

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-454
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

IN THE MATTER OF:

Orange County
No. 11 JA 1

L.L.

Appeal by respondent from order entered 23 January 2013 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 5 August 2013.

No brief for Orange County Department of Social Services, petitioner.

Michael N. Tousey for guardian ad litem.

Mary McCullers Reece for respondent.

DILLON, Judge.

Respondent-mother appeals from a combined custody and permanency planning review order which granted custody of L.L. to his father, closed the juvenile case, and converted the matter into a civil child custody action. This is her second appeal. In the first appeal, we reversed and remanded for a new permanency planning hearing because the court failed (1) to make

a finding required by N.C. Gen. Stat. § 7B-907(b)(1) and (2) to establish a complete visitation plan. *In re L.L.*, ___ N.C. App. ___, No. COA 12-594 (Nov. 6, 2012) (unpublished).

Respondent-mother contends the trial court on remand still failed to make the finding required by N.C. Gen. Stat. § 7B-907(b)(1), which states that if the court determines not to return a child to his or her home at the conclusion of a permanency planning hearing, then the court must make a finding concerning "[w]hether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home." N.C. Gen. Stat. § 7B-907(b)(1) (2011). Respondent-mother argues that the trial court failed to comply with this Court's mandate by failing to make a finding concerning whether it is possible for the child to be returned home immediately or within the next six months.

In the order under review the court made the following pertinent findings:

2. This hearing is on a 7B-907(b)(1) issue of whether it is possible for the juvenile to be returned home immediately or within the next six months. This matter is heard on remand from the North Carolina Court of Appeals. No additional evidence was offered by Respondent mother.

3. It is not in the best interests of this juvenile to be returned to the removal parent immediately or within the next six months. This court's decision is supported by the following findings.

The court then made findings which are not challenged by respondent-mother and which set forth the basis for the court's determination that it is not in the child's best interest that he be returned to his mother. Although the court did not expressly find that return of the child to the mother's home is not possible, this finding is implicit in findings number two and three made by the court. We accordingly affirm this portion of the order.

Respondent-mother also contends the court erred by terminating its jurisdiction and transferring the case to civil custody court without making a finding of fact in accordance with N.C. Gen. Stat. § 7B-911(c)(2)(a) that there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding. N.C. Gen. Stat. § 7B-911(c)(2) (2011) governs transfer of a case from juvenile to civil court and provides the following:

(c) The court may enter a civil custody order under this section and terminate the court's jurisdiction in the juvenile proceeding only if:

(1) In the civil custody order the court

makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to, and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:

a. That there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and

b. That at least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed.

An order transferring jurisdiction must comply with this statute and must contain the requisite findings. *Sherrick v. Sherrick*, 209 N.C. App. 166, 171-72, 704 S.E.2d 314, 318-19 (2011). Absent from the court's order at bar is any finding which addresses the need for continued State intervention on behalf of the juvenile. Without these findings, the order of transfer must be vacated and the matter remanded for further proceedings consistent with this opinion.

AFFIRMED in part; VACATED and REMANDED in part.

Chief Judge MARTIN and Judge STEELMAN concur.

Report per Rule 30(e).