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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-775

Filed 31 December 2024

Union County, Nos. 22 JT 22–24

IN THE MATTER OF: W.G., J.G., & H.G.

Appeal by Respondent-Father from order entered 25 May 2023 by Judge Joseph Williams in Union County District Court. Heard in the Court of Appeals 21 February 2024.

Jeffrey L. Miller for Respondent-Appellant-Father.

R. Bruce Thompson II for Appellee Guardian ad Litem.

Ashley J. McBride for Petitioner-Appellee Union County Division of Social Services.

CARPENTER, Judge.

Respondent-Father appeals from the trial court’s 25 May 2023 order terminating his parental rights as to Hannah, Josh, and Walt¹ (collectively, the “Juveniles”). On appeal, Respondent-Father challenges the trial court’s subject matter jurisdiction and the adjudication grounds found to exist by the trial court.

¹ Pseudonyms used to protect the identities of the Juveniles and for ease of reading. See N.C. R. App. P. 42(b).

Defendant also asserts he was denied a fundamentally fair hearing and effective assistance of counsel. After careful review, we affirm in part and dismiss without prejudice in part.

I. Factual & Procedural Background

Respondent-Father and Mother, who is not a party to this appeal, are the unmarried parents of the Juveniles. They also have an older daughter who is not implicated in this appeal.

In February 2020, while the Juveniles were in Mother's custody, the Union County Division of Social Services ("DSS") filed identical petitions ("First Petitions") alleging the Juveniles were neglected and dependent and obtained nonsecure custody. Respondent-Father consented to DSS' temporary custody and services for the Juveniles. On 6 July 2020, the trial court entered an Adjudication and Initial Disposition Order, which determined the Juveniles were neglected and dependent and established a case plan for reunification.

Following a permanency-planning hearing on 6 January 2021, the trial court entered a permanency-planning order granting custody of the Juveniles to Respondent-Father in Fort Mill, South Carolina, terminating its juvenile jurisdiction, and directing the entry of a civil custody order. After an inexplicable delay, on 1 February 2022, the trial court entered a written "Order Terminating Juvenile Court Jurisdiction and Establishing a Civil File" in reference to the hearing and order entered 6 January 2021, granting legal and physical custody of the Juveniles to

Respondent-Father. The 1 February 2022 order included a provision prohibiting visits between the Juveniles and Mother and provided that the trial court retained “exclusive, continuing jurisdiction under NCGS 50A-202” because North Carolina was the home state of the Juveniles.

On 23 July 2022, Respondent-Father dropped Hannah off in Matthews, North Carolina for a visit with her former foster family from the First Petitions. Respondent-Father, however, did not return to pick her up. Less than a month later, on 14 August 2022, Respondent-Father contacted the foster family and requested they also take physical custody of Josh and Walt, because he lacked housing, employment, and transportation and was unable to take care of the Juveniles. On 15 August 2022, DSS filed new petitions (“Second Petitions”) alleging neglect and dependency. The trial court entered orders granting nonsecure custody to DSS and placed the Juveniles with the foster family. The Second Petitions were amended on 15 September 2022. At the 20 September 2022 adjudication hearing, Respondent-Father reported he needed six months to get back on his feet.

On 6 October 2022, with Respondent-Father’s stipulation, the trial court entered an Adjudication and Initial Disposition Order adjudicating the Juveniles as neglected and dependent, granting custody to DSS, and establishing case plans for reunification. In adjudicating the Juveniles neglected, the trial court found: Respondent-Father allowed Mother to care for the Juveniles without supervision despite there being a no contact order in place; Mother used a white substance

believed to be Fentanyl in front of the Juveniles; and Respondent-Father was involved in car accident when Respondent-Father hit a tree with the Juveniles in the car. In adjudicating the Juveniles dependent, the trial court found: Mother was previously ordered to have no contact with the Juveniles; DSS could not locate Mother during its investigation; Respondent-Father reported living in a hotel room and did not want the Juveniles to live there, so he dropped them off to a safety provider; no person was available to seek medical care for the Juveniles or enroll them in school; and DSS could not ensure the safety of the Juveniles absent court intervention.

