

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-143

Filed 5 March 2024

Bladen County, Nos. 20 JA 35, 22 CVD 534

IN THE MATTER OF: E.C.

Appeal by respondent-mother from orders entered 19 September 2022 and 24 October 2022 by Judge William F. Fairley in Bladen County District Court. Heard in the Court of Appeals 14 February 2024.

No brief for petitioner-appellee Bladen County Department of Social Services.

No brief for guardian ad litem.

Kimberly Connor Benton for respondent-appellant mother.

Mary McCullers Reece for respondent-appellee father.

PER CURIAM.

Respondent-mother (“Mother”) and Respondent-father (“Father”) are the parents of E.C. (“Emma”).¹ Mother appeals from two orders entered following a permanency planning hearing: the first, titled “Custody Order,” and the second, titled

¹ In order to protect the identity of the juvenile and for ease of reading, we adopt the pseudonym for the juvenile to which the parties stipulated.

“Permanency Planning Review Order.”

It appears that the district court intended to enter a permanency planning order, followed by the entry of a Chapter 50 custody order. However, the trial court entered the Custody Order in September 2022 (“the September Order”) and the Permanency Planning Order in October 2022 (“the October Order”). The September Order did not meet the statutory requirements for a permanency planning order, but the October Order did satisfy the statutory requirements. Thus, after careful review, we vacate the September Order, accept the October Order as a sufficient permanency planning order, and remand this case as a juvenile matter for entry of a Chapter 50 custody order pursuant to N.C. Gen. Stat. § 7B-911.

I. Background

Emma was born in December 2018.² On 4 November 2020, the Bladen County Department of Social Services (“DSS”) filed a juvenile petition alleging that Emma was neglected and dependent, and thereafter DSS obtained nonsecure custody of Emma. On 21 January 2021, the district court entered an order dismissing the neglect allegations and adjudicating Emma to be a dependent juvenile. Following a 17 December 2020 dispositional hearing, the district court entered a dispositional order on 11 May 2021, which continued custody with DSS, ordered Mother to

² Father was unaware that he was Emma’s parent until his paternity was established during the pendency of this juvenile action. Emma resided solely with Mother prior to the institution of this action.

IN RE E.C.

Opinion of the Court

complete her DSS case plan, and set a permanent plan of reunification.

Between January 2021 and February 2022, the district court held six permanency planning/review hearings. In each of the resulting orders, the court continued custody of Emma with DSS. The court also made findings documenting Mother's progress on her case plan, Emma's placement and permanent plans, and Mother's visitation with Emma.

Mother's case plan "required her to complete a parenting education course, to obtain and maintain stable and suitable housing that provides adequate basic needs, and [to] complete a mental health assessment and conform to any recommendations arising thereof." Throughout the permanency planning process, Mother struggled with maintaining stable housing and not contacting Emma outside of visitation days. Mother ultimately resolved her housing issues.

The court originally set Emma's permanent plan as reunification, but the court amended it to a primary plan of reunification with a concurrent plan of custody with Father after DSS placed Emma with Father in August 2021. Later, the court again amended its permanent plan for Emma to a primary plan of reunification with Mother and a concurrent plan of custody with a court-approved caretaker.³

³ This appears to have been done in error. The trial court initially determined that the appropriate permanent plan for Emma's maternal half-sibling was a primary plan of reunification with Mother and a secondary plan of custody with a court-approved caretaker, and that the permanent plan for Emma was "a primary plan of custody with her father, . . . with a concurrent secondary plan of reunification with her mother[.]" The court then assigned the plan that it found to be appropriate for Emma's maternal half-sibling to both juveniles.

Mother's visitation generally went well and was expanded or modified several times to suit Emma's needs. Mother was consistently engaged in visitation, including weekly supervised visits and unsupervised day visits. After the district court placed Emma with Father in Georgia and visitation with Mother was changed to one eight-hour visit per month, Mother continued to exercise her visitation until Father stopped bringing Emma to North Carolina due to Mother's difficulty in maintaining contact with Emma between visits.

