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NO. COA09-854

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

IN THE MATTER OF:  
K.C.

Cleveland County  
No. 07 JT 176

Appeal by respondent-father from order entered 13 April 2009 by Judge Larry J. Wilson in Cleveland County District Court. Heard in the Court of Appeals 9 November 2009.

*Charles C. Wilson, Jr., for Cleveland County Department of Social Services petitioner-appellee.*

*Duncan B. McCormick for respondent-father appellant.*

*Pamela Newell Williams for guardian ad litem.*

HUNTER, JR., Robert N., Judge.

Respondent-father appeals from the district court's order terminating his parental rights to his three-year-old daughter, K.C.<sup>1</sup> After review, we affirm.

I. Factual Background

On 20 June 2007, the Cleveland County Department of Social Services ("DSS") filed a juvenile petition alleging that K.C. was a neglected juvenile. The petition was based on the following factual allegations. On 18 June 2007, respondent-father arrived at his home to find K.C.'s mother crying on the floor with eighteen-

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<sup>1</sup> K.C.'s mother is not a party to this appeal.

month-old K.C. lying on top of her. K.C. was unconscious, her lips were blue, and her body was cold. Respondent-father was able to resuscitate K.C., and she was taken to the hospital where drug screens were performed on K.C. due to her lethargy. K.C.'s drug screens were positive for benzodiazepine, and the initial medical impression was that K.C. suffered a benzodiazepine overdose, likely from ingesting Xanax. Respondent-father's brother,<sup>2</sup> his sister, his sister's two children, and his parents also lived in the house. K.C.'s mother recalled taking Xanax and drinking beer on the day of the incident and recalled being punched by respondent-father's brother before passing out. Respondent-father's brother also recalled taking Xanax and drinking beer. However, none of the adults present at the time of the incident recalled what happened to K.C. DSS took custody of K.C. pursuant to a nonsecure custody order on 20 June 2007 and the trial court continued DSS custody on 26 June 2007, 13 July 2007, and 22 August 2007.

The trial court conducted an adjudication hearing on 23 January 2008, and subsequently, entered an order finding K.C. to be a neglected juvenile in that she lived in an environment injurious to her welfare and did not receive proper care and supervision. The adjudication was based on the stipulation of the parents. The trial court found as fact the allegations contained in the petition

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<sup>2</sup> At the time the original petition was filed, paternity was not established. Both respondent-father and his brother were considered putative fathers. Subsequent genetic paternity testing confirmed that respondent-father is K.C.'s biological father.

regarding K.C.'s overdose. In the adjudication order, the trial court set the disposition hearing for 20 February 2008.

In the time between the adjudication and disposition hearings, several events occurred. On the date of the adjudication hearing, both parents submitted to random drug screens, and both had positive results. On the evening of 23 January 2008, both parents were arrested. Respondent-father was arrested for larceny and driving while license revoked, and he subsequently entered a plea of guilty to these charges. Respondent-father also had a number of other pending charges, including driving while license revoked, felony identity theft, and felony obtaining property by false pretenses. Finally, on 11 February 2008, both of K.C.'s parents were involved in an alleged larceny and subsequent high-speed chase through four counties, which ended in Cherokee County, South Carolina. At the time of the disposition hearing, respondent-father was in jail in South Carolina on charges related to the incident, including possession of cocaine, driving while impaired, and resisting arrest. The mother also had pending charges at the time of the disposition hearing: felony child abuse, felonious possession of a controlled substance, and felonious delivery of a controlled substance to a minor. She was expected to enter a guilty plea to the charges in March 2008.

The trial court maintained custody with DSS, and relieved DSS of further reunification efforts, based on the court's finding that further reunification would be futile. Additionally, the trial court maintained K.C.'s placement in foster care, finding that the

suggested relative placements were not approved by DSS. The court gave the parents one hour of weekly supervised visitation, and also ordered them to comply with various services provided by DSS.

The trial court conducted a permanency planning hearing on 12 March 2008, and in an order entered 18 March 2008, the court sanctioned a permanent plan of custody or guardianship. The court found that respondent-father was still in jail in South Carolina on pending charges related to the high-speed chase. Additionally, the felony child abuse charges were still pending against the mother.

On 19 June 2008, DSS filed a petition to terminate the parental rights of respondent-father and the mother, based on the following grounds: (1) neglect and (2) willfully leaving the juvenile in foster care for more than twelve months without showing reasonable progress to correct the conditions which led to removal. Respondent-father filed an answer to the petition on 15 September 2008, admitting certain allegations and denying the existence of grounds for termination.

