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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-877

Filed 21 November 2023

Johnston County, Nos. 18 JA 140–42

IN THE MATTER OF: A.K., K.K., K.K.

Appeal by respondent-mother from orders entered 21 April 2022 by Judge Joy A. Jones in Johnston County District Court. Heard in the Court of Appeals 9 October 2023.

*Jennifer S. O'Connor for petitioner-appellee Johnston County Department of Social Services.*

*Mobley Law Office, P.A., by Marie H. Mobley, for guardian ad litem.*

*Peter Wood for respondent-appellant mother.*

GORE, Judge.

Respondent, the mother of A.K. (“Alice”), K.K. (“Kurt”), and K.K. (“Kelly”) (collectively “the children”), appeals from orders adjudicating the children neglected and dependent juveniles.<sup>1</sup> This Court has jurisdiction pursuant to N.C.G.S. § 7B-1001(a)(7) (2022).

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<sup>1</sup> Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

Respondent raises one issue on appeal: whether the trial court abused its discretion by failing to conduct a hearing, on its own motion, on the need to transfer the case to Illinois under N.C.G.S. § 50A-207. Upon review, respondent failed to make an inconvenient forum argument before the trial court, and thus, failed to preserve the issue on appeal. Consequently, we affirm the trial court's orders.

**I.**

Alice was born in 2014, Kurt was born in 2011, and Kelly was born in 2010. On 17 July 2018, the Johnston County Department of Social Services ("DSS") obtained nonsecure custody of the children and filed juvenile petitions alleging them to be neglected and dependent. The following day, DSS filed amended juvenile petitions. On 6 February 2019, the trial court entered an order adjudicating the children to be neglected and dependent juveniles. The trial court entered an amended disposition order on 20 March 2019.

Respondent appealed, and this Court vacated the orders and remanded for new adjudication and disposition hearings. *In re A.K.*, 273 N.C. App. 219 (2020) (unpublished).

On 17 September 2020, DSS obtained nonsecure custody of the children and filed new juvenile petitions alleging the children to be neglected and dependent. In September 2020, DSS filed a motion to amend the juvenile petitions, and the trial court allowed this motion. On 16 October 2020, DSS filed amended juvenile petitions.

Following hearings on 10 June 2021, 6 December 2021, 24 January 2022, and

25 January 2022, the trial court entered an order on 21 April 2022 adjudicating the children neglected and dependent juveniles. The trial court entered its dispositional order on 21 April 2022. Respondent timely filed notice of appeal.

**II.**

Citing § 50A-207, respondent contends the trial court should have determined that North Carolina was an inconvenient forum to adjudicate this matter. It is well-established that arguments concerning subject matter jurisdiction may be raised at any time during the proceedings, even for the first time on appeal. *In re A.L.I.*, 380 N.C. 697, 699 (2022). In this case, however, respondent does not challenge the trial court's subject matter jurisdiction, nor is lack of subject matter jurisdiction at issue. Rather, respondent contends for the first time on appeal that the trial court should have determined that Illinois was a more convenient forum because she and the children lived in Illinois and received services there.

Rule 10 of the North Carolina Rules of Appellate Procedure requires an appellant to obtain a ruling upon a motion for an issue to be preserved for appeal. N.C.R. App. P. 10(a)(1). Here, respondent did not raise the issue of inconvenient forum in district court, nor did the trial court rule upon it.

Nonetheless, “when a statute is clearly mandatory, and its mandate is directed to the trial court, the statute automatically preserves statutory violations as issues for appellate review.” *In re E.D.*, 372 N.C. 111, 117 (2019) (cleaned up). Section 50A-207(a) provides that a court of this State having jurisdiction to make a child custody

determination “*may* decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum *may* be raised upon . . . the court’s own motion . . . .” N.C.G.S. § 50A-207(a) (2022) (emphasis added). Section 50A-207(a) does not impose a requirement upon the trial court to consider, upon its own motion, whether to transfer its jurisdiction; Section 50A-207(a) is discretionary, not mandatory. *See In re J.R.*, 250 N.C. App. 195, 199 (2016) (stating that “the use of the word ‘may’ in a statute implies the use of discretion.”). This issue is not automatically preserved for appellate review, and thus, respondent failed to preserve her argument on appeal.

**III.**

For the foregoing reasons, we affirm the trial court’s orders.

AFFIRMED.

Chief Judge STROUD and Judge STADING concur.

Report per Rule 30(e).