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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-379

Filed: 19 September 2017

Mecklenburg County, No. 16 JA 346

IN THE MATTER OF: A.J.B.

Appeal by respondent-father from amended order entered 10 January 2017 by Judge Louis A. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 24 August 2017.

Marc S. Gentile, for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

K & L Gates, LLP, by Maggie Dickens, for guardian ad litem.

Miller & Audino, LLP, by Jay Anthony Audino, for respondent-appellant.

CALABRIA, Judge.

Respondent-father appeals from an “Amended Adjudication/Disposition Order” entered by the trial court on 10 January 2017. We conclude that the trial court was without authority to amend its original order entered on 27 September 2016 to reduce the amount of visitation previously awarded to respondent-father. Therefore, we vacate the amended order.

I. Factual and Procedural Background

Opinion of the Court

On 18 July 2016, respondent-father's one-year-old daughter, "Aly,"¹ was taken to the emergency room with serious injuries including a fractured skull, severe bruising on her scalp, face, lips, gumline, and spine, "bleeding into the sclera of the eyes[,] a torn frenulum, "a hand imprint on the side of her face[,] "fingernail marks behind her ears[,] and "a potential bite mark on her arm and bruising on the arm as well." At the time of the incident, Aly was living in a home with respondent-mother, respondent-father, and four other adults, one of whom was a registered sex offender. An investigation by Mecklenburg County Youth and Family Services ("YFS") revealed that Aly sustained her injuries while in the care of respondent-mother and while respondent-father was at work. Respondent-mother was subsequently arrested and charged with child abuse inflicting serious injury.

On 22 July 2016, YFS obtained nonsecure custody of Aly and filed a juvenile petition alleging abuse, neglect, and dependency. After a two-day hearing, the trial court entered a combined "Adjudicatory Hearing Order" and "Disposition Order" on 27 September 2016, adjudicating Aly as an abused, neglected, and dependent juvenile. The court ordered that Aly remain in YFS custody, and ordered respondent-father to comply with the terms of his mediated case plan agreement and awarded him one hour of supervised visitation with Aly twice per week. It established reunification with respondent-father as Aly's "plan of care[.]"

¹ We use this pseudonym to protect the juvenile's privacy and for ease of reading.

Opinion of the Court

Following an initial review hearing pursuant to N.C. Gen. Stat. § 7B-906.1(a) (2015), the trial court entered a “Review Hearing Order” on 29 November 2016. The court found that respondent-mother had declined to enter into a Family Services Agreement with YFS on the advice of her criminal attorney and had not made any progress toward correcting the issues that led to Aly’s removal from the home. Although respondent-father had previously stated his intention to separate from respondent-mother, the court found that he refused to acknowledge respondent-mother’s responsibility for Aly’s injuries, continued to live with respondent-mother, and “got her pregnant” since the September 2016 hearing. The court established adoption as a primary plan for Aly, with a secondary plan of guardianship, but allowed respondent-father to continue to have two hours of weekly supervised visitation with Aly. A permanency planning hearing was scheduled for 30 January 2017.

On 10 January 2017, the trial court entered an “Amended Adjudication/Disposition Order” that was largely consistent with the original order that was entered 27 September 2016. However, the trial court converted the handwritten provisions of the order to typed text and added at least one dispositional conclusion of law, specifically that “[r]eunification efforts with the mother would clearly be unsuccessful or inconsistent with the juveniles’ [sic] health and safety.” More pertinent to this appeal, the court also reduced the amount of supervised

Opinion of the Court

visitation awarded to respondent-father from one hour twice per week to “a minimum of one hour per week.” Respondent-father gave timely notice of appeal from the amended order on 31 January 2017.

II. Authority to Act

In his sole argument on appeal, respondent-father claims that the trial court “lacked subject matter jurisdiction to enter the amended adjudication and disposition order[and] erred in entering” it, absent “the filing of an appropriate motion seeking the entry of such an amended order.” While the trial court is more accurately characterized as lacking the *authority* to enter the amended order, rather than lacking *subject matter jurisdiction*,² we agree with respondent-father that the trial court erred by entering the “Amended Adjudication/Disposition Order,” and it must be vacated.

“[A] court’s authority to act pursuant to a statute, although related, is different from its subject matter jurisdiction.” *Haker-Volkening v. Haker*, 143 N.C. App. 688, 693, 547 S.E.2d 127, 130, *disc. review denied*, 354 N.C. 217, 554 S.E.2d 338 (2001).

