

No. COA06-818

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

IN THE MATTER OF E.H.,
Minor Child

From Wake County
File No.: 05 J 397

BRIEF FOR APPELLEE-JUVENILE,
BY AND THROUGH HER GUARDIAN AD LITEM,
IN RESPONSE TO APPELLANT-RESPONDENT-MOTHER, WANDA H.

INDEX

TABLE OF CASES AND AUTHORITIES..... ii

STATEMENT OF THE CASE1

STATEMENT OF THE FACTS 2

ARGUMENT:

I. THE TRIAL COURT NEITHER COMMITTED REVERSIBLE ERROR IN ITS ADJUDICATION THAT THE JUVENILE WAS NEGLECTED NOR INTERFERED WITH RESPONDENT-MOTHER'S PARENTAL RIGHTS BECAUSE IT HAD SUFFICIENT CLEAR, COGENT, AND CONVINCING EVIDENCE OF THE EXISTENCE OF NEGLECT UNDER THE STATUTORY STANDARD 6

II. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN ITS ADJUDICATION THAT THE JUVENILE WAS DEPENDENT BECAUSE IT HAD SUFFICIENT CLEAR, COGENT, AND CONVINCING EVIDENCE OF THE EXISTENCE OF DEPENDENCY UNDER THE STATUTORY STANDARD 12

III. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN ITS DISPOSITION ORDER BECAUSE IT DID NOT DELEGATE ITS AUTHORITY ON THE ISSUE OF RESPONDENT MOTHER'S VISITATION WITH HER CHILD..... 16

IV. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN DENYING RESPONDENTMOTHER'S REQUESTS FOR CONTINUANCES OR IN PROCEEDING TO DISPOSITION WITHOUT MENTAL HEALTH REPORTS AND MEDICAL EVALUATIONS OF THE CHILD 18

V. ASSIGNMENTS OF ERROR NOT BRIEFED ARE DEEMED ABANDONED 21

CONCLUSION..... 22

CERTIFICATE OF SERVICE 23

TABLE OF CASES AND AUTHORITIES

CASES

Barnes v. Wells, 165 N.C. App. 575, 599 S.E.2d 585 (2004)	19
Blakenship v. Town & Country Ford, Inc., 155 N.C. App. 161, 574 S.E.2d 132 (2002)	19
Blakenship v. Town & Country Ford, Inc., 357 N.C. 61, 579 S.E.2d 384 (2003)	19
In re Eades, 143 N.C. App. 712, 547 S.E.2d 146 (2001)	7
In re E.C., --- N.C. App. ---, 621 S.E.2d 647 (2005)	17
In re Helms, 127 N.C. App. 505, 491 S.E.2d 672 (1997)	16
Herrell v. Taylor, 97 N.C. App. 57, 387 S.E.2d 230 (1990)	19
In re Humphrey, 156 N.C. App. 533, 577 S.E.2d 421 (2003)	19
In re Isenhour, 101 N.C. App. 550, 400 S.E.2d 71 (1991)	17
In re Montgomery, 311 N.C. 101, 316 S.E.2d 246 (1984)	7
N.C. State Bar v. Sheffield, 73 N.C. App. 349, 326 S.E.2d 320 (1985)	7
In re Pope, 144 N.C. App. 32, 547 S.E.2d 153 (2001)	7
In re Shue, 311 N.C. 586, 319 S.E.2d 567 (1984)	17
In re Custod of Stancil, 10 N.C. App. 545, 179 S.E.2d 844 (1971)	17
Starco, Inc. v. AMG Bonding and Ins. Services, Inc., 124 N.C. App. 332, 477 S.E.2d 211 (1996)	7
Starco, Inc. v. AMG Bonding and Ins. Services, Inc., 354 N.C. 359, 554 S.E.2d 644 (2001)	8
In re Williamson, 91 N.C. App. 668, 373 S.E.2d 317 (1988)	7

