2015 IL App (4th) 141038-U

NO. 4-14-1038

FILED
April 29, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.N., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v.	)	No. 13JA21
ERIC NOBLE,	)	
Respondent-Appellant.	)	Honorable
	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order terminating respondent father's parental rights is affirmed where respondent filed a timely appeal from that order but made only an untimely challenge to the trial court's earlier abuse and neglect finding.

¶ 2 Respondent, Eric Noble, appeals from the trial court's order terminating his parental rights to his child, D.N. (born April 18, 2013). On appeal, he argues the court erred "when proceedings continued" after the State failed to prove at the adjudicatory hearing that he neglected or abused D.N. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 23, 2013, the State filed a petition for adjudication of wardship, alleging D.N. was "a neglected and/or abused minor as his environment [was] injurious to his health and well being." It asserted both respondent and D.N.'s mother had previously been indicated for

abuse or neglect of other minors and there was a pending investigation against D.N.'s mother for allowing respondent to live with her and her other minor children. On May 7, 2013, the trial court conducted the adjudicatory hearing, during which D.N.'s mother admitted that the allegations in the State's petition were true. The court accepted the mother's admission, along with the State's factual basis, finding "the petition, in so far as it relate[d] to the mother, ha[d] been proven." The State, "for the sake of efficiency," withdrew an allegation in the petition which solely related to respondent. The same day, the court entered an adjudicatory order, finding D.N. to be a neglected and/or abused minor.

¶ 5 Following a hearing on June 24, 2013, the trial court entered its dispositional order, making D.N. a ward of the court and placing his custody and guardianship with the Illinois Department of Children and Family Services (DCFS). It found both parents were "unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline [D.N.] or [were] unwilling to do so," and D.N.'s best interests would be jeopardized if he remained in their custody. As the factual basis for its finding, the court noted respondent was incarcerated and D.N.'s mother had been the subject of numerous DCFS investigations, including a pending investigation regarding her other children.

¶ 6 On May 19, 2014, respondent appeared before the trial court and executed a final and irrevocable surrender of his parental rights to D.N. On July 1, 2014, the State filed a motion to terminate his parental rights, alleging respondent was unfit because he signed the voluntary and irrevocable surrender of his parental rights and termination was in D.N.'s best interests. Following hearings on November 4, 2014, with respect to parental fitness and D.N.'s best interests, the court entered an order terminating respondent's parental rights. (During the underlying pro-

ceedings, the parental rights of D.N.'s mother were also terminated; however, she is not a party to this appeal.)

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, respondent argues "the trial court erred when it allowed the case to proceed after the adjudicatory hearing when the State *** failed to prove that [he] had neglected or abused D.N." He contends that while D.N.'s mother admitted the allegations against her in the State's petition, the allegations which specifically pertained to him were withdrawn. Thus, respondent maintains the evidence was insufficient to support a finding that *he* neglected or abused D.N. and, as such, "it was improper for the court to proceed" and place custody and guardianship of the minor with DCFS.

¶ 10 Here, although not addressed by either party, we find this court lacks jurisdiction to address the specific issue presented by respondent on appeal. "Appealing a dispositional order is the proper vehicle for challenging a finding of abuse or neglect." *In re Leona W.*, 228 Ill. 2d 439, 456, 888 N.E.2d 72, 81 (2008). When no notice of appeal has been filed within 30 days of a trial court's dispositional order, any error pertaining to that dispositional order is forfeited. *Leona W.*, 228 Ill. 2d at 456-57, 888 N.E.2d at 81-82. See also *In re C.S., Jr.*, 294 Ill. App. 3d 780, 786-87, 691 N.E.2d 161, 165 (1998) (holding this court lacked "appellate jurisdiction over [the] respondent parents' appeal of the trial court's June 1995 adjudicatory order and its September 1995 dispositional order" where their notice of appeal was not filed until April 1997).

¶ 11 In this case, the trial court held an adjudicatory hearing on May 7, 2013, and found D.N. was a neglected and/or abused minor. On June 24, 2013, it entered its dispositional

order. Neither parent sought appellate review of the dispositional order. In particular, the record fails to reflect respondent filed a notice of appeal within 30 days after the dispositional order was entered. Instead, he filed a notice of appeal on December 3, 2014, identifying the court's November 2014 order terminating his parental rights as the order from which he appealed. Given these circumstances, respondent has forfeited any issue with respect to the court's finding of abuse or neglect and we lack jurisdiction to address that portion of the underlying proceedings.

¶ 12 Here, respondent did file a timely notice of appeal from the trial court's order terminating his parental rights. However, he has raised no issue with respect to the termination portion of the underlying proceedings. For the benefit of the court and the parties, we note the court unnecessarily proceeded as if the State was seeking to *involuntarily* terminate respondent father's parental rights when it conducted fitness and best-interest hearings. Because respondent had surrendered his parental rights, he had consented to termination and the court did not need to conduct the typical fitness and best-interest hearings associated with involuntary termination proceedings. It only needed to make a best-interest finding before entering its termination order. See 705 ILCS 405/2-29(2) (West 2012) ("If a petition or motion alleges and the court finds that it is in the best interest of the minor that parental rights be terminated ***, the court, with the consent of the parents, *** may terminate parental rights and empower the guardian of the person of the minor *** to consent to the adoption.").

¶ 13 Nevertheless, despite the superfluous nature of the termination procedure in this case, the record reflects respondent's parental rights were appropriately terminated following his execution of a surrender of his parental rights. Further, as stated, respondent raises no challenge to the termination proceedings asserting otherwise. Therefore, we affirm the trial court's No-

vember 2014 order, which terminated respondent's parental rights.

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we affirm the trial court's judgment.

¶ 16 Affirmed.