The trial court conducted a second permanency planning hearing on 15 October 2008 and entered a written order on 24 October 2008. At the time of the hearing, respondent-father was still incarcerated in South Carolina. The court found that the mother had been convicted of felony child abuse on 9 June 2008 and was incarcerated at the time of the hearing. The court maintained the permanent plan of adoption or guardianship, while DSS was in the process of conducting a home study on a possible relative placement. The trial court entered a final permanency planning

order on 31 March 2009, in which it sanctioned a permanent plan of adoption. The court also found that respondent-father had been released from jail in South Carolina, but upon release, was taken into custody in Gaston County on a number of pending felony charges. Respondent-father also had pending felony charges in Cleveland County. K.C.'s mother was still incarcerated as well. However, the mother had signed a relinquishment of parental rights to K.C. on 14 January 2009.

The trial court conducted a termination hearing on 25 March 2009, and following the hearing, the trial court entered an order on 13 April 2009 finding the existence of both alleged grounds for termination. In the dispositional portion of the order, the trial court found that termination of respondent-father's parental rights was in the best interest of K.C. From this order, respondent-father appeals.

## II. Failure to Allege Sufficient Facts for Termination of Parental Rights

Respondent-father first contends that the trial court lacked subject matter jurisdiction because the termination of parental rights petition allegedly fails to include "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." N.C. Gen. Stat. § 7B-1104(6) (2007). Respondent-father argues that the petition merely contains a bare recitation of the alleged statutory grounds for termination and failed to provide notice as to the acts, omissions, or conditions at issue. See *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002) ("While there is no

requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions, or conditions are at issue." ). Thus, respondent-father argues that the petition failed to comply with N.C. Gen. Stat. § 7B-1104(6) and deprived the trial court of subject matter jurisdiction. We disagree.

While respondent is correct in his assertion that a petition for termination of parental rights must contain more than a mere recitation of the statutory grounds, he failed to acknowledge the complete statement of the law. Pursuant to N.C. Gen. Stat. § 7B-1104(6) a petition for termination of parental rights must state "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." The petition "must put a party on notice as to what acts, omissions, or conditions are at issue," but need not be "exhaustive or extensive." *In re Hardesty*, 150 N.C. App. at 384, 563 S.E.2d at 82. Moreover, *In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160, *appeal dismissed*, 332 N.C. 483, 424 S.E.2d 397 (1992), provides that a petition must set forth more than a "bare recitation . . . of the alleged statutory grounds for termination." In order to meet the statutory requirements "sufficiently detailed allegations need not appear on the face of the petition but may be incorporated by reference." *In re H.T.*, 180 N.C. App. 611, 617, 637 S.E.2d 923, 927 (2006).

In the present case, the petition sets forth the following allegations:

7. That the parental rights of the respondent father and respondent mother are subject to termination by the Court under N.C.G.S. 7B-1111 because:
  - a. That the mother and father have neglected the child and the child is a neglected child within the meaning of N.C.G.S. 7B-1111(a) (1).
  - b. That the mother and father have willfully left the child in foster care for more than twelve months without showing to the satisfaction of the Court that reasonable progress under the circumstances has been made in correcting the conditions that led to the removal of the juvenile.
  - c. The juvenile has been placed in the custody of a county department of social services, a licensed child-placement agency, a child-caring institution, or a foster home, and the mother and father, for a continuous period of six months next preceding the filing of this petition, have willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
  - d. The mother and father have willfully abandoned the child for at least six consecutive months immediately preceding the filing of this petition.

The above allegations would constitute a "bare recitation" of the statute and, standing alone, would be insufficient to meet the statutory standard as set forth above. However, the language in paragraph 2 of the petition provides that "a copy of the Court

Order granting custody is attached to this Petition and is incorporated herein by reference." The disposition order granting legal and physical custody of K.C. to Cleveland County DSS made the following findings of fact:

6. That following the parents' appearance before the Court on January 23, 2008, the parents submitted to a random drug test. On that day, the respondent mother tested positive for cocaine, Benzodiazepines, opiates and marijuana. The respondent father tested positive for Benzodiazepines and marijuana.
7. That on the evening of January 23, 2008, the respondent mother was arrested for larceny and possession of drug paraphernalia, two crack pipes. She has pled guilty to these charges. That on the evening of January 23, 2008, the respondent father was arrested for larceny and driving while license revoked. He has pled guilty to these charges.
8. That the respondent parents were together at the time of these arrests.
9. That the respondent father has a number of other pending charges in Cleveland and Gaston County for Driving While License Revoked, Felony Identity Theft, and Felony Obtaining Property by False Pretense.
10. That the respondent mother has pending charges of Felony Child Abuse, Felonious Possession of Controlled Substance and felonious delivery of Controlled Substance to a Minor. Counsel for the respondent mother has advised the Court that the mother is scheduled to enter a plea on these charges in Superior Court in March, 2008 and is expected to receive a split sentence involving incarceration and subsequent probation.
11. That on February 11, 2008 the respondent parents were involved in an alleged



