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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-218

Filed: 4 October 2016

Robeson County, No. 15 JT 63

Tammy Lowery and Megail Lowery, Petitioners,

v.

B.R. and Unknown Father of I.D.R, Respondent.

Appeal by respondent-mother from order entered 24 November 2015 by Judge John B. Carter, Jr., in Robeson County District Court. Heard in the Court of Appeals 12 September 2016.

Jennifer A. Clay for petitioner-appellees.

Appellate Defender Glen Gerding, Assistant Appellate Defender by J. Lee Gilliam, for respondent-appellant mother.

No brief filed for guardian ad litem.

McCULLOUGH, Judge.

This appeal arises from a private termination of parental rights action. Respondent-mother appeals from an order terminating her parental rights to her minor child "Isaac."[1] We affirm.

[1] A pseudonym is used to protect the identity of the minor child.

I. Background

Isaac was born in August 2011. When Isaac was four days old, respondent-mother brought him to the petitioners and voluntarily placed him in their care. Isaac had several medical issues at birth, including an enlarged kidney and damaged bladder that required hospitalization when he was six weeks old. Although respondent-mother was present when Isaac was admitted to the hospital, she did not return for the remainder of his thirteen-day stay. On 15 February 2012, respondent-mother entered into a consent judgment which gave custody of Isaac to petitioners.

On 4 March 2015, petitioners filed a petition to terminate respondent-mother's parental rights to Isaac. The petition alleged that respondent-mother had not made attempts to see or communicate with Isaac or to provide for his financial support. Respondent-mother filed an answer and moved to dismiss the petition for failure to state a claim and failure to comply with N.C. Gen. Stat. § 7B-1104 (2015). On 25 August 2015, respondent-mother executed a "Waiver of Parental Rights."

On 24 November 2015, the trial court entered an order terminating respondent-mother's parental rights to Isaac. The order concluded that "Respondent[-mother] has willfully failed to provide child support even though she was gainfully employed after the child's birth, and has been physically and financially able to do so" and "[respondent-mother] has had no contact with the Petitioners, . . . has allowed the child to remain in the Petitioners' home since he was 4 days old[, and]

. . . has not seen the child at least six months prior to the filing of this Petition." The court also concluded that termination was in Isaac's best interests. Respondent-mother filed a timely notice of appeal.

II. N.C. Gen. Stat. § 7B-1104

Respondent-mother argues that the trial court lacked subject matter jurisdiction because the petition initiating termination proceedings did not comply with the requirements of N.C. Gen. Stat. § 7B-1104. We disagree.

"[J]urisdiction is dependent upon the existence of a valid motion, complaint, petition, or other valid pleading[;] . . . in the absence of a proper petition, the trial court has no jurisdiction to enter an order for termination of parental rights." *In re McKinney*, 158 N.C. App. 441, 443-45, 581 S.E.2d 793, 795-96 (2003). N.C. Gen. Stat. § 7B-1104 requires a valid termination petition to be verified and include: (1) the juvenile's name, date and place of birth, as well as county of current residence; (2) the petitioner's name and address, and status upon which the petitioner is authorized to file such a petition; (3) the name and address of both parents; (4) the name and address of any person or agency to whom custody of the juvenile has been given, with a copy of the custody order attached to the petition; (5) facts sufficient to warrant a determination that one or more grounds exist for terminating parental rights; and (6) a statement that the petition has not been filed to circumvent the Uniform Child-Custody Jurisdiction and Enforcement Act ("UCCJEA"). N.C. Gen. Stat. § 7B-1104

(1)-(3), (5)-(7) (2015). "Only a violation of the verification requirement of N.C.G.S. § 7B-1104 has been held to be a jurisdictional defect *per se*." *In re T.M.H.*, 186 N.C. App. 451, 454, 652 S.E.2d 1, 2 (2007). The omission of the remaining requirements will not render the petition fatally defective unless the respondent can affirmatively establish that she was prejudiced by the missing information. *Id.* at 454-55, 652 S.E.2d at 2-3.

