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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1064

Filed: 4 June 2019

Mecklenburg County, Nos. 16 JT 290-91

IN THE MATTER OF: M.F and C.F.

Appeal by respondents from order entered 13 July 2018 by Judge Louis A. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 9 May 2019.

Senior Associate County Attorney, Kathleen Arundell Jackson, for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Anné C. Wright for respondent-appellant father.

Garron T. Michael for respondent-appellant mother.

Bell, Davis & Pitt, P.A., by Derek M. Bast, for guardian ad litem.

INMAN, Judge.

Respondents, the mother and father of the juveniles M.F. and C.F. (“Mary” and “Claire”),¹ appeal from an order terminating their parental rights. After careful review, we affirm the trial court’s order.

On 21 June 2016, the Mecklenburg County Department of Social Services, Youth and Family Services (“YFS”) filed a petition alleging that Mary and Claire were neglected and dependent juveniles. DSS was granted non-secure custody of the juveniles. On 27 September 2016, the trial court adjudicated Mary and Claire neglected and dependent. On 3 January 2018, YFS filed a motion in the cause to terminate respondents’ parental rights. On 13 July 2018, the trial court entered an order terminating respondents’ parental rights. Respondents appeal.

Respondents’ sole argument on appeal is that the trial court lacked subject matter jurisdiction to terminate their parental rights because the motion seeking to terminate their parental rights was not properly verified. We disagree.

Whether the trial court had subject matter jurisdiction is a question of law reviewed *de novo* on appeal. *Powers v. Wagner*, 213 N.C. App. 353, 357, 716 S.E.2d 354, 357 (2011). The issue of subject matter jurisdiction may be considered at any time, and may be raised for the first time on appeal. *In re T.R.P.*, 360 N.C. 588, 595, 636 S.E.2d 787, 793 (2006).

¹ Pseudonyms are used to protect the identities of the juveniles and for ease of reading. See N.C.R. App. P. 3.1(b).

N.C. Gen. Stat. § 7B-1104 (2017) states that “[t]he petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant[.]” This Court has held that an unverified motion to terminate parental rights leaves the trial court without subject matter jurisdiction. *See In re C.M.H.*, 187 N.C. App. 807, 809, 653 S.E.2d 929, 930 (2007) (vacating the trial court’s termination order where the motion to terminate parental rights was unverified); *see also In re T.M.H.*, 186 N.C. App. 451, 454, 652 S.E.2d 1, 2 (“[A] violation of the verification requirement of N.C.G.S. § 7B-1104 has been held to be a jurisdictional defect *per se.*”), *disc. review denied*, 362 N.C. 87, 657 S.E.2d 31 (2007).

Because N.C. Gen. Stat. § 7B-1102 requires the motion to be properly verified, and the requirements for verification are not defined in Chapter 7B, “the requirements for verification established in [C]hapter 1A, Rule 11(b) should determine whether the pleading has been properly verified.” *In re Triscari Children*, 109 N.C. App. 285, 287, 426 S.E.2d 435, 437 (1993). N.C. Gen. Stat. § 1A-1, Rule 11(b) provides in pertinent part that,

[i]n any case in which verification of a pleading shall be required by these rules or by statute, it shall state in substance that the contents of the pleading verified are true to the knowledge of the person making the verification, except as to those matters stated on information and belief, and as to those matters he believes them to be true. Such verification shall be by affidavit of the party[.]

N.C. Gen. Stat. § 1A-1, Rule 11(b) (2017). A notarized verification will be accepted if it:

[1] Names the principal who appeared in person before the notary unless the name of the principal otherwise is clear from the record itself[;]

[2] Indicates that the principal who appeared in person before the notary signed the record in question and certified to the notary under oath or by affirmation as to the truth of the matters stated in the record[;]

[3] States the date of the oath or affirmation[;]

[4] Contains the signature and seal or stamp of the notary who took the oath or affirmation[; and]

[5] States the notary's commission expiration date.

N.C. Gen. Stat. § 10B-40(d) (2017).

Here, DSS filed a verified motion to terminate respondents' parental rights. Respondents contend that the verification was improper because, although the motion to terminate is dated 3 January 2018 and the verification is dated the same, the notary's signature is dated 3 August 2017. We conclude, however, that the notarization date was merely a clerical error that does not overcome the presumption of regularity given to both notarial acts and the trial court's exercise of jurisdiction. N.C. Gen. Stat. § 10B-99(a) (2017); *see also In re N.T.*, 368 N.C. 705, 708, 782 S.E.2d 502, 504 (2016) (noting "the presumption of regularity that attaches to the trial court's decision to exercise jurisdiction").

Section 10B-99(a) of our General Statutes provides: “In the absence of evidence of fraud . . . or evidence of a knowing and deliberate violation of this Article by the notary, the courts shall grant a presumption of regularity to notarial acts so that those acts may be upheld, provided there has been substantial compliance with the law.” N.C. Gen. Stat. § 10B-99(a). The notarial certificate in this instance does substantially comply with N.C. Gen. Stat. § 10B-40(d), as it contains the name of the affiant, the affiant’s signature, the affiant’s affirmation as to the motion’s truth, the date of that affirmation (albeit a technically incorrect one), the notary’s seal, and the expiration date of the notary’s commission. Absent evidence of fraud, the apparent clerical error as to the date of the affirmation does not suffice to invalidate the verification, and we will not presume, without more, that the notary impermissibly affirmed the verification five months prior to its execution. N.C. Gen. Stat. § 10B-99(a). We therefore hold the trial court obtained subject matter jurisdiction over this matter and affirm the trial court’s order terminating respondents’ parental rights.

AFFIRMED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).