NO. COA10-167

NORTH CAROLINA COURT OF APPEALS

Filed: 3 August 2010

IN THE MATTER OF:

H.A.B., A.L.C., S.D.C., and D.L.C.	Burke County Nos. 08 J 22-25

Appeal by respondents from orders entered 10 February 2009 by Judge C. Thomas Edwards and 12 November 2009 by Judge J. Gary Dellinger in Burke County District Court. Heard in the Court of Appeals 5 July 2010.

Stephen M. Schoeberle for petitioner-appellee Burke County Department of Social Services.

Pamela Newell for appellee Guardian Ad Litem.

Robert W. Ewing for respondent-appellant mother.

J. Thomas Diepenbrock for respondent-appellant father.

ELMORE, Judge.

Respondent-mother and respondent-father appeal from an order terminating their parental rights to their children. For the following reasons, we reverse.

Respondent-mother is the mother of H.A.B., A.L.C., S.D.C., and D.L.C. (collectively, the children). Respondent-father is the father of A.L.C., S.D.C., and D.L.C. The Burke County Department of Social Services (DSS) has been involved with the family since

July 2007 when DSS received a report alleging that the children were "absolutely filthy and very small." DSS received a report that respondent-father had assaulted respondent-mother in October 2007. Case management services recommended that respondents attend and complete parenting classes, that they obtain anger management-domestic violence assessments, that they maintain employment and stable housing, and that S.D.C. receive speech and autism evaluations.

On 1 February 2008, DSS filed a juvenile petition alleging that the children were neglected based upon the following reasons: they did not receive proper care, supervision, or discipline from respondents, and they lived in an environment injurious to their welfare. DSS alleged that the family had a history of residential instability, having resided in numerous residences in Catawba, Caldwell, and Burke Counties during the preceding two years. The petition also alleged that the children witnessed a domestic violence incident between respondents in October 2007 and that respondent-mother had not ensured H.A.B.'s school attendance nor obtained an evaluation for S.D.C. The children were left in the home, but respondent-mother was warned not to allow respondent-father in the home. At the 14 February 2008 session of district court, Judge C. Thomas Edwards continued the case and ordered respondent-mother to report any employment to DSS and ensure that the children received any necessary medical care. The children were placed in non-secure custody on 14 February 2008 and were returned to respondent-mother on 21 February 2008.

Judge Edwards held an adjudication and disposition hearing on 10 April 2008 and entered an order on 1 May 2008. In the order, Judge Edwards found the following facts: the family had lived in at least three residences during the school year; the family had been evicted from their current residence; respondent-father was incarcerated from 9 November to 7 December 2007 after being convicted of driving with a revoked license; respondent-mother had failed to ensure H.A.B. attended school; and respondent-mother had failed to schedule speech therapy and autism evaluations for S.D.C. Judge Edwards further found that during the month and a half preceding the hearing, DSS had been unable to locate the family, and H.A.B. had been absent from school.

As to the domestic violence allegation in the juvenile petition, Judge Edwards found the following: on 19 October 2007, there was an alleged incident of domestic violence between respondents in front of the children; respondent-mother had a domestic violence complaint issued; and at the hearing, respondent-mother stated that the incident was "blown out of proportion," but that respondent-father admitted grabbing respondent-mother. Judge Edwards concluded that "[e]ither there was domestic violence involving a gun on or about October 18, 2007, or [respondent-mother] perjured herself in her domestic violence complaint."

Judge Edwards adjudicated the children neglected, granted DSS custody of the children, and allowed supervised visitation for both parents. The trial court further ordered respondents to obtain substance abuse, psychological and domestic violence assessments,

and any recommended treatment; complete parenting classes; maintain a stable residence and employment; and submit to random drug testing.

