IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-630

No. COA21-242

Filed 16 November 2021

Hoke County, No. 20 JA 15

IN THE MATTER OF: T.C.M.

Appeal by Respondent from orders entered 5 January 2021 by Judge Warren McSweeney in Hoke County District Court. Heard in the Court of Appeals 5 October 2021.

Wendy C. Sotolongo, Parent Defender, by Jacky Brammer, Assistant Parent Defender, for Respondent-Appellant Mother.

The Charleston Group, by Charles R. Smith, R. Jonathan Charleston, and Jose A. Coker, for Petitioner-Appellee Hoke County Department of Social Services.

Matthew D. Wunsche for guardian ad litem.

DILLON, Judge.

¶ 1 Respondent-Appellant Mother appeals from the trial court's Pre-Adjudication and Adjudication Order ("Adjudication Order") and Disposition Order and Order on the Motion to Transfer Venue ("Disposition Order"), both entered 5 January 2021.

I. Background

¶ 2 Tara[1] ("Mother") was a juvenile when she became pregnant with her adult boyfriend's child. Her primary caretaker was her biological father ("Grandfather"). Mother was adjudicated dependent and taken into custody by Hoke County Department of Social Services ("HCDSS" or "the Department") due to Grandfather's concern for her mental illness and stability, and her tendency to run away from home. HCDSS pursued a primary permanent plan of reunification between Mother and Grandfather, but Grandfather was unable to complete a home assessment and missed some scheduled visitation appointments. In March 2020, Mother gave birth to her son, Travis.

¶ 3 On 23 March 2020, HCDSS filed a petition alleging that Travis was dependent and took non-secure custody of the infant. HCDSS kept Travis placed with Mother for the first several weeks of his life. However, on 4 May 2020, Travis was removed from Mother due to her severe mental health issues. During this time, Mother was involuntarily committed and moved to various inpatient facilities for treatment.

¶ 4 Mother only identified Grandfather as a placement and caregiver for Travis. HCDSS had previously verified that Grandfather had employment and a stable income but was concerned that he was the "removal parent" in Mother's juvenile case and had yet to complete a home assessment under his case plan. For these reasons,

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[1] Pseudonyms are used to protect the identity of the juveniles and for ease of reading. *See* N.C. R. App. P. 42(b)(1).

HCDSS eliminated Grandfather as a placement option. However, the trial court found that Grandfather "has completed every part of his [case plan] that is within his control."

¶ 5 On 5 January 2021, Travis was adjudicated dependent, and venue was transferred from Hoke County to Moore County. The trial court took judicial notice of 19JA38, Mother's own underlying juvenile case. Mother appealed from the trial court's Adjudication Order and Disposition Order.

II. Analysis

¶ 6 Mother presents several arguments on appeal. We review each in turn.

A. Standing

¶ 7 Mother argues that because she was a minor in HCDSS' custody at the time of the report and through the filing of the petition, the Department had a conflict of interest and therefore had no standing to file the petition as to Travis. We disagree.

¶ 8 We review the issue of whether the trial court had subject matter jurisdiction over the juvenile action *de novo*. *In re K.L.*, 272 N.C. App. 30, 36, 845 S.E.2d 182, 189 (2020). "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[.]" *In re T.R.P.*, 360 N.C. 588, 590, 636 S.E.2d 787, 790 (2006) (internal quotation marks and citation omitted).

¶ 9 Our General Statutes provide that "[o]nly a county director of social services or the director's authorized representative may file a petition alleging that a juvenile is abused, neglected, or dependent." N.C. Gen. Stat. § 7B-401.1(a) (2020). Our Supreme Court has stated that "the General Assembly's use of the indefinite article, 'a' before 'county director of social services' in subsection 7B-401.1(a) belies the notion that the provision limits standing to any *one* county director of social services." *In re A.P.*, 371 N.C. 14, 18-19, 812 S.E.2d 840, 843 (2018) (emphasis in original).

¶ 10 Our Administrative Code provides a list of circumstances when a Department of Social Services ("DSS") *shall* refer a case to another county for investigation:[2]

> (a) Reports of neglect, abuse, or dependency shall be referred to another county department of social services for investigation when the alleged perpetrator is:
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> (1) an employee of the county department of social services;
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> (2) a foster parent supervised by that county department of social services;
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> (3) a member of the Board of Social Services for that county, a member of the Board of County Commissioners, the County manager, or a member of the governance structure for the county department of social services;
>
> (4) a caretaker in a sole source contract group home;

[2] Pursuant to N.C. Gen. Stat. § 143B-153 (2020), DSS directors are subject to administrative regulations found in the North Carolina Administrative Code. *See Gammons v. N.C. Dep't of Human Res.*, 344 N.C. 51, 62, 472 S.E.2d 722, 728 (1996).