STATUTES

N.C. Gen. Stat. § 7B-101(9) (2005)	13
N.C. Gen. Stat. § 7B-805 (2005)	7
N.C. Gen. Stat. § 7B-808 (2005)	21
N.C. Gen. Stat. § 7B-808(a) (2005)	20
N.C. Gen. Stat. § 7B-808(b) (2005)	21

OTHER AUTHORITY

N.C. R. App. P. 28(b)(6) (2005)	9 , 22
---------------------------------------	--------

STATEMENT OF THE CASE

Wake County Human Services (WCHS) filed a juvenile petition on 9 June 2005 alleging neglect and dependency of the minor child, E.H. (R pp. 2-5). The trial court conducted a nonsecure custody hearing on 14 June 2005 at which it ordered E.H. to remain in nonsecure custody until adjudication (R pp. 33-38). The trial court conducted the adjudication and disposition hearings that are the subject of this appeal over four days in August and September 2005 (R pp. 132-43). Specifically, the trial court convened on 17 August, 21 September, 22 September, and 27 September 2005 (R p. 132). The trial court adjudicated E.H. neglected and dependent on 27 September 2005 and ordered that she be placed in the legal custody of WCHS with placement authority in that agency (T p. 620; R pp. 138-39). The trial court reduced its order to writing on 17 October 2005 (R p. 141). Respondent-Mother, Wanda H., filed notice of appeal on 19 October 2005 (R pp. 144-45). The trial court judge signed the Appellate Entries form on 4 November 2005 finding Respondent-Mother to be indigent and qualified for court appointed appellate counsel (R pp. 146-47). The Appellate Defender appointed appellate counsel on 14 November 2005 (R p. 148). After several extensions and other problems associated with preparation of the transcript (R pp. 149-76), the court reporter finally served the transcript on the parties

on or about 18 April 2006 (T COS). Appellant-Respondent-Mother filed the Record on Appeal with this Court on 19 June 2006 (R cover page). The Court of Appeals mailed the printed record to the parties on 26 June 2006. Appellant Respondent-Mother filed and served her written brief on 26 July 2006 (Appellant's Brief p. 35).

STATEMENT OF THE FACTS

Appellant-Respondent-Mother, Wanda H., and Respondent Father, William H., married on 9 August 1996 (R p. 10). They are the biological parents of E.H., born in March 1998, and T.H., born in September 2001 (T p. 218-19; R p. 10). The family initially came to be involved with WCHS in March 2000 after Wanda threatened to kill E.H. and was subsequently admitted to Dorothea Dix Hospital (T p. 219; R p. 98). Wanda was stable for a few months following her release from Dorothea Dix but eventually became abusive towards William and was again admitted to Dorothea Dix in 2002 (T p. 224; R p. 98). In March 2002 Respondent-Father, with the help of WCHS, voluntarily placed both children in the custody of his sister, Barbara H., who lived in Texas (R p. 10). In June 2002, Wanda and William H. separated (R p. 10).

In June 2003, Barbara H. obtained legal custody of both children from the Wake County District Court in a N.C. Gen. Stat. Chapter 50 action (R

pp. 10-11). In December 2003, Barbara H. allowed William H. to bring E.H. back to North Carolina for a visit with Wanda (R p. 11). When the parents did not timely return E.H. to Barbara H.'s care, Barbara H. filed a motion for emergency custody (R p. 11).

On 19 March 2004, in a N.C. Gen. Stat. Chapter 50 action the Wake County District Court granted joint legal custody of E.H. to the parents but granted Barbara H. guardianship of T.H. (R pp. 13 - 15). Thereafter Wanda had primary physical custody of E.H. and William had visitation rights but William and Wanda's relationship deteriorated further (R p. 99). E.H. subsequently made allegations that William sexually offended her, but these allegations were never substantiated (Rp.99). WCHS got involved with the family again but Wanda did not cooperate with the WCHS social worker's attempts to make home visits (T pp. 364, 368-69, 395-96; R p. 134, #6). The WCHS social worker that was working with the family, Kimberly Newsome, attempted to get Wanda to have E.H. evaluated (T p. 372). E.H. had already had a Child Medical Evaluation (CME), a Child Mental Health Evaluation (CMHE), and she was receiving ongoing mental health therapy from a Dr. Boustani (T p. 372).

