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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-503

No. COA21-772

Filed 19 July 2022

McDowell County, No. 17JT98

IN THE MATTER OF:

J.W., II

Minor Child.

Appeal by respondents from order entered 6 August 2021 by Judge Robert K. Martelle in McDowell County District Court. Heard in the Court of Appeals 7 June 2022.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender J. Lee Gilliam, for respondent-appellant-father.

Miller & Audino, LLP, by Jeffery L. Miller, for respondent-appellant-mother.

Aaron G. Walker for petitioner-appellee McDowell County Department of Social Services.

Allyson Shroyer for intervenors-appellees.

Matthew D. Wunsche for the Guardian ad Litem.

GORE, Judge.

¶ 1 Respondents, the mother and father of the minor child J.W., II ("Jack"), appeal

from the trial court's 6 August 2021 order terminating their parental rights.[1] This Court has jurisdiction to hear respondents' appeal pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) (2021), 7B-1001(a)(7), and 7B-1002(4).

¶ 2 Pursuant to N.C.R. App. P. 3.1(e), appellate counsel for respondent parents have each filed a no-merit brief. When appellant's counsel submits a no-merit brief in a juvenile matter, this Court must then carefully and independently review the issues identified by counsel in light of the entire record. *In re C.R.B.*, 374 N.C. 523, 525, 843 S.E.2d 57, 58 (2020); *In re L.E.M.*, 372 N.C. 396, 403, 831 S.E.2d 341, 345 (2019). After careful review, we conclude the issues identified by counsel in respondents' briefs as arguably supporting the appeal are meritless. We therefore affirm the trial court's order.

I.

¶ 3 On 8 August 2017, the McDowell County Department of Social Services ("DSS") filed a petition alleging Jack was a neglected juvenile as defined by N.C. Gen. Stat. § 7B-101(15). A contemporaneous order for nonsecure custody was entered granting DSS temporary custody and placement authority. The bases for the adjudication of neglect were that respondent-father tested positive for Methamphetamines; the respondent-mother was exhibiting signs of mental illness or

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C.R. App. P. 42(b)(1).

impairment from drugs; the respondent-mother was witnessed to be hallucinating and acting erratically while that minor child was in her care; and reports of violence and discord between the respondent parents. Because of respondent-mother's erratic behavior and mental health assessment, the trial court appointed a Rule 17 guardian for her. The order adjudicating Jack as neglected was entered on 27 March 2018, and the initial disposition order was entered on 20 July 2018. Respondents were granted supervised visitation each week.

¶ 4 At this time, Jack was in DSS custody and had been moved to a kinship placement with maternal relatives, the Dawsons.[2] The Dawsons filed a motion to intervene on 24 October 2019, which was granted on 29 January 2020. On 28 February 2020, the Dawsons filed a motion to terminate the parental rights of respondent parents. On 20 August 2020, the trial court entered an order granting respondent-mother's motion to remove and release her court-appointed Rule 17 guardian.

¶ 5 A hearing on the termination motion was held on 7 April and 28 April 2021. The trial court found that respondent-parents had not made substantial progress on their respective court ordered case plans. Respondent-parents had continued to refuse random drug screening; continued to test positive for illegal and non-

[2] A pseudonym is used for Jack's placement providers.

prescribed substances throughout the life of the case; had been inconsistent with visitation, often arriving late or cancelling all together; failed to cooperate with DSS and to allow DSS workers to visit their home; failed to substantially follow the recommendations of their mental health care providers; failed to demonstrate a benefit from domestic violence and domestic violence victims classes; failed to follow recommendations of the psychological/parenting evaluation by continuing to reside together with and continue toxic relationships with each other; and failed to follow recommendations of their Comprehensive Clinical Assessments.

¶ 6 By written order entered 6 August 2021, the trial court concluded that three grounds existed for termination of respondent-parents' parental rights to Jack, namely: (i) neglect, N.C. Gen. Stat. § 7B-1111(a)(1); (ii) willful failure to make reasonable progress in correcting the removal conditions, N.C. Gen. Stat. § 7B-1111(a)(2); and (iii) dependency/incapacity, N.C. Gen. Stat. § 7B-1111(a)(6). The trial court further determined that it was in Jack's best interests to terminate respondent-parents' parental rights. Respondents timely filed notice of appeal from the trial court's order terminating parental rights.

II.

¶ 7 Counsel for respondents mother and father each filed a no-merit brief on their client's behalf under N.C.R. App. P. 3.1(e). They identify several issues that could arguably support an appeal, but contend the record contains no issue of merit on

which to base an argument for relief.

¶ 8 Appellate counsel for respondent-mother concedes that there is no non-frivolous argument to make against the adjudication of grounds to terminate her parental rights or that termination of her parental rights was in Jack's best interests. Respondent-mother also concedes that the trial court had subject matter jurisdiction over this matter and acted within its discretion when it released her Rule 17 guardian ad litem at her request.

¶ 9 Appellate counsel for respondent-father similarly concedes there is no non-frivolous argument against a finding of at least one ground to support termination of his parental rights and that the trial court acted within its discretion at the disposition phase of the termination proceeding. Respondent-father raises additional issues: a collateral attack on prior orders based on alleged judicial misconduct; a question of subject matter jurisdiction based on intervenors' (the Dawsons) lack of standing; and a claim for ineffective assistance of counsel. Ultimately, however, respondent-father also concedes that each of these potential issues lack merit.

¶ 10 Counsel for respondents have satisfied the requirements of N.C.R. App. P. 3.1(e) by advising their clients that they have the option of filing *pro se* briefs with this Court and providing them with the no-merit briefs, the trial transcript, and the record on appeal. Respondent-parents have had notice and opportunity to present any *pro se* arguments to this Court and have failed to do so.

III.

¶ 11 Counsel for respondent-parents have fulfilled their obligations under Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. We have carefully and independently reviewed the issues identified by counsel in light of the entire record. *In re L.E.M.*, 372 N.C. at 402, 831 S.E.2d at 345. Upon review, we are satisfied that the trial court's 6 August 2021 order terminating respondents' parental rights is based on clear, cogent, and convincing evidence, and that it is based on proper legal grounds. Accordingly, we affirm the trial court's order terminating respondents' parental rights.

AFFIRMED.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).