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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-681

Filed: 21 March 2017

Buncombe County, Nos. 13 JT 398-99

IN THE MATTER OF: S.M.C. and V.M.J.C.

Appeal by respondents from orders entered 7 April 2016 by Judge Andrea F. Dray in Buncombe County District Court. Heard in the Court of Appeals 20 February 2017.

Hanna Frost Honeycutt for petitioner-appellee Buncombe County Department of Health and Human Services.

Amanda Armstrong for guardian ad litem.

Michael E. Casterline for respondent-appellant mother.

Robert W. Ewing for respondent-appellant father.

INMAN, Judge.

Respondent-mother and respondent-father appeal from orders terminating their parental rights to their children V.M.J.C. (“Victor”) and S.M.C. (“Shawn”)¹. For the following reasons, we affirm.

¹ Pseudonyms are used to protect the juveniles’ privacy and for ease of reading.

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Respondents have a history with child protective services (“CPS”) due to domestic violence and severe mental health issues that inhibit their ability to take care of their children. Their older child, Victor, was born on 15 December 2011 and resided with respondents and his maternal grandparents in the grandparents’ home in Haywood County, North Carolina. On 26 June 2012, Victor was adjudicated neglected and dependent in Haywood County District Court and was placed with the maternal grandparents.

The family moved to Buncombe County, North Carolina in early 2013 and continued to reside in a home together. After respondents’ second child, Shawn, was born on 14 April 2013, the Buncombe County Department of Health and Human Services (“DHHS”) conducted a family assessment and established a safety plan requiring respondents to be supervised with Shawn. Due to respondents’ lack of progress on their case plans, the maternal grandparents were awarded guardianship over Victor on 7 June 2013 by an order entered in Haywood County.

On 9 December 2013, DHHS filed juvenile petitions in Buncombe County District Court alleging that Victor and Shawn were neglected and dependent juveniles. The petitions stated that DHHS received a CPS report on 29 October 2013 alleging that respondent-mother was involved in a domestic violence incident with the maternal grandmother during which respondent-mother struck the maternal grandmother while the maternal grandmother was holding Victor. The maternal

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grandfather then pushed respondent-mother down and gave her a black eye. The report further alleged that the maternal grandmother took out a domestic violence protective order (“DVPO”) against respondent-mother and respondent-mother took out a DVPO against the maternal grandfather.

The petitions further alleged that during the investigation of the CPS report, respondent-mother admitted she had been abusing alcohol while taking her prescribed medications and that Victor was present during the physical altercation between her and the maternal grandparents. At the time of the altercation, respondent-father was incarcerated due to a trespassing charge.

The juvenile petitions also alleged that an adult protective services report was filed on 29 October 2013 concerning the maternal grandmother’s health. The report was substantiated on 11 November 2013, in that the maternal grandmother “was not taking her medication as prescribed, was not physically able or financially able to secure her medications independently, and was not able to care for the minor children on her own.”

Nonsecure custody was granted to DHHS on 9 December 2013, but respondents absconded with the juveniles before DHHS could obtain physical custody. The family was located a few days later in Charlotte, North Carolina, and the juveniles were placed in a foster home on 14 December 2013.

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On 17 March 2014, the Buncombe County District Court entered orders adjudicating the juveniles neglected and dependent based on respondents' stipulations to the allegations in the juvenile petitions. The trial court ordered respondents to complete mental health and substance abuse assessments and to follow all recommendations, to attend an intake appointment with SOAR to determine if services would be beneficial, to complete domestic violence treatment, and to obtain safe and stable housing. The court also ordered one hour of supervised visitation a week with the juveniles.

The trial court held a permanency planning hearing on 20 March 2015, and in an order entered 24 April 2015, the court changed the permanent plan from reunification to adoption with a concurrent plan of guardianship. The court found that respondent-mother completed the services outlined in her case plan but continued to exhibit serious mental health issues despite her reports that she was engaged in treatment. The court also found that respondent-mother had unstable housing, was unemployed, and continued to have contact with respondent-father in violation of court orders. The court further found that respondent-mother's testimony at the hearing "was not based in reality as to jobs, therapy, and stability." The court suspended visitation with respondent-mother until mental health providers could confirm there were no safety concerns and that she was engaged in treatment.

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Regarding respondent-father, the court found that he completed paperwork to relinquish his parental rights, but DHHS did not accept the paperwork due to respondent-father's history of mental health and substance abuse issues and the fact that his attorney was not present. Respondent-father consented to changing the permanent plan to adoption.

On 15 May 2015, DHHS filed petitions to terminate respondents' parental rights to Victor and Shawn, alleging the grounds of neglect, failure to make reasonable progress, failure to pay reasonable cost of care, and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6) (2015).

