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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-637

Filed 02 May 2023

Rutherford County, Nos. 19JT34-38

IN THE MATTER OF:

G.R.D., G.T.D., G.L.D., M.R.D., E.L.D., Minor Children.

Appeal by respondent-mother from orders entered 21 April 2022 by Judge Michelle McEntire in Rutherford County District Court. Heard in the Court of Appeals 21 March 2023.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky L. Brammer, for respondent-appellant.

Hanna Frost Honeycutt for petitioner-appellee Rutherford County Department of Social Services.

Matthew D. Wunsche for appellee guardian ad litem.

GORE, Judge.

Respondent-mother appeals the trial court's orders terminating her parental rights to her children "Graham," "Gunner," "Gideon," "Elsa," and "Mary."¹

¹ Pseudonyms are used to protect the identity of the minor children and for ease of reading.

Respondent-mother raises two issues on appeal: (1) whether the guardian ad litem (“GAL”) program failed to satisfy its statutory obligations under N.C. Gen. Stat. §§ 7B-601 and 7B-1108; and (2) whether the trial court abused its discretion on disposition. Upon careful review, we affirm.

I.

A.

In March 2019, respondent-mother and the newborn Mary tested positive for methamphetamine and THC. Respondent-mother admitted to using methamphetamine two weeks prior to Mary’s birth. Respondent-father denied using drugs, but tested positive for methamphetamine, amphetamine, and THC. Mary, who was born prematurely, needed a sober caregiver, but both respondent-parents were using drugs at the time of her birth. Respondent-parents’ four other children also lived in the home at the time of Mary’s birth and tested positive for methamphetamine. The Rutherford County Department of Social Services (“DSS”) attempted to create a safety plan for the family, but respondent-parents could not provide a safe placement for the children.

On 27 March 2019, DSS filed petitions alleging that the children were abused and neglected, and a GAL staff member and attorney advocate were appointed to represent the best interests of the children on 16 April 2019. Respondent-parents, DSS, and the GAL signed stipulations to the facts alleged in the petitions. The trial court then made findings of fact based on the stipulations and adjudicated each child

abused and neglected, primarily based on respondent-parents' substance abuse and its negative impact on the children.

In the dispositional orders, the trial court found that respondent-mother had entered into an Out of Home Services Agreement, and that the items in her case plan included: completing a substance abuse assessment and following up with recommendations; engaging in substance abuse classes and following up with recommendations; completing a mental health evaluation and following up with recommendations; submitting monthly negative drug screens; engaging with services through Safe Harbor; completing parenting classes; participating in the children's medical appointments; engaging in shared parenting with placement providers; and, supporting the children's placement together. The trial court also found that respondent-mother had completed a Comprehensive Clinical Assessment and substance abuse assessment, but that she had not followed up with recommended services.

Subsequent review and permanency planning orders entered between 2019 and 2021 show GAL attorney advocate Lee Taylor was present for each hearing. The GAL team also submitted court reports for each review and permanency planning hearing. The court reports document respondent-parents' failure to complete their case plans, and consistently recommend respondent-mother work to complete the plan to achieve reunification with the children.

In the court report prepared for the April 2021 permanency planning hearing,

the GAL reported that respondent-mother failed to submit to drug screens, but that she did participate in visits and phone calls with the children. The GAL recommended the primary plan for the case should be adoption based on respondent-parents' lack of progress on their case plans, particularly in addressing their substance abuse issues. Although respondent-parents had worked on their case plans, respondent-mother's last drug screen was positive. The GAL reported that respondent mother appeared to be "unwilling to work on her drug use." In the April 2021 permanency planning orders, the trial court authorized DSS to file termination of parental rights petitions.

DSS filed petitions to terminate respondent-parents' parental rights on 13 July 2021. As to respondent-mother, the petitions alleged grounds to terminate her parental rights based on dependency, abuse and neglect, and willful failure to make reasonable progress. At the termination of parental rights hearing in April 2022, the children were represented by GAL attorney advocate Lora Baker. No party objected to Ms. Baker's participation in the hearing as the GAL attorney advocate. Ms. Baker elicited testimony from social workers Amber Cox and Jessica Martinez about an unsuccessful home placement with respondent-mother, respondent-mother's failure to pursue domestic violence charges against respondent-father, and respondent-parents' failure to submit to drug screens.

