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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-422

Filed 19 December 2023

Yancey County, No. 19 JT 31

IN RE: S.O.R., A Minor Juvenile

Appeal by Respondent-Parents from order entered 13 February 2023 by Judge Hal G. Harrison in Yancey County District Court. Heard in the Court of Appeals 21 November 2023.

Leake & Stokes, PLLC, by Jamie A. Stokes, for petitioner-appellee Yancey County Department of Social Services.

Keith Karlsson for appellee Guardian ad litem.

Laura G. Hooks for respondent-appellant father.

David A. Perez for respondent-appellant mother.

PER CURIAM.

Respondents appeal from the trial court's order terminating their parental

rights to Simon¹ on the basis that the trial court lacked jurisdiction to conduct the termination proceedings. Upon review, we affirm the trial court's order.

Factual and Procedural Background

Simon was born drug-exposed in September 2019 while respondents were in Tennessee. Within one week of Simon's birth, the Tennessee Department of Children's Services (DCS) filed a Petition for temporary legal custody on 18 September 2019, alleging Simon was abused, neglected, and dependent based on a referral for a drug-exposed child that it "received . . . as an out of state courtesy from North Carolina where [Respondents] reside." Besides allegations that Simon was drug-exposed at birth, the Petition provided that Respondents had a history of involvement with child services in North Carolina due to substance abuse, and that their parental rights to another child had been involuntarily terminated. DCS further alleged that it had communicated with the Department of Social Services in Yancey County, North Carolina (DSS), regarding Simon, but DSS could not come get Simon without a court order, and the district court in Yancey County (the district court) would not enter an order for Simon's removal because Simon was not present in Yancey County. Based on DCS's petition, the Juvenile Court for Johnson City, Tennessee (the Tennessee court), entered a protective custody order granting DCS temporary legal custody of Simon on 18 September 2019.

¹ A pseudonym.

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On 20 September 2019, DCS filed a motion to transfer jurisdiction to the district court and to transfer custody of Simon to DSS following his pending adjudication. DCS maintained that Simon was only in DCS custody because he was born in Tennessee, and that Yancey County, where Respondents reside, was “the most convenient and appropriate venue and jurisdiction to work with the family for reunification purposes in the dispositional phase[.]” DCS also filed a motion for communication between the Tennessee court and the district court about transfer of jurisdiction and custody.

Following an adjudicatory hearing on 12 November 2019, the Tennessee court adjudicated Simon neglected and dependent by order entered on 13 November 2019. The Tennessee court further found the Tennessee court had communicated with the district court and determined a transfer of the proceedings to Yancey County was appropriate due to Respondents’ residency in Yancey County. The Tennessee court retained temporary custody of Simon with DCS until DCS released Simon to the care of DSS, at which time the Tennessee court ordered jurisdiction be relinquished to the district court, DCS be relieved of further responsibility, and the Tennessee proceedings be closed. In subsequent correspondence between the Tennessee court and the district court, the Tennessee court forwarded its file to the district court and explained that its order “relinquishes and transfers all jurisdiction, including the remaining disposition of these proceedings to the [district court] upon the child’s physical transfer to the State of North Carolina.”

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Upon Simon's release to DSS and return to Yancey County, the district court proceeded with disposition based on the temporary custody and adjudication orders issued by the Tennessee court and entered an initial dispositional order on 13 November 2019² that purported to award custody of Simon to DSS. The district court proceeded in the case as if it had jurisdiction through DSS's filing of a Petition to terminate Respondents' parental rights on 25 June 2021, and the court entered an order terminating parental rights on 13 September 2021. Respondent-Father appealed the termination order, arguing for the first time that DSS lacked standing to file the termination petition and the district court lacked subject matter jurisdiction.

While Respondent-Father's appeal was pending, DSS filed a Motion pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure seeking the district court's review of the termination order to determine whether the parties should be relieved from the order because it was void for a lack of jurisdiction. The motion requested that the district court enter an order of inclination setting forth how it would rule if an appeal was not pending. After the district court entered an order that it was inclined to allow the Rule 60 motion, the parties to the appeal filed a joint motion in this Court seeking remand of the matter to the district court for entry of a

² Finding 8 of the Rule 60 order provides that the initial disposition order was entered on 13 November 2021, but the year appears to be a typographical error as the termination petition and termination order were entered prior to November 2021.