After a permanency planning review hearing held 1 October 2015, the trial court entered an order on 30 November 2015 ceasing reunification efforts with respondents. The trial court also entered an order on 30 November 2015, concluding that respondent-mother was incompetent and appointing her a guardian ad litem.

The trial court held a hearing on DHHS's petitions to terminate respondents' parental rights on 1 and 2 March 2016. Respondent-father was not present for the hearing and was not represented by counsel.² On 7 April 2016, the trial court entered an order terminating respondent-mother's and respondent-father's parental rights to

² On 1 March 2016, the trial court allowed respondent-father's trial attorney's motion to withdraw filed 25 February 2016 due to respondent-father's failure to maintain contact with the attorney.

Victor and Shawn based on the grounds alleged in the petitions. Respondents filed timely notices of appeal.

Respondents first argue that the trial court lacked subject matter jurisdiction to terminate their parental rights as to Victor because the petition did not comply with the statutory requirements. Specifically respondents argue that because the petition failed to name the maternal grandparents as Victor’s guardians, the petition violated N.C. Gen. Stat. § 7B-1104 (2015) and was deficient. We do not agree.

“The issue of subject matter jurisdiction may be raised at any time, and may be raised for the first time on appeal.” *In re S.D.A.*, 170 N.C. App. 354, 357–58, 612 S.E.2d 362, 364 (2005). We review a question of subject matter jurisdiction *de novo*. *In re K.A.D.*, 187 N.C. App. 502, 503, 653 S.E.2d 427, 428 (2007).

Pursuant to N.C. Gen. Stat. § 7B-1101 (2015), the district court has “exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights[.]” “However, in the absence of a proper petition, the trial court has no jurisdiction to enter an order for termination of parental rights.” *In re McKinney*, 158 N.C. App. 441, 445, 581 S.E.2d 793, 796 (2003). Section 7B-1104(4) of our General Statutes provides that the petition or motion seeking to terminate an individual’s parental rights shall contain “[t]he name and address of any person who has been judicially appointed as guardian of the person of the juvenile.” N.C. Gen. Stat. § 7B-1104(4).

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Here, the maternal grandparents were awarded guardianship of Victor in an order entered 7 June 2013 in Haywood County District Court. Subsequently, Haywood County District Court entered an order on 2 April 2014 “expressly terminat[ing its] jurisdiction in the . . . juvenile proceeding[.]” finding that the permanent plan of guardianship had been achieved and there was no need for further DHHS involvement in the case. Under N.C. Gen. Stat. § 7B-201(b) (2015)

[w]hen the court’s jurisdiction terminates, whether automatically or by court order, the court thereafter shall not modify or enforce any order previously entered in the case, including any juvenile court order relating to the custody, placement, or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed, unless applicable law or a valid court order in another civil action provides otherwise.

Respondents contend that the court’s order terminating jurisdiction did not extinguish the guardianship and that the grandparents were still Victor’s legal guardians pursuant to N.C. Gen. Stat. § 7B-600 (2015). Section 7B-600 of our General Statutes provides that

[t]he court may terminate the guardianship only if (i) the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile’s best interest, (ii) the guardian is unfit, (iii) the guardian has neglected a guardian’s duties, or (iv) the guardian is unwilling or unable to continue assuming a guardian’s duties.

N.C. Gen. Stat. § 7B-600(b). “The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant

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to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.” N.C. Gen. Stat. § 7B-600(a) (2015). Respondents argue that N.C. Gen. Stat. § 7B-600 falls under N.C. Gen. Stat. § 7B-201’s “unless applicable law . . . provides otherwise” provision since N.C. Gen. Stat. § 7B-600 expressly provides that a court may only terminate a legal guardianship under four statutorily defined situations and a court’s termination of its jurisdiction is not one of them. Defendant’s argument, however, is misplaced.

Here, the trial court never expressly terminated the guardianship of Victor in contravention of N.C. Gen. Stat. § 7B-600. The trial court only entered an order terminating its jurisdiction in the juvenile proceeding. The result of the court terminating its jurisdiction, however, is that the guardianship order entered in the case is no longer enforceable. Thus, although the court did not expressly terminate the guardianship, the practical effect of the court terminating its jurisdiction is that the guardianship of Victor was extinguished because the court is without authority to enforce the guardianship order. Because the court did not directly terminate the guardianship, but the guardianship order only was rendered unenforceable due to the court terminating its jurisdiction, N.C. Gen. Stat. § 7B-600 is not applicable.

