

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-126

NORTH CAROLINA COURT OF APPEALS

Filed: 17 June 2008

IN THE MATTER OF:

Iredell County

No. 07 JT 07

V.S.W.

Appeal by respondent from order entered 30 October 2007 by Judge Lynn Gullet in Iredell County District Court. Heard in the Court of Appeals 27 May 2008.

*Pope McMillan, Ruffen Privette, Edwards & Schieck, PA, by Charles A. Schieck, attorney for petitioner-appellee.*

*Mary McCullers Reece for respondent-appellant.*

MARTIN, Chief Judge.

Respondent mother ("respondent") appeals from an order terminating her parental rights to the minor child, V.S.W. On 29 January 2007, the biological father of V.S.W. ("father") filed a petition to terminate respondent's parental rights, alleging willful abandonment and willful failure to provide support. On 30 October 2007, the trial court entered an order terminating the respondent's parental rights.

Respondent's sole assignment of error on appeal is that the trial court lacked subject matter jurisdiction to enter the

termination order because father failed to name the juvenile as a respondent and failed to serve the juvenile with the petition to terminate. In his response, father has conceded the district court's lack of subject matter jurisdiction in this case.

"[S]ubject matter jurisdiction may be raised at any time by the parties or by the court *ex mero motu*." *In re J.D.S.*, 170 N.C. App. 244, 248, 612 S.E.2d 350, 353, *cert. denied*, 360 N.C. 64, 623 S.E.2d 584 (2005); *see also* N.C.R. App. P. 10(a) (2008). In termination of parental rights cases, a summons must be issued to the juvenile "who shall be named as [a] respondent[]." N.C. Gen. Stat. § 7B-1106(a)(5) (2007). "[F]ailure to issue a summons to the juvenile deprives the trial court of subject matter jurisdiction." *In re K.A.D.*, \_\_ N.C. App. \_\_, \_\_, 653 S.E.2d 427, 428-29 (2007). The record in this case shows that DSS failed to issue a summons to the juvenile as required by N.C.G.S. § 7B-1106(a)(5). Without the proper issuance of a summons, an order terminating parental rights must be vacated for lack of subject matter jurisdiction. *Id.* Accordingly, we vacate the order terminating respondent's parental rights.

Vacated.

Judges ELMORE and ARROWOOD concur.

Report per Rule 30(e).