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NO. COA13-737  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

IN THE MATTER OF:

M.S.M.K.R. and M.S.K.K.R.                      Granville County  
Nos. 10 JT 68, 69

Appeal by respondent-mother from order entered 14 March 2013 by Judge J. Henry Banks in Granville County District Court. Heard in the Court of Appeals 28 October 2013.

*Hopper, Hicks & Wrenn PLLC, by N. Kyle Hicks, for petitioner-appellee Granville Department of Social Services.*

*Windy H. Rose for respondent-appellant mother.*

*Cranfill Sumner & Hartzog LLP, by Jennifer A. Welch, for guardian ad litem.*

HUNTER, JR., Robert N., Judge.

Respondent ("Mother") appeals from an order terminating her parental rights to her minor children, Melvin and Rebecca.<sup>1</sup> Because the petitions to terminate respondent's parental rights

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<sup>1</sup> The pseudonyms "Melvin" and "Rebecca" are used to protect the identities of the juveniles.

filed by the Granville County Department of Social Services ("DSS") gave the trial court subject matter jurisdiction over the proceedings below, we affirm.

### **I. Facts & Procedural History**

On 21 September 2010, DSS filed juvenile petitions alleging Melvin and Rebecca to be neglected and dependent juveniles. The same day, orders for non-secure custody were entered. The trial court continued non-secure custody until 13 January 2011, when the adjudication hearing occurred.

Melvin and Rebecca were adjudicated dependent during the 13 January 2011 session of Granville County District Court. The dispositional hearing was also conducted on 13 January 2011 and Melvin and Rebecca remained in the custody of DSS. The court conducted a review hearing on 17 March 2011, where a reunification plan was ordered. The court conducted a permanency plan hearing on 27 January 2012 and concluded the proceeding on 19 July 2012. The permanent plan was thereafter changed to termination of parental rights and adoption.

Petitions were filed on 4 October 2012 to terminate the parental rights of Mother and the father of Melvin and Rebecca ("Father"). The trial court heard the petitions at the 28 February 2013 and 13 March 2013 sessions of Granville County

District Court. The order to terminate the parental rights of Mother and Father was filed on 14 March 2013. Mother timely filed a written notice of appeal on 12 April 2013. There were several notable findings of fact discussed in the petitions.

The petitions alleged that Melvin and Rebecca lived in a home with no running water with their Mother. The petitions also averred that the children were "unkempt: dirty, with body odor with dirty clothing." DSS also stated that alternative housing for Mother, Melvin, and Rebecca was not available. Mother was placed on a "do not readmit" list for a shelter in Henderson, North Carolina. DSS alleged that Mother could not return to the facility because "they had problems with her: she urinated in a bottle which she left under her bed; her room was in a mess because she would not clean it up, and she would start arguments with others at the shelter." DSS then noted attempts to place Mother in hotels throughout Granville County, finding that she was banned from "all motels" in the county. Mother also claimed she was banned from the Durham Rescue Mission and her own mother's ("Grandmother") home. Grandmother noted Mother's problems from previous terms of living with Mother; specifically Mother did not clean her room, stored food under

her bed, and periodically left Melvin and Rebecca with Grandmother without prior notice.

On 13 January 2011, the parties stipulated to a finding of dependency based on the allegations stated in the petition. The case was reviewed on 30 March 2011. The court retained the plan for reunification with the parents, but found that the parents were not making progress toward reunification at that time. Permanency planning hearings were delayed until January and July 2012. Mother was found incapable of caring for Melvin and Rebecca due to her mental health issues. Mother last visited Melvin and Rebecca in March 2011. The permanent plan was converted into termination of parental rights and adoption.

On 4 October 2012, Petitions for Termination of Parental Rights were filed on the grounds of neglect, failure to make reasonable progress, willful failure to pay child support, dependency, and abandonment. The petitions were made by "Luanne Cox, Administrative Officer II of the Granville County Department of Social Services, whose address is 107 Lanier Street, Oxford, North Carolina, 27565." The petitions identify "the Petitioner" as "the Granville County Department of Social Services" and list the same address as Ms. Cox. The petitions were also signed by Ms. Cox under the notarial seal of Vickie B.

Ball. Granville County District Court Judge J. Henry Banks signed an order on 13 March 2013 terminating Mother's parental rights based on the grounds alleged in the petition.

## **II. Jurisdiction & Standard of Review**

This Court has jurisdiction to review the trial court's order pursuant to N.C. Gen. Stat. § 7B-1001(a)(6) (2011).

Mother's sole argument on appeal is that the trial court lacked jurisdiction to terminate her parental rights because the petitions initiating the termination proceedings are fatally defective. Mother contends the petitions are defective because they suggest DSS is not the petitioner, and because the petitions are not properly verified.

"Subject matter jurisdiction is conferred upon the courts by either the North Carolina Constitution or by statute." *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987). "The question of subject matter jurisdiction may be raised at any time, even in the Supreme Court." *Lemmerman v. A.T. Williams Oil Co.*, 318 N.C. 577, 580, 350 S.E.2d 83, 85 (1986). "It is a universal rule of law that parties cannot, by consent, give a court, as such, jurisdiction over subject matter of which it would otherwise not have jurisdiction. Jurisdiction in this sense cannot be obtained by consent of the parties, waiver, or

estoppel.'" *Pulley v. Pulley*, 255 N.C. 423, 429, 121 S.E.2d 876, 880 (1961) (quoting *Hart v. Thomasville Motors, Inc.*, 244 N.C. 84, 88, 92 S.E.2d 673, 676 (1956)), *appeal dismissed and cert. denied*, 371 U.S. 22 (1962).

