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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-452

Filed 07 February 2023

Durham County, Nos. 17 JT 207-209

IN THE MATTER OF: T.H., R.H., J.P.

Appeal by Respondent from a judgment entered 3 March 2022 by Judge Doretta L. Walker in Durham County District Court. Heard in the Court of Appeals 10 January 2023.

Richard Croutharmel, for Respondent-Appellant Mother.

Durham County Senior Assistant County Attorney Robin K. Martinek, for the Durham County Department of Social Services, Petitioner-Appellee.

Stephen M. Schoeberle, for the Guardian ad Litem.

WOOD, Judge.

Respondent-mother (“Mother”) appeals from the trial court’s order terminating her parental rights to three of her children. Mother’s appellate counsel has filed a no-merit brief on his client’s behalf pursuant to North Carolina Rules of Appellate Procedure 3.1(e). After careful consideration of the record, we conclude that the

issues identified by Mother’s appellate counsel as arguably supporting an award of relief from the trial court’s termination order lack merit. Therefore, we affirm the trial court’s termination of parental rights order.

I. Factual and Procedural Background

On 30 October 2017, the Durham County Department of Social Services (“DSS”) filed a juvenile petition alleging neglect of Mother’s children: A.B.¹, T.H. (“Tommy”), R.H. (“Ricky”), and J.P. (“Jimmy”).² The petition alleged that the children were neglected, in that they were not receiving proper care, supervision, or discipline from the parent, guardian, custodian, or caretaker; or have been abandoned; or have not been provided necessary medical care or other remedial care; or lived in an environment injurious to their welfare. DSS requested nonsecure custody of the children due to exposure to a substantial risk of serious physical injury or sexual abuse because the parent, guardian, or custodian has created conditions likely to cause injury or abuse or has failed to provide adequate supervision or protection. The trial court granted an order for nonsecure custody on 30 October 2017.

In a hearing conducted 13 December 2017 and a subsequent order filed 14 December 2017, the trial court adjudicated the juveniles to be neglected. The trial court found that on or about 20 January 2017, DSS received a report that Jimmy,

¹ This juvenile is not a party to the appeal.

² The parties have agreed to the above pseudonyms for the juveniles pursuant to N.C. R. App. P. 42(b).

born six days earlier, tested positive for cocaine at birth. Mother admitted to using illegal substances during her pregnancy, including cocaine and marijuana. Citing to this report, the trial court found that Jimmy was born at 28 weeks gestation and would have to stay in the hospital for three months; Mother visited one time between Jimmy's birth and 19 January 2017; Jimmy had several medical issues due to his premature birth; and Mother has a chronic illness of kidney failure and undergoes dialysis treatment on a weekly basis. Additionally, Mother has a history of substance abuse, so that it impairs her ability to properly supervise, provide care, and protect her children; Mother suffers from mental illness, which further impairs her ability to parent her children. Mother has been referred for both substance abuse and mental illness treatments but has failed to participate.

The court also found that Mother failed to follow through with action plans and a family service agreement to address the family's needs and to protect her children. Specifically, the court found: (1) Mother has not maintained consistent communications with DSS; (2) the home has lacked food stability, so that the children have to ask neighbors for food or lack food in the home; (3) the children are frequently left alone without proper supervision; (4) Jimmy has been left at home to be supervised by the other children; (5) Tommy suffers from mental health issues, is developmentally delayed, and Mother has failed to implement his recommended treatment despite being aware of his condition; and (6) Ricky's mental health issues impair his ability to recognize danger and require him to be constantly supervised.

Mother, being made aware of these conditions, has failed to follow through with the recommended services.

The trial court found that the children's fathers have not provided financial support for the children for several months and deemed the children to have been abandoned by their putative fathers. At disposition, the trial court placed the children in the custody of DSS and ordered the parents to comply with their case plans to effect reunification. Mother was ordered to engage in substance abuse and mental health services, maintain contact with DSS, and obtain and maintain safe, stable housing.

