

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-70

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

IN THE MATTER OF:
H.P.

Greene County
No. 03 JA 32

Appeal by respondent mother from order entered 8 August 2005 by Judge R. Les Turner in Greene County District Court. Heard in the Court of Appeals 13 November 2006.

E.B. Borden Parker, for petitioner-appellee Greene County Department of Social Services.

Lisa Skinner Lefler, for respondent-appellant.

TYSON, Judge.

C.W. ("respondent") appeals from a dispositional order entered decreeing the permanent plan for her daughter, H.P., to be guardianship with a relative and granting "reasonable and liberal visitation" for respondent with H.P. in the discretion of the guardian. We vacate and remand.

I. Background

H.P. was born to respondent and her father, Z.P., on 26 July 1999. On 22 September 2003, H.P. and her half-brother were removed from their parents' home. The Greene County Department of Social Services ("DSS") alleged H.P. was neglected due to living in an injurious environment because her half-brother was disciplined with

a belt by both parents. DSS also alleged a history of domestic violence between respondent and Z.P. in the petition. Respondent admitted H.P. was a neglected juvenile after the petition was filed.

A memorandum of agreement and consent order was signed by all parties on 24 September 2003 and filed on 25 September 2003. Respondent agreed, among other things, to: (1) attend mental health counseling; (2) participate in domestic violence education; (3) maintain a suitable residence; (4) attend parenting and nurturing classes; (5) attend anger management classes; (6) participate in a nutrition education class; and (7) supervised weekly visitation with the children at DSS. Wayne County DSS scheduled a home study on the home of Pearl B. ("Pearl"), H.P.'s paternal aunt, located in Goldsboro, North Carolina.

Respondent was present at a review hearing on 13 October 2003. In an order entered on 18 November 2003, custody of H.P. was continued with DSS. The conditions contained in the prior order were continued.

A further review hearing was held on 10 November 2003 and the trial court entered an order on 10 December 2003. Respondent provided the trial court with her sister's name and contact information in Louisiana for possible relative placement. The trial court ordered a home study review of the home of respondent's sister. The trial court also found respondent had: (1) begun a psychological evaluation; (2) attended anger management classes; and (3) attended parenting classes. The trial court also found respondent had missed visitation with H.P. once "because she was

with the juvenile" (sic), a second time because respondent was in the hospital, and on a third time due to transportation problems. Respondent's supervised visitation with H.P. was continued.

A review hearing was conducted on 23 February 2004. In an order entered on 12 April 2004, findings of fact showed respondent had attended domestic violence classes, had moved to Johnston County, and had completed parenting classes. The trial court ordered custody of H.P. to be placed with Pearl. Pearl was granted discretion over when respondent could have supervised visitation with H.P. Respondent objected to H.P.'s placement with Pearl because H.P. would be separated from her half-brother.

In an order entered on 7 May 2004 after a review hearing on 12 April 2004, the trial court ordered H.P. to remain in Pearl's custody. Respondent was granted continued supervised visitation with H.P. in Pearl's discretion.

In an order entered on 14 September 2004 after a review hearing on 26 July 2004, the trial court: (1) found respondent had moved to Louisiana where she lived with her son's father; (2) found respondent had violated a previous order by having a male in her home while H.P. visited in July 2004; (3) continued custody of H.P. with Pearl; and (4) allowed respondent unsupervised visitation with H.P. in Pearl's discretion as long as respondent did not remove H.P. from Wayne County.

A permanency planning hearing was held on 18 October 2004, and an order was entered 10 January 2005. Respondent requested a home study review of her home in Louisiana. The trial court concluded

and ordered that the permanent plan for H.P. was relative placement with Pearl.

During a permanency planning review hearing held on 14 March 2005, DSS requested the permanent plan for H.P. be changed to guardianship with a relative. The results of the study on respondent's home in Louisiana had not been received. On 26 May 2005, the trial court ordered custody be continued with Pearl and changed H.P.'s permanent plan to guardianship with Pearl.

Another permanency planning review hearing was conducted on 27 June 2005. After setting out findings of fact, the trial court: (1) determined the best interest of H.P. would be promoted by continued custody with Pearl; (2) discontinued further review hearings because H.P. had remained in Pearl's custody for over a year and the permanent plan for H.P. was guardianship with Pearl; (3) determined respondent should have "reasonable and liberal visitation" with H.P. under Pearl's supervision; and (4) relieved and released the guardian *ad litem* and attorney advocate. Respondent appeals from this order entered on 8 August 2005.

II. Issues

Respondent argues the trial court erred by: (1) failing to make required findings of fact and granting Pearl discretion regarding her visitation plan with H.P. and (2) ceasing reunification efforts without making findings of fact required by N.C. Gen. Stat. § 7B-507(b).

III. Visitation

The trial court's order decrees that respondent "may have

reasonable and liberal visitation with the juvenile, under the supervision of Pearl . . . in North Carolina." Respondent contends the trial court's order should be reversed because the visitation plan failed to provide for a minimum outline of visitation. We agree.

N.C. Gen. Stat. § 7B-905(c) (2005) provides, in pertinent part:

Any dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, or under which the juvenile's placement *is continued outside the home shall provide for appropriate visitation* as may be in the best interests of the juvenile and consistent with the juvenile's health and safety.

(Emphasis supplied).

"An appropriate visitation plan *must* provide for a minimum outline of visitation, such as the time, place, and conditions under which visitation may be exercised." *In re E.C.*, 174 N.C. App. 517, 523, 621 S.E.2d 647, 652 (2005) (emphasis supplied) (citing *In re Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971)). The trial court may grant some discretion to the person in whose custody the child is placed to temporarily suspend visitation, upon notice to the court, if the child's health or safety is in danger. *Id.*; see *Woncik v. Woncik*, 82 N.C. App. 244, 250, 346 S.E.2d 277, 281 (1986) (holding that the trial court did not delegate its judicial authority by including in its custody order a provision allowing the child's custodian, upon notice to the court, to suspend a non-custodial parent's visitation privilege, pending a court hearing, if the non-custodial parent

during visitation engaged in behavior detrimental to the child's welfare); *compare* N.C. Gen. Stat. § 7B-905(c) (allowing termination or suspension of visitation by the director of DSS upon "a good faith determination that the visitation plan may not be in the best interests of the juvenile or consistent with the juvenile's health and safety").

The trial court's order failed to make required findings of fact regarding the time, place, and conditions for respondent's visitation with H.P. by placing discretion with Pearl over respondent's visitation with H.P. The trial court's visitation plan is vacated.

IV. Conclusion

The trial court's order failed to provide a "minimum outline of visitation" for respondent's visitation with H.P. *In re E.C.*, 174 N.C. App. at 523, 621 S.E.2d at 652. We vacate the trial court's visitation plan and remand for further proceedings consistent with this opinion. In light of our decision, we do not reach respondent's remaining assignment of error. Upon remand, respondent may move to present any additional evidence bearing on the issue of custody or visitation. N.C. Gen. Stat. § 7B-906(b) (2005) ("The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.").

Vacated and Remanded.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).