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NO. COA06-1583

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

IN RE:

J.R.B.

Stokes County  
No. 06 J 40A

Appeal by respondent-mother from adjudication and disposition orders entered 2 October 2006 by Judge Charles M. Neaves, Jr., in Stokes County District Court. Heard in the Court of Appeals 26 March 2007.

*J. Tyrone Browder for Stokes County Department of Social Services, petitioner-appellee.*

*Richard Croutharmel for respondent appellant.*

*Womble Carlyle Sandridge & Rice, P.L.L.C., by Aulica Lin Rutland, for guardian ad litem, appellee.*

McCULLOUGH, Judge.

Respondent appellant (hereinafter "respondent") is the biological mother of the above juvenile (hereinafter "the child"). At the time of the child's birth in May 2006, respondent was incarcerated in the North Carolina Department of Correction, Women's Correctional Institute in Raleigh. The child was born in a hospital in Raleigh. Two days after the child's birth, the Stokes County Department of Social Services (hereinafter "petitioner") filed a juvenile petition in Stokes County District Court alleging

that the child is a dependent juvenile in that the child's parent is unable to provide for the juvenile's care and lacks an appropriate alternative child care arrangement. Following a hearing on 24 August 2006, at which respondent was present and represented by counsel, the court adjudicated the child as dependent. The court entered a disposition order awarding custody of the child to petitioner. Respondent appeals.

Respondent contends the trial court did not have subject matter jurisdiction to conduct the adjudication and disposition hearings.

"Jurisdiction is the power of the court to decide a matter in controversy, and presupposes the existence of a duly constituted court with control over the subject matter and the parties." *Pinner v. Pinner*, 33 N.C. App. 204, 206, 234 S.E.2d 633, 636 (1977). "Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question [and] ... is conferred upon the courts by either the North Carolina Constitution or by statute." *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987) (citation omitted). An action seeking to adjudicate a juvenile as abused, neglected, or dependent is established and governed by Chapter 7B of the North Carolina General Statutes (the Juvenile Code). *In re T.R.P.*, 360 N.C. 588, 591, 636 S.E.2d 787, 790 (2006). This chapter decrees that "[t]he district court has exclusive, original jurisdiction over any case involving a juvenile alleged to be abused, neglected or dependent." *In re E.C.*, 174 N.C. App. 517, 523, 621 S.E.2d 647, 652 (2005). "A proceeding in which

a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present." N.C. Gen. Stat. § 7B-400 (2005).

Respondent argues that petitioner, Stokes County Department of Social Services, did not have standing to file the action in Stokes County District Court because neither she nor the child were residing or present in Stokes County at the time of the filing of the petition. Respondent's argument, however, confuses jurisdiction with venue. Jurisdiction, as noted above, is the power of a court to make a binding decision in a matter. Venue refers to the county or place where a trial is held. *Lovegrove v. Lovegrove*, 237 N.C. 307, 309, 74 S.E.2d 723, 725 (1953). The statute which establishes venue in a juvenile proceeding is N.C. Gen. Stat. § 7B-400 quoted above. Venue is not jurisdictional and may be waived. *Jones v. Brinson*, 238 N.C. 506, 510, 78 S.E.2d 334, 338 (1953).

Respondent did not move for a change of venue or otherwise contest venue in the court below. Any right to challenge venue is waived if an objection is not made in a timely fashion. *In re Estate of Hodgin*, 133 N.C. App. 650, 652, 516 S.E.2d 174, 175 (1999). Having failed to raise this issue in the trial court, respondent may not raise it for the first time on appeal. N.C. R. App. P. 10(b)(1) (2005). This contention is dismissed.

Respondent's remaining contention is that the court erred by concluding that the child is a dependent juvenile.

A dependent juvenile is defined as one "in need of assistance or placement because the juvenile has no parent, guardian, or

custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2005). In determining whether a juvenile is dependent, "the trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court's failure to make these findings will result in reversal of the court. *In re K.D.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 631 S.E.2d 150, 155 (2006). Respondent argues the court made absolutely no findings of fact as to either prong with regard to the father of the child.

The statutory definition of a dependent juvenile clearly states that in order for a juvenile to be dependent, the juvenile must have "**no parent**" responsible for the juvenile's care or supervision or "whose parent ... is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (emphasis added). The court's findings of fact in the case at bar only address the ability of respondent, the mother, to provide care or supervision or the availability of alternative child care arrangements. The findings do not address the father's ability to provide care or supervision to the child or the availability to him of alternative

child care arrangements. The putative father did participate in the hearing. The findings of fact treat him as if he were a non-entity with no stake or say concerning the care of his child.

We therefore conclude the court's conclusion of law that the juvenile is dependent is not supported by the findings of fact. We reverse this conclusion and remand for the making of findings of fact relative to the father as the other parent of the juvenile or the availability to the parent of alternative child care arrangements.

Reversed and remanded.

Judges HUNTER and TYSON concur.

Report per Rule 30(e).