

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-694

Filed 5 March 2025

Cumberland County, Nos. 18 JA 337, 24 CVD 002241

In the matter of: M.B.

Appeal by Respondent-Mother from orders entered 5 April 2024 by Judge Cull Jordan III in Cumberland County District Court. Heard in the Court of Appeals 12 February 2025.

*Dawn M. Oxendine for Petitioner-Appellee Cumberland County Department of Social Services.*

*Richard Croutharmel for Respondent-Appellant Mother.*

*Keith Karlsson for guardian ad litem.*

GRIFFIN, Judge.

Respondent-Mother appeals from the trial court's orders awarding sole legal and physical custody of Mabry<sup>1</sup> to his father and transferring the case to a Chapter

---

<sup>1</sup> We use a pseudonym for ease of reading and to protect the anonymity of the juvenile. See N.C. R. App. P. 42(b).

50 action. Mother contends the trial court lacked subject matter jurisdiction to alter the custody arrangement and failed to make the necessary findings to transfer the case to a Chapter 50 action. We disagree.

### **I. Factual and Procedural Background**

On 2 August 2018, Cumberland County Department of Social Services filed a juvenile petition alleging Mabry to be a neglected juvenile. The court entered a non-secure custody order the same day placing Mabry with his paternal grandparents. Following a hearing on 26 November 2018, the trial court entered an order adjudicating Mabry as neglected and continuing his custody with DSS. On 21 June 2021, the trial court entered a permanency planning order returning custody of Mabry to Mother and ending DSS's involvement in the matter. The trial court allowed all appointed counsel to withdraw but maintained its jurisdiction. However, on 24 August 2023, Mother moved for review under section 7B-1000 of the North Carolina General Statutes alleging Mabry's father violated the 21 June 2021 order by refusing to return Mabry after a visit. The trial court dismissed the motion as Mother did not attend the hearing on the motion.

Mother renewed her motion on 5 September 2023 making the same allegations. Following a hearing on the matter, the trial court found that Mabry's father had violated the previous order and terminated his visitation rights to Mabry. On 12 October 2023, the trial court entered an order for non-secure custody following

Mabry's allegations that his maternal uncle inappropriately touched him to the trial court judge. The court modified its prior order pursuant to section 7B-1000, placed Mabry in the custody of DSS, and reappointed counsel. Mabry's allegations were determined to be false and made from a desire to remain living with his father.

The trial court held status review hearings on 23 January 2024 and 9 February 2024, during which it received evidence concerning Mabry's parents' compliance with previous court orders as well as evidence concerning Mabry's allegations about his maternal uncle. On 5 April 2024, the trial court entered orders placing sole custody of Mabry with his father, granting Mother visitation, terminating the court's jurisdiction in the matter, and transferring the case to civil district court. Mother timely appeals.

## **II. Analysis**

Mother contends the trial court erred in two ways. She argues the trial court lacked subject matter jurisdiction to alter Mabry's custody arrangement. She also alleges the trial court erred by transferring the case to a Chapter 50 child custody action without making the necessary findings required by section 7B-911. We hold the trial court had subject matter jurisdiction to modify Mabry's custody arrangement and also made the appropriate findings necessary to transfer the case to civil district court as a civil child custody action. N. C. Gen. Stat. § 7B-911(c)(2) (2023).

### **A. Jurisdiction**

Mother contends the trial court lacked jurisdiction to order Mabry into DSS

custody on 12 October 2023 and therefore any orders entered afterwards were *void ab initio*.

We review an alleged error concerning the trial court’s subject matter jurisdiction de novo. *In re M.M.*, 291 N.C. App. 571, 574, 896 S.E.2d 289, 292 (2023) (citation omitted). Under de novo review, we consider the matter anew and substitute our judgment for that of the lower court. *Id.* (citation omitted).

