

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1002

Filed: 6 August 2019

Surry County, No. 09 JA 64

IN THE MATTER of: C.M.B., Juvenile.

Appeal by respondent from order entered 18 June 2018 by Judge William F. Southern, III, in District Court, Surry County. Heard in the Court of Appeals 13 March 2019.

J. Clark Fischer, for appellee William Brickel (Custodian).

Assistant Appellant Defender Annick Lenoir-Peek for respondent-mother.

STROUD, Judge.

Respondent-mother appeals an order staying proceedings and transferring jurisdiction of this juvenile proceeding under Chapter 7B to Tennessee. Because the trial court failed to hold an evidentiary hearing before entering the order on appeal, we reverse and remand for a new hearing and entry of an order consistent with this opinion.

I. Background

On 27 July 2009, the Surry County Department of Social Services (“DSS”) filed a petition alleging Jane¹ was a neglected juvenile, and on 18 September 2009 the trial court adjudicated her as neglected. In a review hearing order, on 17 December 2009, the trial court noted Jane was “in the care of a maternal great aunt [, Ms. Brickel], the placement has gone well[,]” and Mother was now residing in Virginia. Jane continued to do well with her aunt, as noted in the 22 April 2010 permanency planning order. On 8 July 2010, the trial court entered another permanency planning order which found Mother was not present at the hearing and it was not known where she was “residing.”

About six months later, on 19 January 2011, the trial court found that Jane had been residing with the Brickels since September of 2009, placement had “gone well and the BRICKELS have expressed a willingness and desire to continue to provide care and placement for the child.” Mother had not been in contact with DSS, and DSS was relieved of reunification efforts. The permanent plan for Jane was “custody and guardianship with a relative[.]” The trial court ordered the Brickels receive “legal and physical care, custody, and control of” Jane, appointed the Brickels as joint guardians of Jane, “released and discharged” Mother’s attorney, and waived future review hearings.

¹ A pseudonym is used to protect the identity of the minor involved.

On 6 August 2014, Mother and the Brickels entered into a Consent Order. Neither DSS nor a guardian *ad litem* participated in entry of the Consent Order. Mother and the Brickels agreed Jane would remain in the custody of the Brickels, and Mother would have visitation. The order noted that “[t]he current action is a review hearing” initiated by Mother’s “Motion for Review” filed on 11 February 2014. The consent order noted that in late 2013 or early 2014, the Brickels had moved to Tennessee. The order included these findings of fact:

13. The parties also stipulate that this consent order resolves all issues that are currently pending between the parties and, upon entry of this consent order, that there are no other outstanding issues concerning the child’s placement and welfare in this action.
14. DSS has been released from reunification efforts in this action. (See Permanency Planning Order, Paragraph No. 8, dated January 19, 2011).
15. DSS has also been relieved of any further responsibility in this matter. (See Permanency Planning Order, Paragraph No. 18, dated January 19, 201[1]).
16. The guardian ad litem has been discharged in this action. (See Permanency Planning Order, Paragraph No. 18, dated January 19, 2011).
17. Because DSS and the GAL have been released/discharged, these agency’s attorneys’ consent to this consent order is unnecessary.

The order decreed that “the child shall continue to remain in the custody of” the

Brickels. It then set forth a detailed visitation schedule for Mother on weekends, holidays, and during the summer school recess; it also made provisions for the transfer of physical custody “at a location that is exactly one-half (1/2) of the distance between Harrimon, Tennessee and Dobson, North Carolina.” In addition, the order decreed:

4. DSS is continued to be relieved of reunification and of any responsibility in this action.
5. The GAL is continued to be discharged in this action.
6. This consent order is a final order and it disposes of all outstanding issues in this action.
7. Attorney Marion Boone is hereby released and discharged and attorney Jody P. Mitchell is hereby released and discharged.

