

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-837

Filed: 20 June 2017

Rockingham County, Nos. 15 JA 97-98

IN THE MATTER OF: A.K. and A.K.

Appeal by respondent-mother from orders entered 5, 6, and 11 May 2016 by Judge Christopher A. Freeman in Rockingham County District Court. Heard in the Court of Appeals 25 May 2017.

Cardwell & Cardwell, by V. Elliott Cardwell, Jr., for petitioner-appellee Rockingham County Department of Social Services.

Assistant Appellate Defender Annick Lenoir-Peek, for respondent-appellant mother.

McGuireWoods LLP, by Joshua D. Davey and Mary K. Grob, for Guardian ad Litem.

CALABRIA, Judge.

Respondent-mother appeals from orders granting custody of her minor children “Amy” and “Avery” (collectively, “the children”)¹ to their father, terminating the juvenile court’s jurisdiction, and converting the case into a civil custody action

¹ The parties have stipulated to pseudonyms for the minor children pursuant to N.C.R. App. P. 3.1(b) (2015).

under Chapter 50 of the North Carolina General Statutes. We affirm in part and dismiss in part.

I. Factual and Procedural Background

On 19 June 2015, the Rockingham County Department of Social Services (“DSS”) filed a petition alleging that Amy and Avery were neglected and dependent juveniles. According to the petition, DSS alleged that respondent-mother had recently been arrested for driving while impaired, that she had been fired from her job due to an alcohol problem, and that the staff at Amy and Avery’s daycare had noticed that respondent-mother reeked of alcohol when she was transporting the children. DSS also alleged that it was not safe to leave Amy and Avery in respondent-mother’s care due to the severity of her alcohol problem and that respondent-mother had no alternative placement for the children while she sought treatment. Amy and Avery were placed in nonsecure custody with DSS.

On 30 December 2015, the trial court entered an adjudication order concluding that Amy and Avery were neglected and dependent juveniles. The same day, the court entered a dispositional order which left the children in the custody of DSS and awarded respondent-mother supervised visitation once per month. The trial court also ordered respondent-mother to continue working on her case plan goals. Respondent-mother appealed the orders to this Court, and on 1 November 2016, this

Court issued an unpublished opinion affirming both orders. *In re A.K. & A.K.*, ___ N.C. App. ___, 792 S.E.2d 192 (2016) (unpublished).

While the appeal was pending, the trial court continued to conduct permanency planning hearings. On 25 February 2016, the court conducted a custody review and permanency planning hearing, where it received evidence regarding placement of the children with either their elder sister or their father. On 5 May 2016, the court entered an order, based upon the 25 February 2016 hearing, granting custody of the children to their father “[u]pon approval of [the father]’s criminal background check[.]” The order also indicated that the trial court’s juvenile court jurisdiction would be terminated “upon entry of this Order and the Chapter 50 Custody Order[.]”

On 5 May 2016, the trial court conducted another custody review and permanency planning hearing. DSS informed the court that the father’s criminal record check had been completed and that he was approved for placement. On 6 May 2016, the trial court entered an order granting the father legal and physical custody of the children. The order also terminated the juvenile court’s jurisdiction and converted the case into a civil custody action in accordance with N.C. Gen. Stat. § 7B-911.

On 11 May 2016, the trial court entered another order based upon the 5 May 2016 hearing. The order also purported to grant custody of the children to their father and indicated that “[j]uvenile [c]ourt jurisdiction . . . shall terminate upon entry of

the Chapter 50 Custody Order[.]” Respondent-mother filed timely notice of appeal from the 5, 6 and 11 May orders.

II. Termination of Juvenile Court Jurisdiction

Respondent-mother argues that the trial court erred by terminating its jurisdiction over the juvenile case while her appeal from the neglect and dependency adjudication and disposition was still pending. We disagree.

