IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1199

Filed: 17 May 2016

Wake County, Nos. 13 JT 86-88, 14 JT 53

In the Matter of

C.N.H-P., M.S.N.P., A.D.S., M.C-N.H-P.

Appeal by respondent mother from order entered 6 July 2015 by Judge Keith Gregory in Wake County District Court. Heard in the Court of Appeals 13 April 2016.

Office of the Wake County Attorney, by Roger A. Askew, for petitioner-appellee Wake County Human Services.

Ellis & Winters LLP, by James M. Weiss, for Guardian ad Litem.

Jeffery William Gillette for respondent-appellant mother.

McCULLOUGH, Judge.

Respondent, the mother of Carrie, Muriel, Andre, and Mary[1], appeals from an order terminating her parental rights. Based on the reasons stated herein, we affirm the order of the trial court.

[1] Pseudonyms have been used throughout this opinion to protect the identity of the minor children and for ease of reading.

I. Background

On 27 March 2013, Wake County Human Services ("WCHS") filed a juvenile petition alleging that Carrie, Muriel, and Andre were neglected and dependent juveniles as defined by N.C. Gen. Stat. § 7B-101(15) and (9). On that same date, WCHS obtained non-secure custody of Carrie, Muriel, and Andre. The trial court conducted a hearing on 13 June 2013 and Carrie, Muriel, and Andre were adjudicated neglected and dependent by an order entered 28 June 2013.

On 19 March 2014, WCHS filed a juvenile petition alleging that Mary was a neglected and dependent juvenile as defined by N.C. Gen. Stat. § 7B-101(15) and (9). On that same date, WCHS obtained non-secure custody of Mary. The trial court conducted a hearing on 30 June 2014 and Mary was adjudicated neglected and dependent by an order entered 7 August 2014.

On 2 February 2015, the trial court entered an order changing the permanent plan for all the children to adoption.

On 19 February 2015, WCHS filed a motion to terminate the parental rights of respondent as to all the children, as well as three fathers of the children, alleging as grounds: (1) the children were born out of wedlock and the fathers of Carrie, Muriel, and Andre have not, prior to the filing of the petition to terminate parental rights, taken any actions as listed in N.C. Gen. Stat. § 7B-1111(a)(5); (2) the parents neglected the children within meaning of N.C. Gen. Stat. § 7B-101(15) and it is

probable that there would be a repetition of neglect if the children were returned to the care of the parents, N.C. Gen. Stat. § 7B-1111(a)(1); (3) the parents have willfully left the children in foster care for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances have been made in correcting the conditions that led to the removal of the children, N.C. Gen. Stat. § 7B-1111(a)(2); (4) the children have been placed in the custody of WCHS and the parents, for a continuous period of six months next preceding the filing of the motion, have willfully failed to for such period to pay a reasonable portion of the cost of care for the children although physically and financially able to do so, N.C. Gen. Stat. § 7B-1111(a)(3); and, (5) the fathers of the children have willfully abandoned the children for at least six months immediately preceding the filing of the motion, N.C. Gen. Stat. § 7B-1111(a)(7).

The trial court held pre-trial hearings on 6 April 2015 and 22 April 2015 pursuant to N.C. Gen. Stat. § 7B-1108.1. The parental rights of the fathers were terminated by an order entered 5 June 2015. Following a hearing held on 16 June 2015, the trial court entered an order on 6 July 2015, terminating respondent's parental rights.

Respondent appeals.

II. Discussion

Respondent presents two issues on appeal. In her first argument, respondent asserts that the trial court lacked subject matter jurisdiction to terminate her parental rights as to Carrie, Muriel, and Andre because the juvenile petitions were fatally defective. In her second argument, respondent contends that she was denied her fundamental right to counsel at her termination hearing. We address each argument in turn.

A. Subject Matter Jurisdiction

Respondent argues that the trial court lacked subject matter jurisdiction to terminate her parental rights as to Carrie, Muriel, and Andre because the juvenile petitions were fatally defective. We disagree.

Respondent directs our attention to the "VERIFICATION" section of each of the 27 March 2013 juvenile petitions, alleging neglect and dependency as to Carrie, Muriel, and Andre. Each petition was signed by an "Authorized Representative of Ramon Rojano, Director, Wake County Human Services" and dated 26 March 2013. All of the petitions also contain a signature above the line for "Signature of Person Authorized to Administer Oaths." Below this signature, there are two lines for the person authorized to administer oaths to provide information regarding their "TITLE," "SEAL," and "My Commission Expires." These two lines were left blank on all three petitions.

