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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-934

Filed: 16 February 2016

Wake County, No. 14 J 386

IN THE MATTER OF: C.H.M.

Appeal by petitioners from order entered 18 June 2015 by Judge Keith O. Gregory in Wake County District Court. Heard in the Court of Appeals 25 January 2016.

*Manning, Fulton & Skinner, P.A., by Michael S. Harrell, for petitioner-appellants.*

*Marshall & Taylor, PLLC, by Travis R. Taylor, for respondent-appellee.*

TYSON, Judge.

Petitioners, Michael T. Morris and Carolyn L. Morris (“Petitioners”), appeal from an order dismissing their petition for termination of Respondent-father’s parental rights to his minor daughter, C.H.M. We affirm.

I. Background

C.H.M. was born on 28 June 2013 in Onslow County, North Carolina. On 29 June 2013, the birth mother and her husband surrendered C.H.M. to A Child’s Hope, LLC (“A Child’s Hope”) for adoption. A Child’s Hope is a licensed child-placing agency in Wake County, North Carolina. The mother and her husband each signed forms

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entitled, “Relinquishment of Minor for Adoption by Parent or Guardian,” transferred physical and legal custody of the child to A Child’s Hope, and relinquished their parental rights to C.H.M. The agency placed C.H.M. in the physical custody of Petitioners on 9 July 2013, in accordance with the statute, which authorizes an agency “to place the minor for adoption with a prospective adoptive parent.” N.C. Gen. Stat. § 48-3-705(b)(2) (2013).

Respondent-father is a resident of Illinois. It is unclear from the record before us how Respondent-father was notified of or became involved in the adoption of C.H.M. Neither party contests the fact Respondent-father learned in December 2013 from DNA testing that he is C.H.M.’s biological father.

Petitioners and Respondent-father are parties to another appeal pending before this Court. On 9 July 2013, Petitioners filed a petition to adopt C.H.M. On 23 December 2013, Respondent-father filed an objection to the adoption and a motion to intervene in the special proceeding.

The cause was transferred to the Wake County District Court to resolve contested issues of fact as to whether Respondent-father’s consent to the adoption was required. By order entered 9 February 2015, the district court concluded that Respondent-father’s consent was required. Petitioners’ appeal from the district court’s order in that action remains pending in this Court and is not before us at this time.

On 26 November 2014, Petitioners filed this petition and sought termination of Respondent-father's parental rights to C.H.M. pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(3) and (7) (2013). On 9 January 2015, Respondent-father filed a motion to dismiss and an answer asserting affirmative defenses. N.C. Gen. Stat. § 1A-1, Rule 12 (b)(6) (2013). Petitioners subsequently moved to amend their petition to add "additional rationales" for termination.

After a hearing conducted on 20 May 2015, the district court granted Respondent-father's motion under Rule 12(b)(6) to dismiss the petition for failure to state a claim upon which relief can be granted. Petitioners had alleged two grounds to terminate Respondent-father's parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(3) and (7). The court found and concluded:

14. Petitioners have failed to allege sufficient facts in their TPR Petition to place Respondent Father on notice regarding the TPR petition, as required [by] N.C. Gen. Stat. § 7B-1104(6). Petitioner's allegations are bare recitations of the statute. No additional allegations regarding Respondent father's actions or inactions are contained in Petitioners' TPR petition. The exhibits attached to the TPR petition do not provide additional information that places Respondent father on notice of Petitioners' allegations against Respondent father.

....

16. The requirement of Petitioner to allege facts, not simply the statutory language in its petition is supported in numerous appellate cases. *See In re Hardesty*, 150 N.C. App. 380, 563 S.E.2d 79 (2002). *See also, In re Quevedo*, 106 N.C. App. 574, 419 S.E.2d 158 (1992); *In re H.T.*, 180

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N.C. App. 611, 637 S.E.2d 923 (2006).

17. Petitioners failed to comply with N.C. Gen. Stat. § 7B-1104(6) . . . .

18. As a result of Petitioners['] failure to comply with the statutory requirements, Respondent did not receive appropriate notice of the allegations levied against him and this Court does not need to address Respondent's additional arguments for dismissal.

19. Petitioner[s'] facts, as alleged in the TPR petition are legally insufficient to state a claim that Respondent-Father's parental rights should be terminated.

Petitioners appeal the trial court's dismissal of their petition to terminate Respondent-father's parental rights pursuant to Rule 12(b)(6).

II. Issues

Petitioners claim the trial court erred by dismissing their petition for failure to allege sufficient facts to comply with the notice requirement of N.C. Gen. Stat. § 7B-1104(6). They assert their petition follows the statutory language of N.C. Gen. Stat. § 7B-1111(a)(3) and § 7B-1111(a)(7) setting forth the grounds to terminate Respondent-father's parental rights. Petitioners contend their allegations, which track the language of the statutory grounds for termination, are sufficient notice to the Respondent-father of the acts or omissions alleged as grounds to terminate his parental rights.