In this case, respondent-mother contends that the petition fails to establish the trial court's subject matter jurisdiction because it was improperly captioned and failed to include: (1) Isaac's name and place of birth, (2) petitioners' address, (3) a copy of the consent custody order, or (4) a UCCJEA statement. However, while respondent-mother lists these alleged statutory deficiencies, she fails to argue in her brief that any of these omissions were prejudicial. It is well established that "[e]ven if prejudice is apparent without argument, '[i]t is not the role of the appellate courts . . . to create an appeal for an appellant.' " *In re As.L.G. & Au.R.G.*, 173 N.C. App. 551, 555, 619 S.E.2d 561, 564 (2005) (quoting *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (2005)). Thus, respondent-mother's failure to assert that she was prejudiced by any alleged omissions in the petition necessarily defeats her argument. *Id.*

Moreover, the trial court's order terminating respondent-mother's parental rights includes the following unchallenged findings of fact:

> 9. That Petitioner . . . in this matter has had custody of the minor child since the child was 4 days old. That Respondent took child to Petitioner and Petitioner has had complete care of the child since then.
>
> 10. That the Respondent did give custody to the Petitioner. That Respondent has failed to go to Court to try and get custody changed since the child has been with the Petitioner.
>
> . . . .
>
> 23. That the Petitioners continue to live at the same address and have the same telephone number as they did when the Respondent gave them the child.

These findings demonstrate that respondent-mother voluntarily placed Isaac with petitioners and subsequently gave them custody of him. Thus, respondent-mother cannot show she was unaware Isaac resided with petitioners from the time he was four days old through the time the petition was filed. Consequently, petitioner cannot show she was prejudiced by any alleged omissions in the petition. *See In re H.L.A.D.*, 184 N.C. App. 381, 391, 646 S.E.2d 425, 433 (2007), *aff'd per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008) (finding no prejudice from the petitioners' failure to attach the pertinent custody order to the petition when, *inter alia*, "there is also no indication that respondent[-mother] was unaware of [the juvenile]'s placement at any point during the case."). We conclude the petition was sufficient to establish the trial court's jurisdiction over the termination proceeding. *See In re T.M.H.*, 186 N.C. App. at 455, 652 S.E.2d. at 3 (Petition that did not comply with N.C. Gen. Stat. § 7B-1104 still sufficient to confer jurisdiction over termination proceeding when "[the

respondent-mother] assert[ed] no prejudice arising from the alleged omissions" in the petition and "[t]he record as a whole discloses that [the respondent-mother] had access to all of the information required by the statute . . . .").

Respondent-mother also argues that the petition lacked sufficient factual allegations to support a ground for termination. Pursuant to N.C. Gen. Stat. § 7B-1104(6), a termination petition 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). Factual allegations must be sufficient to put a respondent on notice regarding the acts, omissions, or conditions at issue in the petition. *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002).

In the instant case, the petition made the following allegations as to the grounds for termination:

> a. That the Respondent has not made any attempt to see or communicate with the minor child since birth.
>
> b. The Respondent has known how to contact the Petitioners at all times.
>
> c. The Respondent has had the ability to maintain communications with the minor child.
>
> d. The Respondent has not provided any financial support for the minor child since the child's birth. The Respondent is subject to termination of her parental rights pursuant to N.C.G.S. 7A-289.32(8).

Respondent-mother contends that because the allegations refer to "N.C.G.S. 7A-289.32(8)," a statute which was repealed in 1998, *see* 1998 N.C. Sess. Laws 202 § 5,

"the petition failed to put [respondent-mother] on notice as to what would be at issue at the termination hearing." However, this citation to a repealed statute[2] is immaterial, because the actual allegations in the petition, which focus on respondent-mother's failure to make any contact with Isaac and contribute to his care, were sufficient to put respondent-mother on notice that termination was being sought on the ground of willful abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) (2015). *See In re T.J.F.*, 230 N.C. App. 531, 533, 750 S.E.2d 568, 569-70 (2013) (concluding that a petition sufficiently alleged abandonment as a ground for termination when the petition "cited respondent[-father]'s limited contact with the child despite consistently available opportunities for involvement; his failure to have any contact with the child within the six months preceding the petition; his failure to call or write the child within the same six-month period; and his failure to provide a reasonable amount for the cost and care of the child"). This argument is overruled.

III. Notice

Respondent-mother argues that the trial court erred by conducting the termination hearing when she was not provided sufficient notice and opportunity to be heard at the hearing. We disagree. Prior to the hearing, respondent-mother had executed a "Waiver of Parental Rights," which was filed with the court on

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[2] N.C. Gen. Stat. § 7A-289.32(8) "allow[ed] for termination when [t]he parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the petition." *In re Bluebird*, 105 N.C. App. 42, 49, 411 S.E.2d 820, 824 (1992) (quotation marks and citation omitted).