“Subject matter jurisdiction is the threshold requirement for a court to hear and

² Respondent-father appears to use the two terms interchangeably in his appellant’s brief. He refers generally to a trial court’s lack of “authority” to enter an order *sua sponte*. He also observes that N.C. Gen. Stat. § 1A-1, Rule 60(a) (2015) “does not grant the trial court the authority to make substantive modifications to an entered judgment.” *In re C.N.C.B.*, 197 N.C. App. 553, 556, 678 S.E.2d 240, 242 (2009) (quoting *Food Service Specialists v. Atlas Restaurant Mgmt.*, 111 N.C. App. 257, 259, 431 S.E.2d 878, 879 (1993)). However, respondent-father specifically contests the trial court’s subject matter jurisdiction and argues that the “[a]mended [o]rder is void, due to the trial court’s absence of jurisdiction[.]”

adjudicate a controversy brought before it.” *In re J.W.S.*, 194 N.C. App. 439, 446, 669 S.E.2d 850, 854 (2008). “A court’s subject matter jurisdiction over a particular case is invoked by the pleading.” *Boseman v. Jarrell*, 364 N.C. 537, 546, 704 S.E.2d 494, 501 (2010). “This power of a court to hear and determine (subject matter jurisdiction) is not to be confused with the way in which that power may be exercised in order to comply with the terms of a statute (authority to act).” *Haker-Volkening*, 143 N.C. App. at 693, 547 S.E.2d at 130.

“[T]he North Carolina Juvenile Code grants the district courts of North Carolina ‘exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent.’” *In re J.W.S.*, 194 N.C. App. at 446, 669 S.E.2d at 854 (quoting N.C. Gen. Stat. § 7B-200(a) (2007); alteration omitted). “The pleading in an abuse, neglect, or dependency action is the petition.” N.C. Gen. Stat. § 7B-401(a) (2015). Furthermore, following an adjudication of abuse, neglect, or dependency, “the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile, until terminated by order of the court, or until the juvenile is otherwise emancipated.” N.C. Gen. Stat. § 7B-1000(b) (2015).

Respondent-father does not contest the sufficiency of the petition filed by YFS on 22 July 2016. Finding no fatal defect on the face of the pleading, we conclude the trial court possessed subject matter jurisdiction. Moreover, as the court did not

Opinion of the Court

terminate its jurisdiction by order following its adjudication of Aly as abused, neglected, and dependent, the court had continuing jurisdiction in the cause at the time it entered its amended order on 10 January 2017.

Nonetheless, we agree with respondent-father that the trial court “erred in entering” the “Amended Adjudication/Disposition Order.” Generally, a court’s statutory authority to amend a previously-entered order is confined to the following:

N.C. Gen. Stat. § 1A-1, Rule 59(e) (20[15]) permits the amendment of final judgments or orders *upon motion filed within 10 days after entry of the judgment or order sought to be amended. . . .*

N.C. Gen. Stat. § 1A-1, Rule 60(a) [(2015)] provides for the correction of clerical errors by the trial court at any time. *However, the trial court has no authority, under the guise of correction of a clerical error, to make modifications to an order or judgment which affect the substantive rights of any party.*

Black v. Black, 174 N.C. App. 361, 363, 620 S.E.2d 924, 925 (2005) (emphasis added).

Under N.C. Gen. Stat. § 7B-1000(a) (2015), which governs abuse, neglect, and dependency cases, “[u]pon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile.”

Here, the trial court entered its amended order *sua sponte*, without a motion from any party, a hearing, or any finding of “changes in circumstances or the needs

of the juvenile.” N.C. Gen. Stat. § 7B-1000(a). Therefore, the court’s authority to act was limited to the correction of clerical errors not “affect[ing] the substantive rights of any party” pursuant to Rule 60(a). *Black*, 174 N.C. App. at 363, 620 S.E.2d at 925; *see also Buncombe Cty. ex rel. Andres v. Newburn*, 111 N.C. App. 822, 825, 433 S.E.2d 782, 784 (“[a] change in an order is considered substantive and outside the boundaries of Rule 60(a) when it alters the effect of the original order”), *disc. review denied*, 335 N.C. 236, 439 S.E.2d 143 (1993).

The original 27 September 2016 order granted respondent-father two hours of visitation per week. The “Amended Adjudication/Disposition Order” reduced respondent-father’s visitation to only one hour weekly. This was unquestionably a substantive change with regard to respondent-father’s parental rights. *See In re J.H.*, ___ N.C. App. ___, ___, 780 S.E.2d 228, 243 (2015) (finding reversible error where permanency planning order “fails to establish the duration of respondent-mother’s monthly visitation” in accordance with N.C. Gen. Stat. § 7B-905.1(c) (2013)). Because the court exceeded its authority under Rule 60(a) in entering the amended order, the order is hereby vacated.

VACATED.

Judges DILLON and DAVIS concur.

Report per Rule 30(e).