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ruling on the Rule 60 motion. This Court allowed the motion on 29 March 2022 and remanded the matter to the district court.

On 26 April 2022, the district court entered an order allowing DSS's Rule 60 motion and dismissing the termination petition on the grounds that the termination order was void *ab initio*. The district court found that DSS had not been granted custody of Simon by a court of competent jurisdiction because the Tennessee court never explicitly granted DSS custody, and DSS never filed a petition to initiate child custody proceedings in North Carolina in which the district court could award DSS custody of Simon. The district court thus determined that DSS did not have standing to file a termination petition under N.C. Gen. Stat. § 7B-1103(a)(3), as found in the termination order, and that DSS did not satisfy an alternative ground for standing under N.C. Gen. Stat. § 7B-1103. Following entry of the Rule 60 order, this Court allowed a joint motion to dismiss Respondent-Father's first appeal as moot and dismissed the appeal.

On 26 April 2022, the same day the district court entered the Rule 60 order, DSS filed a petition alleging Simon was a neglected and dependent juvenile and obtained nonsecure custody of Simon by order of the district court. The petition was heard on 24 May 2022, and the district court entered an adjudication and disposition order on 15 June 2022 that adjudicated Simon neglected and dependent, granted DSS custody, denied Respondents visitation, and ceased reunification efforts. Following

the initial permanency planning hearing on 26 July 2022, the district court established a primary plan of adoption with a secondary plan of guardianship.

On 26 September 2022, DSS filed another petition to terminate Respondents' parental rights, asserting grounds existed for termination based on neglect, dependency, willful abandonment, and the termination of their parental rights to another child and their failure to establish a safe home. The matter came on for two additional permanency planning hearings before the termination petition was heard on 23 January 2023. On 13 February 2023, the district court entered an order terminating Respondents' parental rights to Simon based on its adjudication of the existence of each of the grounds for termination alleged in the petition and its determination that termination was in Simon's best interests. Respondents separately appealed the termination order.

Issue

The sole argument raised on appeal by both respondents is whether the district court lacked subject matter jurisdiction to terminate their parental rights under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), codified in Chapter 50A of our General Statutes.³

³ Tennessee has also codified the UCCJEA in Tenn. Code Ann. § 36-6-201 *et seq.* The North Carolina and Tennessee statutes are substantively similar—the provisions discussed at length herein, N.C. Gen. Stat. § 50A-201 through N.C. Gen. Stat. § 50A-204, correspond to Tenn. Code Ann. §§ 36-6-216 through -219. For ease of reference, we cite primarily to the North Carolina General Statutes but include parallel cites to the Tennessee Code where appropriate.

Analysis

“Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question . . . [and] is conferred upon the courts by either the North Carolina Constitution or by statute.” *In re H.L.A.D.*, 184 N.C. App. 381, 385, 646 S.E.2d 425, 429 (2007) (quoting *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987)). “The existence of subject matter jurisdiction is a matter of law and cannot be conferred upon a court by consent. Consequently, a court’s lack of subject matter jurisdiction is not waivable and can be raised at any time.” *In re K.J.L.*, 363 N.C. 343, 345-46, 677 S.E.2d 835, 837 (2009) (citations and quotation marks omitted). “Whether or not a trial court possesses subject-matter jurisdiction is a question of law that is reviewed de novo.” *In re M.R.J.*, 378 N.C. 648, 654, 862 S.E.2d 639, 643 (2021). When a court decides a matter in the absence of jurisdiction, “then the whole proceeding is null and void, *i.e.*, as if it had never happened.” *In re M.C.*, 244 N.C. App. 410, 413, 781 S.E.2d 70, 73 (2015) (quoting *Rodriguez v. Rodriguez*, 211 N.C. App. 267, 270, 710 S.E.2d 235, 238 (2011) (citation omitted)).

“In matters arising under the Juvenile Code, the court’s subject matter jurisdiction is established by statute.” *In re K.J.L.*, 363 N.C. at 345, 677 S.E.2d at 837 (citing N.C. Gen. Stat. §§ 7B-200, -1101). The Juvenile Code provides the district court, with

exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual

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custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. . . . Provided, that before exercising jurisdiction under this Article, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of [the UCCJEA, N.C. Gen. Stat. §§] 50A-201, 50A-203, or 50A-204.

