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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-70

Filed: 5 November 2019

Gaston County, No. 18 JT 124, 18 JT 125

IN THE MATTER OF: B.L.R. & S.A.R.

Appeal by Respondent from order entered 29 October 2018 by Judge John K. Greenlee in Gaston County District Court. Heard in the Court of Appeals 3 September 2019.

Anné C. Wright for the Respondent-Appellant.

Horn, Pack, Brown & Dow, P.A., by Carol Walsburger Dow, for the Petitioner-Appellee.

BROOK, Judge.

Jeanine Caroline Russell ("Mother") appeals from the trial court's order terminating her parental rights to two minor children. We affirm.

I. Background

Two minor children of Mother, B.L.R. and S.A.R, came to live with Prospective Adoptive Parent when B.L.R. was approximately four months old and when S.A.R. was one day old.[1] Mother joined a consent judgment with Prospective Adoptive

[1] The identities of the children and prospective adoptive parent have been anonymized.

Parent contemporaneous with B.L.R. coming to live with Prospective Adoptive Parent. Mother joined another consent judgment with Prospective Adoptive Parent contemporaneous with S.A.R. coming to live with Prospective Adoptive Parent. These consent judgments granted Prospective Adoptive Parent sole custody of B.L.R. and S.A.R. Mother did not have visitation rights under either judgment, although Prospective Adoptive Parent testified at the hearing on the petitions for termination of Mother's parental rights that her initial intention in joining these judgments was to take custody of the children until Mother "got on her feet and had a more stable home"; that is, Prospective Adoptive Parent initially agreed to take sole custody of the children until Mother "changed her situation and her ability to be able to visit the children[.]"

Prospective Adoptive Parent filed petitions for termination of Mother's parental rights to these children on 3 May 2018. The petitions alleged two grounds in support of the termination of Mother's parental rights: abandonment and the termination of Mother's parental rights to one of her other children.

In the petitions, Prospective Adoptive Parent alleged that the identity of the father of the children was unknown. The consent judgments granting Prospective Adoptive Parent sole custody of the children were attached to the petitions as exhibits. In the consent judgments, Mother and Prospective Adoptive Parent stipulated and the trial court entering the judgments found that the identity of the

father of the children was unknown. In her response to the petitions to terminate her parental rights to the children, Mother admitted that the identity of the children's father was unknown. The children's birth certificates introduced at the adjudicatory hearing on the petitions to terminate Mother's parental rights also do not identify their father.

The petitions to terminate Mother's parental rights to B.L.R. and S.A.R. came on for a hearing on 11 October 2018 before the Honorable John K. Greenlee in Gaston County District Court. That day, Judge Greenlee presided over an adjudicatory and dispositional hearing on the petitions. Mother identified the children's father in her testimony at the adjudicatory hearing, testifying essentially that the reason she had not disclosed his identity was that he was a registered sex offender at the time of S.A.R.'s birth. Judge Greenlee heard other evidence and adjudicated B.L.R. and S.A.R. abandoned juveniles who had a sibling to whom Mother had also had her parental rights terminated, and concluded that termination of Mother's parental rights to B.L.R. and S.A.R. was in the best interest of the children. Judge Greenlee entered an order reflecting these rulings on 29 October 2018. Mother entered timely written notice of appeal from the trial court's order on 16 November 2018.

II. Standard of Review

> Termination of parental rights proceedings are conducted in two stages: adjudication and disposition. In the adjudication stage, the trial court must determine whether there exists one or more grounds for termination of

> parental rights under N.C. Gen. Stat. § 7B–1111(a). This Court reviews a trial court's conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court's findings of fact, and whether the findings of fact support the court's conclusions of law. If the trial court's findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary. However, the trial court's conclusions of law are fully reviewable *de novo* by the appellate court.
>
> If the trial court determines that at least one ground for termination exists, it then proceeds to the disposition stage where it must determine whether terminating the rights of the parent is in the best interest of the child, in accordance with N.C. Gen. Stat. § 7B–1110(a). The trial court's determination of the child's best interests is reviewed only for an abuse of discretion. Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.

In re A.B., 239 N.C. App. 157, 160-61, 768 S.E.2d 573, 575-76 (2015) (internal marks and citation omitted).

III. Analysis

Mother makes two arguments on appeal, which we address in turn.

A. Petition Contents

Mother first argues that the trial court erred in terminating her parental rights because the trial court lacked subject matter jurisdiction. Specifically, Mother contends that the absence of a verification of the efforts by Prospective Adoptive Parent to determine the identity or whereabouts of the father of the juveniles

rendered the petitions initiating the case fatally defective, depriving the trial court of subject matter jurisdiction to terminate her parental rights. We disagree.

