IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1104

Filed: 16 April 2019

New Hanover County, No. 16 JT 117

IN THE MATTER OF: C.B.

Appeal by Respondents from Order entered 13 August 2018 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 14 March 2019.

Forrest Firm, P.C., by Valerie L. Bateman, for guardian ad litem-appellee.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for respondent-appellant father.

Richard Croutharmel, for respondent-appellant mother.

MURPHY, Judge.

Respondent-Mother ("Iris")[1] and Respondent-Father ("Felix") appeal the trial court's order terminating their parental rights to C.B. ("Connie"). We dismiss Felix's

[1] Pseudonyms are used to protect the identity of the juvenile and for ease of reading.

appeal and, after careful review, affirm the trial court's order terminating Iris's parental rights.

Appellant-Father

Felix appeals from an order terminating his parental rights. Felix's appellate counsel filed a no-merit brief pursuant to Rule 3.1(d) stating that, after a conscientious and thorough review of the record on appeal, he has concluded that the record contains no issue of merit on which to base an argument for relief. N.C. R. App. P. 3.1(d). Appellate counsel provided Felix with copies of the no-merit brief, trial transcript, and record on appeal and advised him of his right to file a brief *pro se* with this Court; however, Felix did not exercise his right to file a *pro se* brief. Accordingly, no issues have been argued or preserved in accordance with the Rules of Appellate Procedure. *In re L.V.*, ___ N.C. App. ___, ___, 814 S.E.2d 928, 929 (2018); *In re I.B.*, ___ N.C. App. ___, ___, 822 S.E.2d 472, 477 (2018) (detailing "settled rules of interpretation [that] support a conclusion that we are not required to conduct an independent review of the record under the text of Rule 3.1(d) as it is written").

Appellant-Mother

A. Background

Connie was born to Iris and Felix and was diagnosed shortly after birth with drug withdrawal syndrome, or NAS. New Hanover County Department of Social Services ("DSS") had been rendering services to Iris for approximately eight years

prior to Connie's birth due to Iris's ongoing substance abuse. During the course of DSS's involvement, Iris's parental rights to her previous three children had been terminated.

In May 2016, DSS obtained nonsecure custody of Connie and filed a petition alleging Connie was a neglected and dependent juvenile due to Iris's "significant, long-standing problem with substance abuse." In the following months, the trial court entered orders continuing nonsecure custody of Connie with DSS. After a hearing on the petition in July 2016, the trial court adjudicated Connie to be neglected on 22 August 2016.[2] The trial court found that Iris "ha[d] a long-standing substance abuse problem" and "numerous unsuccessful in-patient treatment discharges," was discharged from a family reunification program due to non-compliance, and "consistently struggled with stable housing." The trial court also found that Iris had "three other children who were removed from her care due to substance abuse issues." At disposition, the trial court ceased reunification efforts.

DSS subsequently filed a petition to terminate the parental rights of both parents, and a hearing was held on 4 June 2018. The DSS employee ("Ms. Webb") assigned to Iris provided testimony as to her drug testing in the time between the 2016 adjudication of neglect and the current termination hearing. On 25 March 2017, Iris tested positive for oxymorphone and buprenorphine, the latter of which she was

[2] The trial court amended its order on 18 September 2016, but did not amend its adjudication of Connie as a neglected juvenile.

prescribed. In August 2017, Iris was diagnosed with opioid use disorder, benzodiazepine use disorder, major depressive disorder, posttraumatic stress disorder, and cannabis use disorder. On 30 October 2017, Iris tested positive for marijuana use. Throughout 2017, Iris was a "no-show" at eight scheduled drug screenings. On 17 January 2018, Iris self-reported her use of marijuana. Iris continued to "no-show" her drug screenings on 26 February and 2 March 2018. On 25 March 2018, Iris tested positive for amphetamines and Gabapentin, both of which "were not expected." Ms. Webb further testified that Iris "tested positive [on 11 May 2018] for 129,345 nanograms per milliliter for amphetamines, which is upward of ten times higher than what she typically tests for[.]"

Ms. Webb testified that, as "of late, [Iris] has been voicing some extremely concerning happenings in her life that sound semi-atypical for the average person." At the termination hearing, when asked why she illegally took Xanax, Iris responded, "There was just a lot of things going on in my life. I did find a coaxial cable. I could never plugged [sic] it in. I did see a video on TV that was really like the – my life, a day, like a thing like my life." Iris also testified that she believed an individual at CapeSide Psychiatry, where Iris had received treatment services, was "remotely controlling [her] life" with a cell phone.

