

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-204

Filed: 1 August 2017

Ashe County, Nos. 10 JA 6, 15 JA 35

IN THE MATTER OF: R.S., A.G.-C.M.

Appeal by Respondent-Mother from order entered 18 November 2016 by Judge William F. Brooks in Ashe County District Court. Heard in the Court of Appeals 11 July 2017.

Grier J. Hurley, for petitioner-appellee Ashe County Department of Social Services.

Diepenbrock Law Office, PA, by J. Thomas Diepenbrock, for respondent-appellant mother.

Mary McCullers Reece, for respondent-appellee father.

Paul W. Freeman, Jr., for Guardian ad Litem.

HUNTER, JR., Robert N., Judge.

Respondent-Mother appeals from an order adjudicating her minor children, An unpublished opinion of the North Carolina Court of Appeals does not constitute

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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.

R.S. (“Rachel”) and A.G.-C.M. (“Anna”)¹ as neglected juveniles. Respondent-Father, appellee, is Rachel’s biological and legal father. Anna’s biological father is not a party to this appeal. Respondent-Mother appeals from the entry of a dispositional and permanency planning order granting Respondent-Father legal and physical custody of the children. On appeal, Respondent-Mother argues the trial court erred in holding the dispositional and permanency planning hearings on the same day, thereby avoiding the prohibition in N.C. Gen. Stat. § 7B-901(c) against ceasing reunification efforts at disposition except under the statute’s enumerated provisions. We conclude Respondent-Mother’s arguments are without merit, and affirm the trial court’s orders.

I. Factual and Procedural History

On 20 January 2010, the Ashe County Department of Social Services (“DSS”) filed a petition alleging Rachel an abused, neglected and dependent juvenile. DSS alleged Respondent-Mother had been using crack cocaine and marijuana in front of Rachel, had sold illegal substances, and had eleven pending charges for eleven counts of drug

¹ We use pseudonyms to protect the identities of the juveniles and for ease of reading. See N.C. R. App. P. 3.1(b) (2016).

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trafficking, and was hiding from law enforcement. DSS further alleged Respondent-Mother refused to notify DSS of Rachel's and her location. On 18 June 2010, the trial court dismissed the petition without prejudice since DSS was unable to serve Respondent-Mother or take custody of Rachel.

During this time, Respondent-Mother and Rachel lived in Mexico with Respondent-Father. When Respondent-Mother left for Mexico, Respondent-Mother was pregnant with Anna. Respondent-Mother gave birth to Anna in Mexico.² Sometime around July 2012, Respondent-Mother returned to the United States and faced her pending criminal charges. She turned herself in and served some time in prison.³ After prison, Respondent-Mother lived in South Carolina for two to three years.

In July 2015 Respondent-Mother travelled to North Carolina. At this time Respondent-Mother was arrested, charged with simple assault, and incarcerated. Rachel and Anna stayed with their maternal grandmother while Respondent-Mother was in jail.

In October 2015, DSS received a report alleging possible abuse and neglect of Respondent-Mother's children. On 31 October 2015, DSS obtained nonsecure custody orders and placed Rachel and Anna in an Ashe County foster home. On 2 November

² Respondent-Mother listed Respondent-Father as Anna's biological father on Anna's birth certificate. However, the trial court eventually found Respondent-Father was not Anna's biological father.

³ The children stayed with a friend in California during this time.

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2015, DSS filed a second petition alleging Rachel a neglected juvenile. Also on 2 November 2015, DSS filed a petition alleging Rachel's sister, Anna, a neglected juvenile. From 2 November 2015 onward, Ashe County DSS maintained nonsecure custody of both Anna and Rachel.

On 23 August 2016, the trial court entered an order finding Respondent-Father was Rachel's legal father. DNA testing showed another man was Anna's biological father.⁴

On 21 October 2016, after several continuances, the trial court held adjudication and disposition hearings. Parties' counsel, Respondent-Mother, and Respondent-Father⁵ were present. At the opening of the proceeding, the following exchange between the trial court and counsel for DSS occurred:

THE COURT: This is on for adjudication, disposition, and—

[DSS COUNSEL]: And permanency planning. So my plan is, my plan of attack is to do the adjudication, disposition and then after that to do the permanency planning.

DSS first called Regina Drake. Drake worked as the social worker for Rachel and Anna. On 29 October 2015, DSS and law enforcement arrived at Respondent-Mother's home and found Respondent-Mother exhibiting paranoid behavior.

⁴ Anna's biological father is not a party to this appeal.

⁵ Respondent-Father made himself available for the permanency planning hearing via Skype.

