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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-449

Filed: 17 November 2015

Cabarrus County, No. 14 JA 117

IN THE MATTER OF: P.S.

Appeal by respondent from order entered 2 February 2015 by Judge Christy E. Wilhelm in Cabarrus County District Court. Heard in the Court of Appeals 28 October 2015.

*Hartsell & Williams, P.A., by H. Jay White and Stephen A. Moore, for petitioner-appellee Cabarrus County Department of Social Services.*

*Robert W. Ewing for respondent-appellant.*

*Parker Poe Adams & Bernstein LLP, by Kay Linn Miller Hobart, for guardian ad litem.*

DAVIS, Judge.

T.S. (“Respondent”) appeals from the trial court’s disposition order determining that her son P.S. (“Peter”)<sup>1</sup> was to remain in the custody of the Cabarrus County Department of Social Services (“Cabarrus DSS”). After careful review, we affirm.

### **Factual Background**

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<sup>1</sup> The pseudonym “Peter” is used throughout the opinion to protect the identity of the minor child and for ease of reading. N.C.R. App. P. 3.1(b).

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The Alleghany Department of Social Services (“Alleghany DSS”) became involved with Peter’s family in September 2013 after receiving a report that Respondent was abusing substances and had suffered a drug overdose. Respondent entered into a service plan with Alleghany DSS which required her to attend substance abuse classes and parenting classes. After receiving a second report that Respondent was impaired while caring for Peter, Alleghany DSS filed a juvenile petition on 29 May 2014 alleging that Peter was neglected in that he did not receive proper care, supervision, or discipline from his parents and lived in an environment injurious to his welfare.

The trial court conducted a hearing on 2 September 2014 and entered an adjudication order on 2 October 2014 (“the Alleghany Order”) determining that Peter was a neglected juvenile. At the outset of the hearing, both parents moved to have the case transferred to Cabarrus County. The trial court denied their motion to transfer the matter prior to conducting a hearing on whether Peter should be adjudicated a neglected juvenile but limited the scope of the hearing to adjudication. The trial court based its subsequent determination of neglect on evidence that Respondent was unable to provide proper care for Peter due to her substance abuse.

In the Alleghany Order, the trial court transferred the case to Cabarrus County. The court found that disposition in Cabarrus County would be appropriate because Respondent, Peter’s father, and Peter were all residing in Cabarrus County

as of the date of the hearing. At some point during the pendency of the case, Peter was placed with his adult half-sister, who also lives in Cabarrus County. Because it was transferring the case, the trial court did not conduct a disposition hearing or enter an order on disposition. The trial court did, however, give temporary custody of Peter to Alleghany DSS and then to Cabarrus DSS upon the case's transfer. The trial court also ordered that Peter remain in his current placement with his half-sister.

Respondent appealed the Alleghany Order, and on 4 August 2015, this Court filed an opinion dismissing Respondent's appeal as interlocutory. *See In re P.S.*, \_\_\_ N.C. App. \_\_\_, 775 S.E.2d 370 (2015) ("*P.S. I*"). We concluded that the trial court's order was interlocutory because it was not a final disposition order but rather an adjudication and *temporary* disposition order. *Id.* at \_\_\_, 775 S.E.2d at 371. Because the disposition was temporary, we held that Respondent did not have a right to immediate appeal under N.C. Gen. Stat. § 7B-1001(a)(3), which authorizes an appeal only from a *final* disposition order and the adjudication order upon which it is based. *Id.* at \_\_\_, 775 S.E.2d at 371. We further ruled that Respondent did not have an alternative route to appeal the Alleghany Order based on N.C. Gen. Stat. § 7B-1001(a)(4) — which authorizes appeal from orders changing custody — because the trial court granted only temporary custody to Alleghany DSS. *Id.* at \_\_\_, 775 S.E.2d at 372.

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While Respondent's appeal of the Alleghany Order was pending, the Cabarrus County District Court held a hearing on disposition on 30 January 2015. At the outset of the hearing, the trial court responded to Respondent's contention that the Alleghany Order had addressed both adjudication and disposition and that, as a result, the present hearing was merely a review hearing on the prior disposition. The trial court concluded that the Alleghany Order was an adjudication order only and that the matter currently before the court was the disposition phase of the proceeding. The trial court then heard the parties' arguments concerning disposition and, on 2 February 2015, entered a disposition order concluding that it was in Peter's best interest to remain in the legal custody of Cabarrus DSS in his current placement with his half-sister. Respondent filed a timely appeal of the 2 February 2015 disposition order.

**Analysis**

In Respondent's sole argument on appeal, she contends that her appeal from the Alleghany Order divested the Cabarrus County District Court of jurisdiction to enter a disposition order on 2 February 2015. We disagree.

Respondent attempted to appeal from an interlocutory order to which she had no right of immediate appeal. This Court therefore dismissed her appeal on 4 August 2015. *Id.* at \_\_\_, 775 S.E.2d at 371-72. We have repeatedly held that "a trial court is not divested of its jurisdiction to determine a case on its merits where the litigant

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appeals a non-appealable interlocutory order.” *Dalenko v. Peden Gen. Contractors, Inc.*, 197 N.C. App. 115, 122, 676 S.E.2d 625, 630 (2009), *appeal dismissed*, 363 N.C. 801, 690 S.E.2d 534, *cert. denied*, 363 N.C. 854, 694 S.E.2d 202 (2010). “In such instances, the trial court is not required to stay the proceedings but may disregard the appeal and proceed to try the action.” *Id.* (citation, internal quotation marks, and brackets omitted).

However, even more significantly, N.C. Gen. Stat. § 7B-1003(b) — the statute specifically addressing the effect of an appeal in a juvenile case — states that a trial court shall continue to exercise jurisdiction, conduct hearings, and enter orders affecting the custody or placement of a juvenile while an appeal is pending “unless directed otherwise by an appellate court[.]” N.C. Gen. Stat. § 7B-1003(b)(1)-(2) (2013); *see In re M.I.W.*, 365 N.C. 374, 377-78, 722 S.E.2d 469, 472 (2012) (explaining that while generally N.C. Gen. Stat. § 1-294 “operates to stay further proceedings in the trial court upon perfection of an appeal,” N.C. Gen. Stat. § 7B-1003 “controls over N.C.G.S. § 1-294 [in juvenile cases], and any limits placed on the possession and exercise of jurisdiction by the trial court while an appeal is pending will come from N.C.G.S. § 7B-1003, rather than the general rule”).

Here, the trial court was not directed by this Court to stay further proceedings pending the resolution of Respondent’s appeal in *P.S. I*, and as a result, the trial court possessed jurisdiction pursuant to N.C. Gen. Stat. § 7B-1003(b) to continue to conduct

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hearings and “[e]nter orders affecting the custody or placement of [Peter]” during the pendency of Respondent’s prior appeal. N.C. Gen. Stat. § 7B-1003(b). This included the authority to conduct a disposition hearing and subsequently issue a final disposition order. Consequently, Respondent’s sole argument on appeal is without merit, and we affirm the trial court’s 2 February 2015 disposition order.

**Conclusion**

For the reasons stated above, we affirm.

AFFIRMED.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).