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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-898

Filed: 21 March 2017

New Hanover County, No. 09 JA 43

IN THE MATTER OF: G.G.R.

Appeal by Petitioner from order entered 2 May 2016 by Judge Lillian B. Jordan in District Court, New Hanover County. Heard in the Court of Appeals 27 February 2017.

Regina Floyd-Davis for Petitioner-Appellant New Hanover County Department of Social Services.

J. Albert Clyburn for Respondents-Appellees.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem.

McGEE, Chief Judge.

The New Hanover Department of Social Services (“DSS”) appeals from the trial court’s order dismissing a juvenile petition filed by DSS alleging that G.G.R. (“the juvenile”) was a neglected and dependent juvenile. We reverse the order of the trial court and remand for further proceedings.

I. Background

The juvenile began living with Respondents-Appellees (“the caretakers”), who were the parents of one of the juvenile’s classmates, on or about 8 March 2015. The

juvenile was fifteen years old at the time. The juvenile's mother ("the mother") agreed to the arrangement.¹ The caretakers filed a civil action against the mother on 17 November 2015, pursuant to Chapter 50 of the North Carolina General Statutes, seeking legal and physical custody of the juvenile. The caretakers alleged in their complaint that (1) the mother had "acted inconsistent [sic] with her constitutionally protected [parental] status" since March 2015; (2) the mother had barely communicated with the juvenile "despite the efforts of [the caretakers] to engage her in active communication;" (3) the caretakers had "provide[d] the majority . . . of the appropriate care and supervision for [the juvenile]" during that period of time; and (4) the mother had informed the juvenile she would be "moving to Colorado prior to December 1, 2015 and intend[ed] to leave [the juvenile] with [the caretakers][.]" According to the caretakers, because the mother would be relocating out of state, they would "need . . . legal authority to make decisions for [the juvenile] on a day to day basis."

DSS filed a petition ("the petition") pursuant to N.C. Gen. Stat. § 7B-400 *et seq.* on 25 November 2015, apparently after consultation with the mother, alleging that the juvenile was a neglected and dependent juvenile. As to neglect, the petition alleged that the juvenile (1) "[was] not receiv[ing] proper care, supervision, or

¹ The juvenile's father is deceased.

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discipline from [his] parent, guardian, custodian, or caretaker[;]" and (2) "[was] liv[ing] in an environment injurious to [his] welfare." DSS specifically alleged:

On or about March 8, 2015, [the mother] allowed her son to stay with [the caretakers] for a few days. [The mother] is ready for her son to return home; however, the [the caretakers] have filed a [c]omplaint [seeking] legal custody. [The juvenile] is emotionally scarred from years of sexual abuse perpetrated upon him by his step-father. [The mother] was most appropriate during the situation; however, her relationship with her son has deteriorated. [The juvenile] has indicated that his mother is emotionally abusive through her discipline techniques. [The juvenile] has now lived with [the caretakers] for approximately 9 months and [the mother] has been unable to act on his behalf relative to mental health counseling. [The female caretaker] has presented herself as [the juvenile's] [m]other, [and] has taken the [j]uvenile out of state, sharing a room, without the [m]other's consent. The [j]uvenile is in need of an appropriate environment wherein his mental health needs can be objectively met with a goal towards reunification with his [m]other.

As to dependency, DSS alleged that "the juvenile's parent, guardian, or custodian [was] unable to provide for the juvenile's care or supervision and lack[ed] an appropriate alternative child care arrangement." Specifically, the petition included allegations that

[The juvenile] is currently residing with a non-relative, who is without legal authority to act on his behalf. [The mother] would like for her son to return to her home; however, he has refused her request, and the current caretaker is not cooperating with the biological mother. [The juvenile] is in need of a legal [g]uardian to address his mental health needs, provide an appropriate living environment, and to foster the natural mother-son

relationship.

The caretakers filed a motion to dismiss the petition, pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(1), on 10 December 2015.² The caretakers contended that the petition did not contain “allegations of facts sufficient to invoke [the trial court’s] jurisdiction over the [matter].” The caretakers filed a second motion to dismiss the petition, pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6), on 13 January 2016, alleging that the petition “[did] not contain allegations sufficient for [the trial] [c]ourt to determine that the minor child has been neglected or is a dependent juvenile.”

