NO. COA06-52

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

IN THE MATTER OF:

K.L.R., C.D.R., M.D.R.,
F.M.R., K.D.R., & D.R.,
Minor Children

Sampson County
Nos. 03 J 02-07

Appeal by respondent from judgments entered 18 May 2005 by Judge Leonard W. Thagard in Sampson County District Court. Heard in the Court of Appeals 21 August 2006.

Law Offices of Benjamin R. Warrick, by Corrine A. Railey, for petitioner-appellee Sampson County Department of Social Services.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P, by Martin H. Brinkley, for appellee Guardian ad Litem.

Isaac Cortes, Attorney Advocate.

Hall & Hall Attorneys at Laws, P. C., by Susan P. Hall; Keisha Roberson Philpot, for respondent-appellant.

HUNTER, Judge.

Respondent appeals from judgments terminating her parental rights to her minor children K.L.R., C.D.R., M.D.R., F.M.R., K.D.R., and D.R., respectively, entered 18 May 2005. For the reasons stated herein, we affirm the orders of termination.

On 7 January 2003, Sampson County Department of Social Services ("DSS") received a report alleging neglect of F.M.R. A

visit to the home of K.L.R., C.D.R., M.D.R., F.M.R., K.D.R., and D.R. revealed that the six children were sharing one bedroom in a small two-bedroom mobile home. There was damage to the floor of the home, broken windows, and other unsafe and unsanitary conditions. An investigation revealed that neglect had previously been substantiated as to all six children in the state of Arkansas. DSS petitioned for removal of the children from the home on the grounds of neglect on 15 January 2003.

By way of orders entered 29 January 2003, custody of the children was removed to DSS. On 28 February 2003, the trial court entered orders finding all six children neglected. The children remained in DSS custody through subsequent reviews by the trial court and were placed with paternal grandparents in Arkansas following a home study. Attempts were made to work towards reunification, however, respondent was uncooperative. Following a permanency planning hearing held 8 April 2004, the trial court ordered that the permanent plan for the minor children should be termination of parental rights.

Petitions to terminate parental rights for all six children were filed 20 August 2004. A hearing was held in the matter on 16 December 2004, but the matter was continued to 27 January 2005 to provide respondent's newly appointed attorney time to prepare. Due to a conflict with the guardian *ad litem* for the children, the matter was again continued to 24 February 2005. A court conflict resulted in a continuance of the matter until 28 March 2005. Respondent requested a continuance due to the unavailability of

witnesses and the matter was continued until 26 April 2005. The hearing was held on 27 April 2005 and judgments terminating respondent's parental rights as to K.L.R., C.D.R., M.D.R., F.M.R., K.D.R., and D.R., respectively, were entered on 18 May 2005. The parental rights of respondent-fathers for the children were also terminated by these judgments, however they are not a party to this appeal. Respondent appeals from these judgments.

I.

Respondent first contends that the petitions to terminate her parental rights failed to allege facts sufficient to warrant a determination that grounds for termination existed. We disagree.

N.C. Gen. Stat. § 7B-1104 (2005) sets out the requirements for a petition for termination of parental rights. Section 7B-1104(6) requires that the petition include "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." *Id.* As noted in *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002), "[w]hile 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." *Id.*

In *In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160 (1992), this Court stated that a bare recitation of the alleged statutory grounds for termination did not comply with the statutory requirement that a petition state facts sufficient to warrant a determination that grounds exist to warrant termination. *Id.* However, *Quevedo* concluded that the incorporation of an attached

custody award to the petition, which stated facts sufficient to warrant a determination of termination, satisfied the requirements of the statute. *Id.*

Here, the petitions identically alleged the following grounds for termination as to all six children:

> 1. N.C.G.S. Section 7B-1111(a)(1) in that the parents have neglected the juvenile[s] as defined by N.C.G.S. Section 7B-101 et seq.
>
> 2. N.C.G.S Section 7B-1111(a)(2) in that the parents have willfully left the juvenile[s] in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the Court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile[s].

Although the petitions did not state further facts as the basis for termination, copies of the orders from 28 February 2003 finding the children neglected and continuing the children in DSS custody were referenced in the petitions and attached. These orders contained factual allegations as to the neglect of respondent in keeping an unsafe and unsanitary home, as well as allegations of sexual abuse by respondent's live-in boyfriend. Such allegations were sufficient to provide notice to respondent as to the acts, omissions or conditions at issue, and therefore, as in *Quevedo*, the statutory requirements were satisfied. Respondent's assignment of error is overruled.

II.

Respondent next contends the trial court lacked jurisdiction to adjudicate the petition to terminate parental rights where it

failed to do so within ninety days of the filing of the petition. We disagree.

