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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-535

No. COA22-140

Filed 2 August 2022

Guilford County, Nos. 18 JT 17, 18 JT 18

IN THE MATTER OF: D.L.B., E.R.B.

Appeal by respondent-mother from order entered 1 December 2021 by Judge William B. Davis in Guilford County District Court. Heard in the Court of Appeals 13 July 2022.

Mercedes O. Chut, for Petitioner-Appellee Guilford County Department of Health and Human Services.

Richard Croutharmel for Respondent-Appellant-Mother.

Ellis & Winters LLP, by James M. Weiss, for the Guardian ad Litem-Appellee.

CARPENTER, Judge.

¶ 1 Respondent-Mother appeals from an order (the "Order") terminating her parental rights as to her two minor children, Dale and Eddie.[1] The juveniles' father, whose rights were also terminated by the Order, has not been identified and is not a

[1] Pseudonyms are used to protect the identities of the minor children.

party to this appeal. After careful and independent review of the record, we affirm the Order.

I. Factual & Procedural Background

¶ 2 On 18 October 2017, the Guilford County Department of Health and Human Services ("DHHS") began investigating Respondent-Mother after receiving a report that Dale and Eddie were enrolled in school three weeks after the start of the fall term and accumulated seventeen absences—all but three unexcused—in just six weeks. Respondent-Mother "was taken to court" the previous year because of the children's school attendance. Respondent-Mother did not have clothes for Dale and Eddie and requested help. During its investigation, DHHS discovered Dale had an untreated eye infection that caused swelling to the eye, which emitted green pus. Furthermore, Dale and Eddie witnessed domestic violence between Respondent-Mother and her husband, who is not the biological father of either child.

¶ 3 When DHHS began its investigation, Respondent-Mother had recently been arrested in Randolph County for a probation violation. A DHHS investigator met with Respondent-Mother at the Randolph County Jail on 30 October 2017, where Respondent-Mother admitted to using methamphetamine but told the investigator she was "tired and wanted to stop." The children were temporarily placed with their maternal grandmother, with whom they had been living since Respondent-Mother's arrest on or around 20 October 2017.

¶ 4 After Respondent-Mother was released from jail on 30 November 2017, she went to the DHHS office where she formally agreed to comply with mental health and substance abuse treatment. On 22 February 2018, a DHHS social worker met with Respondent-Mother at her home. At the meeting, Respondent-Mother appeared "very anxious, belligerent, combative, irrational, and illogical." She admitted to using methamphetamine on a regular basis, including the day before the meeting. Respondent-Mother also disclosed the children witnessed a domestic violence incident two days prior where her husband held her down and attempted to choke her. When the social worker asked Respondent-Mother to sign a safety assessment and make plans for the children for the night, Respondent-Mother became hostile and combative. After officers from the High Point Police Department arrived, Respondent-Mother agreed to sign the assessment, attend a Child and Family Team Meeting, and arrange for the children to stay with her mother for the night.

¶ 5 Based on the incidents described in the report, DHHS filed juvenile petitions on 23 February 2018 alleging the juveniles were neglected and dependent. On 26 February 2018, DHHS took voluntary dismissal of the petitions filed 23 February 2018 to correct errors, and on the same date, filed new juvenile petitions alleging neglect and dependency.

¶ 6 Respondent-Mother entered into a case plan with DHHS on 14 March 2018, which included: successfully enrolling in and completing domestic violence classes;

complying with mental health and substance abuse treatment, including attending appointments and taking medication as prescribed; attending therapy as recommended; completing a parenting psychological evaluation and complying with all recommendations; completing parenting classes; obtaining and maintaining stable and safe housing and employment; and paying child support.

¶ 7 On 23 March 2018, Respondent-Mother had her first visit with Dale and Eddie since they were removed from her custody on 22 February 2018. The visit went well until they were leaving the DHHS office where the visit was held, and Respondent-Mother's husband appeared at the office exit. Dale and Eddie were upset by his presence.

¶ 8 On 28 March 2018, DHHS filed a motion for review, requesting the trial court suspend visitation due to Respondent-Mother's violation of a court order prohibiting her from bringing her husband to visits with Dale and Eddie. On 9 July 2018, the trial court granted DHHS's motion to suspend visitation. Respondent-Mother did not make a subsequent request to reinstate visitations until 1 July 2021, which was denied.