However, due to Wanda's consistent reports of E.H.'s behavior problems and Wanda's increasing inability to manage them, Ms. Newsome

believed E.H. needed another, additional evaluation (T pp. 372-73). This evaluation was called a Child Forensic Evaluation and it was to be done at UNC Hospital (T p. 374). Wanda agreed to this evaluation on 1 March 2005 and even signed paperwork to that effect, but she later rescinded her approval before the evaluation could be done (T pp. 373-74).

Additionally, while Wanda refused to have E.H. evaluated for mental health/emotional concerns she would take E.H. to the doctor for medical issues that apparently had no medical basis (T pp. 376-79; R p. 134, #11). These issues included parasitic worms, vaginal itching, and kidney problems (T pp. 376-77; R p. 134, #11). E.H. had not displayed any of these problems (except for one report of vaginal itching) in the 21 months in which she had lived with Barbara H. (T pp. 19-20, 503-04; R p. 134, #11).

In May 2005, Wanda terminated E.H.'s therapy (T pp. 396, 427; Rp. 135, #12). Wanda also continued to believe William had sexually abused E.H. despite the lack of substantiation by professionals (R p. 135, #11). On 8 June 2005 Wanda and E.H. went to the Montessori School in Cary, North Carolina where Wanda was employed (T p. 120; R p. 134, #9). Wanda and E.H. subsequently became embroiled in an altercation that disrupted the operation of the school (T pp. 120-22, 133-36i R p. 134, #9). The altercation was so physically violent that school administrators had to get involved and

separate Wanda and E.H. (T pp. 134-36; R p. 134, # 9). At one point, Wanda grabbed E.H. by the head and began shaking her while screaming at her (T p. 136). E.H., in turn, attempted to get Wanda to remove her hands (T p. 136). When one of the school administrators told Wanda to release E.H., Wanda pushed E.H. back and told her she was going to call someone to come get E.H. and take her away (T p. 136). The school administrators immediately reported the incident to WCHS and Ms. Newsome came to the school that same day (T p. 137). By the time Ms. Newsome arrived at the school, administrators had separated Wanda and E.H. but Wanda somehow found E.H. and encouraged her to hide so that Ms. Newsome would not take her away (T p. 137). E.H. attempted to hide from Ms. Newsome but school administrators ultimately found her (T p. 137).

The Montessori School terminated Wanda's employment that same day (T p. 140). WCHS filed a juvenile petition the following day (9 June 2005) alleging neglect and dependency of E.H. (R pp. 2-5). The trial court adjudicated E.H. neglected and dependent on 27 September 2005 and ordered that she be placed in the legal custody of WCHS with placement authority in that agency and reduced its order to writing on 17 October 2005 (R pp. 138-41). Wanda H. filed timely notice of appeal from that order (R pp. 144-45). Appellee-Juvenile, by and through her Guardian ad Litem

(hereinafter "Appellee-GAL"), will develop further facts as needed in the arguments set forth below.

ARGUMENT

I. THE TRIAL COURT NEITHER COMMITTED REVERSIBLE ERROR IN ITS ADJUDICATION THAT THE JUVENILE WAS NEGLECTED NOR INTERFERED WITH RESPONDENT-MOTHER'S PARENTAL RIGHTS BECAUSE IT HAD SUFFICIENT CLEAR, COGENT, AND CONVINCING EVIDENCE OF THE EXISTENCE OF NEGLECT UNDER THE STATUTORY STANDARD. Assignments of Error Nos. 9-25, 30-32, 34, 36-38, 4244 , (R pp. 178-85)