At a review and permanency planning hearing on 14 March 2018, the trial court found Mother had obtained housing and employment but had been inconsistent with her substance abuse and mental health services. Mother's kidney disease treatment continued, and her health had improved with the children out of her care. The trial court placed Jimmy in the temporary legal custody of his grandmother, and Ricky and Tommy were placed with relatives, based on a kinship assessment.

On 12 July 2018, the trial court conducted a permanency planning hearing, finding that it would not be possible to return the children to Mother immediately or likely within the next six months because she had not completed court ordered services by failing to follow through with mental health treatment, and continuing to use cocaine. Although Mother's kidney disease treatment continued, she had not been put on the liver transplant list because she continued to use cocaine and,

consequently, tested positive for cocaine in her drug screens. The trial court again ordered Mother to participate in a psychological evaluation; engage in substance abuse and mental health treatment; complete a parenting program; maintain contact with DSS; obtain and maintain safe and stable housing; and provide DSS with the names of family members that could serve as guardians. The trial court changed the children's primary permanent plan to guardianship and made their secondary permanent plan reunification with a parent.

The trial court conducted permanency planning hearings on 10 January 2019 and 1 July 2019 and found that Mother still was not complying with her case plan. At a 3 January 2020 permanency planning hearing, the trial court changed the children's primary permanent plan to adoption based on Mother's continued lack of compliance with her case plan and the indication "that she is no longer working towards reunification."

On 25 February 2020, DSS filed a termination of parental rights ("TPR") motion against Mother, along with a TPR notice and certificate of service listing both Mother and her trial counsel. On the same day, DSS filed TPR petitions against the putative fathers. In the motion, DSS alleged that Mother's parental rights should be terminated based upon the grounds of neglect, willful failure to comply with a case plan and reunify with the children within twelve months without showing reasonable progress, and failure to pay financial support during the six months preceding the filing of the motion. On 1 May 2020, DSS filed a summons in this action and a second

TPR notice, with certificate of service indicating it had been served on Mother and her trial counsel.

On 11 June 2020, Mother's trial counsel filed an objection to DSS' notice of hearing to determine parentage and to request service by publication on the putative and unknown fathers. The objection was based on Mother's trial counsel having only received a four-day notice of the hearing; however, the trial court allowed the hearing due to the putative and unknown fathers being the subject of the hearing. On 8 September 2020, DSS filed an affidavit of service, asserting Mother had been served on 14 May 2020. At the 10 September 2020 pretrial hearing, the trial court found the TPR motion had been served on 14 May 2020 and set the TPR hearing for 5 October 2020. On 5 March 2021, DSS requested the clerk issue another TPR summons to Mother. Service of said summons was attempted twice on Mother but could not be effectuated based on the following reasons: (1) the first attempted summons listed an incorrect address for Mother; and (2) although the second summons listed the correct address, Mother was not served because "no contact [was established] after several attempts were made at this address." On 11 March 2021, the trial court issued an order of continuance for the TPR hearing stating: "Counsel for Mother raised the issue of service on the mother for the first time at the calendar call for this hearing and moved for a continuance. Due to limited time available on this day, the matter was continued."

On 19 March 2021, Mother's attorney filed a motion to dismiss based on a lack

of personal jurisdiction because his 11 June 2020 objection did not constitute a general appearance and “the tracking receipt failed to show that [Mother] had signed for the TPR motion and that she had not otherwise been properly served.” In April 2021, DSS filed two affidavits of service of process by registered or certified mail stating that “[s]aid cop[ies] [were] in fact delivered to an individual at the address on [8 and 24 March] 2021.” In a hearing conducted 19 April 2021 and an order filed 4 May 2021, the trial court denied Mother’s motion to dismiss the TPR motion based on a lack of personal jurisdiction because Mother, by and through her trial counsel, made an appearance in the TPR action via the 11 June 2020 objection and Mother’s trial counsel appeared at each hearing. Mother and her counsel were both present at this hearing.

