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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-961

Filed: 5 January 2016

Surry County, Nos. 12 JT 103-05

IN THE MATTER OF: R.C.O., J.R.H., JR., & N.C.H.

Appeal by Respondent-parents from orders entered 28 May 2015 by Judge William F. Southern, III, in Surry County District Court. Heard in the Court of Appeals 16 December 2015.

Susan Curtis Campbell for Petitioner Surry County Department of Social Services.

Poyner Spruill, LLP, by Caroline P. Mackie, for Guardian ad litem.

Sydney Batch for Respondent-mother.

Richard Croutharmel for Respondent-father.

STEPHENS, Judge.

This appeal presents two questions for our review: Whether the juvenile court had subject matter jurisdiction over the case and whether the juvenile court erred in determining that there existed at least one statutory ground for terminating Respondent-mother's parental rights.¹ Because we conclude that the juvenile court

¹ Respondent-father's appeal challenges only the juvenile court's jurisdiction.

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had subject matter jurisdiction and did not err in finding at least one ground for termination of Respondent-Mother's parental rights, we affirm the orders terminating Respondent-parents' parental rights.

Factual and Procedural History

Respondent-mother became pregnant with her first child at age 15 years. Due to her homelessness at the time she gave birth, in addition to other difficult circumstances of her childhood, custody of Respondent-mother's first child was granted to her father in June 2007. A month later, Respondent-mother became pregnant with "Ryan,"² whose father is unknown. At the time of Ryan's birth in March 2008, Respondent-mother was living with her mother, and she continued to do so until May 2009 when she began residing with Respondent-father, the father of "Nina" (born in December 2010) and "James" (born in November 2011). In early 2012, the Surry County Department of Social Services ("DSS") became involved with Ryan, James, and Nina (collectively, "the children") as a result of, *inter alia*, Respondent-parents' domestic violence and substance abuse. On the night of 10 December 2012, Respondent-mother was hospitalized after overdosing while using intravenous methamphetamine. At the hospital, Respondent-mother tested positive for both amphetamines and cannabinoids. Respondent-father told DSS social workers that both he and Respondent-mother had been using methamphetamine intravenously

² The parties stipulated to pseudonyms for the children in order to protect their identities. N.C.R. App. 3.1(b).

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that evening while caring for Ryan, James, and Nina. As discussed in detail below, in the early morning hours of 11 December 2012, DSS obtained nonsecure custody of Ryan, James, and Nina.

Also on 11 December 2012, DSS filed juvenile petitions alleging that Ryan, James, and Nina were neglected juveniles. On 10 January 2013, the children were adjudicated neglected, and, at a dispositional hearing on 17 January 2013, the juvenile court placed the children in DSS custody and ordered Respondent-parents to comply with their respective DSS case plans. The court's adjudication and dispositional decisions were memorialized in a written order entered 22 February 2013. At a permanency planning hearing held on 7 November 2013, the juvenile court changed the children's permanent plan to adoption with a concurrent plan of reunification. At a September 2014 permanency planning hearing, the court ordered DSS to cease reunification efforts and initiate termination of parental rights proceedings.

On 6 November 2014, DSS filed motions to terminate Respondent-mother's parental rights to all three children and Respondent-father's parental rights to James and Nina. The matter was heard on 25 March and 25 April 2015 in Surry County District Court, the Honorable William F. Southern, III, Judge presiding. By orders entered 28 May 2015, the court terminated Respondent-mother's parental rights to

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Ryan, James, and Nina, and Respondent-father's parental rights to James and Nina. Both Respondent-parents gave notice of appeal on 16 June 2015.

Discussion

On appeal, both Respondent-parents argue that the juvenile court lacked subject matter jurisdiction over the case. In addition, Respondent-mother argues that the juvenile court erred in determining that grounds existed to terminate her parental rights to the children. We affirm.

I. Issue raised by both Respondent-parents on appeal

We are not persuaded by Respondent-parents' joint argument that the juvenile court lacked subject matter jurisdiction to terminate their parental rights because the initial petitions alleging the children were neglected did not meet the requirements of section 7B-403(a) of our Juvenile Code.