Judge Edwards entered a review order on 29 July 2008. In the order, he found that respondents had not been forthcoming with information regarding residences and employment, but had maintained contact with DSS social worker Kathy Craig and had attended appointments with service providers. The court ordered DSS to continue making reasonable efforts to reunite the children with respondents. Another review order was entered on 10 September 2008. Judge Edwards found that respondents had been evicted from their residence in Icard, then lived with a friend, and were currently living in a mobile home in Morganton. He also found that neither respondent had completed a domestic violence assessment. Judge Edwards ordered respondents to: (1) schedule psychological and domestic evaluations within 15 days and complete any recommended treatment; (2) maintain a stable residence and employment; (3) provide verification of any employment; (4) submit to random drug testing at DSS's request; and (5) pay support. The court continued custody of the children with DSS.

The next review hearing was held on 23 October 2008. By order filed 17 November 2008, Judge Edwards found the following: respondents resided in a mobile home in Morganton, respondents had not completed a domestic violence assessment nor a psychological evaluation, and neither respondent had made any progress since the last review. The trial court concluded that, because of this lack

of progress, reunification efforts would be futile and not in the children's best interest. The trial court ceased reunification efforts.

Judge Edwards held a permanency planning hearing on 15 January 2009. At the hearing, respondent-mother and respondent-father entered into evidence several documents showing they had each completed parenting classes, substance abuse assessment and domestic violence assessment. In addition, respondent-mother introduced her children's school progress reports while in her care and S.D.C.'s individual education plan while in the care of DSS. Respondent-father also entered into evidence tax returns from 2004, 2005, 2006, and 2007 as well as a November 2008 letter from his employer stating that respondent-father made $200.00 to $250.00 per week cutting trees and doing odd jobs.

By permanency planning order filed 10 February 2010, Judge Edwards noted that he had received documents from the parents and found that "[t]the Court adopts the statements contained in the documents that it has received as its findings and incorporates those documents herein by reference." The court also made findings that respondents had completed their parenting classes, substance abuse assessment, and domestic violence assessments. Judge Edwards next found that respondent-father reported that he worked for a tree service making approximately $250.00 per week and respondent-mother reported that she worked cleaning houses and was an in-home aid, but that her employment history was sporadic.

Judge Edwards further found that the parents were ordered to comply with their case plans in order to facilitate reunification. However, respondents were residing with respondent-mother's father and had previously resided "with an individual who had been convicted for indecent exposure." The court found that respondent-father had "scheduled a psychological evaluation and attended an initial meeting with Dr. Richard Welser, but he failed to complete it." Judge Edwards found that respondent-mother had failed to complete a psychological evaluation. Judge Edwards also found that respondents' "declination to complete psychological evaluations has rendered reunification problematic. They have failed to dedicate the necessary time and energy to rectify the issues that brought the matters to court." Judge Edwards ordered the permanent plan for the children be adoption.

On 12 March 2009, DSS filed a motion to terminate the parental rights of respondents. The motion alleged that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(1) in that respondent-mother and respondent-father had neglected the children and under N.C. Gen. Stat. § 7B-1111(a)(3) in that respondent-mother and respondent-father had willfully failed to pay a reasonable portion of the cost of their care. Pursuant to respondents' request in May 2009, Judge Edwards recused himself and set the termination hearing before Judge J. Gary Dellinger.

Judge Dellinger conducted a hearing on the motion to terminate respondents' parental rights that spanned three court dates: 23 July 2009, 17 September 2009, and 15 October 2009. Evidence was

presented in the form of testimony from DSS foster care social worker Kathy Craig, who had respondents' case from April 2008 until March 2009, and testimony from DSS adoption social worker Alyson Watson, who received the case on 31 March 2009. Judge Dellinger also heard testimony from Lorrie Harris of Burke County Child Support, respondent-mother, and respondent-father. At the end of the termination hearing, respondents asked Judge Dellinger to take judicial notice of the documents each had entered into evidence at the permanency planning hearing. After taking the motion under advisement, Judge Dellinger ruled that he would be "taking judicial notice of the orders that are outstanding and that are in the file," clarifying that he would "base [his] decision on the evidence that was presented in front of [him] at the last hearing and argumetns [*sic*] of counsel and exhibits that were presented in front of [him] the last time."

On 12 November 2009, Judge Dellinger entered an order terminating each respondents' parental rights based upon grounds of neglect. Respondent-mother and respondent-father appeal separately.

