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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-319

No. COA21-176

Filed 6 July 2021

Robeson County, Nos. 19 JA 165, 19 JA 166, 20 CVD 3170, 20 CVD 519

IN THE MATTER OF: B.A.M.A.

Appeal by Respondent-Father from Order entered 24 November 2020 by Judge Angelica C. McIntyre in Robeson County District Court. Heard in the Court of Appeals 9 June 2021.

J. Edward Yeager, Jr., for Petitioner-Appellee Robeson County Department of Social Services.

Law Offices of Anton Lebedev, by Anton M. Lebedev, for Respondent-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Respondent-Father appeals from an Order Terminating Juvenile Court Jurisdiction and Directing Entry of Civil Custody Order (Order Terminating Juvenile Court Jurisdiction) entered in Robeson County File Number 19 JA 165 (the Juvenile Action) and subsequently filed in Robeson County File Number 20 CVD 3170 (the Custody Action). As an initial matter, Respondent-Father has also purported to file Notice of Appeal in this case in two additional Robeson County District Court files: 19 JA 166 and 20 CVD 519. The Order Terminating Juvenile Court Jurisdiction—

the sole order from which Respondent-Father appeals—was not entered in either of those two files. Thus, to the extent Respondent-Father purports to bring appeals in each of those additional matters before this Court, we dismiss Respondent-Father’s appeals in 19 JA 166 and 20 CVD 519. With respect to the remainder of Respondent-Father’s appeal, the Record before us tends to reflect the following:

¶ 2 On 4 June 2019, Robeson County Department of Social Services (DSS) filed a Juvenile Petition in the Juvenile Action alleging B.A.M.A. was a Dependent Juvenile. The trial court apparently conducted adjudication and disposition hearings the following day—5 June 2019—at which B.A.M.A. was adjudicated as a Dependent Juvenile. The trial court, however, did not enter Orders on Adjudication and Disposition until 30 September 2019. In particular, the Order on Disposition awarded “legal and physical custody” of B.A.M.A. to B.A.M.A.’s Maternal Grandmother (Maternal Grandmother).¹ The trial court ordered DSS and the Guardian ad Litem be released from further responsibility and that review hearings pursuant to N.C. Gen. Stat. § 7B-906 would not be required.

¶ 3 On or about 12 November 2019, Respondent-Father filed a Petition for Review in the Juvenile Action requesting the trial court review the Adjudication and

¹ It bears mentioning the Order on Disposition reflects it was entered upon B.A.M.A. (and another juvenile) being adjudicated neglected. This is incorrect. B.A.M.A. (and the other juvenile) was adjudicated to be a dependent juvenile.

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Disposition Orders, convert the proceedings to a child custody action under Chapter 50 of the General Statutes, and award him custody of B.A.M.A. On 24 February 2020, consistent in part with Respondent-Father's request for relief, the trial court entered an Order concluding it was in the best interests of B.A.M.A. for jurisdiction over the Juvenile Action to be terminated and the matter transferred to "the regular Civil Division . . . pursuant to N.C.G.S. 7B-911[.]" On 3 March 2020, the trial court entered an Amended Order reaching the same result but also setting out the proper parties and caption for the civil action.

¶ 4

A civil child custody action was commenced in file number 20 CVD 519 naming Respondent-Father as Plaintiff and Maternal Grandmother as Defendant. Maternal Grandmother filed a Motion in the Cause in that action seeking emergency custody of B.A.M.A. after Respondent-Father allegedly removed B.A.M.A. from school without consent and failed to return B.A.M.A. to Maternal Grandmother. The trial court issued an Ex Parte Custody Order the same day granting Maternal Grandmother emergency custody. On 27 March 2020, the trial court in 20 CVD 519 conducted a return hearing on the Ex Parte Custody Order. At this hearing, Respondent-Father argued the trial court lacked jurisdiction over the civil custody proceeding because the prior order entered in the Juvenile Action was insufficient to transfer jurisdiction. The trial court agreed, and in an Order entered 8 April 2020, concluded, because the prior order in the Juvenile Action was insufficient to transfer

jurisdiction under N.C. Gen. Stat. § 7B-911, it did not have subject-matter jurisdiction over child custody and its Ex Parte Custody Order was therefore void. Consequently, the trial court transferred the matter back to the Juvenile Action and determined the 30 September 2019 Order on Disposition awarding custody to Maternal Grandmother should remain in effect pending additional proceedings in the Juvenile Action.

