

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1688

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

In RE: M.P.

Mecklenburg County  
No. 04 J 192

Appeal by respondent from order entered 26 August 2005 by Judge Hugh B. Lewis in Mecklenburg County District Court. Heard in the Court of Appeals 16 August 2006.

*Katten, Muchin, Rosenman, LLP, by Amy E. Simpson, for petitioner-appellee.*

*Don Willey for respondent-appellant.*

CALABRIA, Judge.

Ester H. ("respondent") appeals from an order denying respondent mother's motion to vacate the order terminating her parental rights to M.P. ("the minor child"). We vacate the order and remand to the trial court.

The minor child was born in 1989 in the Republic of Liberia. The minor child first became associated with Robert S. ("petitioner") when the minor child and petitioner's son ("Stephen S.") attended school together in the Ivory Coast in Abidjan during the summer of 2001. At that time, the minor child was twelve years old and lived with a woman named Dodie Speer. Respondent lived in the United States since the minor child was a baby; however, the

minor child's first visit to the United States was in 2001 when he visited respondent in Virginia. Shortly after the minor child's arrival, respondent permitted the minor child to visit petitioner in North Carolina during the summer of 2001. In the fall of 2001, the minor child returned to Virginia and resided with respondent for the 2001-2002 school year. Then the minor child returned to petitioner in June 2002. With respondent's consent, petitioner paid the minor child's expenses to attend boarding school in Abdijan along with Stephen S. for the 2002-2003 school year. After the 2002-2003 school year, with respondent's consent, the minor child returned to live with petitioner. The minor child resided with petitioner from that time until the present.

In early 2004, petitioner sought to adopt the minor child, and on 3 March 2004, a third party delivery service presented a termination of parental rights petition and an adoption petition to the Superior Court Clerk's Office in Mecklenburg County for filing. The Clerk's Office file-stamped and returned only the termination of parental rights petition to the petitioner that day; however, the Clerk's Office did not file-stamp and return the adoption petition until 4 March 2004. On 31 March 2004, a summons was issued, in accordance with N.C. Gen. Stat. § 7B-1106. Respondent was not personally served with the summons and termination of parental rights petition until 26 April 2004.

The trial court subsequently conducted a hearing on the motion to terminate parental rights and concluded:

2. Petitioner has standing to bring the TPR Petition. Petitioner filed the Adoption

Petition on the same day as the TPR Petition. The Adoption Petition was file-stamped within 24 hours after filing the TPR Petition and the Adoption Petition was file-stamped on or before the date the summons was issued pursuant to N.C. Gen. Stat. § 7B-1106 and prior to the date the summons and TPR petition were served on Respondent by personal service in accordance with Rule 4 of the Rules of Civil Procedure.

The trial court also made findings and conclusions that grounds existed for termination of respondent's parental rights based on neglect and willful abandonment of the juvenile. See N.C. Gen. Stat. § 7B-1111(a)(1), (7) (2005). At the dispositional phase, the trial court determined termination of respondent's parental rights was in the best interests of the minor child. See N.C. Gen. Stat. § 7B-1110 (2005). From the order terminating her parental rights, respondent appeals.

Respondent's sole argument on appeal is that the petitioner lacked standing to initiate a petition to terminate respondent's parental rights. "Standing is jurisdictional in nature[,] and [c]onsequently, standing is a threshold issue that must be addressed, and found to exist, before the merits of [the] case are judicially resolved." *In the Matter of Miller*, 162 N.C. App. 355, 357, 590 S.E.2d 864, 865 (2004) (citation and internal quotation omitted). "Standing is a requirement that the plaintiff [has] been injured or threatened by injury or [has] a statutory right to institute an action." *In re Baby Boy Scarce*, 81 N.C. App. 531, 541, 345 S.E.2d 404, 410 (1986) (citations omitted). Our Legislature has specifically enumerated those persons who have standing to file termination of parental rights petitions:

A petition or motion to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed by one or more of the following:

. . .  
(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

N.C. Gen. Stat. § 7B-1103(a) (7) (2005).

Respondent specifically assigns error on the basis that the trial court's findings were insufficient to support its conclusion of law number 2, in which the trial court concluded that petitioner had standing to petition for termination of respondent's parental rights. This Court reviews an order terminating parental rights by considering whether challenged findings are supported by clear, cogent, and convincing evidence and whether the findings are sufficient to support the conclusions of law. *In re M.N.C.*, \_\_ N.C. App. \_\_, \_\_, 625 S.E.2d 627, 629 (2006).

After reviewing the trial court's findings of fact, we agree with respondent that the findings are insufficient to support the conclusion that "[p]etitioner has standing to bring the TPR Petition." Although the trial court found that "[p]etitioner filed a Petition to Adopt . . . the minor child pursuant to Chapter 48 of the North Carolina General Statutes on the same day that he filed his TPR Petition[,]" the trial court's order lacks a finding stating the petition to adopt was filed prior to the termination of parental rights petition. Such a finding was necessary in order to support the trial court's conclusion that petitioner had standing to file the petition to terminate respondent's parental rights. See N.C. Gen. Stat. § 7B-1103(a) (7). Accordingly, we vacate the

order and remand this matter to the trial court for a new order with appropriate findings regarding the requirement for filing the petition to adopt prior to the petition to terminate.

Respondent has failed to argue her remaining assignments of error on appeal, and we deem them abandoned pursuant to N.C. R. App. P. 28(b)(6) (2006).

Vacated and remanded.

Judges GEER and JACKSON concur.

Report per Rule 30(e).