

NO. COA14-621

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

IN THE MATTER OF: Pender County
No. 13 JT 31

N.G.H.

Appeal by Respondent-mother from order entered 12 March 2014 by Judge R. Russell Davis in Pender County District Court. Heard in the Court of Appeals 27 October 2014.

Corbett & Fisler, by Robert H. Corbett, for Petitioners.

Appellate Defender Staples Hughes, by Assistant Appellate Defender J. Lee Gilliam, for Respondent-mother.

STEPHENS, Judge.

Respondent-mother appeals from an order terminating her parental rights to her minor child, N.G.H.,¹ who was born in January 2012. Petitioners, a cousin of Respondent-mother and his wife, filed a petition to terminate Respondent-mother's parental rights on 5 August 2013.

¹ We refer to the juvenile by her initials in order to protect her identity.

Respondent-mother contends that the order must be vacated because Petitioners failed to establish that they had standing to file the petition. "Whether petitioner had standing is a legal issue that this Court reviews *de novo*." *In re A.D.N.*, ___ N.C. App. ___, ___, 752 S.E.2d 201, 205 (2013) (italics added), *disc. review denied*, ___ N.C. ___, 755 S.E.2d 626 (2014). Standing to file a legal proceeding is a matter of subject matter jurisdiction, and "[i]ssues of subject matter jurisdiction may be raised at any time, including on appeal." *Peacock v. Shinn*, 139 N.C. App. 487, 491, 533 S.E.2d 842, 845 (citation omitted), *disc. review denied and appeal dismissed*, 353 N.C. 267, 546 S.E.2d 110 (2000). Standing to file a petition or motion to terminate parental rights is conferred by N.C. Gen. Stat. § 7B-1103. *In re Miller*, 162 N.C. App. 355, 357, 590 S.E.2d 864, 865 (2004). A petition or motion must state "[t]he name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by [section] 7B-1103 to file a petition or motion" to terminate parental rights. N.C. Gen. Stat. § 7B-1104(2) (2013). The petition must include any document or order through which the petitioner claims standing that will enable the court to determine whether it has subject matter jurisdiction. *In re T.B.*, 177 N.C. App. 790, 793, 629 S.E.2d 895, 897-98 (2006).

Petitioners submit that they have standing because they have filed a petition to adopt the child. See N.C. Gen. Stat. § 7B-1103(7) (2013) (stating that “[a]ny person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes” has standing to file a petition to terminate parental rights). We are unable, after careful examination of the petition, to find any factual allegation therein that Petitioners have filed a petition for adoption pursuant to Chapter 48. No petition for adoption is attached to the termination of parental rights petition or referenced therein.

On appeal, Petitioners concede that the petition is deficient. However, they contend that “matters outside the pleadings, such as [a] contract attached to [a] defendant’s motion [to dismiss for lack of subject matter jurisdiction], may be considered and weighed by the court in determining the existence of jurisdiction over the subject matter.” *Tart v. Walker*, 38 N.C. App. 500, 502, 248 S.E.2d 736, 737 (1978) (citation omitted). *Tart*, however, concerned a contract dispute, not a petition for termination of parental rights filed under Chapter 7B. See *id.* In *In re T.B.*, we held

that, where DSS files a motion for termination of parental rights, the trial court has subject matter jurisdiction only if the record includes a copy of an order, in effect when the petition is filed, that awards DSS custody of the child. This is

implicitly recognized by N.C. Gen. Stat. § 7B-1104(5) . . . , which sets out the requirements for a petition for termination of parental rights, and provides in relevant part that the petition shall set forth . . . (5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition or motion.

177 N.C. App. at 793, 629 S.E.2d at 897-98 (citation and internal quotation marks omitted; emphasis in original). Likewise, section 7B-1104 also requires that a petition for termination of parental rights must include, *inter alia*, "[t]he name and address of the petitioner or movant and *facts sufficient to identify the petitioner or movant as one authorized by [section] 7B-1103 to file a petition or motion.*" N.C. Gen. Stat. § 7B-1104(2). This Court has upheld orders terminating parental rights in cases where petitions failed to allege or prove standing, but only where the required documentation, such as a custody order, was later filed and made part of the record. *See, e.g., In re H.L.A.D.*, 184 N.C. App. 381, 390-92, 646 S.E.2d 425, 429-30 (2007) (rejecting a challenge to the petitioners' standing where, although [the] petitioners failed to attach a copy of the custody order to the petition for termination, the custody order was later made part of the record before the trial court, and the mother failed to show that she was prejudiced in any way by the failure to

physically attach a custody order to the motion), *affirmed per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008); *In re W.L.M.*, 181 N.C. App. 518, 526, 640 S.E.2d 439, 444 (2007) (rejecting a challenge to the trial court's subject matter jurisdiction where no custody order was attached to the petition, but "the motion to terminate [the] respondent's parental rights incorporated by reference the juvenile file and custody order in effect when the motion was filed.").

Petitioners note that, at the termination hearing, one of them testified that the Petitioners had "contemporaneous[ly] . . . filed an action for adpotion[.]" However, no testimony established that any adoption petition was filed pursuant to Chapter 48 or that Petitioners had standing to file an adoption petition under Chapter 48. The petition to terminate Respondent-mother's parental rights did not incorporate by reference any adoption petition, and no copy of any adoption petition was ever filed in this matter. Petitioners' failure to include a copy of the petition to adopt in the record "ultimately deprived the [district] court of subject matter jurisdiction." See *In re T.B.*, 177 N.C. App. at 793, 629 S.E.2d at 898. Because the district court lacked subject matter jurisdiction, the order terminating Respondent-mother's parental rights must be vacated without prejudice to Petitioners' right

to file a new petition alleging facts that would show they have standing to bring that action. *See id.* Accordingly, the order terminating Respondent-mother's parental rights is

VACATED.

Judges GEER and MCCULLOUGH concur.