

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-368

NORTH CAROLINA COURT OF APPEALS

Filed: 5 December 2006

IN THE MATTER OF  
A.B.

Johnston County  
No. 05 J 99

Appeal by respondent-mother from order entered 28 October 2005 by Judge Albert A. Corbett, Jr., in Johnston County District Court. Heard in the Court of Appeals 1 November 2006.

*Holland & O'Connor, P.L.L.C., by Jennifer S. O'Connor, for Johnston County Department of Social Services petitioner appellee.*

*Susan J. Hall for respondent-mother appellant.*

McCULLOUGH, Judge.

Tamika Bulluck ("respondent") appeals an order terminating her parental rights as the mother of A.B. In May 2005, the Johnston County Department of Social Services ("DSS") filed a juvenile petition alleging that A.B. was neglected and that the minor child had been in the custody of DSS for a continuous period of six months in which respondent failed to pay a reasonable portion of child care costs.

On 28 September and 28 October 2005, hearings were held on the petition to terminate respondent's parental rights. On 28 October 2005, the trial court entered an order terminating respondent's parental rights. Respondent appeals.

Respondent contends that the trial court was without jurisdiction to proceed with the termination hearing because petitioner failed to attach a copy of the custody order to the petition regarding A.B. We disagree.

"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). "The issue of subject matter jurisdiction may be considered by the court at any time, and may be raised for the first time on appeal." *In re T.B.*, \_\_\_\_ N.C. App. \_\_\_\_, \_\_\_\_, 629 S.E.2d 895, 896-97 (2006). In order for a trial court to have jurisdiction over a petition to terminate parental rights, a copy of an order for custody must be attached. *See id.*

Where a trial court places custody of the juvenile in some agency or person other than the parent, N.C. Gen. Stat. § 7B-1104 requires that a copy of the custody order be attached to a subsequent petition to terminate parental rights. N.C. Gen. Stat. § 7B-1104(5) (2005). However, this Court has stated that failing to attach a custody order to a petition to terminate parental rights can be remedied at the hearing, thereby retaining subject matter jurisdiction. *T.B.*, \_\_\_\_ N.C. App. at \_\_\_\_, 629 S.E.2d at 898 (stating that the "omission [of the custody order] need not have been fatal if petitioner had simply amended the petition by attaching the proper custody order or otherwise ensured the custody

order was made a part of the record before the trial court.”) (emphasis omitted).

In the instant case, A.B. was originally removed from the home and placed in the care of her maternal grandmother based on allegations of neglect. The maternal grandmother was given custody at the adjudication hearing on 1 September 2004. However, the grandmother subsequently contacted DSS near the end of September and demanded that the juvenile, A.B., be removed from her home immediately stating that she no longer wanted to be responsible for the child. At this time, A.B. was placed in the custody of DSS. At the hearing to terminate respondent's parental rights, petitioner introduced into evidence a permanency planning order which ordered A.B. to remain in the custody of DSS.

While there was no custody order attached to the petition to terminate respondent's parental rights, the defect was remedied at trial when petitioner introduced into evidence the permanency planning order, thereby making the custody order part of the record before the trial court. We conclude that this remedial action ultimately conferred the requisite subject matter jurisdiction in the trial court, and therefore, this assignment of error is overruled.

Respondent further argues that the trial court erred in concluding that termination of respondent's parental rights was in the best interest of A.B. We disagree.

Once the trial court concludes that one or more grounds for termination exists, it “must proceed to the dispositional stage

where the best interests of the child are considered." *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). There, the court "shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2005). This Court reviews the trial court's decision whether to terminate parental rights for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

Respondent does not except to the findings and conclusions of the trial court that she neglected A.B. and left her in the custody of DSS for a continuous six-month period without paying any of the reasonable costs of child care. The trial court further found and concluded, in its discretion, that it was in the best interest of A.B. to terminate respondent's parental rights.

The court based its conclusions on findings that respondent neglected the child, there was a probability of repetition of neglect, that A.B. was developing at a regular rate in foster care and developing skills that she did not possess upon entering foster care, and that A.B. was thriving during her time in foster care. We hold that based on these findings, the trial court could reasonably conclude that termination of respondent's parental rights was in the best interest of the child. Therefore, this assignment of error is overruled.

Accordingly, the order terminating respondent's parental rights is affirmed.

Affirmed.

Judges HUNTER and ELMORE concur.

Report per Rule 30(e).