"The question of subject matter jurisdiction may be raised at any time," even for the first time on appeal. *Lemmerman v. A.T. Williams Oil Co.*, 318 N.C. 577, 580, 350 S.E.2d 83, 85 (citation omitted), *rehearing denied*, 318 N.C. 704, 351 S.E.2d 736 (1986). "Whether a . . . court has subject matter jurisdiction is a question of law, reviewed *de novo* on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010) (citation and hyphen omitted; italics added).

As our Supreme Court has explained:

Our General Assembly[,] within constitutional limitations, can fix and circumscribe the jurisdiction of the courts of

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this State. Where jurisdiction is statutory and the Legislature requires the [c]ourt to exercise its jurisdiction in a certain manner, to follow a certain procedure, or otherwise subjects the [c]ourt to certain limitations, an act of the [c]ourt beyond these limits is in excess of its jurisdiction. Thus, for certain causes of action created by statute, the requirement that pleadings be signed and verified is not a matter of form, but substance, and a defect therein is jurisdictional. In such cases, the filing is not complete or operative until certified.

In re T.R.P., 360 N.C. 588, 590-91, 636 S.E.2d 787, 790 (2006) (citations and internal quotation marks omitted). Specifically, “verification of the petition in an abuse, neglect, or dependency action as required by [section] 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.” *Id.* at 591, 636 S.E.2d at 791. Section 7B-403 requires that a petition regarding an abused, neglected, or dependent juvenile “shall be drawn by the [DSS] 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) (2013). Where such a petition is not properly verified, a juvenile court lacks subject matter jurisdiction, not only over any action alleging abuse, neglect, or dependency, but also over any termination of parental rights proceedings that may follow. *See In re T.R.P.*, 360 N.C. at 593, 636 S.E.2d at 792 (“A . . . 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.”).

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Respondent-parents contend that the initial petitions in this matter were not properly verified in that, although they were verified by “Chris Lane,” it “is not apparent who Chris Lane is because his signature is illegible and there is no indication of his office.” In support of this position, Respondent-parents cite this Court’s decision in *In re N.T.*, __ N.C. App. __, 769 S.E.2d 658, *disc. review allowed*, __ N.C. __, 775 S.E.2d 832 (2015). In that case, the verification section of the initial petition alleging that a juvenile was neglected was properly signed by an authorized representative of the director of the local DSS agency. *Id.* at __, 769 S.E.2d at 661. “[H]owever, the signature of the person before whom the petition was verified [wa]s illegible and there [wa]s no title given for the person before whom the petition was verified.” *Id.* Because “[n]othing in the record before this Court establishe[d] that the person before whom the petition was verified was authorized to acknowledge the verification[.]” we held that the initial petition did not comply with the requirements of section 7B-403(a) and, accordingly, the district “court never obtained jurisdiction over the subject matter of the juvenile case[.]” *Id.* In turn, because the juvenile court’s “underlying orders [were thus] void *ab initio*, [the local DSS agency] lacked standing to file the motion to terminate parental rights.” *Id.* (citation omitted). For this reason, this Court vacated the order terminating the appellant’s parental rights. *Id.*

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This matter is distinguishable from *In re N.T.* in that the record here includes documents showing that the underlying neglect petitions were verified by Chris Lane, a magistrate. The Juvenile Code provides that, “[w]hen the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions . . . alleging a juvenile to be abused, neglected, or dependent” N.C. Gen. Stat. § 7B-404(a)(1) (2013). However, as Respondent-parents note, “[t]he authority of the magistrate under this section is limited to emergency situations when a petition is required in order to obtain a nonsecure custody order or an order under [section] 7B-303.” N.C. Gen. Stat. § 7B-404(b). Thus, under the plain language of the statute, for a magistrate to be authorized to verify a juvenile petition for neglect, three conditions must be met: (1) the clerk’s office must be closed, (2) the chief district court judge must have authorized the magistrate to act, and (3) the magistrate must be acting in an emergency situation. *See* N.C. Gen. Stat. § 7B-404.³

The nonsecure custody orders included in the record on appeal here indicate that, on 11 December 2012 at 2:55 a.m., Magistrate Chris Lane verified those orders after receiving telephonic approval to do so from the Honorable Charles Neaves. We

³ This Court in *In re N.T.* referenced these requirements in a footnote explaining the rejection of the petitioner’s motion to amend the record on appeal to include an affidavit from a magistrate averring that he had verified the petition because “neither the motion to amend nor the record on appeal indicates that the Chief District Court Judge of Wake County authorized a magistrate to verify petitions in emergency situations as required by North Carolina General Statutes, section 7B-404—a necessary acknowledgement for receiving verification of an emergency petition” *In re N.T.*, __ N.C. App. at __ n.2, 769 S.E.2d at 661 n.2.

