

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-906

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IN THE MATTER OF:

K.F.	Sampson County
R.J.W.	Nos. 05 J 01-05
M.W.	
M.W.	
C.W.	

Appeal by Respondent from orders dated 1 December 2005 by Judge Paul A. Hardison in District Court, Sampson County. Heard in the Court of Appeals 16 January 2007.

Corinne A. Railey for Petitioner-Appellee, Sampson County Department of Social Services.

Hunton & Williams, LLP, by Raymond A. Starling, for Guardian Ad Litem-Appellee.

Brannon & Strickland, PLLC, by Robin E. Strickland, for Petitioner-Appellant.

McGEE, Judge.

Respondent appeals from permanency planning orders entered pursuant to the requirements set forth in N.C. Gen. Stat. § 7B-906. The orders on appeal do not constitute final orders, and therefore this appeal must be dismissed.

In February 2005, Respondent stipulated to the trial court's adjudication that her five children were neglected due to Respondent's drug use. The trial court found that Sampson County

Department of Social Services (DSS) should "continue to make efforts to prevent or eliminate the need for removal[,] and ordered the children to remain in the care and custody of DSS with placement authority. The trial court entered custody review orders on 4 May 2005 in which the trial court concluded that the children's placement and care was the responsibility of DSS; that DSS should provide or arrange for foster care or other placement; and that a reasonable effort would be made to return the children to the home in the future. The trial court ordered Respondent to participate in the residential treatment program at "The Village"; that the infant R.J.W. be placed with Respondent at The Village; that the other children remain in relative placement and that DSS retain legal and physical custody with placement authority.

A 90-day review hearing was held in July 2005, and an order was entered by the trial court on 9 August 2005. The trial court ordered that DSS retain legal and physical custody of the children with placement authority; that Respondent obtain treatment in a long-term residential treatment facility with long-term after care, but that if Respondent had a re-evaluation, the trial court would consider an alternate treatment plan.

The trial court conducted a review hearing on 6 October 2005 and entered an order on 27 October 2005 concluding that the children's care and placement was the responsibility of DSS; that DSS was to provide or arrange for foster care or other placement; and that reasonable efforts be made to return the children to the home in the future. The trial court ordered that DSS retain legal

and physical custody of the children with placement authority, and that Respondent obtain outpatient long-term treatment for substance abuse based on Respondent's re-evaluation.

DSS filed a "Motion for Review" on 18 November 2005 requesting that the trial court conduct a permanency planning hearing pursuant to N.C. Gen. Stat. § 7B-907. Following a permanency planning hearing, the trial court entered orders dated 1 December 2005, concluding that it was in the children's best interest that the legal permanent plan be guardianship with a relative or other suitable person; that the children's placement and care was the responsibility of DSS; that DSS provide or arrange for foster care or other placement; and that a reasonable effort would be made to return the children to the home in the future. The trial court ordered that the permanent plan be guardianship with a relative or other suitable person, and that the Guardian ad Litem be released. Respondent appeals.

The dispositive issue in this case is whether Respondent's appeal is properly before this Court. N.C. Gen. Stat. § 7B-1001 (2003), provides that an appeal may be taken from "any final order of the court in a juvenile matter[.]" The statute defines a "final order," and states that it includes:

- (1) Any order finding absence of jurisdiction;
- (2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;
- (3) Any order of disposition after an adjudication that a juvenile is abused, neglected, or dependent; or

(4) Any order modifying custodial rights.

N.C. Gen. Stat. § 7B-1001(1)-(4) (2003). We note that this statute was amended effective October 1, 2005, but because the petitions in this case were filed prior to 1 October 2005, we apply the above statute in effect at the time of filing and the related case law.

Sections (1), (2), and (4) are inapplicable to the present case since the 1 December 2005 permanency planning review orders do not find an absence of jurisdiction, do not determine the action or prevent a judgment, and do not modify Respondent's custody rights. Our review, therefore, turns to whether the orders appealed constitute a "disposition" or a "final order" as contemplated under the statute.

In *In re Weiler*, 158 N.C. App. 473, 581 S.E.2d 134 (2003), our Court concluded that the permanency planning order which changed the permanent plan, as to the mother, from reunification to termination of parental rights constituted a "dispositional order" within the meaning of N.C.G.S. § 7B-1001(3) and was therefore appealable. *In re Weiler*, 158 N.C. App. at 477, 581 S.E.2d at 136-37. However, in *In re B.N.H.*, 170 N.C. App. 157, 611 S.E.2d 888, *disc. review denied*, 359 N.C. 632, 615 S.E.2d 865 (2005), our Court "limit[ed] the holding of *Weiler* to the specific facts of [*Weiler*], and decline[d] to extend its reasoning further." *In re B.N.H.*, 170 N.C. App. at 162, 611 S.E.2d at 891. Our Court held that

the statutory language of G.S. § 7B-1001(3), referring to an "order of disposition after an adjudication that a juvenile is abused, neglected, or dependent," means the

dispositional order that is entered after an adjudication [of abuse, neglect or dependency] under G.S. § 7B-905, and does not mean every permanency planning, review, or other type of order entered at some unspecified point following such a disposition.

Id. at 160, 611 S.E.2d at 890 (emphasis omitted). The *B.N.H.* court distinguished *Weiler* by noting that the order appealed from in *In re B.N.H.* did not change the plan from reunification, but rather "repeat[ed] the previous directives of the court that reunification be ceased." *Id.* at 162, 611 S.E.2d at 891.

Unlike the order in *In re Weiler*, where the actual order appealed from changed the status quo of the relationship between the parents and the minor, there is no change in the status quo in this case. Furthermore, the orders do not preclude "return [of] the child[ren] to the home in the future." Because the 1 December 2005 orders of the trial court continuing custody with DSS are not appealable final orders as contemplated by N.C.G.S. § 7B-1001, the appeal is interlocutory and Respondent's appeal is dismissed.

Dismissed.

Chief Judge MARTIN and Judge HUNTER concur.

Report per Rule 30(e).