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NO. COA08-1167

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

IN THE MATTER OF:

B.A.N.T.

Durham County  
No. 06 J 58

Appeal by respondent from order entered 1 July 2008 by Judge James T. Hill in Durham County District Court. Heard in the Court of Appeals 2 February 2009.

# Court of Appeals

*Assistant County Attorney Cathy L. Moore for Durham County Department of Social Services petitioner-appellee.*

*Betsy J. Wolfenden for respondent-appellant.*

# Slip Opinion

MARTIN, Chief Judge.

Respondent is the father of B.A.N.T., a minor child. He appeals from an order terminating his parental rights to the child. He contends the court lacked subject matter jurisdiction to enter an order terminating his parental rights, because the original juvenile petition was not properly verified. We affirm.

"[W]hether a trial court has subject matter jurisdiction is a question of law, which is reviewable on appeal *de novo*." *Ales v. T.A. Loving Co.*, 163 N.C. App. 350, 352, 593 S.E.2d 453, 455 (2004). A challenge to a court's jurisdiction over the subject matter may be made at any time, even for the first time on appeal. *In re T.R.P.*, 360 N.C. 588, 595, 636 S.E.2d 787, 793 (2006). "A

trial court's subject matter jurisdiction over all stages of a juvenile case is established when the action is initiated with the filing of a properly verified petition." *Id.* at 593, 636 S.E.2d at 792. A valid petition sufficient to confer subject matter jurisdiction upon a court is one that is "'drawn by the [DSS] director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing.'" *Id.* at 591, 636 S.E.2d at 790 (quoting N.C. Gen. Stat. § 7B-403(a) (2005)). "[T]he failure of the petitioner to sign and verify the petition before an official authorized to administer oaths render[s] the petition fatally deficient and inoperative to invoke the jurisdiction of the court over the subject matter." *In re Green*, 67 N.C. App. 501, 504, 313 S.E.2d 193, 195 (1984).

The record shows that on 6 February 2006, an authorized representative of the director of the Durham County Department of Social Services ("DSS") presented a juvenile petition alleging that the child was neglected and dependent. The verification section of the petition form was signed by this representative and an unidentified person, whose signature is illegible, purportedly authorized to administer oaths. It appears that on this same date, the unidentified person also signed a nonsecure custody order as the judge's designee.

Respondent argues the petition is defective to confer subject matter jurisdiction because it was not "verified before an official authorized to administer oaths" as required by N.C.G.S. § 7B-403(a). In support of this argument he notes that although the

petition contains the signature of a person attesting that the director of DSS swore to this person that the matters stated in the petition are, or believed to be, true, the petition does not indicate that the person making this attestation is a clerk of superior court, deputy clerk, or assistant clerk as listed on the pre-printed form.

Petitioner responds that respondent has failed to present proof that the petition was not sworn before an official authorized to administer oaths, and that in fact, the petition was sworn under oath before such official. Petitioner calls our attention to statutes providing that (1) a magistrate is empowered to administer oaths, N.C. Gen. Stat. § 7A-292(1); (2) a magistrate may be authorized by the chief district court judge "to draw, verify, and issue petitions" in juvenile matters when the office of the clerk is closed, N.C. Gen. Stat. § 7B-404(a); and (3) the chief district court judge may delegate to persons other than district court judges the authority to issue a nonsecure custody order, N.C. Gen. Stat. § 7B-502.

As evidentiary support, petitioner filed, and this Court allowed, a motion to amend the record on appeal to add (1) an affidavit of Tammy Drew, a magistrate of the Fourteenth Judicial District; (2) an affidavit of Elaine Evans, Chief Magistrate of the Fourteenth Judicial District; and (3) an administrative order signed by Kenneth C. Titus, who was Chief District Court Judge of the Fourteenth Judicial District at the time the order was entered. According to the affidavit of Magistrate Drew, she reviewed the

petition in question and a nonsecure custody order awarding custody of the child to DSS upon the execution of the petition. She recognized a signature contained on each document as her signature and the numbers in the date boxes as "my numbers." She further stated that the juvenile petition form does not contain a box for a magistrate to indicate her office, and "it is not my practice to check any of the boxes on the form petition, because they do not correctly identify my status." According to the affidavit of the chief magistrate, she reviewed the documents in question and recognized the signatures as those of Magistrate Drew. The administrative order signed by Judge Titus authorizes magistrates to issue secure and nonsecure custody orders in juvenile matters after normal business hours.

We are persuaded by petitioner's showing that the petition was in fact properly verified and sworn before an official authorized to administer oaths, specifically, a magistrate. We overrule respondent's contention.

By not bringing them forward and arguing them in his brief, respondent is deemed to have abandoned his other assignments of error. N.C. R. App. P. 28(b)(6) (2008).

The order terminating respondent's parental rights is  
Affirmed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).