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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-569

No. COA21-621

Filed 16 August 2022

Ashe County, No. 21-JA-6

IN THE MATTER OF: E.B.

Appeal by Respondent-Mother from an Order entered 19 August 2021 by Judge Donna Shumate in Ashe County District Court. Heard in the Court of Appeals 26 April 2022.

*James N. Freeman, Jr., for Petitioner-Appellee Ashe County Department of Social Services.*

*Paul W. Freeman, Jr., for Appellee Guardian* ad Litem.

*W. Michael Spivey for Respondent-Appellant Mother.*

INMAN, Judge.

¶ 1 Respondent Mother ("Mother") appeals, by both notice of appeal and petition for writ of certiorari, from an order adjudicating her daughter E.B. ("Ellen")[1] neglected. Mother, however, did not sign the notice of appeal, which was instead signed by a Guardian *ad Litem* appointed by the trial court. Because we hold that Mother was required to sign the notice of appeal to confer jurisdiction on this Court,

[1] We use a pseudonym for ease of reading and to protect the identity of the juvenile.

we dismiss Mother's appeal. In our discretion, considering the factual and procedural background of this appeal, we deny Mother's petition for writ of certiorari.

## I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 The record below discloses the following:

¶ 3 Ellen was born four to six weeks prematurely on 15 January 2021. Ashe County Department of Social Services ("DSS") received two reports because Ellen tested positive for opiates and amphetamines and had to be transferred to a different medical center for withdrawal treatment. Mother tested positive for amphetamines and methamphetamines when Ellen was born and admitted to DSS that she had used heroin and methamphetamines until she was at twenty-seven weeks gestation, at which point she found out she was pregnant. Ellen had high and unstable blood pressure and respiratory problems when she was born.

¶ 4 At the hospital, staff reported that Mother "was doing odd things," such as wiping Ellen's entire body with cold wipes while she was trying to sleep and then rubbing her with Vaseline. The staff also mentioned that once, when Mother was holding Ellen, Mother's eyes had closed, Ellen's head fell backwards, and she almost fell out of Mother's arms. Mother was not at the hospital when Ellen was due to be discharged. DSS had tried to contact Mother without success.

¶ 5 On 17 February 2021, DSS filed a petition alleging Ellen was a neglected juvenile and took temporary custody. Mother was temporarily assigned a provisional

court-appointed lawyer. The summons stated that the court would determine whether Mother qualified for a court-appointed lawyer at the first hearing.

¶ 6 After leaving the hospital, Ellen stayed with her maternal grandmother ("Grandmother"). Mother had been living with Grandmother before Ellen was born, but since DSS determined the house was unsuitable, Grandmother moved in with her brother, leaving Mother without a stable home. Mother ended up "moving from motel to motel." Mother said that she was planning to enter a rehabilitation program and that she attended a Subutex clinic.

¶ 7 At the first nonsecure custody hearing on 24 February 2021, held virtually, Mother appeared and was represented by the provisional attorney named in the summons. Throughout the hearing, "[M]other was defensive and had a difficult time controlling her behaviors and language," and the Clerk had to mute her microphone several times. The court also found Mother did not think that her drug use had anything to do with the reason Ellen had been placed in non-secure custody. Mother admitted that she had been diagnosed with depression, anxiety, and anger and that she "trusts no one."

¶ 8 Mother was not present at the second nonsecure custody hearing on 3 March 2021. She had not yet been served with the petition, non-secure order, or juvenile summons, and her provisional attorney was unable to reach her. Mother was also not present at the third nonsecure custody hearing on 26 March 2021, and she still had

not been served with the petition, order, or summons. Mother was served with the petition, order, and summons later that day.

¶ 9 Although the pre-adjudication, adjudication, and disposition hearing was scheduled for 9 April 2021, it had to be continued because the court could not reach it that day. On 14 May 2021, the pre-adjudication, adjudication, and disposition hearing was again continued, but another nonsecure custody hearing was held. Mother and her provisional attorney were both present. The court ordered Mother to take a psychological evaluation and appointed a Guardian *ad Litem* ("GAL") "[p]ending the evaluation[.]"

