2012 IL App (2d) 121007-U
No. 2-12-1007
Order filed December 26, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re A'NAH G., A Minor	)	Appeal from the Circuit Court of
	)	Winnebago County.
	)	
	)	No. 10-JA-235
	)	
(The People of the State of Illinois, Petitioner-Appellee v. Brandy L., Respondent-Appellant, and Marcus G., Respondent).	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment terminating the parental rights of respondent-mother was affirmed where the order was not void for lack of subject matter jurisdiction.

¶ 2 On July 7, 2010, the State filed a two-count petition alleging that A'nah G. (born August 11, 2009), was a neglected minor under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2010)). Respondents were A'nah's mother, Brandy L., and father, Marcus G.[1] Count I alleged that the minor was neglected based on an environment injurious to her welfare in that her mother had

[1]Respondent-father is not a party to this appeal. Father ultimately consented to A'nah's adoption by her paternal aunt/foster mother.

mental health issues that prevented her from properly parenting, and thereby placed the minor at risk of harm. Count II alleged neglect based on an injurious environment in that the mother engaged in domestic violence, thus placing the minor at risk of harm.

¶ 3 After a shelter care hearing, the trial court found that there was probable cause to believe that A'nah was neglected. The Department of Children and Family Services (DCFS) was given temporary guardianship and custody, with discretion to place A'nah with a responsible relative or in traditional foster care.

¶ 4 The State subsequently filed an amended neglect petition. It was identical to the first except that count II was amended to add that mother engaged in domestic violence "in the presence of the minor."

¶ 5 On October 7, 2010, the trial court conducted an adjudicatory hearing. The assistant State's Attorney told the court that respondent-mother agreed to stipulate to count II "of the petition" and that the State agreed to move to dismiss count I. The court found that there was a factual basis supporting the plea. The written adjudicatory order entered that day stated: "This cause coming on to be heard upon the petition filed _____ ***." In the blank was a handwritten notation: "7/29/10."[2] In the order, the court found that A'nah was a neglected minor and dismissed count I. The original July 7, 2010, neglect petition in the record bears a handwritten notation under count I: "DOMSA"[3] and under count II: "Mom stip ct 2."

¶ 6 The trial court conducted the dispositional hearing on December 22, 2010. After hearing evidence, the court entered a dispositional order making A'nah a ward of the court and granting

[2]We note that the July 30, 2010, amended neglect petition was notarized on July 29, 2010.

[3]We glean from the record that this stands for "dismissed on motion of State's Attorney."

guardianship and custody to DCFS, with discretion to place A'nah with a responsible relative or in foster care. No appeal was taken from the dispositional order.

¶ 7 The State subsequently filed a motion for termination of parental rights. Section 2-29 of the Act (705 ILCS 405/2-29 (West 2010)) provides a two-step process for termination of parental rights wherein the trial court must first find that the parent is unfit and then find that termination of the parent's rights is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010). On July 13, 2012, the court conducted an evidentiary hearing on the unfitness portion of the State's motion to terminate parental rights. The court took the matter under advisement.

¶ 8 On August 10, 2012, the court found that the State had proved by clear and convincing evidence that mother was unfit. The court then heard evidence on the best interests of the child. The court entered an order finding that the termination of mother's parental rights was in A'nah's best interests. Mother appeals.

¶ 9 Initially, we address our jurisdiction to hear this appeal. In all proceedings under the Act except for delinquency cases, appeals from final judgments are "governed by the rules applicable to civil cases." Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001). To vest the appellate court with jurisdiction in a civil case, a party must file a notice of appeal within 30 days of a final judgment. *In re M.J.*, 314 Ill. App. 3d 649, 654 (2000) (citing Ill. S. Ct. R. 303(a) (eff. June 4, 2008)). In the present case, mother's notice of appeal was timely filed from the trial court's August 10, 2012, final order terminating her parental rights. Accordingly, we have jurisdiction over this appeal.

¶ 10 Mother argues that the trial court lacked jurisdiction to enter the order terminating her parental rights. Essentially, mother reasons as follows. The court never made a valid finding of neglect at the adjudicatory hearing because, as reflected by the handwritten notations on the original

petition, the finding was based on mother's stipulation to count II of the original July 7, 2010, petition.[4] Mother maintains that count II of the original petition is flawed because it does not contain factual allegations demonstrating the required nexus between mother's allegedly engaging in domestic violence and the resulting alleged harm to the child—namely, the allegation (found in the amended petition) that the domestic violence occurred "in the presence of the minor." Therefore, mother contends, the court lacked a sufficient factual basis to support its neglect finding, thereby rendering it invalid. Mother concludes that the invalid neglect finding rendered the trial court without jurisdiction to enter the adjudicatory order pursuant to *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004) (stating that a "finding of abuse, neglect or dependence is jurisdictional"). Thus, according to mother, the court also lacked jurisdiction to enter the subsequent dispositional order and the order terminating her parental rights.

