

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-904

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

BRYAN HELMS,
Plaintiff-Appellee,

v.

Mecklenburg County
No. 01 CVD 13214

ANGELIQUE LANDRY,
Defendant-Appellant.

Appeal by Defendant from orders entered 23 February, 15 May, and 18 May 2009 by Judge Christy T. Mann in District Court, Mecklenburg County. Heard in the Court of Appeals 9 March 2010.

No brief for Plaintiff-Appellee.

Angelique Landry, Defendant-Appellant, pro se.

McGEE, Judge.

Angelique Landry (Defendant) has filed multiple motions in this matter related to the custody of her minor child. This action was previously heard by our Court on 20 August 2008, and an opinion was filed on 6 January 2009. See *Helms v. Landry*, 194 N.C. App. 787, 671 S.E.2d 347 (2009) (*Helms I*). The underlying facts are more thoroughly set forth therein. In *Helms I*, our Court reversed the trial court's 13 September 2007 order denying Defendant's motion for a paternity test. *Helms I*, 194 N.C. App. at 791, 671 S.E.2d at 350. We reversed and remanded with instructions to the trial court to "order the mother, the child, and the alleged father

to submit to a paternity test[.]” *Id.* However, Judge Jackson dissented, arguing that Bryan Helms (Plaintiff) was judicially established as the child's father by an order of the trial court entered 29 January 2002. *Id.* at 791, 671 S.E.2d at 350 (Jackson, J., dissenting). Judge Jackson, on the basis of the 29 January 2002 order and Defendant's failure to timely appeal that order, would have affirmed the trial court's 13 September 2007 order dismissing Defendant's motion for a paternity test. *Id.* at 792, 671 S.E.2d at 350-51 (Jackson, J., dissenting). Plaintiff gave notice of appeal to the North Carolina Supreme Court on 10 February 2009 and the matter was heard in the Supreme Court on 17 November 2009. *Helms v. Landry*, 363 N.C. 738, 686 S.E.2d 674 (2009) (*Helms II*). However, our Court's mandate certifying *Helms I* to the trial court issued on 26 January 2009. Over the next several months, Defendant filed numerous motions related to *Helms I*. Pertinent to the present appeal before us, Defendant filed motions on 14 January, 17 February, 24 March, and 6 April 2009.

Defendant filed a motion to compel DNA testing on 14 January 2009, followed by a motion filed 17 February 2009 "to enforce mandate." In an order filed 23 February 2009, the trial court dismissed these two motions on the grounds that it lacked jurisdiction to grant the relief sought by Defendant because by then the case was pending before the North Carolina Supreme Court. Defendant next filed a motion on 24 March 2009 to enforce the mandate of this Court in *Helms I*. The trial court entered an order on 15 May 2009, dismissing this motion to enforce the mandate of

our Court on the grounds that the matter was pending before the North Carolina Supreme Court. Defendant filed another motion on 6 April 2009 "to stop Plaintiff from leaving the state," and the trial court entered an order on 18 May 2009 denying this motion. Defendant appeals these orders.

Three of Defendant's four arguments on appeal focus on either the issue of paternity or whether the trial court was correct in its determination that it could not proceed while the matter was on appeal to the Supreme Court. Based on the Supreme Court's ultimate decision in this matter, we find these arguments moot.

The Supreme Court issued its ruling in *Helms II* on 11 December 2009 stating, "[f]or the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed." *Helms II*, 363 N.C. at 738, 686 S.E.2d at 674. Though brief, the opinion in *Helms II* reversing our Court's decision and determining that paternity was judicially established by the 29 January 2002 order renders moot all arguments related to the minor child's paternity and the enforcement of our Court's mandate. "A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Roberts v. Madison County Realtors Ass'n*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996). Because the Supreme Court reversed our Court's prior opinion, any opinion our Court might now issue regarding the trial court's actions in carrying out our prior mandate would be advisory. "'[C]ourts will not entertain or proceed with a cause merely to determine abstract propositions of law.'" *Id.* at 399,

474 S.E.2d at 787 (citation omitted). We therefore dismiss as moot all but the following argument of Defendant.

Defendant's only argument unrelated to the minor child's paternity or the appeal pending before the Supreme Court is that the trial court lacked subject matter jurisdiction over Defendant solely because Plaintiff failed to issue or serve a summons upon Defendant. Defendant originally filed a complaint on 21 June 2001 seeking "custody or visitation and/or child support." Her complaint was assigned the file number 01-CVD-12031. Defendant timely issued a summons in that action, but she failed to serve the summons on Plaintiff. Shortly thereafter, Plaintiff filed a complaint for child custody on 10 July 2001 and his complaint was assigned the file number 01-CVD-13214. The record on appeal reflects neither the issuance nor the service of a summons in the action filed by Plaintiff. The trial court later consolidated both of these actions in an order filed 17 January 2002; the actions were consolidated under the case number associated with Plaintiff's complaint, 01 CVD 13214.