On 21 April 2022, the trial court entered orders terminating respondent-parents' parental rights ("TPR" orders) and took judicial notice of the underlying

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court files, found that a pretrial conference was held, and found that Lora Baker was present as GAL attorney advocate. The trial court also found that, “the Guardian *ad Litem* program was appointed for the child and continues to serve in that role.” The trial court made adjudicatory findings of fact documenting respondent-mother’s history of illegal drug use and failure to address that issue, the unsuccessful trial home placement with two of the children, and respondent parents’ lack of progress on their case plans over the past three years. As to respondent-mother, the trial court found grounds based on neglect and willful failure to make reasonable progress. The trial court also made dispositional findings about the children’s placements, bond with respondent-parents, likelihood of adoption, and concluded that it was in the children’s best interests to terminate respondent-mother’s parental rights.

B.

Respondent-mother timely filed written notice of appeal on 10 May 2022. The trial court’s orders terminating respondent-mother’s parental rights are final orders of district court from which appeal lies to this Court as a matter of right. N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2022).

II.

Respondent-mother first argues the trial court’s orders terminating her parental rights must be reversed on grounds the GAL program failed to satisfy its statutory obligations under N.C. Gen. Stat. §§ 7B-601 and 7B-1108. Respondent-mother contends this issue is automatically preserved for appellate review

notwithstanding her failure to raise a timely objection during the TPR proceedings. She cites this Court’s decision in *In re J.C.-B.* to support her position. 276 N.C. App. 180, 192, 856 S.E.2d 883, 892 (2021) (“When an appellant argues the trial court failed to follow a statutory mandate, the error is preserved, and the issue is a question of law and reviewed *de novo*.”); accord *In re E.M.*, 263 N.C. App. 476, 479, 823 S.E.2d 674, 676 (2019) (Where the appellant argues “that the trial court failed to follow a statutory mandate, the error is preserved and is a question of law reviewed *de novo*.”).

We note, however, that respondent-mother has not identified any statutory mandate that the trial court failed to follow.

A statutory mandate that automatically preserves an issue for appellate review is one that, either: (1) requires a specific act by a trial judge; or (2) leaves no doubt that the legislature intended to place the responsibility on the judge presiding at the trial, or at specific courtroom proceedings that the trial judge has authority to direct.

In re E.D., 372 N.C. 111, 121, 827 S.E.2d 450, 457 (2019) (cleaned up).

Under the Juvenile Code, if a parent files an “answer or response [that] denies any material allegation of the petition or motion,” the trial court must appoint a GAL “to represent the best interests of the juvenile, unless the petition or motion was filed by the [GAL] pursuant to G.S. 7B-1103, or a [GAL] has already been appointed pursuant to G.S. 7B-601.” N.C. Gen. Stat. § 7B-1108(b) (2022). “The appointment, duties, and payment of the [GAL] shall be the same as in G.S. 7B-601 and G.S. 7B-603” *Id.* If the child has been represented by an appointed GAL in the underlying

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juvenile case, the same GAL “and any attorney appointed to assist that [GAL], shall also represent the juvenile in all [TPR] proceedings under this Article” § 7B-1108(d). The GAL program “shall” have the duties of investigating the facts, the juvenile’s needs, and available resources to meet the juvenile’s needs; settling disputed issues, offering evidence, and examining witnesses at adjudication, and exploring dispositional options with the trial court; conducting follow-up investigations and making reports to the court; “and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.” § 7B-601(a).

For the first time on appeal, respondent-mother asserts the appointed GAL and attorney advocate failed to perform their statutory duties in the year prior to the TPR hearing, or at the TPR hearing itself. She contends “a stranger to the case ‘pinch hit’ for both . . . without an appointment order and could not and did not comply with the statute.” Respondent-mother advances no argument concerning mandatory actions or responsibilities of the trial court.

Presuming, *arguendo*, that such a distinction lacks substantive practical effect, our holding in *In re J.C.-B.* conflicts with prior decisions of this Court that specifically require the respondent to raise a timely objection to the asserted error below under Appellate Rule 10(a)(1). See *In re A.D.N.*, 231 N.C. App. 54, 65, 752 S.E.2d 201, 209 (2013) (“This Court has previously held that in order to preserve for appeal the argument that the trial court erred by failing to appoint the child a GAL, a respondent

must object to the asserted error below.”), *disc. rev. denied*, 367 N.C. 321, 755 S.E.2d 626 (2014); *In re P.T.W.*, 250 N.C. App. 589, 606, 794 S.E.2d 843, 855 (2016) (“Respondent-[m]other failed to object to the lack of a GAL for [the juvenile] during the termination proceedings, and the issue was therefore not preserved for appellate review.”).

