An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-293

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

IN THE MATTER OF

K.P., Stokes County
A Minor Child No. 05 J 03A

Appeal by Respondent-father from order entered 8 June 2005 by Judge Mark H. Badgett in Stokes County District Court. Heard in the Court of Appeals 24 August 2006.

Hall & Hall Attorneys at Law, P.C., by Susan P. Hall, for Respondent-Appellant father.

Hunt Law Group, P.C., by James A. Hunt, for Appellee Guardian ad Litem.

STEPHENS, Judge.

Respondent-appellant ("Respondent") is the father of K.P., the juvenile who is the subject of this action. In a juvenile petition filed 6 January 2005, the Stokes County Department of Social Services ("DSS") alleged that K.P. was neglected in that he did not "receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker." Specifically, the petition alleged that on 3 January 2005, Child Protective Services received a report that after a recent suicide attempt by K.P.'s mother ("K.T."), Respondent left the child with K.T.'s mother and her boyfriend, both of whom were intoxicated.

The petition alleged further that in a 5 January 2005 meeting with a social worker, K.T. and Respondent could not agree on a placement for K.P. and neither believed that K.P. would be safe with the other parent. In an order filed 6 January 2005, the Honorable Mark H. Badgett placed K.P. in the non-secure custody of DSS. On 5 May 2005, an adjudicatory hearing was held in Stokes County District Court before Judge Badgett. Following this hearing, a juvenile adjudication order was filed, on 8 June 2005, in which Judge Badgett concluded that K.P. was a neglected juvenile. On 17 August 2005, Respondent filed written notice of appeal. Subsequent to this notice, in a review order filed 27 October 2005, the Honorable Spencer G. Key, Jr. concluded that "[p]ending further hearings, the juvenile should be returned to the custody of father[.]" From Judge Badgett's juvenile adjudication order, Respondent appeals.

By motion filed 28 March 2006, DSS moved to dismiss this appeal on grounds that the adjudication order appealed from is not a final order and that the appeal is moot because legal custody of the juvenile was later returned to Respondent. We decline to dismiss the appeal.

North Carolina law provides in pertinent part that

> [u]pon motion of a proper party as defined in G.S. 7B-1002, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in writing within 10 days after entry of the order. However, if no disposition is made within 60 days afer entry of the order, written notice of appeal may be given within 70 days after such entry.

N.C. Gen. Stat. § 7B-1001 (2003). This Court has interpreted this statutory provision to provide "for an appeal from an order that has not been the subject of a final disposition within sixty days," providing that the notice of appeal is filed after day sixty and before the end of day seventy. *In re Laney*, 156 N.C. App. 639, 643, 577 S.E.2d 377, 379, *disc. review denied*, 357 N.C. 459, 585 S.E.2d 762 (2003). In this case, the adjudication order was filed on 8 June 2005, and Respondent's notice of appeal was filed on 17 August 2005, within the time frame established by the statute and this Court. Therefore, Respondent's appeal is timely.

DSS next argues that the appeal is moot because in a review order filed 27 October 2005, Judge Key ordered that "[p]ending further hearings, the juvenile should be returned to the custody of father[.]" We likewise reject this argument.

In a recent decision, our Supreme Court determined that "[i]t is axiomatic . . . that reinstatement of parental custody during the pendency of an appeal challenging a child's neglect or abuse adjudication does not render a case moot as the adjudication may result in collateral legal consequences for the parent." *In re A.K.*, ___ N.C. ___, ___, 628 S.E.2d 753, 756 (2006). Based on the direction provided by our Supreme Court, we must not dismiss this appeal as moot. We thus reach the merits of this case.

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By his first assignment of error, Respondent argues that the trial court erred by failing to make findings of fact supported by

clear, cogent and convincing evidence as required by N.C. Gen. Stat. § 7B-807(a). We find this argument without merit.

When an appellant challenges the findings of fact, "each contested finding of fact must be separately assigned as error, and the failure to do so results in a waiver of the right to challenge the sufficiency of the evidence to support the finding." *Okwara v. Dillard Dep't Stores, Inc.*, 136 N.C. App. 587, 591, 525 S.E.2d 481, 484 (2000) (citations omitted). If error is not assigned separately to each finding of fact, appellate review "is limited to the question of whether the trial court's findings of fact, which are presumed to be supported by competent evidence, support its conclusions of law and judgment." *Okwara*, 136 N.C. App. at 591-92, 525 S.E.2d at 484 (citing *Taylor v. N.C. Dep't of Transp.*, 86 N.C. App. 299, 357 S.E.2d 439 (1987)). In this case, since Respondent failed to separately assign error to any finding of fact, our review is limited to the determination of whether the trial court's findings of fact support its conclusions of law and judgment.

The trial court concluded that K.P. was a neglected juvenile. Under North Carolina law, a neglected juvenile is

> [a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare[.]