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Respondent-Mother went to Ashe Memorial Hospital and she admitted to relapsing and taking methamphetamine. Respondent-Mother stayed at the hospital until 31 October 2015.⁶ Following her discharge, Respondent-Mother denied having any mental health or substance abuse issues, and stated she was going to get her children. Also on 31 October 2015, DSS received a report alleging Rachel and Anna were victims of sexual abuse. The incident involved the children's maternal grandmother and the maternal grandmother's boyfriend.⁷ The children⁸ stated the boyfriend grabbed the child's hand and made her touch his "wee-wee," and the grandmother wanted her to do so. Additionally, the children stated their grandmother started "sexing" with her boyfriend in front of them.

Deputy James McNeill ("McNeill") testified. McNeill had been to Respondent-Mother's home at least three times the week of 21 October 2016. Respondent-Mother called the Sheriff's Department, but the dispatcher could not make sense of what Respondent-Mother was saying. McNeill arrived at Respondent-Mother's home and witnessed Respondent-Mother "looking at the wall . . . just screaming out, cussing . . . but there was no one there." The children were at the residence. During another incident that same week, Respondent-Mother kept insisting "there were people

⁶ While Respondent-Mother was at Ashe Memorial Hospital, Respondent-Mother's adult son served as placement for Rachel and Anna.

⁷The transcript does not reveal exactly when this abuse occurred.

⁸ Neither the transcript nor the record designates which child was the victim of this abuse, or if both children were victims.

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. . . surrounding her residence . . . impersonating law enforcement, impersonating FBI agents, uhm, that [were] there to try to kill her and try to watch her every move.” McNeill was uncertain whether the children were home at that time.

Respondent-Mother took the stand. Respondent-Mother stated she “relapsed” the week of 21 October 2016. This relapse involved both drugs and alcohol. Respondent-Mother called 911 because she wanted to talk to someone and she “wasn’t in her right mind.”

Respondent-Mother also testified:

I love [my children] very much . . . I turned myself in from Mexico and went to prison. I went to rehab. I took neurobiology, I’ve done three years of probation successfully [and] two of them was down in South Carolina. I never had any problems down there. . . I think in the last year when I come back up here I kind of got stuck up here. I had three deaths [in the family] . . . within two years.

The trial court found DSS met their burden in the adjudication hearing. The trial judge stated:

I do find that the children have been placed in an environment injurious to [them] . . . through the lack of supervision by the mother, the use of uhm, drugs and other substances and that they haven’t received proper care and supervision. During the period of time that she was in . . . jail they were placed with the maternal grandmother, [and] there’s certainly evidence of great problems then. Then on this night when the children were taken . . . from her apparently she was talking basically . . . out of her head . . . [S]he’s admitted to substance abuse and as such the children have been put in a precarious situation and I am

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going to find neglect . . . I am going to adjudicate that these children are neglected children.

The trial court also found Rachel's and Anna's biological fathers non-offending parents.

The trial court asked the parties whether there was additional evidence regarding disposition. The parties presented no new evidence except the DSS reports regarding disposition. DSS stated "it would be the normal disposition of custody remaining with the Department and the children [will] remain with the foster parents." The parties did not wish to be heard on disposition, and the trial court stated the order will be "told in open Court by . . . the Department of Social Services Attorney."

The trial court moved onto the permanency planning hearing. DSS called Paige Shatley, a foster care social worker with Ashe County DSS. On 15 November 2015, Respondent-Mother consented to and entered into a Family Services Plan with DSS. Her plan objectives were to obtain a substance abuse and mental health assessment and to follow treatment recommendations. Another plan objective was to obtain a psychological evaluation. Respondent-Mother obtained a substance abuse and mental health evaluation in December 2015. She was diagnosed with cocaine and amphetamine use disorder. On 18 December 2015, Respondent-Mother completed a psychological evaluation. There, she was diagnosed with specified

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personality disorder, antisocial features, bipolar II disorder, and amphetamine use disorder with stimulant psychosis. Respondent-Mother was to receive ongoing mental health treatment and substance abuse treatment.

Initially, Respondent-Mother complied with her case plan. In August 2016 Respondent-Mother began to struggle to comply with her case plan. Respondent-Mother had some positive drug screens and stopped attending her classes. At this time, Respondent-Mother's contact with DSS dwindled, and DSS social workers had difficulty understanding Respondent-Mother in one or more phone calls. Respondent-Mother revoked her release with her therapy service provider on 8 September 2016. On 25 September 2016, Respondent-Mother was arrested for felony assault with a deadly weapon. Respondent-Mother remained in the Ashe County Jail until the week prior to this hearing.⁹

DSS introduced a letter dated 20 October 2016 which contained a recommendation by the children's counselor. DSS admitted this letter into evidence without objection. The counselor's clinical opinion was the children would be emotionally damaged if they were separated from each other. The counselor asked the trial court to not separate the sisters because they have "a very strong and loving bond" and "they have basically been the only constants in each other's lives . . . in

⁹ That charge resulted in a misdemeanor charge with a sentence of probation.