N.C. Gen. Stat. § 7B-1101 (2021). “Compliance with the UCCJEA . . . is essential to the juvenile court’s subject matter jurisdiction under N.C. Gen. Stat. § 7B-1101.” *In re D.A.Y.*, 266 N.C. App. 33, 35, 831 S.E.2d 854, 856 (2019). “The trial court is not required to make specific findings of fact demonstrating its jurisdiction under the UCCJEA, but the record must reflect that the jurisdictional prerequisites in the Act were satisfied when the court exercised jurisdiction.” *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200-01 (2020).

Despite DSS’s attempt to cure the jurisdiction and standing issues that plagued the initial termination proceedings by filing a petition to invoke the district court’s jurisdiction and relitigating the case through termination of Respondents’ parental rights, Respondents argue the district court continued to lack jurisdiction because the district court never had jurisdiction under the UCCJEA to make a child custody determination following the Tennessee court’s award of temporary custody to DCS. Respondents thus contend the Tennessee court’s temporary custody award continued to be the controlling custody order regarding Simon, and DSS never obtained custody. Respondent-Mother further asserts that since DSS never obtained custody from a court with jurisdiction under the UCCJEA, DSS lacked standing to

file the termination petition pursuant to N.C. Gen. Stat. § 7B-1103(a)(3). We disagree on all accounts.

The UCCJEA governs the jurisdiction between courts of North Carolina and other states over child custody determinations—both initial determinations and the modification of child custody determinations. Under the UCCJEA: “[c]hild-custody determination’ means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child[,]” including “permanent, temporary, initial, and modification order[s,]” N.C. Gen. Stat. § 50A-102(3) (2021); “[i]nitial determination’ means the first child-custody determination concerning a particular child[,]” N.C. Gen. Stat. § 50A-102(8) (2021); and “[m]odification’ means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination[,]” N.C. Gen. Stat. § 50A-102(11) (2021).

The UCCJEA provides two ways a court may exercise jurisdiction to make an initial child custody determination. First, N.C. Gen. Stat. § 50A-201 provides that, “[e]xcept as otherwise provided in [N.C. Gen. Stat. §] 50A-204, a court of this State has jurisdiction to make an initial child-custody determination only if:” (1) this State is the home state of the child; (2) a court of another state does not have jurisdiction as the home state or has declined jurisdiction on the basis that this State is the more appropriate forum, the child and a parent have a significant connection with this

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State, and substantial evidence concerning the child is available in this State; (3) all courts with jurisdiction under subdivision (1) or (2) decline jurisdiction on the basis that this State is the more appropriate forum; or (4) no court of any other state has jurisdiction under subdivisions (1) through (3). N.C. Gen. Stat. § 50A-201(a) (2021); *see also* Tenn. Code Ann. § 36-6-216. Second, pursuant to the exception noted in N.C. Gen. Stat. § 50A-201, a court may exercise temporary emergency jurisdiction under N.C. Gen. Stat. § 50A-204 “if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child . . . is subjected to or threatened with mistreatment or abuse.” N.C. Gen. Stat. § 50A-204(a) (2021); *see also* Tenn. Code Ann. § 36-6-219.

The context in which an initial child custody determination is made is significant given that N.C. Gen. Stat. § 50A-202 provides exclusive, continuing jurisdiction only to a court that has made a child custody determination consistent with N.C. Gen. Stat. § 50A-201, or to a court that has exercised modification jurisdiction consistent with N.C. Gen. Stat. § 50A-203. N.C. Gen. Stat. § 50A-202(a); *see also* Tenn. Code Ann. § 36-6-217. When a court exercises emergency temporary jurisdiction under N.C. Gen. Stat. § 50A-204, that Section controls and provides:

[i]f there is no previous child-custody determination that is entitled to be enforced under this Article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under [N.C. Gen. Stat. §] 50A-201 through [N.C. Gen. Stat. §] 50A-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having

jurisdiction under [N.C. Gen. Stat. §] 50A-201 through [N.C. Gen. Stat. §] 50A-203. If a child-custody proceeding has not been commenced or is not commenced in a court of a state having jurisdiction under [N.C. Gen. Stat. §] 50A-201 through [N.C. Gen. Stat. §] 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

N.C. Gen. Stat. § 50A-204(b) (2021).

