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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-914

Filed: 3 April 2018

Craven County, No. 16 JT 80

IN THE MATTER OF: G.N.R.

Appeal by respondent-mother from order entered 9 June 2017 by Judge Thomas Foster in Craven County District Court. Heard in the Court of Appeals 8 March 2018.

No brief filed on behalf of petitioner-appellees.

Richard Croutharmel for respondent-appellant mother.

BRYANT, Judge.

Where petitioners, although legal custodians, did not meet any of the statutory requirements for standing to bring an action for termination of parental rights and where the child was in a private placement and did not reside in Craven County where the action was filed, the trial court did not have jurisdiction over the termination proceeding.

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Respondent, the mother of G.N.R. (“Grace”),¹ appeals from the trial court’s 9 June 2017 order terminating her parental rights on the grounds of willful abandonment and failure to pay a reasonable cost of care.

Respondent and Grace’s father (“father”) were married and had two children together, Z.R. (“Zane”)² and Grace. In 2003, shortly after Grace was born, respondent and father moved to Craven County, next to petitioners, into a residence owned by petitioners. Petitioners are father’s parents, Grace’s paternal grandparents.

Less than a year later, discord between the parties caused respondent and father to move to Tennessee with the children. Respondent and father did not tell petitioners where they moved, and petitioners did not have contact with respondent, father, or the children for six years.

In November 2007, respondent and father separated. Respondent remained in Tennessee, and father moved to Virginia. In June 2010, respondent and father agreed to allow the children to stay with petitioners for the summer. Petitioner-grandfather and his daughter, the children’s paternal aunt, met respondent and the children at a rest stop along the Tennessee-North Carolina border and returned home with the children.

¹ Pseudonyms are used to protect the juveniles’ privacy and for ease of reading. *See* N.C. R. App. P. 3.1(b) (2018).

² Petitioners did not move to terminate respondent’s parental rights to Zane, and parental rights to him are not at issue in this case.

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Shortly after arriving in North Carolina, the children moved in with their parental aunt and her husband—Mr. and Mrs. L—who lived in Beaufort County. However, due to issues between Zane and Mrs. L's teenage son, Zane returned to Craven County and moved in with petitioners. Grace stayed with Mr. and Mrs. L. However, after further discussion, respondent agreed to let both children spend the 2010–11 school year with petitioners.

In order to enroll the children in Craven County schools, petitioners filed an action for temporary custody on 13 August 2010 in Craven County District Court and obtained a Temporary Ex-Parte Custody Order.

Respondent received service of the complaint for custody and summons on 20 August 2010. Respondent did not answer the complaint and did not attend the hearings set for 24 August 2010 or 21 September 2010. In an order entered 21 September 2010, the trial court continued temporary legal custody of the children with petitioners. No further legal action regarding custody was ever pursued. Although petitioners were awarded custody of Grace, they placed her with Mr. and Mrs. L, and she continued to reside with Mr. and Mrs. L through the time of the termination hearing.

A few months after leaving the children with petitioners, respondent lost her job and moved out of her home. Since September 2010, respondent has changed her residence multiple times, moving between Tennessee and Iowa seeking employment

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and educational advancement. Respondent struggled financially but was able to earn her General Equivalency Degree and later an Associate's Degree in business management. Respondent eventually moved back to Tennessee sometime prior to 2015 and was residing there at the time of the filing of the petition to terminate parental rights.

On 22 July 2016, petitioners filed a petition in Craven County to terminate respondent's parental rights to Grace on the grounds of willful abandonment and failure to pay a reasonable cost of care. Petitioners alleged that respondent had not had any contact with Grace for over five years and never contributed any money or any other item towards the care, support, and education of Grace. Respondent filed a response to the petition on 19 August 2016 denying the allegations and alleging that petitioners lack standing to terminate her parental rights. After a hearing on 1 and 2 May 2017, the trial court entered an order on 9 June 2017 terminating respondent's parental rights on both grounds. Respondent timely appealed.

