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NO. COA05-1129

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

IN THE MATTER OF:
M.E.

Edgecombe County
No. 99 J 172

Appeal by respondent-mother (respondent) from judgment entered 3 January 2005 by Judge Pell C. Cooper in Edgecombe County District Court granting legal and physical custody of M.E. to the respondent-father, suspending further reviews, and transferring the case to Seneca County, Ohio. Heard in the Court of Appeals 22 March 2006.

Robert Dale Pitt, for the minor's Guardian ad Litem.

Rountree & Boyette, LLP by Wayne S. Boyette, for respondent-father.

Duncan B. McCormick, for respondent-appellant mother.

STEELMAN, Judge.

M.E. was adjudicated dependent by order filed 4 May 2000 in Edgecombe County, and legal and physical custody of the child was placed in Edgecombe County Department of Social Services. By order filed 22 February 2002, the trial court granted Department of Social Services the authority to place physical custody of M.E.

with her father, who lives in Ohio (though legal custody of the child remained with Department of Social Services). Department of Social Services placed M.E. in the physical custody of her father in March of 2002, and she has remained in his physical custody since that time. Legal custody of M.E. was granted to her father in July of 2002. Respondent moved for custody review in September of 2004, requesting that M.E. be placed with her. This matter was heard 23 November 2004. By judgment filed 3 January 2005, the trial court ordered, *inter alia*, that legal and physical custody of the child be with the father; that respondent have certain visitation and notification rights; and that all "further reviews are suspended, jurisdiction is transferred to Seneca County, Ohio and the GAL is released." From this judgment, respondent appeals.

We note that though respondent submitted written notice of appeal to the Clerk of Court for Edgecombe County, she acknowledges her notice of appeal was defective. For this reason, respondent petitioned this Court to review the matter upon writ of certiorari. N.C. R. App. P. Rule 21(a)(1); *Cox v. Steffes*, 161 N.C. App. 237, 241, 587 S.E.2d 908, 911 (2003). We have granted respondent's petition for writ of certiorari. *Id.*

In respondent's only argument on appeal, she contends that the trial court erred by transferring jurisdiction of the case to Ohio without making any relevant findings of fact or conclusions of law. We agree.

This matter was initiated by the filing in Edgecombe County of a juvenile petition alleging dependency on 22 October 1999. Both

respondent and M.E. resided in Edgecombe County at that time. Issues concerning subject matter jurisdiction in interstate custody disputes are generally governed by Chapter 50A of the North Carolina General Statutes. See *Wilson v. Wilson*, 121 N.C. App. 292, 294, 465 S.E.2d 44, 45 (1996). Chapter 50A is known as the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA). "The UCCJEA is a jurisdictional statute, and the jurisdictional requirements of the UCCJEA must be met for a court to have power to adjudicate child custody disputes." *Foley v. Foley*, 156 N.C. App. 409, 411, 576 S.E.2d 383, 385 (2003).

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. . . . Provided, that before exercising jurisdiction under this Article, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204.

N.C. Gen. Stat. § 7B-1101 (2004). The trial court properly exercised initial jurisdiction pursuant to N.C. Gen. Stat. §§ 50A-201 and 7B-1101 because the juvenile resided in Edgecombe County, North Carolina on the date of the commencement of the proceeding. *In re N.R.M.*, 165 N.C. App. 294, 298-99, 598 S.E.2d 147, 149-50 (2004).

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive,

continuing jurisdiction over the determination until:

(1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

N.C. Gen. Stat. § 50A-202. Additionally, N.C. Gen. Stat. § 50A-207 allows the trial court in its discretion to decline jurisdiction if it determines that it is an inconvenient forum. The trial court must make the appropriate findings of fact and conclusions of law when settling jurisdictional matters. See *Senner v. Senner*, 161 N.C. App. 78, 83-84, 587 S.E.2d 675, 678-79 (2003); *Foley*, 156 N.C. App. at 413, 576 S.E.2d at 386.

Unlike the trial court in *Senner*, in the instant case, the trial court made no findings of fact or conclusions of law to support a finding that it no longer had sufficient contacts with the parties to maintain continuing jurisdiction under N.C. Gen. Stat. § 50A-202, or that it properly exercised its discretion to terminate jurisdiction pursuant to N.C. Gen. Stat. § 50A-207. Because there are no findings of fact or conclusions of law in support of the trial court's transfer of jurisdiction to Ohio, we must vacate that portion of the judgment and remand for entry of an

order containing the appropriate findings of fact and conclusions of law, or other action consistent with this decision. "The trial court shall determine whether it is appropriate to allow additional evidence prior to making [any supplemental] findings and conclusions." *In re Anderson*, 151 N.C. App. 94, 100, 564 S.E.2d 599, 603 (2002). If additional evidence is received, the trial court shall insure that M.E. is represented by a guardian *ad litem*.

We note that respondent has not contested any portion of the trial court's judgment, other than its transfer of jurisdiction to Ohio. Therefore, the judgment of the trial court, including the order that legal and physical custody of M.E. be returned to her father, and the suspension of all further reviews, is affirmed in all respects other than the transfer of jurisdiction.

Because defendant has not argued her other assignments of error in her brief, they are deemed abandoned. N.C. R. App. P. Rule 28(b)(6) (2003).

AFFIRMED IN PART, VACATED AND REMANDED IN PART.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).