

2014 IL App (2d) 130877-U
Nos. 2-13-0877, 2-13-0878, 2-13-0879 cons.
Order filed January 29, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ANABELLA H., GUILIANA H.,)	Appeal from the Circuit Court
and ALEXANDRIA Y., Minors)	of Kane County.
)	
)	Nos. 11-JA-76
)	11-JA-77
)	11-JA-78
)	
)	Honorable
)	Linda S. Abrahamson
)	Judith M. Brawka
(The People of the State of Illinois, Petitioner-)	Clint T. Hull,
Appellee, v. Robert H., Respondent-Appellant).)	Judges, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court had both subject matter and personal jurisdiction throughout the proceedings, and we lack jurisdiction to review the underlying neglect proceedings because the respondent did not file a timely appeal from the dispositional order.

¶ 2 The respondent, Robert H., appeals an order of the circuit court of Kane County terminating his parental rights to his minor daughters Anabella H. (born January 1, 2008), Guiliana H. (born September 14, 2009), and Alexandria Y. (born February 17, 2011). On appeal,

the respondent contends that the trial court lacked jurisdiction throughout the proceedings, and that the trial court acted beyond the authority purportedly granted it by the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2010)).

¶ 3

BACKGROUND

¶ 4 Samantha Y. is the mother of the minors. The respondent and Samantha were not married. In June 2010, the respondent was arrested on multiple charges of domestic violence against Samantha. The respondent remained in custody from the time of his arrest until he was convicted of those offenses. The respondent is scheduled to be paroled in June 2016.

¶ 5 On July 13, 2011, the State filed petitions for adjudication of wardship and temporary custody under section 2-3 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3 (West 2010)). At the shelter care hearing on that same date, the respondent and the minors' mother were present and the court appointed attorneys for them. The parties stipulated that there was probable cause that the minors were neglected. The factual basis in support of the stipulation was that the respondent was in custody and that, on July 6, 2011, the minors' mother was hospitalized for a drug overdose. The Illinois Department of Children and Family Services (DCFS) removed the minors from the home and placed them in the custody of their maternal grandmother.

¶ 6 Two orders were entered on the date of the shelter care hearing. The first was an order entitled "First Appearance." The order indicated that the respondent had been tendered a copy of the petition and had been served in open court. The order also stated that the mother was to provide birth certificates. The second order was a temporary custody order granting temporary custody of the minors to DCFS. The order allowed the mother supervised visitation but ordered that the respondent was not allowed visitation while in custody. The order also indicated that the

respondent had received notice and was present. The parties agreed to an adjudicatory hearing date of September 28, 2011.

¶ 7 On September 8, 2011, a pretrial conference was held. The trial court notified the parties that a hearing in a different case had already been scheduled for September 28. The State noted that there was no father listed on the birth certificate for Alexandria and that the State had sent notice by publication to “John Doe and unknown fathers.” Because of that, the State said that the hearing date could not be moved up. The trial court stated that it would keep the hearing set for September 28 but that it was not its intent to move forward on that date. The respondent was present and did not object. On September 28, 2011, by agreement of all the parties in open court, including the respondent who was present, the case was continued until December 5. The trial court noted that December 5 was beyond the ninety day deadline for the adjudicatory hearing but that all the parties had agreed and that, therefore, there was good cause shown for the extension. On December 5, the case was called at 4:40 p.m., with insufficient time to conduct a hearing. The parties agreed to continue the case until December 14.

¶ 8 On December 14, 2011, the adjudicatory hearing commenced. The respondent was present. After the caseworker testified, the State sought a continuance because its next witness was unavailable. The respondent did not object.

¶ 9 On January 3, 2012, the State filed a five-count amended neglect petition in each case. On that same day, the minors’ mother stipulated to count II of the amended petitions that she failed to protect the minors from the respondent and the respondent’s history of domestic violence, thereby placing the minors in an injurious environment (705 ILCS 405/2-3(1)(b) (West 2010)). The remaining counts were dismissed. Without objection, the State introduced certified

copies of the respondent's two 2010 convictions for aggravated domestic battery. The respondent was sentenced to six years' imprisonment on each conviction. The State rested.

¶ 10 The trial court stated that it could proceed on Anabella and Guiliana's cases as to the respondent. The State asserted that the trial court could proceed as to Alexandria as well since the respondent was the putative father of Alexandria and had been served in the case related to Alexandria. The trial court asked if any of the parties believed that there was not adequate jurisdiction to proceed in Alexandria's case. The parties all stated that they had no objection to jurisdiction.

