

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA02-32

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

In re: Shae Denise Herndon Granville County
In re: Douglas Anthony Herndon Nos. 00 J 92, 93

Appeal by respondent from orders entered 7 October 2001 by Judge Charles W. Wilkinson, Jr. in Granville County District Court. Heard in the Court of Appeals 1 July 2002.

Ann Marie Vosburg for petitioner-appellee.

Peter Wood for respondent-appellant.

John M. Dunlow, Guardian Ad Litem for Douglas Anthony Herndon.

Teresa Gibson, Guardian Ad Litem for Shae Denise Herndon.

BRYANT, Judge.

Respondent mother Janice Moore (respondent) appeals from the orders terminating her parental rights to the minor children Shae Denise Herndon and Douglas Anthony Herndon.

Roderick Antonia Herndon, Sr. (petitioner), biological father of the minor children, filed petitions on 5 October 2000 to terminate the respondent's parental rights on grounds of neglect, willful failure to pay her support obligation as provided in an October 1995 emergency custody order, and willful abandonment. A hearing on the petitions was initially scheduled for 5 December

2000. On 5 December 2000, the district court appointed counsel to represent respondent and set a new hearing date of 18 January 2001.

Petitioner filed amended petitions on 8 December 2000. On 5 January 2001, respondent filed answers and counterclaims opposing the termination of her parental rights and seeking weekend visitation with the minor children.

Although the transcript reflects that the district court set the hearing for 18 January 2001, the record on appeal contains an undated, unsigned memorandum on the letterhead of the Granville County Clerk of Superior Court, which announces as follows:

Please be advised that if you had a case schedule[d] for January 9, 2001 it will be January 2, 2001 and if you had a case schedule[d] for January 23, it will be January 16, 2001. *If you had a case schedule[d] for January 18, 2001, it will be January 11, 2001.*

(emphasis added). A copy of this document was apparently found in the district court case file but contains no indicia of service upon petitioner or his counsel.

Petitioner and his counsel did not appear at the hearing on 11 January 2000. Respondent moved to dismiss the case based on petitioner's absence. The district court denied the motion, saying, "Well, I'm not going to do that. I wouldn't do it to you." At the court's behest, respondent's counsel telephoned counsel for petitioner, who indicated that she would not be able to attend the hearing because she was in court trying an unrelated matter. She further indicated she had been "under the assumption that the case was [scheduled] for next week." After consulting with respondent's counsel, the district court rescheduled the hearing for 15 March

2001.

The hearing was subsequently postponed until 12 April 2001, at which time the district court ordered the appointment of guardians ad litem for the minor children as required by N.C.G.S. § 7B-1108(b) (2001), and reset the matter for hearing on 17 May 2001. The court again continued the matter until 14 June 2001, to await the resolution of a pending legitimation petition. The hearing on the petitions was ultimately held on 14 June 2001, resulting in the entry of orders terminating respondent's parental rights. The court found grounds for termination as alleged in the petition and concluded that termination was in the best interests of both minor children. Respondent gave notice of appeal in open court.

In her sole argument on appeal, respondent challenges the trial court's decision to deny her motion to dismiss and to continue the hearing from 11 January 2001 until 15 March 2001. Respondent contends that petitioner gave no reason for his absence from the hearing, and the trial judge gave no reason for his decision to continue the matter. Respondent further faults the trial court for failing to make findings on the issue of whether the continuance was in the minor children's best interests. Absent any articulated justification, respondent avers the judge's ruling constitutes an abuse of his discretion. She claims she was prejudiced by the ruling because the petition against her would have been dismissed had the continuance not been granted.

Under N.C.G.S. § 7B-803 (2001), the district court may continue hearings for good cause "as long as is reasonably required

to receive additional evidence . . . or other information needed in the best interests of the juvenile[.]” In “extraordinary circumstances” the court may allow continuances “when necessary for the proper administration of justice or in the best interests of the juvenile.” *Id.* The decision to continue a proceeding is within the discretion of the court, with the “‘chief consideration’” being the “‘furtherance of substantial justice.’” *In re Mitchell, M.*, ___ N.C. App. ___, ___, ___ S.E.2d ___, ___ (Feb. 5, 2002) (COA01-488) (quoting *Shankle v. Shankle*, 289 N.C. 473, 483, 223 S.E.2d 380, 386 (1976)).

We believe the district court acted well within its discretion in postponing the hearing from January until March of 2001 to allow for a decision based on a full consideration of the parties’ evidence, rather than dismissing the petitions outright due to the confusion in scheduling. The record reflects that the January hearing was originally set by the district court for the 18th as petitioner’s counsel believed. Although the date was subsequently changed to the 11th, there is no showing in the record on appeal that petitioner’s counsel was apprised of the change. The continuance ordered by the district court was consistent with its mandate to work substantial justice to the parties and to act in the best interests of the minor children.

Respondent has not shown that her ability to defend the petitions was prejudiced in any way from the delay. She makes no claim that she was inhibited in presenting evidence or from otherwise rebutting petitioner’s allegations. Moreover, the

transcript reflects that the hearing would not have been held on 11 January regardless of petitioner's attendance at the hearing, due to the need for the appointment of guardians ad litem to represent the minor children's interests.

The record on appeal contains an additional assignment of error not addressed in respondent's brief to this Court. By rule, we deem it abandoned. See N.C.R. App. P. 28(b)(5).

Affirmed.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).