N.C. Gen. Stat. § 7B-1109(a) (2005) requires that a hearing on a termination of parental rights shall be conducted no later than ninety 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.* Section 7B-1109(d) states 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. Violations of time limitations "'are not jurisdictional in cases such as this one 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 As.L.G. & Au.R.G.*, 173 N.C. App. 551, 555, 619 S.E.2d 561, 564 (2005) (citation omitted), *disc. review improvidently allowed*, 360 N.C. 476, 628 S.E.2d 760 (2006).

Defendant cites to several cases finding prejudice for delays in entry of termination orders, preventing entry of notice of appeal, in support of her claim that the continuances in the instant case were prejudicial and warrant reversal. *See In re T.L.T.*, 170 N.C. App. 430, 432, 612 S.E.2d 436, 438 (2005) (finding prejudice in trial court's failure to enter order for seven

months); *In re L.E.B., K.T.B.*, 169 N.C. App. 375, 379, 610 S.E.2d 424, 427 (finding prejudice in trial court's failure to enter order for six months), *disc. review denied*, 359 N.C. 632, 616 S.E.2d 538 (2005).

However, these cases address N.C. Gen. Stat. §§ 7B-1109(e) and 7B-1110(a), statutory provisions related to entry of adjudicatory orders, rather than the provision at issue in this case, section 7B-1109(d), which sets out the time for the termination hearing. In response to a similar challenge, this Court stated in *In re D.J.D., D.M.D., S.J.D., J.M.D.*, 171 N.C. App. 230, 615 S.E.2d 26 (2005), that "[t]here is a distinction between the failure of the trial court to reduce an order to writing, which [a]ffects the respondent's time to appeal, and a delay in scheduling a matter for hearing." *Id.* at 243, 615 S.E.2d at 35. *D.J.D.* concluded that while that case was erroneously delayed, as the hearing was not scheduled until forty-four days after the ninety-day period, the trial court had continued to review the case on the permanency planning schedule and the respondent had asked for a further continuance, delaying the hearing for an additional sixty-eight days. *Id.* As the respondent had moved for a continuance and added more than two months delay to the trial court's original error, *D.J.D.* held that the respondent had failed to demonstrate prejudice. *Id.*

Similarly here, the initial hearing was scheduled for 16 December 2004, less than one month outside the initial ninety-day window. The first continuance to 27 January 2005 was granted in

written orders at the request of respondent's newly appointed attorney. A second continuance to 24 February 2005 was granted in written orders with the concurrence of all parties. A third continuance to 28 March 2005 was granted in written orders due to a court scheduling conflict. A final continuance to 26 April 2005 was granted in written orders at the request of respondent. The hearing was ultimately held on 27 April 2005. As respondent moved for two continuances, delaying both the initially scheduled termination hearing and a later scheduled date, respondent has failed to demonstrate prejudice in the continuances granted by written orders of the trial court as required by section 7B-1109(d). This assignment of error is overruled.

III.

Respondent finally contends that the trial court was without jurisdiction to terminate parental rights where the petition to terminate was not filed within sixty days of the permanency planning hearing directing the filing. We disagree.

N.C. Gen. Stat. § 7B-907(e) (2005) requires:

> If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed.

Id. Respondent contends that as termination was made the permanent plan for the children at the hearing on 8 April 2004, and petitions for termination of respondent's parental rights were not filed until 20 August 2004, 134 days later, the trial court lacked subject matter jurisdiction to proceed on this matter. This Court has recently addressed this issue in *In re B.M., M.M., An.M., & Al.M.*, 168 N.C. App. 350, 607 S.E.2d 698 (2005). *In re B.M.* stated that:

> The purpose of the legislature in including the filing specifications in the statute was to "provide parties with a speedy resolution of cases where juvenile custody is at issue[,]" as is the case here. By holding that the order terminating respondents' parental rights should be reversed simply because it was filed outside of the specified time limit "would only aid in further delaying a determination regarding [the minor children] because juvenile petitions would have to be re-filed and new hearings conducted."

Id. at 354, 607 S.E.2d at 701 (citations omitted). The Court concluded "that the time limitation specified in N.C. Gen. Stat. § 7B-907(e) is directory rather than mandatory and thus, not jurisdictional[,]" and concluded that despite DSS's delay of the sixty-day provision, no authority compelled the termination of parental rights order be vacated. *Id.*

Similarly here, we conclude that although DSS erred in delaying the filing of the petition for termination of parental rights, such error is not jurisdictional in nature, and the statute does not provide consequences for failure to comply with the time period. We also note that the permanency planning written orders were not entered by the trial court until more than sixty days

following the hearing. As in *B.M.*, no authority compels the termination of parental rights order be vacated. This assignment of error is overruled.

As the petition to terminate respondent's parental rights provided notice of the factual basis for termination, and as respondent had failed to show prejudice from the delay in the hearing on termination, or authority for finding the petition jurisdictionally defective as a result of a delay in filing, we affirm the trial court's judgments terminating respondent's parental rights.

Affirmed.

Chief Judge MARTIN and Judge McCULLOUGH concur.

Report per Rule 30(e).