

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1513

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN THE MATTER OF:

C.K.P.

Onslow County
No. 05 J 73

Appeal by respondent from order entered 29 August 2006 by Judge Wayne G. Kimble, Jr. in Onslow County District Court. Heard in the Court of Appeals 2 April 2007.

No brief for Onslow County Department of Social Services, petitioner-appellee.

No brief for R.R. and N.R., respondent-appellees.

Susan J. Hall for respondent-appellant.

ELMORE, Judge.

Respondent Lisbeth P. appeals the district court's 29 August 2006 order, in which the trial court adjudicated her minor child, C.K.P., dependent and placed the child's legal custody with petitioner and her physical custody with a paternal aunt and uncle (respondent-appellee).

On 25 February 2005, petitioner filed a juvenile petition that alleged that C.K.P. was a dependent juvenile. The petition alleged that the child's father had been killed in a vehicle accident on 24

February 2005 and that respondent had been deported from the United States. Pursuant to a nonsecure custody order, the child was placed with friends of her father. Respondent, who had been deported in 2001 for overstaying her visa, was unable to obtain a visa for the purpose of attending the hearing.

On 19 May 2005, the child's uncle and aunt moved to intervene in the action. The trial court conducted a hearing and filed a memorandum juvenile order on 17 June 2005 which stated, "pending preparation of the final Order," that:

1. The juvenile, [C.K.P.], is placed in the legal custody of Onslow County Department of Social Services and physical custody be placed with Roberto and Nancy R[.], paternal uncle and aunt.

2. The juvenile is adjudicated dependant.

After a permanency planning hearing on 19 April 2006, the trial court entered a juvenile order on 16 June 2006, which granted legal guardianship to the child's aunt and uncle, ceased further reviews of the matter, and ordered that visitation with respondent would be in the discretion of the aunt and uncle. Respondent gave notice of appeal from the 16 June 2006 juvenile order on 20 June 2006, and subsequently filed that record on appeal (COA06-1122) with this Court on 28 July 2006. That appeal is still pending.

On 29 August 2006, the trial court entered the juvenile adjudication and disposition order, *nunc pro tunc* 17 June 2005. In that order, the trial court allowed the aunt and uncle to intervene in the action. After finding that the father had had custody of the child pursuant to a 22 August 2003 order, the trial court made

findings as to the death of the child's father in a vehicle accident on 24 February 2005. The court found that petitioner had previously substantiated neglect of C.K.P. during the marriage between respondent and the child's father. The court further found that respondent had been deported approximately four years earlier, was currently unable to return to the United States, was residing in an apartment in Sweden, and was currently on disability. Additionally, the court found that respondent evaded direct questions about substance abuse during several telephone conversations with a social worker in which her speech was slow and slurred.

After concluding that the child's dependency had been proven by clear, cogent and convincing evidence, the trial court concluded that returning the child to respondent's home would be contrary to the child's best interests. The court placed the child in the legal custody of DSS and in the physical custody of her aunt and uncle. In an amended notice of appeal filed on 30 August 2006, respondent appealed from the trial court's 29 August 2006 adjudication and disposition order.

In her sole argument on appeal, respondent contends that the trial court erred by entering the adjudication and disposition order fourteen months after the completion of the hearing on 17 June 2005. She asserts that the delay was a violation of N.C. Gen. Stat. §§ 7B-807 and 7B-902 (2005) and was prejudicial to her because she could not give notice of appeal from the adjudication and dispositional order. Respondent further claims that the delay

violated her due process rights and prevented the minor child from moving toward a permanent placement. Respondent's argument is not persuasive.

Pursuant to statute, both adjudication and disposition orders must be in "writing, signed, and entered no later than 30 days" after the hearing is completed. N.C. Gen. Stat. §§ 7B-807(b) and 7B-905(a) (2005). The trial court here entered a two-sentence "memorandum juvenile order" after the 17 June 2005 hearing, but did not enter its "juvenile adjudication and disposition order" with proper findings of fact and conclusions of law until fourteen months later on 29 August 2006.

However, this Court has repeatedly held that failure to meet statutory deadlines "is not reversible error *per se*. . . . Rather, we have held that the complaining party must appropriately articulate the prejudice arising from the delay in order to justify reversal." *In re T.S.*, ___ N.C. App. ___, ___, 631 S.E.2d 19, 23-24 (2006) (citations and quotations omitted). It is true that "this court has recently noted that the longer the delay in entry of the order beyond the thirty-day deadline, the more likely prejudice will be readily apparent." *Id.* (citations and quotations omitted). However, the adequacy of prejudice is always determined on a case-by-case basis, and "determining prejudice is not a rubric by which this Court vacates or reverses an order when, in our opinion, the order is not in the child's best interest." *In re As.L.G. & Au.R.G.*, 173 N.C. App. 551, 554, 619 S.E.2d 561, 564 (2005).

Despite the trial court's failure to comply with the statutory time limits for filing its full order, respondent has not shown how she was prejudiced by the late filing. See *In re E.N.S.*, 164 N.C. App. 146, 153-54, 595 S.E.2d 167, 172, *cert. denied*, 359 N.C. 189, 606 S.E.2d 903 (2004). Given that the 17 June 2005 memorandum order held the child to be dependent and placed her physical custody with her aunt and uncle, no significant change in the status quo occurred as a result of the entry of the 29 August 2005 adjudication and disposition order. Additionally, respondent's rights were not affected by the untimely filing of the 29 August 2006 order, as she was able to appeal. Accordingly, the trial court's failure to file the adjudication and disposition order within thirty days after the completion of the 17 June 2005 hearing amounted to harmless error and is not grounds for reversal.

Affirmed.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).