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NO. COA08-1024

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2009

IN THE MATTER OF:

R.A.E.,
A Minor Child.

Wilkes County
No. 02 JT 218

Appeal by Respondent from order entered 20 May 2008 by Judge Jeanie R. Houston in District Court, Wilkes County. Heard in the Court of Appeals 30 December 2008.

Court of Appeals

Paul W. Freeman, Jr. for Petitioner-Appellee Wilkes County Department of Social Services and Guardian ad Litem.

Robert W. Ewing for Respondent-Appellant.

Slip Opinion

McGEE, Judge.

B.R.E. (Respondent) appeals from an order entered 20 May 2008 terminating his parental rights to his minor child R.A.E. ("the Juvenile"). Because we find the Wilkes County Department of Social Services (Petitioner) had no standing to file the petition to terminate Respondent's parental rights to the Juvenile, we must vacate the trial court's order.

Petitioner first became involved with the Juvenile through the filing of a juvenile petition on 13 December 2002, alleging the Juvenile and his sibling, J.S.L., were neglected children. In the "Verification" section of this petition, in the box marked "Signature Of Petitioner," the name of the Director of the Wilkes

County Department of Social Services, James D. Bumgarner ("Director Bumgarner"), was signed and followed by the initials "MLE." The box marked "Director" was checked, indicating that it was Director Bumgarner himself who signed the petition, though the initials MLE indicate that the petition was not signed by Director Bumgarner himself, but on his behalf. On 13 May 2003, pursuant to a settlement agreement, the trial court found the Juvenile was neglected by his mother, A.L., and purported father, J.L., and granted custody of the Juvenile to Petitioner. The trial court ordered the Juvenile placed with his aunt and uncle on 24 February 2004, and it relieved Petitioner of any further responsibility in the case.

Petitioner filed a second petition alleging the Juvenile was neglected on 14 June 2006. This petition was also purportedly signed by Director Bumgarner, but following his name in the signature box were the words "by L.B." The box marked "Authorized Representative of Director" was checked, indicating that it was not Director Bumgarner himself who "signed" the petition, but one of his representatives. The trial court again found the Juvenile was neglected. Petitioner filed a petition to terminate Respondent's parental rights to the Juvenile on 30 January 2008. The trial court heard the termination petition on 29 April 2008 and entered an order on 20 May 2008 terminating Respondent's parental rights to the Juvenile. Respondent appeals.

Respondent argues the trial court lacked jurisdiction over the termination proceedings because the orders which gave custody of

the Juvenile to Petitioner were void and therefore Petitioner lacked standing to file the petition to terminate Respondent's parental rights. Respondent contends the orders giving custody of the Juvenile to Petitioner are void because the underlying juvenile petitions were not properly verified and the trial court thus lacked subject matter jurisdiction to enter the orders at issue. We agree.

"[V]erification of the petition in an abuse, neglect, or dependency action as required by N.C.G.S. § 7B-403 is a vital link in the chain of proceedings carefully designed to protect children at risk on one hand while avoiding undue interference with family rights on the other." *In re T.R.P.*, 360 N.C. 588, 591, 636 S.E.2d 787, 791 (2006). Proper "[v]erification of a juvenile petition is no mere ministerial or procedural act[,]" *Id.* at 591, 636 S.E.2d at 790, but rather invokes the jurisdiction of the trial court over all stages of a juvenile action. *Id.* at 593, 636 S.E.2d at 791-92. Where the juvenile petition initiating a case alleging a juvenile is abused, neglected, or dependent is neither signed nor verified as mandated by N.C. Gen. Stat. § 7B-403(a), the trial court lacks jurisdiction over the case and its subsequent orders are void *ab initio*. *In re A.J.H-R.*, 184 N.C. App. 177, 178-79, 645 S.E.2d 791, 792 (2007) (citing *T.R.P.*, 360 N.C. at 593-94, 636 S.E.2d at 791-92). "Subject matter jurisdiction 'cannot be conferred upon a court by consent, waiver or estoppel, and therefore failure to . . . object to the jurisdiction is immaterial.'" *T.R.P.*, 360 N.C. at 595, 636 S.E.2d at 793 (quoting *In re Sauls*, 270 N.C. 180,

187, 154 S.E.2d 327, 333 (1967)) (quotation marks omitted); see also *Feldman v. Feldman*, 236 N.C. 731, 734, 73 S.E.2d 865, 867 (1952) ("Jurisdiction rests upon the law and the law alone. It is never dependent upon the conduct of the parties.").

