

NORTH CAROLINA COURT OF APPEALS

IN THE MATTER OF:

From Lee County

S. J .M.,

File No: 05 J 42

A Minor Child

MOTION TO AMEND RECORD ON APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA: NOW COME THE Appellee Lee County Department of Social Services and the Guardian ad litem, pursuant to 9(b)(5) of the North Carolina Rules of Appellate Procedure and respectfully move this Court for an order amending the record on appeal to incorporate two additional documents. In support of this motion, Appellee and Guardian ad litem show the following:

1. On 19 June 2006 the Record on Appeal was filed in the North Carolina Court of Appeals.
2. The printed Record on Appeal was mailed to the parties on 26 June 2006.
3. The Respondent mother filed a Motion for Extension of Time to File Brief on 24 July 2006. The Court of Appeals granted the motion for extension of time extending the Respondent's time to file her brief until 23 August 2006. The mother's brief was not filed until 25 August 2006.
4. In the Respondent mother's brief, she argued that no summons was issued in the instant case because no summons was in the Record on Appeal.
5. In its original adjudication and disposition orders which were

not appealed, the trial court found that "This Court has jurisdiction over the subject matter and of this proceeding and of the person of the juvenile and parties." (Finding 2, R p. 25; Conclusion 1, R p. 26; Conclusion 1, R p. 29).

6. In its Permanency Planning order that was appealed, the court made a preliminary finding that "This Court has jurisdiction over the subject matter of this proceeding and of the person of the juvenile." (R p. 43)

7. The Respondent father also filed an appeal of the Permanency Planning order and did not raise any objection to personal or subject matter jurisdiction and did not argue that no summons was issued.

8. In her original assignments of error, the Respondent mother did not assign error to the specific failure of the issuance of a summons. (R pp. 59-62). The mother made a general assignment of error alleging lack of subject matter jurisdiction as one of her 30 assignments of error but that assignment of error referenced pages 43-46 which is the order she appealed. (Assignment of error 5, R p. 59).

9. Counsel have attached a copy of the summons in this case that was issued by Denise Whitaker, Deputy Clerk of Superior Court of Lee County on June 24, 2005.

10. The attached summons is relevant to the issue raised by the Respondent mother in her brief and is a necessary part of the Record on Appeal.

11. Undersigned counsel have not delayed in filing this motion in that this issue was raised in the mother's brief filed last week.

WHEREFORE, Appellee Lee County Department of Social Services and the Guardian ad litem, request this Court grant their joint Motion to Amend the Record on Appeal to add the summons and for such other and further relief as the Court deems just and proper.

This the 6th day of September, 2006.

Elizabeth Myrick Boone
Attorney for Guardian ad litem
7408 Villanow Drive

Sanford, NC 27332
(919) 774-3497

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion to Dismiss Appeal has been served upon counsel of record for the parties on 6 September 2006 by placing a copy of the same in a United States Postal Service depository, first class postage prepaid, to the following persons at the following address

Ms. Susan Hall
Attorney for father
PO Box 713
Fayetteville, NC 28302

Ms. Katharine Chester
Attorney for mother
PO Box 582
Siler City, NC 27344

This the 6th day of September, 2006.

Elizabeth Myrick Boone
Attorney for Guardian ad litem