¶ 5 With proceedings back in the Juvenile Action, Respondent-Father now filed a “Demand for Evidentiary Hearing” along with a Motion to Vacate Prior Orders on Adjudication and Disposition. In sum, Respondent-Father sought the trial court to set aside the earlier Orders on Adjudication and Disposition, and either simply terminate its jurisdiction (and presumably simply return custody of B.A.M.A. to him without the need for further proceedings) or conduct a full evidentiary review hearing to determine custody of B.A.M.A. (again, seeking to award him custody), and, yet again, consider transferring jurisdiction pursuant to N.C. Gen. Stat. § 7B-911 to a civil custody action under Chapter 50.

¶ 6 Following a 19 October 2020 hearing at which Respondent-Father was permitted to testify, the trial court in the Juvenile Action on 24 November 2020 entered its Order Terminating Juvenile Court Jurisdiction, which is the subject of this appeal. In relevant part, the trial court found: B.A.M.A. was adjudicated dependent on 5 June 2019 and custody was awarded to Maternal Grandmother with whom custody remained to date; there was no longer a need for continued state

intervention and DSS was no longer actively involved in the case; and jurisdiction in the Juvenile Action should terminate. The trial court then decreed: jurisdiction over the Juvenile Action was terminated and the parties would be governed by a civil custody order; said custody order was to be entered in the newly initiated Custody Action (20 CVD 3170); and further established the parties to and captioning of the Custody Action. The Order Terminating Juvenile Court Jurisdiction, however, made no provision for ongoing custody of B.A.M.A. nor provided for any visitation rights of the parties. The Order Terminating Juvenile Court Jurisdiction was also filed in the Custody Action. Respondent-Father timely filed his written Notice of Appeal from the Order Terminating Juvenile Court Jurisdiction on 16 December 2020.²

Issue

¶ 7

The dispositive issue in this case is whether the trial court’s Order Terminating Juvenile Court Jurisdiction sufficiently complies with N.C. Gen. Stat. § 7B-911 to terminate jurisdiction in the Juvenile Action and transfer jurisdiction to the Custody Action where the trial court failed to make findings and conclusions that support the

² The Order Terminating Juvenile Court Jurisdiction constitutes an “order . . . which in effect determines the action and prevents a judgment from which appeal might be taken.” N.C. Gen. Stat. § 7B-1001(a)(2) (2019). Consequently, Respondent-Father has a statutory right to appeal the Order Terminating Juvenile Court Jurisdiction. *Id.* Accordingly, we dismiss his Petition for Writ of Certiorari as moot.

entry of an initial custody order in an action under Chapter 50 of the North Carolina General Statutes.³

Analysis

¶ 8 At the outset, we observe the issues underpinning this appeal arise from efforts by the trial courts in these actions to try and provide an avenue to Respondent-Father to seek custody of B.A.M.A. on the merits. Indeed, the history of this case reflects Respondent-Father has repeatedly attempted to posture this case in the way he deems the most procedurally advantageous at any given time, changing direction and seeking to transfer or undermine jurisdiction whenever he meets a roadblock to his substantive claims. The primary issues raised by Respondent-Father on appeal, however, are issues of subject-matter jurisdiction, which we acknowledge cannot be conferred by consent or waiver. *In re S.T.P.*, 202 N.C. App. 468, 471, 689 S.E.2d 223, 226 (2010).

¶ 9 Respondent-Father first argues the trial court in the Juvenile Action lacked jurisdiction to even enter the Order Terminating Juvenile Court Jurisdiction. Specifically, Respondent-Father contends the trial court's 24 February 2020 Order and, as amended by, the 3 March 2020 Amended Order entered in the Juvenile Action, while insufficient under N.C. Gen. Stat. § 7B-911 to *transfer* jurisdiction to a

³ Respondent-Father raises a number of additional issues on appeal. Given our disposition of this matter, however, we do not reach those additional issues.

civil child custody action were, nevertheless, sufficient under N.C. Gen. Stat. § 7B-201 to *terminate* jurisdiction over the Juvenile Action. Thus, Respondent-Father submits the trial court had no further authority to enter orders in the Juvenile Action. Therefore, he proposes we should vacate the trial court’s Order Terminating Juvenile Court Jurisdiction and require B.A.M.A. be placed in his custody as a result of the cessation of the Juvenile Action. We reject Respondent-Appellant’s argument on this point.

