

NO. COA14-974

NORTH CAROLINA COURT OF APPEALS

Filed: 17 March 2015

IN THE MATTER OF:

N.T.

Wake County
No. 12 JT 136

Appeal by respondent-father from order entered 7 May 2014 by Judge Monica Bousman in Wake County District Court. Heard in the Court of Appeals 17 February 2015.

Office of the Wake County Attorney, by Roger A. Askew and Claire A. Hunter, for petitioner-appellee Wake County Human Services.

W. Michael Spivey for respondent-appellant father.

Poyner Spruill LLP, by Shannon E. Hoff, for guardian ad litem.

BRYANT, Judge.

Because we are bound by *In re Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."), to acknowledge that on the facts of this case, this issue of subject matter jurisdiction is controlled by *Fansler v. Honeycutt*, 221

N.C. App. 226, 728 S.E.2d 6 (2012), we are compelled to vacate the trial court's orders in this matter for lack of jurisdiction.

Respondent father appeals from an order terminating his parental rights to his minor child, N.T. ("Ned").¹ Because the trial court never gained subject matter jurisdiction over the underlying juvenile case, and thus, petitioner Wake County Human Services ("WCHS") never obtained lawful custody of Ned, we vacate the trial court's order terminating parental rights.

On 22 May 2012, WCHS filed a juvenile petition alleging Ned was a neglected juvenile, having obtained non-secure custody of Ned the previous day. By order entered 11 July 2012, the trial court concluded Ned was a neglected juvenile and continued custody of Ned with WCHS. WCHS worked to reunify Ned with his parents, but on 19 April 2013, the trial court entered an order ceasing reunification efforts and changing the permanent plan for Ned to adoption. On 24 September 2013, WCHS filed a motion to terminate parental rights to Ned, alleging grounds of neglect, failure to make reasonable progress to correct the conditions that led to Ned's removal from his home, and failure to pay a reasonable portion for Ned's cost of care while he was placed outside of the

¹ The pseudonym "Ned" is used throughout to protect the identity of the juvenile and for ease of reading.

home. After a four-day hearing on the motion, the trial court entered an order on 7 May 2014 terminating the parental rights of both respondent and Ned's mother. Respondent filed timely notice of appeal.

Respondent's sole argument on appeal is that the trial court lacked subject matter jurisdiction over the termination proceeding. Respondent contends that because the 22 May 2012 juvenile petition was not properly verified, it did not confer subject matter jurisdiction over the underlying juvenile case to the trial court, and the trial court's orders in the juvenile case are thus void *ab initio*. Respondent argues that because the court's orders are void, WCHS was never given lawful custody of Ned and, thus, was without standing to file the motion to terminate parental rights. Based on precedent from this Court that we are compelled to follow, we agree.

"A trial court's subject matter jurisdiction over all stages of a juvenile case is established when the action is initiated with the filing of a properly verified petition." *In re T.R.P.*, 360 N.C. 588, 593, 636 S.E.2d 787, 792 (2006). Where the initial abuse, neglect, or dependency petition in a juvenile case is not properly verified, the trial court never obtains subject matter jurisdiction over the case and all of its orders are void *ab*

initio. *Id.* at 588, 636 S.E.2d at 789; *see also In re S.E.P.*, 184 N.C. App. 481, 486, 646 S.E.2d 617, 621 (2007) ("In the absence of a verification a trial court's order is void *ab initio*." (citation omitted)). Thus, where an improperly verified petition is filed by a county department of social services, the department never obtains custody of the juvenile from a court of competent jurisdiction, and it lacks standing to file a petition or motion to terminate parental rights to that juvenile. *See* N.C. Gen. Stat. §§ 7B-1103(a)(3), -1104(2) (2013); *e.g. S.E.P.*, 184 N.C. App. at 487-88, 646 S.E.2d at 621-22. This Court has held that a pleading is not properly verified where the person before whom the pleading was to be verified did not indicate his title and nothing in the record established his authority to acknowledge the verification. *See Fansler*, 221 N.C. App. at 230, 728 S.E.2d at 9; *see also In re Green*, 67 N.C. App. 501, 503, 313 S.E.2d 193, 194-95 (1984) ("[W]here it is required by statute that the petition be signed and verified, these essential requisites must be complied with before the petition can be used for legal purposes." (citation omitted)).

