also testified that the child is doing well since she was removed from respondent's care, that her "compulsive behaviors" have ceased, and that her "self mutilating behaviors have decreased. . . ." Finally, the social worker testified that the prospect of adoption existed. Likewise, the guardian ad litem testified that the child asked her therapist to request that her foster parents adopt her. The guardian *ad litem* also testified that it was her opinion that termination of respondent's rights was in the child's best interest. Based on this testimony and the trial court's other findings of fact and conclusions of law, the trial court did not abuse its discretion; this claim must therefore fail.

The trial court's termination of respondent's parental rights was based on clear, cogent, and convincing evidence, and was in the best interest of the child. Accordingly, this Court affirms the trial court's order of termination.

Affirmed.

Judges MCGEE and BRYANT concur.

Report per Rule 30(e).