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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-834

Filed 2 April 2025

Brunswick County, No. 14 JT 65

IN THE MATTER OF: K.F.M.

Appeal by Respondent-Mother from order entered 24 April 2023 by Judge Pauline Hankins in Brunswick County District Court. Heard in the Court of Appeals 6 March 2024.

*Miller & Audino, LLP, by Jeffrey L. Miller for Respondent-Appellant-Mother.*

*Brittany T. McKinney for the Guardian ad Litem.*

*Jane R. Thompson for Petitioner-Appellee Brunswick County Department of Social Services.*

CARPENTER, Judge.

Respondent-Mother appeals from the trial court's 24 April 2023 order terminating her parental rights as to her minor daughter, Kay.<sup>1</sup> On appeal, Respondent-Mother challenges the trial court's subject matter jurisdiction over the termination proceedings. After careful review, we conclude the trial court possessed subject matter jurisdiction. Accordingly, we affirm.

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<sup>1</sup> Pseudonym used to protect the identity of the minor child and for ease of reading. See N.C. R. App. P. 42(b).

## **I. Factual & Procedural Background**

Father, who is not a party to this appeal, and Respondent-Mother are the parents of six children born between 1998 and 2008. This appeal concerns Kay, who was born in 2008.

Since 2006, the Brunswick County Department of Social Services (“DSS”) has worked with the family due to various concerns, including an injurious environment, substance abuse, and improper care of the children. On 8 May 2014, DSS filed a petition alleging that Kay was neglected and dependent due to the absence of necessary medical care, the recurrence of untreated headlice, issues with school attendance, issues with the structure of the family’s home that posed safety concerns, and Respondent-Mother’s substance abuse.

On 29 May 2014, Kay was adjudicated as dependent, but the trial court allowed Respondent-Mother and Father to retain custody contingent on their compliance with the case plan. On 14 October 2014, the trial court conducted a review hearing, where they found that Respondent-Mother and Father failed to comply with the case plan and placed Kay in the legal and physical custody of DSS. On 16 December 2014, the trial court held another review hearing and found that Kay and her siblings “reported incidents of [sexual abuse] between and among themselves.” That same month, DSS learned that Father engaged in sexual behavior with Kay and her sister.

On 10 March 2015, DSS filed a second petition alleging that Kay was abused and neglected based on: reports of sexual abuse among the siblings; reports of sexual

abuse by Father; Respondent-Mother's knowledge of the sexual abuse and failure to intervene; continued substance abuse by Respondent-Mother and Father; and domestic violence between Respondent-Mother and Father. On 26 May 2015, the trial court entered an order adjudicating Kay as neglected. On 10 November 2015, the trial court entered an order placing Kay in the guardianship of her maternal aunt and uncle.

On 18 January 2022, DSS filed a third petition alleging Kay was dependent because her aunt and uncle no longer wanted guardianship, and DSS obtained nonsecure custody of Kay. On 7 March 2022, the trial court modified its guardianship order and placed Kay in the legal and physical custody of DSS. On 19 May 2022, the trial court conducted a permanency planning hearing and found that Respondent-Mother had not contacted Kay in seven years. The trial court also found that Respondent-Mother lived with Father in a camper "a few miles" from Kay's brother, who had sexually abused Kay.

On 26 July 2022, the trial court conducted another permanency planning hearing and found that Respondent-Mother was working to stay in contact with DSS and acquire stable employment, but had not made progress with the remainder of her case plan. On 7 September 2022, DSS filed a petition to terminate Respondent-Mother's parental rights, alleging grounds of dependency, neglect, willful failure to make reasonable progress, and prior willful abandonment. The termination petition included a verification signed by the DSS Director, Catherine Lytch, "being first duly

sworn,” before a notary public “for the purpose stated therein.” On 1 December 2022, the trial court held a pre-adjudication hearing for the termination petition and concluded that the petition was properly verified.

The adjudication hearing on the termination petition occurred on 6 February 2023. The trial court found the existence of adjudication grounds for neglect and prior willful abandonment. The next day, the trial court conducted the disposition hearing and concluded it was in Kay’s best interest to terminate Respondent-Mother’s parental rights. On 24 May 2023, Respondent-Mother filed notice of appeal from “the Order Terminating Parental Rights Disposition Order.”

