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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-662

No. COA22-88

Filed 4 October 2022

Franklin County, No. 21 JA 46

IN THE MATTER OF: D.L.S.

Appeal by respondent from order entered 4 November 2021 by Judge Adam S. Keith in Franklin County District Court. Heard in the Court of Appeals 21 September 2022.

No brief for Franklin County Department of Social Services.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender J. Lee Gilliam, for respondent-appellant.

N.C. Administrative Office of the Courts Guardian Ad Litem Program, by staff attorney Michelle FormyDuval Lynch, for the guardian ad litem.

TYSON, Judge.

¶ 1 Respondent-father (“Respondent”) appeals from order determining North Carolina lacked jurisdiction and transferring custody of “David” to the Lawrence County, Alabama Department of Human Resources (“DHR”). See N.C. R. App. P. 42(b) (pseudonym used to protect the identity of juvenile). We affirm.

I. Background

¶ 2 Respondent-mother, who is not a party to this appeal, is a resident of Lawrence

County, Alabama. Respondent, the putative father, is a resident of Georgia. Respondent-mother has two older children in the custody of DHR. Respondent-mother's rights have been terminated for one of the two other children and an action to terminate her parental rights to the other child is pending.

¶ 3 A court in Lawrence County, Alabama granted DHR an order to assume custody of David. David was born and had resided in North Carolina since birth in Franklin County. David's birth certificate is not included in the Record on Appeal ("ROA"). No Affidavit of Parentage, DSS-4697, is included in the ROA.

¶ 4 Franklin County Department of Social Services ("DSS") had received a report from DHR on 19 October 2021 asserting Respondent-mother had a child welfare case pending in Alabama involving other children. The report alleged Respondent-mother had untreated mental illness, had engaged in domestic violence with the father of the other two children, had lost her parental rights to one child, and a termination of parental rights proceeding was pending for another child. DSS filed an emergency petition and affidavit alleging David was neglected and dependent and requested nonsecure custody. The district court granted DSS nonsecure custody over David.

¶ 5 Following a hearing on jurisdiction, the trial court entered an order holding jurisdiction over the determination of David's custody was proper in the State of Alabama, and ordered David to be turned over to DHR on 4 November 2021. Respondent appeals.

II. Jurisdiction

¶ 6 Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(1) (2021).

III. Issues

¶ 7 Respondent argues the trial court erred in not retaining jurisdiction in North Carolina and holding Alabama held jurisdiction to determine custody.

IV. Standard of Review

¶ 8 “Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question.” *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987). In determining juvenile matters, “the court’s subject matter jurisdiction is established by statute.” *In re K.J.L.*, 363 N.C. 343, 345, 677 S.E.2d 835, 837 (2009). “Subject 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 H.L.A.D.*, 184 N.C. App. 381, 385, 646 S.E.2d 425, 429 (2007), *aff’d per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008).

¶ 9 Whether a trial court has jurisdiction is a question of law reviewable *de novo* on appeal. *In re K.U.-S.G.*, 208 N.C. App. 128, 131, 702 S.E.2d 103, 105 (2010). The trial court’s decision to relinquish jurisdiction to another state on the basis of a more convenient forum is reviewed for an abuse of discretion. *Kelly v. Kelly*, 77 N.C. App. 632, 635, 335 S.E.2d 780, 783 (1985).

V. Home State

¶ 10 Petitioner argues the trial court erred in not exercising and retaining jurisdiction because North Carolina is David’s home state since birth. A newborn’s home state is defined as “the state in which the child lived from birth with [a parent or a person acting as a parent].” N.C. Gen. Stat. § 50A-102(7) (2021).

¶ 11 The district court held North Carolina was not David’s home state, but further held: “Even if North Carolina could have jurisdiction over this matter, based upon the findings herein, Alabama is the more convenient forum pursuant to N.C.G.S. 50A-207.” Presuming without deciding, even if North Carolina is David’s home state, the result in this case would remain unchanged.

A. N.C. Gen. Stat. § 50A-207

¶ 12 A juvenile’s asserted home state does not require a trial court to exercise jurisdiction, N.C. Gen. Stat. § 50A-207 allows a North Carolina court to decline jurisdiction in a juvenile action:

(a) A court of this State which has jurisdiction under this Article to make a child-custody determination *may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum.* The issue of inconvenient forum may be raised upon motion of a party, *the court’s own motion, or request of another court.*

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise

jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) The length of time the child has resided outside this State;
- (3) The distance between the court in this State and the court in the state that would assume jurisdiction;
- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

N.C. Gen. Stat. § 50A-207 (2021) (emphasis supplied).

B. *In re M.M.*

¶ 13 Respondent asserts the trial court did not adequately address these eight statutory factors, and cites *In re M.M.*, 230 N.C. App. 225, 750 S.E.2d 50 (2013). In the case of *In re M.M.* this Court reversed a trial court order declining jurisdiction because the trial court made no findings concerning the factors in N.C. Gen. Stat. §

50A-207, including the nature and location of the evidence, the familiarity of the courts in the other jurisdiction, the likelihood of domestic violence, or the relative financial circumstances of the parties. *Id.* at 229, 750 S.E.2d at 53. This Court further held the trial court's order was not conditioned on another forum actually initiating a proceeding or investigation into the juvenile, as Lawrence County, Alabama DHR has done here. *Id.*

¶ 14 Here, the trial court found and concluded the home state of David's mother was Alabama and the evidence was present in Alabama, the courts in Alabama had exercised jurisdiction pursuant to a pending investigation and actions regarding other children, and Alabama was a more convenient forum than North Carolina. *Id.* As noted above, Respondent-mother is not a party to this appeal. Respondent, the putative father's home state is listed in Georgia. The trial court did not err or abuse its discretion in declining jurisdiction in favor of Alabama. Respondent's argument is overruled.

VI. Conclusion

¶ 15 The trial court made statutory findings to support its decision to decline the exercise of jurisdiction and to transfer the juvenile and adjudication to the State of Alabama, as a more convenient forum. The order of the trial court is affirmed. *It is so ordered.*

AFFIRMED.

IN RE D.L.S.

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Opinion of the Court

Judges CARPENTER and WOOD concur.

Report per Rule 30(e).