The trial court conducted a hearing on the caretakers’ motions to dismiss on 13 January 2016. DSS and the guardian *ad litem* (“GAL”) objected to a hearing on the Rule 12(b)(6) motion to dismiss, which was filed and served on the same day as the hearing, arguing that they did not receive adequate notice of the motion. The trial court agreed and declined to rule on the Rule 12(b)(6) motion. Accordingly, the trial court considered the caretakers’ Rule 12(b)(1) motion only.

The trial court entered an order dismissing the DSS petition on 2 May 2016. The court concluded that although it “ha[d] exclusive, original jurisdiction over any case involving [whether] a juvenile is neglected or dependent[,] . . . the allegations in the petition, taken in the light most favorable to DSS, [were] not sufficient to justify [the trial court] in assuming jurisdiction over the juvenile herein[.]” DSS appeals.

² The same day, the trial court entered an order in the Chapter 50 custody action awarding the caretakers temporary custody of the juvenile. That order has not been appealed.

II. Rule 12(b)(1) Motion to Dismiss

On appeal, DSS and the GAL argue that the petition contained allegations sufficient to invoke the jurisdiction of the trial court and that the trial court erroneously treated the caretakers' Rule 12(b)(1) motion as a motion to dismiss under Rule 12(b)(6).

A. Standard of Review

The trial court considered the caretakers' motion to dismiss pursuant to N.C.G.S. § 1A-1, Rule 12(b)(1) only, and stated the petition was dismissed for lack of subject matter jurisdiction. "An appellate court's review of an order of the trial court denying or allowing a Rule 12(b)(1) motion is *de novo*["] *Clements v. Clements*, 219 N.C. App. 581, 586, 725 S.E.2d 373, 377 (2012) (citation and quotation marks omitted). "Under a *de novo* review, [this] [C]ourt considers the matter anew and freely substitutes its own judgment for that of the [trial court]." *In re A.K.D.*, 227 N.C. App. 58, 60, 745 S.E.2d 7, 8 (2013) (citation and quotation marks omitted).

B. Analysis

Pursuant to N.C.G.S. § 1A-1, Rule 12(b)(1), a party may move for dismissal based on a court's lack of jurisdiction over the subject matter of an action. "Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question . . . [and] is conferred upon the courts by either the North Carolina Constitution or by statute." *In re H.L.A.D.*, 184 N.C. App. 381, 385, 646 S.E.2d 425,

429 (2007) (citation and quotation marks omitted). In North Carolina, our district courts have “exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent.” N.C. Gen. Stat. § 7B-200 (2015). “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). “The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of each party . . . , and allegations of facts sufficient to invoke jurisdiction over the juvenile.” N.C. Gen. Stat. § 7B-402(a) (2015). Additionally, this Court has explained:

[T]he Rules of Civil Procedure are applicable to Chapter 7B proceedings. [N.C. Gen. Stat. § 1A-1,] Rule 8 requires that a pleading contain “[a] short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief[.]” Under the liberal standard of notice pleading, a claim is adequate if it gives sufficient notice of the events that produced the claim to enable the adverse party to understand the complaint’s nature and basis and to file a responsive pleading.

In re L.T.R., 181 N.C. App. 376, 389, 639 S.E.2d 122, 130 (2007) (citations omitted); *see also* N.C. Gen. Stat. § 7B-401(a) (2015) (“The pleading in an abuse, neglect, or dependency action is the petition.”).

A motion to dismiss under N.C.G.S. § 1A-1, 12(b)(1) addresses the trial court’s jurisdiction “over the subject matter of the claim or claims asserted in [a]

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complaint[,]” not the legal sufficiency of the complaint’s allegations. *See State v. Seneca-Cayuga Tobacco Co.*, 197 N.C. App. 176, 181, 676 S.E.2d 579, 583 (2009). By contrast,

[a] motion to dismiss under [N.C.G.S. § 1A-1, Rule] 12(b)(6) tests the legal sufficiency of the complaint. In ruling on the motion the allegations of the complaint must be viewed as admitted, and on that basis the court must determine as a matter of law whether the allegations state a claim for which relief may be granted.

Stanback v. Stanback, 297 N.C. 181, 185, 254 S.E.2d 611, 615 (1979) (citations omitted); *see also Cline v. Teich*, 92 N.C. App. 257, 263, 374 S.E.2d 462, 466 (1988) (“Although the practical consequence of dismissal of a complaint under either Rule 12(b)(6) or 12(b)(1) is the same—the case is dismissed—the legal effect is quite different.”).

