

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-883

NORTH CAROLINA COURT OF APPEALS

Filed: 18 December 2007

IN THE MATTER OF:

R.D.Q.

Stanly County
No. 03 JA 61

Appeal by respondent mother from order entered 23 May 2007 by Judge Kevin M. Bridges in Stanly County District Court. Heard in the Court of Appeals 26 November 2007.

Jacqueline R. DeSantis, competition-appellee Stanly County Department of Social Services.

Vita A. Pastorini, for Guardian ad Litem.

Janna D. Allison, for respondent-appellant.

MARTIN, Chief Judge.

Respondent appeals from the trial court's order adjudicating her minor daughter R.D.Q. a neglected juvenile and placing R.D.Q. with respondent's parents. For the reasons stated below, we reverse and remand.

The Stanly County Department of Social Services (DSS) has been involved with respondent and R.D.Q. since April 2002 when DSS received a report of respondent's mentally unstable behaviors after giving birth to R.D.Q. Respondent and R.D.Q. were allowed to leave

the hospital upon written confirmation that respondent and R.D.Q. would receive constant supervision by R.D.Q.'s maternal grandparents. DSS substantiated neglect of R.D.Q. in June 2002 and subsequently entered into a case plan with respondent and L.Q., the father of R.D.Q. DSS filed a juvenile petition on 28 May 2003, alleging that R.D.Q. was an abused and neglected juvenile. The petition alleged that respondent had squeezed and shaken R.D.Q. while trying to force-feed her, and that respondent kicked her mother when the maternal grandfather physically removed R.D.Q. from respondent's care. DSS took nonsecure custody of R.D.Q.

After holding a hearing on 30 October 2003, the trial court adjudicated R.D.Q. neglected and ordered custody to remain with DSS with placement in the home of R.D.Q.'s maternal grandparents. The trial court also ordered respondent to comply with a Family Services Plan, complete anger management classes, and complete a full psychological evaluation. The trial court conducted review hearings in January and April 2004, and subsequently placed R.D.Q. with respondent and L.Q. on a trial basis in July 2004. In October 2004, the trial court found that the conditions that led to the placement of R.D.Q. with DSS had been rectified, granted legal and physical custody of R.D.Q. to respondent and L.Q., and relieved DSS of further involvement. Respondent and L.Q. separated in 2005, and respondent and R.D.Q. moved into the home of the maternal grandparents.

On 31 October 2006 DSS filed a second juvenile petition alleging that R.D.Q. was neglected and dependent. The petition

alleged that respondent had stopped taking her medication for her mental health conditions, that respondent physically attacked a DSS social worker and a hospital social worker following the birth of her second child, that respondent was involuntarily committed to the psychiatric unit of the hospital, and that respondent told her parents she would "disappear" with R.D.Q. The petition also alleged that L.Q. was living with his mother in Cleveland, North Carolina, and visited R.D.Q. every few months. The trial court entered an order giving DSS nonsecure custody of R.D.Q., with placement in the home of the maternal grandparents. The trial court subsequently continued nonsecure custody.

On 15 March 2007, respondent signed a Memorandum of Judgment/Order in which she stipulated to neglect. The Memorandum of Judgment/Order further provided that the parties requested an immediate disposition hearing. R.D.Q.'s father, L.Q., also signed the Memorandum of Judgment/Order. Based upon the Memorandum of Judgment/Order, the trial court adjudicated R.D.Q. a neglected juvenile and immediately proceeded with the dispositional hearing. Respondent and L.Q. testified at the hearing. The same day, the trial court signed a Supplemental Custody Order granting legal custody of R.D.Q. to her maternal grandparents and thereafter entered an Adjudication Hearing and Disposition Hearing Order. In its adjudication and disposition order, the trial court made the following pertinent findings of fact:

7. That the Juvenile is nearly five years old, and has spent the vast majority of her life in the home of her maternal grandparents . . . , and under their care and supervision.

That the home of [the maternal grandparents] is a Court approved and safe home for the Juvenile and that she has been provided with proper care and supervision while in their home, custody and care.

8. That the last custody order of this Court concerning the Juvenile returned custody of the Juvenile to her parents. That within two months of this Court's returning of custody of the Juvenile to her parents, they requested the maternal grandparents to come and take the Juvenile into their home and care for her, while they continued to reside together in a different home. That the Juvenile's maternal grandparents assumed custody of the Juvenile, and since that time the Juvenile has mainly lived in her maternal grandparent[s'] home.

. . .

10. That the Juvenile's mother resides in her parent[s'] home with the Juvenile and has done so for a significant period of time. That the Juvenile's mother has no intent to move from her parent's home and her parents have expressed no intent for her not to continue to reside with them. That the normal pattern of the Juvenile's maternal grandparent[s'] home is that one of the grandparents is in the home at all times.

. . .

12. That the Juvenile's mother has a long standing mental health condition which requires daily medication for her continued mental stability. That during her current residency with her parents, the Juvenile's mother would on certain days fail to take this medication, despite the prompting of her parents, and become irritated, angry aggressive and failed to properly care for and supervise the Juvenile. That during those times the Juvenile's maternal grandparents would care for and supervise the Juvenile to the extent the Juvenile's mother would allow them.

