

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-276

NORTH CAROLINA COURT OF APPEALS

Filed: 4 August 2009

IN THE MATTER OF:

M.S., N.S., K.Y.,  
J.G., and A.G.,  
Minor Children.

Mecklenburg County  
Nos. 06 JT 505-09

Appeal by respondent-mother from order entered 14 November 2008 by Judge Rickye McKoy-Mitchell in Mecklenburg County District Court. Heard in the Court of Appeals 13 July 2009.

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

*Klein & Freeman, PLLC, by Marc S. Gentile, for Guardian ad Litem.*

*Don Willey for respondent-appellant mother.*

BRYANT, Judge.

Y.G.<sup>1</sup> (respondent) appeals from an order of the trial court terminating her parental rights to A.G., K.Y., J.G., N.S., and M.S., (collectively, the minor children). We affirm.

*Facts*

Y.G. is the biological mother of the minor children who range in age from five to fourteen. On 2 May 2006, the Charlotte-Mecklenburg County Department of Social Services (petitioner) filed

---

<sup>1</sup>Initials are used to protect the identity of the juveniles.

juvenile petitions alleging the minor children were neglected and dependent juveniles due to respondent's substance abuse and mental health problems. The trial court granted petitioner non-secure custody of the minor children that same day. On 9 May 2006, the trial court conducted a non-secure custody review hearing and referred the matter to mediation.

Petitioner and respondent met for mediation on 7 June 2006 and reached a mediated agreement and case plan for respondent. Respondent's case plan required that she:

1. Follow through on all recommendations from the Families in Recovery Stay Together ("FIRST") program for substance abuse treatment and a mental health assessment.
2. Successfully resolve any substance or alcohol abuse issues and maintain sobriety on an ongoing basis, participate in random drug tests within twenty-four hours of a request by a social worker, and attend Alcoholics Anonymous/Narcotics Anonymous meetings if recommended.
3. Continue her involvement with individual mental health therapy and take any medication prescribed by her psychiatrist.
4. Complete parenting classes and demonstrate the skills learned.
5. Develop a system to help support her when she is feeling emotionally and financially overwhelmed.
6. Obtain legal, stable employment and have sufficient income to meet her children's basic needs for food, shelter, clothing, education, and health care.
7. Maintain an appropriate, safe, and stable living environment for herself and her children.

8. Contact her social worker weekly or more often if she is experiencing difficulty with her case plan.

9. Cooperate with the Guardian ad Litem volunteer assigned to her case.

10. Attend weekly supervised visitations with all of her children and attend the children's appointments when invited and able to do so.

At the mediation, respondent admitted to recent use of marijuana and cocaine, and her case plan identified substance abuse treatment as her first priority.

On 20 June 2006, the trial court entered adjudication and disposition orders finding the minor children to be neglected and dependent juveniles. The trial court ordered that the minor children remain in the custody of petitioner and that petitioner should make reasonable efforts toward reunification of the minor children with respondent. The court incorporated the mediated case plan into its disposition order and further ordered respondent to enter into substance abuse and mental health treatment.

On 24 September 2007, the trial court changed the permanent plan for the children to adoption and termination of respondent's parental rights. On 28 November 2007, petitioner filed petitions and motions to terminate respondent's parental rights to the minor children and their respective fathers - both known and unknown. Petitioner filed an amended petition to terminate respondent's parental rights to the minor children on 30 January 2008.

On 6 and 27 May 2008, the trial court conducted a hearing on the underlying termination petitions and motions. The fathers of the minor children did not appear at the hearing. On 31 July 2008,

the trial court delivered a memorandum to the parties stating its decision in the case. Subsequently, the respondent requested a more detailed explanation of the court's reasoning and the trial court issued a second more detailed memorandum on 5 September 2008. A proposed order was prepared and circulated to the parties on 30 September 2008 and respondent filed a motion for additional findings of fact on 2 October 2008. After a hearing on 23 October 2008, the trial court made changes to its proposed order and entered its termination order on 14 November 2008. The trial court concluded multiple grounds existed to terminate the parental rights of respondent and the fathers of the minor children. The trial court further concluded it was in the best interests of the minor children to terminate the parental rights of respondent and the fathers, and ordered the termination of respondent and the fathers' parental rights to the minor children. Respondent filed notice of appeal on 12 December 2008. The fathers of the minor children are not parties to this appeal.