larceny and subsequent high-speed chase through four counties, beginning in Lincoln County, NC and ending in Cherokee County, SC. Although the respondent mother has not been charged, the respondent father is presently in jail in Cherokee County on charges related to this incident, including possession of cocaine, Driving While Impaired and resisting arrest.

12. That prior to the adjudication of this matter, the Cleveland County Department of Social Services made efforts to assist the respondent parents in obtaining treatment services including substance abuse assessment and treatment; psychological evaluation; and parenting classes. The social worker made referrals and scheduled for both parents, but neither parent has attended any scheduled appointment or treatment service.

. . . .

14. That the juvenile has been in the custody of the Cleveland County Department of Social Services since June 20, 2007. Adjudication was delayed at the request of the respondent parents.
15. That it is unlikely that the juvenile can be safely returned to the home of either parent within the next six months.
16. That, based on the foregoing findings of fact, it is clear to the court that further efforts toward reunification with either parent would clearly be futile, and the Court will therefore relieve[] the Cleveland County Department of Social Services of its obligation to make such continued efforts.
17. That since the entry of the adjudication order, the Cleveland County Department of Social Services has made reasonable efforts to prevent or eliminate the need for removal of the juvenile from the home, but at this time, it is necessary for the well being of the juvenile for

the Cleveland County Department of Social Services to continue to have physical and legal custody of the juvenile.

18. That a continuation of the juvenile in the custody of the parents would be contrary to the well being of the juvenile.
19. That the juvenile is presently placed in a licensed family foster home in Cleveland County.
20. That the parents have been entitled to weekly supervised visitation with the juvenile at the James Home or at the offices of the Cleveland County Department of Social Services. The parents have missed a number of visits due to be being incarcerated or lack of transportation.
21. That the Court does find that the current plan of weekly visitation, to be scheduled for a minimum of one hour per week, is appropriate and is in the best interest of the juvenile.
22. That the placement and care of the juvenile should be the responsibility of the Cleveland County Department of Social Services and the Cleveland County Department of Social Services should provide or arrange for the foster care of the juvenile.

Respondent, in his response to the petition, stipulates to paragraphs 1-6, and, as such, respondent stipulates to the findings of fact provided in the disposition court order granting custody. The findings of fact contained in the disposition court order, as incorporated by reference in the petition, are sufficiently detailed to put respondent-father on notice as to what acts, omissions, or conditions are at issue in the present matter. See *In re H.T.*, 180 N.C. App. at 617, 637 S.E.2d at 927. Accordingly,

we hold that the petition complied with N.C. Gen. Stat. § 7B-1104(6).

III. Sufficiency of Grounds for Termination  
of Parental Rights

In his second and third arguments on appeal, respondent-father challenges the existence of grounds for termination. Pursuant to N.C. Gen. Stat. § 7B-1111(a) (2007), a trial court may terminate parental rights upon a finding of one of the ten enumerated grounds. "In [the adjudication] stage, the burden is on the petitioner to provide 'clear, cogent, and convincing evidence' that the named grounds in N.C. Gen. Stat. § 7B-1111(a) (2005) exist." *In re S.W.*, 187 N.C. App. 505, 506, 653 S.E.2d 425, 425-26 (2007). On appeal, we review the trial court's order to determine "whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur[.]" *In re Oghenekevebe*, 123 N.C. App. 434, 435-36, 473 S.E.2d 393, 395 (1996) (citation omitted). "'So long as the findings of fact support a conclusion [that one of the enumerated grounds exists], the order terminating parental rights must be affirmed.'" *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (citation omitted).

Here, the trial court found that two grounds existed to terminate respondent-father's parental rights to K.C.: (1) neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2) willfully leaving the juvenile in foster care for over twelve months without showing reasonable progress in correcting the conditions which led

to removal, pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). Although the trial court found the existence of two grounds, "[a] single ground . . . is sufficient to support an order terminating parental rights." *In re J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006). Therefore, if we find that the findings of fact support one ground for termination, we need not review the other. See *Humphrey*, 156 N.C. App. at 540, 577 S.E.2d at 426-27. Although respondent-father challenges both grounds, we need not analyze both because the findings of fact are sufficient to support the existence of grounds for termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Section 7B-1111 lists neglect as one of the grounds for terminating parental rights and provides, in pertinent part:

(a) The court may terminate the parental rights upon a finding of one or more of the following:

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-101.