Evidence before the trial court included Respondent-Father's admission to taking edible marijuana and his failure to develop a family-services agreement with DSS. Additionally, Respondent-Father refused to engage in DSS-supervised visitation with the Juveniles and failed to set up alternative visitation under the foster family's supervision. In its adjudication order, the trial court ordered Respondent-Father to: make contact with DSS at least once per month and remain in contact with the guardian ad litem ("GAL"); participate in a child and family meeting with DSS to develop and out of home services agreement; participate in all activities in the out of home services agreement; complete an evaluation and follow all recommendations of mental health and substance abuse providers; sign a medical release for DSS; and submit to random drug tests. The trial court also granted Respondent-Father a minimum of one-hour of supervised visitation.

Three months later, at the 10 January 2023 permanency-planning hearing, the trial court changed the Juveniles' permanent plans to adoption and guardianship. In altering the plan, the trial court found that Respondent-Father had failed to participate in the case plan or address his identified needs in any significant way. Respondent-Father did not maintain contact with DSS, the GAL, or the foster family. He did not complete a family services agreement, mental health assessment, or substance abuse assessment. Respondent-Father posted a GoFundMe account online with a picture of Hannah in which he admitted to making "some wrong decisions" in his life and requested donations to pay for drug treatment. Respondent-Father was also arrested on 28 November 2022 and pleaded guilty to entering a premises or refusing to leave on request.

On 23 January 2023, DSS moved for termination of parental rights on the grounds of neglect, willful failure to reasonably contribute to the cost of the Juveniles' care, and dependency. Respondent-Father was served through his appointed counsel, who had not heard from Respondent-Father since the 20 September 2022 adjudication hearing. Neither Respondent-Father nor Mother appeared at the 2 May 2023 termination hearing. Respondent-Father's counsel moved to withdraw, and the trial court ultimately denied the motion before proceeding with the hearing. On 25 May 2023, the trial court entered its order terminating Respondent-Father's parental rights, from which Respondent-Father timely appealed.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

III. Issues

The issues are whether: (1) the trial court had subject matter jurisdiction to terminate Respondent-Father's parental rights; (2) clear, cogent, and convincing evidence supported the trial court's findings that grounds existed to terminate Respondent-Father's parental rights; and (3) Respondent-Father was denied a fundamentally fair proceeding or received ineffective assistance of counsel.

IV. Analysis

A. Subject Matter Jurisdiction

Respondent-Father first challenges the trial court's subject matter jurisdiction on two bases, standing and verification of the termination motions. Specifically, he argues DSS lacked standing to bring the Second Petitions and subsequently seek termination where North Carolina lost home-state jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") to South Carolina.

Next, he asserts the termination motions failed to confer subject matter jurisdiction because the motions were acknowledged before a notary but not verified. Specifically, Respondent-Father appears to argue that a verified pleading is void unless the affiant swears an oath before the notary that the contents of the affidavit are true. We disagree with both arguments.

1. Home-State Jurisdiction

“Whether ‘a trial court possesses subject-matter jurisdiction is a question of law that is reviewed de novo.” *In re M.A.C.*, 291 N.C. App. 35, 38, 893 S.E.2d 556, 559 (2023) (quoting *In re A.L.L.*, 376 N.C. 99, 101, 852 S.E.2d 1, 4 (2020)). Subject matter jurisdiction is established by statute in abuse, neglect and dependency proceedings. *In re K.L.J.*, 363 N.C. 343, 345, 677 S.E.2d 835, 837 (2009).

While subject matter jurisdiction may be challenged at any time, even for the first time on appeal, “where the trial court has acted in a matter, ‘every presumption not inconsistent with the record will be indulged in favor of jurisdiction.’” *In re N.T.*, 368 N.C. 705, 707, 782 S.E.2d 502, 503 (2016) (quoting *Cheape v. Town of Chapel Hill*, 320 N.C. 549, 557, 359 S.E.2d 792, 797 (1987)). Thus, “[n]othing else appearing” in the record, an appellate court may apply “the *prima facie* presumption of rightful jurisdiction which arises from the fact that a court of general jurisdiction has acted[.]” *Id.* at 707, 782 S.E.2d at 504 (quoting *Williamson v. Spivey*, 224 N.C. 311, 313, 30 S.E.2d 46, 47 (1944)). On appeal, then, it becomes the appellant’s burden to show a lack of jurisdiction apparent in the record. *See id.* at 707, 782 S.E.2d at 503–04.