The authority of the trial court to act during a pending appeal is controlled by N.C. Gen. Stat. § 7B-1003:

(b) Pending disposition of an appeal, unless directed otherwise by an appellate court . . . the trial court shall:

(1) Continue to exercise jurisdiction and conduct hearings under this Subchapter with the exception of Article 11 of the General Statutes; and

(2) Enter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-1003(b) (2015). Thus, the trial court continues to possess jurisdiction over a juvenile matter and may address and modify custodial arrangements, if such action is in the child’s best interests, while an appeal is pending. *See In re M.I.W.*, 365 N.C. 374, 377, 722 S.E.2d 469, 472 (2012) (“Given the unique nature of the Juvenile Code, with its overarching focus on the best interest of the child, it is not surprising that the General Assembly recognized that the needs of the child may change while legal proceedings are pending on appeal”).

Respondent-mother contends that although the statute permits the court to “enter orders to protect a child[,]” it should not be read to allow the trial court “to divest itself of jurisdiction.” She asserts that, without this restriction, the trial court would be allowed “to moot an appeal through strategic timing of the entry of an order terminating jurisdiction.” However, respondent-mother’s interpretation cannot be reconciled with the plain language of the statute. Her restrictive reading of the statute would interfere with the trial court’s ability to address changing circumstances and “[e]nter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.” N.C. Gen. Stat. § 7B-1003(b)(2).

N.C. Gen. Stat. § 7B-911(a) (2015) specifically authorizes a trial court in juvenile cases to “determine whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7.” The statute sets out the findings required in order to terminate jurisdiction in the juvenile proceeding and award custody of the child to a parent under Chapter 50. N.C. Gen. Stat. § 7B-911(c). Respondent-mother does not contend that the trial court’s order lacks any of these required findings, and our review of the order reveals that it fully complies with the statute. Moreover, the trial court’s order was clearly an “order[]

affecting the custody or placement of the juvenile” and thus, was authorized by N.C. Gen. Stat. § 7B-1003.

We also do not agree with respondent-mother that the trial court’s order effectively mooted her appeal from the adjudication order.² Our Supreme Court has recognized that “a parent may reasonably expect collateral legal consequences of an adverse nature to result from an adjudication of his or her minor child as neglected.” *In re A.K.*, 360 N.C. 449, 454, 628 S.E.2d 753, 756 (2006) (internal quotation marks and citation omitted). Thus, we hold that the trial court acted within its authority when it terminated jurisdiction pursuant to N.C. Gen. Stat. § 7B-911 and entered the civil custody order pursuant to Chapter 50 while respondent's appeal of the adjudication order was pending.

III. 11 May 2016 Order

Respondent-mother argues that the trial court lacked jurisdiction to enter its 11 May 2016 juvenile order after it terminated its juvenile jurisdiction in its 6 May 2016 order. We are unable to review this argument because we conclude we lack jurisdiction over the 11 May 2016 order.

Appeals in juvenile cases are governed by N.C. Gen. Stat. § 7B-1001(a) (2015), which lists the six types of juvenile orders that may be appealed to this Court. In the instant case, respondent-mother’s brief asserts that her appeal of the trial court’s

² We note that while the appeal was pending, respondent-mother’s counsel did not assert to this Court that the appeal had become moot after entry of the challenged orders.

three orders was based on N.C. Gen. Stat. § 7B-1001(a)(4), which permits appeal from “[a]ny order, other than a nonsecure custody order, that changes legal custody of a juvenile.” However, at the time the 11 May 2016 order was entered, the trial court’s 5 and 6 May 2016 orders had already granted custody of the children to their father. Thus, regardless of whether the trial court retained jurisdiction to enter the 11 May 2016 order, the order did not “change legal custody of [the] juvenile[s],” and therefore, it was not appealable under N.C. Gen. Stat. § 7B-1001(a). Accordingly, we dismiss respondent-mother’s appeal from this order.

IV. Conclusion

Pursuant to N.C. Gen. Stat. § 7B-1003(b)(2), the trial court is permitted to terminate its jurisdiction and convert a juvenile case into a civil custody case in accordance with N.C. Gen. Stat. § 7B-911 while the appeal of a related juvenile order is pending. This Court lacks jurisdiction over the trial court’s 11 May 2016 order because that order did not change the legal custody of the children. The trial court’s 5 and 6 May 2016 orders are affirmed. Respondent-mother’s appeal from the 11 May 2016 order is dismissed.

AFFIRMED IN PART AND DISMISSED IN PART.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).