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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1257

Filed: 3 July 2018

Onslow County, No. 15 JA 83

IN THE MATTER OF: A.M.

Appeal by respondent-father from order entered 26 May 2017 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 10 May 2018.

Richard Penley for petitioner-appellee Onslow County Department of Social Services.

Jeffrey L. Miller for respondent-appellant father.

INMAN, Judge.

Respondent, the father of A.M. (“Ann”)¹, appeals from the trial court’s order adjudicating Ann as a dependent juvenile. Respondent contends the trial court lacked subject matter jurisdiction to adjudicate the juvenile petition and that the trial court erred in adjudicating Ann as dependent because the findings of fact do not support the court’s conclusion that Ann is dependent. Because we hold the evidence

¹ A pseudonym is used for ease of reading and to protect the juvenile’s identity.

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and findings of fact are insufficient to support the trial court's conclusion that Ann is a dependent juvenile, we reverse the order of the trial court.

Facts and Procedural History

Ann was born in December 2002. Respondent and Ann's mother have a history with child protective services. On 28 January 2007, the Harnett County District Court adjudicated Ann neglected due to drug use and domestic violence by both parents. Ann was placed in the custody of the Harnett County Department of Social Services ("HCDSS"). At some point in time, respondent and the mother divorced. The mother made progress on her case plan, and HCDSS placed Ann back with the mother on 27 July 2007. In a permanency planning review order entered 11 January 2008, the trial court returned full custody of Ann back to the mother and ordered respondent not to initiate contact with Ann. The trial court found that respondent failed to comply with his family service agreement and that the court previously had ceased visitation between respondent and Ann and ceased reunification efforts with respondent on 28 November 2006. The court ordered the preparation of a child custody order to be entered in the existing civil case involving Ann. On 24 January 2008, the Hartnett County District Court entered a Civil Child Custody Order awarding full custody of Ann to the mother and ordering no contact between

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respondent and Ann, finding respondent not to be a fit and proper person to visit with the child.

The mother remarried and Ann lived with the mother and step-father in Maple Hill, North Carolina. In September 2016, Ann was in secure custody at the Chatham County Youth Development Center (“YDC”) pursuant to a 25 February 2016 juvenile court order adjudicating her responsible for felony criminal offenses. Ann was committed to YDC for an indefinite period not to exceed her eighteenth birthday. The mother and step-father were ordered to participate in Ann’s juvenile case plan at least one time per month. However, from 25 February 2016 through 16 May 2016, the mother did not contact the juvenile at YDC, and on 3 August 2016, the mother informed YDC that she did not want to participate in Ann’s case plan. The North Carolina Department of Public Safety (“DPS”) filed a Motion to Show Cause against the mother. At a hearing on the motion, the mother informed the court that she no longer wanted to parent Ann. The court, sua sponte, entered an order placing Ann in the nonsecure custody of the Onslow County Department of Social Services (“DSS”) but also directing that she remain in secure custody at YDC.

Onslow County DSS filed a juvenile petition on 13 October 2016, alleging Ann to be a dependent juvenile. After a hearing held 13 February 2017, the trial court entered an order on 26 May 2017 adjudicating Ann dependent. The trial court continued custody with Onslow County DSS and ordered reunification efforts to

remain ceased with respondent “as previously court ordered [in] Harnett County.” Respondent appeals.

Analysis

A. Jurisdiction

Respondent challenges the Onslow County District Court’s jurisdiction over the matter on multiple grounds. We address each in turn.

Respondent first challenges the Onslow County District Court’s subject matter jurisdiction to hear the dependency petition. Respondent contends that the Onslow County District Court exceeded its authority in entering the nonsecure custody order without a pending juvenile petition, and therefore, the court lacked authority to enter the adjudication order. We do not agree.

Whether the trial court had subject matter jurisdiction is a question of law, and is reviewed *de novo* on appeal. *Powers v. Wagner*, 213 N.C. App. 353, 357, 716 S.E.2d 354, 357 (2011). Subject matter jurisdiction is the threshold requirement for a court to hear and adjudicate a controversy brought before it. *In re McKinney*, 158 N.C. App. 441, 443, 581 S.E.2d 793, 795 (2003). “When a court decides a matter without the court’s having jurisdiction, then the whole proceeding is null and void, *i.e.*, as if it had never happened.” *Hopkins v. Hopkins*, 8 N.C. App. 162, 169, 174 S.E.2d 103, 108 (1970) (internal quotation marks omitted). Thus the trial court’s subject matter jurisdiction may be challenged at any stage of the proceedings, even

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for the first time on appeal. *In re T.R.P.*, 360 N.C. 588, 595, 636 S.E.2d 787, 793 (2006).