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take judicial notice of the fact that the office of the clerk of district court in Surry County is closed at 2:55 a.m. and that Judge Charles Neaves was the Chief District Court Judge in Surry County on the date the nonsecure custody orders were issued. Thus, the first and second requirements of section 7B-404 are satisfied. In addition, the documents attached to the petitions state that the children were taken into nonsecure custody because Respondent-mother had overdosed and been hospitalized and that “Respondent-father openly admitted that he and Respondent Mother used methamphetamine intravenously while the children were in their care.” We conclude that these circumstances sufficiently satisfy the third requirement under the statute, to wit, that Magistrate Lane was acting in an emergency situation. *See* N.C. Gen. Stat. § 7B-404(b). In sum, the record on appeal establishes that the initial petitions in this case were properly verified and, accordingly, the juvenile court was vested with subject matter jurisdiction in this matter.⁴ Respondent-parents’ argument is overruled.

II. Respondent-mother’s additional issues on appeal

⁴ Although not raised as an issue by Respondent-parents, we also observe that the file stamps on the petitions and nonsecure custody orders further indicate that they were filed at 10:05 a.m. on 11 December 2012, thus complying with the statutory mandate that “[a]ny petition issued under this section shall be delivered to the clerk’s office for processing as soon as that office is open for business.” N.C. Gen. Stat. § 7B-404(b).

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Respondent-mother also argues that the juvenile court erred in finding and concluding grounds existed to support termination of her parental rights. We disagree.

The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the [juvenile] court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (citations and internal quotation marks omitted), *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004).

Section 7B-1111(a) enumerates eleven individual grounds that can support termination of parental rights, and a court's finding of any one ground is sufficient to terminate parental rights. *In re J.A.A.*, 175 N.C. App. 66, 74, 623 S.E.2d 45, 50 (2005) (citation omitted). Here, the juvenile court determined that two bases existed to support termination of Respondent-mother's parental rights:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of [section] 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the

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removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a) (2013).

Regarding the second ground for termination, the children were removed from Respondent-mother's care on 11 December 2012 due to issues of domestic violence and substance abuse. The juvenile court found the following facts⁵ regarding Respondent-mother's attempts to address her domestic violence and substance abuse issues:

17. Respondent[-m]other receives Social Security Disability in the amount of \$733.00 per month.

18. Respondent[-m]other receives Medicaid through her SSI, with covers her cost for all substance abuse, mental health, and domestic violence counseling services as required by her case plan[] and as ordered by the court.

.....

29. Respondent[-m]other has not followed through on the recommended treatment for substance abuse, mental health, or domestic violence.

30. Easter Seals UPC terminated Respondent[-m]other for mental health services on September 13, 2013, as she failed to keep several scheduled appointments.

31. Respondent[-m]other last went to Daymark Recovery Services, for substance abuse treatment, on

⁵ These findings of fact are taken from the order terminating Respondent-parents' parental rights to James and Nina. The order terminating Respondent-mother's parental rights to Ryan includes identical findings of fact, albeit differently numbered.

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December 17, 2013, and her case with Daymark Recovery Services has been closed since September 4, 2014.

32. Respondent[-m]other did not attend the Decisions Group as she was instructed to do by Daymark Recovery Services.

33. Respondent[-m]other and Respondent[-f]ather have a documented history of domestic violence.

34. Respondent[-m]other and Respondent[-f]ather have had at least three physical altercations during the pendency of this case.

35. In June 2013, Respondent[-p]arents were involved in a physical altercation, while staying at the Shepherd's House, causing them to lose their housing there.

36. In June 2013, [Respondent-]parents engaged in domestic violence while visiting with the minor children at DSS, which led to Respondent[-f]ather being banned from the premises.

....

38. As recently as April 28, 2014, law enforcement was called in for a domestic disturbance involving Respondent[-m]other and Respondent[-f]ather, at an address located in Pilot Mountain, NC.