A few years later, in November of 2017, the Brickels filed a motion in Tennessee to register the North Carolina custody order under “T.C.A. 36-6-229” and in the same motion requested modification of the North Carolina order by suspending Mother’s visitation. “T.C.A. 36-6-229” provides, “A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state[.]” Tenn. Code Ann. § 36-6-229 (2017). T.C.A. § 36-6-229 allows for registration of child custody orders from another state and is part of Tennessee’s Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”). *See id.* Registration of the

North Carolina custody order in Tennessee allowed for enforcement of the order in Tennessee, but not modification; registration of the order alone does not confer jurisdiction under the UCCJEA. *See* Tenn. Code Ann. § 36-6-230(b) (2017) (“A court of this state shall recognize and enforce, but may not modify, except in accordance with this part, a registered child-custody determination of a court of another state.”) Yet the Brickels’ motion also requested modification of the North Carolina order, based upon these allegations:

- d. Upon information and belief, the home of . . . [Mother] is not suitable for visits with the minor child.
- e. That the minor child is schedule[d] to visit with . . . [Mother] at the beginning of Winter Break and Petitioner seeks that this visit be suspended pending a full hearing on this matter.

Mother then filed a *pro se* motion in Tennessee to dismiss the Brickels’ motions. Mother also filed three *pro se* motions in North Carolina between December of 2017 and January of 2018: (1) a motion for review requesting an “emergency” revocation of the Brickels as guardians and that she be appointed as Jane’s guardian; (2) a motion and order to show cause claiming the Brickels had violated the custody agreement, and (3) a motion requesting North Carolina to invoke jurisdiction as it was the “more appropriate forum[.]” (Original in all caps.)

The Tennessee court heard the Brickels’ motions to register and modify the custody order on 13 December 2017. Mother was present and testified at the hearing

in Tennessee. By order entered 12 January 2018, the Tennessee court entered an “ORDER OF TRANSFER TO COURT HAVING JURISDICTION UNDER TCA § 36-6-216 and 229” (“Order of Transfer”).² The Tennessee “Order of Transfer” found that the minor child and Brickels had lived in Tennessee since 2014 and Mother resided in Virginia. Based upon the findings that neither the child nor any parties had resided in North Carolina since 2014, the Tennessee court ordered “that this Court is the proper forum to have jurisdiction regarding the minor child, . . . and jurisdiction is hereby transferred.” A handwritten notation at the bottom of the order states, “Court directs Ms. Hogg to forward a copy of this order to the Court in Surry County, N.C.”

By order entered on 18 January 2018, the Tennessee court granted the Brickel’s motion to modify visitation, modifying Mother’s visitation to allow her only limited supervised visitation in Tennessee. The order notes it is based upon several statutes, including Tenn. Code Ann. § 36-6-216, “Initial custody determination; jurisdiction[;]” -218, “Child-custody determination in another state; modification[;]” and -219, which provides for “[t]emporary emergency jurisdiction” to enter an order if “necessary in an emergency to protect the child because the child, or a sibling or

² Tenn. Code Ann. § 36-6-216 addresses jurisdiction for an “[i]nitial custody determination” and Tenn. Code Ann. § 36-6-229 addresses registration of an out of state custody order; neither statute addresses modification jurisdiction under the UCCJEA. T.C.A. §§ 36-6-216; -229 (2017). There is no indication in the order or our record about whether the Tennessee court did or did not communicate with the North Carolina court prior to entry of the order.

parent of the child, is subjected to or threatened with mistreatment or abuse.” T.C.A. §§ 36-6-216, -218, -219. But from the findings of fact in the order, it does not appear Tennessee was exercising emergency jurisdiction, as there are no findings of an emergency. Instead, the Tennessee court found only “[t]hat based upon the evidence and testimony presented, there has been a substantial change of circumstances sufficient to temporarily modify the terms of the prior Consent Order.”

On 29 January 2018, the Brickels filed an unverified motion in North Carolina to “stay” Mother’s pending motions or to transfer jurisdiction to Tennessee because North Carolina was an “inconvenient forum” under North Carolina General Statute § 50A-207. The Tennessee orders were attached as exhibits to this motion. The trial court in North Carolina began holding a hearing on the pending motions by the Brickels and Mother on 1 February 2018. The Brickels were represented by counsel, and Mother appeared *pro se*. The trial court heard arguments from the Brickels’ counsel and from Mother. The trial court then inquired if Mother would like court-appointed counsel, and she requested court-appointed counsel. The trial court then announced that “[i]n reviewing [the Tennessee] order, I believe he has made his order very clear about transferring jurisdiction to himself, but I believe I need to discuss that with him before I make any further order in this Surry County matter.” The trial court then set the next court date, for completion of the hearing, for 1 March 2018.