Contrary to respondent's assertion, it is the juvenile petition, not the nonsecure custody order, that confers subject matter jurisdiction of the case on the court. "The pleading in an abuse, neglect, or dependency action is the petition." N.C. Gen. Stat. § 7B-401 (2017). "A juvenile abuse, neglect, or dependency action is a creature of statute and 'is commenced by the filing of a petition,' which constitutes the initial pleading in such actions." *In re A.R.G.*, 361 N.C. 392, 397, 646 S.E.2d 349, 352 (2007) (quoting N.C. Gen. Stat. § 7B-405 [(2017)]). "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. at 593, 636 S.E.2d at 792. An order for nonsecure custody in a juvenile abuse, neglect, or dependency proceeding "shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true" N.C. Gen. Stat. § 7B-503(a) (2017).

Here, the nonsecure custody order was filed in the juvenile delinquency case, not in a new abuse, neglect, or dependency action. The trial court acquired subject matter jurisdiction over the dependency case by the filing of the verified juvenile petition on 13 October 2016 and therefore had jurisdiction to enter the adjudication order. N.C. Gen. Stat. § 7B-405; *see also In re T.P.*, 197 N.C. App. 723, 726-729, 678 S.E.2d 781, 784-86 (2009) (holding that the trial court's failure to properly complete

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the nonsecure custody form did not deprive the trial court of subject matter jurisdiction because the court obtained jurisdiction over the matter when DSS filed juvenile petitions alleging the children were neglected and dependent juveniles).

Respondent next argues the trial court lacked jurisdiction because Onslow County DSS lacked standing to file the juvenile petition as Ann was not found in and did not reside in Onslow County. We disagree.

Pursuant to N.C. Gen. Stat. § 7B-400(a) (2017), “[a] proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present.” Further, “[o]nly a county director of social services or the director’s authorized representative may file a petition alleging that a juvenile is abused, neglected, or dependent.” N.C. Gen. Stat. § 7B-401.1(a) (2017). Under the Juvenile Code, a “director” is defined as “[t]he director of the county department of social services in the county in which the juvenile resides or is found, or the director’s representative as authorized in G.S. 108A-14.” N.C. Gen. Stat. § 7B-101(10) (2017). For the purpose of receiving social services,

[a] minor has the legal residence of the parent or other relative with whom he resides. If the minor does *not* reside with a parent or relative and is *not* in a foster home, hospital, mental institution, nursing home, boarding home, educational institution, confinement facility, or similar institution or facility, he has the legal residence of the person with whom he resides. *Any other minor* has the legal residence of his mother, or if her residence is not known then the legal residence of his father; if his mother’s or father’s residence is not known, the minor is a legal resident of the county in which he is found.

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N.C. Gen. Stat. § 153A-257(d)(3) (2017) (emphasis added). Because Ann did not reside with a parent or relative, but was in YDC custody at the time the petition was filed, she had the legal residence of her mother for purposes of receiving social services. *Id.*

Respondent asserts, without any citation, that the mother was a resident of Pender County. However,

[i]n appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal, the verbatim transcript of proceedings, if one is designated, and any other items filed pursuant to this Rule 9. Parties may cite any of these items in their briefs and arguments before the appellate courts.

N.C. R. App. P. 9(a). “Matters discussed in the brief outside the Record are not properly considered on appeal since the Record imports verity and binds the reviewing court.” *In re L.B.*, 181 N.C. App. 174, 185, 639 S.E.2d 23, 28 (2007) (internal quotation marks omitted). “In making our review and reaching our determination upon the facts of a particular case, we can judicially know only what appears of record on appeal and will not speculate as to matters outside the record.” *State v. Branch*, 306 N.C. 101, 105, 291 S.E.2d 653, 657 (1982). “An appellate court cannot assume or speculate that there was prejudicial error when none appears on the record before it.” *State v. Moore*, 75 N.C. App. 543, 548, 331 S.E.2d 251, 254, *disc. rev. denied*, 315 N.C. 188, 337 S.E.2d 862 (1985).

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The juvenile petition alleges that Ann resided in the district of Onslow County, and the trial court concluded in a Pre-Adjudication Order that the court had jurisdiction over the parties and subject matter of the action. The record on appeal is devoid of any indication that the mother did not reside in Onslow County. Because no error is shown on the face of the record, this Court will not assume that Onslow County DSS lacked standing to file the juvenile petition.

Lastly, respondent argues the Onslow County District Court lacked jurisdiction to adjudicate Ann dependent because the Harnett County District Court did not terminate its jurisdiction in a 2006 case involving the custody of Ann and retained exclusive, continuing jurisdiction.

