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DURHAM COUNTY / NEWS

Durham Judge Moves Custody Hearing Out of County, Appeals Court Returns Case to Durham

Posted by **Lauren Horsch** on Wed, Aug 17, 2016 at 3:02 PM

Custody hearings can be complicated enough to begin with—but one case in Durham County is especially complicated because the children in question could be sent back to El Salvador where their father is alleged to be connected to Mara 18, a "gang that controls many communities and subjects local residents to violence and terror."

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The case is an example of how hard it can be for relatives to gain custody of children born outside of the U.S.

Let's breakdown the case a bit—

Aurora Zetino-Cruz has been living in North Carolina for fifteen years, and in May 2014 her daughter and two grandchildren were apprehended by immigration officers in Texas, according to Tuesday's N.C. Court of Appeals opinion.

They soon joined their grandmother in Sanford, and in November 2014 the children's mother left after failing to appear in immigration court. Since then Zetino-Cruz claims the mother has only called once, and the children have never lived with their father. When the mother absconded she didn't sign away legal custody of the the children to Zetino-Cruz, thus leaving the children's care in limbo.

The court did not identify the children, instead giving them aliases in the court documents. The children, Javier (born in 2006) and Maria (born in 2009), have been in the care of Zetino-Cruz since their mother left. Javier, according to court documents, has "extensive special needs," and because there was no legal custody Zetino-Cruz was finding it difficult to provide for him.

In May 2015 Zetino-Cruz filed a complaint in Durham County to seek custody of the two children. She was granted a temporary custody order on May 14, 2015. Then on August 14, 2015 during a pre-trial hearing before Durham County District Court Judge Doretta L. Walker the case took an



Doretta Walker

interesting turn.

Walker decided the custody hearing didn't need to be in Durham. Instead she moved it to Lee County—at the objection of Zetino–Cruz's attorney and without any request from defendants (who have not showed up to court dates).

In North Carolina the plaintiff—in this case Zetino–Cruz—has the right to remain in the county the complaint is filed in, until (or really unless) a defendant files for a venue change. And because neither of the children's parents (the defendants in this case) have showed up to court, let alone spoken to the children, there has been no such motion.

Zetino–Cruz's attorney, Derrick Hensley, during the August hearing argued against the venue change:

MR. HENSLEY: And, Your Honor, the matter of venue is a substantive procedural right for the plaintiff and for the defendant when timely objected to. In this case the defendant has not objected and it is convenient to the Plaintiffs to be heard in the County of Durham wherein the children may be found on the occasion of filing the complaint and case law specifies that that is sufficient. Moreover, I'm representing these individuals and it is most convenient for them to have an attorney practice in its own district in order to have most efficient representation possible. And beyond that, Your Honor, the case law specifically gives the right to object to venue only to the defendant, the parties may agree otherwise, but the only statutory basis for changing venue is by objection of a defendant and ask that you carefully read the memorandum before issuing any order in this matter, Your Honor.

THE COURT: I carefully read the law and I transfer

In the Appeals Court's decision Judge Donna Stroud wrote there was no legal authority the court could find allowing the trial court to change the venue sua sponte—of her own accord.

"The order changing venue has served only to delay a final resolution of custody of the children, and our Supreme Court has often recognized the need to avoid delay in cases involving children," Stroud wrote in her opinion.

Stroud continues:

Since the legal basis for the order is unclear, we will also address the other factors the trial court cited as supporting a change of venue under N.C. Gen. Stat. § 1-83, "convenience of

the court,” “convenience of witnesses,” and “the interests of justice.” We cannot discern how plaintiff and the children, who were present and ready to proceed, could possibly find removal to Lee County “convenient.” In fact, plaintiff’s counsel expressed that removal to Lee County would not be convenient for plaintiff. The record does not indicate any other potential witnesses who may be in Lee County. But the phrase “convenience of witnesses” is at least a recognized factor under N.C. Gen. Stat. § 1-83 and may apply based upon the facts of a particular case and where proper objection or motion is made. Yet we cannot find any authority for a transfer of venue based upon “convenience of the court.” We cannot even determine what this phrase means and we decline plaintiff’s invitation to speculate.

As far of "interests of justice," Stroud wrote: "The most obvious 'interest of justice' in this case is the welfare of the minor children."

Beyond just the case facts as outlined in the opinion, Zetino–Cruz, was gathering more materials in order to obtain "Special Immigrant Juvenile Status."

The program allows foreign children in the country who have been abused, abandoned, or neglected the ability to get a green card even if they aren't reunited with a parent. Once a child gets a green card the he or she can live and work in the country permanently.

However, if a someone gets a green card through the program they cannot petition to get a green card for their parents and they cannot petition to get a green card for any sibling until they become a U.S. citizen.

Zatino–Cruz, Javier, and Maria will return to Durham County to have their case heard in the future.

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