¶ 11 Thereafter, the respondent testified that he was the father of Anabella and Guiliana and was listed as such on their birth certificates. Although he was not listed as Alexandria's father on her birth certificate, he was "probably" her father. The respondent requested a court order to test Alexandria's paternity. The respondent testified that he had been in continuous custody since June 2010 and that DCFS had prevented him from seeing or communicating with the minors. He testified that he had never physically abused the minors. On cross-examination, the respondent acknowledged that he had contact with DCFS on five prior occasions due to domestic violence.

¶ 12 On January 3, 2012, after closing argument, the trial court adjudicated the minors neglected. The trial court ordered paternity testing of the respondent and Alexandria. The adjudicatory order also indicated that the respondent had "been served with summons." On January 27, 2012, following a dispositional hearing at which the respondent was present, the trial court found the respondent unfit and granted guardianship and custody of the minors to DCFS with the discretion to place the minors in the care of a responsible relative. On February 6, 2012,

the trial court entered an order that amended the dispositional order to reflect that the minors were made wards of the court.

¶ 13 On June 28, 2012, the first permanency hearing was held. The respondent was present. The case manager testified that the minors were making progress. She also testified that she had spoken to the respondent weekly and that she had informed him that paternity testing confirmed that the respondent was Alexandria's biological father. The trial court set the permanency goal to return home within 12 months. The trial court found, however, that the respondent had not made reasonable or substantial progress towards the family's reunification.

¶ 14 On July 16, 2012, based on testing that established he was Alexandria's father, the respondent appeared in court, admitted paternity as to her, and waived his right to a hearing on the issue. On July 30, 2012, a status hearing was held and the respondent was present. On that same date, the trial court entered an order stating that because the respondent was incarcerated, he was not a return home source at that time. The court further ordered that visitation was at DCFS's discretion. The trial court encouraged the respondent to send letters and cards to his children and to request pictures of them from caseworkers.

¶ 15 On December 27, 2012, a second permanency hearing was held. The respondent was present in court. The trial court found that the respondent had failed to make substantial progress toward reunification and changed the permanency goal to substitute care pending the State's decision to petition for termination of his parental rights.

¶ 16 On January 24, 2013, the State filed petitions to terminate the parental rights of both parents to the minors. The respondent was served in open court. On June 27, 2013, the State filed amended petitions to terminate the parental rights of both parents and appoint a guardian with the power to consent to adoption. On that same date a hearing was held and the respondent

was present. At the hearing, the minors' mother surrendered her parental rights over the minors. Additionally, the trial court found that the respondent had again failed to make reasonable progress towards reunification, largely due to his incarceration.

¶ 17 On July 18, 2013, a hearing commenced on the termination petitions. The hearing continued on August 5, 2013. On that date, at the conclusion of the hearing, the trial court found the respondent unfit. The respondent was present at the fitness hearings. On August 6, 2013, following a best interest hearing, at which the respondent was also present, the trial court found that it was in the best interests of the minors to terminate the respondent's parental rights. The trial court entered an order to that effect and appointed a guardian with the power to consent to their adoption. The respondent filed a timely notice of appeal from that order.

¶ 18 ANALYSIS

¶ 19 The respondent's first contention on appeal is that the trial court lacked subject matter and personal jurisdiction where there was no issuance of a summons. Section 2-15 of the Act provides that:

“Summons. (1) When a petition is filed, the clerk of the court shall issue a summons with a copy of the petition attached. The summons shall be directed to the minor's legal guardian or custodian and to each person named as a respondent in the petition, ***.”

(7) The appearance of the minor's legal guardian or custodian, or a person named as a respondent in a petition, in any proceeding under this Act shall constitute a waiver of service of summons and submission to the jurisdiction of the court, except that filing of a motion authorized under Section 2-301 of the Code of Civil Procedure does not constitute an

appearance under this subsection. A copy of the summons and petition shall be provided to the person at the time of his appearance.” 705 ILCS § 405/2-15(1), 15(7) (West 2010).

The defendant contends that the statute requires the issuance of a summons and that the failure to comply with the requirements of the statute deprived the trial court of jurisdiction. In the absence of jurisdiction, the respondent contends that the adjudication of neglect, the dispositional order, and the orders finding him unfit and terminating his parental rights are void. Jurisdiction is a question of law that we review *de novo*. *City of Kankakee v. Department of Revenue*, 2013 IL App (3d) 120599, ¶ 11.

¶ 20 The defendant’s contention is without merit. The trial court specifically indicated on the January 3, 2012, adjudicatory orders that the respondent had “been served with summons.” The respondent contends that this must have been a mistake by the trial court. However, the respondent has failed to provide any argument as to how or why the trial court could have made such a mistake. Moreover, on the order entered on July 13, 2011, the date of the shelter care hearing, the trial court indicated that respondent had been tendered a copy of the petition and had been served in open court.