Respondent argues that the trial court lacked subject matter jurisdiction over the termination of parental rights proceeding because (1) petitioners lacked standing to file the petition, and (2) the petition was filed in Craven County while Grace resided in Beaufort County, and Grace was not in the custody of the Craven County Department of Social Services or a Craven County child-placing agency at the time

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the petition to terminate parental rights was filed. Therefore, respondent contends that the order terminating her parental rights should be vacated. We agree.

“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) (citation omitted). “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) (citation omitted), *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 B.L.H.*, 239 N.C. App. 52, 58, 767 S.E.2d 905, 909 (2015) (citation omitted).

“In North Carolina, standing is jurisdictional in nature and consequently, standing is a threshold issue that must be addressed, and found to exist, before the merits of [the] case are judicially resolved.” *In re E.T.S.*, 175 N.C. App. 32, 35, 623 S.E.2d 300, 302 (2005) (alteration in original) (citation omitted). Section 7B-1103(a) of our General Statutes provides that the following entities have standing to file a petition to terminate parental rights:

- (1) Either parent seeking termination of the right of the other parent.
- (2) Any person who has been judicially appointed as the guardian of the person of the juvenile.

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- (3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent jurisdiction.
- (4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to G.S. 48-3-701.
- (5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the petition or motion.
- (6) Any guardian ad litem appointed to represent the minor juvenile pursuant to G.S. 7B-601 who has not been relieved of this responsibility.
- (7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

N.C. Gen. Stat. § 7B-1103 (a) (1)–(7) (2017).

In this case, petitioners are not (1) the parents of Grace; (2) the legal guardians of Grace; (3) the guardian ad litem of Grace; or (4) a county department of social services, a consolidated county human services agency, or a licensed child-placing agency. Petitioners are the legal custodians of Grace but not a party named in N.C. Gen. Stat. § 7B-1103(a) as having standing to file a petition to terminate respondent's parental rights. *See In re J.A.U.*, 242 N.C. App. 603, 609, 777 S.E.2d 772, 775 (2015) (holding that the trial court did not have subject matter jurisdiction over the

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termination proceedings because the legal custodian lacked standing to file a petition).

Thus, in order to have standing to file the petition, petitioners must have filed a petition for adoption of Grace, *see* N.C. Gen. Stat. § 7B-1103(a)(7), or Grace must have resided with petitioners for a continuous period of two years or more next preceding the filing of the petition or motion, *see id.* § 7B-1103(a)(5). Here, both petitioners and Mrs. L testified that Grace has resided with Mrs. L since July 2010, shortly after the children arrived in North Carolina. The petition to terminate respondent's parental rights was filed on 22 July 2016. Therefore, petitioners were not persons "with whom [Grace] ha[d] resided for a continuous period of two years or more next preceding the filing of the petition." *Id.* Additionally, there is no indication in the record before this Court that petitioners had filed a petition for adoption of Grace. Mr. L, in fact, testified that should the petition be granted, he and Mrs. L, not petitioners, intended to pursue adoption of Grace.

As petitioners do not fall within any of the categories enumerated within N.C. Gen. Stat. § 7B-1103(a) naming persons or organizations as having standing to file a petition to terminate parental rights, we conclude the trial court did not have subject matter jurisdiction over the termination proceeding. Accordingly, we must vacate the trial court's order terminating respondent's parental rights. *J.A.U.*, 242 N.C. App. at 609, 777 S.E.2d at 775.

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As an additional matter, we note that the court also lacked jurisdiction because at the time the petition to terminate respondent's parental rights was filed in Craven County District Court, Grace did not reside in Craven County, was not found in Craven County, and she was not in the legal or actual custody of the Craven County Department of Social Services or licensed child-placing agency. *See* N.C. Gen. Stat. § 7B-1101 (2017) ("Jurisdiction"); *see also In re J.M.*, ___ N.C. App. ___, ___, 797 S.E.2d 305, 306–07 (2016) (vacating order terminating parental rights where trial court lacked jurisdiction pursuant to N.C. Gen. Stat. § 7B-1101).

Accordingly, the trial court's 9 June 2017 order is

VACATED.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).