"Whether a trial court has subject matter jurisdiction is a question of law, which is reviewable on appeal *de novo*." *In Re D.D.F.*, 187 N.C. App. 388, 392, 654 S.E.2d 1, 3 (2007) (citation and quotation marks omitted). Further,

A court has inherent power to inquire into, and determine, whether it has jurisdiction and to dismiss an action *ex mero motu* when subject matter jurisdiction is lacking.

The provisions of our Juvenile Code establish one continuous juvenile case with several interrelated stages. 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. [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. [I]n the absence of a verification . . . a trial court's order is void *ab initio*.

A petition to terminate parental rights may only be filed by a person or agency given standing by section 7B-1103(a) of our General Statutes. One such agency is any county department of social services . . . to whom custody of the juvenile has

been given by a court of competent jurisdiction. Standing is jurisdictional in nature and consequently, standing is a threshold issue that must be addressed, and found to exist, before the merits of the case are judicially resolved.

*Id.* (quoting *In re S.E.P.*, 184 N.C. App. 481, 486, 646 S.E.2d 617, 621 (2007) (alterations in original)).

### **III. Analysis**

Mother first argues that the petitions were insufficient to invoke the court's jurisdiction because they identify Luanne Cox, and not DSS, as the petitioner. Mother's argument is based on the first paragraph of the petitions, which states in each: "COMES NOW, Luanne Cox, Administrative Officer II of the Granville County Department of Social Services, whose address is 107 Lanier Street, Oxford, North Carolina, 27565, and petitions the Court for termination of the parental rights of the Respondent Parents . . . ."

We find this case similar to that of *In re Manus*, 82 N.C. App. 340, 346 S.E.2d 289 (1986). In *Manus*, the respondent-mother argued "the petition for termination of parental rights was invalid and should have been dismissed because it was filed by a party not authorized to maintain such an action." *Id.* at 342, 346 S.E.2d at 291. This Court held that even though the petition stated the "name of the petitioner [was] H. Gene

Herrell" who was the Director of the Union County Department of Social Services, the petition was sufficient to establish that a county department of social services was the petitioner because it was "readily apparent that Mr. Herrell did not petition for termination of respondents' parental rights in his capacity as an individual, but rather in his capacity as Director of DSS and, therefore, on behalf of DSS." *Id.* at 343, 346 S.E.2d at 291.

Here, Mother ignores the first and sixth numbered paragraphs of the petitions, which state:

1. That the Petitioner is a County Department of Social Services to whom the custody of the Juvenile[s], [Melvin and Rebecca], has been given by a Court of competent jurisdiction, and is a proper petitioner pursuant to N.C.G.S. §7B-1103.

. . . .

6. That the Petitioner, the Granville County Department of Social Services (hereinafter "Petitioner"), located at 107 Lanier Street, Oxford, North Carolina 27565, has had custody of the juvenile[s] since September 21, 2010, at which date the juvenile[s] were placed in the custody of the Petitioner by a Non-Secure Custody Order of the District Court of Granville County, based on a Petition alleging neglect and dependency.

These statements clearly establish that the petitioner in this case was the Granville County Department of Social Services, and



that Luanne Cox was filing the petition in her capacity as a DSS employee, and thus on behalf of DSS, which is a proper party to file petitions to terminate parental rights. N.C. Gen. Stat. § 7B-1103(a)(3) (2011). Accordingly, Mother's argument that the petitions were improperly filed in the name of Luanne Cox is overruled.

Mother also argues the petitions to terminate her parental rights were not properly verified. Mother argues there is nothing in the record or transcript to establish Luanne Cox's connection to the case or her authority to sign petitions to terminate parental rights on behalf of DSS. In support of her argument, Mother cites to Article 4, Section 7B-403 of our Juvenile Code, which requires that petitions alleging juveniles to be abused, neglected, or dependent "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) (2011). Verification of petitions to terminate parental rights, however, are governed by Article 11, Section 7B-1104 of our Juvenile Code, which merely requires that the petition be verified by the petitioner. Thus, a petition to terminate parental rights is not required "to be signed or verified by the director of DSS or an 'authorized

representative.'" *In re D.D.F.*, 187 N.C. App. at 397, 654 S.E.2d at 6.

To be properly verified, a petition to terminate parental rights must comply with the requirements of Rule 11(b) of the North Carolina Rules of Civil Procedure. *In re Triscari Children*, 109 N.C. App. 285, 287, 426 S.E.2d 435, 437 (1993). Rule 11(b) provides in pertinent part:

In any case in which verification of a pleading shall be required by these rules or by statute, it shall state in substance that the contents of the pleading verified are true to the knowledge of the person making the verification, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

N.C. Gen. Stat. § 1A-1, Rule 11(b) (2011). Here, the verification of each petition states:

Luanne Cox, Administrative Officer II of the Granville County Department of Social Services, Petitioner in the above entitled action, first being duly sworn, deposes and says that she has read the foregoing and hereto annexed Petition; that the same is true of her own knowledge, except as to matters and things therein alleged upon information and belief and as to such matters and things so alleged she believes it to be true.

While the verifications are unartfully drawn and again state Ms. Cox is the petitioner in this case, it is clear from the petitions as a whole that Ms. Cox is acting on behalf of her

employer and true petitioner, the Granville County Department of Social Services. Ms. Cox avers that she has personal knowledge of the contents of the petition, except for those stated on information and belief, and thus the verification conforms with Rule 11(b). We hold Ms. Cox's verification of the petitions fulfills the mandate of N.C. Gen. Stat. § 7B-1104, and the petitions thus conferred subject matter jurisdiction over the termination proceedings to the trial court. Accordingly, we affirm the trial court's order terminating respondent's parental rights to her minor children Melvin and Rebecca.

Affirmed.

Judges HUNTER, ROBERT C., and CALABRIA concur.

Report per Rule 30(e).