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Statutory Violations and Subject Matter Jurisdiction Void Judgment or Legal Error?

***Ellis v. Ellis*, 190 N.C. 418, 130 S.E. 7 (1925)(divorce judgment void where jury did not find parties had been separated for time period required by statute authorizing divorce):**

“If a judgment is void, it must be from one or more of the following causes: (1) Want of jurisdiction over the subject-matter; (2) want of jurisdiction over the parties to the action, or some of them; or (3) want of power to grant the relief contained in the judgment. In pronouncing judgments of the first and second classes, the court acts without jurisdiction, while in those of the third class it acts in excess of jurisdiction.”

“When we speak of ‘jurisdiction of the subject-matter,’ we do not mean merely cognizance of the general class of actions to which the action in question belongs, but we also mean legal power to pass upon and decide the particular contention which the judgment assumes to settle.”

“Ordinarily, as to parties properly before the court, and respecting a matter within its jurisdiction, the cases hold that a judgment without a finding of facts to support it is not void, but at most merely erroneous, and subject to reversal by a suitable proceeding in a tribunal having authority to review it.”

However, “[j]urisdiction over the subject-matter of divorce is given only by statute, and in the same grant judgments in favor of the plaintiff, dissolving the bonds of matrimony, are prohibited except upon a finding of the material facts by a jury.”

“Our position in no way militates against the established principle that, where the court has jurisdiction of both the subject-matter and the parties and acts within its power, the binding force and effect of a judgment is not impaired because the same has been erroneously allowed, though the error may be undoubted and apparent on the face. [citations omitted] An erroneous judgment should be corrected by appeal or certiorari. [citations omitted] But a void judgment may be impeached collaterally or by direct attack. [citation omitted]

***Hodges v. Hodges*, 226 N.C. 570, 39 S.E.2d 596 (1946)(lack of verification of complaint as required by statute rendered order of alimony without divorce void for lack of subject matter jurisdiction):**

“One who predicates his cause of action on a statute must bring himself within its provisions. [citations omitted] Where a right is statutory, the claimant cannot recover unless he brings himself within the terms of the statute.”

***Eudy v. Eudy*, 288 N.C. 71, 215 S.E.2d 782 (1975), overruled on other grounds, *Quick v. Quick*, 305 N.C. 446, 290 S.E.2d 653 (1982) (plaintiff’s failure to allege in complaint the statutorily required residency period rendered judgment void)**

“Where jurisdiction is statutory and the legislature requires the court to exercise its jurisdiction in a certain manner, to follow a certain procedure, or otherwise subjects the Court to certain limitations, an act of the Court beyond these limits is in excess of its jurisdiction.”

A failure of a complaint to allege facts required for subject matter jurisdiction can be cured if pleadings are amended during trial by consent pursuant to Rule 15(b) of the Rules of Civil Procedure.

[Somewhat Recent] NC Supreme Court Opinions

Addressing Subject Matter Jurisdiction When Statutory Provisions Violated

1. ***In re: T.R.P.*, 360 N.C. 588, 636 S.E.2d 787 (2006).** Lack of statutorily required verification of juvenile petition deprived trial court of subject matter jurisdiction.
 - a. Our General Assembly “within constitutional limitations, can fix and circumscribe the jurisdiction of the courts of this State.” *Bullington v. Angel*, 220 N.C. 18, 20, 16 S.E.2d 411, 412 (1941). “Where jurisdiction is statutory and the Legislature requires the Court to exercise its jurisdiction in a certain manner, to follow a certain procedure, or otherwise subjects the Court to certain limitations, an act of the Court beyond these limits is in excess of its jurisdiction.”
 - b. “[F]or certain causes of action created by statute, the requirement that pleadings be signed and verified “is not a matter of form, but substance, and a defect therein is jurisdictional.”
 - c. “[G]iven the magnitude of the interests at stake in juvenile cases and the potentially devastating consequences of any errors, the General Assembly’s requirement of a verified petition is a reasonable method of assuring that our courts exercise their power only when an identifiable government actor “vouches” for the validity of the allegations in such a freighted action.”