On 1 March 2018, Mother’s newly-appointed counsel and the Brickels’ counsel appeared, and the trial court noted that he had not yet been able to discuss the case with the judge in Tennessee and continued the case to 5 April 2018. On 2 March 2018, the trial court entered an order continuing the completion of the hearing to 5 April 2018 “for communication between Surry County and Tennessee to take place.” (Original in all caps.) But the trial court never resumed the hearing which started on 1 February 2018. Instead, on 15 March 2018, a District Court Judicial Assistant for the Surry County District Court sent an email to the Brickels’ counsel³ stating that “Judge Southern has spoken with Judge Humphries in TN and agreed jurisdiction is in Tennessee. Judge Southern request[s] that you prepare an order and notify all parties there will be no need to appear on 4/5/18.” On 18 June 2018, the North Carolina trial court entered an order allowing the Brickels’ motion to “stay” and “transfer” jurisdiction based on North Carolina being an inconvenient forum. Mother appeals.

II. Appellate Jurisdiction

Mother contends the trial court erred in determining North Carolina was an inconvenient forum under North Carolina General Statute 50A-207 and transferring the action to Tennessee. We first note that Mother argues that we have jurisdiction to consider this appeal because it is a final order, and we agree. As far as North

³ The email was also copied to an individual Mother’s brief identifies as the juvenile clerk. Neither Mother nor her counsel was included on the email.

Carolina is concerned, the order on appeal is final, since it does not leave the case open “for further action by the trial court in order to settle and determine the entire controversy[,]” *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950), but transfers the matter to Tennessee. We therefore have jurisdiction to consider Mother’s appeal.

III. Distinction between Juvenile Proceedings under Chapter 7B and Custody Proceedings under Chapter 50

Although the parties’ arguments rely almost exclusively on the UCCJEA, the issues here are actually controlled by Chapter 7B. Before addressing the substantive issues, we stress that this case arises in a juvenile neglect proceeding initiated under Chapter 7B, but somewhere along the way, Mother, the Brickels, and the trial courts in North Carolina and Tennessee essentially began treating the case as if it were a Chapter 50 custody proceeding. Although DSS initiated this case in 2009 because of an investigation of neglect and there was an adjudication of neglect, DSS has not been directly involved in the case since 2011. DSS did not participate in this appeal nor did a guardian *ad litem* participate on behalf of Jane, so we do not have the benefit of briefs from DSS or guardian *ad litem*. The only “parties” appearing or participating before the trial and this Court are Mother and the Brickels. But this case was never transferred as a Chapter 50 private custody matter under North Carolina General Statute § 7B-911. *See* N.C. Gen. Stat. § 7B-911(a) (2017) (“Upon placing custody with a parent or other appropriate person, the court shall 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.”). Although the UCCJEA is applicable to abuse, neglect and dependency proceedings under Chapter 7B actions, the trial court’s jurisdiction over this case is based upon Chapter 7B, and the trial court has not terminated its jurisdiction.

The last order entered by the North Carolina juvenile court with the involvement of DSS and the GAL was a Permanency Planning Order entered under “NCGS 907(b)” on 19 January 2011. The 2011 order ordered that “legal and physical care, custody, and control of [the minor child] is hereby granted to . . . [the Brickels] and, further, the same are hereby appointed as joint guardians of the child[.]” The trial court ordered that “the SURRY COUNTY DEPARTMENT OF SOCIAL SERVICESURRY COUNTY DEPARTMENT OF SOCIAL SERVICES is relieved of further responsibility in this matter. The guardian ad litem is hereby discharged.” Counsel for both Mother and Father were also released. The trial court also waived future review hearings in accordance with “N.C.G.S. 7B-906(b)[.]”⁴ But the trial court did not terminate its jurisdiction. *See In re S.T.P.*, 202 N.C. App. 468, 473, 689 S.E.2d 223, 227 (2010) (“[W]e hold that the district court did not terminate its jurisdiction by its use of the words ‘Case closed.’”) Nor did the 2011 order return Mother to her