The jurisdictional requirements of the UCCJEA must be satisfied for subject matter jurisdiction to exist in juvenile cases and termination proceedings. *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200 (2020). Before initially exercising jurisdiction, the trial court must find it has jurisdiction to make a child-custody determination under the UCCJEA. *See* N.C. Gen. Stat. §§ 50A-201, -203, -204 (2023).

Our Juvenile Code provides that the trial court:

shall have 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 custody of a county department of social services or licensed child-placing agency in the district at the time of the filing of the petition or motion. . . . The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the state of residence of the parent. Provided, that before exercising jurisdiction under this Article regarding the parental rights of a non-resident parent, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of [N.C. Gen. Stat. §] 50A-201 or [N.C. Gen. Stat. §] 50A-203 without regard to [N.C. Gen. Stat. §] 50A-204 and that process was served on the nonresident parent pursuant to [N.C. Gen. Stat. §] 7B-11-6.

N.C. Gen. Stat. 7B-1101 (2023).

A trial court has jurisdiction to make an initial child-custody determination when:

[t]his State is the home state of the child on the date of commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State[.]

N.C. Gen. Stat. § 50A-201(a)(1) (2023). Once a North Carolina trial court has made an initial child custody determination consistent with section 50A-201, it retains exclusive continuing jurisdiction until:

(1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State

concerning the child's care, protection, training, and personal relationships; or

(2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

N.C. Gen. Stat. § 50A-202(a) (2023).

Here, pursuant to the First Petitions in February 2020, the trial court made its initial child custody determination that North Carolina was the Juveniles' home state. Subsequently, the trial court's 1 February 2022 custody order terminating juvenile jurisdiction and establishing a civil file noted it retained exclusive, continuing jurisdiction under section 50A-202 because North Carolina remained the home state of the Juveniles.

Although the Juveniles resided in South Carolina with Respondent-Father for over six months, our review of the record does not reveal any order where a court of this State or another state concluded that North Carolina was no longer the home state of the Juveniles. *See* N.C. Gen. Stat. § 50A-202(a)(2). The record is similarly devoid of an order where a North Carolina court concluded the parties no longer had a significant connection to North Carolina or that substantial evidence concerning the Juveniles was no longer available here. *See* N.C. Gen. Stat. § 50A-202(a)(1).

Despite the inexplicable delay between entry of the 6 January 2021 permanency-planning order and the 1 February 2022 civil custody order, each order consistently stated North Carolina retained exclusive, continuing jurisdiction over

the custody matter. Furthermore, the record provides no indication that Mother no longer resided in North Carolina prior to 8 September 2022, after Respondent-Father returned the Juveniles to the foster family in Matthews, North Carolina.

Since North Carolina properly invoked home state jurisdiction in 2020 and retained exclusive, continuing jurisdiction, the lack of an order in the record from this State or another state expressing anything to the contrary is dispositive. *See* N.C. Gen. Stat. § 50A-202(a). Therefore, this argument is without merit.

2. Verification Requirement

When the trial court possesses subject matter jurisdiction, DSS may initiate a termination action by moving for termination of parental rights. N.C. Gen. Stat. § 7B-1102(a) (2023). The motion must be verified by the movant. N.C. Gen. Stat. § 7B-1104 (2023). Verification of a motion or petition is “a vital link in the chain of proceedings carefully designed to protect children at risk on one hand while avoiding undue interference with family rights on the other.” *In re T.R.P.*, 360 N.C. 588, 591, 636 S.E.2d 787, 790–91 (2006).

A verification 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.” N.C. Gen. Stat. § 1A-1, Rule 11(b) (2023). Juvenile pleadings which require verification are verified by means of an affidavit subject to Rule 11. *In re N.T.*, 368 N.C. at 708, 782 S.E.2d at 504. “An affidavit is ‘a written or printed

declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.” *In re S.E.T.*, 375 N.C. 665, 672, 850 S.E.2d 342, 347 (2020) (quoting *Schoolfield v. Collins*, 281 N.C. 604, 612, 189 S.E.2d 208, 213 (1972)).

