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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1223

Filed: 16 July 2019

Onslow County, No. 16-JT-170

IN THE MATTER OF: E.M.

Appeal by Respondent-Father from order entered 10 September 2018 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 27 June 2019.

Richard A. Penley for Petitioner-Appellee Onslow County Department of Social Services Consolidated Human Services.

Jeffrey L. Miller for Respondent-Appellant Father.

Nelson Mullins Riley & Scarborough, LLP, by Carrie A. Hanger and Chelsea K. Barnes, for Petitioner-Appellee Guardian ad Litem.

DILLON, Judge.

Respondent-Father (“Father”) appeals from an order terminating his parental rights to his minor child E.M. (“Edna”).¹ After careful consideration, we affirm.

I. Background

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading. N.C. R. App. P. 42.

On 16 July 2016, Edna's mother died unexpectedly. At the time, Father was living in California and had not seen Edna in approximately five years. As the result of her mother's death and the lack of an appropriate person with legal authority to care for Edna, the Onslow County Department of Social Services ("DSS") filed a juvenile petition alleging that Edna was neglected and dependent. DSS obtained non-secure custody the same day. Following an adjudicatory and dispositional hearing, the trial court entered an order adjudicating Edna to be neglected and ordering Father to submit to a substance abuse assessment and to follow all recommendations, complete parenting classes, and communicate with Edna's treatment providers to ensure she received recommended services and treatment.

On 9 December 2016, at a permanency planning hearing, the trial court determined that Father had not yet visited with Edna, though he had two phone conversations with her. Father failed to participate in a scheduled Child and Family Team phone meeting or send gifts or support for Edna. Father's home in California was deemed unsuitable for Edna after a home study. The trial court established a primary permanent plan of reunification and a secondary plan of guardianship with a court-approved caretaker.

After a subsequent permanency planning hearing on 22 December 2017, the court entered an order ceasing reunification efforts and changing the primary

permanent plan to adoption with a secondary plan of guardianship with a court-approved caretaker.

In May 2018, DSS filed a petition to terminate Father's parental rights, alleging a number of statutory grounds.

Four months later, in September 2018, following a hearing on the matter, the trial court entered an order terminating Father's parental rights after adjudicating the existence of neglect, willful abandonment, and willful failure to correct the conditions leading to Edna's removal as grounds to terminate.

Father timely appealed.

II. Analysis

Father's counsel has filed a "no-merit" brief on Father's behalf in which he states that, after a conscientious and thorough review of the record on appeal and transcript, he was unable to identify any issue of merit on which to base an argument for relief. Pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure, counsel requests that this Court conduct an independent examination of the case. N.C. R. App. P. 3.1(e).

In accordance with Appellate Rule 3.1(e), counsel wrote Father a letter advising him of: (1) counsel's inability to find error; (2) counsel's request for this Court to conduct an independent review of the record; and (3) Father's right to file his own arguments directly with this Court while the appeal is pending. Counsel

attached to the letter a copy of the record, transcript, and counsel's no-merit brief. Father has not submitted written arguments on his own behalf, and a reasonable period of time to have done so has passed.

Rule 3.1(e), promulgated by our Supreme Court, does not require that we conduct an independent review of the record where no argument has been made by Father or his counsel. *See In re T.H. & M.H.*, ___ N.C. App. ___, ___, ___ S.E.2d ___, ___ (2019) (explaining the holding in *In re L.V.*, ___ N.C. App. ___, ___, 814 S.E.2d 928, 928-29 (2018)). However, in the exercise of our discretion, we have carefully reviewed the transcript and record. Based on this review, we are unable to find any prejudicial error in the trial court's order terminating Father's parental rights. The termination order contains sufficient findings of fact supported by clear, cogent, and convincing evidence to support the conclusion that Father willfully left Edna in a placement outside the home for more than twelve months without making reasonable progress toward correcting the conditions that led to Edna's removal. *See* N.C. Gen. Stat. § 7B-1111(a)(2) (2017). Furthermore, the trial court made appropriate findings in determining that the termination of Father's parental rights was in Edna's best interests. *See* N.C. Gen. Stat. § 7B-1110(a) (2017). As a result, we affirm the trial court's order terminating Father's parental rights to Edna.

AFFIRMED.

Judge TYSON concurs.

IN RE: E.M.

Opinion of the Court

Judge BERGER concurs by separate opinion.

Report per Rule 30(e).

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BERGER, Judge, concurring in separate opinion.

I agree with the majority’s analysis, but would dismiss the appeal. Counsel for respondent-father complied with all requirements of Rule 3.1(d), and respondent-father did not exercise his right to file a *pro se* brief under Rule 3.1(d). “No issues have been argued or preserved for review in accordance with our Rules of Appellate Procedure.” *In re L.V.*, ___ N.C. App. ___, ___, 814 S.E.2d 928, 929 (2018).