

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-778  
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

AMANDA JANE LEAZER,  
Plaintiff,

vs.

Rowan County  
No. 13 CVD 1217

JOHN LEAZER AND  
JACKIE LEAZER,  
Defendants,

vs.

JAMES PETE HOFFMAN AND  
DEBRA HOFFMAN,  
Intervenors.

Appeal by Intervenors from an order entered 3 April 2014 by Judge D. Brent Cloninger in Rowan County District Court. Heard in the Court of Appeals 19 November 2014.

*Robert L. Inge, for the Plaintiff-Appellee.*

*James P. Hoffman, Jr., for the Intervenors-Appellant.*

DILLON, Judge.

James Pete Hoffman and Debra Hoffman ("Intervenors") appeal from an order adjudicating their son, John Leazer, and their daughter-in-law, Jackie Leazer, ("Defendants") unfit parents,

and awarding custody of their grandchild to their daughter, Amanda Jane Leazer ("Plaintiff"). We affirm.

### I. Background

Defendants have a history of drug abuse and criminal behavior. Their child came into Plaintiff's care when Jackie Leazer left the child with Plaintiff during an attempt to procure prescription pain relievers that resulted in her arrest. The child's father was incarcerated on drug charges at the time and Intervenor agreed that Plaintiff should take care of the child, initially paying the attorneys' fees Plaintiff incurred in obtaining temporary custody. Intervenor subsequently intervened in the custody action. On 3 April 2014, the district court entered an order awarding permanent custody to Plaintiff and granting Defendants and Intervenor limited visitation. Intervenor entered written notice of appeal.

### II. Intervenor's Motion to Strike

Intervenor filed a motion with the Court to strike Plaintiff's brief based on an alleged violation of Rule 28 of the North Carolina Rules of Appellate Procedure, which requires parties "to present the arguments and authorities upon which [] [they] rely" in their briefing. N.C. R. App. P. 28(a). Intervenor asserts that Plaintiff's brief, or alternately,

Plaintiff's argument that the trial court did not abuse its discretion in awarding her custody, should be stricken, because it is not adequately supported by citation to authority. We disagree.

We only impose sanctions for non-jurisdictional appellate rule violations, such as Rule 28 violations, where a violation rises to the level of a "substantial failure" or a "gross violation." *Dogwood Development v. White Oak*, 362 N.C. 191, 199, 657 S.E.2d 361, 366 (2008). "In determining whether a party's noncompliance with the appellate rules rises to the level of a substantial failure or gross violation," we consider "whether and to what extent the noncompliance impairs [] [our] task of review and whether and to what extent review on the merits would frustrate the adversarial process." *Id.* at 200, 657 S.E.2d at 366-67.

Assuming, *arguendo*, that the lack of citation to authority in support of Plaintiff's argument that the trial court did not abuse its discretion is a technical violation of Rule 28, we do not believe it rises to the level of a substantial failure or gross violation. While it would have been the better practice, for example, for Plaintiff to include a citation supporting the proposition that "[t]he trial court was able to hear the

evidence and observe the witnesses and make appropriate determinations as to their credibility," see, e.g., *State v. Stanley*, 175 N.C. App. 171, 177, 622 S.E.2d 680, 684 (2005), which is asserted on the third page of Plaintiff's brief without citation, her failure to include the citation did not impair our review or frustrate the adversarial process. As will become apparent, there is not much to this case. Plaintiff's argument therefore did not need much support. Intervenors' motion is hereby denied.

### III. Analysis

Intervenors make two arguments on appeal, which we address in turn.

#### A. Abuse of Discretion

Intervenors first contend that the trial court abused its discretion in denying them visitation. We find this characterization of the court's order misleading. Specifically, the court found that "it [was] in the best interests of the minor child that her legal and physical custody be placed with the Plaintiff *with Intervenors and Defendants having visitation,*" decreeing that "[a]ll of Defendants['] visitation shall take place in the home of the Intervenors and shall be strictly supervised by the Intervenors. 'Strictly supervised'

shall be defined as 'eyes on 24/7[.]'" (Emphasis added.)

Intervenors cite various findings from the trial court's order in support of their contention that the trial court abused its discretion. We believe the court's findings support rather than undercut its conclusions.

We note that Intervenors have elected not to file a transcript of the proceedings below. Therefore, our review is limited to the record on appeal. See N.C. R. App. P. 9. We find nothing in that record to support Intervenors' contention that the court abused its discretion. Accordingly, this argument is overruled.

#### B. Adequacy of Order

Intervenors next contend that the trial court "erred in failing to make findings of fact and conclusions of law [in] denying [them] visitation[.]" As stated previously, we do not believe it is accurate to characterize the trial court's order as denying them visitation. Instead, a more reasonable reading of the court's order is that it grants Intervenors visitation with their grandchild coextensive with, but contingent upon, the child's natural parents' exercise of their right to visitation, since the child's parents may only exercise their right to

visitation in the home of the Intervenors, and only when Intervenors are supervising that visitation.

In support of their contention that the trial court did not make all the required findings of fact, Intervenors assert that the trial court's finding that "[i]t is in the best interests of the minor child that her legal and physical custody be placed with the Plaintiff with Intervenors and Defendants having visitation" is actually a conclusion of law, and is unsupported by the court's findings. We disagree.

Even granting Intervenors' initial premise and assuming, *arguendo*, that this finding is actually a conclusion of law, we believe that the court's other findings support it. Specifically, we believe that the courts findings that "Intervenors' motivations in this case are to reunite the child with the Defendants"; that "Plaintiff's motivations in this case are to protect the child and to raise the child in a safe, loving environment"; that "[t]he minor child is in need of a safe, stable, loving home"; that "Plaintiff can provide a safe, stable, loving home"; that "[t]he minor child is not a tool to be used to get the Defendants to stop using drugs and is not a reward to be given to the parents for ceasing their drug use and criminal behavior"; and that "Defendants and [Intervenor] Debra

Hoffman believe that the child can help the Defendants get clean and stop their criminal behavior," amongst others, all support the proposition that it is in the child's best interests to be in the legal and physical custody of Plaintiff with Intervenors and Defendants enjoying only limited visitation, whether that proposition is denominated a conclusion of law or a finding of fact. Accordingly, this argument is overruled.

#### IV. Conclusion

For the reasons stated herein, the district court's order is affirmed.

AFFIRMED.

Judges BRYANT and DIETZ concur.

Report per Rule 30(e).