Defendant argues that, because Plaintiff never issued a summons, his action abated and the trial court lacked subject matter jurisdiction "to enter the [o]rders filed on 29 January 2002 and 12 July 2005 and 28 December 2005 and all orders following[.]" Although Defendant never argued lack of subject matter jurisdiction before the trial court, "'the issue of subject matter jurisdiction may be raised at any time, even on appeal.'" *Murdock v. Chatham County*, ___ N.C. App. ___, ___, 679 S.E.2d 850, 853-54 (2009)

(citation omitted). Our Supreme Court recently provided guidance concerning subject matter jurisdiction under the Juvenile Code in *In re J.T.*, stating that:

In any given case under the Juvenile Code, "[t]he issuance and service of process is the means by which the court obtains jurisdiction, and thus where *no* summons is issued, the court acquires jurisdiction over neither the parties nor the subject matter of the action." . . . In the case *sub judice*, it is undisputed that a summons was issued upon the filing of the TPR petition by DSS. It is equally clear that the General Assembly has granted subject matter jurisdiction to the trial court to hear and determine TPR petitions within a prescribed set of circumstances. N.C.G.S. § 7B-1101 (2007). Because the jurisdictional requirements of N.C.G.S. § 7B-1101 were satisfied in the instant case, the trial court's subject matter jurisdiction was properly invoked upon issuance of a summons.

In re J.T., 363 N.C. 1, 4, 672 S.E.2d 17, 18-19 (2009) (citations omitted, emphasis in the original).

In *In re K.J.L.*, 363 N.C. 343, 677 S.E.2d 835 (2009), our Supreme Court clarified its holding in *In re J.T.* when it addressed the issue of "whether the failure to legally issue a summons implicates the court's jurisdiction over the subject matter of an action or merely affects jurisdiction over the parties thereto." *Id.* at 345, 677 S.E.2d at 837. The Supreme Court noted:

In the recent case *In re J.T. (I)*, a TPR summons had been issued but failed to name any of the three juveniles in that case as respondent, and no summons had been served on the juveniles or their GAL. We held these deficiencies implicated personal jurisdiction, not subject matter jurisdiction. . . . In our decision, we quoted the following: "[T]he issuance and service of process is the means by which the court obtains jurisdiction, and thus where *no* summons is issued, the court

acquires jurisdiction over neither the parties nor the subject matter of the action.'" . . . Understood in context, this language was used to emphasize that a summons had in fact been issued in *In re J.T. (I)*, as had been the case in *In re Poole*. . . . Read literally and in isolation, however, this language could be interpreted to mean the failure to issue a summons defeats subject matter jurisdiction. We disavow such an interpretation. The summons relates to subject matter jurisdiction, albeit only insofar as it apprises the necessary parties that the trial court's subject matter jurisdiction has been invoked and that the court intends to exercise jurisdiction over the case. Thus, although the summons itself does not establish subject matter jurisdiction, it can be used as some proof of invocation of the trial court's subject matter jurisdiction. This invocation is accomplished when a proper controversy has been brought before the court.

Id. at 347-48, 677 S.E.2d at 838 (citations omitted, emphasis in the original).

The Supreme Court held that "[b]ecause the purpose of the summons is to obtain jurisdiction over the parties to an action and not over the subject matter, summons-related defects implicate personal jurisdiction and not subject matter jurisdiction." *Id.* at 348, 677 S.E.2d at 838. The Supreme Court stated that "[t]he allegations of a complaint determine a court's jurisdiction over the subject matter of the action." *Id.* at 345, 677 S.E.2d at 837. The Court noted that, with respect to actions filed under the Juvenile Code, "the court's subject matter jurisdiction is established by statute." *Id.* (citing N.C. Gen. Stat. § 7B-200 (2007), N.C. Gen. Stat. § 7B-1101 (2007)). The Supreme Court distinguished between subject matter jurisdiction and personal jurisdiction and stated that "[e]ven without a summons, a court may

properly obtain personal jurisdiction over a party who consents or makes a general appearance, for example, by filing an answer or appearing at a hearing without objecting to personal jurisdiction." *Id.* at 346, 677 S.E.2d at 837.

As with matters arising under the Juvenile Code, the trial court's jurisdiction over child custody matters is set forth by statute, subject to limitations not pertinent here. See N.C. Gen. Stat. § 50-13.5(c)(2) (2009) ("The courts of this State shall have jurisdiction to enter orders providing for the custody of a minor child under the provisions of G.S. 50A-201, 50A-202, and 50A-204."). Further, the case before us involves the consolidation of two separate actions, each filed by one of the parties against the other, including one action in which Defendant invoked the jurisdiction of the trial court by filing her original complaint and timely issuing a summons. In light of *In re K.J.L.* and the fact that Defendant filed one of the complaints giving rise to this appeal, we conclude that "[a]ny deficiencies in the issuance and service of the summonses [below] . . . did not affect the trial court's subject matter jurisdiction and any defenses implicating personal jurisdiction were waived by the parties." *In re K.J.L.*, 363 N.C. at 348, 677 S.E.2d at 838. Therefore, this argument is overruled.

Affirmed.

Judges GEER and ERVIN concur.

Report per Rule 30(e).