⁴ This version of the statute was repealed in 2013. *See* N.C. Gen. Stat. § 7B-907 (2017).

pre-petition status by returning Jane to her custody. Thus, the juvenile court's jurisdiction continues "until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first." N.C. Gen. Stat. § 7B-201(a) (2017). Thereafter, the trial court entered its 2014 consent order between Mother and the Brickels and again did not terminate jurisdiction.⁵ Under North Carolina General Statute § 7B-201, once the trial court had jurisdiction over Jane, it retains jurisdiction until she attains the age of 18 or the trial court terminates its jurisdiction. N.C. Gen. Stat. § 7B-201(a) (2017) ("When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first."). Only North Carolina can terminate its own juvenile court jurisdiction; a court in Tennessee cannot. *See id.*

The North Carolina juvenile court has never terminated its jurisdiction in this matter and even the order on appeal does not clearly terminate jurisdiction under North Carolina General Statute § 7B-201. Instead, based solely upon the UCCJEA and not Chapter 7B, the order on appeal concluded both North Carolina and

⁵ In fact, in its 2014 consent order the trial court noted DSS "*continued* to be relieved of reunification" and "[t]he GAL is *continued* to be discharged[.]" (emphasis added), because the trial court had already relieved DSS, the GAL, and counsel in its 2011 order. By exercising jurisdiction in 2014 -- after relieving DSS, the GAL, and counsel in 2011 -- the trial court demonstrated it retained jurisdiction. For a thorough analysis on when a juvenile court terminates its jurisdiction *see Rodriguez v. Rodriguez*, 211 N.C. App. 267, 710 S.E.2d 235 (2011). The 2014 consent order, like its 2011 predecessor, also has no affirmative language terminating jurisdiction nor does either party contend it did -- Mother contends North Carolina has always been the appropriate jurisdiction and the Brickels filed a motion to transfer jurisdiction to Tennessee.

Tennessee had subject matter jurisdiction and both “stayed” and “transferred” the North Carolina action. The order includes these relevant conclusions of law:

- a. The Court has subject matter jurisdiction over this action. The Court takes judicial notice of the UCCJEA and determines that the State of Tennessee also has appropriate subject matter jurisdiction over this action.
-
- c. The Court concludes as a matter of law that the State of North Carolina is no longer a convenient forum for this matter.
- d. The Court concludes as a matter of law that it exercises its discretion and relinquishes jurisdiction over this matter to the State of Tennessee for any further proceedings herein.
- e. The Court further concludes as a matter of law that it is exercising its discretion to stay these proceedings, and/or to transfer jurisdiction of these proceedings to Tennessee, due to the pendency of the matters pending in Roane County Tennessee.

The order then decreed as follows:

- 1. This matter is stayed for any further proceedings in Surry County North Carolina.
- 2. This matter is hereby transferred to the Roane County court for any further proceedings and/or dispositions.
- 3. The Surry County Clerk of Superior Court shall forthwith prepare the Court file in this matter for transfer to the Roane County Tennessee Clerk of Circuit Court.

North Carolina General Statute § 50A-207 directs the trial court to “stay” proceedings if it “determines that it is an inconvenient forum and that a court of another state is a more appropriate forum” but this stay is conditioned upon the requirement “that a child-custody proceeding be promptly commenced in another designated state[.]” N.C. Gen. Stat. § 50A-207(c) (2017). A “stay” of proceedings is not a termination of the trial court’s jurisdiction, but under a stay, a court refrains from acting temporarily and *explicitly* retains jurisdiction to lift the stay and resume the case if necessary. *See generally In re M.M.*, 230 N.C. App. 225, 229, 750 S.E.2d 50, 53 (2013) (“If a trial court considering a child custody matter determines that the current jurisdiction is an inconvenient forum and that another jurisdiction would be a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state. It is well established that the word shall is generally imperative or mandatory. The trial court here simply purported to transfer jurisdiction, effectively dismissing the case in North Carolina. It did not stay the present case and condition the stay on the commencement of a child custody proceeding in Michigan. The record before us does not indicate that there is or ever has been a custody proceeding of any sort regarding Margo in Michigan. Failure to condition an order transferring jurisdiction on the filing of a child custody proceeding in the new jurisdiction leaves the child and the proceedings in legal limbo, something that the Uniform Child–Custody Jurisdiction

Act is intended to prevent. It also ignores the mandatory procedure contained in N.C. Gen. Stat. § 50A–207(c).” (citations and quotation marks omitted)). Of course, since the Tennessee custody proceeding had already been filed, a stay may not be needed.