District courts have jurisdiction over proceedings where a juvenile has been alleged to be neglected. N.C. Gen. Stat. § 7B-200(a) (2023). Jurisdiction is invoked by a county director of social services filing a petition making the allegation of neglect. N.C. Gen. Stat. §§ 7B-200(c), 401.1(a) (2023). This jurisdiction continues until the child reaches the age of majority or the court terminates its jurisdiction. N.C. Gen. Stat. § 7B-201(b)(1) (2023). During the pendency of the proceeding and “[u]pon motion in the cause . . . the court may conduct a modification hearing to determine whether the order of the court is in the best interests of the juvenile.” N.C. Gen. Stat. § 7B-1000(a) (2023). *See* N.C. Gen. Stat. § 7B-1000(b) (“In any case where the court finds the juvenile to be abused, neglected, or dependent, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile [or] until terminated by order of the court[.]”).

Here, Mother contends section 7B-401(b) controls the district court’s jurisdiction. Section 7B-401(b) provides:

[i]f the court has retained jurisdiction over a juvenile whose

custody was granted to a parent and there are no periodic judicial reviews of the placement, the provisions of Article 8 of this subchapter shall apply to any subsequent report of abuse, neglect, or dependency determined by the director of social services to require court action pursuant to [N.C. Gen. Stat. [§] 7B-302.

N.C. Gen. Stat. § 7B-401(b) (2023). Thus, for section 7B-401 to apply, four requirements must be met:

(1) the court must have “retained jurisdiction over a juvenile whose custody was granted to a parent”; (2) the court must no longer be holding “periodic judicial reviews of the placement” of the juvenile; (3) after the court discontinued periodic judicial reviews, DSS must have received a new report of abuse, neglect, or dependency; and (4) the director of social services must have determined based on an assessment conducted pursuant to [N.C. Gen. Stat.] § 7B-302 that court action was required.

*In re T.P.*, 254 N.C. App. 286, 291, 803 S.E.2d 1, 5 (2017).

Here, Mother filed a motion for review alleging Mabry’s father had violated a prior order of the court. During the proceeding, Mabry alleged to the trial court that his maternal uncle inappropriately touched him. These facts do not trigger section 7B-401(b) because neither DSS received a new report of abuse nor did the DSS director determine an assessment was required. Rather, they are a part of the process by which the trial court modified its earlier orders pursuant to section 7B-1000. In compliance with the statutory process set forth above, the Cumberland County district court gained subject matter jurisdiction upon the filing of the 2 August 2018 petition alleging Mabry to be a neglected juvenile. The court maintained

its jurisdiction over the juvenile proceeding because neither of the relevant conditions in section 7B-201(1), Mabry reaching the age of majority or the court terminating its jurisdiction, were satisfied. Thus, because Mother filed a motion for review on 5 September 2023, the trial court's order granting Mabry's father custody and providing Mother with visitation was an appropriate exercise of authority under section 7B-1000(a). Accordingly, Mother's argument is without merit.

## **B. Chapter 50**

Mother also argues the trial court erred by failing to make the necessary findings required by section 7B-911(c)(2) prior to transferring the case to a civil action. We disagree.

Section 7B-911(c)(2) requires the trial court in a juvenile proceeding to make a finding that “[t]here is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding[.]” prior to transferring the matter to a Chapter 50 action. N.C. Gen. Stat. § 7B-911(c)(2). Here, in the order entered upon Mother's motion for review, the trial court found “[t]here is no need for continued State intervention on behalf of the juvenile[] . . . through a Juvenile Court proceeding and as such, this [c]ourt should transfer this case to Domestic Court in the Civil District Division of Cumberland County[.]” Additionally, in the order establishing the domestic civil file, the trial court reiterated its earlier finding and concluded as a matter of law “[t]here is no longer a need for State intervention to protect the juvenile [Mabry].” These findings, as they track the statutory language, are sufficient to meet

the requirements of section 7B-911(c)(2). *See In re A.S.*, 182 N.C. App. 139, 144, 641 S.E.2d 400, 404 (2007) (holding the trial court complied with section 7B-911(c)(2) by making findings which addressed the substance of the requirement).

### **III. Conclusion**

For the aforementioned reasons, we hold the trial court did not err by modifying Mabry's custody arrangement nor by transferring the matter to civil district court. The order appealed from is affirmed.

AFFIRMED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).