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their unstable living situations.” The counselor prepared the letter especially for the hearing.

Respondent-Father had been involved with the girls since they came into DSS custody. Respondent-Father consistently communicated with the children through skype and the telephone. He considers both girls his daughters. DSS received a home study on Respondent-Father and his home in Mexico.¹⁰ DSS admitted the home study into evidence without objection. This home study stated Respondent-Father “is a fit person and that he has the financial and social conditions to provide the minors with a stable home, the necessary tools for them to grow and develop into useful members of society.” Respondent-Father also had a full-time job, lived alone, had adequate space for the two girls, no criminal history, tested negative for drugs and passed a drug abuse assessment.

DSS believed Respondent-Mother had not made adequate progress within a reasonable period of time. DSS recommended the trial court change Rachel’s primary permanency plan to custody with Respondent-Father, her biological father. DSS also recommended the trial court change the primary permanent plan for Anna to Respondent-Father, an approved caregiver.

During the permanency planning’s closing arguments, counsel for Respondent-Mother stated, “if the Court determines what’s best for the children . . . is that they

¹⁰ DSS submitted their request for a home study through the Mexican Consulate.

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be in the custody of [Respondent-Father] in Mexico, [Respondent-Mother will support that determination.” Respondent-Mother asked to directly speak to the court and stated, “I want them to go to Mexico. I know [Respondent-Father is] a good father. Just get this case closed and be done with it because I’m sick of dealing with it . . .”

The trial court’s primary permanent plan established custody with Respondent-Father. The trial court established reunification as a secondary permanent plan. The trial court set a further hearing for 13 December 2016, where “legal and physical custody shall be awarded to [Respondent-Father] and the logistics shall be determined as to the children being transported to Mexico and the visitation which shall be awarded as to [Respondent-Mother] and Anna’s biological father.

On 30 November 2016, Respondent-Mother timely appealed the adjudication and disposition order. Respondent-Mother also petitions this Court to issue a writ of certiorari to review the permanency planning order. For the reasons discussed below, we dismiss Respondent-Mother’s petition for writ of certiorari because we conclude her arguments contained therein are not meritorious.

II. Standard of Review and Jurisdiction

Appellate courts review dispositional orders in juvenile proceedings only for abuse of discretion. *See* N.C. Gen. Stat. § 7B-903; *In re T.H.*, 232 N.C. App. 16, 29, 753 S.E.2d 207, 216 (2014). “Allegations of neglect must be proven by clear and convincing evidence.” *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676

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(1997). If the trial court’s findings of fact are supported by competent evidence, they are conclusive on appeal. *In re Isenhour*, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73 (1991).

This Court’s review of a permanency planning order is “limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. The trial court’s findings of fact are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings.” *Matter of J.S.*, ___ N.C. App. ___, ___, 792 S.E.2d 861, 863 (2016) (quoting *In re J.H.*, ___ N.C. App. ___, ___, 780 S.E.2d 228, 238 (2015)). “Factual findings that are not challenged on appeal are deemed to be supported by the evidence and are binding on appeal.” *Id.* at ___, 792 S.E.2d at 863.

“Questions of statutory interpretation are questions of law, which are reviewed *de novo* by an appellate court.” *In re P.A.*, 241 N.C. App. 53, 58, 772 S.E.2d 240, 245 (2015) (quoting *State v. Jones*, 237 N.C. App. 526, 530, 767 S.E.2d 341, 344 (2014)).

III. Analysis

In her appellate brief, Respondent-Mother acknowledges the standard of review for dispositional and permanency planning orders. However, Respondent-Mother fails to challenge the evidentiary support for any specific finding of fact or argue the trial court’s conclusions are not supported by its factual findings. Even though this Court could affirm the trial court’s orders on the basis of Respondent-

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Mother's failure to properly challenge the trial court's orders, we will review Respondent-Mother's arguments due to the importance of child custody orders. *See Matter of J.S.*, ___ N.C. App. ___, ___, 792 S.E.2d 861, 863 (2016).

