

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1581

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

IN THE MATTER OF:
R.A.B.H. and D.J.H.,
Minor Children.

Buncombe County
Nos. 04 J 291-92

Appeal by respondent from orders entered 9 August 2005 by Judge Peter L. Roda in Buncombe County District Court. Heard in the Court of Appeals 24 July 2006.

C. Reid Gonella for petitioner-appellee Buncombe County Department of Social Services.

Judy N. Rudolph for Guardian Ad Litem.

Charlotte Gail Blake for respondent-appellant.

MARTIN, Chief Judge.

Mimi Reynolds ("respondent") appeals orders terminating her parental rights as the mother of R.A.B.H. and D.J.H. On 28 December 2000, the Buncombe County Department of Social Services ("DSS") filed juvenile petitions alleging that R.A.B.H. and D.J.H. were neglected and dependent children and obtained custody by non-secure custody order. The children were subsequently adjudicated neglected and dependent juveniles, with the court later ordering that the permanent plan for the children be reunification. In June 2002, the children were returned to respondent's custody.

On 3 June 2003, DSS filed juvenile petitions alleging that the children were abused, neglected and dependent, and DSS obtained custody by non-secure custody order. The petition was filed after DSS received a report that the children had been sexually abused by Roy Searcy, a convicted sex offender living in the children's home. Searcy was murdered by Robert McGrath, respondent's boyfriend who was also living in the home. On 2 September 2003, the children were adjudicated abused, neglected and dependent juveniles.

On 9 June 2004, a permanency planning review hearing was held at which the court changed the permanent plan for the children from reunification to adoption or guardianship. The permanency planning review order from the hearing was entered on 2 September 2004. On 1 November 2004, petitions to terminate parental rights were filed by DSS alleging that respondent had neglected the children, and had willfully left the children in foster care for twelve months without showing reasonable progress to correct the conditions which led to their removal from respondent's home. On 15 June 2005, hearings were held on the petitions to terminate respondent's parental rights. On 9 August 2005, the trial court entered an order terminating respondent's parental rights. Respondent appeals.

Respondent first argues that the trial court's failure to terminate her parental rights within statutory timelines constituted reversible error. Respondent cites four specific delays in the termination proceedings. First, respondent asserts DSS did not file its petition to terminate her parental rights

within sixty days of the permanency planning hearing at which the court changed the permanent plan for the children to adoption. See N.C. Gen. Stat. § 7B-907(e) (2005). Second, respondent contends the trial court erred because it failed to reduce to writing the permanency planning review order within thirty days after completion of the hearing. See N.C. Gen. Stat. § 7B-907(c) (2005). Third, respondent argues that the trial court failed to hold a hearing to terminate her parental rights within ninety days of the filing of the petition in accordance with N.C. Gen. Stat. § 7B-1109(a) (2005). Finally, respondent cites the trial court's failure to reduce the termination order to writing within thirty days. See N.C. Gen. Stat. § 7B-1109(e) (2004).

Respondent contends that the delays mandate that the Court vacate the order terminating her parental rights. Respondent claims prejudice from the delays, arguing that all of the failures to follow statutory guidelines prevented her from appealing until after 9 August 2005. Respondent claims that the delays meant that her relationship with her children remained "unresolved," placement in permanent homes for her children were delayed, and DSS was no longer making efforts to reunify her with her children by providing any services, including visitation.

After careful review of the record, briefs and contentions of the parties, we affirm. This Court has stated that "time limitations in the Juvenile Code are not jurisdictional . . . and do not require reversal of orders in the absence of a showing by the appellant of prejudice resulting from the time delay." *In re*

C.L.C., K.T.R., A.M.R., E.A.R., 171 N.C. App. 438, 443, 615 S.E.2d 704, 707 (2005), *aff'd*, 360 N.C. 475, ___ S.E.2d ___ (5 May 2006) (No. 467A05). Thus, the failure of the trial court to follow applicable timelines did not deprive the court of jurisdiction and does not require reversal in the absence of prejudice. In the case *sub judice*, we find no prejudice, and thus decline to reverse the order of termination.

