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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-365

Filed: 7 November 2017

Dare County, No. 14 CVD 673

SUSAN VAUGHAN, Plaintiff,

v.

JENNIFER VAUGHAN and KATHLYN ROMM/CURRITUCK DSS, Defendants.

Dare County, No. 15 SP 212

FOR THE ADOPTION OF: E.J.V.

Appeal by petitioner from orders entered 23 June 2016 and 28 October 2016 by Judge Amber Davis in Dare County District Court. Heard in the Court of Appeals 5 October 2017.

*Susan Vaughan, pro se, petitioner-appellant.*

*Courtney S. Hull for Currituck County Department of Social Services, respondent-appellee.*

INMAN, Judge.

Susan Vaughan, petitioner, (“Grandmother”) appeals from two orders: (1) denying her motion to vacate a stay order and all prior orders regarding a custody complaint filed by her in Dare County; and (2) dismissing her petition for adoption of her grandchild, E.J.V.<sup>1</sup> After careful review, we dismiss Grandmother’s appeal as untimely and moot.

### **Factual and Procedural History**

This appeal arises out of three legal proceedings under our General Statutes involving the juvenile E.J.V.: (1) a petition by child welfare agencies seeking an adjudication of neglect and/or dependency under Chapter 7B; (2) Grandmother’s complaint seeking child custody under Chapter 50A; and (3) Grandmother’s petition for adoption under Chapter 48. The history of each proceeding is narrated below.

#### *1. Chapter 7B Juvenile Proceeding*

On 15 August 2013, the Dare County Department of Social Services filed a juvenile petition seeking an adjudication that E.J.V., then three months old, was a neglected and dependent juvenile due to his mother’s mental illness and a lack of an appropriate available caretaker. On 13 September 2013, the court entered an order transferring venue to Currituck County to resolve a conflict of interest with the Dare County agency, which also had been named interim guardian for E.J.V.’s mother. On 18 September 2013, the Currituck County Department of Social Services (“CCDSS”)

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<sup>1</sup> A pseudonym is used to protect the identity of the juvenile and for ease of reading. See N.C.R. App. P. 3.1(b).

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filed a juvenile petition seeking the same adjudication. At the request of Grandmother, the petition identified Grandmother as a caretaker for the child and a party to the proceeding.

Following a hearing on 18 November 2013, the court adjudicated the child, then six months old, as neglected. The order found, *inter alia*, that each of the child's parents and Grandmother stipulated that clear, cogent and convincing evidence supported a finding that the child was not receiving proper care from his parents or Grandmother, that the child did not receive proper medical care, and that the child was living in an environment injurious to his welfare, and supported a conclusion that the child was neglected as defined by N.C. Gen. Stat. § 7B-101(15) (2011).

After a hearing on 17 December 2013, the court entered an order removing Grandmother as a party to the juvenile proceeding, because Grandmother had no legal rights that would be affected by the proceeding, had not sought custody of her grandchild, was not advocating for a disposition different than that sought by the mother, and as a relative would be considered for temporary placement of the child notwithstanding her status as a party to the action.

Nearly a year later, on 9 December 2014, CCDSS filed a petition to terminate the mother's parental rights, the father having relinquished his rights. On 20 August 2015, the court terminated the mother's parental rights. 8 July 2016, a decree of adoption was entered. Grandmother did not file notice of appeal from the order

removing her as a party to the juvenile case. Nor did either of the parents file notice of appeal from any of the orders.

*2. Chapter 50A Child Custody Proceeding*

After she was removed as a party to the juvenile proceeding, and before the trial court terminated the parents' parental rights regarding E.J.V. and entered a decree of adoption, Grandmother filed a civil complaint in Dare County District Court on 15 December 2014 seeking custody of her grandchild (No. 14-CVD-673). The court conducted a hearing upon pending motions on 19 May 2016 and entered an order on 23 June 2016 denying Grandmother's motion to disqualify all judges in the custody action, and denying Grandmother's motion to vacate stay and vacate all prior orders in that action. On 1 July 2016, Grandmother filed under case file number 14-CVD-673 "Motions for Retrial and to Amend Findings and Judgment NCGS Rules 52(b) and 5(2, 6, 7, 8)." On 1 August 2016, CCDSS filed a motion to dismiss the complaint seeking custody on the ground that a decree of adoption of the child had been entered by the Currituck County District Court on 8 July 2016 in case file number 16-SP-73. CCDSS also filed on the same date motions to dismiss Grandmother's motion for retrial and for imposition of sanctions against Grandmother pursuant to N.C. Gen. Stat. § 1A-1, Rule 11. The court conducted a hearing upon the motions on 9 September 2016, and entered an order on 28 October 2016: (1) dismissing Grandmother's complaint for custody; (2) denying, except for a portion of one finding