39. Respondent[-m]other attended YVEDDI Domestic Violence Counseling and Sexual Assault Program five times, since October 16, 2013,⁶ before the minor children came into care, and the last time being on September 29, 2014. She did not complete the Program.

40. Respondent[-m]other was given a referral for an assessment and treatment for domestic violence through

⁶ This date appears to be a clerical error. As discussed *supra*, nonsecure custody orders for the children were entered on 11 December 2012.

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Don Lin Counseling, which Respondent[-m]other would receive at no charge.

41. Respondent[-m]other had an assessment at Don Lin Counseling, on May 6, 2014, but she has not followed through with the Journey Beyond Abuse Support Group with the Surry Domestic Violence and Sexual Assault Program, as recommended.

42. DSS has documented numerous and extensive efforts to drug screen Respondent[-m]other.

43. Throughout the life of the case, Respondent[-m]other has had some positive and some negative screens, and there were many attempts for which Respondent[-m]other did not make herself available.

44. Drug screen attempts were made more burdensome due to Respondent[-m]other at times reporting residential addresses to DSS, at which she did not reside.

45. As recently as December 2014, Respondent[-m]other tested positive for cocaine, and she refused a drug screen in February 2015.

46. Respondent[-m]other had two negative random screens in January 2015, and one negative screen on March 16, 2015.

47. DSS unsuccessfully attempted to screen Respondent[-m]other four times in February[] 2015.

....

50. In December 2014, DSS, in an effort to comply with the [c]ourt's order regarding drug screens and visitations for Respondent[-m]other, the social worker attempted to contact Respondent[-m]other numerous times to obtain a random drug screen.

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51. During December 2014, Respondent[-m]other, on several occasions, agreed to meet the DSS transportation aid to be taken for a drug screen, but then failed to appear at the appointed place and time. On at least one occasion, Respondent[-m]other told the social worker that she had overslept.

52. On another attempt in late December of 2014, Respondent[-m]other, after several attempts on the part of the social worker to contact Respondent[-m]other on her cell phone[] for a drug screen, called the social worker and reported that she was “having a girls’ day out in Winston-Salem, and that all of this talk was bringing her down.”

None of these findings of fact are challenged by Respondent-mother on appeal, and accordingly, we treat them as conclusive. They can be fairly summed up as showing that, between the children’s removal in December 2012 and the termination hearings in March and April 2015, Respondent-mother: (1) failed to complete either of two domestic violence programs recommended as part of her case plan and (2) continued to be involved in documented domestic violence incidents, specifically in June 2013 and April 2014. In addition, regarding her substance abuse issues, Respondent-mother (1) did not comply with substance abuse programs as directed by her case plan and (2) in addition to avoiding and/or missing numerous drug screenings, tested positive as recently as December 2014, three months before the first hearing on the termination of parental rights motions. These findings of fact support the ultimate finding of fact and conclusion of law that Respondent-mother failed to make reasonable progress in correcting her domestic violence and substance abuse issues.

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In reaching our holding, we specifically reject Respondent-mother's contention that the juvenile court's determination was based on "the sole reason that the parents are unable to care for the juvenile on account of their poverty." N.C. Gen. Stat. § 7B-1111(a)(2). In light of the juvenile court's unchallenged findings of fact that Respondent-mother's Medicaid and SSI payments fully covered her substance abuse and domestic violence programs and treatments, we see no possibility that Respondent-mother's poverty was the "sole" reason for the juvenile court's determination. Likewise, although Respondent-mother also argues vigorously about the import of the juvenile court's findings of fact regarding her extreme housing instability, in light of the unchallenged findings of fact which support the conclusion that Respondent-mother failed to make reasonable progress in correcting her substance abuse and domestic violence issues, we see no error by the juvenile court. Because the finding of any one ground under 7B-1111(a) is sufficient to terminate parental rights, *see In re J.A.A.*, 175 N.C. App. at 74, 623 S.E.2d at 50 (citation omitted), we need not address Respondent-mother's argument that the juvenile court erred in determining that her parental rights could be terminated because the children had been adjudicated neglected and would likely be neglected again were they returned to her care. Accordingly, the termination of parental rights orders in this matter are

AFFIRMED.

IN RE: R.C.O., J.R.H., JR., N.C.H.

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Judges HUNTER, JR., and INMAN concur.

Report per Rule 30(e).