The TPR hearing started on 19 April 2021 and continued 19 May, 23 July, and 28 July 2021. At the hearing, the social worker who filed the TPR motion testified that Mother participated in her case plan as much as her health would allow, but that she suffered from end-stage kidney disease and often cancelled visits due to feeling unwell. The social worker testified that Mother participated in substance abuse and mental health services but never completed those services; completed a parenting program in April 2019; provided no financial support for the children; and was employed off and on with part-time jobs. The social worker was not aware of her housing when the TPR motion was filed.

Mother testified that she lived in a room in a women’s dorm with a monthly

lease, worked at McDonalds, and received social security disability benefits and food stamps. Additionally, she testified that she had a cocaine addiction, but she had last used six months earlier. Mother testified her kidney disease was improving but acknowledged her need for a liver transplant and admitted she was not on a transplant list because her substance abuse disqualified her.

After weighing the evidence, the trial court concluded that grounds existed to terminate Mother's parental rights. At disposition, the current social worker testified that the children's foster parents wanted to adopt the children, and that terminating Mother's parental rights would help accomplish a permanent plan for the children. The social worker also discussed the children's bond with their mother and with their foster parents, and testified he considered the likelihood of adoption high for all three children. In its written 3 March 2022 order, the trial court found the existence of all three TPR grounds alleged as to Mother and that it was in the children's best interests to terminate all parental rights. Mother filed notice of appeal to the TPR order on 29 March 2022.

II. Discussion

Mother's court-appointed counsel filed a "no-merit" brief indicating that there were no non-frivolous issues to assert in this appeal, pursuant to Rule 3.1(e) of our Rules of Appellate Procedure. N.C. R. App. P. 3.1(e). In compliance with the provisions of this rule, counsel states that, after thoroughly and conscientiously reviewing the record on appeal and consulting with other experienced appellate

attorneys, he is unable to identify any issues with sufficient merit upon which to base an argument for relief on appeal. He asks this Court to review the record for possible meritorious issues that may have been overlooked by counsel.

In the brief, Mother's appellate counsel identified a number of issues that could potentially provide a basis for challenging the lawfulness of the trial court's termination order, including whether the trial court lacked personal jurisdiction over Mother to terminate her parental rights; whether the record evidence and the trial court's findings of fact provided adequate support for its determination that Mother's parental rights in Tommy, Ricky, and Jimmy were subject to termination; and whether the trial court had abused its discretion when it found that it would be in the children's best interests to terminate Mother's parental rights. However, Mother's appellate counsel provided an explanation for why those issues were frivolous. Counsel provided a copy of the brief to Mother along with the record on appeal, the accompanying transcript, and a letter advising Mother of her right to file her own *pro se* brief with instructions for doing so. Mother has not filed a separate brief. Both DSS and the guardian *ad litem* filed briefs expressing agreement with the conclusion reached by Mother's appellate counsel that the record does not disclose the existence of any arguably meritorious issues on appeal.

This Court independently reviews issues identified by counsel in a no-merit brief to determine if any of those issues have potential merit. *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). After a careful review of the issues identified

in the no-merit brief in this case, and in light of the record and the applicable law, we are unable to find anything to support an argument for meaningful relief on appeal. We conclude the trial court possessed personal jurisdiction over Mother because she personally appeared at the TPR hearing. The trial court had jurisdiction over Mother's person, even if service of process was defective. *Alexiou v. O.R.I.P., Ltd.*, 36 N.C. App. 246, 248, 243 S.E.2d 412, 414, *cert. denied*, 295 N.C. 465, 246 S.E.2d 215 (1978).

We further hold that the findings of fact contained in the trial court's termination order are supported by ample record evidence and the trial court did not err in determining that Mother's parental rights were subject to termination. *In re C.M.F.*, 379 N.C. 216, 220, 864 S.E.2d 329, 332 (2021). Further, the record evidence supports the trial court's conclusion that termination of Mother's parental rights would be in the children's best interests. Thus, we conclude the trial court did not abuse its discretion in terminating Mother's parental rights.

III. Conclusion

As a result, for the reasons set forth above, we affirm the trial court's order terminating Mother's parental rights to Tommy, Ricky, and Jimmy.

AFFIRMED.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).