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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-916

Filed 05 July 2023

Guilford County, Nos. 20 JT 75–76

IN THE MATTER OF: A.L., A.L., Jr.

Appeal by respondent from order entered 26 July 2022 by Judge Tonia Cutchin in Guilford County District Court. Heard in the Court of Appeals 12 June 2023.

*Mercedes O. Chut, for Guilford County Department of Health and Human Services, petitioner-appellee.*

*Parker Poe Adams & Bernstein LLP, by C. Kyle Musgrove, for Guardian ad Litem.*

*Richard Croutharmel, for respondent-appellant father.*

WOOD, Judge.

Respondent-Father (“Father”) appeals from the trial court’s order terminating his parental rights to his minor children A.L. (“Alice”<sup>1</sup>) and A.L., Jr. (“Alan”). Counsel for Father has filed a no-merit brief under North Carolina Rules of Appellate Procedure 3.1(e). After careful review, we conclude the trial court properly terminated Father’s parental rights and affirm the termination order.

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<sup>1</sup> We use pseudonyms to protect the identities of the minor children. See N.C. R. App. P. 42.

## **I. Background**

On 5 August 2020, Guilford County Department of Health and Human Services (“DSS”) filed juvenile petitions alleging Alice and Alan were neglected juveniles. In support of the allegations of neglect, DSS described two recent incidents of domestic violence involving the family. In the first incident, DSS received a report on 19 June 2020 about a domestic dispute where the High Point Police Department responded and discovered the children’s mother (“Mother”) had assaulted Alice and Alan’s half-brother Zack and engaged in a physical altercation with the maternal grandmother, who was holding Alice and Alan when the altercation began. In the second incident, on 26 July 2020, Father and Mother went to the maternal grandmother’s home. Father, who was intoxicated, began arguing with the grandmother “about not being able to see his children.” Father and Mother then engaged in a physical confrontation where Father punched Mother repeatedly while she was holding Alice, and Mother retaliated by hitting Father with a frying pan. During its investigation of these incidents, DSS spoke to the maternal grandmother, who alleged Mother “has been physically abusing [Zack] for years,” has issues with alcohol, and “becomes aggressive when she drinks.” DSS also learned there had been numerous 911 calls regarding domestic violence made from the family’s residence and Father and Mother each had lengthy criminal records. DSS obtained nonsecure custody of the children and placed them with their maternal grandmother on 5 August 2020.

Father was served with the neglect petitions and appointed counsel on 6 August 2020. On 4 March 2021, Father's counsel moved to withdraw based on lack of contact with him. The trial court granted counsel's motion and did not appoint new counsel, leaving Father unrepresented.

The juvenile petitions were heard on 29 March 2021. Father did not attend the hearing. On 21 June 2021, the trial court entered an order adjudicating Alice and Alan as neglected juveniles. The adjudication order included a finding that paternity testing confirmed that Father was Alice and Alan's biological father.

The trial court conducted a dispositional hearing on 29 April 2021. Father again did not attend. In its order resulting from the hearing, the court ordered Father to comply with his case plan into which he entered on 2 December 2020. Specifically, the case plan addressed issues related to "housing/environment/basic physical needs," parenting skills, "employment/income management," substance abuse, and "domestic violence/anger management." Alice and Alan remained in DSS custody. Father was awarded one hour of visitation per week with the children.

Father did not attend the permanency planning hearing conducted by the trial court on 22 July 2021. In its 18 November 2021 order, the court found: 1) the children's mother had died of a drug overdose on 1 June 2021; 2) Father was not in compliance with his case plan; and 3) Father had not participated in any visitation since the disposition hearing on 29 April 2021. The trial court suspended Father's visitation. The court set the permanent plan as adoption with a concurrent secondary

plan of reunification and ordered DSS to file a termination of parental rights petition within sixty days.

On 10 December 2021, DSS filed a petition seeking to terminate Father's parental rights to his children. The petition alleged three grounds for termination: 1) neglect; 2) willful failure to make reasonable progress in correcting the conditions that led to the children's removal; and 3) willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(2), (7) (2021). It further alleged that it would serve the best interests of both children to terminate Father's parental rights.

By order entered 21 January 2022, the trial court appointed new counsel for Father on its own motion. However, Father did not appear at the next permanency planning hearing on 3 February 2022 although his new counsel appeared on his behalf. In its order resulting from that hearing, the trial court retained the primary permanent plan of adoption, changed the secondary plan to guardianship, and relieved DSS of its obligation to continue reunification efforts.

The trial court conducted a termination hearing on 16 May 2022. Father was represented by counsel at the termination hearing but was not present. On 26 July 2022, the trial court entered an order terminating Father's parental rights based on its determination that all three grounds for termination alleged by DSS existed and that termination was in Alice's and Alan's best interests. Father filed a timely appeal.

## **II. No-Merit Brief**

Father's appellate counsel has filed a no-merit brief on his behalf pursuant to

N.C. R. App. P. 3.1(e). Counsel also has advised Father of his right to file *pro se* written arguments on his own behalf with this Court and provided him with the necessary documents to do so. Father has not submitted any written arguments.

This Court conducts an independent review of “issues contained in a no-merit brief” filed pursuant to Rule 3.1(e). *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). Father’s counsel raises three potential issues in his brief: 1) whether the trial court improperly denied Father the opportunity to meaningfully participate in the case prior to the filing of the TPR petition by failing to ensure he was provided with notice of his initial counsel’s intent to withdraw and notice of the hearings conducted in the case in 2021; 2) whether the trial court properly concluded grounds existed to terminate Father’s parental rights; and 3) whether the trial court properly concluded termination of Father’s parental rights was in Alice’s and Alan’s best interests. Counsel, however, concedes he cannot make a meritorious argument regarding those issues. After a careful review of the record, we agree.

### **III. Conclusion**

Based upon our independent review of the issues identified in the no-merit brief and our consideration of the entire record, we are satisfied the trial court’s 26 July 2022 order was based on proper legal grounds and the trial court did not abuse its discretion in finding it was in the children’s best interest to terminate Father’s parental rights. Accordingly, we affirm the trial court’s order terminating Father’s parental rights to Alice and Alan.

IN RE: A.L., A.L., JR.

*Opinion of the Court*

AFFIRMED.

Judges Collins and Carpenter concur.

Report per Rule 30(e).