

NO. COA14-732

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF:

A.R., C.R.

Cleveland County
Nos. 12 JA 67-68

Appeal by respondent-mother from orders entered 14 June 2013 and 2 June 2014 by Judge Ali B. Paksoy in Cleveland County District Court. Heard in the Court of Appeals 2 December 2014.

Charles E. Wilson, Jr., for petitioner-appellee Cleveland County Department of Social Services.

Administrative Office of the Courts, by Appellate Counsel Tawanda N. Foster, for guardian ad litem.

Richard Croutharmel, for respondent-appellant mother.

CALABRIA, Judge.

Respondent-mother ("respondent") appeals from the trial court's orders which ceased reunification efforts with respondent and her minor children "Ariel" and "Cristina"¹ (collectively "the children") and awarded guardianship of the

¹ Pseudonyms are used to protect the identity of the minor children.

children to paternal relatives in Arizona. We dismiss in part and affirm in part.

I. Background

On 21 May 2012, the Cleveland County Department of Social Services ("DSS") filed petitions alleging that the children were neglected, based upon respondent and her husband's (collectively "the parents") failure to properly treat Ariel's seizure disorder and Cristina's asthma. After a hearing, the trial court entered an order which adjudicated the children as neglected on 5 December 2012. The trial court placed the children in the physical and legal custody of DSS and ordered the parents to obtain psychological evaluations and follow any treatment recommendations which resulted. The parents were granted visitation, with respondent receiving an extra hour of visitation per week outside the presence of the children's father.

At a subsequent hearing, the trial court appointed a guardian *ad litem* ("GAL") to assist respondent. On 19 February 2013, the trial court entered an order appointing respondent-mother a GAL in an assistance-only capacity.

Respondents failed to obtain their required psychological evaluations. As a result, on 14 June 2013, the trial court

entered an order which ceased reunification efforts, suspended the parents' visitation, changed the children's permanent plan to guardianship, and placed the children with paternal relatives in Arizona. Both parents filed a notice of their intent to appeal the trial court's order. DSS did not initiate any proceedings to terminate respondent's parental rights in the 180 days after the entry of the order ceasing reunification efforts. Respondent entered formal notice of appeal of that order on 21 April 2014.

On 2 June 2014, the trial court entered an order awarding permanent guardianship to the paternal relatives in Arizona. Respondent appeals. The father did not appeal this order.

II. Appellate Jurisdiction

As an initial matter, we note that respondent did not file a notice of appeal from the trial court's 14 June 2013 order ceasing reunification efforts until 21 April 2014, more than ten months after the order was entered. Pursuant to N.C. Gen. Stat. § 7B-1001(b), "[n]otice of appeal and notice to preserve the right to appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58." N.C. Gen. Stat. § 7B-1001(b) (2013). However, under

N.C. Gen. Stat. § 7B-1001(a)(5), a parent who has properly preserved the right to appeal an order which ceases reunification "shall have the right to appeal the order if no termination of parental rights petition or motion is filed within 180 days of the order." N.C. Gen. Stat. § 7B-1001(a)(5)(b) (2013). Thus, for a respondent-parent who has preserved their right to appeal the order ceasing reunification efforts, the statute renders the order unappealable for a period of 180 days, if no termination of parental rights ("TPR") petition or motion is filed. See *In re D.K.H.*, 184 N.C. App. 289, 645 S.E.2d 888 (2007) (dismissing an appeal of an order ceasing reunification efforts filed less than 180 days after the entry of the order when no TPR petition had been filed). After 180 days have passed without the filing of a TPR petition or motion, the respondent-parent may proceed with their appeal.

Respondent contends that once 180 days have passed, a parent has the right to appeal the order at essentially any time, so long as the trial court "continues to review the matter." In support of her contention, respondent notes that N.C. Gen. Stat. § 7B-1001(a)(5) "contains no affirmative language covering a deadline date in which to appeal such orders when there is no subsequent [TPR] action." However,

respondent's interpretation of N.C. Gen. Stat. § 7B-1001(a)(5) is illogical when that subsection is considered *in pari materia* with the remainder of the statute.

N.C. Gen. Stat. § 7B-1001(a) (1) - (6) lists the six types of juvenile orders which are appealable. N.C. Gen. Stat. § 7B-1001(b) then establishes that notice of appeal "shall be made within 30 days after entry and service of" these orders included in subsection (a). In light of the 30-day time limitation to appeal that unquestionably applies to the other orders listed in N.C. Gen. Stat. § 7B-1001(a), we conclude that the 180-day period in N.C. Gen. Stat. § 7B-1001(a)(5)(b) operates solely to delay the date from which notice of appeal may be taken. Once the 180 days after the entry of the order ceasing reunification efforts has elapsed, the respondent-parent that has properly preserved their right to appeal the order becomes subject to the 30-day limitation in N.C. Gen. Stat. § 7B-1001(b).