There is no question in this case that the Tennessee court entered the initial child custody determination concerning Simon when it entered the protective custody order on 18 September 2019 placing Simon in the temporary legal custody of DCS. The Tennessee court continued temporary legal custody with DCS in its preliminary orders while DCS and the court contemplated Simon's release to DSS and return to North Carolina where Respondents resided, and, again, continued temporary legal custody with DCS until Simon was turned over to DSS and returned to North Carolina in the last order it entered in the case on 13 November 2019.

However, as Respondent-Mother acknowledges, it appears the Tennessee court only exercised temporary emergency jurisdiction in awarding DCS temporary legal custody of Simon. In the protective custody order, the Tennessee court awarded temporary legal custody of Simon to DCS based on his presence in Tennessee and its finding that “[t]he child is subject to an immediate threat to the child’s health or safety[,]” consistent with the language of N.C. Gen. Stat. § 50A-204(a). *See also* Tenn. Code Ann. § 36-6-218. While the Tennessee court never addressed its jurisdiction

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under UCCJEA in its orders, DCS's filings and the court's orders provide that Simon's only connection to Tennessee was that he was born there, that Respondents reside in North Carolina, and that DCS and the Tennessee court were working with DSS and the district court to transfer Simon and the proceedings to North Carolina, the Tennessee court found was appropriate based on Respondents' residency. It is clear from the Tennessee proceedings that the Tennessee court did not contemplate the exercise of jurisdiction under N.C. Gen. Stat. § 50A-201(a) (Tenn. Code Ann. § 36-6-216) and did not intend to exercise exclusive, continuing jurisdiction that accompanies an initial child custody determination made under that Section. *See* N.C. Gen. Stat. § 50A-202 (Tenn. Code Ann. § 36-6-217). The Tennessee court explicitly relinquished all jurisdiction in Simon's case to the district court, relieved counsel for all parties in the Tennessee case, and closed the proceedings upon Simon's physical transfer to DSS.

Though the Tennessee court's relinquishment of jurisdiction would seem sufficient to allow the district court to act in Simon's case, to the extent the Tennessee court never ordered a change in Simon's legal custody, it appears DCS retained legal custody even after Simon was released to DSS and returned to North Carolina. Pursuant to N.C. Gen. Stat. § 50A-204 (Tenn. Code Ann. § 36-6-219), the Tennessee court's initial child custody determination under the exercise of temporary emergency jurisdiction "remains in effect until an order is obtained from a court of a state having jurisdiction under [N.C. Gen. Stat. §] 50A-201 through [N.C. Gen. Stat. §] 50A-203[.]"

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or until the “child-custody determination made under [temporary emergency jurisdiction] becomes a final determination if it so provides[.]” N.C. Gen. Stat. § 50A-204(b); *see also* Tenn. Code Ann. § 36-6-219. As the Tennessee court did not order its temporary custody award final but instead released jurisdiction to Yancey County, North Carolina, the Tennessee court’s initial child custody determination remained in effect until the district court exercised initial custody or modification jurisdiction pursuant to N.C. Gen. Stat. § 50A-201 through N.C. Gen. Stat. § 50A-203.

Though occurring more than two years after the entry of the Tennessee court’s last order due to DSS litigating Simon’s case for years without jurisdiction, DSS filed a petition regarding Simon on 26 April 2022 to invoke the district court’s jurisdiction. The district court granted DSS nonsecure custody on the day the petition was filed and subsequently entered an adjudication and dispositional order on 15 June 2022 ordering DSS to retain legal custody of Simon. It was based on those orders granting DSS custody of Simon that DSS alleged the district court had jurisdiction to terminate Respondents’ parental rights. The question is whether the district court properly exercised jurisdiction under N.C. Gen. Stat. §§ 50A-201 through -203, such that its custody orders superseded the Tennessee court’s child custody determination made under its temporary emergency jurisdiction.