---

Respondent argues the trial court's findings and conclusions that (I) respondent acted wilfully in leaving her children in placement outside of the home for more than twelve months, (II) respondent acted wilfully in failing to support her children although physically and financially capable of doing so, and (III) there is a reasonable probability of neglect and dependency in the foreseeable future, are not supported by clear and convincing evidence. We disagree.

Respondent argues the trial court erred in concluding grounds existed to terminate her parental rights to the juveniles on the basis that she willfully left her children in placement outside the home for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances had been made in correcting those conditions which led to the removal of the children. Respondent contends that at the time of the termination hearing, she had established a stable income, stable housing, a stable mental health counseling regimen, and a stable relationship with her children. Given her specific circumstances, in that she was found in May of 2007 to have been under a disability and to suffer from anxiety, recurrent major depression, panic disorder with agoraphobia, social phobia and avoidant personality disorder, respondent argues her progress in correcting those conditions which led to the removal of the minor children was reasonable. We disagree.

We first note respondent assigned error to the trial court's findings of fact set forth in paragraphs numbered 63-66, 68-69, 71-72, 75, 80 and 85 of the court's termination order, and respondent purports to bring these assignments of error forward in her arguments on appeal. However, in her brief to this Court, respondent does not argue these findings of fact are in error, but rather presents a broadside argument that the trial court's findings of fact are insufficient to support its conclusions of law.

It is well established that "[a]ssignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned." N.C.R. App. P. 28(b)(6); see also *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 405 (2005) (concluding findings of fact were binding on appeal where respondent had abandoned factual assignments of error when she "failed to specifically argue in her brief that they were unsupported by evidence"). Accordingly, respondent has abandoned her assignments of error regarding the trial court's findings of fact and our review is limited to a determination of "whether the trial court's findings support its conclusion[s] of law." *In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001).

"The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (quoting *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984)), *disc. review denied*, *In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). If the trial court's findings of fact "are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary." *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). "[I]t is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their

testimony." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). Additionally, the trial court's findings of fact to which an appellant does not assign error are conclusive on appeal and binding on this Court. *In re J.D.S.*, 170 N.C. App. 244, 250-51, 612 S.E.2d 350, 354-55, *cert. denied*, 360 N.C. 64, 623 S.E.2d 584 (2005).

Termination of parental rights involves a two-step process involving an adjudicatory stage and a dispositional stage. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). At the adjudicatory stage, the petitioner must show by clear, cogent and convincing evidence that a statutory ground to terminate exists. *Id.* If the trial court determines that grounds for termination exist, the trial court must proceed to the dispositional stage where it determines whether terminating parental rights is in the best interest of the juvenile. *Id.*; see also N.C. Gen. Stat. § 7B-1110(a) (2007). A trial court may terminate parental rights where:

The parent has 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. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a)(2) (2007). In determining whether a parent has acted willfully under N.C. Gen. Stat. § 7B-1111(a)(2), this Court has held:

A finding of willfulness does not require a showing of fault by the parent. Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort. A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children.

*In re O.C.*, 171 N.C. App. 457, 465, 615 S.E.2d 391, 396 (citations and quotation marks omitted), *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005).

In the instant case, the trial court's conclusion that grounds existed to terminate respondent's parental rights to the minor children pursuant to Section 7B-1111(a)(2) is supported by the following findings of fact:

7. [Respondent] admitted to having a history of mental health issues. She had been diagnosed with mood, personality, and anxiety disorders. She ingested cocaine and prescription medicine in February 2006 in a suicide attempt. She was hospitalized after this attempt.

. . .

9. Prior to [petitioner's] filing the juvenile petition on the children, [respondent] was not involved in substance abuse or mental health treatment.

. . .

14. [Russell C. Hancock, Ph.D.] was assigned to perform [respondent's initial] parenting capacity evaluation in early 2007. He explained to [respondent] that if she missed appointments, the evaluation would be cancelled. [Respondent] missed appointments on 19 March 2007 and 21 May 2007. The evaluation was cancelled as a result.