It is axiomatic that "[s]ubject matter jurisdiction cannot be conferred by consent or waiver, and the issue of subject matter jurisdiction may be raised for the first time on appeal." *In re W.L.M.*, 181 N.C. App. 518, 524, 640 S.E.2d 439, 443 (2007) (citation omitted).

"Article 11 of Chapter 7B of the General Statutes governs termination of parental rights actions." *In re S.D.W.*, 187 N.C. App. 416, 418, 653 S.E.2d 429, 430 (2007). The required contents of a petition for termination of parental rights are set out in N.C. Gen. Stat. § 7B-1104. *Id.* N.C. Gen. Stat. § 7B-1104 requires the following:

> (1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.
>
> (2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by G.S. 7B-1103 to file a petition or motion.
>
> (3) The name and address of the parents of the juvenile. *If the name or address of one or both parents is unknown to the petitioner . . . , the petitioner . . . shall set forth with particularity the petitioner's . . . efforts to ascertain the identity or whereabouts of the parent or parents.* The information may be contained in an affidavit attached to the petition . . . and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. 14-27.21, 14-27.22, 14-27.23, or 14-27.24 and the conception of the juvenile need not be named in the

> petition.
>
> (4) The name and address of any person who has been judicially appointed as guardian of the person of the juvenile.
>
> (5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition or motion.
>
> (6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.
>
> (7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act.

N.C. Gen. Stat. § 7B-1104 (2017) (emphasis added).

The statute also contains a verification requirement, stating that "[t]he petition . . . shall be verified by the petitioner . . . and shall set forth such of the [] facts as are known," as well as those "facts which are unknown[.]" *Id.* This verification requirement has been held to be jurisdictional. *In re T.R.M.*, 208 N.C. App. 160, 161, 702 S.E.2d 108 (2010). The exact contents of this verification are not specified in the juvenile code, however; instead, they are found in Rule 11(b) of the North Carolina Rules of Civil Procedure. *In re Triscari*, 109 N.C. App. 285, 287, 426 S.E.2d 435, 436-37 (1993). Rule 11(b) requires such verifications to "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." N.C. Gen. Stat. § 1A–1, Rule 11(b) (2017).

In the present case, both petitions contained the following verification:

> [PROSPECTIVE ADOPTIVE PARENT], being duly sworn, deposes and says: That she has read the foregoing Petition; that the same is true of her own knowledge, except those matters alleged upon information and belief, and as to the same she believes them to be true.

The verifications of both petitions were signed by Prospective Adoptive Parent. Both verifications were also notarized.

It is true, as Mother points out in her appellate brief, that the verified allegations that the identity of B.L.R. and S.A.R.'s father was unknown did not describe efforts made to discover the identity of the children's father, nor was there an affidavit attached to the petitions describing "the petitioner's . . . efforts to ascertain the identity or whereabouts of the [father]," *see* N.C. Gen. Stat. § 7B-1104(3) (2017). Instead, attached to both petitions were consent judgments signed by Mother and containing a stipulation that the father of the children was unknown. Mother also admitted the verified allegations that the identity of the children's father was unknown in her response to the petitions filed with the trial court on 9 August 2018, as noted previously.

However, "[t]here is a distinction between the verification requirement of section 7B–1104, necessary to subject matter jurisdiction, and the required factual allegations of section 7B–1104(1)–(7)." *In re Z.T.B.*, 170 N.C. App. 564, 572, 613 S.E.2d 298, 301 (2005) (Martin, C.J., dissenting). As former Chief Judge Martin observed in his dissent in *In re Z.T.B.*,

> [t]his Court has repeatedly affirmed termination orders despite statutory defects where no prejudice was shown. *See, e.g.*, *In re Humphrey*, 156 N.C. App. 533, 539, 577 S.E.2d 421, 426 (2003) (overruling respondent's assignment of error regarding non-compliance with mandatory language of section 7B–1104(7), because respondent failed to demonstrate prejudice); *In re B.S.D.S.*, 163 N.C. App. 540, 544, 594 S.E.2d 89, 92 (2004) (failure to show prejudice despite petition's reference to UCCJA not UCCJEA); *In re Clark*, 159 N.C. App. 75, 79, 582 S.E.2d 657, 660 (2003) (failure to attach statutorily required affidavit to initial petition did not divest jurisdiction); *In re Joseph Children*, 122 N.C. App. 468, 469–72, 470 S.E.2d 539, 540–41 (1996) (custody order not attached, as required by statute, nor were the notice requirements of the termination statute met, but error not prejudicial because notice required by civil procedure rules was met).

Id. at 572, 613 S.E.2d at 302-03.

