

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-567
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

IN THE MATTER OF:

Catawba County
Nos. 07 JT 357-58

J.N.M. and A.M.M.

Appeal by respondent-mother from orders entered 26 March 2012, 27 February 2013, and 25 March 2013 by Judge J. Gary Dellinger in Catawba County District Court. Heard in the Court of Appeals 15 October 2013.

Lauren Vaughan, for petitioner-appellee Catawba County Department of Social Services.

Winston & Strawn LLP, by Eric M.D. Zion, for guardian ad litem.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for respondent-appellant mother.

CALABRIA, Judge.

Respondent-mother ("respondent") appeals from orders ceasing reunification efforts and terminating her parental rights to her minor children Jane and Amy (collectively "the

children").¹ The children's father has relinquished his parental rights and is not a party to this appeal. We affirm.

On 27 December 2007, the Catawba County Department of Social Services ("DSS") filed a juvenile petition alleging that the children were abused and neglected juveniles. The petition alleged that respondent's boyfriend, who was acting as caretaker for the children, "exposed his erect penis to the children, asked them to touch his penis, touched the children with his penis, and asked to touch the children's genitals; and the children witnessed [him] ejaculate on that occasion." Respondent refused to believe the allegations and married her boyfriend on 28 August 2007. On 1 April 2008, the children were adjudicated abused and neglected juveniles based upon the allegations in the DSS petition. The trial court permitted custody of the children to remain with respondent, but ordered that the children should have no contact with her new husband.

On 10 November 2008, the trial court conducted a review hearing and entered an order finding that respondent had cooperated with DSS and completed her case plan. As a result, the court concluded that it would be in the best interests of the children for them to remain in respondent's custody.

¹ The parties stipulated to the use of these pseudonyms for the children.

However, the court ordered that respondent not allow the children to have any contact with her husband, that respondent should continue to take the children to therapy until discharged by their therapist, that respondent should participate in that therapy as recommended by the therapist, and that respondent should cooperate with in-home Community Support Services. The court also ordered that the children's father had no visitation rights and that respondent could not permit the children to see their father until he had addressed his substance abuse and domestic violence issues. The court did not schedule any further review hearings, ordered that "[a]ll counsel are relieved," and terminated the appointment of the guardian *ad litem* for the children.

In March 2011, Amy's teacher observed various bruises on Amy, including two bruises resembling finger marks on Amy's left bicep. When asked about the bruises, Amy disclosed that respondent's husband had grabbed her arm because she was scratching her eczema. Amy further disclosed that respondent's husband had been "touching [her] in [her] private parts and he needs help." Amy also told her teacher that respondent "promised the children chips and an outing to Bo's [Bodacious Family Entertainment] if they would not tell their social worker

about their contact with [respondent's husband]." The teacher reported Amy's disclosures to DSS.

On 15 April 2011, DSS filed a motion for review. DSS alleged that, upon information and belief, respondent and the children had resided together with respondent's husband from 5 January 2009 until March 2011, in contravention of the court's prior review order. The motion further alleged that the children shared a bedroom with respondent and her husband during some of that time. Finally, DSS alleged that respondent stopped taking the children to therapy.

The trial court reappointed respondent's former counsel and the guardian *ad litem* for the children. Following a review hearing on 23 May 2011, the trial court entered an order placing the children in the physical and legal custody of DSS. On 26 March 2012, the trial court ordered DSS to cease reunification efforts with respondent. On 25 April 2012, the trial court entered an order changing the permanent plan for the children to adoption.

On 25 May 2012, DSS filed a motion in the cause to terminate respondent's parental rights. After a hearing on the motion, the trial court entered an order terminating respondent's parental rights on 27 February 2013. On 25 March

2013, the trial court entered an amended order terminating respondent's parental rights. Respondent appeals.

Respondent's sole argument on appeal is that the trial court lacked subject matter jurisdiction to terminate her parental rights after entering the 10 November 2008 order. We disagree.

"Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). According to the Juvenile Code, our district courts have "exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent." N.C. Gen. Stat. § 7B-200(a) (2011). "When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first." N.C. Gen. Stat. § 7B-201(a) (2011). "When the court's jurisdiction terminates . . . the court thereafter shall not modify or enforce any order previously entered in the case . . . and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed[.]" N.C. Gen. Stat. § 7B-201 (b) (2011).