N.C. Gen. Stat. § 7B-101(15) (2005). To support this conclusion of law, Judge Badgett found the following facts by clear and convincing evidence:

> 2) Mother [K.T.] attempted to commit suicide by an overdose of medication on the night of January 3, 2005. She had left the juvenile at the home of her mother (the juvenile's maternal grandmother) with the maternal grandmother and the grandmother's boyfriend, both of whom were drunk and not appropriate caretakers for the juvenile.
> 3) [Respondent] . . ., while Stokes County EMS was present at the home responding to the overdose by [K.T.], placed the juvenile at the home of the maternal grandmother, with the maternal grandmother and her boyfriend, both of whom were drunk and not appropriate caretakers for the juvenile. He then took the juvenile with him to the hospital when [K.T.] was transported.
> 4) By his own testimony, [Respondent] was present with the juvenile at the trailer where he and [K.T.] were living, from approximately 3:00 pm on January 3, 2005 until the overdose incident that night. The home had no electricity, no sewer and septic, and no food.
> 5) By his own testimony, [Respondent] was present at the trailer where he and [K.T.] were living, on the late afternoon or evening of January 3, 2005, when [K.T.] became agitated and grabbed a knife. The juvenile was strapped in a car seat on the couch in the trailer during this incident. [Respondent] left the trailer and shut the agitated [K.T.] and the juvenile in the trailer together and called for [K.T.'s] brother.
> 6) By his own testimony, [Respondent] had known that [K.T.] had drug problems for quite a while, but December 31, 2004 was the first time he had gotten himself and the juvenile out of that situation, and he returned with the juvenile to the trailer he shared with [K.T.] shortly thereafter.

These findings of fact, which we must presume to be supported by competent evidence presented at the hearing, are clearly sufficient to support the trial court's determination that K.P. was neglected. That is, it is clear that K.P. did not receive proper care from Respondent and lived with Respondent in an environment that was

injurious to his welfare. Therefore, this assignment of error is overruled.

Although not specifically stated in his assignments of error, Respondent, in his brief, argues that the trial court's order should be reversed because the attorney for the prevailing party may have drafted the adjudication order. It is unclear from the record and transcript who drafted the order. However, even if the order was drafted by the attorney for DSS, "[n]othing in the statute or common practice precludes the trial court from directing the prevailing party to draft an order on its behalf." *In re J.B.*, 172 N.C. App. 1, 25, 616 S.E.2d 264, 279 (2005)(finding no error when the prevailing party drafted an order terminating parental rights). This argument is also without merit.

Respondent next argues that the trial court was without subject matter jurisdiction, and thus, without authority to enter the adjudication order because the adjudicatory hearing was not timely held after the filing of the petition. We disagree.

North Carolina law requires that an "adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate, but no later than 60 days from the filing of the petition unless the judge pursuant to G.S. 7B-803 orders that it be held at a later time." N.C. Gen. Stat. § 7B-801(c) (2005). Section 803 of the Juvenile Code provides that

> [t]he court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-803 (2005). "'A motion to continue is addressed to the court's sound discretion and will not be disturbed on appeal in the absence of abuse of discretion.'" *In re Humphrey*, 156 N.C. App. 533, 538, 577 S.E.2d 421, 425 (2003) (quoting *Doby v. Lowder*, 72 N.C. App. 22, 24, 324 S.E.2d 26, 28 (1984) (citation omitted)).

Nothing in the record reflects any court orders continuing the case. However, at the hearing, Respondent's counsel indicated that this matter had been continued "five or six" times. Respondent makes no showing that these alleged continuances constituted an abuse of discretion by the trial court. Instead, Respondent argues that the delay constituted prejudice *per se*. We disagree.

Based on the cases cited by the parties and our research, a violation of N.C. Gen. Stat. § 7B-801 has yet to be addressed by our appellate courts. However, other provisions dealing with timely disposition of juvenile cases have repeatedly been addressed. For example, in *In re J.L.K.*, 165 N.C. App. 311, 598 S.E.2d 387, *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314

(2004), this Court determined that absent a showing of prejudice, a failure to comply with N.C. Gen. Stat. § 7B-1109(e) (directing the timely filing of an adjudication order after a termination of parental rights hearing) did not warrant reversal. Additionally, in *In re B.M.*, 168 N.C. App. 350, 607 S.E.2d 698 (2005), this Court declined to reverse a trial court's order because of a violation of N.C. Gen. Stat. § 7B-907(e) (directing the timely filing of a termination of parental rights petition) without a showing of prejudice. Taken as a whole, these decisions "recognize that reversing an order for non-adherence to these time lines further unbalances the need for swift finality in [juvenile] proceedings, the undisputed intent and presumed effect" of the Legislature. *In re C.J.B.*, 171 N.C. App. 132, 134, 614 S.E.2d 368, 370 (2005) (citing *In re A.D.L.*, 169 N.C. App. 701, 612 S.E.2d 639, *disc. review denied*, 359 N.C. 852, 619 S.E.2d 402 (2005)).

We are persuaded by the rationale previously employed by this Court. Accordingly, we hold that to support reversal of the trial court's order due to an untimely hearing under N.C. Gen. Stat. § 7B-801, a party must establish prejudice. In this case, Respondent neither proved prejudice, nor even attempted to show prejudice. Therefore, this assignment of error is overruled.

For the reasons stated, the order of the trial court is

AFFIRMED.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).