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NO. COA08-537

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2008

IN THE MATTER OF:
M.R.M.,
a minor child.

Buncombe County
No. 07 JT 327

Appeal by petitioner-mother from orders entered 5 November 2007 and 21 February 2008 by Judge Rebecca E. Knight in Buncombe County District Court. Heard in the Court of Appeals 20 October 2008.

Arlaine Rocky, for petitioner appellant.
The Sutton Firm, P.A., by Emily Sutton Dezio, for respondent-appellee.

MARTIN, Chief Judge.

Petitioner appeals from orders dismissing her petition to terminate respondent's parental rights, imposing sanctions, and denying her motions pursuant to Rules 59 and 60 of the North Carolina Rules of Civil Procedure. Because we hold the trial court lacked subject matter jurisdiction, we must vacate the orders and remand for dismissal for lack of subject matter jurisdiction.

Petitioner and respondent are the mother and father, respectively, of M.R.M., the minor child. On 17 August 2007, petitioner filed a petition to terminate respondent's parental

rights and an emergency ex parte motion. At the time of filing, petitioner and respondent had joint legal and physical custody of M.R.M. pursuant to a November 2006 temporary order in case number 03 CVD 1581 from Henderson County. Respondent moved to dismiss the petition and ex parte motion, and to impose sanctions on petitioner. On 5 November 2007, the trial court entered an order dismissing the petition without prejudice. The trial court found that the petition was filed for an improper purpose, namely, "to delay and/or stop the pending custody litigation in Henderson County."

On 19 November 2007, petitioner filed a motion pursuant to Rules 59 and 60 of the North Carolina Rules of Civil Procedure. A hearing was held on 11 and 12 February 2008. On 21 February 2008, the trial court entered an order denying petitioner's motion. In its order, the court modified its prior dismissal of the petition to terminate respondent's parental rights by deleting that part of its prior order which indicated the dismissal was "without prejudice." Additionally, the court sanctioned petitioner and awarded respondent \$4,189.25 in attorney's fees. Petitioner appeals.

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

In the instant case, petitioner failed to name the juvenile as a respondent in the summons. N.C.G.S. § 7B-1106(a)(5) provides, in pertinent part, that "upon the filing of the petition, the court

shall cause a summons to be issued. *The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents: . . . [t]he juvenile.*" N.C. Gen. Stat. § 7B-1106(a)(5) (2007) (emphasis added). This Court has held that the failure to issue a summons to the juvenile as a respondent in accordance with N.C.G.S. § 7B-1106(a)(5) deprives the trial court of subject matter jurisdiction. *In re K.A.D.*, ___ N.C. App. ___, ___, 653 S.E.2d 428-29, 427, (2007).

While this Court has recently held that service of the summons on the guardian *ad litem* for the juvenile or the attorney advocate for the guardian *ad litem* is sufficient to establish subject matter jurisdiction when combined with naming the juvenile in the caption of the summons, see *In re N.C.H., G.D.H., D.G.H.*, No. COA08-413, slip op. at 2-3 (N.C. Ct. App. Sept. 2, 2008); *In re J.A.P. & I.M.P.*, ___ N.C. App. ___, ___, 659 S.E.2d 14, 17 (2008), no guardian *ad litem* and attorney advocate were appointed to represent the juvenile until 15 October 2007, subsequent to the filing of the petition. Thus, *J.A.P.* and *N.C.H.* are inapplicable. Therefore, because the juvenile was not named as a respondent in the summons in accordance with N.C.G.S. § 7B-1106(a)(5), we conclude that the trial court never obtained jurisdiction in this action, and its orders were void ab initio. See *In re T.R.P.*, 360 N.C. 588, 598, 636 S.E.2d 787, 795 (2006) (holding that failure to verify a juvenile petition is a fatal defect that deprives the trial court of subject matter jurisdiction and renders its orders in the cause

void ab initio). Accordingly, the trial court's orders in this case, including the order sanctioning petitioner, are vacated, and this case is remanded to the trial court for entry of an order dismissing the action for lack of subject matter jurisdiction.

Vacated and Remanded.

Judges ELMORE and STEELMAN concur.

Report per Rule 30(e).