

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1078

Filed: 3 April 2018

Wayne County, No. 15 JT 37

IN THE MATTER OF: E.M.S., A Minor Child

Appeal by respondent-father from order entered 29 June 2017 by Judge Ericka Y. James in Wayne County District Court. Heard in the Court of Appeals 8 March 2018.

Baddour, Parker, Hine & Hale, PC, by E. Borden Parker, for petitioner-appellee Wayne County Department of Social Services.

Batch, Poore & Williams, PC, by Sydney J. Batch, for respondent-appellant father.

Poyner Spruill, LLP, by Christopher S. Dwight, John M. Durnovich, Dylan J. Castellino, and Cheslie Kryst, for guardian ad litem-appellee.

BRYANT, Judge.

Where appellate counsel for respondent filed a no merit brief in accordance with Rule 3.1(d) of our Rules of Appellate Procedure in which counsel states that after a conscientious and thorough review of the record on appeal, transcript, and documents, she “has concluded that there is no issue of merit on which to base an argument for relief and that this appeal would be frivolous,” and we are unable to

find any prejudicial error in the trial court's 29 June 2017 order terminating respondent's parental rights, we affirm the trial court's order terminating respondent's parental rights to E.M.S.

Respondent, the father of E.M.S. ("Erin"),¹ appeals from the trial court's order terminating his parental rights on the ground of neglect. We affirm the order of the trial court.

The Wayne County Department of Social Services ("DSS") filed a petition on 5 May 2015 alleging Erin was a neglected and dependent juvenile. The petition alleged that DSS received a Child Protective Services ("CPS") report on 9 July 2014, stating that Erin and her mother² ("the mother") both tested positive for cocaine and marijuana. Respondent denied using drugs and stated he had no knowledge of the mother's drug use. In-home services were provided, and the parents entered into a safety plan in which the mother was to be supervised at all times she was with Erin. Respondent was deemed to be an appropriate caregiver at the time and agreed to supervise the mother at all times while they lived together as a family.

On 21 May 2015, DSS dismissed the 5 May 2015 petition and filed a new petition alleging Erin was neglected and dependent. The petition alleged that DSS received an additional report on 2 May 2015 stating the parents had been drinking

¹ A pseudonym is used to protect the juvenile's privacy and for ease of reading. See N.C. R. App. P. 3.1(b) (2018).

² Erin's mother is not a party to this appeal. She relinquished her parental rights with respect to Erin before the trial court.

and got into a domestic altercation with Erin present, resulting in respondent's arrest. The petition also alleged that respondent "reportedly" was using crack cocaine. Respondent denied any drug use at the time but admitted using cocaine before Erin was born. He also admitted he would test positive for hydrocodone but could not produce a prescription for the medication. Due to the domestic altercation and because respondent violated the safety plan by allowing the mother to have unsupervised contact with Erin, DSS deemed respondent no longer an appropriate safety resource and took Erin into nonsecure custody.

On 21 July 2015, the trial court entered an order adjudicating Erin to be neglected and dependent. The court found that the parents admitted Erin was a neglected and dependent juvenile but did not admit to any of the specific allegations in the petition. The trial court ordered respondent to complete a non-self-reporting substance abuse assessment and follow all recommendations, participate in Family Drug Treatment Court, complete a psychological evaluation and follow all recommendations, submit to random drug screens, and attend domestic violence offender treatment and follow all recommendations.

In a review order entered 15 March 2016, the trial court found that the barriers to achieving the permanent plan of reunification were the mental health issues of both parents, substance abuse of both parents, and the lack of stable, permanent

housing of both parents. The court ordered that respondent was to have one hour of supervised visitation every two weeks.

After a permanency planning hearing held 7 April 2016, the trial court entered an order on 2 May 2016 changing the permanent plan to guardianship with a concurrent plan of reunification. The trial court found that respondent tested positive for cocaine at the hearing and that respondent had not visited with Erin since October 2015.

In a permanency planning review order entered 28 October 2016, the trial court changed the permanent plan to adoption with a concurrent plan of guardianship with a court approved caretaker. The court found that the parents had not complied with the previous court orders, that the mother admitted she and respondent were always fighting and arguing, and that it was not an appropriate environment for the child to be reared in. The court also found that respondent again tested positive for cocaine at the 29 September 2016 hearing.

The mother relinquished her parental rights to Erin. DSS filed a petition to terminate respondent's parental rights on 29 November 2016 alleging the ground of neglect. See N.C. Gen. Stat. § 7B-1111(a)(1) (2017) ("The court may terminate the parental rights upon a finding of . . . the following: (1) The parent has . . . neglected the juvenile."). After a 15 June 2017 hearing, the trial court entered an order on 29 June 2017 concluding that grounds existed to terminate respondent's parental rights

based on neglect and that termination of respondent's parental rights was in Erin's best interest. Accordingly, the trial court terminated respondent's parental rights. Respondent appeals.

Respondent's counsel has filed a no-merit brief on respondent's behalf in which she states that after a conscientious and thorough review of the record on appeal, transcript, and documents, she "has concluded that there is no issue of merit on which to base an argument for relief and that this appeal would be frivolous." Pursuant to North Carolina Rule of Appellate Procedure 3.1(d), she requests that this Court conduct an independent examination of the case. N.C. R. App. P. 3.1(d) (2018) ("No Merit Briefs"). In accordance with Rule 3.1(d), counsel wrote respondent a letter on 30 October 2017 advising respondent of counsel's inability to find error, of counsel's request for this Court to conduct an independent review of the record, and of respondent's right to file his own arguments directly with this Court. Counsel attached to the letter a copy of the record, the transcripts, and the brief filed by counsel. Respondent has not submitted written arguments of his own and a reasonable period of time for him to have done so has passed.

After careful review of the transcript and record, we are unable to find any prejudicial error in the trial court's order terminating respondent's parental rights to Erin. The termination order includes sufficient findings of fact, supported by clear,

cogent, and convincing evidence, to support the conclusion that respondent neglected Erin in the past and that there is a reasonable probability of the repetition of neglect if Erin was returned to respondent's care. *See* N.C. Gen. Stat. § 7B-1111(a)(1); *see also In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (holding that at a termination hearing, the trial court may consider a prior adjudication of neglect but "must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect" (citation omitted)). The trial court's findings show that respondent failed to complete a majority of his case plan in that he did not complete substance abuse treatment and continued to use cocaine, did not complete a domestic violence offender treatment program and continued to engage in domestic violence with the mother, and did not fully comply with taking his medication in order to address his mental health issues. *See In re C.M.P.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 859 (2017) ("A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect."). The finding of this statutory ground alone supports termination of respondent's parental rights. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (citation omitted) ("A finding of any one of the enumerated grounds for termination of parental rights under N.C.G.S. 7B-1111 is sufficient to support a termination." (citation omitted)).

IN RE: E.M.S.

Opinion of the Court

The trial court also made appropriate findings in determining that termination of respondent's parental rights was in the Erin's best interests. *See* N.C. Gen. Stat. § 7B-1110(a) (2017) ("Determination of best interests of the juvenile"). Accordingly, we find no prejudicial error in the trial court's order terminating respondent's parental rights to Erin.

AFFIRMED.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).