¶ 9 After the permanency planning review hearing on 17 January 2019, the trial court made findings of fact demonstrating that, despite Respondent-Mother's post-traumatic stress disorder, amphetamine use disorder, opioid use disorder, and cannabis use disorder diagnoses, Respondent-Mother did not participate in a

substance abuse program. In the ten months since entering the case plan, Respondent-Mother had not obtained employment nor had she maintained stable housing, and her living arrangements at the time of the hearing were unknown. She failed to complete a parenting/psychological assessment and engage in mental health services. Based on these findings, the trial court determined the primary permanent plan for the juveniles should be changed from reunification to adoption with a secondary concurrent plan of reunification.

¶ 10 On 18 October 2019, DHHS filed a petition to terminate the parental rights of Respondent-Mother and the juveniles' biological father, who could not be located to establish paternity. The petition alleged neglect, willful failure to comply with a case plan and reunify with Dale and Eddie within twelve months, failure to pay child support, and abandonment. After the petition was filed, the case was continued for over a year due to the COVID-19 pandemic. On 4 June 2021, Respondent-Mother filed a motion to continue the termination of parental rights ("TPR") hearing, asserting she had taken significant steps to comply with her case plan, and the trial court denied her motion.

¶ 11 Following a hearing on 30 August 2021 to consider DHHS's TPR petition, the trial court entered its written Order on 6 December 2021, terminating the parental rights of Respondent-Mother as to Dale and Eddie, as well as the parental rights of the juveniles' unknown father. After making findings of fact, the trial court concluded

grounds existed for the termination of Respondent-Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), N.C. Gen. Stat. § 7B-1111(a)(2) (willful failure to make reasonable progress), and N.C. Gen. Stat. § 7B-1111(a)(7) (willful abandonment). At the dispositional stage, the trial court made findings and concluded it was in Dale's and Eddie's best interest that Respondent-Mother's parental rights be terminated. Respondent-Mother timely appealed from the Order.

II. Jurisdiction

¶ 12 This Court has jurisdiction to address Respondent-Mother's appeal from the Order pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021) and N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Standard of Review

¶ 13 "The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004) (citation omitted). We review the trial court's determination that termination of parental rights was in the best interest of the child for abuse of discretion. *Id.* at 222, 591 S.E.2d at 6 (citation omitted).

IV. Analysis

¶ 14 Appellate counsel for Respondent-Mother filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure and advised

Respondent-Mother of her right to file written arguments on her own behalf. *See* N.C. R. App. P. 3.1(e). As required by Rule 3.1(e), counsel provided Respondent-Mother with a copy of his no-merit brief, the transcript, and the printed record on appeal. Respondent-Mother did not file a *pro se* brief.

¶ 15 On appeal, counsel for Respondent-Mother cannot identify any issues with sufficient merit to base an argument for relief. Thus, he respectfully requests this Court to conduct an independent review of the record and determine if any meritorious issues were overlooked and decide if any reversable error was committed by the trial court. *See In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019) (interpreting Rule 3.1 to require appellate courts to conduct an independent review of the potential issues raised in a no-merit brief filed by counsel, even if the appellant has not filed a *pro se* brief).

¶ 16 Although Respondent-Mother's appellate counsel asserts there are no non-frivolous arguments for relief on appeal, he identified two issues he believes could arguably support the appeal, including whether: (1) the trial court's findings of fact support the trial court's grounds for termination of Respondent-Mother's parental rights; and (2) the trial court abused its discretion in finding termination of Respondent-Mother's parental rights was in the best interest of the children.

¶ 17 After carefully and independently reviewing the record and the issues identified by counsel, we are satisfied the trial court's findings of fact are supported

by clear, cogent, and convincing evidence, and the findings in turn, support the trial court's conclusion that grounds existed to terminate the parental rights of Respondent-Mother. *See In re Shepard*, 162 N.C. App. at 221, 591 S.E.2d at 6; *In re L.E.M.*, 372 N.C. at 402, 831 S.E.2d at 345. Furthermore, we discern no abuse of discretion in the trial court's determination that termination was in the best interest of the juveniles. *See In re Shepard*, 162 N.C. App. at 222, 591 S.E.2d at 6.

V. Conclusion

¶ 18 For the reasons discussed above, we affirm the Order.

AFFIRMED

Judges MURPHY and JACKSON concur.

Report per Rule 30(e).