

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-644

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

IN RE: PLAYER,
a minor child
DOB: 2/20/97

Randolph County
No. 01 J 78

Appeal by respondent from order filed 27 November 2001 by Judge Michael A. Sabiston in Randolph County District Court. Heard in the Court of Appeals 30 December 2002.

Scott N. Dunn for petitioner appellee.

Elizabeth A. Hansen for respondent appellant.

GREENE, Judge.

Dennis Alexander Player (Respondent) appeals an order filed 27 November 2001 terminating his parental rights over his daughter (the child) born 20 February 1997 of his marriage to Tressa Fox (Petitioner).

On 5 April 2001, following a jury trial during which Respondent testified on his own behalf, Respondent was convicted of crime against nature, sexual activity by a substitute parent, taking indecent liberties with a child, and first-degree rape of another juvenile, Petitioner's older daughter, who resided in the marital home with Petitioner and Respondent. Thereafter, Petitioner filed a petition to terminate Respondent's parental

rights to the child on 25 April 2001. At the termination hearing, Respondent moved the trial court for a continuance of the matter pending the appeal of his criminal convictions. The trial court denied the motion. The hearing was held, and Respondent chose not to testify. The trial court then entered an order on 27 November 2001 in which it terminated Respondent's parental rights based on his neglect and abandonment of the child.

The issues are whether: (I) the trial court committed prejudicial error in denying Respondent's motion for a continuance of the termination hearing and (II) Respondent preserved his assignment of error that the trial court abused its discretion in terminating Respondent's parental rights.

I

Respondent contends the trial court abused its discretion by denying his motion to continue the hearing until after the conclusion of his appeal of the criminal convictions. The statute governing continuances in juvenile court provides:

The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

N.C.G.S. § 7B-803 (2001). Respondent submits that if the hearing had been delayed until after the conclusion of his criminal appeal,

he could have testified and offered additional evidence at the termination hearing. Respondent argues the denial of the motion forced him to choose either to testify at the termination hearing and jeopardize his appeal of the criminal case or not to testify and jeopardize his parental rights.

A motion to continue is addressed to the discretion of the trial court and will not be disturbed in the absence of an abuse of discretion. *State v. Beck*, 346 N.C. 750, 756, 487 S.E.2d 751, 755 (1997). When a motion to continue is based upon a constitutional right, the motion presents a question of law, fully reviewable on appeal. *State v. Jones*, 342 N.C. 523, 530-31, 467 S.E.2d 12, 17 (1996). Regardless of whether or not the motion raises a constitutional issue, the denial of the motion does not constitute reversible error unless the movant shows the denial was not only erroneous but resulted in prejudice to him. *State v. Walls*, 342 N.C. 1, 24-25, 463 S.E.2d 738, 748 (1995).

In this case, Respondent failed to make any showing how the trial court's denial of his motion for a continuance, resulting in his "inability" to testify, was in any way prejudicial in light of the fact Respondent already testified on his own behalf at his criminal trial. As such, this assignment of error is overruled.

II

In his next assignment of error, Respondent contends the trial court abused its discretion by terminating his parental rights. See *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984) (upon finding grounds during the adjudication phase to terminate

parental rights, the trial court enters the disposition phase and engages in the discretionary analysis of whether the best interests of the juvenile require that the parental rights not be terminated); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Respondent's brief, however, focuses on whether the trial court's findings are supported by the evidence and whether the findings in turn support the trial court's conclusions. See *Montgomery*, 311 N.C. at 110-11, 316 S.E.2d at 252-53 (in reviewing the adjudication phase of a termination hearing, the appellate court determines whether the trial court's findings are supported by clear, cogent, and convincing evidence and whether the findings support the conclusions of law). This is a completely separate analysis from the abuse of discretion standard used for review of the disposition phase. Accordingly, Respondent has abandoned his assignment of error, and this Court is without authority to review the remaining arguments raised in his brief. See N.C.R. App. P. 10(a), 28(a).

Affirmed.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).