Chapter 7B does not provide an option for “transfer” but instead provides for the trial court to either terminate the juvenile court jurisdiction and return the parents to their pre-petition status or to transfer the matter to a private custody case under Chapter 50:

When the court’s jurisdiction terminates, whether automatically or by court order, the court thereafter shall not modify or enforce any order previously entered in the case, including any juvenile court order relating to the custody, placement, or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed, unless applicable law or a valid court order in another civil action provides otherwise. Termination of the court’s jurisdiction in an abuse, neglect, or dependency proceeding, however, shall not affect any of the following:

- (1) A civil custody order entered pursuant to G.S. 7B-911.⁶
- (2) An order terminating parental rights.
- (3) A pending action to terminate parental rights, unless the court orders otherwise.
- (4) Any proceeding in which the juvenile is alleged to be or has been adjudicated undisciplined or delinquent.
- (5) The court’s jurisdiction in relation to any new abuse, neglect, or dependency petition that is filed.

⁶ North Carolina General Statute § 7B-911 addresses Chapter 50. See N.C. Gen. Stat. § 7B-911 (2017).

N.C. Gen. Stat. § 7B-201(b) (2017). Thus, if the trial court were to determine Tennessee is a more appropriate forum under North Carolina General Statute § 50A-207 and the Tennessee proceeding will address the child custody issues, it may terminate the juvenile court's jurisdiction under North Carolina General Statute § 7B-201 to allow the matter to be addressed in that court. *See* N.C. Gen. Stat. § 7B-201.

IV. Inconvenient Forum

This brings us to the present issue raised by Mother who contends the trial court erred in “transferring” the case to Tennessee based upon its determination that North Carolina is an inconvenient forum under the UCCJEA. *See generally* N.C. Gen. Stat. § 50A-207.

(a) A court of this State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

Opinion of the Court

(2) The length of time the child has resided outside this State;

(3) The distance between the court in this State and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this Article if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

N.C. Gen. Stat. 50A-207.

Mother's brief contends that only North Carolina's court had the authority to decide "who has jurisdiction in this matter" and that North Carolina "was bound to take evidence and follow the" UCCJEA. Mother argues that the trial court failed to follow the proper procedure under the UCCJEA, and the order must be reversed.

We first note that Tennessee’s orders are not before us, and we do not purport to determine based upon the record before us whether Tennessee complied with the UCCJEA or made any other error under Tennessee law. But Tennessee’s order “transferring” jurisdiction of this North Carolina juvenile matter to the Tennessee court has no effect on North Carolina’s jurisdiction under Chapter 7B or on our analysis. Our only question is whether there is reversible error in the North Carolina trial court’s order.

A. Communication between Courts

Mother’s first argument is that the trial court did not follow a proper procedure under North Carolina General Statute § 50A-110 for its communications with the Tennessee court. Where the parties do not participate in the communication, the statute requires a record to be made of the communication and the parties notified of the record:

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. . . .

. . . .

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, “record” means

information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

N.C. Gen. Stat. § 50A-110 (2017). Mother argues that “[t]he only record of the communication between the two courts is a one line email sent by the judge’s judicial assistant to the Brickels’ trial counsel, but not [Mother’s] trial counsel, and copied to the juvenile clerk.”