15. [Upon order of the trial court, t]he process began again and the evaluation took



from 11 September 2007 through 31 December 2007. . . .

17. [Respondent] freely admitted she had been diagnosed with Bipolar Disorder. She also admitted that she missed the appointments for the evaluation in March and May 2007 due to using cocaine and marijuana.

18. The evaluation detailed the kind of questionable and risky behavior [respondent] would engage in in her manic phases. She is likely to stop taking her prescribed medication and might use illegal drugs. The mother admitted to using drugs before her Team Decision Meeting, an important meeting with [petitioner] that would determine where her children would be placed. Her smoking marijuana in her apartment in December 2005 caused her family to be evicted.

. . . .

20. The opposite side of [respondent]'s bipolar diagnosis is the untreated depressive phase. During these periods, she is unlikely to leave her bedroom, unlikely to spend adequate time on [sic] her children, and might also turn to illegal drugs. . . .

. . . .

41. [Respondent] was recommended for intensive outpatient substance abuse treatment through the SAIL program. [Respondent] was never able to complete treatment at SAIL. [Respondent] never provided [petitioner] with any proof she was attending any NA/AA meetings.

42. [Respondent] was referred to the Family Drug Treatment Court. She was discharged from that program for testing positive for cocaine and marijuana in May 2007. . . .

43. [Respondent] was already participating in mental health therapy with Max Nunez at CMC Randolph. While [petitioner] was monitoring her attendance at therapy, [respondent]'s attendance was irregular. [Petitioner] never received any information that [respondent] had progressed in therapy or had completed therapy.

44. [Respondent] agreed to attend parenting classes. A prerequisite to attending parenting classes was to complete substance abuse treatment. Because [Respondent] never completed any substance abuse treatment program, she could not be referred for parenting classes.

45. [Respondent] was to develop a support system to help her, particularly when she felt overwhelmed. While [petitioner has been involved with respondent], [respondent] has never developed a support system.

. . .

60. [Respondent] testified she had completed intensive outpatient substance abuse treatment through the SAIL program. She is now in the continuing care part of the treatment continuum.

61. When she completes continuing care, she should continue on with aftercare. The counselors at SAIL recommend she attend NA/AA meetings, but she does not attend any meetings.

62. [Respondent] continues in therapy with Max Nunez. She attends when he schedules an appointment for her. She now attends therapy approximately every two weeks. She also sees Dr. Hancock about once a month and has seen Dr. Castro, a psychiatrist, once for medication management.

. . .

64. [By order dated 17 April 2008, upon her appeal from the denial of Social Security Disability Benefits, respondent] was found to be under a disability since May 2007.

65. The Administrative Law Judge found [respondent] lacked the residual functional capacity to perform any substantial gainful activity on a sustained basis. [Respondent] suffers from anxiety, with recurrent major depression, panic disorder with agoraphobia, social phobia, and avoidant personality disorder.

66. The Administrative Law Judge relied upon evidence submitted by [respondent] in making this determination. He gave the greatest weight to the diagnosis supplied by Max Nunez, [respondent]'s treating therapist. Mr. Nunez outlined a long list of symptoms [respondent] suffered from that would limit her ab[ility] to work effectively and to interrelate with employers, supervisors, and the public.

67. The benefits would have been awarded earlier than May 2007, but [respondent] was using illegal drugs or alcohol through that date.

. . .

69. [Respondent] has not discussed the Disability Decision or Dr. Hancock's Parenting Capacity Evaluation in therapy with Max Nunez. When asked what was her goal in therapy, [respondent] said only she wanted to be able to go out in social settings on a regular basis.

70. [Respondent] described her daily activities. She rides the bus to visit her children at Bob Walton Plaza once a week. She also attends her therapy, substance abuse continuing care, and goes to the library occasionally.

. . .

