

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA11-617
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

IN THE MATTER OF:

C.C.W., J.M.W., A.L.A., Harnett County
J.D.T. Nos. 09 J 145-48

Appeal by respondent parents from order entered 4 March 2011 by Judge Paul A. Holcombe, III, in Harnett County District Court. Heard in the Court of Appeals 10 October 2011.

E. Marshall Woodall and Duncan B. McCormick for petitioner-appellee Harnett County Department of Social Services.

W. Michael Spivey for respondent-appellant mother.

Sydney Batch for respondent-appellant father.

Pamela Newell for guardian ad litem.

ELMORE, Judge.

Respondents mother and father each appeal from the trial court's 4 March 2011 order terminating their parental rights. We vacate the portions of the termination order referring to the

juvenile C.C.W., and we affirm the order as to the other three juveniles.

Respondent mother has a history with social services beginning in 1997 that includes complaints of substance abuse and inappropriate supervision of her children. On 6 August 2009, the Harnett County Department of Social Services (DSS) filed juvenile petitions alleging that the juveniles were neglected. The petitions identified respondent father as the father of three of the juveniles, and K.A. as the father of juvenile A.L.A.¹ The petitions each allege that DSS became involved with the family because of respondents' problems with drugs and alcohol, domestic violence, and improper care and supervision. The verification section of the petition filed for C.C.W. is not signed by a social worker or other DSS representative. The other three petitions are signed.

On 22 January 2010, Judge Charles P. Bullock entered a consent order adjudicating the juveniles neglected. In the order, however, Judge Bullock found that K.A., A.L.A.'s biological father, had not been served with process because his location was unknown at the time. The juveniles were placed in DSS custody, and respondents were provided with supervised

¹ For reasons discussed herein, K.A. is not a party to this appeal.

visitation plans, ordered to undergo psychological evaluations, and required to participate in DSS services.

On 25 June 2010, Judge Resson O. Faircloth entered a permanency planning order in which he changed the permanent plan to adoption and ordered DSS to cease reunification efforts with respondents. On 8 July 2010, DSS filed a motion to terminate respondents' parental rights to all four of the juveniles. The motion named respondents and K.A., but stated that K.A. had not been served and was not a party to the termination action. As to both respondents, DSS alleged the following grounds for termination: (1) neglect (N.C. Gen. Stat. § 7B-1111(a)(1)); (2) willful failure to pay a reasonable portion of the cost of care (N.C. Gen. Stat. § 7B-1111(a)(3)); and (3) willful abandonment (N.C. Gen. Stat. § 7B-1111(a)(7)). As to the mother only, DSS also alleged that the juveniles were dependent (N.C. Gen. Stat. § 7B-1111(a)(6)). Respondents each filed a response to the motion. On 21 January 2011, Judge Paul A. Holcombe entered a permanency planning review order in which he ceased visitation and ordered DSS to proceed with the termination of parental rights.

After hearings on 7 and 21 January 2011, the trial court entered an order on 4 March 2011 terminating the parental rights

of both respondents. As to the mother, the trial court found grounds to terminate her parental rights based on: (1) neglect (N.C. Gen. Stat. § 7B-1111(a)(1)); (2) the previous termination of her parental rights to another child (N.C. Gen. Stat. § 7B-1111(a)(9)); and (3) dependency (N.C. Gen. Stat. § 7B-1111(a)(6)). As to the father, the trial court found neglect as the sole ground to terminate his parental rights. Respondents each filed written notice of appeal.

On appeal, respondents each argue that the trial court lacked jurisdiction to terminate their parental rights to C.C.W., because DSS failed to properly verify the juvenile petition as required by N.C. Gen. Stat. § 7B-302(c) and N.C. Gen. Stat. § 7B-403(a). We agree.

Section 7B-403(a) requires that a juvenile petition alleging dependency, abuse, or neglect "shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing." N.C. Gen. Stat. § 7B-403(a) (2009). This Court has "read the phrases beginning with 'drawn,' 'verified,' and 'filed' to be separate requirements." *In re Dj.L., D.L. & S.L.*, 184 N.C. App. 76, 79, 646 S.E.2d 134, 137 (2007). In this context, the verification consists of "the act of personally signing one's

name in ink by hand." *In re S.E.P. & L.U.E.*, 184 N.C. App. 481, 487, 646 S.E.2d 617, 621 (2007) (quoting N.C. Gen. Stat. § 10B-3(25) (2005)).

"[V]erification of a juvenile petition is no mere ministerial or procedural act." *In re T.R.P.*, 360 N.C. 588, 591, 636 S.E.2d 787, 790 (2006). Instead, "verification of the petition in an abuse, neglect, or dependency action as required by N.C.G.S. § 7B-403 is a vital link in the chain of proceedings carefully designed to protect children at risk on one hand while avoiding undue interference with family rights on the other." *Id.* at 591, 636 S.E.2d at 791.

In this case, we hold that DSS failed to verify the juvenile petition filed in C.C.W.'s case. Although a social worker signed the verification on the other three juvenile petitions, she failed to sign the verification on C.C.W.'s petition. Because of the jurisdictional significance of verification, we cannot ignore DSS's failure to verify the petition.

