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NO. COA08-1030

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2009

IN THE MATTER OF:
J.S.

Lee County
No. 06 J 71

Appeal by respondents from order entered 23 June 2008, *nunc pro tunc* 8 April 2008, by Judge George R. Murphy in Lee County District Court. Heard in the Court of Appeals 23 December 2008.

Beverly D. Basden for petitioner-appellee Lee County Department of Social Services.

Peter Wood for respondent-appellant father.

Lisa Skinner Lefler for respondent-appellant mother.

Womble Carlyle Sandridge & Rice, PLLC, by Beth Tyner Jones, for guardian ad litem.

ELMORE, Judge.

On 26 September 2006, the Lee County Department of Social Services (DSS) filed a petition alleging that J.S. was a neglected and dependent juvenile. On 14 November 2006, the district court adjudicated J.S. a neglected and dependent juvenile based on a stipulation between the parties. On 31 October 2007, DSS filed a petition to terminate respondents' parental rights. On 23 June 2008, *nunc pro tunc* 8 April 2008, the trial court terminated respondents' parental rights. Respondents appeal.

The threshold issue for this Court to consider on appeal is whether the trial court acquired subject matter jurisdiction over this juvenile action. We hold that it did not.

N.C. Gen. Stat. § 7B-200(a) confers on the district court "exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent." N.C. Gen. Stat. § 7B-200(a) (2007). In juvenile proceedings, verified pleadings are necessary to invoke the jurisdiction of the court over the subject matter. *In re Triscari Children*, 109 N.C. App. 285, 288, 426 S.E.2d 435, 437 (1993). N.C. Gen. Stat. § 7B-403 specifically provides that "the petition shall 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) (emphasis added).

Our Supreme Court addressed the effect of verification of a juvenile petition in *In re T.R.P.*, 360 N.C. 588, 636 S.E.2d 787 (2006). There, the Court stated that "verification of a juvenile petition is no mere ministerial or procedural act" and "verification 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." *Id.* at 591, 636 S.E.2d at 790-91. The Court noted that a "juvenile abuse, neglect, or dependency action under Chapter 7B may be based on an anonymous report, and . . . frequently results in DSS' immediate interference with a respondent's

constitutionally-protected right to parent his or her children.”
Id. at 591-92, 636 S.E.2d at 791 (citations omitted).

[G]iven the magnitude of the interests at stake in juvenile cases and the potentially devastating consequences of any errors, the General Assembly’s requirement of a verified petition is a reasonable method of assuring that our courts exercise their power only when an identifiable government actor “vouches” for the validity of the allegations in such a freighted action.

Id. at 592, 636 S.E.2d at 791. Accordingly, in interpreting “the integrated nature of the statutes constituting the Juvenile Code,” our Supreme Court held that a trial court cannot exercise subject matter jurisdiction over an allegedly neglected juvenile in a custody review hearing when the juvenile petition initiating the case was not verified as mandated by N.C. Gen. Stat. § 7B-403(a); in such a case, the trial court’s review order is void *ab initio*.
Id. at 593-94, 636 S.E.2d at 791-92.

In the instant case, DSS filed a petition alleging neglect and dependency with respect to J.S. on 26 September 2006. The petition was not verified before an official authorized to administer oaths. Thus, the trial court never obtained jurisdiction in this action, and the order awarding DSS custody of J.S. was *void ab initio*. Because DSS did not have legal custody of the juvenile, DSS did not have standing to file the termination petition, and the trial court did not have subject matter jurisdiction to enter the order terminating respondents’ parental rights. Accordingly, the order terminating respondents’ parental rights is vacated.

Vacated.

Judges MCGEE and STROUD concur.

Report per Rule 30(e).