The district court held its final permanency planning review hearing on 15 August 2022, and thereafter filed the two orders that are the subject of this appeal. On 19 September 2022, the district court filed the September Order, titled "Custody Order," in which it made findings of fact supporting the award of custody to Father with visitation to Mother and that purported to transfer jurisdiction from the juvenile court to the civil court pursuant to N.C. Gen. Stat. § 7B-911. Then, on 24 October 2022, the district court filed the October Order, titled "Permanency Planning Order," that determined there was no longer a need for DSS intervention, that it was in Emma's best interests to reunify with her parents, and placed Emma in Father's custody. Mother appealed both orders.

II. Standard of Review

We review permanency planning orders to determine:

whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. The trial court's findings of fact are

conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings. . . . We review a trial court’s determination as to the best interest of the child for an abuse of discretion.

In re J.K., 253 N.C. App. 57, 59–60, 799 S.E.2d 439, 441 (2017) (citation omitted). “A ruling committed to a trial court’s discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.” *In re A.C.*, 247 N.C. App. 528, 551–52, 786 S.E.2d 728, 744 (2016) (citation omitted). “Questions of statutory interpretation are questions of law, which are reviewed *de novo* by an appellate court.” *J.K.*, 253 N.C. App. at 60, 799 S.E.2d at 441 (citation omitted).

III. Analysis

Mother argues that (1) there were insufficient findings of fact in both orders to support awarding custody to Father, (2) the district court abused its discretion in determining it was in Emma’s best interest to award custody to Father, (3) the district court similarly abused its discretion in awarding visitation to Mother, and (4) the court erred by failing to comply with Chapter 7B when awarding visitation to Mother. Mother precedes these arguments with several paragraphs describing the district court’s authority to enter these orders under N.C. Gen. Stat. §§ 7B-906.1, 7B-906.2, and 7B-911. In making these arguments, Mother inadvertently highlights the district court’s failure to enter a statutorily sufficient permanency planning order, followed by a Chapter 50 custody order.

The district court separately exercises its juvenile and civil jurisdiction. “The ‘juvenile court’ is the District Court exercising its exclusive, original jurisdiction in a matter pursuant to N.C. Gen. Stat. § 7B-200(a); the ‘civil court’ is the District Court exercising its child custody jurisdiction pursuant to N.C. Gen. Stat. § 50-13.1, *et seq.*” *Sherrick v. Sherrick*, 209 N.C. App. 166, 169, 704 S.E.2d 314, 317 (2011). Section 7B-911 is the jurisdictional bridge by which the district court converts a custody determination under Chapter 7B to a custody determination under Chapter 50. *See* N.C. Gen. Stat. § 7B-911 (2023). Section 7B-911 sets forth a mandatory procedure, including required findings of fact, for entry of a valid order transferring jurisdiction from the juvenile court to the district court. *See id.* Section 7B-911 is only triggered when the court places custody of the juvenile with a person other than DSS: “Upon placing custody with a parent or other appropriate person, the court shall determine whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to [Chapter 50].” *Id.* § 7B-911(a).

Chapter 7B further provides that “placement” of the juvenile in the custody of another, including a parent, is a dispositional alternative, *see id.* §§ 7B-903, -906.1(d1), (i), and the district court is consequently required to consider certain information and make mandatory findings of fact, *see id.* §§ 7B-906.1(d), (g), -906.2(c)–(d). The court must consider and, if relevant, make findings regarding the services provided in support of family reunification; reports as to the

IN RE E.C.

Opinion of the Court

appropriateness of the juvenile's placement; reports concerning visitation; reports as to a juvenile's foster placements; and whether reunification efforts would be futile. *Id.* § 7B-906.1(d). Following each permanency planning hearing, the court must make specific findings as to the permanent plans for the juvenile, *id.* § 7B-906.1(g); and whether DSS's reunification efforts and efforts to finalize the permanent plans were reasonable, *id.* § 7B-906.2(c).

