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NO. COA11-733
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

IN THE MATTER OF:

J.D. Wake County
No. 07 JT 705

Appeal by respondent-mother from order entered 28 March 2011 by Judge Eric Chasse in Wake County District Court. Heard in the Court of Appeals 7 November 2011.

Deputy Wake County Attorney Roger A. Askew, for Wake County Human Services, petitioner-appellee.

Pamela Newell for Guardian ad Litem.

Duncan B. McCormick for respondent-mother appellant.

McCULLOUGH, Judge.

Respondent-mother appeals from the trial court's order on remand terminating her parental rights to her daughter, J.D. We reverse the order of the trial court.

Wake County Human Services ("petitioner") filed a juvenile petition on 3 October 2007, alleging J.D. was a neglected juvenile. On 9 May 2008, J.D. was adjudicated neglected. Thereafter, the trial court held a permanency planning review

hearing. In an order entered 9 January 2009, the trial court adopted the permanent plan of adoption for J.D. and ceased reunification efforts. Petitioner filed a motion to terminate respondent-mother's parental rights on 30 March 2009. On 1 September 2009, the trial court terminated respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), (9) (2009). Respondent-mother appealed from the order ceasing reunification efforts and from the order terminating her parental rights. In an opinion filed 5 October 2010 this Court affirmed the order ceasing reunification efforts, but reversed the order terminating respondent-mother's parental rights concluding neither ground found by the trial court was supported by the findings of fact. We remanded the matter "to the trial court to make appropriate findings related to Respondent-Mother's ability or willingness to obtain a home for J.D. in which J.D. would not be 'at substantial risk of physical or emotional abuse or neglect.'" *In re J.D.*, No. COA10-422, slip op. at 18-19 (N.C. App. filed October 5, 2010), (unpublished), *disc. review denied*, 365 N.C. 193, 707 S.E.2d 245 (2011).

On remand, the trial court held a hearing to discuss the proposed orders and findings of fact submitted by the parties. On 28 March 2011, the trial court entered an order terminating

respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). Respondent-mother appeals.

Respondent-mother argues the trial court erred in terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) because this Court did not remand the case for additional findings with respect to this ground. Respondent-mother argues this Court remanded the matter for additional findings with respect to N.C. Gen. Stat. § 7B-1111(a)(9) and the trial court was precluded from entering an order terminating her rights on the basis of N.C. Gen. Stat. § 7B-1111(a)(2). We agree.

When a case has been remanded from this Court, "[t]he general rule is that an inferior court must follow the mandate of an appellate court in a case without variation or departure." *In re R.A.H.*, 182 N.C. App. 52, 57, 641 S.E.2d 404, 407 (2007) (internal quotation marks and citation omitted) (alteration in original). "No judgment other than that directed or permitted by the appellate court may be entered." *D & W, Inc. v. Charlotte*, 268 N.C. 720, 722, 152 S.E.2d 199, 202 (1966). In this case, we found the trial court failed to address whether respondent-mother was unwilling or unable to establish a home in which J.D. would not be at substantial risk of physical or

emotional abuse or neglect. We remanded the matter "to the trial court to make proper findings as to Respondent-Mother's ability or willingness to provide J.D. with a safe home." It is clear the trial court was required to make findings of fact in accordance with N.C. Gen. Stat. § 7B-1111(a)(9).

Moreover, "[t]he law of the case doctrine applies to cases in which 'a question before an appellate court has previously been answered on an earlier appeal in the same case[.]'" *In re S.R.G.*, 200 N.C. App. 594, 597, 684 S.E.2d 902, 904 (2009) (quoting *Wrenn v. Maria Parham Hosp., Inc.*, 135 N.C. App. 672, 678, 522 S.E.2d 789, 792 (1999)), *disc. review and cert. denied*, 363 N.C. 804, 691 S.E.2d 19 (2010). "In such a case, 'the answer to the question given in the former appeal becomes "the law of the case" for purposes of later appeals.'" *Id.* In the prior appeal, we found the trial court's findings showed respondent-mother attempted to comply with every condition established by petitioner. We concluded the trial court's findings of fact did not support its conclusion of law, and held that the trial court erred in terminating respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). We did not remand the case for findings of fact with respect to N.C. Gen. Stat. § 7B-1111(a)(2). Accordingly, on remand, it was

error for the trial court to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). The order of the trial court is reversed and this case is remanded for further findings as to N.C. Gen. Stat. § 7B-1111(a)(9).

Reversed and remanded.

Judges HUNTER (Robert C.) and THIGPEN concur.

Report per Rule 30(e).