In her brief and petition, Respondent-Mother asserts the trial court erred by holding a permanency planning hearing immediately after the dispositional hearing and by ceasing reunification efforts therein. Respondent-Mother first contends the trial court misinterpreted and failed to properly apply the statutory provisions of the Juvenile Code. Specifically, Respondent-Mother contends the trial court violated the clear intent of N.C. Gen. Stat. § 7B-901(c) (2016), and therefore this Court should review her issue on appeal despite her failure to object at trial. *See State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985) (“[W]hen a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court's action is preserved, notwithstanding defendant's failure to object at trial.”). Respondent-Mother argues the trial court improperly ceased reunification efforts without making the findings required under N.C. Gen. Stat. § 7B-901(c). Following our *de novo* review, we conclude the trial court did not err by not entering findings under § 7B-901(c). We also conclude the trial court correctly followed the procedure set forth in § 7B-906.2(b) of the Juvenile Code.

N.C. Gen. Stat. § 7B-901(c) prescribes a narrow set of circumstances where the trial court, as part of its initial dispositional order, may direct reasonable efforts for

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reunification to cease. A trial court is permitted to cease reunification efforts at an initial dispositional hearing under certain circumstances. N.C. Gen. Stat. § 7B-901(c) (2016). If the trial court finds one of those circumstances exist, § 7B-901(c) provides the court “shall direct that reasonable efforts for reunification . . . shall not be required . . . unless the court concludes that there is compelling evidence warranting continued reunification efforts[.]”

This Court held N.C. Gen. Stat. § 7B-901(c) has no application beyond the initial disposition hearing. *Matter of T.W.*, ___ N.C. App. ___, ___, 796 S.E.2d 792, 794 (2016). Rather, in instances where the trial court does not cease reunification at the initial disposition, N.C. Gen. Stat. § 7B-906.2(b) provides for cessation of reunification efforts at the permanency planning hearing. *See T. W.* at ___, 796 S.E.2d at 795-96. (Where reunification efforts are not preempted as part of the initial disposition pursuant to N.C. Gen. Stat. § 7B-901(c), the trial court may cease reunification efforts at the primary planning stage pursuant to N.C. Gen. Stat. § 7B-906.2(b) (2016)). N.C. Gen. Stat. § 906.2(b) (2016) provides “[r]eunification shall remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile’s health or safety.”

Here, the trial court did not find any of the factors listed in N.C. Gen. Stat. § 7B-901(c) existed. Nor did the trial court cease reunification efforts in its

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dispositional order. Therefore, the trial court did not violate the mandates of N.C. Gen. Stat. § 7B-901(c). Rather, the trial court correctly proceeded pursuant to N.C. Gen. Stat. § 7B-906.2(b) and found as part of its permanency plan order, “reunification efforts clearly would be unsuccessful or inconsistent with the children’s health and safety.” Respondent-Mother does not challenge this finding, but merely asserts the trial court’s procedure in this case failed to protect Respondent-Mother’s constitutional rights. Additionally, Respondent-Mother concedes the trial court’s order did not eliminate reunification as a permanent plan since the trial court’s order adopted a secondary plan for reunification as to each child. Because the trial court did not violate the pertinent provisions of the Juvenile Code, we fail to find merit in Respondent-Mother’s contention the trial court’s conduction of a permanency planning hearing immediately after the dispositional hearing allowed the trial court to circumvent the statutory requirements under N.C. Gen. Stat. § 7B-901(c).

Respondent-Mother next contends she had improper notice of the permanency planning hearing since it occurred immediately after the dispositional hearing. As to notice for a juvenile hearing, this Court explained:

A party who is entitled to notice of a hearing waives such notice where they attend the hearing and participate in it without objecting to improper notice . . . [R]espondents and their attorneys were present at the hearing, they participated in the proceedings, and no one objected to improper notice. Thus, respondents waived any objection they might have had to improper notice.

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In re J.S., 165 N.C. App. 509, 514, 598 S.E.2d 658, 662 (2004) (internal citations omitted). Here, the record reflects DSS served Respondent-Mother's counsel with a notice of hearing on 3 October 2016. This notice stated both the adjudicatory and dispositional hearings as well as the permanency planning hearing would occur on 21 October 2016. The record also reflects Respondent-Mother and counsel were prepared to hold the permanency planning hearing after the adjudication and dispositional hearings. Following disposition, the trial court stated it would move on to the permanency planning phase. The trial court began its permanency planning hearing after the lunch recess. At no point did Respondent-Mother's counsel object to the trial court's holding the permanency planning hearing after the adjudicatory and dispositional hearings. Because the record fails to indicate Respondent-Mother or her counsel objected to the trial court's holding the permanency planning hearing immediately after the dispositional hearing, Respondent-Mother has waived review of whether she had notice of the hearing.