Relying solely on our holding in *In re N.T.*, __ N.C. App. __, 769 S.E.2d 658 (2015), respondent argues that the juvenile petitions are fatally defective because they failed to expressly state the authority of the person who administered and verified the oath. In *N.T.*, the verification section of the juvenile petition alleging that the minor child was a neglected juvenile indicated that it was verified by an authorized representative of the Director of WCHS. *Id.* at __, 769 S.E.2d at 661. However, the signature of the person before whom the petition was verified was illegible and their title was not given. Our Court noted that nothing in the record evidence established that "the person before whom the petition was verified was authorized to acknowledge the verification." *Id.* Because there was no competent evidence that the petition was properly verified, our Court held that "the trial court never obtained jurisdiction over the subject matter of the juvenile case" and that the trial court's underlying orders were void *ab initio*. Accordingly, our Court held that the trial court lacked subject matter jurisdiction to enter an order terminating the respondent's parental rights as to the juvenile. *Id.*

Recently, however, our holding in *N.T.* was reversed by the North Carolina Supreme Court in *In re N.T.*, __ N.C. __, 782 S.E.2d 502 (2016). The North Carolina Supreme Court noted that "[n]othing else appearing, we apply the *prima facie* presumption of rightful jurisdiction which arises from the fact that a court of general jurisdiction has acted in the matter. As a result, [t]he burden is on the party asserting

want of jurisdiction to show such want." *Id.* at __, 782 S.E.2d at 503-04 (citations and quotation marks omitted). The Court held that the juvenile petition in question appeared facially valid in that:

> [i]t is signed by an authorized representative of the director of WCHS who "vouches" for the truth of the allegations in the petition and another signature appears in a space clearly reserved for "Signature of Person Authorized to Administer Oaths." By signing in a space with such a conspicuous designation, the person who did so necessarily represented that he or she possessed such authority and there is nothing in the record indicating that this person lacked the authority he or she claimed to possess. Respondent never submitted any evidence, or even any specific allegations, tending to overcome the presumption of regularity. Instead, respondent's argument is based upon speculation as to whether a person who represented that he or she had the authority to administer oaths actually had such authority.

Id. at __, 782 S.E.2d at 504 (internal citation omitted). Thus, the North Carolina Supreme Court held that our Court had no basis to conclude that the petition was not properly verified and reversed the decision that respondent now relies upon. *Id.*

In accordance with the recent decision made by the North Carolina Supreme Court, we hold respondent has failed to present any evidence or any specific allegations tending to rebut the presumption of rightful jurisdiction. An authorized representative of the director of WCHS signed the juvenile petitions, vouching for the truth of the allegations in the petition, and another signature appeared in a space reserved for the "Signature of Person Authorized to Administer Oaths." This

signature necessarily represented that he or she possessed the appropriate authority and there is nothing in the record to indicate otherwise. Hence, we reject respondent's argument that the juvenile petitions were fatally defective and that the trial court lacked subject matter jurisdiction.

B. Right to Counsel

Next, respondent argues that the trial court denied her right to counsel by failing to address the issue of her waiver of counsel at the termination hearing and by allowing her to proceed *pro se*. We disagree.

A parent's right to counsel in a termination of parental rights proceeding is governed by N.C. Gen. Stat. § 7B-1101.1 which provides that

> (a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right.
>
> . . . .
>
> (a1) A parent qualifying for appointed counsel may be permitted to proceed without the assistance of counsel only after the court examines the parent and makes findings of fact sufficient to show that the waiver is knowing and voluntary.

N.C. Gen. Stat. § 7B-1101.1(a) and (a1) (2015). N.C. Gen. Stat. § 7B-1109(b) also provides that in the context of a termination proceeding:

> [t]he court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents

> desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, counsel shall be appointed to represent them in accordance with rules adopted by the Office of Indigent Defense Services. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition or motion.

N.C. Gen. Stat. § 7B-1109(b) (2015).

In the present case, we conclude that the trial court acted in accordance with both N.C. Gen. Stat. §§ 7B-1101.1 and 7B-1109 based on the record evidence. Following a pretrial hearing conducted on 22 April 2015 in the action to terminate respondent's parental rights, the trial court entered an "Order from Pre-trial Hearing for Termination Parental Rights and Notice of Next Hearing" on 23 April 2015. The order included the following relevant findings of fact:

> 2. That [respondent] was advised of her right to appointed counsel in this matter. [Respondent] requested that counsel not be appointed and waived her right to counsel. [Respondent] was questioned as to whether her waiver was knowing and voluntary. [Respondent] is a high school graduate and has an associate's degree in finance. [Respondent] was not under the influence of any impairing substance and does not have a mental health condition that would prevent her from knowingly waiving her right to counsel.
>
> 3. [Respondent] has contacted an attorney and states that she will be able to hire an attorney to represent her in these matters. [Respondent] was reminded that the hearing on termination of parental rights is set for June 5, 2015 at 9:00 and that the court would be reluctant

> to continue the hearing on termination of parental rights at that time. [Respondent] stated that she understood and that she did not wish to have counsel appointed to represent her in these matters.