25 August 2015, approximately two weeks before the termination hearing. As part of that waiver, respondent-mother also specifically agreed to "waive notice of any proceeding in this action." As a result, respondent-mother cannot now assert that she received insufficient notice of the termination hearing. This argument is overruled.

IV. Grounds for Termination

Respondent-mother argues that the trial court erred by concluding grounds existed to terminate her parental rights. We disagree.

"The standard for 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." *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). "If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court." *In re A.R.H.B.*, 186 N.C. App. 211, 214, 651 S.E.2d 247, 251 (2007) (internal quotation marks and citations omitted).

Under N.C. Gen Stat. § 7B-1111(a), a trial court may terminate the parental rights to a child upon a finding that the parent "has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion." N.C. Gen. Stat. § 7B-1111(a)(7) (2015).

> Abandonment has been defined as wilful neglect and refusal to perform the natural and legal obligations of

> parental care and support. It has been held that if a parent withholds his presence, his love, his care, the opportunity to display filial affection, and wilfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child.

In re Humphrey, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003) (citation omitted).

In this case, the trial court made the following unchallenged findings of fact:

> 9. That Petitioner . . . has had custody of the minor child since the child was 4 days old. That Respondent took child to Petitioner and Petitioner has had complete care of the child since then.
>
> 10. That the Respondent did give custody to the Petitioner. That Respondent has failed to go to Court to try and get custody changed since the child has been with the Petitioner.
>
> 11. That the child had severe medical issues at birth, including an enlarged kidney and a damaged bladder. That the child was taken to UNC hospital because of kidney failure when he was 6 weeks old. The child was in hospital for 13 days. That Respondent went there, but was only there long enough to see child get admitted, and did not return to see child while under the care of physicians.
>
> . . . .
>
> 16. That Respondent has only seen the child twice since the child has been in the care of the Petitioners.
>
> 17. That the Respondent has been gainfully employed at Wal-Mart since the child has been in the custody of the Petitioners. That the Respondent has wilfully failed to pay child support for the benefit of the minor child, even though she has had the ability to pay support. She has also

> received food stamps and TANF. That the Respondent has never provided clothing and diapers.
>
> 18. That the Respondent never bought the child any birthday presents or acknowledged the child on his birthday.
>
> 19. That the Respondent has wilfully left the child in the custody of the Petitioners at least six months prior to the filing of this Petition and has made no efforts to regain custody of the child.
>
> 20. That the Respondent has signed an Affidavit indicating that she wanted to give up her rights to the minor child to the Petitioners.
>
> . . . .
>
> 22. That the Respondent has not made any attempts to check on the minor child's medical situation, has never inquired how the child recovered from surgery, and has never tried to provide any type of medical coverage for the child.
>
> 23. That the Petitioners continue to live at the same address and have the same telephone number as they did when the Respondent gave them the child.
>
> 24. That the Respondent has made no effort to visit the child even though she knew where the child was.

These findings show that respondent-mother had little to no contact with Isaac after she placed him with petitioners when Isaac was four days old and that she subsequently made no attempt to regain custody of Isaac or to communicate with or financially support him in any way. Such findings are sufficient to establish that respondent-mother willfully abandoned the child under N.C. Gen. Stat. § 7B-

1111(a)(7). *See In re B.S.O.*, 234 N.C. App. 706, 711, 760 S.E.2d 59, 64 (2014) (Findings that "during the relevant six-month period, respondent-father 'made no effort' to remain in contact with his children or their caretakers and neither provided nor offered anything toward their support[]" were sufficient to support a conclusion that the respondent-father had willfully abandoned his children.). This argument is overruled. Since we have determined that termination was appropriate on this ground, it is unnecessary to address respondent-mother's arguments regarding the remaining grounds for termination found by the trial court. *See In re M.D.*, 200 N.C. App. 35, 44, 682 S.E.2d 780, 786 (2009).

V. Best Interests

Finally, respondent-mother argues that the trial court abused its discretion by concluding that termination was in Isaac's best interests. We disagree.