Respondent-Mother next asserts this Court should "treat the disposition hearing and the permanency planning hearing as one hearing and should treat the adjudication/disposition order and the permanency planning order as one order." In support of her argument, Respondent-Mother asserts the trial court separated the two hearings and orders in order to avoid the prohibition in N.C. Gen. Stat. § 7B-901(c) against ceasing reunification efforts at disposition except under the statute's

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enumerated provisions. We have already concluded the trial court did not violate our Juvenile Code. Here, Respondent-Mother offers no direct legal authority or precedent as to why this Court should treat the trial court's two orders as a single order except to cite *In re A.B.*, 239 N.C. App. 157, 170-71, 768 S.E.2d 573, 581 (2015) (Where this Court treated an improper Rule 60 motion according to its substance as a motion to reopen evidence.). Because Respondent-Mother only offers a conclusory statement, without any true legal argument or citation to relevant authority, Respondent-Mother's assignment of error violates Rule 28(b)(6) of our North Carolina Rules of Appellate Procedure and therefore subjects this argument to dismissal. This assignment of error is dismissed.

Respondent-Mother next assigns error to the trial court's finding Respondent-Mother insufficiently complied with her DSS case plan when the trial court never ordered her to comply with that case plan. Specifically, Respondent-Mother asserts neither the trial court nor DSS had authority to compel Respondent-Mother to comply with her case plan until the entry of the dispositional order. The only legal authority Respondent-Mother cites in this assignment of error is *In re A.G.M.*, 241 N.C. App. 426, 433, 773 S.E.2d 123, 130 (2015) (Neither the trial court nor DSS had the jurisdiction or authority to order the mother to sign a service agreement or comply with anything in any service agreement, until the entry of a dispositional order.). Respondent-Mother concedes the trial court ordered her to "comply with a plan of

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treatment as recommended by the assessing therapist,” but the trial court failed to otherwise order her to comply with her DSS case plan.

In its 18 November 2016 permanency planning order, the trial court made numerous findings regarding Respondent-Mother’s compliance with her case plan. The trial court found Respondent-Mother “has had inconsistent participation and cooperation with her plan, is not making adequate progress within a reasonable period of time, and has not made herself available to the court, the department, or the children’s GAL.” Respondent-Mother does not argue there is no evidence to support this finding. Respondent-Mother also does not argue this finding does not support the trial court’s conclusions. Respondent-Mother merely asserts because she was not legally obligated to follow the case plan, the “trial court therefore erred when it based its 18 November 2016 order ceasing reunification efforts and changing the primary permanent plan on its findings that [Respondent-Mother] had failed to make sufficient progress on her case plan from November 2015 until 21 October 2016.”

“It is not the duty of this Court to supplement an appellant’s brief with legal authority or arguments not contained therein.” *Eaton v. Campbell*, 220 N.C. App. 521, 522, 725 S.E.2d 893, 894 (2012) (citations omitted). Here, Respondent-Mother’s assertion she was not legally required to follow the DSS plan gives this Court no reason to disturb the trial court’s order because the trial court’s conclusions of law

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are supported by its findings of fact, and those findings are, in turn, supported by the evidence.

Finally, Respondent-Mother argues she suffered prejudice because the trial court merged the dispositional hearing with the permanency planning hearing, and because the trial court erroneously ceased reunification efforts. We disagree.

“According to well-established North Carolina law, a litigant will not be heard to complain on appeal about a decision that a trial judge made at that litigant’s request.”

In re K.C., 199 N.C. App. 557, 563, 681 S.E.2d 559, 564 (2009). Respondent-Mother did not object to the permanency plan. Rather, Respondent-Mother through counsel, approved the trial court’s plan to place both children with Respondent-Father. After her counsel consented to the plan, Respondent-Mother personally addressed the court. Respondent-Mother stated, “I want them to go to Mexico. I know [Respondent-Father is] a good father. Just get this case closed and be done with it because I [am] sick of dealing with it, honest to God.” Because Respondent-Mother affirmed the trial court’s determination, she cannot now assert prejudice. *K.C.* at 563, 681 S.E.2d at 564.

IV. Conclusion

For the reasons stated above, we affirm the trial court’s adjudication dispositional orders and dismiss Respondent-Mother’s petition for writ of certiorari.

AFFIRMED IN PART AND DIMISSED IN PART.

IN RE: R.S., A.G.-C.M.

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Judges BRYANT and MURPHY concur.

Report per Rule 30(e).