III. Standard of Review

“Our review of the grant of a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure is de novo.” *Bridges v. Parrish*, 366 N.C. 539, 541, 742 S.E.2d 794, 796 (2013). “The question on a motion to dismiss is whether, as a matter of law, and taking the allegations in the complaint as true, the allegations are sufficient to state a claim upon which relief may be granted under any legal theory.” *Hardesty*, 150 N.C. App. at 383, 563 S.E.2d at 82.

#### IV. Notice

A petition to terminate parental rights must allege “[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.” N.C. Gen. Stat. § 7B-1104(6) (2013). “While there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue.” *Hardesty*, 150 N.C. App. at 384, 563 S.E.2d at 82. A petition which sets forth only a “bare recitation . . . of the alleged statutory *grounds* for termination” does not meet this standard. *Quevedo*, 106 N.C. App. at 579, 419 S.E.2d at 160 (emphasis original) (construing predecessor statute, N.C. Gen. Stat. § 7A-289.25(6)).

In support of their petition to terminate Respondent-father’s parental rights, Petitioners alleged:

- (a) The minor juvenile has remained in the legal custody of a licensed child-placing agency, and Respondent for a continuous period of at least six months prior to the time of the filing of this petition has willfully failed to pay a

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reasonable portion of the cost of the child's care, although physically and financially able to do so as required under §7B-1111(a)(3).

(b) Respondent has willfully abandoned the juvenile for a period of at least six months prior to the filing of this petition as per §7B-1111(a)(7).

Petitioners acknowledge their pleading merely quotes the applicable statutory language in N.C. Gen. Stat. §§ 7B-1111(a)(3) and (7), without alleging any additional facts regarding Respondent-father's actions or inactions regarding C.H.M.

A. *In re Hardesty* and *In re Quevedo*

Our decisions in *In re Hardesty* and *In re Quevedo* clearly state the petition must give notice of facts alleged by the petitioner to support the asserted statutory ground or grounds to terminate parental rights. *Hardesty*, 150 N.C. App. at 384, 563 S.E.2d at 82; *Quevedo*, 106 N.C. App. at 579, 419 S.E.2d at 160. In *Hardesty*, the petition for the termination of parental rights to the juvenile alleged:

Hardesty and any unknown father were incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is dependent and there is a reasonable probability that such incapability will continue for the foreseeable future. The petition, however, did not allege any facts to delineate the incapacity.

*Hardesty*, 150 N.C. App at 383-84, 563 S.E.2d at 82.

The petitioner in *Hardesty*, “merely used words similar to those in the statute setting out grounds for termination, alleged illegitimacy, and alleged that [the juvenile] had spent his entire life in foster care.” *Id.* at 384, 563 S.E.2d at 82 (citation

omitted). This Court held this to be insufficient notice to the respondent. “While there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue.” *Id.* Our Court held the motion to dismiss pursuant to Rule 12(b)(6) should have been granted and reversed the trial court’s termination of respondent Hardesty’s parental rights. *Id.*

In the case of *In re Quevedo*, the petitioners’ verified petition for termination of parental rights contained the following:

A. Said parent [] has neglected the child within the meaning of G.S. 7A–517(21).

B. Said parent has wilfully abandoned the child for at least six (6) consecutive months immediately preceding the filing of this petition

106 N.C. App. at 578-79, 419 S.E.2d at 160.

This Court held the petitioners’ “bare recitation” in paragraphs A and B of the alleged statutory grounds for termination did not comply with the pleading requirement in N.C. Gen. Stat. § 7A–289.25(6) (predecessor to N.C. Gen. Stat. § 7B-1104(6)) that the petition must state “facts which are sufficient to warrant a determination that grounds exist to warrant termination.” *Id.* However, since the petition in *Quevedo* incorporated an attached custody award, this Court determined the custody award “state[d] sufficient facts to warrant such a determination.” *Id.*

B. *In re Humphrey*

In *In re Humphrey*, this Court held the petitioner's factual allegations were sufficient to put the respondent on notice regarding the issues in the petition where the petition alleged "that respondent had not visited the child in the past five years and that respondent had contributed less than \$25.00 to the child's support since 1992." *In re Humphrey*, 156 N.C. App. 533, 539, 577 S.E.2d 421, 426 (2003). These allegations assert specific facts and more than the mere recitation of the alleged statutory grounds for termination and provide more notice than the allegations provide Respondent-father in the present case.