"After an adjudication hat one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2015). "We review the trial court's decision to terminate parental rights for abuse of discretion." *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

In determining whether a termination of parental rights is in the juvenile's best interests, the trial court "shall consider the following criteria and make written findings regarding the following that are relevant:"

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a)(1)-(6) (2015). Although "the language of [N.C. Gen. Stat. § 7B-1110(a)] requires the trial court to 'consider' all six of the listed factors," the statute does not "require[ ] the trial court to make written findings with respect to all six factors; rather, as the plain language of the statute indicates, the court must enter written findings in its order concerning only those factors 'that are relevant.' " *In re D.H.,* 232 N.C. App. 217, 220-21, 753 S.E.2d 732, 735 (2014) (citing *In re J.L.H.*, 224 N.C. App. 52, 59, 741 S.E.2d 333, 338 (2012)). "[A] factor is 'relevant' if there is 'conflicting evidence concerning' the factor, such that it is 'placed in issue by virtue of the evidence presented before the trial court[.]' " *In re H.D.*, ___ N.C. App. ___, ___, 768 S.E.2d 860, 866 (2015) (quoting *D.H.*, 232 N.C. App. at 222 n.3, 753 S.E.2d at 735 n.3).

In this case, the trial court's order indicates that it "consider[ed] the factual evidence, the needs of the juvenile, and the available resources that would provide

the protection, treatment, rehabilitation, or supervision of the juvenile . . . ." This would necessarily include consideration of the testimony at the hearing, which indicated that petitioners were ready and willing to adopt Isaac, that Isaac had only seen respondent-mother twice, when he was a few months old, and that respondent-mother had made no attempt to see Isaac further or provide for him in any way after placing him with petitioners. The guardian *ad litem* also stated during the hearing that Isaac was bonded with petitioners, that he thought they were his parents, and that adoption by petitioners was the appropriate outcome for him.

Respondent-mother contends that the trial court's order lacks all of the findings that are required by N.C. Gen. Stat. § 7B-1110(a). However, respondent-mother does not identify any statutory factor for which there was "conflicting evidence concerning the factor, such that it is placed in issue by virtue of the evidence presented before the trial court[.]" *Id.* (quotation marks and citation omitted). Thus, respondent-mother has failed to show that the trial court failed to make findings regarding a relevant factor. The trial court's order demonstrates that it considered the factors listed in N.C. Gen. Stat. § 7B-1110(a), as required by that statute, and we discern no abuse of discretion in the court's conclusion that termination was in Isaac's best interests. This argument is overruled.

VI. Conclusion

The termination petition included sufficient allegations to confer jurisdiction on the trial court because the omission of any information required by N.C. Gen. Stat. § 7B-1104 was not prejudicial to respondent-mother. Moreover, the allegations in the petition placed respondent-mother on notice that her parental rights were subject to termination on the ground of willful abandonment. Respondent-mother waived notice of the termination proceeding by executing her "Waiver of Parental Rights." The trial court's findings supported its conclusion that respondent-mother had willfully abandoned Isaac. Finally, the court did not abuse its discretion in concluding termination was in Isaac's best interests. The trial court's order is affirmed.

AFFIRMED.

Judge DILLON concurs.

Judge ENOCHS dissents in a separate opinion.

Report per Rule 30(e).

ENOCHS, Judge, dissenting.

For the reasons set forth below, I cannot agree with the majority that the trial court possessed jurisdiction over petitioners' termination of parental rights petition in the present case. Therefore, I respectfully dissent.

Respondent argues that the trial court lacked subject matter jurisdiction over petitioners' termination of parental rights petition because it failed to comply with the statutory requirements of N.C. Gen. Stat. § 7B-1104. Specifically, respondent contends that because petitioners' petition failed to include (1) Isaac's name and place of birth; (2) petitioners' address; (3) a copy of the consent custody judgement; and (4) a UCCJEA compliance statement, we must vacate the trial court's order.

It is well established that "jurisdiction is dependent upon the existence of a valid motion, complaint, petition, or other valid pleading[;] . . . in the absence of a proper petition, the trial court has no jurisdiction to enter an order for termination of parental rights." *In re McKinney*, 158 N.C. App. 441, 443-45, 581 S.E.2d 793, 795-96 (2003). " '[A] question of jurisdiction . . . may be addressed by this Court at any time, *sua sponte,* regardless of whether [parties] properly preserved it for appellate review.' " *In re C.M.H., B.N.H., S.W.A.*, 187 N.C. App. 807, 808, 653 S.E.2d 929, 930 (2007) (quoting *Guthrie v. Conroy*, 152 N.C. App. 15, 17, 567 S.E.2d 403, 406 (2002)).