Moreover, our Supreme Court addressed a similar issue in *In re M.J.M.*, 378 N.C. 477, 861 S.E.2d 815 (2021), a decision filed several months after *In re J.C.-B.* The Court relied on our decision, *In re A.D.N.*, in determining that the respondent was required to object to a lack of GAL to preserve her issue on appeal. *In re M.J.M.*, 378 N.C. at 482, 861 S.E.2d at 818. The respondent in *In re M.J.M.* also argued “the matter should be reviewed on appeal despite her failure to raise the issue or an objection in the trial court.” 378 N.C. at 482 n.3, 861 S.E.2d at 818 n.3. Our Supreme Court distinguished the cases cited, noting that this Court relied on Appellate Rule 2, not automatic preservation, “to reach the issue of whether the trial court committed prejudicial error by failing to comply with the statutory mandate that a GAL shall be appointed when an answer is filed contesting a termination petition.” *Id.* (citations omitted).

Respondent-mother has not identified any statutory mandate that the trial court failed to follow. Respondent-mother asserts the GAL team, or the attorney advocate, failed to comply with their statutory duties. She did not raise this issue in the trial court, and the trial judge did not pass upon it. As a result, we conclude that

this issue is not preserved for appellate review. *See* N.C.R. App. P. 10(a)(1) (“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . .”).

III.

In the alternative, respondent-mother asserts the trial court abused its discretion by determining that termination of her parental rights was in her children’s best interests. Respondent-mother raises three arguments on this issue: (1) the performance of the GAL program and the attorney advocate at the TPR hearing was deficient; (2) some of the juveniles were not in pre-adoptive placements; and (3) many of the trial court’s dispositional findings of fact are unsupported by competent evidence. These arguments lack merit.

A.

“Once the trial court has found a ground for termination, the court then considers the best interests of the child in making its decision on whether to terminate parental rights.” *In re L.M.T.*, 367 N.C. 165, 171, 752 S.E.2d 453, 457 (2013) (quotation marks and citation omitted). When making a decision on a child’s best interests, the trial court must consider the following factors:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.

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(5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.

(6) Any relevant consideration.

§ 7B-1110(a) (2022). “The trial court’s dispositional findings are binding if they are supported by any competent evidence or if not specifically contested on appeal.” *In re S.M.*, 380 N.C. 788, 791, 869 S.E.2d 716, 722 (2022) (cleaned up). “The trial court’s assessment of a juvenile’s best interests is reviewed solely for abuse of discretion.” *Id.* (citations omitted). “Under this standard, we defer to the trial court’s decision unless it is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (quotation marks and citation omitted).

B.

In this case, the trial court heard the adjudication and disposition evidence together, without objection. The trial court also took judicial notice of the underlying court file, which included the prior GAL court reports. As previously discussed, respondent-mother failed to raise any objection during the TPR proceedings as to whether the GAL team complied with its statutory duties.

Respondent-mother asserts four of the five children were not in pre-adoptive placements, and a lack of a finding on this “undisputed and important fact” undermines the trial court’s best interests determination. Our Supreme Court was unpersuaded by this argument in *In re A.J.T.*, noting “that the absence of an adoptive

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placement for a juvenile at the time of the termination hearing is not a bar to terminating parental rights.” 374 N.C. 504, 512, 843 S.E.2d 192, 197 (2020).

The remainder of respondent-mother’s argument concerns whether the trial court’s findings of fact are supported by competent evidence. After careful review of the transcript and record, we determine that there is evidentiary support for each finding of fact that section 7B-1110(a) specifically requires the trial court to address. The trial court’s dispositional findings are supported by testimony from multiple social workers concerning the likelihood of adoption for each child, achievement of the permanent plan, resources available to the department to locate adoptive homes, and observations regarding the relationship between the children and respondent-parents. We are satisfied that trial court’s best interests determination was neither arbitrary nor manifestly unsupported by reason.

IV.

For the foregoing reasons, we affirm the trial court’s orders terminating respondent-mother’s parental rights.

AFFIRMED.

Chief Judge STROUD and Judge HAMPSON concur.

Report per Rule 30(e).