The plain language of N.C. Gen. Stat. § 7B-201 is clear; when the jurisdiction of the juvenile court terminates, “the court thereafter shall not modify or enforce any order previously entered in the case, *including any juvenile court order relating to the*

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custody, placement, or *guardianship of the juvenile*.” N.C. Gen. Stat. § 7B-201(b) (emphasis added). “Where the language of a statute is clear and unambiguous, there is no room for judicial construction[,] and the courts must give [the statute] its plain and definite meaning[.]” *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 575, 573 S.E.2d 118, 121 (2002) (internal quotation marks omitted). If our General Assembly had not intended for a guardianship order to no longer be enforceable when the court’s jurisdiction terminates, we must assume that it would not have included plain language to that effect in the statute.

Additionally, N.C. Gen. Stat. § 7B-201’s “unless applicable law . . . provides otherwise” phrase modifies the provision concerning the reversion of the juvenile’s legal status and custodial rights of the parties. It does not modify the preceding sentence concerning whether prior orders in a case are no longer enforceable when the court’s jurisdiction terminates. Thus, according to the plain language of N.C. Gen. Stat. § 7B-201, a guardianship order is no longer enforceable when the court terminates its jurisdiction.

Here, because the Haywood County court terminated its jurisdiction on 2 April 2014, the underlying guardianship order awarding guardianship of Victor to the maternal grandparents was no longer enforceable and the guardianship was, for all practical purposes, extinguished. Custody of the juveniles would have reverted back to respondents at that time had DHHS not already obtained custody of the juveniles

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through nonsecure custody orders entered 9 December 2013 in the Buncombe County proceeding. *See* N.C. Gen. Stat. § 7B-201(b). Therefore, when DHHS filed the petition to terminate respondents' parental rights as to Victor on 15 May 2015, the maternal grandparents were no longer his legal guardians and they were not required to be named as guardians on the petition.

Respondents next argue the court lacked subject matter jurisdiction because DHHS did not issue a summons to the maternal grandparents as Victor's guardians. However, because this argument is based on the premise that the grandparents remained Victor's legal guardians, and we conclude the guardianship was rendered unenforceable by the 2 April 2014 order, this argument must necessarily fail. The grandparents were no longer the guardians of Victor when the petition to terminate parental rights was filed and they were not parties to the termination proceeding. Thus, DHHS was not required to cause a summons to be issued to them for the termination hearing.

Because we hold the grandparents were not the guardians of Victor at the time the petition was filed, they were not required to be named on the petition or be issued a summons. Therefore, the petition to terminate respondents' parental rights to Victor was not deficient and the trial court had subject matter jurisdiction to enter the termination order.

Moving to the merits of the termination orders, respondents do not challenge the trial court's determination that grounds exist to terminate their parental rights. Respondents only challenge the dispositional portion of the orders, arguing that the trial court abused its discretion in concluding that termination of their parental rights was in the juveniles' best interest because it failed to consider the bond between the juveniles and their grandparents. We are not persuaded.

"After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2015). "The decision to terminate parental rights is vested within the sound discretion of the trial [court] and will not be overturned on appeal absent a showing that the [trial court's] actions were manifestly unsupported by reason." *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005) (citation omitted). When determining whether it is in a juvenile's best interest to terminate parental rights, the trial court must consider the factors set forth in N.C. Gen. Stat. § 7B-1110, which include the juvenile's age, the likelihood of the adoption of the juvenile, whether termination will accomplish the permanent plan for the juvenile, the bond between the juvenile and the parent, and the quality of any relationship between the juvenile and any potential adoptive parent, guardian, or custodian. N.C. Gen. Stat. § 7B-1110(a)(1)-(5).

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Here the trial court found that the juveniles are two and four years old, have been placed with their foster parent since 2014, and have a strong bond with their foster parent; the foster parent has provided for all of the juveniles' needs; the foster parent is willing to adopt the juveniles; the juveniles have a very little bond with respondents due to their long absence in their lives; the juveniles have a high likelihood of adoption; and the only barrier to achieving the permanent plan of adoption is termination of parental rights. Respondents do not specifically challenge any of these findings of fact and they are thus binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Respondents contend the trial court abused its discretion in terminating their parental rights because it failed to make any findings regarding the bond between the children and their grandparents and the grandparents' guardianship of Victor. However, for the reasons discussed above, the grandparents were no longer the guardians of Victor and not parties to the termination of parental rights proceeding. Thus, the court was not required to make any findings pertaining to the grandparents' previous guardianship or the relationship of the juveniles with the maternal grandparents. The trial court's findings of fact demonstrate that the court properly considered all of the requisite statutory factors and reached a reasoned decision based on these factors. Therefore, the trial court did not abuse its discretion

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in determining that termination of respondents' parental rights was in the juveniles' best interests. Accordingly, the trial court's orders are affirmed.

AFFIRMED.

Judges CALABRIA and ZACHARY concur.

Report per Rule 30(e).