"A petition or motion to terminate parental rights is governed by North Carolina General Statute § 7B-1104[.]" *Id.* N.C. Gen. Stat. § 7B-1104 sets forth what

must be included in a termination of parental rights petition in order for it to confer jurisdiction upon the trial court and provides, in pertinent part, as follows:

> The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile", who shall be a party to the action, and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:
>
> (1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.
>
> (2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by G.S. 7B-1103 to file a petition or motion.
>
> (3) . . . The name and address of the parents of the juvenile. . . .
>
> (4) The name and address of any person who has been judicially appointed as guardian of the person of the juvenile.
>
> (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.
>
> (6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

> (7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act.

In the present case, there is no copy of the "Consent Judgment" referenced in the termination of parental rights petition included anywhere in the record. Nor was a copy introduced at the 9 September 2015 hearing on the petition. Indeed, after a thorough and in-depth examination of the entire record and transcript it is readily apparent that there is no indication that this document was ever presented to or reviewed by the trial court at all.

While this Court has stated that "absent a showing of prejudice, failure to comply with N.C. Gen. Stat. § 7B-1104(5) does not deprive the trial court of subject matter jurisdiction[,]" *In re T.M.*, 182 N.C. App. 566, 571, 643 S.E.2d 471, 475, *aff'd per curiam*, 361 N.C. 683, 651 S.E.2d 884 (2007), we have also consistently maintained that where "the omission of [a] custody order from [a] petition is *never remedied* by amendment of the petition or later production of the order, the trial court never obtain[s] subject matter jurisdiction." *In re T.B., J.B., C.B.*, 177 N.C. App. 790, 793, 629 S.E.2d 895, 898 (2006).

Indeed, in *In re T.B.*, the petitioner — the Vance County Department of Social Services — failed to attach a copy of an order awarding legal custody of the respondents' minor children to the petitioner to its termination of parental rights

petition. *Id.* at 790-91, 629 S.E.2d at 896. It then failed to remedy this omission at any subsequent stage in the proceedings. *Id.* at 793, 629 S.E.2d at 898. The trial court nevertheless terminated the respondents' parental rights to their minor children and the respondents subsequently appealed. *Id.* at 790, 629 S.E.2d at 896.

On appeal this Court vacated the trial court's TPR order stating the following:

> In the instant case, because the petition was not accompanied by a copy of the custody order then in effect, we conclude that the petition failed to confer subject matter jurisdiction on the trial court. This omission *need not have been fatal* if petitioner had simply amended the petition by attaching the proper custody order or otherwise ensured the custody order was made a part of the record before the trial court. Thus, it was the failure by DSS *either* to attach the custody order to the petition *or* to remedy this omission that ultimately deprived the court of subject matter jurisdiction.
>
> A universal principle as old as the law is that the proceedings of a court without jurisdiction of the subject matter are a nullity. We conclude that, because the omission of the custody order from the petition was *never remedied* by amendment of the petition or later production of the order, the trial court never obtained subject matter jurisdiction. Accordingly, the orders for termination of parental rights are vacated without prejudice to petitioner's right to bring proper petitions before the Court.

Id. at 793, 629 S.E.2d at 898 (internal citation and quotation marks omitted); *see In re N.G.H.*, 237 N.C. App. 236, 238, 765 S.E.2d 550, 552 (2014) ("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." (emphasis added)).

The holdings of *In re T.B.* and *In re N.G.H* are clearly stated and unambiguous: Where "the omission of [a] custody order from [a] petition is *never remedied* by amendment of the petition or later production of the order, the trial court *never obtain[s] subject matter jurisdiction*." *In re T.B.*, 177 N.C. App. at 793, 629 S.E.2d at 898 (second emphasis added). It is fundamental that "[w]here a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." *In re Civil Penalty,* 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989).

> "While we recognize that a panel of the Court of Appeals may disagree with, or even find error in, an opinion by a prior panel and may duly note its disagreement or point out that error in its opinion, the panel is bound by that prior decision until it is overturned by a higher court."

Wells v. Cumberland Cnty. Hosp. Sys., Inc., 181 N.C. App. 590, 593, 640 S.E.2d 400, 402 (2007) (quoting *State v. Jones,* 358 N.C. 473, 487, 598 S.E.2d 125, 134 (2004)).