¶ 10 Mother attended supervised visitation with Ellen every week, alternating between supervision by DSS and Our House, an organization located in Wilkes County. Our House stopped Mother's visits when she broke rules prohibiting using a cell phone during visitation, cursing, and bringing a weapon. Our House told Mother to complete an orientation program again before she could resume visiting with Ellen, but Mother never did. Mother was consistently late or missed her visitation sessions supervised by DSS.

¶ 11 The pre-adjudication, adjudication, and disposition hearing scheduled for 11 June 2021 was again continued because Mother was not present for the hearing. Mother's GAL had yet to meet with Mother.

¶ 12 On 25 June 2021, the next scheduled court date, Mother was not present, and

her counsel moved to continue the hearing. Counsel produced a doctor's note from a local emergency room that said Mother was excused from work for eight days beginning 20 June, but counsel did not know Mother's diagnosis, medical condition, or employment status. Counsel also noted Mother had not yet met with her GAL or completed the psychological evaluation ordered by the court. The court denied the motion to continue, stating, "this is not an extraordinary circumstance and the matter has previously been continued numerous times due to . . . [M]other's failure to appear in court." The trial court gave Mother's attorney time to contact her to get more information about her medical excuse and see whether she could join virtually. Mother's counsel could not reach her.

¶ 13 At the hearing, a social worker for DSS explained the allegations in the report that initially led DSS to take nonsecure custody of Ellen. The social worker also testified that Mother had not stayed in contact with DSS, would not meet to revise her case plan, and became belligerent and hung up the phone when speaking with DSS.

¶ 14 On 19 August 2021, the trial court entered an order adjudicating Ellen as a neglected juvenile. Mother's attorney and GAL signed and filed a notice of appeal. Mother's appellate counsel then filed a petition for writ of certiorari with this Court in the event Mother's failure to sign the notice of appeal amounted to a jurisdictional defect.

## II. ANALYSIS

### A. Appellate Jurisdiction and Mother's Notice of Appeal

¶ 15 A non-prevailing party may appeal an initial disposition and adjudication order in a juvenile matter. N.C. Gen. Stat. § 7B-1001(a)(3) (2021). Timely notice of appeal must be given, N.C. R. App. P. 3.1 (2021), and the notice of appeal must be signed by both the appealing party and the party's counsel, N.C. Gen. Stat. § 7B-1001(c) (2021). The proper appealing parties are provided by statute:

> (1) A juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601.
>
> (2) A juvenile for whom no guardian ad litem has been appointed under G.S. 7B-601. If such an appeal is made, the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17 for the juvenile for the purposes of that appeal.
>
> (3) A county department of social services.
>
> (4) A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or a custodian as defined in G.S. 7B-101 who is a nonprevailing party.
>
> (5) Any party that sought but failed to obtain termination of parental rights.

N.C. Gen. Stat. § 7B-1002 (2021).

¶ 16 If notice of appeal is not signed by the proper party and counsel, the appeal is not properly before this Court. *See In re L.B.*, 187 N.C. App. 326, 332, 653 S.E.2d 240, 244 (2007) (holding a parent's failure to sign a notice of appeal pursuant to the

equivalent of Rule 3.1 in effect at that time is a jurisdictional defect), *aff'd per curiam*, 362 N.C. 507, 666 S.E.2d 751 (2008).

¶ 17 Mother failed to sign the notice of appeal in this case, which was instead signed only by Mother's attorney and her appointed GAL. This Court dismissed a parent's appeal under functionally identical circumstances in *In re L.B.* *Id.* at 328, 653 S.E.2d at 242. Our holding that an adult parent GAL's signature, together with trial counsel's signature, were inadequate to perfect an appeal was premised on two independent rationales: (1) the parental GAL statute, N.C. Gen. Stat. § 7B-1101.1 (2005),[2] "plainly indicate[d] the role of the GAL is to *assist* parents rather than *replace* their authority to undertake acts of legal import themselves," 187 N.C. App. at 330-31, 653 S.E.2d at 243; and (2) "[n]owhere in section 7B-1002 is a parent's GAL designated as a 'proper party' who may give written notice of appeal[.] . . . [B]y explicitly listing who may give written notice of appeal . . . , the General Assembly did not intend for those not listed to have the right to perfect an appeal[,]" *id.* at 331, 653 S.E.2d at 243.