We first consider the trial court's failure to enter the permanency planning review order within thirty days in violation of N.C. Gen. Stat. § 7B-907(c), and DSS's failure to file a petition for the termination of respondent's parental rights within sixty days of the permanency planning review hearing in violation of N.C. Gen. Stat. § 7B-907(e). The permanency planning review order was entered 2 September 2004, slightly less than 90 days after the hearing. Respondent did not appeal the order, although she could have. See *In re B.M., M.M., An.M, & Al.M.*, 168 N.C. App. 350, 355, 607 S.E.2d 698, 701 (2005) ("An order following a review hearing or permanency planning hearing that changes the permanency plan from reunification to termination of parental rights is a dispositional order that fits within the statutory language of N.C. Gen. Stat. § 7B-1001.").

DSS filed its petition to terminate respondent's parental rights almost two months later, on 1 November 2004, slightly less than five months after the hearing. In *In re B.M.*, this Court held that "the time limitation specified in N.C. Gen. Stat. § 7B-907(e) is directory rather than mandatory and thus, not jurisdictional."

Id. at 354, 607 S.E.2d at 701. The Court then concluded that the respondents had failed to show prejudice where the petition was filed almost 11 months late. *Id.* Persuasive to this Court's conclusion was the fact that respondent's right to appeal was not affected by the untimely filing of the petition, because respondent could have appealed from the permanency planning review order. *Id.* at 355, 607 S.E.2d at 701. Based on *In re B.M.*, this Court found no prejudice where DSS's delay in filing the petition to terminate parental rights was only three months. *C.L.C.*, 171 N.C. App. at 445, 615 S.E.2d at 708. Here, similarly, the delay in the petition to terminate respondent's parental rights was just under five months. As in *In re C.L.C.*, we are unable to find any circumstances in this case that would distinguish respondent's situation from the respondent in *In re B.M.* *Id.* Thus, we conclude that respondent is not entitled to reversal based on violations of N.C. Gen. Stat. § 7B-907(c) or (e).

Respondent contends that the trial court's failure to timely hold a hearing on the petition in accordance with N.C. Gen. Stat. § 7B-1109(a) constitutes reversible error.

This Court uniformly has held that the failure of a trial court to enter termination orders within the time standards set forth in North Carolina General Statutes, section 7B-1109(e) need only be reversed when the appellant demonstrates prejudice as a result of the delay. . . . Although our prior cases . . . have addressed the failure of trial courts to file the written termination order within the time provided in section 7B-1109(e), we hold that the same logic must be applied to the timeliness of the termination hearing after the filing of the termination petition under North Carolina General Statutes, section

7B-1109(a).

In re S.W., ___ N.C. App. ___, ___, 625 S.E.2d 594, 596 (citations omitted) (no prejudice demonstrated with a five month delay between termination petition and hearing), *disc. review denied*, ___ N.C. ___, ___ S.E.2d ___ (29 June 2006) (No. 101P06). Since we have already concluded that respondent has failed to demonstrate prejudice, this argument is overruled.

Finally, respondent cites the trial court's failure to reduce the termination order to writing within thirty days. N.C. Gen. Stat. § 7B-1109(e). Here, the order was entered 25 days late. The trial court found that respondent had failed to correct the conditions which led to the removal of her children, and respondent does not assign error to the court's findings. Thus, respondent can show no prejudice from the *de minimis* delay in the filing of the termination order.

Respondent next argues that the trial court abused its discretion by concluding that termination of her parental rights was in the best interests of the children. Respondent cites evidence of the strong bond she has with her children, argues that she has complied with requests made by DSS and the court, and asserts that it is not in the best interests of the children that they be separated from her. We are not persuaded.

Once the trial court has found that grounds exist to terminate parental rights, "the court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2005). The trial court's decision to terminate

parental rights at the disposition stage is discretionary. See *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). "A ruling based on a trial court's discretion will not be reversed without a showing of manifest abuse of that discretion." *In re Black*, 76 N.C. App. 106, 110, 332 S.E.2d 85, 87 (1985) (citation omitted).

Here, the trial court concluded in its discretion that it was in the best interests of the children that respondent's parental rights be terminated. The court based its conclusion primarily on the dramatic improvement that the children made while in DSS custody. The court noted that the children exhibited behavioral problems when they entered non-secure custody for the second time, including self-harming behavior and acting out sexually. At the time of the hearing, the children had stabilized and were adoptable. The court cited the sexual and physical abuse the children suffered, as well as respondent's failure to correct the conditions that led to their removal. The court then concluded that the children needed "a stable, healthy environment" in order to continue improving, and that respondent was not capable of providing that environment. We hold that based on these findings, the trial court could reasonably conclude that termination of respondent's parental rights was in the best interests of the children. Accordingly, the order terminating respondent's parental rights are affirmed.

Affirmed.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).