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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1106

Filed: 6 March 2018

Caldwell County, No. 16 JT 161

IN THE MATTER OF: J.R.G.

Appeal by Respondent-Father from order entered 12 April 2017 by Judge Wesley W. Barkley in Caldwell County District Court. Heard in the Court of Appeals 21 February 2018.

*Joseph C. Delk, III, for Petitioner-Appellee.*

*Anné C. Wright for Respondent-Appellant.*

*No brief filed by Guardian ad Litem.*

INMAN, Judge.

Edward Ryan Chandler (“Respondent-Father” or “Father”) appeals from an order terminating his parental rights to J.R.G. (“Jenny”).<sup>1</sup> Father argues that the trial court lacked subject matter jurisdiction because April L. Woods and Jesse L.

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<sup>1</sup> A pseudonym is used to protect the identity of the child and for ease of reading.

Woods (“Petitioners”) did not establish standing pursuant to N.C. Gen. Stat. § 7B-1103 to file a Petition to Terminate Parental Rights.

After careful review, we vacate the trial court’s order.

### **Factual and Procedural History**

Jenny was born on 24 April 2016 to Kendi Noel Goodman (“Mother”)<sup>2</sup> in Caldwell County, North Carolina. On 25 April 2016, Mother signed a “Consent to Adoption” form and relinquished custody of Jenny to Petitioners. On 18 November 2016, Petitioners filed a Petition to Terminate the Parental Rights of both Mother and Father (the “Petition”).

Father was served with the Petition on 28 November 2016 in the Catawba County Detention Center, where he was incarcerated. On 5 December 2016, Father filed and served on Petitioners a *pro se* answer, stating that he did not want his parental rights terminated and requesting that Jenny be placed with his sister for the remainder of his incarceration.

Petitioners’ counsel attempted to serve Father with a notice of hearing by mail addressed to the Catawba County Detention Center. After the notice of hearing was returned as unclaimed, Petitioners’ counsel served notice by publication in the Lenoir News-Topic on 28 February, 7 March, and 14 March 2017.

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<sup>2</sup> Mother has not appealed from the order terminating parental rights.

A consolidated adjudication and disposition hearing occurred on 21 March 2017. Neither Mother nor Father appeared at the hearing. On 12 April 2017, the trial court entered an order terminating the parental rights of Mother and Father. At no point during the proceedings was Father appointed provisional counsel.

In a notice of appeal filed on 9 August 2017, Father asserted that he was not served a copy of the order terminating his parental rights and was unaware of the hearing or the order until 27 July 2017. Appellate counsel was assigned to represent Father on 23 August 2017. Petitioners filed their reply brief on 16 February 2018, ninety days after the time allowed per the North Carolina Rules of Appellate Procedure. Father filed a Motion to Strike Petitioners' brief; we allowed Father's motion.

### **Analysis**

#### *1. Appellate Jurisdiction*

Concurrent with filing his brief before this Court, Father filed a Petition for Writ of Certiorari out of concern that his notice of appeal was not timely filed. *See* N.C. R. App. P. 21(a)(1) (2017) ("The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action . . . ."). In the interest of justice and in our discretion, we allow

Father's Petition for Writ of Certiorari and permit his appeal from the order terminating his parental rights.

*2. Subject Matter Jurisdiction*

Father argues that the order terminating his parental rights must be vacated because the Petitioners failed to establish standing and therefore the trial court was never vested with subject matter jurisdiction.

“Whether [a] petitioner had standing is a legal issue that this Court reviews de novo.” *In re A.D.N.*, 231 N.C. App. 54, 59, 752 S.E.2d 201, 205 (2013), *disc. review denied*, 367 N.C. 321, 755 S.E.2d 626 (2014). “Standing to file a legal proceeding is a matter of subject matter jurisdiction, and ‘[i]ssues of subject matter jurisdiction may be raised at any time, including on appeal.’ ” *In re N.G.H.*, 237 N.C. App. 236, 237, 765 S.E.2d 550, 551 (2014) (alteration in original) (quoting *Peacock v. Shinn*, 139 N.C. App. 487, 491, 533 S.E.2d 842, 845, *disc. review denied and appeal dismissed*, 353 N.C. 267, 546 S.E.2d 110 (2000)).

Section 7B-1103 of the North Carolina General Statutes defines who has standing to file a petition or motion to terminate parental rights. N.C. Gen. Stat. § 7B-1103 (2015); *see also In re Miller*, 162 N.C. App. 355, 357, 590 S.E.2d 864, 865 (2004). A petition or motion to terminate parental rights must include “[t]he name and address of the petitioner or movant and facts sufficient to identify the petitioner

or movant as one authorized by [N.C. Gen. Stat. §] 7B-1103 to file a petition or motion.” N.C. Gen. Stat. § 7B-1104(2) (2015). Section 7B-1103 provides:

(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:

(1) Either parent seeking termination of the right of the other parent.

(2) Any person who has been judicially appointed as the guardian of the person of the juvenile.

(3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent jurisdiction.

(4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to [N.C. Gen. Stat. §] 48-3-701.

(5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the petition or motion.

(6) Any guardian ad litem appointed to represent the minor juvenile pursuant to [N.C. Gen. Stat. §] 7B-601 who has not been relieved of this responsibility.

(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

N.C. Gen. Stat. § 1103(a).

Father asserts that Petitioners do not have standing based on any provision of N.C. Gen. Stat. § 7B-1103; we agree. A careful review of the record reveals that Petitioners are not biologically related to Jenny, are not a department of social services, have not been appointed as guardians ad litem for Jenny, and that Jenny has not resided with them continuously for two or more years—Jenny was born only seven months before the Petition was filed. It appears from the record that Petitioners failed to allege in the Petition or present any evidence that they filed a petition to adopt Jenny.

This Court has addressed a similar deficiency in a petition to terminate parental rights. In *In re N.G.H.*, we vacated the trial court’s order terminating parental rights because the petitioners did not attach or reference a Petition for Adoption in their Petition to Terminate Parental Rights. 237 N.C. App. at 237, 765 S.E.2d at 551. This Court held that the “[p]etitioners’ failure to include a copy of the petition to adopt in the record ‘ultimately deprived the [district] court of subject matter jurisdiction.’” *Id.* at 238-39, 765 S.E.2d at 552 (second alteration in original) (quoting *In re T.B.*, 177 N.C. App. 790, 793, 629 S.E.2d 895, 898 (2006)).

Here, there is no evidence in the record that Petitioners filed a Petition for Adoption prior to, or concurrent with, bringing this action to terminate Father’s parental rights. Because the trial court lacked subject matter jurisdiction, the order terminating Father’s parental rights must be vacated without prejudice to

Petitioners' right to file a new petition demonstrating they have standing to bring a termination action.

Because we vacate the trial court's order for lack of subject matter jurisdiction, we do not address Father's arguments on appeal regarding the merits of the Petition.

**Conclusion**

For the foregoing reasons, we vacate the trial court's order terminating Father's parental rights.

VACATED.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).