

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-41

Filed: 5 July 2017

New Hanover County, No. 16 JA 117

IN THE MATTER OF: C.B

On certiorari review of order entered 26 September 2016 by Judge J.H. Corpening II in New Hanover County District Court. Heard in the Court of Appeals 7 June 2017.

Regina F. Floyd-Davis for petitioner-appellee New Hanover County Department of Social Services.

Ellis & Winters LLP, by Steven A. Scoggan, for guardian ad litem.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for respondent-appellant father.

ELMORE, Judge.

We allowed respondent’s petition for writ of certiorari to determine whether the trial court exceeded its statutory authority at a permanency planning hearing by ordering DSS to cease reunification efforts between respondent and his minor child. The 2015 amendments to the Juvenile Code indicate that a trial court may direct that reunification efforts “shall not be required” but may not explicitly order that efforts “shall cease.” Because DSS requested that it be relieved from reunification efforts at

the hearing, however, respondent has failed to show prejudice from the court's improper directive. We affirm.

I. Background

On 4 May 2016, the New Hanover County Department of Social Services (DSS) filed a petition alleging that "Cate"¹ was a neglected and dependent juvenile. The petition identified respondent as Cate's father but, at the time, he was not aware of Cate and his paternity had not been legally established. Cate's mother is not a party to this appeal.

DSS obtained nonsecure custody of Cate and informed respondent of the proceeding. He entered into a family service agreement which required him to complete a paternity test, a parenting program, obtain stable housing and verifiable employment, comply with the terms of his probation, and submit to random drug tests. Respondent was on probation for a recent conviction, use of a social website by a sex offender. He had been placed on the sex offender registry after a prior conviction for attempted rape of a child under the age of six.

Adjudication and disposition were set for 6 July 2016. In anticipation of the hearings, DSS submitted a report to the court recommending the following:

1. The Court makes a finding that the Department is pursuing reasonable efforts to eliminate the need for placement; however, it is contrary to the child's welfare to return home and it is in the child's best interest to

¹ This pseudonym is used to protect the identity of the minor child. N.C. R. App. P. 3.1(b).

remain in the custody of the Department of Social Services with the Department having placement authority.

2. *The Court allows the Department to cease efforts at reunification with . . . [respondent].*

(Emphasis added.) In the adjudication phase, counsel for DSS informed the court that paternity test results confirmed respondent is Cate’s father. Respondent stipulated to the neglect allegations contained in the petition.

In the disposition phase, the trial court announced its ruling to cease reunification efforts: “[Respondent] has been required to register as a sex offender based on his prior criminal history. 7B-901(c) requires that I cease efforts with both parents as a result” In its order, the trial court found that “[a] court of competent jurisdiction has required [respondent] to register as a sex offender” and “[respondent] has no independent means of support.” The court ordered that DSS “shall cease reunification efforts with . . . [respondent].”

II. Discussion

Respondent argues that the trial court exceeded its statutory authority by ordering DSS to cease reunification efforts where the court was only authorized to direct that reunification efforts “shall not be required.”

We review a trial court’s disposition order under the abuse of discretion standard. *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008). A trial

court abuses its discretion when it exceeds its statutory authority. *See Harris v. Harris*, 91 N.C. App. 699, 705–06, 373 S.E.2d 312, 316 (1988) (concluding that failure to follow statutory mandate resulted in abuse of discretion).

Prior to its amendment in 2015, the Juvenile Code provided the trial court with authority at disposition to order that reunification efforts “*shall not be required or shall cease*” upon a finding that a parent has been required by a court of competent jurisdiction “to register as a sex offender on any government-administered registry.” N.C. Gen. Stat. § 7B-507(b)(4) (2013) (emphasis added). The amendments removed the phrase “or shall cease” from the statutory language such that, under the current law in effect at the disposition hearing, the trial court could only direct that reunification efforts “shall not be required.” An Act to Make Various Changes to the Juvenile Laws Pertaining to Abuse, Neglect, and Dependency, S.L. 2015-136, sec. 7, 9, 2015 N.C. Sess. Laws 320, 324–26 (codified as amended at N.C. Gen. Stat. § 7B-901(c) (2015)).

Although the trial court exceeded its statutory authority by ordering DSS to cease reunification efforts, respondent has failed to show prejudice. In its court report, DSS requested that the trial court “allow[] the Department to cease reunification efforts with . . . [respondent].” Respondent has offered no evidence to indicate that, had the court merely directed that reunification efforts “shall not be required,” DSS would have pursued such efforts contrary to its request to the court.

III. Conclusion

The 2015 amendments to the Juvenile Code indicate that a trial court no longer has the authority at disposition to direct DSS to cease reunification efforts. Although the court improperly ordered such efforts to cease in this case, respondent has failed to show prejudice in light of DSS’s request that the court “allow[] the Department to cease reunification efforts with . . . [respondent].”

AFFIRMED.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).