In *Fansler*, the defendant appealed from trial court orders requiring that he refrain from stalking and harassing the plaintiffs, Mr. and Mrs. Fansler (Mr. and Mrs. Fansler filed

individual complaints). *Fansler*, 221 N.C. App. 226, 728 S.E.2d 6. On appeal, this Court observed that the plaintiffs' individual complaints contained "no indication that either complaint had been verified before an individual authorized to administer oaths." *Id.* at 230, 728 S.E.2d at 9. Of particular pertinence to the current case, the *Fansler* Court noted that in the verification section of Mr. Fansler's complaint, the record reflected Mr. Fansler's signature, a date, and a signature in the block designated for the signature of the person before whom Mr. Fansler's verification had been executed; however, there was no indication of the status of the person whose signature appeared in the box. In other words, there was no indication that Mr. Fansler's verification had been executed before an individual authorized to administer an oath. *Id.* The *Fansler* Court reasoned as follows:

If an action is statutory in nature, the requirement that pleadings be signed and verified is not a matter of form, but substance, and a defect therein is jurisdictional, leaving a trial judge confronted with an unverified pleading devoid of subject matter jurisdiction. Put another way, where it is required by statute that the petition be signed and verified, these essential requisites must be complied with before the petition can be used for legal purposes, since non-compliance renders the petition incomplete and non-operative.

Id. at 228, 728 S.E.2d at 8 (citations and quotations omitted). Thus, the Court held that "given the absence of any indication that either of Plaintiffs' complaints had been properly verified, we hold that the trial court never obtained jurisdiction over the subject matter of these cases, that the trial court's orders should be vacated, and that both cases must be dismissed." *Id.* at 230, 728 S.E.2d at 9.

The instant case cannot be distinguished from *Fansler*. The verification section of the initial petition alleging that Ned was a neglected juvenile indicates that it was verified by Diamond Wimbish, an authorized representative of the Director of WCHS; however, the signature of the person before whom the petition was verified is illegible and there is no title given for the person before whom the petition was verified. Nothing in the record before this Court establishes that the person before whom the petition was verified was authorized to acknowledge the verification.² Given the absence of any competent evidence in the

² WCHS has filed a motion to amend the record on appeal to include an affidavit from Wake County Magistrate Christopher H. Graves, who avers that the signature on the petition is his and that he signed the petition in his official capacity as a magistrate. However, this affidavit was never before the trial court and, thus, cannot be considered on appeal. See N.C.R. App. P. 9(a), 11(c); see also, e.g., *State v. Gay*, 334 N.C. 467, 481, 434 S.E.2d 840, 847 (1993) (refusing to consider on appeal affidavits from the trial judge and prosecutor regarding *ex parte* contact with jurors

record to show that the petition was properly verified, the trial court never obtained jurisdiction over the subject matter of the juvenile case. Therefore, the trial court's underlying orders are void *ab initio*, and thus, WCHS lacked standing to file the motion to terminate parental rights to Ned. See *Fansler*, 221 N.C. App. at 230, 728 S.E.2d at 9. Accordingly, as the trial court did not have subject matter jurisdiction to enter the order terminating respondent's parental rights, we must vacate its order.

Vacated.

Judges CALABRIA and DIETZ Dietz concur.

because the affidavits were not part of the record made at trial). Accordingly, we deny WCHS's motion to amend the record on appeal.

Nevertheless, we acknowledge that this Court has in unpublished opinions allowed motions to amend in circumstances where a respondent failed to challenge the verification and/or signature on the petition before the trial court and, thus, where the trial court had no opportunity to rule on the issue. Such unpublished opinions are not authority upon which we could rely to allow a motion to amend. See N.C. R. App. 30(e)(3) ("The unpublished decision of the North Carolina Court of Appeals does not constitute controlling legal authority.") Further, as neither the motion to amend nor the record on appeal indicates that the Chief District Court Judge of Wake County authorized a magistrate to verify petitions in emergency situations as required by North Carolina General Statutes, section 7B-404 — a necessary acknowledgement for receiving verification of an emergency petition, such as we have in the instant case — we would not consider suspending our rules pursuant to Rule 2.