of fact, Grandmother's motion to amend the findings and judgment in the 19 May 2016 order; (3) denying Grandmother's motion for retrial pursuant to Rule 59; and (4) prohibiting Grandmother from filing any additional pleading unless she first files a bond in the amount of \$200.00. On 4 October 2016, Grandmother filed notice of appeal in file number 14-CVD-673 from the order filed on 23 June 2016. On 1 November 2016, Grandmother filed amended notice of appeal of the 23 June 2016 order.

*3. Chapter 48 Petition for Adoption*

On or about 10 November 2015, Grandmother filed in Dare County District Court a petition seeking to adopt E.J.V. (No. 15-SP-212). The court entered an order dismissing her petition for adoption on 23 June 2016.

On 1 July 2016 Grandmother filed a motion for retrial and to amend findings and judgment pursuant to Rules 52 and 59. On 1 August 2016, CCDSS filed a motion for sanctions. On 9 September 2016, the Dare County District Court conducted a hearing on the motions. The court denied Grandmother's motion, allowed the motion for sanctions in open court, and filed a written order on 28 October 2016.

On 4 October 2016, Grandmother filed notice of appeal in case number 15-SP-212 from the order filed on 23 June 2016 dismissing Grandmother's petition for adoption. On 1 November 2016, Grandmother filed amended notice of appeal from the 23 June 2016 order dismissing Grandmother's petition for adoption and the 28

October 2016 order denying Grandmother's motion for retrial and to amend the findings of fact and order.

### **Analysis**

CCDSS filed a motion in this Court to dismiss Grandmother's appeal on the ground of mootness, given that a final decree of adoption of the child was entered on 8 July 2016. "A case is considered moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Lange v. Lange*, 357 N.C. 645, 647, 588 S.E.2d 877, 879 (2003) (citation and internal quotation marks omitted). "If a case becomes moot at any time during the course of the proceedings, the usual response should be to dismiss the action." *Hospice & Palliative Care Charlotte Region v. N.C. Dep't of Health & Human Servs.*, 185 N.C. App. 109, 112, 648 S.E.2d 284, 286 (citation and quotation marks omitted), *disc. review denied*, 361 N.C. 692, 654 S.E.2d 476 (2007).

In this case, even if Grandmother were to prevail on her claims for relief, it would have no practical effect because the child was legally adopted on 8 July 2016, the order of adoption was not appealed or stayed, and Grandmother was not a party to the proceeding. "No adoption may be attacked either directly or collaterally because of any procedural or other defect by anyone who was not a party to the adoption." N.C. Gen. Stat. § 48-2-607(a) (2015). The defendants to the Chapter 50 custody action, namely the child's natural mother and CCDSS, as custodian of the

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child, are no longer parties due to the termination of the mother's parental rights and the adoption of the child removing him from the custody of CCDSS. Grandmother's petition to adopt the child was dismissed and she did not timely appeal the dismissal by the filing written notice of appeal as required by N.C.R. App. P. 3(c).

In addition, we note that the Chapter 50 child custody action was dismissed by the 28 October 2016 order. Appellate Rule 3(d) provides that the notice of appeal "shall designate the judgment or order from which appeal is taken and to which appeal is taken." In the notice of appeal filed 1 November 2016 in the Chapter 50 child custody action (file number 14-CVD-673), Grandmother gave notice of appeal to this Court "from the Order to Dismiss that was filed on June 23, 2016, regarding Appellant's Claim of Lack of Subject Matter Jurisdiction, Her Request to Allow Her Complaint for Custody to be Heard and for Disqualification of Judge Davis and all other District 1 Judges from hearing these matters." She did not designate in the notice of appeal the 28 October 2016 order dismissing her complaint for custody, and the time for giving notice of appeal has expired. The dismissal of her complaint for child custody is therefore final.

We accordingly allow the motion to dismiss and dismiss the appeal.

DISMISSED.

Chief Judge MCGEE and Judge DIETZ concur.

Report per Rule 30(e).