Standard of Review

There are two phases in juvenile hearings: adjudication and disposition. *In re Eades*, 143 N.C. App. 712, 713, 547 S.E.2d 146, 147 (2001). At the adjudicatory phase, a petitioner has the burden of proving by clear, cogent, and convincing evidence that the allegations in the petition alleging abuse, neglect, or dependency are true. N.C. Gen. Stat. § 7B-805 (2005). "Clear, cogent, and convincing evidence describes an evidentiary standard stricter than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt." *N.C. State Bar v. Sheffield*, 73 N. C. App. 349, 354, 326 S.E.2d 320, 323 (1985). It has been defined as evidence that should fully convince. *Id.* Thus, on appeal the standard of review for the adjudicatory phase is whether the trial court's findings of fact are based on clear, cogent, and convincing evidence and whether the findings support the

conclusions of law. *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984). “When the court’s findings ... are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.” *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). This Court can review a trial court’s conclusions of law *de novo*. *In re Pope*, 144 N.C. App. 32, 40, 547 S.E.2d 153, 158 (2001), (citing *Starco, Inc. v. AMG Bonding and Ins. Services, Inc.*, 124 N.C. App. 332, 335, 477 S.E.2d 211, 214 (1996), *aff’d*, 354 N.C. 359, 554 S.E.2d 644 (2001)). Appellant abandons assignments of error not briefed. In her first argument, Appellant-Respondent-Mother references four assignments of error that she did not subsequently address in the argument that ensued: 9, 16, 18, and 21.

Assignment of Error #9 concerns Appellant Respondent-Mother's motions to dismiss at the close of Petitioner's evidence and then at the close of all evidence (R p. 178). Appellant-Respondent-Mother neither gave the standard of review for arguing such an error nor argued how the trial court failed to achieve the standard of review on the matter.

Assignment of Error #16 addresses Finding of Fact #12 which indicates that E.H.’s therapist reported that Appellant-Respondent-Mother was no longer working with the therapist. Appellant-Respondent-Mother

never refuted this finding in her first argument (Appellant's Brief pp. 13-28). Likewise, Appellant-Respondent-Mother did the same with Assignment of Error #18, which addresses Finding of Fact #16 that indicates that E.H. was deprived of normal growth and development, that she was subjected to a chaotic environment, and that her mother was hospitalized for mental health problems.

The same goes for Assignment of Error #21, which addresses Finding of Fact #20 that indicates that Appellant-Respondent-Mother did not follow the case plan established by WCHS before WCHS filed its petition and that Appellant-Respondent-Mother rebuffed WCHS's attempts to assess the risk to E.H. Pursuant to Rule 28(b) (6) of the North Carolina Rules of Appellate Procedure, Appellant-Respondent-Mother abandons these assignments of error as she has not actually argued them in her Brief (Appellant's Brief pp. 13-28). N.C. R. App. P. 28 (b) (6) (2005). Appellee-GAL respectfully urges the Court to ignore these assignments of error despite her reference to them at the beginning of her first argument (Appellant's Brief p. 14). This Court should thus consider these findings conclusive for purposes of this appeal.

Other Facts Not Allegedly Refuted

Appellant-Respondent-Mother has failed to adequately refute other salient findings supporting the trial court's order on adjudication.

Specifically, Appellant-Respondent Mother has failed to adequately refute the trial court's findings of fact numbers eight, nine, and 20 (R pp. 134, 136). Finding number eight indicates that E.H. had serious mental health and behavior issues that were not properly treated (R p. 134). The evidence for this was plenary. Respondent-Father, William H., testified that E.H. fought quite a bit, to include biting, if she was not happy (T p. 251, lines 14-17). Even when E.H. went to live with her Aunt Barbara in Texas, she displayed behavior problems (T p. 230). William H. testified that it might take up to four hours to get E.H. to do a timeout and that one had to have pretty good resolve for such a thing (T p. 230). In addition, Appellant-Respondent-Mother consistently reported to WCHS social worker Kimberly Newsome E.H.'s behavior problems and her increasing inability to manage them (T pp. 372-73). This prompted Ms. Newsome to get E.H. another evaluation known as a Child Forensic Evaluation (T pp. 372-74). Wanda agreed to this evaluation on 1 March 2005 and even signed paperwork to that effect but she later rescinded her approval before the evaluation could be done (T pp. 373 - 74).

