

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-793
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

IN THE MATTER OF:

J.P.,
Minor Child

Watauga County
No. 06-J-41

Appeal by respondent-mother from order entered 12 April 2011 by Judge Ted McEntire in Watauga County District Court. Heard in the Court of Appeals 31 October 2011.

Di Santi Watson Capua & Wilson, by Andrea N. Capua and Chelsea B. Garrett, for Watauga County Department of Social Services petitioner-appellee.

Charlotte Gail Blake for respondent-mother appellant.

Pamela Newell for guardian ad litem.

McCULLOUGH, Judge.

On 1 March 2011, this Court filed an opinion which affirmed the trial court's order adjudicating that grounds existed to terminate respondent's parental rights, and which remanded for entry of a new dispositional order. *In re J.P.*, ___ N.C. App. ___, 710 S.E.2d 710 (2011) (unpublished). On 14 March 2011, the trial court convened a dispositional hearing and received

evidence. On 12 April 2011, the court filed an order concluding that it was in the best interest of the juvenile that parental rights of both parents be terminated. The mother of the juvenile filed notice of appeal on 18 April 2011. She subsequently filed a brief in which she contended the trial court lacked subject matter jurisdiction to conduct the dispositional hearing on 14 March 2011 because this Court had not yet issued its mandate. Her contention has merit.

During the pendency of an appeal from an order terminating parental rights, the trial court retains jurisdiction "only to 'enter temporary orders affecting the custody or placement of the juvenile.'" *In re K.L.*, 196 N.C. App. 272, 280, 674 S.E.2d 789, 794-95 (2009) (quoting N.C. Gen. Stat. § 7B-1003(c)). "[A]n appeal removes a case from the trial court which is thereafter without jurisdiction to proceed on the matter until the case is returned by mandate of the appellate court." *Woodard v. Local Governmental Employees' Retirement Sys.*, 110 N.C. App. 83, 85, 428 S.E.2d 849, 850 (1993). The disposition of the appellate court does not become final until the mandate issues. *Hodge v. N.C. Dep't of Transp.*, 161 N.C. App. 726, 729, 589 S.E.2d 737, 738-39 (2003). The mandate of an appellate court

issues twenty days after the written opinion has been filed with the clerk of the appellate court. N.C.R. App. P. 32(b) (2011).

Twenty days from 1 March 2011 is 21 March 2011; the trial court thus prematurely conducted the hearing before this Court issued its mandate and returned jurisdiction to the trial court. "When the record shows a lack of jurisdiction in the lower court, the appropriate action on the part of the appellate court is to arrest judgment or vacate any order entered without authority." *In re R.P.M.*, 172 N.C. App. 782, 787, 616 S.E.2d 627, 631 (2005) (quoting *State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981)). We therefore vacate the order and remand the matter to the trial court for appropriate action.

Vacated and remanded.

Judges HUNTER (Robert C.) and THIGPEN concur.

Report per Rule 30(e).