After considering the evidence, the trial court entered an order concluding that grounds existed under N.C.G.S. § 7B-1111(a)(1), (2), and (9) to terminate Iris's

parental rights to Connie. The trial court subsequently found it was in Connie's best interests to terminate Iris's parental rights and so ordered. Iris appeals.

B. Analysis

Iris challenges the trial court's conclusion that grounds existed to terminate her parental rights under N.C.G.S. § 7B-1111(a)(1), (2), and (9). After careful review, we affirm the trial court's termination of Iris's parental rights to Connie.

N.C.G.S. § 7B-1111 enumerates the statutory grounds upon which a trial court may terminate parental rights. A finding of any separate statutory ground "is sufficient to support an order terminating parental rights." *In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014) (citation and internal quotation marks omitted). Accordingly, if the trial court properly found that any one ground for termination existed under N.C.G.S. § 7B-1111(a), we need not review the remaining challenged grounds for termination. *Id.* In our review of a trial court's adjudication under N.C.G.S. § 7B-1111(a),

> we must determine whether the findings of fact are supported by clear . . . and convincing evidence, and whether the findings support the court's conclusions of law. If there is competent evidence, the findings of the trial court are binding on appeal. An appellant is bound by any unchallenged findings of fact. Moreover, erroneous findings unnecessary to the determination do not constitute reversible error where the adjudication is supported by sufficient additional findings grounded in competent evidence. We review conclusions of law de novo.

Id. at 707-08, 760 S.E.2d at 62 (citations and internal quotation marks omitted); *In re J.A.M.*, 370 N.C. 464, 464, 809 S.E.2d 579, 580 (2018).

In accordance with N.C.G.S. § 7B-1111(a)(9), the trial court may terminate parental rights upon a finding that:

> (9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent *lacks the ability* or willingness to establish a safe home.

N.C.G.S. § 7B-1111(a)(9) (2017) (emphasis added). "Termination under § 7B-1111(a)(9) thus necessitates findings regarding two separate elements: (1) involuntary termination of parental rights as to another child, and (2) inability or unwillingness to establish a safe home." *In re L.A.B.*, 178 N.C. App. 295, 299, 631 S.E.2d 61, 64 (2006). A safe home is a "home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect." N.C.G.S. § 7B-101(19) (2017).

Iris does not contest the trial court's conclusion of law that her parental rights with respect to another child have been involuntarily terminated by a court of competent jurisdiction. Our inquiry is therefore solely into whether the trial court's conclusion that Iris was unable or unwilling to establish a safe home is supported by findings of fact that are supported by clear and convincing evidence.

The trial court made the following relevant findings of fact:

5. That in May of 2016, [Iris] enrolled in the Intensive Reunification Program. The program is designed to work intensively, consistently, and collectively with team support to strengthen the parent's ability to be reunited with the removed Juvenile. [Iris] enrolled in substance abuse treatment at Coastal Horizons. However, approximately one month later, in June of 2016, it became difficult for Social Worker Guerra to contact [Iris]. She missed appointments at Coastal Horizons, and it was later determined that she was no longer participating in their program. She missed several visitations; therapy sessions; a Child and Family team meeting; an appointment with Social Worker Guerra; and an appointment regarding housing at First Fruit Ministries. Prior to the end of June of 2016, [Iris] was arrested for probation violations, with said violations including testing positive for drugs, and being in the company of a known Felon. On July 6, 2016, [Iris] was terminated from the Intensive Reunification Program for non-compliance.

6. That over the course of the last decade, [Iris] has continued to use illegal substances despite having had all of her children removed from her custody, and three of whom were ultimately adopted. She has participated in numerous substance abuse programs, without success. She was allowed to participate in an intensive program, which is limited to a few participants in New Hanover County and designed to give her one-on-one assistance, and she was non-compliant with the same. Housing was an issue when [Connie] was born, and housing remained an issue. This Court determined at adjudication that reasonable efforts were not required as to [Iris] in that a court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent, in this case three (3) children.

7. That on this date, [Iris] is residing with the father of her youngest child. She is dependent upon said individual for housing and finances. Said child was positive at birth, and [Iris] continues to test positive for illegal substances during

> her purported treatment at CapeSide for purposes of seeking reunification with said child. On this date, [Iris] has made some irrational statements, which would indicate the need for mental health services and substance abuse treatment.

