

SUPREME COURT OF NORTH CAROLINA

In the Matter of K.J.L.

677 S.E.2d 835 (N.C. 2009) · No. No. 37A09 · Decided June 18, 2009

SUMMARY

The Supreme Court of North Carolina held that defects in the issuance or service of a summons in juvenile neglect, dependency, and termination-of-parental-rights proceedings affect personal jurisdiction rather than subject matter jurisdiction. Because the parents and the guardian ad litem appeared without objecting, any personal-jurisdiction defenses were waived. The court reversed the Court of Appeals and remanded for consideration of the remaining assignments of error.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Newby, Justice; Timmons-Goodson, Justice; Martin, Justice; Brady, Justice
JURISDICTION	North Carolina
DECIDED	June 18, 2009
DOCKET	No. 37A09
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Davidson County Department of Social Services and the guardian ad litem appealed from the Court of Appeals' decision vacating the juvenile adjudication and termination-of-parental-rights orders for alleged subject matter jurisdiction defects arising from deficient issuance and service of summonses. The Supreme Court reviewed the case based on the Court of Appeals dissent.
STANDARD OF REVIEW	Subject matter jurisdiction is reviewed as a matter of law. Whether summons defects implicate subject matter or personal jurisdiction is a legal question.
PRECEDENTIAL VALUE	Published North Carolina Supreme Court opinion; precedential.
PARTIES	Davidson County Department of Social Services, Guardian ad Litem v. K.J.L.'s mother

TOPICS

termination of parental rights

personal jurisdiction

subject matter jurisdiction

service of process

appellate procedure

PRACTICE AREAS

family law

juvenile law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the failure of an authorized clerk to sign a summons means that the trial court lacks subject matter jurisdiction over a juvenile neglect and dependency proceeding.
2. Whether defects in the issuance or service of summons in a termination-of-parental-rights proceeding affect subject matter jurisdiction or personal jurisdiction.
3. Whether the parents' and guardian ad litem's appearances without jurisdictional objections waived defenses based on the summons defects.
4. Whether the underlying neglect adjudication was essential to the trial court's subject matter jurisdiction over the termination-of-parental-rights proceeding.

HOLDINGS

1. A deficiency in the issuance of a summons, including the absence of an authorized clerk's signature, implicates personal jurisdiction rather than subject matter jurisdiction.
2. The parents' appearance at the neglect hearing without objecting to jurisdiction waived defenses based on the defective or nonexistent summons, and the guardian ad litem's appearance at the termination hearing without objection waived defenses based on the failure to issue or serve a summons on the juvenile or guardian ad litem.
3. The failure to issue a summons to the juvenile or to serve the summons on the juvenile's guardian ad litem did not deprive the trial court of subject matter jurisdiction; those defects implicated personal jurisdiction and were waived by the guardian ad litem's appearance without objection.
4. The Court of Appeals erred in concluding that the underlying neglect adjudication was essential to the trial court's subject matter jurisdiction over the termination-of-parental-rights proceeding.

KEY QUOTATIONS

"Because the summons affects jurisdiction over the person rather than the subject matter, this Court has held that a general appearance by a civil defendant "waive[s] any defect in or nonexistence of a summons." (at 838)

"Because the purpose of the summons is to obtain jurisdiction over the parties to an action and not over the subject matter, summons-related defects implicate personal jurisdiction and not subject matter jurisdiction." (at 838)

FACTUAL BACKGROUND

DSS filed a juvenile petition alleging that K.J.L. was neglected and dependent, but the summons was not dated and signed by an authorized clerk as required by Rule 4(b). Both parents were served, appeared at the hearing, and stipulated that K.J.L. was neglected without objecting to jurisdiction. DSS subsequently filed a termination-of-parental-rights petition; the mother and the juvenile's guardian ad litem appeared without jurisdictional objections, while the father did not appear. The trial court terminated both parents' rights.

PROCEDURAL HISTORY

DSS filed a petition alleging that K.J.L. was neglected and dependent. Although the summons was not signed by an authorized clerk, both parents were served, appeared, and stipulated to the neglect adjudication. DSS later filed a termination-of-parental-rights petition, and a properly signed summons was issued and served on the parents; the mother and guardian ad litem appeared without objecting to jurisdiction. The trial court terminated both parents' rights. The Court of Appeals vacated both orders, concluding that the summons defects deprived the trial court of subject matter jurisdiction. The Supreme Court reversed and remanded for consideration of the remaining assignments of error.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the North Carolina Court of Appeals for consideration of the parties' remaining assignments of error.

CASES CITED

- Peoples v. Norwood, 94 N.C. 167, 172 (1886)
- In re T.R.P., 360 N.C. 588, 595, 636 S.E.2d 787, 793 (2006)
- In re Custody of Sauls, 270 N.C. 180, 187, 154 S.E.2d 327, 333 (1967)
- Grimsley v. Nelson, 342 N.C. 542, 545, 467 S.E.2d 92, 94 (1996)
- Hooker v. Forbes, 202 N.C. 364, 368, 162 S.E. 903, 905 (1932)
- In re J.T. (I), 363 N.C. 1, 4-5, 672 S.E.2d 17, 18-19 (2009)
- Harmon v. Harmon, 245 N.C. 83, 86, 95 S.E.2d 355, 359 (1956)
- Dellinger v. Bollinger, 242 N.C. 696, 698, 89 S.E.2d 592, 593 (1955)
- Hatch v. Alamance Ry. Co., 183 N.C. 617, 628, 112 S.E. 529, 534 (1922)
- In re Poole, 151 N.C. App. 472, 475, 568 S.E.2d 200, 202 (2002), rev'd per curiam, 357 N.C. 151, 579 S.E.2d 248 (2003)
- In re R.T.W., 359 N.C. 539, 551, 553, 614 S.E.2d 489, 497 (2005)
- In re D.D.J., 177 N.C. App. 441, 443, 628 S.E.2d 808, 810 (2006)
- In re Leonard, 77 N.C. App. 439, 440, 335 S.E.2d 73, 73-74 (1985)
- In re T.M., 182 N.C. App. 566, 571, 643 S.E.2d 471, 475 (2007), aff'd per curiam, 361 N.C. 683, 651 S.E.2d 884 (2007)

