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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-1019

Filed 7 May 2025

Wilkes County, No. 20 JA 000126

IN THE MATTER OF: B.O.R., minor child.

Appeal by Respondent Mother from order entered 12 July 2024 by Judge Donna L. Shumate in Wilkes County District Court. Heard in the Court of Appeals 22 April 2025.

Sherryl R. West for Petitioner-Appellee Wilkes County Department of Social Services.

Garron T. Michael for Respondent-Appellant Mother.

Administrative Office of the Courts, by GAL Staff Attorney Brittany T. McKinney, for guardian ad litem.

GRIFFIN, Judge.

Respondent Mother appeals from the trial court's written order granting guardianship of her minor child to his foster parents and granting Mother no visitation. Mother contends the trial court's written order must be vacated because

it directly and substantively contradicts the court's prior orally rendered terms. We hold the trial court did not err.

I. Factual and Procedural Background

This appeal arises from the removal of Mother's minor child, Ben,¹ from her custody due to concerns of child abuse in Mother's home. In September 2020, Wilkes County Department of Social Services filed a petition alleging Ben was an abused and neglected juvenile, and Ben's parents stipulated to an adjudication of abuse and neglect in October 2020. On 2 January 2024, a prior panel of this Court entered an unpublished opinion vacating and remanding in part, and affirming in part, the trial court's permanency planning order regarding Ben's custody. *See In re B.O.R.*, 292 N.C. App. 110, 896 S.E.2d 67, 2024 WL 16285 (2024). A thorough recitation of the factual background to this case can be found in this Court's prior opinion.

On remand from this Court's ruling, the trial court held a permanency planning hearing on 13 May 2024. The court heard evidence from a social worker involved in Ben's case, Ben's foster mother, and Ben's father. The court then discussed custody and the parents' visitation with the parties' attorneys. The trial court rendered an oral judgment at the close of the hearing, in which it pronounced that Mother would be granted no visitation with Ben at that time, but future visitation could be a possibility if advisable once Ben underwent therapy. On 12 July

¹ A pseudonym is used for ease of reading and to protect the identity of the juvenile. *See* N.C. R. App. P. 42(b).

2024, the trial court entered a written order granting guardianship of Ben to his foster parents and granting Mother no visitation at that time, but reminding the parties that visitation could be modified later.²

Mother timely appeals.

II. Analysis

Mother's sole argument on appeal contends the trial court "erred by entering a formal written order which directly contradicted its orally rendered order regarding Mother's future visitation with Ben."

This Court reviews the trial court's dispositional choices in a permanency planning order, including parental visitation, for abuse of discretion. *See Matter of A.P.W.*, 378 N.C. 405, 410, 861 S.E.2d 819, 825 (2021) (citations omitted). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020) (citation omitted).

Rule 58 of the North Carolina Rules of Civil Procedure states that a judgment is not entered until it is "reduced to writing, signed by the judge, and filed with the clerk of court[.]" N.C. Gen. Stat. § 1A-1, Rule 58 (2023). With that in mind, "this Court has not generally required written entered judgments to adhere to the prior non-entered, orally rendered judgments upon which they were based." *In re O.D.S.*,

² The order also set out visitation rights for Ben's father, but Ben's father is not a party to this appeal.

247 N.C. App. 711, 718, 786 S.E.2d 410, 415 (2016). “The announcement of judgment in open court is the mere rendering of judgment, and is subject to change before entry of judgment.” *Morris v. Se. Orthopedics Sports Med. & Shoulder Ctr., P.A.*, 199 N.C. App. 425, 433, 681 S.E.2d 840, 846 (2009) (citations and internal marks omitted). Mere differences in the findings and conclusions orally rendered during a hearing and those contained in the later written order do not constitute an abuse of discretion by the trial court. *See In re A.U.D.*, 373 N.C. 3, 10, 832 S.E.2d 698, 702 (2019). “If the written judgment conforms generally with the oral judgment, the judgment is valid.” *Edwards v. Taylor*, 182 N.C. App. 722, 727, 643 S.E.2d 51, 54 (2007) (citation omitted).