Contrary to Respondent-Father’s argument, there is no independent requirement that the notary’s statement explicitly state that the notary administered an oath to the affiant. In fact, the Juvenile Code does not even require a notary be involved in every verification. *In re C.N.R.*, 379 N.C. 409, 416, 866 S.E.2d 666, 672 (2021) (“[N]othing in N.C. [Gen. Stat.] § 1-148 requires that an affidavit used to verify a motion or other pleading be certified by a notary in accordance with the Notary Public Act[.]”). Rather, we simply require that the petition “shall be verified by the petitioner or movant.” N.C. Gen. Stat. § 7B-1104.

Here, the motion to terminate parental rights was properly verified. The verification reads:

Ashley Lantz, being duly sworn, deposes and says that she is the Director of the Union County Department of Human Services Division of Social Services, the petitioner in the foregoing action, and as such is authorized to make this verification, that she has read the foregoing document and knows the contents thereof; that the same is true of his own knowledge, except those matters and things therein stated upon information and belief and as to those matters and things she believes the same to be true.

While Respondent-Father argues that the verification here was simply an acknowledgement because the movant was not sworn, the very first words after the

affiant's name state "being duly sworn." The notary block then states that the movant "voluntarily signed the foregoing document for the intents and purposes therein expressed." The verification in the present case is similar to a verification upheld by our Supreme Court in a case cited by Respondent-Father. *See In re C.N.R.*, 379 N.C. at 417, 866 S.E.2d at 672 (reasoning that a termination motion satisfied the verification requirement despite an undated signature when there was no evidence of fraud and the verification substantially complied with statutory requirements).

The verification, read in conjunction with the notarial statement, makes clear that Ms. Lantz was first sworn and then attested to the truth of the contents of the motion. Because the record reflects the affidavit was verified, this was a valid verification which properly conferred jurisdiction. *See In re C.N.R.*, 379 N.C. at 417, 866 S.E.2d at 672.

B. Dependency Ground

"Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020); *see also* N.C. Gen. Stat. § 7B-1110(a) (2023). "[A]n adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citation omitted); *see also* N.C. Gen. Stat. § 7B-1110(a). Thus, "if this Court upholds the trial court's order in which it concludes that a particular ground for termination exists, then we need not review any

remaining grounds.” *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

“We review a trial court’s adjudication that a ground exists to terminate parental rights under [N.C. Gen. Stat.] § 7B-1111 ‘to determine whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law.’” *In re A.M.*, 377 N.C. 220, 225, 856 S.E.2d 801, 806 (2021) (quoting *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49 (2019)). Moreover, “[f]indings of fact not challenged by [the] respondent are deemed supported by competent evidence and are binding on appeal. [W]e review only those findings necessary to support the trial court’s determination that grounds existed to terminate [the] respondent’s parental rights.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) (citations omitted). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

In concluding that grounds exist to terminate parental rights due to dependency, the trial court must find:

That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of [N.C. Gen. Stat. §] 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6) (2023). A dependent juvenile is 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) (2023). When analyzing dependency, “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 T.B.*, 203 N.C. App. 497, 500, 692 S.E.2d 182, 184 (2010). A parent’s “failure to comply with court-ordered protection plans may establish an inability to care for or supervise a child if the plans were adopted to ensure proper care and supervision of the child[.]” *In re P.M.*, 169 N.C. App. 423, 428, 610 S.E.2d 403, 406–07 (2005).

Here, based on the social worker’s testimony, the trial court found that Respondent-Father:

is incapable of providing for the proper care and supervision of the juveniles, such that the juvenile are dependent juveniles within the meaning of [N.C. Gen. Stat.] § 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future, to wit: 1) [Respondent-Father] does not have reasonable and appropriate alternative childcare arrangements for the juveniles. 2) [Respondent-Father] has been unable to properly care for the juveniles in that he has not provided a safe home and has not provided for the wellbeing needs of the juveniles. 3) [Respondent-Father] does not have the ability to provide care

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appropriately as he has failed to address his needs of substance abuse, emotional/mental health, parenting, and housing. 4) [Respondent-Father] has not completed a Child and Family Team Meeting to come up with a plan to address any identified needs. 5) [Respondent-Father] has failed to engage in services to address his identified needs. 6) [Respondent-Father] has had no contact with [DSS] since the beginning of the case nor has he responded to attempts by [DSS] to contact him via phone calls, text messages, and/or letters.