Appellant-Respondent-Mother also reported that E.H. would throw things at her while she was driving with E.H. in the car (T p. 404). There was hair pulling, kicking, spitting, biting, tantruming, and excessive crying

by E.H. (T pp. 404-05). E.H.'s mother, her father, her therapist, school officials, and Ms. Newsome were reporting seeing these behaviors in E.H. (T pp. 404-05). Ms. Newsome discussed these behaviors with Appellant-Respondent-Mother and Appellant-Respondent-Mother displayed concern for the behaviors (T p. 406). E.H.'s behaviors were abnormal enough to cause Ms. Newsome to believe that E.H. needed medical intervention (T p. 409). Still, in May 2005, just a few days before WCHS took custody of E.H., Appellant-Respondent-Mother terminated E.H.'s mental health therapy with Dr. Boustani (T pp. 396, 427; R p. 135, #12). Thus, there existed plenary evidence that E.H. suffered mental health problems that were not being properly treated at the time WCHS filed its juvenile petition.

Secondly, Appellant-Respondent-Mother, by and large, did not refute the findings the trial court made with respect to the incident that occurred on 8 June 2005 at the Montessori School (R p. 134, FOF #9). Some of the specific details are not written exactly as they were presented at trial. For example, the evidence did not show that Appellant-Respondent-Mother slung E.H.'s arms down during the physical confrontation at the Montessori School (R p. 134, #9). However, the evidence showed that Appellant Respondent-Mother did push E.H. back (T p. 136). . The difference between these two descriptions is *de minimis*. The net effect is the same: Appellant-

Respondent-Mother put her hands on E.H. in a manner undesirable to all concerned observers. There is also little if no evidence to support the finding that school administrators had to “physically separate” Appellant-Respondent-Mother and E.H. as described in finding number nine (R p. 134). But again, so what? The evidence supported the notion that Appellant-Respondent Mother and E.H. had to be separated so as to prevent further physical violence towards each other (T pp. 134-36). Whether that was done by verbal commands from the school administrators or by physical separation does not matter. The other findings of fact in finding number nine are supported by the competent evidence (T pp. 134-36; R p. 134). These facts support the overall conclusion that Appellant-Respondent-Mother neglected E.H., especially in light of finding number 20 that describes WCHS’s history with the family and its previous attempts to keep mother and daughter together (R p. 136). Appellant-Respondent-Mother failed to adequately refute finding number 20 also.

II. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN ITS ADJUDICATION THAT THE JUVENILE WAS DEPENDENT BECAUSE IT HAD SUFFICIENT CLEAR, COGENT, AND CONVINCING EVIDENCE OF THE EXISTENCE OF DEPENDENCY UNDER THE STATUTORY STANDARD. Assignments of Error Nos. 9-25, 31, 34, 35-38, 42-44, (R pp. 178-85)

