

NO. COA14-647

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF:

Wake County
No. 13 JT 69

BABY BOY

Appeal by respondent from order entered 14 April 2014 by Judge Margaret Eagles in Wake County District Court. Heard in the Court of Appeals 25 November 2014.

Manning, Fulton & Skinner, P.A., by Michael S. Harrell and Cheri C. Patrick, for petitioners-appellees adoptive parents.

Cranfill Sumner & Hartzog LLP, by Michelle D. Connell, for respondent-appellant biological mother.

DILLON, Judge.

Respondent appeals from an order terminating her parental rights to Baby Boy Clark¹. For the following reasons, we affirm.

I. Background

Respondent gave birth to Baby Boy Clark in April 2012. Respondent and the father signed relinquishment forms and surrendered legal custody of Baby Boy Clark to an adoption agency. On 23 April 2012, the adoption agency transferred

¹ A pseudonym.

physical custody of Baby Boy Clark to appellee parents ("petitioners") who filed a petition to adopt him that same day with the Wake County Clerk of Superior Court (12 SP 1911). See *In re Adoption of "Baby Boy"*, ___ N.C. App. ___, 757 S.E.2d 343, *disc. review denied*, ___ N.C. ___, ___ S.E.2d ___ (2014).

In June 2012, respondent filed a motion to dismiss the adoption petition and to declare her relinquishment void, alleging that her relinquishment did not comply with statutory requirements. *Id.* at ___, 757 S.E.2d at 345-46. By order filed 15 February 2013, the district court declared respondent's signed relinquishment was not valid because it did "not conform to the mandatory statutory requirements of a relinquishment set out in N.C.G.S. 48-3-702 and [was] void to operate as a relinquishment." *Id.* at ___, 757 S.E.2d at 346. Petitioners and the adoption agency appealed to this Court. *Id.*

While the appeal from the trial court's 15 February 2013 order regarding respondent's relinquishment was pending in this Court, petitioners, on 27 February 2013, filed a petition to terminate the parental rights of respondent and the father in Wake County District Court (13 JT 69). Respondent's motions to stay the termination proceedings were denied and a hearing was held in February 2014.

By order entered 14 April 2014, the trial court concluded grounds existed to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(3) (2013) (failure to pay child support towards the care of the children) and determined that termination of her parental rights was in the best interests of Baby Boy Clark.²

The next day, on 15 April 2014, this Court filed its opinion in *In re Adoption of: "Baby Boy"* ___ N.C. App. ___, 757 S.E.2d 343, reversing the district court's order. This Court held that respondent's "relinquishment is valid and conforms to the mandatory statutory requirements as set out in N.C. Gen. Stat. § 48-3-702." *Id.* at ___, 757 S.E.2d at 351. Our Supreme Court denied respondent's petition for discretionary review (157P-14-1). From the order terminating her parental rights, respondent appeals. Given the prior rulings and procedure of this case, we first address the issue of whether respondent's appeal is moot.

II. Mootness

This Court has held in other types of cases, in which an order has expired by the time of consideration on appeal, that if the order may cause a party to "suffer collateral legal

² The trial court also terminated the father's parental rights.

consequences" in the future, the appeal still has "legal significance and is not moot." *Smith ex rel. Smith v. Smith*, 145 N.C. App. 434, 436-37, 549 S.E.2d 912, 914 (2001). Thus, even though our ruling in *In re Adoption of: "Baby Boy" ____* N.C. App. ___, 757 S.E.2d 343 finalized the adoption of Baby Boy Clark, so that this termination of rights proceeding could have no practical effect upon the outcome as to his parentage, this appeal is not moot. Specifically, the termination order may have an effect on respondent's parental rights in the future as to any other children she has or may have. N.C. Gen. Stat. § 7B-1111(a)(9) states that one ground for termination of parental rights is whether "[t]he parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home." Respondent's appeal is not moot, and we will therefore consider her arguments.

III. Analysis

Respondent does not challenge any of the findings of fact and conclusions of law with regard to grounds for termination, nor does she challenge the best interest determination. Rather, respondent challenges the trial court's subject matter

jurisdiction to terminate her parental rights where: (1) the appeal in the adoption case was pending, and (2) the petitioners did not have standing to file the termination petition.

A. Subject matter jurisdiction

"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). "In matters arising under the Juvenile Code, the court's subject matter jurisdiction is established by statute." *In re K.J.L.*, 363 N.C. 343, 345, 677 S.E.2d 835, 837 (2009). According to the Juvenile Code, our district courts have "exclusive original jurisdiction" to hear and determine proceedings to terminate parental rights. See N.C. Gen. Stat. § 7B-200(a)(4) and § 7B-1101 (2013). Whether a court possesses jurisdiction is a question of law reviewable *de novo* on appeal. *In re K.U.-S.G.*, 208 N.C. App. 128, 131, 702 S.E.2d 103, 105 (2010).