Mother is correct that the email indicates only that it was send only to the Brickels’ counsel, which would be inappropriate, as it should have been sent simultaneously to counsel for both parties. But we also note that the trial court informed Mother on 1 February and her counsel on 1 March that it would be communicating with the Tennessee judge; that was the reason for the continuances. Neither Mother nor her counsel requested to participate in the communication. Further, the email was apparently included in the court file as it is a part of our record on appeal, and there is no indication Mother was not “informed promptly” of the communication or that she was not “granted access” to the court file. *Id.* The email is also a “record” as defined by North Carolina General Statute § 50A-110 as it is “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” *Id.*

Under North Carolina General Statute § 50A-110, Mother was also entitled to have an “opportunity to present facts and legal arguments before a decision on

jurisdiction is made” if the parties did not participate in the communication between the courts. *Id.* Although the statute does not specify if this “opportunity” must be before or after the communication, we need not make this determination here. Mother presented some “facts and legal argument” to the trial court on 1 February 2018, before her counsel was appointed, but she did not testify or present evidence. *Id.* On 1 February 2018, the trial court heard only arguments and no sworn testimony. The only documents filed with the trial court were unverified motions. At that point, the trial court had heard no evidence regarding the facts of the case, only arguments. The trial court continued the case and set another date for the parties to return – presumably for an evidentiary hearing on the four pending motions -- after its communication with Tennessee. The trial court appointed counsel for Mother, but the full hearing scheduled for 5 April 2018 was canceled by the trial court. No evidentiary hearing was ever held.

B. Findings of Fact

Mother argues that the court had insufficient evidence upon which it could base its findings of fact or a decision on whether North Carolina was an inconvenient forum. We agree.

Even if we assume the trial court correctly conducted and documented its communications with the Tennessee court, we must reverse the order because there was no evidence to support the trial court’s findings of fact. The order on appeal

includes findings of fact regarding the factors listed in North Carolina General Statute § 50A-207 for purposes of determining that North Carolina is an inconvenient forum and related conclusions of law. We need not address each finding of fact specifically since none is supported by the evidence. Although some factors could possibly be addressed based upon the trial court's record without evidence from the parties, such as the familiarity of the court with the case, most require some evidence regarding the parties and child. Since there was no evidence, the findings of fact cannot be supported. *See Crews v. Paysour*, ___ N.C. App. ___, ___ 821 S.E.2d 469, 472 (2018) (“[A]lthough counsel discussed the issue with the trial court, the parties did not stipulate to amounts paid since the prior order or agree on how any overpayment by Father should be addressed. And arguments of counsel are not evidence: It is axiomatic that the arguments of counsel are not evidence.” (citations, quotation marks, and brackets omitted)). In addition, the motions before the trial court were unverified, and neither party presented any affidavits or other documentary evidence. We also note that when Mother presented her argument to the trial court on 1 February 2018, she had no attorney, but she was entitled to court-appointed counsel. The trial court recognized this problem and appointed counsel for Mother, but since the trial court canceled the completion of the hearing, Mother's counsel never had the opportunity to provide meaningful representation. With no evidence to support the findings of fact, the trial court's conclusions of law based upon

the findings of fact must fail also.

V. Conclusion

We therefore reverse and remand for the trial court to hold a new hearing on the parties' motions and to determine whether to terminate jurisdiction under North Carolina General Statute § 7B-201. The trial court should again communicate with the Tennessee court, as directed by North Carolina General Statute § 50A-110 and should allow the parties the opportunity either "to participate in the communication" or "to present facts and legal arguments before a decision on jurisdiction is made." N.C. Gen. Stat. § 50A-110. If the trial court again determines that North Carolina is an inconvenient forum under North Carolina General Statute § 50A-207, depending upon the status of the Tennessee case, the trial court could stay the proceedings under North Carolina General Statute § 50A-207 or may terminate its jurisdiction under North Carolina General Statute § 7B-201. Although nothing in this opinion should be interpreted as expressing an opinion on whether North Carolina is an inconvenient forum under North Carolina General Statute § 50A-207, we note that the trial court also has the option of terminating the juvenile court's jurisdiction and transferring the case to a private Chapter 50 matter in North Carolina under North Carolina General Statute § 7B-911. But unless the trial court determines that the case should remain under the jurisdiction of the juvenile court of Surry County, the trial court's order should clearly terminate the juvenile court's jurisdiction. The trial court's order

IN RE: C.M.B.

Opinion of the Court

must be based upon sworn testimony or other evidence, and Mother is entitled to court-appointed counsel at all proceedings as long as the matter remains in juvenile court.

REVERSED AND REMANDED.

Judges INMAN and ZACHARY concur.