¶ 18 Mother contends that *In re L.B.*'s holding is not dispositive because our General Assembly has since amended Sections 7B-1101.1(c) and -602(c) to allow for

[2] Although *In re L.B.* construed and applied Section 7B-1101.1, which applies in termination of parental rights cases, Mother acknowledges that the statute is identical to Section 7B-602(c)—which applies to the GAL appointment before us—and that *In re L.B.*'s analysis is therefore applicable here.

substitutive—as opposed to simply assistive—parental GAL appointments in the event of incapacity under Rule 17 of the North Carolina Rules of Civil Procedure. *See* N.C. Gen. Stat. §§ 7B-1101.1(c) & -602(c) (2021). These statutory amendments, however, have no bearing on the second, distinct basis for this Court's holding in *In re L.B.* Sections 7B-1001(c) and -1002 continue to provide a limited enumerated list of parties who can sign a notice of appeal. N.C. Gen. Stat. §§ 7B-1001(c) & -1002. This list includes a GAL appointed to represent a juvenile but conspicuously omits a GAL appointed to represent an adult parent.

¶ 19 Given the presumption that the General Assembly acts with full knowledge of existing law, *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 695, 239 S.E.2d 566, 570 (1977), we will not presume that the General Assembly—in amending only Sections 7B-1101.1(c) and -602(c)—intended to overrule our application of Sections 7B-1001(c)'s and -1002's unambiguous language in the statute and in *In re L.B.* to hold that: "Notice of appeal shall be signed by both the appealing party and counsel for the appealing party," and not just an adult parent's GAL, must sign a notice of appeal to comply with the statute and our Appellate Rules. *Id.* *Cf. Stockton v. Estate of Thompson*, 165 N.C. App. 899, 902, 600 S.E.2d 13, 16 (2004) ("We conclude that the General Assembly, in explicitly listing who may be a party to a paternity proceeding . . . , did not intend for others not set forth in the statute to intervene in such a paternity proceeding. To hold otherwise, would render ineffective the

[statute's] clear and unambiguous meaning.").

¶ 20 Furthermore, to the extent that Sections 7B–1101.1(c), -602(c), -1001(c), and -1002 conflict:

> [When] there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized . . . ; but, to the extent of any necessary repugnancy between them, the special statute . . . will prevail over the general statute . . . .

*Nat'l Food Stores v. N.C. Bd. of Alcoholic Control*, 268 N.C. 624, 628–29, 151 S.E.2d 582, 586 (1966) (citation omitted); *see also Krauss v. Wayne County DSS*, 347 N.C. 371, 378, 493 S.E.2d 428, 433 (1997); *McIntyre v. McIntyre*, 341 N.C. 629, 631, 461 S.E.2d 745, 747 (1995).

¶ 21 Sections 7B-1001(c) and -1002 address the issue before us "in a more minute and definite way," as they identify exactly who must sign a notice of appeal. Any amendment to Sections 7B-1101.1(c)'s and-602(c)'s more general provisions cannot usurp the unambiguous and specific commands of Section 7B-1001 and -1002. Consistent with our binding precedent in *In re L.B.* and its application of these

statutes' plain language,[3] we dismiss Mother's unsigned notice of appeal for want of jurisdiction. N.C. R. App. P. 3.1(a)(b)(2021).