¶ 11 Mother acknowledges that she forfeited her argument by not challenging either the adjudicatory order or the dispositional order in the court below. Nonetheless, she asks us to review those orders under the plain-error doctrine because the termination of parental rights affects a fundamental liberty interest. The State responds that the issue is not one of forfeiture, but, rather, the issue is lack of appellate jurisdiction to address mother's claims regarding the adjudicatory and dispositional orders. As we concluded above, we have jurisdiction to entertain mother's appeal from the order terminating her parental rights. The question thus becomes whether our jurisdiction encompasses review of the underlying adjudicatory and dispositional orders.

¶ 12 Generally, in cases under the Act, while the adjudicatory order is not final and appealable,

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[4]Mother also asserts that "further confusion" results from the adjudicatory order's reference to the petition filed on "7/29/10," when there was no petition filed on that date.

the dispositional order is. *In re M.J.*, 314 Ill. App. 3d at 654-55 (noting Illinois Supreme Court Rule 662(a) (eff. Oct. 1, 1975), which allows an appeal from an adjudicatory order when the trial court fails to enter a dispositional order within 90 days of its entry). We agree with the State that we lack jurisdiction to directly review the adjudicatory and dispositional orders because mother did not timely file a notice of appeal from the entry of the dispositional order. See *In re M.J.*, 314 Ill. App. 3d at 655 (holding that, where the mother never filed a notice of appeal from the dispositional order, appellate jurisdiction was never perfected with respect to the earlier neglect proceedings). According to the State, because mother's argument is based on those orders, we lack jurisdiction to address her appeal. Although mother's argument is based on the validity of the underlying orders, her appeal is still from the order terminating her parental rights. Thus, if mother is correct that the trial court lacked jurisdiction to enter the underlying orders, then they are void and subject to challenge at any time, including by a collateral attack in this appeal from the order terminating mother's parental rights. *In re M.W.*, 232 Ill. 2d 408, 414 (2009) ("If a court lacks either subject matter jurisdiction over the matter or personal jurisdiction over the parties, any order entered in the matter is void *ab initio* and, thus, may be attacked at any time."). Accordingly, we turn to whether the trial court had subject matter jurisdiction to enter the adjudicatory and dispositional orders.

¶ 13 Subject matter jurisdiction refers to the power of a court to " 'hear and determine cases of the general class to which the proceeding in question belongs.' " *In re M.W.*, 232 Ill. 2d at 415 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002)). Except for the trial court's power to review administrative actions, which is conferred by statute, the exclusive source of a trial court's subject matter jurisdiction is the Illinois Constitution. *In re M.W.*, 232 Ill. 2d at 424 (citing *Belleville Toyota*, 199 Ill. 2d at 334 (citing Ill. Const. 1970, art. VI, § 9)).

Under our state constitution, subject matter jurisdiction extends to all "justiciable matters." Ill. Const. 1970, art. VI, § 9; *Belleville Toyota*, 199 Ill. 2d at 334. A trial court's jurisdiction is invoked through the filing of a complaint or petition. *In re Custody of Ayala*, 344 Ill. App. 3d 574, 584 (2003). Whether the trial court properly exercised subject matter jurisdiction is reviewed *de novo*. *In re Luis R.*, 239 Ill. 2d 295, 299 (2010).

¶ 14 In the present case, the trial court's jurisdiction was invoked by the State's filing a neglect petition under the Act. *In re M.B.*, 235 Ill. App. 3d 352, 377 (1992). From that point, the court proceeded under the Act to an adjudicatory hearing, at which time it entered a finding of neglect, and then to the dispositional hearing. Mother's argument, in essence, that there was no finding of neglect because the factual basis upon which the court relied—mother's stipulation to count II—was insufficient, misses the mark. Mother correctly observes that our supreme court in *In re Arthur H.*, citing *In re M.B.*, stated that a finding of neglect is jurisdictional. *In re Arthur H.*, 212 Ill. 2d at 464. However, the supreme court later explained that statement:

> "In other words, *M.B.* simply confirms that, unless and until it makes a neglect *finding*, the trial court is without jurisdiction to adjudicate wardship. *M.B.* in no way supports the notion that a trial court's jurisdiction is contingent upon, or in any way a function of, the quality of the State's *proof*. Indeed, such a rule would flatly contradict the well-established principle that a circuit court does not lose jurisdiction simply by making an erroneous finding of fact." (Emphases in original.) *In re D.S.*, 217 Ill. 2d 306, 322 (2005).