¶ 10 “Whether a trial 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 omitted). Under N.C. Gen. Stat. § 7B-200, a district court “has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent.” N.C. Gen. Stat. § 7B-200(a) (2019). “When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first.” N.C. Gen. Stat. § 7B-201(a) (2019).

When the court’s jurisdiction terminates, whether automatically or by court order, the court thereafter shall not modify or enforce any order previously entered in the case, including any juvenile court order relating to the custody, placement, or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed, unless applicable law or a valid court order in another civil action provides otherwise.

N.C. Gen. Stat. § 7B-201(b) (2019).

¶ 11 For example, this Court has concluded a trial court’s order terminated its jurisdiction over a dependency adjudication case under section 7B-201(a) when the “juvenile review order . . . placed the children in both the physical and legal custody of [the parent], ended involvement of both DSS and the Guardian ad Litem program, and included no provisions requiring ongoing supervision or court involvement[.]” *Rodriguez v. Rodriguez*, 211 N.C. App. 267, 273, 710 S.E.2d 235, 240 (2011). Likewise, in *McMillan v. McMillan*, we concluded, while the trial court’s order in a neglect proceeding was inadequate to transfer jurisdiction or initiate a separate child custody action, it did serve to terminate jurisdiction under N.C. Gen. Stat. § 7B-201(a) where it “expressly ends the involvement of both DSS and Guardian ad Litem, and expressly returns custody—including legal custody—of the child to the parents.” *McMillan v. McMillan*, 267 N.C. App. 537, 546, 833 S.E.2d 692, 698 (2019) (emphasis omitted). Central to our conclusion jurisdiction was terminated in both cases was the fact the trial court, by returning custody to the custodial parent or parents, functionally provided: “the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed[.]” N.C. Gen. Stat. § 7B-201(b) (2019).

¶ 12 In the present case, however, while the trial court did not expressly provide for custody provisions in its 24 February and 3 March 2020 Orders, it is evident the trial court had no intention of placing B.A.M.A. in his father’s custody and, instead,

appears to have contemplated custody of B.A.M.A. would remain with Maternal Grandmother pending proceedings in the separate child custody action. Consequently, the trial court did not terminate jurisdiction over the Juvenile Action under N.C. Gen. Stat. § 7B-201(b) because the custodial rights of the parties to that action did not revert to their pre-petition status. *See In re S.T.P.*, 202 N.C. App. at 472-73, 689 S.E.2d at 227 (order stating “Case closed” did not terminate jurisdiction under Section 7B-201 where “neither Mother nor Father were returned to their pre-petition legal status” and legal custody was awarded to maternal grandparents).

¶ 13 Thus, here, the trial court in the Juvenile Action was not exercising its authority under N.C. Gen. Stat. § 7B-201 to simply terminate jurisdiction, but rather was solely attempting to terminate jurisdiction and transfer the matter to a child custody proceeding under the separate authority of N.C. Gen. Stat. § 7B-911. Furthermore, as the trial court in that newly initiated custody action recognized, the Orders in the Juvenile Action were insufficient to transfer jurisdiction under Section 7B-911.⁴ Therefore, exclusive jurisdiction remained in the Juvenile Action. *See Sherrick v. Sherrick*, 209 N.C. App. 166, 171, 704 S.E.2d 314, 318 (2011) (“As the trial court’s 8 October 2008 temporary custody order did not comply with N.C. Gen. Stat. § 7B-911(c)(2), it did not terminate the juvenile court’s jurisdiction.”). Consequently,

⁴ No party contends otherwise.

the trial court retained jurisdiction in the Juvenile Action, including jurisdiction to consider Respondent-Father's "Demand for Evidentiary Hearing" and Motion to Vacate Prior Orders on Adjudication and Disposition, as well as to enter its Order Terminating Juvenile Court Jurisdiction attempting anew to transfer jurisdiction to the Custody Action pursuant to N.C. Gen. Stat. § 7B-911.

¶ 14 Respondent-Father, however, next argues the trial court's Order Terminating Juvenile Court Jurisdiction, nevertheless, still failed to comply with the statutory requirements for transferring jurisdiction to the Custody Action under N.C. Gen. Stat. § 7B-911. Defendant contends the trial court's failure to fully comply with the requirements of the statute require us to vacate the Order Terminating Juvenile Court Jurisdiction and remand this matter to the trial court for further proceedings in the Juvenile Action, including a new determination whether to transfer jurisdiction to the Custody Action or, instead, for the trial court to conduct further review proceedings under Chapter 7B of the General Statutes. On this point, we are constrained to agree with Respondent-Father.

