

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-174

Filed: 5 September 2017

Wake County, No. 12 JA 313

IN THE MATTER OF: G.M.

Appeal by Mother from order entered 31 October 2016 by Judge Keith O. Gregory in Wake County District Court. Heard in the Court of Appeals 8 August 2017.

Wake County Attorney's Office, by Mary Boyce Wells and Brian K. Kettmer, for Petitioner-Appellee Wake County Human Services.

David A. Perez for Respondent-Appellant Mother.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem.

DILLON, Judge.

Mother appeals from an order granting guardianship of her minor child G.M. ("George")¹ to George's foster parents. The father is not a party to this appeal. After careful consideration, we affirm.

I. Background

¹ A pseudonym is used to protect the identity of the juvenile.

Opinion of the Court

George was born in May 2002 in Virginia. On 12 April 2006, a divorce decree was granted to George's parents by the Circuit Court of the City of Suffolk, Virginia. In the decree, the Virginia court awarded Mother primary physical custody of George. Mother moved to North Carolina with George in 2009.

In November 2012, Wake County Human Services ("WCHS") filed a petition in this matter alleging that George was a neglected and dependent juvenile after receiving a report that Mother was demonstrating paranoia and had expressed thoughts of hurting herself. WCHS obtained nonsecure custody the same day. In December 2012, Mother moved back to Suffolk, Virginia.

In June 2013, following a hearing, the trial court entered an order adjudicating George to be a neglected and dependent juvenile and ordering Mother to enter into and comply with an out of home family services agreement with WCHS. At a February 2014 permanency planning hearing, Mother testified for the first time that there was a prior Virginia custody order. Soon after the hearing, the trial court entered an order ceasing reunification efforts and changing the permanent plan to adoption.

In March 2014, Mother filed a motion to vacate prior orders for lack of subject matter jurisdiction. After learning of the prior Virginia custody order, the trial court contacted the Virginia court, after which the Virginia court scheduled a hearing to determine whether it would retain jurisdiction over the matter. Following a hearing,

the Virginia court entered an order in which it determined that, as of WCHS's filing of the petition in this case, Virginia no longer had continuing, exclusive jurisdiction. The Virginia court also declared Virginia to be an inconvenient forum and North Carolina to be the more appropriate forum. After the Virginia court entered its order declining jurisdiction, the trial court entered an order denying Mother's motion to vacate prior orders.

Following a permanency planning hearing, the trial court entered an order awarding guardianship of George to his foster parents and waiving further review hearings. Mother timely gave notice of appeal from the permanency planning order.

II. Analysis

Mother contends that the trial court lacked subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") to enter its nonsecure custody order and its adjudicatory and dispositional order. Mother further contends that the adjudicatory and dispositional order was void *ab initio* and could not support the trial court's subsequent permanency planning order awarding guardianship of George to his foster parents.

As an initial matter, we must note that Mother had a right to appeal from the June 2013 adjudicatory and dispositional order but failed to do so. *See* N.C. Gen. Stat. § 7B-1001(a)(3) (2015). While in most circumstances, a party's failure to appeal from an order prevents the party from challenging that order on appeal from a

Opinion of the Court

separate order, this Court has previously held that a mother's jurisdictional claim was properly before the Court despite her failure to appeal from the adjudicatory and dispositional order, stating that "the trial court's subject-matter jurisdiction may be challenged *at any stage of the proceedings[.]*" *In re J.H.*, ___ N.C. App. ___, ___, 780 S.E.2d 228, 233 (2015) (emphasis in original); *see also Jenkins v. Piedmont Aviation Servs.*, 147 N.C. App. 419, 425, 557 S.E.2d 104, 108 (2001) ("A lack of jurisdiction or power in the court entering a judgment always avoids the judgment, and a void judgment may be attacked whenever and wherever it is asserted, without any special plea." (internal marks omitted)). In this case, Mother's challenge to the trial court's subject matter jurisdiction is properly before this Court.

Although the North Carolina Juvenile Code grants the district courts of North Carolina "exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent[.]" N.C. Gen. Stat. § 7B-200(a), the jurisdictional requirements of the UCCJEA and the Parental Kidnapping Prevention Act ("PKPA") must also be satisfied for a court to have authority to adjudicate petitions filed pursuant to our juvenile code.

In re J.W.S., 194 N.C. App. 439, 446, 669 S.E.2d 850, 854 (2008) (first alteration in original).

"Whether a trial court has subject-matter jurisdiction is a question of law, reviewed *de novo* on appeal." *In re K.U.-S.G.*, 208 N.C. App. 128, 131, 702 S.E.2d 103, 105 (2010).

In this case, all parties agree that the Virginia court's 2006 order awarding primary physical custody of George to Mother constituted an "initial determination" under the UCCJEA. See N.C. Gen. Stat. § 50A-102(8) (2015) (defining "initial determination" as "the first child-custody determination concerning a particular child"). And because the Virginia court entered the initial child-custody determination as to George, any change to the Virginia order constitutes a modification under the UCCJEA. N.C. Gen. Stat. § 50A-102(11); see *In re N.R.M.*, 165 N.C. App. 294, 299, 598 S.E.2d 147, 150 (2004).

A trial court has jurisdiction to make an initial determination under N.C. Gen. Stat. § 50A-201(a)(1) if North Carolina was "the home state of the child on the date of the commencement of the proceeding[.]" N.C. Gen. Stat. § 50A-201(a)(1). A child's "home state" is defined as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. . . . A period of temporary absence of any of the mentioned persons is part of the period." N.C. Gen. Stat. § 50A-102(7). " 'Commencement' means the filing of the first pleading in a proceeding." N.C. Gen. Stat. § 50A-102(5).

George was brought to North Carolina in approximately July 2009 and was residing in North Carolina in November 2012 when WCHS filed its juvenile petition.

Opinion of the Court

Mother acknowledges that the trial court had jurisdiction to make an initial determination under N.C. Gen. Stat. § 50A-201(a)(1).

Given that the trial court had jurisdiction to make an initial determination, the court would have jurisdiction to modify Virginia's custody determination if:

(1) The [Virginia] court . . . determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of [North Carolina] would be a more convenient forum under G.S. 50A-207; or

(2) A court of [North Carolina] or a court of [Virginia] determines that the child, the child's parents, and any person acting as a parent do not presently reside in [Virginia].

N.C. Gen. Stat. § 50A-203.

Here, the record shows that on the date WCHS filed the petition, George and Mother resided in North Carolina, while George's father resided in Maryland. As the Virginia court found in its order declining jurisdiction, "the uncontested facts presented in this court hearing . . . reveal that in November 2012, when WCHS filed its petition, neither [George], nor any parent, nor any person acting as a parent continued to live in Virginia." Given that neither George nor his parents resided in Virginia when WCHS filed the petition, and that the trial court had jurisdiction to make an initial determination under N.C. Gen. Stat. § 50A-201(a)(1), the trial court had jurisdiction to modify Virginia's initial custody determination pursuant to N.C. Gen. Stat. § 50A-203(2).

IN RE: G.M.

Opinion of the Court

As a result of our determination that the trial court had jurisdiction pursuant to N.C. Gen. Stat. § 50A-203(2), we need not address Mother's argument that the trial court lacked jurisdiction to modify the Virginia custody determination under N.C. Gen. Stat. § 50A-203(1). The trial court's order is affirmed.

AFFIRMED.

Judges CALABRIA and DAVIS concur.

Report per Rule 30(e).