I. Standard of Review

Termination of parental rights involves a two-stage process. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). "In the adjudicatory stage, the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111

exists." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002). "If the trial court determines that grounds for termination exist, it proceeds to the dispositional stage, and must consider whether terminating parental rights is in the best interests of the child." *Id.* at 98, 564 S.E.2d at 602. "We review the trial court's decision to terminate parental rights for abuse of discretion." *Id.*

II. Neglect

Both respondents argue that the trial court erred by finding and concluding that sufficient grounds existed to terminate their parental rights based upon a finding that their children were neglected within the meaning of N.C. Gen. Stat. § 7B-101(15). We agree.

The trial court concluded that termination of respondents' parental rights was justified because the children were neglected by respondents. North Carolina General Statute § 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) (2009). 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) (2009).

> Where, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect. This is because requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible. The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*. Although prior adjudications of neglect may be admitted and considered by the trial court, they will rarely be sufficient, standing alone, to support a termination of parental rights, since the petition must establish that neglect exists at the time of hearing. Thus, the trial court must also consider evidence of changed conditions in light of the history of neglect by the parent and the probability of a repetition of neglect.

In re Shermer, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (quotations and citations omitted).

The conditions which led to the removal of the children were domestic violence and residential instability. To support its conclusion that respondents neglected their children, the trial court made the following pertinent findings of fact:

> 5. On April 10, 2008, the minor children were adjudicated to be neglected, due to [S.D.C.]

not having been scheduled for a recommended evaluation for speech therapy and autism, [H.A.B.] having had numerous unexcused absences from school and numerous days tardy, residential instability, and domestic violence in the home.

6. As a result of that adjudication, the Court ordered [respondent-mother] and [respondent-father] to obtain substance abuse, psychological and domestic violence assessments and any recommended treatment, successful completion of parenting classes, maintenance of a stable residence and employment, and random drug testing at the Departments' request.

7. On July 3, 2008, the Court found that [respondent-mother] and [respondent-father] had not been forthcoming with information regarding residences and employment.

8. On August 28, 2008, the Court ordered that [respondent-mother] pay $350 per month directly to the Department for the support of the minor children beginning on September 1, 2008, and that [respondent-father] pay $300 per month directly to the Department for support of his 3 minor children beginning on September 1, 2008. Neither has made any payments, although [respondent-mother] has earned on average $200 per week and admits that she could have paid up to $300 per month, and [respondent-father] has earned on average $200 per week and admits that he could have paid $50-$75 per week.

9. On October 23, 2008, the Court ceased reunification efforts with [respondent-mother] and [respondent-father] due to their failure to comply with their case plans and the Court's previous orders.

10. On January 15, 2009, the Court made adoption the permanent plan for the minor children, concluding that the failure of [respondent-mother] and [respondent-father] to obtain psychological evaluations had rendered reunification problematic. To date, they have failed to obtain such psychological evaluations.

> 11. Since October 23, 2008, when the Court ceased reunification efforts with [respondent-mother] and [respondent-father], they have failed to send any correspondence or gifts to the minor children.
>
> 12. While these matters have been pending, [respondent-mother] and [respondent-father] have continued to demonstrate residential instability. Their employment has also been sporadic.
>
> 13. Due to the failure of [respondent-mother] and [respondent-father] to demonstrate stability and to obtain psychological evaluations and recommended treatment, there is a reasonable probability that the neglect of the minor children would be repeated were the minor children to be returned to them.

Respondent-mother and respondent-father contend that the following findings of fact are not supported by clear, cogent, and convincing evidence: 8, 10, 11, 12, and 13. With respect to findings 8, 10, 12, and 13, we agree.

Respondent-mother challenges finding of fact 8 that she failed to pay child support. During the portion of the termination hearing that took place on 23 July 2009, respondent-mother testified that she had attempted to pay child support, but had not been able to. When asked whether she had made any partial child support payments, the following colloquy ensued:

> A. No, sir. I haven't had a child support order so I don't know what to do with any of that. I have put forth an effort and called to make a child support payment but they couldn't accept any money from me because I didn't have a remittance coupon number to send to Raleigh with any money or on a money order and they wouldn't accept any amount of money from me whatsoever.