¶ 21 Nonetheless, even if a summons had not been issued, the failure to do so would not deprive the trial court of subject matter jurisdiction. Subject matter jurisdiction refers to a court’s power to hear and determine cases of the general class to which the proceeding in question belongs. *In re M.W.*, 232 Ill. 2d 408, 415 (2009). Except in the context of administrative review, a trial court’s subject matter jurisdiction is conferred entirely by the state constitution and the court possesses subject matter jurisdiction as a matter of law over all “justiciable matters” brought before it. *In re Luis R.*, 239 Ill. 2d 295, 300-01 (2010). A justiciable matter is a controversy appropriate for review by a court. *Id.* at 301.

¶ 22 In the present case, the State commenced the neglect proceeding by filing its petition pursuant to section 2-13 of the Act (705 ILCS 405/2-13 (West 2010)). That section authorizes the State to file in the circuit court petitions alleging that a minor is neglected and praying that the minor be adjudged a ward of the court. As such, the State's petitions for adjudication of wardship alleged the existence of justiciable matters to which the trial court's constitutionally granted original jurisdiction extended. *Luis R.*, 239 Ill. 2d at 302-03 (State's petition alleged existence of justiciable matter because the petition was authorized by statute); see also *In re Nathan A.C.*, 385 Ill. App. 3d 1063, 1075 (2008) (in a delinquency proceeding, failure to issue a summons and serve it on the parents did not deprive the trial court of subject matter jurisdiction; however, failure to serve the parents affected the trial court's personal jurisdiction over them); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1128 (2006) (the trial court's subject matter jurisdiction was invoked by the filing of a petition for adjudication of neglect). As such, any argument that the trial court lacked subject matter jurisdiction is without merit.

¶ 23 Personal jurisdiction is the authority of the court to exercise its power to adjudicate as to a particular individual. *In re L.E.J.*, 115 Ill. App. 3d 993, 997 (1983). A plaintiff submits to the jurisdiction of the court by filing a petition and thereby agreeing to be bound by the trial court's resolution regarding the petition. *Luis R.*, 239 Ill. 2d at 305. A respondent either has personal jurisdiction imposed upon him by the effective service of summons, or consents to personal jurisdiction by his appearance. *Id.* Section 2-15(7) of the Act specifically provides that, by making an appearance, a respondent submits to the personal jurisdiction of the trial court and waives his right to service of summons. 705 ILCS 405/2-15(7) (West 2010).

¶ 24 In the present case, the record indicates, and the respondent does not argue to the contrary, that he appeared in court on the first and all the subsequent court dates during the

proceedings in this case. When the respondent first appeared he did not object to the trial court's jurisdiction or argue the insufficiency of service of process. Accordingly, the trial court had personal jurisdiction over the respondent. *Nathan A.C.*, 385 Ill. App. 3d at 1075 (in delinquency proceeding where a summons was not issued or served on father, objection to personal jurisdiction was forfeited by father's appearance and failure to object to such jurisdiction); *In Interest of L.M.*, 189 Ill. App. 3d 392, 397 (1989) ("Where a parent has appeared and participated in all proceedings before the circuit court, and does not object to jurisdiction, she has waived the formality of service of process and voluntarily submits to the jurisdiction of the court"). As we have found that the trial court had both subject matter and personal jurisdiction, the trial court's orders in this case are not void. *Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768, ¶ 103.

¶ 25 In arguing that the alleged failure to issue a summons deprived the trial court of jurisdiction the respondent cites to foreign case law as persuasive authority. However, the cases cited do not support the respondent's contention. The defendant first cites *In re Matter of Jessica Mitchell*, 126 N.C. App. 432, 485 S.E. 2d 623, 624 (1997), where the court held that because no summons had ever been issued, the trial court lacked both subject matter and personal jurisdiction. However, the court further noted that although the respondents appeared at the initial hearing, they did not voluntarily submit to the jurisdiction of the court because they raised the insufficiency of process at that hearing and orally moved to dismiss. *Id.* In the present case, by contrast, the respondent appeared at the initial hearing, did not raise any objections to the alleged insufficiency of process and, thereby, voluntarily submitted himself to the jurisdiction of the court. *L.M.*, 189 Ill. App. 3d at 397.