Iris argues the trial court's finding that she "continues to test positive for illegal substances" is unsupported by evidence. Specifically, she argues that she "had not tested positive for marijuana since October 2017 (8 months [prior to the termination hearing])" and that, while she "tested positive for Xanax in March 2018 (three months before the TRP hearing)[,] . . . the evidence showed that she took Xanax due to a mental health issue, not a substance abuse issue[.]" This argument ignores the testimony and evidence before the trial court at the termination hearing. While Iris had not tested positive for marijuana since October 2017, she self-reported marijuana use on 17 January 2018. Moreover, Iris's prescriptions included Adderall, Buprenorphine, and Amphetamine-Dextroamphetamine while at Capeside, but her "screens from Capeside for October, November and December 2017 do not support medicine compliance." The social worker assigned to Iris testified that on 11 May 2018, less than a month before the termination hearing, Iris's drug test showed an "extraordinarily high" amount of amphetamines. Such evidence adequately supports the trial court's finding that Iris continued to test positive for illegal substances. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) ("[I]t is [the trial] judge's duty to weigh and consider all competent evidence, and pass upon the

credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom.").

Iris does not challenge the trial court's finding that "[Iris] has made some irrational statements" at the termination hearing as unsupported by the evidence. Rather, she contests the portion of the finding stating these irrational statements "indicate the need for mental health services and substance abuse treatment[,]" arguing "that need was not proof that she continued to abuse substances." The trial court, however, did not state this – this portion of the finding only addressed the need for mental health services and substance abuse treatment. Iris states herself that her "need for continued abuse treatment was not disputed." This portion of the finding is also supported by clear and convincing evidence.

Finding of Fact 7 is supported by clear and convincing evidence, and, because Iris does not contest Findings of Fact 5 and 6, those findings are binding on appeal. *See In re L.R.S.*, 237 N.C. App. 16, 764 S.E.2d 908 (2014). In turn, we conclude that these findings support the trial court's conclusion that Iris lacked the ability to establish a safe home for Connie. The fact that Iris "had housing, . . . lived in that housing for two years, and the house had space for Connie" does not necessarily equate with providing a safe home, as Iris suggests. A safe home within the meaning of N.C.G.S. § 7B-1111(a)(9) is not simply the existence of a home and the fact that there is space in that home for the juvenile. The home must be *safe*, meaning the

juvenile "is not at substantial risk of physical or emotional abuse or neglect." N.C.G.S. § 7B-101(19) (2017). Iris's ongoing substance abuse, her need for mental health and substance abuse treatment, and her historical and ongoing failure to comply with treatment programs support the conclusion that Iris is unable to provide Connie with a safe home where Connie is free from substantial risk of physical or emotional abuse or neglect. We affirm.

CONCLUSION

We dismiss Felix's appeal of the termination of his parental rights, as he has failed to preserve any argument on appeal. With respect to Iris, the trial court's findings of fact are supported by clear and convincing evidence, and these findings, in turn, support the conclusion of law that grounds existed under N.C.G.S. § 7B-1111(a)(9) to terminate Iris's parental rights. Accordingly, we affirm.

DISMISSED IN PART; AFFIRMED IN PART.

Judge BERGER concurs.

Chief Judge McGEE concurs in part and dissents in part in separate opinion.

Report per Rule 30(e).

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McGEE, Chief Judge, concurring in part and dissenting in part.

Based on the rationale in my dissenting opinion in *In re L.E.M.*, ___ N.C. App. ___, 820 S.E.2d 577 (2018), I believe this Court is required to conduct an *Anders*-type review when a no-merit brief is filed pursuant to the requirements of N.C.R. App. P. 3.1(d). Based on a review of the record in this case, I am unable to find any prejudicial error by the trial court in ordering termination of Respondent-Father's parental rights. A review of the record reveals that the termination order includes sufficient findings of fact, supported by clear, cogent, and convincing evidence, to support at least one ground for termination. *See In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) (A finding of any one of the separately enumerated grounds is sufficient to support termination.). Moreover, the trial court did not abuse its discretion in determining that termination of Respondent-Father's parental rights was in the best interests of C.N.B. *See* N.C. Gen. Stat. § 7B-1110 (2017). Accordingly, I would affirm the trial court's orders as to Respondent-Father and Respondent-Mother.