76. [Respondent]'s failure to complete her case plan and to demonstrate that the children would not be at risk of a repetition of the neglect that led them to come into [petitioner's] custody, coupled with her diagnosed disability and associated symptoms, make her unable to be an adequate parent for her children. Her Social Security Administration Disability Determination found that she was "disabled" and that determination was based upon [respondent]'s recurrent major depression, panic disorder with agoraphobia, social phobia, and avoidant personality disorder resulting in recurrent panic attacks, marked difficulties in maintaining social functioning and marked difficulties in maintaining concentration, persistence or pace, and manifested signs and symptoms with a

disability onset date of May 2007 and necessitating a recommendation that a representative payee be appointed for [respondent] due to the nature of her impairments.

77. [Respondent] still suffers from the Bipolar Disorder referenced by Dr. Hancock. The Bipolar Disorder coupled with the Agoraphobia Max Nunez has been treating the mother for and her additional "disabling" diagnoses along with her demonstrated failure to complete her case plan make [respondent] unable to address the needs of her children in medical, therapeutic, or educational settings. Her children range in age from four to thirteen, so she must be a parent who can deal with a full range of parenting issues.

. . .

80. Because [respondent] has limited social interaction, there is no way to monitor if she should slip into a manic or depressive phase of her bipolar condition. When she suffers from either phase, she makes poor choices that put herself and her children at risk.

81. On May 27, 2008, and subsequent to the trial, the Court met with counsel and requested that [respondent] submit to a drug screen which she did on that same day. The result of the drug screen was negative for drugs.

While we commend respondent for the progress she has made to date in addressing her mental health and substance abuse problems, and her success in securing public housing and consistently attending visitation with her children, the above findings of fact are more than sufficient to support the trial court's conclusion that respondent has not made reasonable progress under the circumstances to correct her inability to take care of the minor children.

Respondent has made some progress in her substance abuse treatment, but we cannot say that her establishment of a stable mental therapy regime constitutes reasonable progress made towards correcting her mental health problems. Respondent never completed essential elements of her case plan and her failure to complete substance abuse treatment resulted in her inability to take any parenting classes. Respondent has obtained a stable income stream through disability benefit payments, but these payments are only due to her "recurrent major depression, panic disorder with agoraphobia, social phobia, and avoidant personality disorder resulting in recurrent panic attacks, marked difficulties in maintaining social functioning and marked difficulties in maintaining concentration, persistent or pace." Further, while respondent now has income through her disability benefit payments, her impairments required the appointment of a representative payee because she is not able to effectively handle her own finances.

Respondent has without question left her minor children in foster care or placement outside the home for over twelve months. The minor children have been in the custody of petitioner since 2 May 2006. Petitioner filed the underlying petition to terminate respondent's parental rights to the minor children eighteen months later, on 28 November 2007, and the trial court entered its termination order on 14 November 2008, thirty months after the initial removal of the minor children from respondent's custody. Respondent's documented continued use of illegal substances through May 2007, and only recent steps toward making progress in

addressing her substance abuse and mental health problems, show she had the ability to show reasonable progress but was unwilling to make the effort, and thus willfully left the minor children in a placement outside the home.

The trial court's findings of fact clearly support its conclusion that grounds existed to terminate respondent's parental rights to the minor children because she willfully left her children in foster care or placement outside the home for more than twelve months without showing to the satisfaction of the court that she made reasonable progress under the circumstances in correcting those conditions which led to the removal of the children.

In light of our holding with respect to this ground of termination, we need not address respondent's arguments regarding the remaining grounds for termination found by the trial court. N.C. Gen. Stat. § 7B-1111(a) (2007) ("The court may terminate the parental rights upon a finding of one or more of the following[.]"); *In re D.B.*, 186 N.C. App. 556, 561, 652 S.E.2d 56, 60 (2007) ("Where a trial court concludes that parental rights should be terminated pursuant to several of the statutory grounds, the order of termination will be affirmed if the court's conclusion with respect to any one of the statutory grounds is supported by valid findings of fact."), *aff'd per curiam*, 362 N.C. 345, 661 S.E.2d 734 (2008).

The trial court's order terminating respondent's parental rights to her minor children, A.G., K.Y., J.G., N.S., and M.S., is hereby affirmed.

Affirmed.

Judges WYNN and STEELMAN concur.

Report per Rule 30(e).