NO. COA06-1027

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

IN THE MATTER OF:

A.D.C.

Cleveland County
No. 05-JA-098

Appeal by respondent from an order entered 23 January 2006, *nunc pro tunc* 11 January 2006, by Judge Larry J. Wilson in Cleveland County District Court. Heard in the Court of Appeals 12 March 2007.

Charles E. Wilson, Jr., for petitioner-appellee Cleveland County Department of Social Services.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for appellee Guardian ad Litem.

Katherine Haen, Attorney Advocate.

Rich Luptak, Guardian ad Litem for respondent-appellant.

Hall & Hall Attorneys at Law, P.C., by Douglas L. Hall, for respondent-appellant.

HUNTER, Judge.

On 27 May 2004, the Cleveland County Department of Social Services ("DSS") filed a juvenile petition alleging that A.D.C. was a neglected juvenile in that the child did not receive proper care, supervision or discipline, and lived in an environment injurious to his welfare. DSS obtained custody by non-secure custody order. On

24 September 2004, A.D.C. was adjudicated a dependent juvenile. On 11 May 2005, following a permanency planning review hearing, the trial court entered an order changing the permanent plan for A.D.C. to adoption. On 10 June 2005, DSS filed a petition to terminate respondent's parental rights. On 23 January 2006, the trial court entered an order terminating respondent's parental rights. Respondent appeals. After a careful review of the record and briefs, we affirm the order of the trial court.

Respondent first argues on appeal that the trial court lacked subject matter jurisdiction to enter the termination order because the termination hearing was not held until seven months after the petition was filed. N.C. Gen. Stat. § 7B-1109(a) (2005) provides that termination hearings should be heard "no later than 90 days from the filing of the petition or motion unless the judge pursuant to subsection (d) of this section orders that it be held at a later time." *Id.* However, this Court has stated that "time limitations in the Juvenile Code are not jurisdictional . . . and do not require reversal of orders in the absence of a showing by the appellant of prejudice resulting from the time delay." *In re C.L.C., K.T.R., A.M.R., E.A.R.*, 171 N.C. App. 438, 443, 615 S.E.2d 704, 707 (2005), *affirmed per curiam*, 360 N.C. 475, 628 S.E.2d 760 (2006). Thus, the failure of the trial court to follow applicable timelines did not deprive it of jurisdiction and does not require reversal in the absence of prejudice.

We further conclude that respondent has failed to demonstrate prejudice requiring reversal. N.C. Gen. Stat. § 7B-1109(d) provides that:

> The court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

Id. Here, continuances were granted on 28 September 2005 and 16 November 2005. According to the trial court's orders, the continuances were granted "for good cause shown" and were "necessary for the proper administration of justice, and [were] not contrary to the best interest of the juvenile." Moreover, the orders state that the continuances were granted upon the agreement of the parties, including the respondent's attorney and the guardians ad litem for the respondent and the juvenile. Thus, even assuming *arguendo* that the termination hearing was erroneously delayed, respondent can demonstrate no prejudice since both she and the guardian ad litem for the juvenile agreed to the delay. See *In re D.J.D., D.M.D., S.J.D., J.M.D.,*, 171 N.C. App. 230, 243, 615 S.E.2d 26, 35 (2005) (since respondent moved for the continuance, he could demonstrate no prejudice from any delay in holding the termination hearing). Accordingly, the assignment of error is overruled.

Respondent next argues that the petition to terminate her parental rights did not sufficiently allege specific facts to support termination as required by N.C. Gen. Stat. § 7B-1104(6) (2005). Respondent contends that the petition fails to make any factual allegations, instead merely summarizing the statutory grounds for a termination action. Respondent claims prejudice because she was not properly advised of the allegations against her.

N.C. Gen. Stat. § 7B-1104(6) provides that the petition to terminate parental rights shall state "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." *Id.* Respondent claims that the petition fails to state sufficient allegations in accordance with section 7B-1104(6). However, attached to the petition and incorporated by reference was the adjudication and disposition order granting custody to DSS. The order contained a finding that respondent stipulated that A.D.C. was a dependent juvenile due to respondent's failure to provide proper care and supervision for the child. This was based upon a finding of fact that they had been living in a car, and respondent was unemployed and unable to provide suitable housing. Thus, sufficient allegations were made in the petition to comply with N.C. Gen. Stat. § 7B-1104(6). *See In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160 (1992) (attachment and incorporation of custody award stated sufficient facts to comply with former N.C. Gen. Stat. § 7A-289.25(6)). Accordingly, we affirm.

Affirmed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).