## **II. Jurisdiction**

Respondent-Mother concedes her notice of appeal only identifies the disposition order and not the adjudication order. *See* N.C. R. App. P. 3(d) (specifying that a notice of appeal must designate the order from which appeal is taken). Because Rule 3(d) is a jurisdictional rule, failure to comply with its requirements “precludes [us] from acting in any manner other than to dismiss the appeal.” *Dogwood Dev. And Mgmt. Co., LLC v. White Oak Transp., Inc.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008). Thus, this Court only has jurisdiction over Respondent-Mother’s appeal from the disposition order under N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

Respondent-Mother’s argument on appeal implicates both orders, however, so she filed a petition for writ of certiorari (“PWC”). A PWC is a “prerogative writ[],”

which we may issue to aid our jurisdiction. *See* N.C. Gen. Stat. § 7A-32(c) (2023). In our discretion, we allow Respondent-Mother’s PWC.

### **III. Issue**

The sole issue is whether the trial court possessed subject matter jurisdiction over Respondent-Mother’s termination proceedings.

### **IV. Analysis**

Respondent-Mother argues the trial court lacked subject matter jurisdiction to terminate her parental rights because the termination petition was not verified. We disagree.

Whether the trial court had subject matter jurisdiction is a question of law that this Court reviews de novo. *In re N.P.*, 376 N.C. 729, 731, 855 S.E.2d 203, 205–06 (2021). “Under a *de novo* review, th[is] [C]ourt considers the matter anew and freely substitutes its own judgment for that of the [lower tribunal].” *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003).

Subject matter jurisdiction is conferred by statute, not “by consent, waiver or estoppel, [or] failure to demur or object to the jurisdiction.” *In re C.T.*, 182 N.C. App. 472, 473–74, 643 S.E.2d 23, 24 (2007) (quoting *In re T.B.*, 177 N.C. App. 790, 791, 629 S.E.2d 895, 896 (2006) (internal quotation marks omitted)). A court must have subject matter jurisdiction to render a judgment on the merits. *Id.* at 473–74, 643 S.E.2d at 24. “This Court presumes the trial court has properly exercised jurisdiction

unless the party challenging jurisdiction meets its burden of showing otherwise.” *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200 (2020).

A petition to terminate parental rights must be verified for the trial court to acquire subject matter jurisdiction. *In re T.R.P.*, 360 N.C. 588, 636 S.E.2d 787, 789 (2006). “[V]erification of the petition in an abuse, neglect, or dependency action as required by [N.C. Gen. Stat.] § 7B–403 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.” *Id.* at 591, 636 S.E.2d at 791. The petition “shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing.” N.C. Gen. Stat. § 7B–403(a) (2023).

In *In re C.N.R.*, the North Carolina Supreme Court reviewed the verification of a petition to terminate parental rights where the notary failed to date the verification. 379 N.C. 409, 413, 843 S.E.2d 666, 670 (2021). The Court held that, despite the absence of the date, the termination petition “satisfied the concerns that underlie the verification requirement” and, therefore, “sufficed to give the trial court subject matter jurisdiction.” *Id.* at 420, 843 S.E.2d at 674.

Here, Respondent-Mother contends that the use of “acknowledged” as opposed to “verified” in the notarial certificate renders the verification defective. The verification document demonstrates that Director Lytch personally attested before a notary public that she “read the foregoing Petition for Termination of Parental

Rights” and “believes [the matters contained within] to be true.” Further, the notary public certified that Director Lytch signed the verification “for the purpose stated therein.” Just as the Court reasoned in *In re C.N.R.*, the verification in this case is consistent with the verification’s purpose “of assuring that our courts exercise their power only when an identifiable government actor ‘vouches’ for the validity of the allegations.” See 379 N.C. App. at 420, 833 S.E.2d at 674. Accordingly, the verification properly conferred subject matter jurisdiction upon the trial court.

## **V. Conclusion**

In sum, the trial court had subject matter jurisdiction to terminate Respondent-Mother’s parental rights. Accordingly, we affirm.

AFFIRMED.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).