Juvenile petitions must be "drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing." N.C. Gen. Stat. § 7B-403(a) (2007). Under the Juvenile Code, a "director" is defined as "[t]he director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14." N.C. Gen. Stat. § 7B-101(10) (2007). N.C. Gen. Stat. § 108A-14(b) (2007) states:

The director may delegate to one or more members of his staff the authority to act as his representative. The director may limit the delegated authority of his representative to specific tasks or areas of expertise.

See also *In re Dj.L.*, 184 N.C. App. 76, 79, 646 S.E.2d 134, 137 (2007). Further, when the juvenile petition is signed by a person other than the director, this Court has held that a petition is properly verified by an authorized representative of the director if the petition "contained sufficient information from which the trial court could determine that [the signatory] had standing to initiate an action under section 7B-403(a)." *Dj.L.*, 184 N.C. App. at 80, 646 S.E.2d at 137. However, when a person signing the juvenile petition purports to sign as the director, but the signature is the director's name signed by another, this Court has held the petitions were improperly verified and insufficient to

confer subject matter jurisdiction upon the trial court. *A.J.H-R.*, 184 N.C. App. at 179-80, 645 S.E.2d at 792-93 (where the petitions at issue were signed as the director with signatures of "[director's name] by MH" and "[director's name] by MHenderson"); see also *In re S.E.P.*, 184 N.C. App. 481, 487-88, 646 S.E.2d 617, 621-22 (2007) (where the petition at issue was signed as the director with a signature of "[director's name] by Pam Frazier").

In this case, Petitioner filed two underlying petitions alleging the Juvenile was neglected, one on 13 December 2002 and one on 14 June 2006. The verification of the 2002 petition states the petitioner is "James D. Bumgarner MLE" and that the signatory is the Director of the Wilkes County Department of Social Services. The verification of the 2006 petition states the petitioner is "James D. Bumgarner by L.B." and that the signatory is an Authorized Representative of the Director of the Wilkes County Department of Social Services. Neither signature resembles the signature of James D. Bumgarner found on the verification of the termination petition. Further, there is no indication on either petition of the actual identities of "MLE" or "L.B." or what affiliation, if any, they have with Petitioner. Resort to the record affords potential identities for "MLE" and "L.B." but there is no way from the record for this Court to positively identify the signatories of the petitions. This Court therefore has no method of determining whether these individuals were properly granted the authority to act as representatives of Director Bumgarner in signing these petitions pursuant to N.C. Gen. Stat. § 108A-14(b),

even had the petitions been otherwise properly signed and verified. Initials are not considered signatures within the meaning of N.C. Gen. Stat § 10-3(25). *A.J.H-R.*, 184 N.C. App. at 179-80, 645 S.E.2d at 792. Accordingly, neither petition is verified as required by N.C. Gen. Stat. § 7B-403, and both are insufficient to confer upon the trial court subject matter jurisdiction over the underlying neglect actions.

Because the trial court never obtained subject matter jurisdiction over the neglect cases, the underlying orders awarding petitioner custody of the Juvenile were void *ab initio*. *S.E.P.*, 184 N.C. App. at 487-88, 646 S.E.2d at 622. As Petitioner is not an agency awarded custody of the Juvenile by a court of competent jurisdiction, Petitioner lacked the necessary standing to file the petition to terminate Respondent's parental rights. *Id.* at 488, 646 S.E.2d at 622. The trial court thus lacked subject matter jurisdiction over the termination proceeding and we must vacate the order terminating Respondent's parental rights to the Juvenile.

When filing juvenile petitions, whoever is named the "Petitioner" must personally sign the petition and have that signature verified. If the Director of the County Department of Social Services is named the petitioner, the Director must personally sign the petition, and mark the box indicating "Director" below his or her signature. If a duly appointed representative of the Director signs the petition, that individual should be named as the petitioner, sign his or her own name, and mark the box below the signature indicating "Authorized

Representative of Director." Our Supreme Court has made clear that in order to fully protect the rights of both juveniles and parents or guardians, juvenile petitions must be verified in accordance with the mandates of Chapter 7B. *T.R.P.*, 360 N.C. 588, 636 S.E.2d 787.

Vacated.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).