In the present case, the DSS action was initiated by the filing of a properly verified petition. In accordance with N.C.G.S. § 7B-402(a), the petition contained the name, date of birth, and address of the juvenile, as well as the name and last known address of each party. Additionally, the petition alleged that the juvenile was a neglected and dependent juvenile in that: (1) he was emotionally scarred from years of sexual abuse perpetrated by his stepfather; (2) his relationship with his mother had deteriorated; (3) he was living with caretakers who lacked legal authority to act on his behalf; and (4) the caretakers were not cooperating with the mother. Regardless of whether these allegations were sufficient to withstand a motion to

dismiss under Rule 12(b)(6), they satisfied the statutory requirement that a petition must contain “allegations of facts sufficient to invoke jurisdiction over the juvenile[.]” *i.e.*, allegations that the juvenile is abused, neglected, or dependent. *See* N.C.G.S. §§ 7B-200, 7B-402(a); *cf. Fuller v. Easley*, 145 N.C. App. 391, 398, 553 S.E.2d 43, 48 (2001) (“To survive a Rule 12(b)(6) motion, the complaint must . . . state allegations sufficient to satisfy the *substantive elements* of at least some recognized claim.” (citation and internal quotation marks omitted) (emphasis added)).

The petition also gave the caretakers notice of the nature and basis of the petition, sufficient to enable the caretakers to respond. *See In re L.T.R.*, 181 N.C. App. at 389, 639 S.E.2d at 130. Given that the district court has exclusive original jurisdiction over “any case involving a juvenile who is alleged to be abused, neglected, or dependent[.]” and that the petition in the present case alleged the juvenile was neglected and dependent, we hold the petition contained “allegations of facts sufficient to invoke jurisdiction over the juvenile.” *See In re T.R.P.*, 360 N.C. at 602-03, 636 S.E.2d at 797.

The trial court’s order demonstrates that the court applied the standard for Rule 12(b)(6) motions, rather than evaluating the caretakers’ motion to dismiss under the standard applicable to Rule 12(b)(1) motions. Although an order for dismissal under Rule 12(b)(6) should not include findings of fact, the trial court made over thirty findings of fact regarding the allegations contained in the petition, including that the

petition failed to offer “any compelling explanation for the [mother’s] objection [to the juvenile’s mental health counseling];” that “DSS ha[d] not alleged that [the juvenile] ha[d] not received appropriate treatment while in the [c]aretakers’ home;” and that, contrary to an allegation in the petition, the caretakers “did have legal authority to act on [the juvenile’s] behalf.” The trial court further found:

27. DSS alleges that the child is neglected in that [the female caretaker] presented herself as [the juvenile’s] mother, has taken the child out of the State without the mother’s consent and that she shared a room with the child. None of those allegations, taken as true, rise to the level of neglect that would justify this [c]ourt in assuming jurisdiction for the purpose of determining if the child is a neglected or dependent [juvenile].

.....

35. While the [mother] is unable to provide for the child’s care, she does have an appropriate alternative arrangement. The [c]aretakers are, by all accounts, appropriate to provide for the care of the child and have been meeting the child’s needs since March of 2015. The [c]aretakers’ home was approved by DSS and the [mother] no longer objects to the child remaining in the home.

36. The allegations related to the DSS claim that the child is a dependent juvenile, taken in the light most favorable to DSS, are not sufficient to support a finding that the child is dependent such that it would be appropriate for this Court to assume jurisdiction over the juvenile in this matter.

These findings went beyond determining whether, pursuant to Rule 12(b)(1), the allegations in the petition were sufficient to invoke the jurisdiction of the trial court. Although the court declined to rule on the caretakers' Rule 12(b)(6) motion, it ultimately concluded that the petition's factual allegations failed to support a claim that the juvenile was neglected or dependent, *i.e.*, that DSS failed to meet the test for the legal sufficiency of a complaint under Rule 12(b)(6).

III. Conclusion

Because the trial court applied the incorrect legal standard in allowing the caretakers' motion to dismiss, we must reverse and remand the trial court's order dismissing the petition. In light of this conclusion, we need not address the additional arguments of DSS on appeal.

REVERSED AND REMANDED.

Judges STROUD and McCULLOUGH concur.

Report per Rule 30(e).