

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-833

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

IN THE MATTER OF:
CODY GURLEY

Durham County
No. 98 J 117

Appeal by respondent-appellant from order filed 6 March 2001 by Judge Marcia H. Morey in Durham County District Court. Heard in the Court of Appeals 16 April 2002.

Attorney General Roy Cooper, by Assistant Attorney General John P. Barkley, for the State.

County Attorney S.C. Kitchen, by Deputy Durham County Attorney Lowell L. Siler and Assistant Durham County Attorneys Curtis O. Massey, II, and Lucy Chavis, for respondent-appellant, Durham County.

Public Defender Robert Brown, Jr., by Assistant Public Defender Lori D. Mahmoud, for respondent-appellee, juvenile.

GREENE, Judge.

Durham County (the County) appeals a juvenile order filed 6 March 2001 ordering it to pay the costs of Cody Gurley's (Gurley) residential treatment at Evy's Group Care.

Gurley was adjudicated delinquent on 12 May 1998 for two counts of crimes against nature and two counts of first-degree sexual offenses. Gurley was subsequently adjudicated delinquent on 5 December 2000 for breaking and entering and larceny. Thereafter,

on 6 March 2001, the trial court determined Gurley was in need of therapy due to his mental diagnosis. After finding Gurley's family had "not been involved in anything," the trial court ordered the County to "be responsible for the cost of pay[ing] for [Gurley's] residential treatment at Evy's Group Care."

On 2 April 2001, the County filed its notice of appeal and on 29 June 2001, filed a petition for writ of certiorari.

The dispositive issue is whether this Court has the right to grant a writ of certiorari and review the trial court's order in this case.

A trial court may order a county "to arrange for evaluation or treatment of [a] juvenile and to pay for the cost of the evaluation or treatment." N.C.G.S. § 7B-2502(b) (1999). While a county must be given notice and an opportunity to be heard before an order to pay costs can be issued, *id.*, a county does not have a "statutory right to appeal in a juvenile proceeding in this state," *In re Voight*, 138 N.C. App. 542, 545, 530 S.E.2d 76, 78, *disc. review denied, cert. denied, and remedial writ denied*, 352 N.C. 674, 545 S.E.2d 728 (2000); *In re Wharton*, 305 N.C. 565, 569, 290 S.E.2d 688, 690 (1982); *In re Brownlee*, 301 N.C. 532, 547, 272 S.E.2d 861, 870 (1981). Although *Brownlee* and *Wharton* held that a county does not have a right to appeal in a juvenile delinquency action, our Supreme Court exercised its power under the N.C. Constitution, Article IV, Section 12(1) and issued a remedial writ to hear the appeals. *Voight*, 138 N.C. App. at 545, 530 S.E.2d at 78. While

"this Court does not have the power to issue a remedial writ under our Constitution, . . . we do have the power to issue certain prerogative writs under N.C. Gen. Stat. § 7A-32 (1999)." *Id.* One of these prerogative writs is certiorari. N.C.G.S. § 7A-32(c) (1999). This Court has authority to issue a writ of certiorari only

in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review pursuant to G.S. 15A-1422(c) (3) of an order of the trial court denying a motion for appropriate relief.

N.C.R. App. P. 21(a) (1).

In this case, the County has not failed to take timely action, is not attempting to appeal from an interlocutory order, and is not seeking review pursuant to N.C. Gen. Stat. § 15A-1422(c) (3). Thus, this Court does not have the authority to issue a writ of certiorari pursuant to Rule 21(a) (1). Accordingly, because the County does not have a right to appeal and this Court is without authority to issue remedial writs or grant a writ of certiorari under the circumstances of this case, the County's appeal is dismissed.

Dismissed.

Judges TIMMONS-GOODSON and HUNTER concur.

Report per Rule 30(e).