As explained above, the UCCJEA first provides for the exercise of jurisdiction by a court of this State if this State is Simon’s home state. N.C. Gen. Stat. § 50A-201(a)(1). Though Respondent-Father asserts North Carolina was Simon’s home

state when DSS invoked the district court's jurisdiction by filing the petition, Respondent-Mother argues North Carolina was not his home state. We agree with Respondent-Mother. Pertinent to this case, the UCCJEA provides that "[h]ome state' means the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding." N.C. Gen. Stat. § 50A-102(7). In turn, "[p]erson acting as a parent' means a person, other than a parent, who: (a) [h]as physical custody of the child . . . ; and (b) [h]as been awarded legal custody by a court[.]" N.C. Gen. Stat. § 50A-102(13). In this case, Simon resided in foster care since his return to North Carolina in November 2019 while DCS retained legal custody. Because Simon was not living with a parent or with a "person acting as a parent" since DCS retained custody, Simon did not have a "home state" under the UCCJEA. The district court thus could not exercise jurisdiction pursuant to N.C. Gen. Stat. § 50A-201(a)(1).

However, N.C. Gen. Stat. § 50A-201(a)(2) provides a court of this State has jurisdiction if a court of another does not have jurisdiction as the home state under N.C. Gen. Stat. § 50A-201(a)(1) and: (a) "[t]he child and the child's parents . . . have a significant connection with this State other than mere physical presence; and (b) [s]ubstantial evidence is available in this State concerning the child's care, protection, training, and personal relationships[.]" N.C. Gen. Stat. § 50A-201(a)(2). Since both Simon and Respondents resided in North Carolina for at least two years immediately preceding the filing of the petition and DSS had a history of involvement with the

family, and because Simon does not have a home state under the UCCJEA, the requirements for the district court to exercise jurisdiction under N.C. Gen. Stat. § 50A-201(a)(2) were satisfied.

Additionally, N.C. Gen. Stat. § 50A-203, the UCCJEA's provision for modification jurisdiction, provides a court of this State has jurisdiction to modify a child custody determination made by a court of another state if the court of this State has jurisdiction to make an initial determination under N.C. Gen. Stat. § 50A-201(a)(1) or (a)(2), and the court determines "that the child, the child's parents, and any person acting as a parent do not presently reside in the other state." N.C. Gen. Stat. § 50A-203(2). Respondents assert that the requirement of N.C. Gen. Stat. § 50A-203(2) is not satisfied because the court did not issue specific findings about their residency. A court is not required to make specific findings so long as the record reflects the jurisdictional prerequisites are satisfied. *In re L.T.*, 374 N.C. at 569, 843 S.E.2d at 200-01. The Record clearly establishes that Simon and Respondents were residents of North Carolina and had been for years. DCS and the Tennessee court returned Simon to Yancey County because it was where Respondents resided. Simon lived in foster care in Yancey County, and the record reflects that Respondents were residing in Burnsville, North Carolina, when DSS commenced the North Carolina case with the 26 April 2022 filing, as they were served the petition by a Yancey County Sheriff's Deputy at their Burnsville, North Carolina, residence on 11 May 2022. There has never been any contention that Simon and Respondents did not live

in North Carolina.

Because we conclude the district court had jurisdiction pursuant to N.C. Gen. Stat. §§ 50A-201 and -203, the district court's nonsecure custody order entered on 26 April 2022 and adjudication and dispositional order entered on 15 June 2022 were valid orders granting custody of Simon to DSS and superseded the Tennessee court's award of temporary legal custody under its exercise of temporary emergency jurisdiction. As DSS obtained custody of Simon, it had standing to file the petition to terminate Respondents' parental rights pursuant to N.C. Gen. Stat. § 7B-1101, and the district court had continuing, exclusive jurisdiction pursuant to N.C. Gen. Stat. § 50A-202 to make a child custody determination in the termination proceedings. Respondents' jurisdictional challenges are overruled.

Conclusion

The district court properly exercised jurisdiction in accordance with the UCCJEA to award custody of Simon to DSS. Accordingly, the district court had jurisdiction over the petition filed by DSS to terminate Respondents' parental rights, and we affirm the termination order.

AFFIRMED.

Panel consisting of Judges MURPHY, COLLINS, and HAMPSON.

Report per Rule 30(e).