

[Cite as *Gonzales v. Perez*, 2015-Ohio-1282.]

STATE OF OHIO, CARROLL COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

MAMIE GONZALES, et al.,)	
)	CASE NO. 13 CA 893
PLAINTIFFS-APPELLEES,)	
)	
- VS -)	OPINION
)	
JULIA JUANA PEREZ,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Juvenile Division, Carroll County Ohio, Case No. 20104046.

JUDGMENT: Reversed and Remanded.

APPEARANCES:
For Plaintiffs-Appellees: Attorney Arnold F. Glantz
4883 Dressler Road, NW
Canton, OH 44718

For Defendant-Appellant: Attorney Michael A. Boske
122 Central Plaza N.
Canton, OH 44702

JUDGES:
Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: March 30, 2015

[Cite as *Gonzales v. Perez*, 2015-Ohio-1282.]
DeGenaro, J.

{¶1} This appeal filed by Julia Juana Perez, Appellant-Mother herein, challenges the Carroll County Juvenile Court's decision that it lacked jurisdiction and erred in denying her motion to terminate the parent child relationship of Enrique Gonzales. Mother contends that the Acknowledgement of Paternity should be rescinded due to the fact that it was not filed with the office of child support. Enrique and Mamie Gonzales, Appellees, argue that Mother's claim is not supported by the record. Because the trial court did have jurisdiction, Mother's sole assignment of error is meritorious and the matter is remanded for the juvenile court to address the parties' respective motions in the first instance.

Facts and Procedural History

{¶2} Y.G. was born to Mother on July 1, 2007. Conflicting versions of how the child came to live with Mamie and Enrique were presented to the juvenile court. It is undisputed that Mother and Mamie met while Mamie was working with the Tuscarawas County WIC program and Mother was seeking assistance. Throughout Y.G.'s life he has resided with the Gonzales family.

{¶3} Mamie and Enrique filed a complaint for custody of Y.G. on September 15, 2010. Attached to the complaint were the following documents: a notarized statement signed by Mother purportedly granting temporary guardianship of Y.G., signed July 2, 2007, the day after he was born; a notarized statement signed June 3, 2008 by Mother purportedly granting guardianship of Y.G. through 2025; birth certificate listing no father; and a birth certificate listing Enrique as the father. The record in this appeal does not demonstrate when the original and amended birth certificates each were filed with the Department of Health; curiously both birth certificates, which were assigned different certificate numbers, show July 13, 2007, as the date each certificate was signed by the delivering physician and August 6, 2007, as the date each certificate was signed by the registrar.

{¶4} A guardian ad litem was appointed and Mother was granted visitation every Sunday for three hours. This time was later extended to eight hour visits. Genetic testing was conducted confirming that Enrique is not the biological father of Y.G.

{¶15} On November 15, 2011, Mother filed a "motion to terminate the parental relationship of Enrique Gonzales" alleging fraud, duress, and material mistake of fact. In the motion Mother stated that she was presented with an Acknowledgement of Paternity which she executed. She further argued that although a year had passed since she signed it, it had not been filed with the office of child support and was therefore not final and may be terminated by the juvenile court pursuant to R.C. 3111.28. Significantly, the Acknowledgement was not attached to this motion or found anywhere in the record on appeal.

{¶16} Pursuant to an agreed entry, custody of Y.G. was awarded to Enrique and Mamie with visitation to Mother every other weekend which was later modified to every Saturday for nine hours.

{¶17} On July 27, 2012, and July 31, 2012, Mother filed motions to show cause alleging that Mamie and Enrique failed to appear with the minor child for visitation. On August 29, 2012, the court expanded Mother's visitation and granted her access to the minor child's school and medical records. Further, Mamie was ordered to provide the names and addresses of doctors, counselors, and school information to Mother. By way of judgment entry dated November 13, 2012, several specific dates were outlined for visitation between the minor child and Mother. Mother was granted overnight visitation on January 9, 2013.

{¶18} On May 30, 2013, Mother filed a motion for standard visitation and a motion for change of custody alleging that Mamie Gonzales continually alienates Y.G. from her. The record on appeal demonstrates that these motions remain outstanding.