¶ 26 The respondent also relies on *In re N.C.H.*, 363 N.C. 116, 678 S.E. 2d 658, 659 (2009). In that case the court held that a trial court's subject matter jurisdiction was invoked by the issuance of, rather than the service of, a summons. *Id.* Based on *N.C.H.*, the issuance of a summons goes to subject matter jurisdiction and only the service of the summons affects a trial court's personal jurisdiction. As explained above, it is well settled under Illinois law that any failure to prepare a summons would not deprive the trial court of subject matter jurisdiction. *Luis R.*, 239 Ill. 2d at 302-03; *Nathan A.C.*, 385 Ill. App. 3d at 1075; *Antwan L.*, 368 Ill. App. 3d at 1128. Further, in the present case, pursuant to section 2-15(7) of the Act (705 ILCS 405/2-15(7) (West 2010)), the respondent waived his right to service of a summons by making his initial appearance and thereby voluntarily submitted to the personal jurisdiction of the court.

¶ 27 Finally, the defendant cites *In re K.J.L.*, 363 N.C. 343, 677 S.E. 2d 835 (2009). In that case, the summons was not properly signed pursuant to the rules of civil procedure and the court determined that the summons did not meet the statutory issuance requirements. *Id.* at 345. The court held that the failure to issue a summons implicated a trial court's personal jurisdiction and could be waived by the parties. *Id.* at 346. Accordingly, the court stated that the defendant's appearance waived any defect in, or the nonexistence of, a summons. *Id.* at 347. Based on this authority, the respondent's appearance actually waived the alleged nonexistence of the summons.

¶ 28 The defendant's final two contentions on appeal raise procedural challenges to the neglect proceedings. First, the defendant argues that the trial court improperly granted two continuances of the adjudicatory hearing. The statute indicates that a continuance should only be granted for "good cause" and further states that "only one such continuance shall be granted." 705 ILCS 405/2-14(c) (West 2010). The defendant argues that the first continuance was not supported by "good cause" and that the second continuance was improper. Thus, the defendant

argues that the adjudicatory hearing proceeded without statutory authority and that the findings therein are void.

¶ 29 Second, the defendant argues that the trial court erred in adjudicating Alexandria neglected and finding that he was unable to care for the minor at the subsequent dispositional hearing because those orders were entered prior to establishing his paternity. Accordingly, the defendant argues he was not a proper party to the neglect proceedings involving Alexandria and that any findings therein were a nullity.

¶ 30 The State argues that we lack jurisdiction to address the respondent's final two arguments because he failed to appeal from the dispositional order. We note that 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, the respondent's notice of appeal was timely filed from the trial court's August 6, 2013, final order terminating his parental rights. Accordingly, we have jurisdiction over this appeal. Nonetheless, we must still determine whether we have jurisdiction to review the underlying adjudicatory and dispositional orders.

¶ 31 Generally, in cases under the Act, while the adjudicatory order is not final and appealable, the dispositional order is. *M.J.*, 314 Ill. App. 3d at 654-55. Accordingly, we lack jurisdiction to directly review the adjudicatory and dispositional orders because the respondent did not timely file a notice of appeal from the entry of the dispositional order. See *M.J.*, 314 Ill. App. 3d at 655 (holding that, where the parent never filed a notice of appeal from the

dispositional order, appellate jurisdiction was never perfected with respect to the earlier neglect proceedings).

¶ 32 Nonetheless, if the respondent is correct that the underlying orders are void, then they are subject to challenge at any time, including by a collateral attack in this appeal from the order terminating the respondent'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."); *People v. Davis*, 156 Ill. 2d 149, 155 (1993) (an order is void only when jurisdiction is lacking; in contrast, a voidable judgment is one entered erroneously by a court having jurisdiction). Accordingly, we turn to whether the trial court had jurisdiction to enter the adjudicatory and dispositional orders.

¶ 33 As explained above, the respondent submitted to the jurisdiction of the court by making his appearance at the initial hearing. *Luis R.*, 239 Ill. 2d at 305. Further, the trial court's subject matter jurisdiction was invoked by the filing of a petition for adjudication of neglect. *Luis R.*, 239 Ill. 2d at 302-03. As to the argument that the continuances did not conform to statutory requirements, it is well settled that the failure to comply with a statutory condition does not deprive the trial court of subject matter jurisdiction. *M.J.*, 314 Ill. App. 3d at 654. As to the argument that he was not a proper party to the neglect proceedings involving Alexandria because paternity had not yet been established, the record shows that the respondent was the putative father, was present throughout the proceedings, and did not object to jurisdiction. Additionally, the subsequent paternity test proved that the respondent was Alexandria's father and, therefore, confirmed that he was the proper party at all times. Under these circumstances, the trial court had both subject matter and personal jurisdiction throughout the neglect proceedings. As such,

the orders entered in the neglect proceedings are not void and we lack jurisdiction to review the underlying adjudicatory and dispositional orders.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 36 Affirmed.