> (5) a child's parent/caretaker is an incompetent adult and a ward of that county department of social services; or
>
> (6) a minor in foster care who is also a parent/caretaker.

10A N.C.A.C. 70A.0103(a)(1)-(6) (2020).

¶ 11 Mother specifically argues that the Department was required to refer the report to a neighboring county DSS due to its conflict of interest. But even assuming *arguendo* that HCDSS failed to follow the guidelines of the Administrative Code due to an alleged conflict of interest, we conclude that the Department had standing to file the juvenile petition. *See* N.C. Gen. Stat. § 7B-401.1(a). Our Courts have repeatedly stated that the guiding principle of the juvenile code is the best interests of the child. *In re E.J.B.*, 375 N.C. 95, 110, 846 S.E.2d 472, 481 (2020). To that end, juvenile proceedings should be upheld if possible. *Id*. at 110, 846 S.E.2d at 481 ("Because the ultimate goal of juvenile proceedings is to determine and effectuate the best interests of the child, the proceedings . . . should not be invalidated over technical difficulties.").

¶ 12 We conclude that 10A N.C.A.C. 70A.0103(a) does not affect *standing*, whereas our General Statutes provide that any county DSS director may file the juvenile petition. Therefore, we dismiss Mother's argument.

B. Dependency Adjudication

¶ 13 Mother further argues that Travis is not dependent because Grandfather was an alternative childcare arrangement. We disagree.

¶ 14 "The role of this Court in reviewing a trial court's adjudication of neglect and abuse is to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact." *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (internal quotation marks omitted). "Whether a child is dependent is a conclusion of law[.]" *In re M.H.*, 272 N.C. App. 283, 286, 845 S.E.2d 908, 911 (2020).

¶ 15 "Our General Assembly requires social service agencies to undertake reasonable, not exhaustive, efforts towards reunification." *In re A.A.S.*, 258 N.C. App. 422, 430, 812 S.E.2d 875, 882 (2018). "Reasonable efforts" are defined in the juvenile code as:

> The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

N.C. Gen. Stat. § 7B-101(18).

¶ 16 Mother challenges Findings of Fact 17 and 19 and Conclusion of Law 5 in the

Adjudication Order:

> **FINDINGS OF FACT[:]**
>
> 17. Prior to the filing of the Amended Petition, the Department assessed numerous alternative child care arrangements for the Juvenile, including: the home of [Grandfather], the home of maternal great-aunt[,] and placement with maternal great-grandmother[.]
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> * * *
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> 19. [Grandfather] has been the primary caretaker of [Mother] for the majority of her life, and he is the removal parent in [Mother's] underlying child protective services case, 19 JA 38. That case was ongoing at the time of the filing of the Amended Petition.
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> **[CONCLUSIONS OF LAW:]**
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> 5. By clear, cogent, and convincing evidence, there is no appropriate alternative child care arrangement for the Juvenile.

¶ 17 We conclude that these findings of fact are supported by clear and convincing evidence and the challenged legal conclusion is supported by the findings of fact. As to Finding 17, the Department assessed three individuals for potential placements for Travis: Grandfather, the maternal great-aunt, and the maternal great-grandmother. Evidence of these assessments was presented at the adjudication hearing through testimony, along with the reasons the Department dismissed each potential placement. There is no indication of conflicting evidence.

¶ 18 As to Finding 19, a DSS social worker testified that Grandfather was the

removal parent in Mother's own juvenile case, 19JA38, and that although she was moving around between homes at the time, she had primarily lived with Grandfather her whole life. Therefore, Finding 19 is supported by the social worker's testimony.

¶ 19 Further, we conclude that HCDSS made reasonable efforts towards reunification. The focus of these efforts is for Mother and Travis, not necessarily Grandfather, but the Department still made reasonable attempts to involve Grandfather in consideration for placement. Unfortunately, Grandfather failed to attend certain visits with Travis. As for Mother, the Department (1) initially placed Travis with Mother until her mental health made the placement impossible and (2) pursued a plan of reunification by attempting home visits with Grandfather while Mother was recovering.

¶ 20 As to Conclusion of Law 5, the above challenged findings of fact indicate that the Department considered and rejected alternative childcare arrangements for Travis, including family members. Unchallenged Findings 18 and 21 also indicate that Grandfather has a criminal history, and the maternal great-grandmother does not have her own residence. Therefore, we conclude that Conclusion of Law 5 is supported by the trial court's findings of fact.

III. Conclusion

¶ 21 We affirm the trial court's adjudication of Travis as a dependent juvenile, as well as its corresponding Disposition Order.

AFFIRMED.

Judges MURPHY and JACKSON concur.

Report per Rule 30(e).