**B. Mother's Petition for Writ of Certiorari**

¶ 22 Independent of her direct appeal, Mother petitions this Court to grant certiorari review of the trial court's adjudication and disposition order. "A writ of certiorari is intended as an extraordinary remedial writ to correct errors of law. A petitioner must show merit or that error was probably committed below." *Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 2022-NCSC-19, ¶ 19 (citations

[3] In *In re Q.M.*, this Court proffered that an amended notice of appeal "corrected" an initial notice of appeal left unsigned by the appealing mother when the amended notice was signed by the mother's GAL appointed pursuant to Section 7B-1101.1(c) and Rule 17. 275 N.C. App. 34, 37, 852 S.E.2d 687, 690 (2020). We premised that statement on Rule 17's provision that GALs appointed thereunder are empowered to "file and serve . . . pleadings," *id.*, notwithstanding the fact that *signing* a pleading is different and distinct from both serving and filing it. Our opinion also did not cite or address *In re L.B.*, and the statement in question was not necessary to our holding; indeed, we dismissed the mother's appeal on different grounds. *Id.* at 37-38, 852 S.E.2d at 690-91. We are not bound by *In re Q.M.*'s *dicta*, and it cannot, in any event, overrule *In re L.B.*'s earlier determination that the unambiguous language of Sections 7B-1001 and -1002, distinct from Section 7B-1101.1 (and by analogy Section 7B-602(c)), requires parents to sign their notices of appeal. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."). *Cf. In re A.S.Y.*, 208 N.C. App. 530, 537 n.5, 703 S.E.2d 797, 801 n.5 (2010) (declining to follow *In re L.B.*'s holding that parent GAL's are not substitutive in light of the amendment to Section 7B-1101.1(c) incorporating Rule 17 while also noting that "our determination of the GAL's duties *during* a termination proceeding does not require us to touch upon or otherwise disturb the ultimate question determined by the *L.B.* Court, that a notice of appeal signed by the GAL but not the parent is insufficient to grant jurisdiction of the appeal to this Court.").

omitted) (cleaned up). Whether to grant the writ is in the sound discretion of this Court. *State v. Killette*, 2022-NCSC-80, ¶ 16.

¶ 23 Mother cites *In re A.S.*, 190 N.C. App. 679, 661 S.E.2d 313 (2008), and *In re Q.M.*, as authority for granting certiorari review, asserting those decisions demonstrate instances in which this Court has granted certiorari review "to appellants similarly situated." Neither case, however, is meaningfully similar to this case.

¶ 24 In *In re A.S.*, we granted certiorari to review a mother's appeal despite her failure to sign the notice of appeal because, "[a]lthough the order at issue involves only an initial adjudication of neglect, the disposition could be read as ordering DSS to cease reunification efforts with respondent—effectively, a termination of respondent's parental rights[.]" 190 N.C. App. at 683, 661 S.E.2d at 316. Additionally, we concluded that the absence of mother's signature was "due to trial counsel's mistake regarding the requirements of the Rules of Appellate Procedure[,]" rather than any failure of the mother. *Id.* In *In re Q.M.*, we granted certiorari review and relied on *In re A.S.* for the proposition that such an exercise of our discretion is appropriate when the trial court's adjudication and disposition could be construed as ceasing reunification. *In re Q.M.*, 275 N.C. App. at 38, 852 S.E.2d at 691 (citing *In re A.S.*, 190 N.C. App. at 683, 661 S.E.2d at 316).

¶ 25 The order appealed from is unlike the orders at issue in the above cases. It contains no ambiguity that might lead DSS to cease reunification efforts and effectively terminate Mother's parental rights; to the contrary, the order expressly states that it is in Ellen's best interest "for the primary plan to be reunification" and requires DSS to continue "[r]easonable efforts toward reunification with . . . [M]other . . . to prevent the need for placement in foster care." Nor does it appear that the failure to properly perfect the appeal was strictly the fault of the signing GAL and Mother's trial counsel, as the record shows Mother was largely absent throughout the proceedings and never contacted her GAL prior to the entry of the adjudication and disposition order. Mother has failed to offer any analogous caselaw in support of the exercise of our discretion, and we deny her petition.

## III. CONCLUSION

¶ 26 For the foregoing reasons, we dismiss Mother's appeal and deny her petition for writ of certiorari.

APPEAL DISMISSED; PETITION FOR WRIT OF CERTIORARI DENIED.

Judges TYSON and WOOD concur in the result only.

Report per Rule 30(e).