This Court has held, though, that a direct and substantive contradiction between the terms of an orally rendered order and a subsequently entered written order can amount to an abuse of discretion. In *In re J.C.*, the trial court orally ordered DSS to supervise the mother’s visits with her minor child until DSS could find a replacement supervisor, and the visits would be held “at [DSS] every other week.” *In re J.C.*, 236 N.C. App. 558, 563, 783 S.E.2d 202, 205 (2014). In the written order that followed, the court ordered “[the mother’s] visitation would continue to be at a visitation center at [the mother’s] expense.” *Id.* This Court held “[t]he difference between the trial court’s pronouncement in open court and its written order is substantive and the change in the written order cannot be said to generally conform to the court’s oral statement.” *Id.* This Court vacated and remanded the written

order because its terms “directly contradict[ed] the trial court’s statements from the bench.” *Id.*

In *In re O.D.S.*, 247 N.C. App. 711, 786 S.E.2d 410, this Court addressed the apparent conflict between well-established precedent and the holding in *J.C.* This Court in *O.D.S.* clarified that, to the extent *J.C.* conflicts with this Court’s long progeny of holdings that, “as a general proposition, the written and entered order or judgment controls over an oral rendition of that order or judgment,” we are bound by those prior decisions—not *J.C.* *O.D.S.*, 247 N.C. App. at 721, 786 S.E.2d at 417 (citation omitted). Otherwise, we apply the holding in *J.C.* only to the limited factual circumstances where the trial court’s written order is in direct contradiction to the terms of its oral rendering. *Id.* at 722, 786 S.E.2d at 418.

In the present case, the visitation terms of the trial court’s written order do not directly and substantively contradict the terms orally rendered during the permanency planning hearing. During the hearing, the trial court stated it understood that it was previously not in Ben’s best interests for Mother to have visitation with him, and that there had been no change in circumstances since then:

[Mother] was charged with child abuse on [Ben]. Since then she has been convicted of child abuse on [Ben]. And that she’s only completed supervised probation about three months ago.

But I note that in the interim while she was on probation for child abuse on [Ben], that it was not in [Ben’s] health - the best interest, and it would be consistent with [Ben’s] health and safety not to have visitation with the

perpetrator of child abuse on (indiscernible).

At this point, I still have nothing in the record that would indicate that it would be consistent with the best interests of [Ben] to have visitation with the perpetrator of child abuse on him.

The only things in the file that I was able to see, taking judicial notice of the previous orders of the Court, was that [M]other had had two video contacts with [Ben], and neither of them had gone well, that the child appeared to be afraid of her.

I cannot find at this point that it will be in the best interest of [Ben] to have visitation with [M]other -- even supervised, given the history of child abuse on [Ben].

The court then continued its thoughts on visitation by noting that Ben needed therapy services, and that visitation between Mother and Ben could possibly occur in the future if circumstances changed:

However, I will order that [Ben] be enrolled in therapy. I think that that is something [Ben] probably can benefit from anyway.

And if at such time, the therapist determines it would therapeutically [be] recommended to have visits with [M]other, that those visits may occur with appropriate supervision. . . .

. . .

But I'll at least put that in the works so that, if at some point in the future, a therapist determines that it's therapeutically recommended to have visits with [M]other, those can come.

But I cannot, in good conscience at this point, make a child visit with his abuser at – outside of any therapeutic setting.

(Emphasis added).

The court's written order then found and concluded:

[Findings of Fact]

52. It would not be in the best interest of [Ben] to have visits with the person who abused him.

53. *This Court in good conscience cannot grant visitation to [Ben's] abuser, [Mother].*

...

[Conclusions of Law]

13. Due to [M]other's past abuse of [Ben], visitation is not in the best interest of [Ben].

14. Any party may file a motion for review to address the current visitation plan at any time pursuant to [N.C. Gen. Stat. §] 7B-905.1(d).

...

[Decrees]

3. The guardians shall enroll [Ben] in therapy within the next thirty days.

...

8. [Mother] is hereby granted no visitation with [Ben].

9. Any party may file a motion for review to address the current visitation plan at any time pursuant to [N.C. Gen. Stat. §] 7B-905.1(d).

(Emphasis added).

Mother contends the written order directly contradicts the oral renderings because the written order does not include specific terms for future visitation with

Ben following his receipt of therapy. We disagree. The visitation terms in the trial court's written order are substantively the same as the terms pronounced in its oral rendering. Each set of terms reflects the trial court's unwillingness to allow Mother visitation with Ben considering her prior conviction of child abuse against Ben. Additionally, the terms in both renderings state that Ben should undergo therapy. The written order does not explicitly include the trial court's hopeful statements that future visitations could be a possibility upon a report of changed circumstances from Ben's therapist, but its terms are consistent with the oral rendering that the court was unable to, "in good conscience," allow Mother visitation with Ben. The written order further reminds Mother that she may make a motion to review the current visitation plan at any time, including after Ben sees a therapist as opined in the court's oral rendering. We cannot say the written order directly contradicts the oral renderings.

III. Conclusion

For the foregoing reasons, we hold the trial court did not abuse its discretion in entering its written order.

AFFIRMED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).