C. *In re A.H.*

Petitioners rely on our Court's decision in *In re A.H.*, 183 N.C. App. 609, 644 S.E.2d 635 (2007). Petitioners' reliance on *In re A.H.* is misplaced. In *A.H.*, the Department of Social Services ("DSS") had been involved with the respondent and her child for over three years before DSS filed its petition to terminate the respondent's parental rights. *Id.* at 611-612, 644 S.E.2d 635. The respondent had a severe drug problem and had been in and out of drug treatment programs and jail. *Id.* The petition in *A.H.* alleged as grounds for termination,

[t]he mother is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101(15) and there is a reasonable probability that such incapability will continue in the foreseeable future as a result of substance abuse, mental retardation and mental illness and the mother has lacked an appropriate alternative child care arrangement.



*Id.* at 615, 644 S.E.2d at 638-39.

In *A.H.*, the respondent challenged the trial court's termination of her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6). She argued the petition failed to provide her "notice of *this ground* being at issue in the proceeding." *Id.* at 614, 644 S.E.2d at 638 (emphasis supplied).

Citing our decision in *Humphrey*, we rejected the respondent's claim, as follows:

a petition will not be held inadequate simply because it fails to allege the precise statutory provision ultimately found by the trial court. Rather, the adequacy of the petition must be measured according to N.C. Gen. Stat. § 7B-1104(6) (2005), which requires that the petition state "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist."

*Id.* (quoting *Humphrey*, 156 N.C. App. at 539, 577 S.E.2d at 426). Because the petition's "language directly parallel[ed] that of N.C. Gen. Stat. § 7B-1111(a)(6)" without explicitly referencing the subsection, we held that it was "sufficient to put a respondent on notice regarding the acts, omissions, or conditions' that a trial court must find prior to terminating parental rights under § 7B-1111(a)(6)." *Id.* at 615, 644 S.E.2d at 639 (quoting *Humphrey*, 156 N.C. App. at 539, 577 S.E.2d at 426).

Here, Petitioner only quoted the statute and alleged no facts to put Respondent-father on notice of facts, which if proven to be true, would be sufficient

to support a determination that Respondent-father's conduct warranted termination of his parental rights. Furthermore, the record shows Petitioners attached C.H.M.'s birth certificate and signed relinquishment forms, which contain erroneous statements that another man, not Respondent-father, was asserted to be the father of C.H.M.

In the present case, Respondent-father lived in a different state from the mother and found out he was the father of C.H.M. months after the birth of the child. Petitioners' bare allegation offers no insight into when or to whom Respondent-father allegedly failed to pay a reasonable portion of C.H.M.'s care, abandoned her or any statements to alert Respondent-father how to respond to the allegations against him.

The petition fails to provide the required minimum notice to Respondent-father of the "acts, omissions or conditions" alleged to support termination under N.C. Gen. Stat. §§ 7B-1111(a)(3) or (7). We hold the trial court correctly granted Respondent-father's motion to dismiss under Rule 12(b)(6).

#### V. Amendment

Petitioners also argue the trial court abused its discretion by failing to rule on their motion to amend their petition on the ground that the motion was moot. Petitioners moved to amend their petition pursuant to N.C. Gen. Stat. § 1A-1, Rule 15(b). In its order dismissing the petition, the trial court listed mootness as an explanation of its refusal to rule on Petitioner's motion to amend their petition.

This Court has held that Rule 15(b) does not apply to termination of parental rights proceedings under Article 11 of the Juvenile Code. *In re B.L.H. & Z.L.H.*, 190 N.C. App. 142, 146, 660 S.E.2d 255, 257, *aff'd per curiam*, 362 N.C. 674, 669 S.E.2d 320 (2008). Amendments are authorized only for petitions filed in abuse, neglect, or dependency proceedings under Article 10 of the Code, pursuant to N.C. Gen. Stat. § 7B-800 (2013). *Id.*

Based on this Court's ruling in *B.L.H.*, there is no right to amend a termination petition to conform to the evidence at hearing under N.C. Gen. Stat. § 1A-1, Rule 15(b). This Court has also held as a matter of law it is error for a trial court to allow amendments to petitions to terminate parental rights. *In re G.B.R & S.D.R.*, 220 N.C. App. 309, 313, 725 S.E.2d 387, 390 (2012). As Petitioners' petition was not filed under Article 10, the trial court had no authority to allow an amendment of their petition. *Id.*; *In re B.L.H.* at 146, 660 S.E.2d at 257. The trial court's conclusion of mootness was unnecessary. Under our precedents, the court properly denied the proffered amendment.

#### VI. Conclusion

The trial court properly found the petition failed to plead any factual basis on either ground to satisfy the minimum notice requirements of N.C. Gen. Stat. § 7B-1104(6). The trial court properly refused to allow amendment of the petition to

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terminate Respondent-father's parental rights. The trial court's dismissal of the petition to terminate Respondent-father's parental rights is affirmed.

AFFIRMED.

Chief Judge McGEE and Judge STEPHENS concur.

Report per Rule 30(e).