Respondent-Father's inability to provide proper care for the Juveniles is amply supported by the record. Moreover, although Respondent-Father's decision to place the Juveniles with the foster family appears responsible under the circumstances, his decision was also unilateral. There is no evidence the foster family agreed to take physical custody of the Juveniles without assistance for an indefinite period. Even if they had, the foster family had no authority or ability to arrange necessary medical care absent DSS intervention. Therefore, the foster family was not an appropriate alternative child care arrangement. *See In re T.B.*, 203 N.C. App. at 500, 692 S.E.2d at 184. Finally, Respondent-Father's incapability was likely to continue for the foreseeable future, given his complete lack of engagement with DSS and his case plan. The trial court's findings concerning the dependency ground are supported by clear, cogent, and convincing evidence from the hearing.

Because the existence of one ground is sufficient to support the termination, we affirm without reaching the remaining grounds. *See In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71.

C. Ineffective Assistance of Counsel (“IAC”)

Finally, Respondent-Father asserts that his appointed counsel was deficient at the termination hearing by failing to participate in his absence. Because the cold record is insufficient to assess possible IAC, we dismiss without prejudice.

The Juvenile Code affords indigent parents a statutory right to assistance of counsel. N.C. Gen. Stat. § 7B-1101.1(a) (2023). Included in this right is “the right to effective assistance of counsel.” *In re Bishop*, 92 N.C. App. 662, 665, 375 S.E.2d 676, 678 (1989). “To prevail in a claim for ineffective assistance of counsel respondent must show (1) [his] counsel’s performance was deficient or fell below an objective standard of reasonableness; and (2) [his] attorney’s performance was so deficient [he] was denied a fair hearing.” *In re J.A.A.*, 175 N.C. App. 66, 74, 623 S.E.2d 45, 50 (2005).

Although ineffective assistance is unlikely to exist when a lawyer’s alleged deficiencies result from a respondent’s own actions or inactions, *see Bishop*, 92 N.C. App. at 666–67, 375 S.E.2d at 679–80, the record must be developed such that we can consider whether counsel or respondent is primarily to blame for respondent’s nonattendance and counsel’s nonparticipation in a termination hearing, *In re S.N.W.*, 204 N.C. App. 556, 559, 698 S.E.2d 76, 78 (2010). In *S.N.W.*, the extent of the respondent’s communication with counsel during her appointment was a voicemail and an unknown number of missed phone calls. *See id.* at 557, 698 S.E.2d at 77. After the respondent failed to appear for the termination hearing and the trial court

explicitly allowed respondent's counsel "not to participate," we remanded for a factual inquiry, reasoning "the trial court should have inquired further about Respondent counsels' efforts: (1) to contact Respondent; (2) to protect Respondent's rights; and (3) to ably represent Respondent." *See id.* at 559, 698 S.E.2d at 78.

Here, Respondent-Father's counsel moved to withdraw at the start of the hearing, stating "I haven't had any contact with my client since adjudication in the underlying case." After initially allowing the motion, the trial court reversed course after an objection by counsel for the GAL. Thereafter, Respondent-Father's counsel did not participate in the hearing. Particularly in cases where a respondent is served through counsel, as here, the record must be developed further for us to assess whether Respondent-Father received notice of the hearing or assisted in trial preparation. Accordingly, we dismiss Respondent-Father's IAC claim without prejudice to his right to request a factual inquiry before the trial court.

V. Conclusion

In sum, the trial court possessed subject matter jurisdiction and did not err in finding the existence of the dependency adjudication ground. We dismiss Respondent-Father's IAC claim without prejudice.

AFFIRMED IN PART; DISMISSED WITHOUT PREJUDICE IN PART.

Judges ARROWOOD and THOMPSON concur.

Report per Rule 30(e).