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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-8

No. COA20-77

Filed: 2 February 2021

Cabarrus County, Nos. 18 JA 172–74

IN THE MATTER OF:

A.S., C.W.S., III, and J.C.S.

Appeal by respondent from order entered 23 October 2019 by Judge D. Brent Cloninger in Cabarrus County District Court. Heard in the Court of Appeals 17 November 2020.

*Harstell & Williams, PA, by E. Garrison White, for petitioner-appellee Cabarrus County Department of Human Services.*

*Sean P. Vitrano for respondent-appellant mother.*

*N.C. Administrative Office of the Courts Guardian Ad Litem Division, by GAL Staff Counsel Michelle FormyDuval Lynch, for guardian ad litem.*

DIETZ, Judge.

¶ 1

Respondent appeals a permanency planning order following an adjudication that her children were neglected and dependent. She contends that the order is void because the trial judge who signed it was not the judge who presided over the hearing in the matter. The Cabarrus County Department of Human Services and the guardian ad litem both concede that the trial court's order is infirm for this reason.

We agree and therefore vacate and remand for further proceedings.

### **Facts and Procedural History**

¶ 2 In 2018, the Cabarrus County Department of Human Services filed petitions alleging that Respondent’s children were neglected and dependent. DHS obtained nonsecure custody of the juveniles. The trial court adjudicated the juveniles as neglected and dependent and placed the children with their maternal grandparents. The trial court initially established a permanent plan of reunification with a secondary plan of legal guardianship. At a follow-up hearing, the trial court changed the primary plan to guardianship by the maternal grandparents with limited visitation by Respondent. Respondent appealed that permanency planning order.

### **Analysis**

¶ 3 Respondent first argues that the challenged order does not contain the necessary signature of the trial judge. This, Respondent contends, renders the challenged order a nullity. Both DHS and the guardian ad litem concede that the trial court’s order is infirm for this reason. We agree.

¶ 4 Our Supreme Court recently held that, in this type of juvenile case, an order entered by the trial court must be signed by the judge “who presided over the hearing.” *In re C.M.C.*, 373 N.C. 24, 28, 832 S.E.2d 681, 683 (2019). Thus, in a termination proceeding, “an order terminating parental rights was a ‘nullity’ when signed by a judge other than the one who presided over the hearing.” *Id.* This

reasoning applies equally to other juvenile proceedings that involve a hearing and resulting findings by the presiding judge. *See id.*

¶ 5 Here, the parties all agree (and the record confirms) that Judge Christy E. Wilhelm presided over the permanency planning hearing that led to the challenged order. However, the written permanency planning order entered after that hearing is signed by Judge D. Brent Cloninger. Under *In re C.M.C.*, we must vacate that permanency planning order and remand for further proceedings.

¶ 6 On remand, depending on the availability of the judge who presided over the original hearing, the trial court may decide this case on the existing record and enter a new order signed by the presiding judge, or the court may conduct a new hearing or any other proceedings that the court deems appropriate. We leave that decision to the sound discretion of the trial court.

¶ 7 Respondent also challenges other aspects of the trial court's order, but we decline to address those issues, which may be mooted by the entry of a new order on remand.

### **Conclusion**

¶ 8 We vacate the trial court's permanency planning order and remand for further proceedings in the trial court.

VACATED AND REMANDED.

Judges ZACHARY and COLLINS concur.

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*Opinion of the Court*

Report per Rule 30(e).