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NO. COA06-1614

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

IN RE W.B.M.

Camden County
No. 06 JT 002

Appeal by respondent from judgment entered 30 August 2006 by Judge C. Christopher Bean in Camden County District Court. Heard in the Court of Appeals 9 April 2007.

Hornthal, Riley, Ellis & Maland, LLP, by Michael P. Sanders, for petitioner-appellee.

Duncan B. McCormick for respondent-appellant.

CALABRIA, Judge.

M.C.F., ("respondent-mother") appeals from an order of the trial court terminating her parental rights to W.B.M. ("the minor child"). We vacate the order of the trial court.

Petitioner-father, W.E.M ("petitioner") and respondent-mother are the parents of the minor child born in January of 2001. The petitioner and respondent-mother were married in November of 2000, separated in February of 2003 and divorced on 18 June 2004. At the time of the separation, the parties entered into a custody agreement. Petitioner was awarded sole custody of the minor child subject to the respondent-mother's reasonable rights of visitation with the minor child.

On 24 April 2006, petitioner filed a petition to terminate the parental rights of respondent-mother on the grounds of willful abandonment. The petition, in relevant part, alleged:

7. Grounds exist for termination of the Respondent's parental rights to the minor child in that pursuant to N.C. Gen. Stat. § 7B-1111(a)(7), the Respondent has willfully abandoned the minor child for at least six consecutive months immediately preceding the filing of this action in that Respondent's conduct manifests a willful determination to forego all parental duties and to relinquish all parental claims to the minor child. The minor child does not remember nor know who the Respondent is.

On 5 June 2006, respondent-mother filed a *pro se* answer denying willful abandonment of the minor child. An order terminating respondent-mother's parental rights was entered on 30 August 2006. Respondent-mother appeals.

I. Subject Matter Jurisdiction

Respondent-mother argues the trial court did not have subject matter jurisdiction to enter an order terminating her parental rights because the petition failed to comply with the requirements of N.C. Gen. Stat. § 7B-1104(6). We agree.

"[Subject matter] jurisdiction is dependent upon the existence of a valid motion, complaint, petition, or other valid pleading." *In re McKinney*, 158 N.C. App. 441, 443, 581 S.E.2d 793, 795 (2003). "[I]n the absence of a proper petition, the trial court has no jurisdiction to enter an order for termination of parental rights [.]" *Id.* at 445, 581 S.E.2d at 796. Pursuant to N.C. Gen. Stat. § 7B-1104(6), a proper petition for termination of parental rights must set forth "[f]acts that are sufficient to warrant a

determination that one or more of the grounds for terminating parental rights exist." N.C. Gen. Stat. § 7B-1104(6) (2005). "[A] petitioner's bare recitation . . . of the alleged statutory grounds for termination does not comply with the requirements of [§ 7B-1104(6)]." *In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160 (1992). "While there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue." *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002). In *Hardesty*, this Court reversed an order terminating the parental rights of the respondent because the "petitioner merely used words similar to those in the statute setting out grounds for termination." *Id.* In the case before us, petitioner's allegation merely tracks the language of § 7B-1111(a)(7). The only factual allegation contained in the petition was "the minor child does not remember or know who the Respondent is." This is not sufficient to put respondent-mother on notice of the acts or omissions that are at issue.

Petitioner argues the petition contained sufficient factual allegations because the child custody agreement was attached to and incorporated into the petition. Documents incorporated into the petition may be used to allege facts sufficient to give the respondent notice. See *Quevedo*, 106 N.C. App. at 579, 419 S.E.2d at 160; *In re H.T.*, ___ N.C. App. ___, 637 S.E.2d 923 (2006). However, the incorporated document must contain facts that show grounds exist for terminating parental rights. *Quevedo*, 106 N.C.

App. at 579, 419 S.E.2d at 160. In the case before us, the child custody agreement merely established custody and visitation arrangements between petitioner and respondent-mother. It did not contain any facts regarding respondent-mother's behavior towards or care of the minor child. Moreover, it did not contain any facts indicating that respondent-mother acted in a manner inconsistent with her role as the minor child's parent. The child custody agreement did not contain facts sufficient "to warrant a determination that one or more of the grounds for terminating parental rights exist." N.C. Gen. Stat. § 7B-1104(6). The trial court did not have subject matter jurisdiction over the termination of parental rights proceedings. Accordingly, the order for termination of parental rights is vacated without prejudice to petitioner's right to bring a proper petition before the court.

Vacated.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).