An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-388

No. COA21-662

Filed 7 June 2022

Mecklenburg County, No. 18 JT 140

IN THE MATTER OF: J.C.M., Minor Child.

Appeal by Respondent-Mother from Order entered 28 June 2021 by Judge Regan A. Miller in Mecklenburg County District Court. Heard in the Court of Appeals 26 April 2022.

Marc S. Gentile, Senior Associate County Attorney, for petitioner, Mecklenburg County Department of Social Services/Youth and Family Services.

Sean P. Vitrano for respondent-mother.

N.C. Administrative Office of the Courts, Guardian ad Litem Division, by Staff Counsel Michelle FormyDuval Lynch, for Guardian ad Litem.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Respondent Mother (Respondent) appeals from the trial court's Order entered 28 June 2021, terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(3). The Record tends to reflect the following:

¶ 2 On 2 April 2018, Mecklenburg County Department of Social Services/ Youth and Family Services (YFS) filed juvenile petitions (Petition) alleging J.C.M. and his older brother, J.G., were neglected and dependent as defined in N.C. Gen. Stat. § 7B.[1] The Petition alleged on 27 March 2018 YFS launched an investigation after receiving a child protective services (CPS) report regarding J.C.M. The investigation revealed, on the day of the report, J.C.M. became very upset at school, grabbed a pair of scissors, put them to his head, and said he wanted to kill himself. Respondent was called to pick up J.C.M. and take him for a psychological assessment. Respondent refused to pick up her son and hung up the phone when the school attempted to discuss the instance saying, "I don't want to hear it and don't even care." Later that day, when Respondent arrived to pick up J.C.M., she cursed out the assistant principal then grabbed J.C.M. and threatened him saying "you want to show out . . . you are about to get something." Following the incident at school, YFS went to J.C.M.'s home but Respondent refused to allow access to the child. YFS also checked with local mental health facilities and determined J.C.M. had not been seen by a doctor in the days following the incident. The Petition also alleged Respondent had been the subject of numerous YFS investigations dating back to November 2012.

---

[1] The original Petition is dated 29 March 2018 but was not filed until 2 April 2018. YFS also filed an Amended Petition on 2 April 2018.

¶ 3 On 2 April 2018,[2] the same day as the Petition, the trial court entered a Non-Secure Custody Order finding J.C.M. was:

> in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and his parent, guardian, or custodian is unwilling or unable to provide or consent to the medical treatment.

Consequently, nonsecure custody was granted to YFS.

¶ 4 On 2 May 2018, an adjudication/disposition hearing was held and the trial court adjudicated J.C.M. neglected and dependent by Order entered 5 July 2018. The trial court ordered Respondent to submit to a parenting capacity evaluation and comply with all recommendations. YFS developed a reunification plan for Respondent which included, *inter alia*, mental health assessment, anger management classes, parenting classes, attending and participating in all appointments related to the children's medical, dental, educational, and mental health, securing and maintaining employment, maintaining safe and stable housing, and maintaining contact with YFS.

¶ 5 Over the course of the next couple years, Respondent struggled to comply with the terms of her reunification plan. Specifically, Respondent failed to release information regarding her mental health assessments, and although Respondent

---

[2] J.C.M. was taken into non-secure custody on 29 March 2018, but the trial court's Order was not entered until 2 April 2018.

testified she had been taking her medications for two months, she continued to exhibit violent and aggressive behaviors towards YFS, the court, and J.C.M. For example, during Respondent's supervised visits she threatened to kill the children, pulled J.C.M.'s brother by the collar and told him she would stop attending visits, and told J.C.M. he was "fat and black" because of the medication his foster parents were giving him.

¶ 6 Subsequently, around January 2020, J.C.M. began having nightmares about Respondent killing him and told his therapist and YFS, he did not want to see Respondent. Over the pursuing months, the trial court found Respondent continued to fail to recognize J.C.M's therapeutic needs or how her behavior impacted him. In October 2020, the trial court concluded termination of parental rights (TPR) was in J.C.M.'s best interests. Respondent was permitted one supervised visit per month and could send letters to J.C.M. via YFS so long as J.C.M.'s therapist determined these communications were in J.C.M.'s best interest. On 21 October 2020, YFS filed a TPR petition to terminate Respondent's parental rights to J.C.M.