¶ 15 Here, under the court's reasoning in *In re D.S.*, the trial court could not have lost subject matter jurisdiction by entering the finding of neglect, even assuming, for the sake of argument, that the finding was not supported by a sufficient factual basis. See *In re M.W.*, 232 Ill. 2d at 423 ("Error

or irregularity in the proceeding, while it may require reversal of the court's judgment on appeal, does not oust subject matter jurisdiction once it is acquired."); *In re M.J.*, 314 Ill. App. 3d at 654 ("Where a court fails to proceed within rules of evidence or the strictures of a statute, the court does *not* lose its constitutionally conferred subject matter jurisdiction." (Emphasis in original.)). In other words, because the court made a finding of neglect, it had jurisdiction to enter the adjudicatory and dispositional orders. See *In re D.S.*, 217 Ill. 2d at 322. Accordingly, because the adjudicatory and dispositional orders were not void for lack of subject matter jurisdiction, they are not subject to collateral attack in this appeal. See *In re C.S.*, 294 Ill. App. 3d 780, 786 (1998) ("Any error the trial court committed here in not holding the adjudicatory and dispositional hearings prior to the statutory deadlines did not render those orders void for lack of subject-matter jurisdiction. Thus, contrary to respondents' contention, those orders are not subject to attack at any time.").

¶ 16 In summary, we have no jurisdiction to directly review the adjudicatory and dispositional orders because mother did not timely appeal from them. Moreover, any error alleged by mother with respect to those orders did not render them void. Accordingly, our jurisdiction over mother's appeal from the order terminating her parental rights does not extend to review of the adjudicatory and dispositional orders. See *In re Alexander R.*, 377 Ill. App. 3d 553, 555 (2007) (where the father appealed from the order terminating his parental rights, the court declined to address his argument regarding the trial court's neglect finding for lack of jurisdiction over that portion of the appeal); *In re J.J.*, 316 Ill. App. 3d 817, 826 (2000) (holding that it lacked jurisdiction to address the mother's claims of error regarding the adjudicatory order because the mother had appealed from the order terminating her parental rights); *In re M.J.*, 314 Ill. App. 3d at 655 (same); *In re C.S.*, 294 Ill. App. 3d at 787 (same).

¶ 17 Mother nonetheless urges that we review her claims of error under the plain-error doctrine. In the statement of jurisdiction in her opening brief, mother cites Illinois Supreme Court Rule 615 (eff. Jan. 1, 1967), which provides authority for appellate review of issues that were not properly preserved in the trial court. The plain-error doctrine allows courts of review to overlook forfeiture, which is a limitation on the parties, not the court. *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 30. In contrast, jurisdiction is a limitation on the court, as it speaks to the court's power to hear and decide cases. *In re M.W.*, 232 Ill. 2d at 415. Absent jurisdiction, we are powerless to act. See *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 780 (2010) (stating that, if the appellant does not file a timely notice of appeal, the "reviewing court lacks jurisdiction over the appeal and must dismiss it"). Accordingly, mother's reliance on the plain-error doctrine is misplaced.

¶ 18 Finally, mother contends that our review of the adjudicatory and dispositional orders is proper because they were steps in the procedural progression leading to the order terminating her parental rights. In support of her position, mother cites *In re D.R.*, 354 Ill. App. 3d 468 (2004). In *In re D.R.*, the mother filed a timely notice of appeal from the trial court's dispositional orders making her children wards of the court. On appeal, the mother challenged the validity of the adjudicatory orders finding each child was neglected. *In re D.R.*, 354 Ill. App. 3d at 470. The State argued that the appellate court lacked jurisdiction to address the mother's arguments regarding the adjudicatory orders because she did not reference those orders in her notice of appeal. *In re D.R.*, 354 Ill. App. 3d at 471. The appellate court rejected the State's argument, holding that an adjudicatory order is a step in the procedural progression leading to the dispositional order. *In re D.R.*, 354 Ill. App. 3d at 473.

¶ 19 *In re D.R.* does not speak to the issue in the present case and thus lends no support to

mother's position that the dispositional order was a step in the procedural progression leading to the order terminating her parental rights. An adjudicatory order, which is not itself a final order, is logically encompassed in an appeal from the subsequent final and appealable dispositional order. As the court in *In re D.R.* pointed out, the State could have fairly inferred an intent to challenge the adjudicatory order from the notice of appeal from the dispositional order. *In re D.R.*, 354 Ill. App. 3d at 474. In contrast, here, the State had no reason to infer from mother's notice of appeal from the order terminating her parental rights any intent to challenge the dispositional order. Moreover, as discussed above, the dispositional order was final and appealable. Thus, in order to invoke this court's jurisdiction to review it, mother needed to file a notice of appeal within 30 days of its entry. See *In re M.J.*, 314 Ill. App. 3d at 655 (holding that appellate jurisdiction was never perfected where the mother did not file notice of appeal within 30 days of the entry of the dispositional order). Accordingly, mother's procedural-progression argument lacks merit.

¶ 20 Based on the foregoing, we affirm the judgment of the circuit court of Winnebago County.

¶ 21 Affirmed.