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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-297

Filed: 4 October 2016

Cumberland County, Nos. 12 JT 206, 402

IN RE: N.G.F., A.L.F.

Appeal by respondent from order entered 12 January 2016 by Judge Robert J. Stiehl, III, in Cumberland County District Court. Heard in the Court of Appeals 12 September 2016.

*No brief for petitioner-appellees.*

*Richard Croutharmel for respondent-appellant father.*

*Administrative Office of the Courts, by Appellate Counsel Matthew D. Wunsche, for guardian ad litem.*

McCULLOUGH, Judge.

Respondent, the father of the juveniles N.G.F. and A.L.F., appeals from the district court's order terminating his parental rights. After careful review, we affirm.

I. Background

On 9 April 2012, Cumberland County Department of Social Services ("DSS") filed a petition alleging that N.G.F. was an abused, neglected and/or seriously neglected, and dependent juvenile. The bases for the allegations were that respondent had attempted to kill N.G.F., an infant, and had committed domestic

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violence against the juvenile's mother. DSS obtained non-secure custody of N.G.F. Thereafter, on 29 June 2012, shortly following A.L.F.'s birth, DSS filed a petition alleging that A.L.F. was a neglected and/or seriously neglected and dependent juvenile. DSS recited the incidents of domestic violence which culminated in the filing of the juvenile petition concerning N.G.F., and additionally noted that respondent had been previously convicted for felony child abuse for assaulting his ten-month old son, J.F. DSS obtained non-secure custody of A.L.F. In orders entered *nunc pro tunc* 22 January 2013, the district court adjudicated N.G.F. an abused, neglected and/or seriously neglected, and dependent juvenile, and A.L.F. a neglected and dependent juvenile. The district court granted custody of the juveniles to DSS.

J.F. died on 7 November 2011 and respondent was later incarcerated and charged with first-degree murder. On 14 May 2013, *nunc pro tunc* 21 April 2013, the district court ceased reunification efforts between respondent and the juveniles. On 16 April 2014, the court held a permanency planning review hearing. At the hearing, the court granted guardianship of the juveniles to their maternal great-aunt and great-uncle, N.M. and J.M. ("petitioners"), and granted them full physical and legal custody. The court further ordered that there would be no further review hearings, granted DSS permission to close its file, and allowed the guardian ad litem to withdraw. The court, however, retained jurisdiction.

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On 10 September 2014, petitioners filed petitions to terminate respondent's parental rights to N.G.F. and A.L.F. pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) ("neglect") and (7) ("willful abandonment"). On 31 August 2015, petitioners amended their petitions to allege an additional ground for termination, that respondent had murdered another child residing in his home and had been convicted of the offense. *See* N.C. Gen. Stat. § 7B-1111(a)(8) (2015).

On 10 September 2015, the district court held a hearing at which it determined there was

no need for continued State intervention on behalf of the juveniles through a Juvenile Court proceeding. That this Court should relinquish jurisdiction in this matter and transfer the case as a N.C. Gen. Stat. § 50 Civil Custody Action or Termination of Parental Right, pursuant to N.C. Gen. Stat. § 7B-1100, et. seq., and pursuant to N.C. Gen. Stat. § 7B-911.

The court ordered that DSS and the guardian ad litem close their case files, stating that "they are not proper or necessary parties to the Termination of Parental Rights privately filed."

On 12 January 2016, the district court terminated respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7). Respondent-father filed timely notice of appeal.

II. Discussion

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Respondent argues the district court lacked subject matter jurisdiction over the Chapter 7B termination of parental rights petitions because it relinquished jurisdiction. We are not persuaded.

“Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question.” *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987). “Subject matter jurisdiction cannot be conferred by consent or waiver, and the issue of subject matter jurisdiction may be raised for the first time on appeal.” *In re H.L.A.D.*, 184 N.C. App. 381, 385, 646 S.E.2d 425, 429 (2007), *aff’d per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008). The question of whether a trial court has subject matter jurisdiction is a question of law and is reviewed *de novo* on appeal. *In re K.U.-S.G.*, 208 N.C. App. 128, 131, 702 S.E.2d 103, 105 (2010).

Petitioners filed their initial petitions to terminate respondent’s parental rights on 10 September 2014. The district court did not purport to terminate its jurisdiction until 10 September 2015. Thus, when petitioners filed their termination petitions, the district court was still exercising jurisdiction over the underlying juvenile abuse, neglect, and dependency matter. The filing of the petitions to terminate respondent’s parental rights on 10 September 2014 created a new civil action. *In re K.L.*, 196 N.C. App. 272, 278, 674 S.E.2d 789, 793 (2009). Neither the district court nor any party sought to consolidate the termination action with the juvenile abuse, neglect, and dependency actions, and thus they remained separate.

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See N.C. Gen. Stat. § 7B-1102(c) (“When a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, the court on its own motion or motion of a party may consolidate the action pursuant to G.S. 1A-1, Rule 42.”). Respondent does not contest the validity of the petitions, and the record demonstrates both that petitioners had standing, see N.C. Gen. Stat. § 7B-1103(a)(2) (2015) (granting guardians standing to file a petition to terminate parental rights), and that North Carolina was the home state of the juveniles, see N.C. Gen. Stat. § 50A-201(a)(1) (2015). Consequently, the petitions were sufficient to invoke the subject matter jurisdiction of the district court.

To the extent the district court purported to transfer jurisdiction of the petitions to terminate respondent’s parental rights in its 10 September 2015 order, said transfer was ineffective. The district court is vested with exclusive original jurisdiction over proceedings for the termination of parental rights. N.C. Gen. Stat. §§ 7B-200(a)(4) and 1101 (2015). N.C. Gen. Stat. § 7B-1101 states that

[t]he court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion.

N.C. Gen. Stat. § 7B-1101 (2015). N.C. Gen. Stat. § 7B-101(6) defines “court” as “[t]he district court division of the General Court of Justice.” N.C. Gen. Stat. § 7B-101(6)

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(2015). Termination of a court’s jurisdiction in an abuse, neglect, and dependency matter has no effect on “[a] pending action to terminate parental rights, unless the court orders otherwise.” N.C. Gen. Stat. § 7B-201(b)(3) (2015). Thus, even assuming *arguendo* that the district court properly terminated its jurisdiction in the underlying juvenile matters, said relinquishment had no effect on the termination action. Accordingly, because we conclude the district court possessed subject matter jurisdiction over the petitions to terminate respondent’s parental rights, we affirm the district court’s order.

AFFIRMED.

Judges DILLON and ENOCHS concur.

Report per Rule 30(e).