Standard of Review

Appellee-GAL adopts the standard of review described above as if

fully set out herein. A child is dependent if it has no parents to care for it. N.C. Gen. Stat. § 7B-101(9) (2005). A child can also be dependent if it has parents but they are under some sort of disability that precludes them from providing proper care and supervision for the child and they have no alternative care arrangement in light of that disability. *Id.* Here, E.H. had two parents and WCHS knew who those parents were and where to find them. Thus, the trial court must have concluded the existence of E.H.'s dependency under the second prong of the statutory definition. The trial court describes the parents' disabilities in findings numbers 23, 24, and 25 (R p. 136-37). It wrote that Appellant-Respondent-Mother was unable to provide E.H. with proper care and supervision due to Appellant-Respondent Mother's mental illness (R p. 137/ #24). The trial court indicated that Respondent-Father's disability was that he had failed to put himself in a position such that he could provide a safe and stable home for E.H. (R p. 136-371 #23, #25). Appellant-Respondent-Mother basically adopted her previous arguments against neglect to support her argument that E.H. was not dependent (Appellant/s Brief p. 30). Appellant-Respondent-Mother addresses the evidence concerning her mental health issues arguing, by and large, that the evidence failed to support a "serious mental health disorder" (Appellant's Brief pp. 19-21). It is important to note two things. First, neither

the statute nor the case law requires a finding that a parent have a "serious mental health disorder" in order to conclude that the parent is under a disability worthy of a finding of dependency. Second, Dr. Aiello conducted his psychological evaluation on Appellant-Respondent-Mother after WCHS filed its petition (R p. 48). Thus, WCHS was basing its belief that Appellant Respondent-Mother had a mental illness that precluded her from providing E.H. with proper care and supervision on Appellant-Respondent-Mother's history and her recent actions.

Appellant-Respondent-Mother's history included two commitments to Dorothea Dix Hospital in the previous five years (T pp. 219, 224; R p. 98). In addition, in the months and days leading up to WCHS's petition, Appellant-Respondent Mother had displayed other disturbing behavior including the following: Appellant-Respondent-Mother did not cooperate with Ms. Newsome's attempts to make home visits (T pp. 364, 368-69, 395-96; R p. 134, #6). Appellant-Respondent-Mother consistently reported to Ms. Newsome E.H.'s behavior problems and Appellant-Respondent-Mother's increasing inability to manage them but Appellant-Respondent-Mother refused to let E.H. receive a Child Forensic Evaluation per Ms. Newsome's request (T pp. 372-74). While Appellant Respondent-Mother refused to have E.H. evaluated for mental health/emotional concerns, she

would take E.H. to the doctor for medical issues that apparently had no medical basis including parasitic worms, vaginal itching, and kidney problems (T pp. 376-79; R p. 134, #11). Appellant Respondent-Mother terminated E.H.'s mental health therapy in May 2005 (T pp. 396, 427; R p. 135, #12). Appellant Respondent-Mother continued to believe Respondent-Father had sexually abused E.H. despite the lack of substantiation by professionals (R p. 135, #11). And Appellant-Respondent Mother had a "knock-down drag out" fight with her seven year-old daughter in a public place and lost her job as a result of that fight (T pp. 133-36). In addition, Ms. Newsome observed Appellant-Respondent Mother exhibit extreme mood and behavioral changes (T p. 394, lines 13-15).

Appellant-Respondent-Mother also exhibited boundary problems (T p. 394). For example, on one occasion when she was demonstrating to Ms. Newsome what E.H. had recently done, she lifted Ms. Newsome's shirt to stab her in the belly with a pencil (T p. 394-95). Thus, there was ample evidence before WCHS that Appellant-Respondent Mother had a mental illness that precluded her from providing proper care and supervision of E.H. The evidence as to Respondent-Father's disability was also present. The bottom line is that Respondent-Father admitted on the witness stand at the adjudication hearing that he was not in a position to care for E.H. when

WCHS filed its petition (T p. 249, lines 8-12). He admitted that he could not provide E.H. with a safe, stable home at the time WCHS filed its petition (T p. 249). Thus, WCHS provided the trial court with clear, cogent, and convincing evidence that both parents were under a disability that precluded both of them from providing E.H. with proper care and supervision.

As such, the trial court was justified in concluding that E.H. was a dependent child under the statutory definition.

III. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN ITS DISPOSITION ORDER BECAUSE IT DID NOT DELEGATE ITS AUTHORITY ON THE ISSUE OF RESPONDENT-MOTHER'S VISITATION WITH HER CHILD. Assignments of Error Nos. 2, 4-6, 28-29, 32-33, 45, pp. 177-78, 182-83, 186)

Standard of Review

All dispositional orders of the trial court after abuse, neglect, and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 676 (1997). If the trial court's findings of fact are supported by competent evidence, they are binding on appeal. *In re Isenhour*, 101 N.C. App. 550r 553r 400 S.E.2d 71r 73 (1991). In addition, all findings, conclusions, and orders of the trial court must be in the best interests of the juvenile. *In re Shue*, 311 N.C. 586, 597, 319 S.E.2d 567, 574 (1984). “Whenever the trial court is determining the best interest of a child, any

evidence which is competent and relevant to a showing of the best interest of that child must be heard and considered by the trial court, subject to the discretionary powers of the trial court to exclude cumulative testimony.” *Id.* In an action involving the custody of a child, the awarding of visitation rights is a judicial function. *In re Custody of Stancil*, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971). The exercise of this judicial function should not be delegated to the child’s custodian. *Id.* This Court has recently upheld the *Stancil* decision in an abuser neglect, and dependency case. *In re E.C.*, --- N.C. App. ---, 621 S.E.2d 647 (2005). Here, the trial court delegated nothing with regards to Appellant-Respondent-Mother’s visitation rights (R p. 140, #8). Thus, there is no violation of *Stancil* or *E.C.* as alleged by Appellant-Respondent-Mother. The only thing the trial court may have been remiss in doing was its failure to establish a quantitative minimum amount of visitation in the written order (R p. 140). However, WCHS’s recommendation was that Appellant Respondent-Mother continue to visit E.H. according to the already established visitation plan (R p. 130). In addition, at the disposition hearing WCHS’s personnel told the trial court judge that supervised visitation could resume immediately (T p. 642). The trial court ordered from the bench that Appellant-Respondent-Mother could have supervised visitation in accordance with the visitation plan (T p. 667).

Appellant-Respondent-Mother never raised the issue of how much visitation she could have during the disposition hearing (T pp. 634-76). Thus, Appellee-GAL is unsure what the issue is at this point. The trial court ordered supervised visitation between-Appellant-Respondent-Mother and E.H., no one raised the issue at trial, and there is no language in the written order purporting to give any party discretion as to whether Appellant-Respondent-Mother's visitation could be curtailed in any way. Appellee-GAL submits that there exists no reversible issue here.

IV. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN DENYING RESPONDENT-MOTHER'S REQUESTS FOR CONTINUANCES OR IN PROCEEDING TO DISPOSITION WITHOUT MENTAL HEALTH REPORTS AND MEDICAL EVALUATIONS OF THE CHILD. Assignments of Error Nos. 2-3, 7-8, 39, 45, 78, 184, 186; T pp. 3, 170, 173-74, 621-27) (R pp. 177)

Standard of Review

“A motion to continue is addressed to the court's sound discretion and will not be disturbed on appeal in the absence of an abuse of discretion.” *In re Humphrey*, 156 N.C. App. 533, 538, 577 S.E.2d 421, 425 (2003). The chief consideration is whether granting or denying a continuance will further substantial justice. *Id.* “Abuse of discretion exists when ‘the challenged actions are manifestly unsupported by reason.’” *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004), (quoting *Blankenship v. Town & Country Ford, Inc.*, 155 N.C. App. 161, 165, 574 S.E.2d 132, 134 (2002),

disc. rev. denied, 357 N.C. 61, 579 S.E.2d 384 (2003)). When a trial court acts contrary to a statutory mandate and a defendant is thereby prejudiced, the defendant's right to appeal the trial court's decision is preserved notwithstanding the defendant's failure to object at trial. *Herrell v. Taylor*, 97 N.C. App. 57, 61, 387 S.E.2d 230, 232 (1990). Thus, this Court can review a trial court's alleged statutory violation *de novo*.