N.C. Gen. Stat. § 7B-1111(a)(1). Neglect, in turn, is defined as follows:

Neglected juvenile. — A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2007).

When a child has not been in the custody of a parent for a significant amount of time prior to the termination hearing, as is the case here, "the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect." *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citing *In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001), *aff'd*, 356 N.C. 68, 565 S.E.2d 81 (2002)). Because the determinative factor is the parent's ability to care for the child at the time of the hearing, we previously have explained that "requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible." *Id.* (citing *In re Ballard*, 311 N.C. 708, 714, 319 S.E.2d 227, 232 (1984)). Therefore, the trial court must "find that grounds for termination exist upon a showing of a 'history of neglect by the parent and the probability of a repetition of neglect.'" *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (quoting *Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407). "[E]vidence of neglect by a parent prior to losing custody of a child--including an adjudication of such neglect--is admissible in subsequent proceedings to terminate parental rights." *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. Additionally, "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *Id.*

Respondent-father first argues that the findings are insufficient to establish prior neglect, because respondent-father was not present when K.C. overdosed on benzodiazepine. However, he overlooks the fact that K.C. was adjudicated neglected on 20 February 2008, and that he stipulated to the adjudication. The findings establish that, at the time of the incident, respondent-father had been jailed for nearly all of K.C.'s life and had only been out of jail for four weeks. However, he admitted that K.C. was in his care and custody at the time of the incident and that he left K.C. in the care of her mother and several other impaired adults on the date of the incident. Given the prior adjudication of neglect and the seriousness of the incident, we conclude that the findings are sufficient to establish past neglect by respondent-father.

We also conclude that the findings of fact are sufficient to establish a likelihood of repetition of neglect. The following unchallenged findings of fact support this portion of the analysis:

30. That the Court, in its February 20, 2009<sup>3</sup> order, made the following findings of fact . . . .
  - a. That following the adjudication hearing on January 23, 2009, the respondent father submitted to a court-ordered drug test and on that day tested positive for Benzodiazepines and Marijuana.

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<sup>3</sup> As further discussed in section III, it appears that findings of fact numbers 30, 30.a, and 30.b contain a typographical error. The year referenced in these findings should be 2008, not 2009.

- b. That on the evening of January 23, 2009, the respondent parents were both arrested and charged with a number of misdemeanor offenses. [T]he father was charged with larceny and driving while license revoked. . . .
- c. That the respondent father had a number of other pending charges in Cleveland and Gaston Counties for Driving While License Revoked, Felony Identity Theft and Felony Obtaining Property by False Pretenses.
- d. That on February 11, 2008 the respondent parents were involved in an alleged larceny and subsequent high-speed chase. . . .

\* \* \* \*

- 36. That the respondent father never complied with any of the referrals [for parenting classes, substance abuse assessment and treatment, and a psychological evaluation]
- 37. . . . The father attended most of these visits between June 2007 and January 2008, but was incarcerated during the month of October 2007. The father was incarcerated again on January 23, 2008 until February 1, 2008.

\* \* \* \*

- 39. That the respondent father was not in jail from February 1, 2008 until February 11, 2008. During this time period, social worker Dorothy Reynolds attempted to assist the respondent father in obtaining court ordered treatment services. . . . Ms. Reynolds told respondent father on January 23, 2008 that his first parenting class would be on February 5, 2008. She also advised him on that day of a scheduled substance abuse assessment for February 19, 2008.

40. That respondent father failed to attend his first scheduled parenting class. . . .

\* \* \* \*

42. That Dorothy Reynolds learned that the respondent father had been arrested in Cherokee County, South Carolina on February 11, 2008 . . . .

43. That the respondent parents were involved in a high-speed chase from law enforcement on February 11, 2008 that encompassed four counties, beginning in Lincoln County, North Carolina and ended in Cherokee County, South Carolina. The respondent father was arrested in Cherokee County, South Carolina and charged with a number of misdemeanor offenses including failure to stop for blue light, possession of cocaine, driving while impaired, open contain[er] and driving without an operator's license. He pled guilty to those charges and received an 18-month sentence.

\* \* \* \*

45. That the respondent father was out on bond for felony charges in both Gaston and Cleveland Counties at the time of his arrest in . . . South Carolina. As a result of his arrest, his bonds were revoked in both counties.