¶ 7 In January 2021, the trial court suspended all visitation between J.C.M. and Respondent as Respondent had not written any letters to J.C.M. or made any attempt to re-establish their relationship. Respondent also refused to sign an informed consent form for J.C.M. to have dental surgery even though she knew J.C.M. was in

pain. J.C.M. continued to refuse to have any visits with Respondent and expressed his desire to be adopted by his foster mother.

¶ 8 The trial court held a TPR hearing starting on 29 April 2021.[3] YFS introduced a certified copy of a child support court order from New Castle County, Delaware directing J.C.M.'s father to provide monthly child support to Respondent. YFS also introduced certified copies of support payments on file with the Delaware Health and Social Services Division of Child Support Enforcement, which showed payments beginning in September 2013 and continuing through March 2021 to Respondent. Despite these payments, YFS social worker, Stephanie Boular, testified Respondent had not contributed any money to defray the cost of care of J.C.M. since he entered custody.

¶ 9 Following the hearing the trial court entered an Order on 29 June 2021 in which it concluded grounds existed to terminate Respondent's parental rights on the grounds of neglect, willfully failing to pay a reasonable portion of the costs of care for the juvenile, and incapability of providing for the proper care and supervision for J.C.M. N.C. Gen. Stat. §§ 7B-1111(a)(1), (3), (6) (2021). The trial court further concluded it was in the juvenile's best interest to terminate Respondent's parental rights as:

---

[3] J.C.M.'s father relinquished his parental rights prior to the TPR hearing.

> 4. . . . [Respondent] has not made meaningful progress on alleviating the removal conditions related to her own mental health or of demonstrating that she could provide proper care and supervision for [J.C.M.]'s mental health needs. . . .
>
> 5. The bond between the juvenile and [Respondent] is virtually non-existent as demonstrated by their last visitation occurring in February 2020 and her last contact with him occurring in November 2020 during an educational meeting where she declined to provide informed consent that would allow him to undergo dental surgery after first asking him how he was feeling.
>
> 6. . . . [J.C.M.] desires to be adopted by [his foster mom]. This placement is a loving, caring, stable, and permanent home. It is also an adoptive placement. . . .

Consequently, the trial court terminated Respondent's parental rights. Respondent filed written Notice of Appeal on 21 July 2021 and was appointed appellate counsel. Respondent's appellate attorney filed a no-merit brief pursuant to Rule 3.1(e) and advised Respondent of her right to file pro se written arguments on her own behalf. Respondent has not filed a pro se brief.

Analysis

¶ 10 Respondent's appellate attorney's no-merit brief identified three issues that could arguably support the appeal including whether: (1) competent evidence supported the Findings Respondent was working and receiving child support during the six months preceding the filing of the TPR petition; (2) the Findings supported the trial court's Conclusion that grounds existed to terminate Respondent's rights under N.C. Gen. Stat. § 7B-111(a)(3); and (3) the trial court abused its discretion in

determining termination of Respondent's parental rights was in J.C.M.'s best interests. The Rule 3.1(e) brief also explains why these issues lack merit or would not alter the ultimate result.

¶ 11 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 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.

N.C. R. App. P. 3.1(e) (2021).

¶ 12 Here, Respondent's appellate attorney complied with Rule 3.1(e) by providing appellant with a copy of his no-merit brief, the transcript, and the printed record on appeal; and notifying the appellant in writing that she could file a pro se brief.

¶ 13 Nevertheless, when a no-merit brief is filed pursuant to Rule 3.1(e), it "will, in fact, be considered by the appellate court and . . . an independent review will be conducted of the issues identified therein." *In re K.M.S.*, 2022-NCSC-6, ¶ 8. "This Court conducts a careful review of the issues identified in the no-merit brief in light

of our consideration of the entire record." *Id.* "On review, this Court must determine whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur[.]" *In re Humphrey*, 156 N.C. App. 533, 539-540, 577 S.E.2d 421, 426 (2003). "So long as the findings of fact support [such] a conclusion . . . the order terminating parental rights must be affirmed." *Id.*

¶ 14 Here, we have reviewed the issues raised in the no-merit brief in light of the entire Record and are satisfied competent evidence supports the Finding Respondent received child support payments in the six months preceding the filing of the TPR and this Finding, in turn, supports the Conclusion that grounds existed to terminate Respondent's rights under N.C. Gen. Stat. § 7B-1111(a)(3). Moreover, we are satisfied competent evidence supports the Finding that termination of Respondent's parental rights was in J.C.M.'s best interests.

Conclusion

¶ 15 Accordingly, we affirm the trial court's Order terminating Respondent's parental rights to J.C.M.

AFFIRMED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).