We hold that attachment of the consent judgments as exhibits to the petitions cured Prospective Adoptive Parent's non-compliance with the statutory requirement that the petitions "set forth with particularity the petitioner's . . . efforts to ascertain the identity . . . of the parent," *see* N.C. Gen. Stat. § 7B-1104(3) (2017), where the petitions contained verified allegations that the identity of one parent was unknown

and the information incorporated in the petitions included admissions by the known parent that the identity of the other parent was not known to him or her. We are unable to discern any prejudice to Mother from the petitions' technical non-compliance with N.C. Gen. Stat. § 7B-1104(3) on their face, and Mother does not identify any. We therefore overrule the argument that the trial court lacked subject matter jurisdiction to terminate Mother's parental rights because we hold that the petitions and information incorporated therein in this case were sufficient as a matter of law.

B. Sufficiency of Findings

Mother next argues that the trial court erred by making potentially contradictory findings of fact in its order terminating her parental rights. Mother identifies two such potential contradictions. We consider each in turn.

1. Identity of Father and Sex Offender Status

Mother identifies as a potential contradiction the discrepancy between the petitions filed by Prospective Adoptive Parent and the consent judgments granting Prospective Adoptive Parent sole custody of the children, all of which stated that the identity of the children's father was unknown, and the trial court's findings that the children's father was allegedly Brian A. Nipper, a registered sex offender. We believe this potential contradiction identified by Mother is more apparent than actual.

"When findings are actually antagonistic, inconsistent, or contradictory such that the reviewing court cannot safely and accurately decide the question, the judgment cannot be affirmed." *Spencer v. Spencer*, 70 N.C. App. 159, 168, 319 S.E.2d 636, 643-44 (1984) (internal marks and citation omitted). However, we must "endeavor to reconcile apparently inconsistent findings and uphold the judgment when practicable." *Id.* at 168, 319 S.E.2d at 644. "[F]indings of the trial judge will be construed to uphold, rather than to defeat, the judgment, if this may reasonably be done." *Bradham v. Robinson*, 236 N.C. 589, 593, 73 S.E.2d 555, 558 (1952).

The first potential contradiction identified by Mother is not a contradiction in the trial court's order. It is a difference between the trial court's order and the petitions filed by Prospective Adoptive Parent and the consent judgments attached to these petitions. Differences between a trial court's findings of fact in an order adjudicating the merits of a controversy and the allegations set out in the pleading initiating the controversy reflect the trial court performing its role as the factfinder. *See In re M.K. I*, 241 N.C. App. 467, 470, 773 S.E.2d 535, 538 (2015). "[I]t is not the role of the trial court as fact finder to simply restate the testimony given." *In re O.W.*, 164 N.C. App. 699, 703, 596 S.E.2d 851, 854 (2004). "The trial court's role is to determine the credibility of all of [the] evidence and [] weigh . . . it and then [] make its findings of fact accordingly." *In re A.B.*, 245 N.C. App. 35, 47, 781 S.E.2d 685, 693 (2016). We therefore hold that the potential contradiction identified by Mother

between the petitions and the exhibits to the petitions and the trial court's findings in the order are not, in fact, contradictions, and instead reflect the proper discharge by the trial court of its duty as factfinder.

2. Use of the Term "Alleged Putative Father"

Mother additionally identifies as a potential contradiction the language of the order describing Brian A. Nipper as the "alleged putative father" of the children based on a dictionary definition of "putative father" as an "alleged biological father." This second potential contradiction identified by Mother thus amounts to the assertion that the description of Mr. Nipper as an alleged biological father is a contradiction requiring remand. However, as noted previously, "findings of the trial judge will be construed to uphold, rather than to defeat, the judgment, if this may reasonably be done." *Bradham*, 236 N.C. at 593, 73 S.E.2d at 558. The language of the order makes plain that the court was not conclusively answering the question of Mr. Nipper's paternity of the children but was instead finding (1) that S.A.R. came to live with Prospective Adoptive Parent at least in part because of the alleged father's sex offender status and (2) that at the time of the hearing, there was testimony that Mr. Nipper was the father. The trial court's decision not to credit this testimony but instead to simply note its existence was proper where Mr. Nipper's parental rights were not at issue. We therefore hold that the potential contradiction in the language

of the order describing Mr. Nipper as the "alleged putative father" is not a contradiction requiring remand. Accordingly, this argument is overruled.

IV. Conclusion

We affirm the trial court's order because we hold that the court did not lack subject matter jurisdiction and the court's order did not contain contradictory findings.

AFFIRMED.

Chief Judge McGEE and Judge BRYANT concur.

Report per Rule 30(e).