46. That the respondent father completed his incarceration in . . . South Carolina on December 1, 2008 and was transferred to the Gaston County Jail, where he remains to this day.

\* \* \* \*

48. That the respondent father admitted that his incarceration in . . . South Carolina was a result of his failure to stop for police in Lincoln County . . . and admitted that he fled through Gaston and Cleveland Counties and across the state line before being arrested in Cherokee



County. He admitted . . . that he was "messed up" on drugs at that time.

\* \* \* \*

50. That the respondent father admitted that he has an extensive history of criminal activity, convictions and incarcerations.

51. That the respondent father had only been out of jail for four weeks prior to the June 18, 2007 overdose of the juvenile.

\* \* \* \*

56. That with the exception of [a] four month period of time, and the four weeks prior to June 18, 200[7], the respondent father has been incarcerated for the entire life of the juvenile. The juvenile is currently 3 years old.

57. That the respondent father testified that he had started smoking crack cocaine after the Department of Social Services took custody of his child.

\* \* \* \*

64. That the respondent father currently has pending in Cleveland County three counts of felony Identity Theft, five counts of felony Obtaining Property by False Pretense, and one count of unlawfully obtaining a financial transaction card . . . .

\* \* \* \*

67. That [Assistant District Attorney] Kaylor further testified that . . . based on his criminal record, [respondent-father] would qualify as a Level Six for sentencing purposes . . . and could be facing a potential maximum sentence of 36-44 months on each of the counts of Felonious Identity Theft, 25-30 months on each of the counts of Felonious Obtaining Property by False Pretense, plus a 120-day sentence on the misdemeanor charge.

68. That [respondent-father] is presently being held in Gaston County on ten counts of felonious Obtaining Property by False Pretense and three counts of felonious Identity Theft.

\* \* \* \*

81. That the respondent father acknowledged that he has been to jail ten to twelve times in the past ten years.

\* \* \* \*

86. That the father had an opportunity to provide for the needs of his child after his release from custody, but within a short period of time, he returned to those same behaviors including substance abuse that had previously led to his incarceration and again resulted in his arrest and incarceration which has continued to this day.

Based on the undisputed findings of fact, which are described above, the trial court also found the following:

88. That [respondent-father] has willfully neglected the juvenile. This neglect is evidenced by the respondent father's continued involvement in substance abuse and criminal activity that . . . resulted in his repeated and present incarceration. That there is a reasonable probability that this neglect will continue for the foreseeable future based upon [respondent-father's] continued incarceration and the likelihood that this incarceration will continue.

89. That the Court does find as fact and will conclude as a matter of law that [respondent-father] has neglected the juvenile, as defined by N.C.G.S. § 7B-101(15) and that there is a substantial probability that this neglect will continue for the foreseeable future.

Respondent-father specifically challenges these two findings of fact, and contends that the trial court erred in finding a

likelihood of repetition of neglect. Citing to *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 730 (2007), he contends that the trial court erred by placing too much emphasis on his incarceration. We disagree. Based on our review of the pertinent findings of fact, it is clear that the trial court did not rely on respondent-father's incarceration, but rather on the circumstances and events that led to his incarceration. Only four weeks after respondent-father was released from an eighteen-month incarceration, K.C. suffered a nearly fatal overdose of drugs while she was left in the care of impaired individuals. After K.C. was taken into DSS custody, respondent-father had a second chance to change his ways, but instead continued his criminal behavior and substance abuse, even testing positive on the same day of the adjudication hearing. After another arrest, respondent-father's downward spiral culminated in a high-speed chase through four counties and across the state line. Given that respondent-father returned to such behavior in a matter of months, we conclude that the trial court did not err in finding a likelihood of repetition of neglect. Accordingly, we find that the trial court did not err in finding grounds for termination of respondent-father's parental rights pursuant to N.C. Gen. Stat. § 1111(a)(1).

#### IV. Typographical Error in the February 2008 Dispositional Order

Lastly, respondent-father challenges several findings of fact numbers 29, 30, 30.a, and 30.b on the grounds the trial court erroneously found that certain events occurred in 2009 rather than 2008. We agree that these findings contain erroneous information,

but we believe the trial court merely committed a harmless typographical error. The challenged findings reference the disposition order, the adjudication hearing, and the parents' arrests on the evening of the adjudication hearing. It is clear from our review of the record, the transcript, and the remaining findings of fact (which are in excess of 100) that these events occurred in 2008, rather than in 2009. Thus, respondent-father suffered no prejudice as a result of these minor typographical errors. Accordingly, these assignments of error are overruled.

Affirmed.

Judges MCGEE and GEER concur.

Report per Rule 30(e).