Motion to Continue

Appellee-GAL does not deny that Appellant-Respondent Mother requested continuances at both the adjudication and disposition hearings and was denied by the trial court on both occasions. Appellant-Respondent-Mother argues that due to these denials she was denied the opportunity to present her defense and have fair representation in the hearings (Appellant's brief pp. 33-34). However, Appellant Respondent-Mother does not specifically state why this is true. A generalized averment without specification is insufficient to put this Court on notice as to how reversible error has occurred. Appellant-Respondent-Mother has failed to show how the trial court's decisions denying the motions to continue were manifestly unsupported by reason. The trial judge provided her reasoning for not granting the continuances on both occasions (T pp. 173-74, 626-27).

In both instances, the reasoning was neither capricious nor arbitrary.

Thus, the trial court did not abuse its discretion in denying Appellant-Respondent-Mother's motions to continue.

Statutory Violation

The statute in question reads as follows: “The court may proceed with the dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary.” N.C. Gen. Stat. § 7B-808(a) (2005). The statute goes on to read “The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation under G.S. 7B-503, a placement plan, and a treatment plan the director deems appropriate to meet the juvenile's needs.” N.C. Gen. Stat. § 7B-808(b) (2005). Thus, it is clear from the statutory language that the “predisposition report” in question is a report that is to be prepared by the department of social services (WCHS in this case). The trial court had a predisposition report from WCHS before it proceeded to disposition in this case (R pp. 126-30). Appellant-Respondent-Mother argued that the trial court violated N.C. Gen. Stat. § 7B-808 because it proceeded to disposition without written evaluations of the child (Appellant's Brief pp. 32-34). Thus, Appellant Respondent-Mother's argument is misplaced. The trial court did not violate N.C. Gen. Stat. § 7B-808.

V. ASSIGNMENTS OF ERROR NOT BRIEFED ARE DEEMED ABANDONED. Assignments of Error Nos. 1, 26-27, 40-41, and 46-47, (R pp. 177-86)

In addition to the above-mentioned abandonment of assignments of error (Argument I supra), Appellee-Guardian ad Litem submits that Appellant-Respondent-Mother failed to even reference assignments of error numbers one, 26, 27, 40, 41, 46, and 47. As such and pursuant to Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure, Appellant Respondent-Mother abandons these assignments of error. N.C. R. App. P. 28(b)(6) (2005). Appellee-GAL urges the Court to ignore these assignments of error and to consider these findings conclusive for purposes of this appeal.

CONCLUSION

On the basis of the arguments and authorities cited herein, Appellee-GAL respectfully requests that the Court uphold the trial court's decision in all respects. Respectfully submitted this --- day of --- 2006.

Richard Croutharmel
Attorney for Appellee-GAL
c/o Wake County GAL Program
P.O. Box 1107
Raleigh, North Carolina 27602
Telephone: (919) 755 -1113
Fax: (919) 755 -1162
Email: rcroutharmel@earthlink.net

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the original of the foregoing BRIEF FOR APPELLEE-GAL was duly served with the Office of the Clerk of the North Carolina Court of Appeals by hand delivery to the following address:

Mr. John Connell, Clerk
North Carolina Court of Appeals
1 West Morgan Street
Raleigh, NC 27601

The undersigned attorney hereby certifies that copies of the foregoing BRIEF FOR APPELLEE-GAL were duly served upon the other parties this day by placing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in first class, postage-prepaid envelopes and properly addressed as follows:

Corinne Russell
P.O. Box 550
Raleigh, NC 27602

Jeffrey L. Miller
P.O. Drawer 3740
Greenville, NC 27836

This the --- day of --- 2006.

Richard Croutharmel
Attorney for Appellee-GAL
c/o Wake County GAL Program
P.O. Box 1107
Raleigh, North Carolina 27602
Telephone: (919) 755 -1113
Fax: (919) 755 -1162
Email: rcroutharmel@earthlink.net