

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-517

NORTH CAROLINA COURT OF APPEALS

Filed: 7 October 2008

IN THE MATTER OF:

H.K.

Gaston County
No. 06 JA 90

Court of Appeals

Appeal by respondent-mother from an order entered 9 January 2008 by Judge Michael K. Lands in Gaston County District Court. Heard in the Court of Appeals 27 August 2008.

Jill Y. Sanchez, for Gaston County Department of Social Services, petitioner-appellee.

Pamela Newell Williams, for Guardian ad Litem.

Richard E. Jester, for respondent-appellant mother.

JACKSON, Judge.

Susan K. ("the mother") appeals the appointment of guardians of the person for her daughter, H.K. For the reasons stated below, we dismiss.

On or about 22 March 2005, Catawba County Department of Social Services ("Catawba DSS") received a report that the mother was running from police after a disturbance at the home of H.K.'s father. The mother subsequently was hospitalized for psychiatric treatment. Pursuant to a safety plan with Catawba DSS, upon her

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release from the hospital, the mother resided with H.K. at the Salvation Army Shelter. However, on or about 4 April 2005, the Salvation Army Shelter contacted Catawba DSS to report that the mother was not following the rules, wandering into restricted areas, leaving H.K. unattended, and creating disturbances such that she no longer would be allowed to stay. As a result, Catawba DSS obtained non-secure custody of H.K. Also on 4 April 2005, Catawba DSS filed a juvenile petition alleging H.K. was a neglected and dependant juvenile. A juvenile adjudication and disposition hearing was held on 23 May 2005, at which H.K. was adjudicated to be a neglected juvenile and placed in the custody of Catawba DSS.

On 1 March 2006, the case was transferred to Gaston County. H.K. was placed in the custody of the Gaston County Department of Social Services ("Gaston DSS") on 4 April 2006. On 5 September 2006, the permanency plan was changed to a concurrent plan for reunification and adoption. On 28 November 2007, by order filed 9 January 2008, the permanency plan was changed to guardianship, and guardians of the person were appointed. The mother filed her notice of appeal on 20 December 2007.

At the outset, we note that the mother filed her written notice of appeal prior to entry of the order from which she appeals. She did not thereafter file an amended notice of appeal within 30 days after entry of the order. In prior cases before this Court on this issue, notice of appeal was filed pursuant to former Rule 3 of the North Carolina Rules of Appellate Procedure, which allowed oral notice of appeal. Rule 3 governing appeals of

civil cases no longer provides for oral notice of appeal, nor does Rule 3A governing appeals in juvenile cases. Furthermore, the mother did not give oral notice of appeal.

Pursuant to Rule 3A,

Any party entitled by law to appeal from a trial court judgment or order rendered in a case involving termination of parental rights and issues of juvenile dependency or juvenile abuse and/or neglect, appealable pursuant to G.S. 7B-1001, may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties in the time and manner set out in Chapter 7B of the General Statutes of North Carolina.

N.C. R. App. P. 3A(a) (2007). Rule 3A is jurisdictional. Failure to comply with its requirements mandates dismissal of the appeal. See *In re L.B.*, ___ N.C. App. ___, ___, 653 S.E.2d 240, 244 (2007), *disc. rev. denied, cert. denied*, 362 N.C. 358, 661 S.E.2d 247, 248 (2008).

North Carolina General Statutes, section 7B-1001(b) sets out the time and manner for appealing juvenile matters, and provides that notice of appeal from any order, other than those described in subsection (a)(5), shall be "given in writing by a proper party . . . within 30 days *after* entry and service of the order" N.C. Gen. Stat. § 7B-1001(b) (2007) (emphasis added).

Although this Court, in its discretion, may exercise Rule 2 to suspend the Rules of Appellate Procedure to reach the merits of an appeal under some circumstances, "in the absence of jurisdiction, the appellate courts lack authority to consider whether the circumstances of a purported appeal justify application of Rule 2." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C.

191, 198, 657 S.E.2d 361, 365 (2008) (citing *Bailey v. State*, 353 N.C. 142, 157, 540 S.E.2d 313, 323 (2000)). However, this Court may review the matter pursuant to a petition for writ of *certiorari*. See N.C. R. App. P. 21 (2007) ("The writ of *certiorari* may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action")

No written notice of appeal was filed and served within 30 days *after* entry of the order at issue. No petition for writ of *certiorari* has been filed with this Court. Further, the mother's brief cannot be considered as such a petition because it fails to comply fully with the requirements of Rule 21 in that it is not verified pursuant to subsection (c) of that Rule. Therefore, we are without jurisdiction to hear this case and must dismiss the appeal.

Dismissed.

Judge BRYANT concurs.

Judge ARROWOOD concurs in result only.

Report per Rule 30(e).