{¶19} On September 18, 2013, almost two years after it had been filed, the juvenile court overruled Mother's motion to terminate the parent child relationship of Enrique. The juvenile court stated:

The law cited in the motion of Defendant's Attorney Michael Boske is correct. The argument is not correct. The birth registry was amended and filed on May 14, 2007 showing Enrique Gonzales as father. No action was

taken by either parent to terminate the relationship for more than one year. The Court lacks jurisdiction to terminate the parent child relationship.

Jurisdiction

{¶10} In her sole assignment of error, Mother asserts:

"The trial court erred in finding that it lacked jurisdiction to terminate the parent child relationship after one year even though the acknowledgment of paternity had not been filed with the CSEA."

{¶11} Subject-matter jurisdiction is defined as a court's power to hear and decide particular classes of cases. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶11. It may not be conferred by agreement of the parties or waived, and is the basis for mandatory, sua sponte dismissal either at the trial court or on appeal. *Keeley v. Stoops*, 7th Dist. 13 BE 23, 2014-Ohio-4161, ¶10. Personal jurisdiction describes a court's authority over particular litigants in a specific case, and "may be acquired either by service of process upon the defendant or the voluntary appearance and submission of the defendant to the jurisdiction of the court." *Snyder Computer Sys., Inc. v. Stives*, 175 Ohio App.3d 653, 2008-Ohio-1192, 888 N.E.2d 1117, ¶14 (7th. Dist.) citing *Maryhew v. Yova*, 11 Ohio St.3d 154, 156, 464 N.E.2d 538 (1984). Unlike subject matter jurisdiction, personal jurisdiction and venue can be waived. *Keeley* at ¶11.

{¶12} R.C. 2151.23(B)(5) provides that the juvenile court has original jurisdiction "to hear and determine an action commenced under section 3111.28 of the Revised Code." R.C. 3111.28 provides that the action to rescind the acknowledgement may be filed in the juvenile court where the child resides. *Id.* The unambiguous statutory language demonstrates that the juvenile court has subject matter jurisdiction over Mother's challenge to Enrique's acknowledgment of paternity. Turning to the issue of personal jurisdiction, the parties voluntarily appeared and submitted themselves to the authority of the Carroll County Juvenile Court through their multiple appearances and filings.

{¶13} Accordingly, the trial court erroneously determined that it lacked jurisdiction. Mother's sole assignment of error is meritorious and the matter is remanded for the juvenile court to address the parties' respective motions in the first instance.

Factual Errors, Record Omissions and Waived Arguments

{¶14} As this matter is being remanded for further proceedings in accordance with this opinion, comment on the state of the record in this appeal is warranted.

{¶15} In its judgment entry the juvenile court makes the following factual statement: "The birth registry was amended and filed on May 14, 2007 showing Enrique Gonzales as father." It is troubling that the juvenile court made this factual finding as Y.G. was not born until July 1, 2007. Clearly, the birth registry could not have been amended on a date before the child was born.

{¶16} Further, pursuant to R.C. 3111.25 an acknowledgment of paternity is "final and enforceable without ratification by a court when the acknowledgment has been filed with the office of child support, the information on the acknowledgment has been entered in the birth registry, and the acknowledgment has not been rescinded and is not subject to possible rescission." In addition to the concern above regarding the birth registry, in order to be final without ratification by a court, the acknowledgement must be filed with the office of child support; however, there is no evidence in the record that this was done.

{¶17} Finally, Mother also argues on appeal that the acknowledgment is subject to automatic termination pursuant to R.C. 3119.961. This argument was not raised in the juvenile court. "Issues that could have been raised and resolved in the trial court cannot be raised for the first time on appeal; issues not raised to trial court are deemed waived on appeal." *Quick v. Jenkins*, 7th Dist. No. 13 CO 4, 2013-Ohio-4371, ¶27 citing *Litva v. Richmond*, 172 Ohio App.3d 349, 2007-Ohio-3499, 874 N.E.2d 1243, ¶18 (7th Dist.).

{¶18} In sum, Mother's sole assignment of error is meritorious. The juvenile court has jurisdiction over this matter. As such, this case is remanded to the juvenile court for further proceedings

Donofrio, P.J., concurs.

Waite, J., concurs.