In the instant case, respondent contends that after the entry of the 10 November 2008 review order, the trial court's jurisdiction over respondent was terminated. Respondent relies upon *Rodriguez v. Rodriguez*, 211 N.C. App. 267, 710 S.E.2d 235 (2011), to support her argument. In *Rodriguez*, the trial court entered an order which (1) placed the juveniles in the physical and legal custody of their mother; (2) ordered the mother to continue to provide dental and medical care for the juveniles and to take them to speech, occupational, and psychological therapy; (3) vacated any prior DSS custody orders; and (4) relieved DSS and the Guardian *ad Litem* program of further involvement in the case. *Id.* at 271, 710 S.E.2d at 238-39. This Court held that "[b]ecause the juvenile review order herein placed the children in both the physical and legal custody of [the mother], ended involvement of both DSS and the Guardian *ad Litem* program, and included no provisions requiring ongoing supervision or court involvement," the juvenile court's order had returned the mother "to her status prior to the filing of the petition," and therefore terminated the juvenile court's jurisdiction.² *Id.* at 272-73, 710 S.E.2d at 239-40. The Court found that the trial court's nonspecific instructions regarding

² The juveniles' father had died and thus was not a party to the case. *Id.* at 269, 710 S.E.2d at 237.

dental and medical care and therapy, which did not "set[] out any details as to the actual 'dental and medical care' [the mother] must provide" or "state who was to provide the therapy," were insufficient to override its overall "intent to end its involvement with the children entirely." *Id.* at 271-72, 710 S.E.2d at 239.

In reaching its holding, the *Rodriguez* Court distinguished this Court's opinion in *In re S.T.P.*, 202 N.C. App. 468, 689 S.E.2d 223 (2010). In *S.T.P.*, the trial court entered an order placing custody of the juvenile with his maternal grandparents and stated "Case closed." *Id.* at 472, 689 S.E.2d at 226. This Court concluded that the trial court's jurisdiction was not terminated merely by the use of the words "Case closed." *Id.* at 472, 689 S.E.2d at 227. The Court noted that "neither Mother nor Father were *returned to their pre-petition legal status*," as required by N.C. Gen. Stat. § 7B-201(b). *Id.* (emphasis added). Instead, the trial court's order awarded custody to the maternal grandparents, awarded limited visitation to the mother, and ordered the father to stay away from the maternal grandmother's property. *Id.* at 472-73, 689 S.E.2d at 227.

In the instant case, the trial court's 10 November 2008 order unquestionably ordered that full physical and legal

custody of the children would remain with respondent. However, the decretal portion of the trial court's order also included several restrictions on that custody:

[Respondent] shall continue to not allow the children to have contact with [respondent's husband]; she shall not allow contact between the children and [their father] if he has not addressed his substance abuse and domestic violence issues; she shall continue to address the children's educational issues through tutoring, in-home reading/homework, and ongoing communication with the school; the mother shall continue to take the children for therapy, as recommended by the children's therapist, until the children are discharged; the mother shall continue to participate in the children's therapy as deemed appropriate by the children's therapist; she shall cooperate with in-home Community Support Services, if available; and she shall ensure that the children receive necessary preventative dental care.

Respondent contends that these restrictions are similar to the nonspecific restrictions regarding medical care and therapy that the *Rodriguez* Court found insufficient to retain subject matter jurisdiction. Respondent is mistaken. The trial court's order in the instant case includes many more details and restrictions than the order in *Rodriguez*, and therefore indicates that the court in this case was retaining jurisdiction over the children.

Unlike the order in *Rodriguez*, the order in the instant case includes a finding which specifically identifies the

children's therapist, Hannah Alligood. The court then required respondent to continue therapy for the children and to participate in that therapy for as long as directed by Alligood. Moreover, the court specifically forbade respondent from allowing her children to have any contact with her husband and the children's father. Finally, the trial court ordered that the children's father was to have no visitation with them.

Ultimately, these restrictions placed on both respondent and the children's father were sufficiently significant such that the order cannot be said to have returned either of the parents to their pre-petition status. Accordingly, we hold that the trial court's 10 November 2008 order did not terminate its jurisdiction, and the court had subject matter jurisdiction to consider and rule upon DSS's motion in the cause to terminate respondent's parental rights. See *S.T.P.*, 202 N.C. App. at 472, 689 S.E.2d at 227. The trial court's order is affirmed.

Affirmed.

Judges HUNTER, Robert C. and HUNTER, JR., Robert N. concur.

Report per Rule 30(e).