> Q. So you're telling this Court that the Department has refused to accept any money from you?
>
> A. I don't know that they have refused but the lady I spoke to said that she couldn't accept any money from me unless I had a remittance coupon from the Child Support Enforcement Agency which I do not have.
>
> Q. Did you ever speak with [social worker Kathy] Craig back here about paying child support?
>
> A. I have asked her, yes.
>
> Q. Did you ever make any payments to her?
>
> A. I didn't know I was supposed to give her money. I thought I was supposed to mail it through child support.
>
> Q. You knew you were under an order from Judge Edwards to pay $350 a month; isn't that correct?
>
> A. I didn't know what I was supposed to do with the child support. Am I supposed to hand her $300 and not know that it gets to my children?

During her testimony, Kathy Craig confirmed that she spoke with respondent-mother about child support, and that she had instructed respondent-mother to "go to the Child Support Enforcement Agency and do the appropriate paperwork and enter into an agreement with them to pay child support." Lorrie Harris of Burke County Child Support testified that the juvenile order entered by Judge Edwards was not enforceable by the child support agency. She also confirmed that if respondent-mother "had come to the clerk's office, cashier or to [her] office to try and make a payment," she could not have accepted it.

On the second day of the hearing, which occurred two months later on 17 September 2009, Harris testified that respondent-mother signed an order agreeing to child support on 13 August 2009, between the first and second days of the termination hearing. According to Harris, the order required respondent-mother to pay $237.00 per month, beginning on 1 August 2009. Harris testified that, as of the hearing on 17 September 2009, respondent-mother had made no payments. However, Harris also admitted that the coupons that the agency had sent to respondent-mother listed an initial due date of 1 October 2009.

Respondent-mother also testified that day, and she testified that she *had* made child support payments pursuant to the 13 August 2009 order. She explained

> I have made two $30 payments a piece with the remittance coupon that I just currently received and I also have two left and I was going to send $30 a piece of each child until I get it caught up and then on 10/01 it's not really in arrears until October 1 so --

She stated that she had sent the payments in the day before (16 September 2009), and she acknowledged that she had not sent the full amount due and that she also owed payments from August and September 2009.

Because the trial court should have focused on whether neglect existed "at the time of the hearing," finding of fact 8 is not supported by clear, cogent, and convincing evidence. Respondent-mother explained that it was not possible for her to make child support payments before 13 August 2009 because of administrative issues beyond her control. This explanation was confirmed by

Lorrie Harris. Respondent-mother also testified that, after signing a child support order on 13 August 2009, she made a child support payment. Accordingly, we hold that finding of fact 8 is not supported by clear, cogent, and convincing evidence.

Both respondents challenge the last sentence in finding of fact 10: "To date they have failed to obtain such psychological evaluations." We agree with respondents that ample evidence was presented at the termination hearing to show that they had received psychological evaluations. At the hearing, social worker Kathy Craig testified that prior to ceasing reunification efforts, DSS made referrals to two psychologists for respondent-mother and respondent-father, but respondents did not follow up with the psychologists. Later in her testimony, Craig acknowledged that "respondent-mother belatedly got a psychological evaluation." Respondent-mother testified that on 26 February 2009, she completed her psychological evaluation at the Catawba Valley Behavioral Health; that she was diagnosed with mild anxiety; that her psychologist's name is Richard Lorenzo, who prescribed Celexa and Ambien to her for sleeping issues; that her psychologist also prescribed one milligram of Clozapine; and that she attends counseling once or twice a month, as requested by her mental health professionals. Respondent-father testified that he obtained a psychological evaluation at Cawtawba Valley Mental Health in March 2009, after the filing of the termination motion. Accordingly, we hold that the finding regarding psychological evaluations was not supported by clear, cogent, and convincing evidence.