2. ***In re: J.T.*, 363 N.C. 1, 672 S.E.2d 17 (2009), reversing 189 N.C. App. 206, 657 S.E.2d 692 (2008)**. Failure to comply with statute requiring that the juvenile at issue be named as a respondent and that a summons be issued to the juvenile and served on the juvenile's GAL did not deprive trial court of subject matter jurisdiction in termination of parental rights proceeding.
 - a. Statute in effect when petition was filed provided: “[U]pon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons ... who shall be named as respondents: ... (5) The juvenile.” The statute further required that the summons be served on the juvenile through the juvenile's guardian ad litem (“GAL”) “if one has been appointed.” *Id.* In the instant case, the summons did not name the juveniles as respondents, nor was it served on the juveniles through a GAL.
 - b. “In any given case under the juvenile code, the issuance and service of process is the means by which the court obtains jurisdiction, and thus where no summons is issued, the court acquires jurisdiction over neither the parties nor the subject matter of the action.”
 - c. But deficiencies in the summons relate to personal jurisdiction rather than subject matter jurisdiction.
 - d. Because a summons was issued in this case, the jurisdiction of the court was invoked even though the summons that was issued failed to comply with the statute.
 - e. *See also In re: N.C.H.*, 363 N.C. 116, 678 S.E.2d 658 (2009), affirming but criticizing, 192 N.C. App. 445, 665 S.E.2d 812 (2008)(failure to serve juvenile as required by statute did not deprive trial court of subject matter jurisdiction; subject matter jurisdiction established when a valid summons was issued).
3. ***In re K.J.L.*, 363 N.C. 343, 677 S.E.2d 835 (2009), reversing, 194 N.C. App. 269, 670 S.E.2d 269 (2008)**. Lack of validly issued summons did not deprive trial court of subject matter jurisdiction in juvenile abuse, neglect and dependency proceeding.
 - a. Statute provided: “Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons ...”. Rule 4(a) of the Rules of Civil Procedure states “A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so.” The summons issued in this case was not “dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action [was] commenced” as required by GS § 1A-1, Rule 4(b).
 - b. The summons was not issued in this case.
 - c. “The allegations of a complaint determine a court's jurisdiction over the subject matter of the action.”
 - d. The purpose of the summons is to acquire jurisdiction over the parties. “[T]he summons is not the vehicle by which a court obtains subject matter jurisdiction over a case, and failure to follow the preferred procedures with respect to the summons does not deprive the court of subject matter jurisdiction.”

4. ***In re: D.S.*, 364 N.C.184, 694 S.E.2d 758 (2010), reversing in part, 197 N.C. App. 598, 682 S.E.2d 709 (2009).** Filing delinquency petition outside of statutorily imposed time limit did not deprive the trial court of jurisdiction.
 - a. Another statute specifically addressed subject matter jurisdiction in delinquency proceedings, stating: “For purposes of determining jurisdiction, the age of the juvenile at the time of the alleged offense governs.”
 - b. Statute containing time restraints for filing the petition do not mention jurisdiction and do not indicate that the failure to comply with the statute deprives the court of jurisdiction.
 - c. “We believe that had the legislature intended [the statute] to implicate subject matter jurisdiction, the legislature would have either included these requirements in [the section of the Chapter addressing subject matter jurisdiction] or expressly stated so in [the statute at issue] itself.”

5. ***Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010), reversing in part, 199 N.C. App. 128, 681 S.E.2d 374 (2009).** Adoption decree waiving the statutorily prescribed effects of the decree was void *ab initio*.
 - a. Adoption statute specified that the legal effects of a direct placement adoption include the complete substitution of a child’s family and a termination of the parental rights of the biological parents.
 - b. Trial court order of adoption that attempted to waive these statutorily prescribed effects of the adoption exceeded the subject matter jurisdiction granted by the adoption statutes because it granted a form of relief not authorized by the legislature.
 - c. Subject matter jurisdiction of the court is invoked by a complaint. A complaint seeking a type of adoption not authorized by the adoption statutes failed to invoke the subject matter jurisdiction of the trial court. Plaintiff’s complaint requesting an adoption that did not terminate her rights to her biological child requested an adoption not authorized by law and therefore failed to invoke the subject matter jurisdiction of the court.

6. ***Catawba County ex rel. Rackley v. Loggins*, 370 N.C. 83, 804 S.E.2d 474 (2017), reversing, 246 N.C. App. 387 (2016).** Lack of statutorily required motion did not deprive the trial court of subject matter jurisdiction.
 - a. Statute specifies that a child support order can be modified “upon the filing of a motion in the cause and a showing of changed circumstances.”
 - b. Trial court modified a child support order when no motion in the cause had been filed.
 - c. Because statutes allow child custody and support orders to be modified, “the jurisdiction of the court entering such a decree continues as long as the minor child whose custody [or support] is the subject of the decree remains within its jurisdiction.”

- d. The plain language of the statute “does not indicate that a party’s failure to file a motion divests the court of jurisdiction. There is no language in either law establishing jurisdictional consequences for failure to follow the statutory provisions; the statutory language is clear and unambiguous and the plain meaning of each statute imposes no jurisdictional prerequisites. . . . the legislature here could have set forth requirements that would affect jurisdiction in [the statute].”
- e. “[T]he legislative history of the statute indicates that the legislature did not intend for the statute to create a jurisdictional prerequisite to modify child support orders.”
- f. The statutory provision “requiring a motion to be filed is directory rather than mandatory; consequently, the absence of a motion to modify a child support order does not divest the district court of jurisdiction to act under the purview of the statute.”
 - i. “[A] provision in a statute that is directory rather than mandatory is not jurisdictional.”
 - ii. “In determining the mandatory or directory nature of a statute, the importance of the provision involved may be taken into consideration. Generally speaking, those provisions which are a mere matter of form, or which are not material, do not affect any substantial right, and do not relate to the essence of the thing to be done so that compliance is a matter of convenience rather than substance, are considered to be directory.”
 - iii. “The meaning and intention of the Legislature must govern; and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it in the one way or the other.”
 - iv. “The provision requiring a motion to be filed for a child support order to be modified is directory, not mandatory, in nature. The provision concerns a matter of form, rather than a matter of substance as defendant contends, and merely addresses the procedural aspects of modifying a child support order.”
- g. *Cf. Summerville v. Summerville*, 814 S.E.2d 887 (N.C. App. 2018) (failure to comply with requirements of statute is legal error that can be attacked on direct appeal).