The North Carolina Juvenile Code grants our district courts “exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent.” N.C. Gen. Stat. § 7B-200(a) (2017). Additionally,

[w]hen the court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected, or dependent:

- (1) Any other civil action in this State in which the custody of the juvenile is an issue is automatically stayed as to that issue, unless the juvenile proceeding and the civil custody action or claim are consolidated pursuant to subsection (d) of this section or the court in the juvenile proceeding enters an order dissolving the stay.
- (2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to exercise jurisdiction in the

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juvenile proceeding.

N.C. Gen. Stat. § 7B-200(c).

In a juvenile abuse, neglect, or dependency proceeding, when the child is placed in the custody of a parent, the trial court “shall determine whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person” in a civil custody order. N.C. Gen. Stat. § 7B-911(a) (2017). When entering a civil custody order pursuant to N.C. Gen. Stat. § 7B-911, the trial court shall

(1) Make findings and conclusions that support the entry of a custody order under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, make findings and conclusions that support modification of that order pursuant to G.S. 50-13.7.

(2) Make the following findings:

a. There is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding.

b. At least six months have passed since the court made a determination that the juvenile’s placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed.

N.C. Gen. Stat. § 7B-911(c).

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Here, there was a prior juvenile neglect proceeding in Harnett County, North Carolina. In a permanency planning order entered 11 January 2008, the Harnett County District Court awarded custody back to the mother and ordered no initiating contact between respondent and Ann. The trial court found that “the court should execute a civil child custody order in accordance with [this permanency planning] order” to be “filed in the existing Harnett County domestic action relating to the juvenile.” The court waived further hearings in the matter and ordered that “[u]ntil the court enters a child custody order, the court retains jurisdiction pursuant to the Juvenile Code.”

On 24 January 2008, a Civil Child Custody Order was entered in Harnett County District Court awarding full custody of Ann to the mother. The court concluded that it had jurisdiction of the parties and subject matter pursuant to N.C. Gen. Stat. § 7B-911 and N.C. Gen. Stat. § 50A-201, stated that the order “shall constitute the permanent order of custody of the child[,]” and ordered no visitation or initiation of contact between respondent and Ann.

Respondent contends that the Harnett County District Court retained continuing, exclusive jurisdiction because the Harnett County orders did not contain the appropriate findings to terminate its jurisdiction in the juvenile proceeding. Specifically, respondent contends that the 11 January 2008 Permanency Planning Order failed to contain any findings about the need for continued state intervention,

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and that six months had not passed since entry of the Permanency Planning Order granting the mother full custody before entry of the Civil Child Custody Order.

Respondent's argument, however, relies entirely on alleged error in the Harnett County orders: the failure to make the necessary findings to terminate the trial court's jurisdiction in the juvenile proceeding and transfer the matter to Chapter 50. Respondent failed to appeal from the permanency planning order or the civil custody order, and he cannot now collaterally attack those orders as failing to properly terminate jurisdiction in the juvenile case. *In re Webber*, 201 N.C. App. 212, 219, 689 S.E.2d 468, 474 (2009) ("A collateral attack is one in which a party is not entitled to the relief requested unless the judgment in another action is adjudicated invalid." (internal quotation marks omitted)), *cert denied*, 364 N.C. 241, 699 S.E.2d 925 (2010). The permanency planning order indicates the court intended to terminate its jurisdiction upon the entry of the civil child custody order, stating "[u]ntil the court enters a child custody order, the court retains jurisdiction pursuant to the Juvenile Code." Once the civil custody order was entered on 24 January 2008, this condition was met and Harnett County's jurisdiction over the juvenile proceeding was terminated. Therefore, this argument is overruled.

B. Adjudication

Respondent contends that the trial court erred in adjudicating Ann dependent because the trial court's findings of fact are not supported by clear and convincing evidence, and the findings of fact do not support the conclusions of law. Specifically,

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respondent argues the trial court's findings of fact are insufficient to support the conclusion that Ann was a dependent juvenile because the findings do not address respondent's ability to provide care or supervision of Ann and the availability to respondent of an alternative child care arrangement. We agree.

Adjudicatory hearings for dependency are limited to determining only "the existence or nonexistence of any of the conditions alleged in [the] petition." N.C. Gen. Stat. § 7B-802 (2017). "The allegations in a petition alleging that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence." N.C. Gen. Stat. § 7B-805 (2017). We review the lower court's adjudication to determine whether the (1) findings of fact are supported by clear and convincing evidence, and (2) legal conclusions are supported by the findings of fact. *In re L.Z.A.*, ___ N.C. App. ___, ___, 792 S.E.2d 160, 165 (2016). "The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*." *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015). We review the disposition to determine whether the trial court abused its discretion in making its determination of the child's best interests. *In re C.W.*, 182 N.C. App. 214, 219, 641 S.E.2d 725, 729 (2007).

