

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-541

No. COA21-136

Filed 5 October 2021

Cumberland County, No. 19 JA 5

IN THE MATTER OF: B.J.

Appeal by Respondent-Mother from order entered 24 November 2020 by Judge Frances M. McDuffie in Cumberland County District Court. Heard in the Court of Appeals 24 August 2021.

*Patrick Kuchyt for petitioner-appellee Cumberland County Department of Social Services.*

*Sean P. Vitrano for respondent-appellant mother.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Michael W. Mitchell and David Pasley, for guardian ad litem.*

MURPHY, Judge.

¶ 1

On 4 January 2019, Petitioner Cumberland County Department of Social Services (“DSS”) filed a *Juvenile Petition Neglect/Dependency* alleging B.J. was neglected and dependent pursuant to N.C.G.S. Chapter 7B. On 7 January 2019, nonsecure custody was granted to DSS. After several permanency planning hearings, the trial court ultimately entered a *Permanency Planning Order* (“Order”), on 24 November 2020, which granted sole legal and physical custody of B.J. to Respondent-

Father, held the primary plan of reunification for B.J. had been achieved, and granted Respondent-Mother supervised visitation with B.J. in a therapeutic setting once a month. Respondent-Mother entered timely notice of appeal from the Order.

¶ 2

Respondent-Mother's appellate attorney filed a no-merit brief pursuant to Rule 3.1(e). *See* N.C. R. App. P. 3.1(e) (2021). Rule 3.1(e) states:

When counsel for the appellant concludes that there is no issue of merit on which to base an argument for relief, counsel may file a no-merit brief. The appellant then may file a pro se brief within thirty days after the date of the filing of counsel's no-merit brief.

In the no-merit brief, counsel must identify any issues in the record on appeal that arguably support the appeal and must state why those issues lack merit or would not alter the ultimate result. Counsel must provide the appellant with a copy of the no-merit brief, the transcript, the printed record on appeal, and any supplements or exhibits that have been filed with the appellate court. Counsel must inform the appellant in writing that the appellant may file a pro se brief and that the pro se brief is due within thirty days after the date of the filing of the no-merit brief. Counsel must attach evidence of this communication to the no-merit brief.

*Id.* Respondent-Mother's appellate attorney complied with Rule 3.1(e), and Respondent-Mother did not file a pro se brief as permitted by Rule 3.1(e). *See id.*

¶ 3

When appellate counsel files a no-merit brief pursuant to Rule 3.1(e), "such [a] brief[] will, in fact, be considered by the appellate court and [] an independent review will be conducted of the issues identified therein." *In re L.E.M.*, 372 N.C. 396, 402,

831 S.E.2d 341, 345 (2019) (interpreting the no-merit brief rule in N.C. R. App. P. 3.1(d) (2018)). Although *In re L.E.M.* made this holding in reference to the then controlling no-merit brief rule in Rule 3.1(d), our Supreme Court stated:

The Rules of Appellate Procedure were amended in December 2018. As of 1 January 2019, the provision authorizing no-merit briefs previously contained in Rule 3.1(d) is now codified in subsection (e). While the language addressing no-merit briefs as set out in Rule 3.1(e) differs in certain respects from that formerly contained in Rule 3.1(d), the two provisions are substantially similar.

*Id.* at 400 n.1, 831 S.E.2d at 344 n.1. As a result, our Supreme Court’s holding regarding the no-merit brief rule then stated in Rule 3.1(d) extends equally to the “substantially similar” no-merit brief rule currently stated in Rule 3.1(e). *Id.*

¶ 4

Respondent-Mother’s appellate attorney’s no-merit brief identified two issues: (1) whether competent evidence supported the findings of fact in the Order; and (2) whether the findings of fact supported the conclusions of law in the Order. “[R]eview of a permanency planning order is limited to whether there is competent evidence in the record to support the findings of fact and whether the findings [of fact] support the conclusions of law.” *In re L.R.L.B.*, 377 N.C. 311, 2021-NCSC-49, ¶ 11 (marks omitted). “Based upon our careful review of the issues identified in the no-merit brief in light of our consideration of the entire [R]ecord, we are satisfied that [competent evidence supports the Order’s findings of fact and the Order’s findings of fact support the conclusions of law].” *In re L.E.M.*, 372 N.C. at 403, 831 S.E.2d at 345.

IN RE B.J.

2021-NCCOA-541

*Opinion of the Court*

Accordingly, we affirm the trial court's Order granting Respondent-Father sole legal and physical custody of B.J.

AFFIRMED.

Judges ZACHARY and GORE concur.

Report per Rule 30(e).