Respondents next challenge finding of fact 11 which states that they had failed to send any correspondence or gifts to the children since October 2008. Social worker Kathy Craig testified that respondents did not send any presents or cards. Social worker Alyson Watson testified that, while she had the case, respondents did not send presents to their children. We hold that finding of fact 11 is supported by clear, cogent, and convincing evidence.

Respondent-mother also challenges finding of fact 12. She first asserts that she and respondent-father have demonstrated residential stability. At the termination hearing, both respondents testified that they had been living together in the same home since November 2008. DSS presented evidence through testimony of social worker Craig and its October 2009 court report that, from April 2008 until approximately October 2008, respondent-parents lived in six different places. DSS, however, did not present any evidence regarding respondents' residential stability after October 2008. Thus, the evidence shows that, at the time of the termination hearing, respondents maintained a single residence in Hildebran for ten months. We hold that the trial court's finding that "[w]hile these matters have been pending, [respondents] have continued to demonstrate residential instability" is not supported by clear, cogent, and convincing evidence.

Respondent-mother further asserts that the trial court's finding that "their employment has also been sporadic" in finding of fact 12 was not supported by the evidence. Social worker Craig

testified that during the period of time she was involved in the case, respondent-mother was not working and respondent-father "reportedly worked for Independent Tree Contractors." Respondent-mother testified that, at the time of the hearing, she was cleaning houses, that she has been cleaning houses since 2004, and that she makes an average of $200.00 per week. In finding of fact 8, the trial court found that respondent-mother "has earned on average $200 per week." Respondent-father testified that he has been working continuously for a tree service; that he files "self-employment," but works for his uncles; and that he made on average $200.00 a week. Accordingly, we hold that the trial court's finding that respondents' employment was sporadic was not supported by clear, cogent, and convincing evidence. We note also that the finding is contrary to finding of fact 8.

Finally, respondents challenge finding of fact 13, which states that there is a reasonable probability of neglect because of respondents' failure to demonstrate stability and to obtain psychological evaluations and recommended treatment. As noted above, respondent-mother and respondent-father obtained psychological evaluations in February and March 2008, respectively. Further, respondents had lived in the same house since November 2008. We also note that the children's residential stability while in the custody of DSS consisted of four different placements, sometimes apart from one another, until November 2008, when the four children were finally housed together. Accordingly, we hold

that finding of fact 13 is not supported by clear, cogent, and convincing evidence.

The remaining findings of fact do not support the trial court's conclusion that grounds exist to terminate the parental rights of respondents based upon neglect. Accordingly, we reverse the trial court's order terminating respondent-mother's and respondent-father's parental rights.

II. Admissibility of prior documents

Respondent-mother and respondent-father both argue that Judge Dellinger erred by refusing to take judicial notice of documents entered into evidence at the permanency planning hearing and that they were prejudiced by that failure.

"The statutes lead to but one conclusion: In juvenile proceedings, trial courts may properly consider all written reports and materials submitted in connection with said proceedings," even if those materials were not admitted into evidence. *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003) (quotations and citations omitted). The question, then, is whether Judge Dellinger abused his discretion by declining to take judicial notice of exhibits admitted during the permanency planning hearing. The exhibits in question included respondent-father's tax returns, which supported his testimony that he has had regular employment, and certificates showing that both respondents completed psychological and domestic violence evaluations.

Respondent-mother contends that Judge Dellinger failed to exercise his discretion. She asserts that Judge Dellinger improperly believed that he did not have the authority to take judicial notice of the documents entered in the prior hearing and not at the termination hearing. Respondent-mother argues that Judge Dellinger was under a misapprehension of the law and, therefore, the termination order should be reversed and remanded for the trial court to exercise its discretion. *See Robinson v. General Mills Restaurants*, 110 N.C. App. 633, 637, 430 S.E.2d 696, 699 (1993) ("Where a trial court, under a misapprehension of the law, has failed to exercise its discretion regarding a discretionary matter, that failure amounts to error which requires reversal and remand."). We interpret Judge Dellinger's statements during the hearing as demonstrating that he did not believe that the law forbade him from taking judicial notice of the exhibits; he merely elected not to consider them. On 17 September 2009, the following colloquy occurred at the end of court:

> The Court: . . . I've heard evidence mentioned that I've introduced the tax returns, somebody's employment and I've introduced his psychological and his domestic violence completions and I do see packages that say Judge's notes with Judge Edwards' notes and exhibits but on the one hand I'm looking at orders and then I'm hearing the termination of parental rights motion and it appears to be that there is some conflict. So I want to hear from the attorneys on that.
>
> Are you saying, [respondent-father's attorney], that some of these other hearings maybe the July of '08 and the November '08 and the February of '09 hearings, that evidence was introduced but it's not reflected in the Court's orders or that the Court differed from

> your interpretation? Do you see what I'm saying?
>
> [Respondent-mother's attorney]: Your Honor, I know exactly what you're saying.
>
> The Court: It's looks like I'm bound by these orders and the evidence that I'm hearing in these two hearings --
>
> [Respondent-mother's attorney]: Okay. Perhaps what we should do is and of course judges do this anyway, you take judicial notice of the complete file. I guess my explanation for it is that, that was the neglect case, this is now a TPR, different statute, different stuff and we want to show that even after Judge Edwards found no reunification we want to like reintroduce those things that are in the file that they did do to show that there shouldn't be a termination, that there was not neglect.
>
> * * *
>
> The Court: Well, I think since it's 5:00 and I was a little confused at the presentation of your evidence and now I understand where it is, I think I'm just going to take it under advisement . . . .

The hearing resumed on 15 October 2009, and the parties and Judge Dellinger took up the matter of respondents' exhibits:

> [Respondent-father's attorney]: Your Honor, if I could just put on the record, I believe that at the close of receiving the evidence that you had indicated that you might take a position or that you might refer back to the case file. I don't if Your Honor has decided whether or not to do that. If Your Honor has decided not to do then I would just need an objection for the record and ask that the entire case file and the notes from the previous judge involved in this case be received and be reviewed.
>
> The Court: All right. Then I need to address that becuase [*sic*] that was my issue for not issuing my decision at the last court hearing. I had noticed that Judge Edwards had this case until approximately a month ago. I believe

> that he had heard the issue as to the one father, maybe some relinquishments and then the motions that Judge Edwards should not hear this part of the termination of parental rights. Therefore, it was given to me and after we had evidence presented I noticed several manilla envelopes that said Judge's notes, [parties' surnames], Judge Edwards' notes and exhibits. So I stopped to see whether or not I should look at those things because I had not.
>
> *The Court will not look at those matters that have been heard by Judge Edwards before me other than taking judicial notice of the orders that are outstanding and that are in the file. The Court will base this decision on the evidence that was presented in front of me at the last hearing and argumetns* [*sic*] *of counsel and exhibits that were presented in front of me the last time.* So I'll note your exception as to the - -
>
> [Respondent-father's attorney]:: Thank you, Your Honor.
>
> The Court: -- things that Judge Edwards saw and that I did not review.
>
> [Respondent-father's attorney]:: Thank you, Your Honor, yes I will renew that objection.

(Emphasis added.)

Respondent-father also argues that Judge Dellinger abused his discretion by not taking judicial notice of the documents introduced at the permanency planning hearing. He has not offered any authority for the underlying assumption that a trial court *must* take judicial notice of such documents in the adjudicatory phase of a termination hearing, only that a trial court *may* do so. Regardless, respondents were not prejudiced by the omission because the contents of the documents were discussed during the hearing and are reflected in witness testimony. As noted above, it appears

that Judge Dellinger disregarded both the exhibits in question and the witness testimony discussing the contents of those exhibits, which accounts for the unsupported findings of fact in his order. Omitting the exhibits did not prejudice respondents; Judge Dellinger had ample evidence in the form of witness testimony to find the facts supported by the disregarded exhibits.

For the foregoing reasons, we reverse the order of the trial court, and we remand for further proceedings consistent with this opinion.

Reversed and remanded.

Judges WYNN and HUNTER, JR., Robert N., concur.

Report per Rule 30(e).