. . .

14. That the Juvenile's return to the home of either of her parents is contrary to her health, safety, welfare and best interests.

15. That the Juvenile[']s Permanent Plan is custody to a relative, [maternal grandparents]. That this is the best plan of care to achieve a safe, permanent home for the Juvenile within a reasonable period of time, and that the Court's immediate custodial placement of the Juvenile [in] her maternal grandparent[s'] home will achieve the permanent plan for the Juvenile.

16. That it is in the best interests of the Juvenile that she be placed in the immediate custody of her maternal grandparents . . . , with this custodial placement giving the Juvenile an immediate safe and permanent home. That for at least a one (1) year period of time the Juvenile has resided in the home of her maternal grandparents. That the Juvenile's custodial placement with her maternal grandparents will not change the current established custodial pattern of the Juvenile and the Juvenile's mother's residency, or of the Juvenile's mother's ability to assist with the care and supervision of the Juvenile. That due to this fact, this Court finds no reason to delay the Juvenile's custodial placement with her maternal grandparents or the permanency of the Juvenile in their home.

. . .

18. That due to this Court's custodial placement of the Juvenile in her maternal grandparent[s'] home, the Juvenile is no longer in need of services from the Department or her Guardian ad Litem, that their involvement would serve no further useful purpose, and it is in this Juvenile's best interests that the Department and her Guardian ad Litem be relieved of further efforts in this matter.

Based on these findings, the trial court concluded that it was in the best interest of R.D.Q. to place her in the custody of her maternal grandparents, with whom respondent resided. The trial

court relieved DSS and the Guardian ad Litem of further efforts and ceased its jurisdiction of the matter. Respondent appeals.

Respondent argues that the trial court erred by ceasing its jurisdiction, relieving DSS of its involvement, and entering a permanent plan for R.D.Q. in the disposition order. We agree.

N.C.G.S. § 7B-905(c) states that "[a]ny dispositional order shall comply with the requirements of G.S. 7B-507." N.C. Gen. Stat. § 7B-905(c) (2005). N.C.G.S. § 7B-507(c) provides:

At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7B-907 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

N.C. Gen. Stat. § 7B-507(c) (2005). N.C.G.S. § 7B-907(a) states:

In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906.

N.C. Gen. Stat. § 7B-907(a) (2005).

Further, "[t]he purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." *Id.* This Court has held that ". . . N.C. Gen. Stat. §§ 7B-507 and 907 do not permit the trial court to enter a permanent plan for a juvenile during disposition[.]" *In re D.C.*, ___ N.C. App. ___, ___, 644 S.E.2d 640, 646-47 (2007). In *In re D.C.* the trial court

adjudicated D.C. neglected, entered a disposition ceasing reunification efforts, and appointed permanent legal guardians. *Id.* at ____, 644 S.E.2d at 642. This Court held that the respondent mother did not have the statutorily required notice that the trial court would consider a permanent plan for D.C., and therefore remanded the matter for a permanency planning hearing and entry of a permanency planning order containing findings as required by N.C. Gen. Stat. § 7B-907. *Id.* at ____, 644 S.E.2d at 646-47.

Here, the trial court relieved DSS and the Guardian ad Litem of further efforts and ceased its jurisdiction. The trial court also entered a permanent plan for R.D.Q. when it made the following findings:

15. That the Juvenile[']s Permanent Plan is custody to a relative, [maternal grandparents]. That this is the best plan of care to achieve a safe, permanent home for the Juvenile within a reasonable period of time, and that the Court's immediate custodial placement of the Juvenile [in] her maternal grandparent[s'] home will achieve the permanent plan for the Juvenile.

16. That it is in the best interests of the Juvenile that she be placed in the immediate custody of her maternal grandparents . . . , with this custodial placement giving the Juvenile an immediate safe and permanent home. That for at least a one (1) year period of time the Juvenile has resided in the home of her maternal grandparents. That the Juvenile's custodial placement with her maternal grandparents will not change the current established custodial pattern of the Juvenile and the Juvenile's mother's residency, or of the Juvenile's mother's ability to assist with the care and supervision of the Juvenile. That due to this fact, this Court finds no reason to delay the

Juvenile's custodial placement with her maternal grandparents or the permanency of the Juvenile in their home.

. . .

18. That due to this Court's custodial placement of the Juvenile in her maternal grandparent[s'] home, the Juvenile is no longer in need of services from the Department or her Guardian ad Litem, that their involvement would serve no further useful purpose, and it is in this Juvenile's best interests that the Department and her Guardian ad Litem be relieved of further efforts in this matter.

Like the respondent in *In re D.C.*, respondent did not have the statutorily required notice that the trial court's order entered after the dispositional hearing would be permanent. Accordingly, we remand for a permanency planning hearing and entry of an order containing all findings of fact in accordance with N.C.G.S. § 7B-907.

Reversed and remanded.

Judges MCCULLOUGH and BRYANT concur.

Report per Rule 30(e).