In the instant case, the trial court's order ceasing reunification efforts with respondent was entered on 14 June 2013. Respondent timely filed her notice of intent to appeal that order. However, respondent did not file her notice of appeal until 21 April 2014. This date was unquestionably more than the 210 days after the entry of the order ceasing

reunification efforts, and as a result, respondent's appeal of that order was untimely and must be dismissed.

However, respondent has also filed a petition for writ of *certiorari* seeking our review of the trial court's 14 June 2013 order which ceased reunification efforts. In our discretion, we deny respondent's petition because the only argument respondent makes on appeal does not relate directly to this order. Thus, our appellate review in the instant case is limited to respondent's appeal from the trial court's 2 June 2014 order which awarded permanent guardianship to paternal relatives in Arizona, from which respondent timely appealed.

III. Guardian ad Litem

Respondent argues that the trial court erred by appointing her a GAL in an assistance-only capacity, rather than a substitution capacity. We disagree.

At the time the trial court appointed a GAL for respondent, the appointment was governed by N.C. Gen. Stat. § 7B-1101.1(c) (2011), which stated:

On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17 if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall

not be appointed to serve as the guardian ad litem.

This statute permitted the trial court to "appoint a GAL upon finding a 'reasonable basis' for believing that the parent either (1) is incompetent, or (2) has diminished capacity and cannot adequately act in his or her own interest. Any appointment of a GAL is required to be in accordance with Rule 17 of the Rules of Civil Procedure." *In re P.D.R.*, ___ N.C. App. ___, ___, 737 S.E.2d 152, 157 (2012) (internal quotations and citation omitted). In *P.D.R.*, this Court established that a GAL appointed under this statute would serve different roles, depending upon the reason for the appointment:

[T]he role of the GAL should be determined based on whether the trial court determines that the parent is incompetent or whether the trial court determines that the parent has diminished capacity and cannot adequately act in his or her own interest. Rule 17(e), which addresses the duties of a GAL for an incompetent person, should apply if the parent is incompetent – the role of the GAL should be one of substitution. On the other hand, if the parent has diminished capacity, N.C. Gen. Stat. § 7B-1101.1(e) should apply and the role of the GAL should be one of assistance.

Id. at ___, 737 S.E.2d at 158. "If the court chooses to exercise its discretion to appoint a GAL under N.C. Gen. Stat. § 7B-1101.1(c), then the trial court must specify the prong under

which it is proceeding, including findings of fact supporting its decision, and specify the role that the GAL should play, whether one of substitution or assistance.” *Id.* at ___, 737 S.E.2d at 159.

In the instant case, the court appointed respondent a GAL that would serve in an assistance-only capacity. Respondent contends that the trial court’s conclusion was erroneous because the evidence before the court demonstrated that respondent was incompetent. Respondent is mistaken.

An incompetent adult is defined as one who “lacks sufficient capacity to manage the adult’s own affairs or to make or communicate important decisions concerning the adult’s person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.” N.C. Gen. Stat. § 35A-1101(7) (2013). Respondent contends that there was evidence before the trial court that she suffered from epileptic seizures and that the children’s father exercised such a strong influence over her that she was rendered incompetent.

However, at the hearing in which the trial court considered the propriety of appointing a GAL, the proposed GAL specifically

testified that respondent was reasonable, smart, and understood the proceedings. She further testified that she could possibly assist respondent if respondent was making poor decisions that were influenced by the children's father. Also at the hearing, respondent told the trial court that she graduated from high school, paid her bills, managed her daily affairs, and was capable of making her own decisions. Based upon this evidence, we conclude that the trial court did not abuse its discretion by appointing a GAL for respondent in an assistance-only capacity. This argument is overruled.

IV. Conclusion

After 180 days had elapsed from the entry of the trial court's order ceasing reunification efforts with respondent, respondent had 30 days to enter her notice of appeal from that order and failed to do so. As a result, we dismiss respondent's appeal from the trial court's 14 June 2013 order. The trial court did not abuse its discretion by appointing a GAL for respondent to serve in an assistance-only capacity. Consequently, we affirm the trial court's 2 June 2014 order which awarded permanent guardianship to paternal relatives in Arizona.

Dismissed in part and affirmed in part.

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Judges STROUD and McCULLOUGH concur.