The trial court then entered a conclusion of law that respondent "knowingly and voluntarily waived her right to appointed counsel."

The record also contains a "Waiver of Parent's Right to Counsel" dated 22 April 2015 and signed by respondent. In this waiver, respondent checked a box that read

> I am the parent of the juvenile named above. I have been told that I have the right to have a lawyer represent me. I have been told of my right to have a lawyer appointed by the Court if I cannot afford to hire one. With full knowledge of these rights, I knowingly, willingly, and understandingly choose as follows:
>
> I do not want a court-appointed lawyer. I will hire my own lawyer at my own cost.

The trial court entered the following findings of fact:

> [Respondent] is competent. [Respondent] has complete[d] college and has received an associate degree in financing. [Respondent] is not under the influence of any prescribed medicine or any mental health related issues. Nor is [respondent] under the influence of any illegal drug/substances.

The foregoing evidence demonstrates that the trial court advised respondent of her right to counsel, including the right to appointed counsel, and that respondent expressly waived her right to appointed counsel on 22 April 2015 at her pre-trial

hearing and through a written waiver. This waiver was knowing and voluntary as found by the trial court.

Furthermore, respondent argues that she "never waived her right to avail herself to *all* counsel," that the decision to proceed *pro se* must be "made expressly and cannot be inferred or implied by the court," and that the trial court erred by failing to directly address this issue at the termination hearing. Respondent contends that our holdings in *In re S.L.L.*, 167 N.C. App. 362, 605 S.E.2d 498 (2004), and *In re J.K.P.*, __ N.C. App. __, 767 S.E.2d 119 (2014), are controlling. We do not find respondent's arguments convincing.

In *S.L.L.*, the respondent father appealed an order adjudicating his minor child a neglected child. *S.L.L.*, 167 N.C. App. at 362, 605 S.E.2d at 498. At the adjudicatory hearing, the respondent father had requested that his appointed counsel be removed and his appointed counsel was released. Thereafter, respondent father requested that he wanted counsel twice but the trial court required him to proceed *pro se*. *Id.* at 363, 605 S.E.2d at 499. The issue on appeal was whether the trial court erred by failing to obtain a written waiver of counsel from the respondent father. *Id.* Our Court held that once an indigent party expresses their desire to not be represented by court-appointed counsel, the trial court had an obligation to either obtain a knowing waiver of counsel from the respondent father or to appoint substitute counsel. *Id.* at 365, 605 S.E.2d at 500. The respondent father's request that his

current appointed counsel be removed did not amount to an expression of a waiver of court-appointed counsel or an intention to represent himself. Accordingly, the respondent father's case was remanded for a new hearing. *Id.*

We find the circumstances in the present case distinguishable from those found in *S.L.L.* Here, respondent expressly waived her right to appointed counsel on 22 April 2015 through a written waiver, made knowingly and voluntarily. In addition, respondent never expressed her desire for appointed counsel. Rather, at her 22 April 2015 pre-trial hearing, respondent informed the trial court that she had been in contact with an attorney and that she would be able to hire an attorney to represent her. The trial court cautioned respondent that it would be reluctant to continue the termination hearing, respondent stated that she understood, and respondent expressed that she did not desire appointed counsel to handle these matters. Thereafter, respondent appeared at the termination hearing and proceeded *pro se*.

Next, respondent argues that *J.K.P.* stands for the proposition that a waiver of appointed counsel is not sufficient as a waiver of all counsel. However, we do not find this interpretation correct and reject her argument. In *J.K.P.*, the issue before our Court was whether the record demonstrated that the respondent mother had requested to represent herself and whether the trial court informed her of her right to counsel. *J.K.P.*, __ N.C. App. at __, 767 S.E.2d at 121. Our Court held that the

transcript revealed that the respondent mother unquestionably asked to represent herself, informed the court that she did not want to be represented by counsel, and expressly stated in her waiver of counsel form that she did not want the assistance of any lawyer. *Id.* at __, 767 S.E.2d at 121-24. In addition, our Court held that the respondent mother had been told of her right to be represented by counsel. *Id.* at __, 767 S.E.2d at 124.

Based on the foregoing reasons, we conclude that the trial court adequately advised respondent of her right to counsel, including her right to court-appointed counsel, and ensured that respondent knowingly and voluntarily waived her right to court-appointed counsel before allowing her to proceed *pro se*.

III. Conclusion

The 6 July 2015 order of the trial court, terminating respondent's parental rights, is affirmed.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).