Here, respondent in her answer expressly brought to petitioners' attention that no copy of the "Consent Judgment" had been attached to the termination of parental rights petition or otherwise provided to her. Therefore, petitioners' subsequent failure to cure this omission by producing the "Consent Judgment" by filing it with the trial court or introducing it at the hearing after being made unequivocally aware

of their error deprived the trial court of jurisdiction over the petitioners' termination of parental rights petition.

Petitioners' citation to *In re T.M.* that failure to attach a copy of a consent judgment to a termination of parental rights petition is not prejudicial error *per se*, is distinguishable from the present case. *In re T.M.* does not conflict with — and, in any event, cannot overrule as a matter of law — the holdings of *In re T.B.* and *In re N.G.H.* that where, as here, the petitioners made no effort to cure their failure of producing a consent judgment that they omitted from their termination of parental rights petition, jurisdiction is never conferred upon the trial court in the first instance.

As a result, petitioners' failure to attach the consent judgment to their petition is fatal and renders the trial court's order void *ab initio* on jurisdictional grounds in light of the fact that nothing in the record or hearing transcript demonstrates that they ever attempted to remedy this error — of which they were made aware in respondent's answer and counterclaim and at the hearing — as mandated by *In re T.B.* and *In re N.G.H.*

In reaching a contrary result, the majority gives great weight to the fact that respondent never argued in her brief that she was prejudiced by the omissions and errors present in the termination of parental rights petition. However, in doing so, they overlook the plain language of *In re T.B.* and *In re. N.G.H.* — by which we are bound — holding unequivocally that where a petitioner fails to cure the error of

omitting a consent judgment from their termination of parental rights petition *the trial court never obtains jurisdiction ab initio*. Respondent's failure to argue prejudice in her brief is thus immaterial to the more fundamental question of whether jurisdiction was originally conferred upon the trial court in this case. In any event, it is fundamental that "this Court has not only the power, but the duty to address the trial court's subject matter jurisdiction on its own motion or *ex mero motu*[,]" *Rinna v. Steven B.*, 201 N.C. App. 532, 537, 687 S.E.2d 496, 500 (2009), and "we review *de novo* whether a trial court had jurisdiction to enter an order." *Ponder v. Ponder*, ___ N.C. App. ___, ___, 786 S.E.2d 44, 49 (2016).

Our Supreme Court has long held that

> "[a] universal principle as old as the law is that the proceedings of a court without jurisdiction of the subject matter are a nullity." Subject matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest, and in its absence a court has no power to act:
>
> > A judgment is void, when there is a want of jurisdiction by the court over the subject matter . . . .
> >
> > A void judgment is in legal effect no judgment. No rights are acquired or divested by it. It neither binds nor bars any one, and all proceedings founded upon it are worthless.

In re T.R.P., 360 N.C. 588, 590, 636 S.E.2d 787, 790 (2006) (quoting *Burgess v. Gibbs*, 262 N.C. 462, 465, 137 S.E.2d 806, 808 (1964) and *Hart v. Thomasville Motors, Inc.*,

244 N.C. 84, 90, 92 S.E.2d 673, 678 (1956)). " 'A void judgment is no judgment, and may always be treated as a nullity. A nullity is a nullity, and out of nothing nothing comes. *Ex nihilo nihil fit* is one maxim *that admits of no exceptions*.' " *Guerin v. Guerin*, 208 N.C. 457, 458-59, 181 S.E. 274, 274 (1935) (quoting *Harrell v. Welstead*, 206 N.C. 817, 819, 175 S.E. 283, 285 (1934) (emphasis added); *see also State v. Daniels*, 224 N.C. App. 608, 613, 741 S.E.2d 354, 359 (2012) (" 'Where there is no jurisdiction of the subject matter the whole proceeding is void *ab initio* and may be treated as a nullity anywhere, at any time, and for any purpose.' " (quoting *High v. Pearce*, 220 N.C. 266, 271, 17 S.E.2d 108, 112 (1941)); *see also Russ v. Hedgecock*, 161 N.C. App. 334, 337, 588 S.E.2d 69, 71 (2003).

Consequently, because the trial court never had jurisdiction in the present case, I would vacate the trial court's termination of parental rights order. However, I would do so without prejudice to petitioners' ability to file a new termination of parental rights petition as to Isaac.