Furthermore, the unverified petition ultimately deprived the trial court of jurisdiction to enter an order terminating respondents' parental rights to C.C.W. DSS may file a motion to terminate parental rights "[w]hen the district court is

exercising jurisdiction over a juvenile and the juvenile's parent in an abuse, neglect, or dependency proceeding[.]” N.C. Gen. Stat. § 7B-1102(a) (2009). In this case, DSS filed a motion to terminate parental rights pursuant to N.C. Gen. Stat. § 7B-1102(a), and presumed to proceed to termination based on the jurisdiction acquired through the juvenile petitions in the pending abuse, neglect, and dependency matter. Because DSS failed to properly verify the juvenile petition as to C.C.W., however, the trial court never acquired subject matter jurisdiction in that abuse, neglect, and dependency case. Thus, DSS's failure to verify the original juvenile petition as to C.C.W. also deprived the trial court of jurisdiction to terminate respondents' parental rights to C.C.W. Accordingly, we vacate the portion of the termination of parental rights order as to C.C.W.

Respondent mother next argues that the trial court also lacked jurisdiction to terminate her parental rights to A.L.A., because the prior consent adjudication order was entered outside of the presence of the juvenile's father, K.A. We disagree.

At the outset, we note that this issue is not properly before us because the mother had a right to appeal immediately from the 22 January 2010 consent adjudication order pursuant to

N.C. Gen. Stat. § 7B-1001(a)(3), but failed to enter timely notice of appeal. See *In re C.L.C.*, 171 N.C. App. 438, 443, 615 S.E.2d 704, 707 (2005), *aff'd per curiam, disc. review improvidently allowed as to additional issues*, 360 N.C. 475, 628 S.E.2d 760 (2006). Nevertheless, collateral attack is a permissible means of seeking relief from a judgment or order if the order is void on its face for lack of jurisdiction. See *In re T.R.P.*, 360 N.C. at 596, 636 S.E.2d at 793.

A consent order in an abuse, neglect, and dependency matter is appropriate "when all parties are present, the juvenile is represented by counsel, and all other parties are either represented by counsel or have waived counsel, and sufficient findings of fact are made by the court." N.C. Gen. Stat. § 7B-902 (2009).

We have previously held that, although it is error for a court to enter a consent adjudication outside of the presence of one of the respondent parents, the error can be waived by the parent's failure to object to the order. *In re J.N.S.*, ___ N.C. App. ___, ___, 704 S.E.2d 511, 517 (2010) ("Since respondent-mother did not object to the entry of the consent adjudication order or the stipulations contained in the order, she has not preserved this issue for appellate review.") (citing N.C.R. App.

P. 10(a)(1)). Because such an error can be waived, it is non-jurisdictional. *Dependents of Thompson v. Funeral Home*, 205 N.C. 801, 804, 172 S.E. 500, 501 (1934) ("Jurisdiction, not given by law, may not be conferred on a court or commission, as such, by waiver or consent of the parties.") (citations omitted).

In this case, because the mother failed to object to the trial court's prior adjudication of neglect or to exercise her right to appeal from that order, and because the alleged error is not jurisdictional, the mother cannot collaterally attack the prior adjudication in this appeal from the order terminating her parental rights. See *In re Wheeler*, 87 N.C. App. 189, 194, 360 S.E.2d 458, 461 (1987). Therefore, we hold that this argument lacks merit.

Finally, respondents' remaining arguments all address the trial court's conclusions that grounds existed to terminate their parental rights. We hold that these arguments lack merit because the evidence supports a conclusion that at least one ground existed to terminate respondents' parental rights.

At the adjudicatory stage of a termination of parental rights hearing, the burden is on the petitioner to prove that at least one ground for termination exists by clear, cogent, and

convincing evidence. N.C. Gen. Stat. § 7B-1109(f) (2009); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Our review is limited to determining whether clear and convincing evidence exists to support the findings of fact, and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000).

Here, it is dispositive that the evidence supports termination of both respondents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), based on neglect. See *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (a finding of one statutory ground is sufficient to support the termination of parental rights).

A trial court may terminate parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) upon a finding that a juvenile is abused or neglected as defined in N.C. Gen. Stat. § 7B-101. In relevant part, that statute defines a neglected juvenile as:

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare[.]

N.C. Gen. Stat. § 7B-101(15) (2009).

Generally, "[a] finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997) (citation omitted). However, "a prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect." *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). "The trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *Id.* at 715, 319 S.E.2d at 232.

Here, the trial court made numerous adjudicatory findings of fact and conclusions of law addressing the evidence of changed circumstances and the likelihood of the repetition of neglect, including findings of fact 20, 23, 25-28, 32, 33, 42, and 44. These findings describe respondents' extensive history of drug abuse and domestic violence, their failure to provide a stable home for the juveniles, and their persistent resistance to DSS's efforts to help them improve their situation. Respondents have not challenged these findings of fact, and thus they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Based on these findings, the

trial court properly concluded that respondents' failure to progress "create[d] the likelihood that[,] if the juveniles were returned to the [parents], the juveniles would be at risk of harm or neglect." Accordingly, we affirm the trial court's conclusion that grounds exist pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate respondents' parental rights to A.L.A., J.M.W., and J.D.T.

Affirmed in part; vacated in part.

Judges BRYANT and ERVIN concur.

Report per Rule 30(e).