Citing N.C. Gen. Stat. § 7B-1003, respondent argues the trial court was precluded from hearing the termination proceeding because the adoption case was pending appeal in this Court. We disagree.

Generally, N.C. Gen. Stat. § 1-294 operates to stay further proceedings in the trial court upon perfection of an appeal. N.C. Gen. Stat. § 1-294 (2013). "When a specific statute addresses jurisdiction during an appeal, however, that statute controls over the general rule." *In M.I.W.*, 365 N.C. 374, 377, 722 S.E.2d 469, 472 (2012). Pursuant to the Juvenile Code, jurisdiction by the trial court while an appeal is pending is governed by N.C. Gen. Stat. § 7B-1003, which provides:

(a) During an appeal of an order entered under this Subchapter, the trial court may enforce the order unless the trial court or an appellate court orders a stay.

(b) Pending disposition of an appeal, unless directed otherwise by an appellate court or subsection (c) of this section applies, the trial court shall:

(1) Continue to exercise jurisdiction and conduct hearings under this Subchapter with the exception of Article 11 of the General Statutes; and

(2) Enter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.

(c) Pending disposition of an appeal of an order entered under Article 11 of this Chapter where the petition for termination of parental rights was not filed as a motion in a juvenile matter initiated under Article 4 of this Chapter, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.

Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if there be any, within 10 days thereafter, as to why the modifying order should be vacated or altered. . . .

N.C. Gen. Stat. § 7B-1003 (emphasis added). Article 11 of Chapter 7B of the General Statutes governs termination of parental rights. See, e.g., N.C. Gen. Stat. Ch. 7B, Art. 11 (2013).

This statute does not deprive the trial court of jurisdiction to terminate parental rights during the pendency of the adoption appeal. Rather, the plain language of the statute limits the trial court's jurisdiction while an appeal of an order entered under the Juvenile Code is pending in the appellate court. Nowhere in the statute does it reference appeals of orders outside of the Juvenile Code, Chapter 7B of the North Carolina General Statutes. Section 7B-1003 does not apply to petitioners' appeal of the adoption order, which

originated as an adoption petition filed under Chapter 48. The order appealed from in *In re Adoption of: "Baby Boy"* ____ N.C. App. ____, 757 S.E.2d 343, was entered under Chapter 48 which governs adoption, not under Chapter 7B. The district court's ruling regarding respondent's relinquishment restored parental rights to respondent pursuant to Chapter 48, pending appeal, and petitioners sought to terminate those rights pursuant to Chapter 7B based on respondent's actions in not providing support for Baby Boy Clark, while appeal was pending. The appeal of an order entered under Chapter 48, which is outside of the Chapter 7B Juvenile Code, did not preclude the district court's jurisdiction to terminate respondent's parental rights.

Further, respondent's reliance on *In re M.I.W.*, in which our Supreme Court interprets Section 7B-1003, is misplaced. In *M.I.W.*, our Supreme Court applied section 7B-1003 to determine whether the district court had jurisdiction to conduct a termination proceeding while an appeal was pending of a permanency planning disposition order entered in the same case. *M.I.W.*, 365 N.C. at 375-76, 722 S.E. at 470. In holding that the trial court had jurisdiction because section 7B-1003 only barred the trial court from exercising jurisdiction or holding hearings before the appellate court's mandate issued, the *M.I.W.*

Court recognized that its "holding is limited to matters arising under the Juvenile Code." *Id.* at 378, 722 S.E.2d at 472.

Contrary to respondent's assertion, the present case is distinguishable from *M.I.W.* Here, the district court's order appealed from in *In re Adoption of: "Baby Boy"* ____ N.C. App. ____, 757 S.E.2d 343 originated in district court as an adoption petition filed under Chapter 48, as stated above. In contrast, the order appealed from in *M.I.W.*, involved a disposition order entered under Chapter 7B. Accordingly, the trial court properly entered its termination order while the adoption appeal was pending in the appellate court.

B. Standing

As part of her argument that the trial court did not have authority to preside over the termination hearing, respondent contends petitioners did not have standing to file the juvenile petition.

"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 Miller*, 162 N.C. App. 355, 357, 590 S.E.2d 864, 865 (2004) (citation, brackets, and quotation marks

omitted). Standing to file a petition to terminate parental rights is conferred by statute:

- (a) A petition or motion to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed by one or more of the following:

. . .

- (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) (2013). Here, there is no question that petitioners filed a petition to adopt Baby Boy Clark. This establishes petitioners' standing to file a petition for termination of respondent's and the father's parental rights.

In sum, because petitioners had standing to file their petition to terminate parental rights and the trial court had jurisdiction over the termination of parental rights matter, the trial court's order terminating respondent's parental rights to Baby Boy Clark is affirmed.

AFFIRMED.

Judge STROUD and Judge DIETZ concur.