Additionally, the court must make written findings regarding (1) whether the juvenile's parents are making adequate and timely progress on their case plans, (2) whether the parents are participating and cooperating with DSS and their case plans, (3) whether the parents are available to the court and DSS, and (4) whether the parents are acting "in a manner inconsistent with the health and safety of the juvenile." *Id.* § 7B-906.2(d).

The district court's last hearing in this matter was a permanency planning hearing on 15 August 2022. Based on this hearing, the district court entered the September Order placing Emma with Father as a dispositional alternative. *See id.* § 7B-906.1(i) (establishing that after any permanency planning hearing, "[t]he court may . . . order any disposition authorized by G.S. 7B-903, including the authority to place the child in the custody of either parent"). Therefore, as the first order entered after the permanency planning hearing, the September Order was required to include the various findings above. *See id.* §§ 7B-906.1, -906.2.

The district court made nineteen findings of fact in the September Order;

IN RE E.C.

Opinion of the Court

however, these findings did not address the mandatory statutory findings required for permanency planning orders. Accordingly, we must vacate the September Order. *See In re D.S.*, 260 N.C. App. 194, 200, 817 S.E.2d 901, 906 (2018).

The district court then filed the October Order. In the October Order, the district court found that (1) Mother had complied with her case plan, (2) Emma had been and was still placed with Father, (3) reunification with both parents was consistent with Emma's safety and need for permanency, (4) DSS had made reasonable efforts toward reunifying Emma with her parents, (5) Emma's placement with either Mother or Father would be appropriate, and (6) it was in Emma's best interests to return to either parent's home.

Based on these findings, the district court concluded "[t]hat [it] is in the best interest of the juvenile that custody be returned to her parents." These findings comply with the requirements for a permanency planning order under Chapter 7B and support the trial court's conclusion that Emma should be returned to her parents. *See* N.C. Gen. Stat. §§ 7B-906.1, -906.2.

Thereafter, the district court attempted to terminate the juvenile jurisdiction and transfer the matter to civil court by awarding custody to Father as a civil matter, pursuant to N.C. Gen. Stat. § 7B-911. *See id.* § 7B-911(a) ("Upon placing custody with a parent or other appropriate person, the court *shall determine* whether or not jurisdiction in the juvenile proceeding should be terminated" (Emphasis added)). To that end, the October Order found "that the return of custody of the child to the

parents requires that the Court enter a Chapter 50 Custody Order[,]” and decreed “[t]hat upon entry of the Chapter 50 Order, that the jurisdiction will terminate in the juvenile matter.” However, the district court must have taken the statutorily prescribed action to initiate a civil custody case between Emma’s parents, *see id.* § 7B-911(b) (setting out requirements for initiation of a new civil custody action), which it did not do in the October Order. Nor did the district court enter a subsequent order doing so.

Therefore, because the October Order was a sufficient permanency planning order but left open the issue of transferring jurisdiction from juvenile court to civil court and determining custody as between Father and Mother, we remand this case for entry of a Chapter 50 custody order in accordance with N.C. Gen. Stat. § 7B-911. *See In re L.R.L.B.*, 377 N.C. 311, 327–28, 857 S.E.2d 105, 119 (2021) (remanding where the court’s “substantial compliance with the statute obviates the need for vacation or reversal of the trial court’s order”). The district court need not hold a new permanency planning hearing on remand. *See* N.C. Gen. Stat. § 7B-906.1(k) (“If at any time a juvenile has been removed from a parent and legal custody is awarded to either parent . . . , the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.”).

IV. Conclusion

The September Order did not make sufficient findings of fact to constitute a valid permanency planning order, and therefore, we must vacate that order. The

IN RE E.C.

Opinion of the Court

October Order satisfied the statutory requirements of a permanency planning order but left open the issue of transferring jurisdiction from juvenile court to civil court. Accordingly, we remand for entry of a Chapter 50 custody order consistent with the requirements of N.C. Gen. Stat. § 7B-911.

VACATED IN PART; REMANDED.

Panel consisting of:

Judges ZACHARY, CARPENTER, and THOMPSON.

Report per Rule 30(e).