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NO. COA14-366
NORTH CAROLINA COURT OF APPEALS

Filed: 4 November 2014

IN THE MATTER OF:

D.D.A. Craven County
No. 10 JT 105

Appeal by respondent from order entered 9 January 2014 by Judge L. Walter Mills in Craven County District Court. Heard in the Court of Appeals 30 September 2014.

No brief for petitioner-appellee mother.

Jeffrey L. Miller, for respondent-appellant father.

No brief for guardian ad litem.

CALABRIA, Judge.

Respondent-father ("respondent") appeals from an order terminating his parental rights to the juvenile D.D.A. ("Don")¹. Since the trial court lacked subject matter jurisdiction, we vacate the trial court's order.

¹ We use a pseudonym to protect the juvenile's privacy and for ease of reading.

Don was born in Georgia. Respondent is listed as Don's father on the birth certificate, and does not dispute that he is Don's father. Respondent and petitioner-mother ("petitioner") were never married, but briefly lived together after Don was born. After a dispute with petitioner, respondent moved out of the residence, and subsequently moved to Jacksonville, Florida. Although there was no formal custody agreement, petitioner had physical custody of Don.

Petitioner filed an action for child support in Georgia, but respondent's payments were sporadic. The Georgia child support case was later closed because both petitioner and respondent resided outside the state of Georgia. There were no further actions for child support.

In 2002, when Don was five years old, petitioner met her current husband ("stepfather"), a member of the United States Marine Corps. After petitioner married stepfather, they moved from Georgia to South Carolina, and then to North Carolina as part of stepfather's service with the Marine Corps.

On 19 November 2010, petitioner filed a petition in Craven County District Court to terminate respondent's parental rights. The petition alleged, *inter alia*, that Don had lived in Craven County, North Carolina for the past three years. The petition

also alleged that termination of respondent's parental rights was warranted because respondent had willfully abandoned Don and had failed to pay for Don's care, support, and education for at least one year prior to the filing of the petition. In February 2011, a Guardian *ad Litem* ("GAL") was appointed for Don. In March 2011, the GAL met with petitioner and Don, and spoke with respondent over the telephone, for the purpose of creating a report for the court. Respondent indicated he had been employed as a physical therapy aide in Jacksonville, Florida since 2005.

Petitioner indicated to the GAL that she had been employed for the past three years at a day care center in Havelock, North Carolina. Petitioner also indicated that stepfather had been assigned to a new duty station in Missouri, and was required to report to that duty station on 1 April 2011. Although petitioner stayed in North Carolina with Don until their house was rented, by the time of the hearing, they both resided in Missouri.

On 19 December 2013, at the hearing to terminate respondent's parental rights, petitioner testified that she and Don had been living in St. Robert, Missouri, for approximately two years. Petitioner also admitted, and respondent testified, that the last time respondent had seen Don was at

petitioner's sister's funeral in Georgia in September 2010, shortly before the petition in the matter was filed. Respondent testified regarding his contentious relationship with petitioner, including his foiled attempts to contact Don at petitioner's cell phone number. Respondent also testified that he had been corresponding regularly with Don via Facebook beginning in March 2013.

On 9 January 2014, the trial court entered an order concluding that grounds existed to terminate respondent's parental rights due to abandonment and failure to pay support. See N.C. Gen. Stat. § 7B-1111(a)(4) and (7) (2013). The trial court further concluded that it was in the best interests of the juvenile that respondent's parental rights be terminated. Respondent appeals.

Respondent argues that the trial court erred by failing to make findings in support of its conclusion that it had jurisdiction. Respondent essentially challenges the trial court's subject matter jurisdiction.

"[T]he trial court's subject-matter jurisdiction may be challenged at any stage of the proceedings." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). "When a court decides a matter without the court's having jurisdiction,

then the whole proceeding is null and void, *i.e.*, as if it had never happened." *Id.* (citation omitted). "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *Id.*

Regarding jurisdiction, N.C. Gen. Stat. § 7B-1101 (2013) provides in pertinent part that a court "shall have jurisdiction to terminate the parental rights of any parent Provided, that before exercising jurisdiction . . . the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204."

As an initial matter, it is undisputed that since there has been no prior custody determination in any other state, N.C. Gen. Stat. § 50A-203 (2013), the statute that provides jurisdiction to modify a custody determination made in another state, does not apply in the instant case. Second, there is no evidence to support the exercise of emergency jurisdiction. See N.C. Gen. Stat. § 50A-204(a) (2013) ("A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with

mistreatment or abuse.”). Therefore, in the instant case, the trial court could only exercise subject matter jurisdiction pursuant to N.C. Gen. Stat. § 50A-201.

N.C. Gen. Stat. § 50A-201(a)(1) (2013) provides, in pertinent part, that North Carolina has jurisdiction to make an initial custody determination if “[t]his State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State[.]” A child’s “home state” is defined as “the state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement of a child-custody proceeding.” N.C. Gen. Stat. § 50A-102(7) (2013). “It is a generally accepted principle that the courts of the state in which a minor child is physically present have jurisdiction consistent with due process to adjudicate a custody dispute involving that child.” *In re Humphrey*, 156 N.C. App. 533, 536, 577 S.E.2d 421, 424 (2003) (quoting *Lynch v. Lynch*, 302 N.C. 189, 193, 274 S.E.2d 212, 217, modified and affirmed, 303 N.C. 367, 279 S.E.2d 840 (1981)).

In the instant case, there had never been an initial custody determination. The record does not indicate any prior custody actions in any other states, nor does it indicate any Department of Social Services involvement. The only other state to assume jurisdiction of this case was the state of Georgia, regarding child support. However, the Georgia child support case was later closed because both petitioner and respondent resided outside the state of Georgia. There were no further actions for child support.

At the termination of parental rights hearing, petitioner presented evidence that Don was born in Georgia in 1997, and moved to Havelock, North Carolina, in either 2009 or 2010. The petition to terminate respondent's parental rights was filed in November 2010. However, the evidence also showed that Don had moved to Missouri with petitioner and stepfather shortly after the filing of the petition, and was no longer residing in North Carolina at the time of the hearing. It is undisputed that respondent lives in Florida, and has never moved to North Carolina. Therefore, while it is possible that North Carolina may have been Don's home state within six months before the petition was filed, the evidence shows that Don is no longer physically present in North Carolina and has been absent from

this state for at least three years. Additionally, neither petitioner nor respondent live in North Carolina. Accordingly, we hold that the trial court did not have subject matter jurisdiction. See N.C. Gen. Stat. § 50A-201(a)(1).

Because we determine that the trial court lacked subject matter jurisdiction, we need not address respondent's remaining arguments. Furthermore, because we conclude that the trial court lacked subject matter jurisdiction, the trial court's order terminating respondent's parental rights is vacated.

Vacated.

Judges STEELMAN and McCULLOUGH concur.

Report per Rule 30(e).