¶ 15 In relevant part, Section 7B-911(c) provides:

When entering an order under this section, the court shall satisfy the following:

(1) Make findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order

entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7.

(2) Make the following findings:

. . . .

b. At least six months have passed since the court made a determination that the juvenile’s placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed.

N.C. Gen. Stat. § 7B-911(c) (2019). Here, specific to this case, the Order Terminating Juvenile Court Jurisdiction did not meet these statutory requirements: it did not “[m]ake findings and conclusions that support entry of a custody order in an action under Chapter 50”; and made no determination whether “[a]t least six months have passed since the court made a determination that the juvenile’s placement with the person to whom the court is awarding custody is the permanent plan for the juvenile” or, because it failed to make an award of custody, whether the court intended to award custody “to a parent or person with whom the child was living when the juvenile petition was filed.” *Id.*

¶ 16 In *Sherrick*, this Court held a trial court had no jurisdiction to enter child custody orders in a Chapter 50 child custody action where jurisdiction in a neglect proceeding had not been properly terminated and the matter had not been properly transferred to the civil child custody action. 209 N.C. App. at 170-72, 704 S.E.2d at

318-19. In so doing, our Court recognized: “N.C. Gen. Stat. § 7B-911 specifically provides the procedure for transferring a Chapter 7B juvenile proceeding to a Chapter 50 civil action.” *Id.* at 169, 704 S.E.2d at 317.

N.C. Gen. Stat. § 7B-911 sets forth a detailed procedure for transfer of such cases which will ensure that the juvenile is protected and that the juvenile’s custodial situation is stable throughout this transition. For this reason, N.C. Gen. Stat. § 7B-911(b) requires that the juvenile court enter a permanent order prior to termination of its jurisdiction.

Id. Consequently, our Court held, where the trial court did not comply with the statutory requirements, “the juvenile court never terminated its jurisdiction and the case was therefore never properly transferred from juvenile court to civil court; thus the trial court, acting under its Chapter 50 jurisdiction, had no subject matter jurisdiction to enter these orders.” *Id.* at 172, 704 S.E.2d at 319. We, thus, vacated the orders entered in the child custody action and remanded the matter to the trial court noting “upon remand, this case remains within the jurisdiction of the juvenile court unless and until the juvenile court terminates its jurisdiction in compliance with N.C. Gen. Stat. § 7B-911 and enters a civil custody order in compliance with N.C. Gen. Stat. § 50-13.1, *et seq.*” *Id.*

¶ 17 We reach a similar result here. The trial court’s failure to comply with the requirements of N.C. Gen. Stat. § 7B-911(c)(1) and (c)(2)(b) renders the Order Terminating Juvenile Court Jurisdiction insufficient to terminate jurisdiction in the

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Juvenile Action and transfer jurisdiction to the Custody Action. Thus, this case remains within the jurisdiction of the trial court in the Juvenile Action. Therefore, we vacate the Order Terminating Juvenile Court Jurisdiction and remand this matter to the trial court in the Juvenile Action to conduct proceedings under Chapter 7B of the North Carolina General Statutes. Consequently, upon remand, this case remains within the jurisdiction of the trial court in the Juvenile Action. Jurisdiction will continue in the Juvenile Action unless and until the juvenile court terminates its jurisdiction in compliance with N.C. Gen. Stat. § 7B-911 and enters a civil custody order in compliance with N.C. Gen. Stat. § 50-13.1, *et seq.*, or, on the other hand, if the trial court on remand declines to do so, following ongoing proceedings as required by Chapter 7B of the General Statutes, jurisdiction is otherwise terminated consistent with N.C. Gen. Stat. § 7B-200.

Conclusion

¶ 18 Accordingly, for the foregoing reasons, the Order Terminating Juvenile Court Jurisdiction is vacated, and the matter remanded to the trial court to exercise jurisdiction in the Juvenile Action. Respondent-Father's appeals in Robeson County File Numbers 19 JA 166 and 20 CVD 519 are dismissed.

19 JA 166 AND 20 CVD 519: APPEAL DISMISSED.

19 JA 165 AND 20 CVD 3170: VACATED AND REMANDED.

Judges DILLON and ZACHARY concur.

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Report per Rule 30(e).