An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-482

Filed: 6 December 2016

Alleghany County, Nos. 13 JA 16-17

IN THE MATTER OF: H.B. and I.B.

Appeal by Respondent-Mother from order entered 2 February 2016 by Judge David V. Byrd in District Court, Alleghany County. Heard in the Court of Appeals 7 November 2016.

James N. Freeman Jr. for Petitioner-Appellee Alleghany County Department of Social Services.

Leslie Rawls for Respondent-Appellant Mother.

Parker Poe Adams & Bernstein LLP, by Matthew P. Weiner, for Guardian ad Litem.

McGEE, Chief Judge.

Respondent-Mother ("Respondent") appeals from an order awarding guardianship of her minor children, H.B. and I.B., to their great aunt and uncle ("the relatives"). Because the trial court's order clearly establishes the relatives as the children's guardians, and not merely custodians, we affirm.

The Alleghany County Department of Social Services ("DSS") became involved with Respondent and her children in December 2012 when it received a report that Respondent's drug use was affecting her ability to care for her children. DSS initially

entered into an in-home family services agreement with Respondent, but on 8 May 2013, DSS filed petitions alleging H.B. and I.B. were neglected juveniles. After a hearing on 16 July 2013, the trial court entered an order adjudicating the children to be neglected juveniles, awarding custody of the children to DSS, and approving placement of the children with Respondent. The court further ordered Respondent to comply with all aspects of her family services case plan, including that she not consume or use any controlled substances.

DSS initially left the children in Respondent's care but removed them on 26 September 2013 and placed them in foster care. In a review order entered 22 November 2013, the trial court approved the placement of the children with the great aunt and granted Respondent a minimum of two hours per week of supervised visitation.

The trial court entered a permanency planning order by consent of the parties on 21 July 2014. The court granted custody of the children to the relatives, set out a schedule for Respondent's visitation with the children, and ordered that the juvenile matter be converted to a civil custody action. However, the court also ordered that a six-month review hearing in the juvenile matter would be held on 6 January 2015.

The trial court held hearings in January, March, and June 2015, and entered a permanency planning order in the juvenile case on 5 January 2016. The court continued custody of the children with the relatives, set the permanent plan for the

children as custody with an approved caregiver, established a detailed plan of visitation with the children for Respondent, and relieved DSS of having to make further efforts to reunify the children with Respondent.

The guardian ad litem [“GAL”] for H.B and I.B. filed a motion on 8 January 2016 to modify visitation and to review and change their permanent plan. The trial court heard the GAL’s motion on 19 January 2016 and entered its order from that hearing on 2 February 2016. The court set the children’s permanent plan as guardianship with the relatives with a concurrent plan of termination of parental rights and adoption, and appointed the relatives as the children’s guardians. The court changed Respondent’s visitation with the children to supervised visitation for four hours on the first Saturday of each month. Additionally, the court released DSS and the GAL from further involvement in the juvenile case and waived further review hearings. Respondent appeals.

Respondent’s sole argument on appeal is that the trial court’s order lacks internal consistency because it placed the children in the custody of the relatives, and also granted the relatives guardianship of the children. Respondent contends the trial court’s order conflates custodians with guardians and must be reversed. Respondent is mistaken.

The trial court’s order states in pertinent part:

> 1. That it is in the best interests of the Juveniles [H.B.] and [I.B.] that they remain in the legal custody of [the relatives]

> and it is so ordered.
>
> 2. That the permanent plan for these Juveniles shall be guardianship with an approved caregiver, specifically [the relatives], with a concurrent plan of termination of parental rights and adoption, and it is so ordered that [the relatives] are hereby appointed the legal guardians of [H.B.] and [I.B.].

Respondent contends these two directives establish the relatives as both custodians and guardians of the children. Respondent is correct that custodian and guardian are two separate roles that a court may establish in a juvenile case. *See In re B.O.*, 199 N.C. App. 600, 604, 681 S.E.2d 854, 857 (2009) ("Under the [Juvenile] Code, 'guardians' clearly have far greater powers over their wards than do 'custodians.'"). However, Respondent cites to no authority holding that a trial court's grant of legal custody of children to parties who are also explicitly awarded guardianship of the same children creates an internal inconsistency within the order as to whether the court established a custodial relationship or a guardianship.

In this case, the court explicitly changed the permanent plan for the children from custody with an approved caregiver to guardianship with a concurrent plan of adoption. The court found that the relatives understood the legal significance of the children being placed in their guardianship and that they were willing and able to provide appropriate care for the children, as required by N.C. Gen. Stat. § 7B-600(c) (2015), and granted guardianship of the children to the relatives. At no point in its order does the trial court suggest it was making the relatives mere custodians of the

children. Moreover, the establishment of a guardianship for children in a juvenile proceeding brought under the abuse, neglect and dependency provisions of Chapter 7B of the North Carolina General Statutes includes an inherent grant of legal custody of the children. *See* N.C. Gen. Stat. § 7B-600(a) ("The guardian shall have the care, custody, and control of the juvenile[.]"). The explicit award of legal custody of H.B. and I.B. to the relatives is thus nothing more than surplusage, and does not impose a dual custodian/guardian role upon the relatives as suggested by Respondent.

Accordingly, we overrule this argument and hold the trial court's order establishes the relatives as guardians of H.B. and I.B. Respondent does not otherwise challenge the trial court's order, and we affirm the order.

AFFIRMED.

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).