A dependent juvenile is defined as one "in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2017). In

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determining whether a juvenile is dependent, “the trial court must address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.” *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court’s failure to make these findings will result in reversal of the court. *In re K.D.*, 178 N.C. App. 322, 328-29, 631 S.E.2d 150, 155 (2006). “Moreover, although [N.C. Gen. Stat.] § 7B-101(9) uses the singular word ‘the parent’ when defining whether ‘the parent’ can provide or arrange for adequate care and supervision of a child, our caselaw has held that a child cannot be adjudicated dependent where she has at least ‘a parent’ capable of doing so.” *In re V.B.*, 239 N.C. App. at 342, 768 S.E.2d at 868 (brackets omitted).

In *In re V.B.*, this Court reversed the trial court’s dependency adjudication because “the trial court’s findings of fact [did] not fully address (1) whether either parent was capable of providing care and supervision for the Child; or (2) whether either parent had an appropriate alternative child care arrangement for the Child.” 239 N.C. App. at 343, 768 S.E.2d at 869. The juvenile petition named the father as the child’s father and alleged the child was dependent because (1) the mother was a minor who was unable to provide for the child’s care or supervision, (2) paternity had not been established, and (3) there were no known placements currently available for the child. *Id.* at 342, 768 S.E.2d at 869. In the order adjudicating the child dependent, the trial court found that paternity had been established. *Id.* at 343, 768 S.E.2d at

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869. On appeal, this Court reversed, holding that “in light of [the] finding [of paternity],” the trial court erred in adjudicating the child dependent because social services “made no allegations, and presented no evidence, that [the] Father was unable to provide or arrange for the care and supervision of the Child, and the trial court made no findings to that effect.” *Id.* at 344, 768 S.E.2d at 870.

Here, as in *V.B.*, Onslow County DSS made no allegations in the petition and presented no evidence during adjudication that respondent was unable to provide or arrange for the care and supervision of Ann. The petition alleged only that the mother “reported that [respondent] is ‘court ordered no rights to the juvenile,’ but [Onslow County DSS] has been unable to verify this information at the time of filing.” During the adjudication portion of the hearing, a DPS employee assigned to Ann’s delinquency case testified that he did not have any involvement with respondent and did not attempt to try and locate respondent at the time Ann was taken into nonsecure custody because the mother told him that respondent’s rights had been terminated. He further testified that he never investigated the mother’s allegation and that it was a “non-issue” because DSS was working with the mother and step-father at the time. An Onslow County DSS social worker confirmed that the DPS employee’s testimony regarding Onslow County DSS’s involvement in the case was consistent with what the DPS employee had reported to DSS, but the social worker had no independent knowledge of the DPS investigation. Additionally, DSS’s report

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and the Harnett County court files were admitted during the dispositional hearing and received for purposes of disposition only.

In the adjudication portion of the order, the trial court's findings pertaining to respondent find only that he is the biological father of Ann and that there was "previous DSS involvement with the family in Harnett County . . . wherein custody was returned to the respondent mother on or about January 11, 2008." The trial court failed to make any findings on adjudication as to respondent's ability to provide care or supervision of Ann.

Although the trial court made findings of fact pertaining to respondent in the disposition portion of the order, those findings are insufficient to support the adjudication of dependency. It is well settled that a proceeding adjudicating abuse, neglect, or dependency involves two independent and distinct stages: the adjudication stage governed by N.C. Gen. Stat. § 7B-805 and the disposition stage governed by N.C. Gen. Stat. § 7B-901 (2017). *In re O.W.*, 164 N.C. App. 699, 701, 596 S.E.2d 851, 853 (2004). At the adjudication stage, the allegations in the petition must be proved by clear and convincing evidence, while the dispositional hearing "may be informal," and the court "may consider any evidence, including hearsay evidence . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C. Gen. Stat. §§ 7B-805, 901. Accordingly, dispositional findings of fact do not satisfy the statutory requirement

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that the adjudication order “contain appropriate findings of fact and conclusions of law.” N.C. Gen. Stat. § 7B-807(b) (2017).

Because Onslow County DSS did not present any evidence at the adjudicatory hearing that respondent was unable to provide or arrange for the care and supervision of Ann, and the trial court made no findings to that effect, the trial court erred in adjudicating Ann dependent. Therefore, we reverse the trial court’s order. Because we reverse, we need not address respondent’s remaining arguments regarding the trial court’s disposition.

REVERSED.

Judges CALABRIA and ARROWOOD concur.

Report per Rule 30(e).