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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-596

Filed: 15 January 2019

Mecklenburg County, Nos. 08 JT 215, 216, 16 JT 243

IN THE MATTER OF: T.O., JR., K.D-D., AND T.O.

Appeal by respondent-mother from order entered 8 March 2018 by Judge Elizabeth T. Trosch in District Court, Mecklenburg County. Heard in the Court of Appeals 6 December 2018.

No brief filed for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Miller & Audino, LLP, by Jay Anthony Audino, for respondent-appellant mother.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

STROUD, Judge.

Respondent-mother appeals from an order terminating her parental rights to her minor children, T.O., Jr. ("Travis"), K.D.-D. ("Kevin"), and T.O. ("Terry").[1] We affirm.

[1] Pseudonyms are used for ease of reading and to protect the juveniles' identities.

On 16 May 2016, Mecklenburg County Department of Social Services, Youth and Family Services ("YFS") filed a petition alleging Travis, Kevin, Terry, and a fourth sibling were neglected and dependent juveniles.[2] YFS alleged: (1) respondent used marijuana in the presence of the children; (2) respondent had been in jail since 14 April 2016 and had left the children with a caretaker who left the children alone; and (3) the caretaker used marijuana, inappropriately disciplined the children, and sold crack cocaine from the his home. YFS obtained non-secure custody of the children, and all were placed with Travis and Terry's paternal grandmother.

After a hearing on 25 July 2016, the trial court entered an order adjudicating the children to be neglected and dependent juveniles. The court continued custody of the children with YFS and granted respondent supervised visitation with the children conditioned upon approval of such visitation by the children's psychologists. The court set reunification with their father as the primary plan for Travis and Terry and guardianship or adoption as the secondary plan. The primary plan for Kevin was guardianship, with a secondary plan of reunification with respondent.

After a review hearing on 7 September 2016, the trial court found respondent had not made reasonable progress on her case plan objectives and continued custody of the children with YFS. The court also changed the primary permanent plan for Travis and Terry to reunification with both their father and respondent, and set their

[2] The fourth sibling is not a part of this appeal.

secondary plan as guardianship. The court ordered respondent to comply with her court-ordered case plan objectives and allowed her supervised visitation with the children as previously ordered.

A second review hearing was held on 27 September 2016. The trial court found that respondent had made minimal progress on her case plan objectives and that the father of Travis and Terry wanted to have them adopted by their paternal grandmother, with whom the children had been placed. The court changed the primary plan for Travis and Terry to adoption, with reunification as the secondary plan. The primary plan for Kevin was also set as adoption, with a secondary plan of reunification. The court further ordered that Kevin's placement be transitioned to his paternal grandmother.

Over the next several months respondent continued to make minimal progress on her case plan objectives, as found by the court after review hearings on 18 January 2017 and 14 June 2017. The court continued the children's primary plans as adoption and their secondary plans as reunification. In its 26 June 2017 order, the trial court directed YFS to file a petition to terminate parental rights to Travis, Kevin and Terry, after finding:

> There has been no demonstrable progress in alleviating the issues that led to the juveniles' placement by [respondent]. She has not consistently addressed substance abuse, mental health, or housing issues. She stopped engagement in substance abuse treatment program, and did not attend a complete session of treatment. There is a warrant for her

> arrest from drug court non-compliance. Her last contact with the substance abuse [treatment] provider was on 21 April 2017. The respondent mother has not engaged in mental health treatment to address her anxiety [dis]order or her cannabis disorder. [Respondent] has not had contact with the mental health provider since May 2017. The respondent mother moved to Shelby, N.C. and ceased her contact with the social worker.

YFS filed a motion in the cause to terminate parental rights to Travis, Kevin and Terry on 18 August 2017. YFS alleged grounds to terminate respondent's parental rights based on neglect, failure to make reasonable progress toward correcting the conditions that led to the removal of the children from her care, failure to pay a reasonable portion of the cost of care for the children while they were in YFS custody, and abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (7) (2017).

The trial court heard the motion to terminate parental rights on 31 January 2018. Respondent was not present at the hearing because she was incarcerated in South Carolina, and her trial counsel moved to continue the hearing until he was able to secure her availability. Counsel for YFS objected to the continuance, and the trial court denied the motion.

On 8 March 2018, the trial court entered an order terminating respondent's parental rights to Travis, Kevin, and Terry.[3] The court concluded respondent's parental rights to the children could be terminated on the grounds of neglect, failure

[3] The fathers of the children signed specific relinquishments of their parental rights on the condition that the children be adopted by their respective paternal grandmothers.

to make reasonable progress toward correcting the conditions that led to the removal of the children from her care, and failure to pay a reasonable portion of the cost of care for the children while they were in YFS custody. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3). The court further concluded that the best interests of the children would be served by terminating respondent's parental rights. Respondent timely appealed from the trial court's order.

Appellate counsel for respondent has filed a no-merit brief on respondent's behalf in which counsel states he has made a conscientious and thorough review of the record on appeal and concluded that there is no issue of merit on which to base an argument for relief. Pursuant to North Carolina Rule of Appellate Procedure 3.1(d), appellate counsel requests that this Court conduct an independent examination of the case. N.C. R. App. P. 3.1(d). In accordance with Rule 3.1(d), counsel wrote a letter to respondent on 19 July 2018, advising respondent of his inability to find error, of his request for this Court to conduct an independent review of the record, and of respondent's right to file her own *pro se* brief directly with this Court. Counsel also provided respondent with copies of all relevant documents so that she may file her own *pro se* brief with this Court. Respondent has not filed written arguments with this Court, and a reasonable time for her to have done so has passed. In our discretion, we have conducted an independent review of the record. *See In re I.B.*, ___ N.C. App. ___, ___, ___ S.E.2d ___, ___, (Nov. 20, 2018) ("[U]ntil

otherwise instructed by our Supreme Court, we will follow the plain language of Rule 3.1(d). That language, in conjunction with our existing precedent, permits but does not require this Court to conduct an independent review of the record in these cases.”).

Appellate counsel directs this Court’s attention to two potential issues regarding: (1) the trial court’s denial of respondent’s motion to continue the termination hearing; and (2) whether the court’s findings of fact support its conclusions of law on grounds to terminate respondent’s parental rights. After reviewing the transcript and record, we agree with appellate counsel that the trial court’s findings of fact support at least one ground of termination and that the trial court did not err in denying respondent’s motion to continue. *See* N.C. Gen. Stat. § 7B-1111; *see also In re C.M.P.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 857 (2017) (“When a parent is absent from a termination proceeding and the trial court preserves the adversarial nature of the proceeding by allowing the parent’s counsel to cross examine witnesses, with the questions and answers being recorded, the parent must demonstrate some actual prejudice in order to prevail on appeal.” (ellipsis omitted)). Moreover, we conclude that the trial court did not abuse its discretion in concluding termination of respondent’s parental rights to be in the children’s best interests. *See* N.C. Gen. Stat. § 7B-1110.

After carefully reviewing the record and transcript, we are unable to find any prejudicial error in the trial court's 8 March 2018 order terminating respondent's parental rights to Travis, Kevin and Terry, and we affirm the order.

AFFIRMED.

Judges DILLON and BERGER concur.

Report per Rule 30(e).