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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1061

Filed 18 July 2023

Iredell County, No. 20JT141

IN RE: A.L.C.H., A Minor Juvenile.

Appeal by Respondent-Mother from Order entered 6 September 2022 by Judge Bryan A. Corbett in Iredell County District Court. Heard in the Court of Appeals 7 June 2023.

Lauren Vaughan for Petitioner-Appellee Iredell County Department of Social Services.

Mary McCullers Reece for Respondent-Appellant Mother.

Stephen M. Schoeberle for Guardian ad Litem.

HAMPSON, Judge.

Factual and Procedural Background

Respondent-Mother appeals from the trial court's Order entered 6 September 2022, terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1111. The Record before us tends to reflect the following:

On or about 12 December 2020, the Iredell County Department of Social Services (DSS) filed a Juvenile Petition (Petition) alleging Amelia¹ to be an abused, neglected, and dependent juvenile. The Petition alleged on or about 10 December 2020, DSS received a report alleging the neglect of Amelia due to substance abuse and injurious environment. Amelia was born testing positive for cocaine and Subutex. Respondent-Mother also tested positive for cocaine and Subutex. Amelia suffered from a variety of withdrawal symptoms following her birth. On 12 December 2020, DSS was contacted by the hospital because Amelia's withdrawal symptoms were worsening, and she needed to be transferred to another hospital for more intensive care. Hospital staff were unable to contact Respondent-Mother to obtain consent to Amelia's treatment. DSS was granted non-secure custody of Amelia.

On 15 June 2021, Amelia was adjudicated abused and neglected. At the initial disposition, the trial court ordered Respondent-Mother to: enter into and comply with a case plan; cooperate with DSS and the Guardian ad Litem; sign necessary releases of information; submit to a comprehensive clinical assessment; refrain from criminal activity; cease use or possession of nonprescribed impairing substances; complete DSS approved parenting classes; and obtain and maintain stable income and housing. Respondent-Mother did not complete a comprehensive clinical assessment and was incarcerated on 12 May 2021.

¹ A pseudonym.

On 1 April 2022, DSS filed a Petition to terminate Respondent-Mother's parental rights to Amelia pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (9). The trial court held a Termination of Parental Rights hearing on 13 July 2022. At the time of the hearing, Respondent-Mother remained incarcerated. Respondent-Mother testified she enrolled in—but did not complete—a parenting class in prison. Further, Respondent-Mother reported receiving some treatment from a doctor, but DSS was not able to verify the treatment because Respondent-Mother failed to complete the releases of information as ordered by the trial court. Respondent-Mother failed to complete any tasks required by the case plan or Dispositional Order.

Following the hearing, the trial court concluded: (I) grounds exist to terminate Respondent-Mother's parental rights to Amelia pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (9); and (II) it was in the best interests of Amelia to terminate Respondent-Mother's parental rights. The trial court entered an Order on 6 September 2022 terminating Respondent-Mother's parental rights.

Respondent-Mother filed written Notice of Appeal on 6 October 2022 and was appointed appellate counsel. Respondent-Mother's appellate counsel filed a no-merit brief pursuant to Rule 3.1(e) and advised Respondent-Mother of her right to file pro se written arguments on her own behalf. Respondent-Mother has not filed a pro se brief.

Analysis

Respondent-Mother's appellate counsel's no-merit brief identified two issues

that could arguably support the appeal including whether: (I) the trial court erred in concluding grounds exist to terminate Respondent-Mother's parental rights to Amelia; and (II) the trial court abused its discretion in determining it was in Amelia's best interests to terminate Respondent-Mother's parental rights.

Rule 3.1(e) states:

When counsel for the appellant concludes that there is no issue of merit on which to base an argument for relief, counsel may file a no-merit brief. The appellant then may file a pro se brief within thirty days after the date of the filing of counsel's no-merit brief. In the no-merit brief, counsel must identify any issues in the record on appeal that arguably support the appeal and must state why those issues lack merit or would not alter the ultimate result. Counsel must provide the appellant with a copy of the no-merit brief, printed record, transcripts, copies of exhibits and other items included in the record on appeal pursuant to Rule 9(d), and any supplement prepared pursuant to Rule 11(c). Counsel must inform the appellant in writing that the appellant may file a pro se brief and that the pro se brief is due within thirty days after the date of the filing of the no-merit brief. Counsel must attach evidence of this communication to the no-merit brief.

N.C.R. App. P. 3.1(e) (2023).

Here, Respondent-Mother's appellate counsel complied with Rule 3.1(e) by providing Respondent-Mother with a copy of the no-merit brief, transcript, and the printed record on appeal. Appellate counsel also notified Respondent-Mother in writing that she could file a pro se brief.

Nevertheless, when a no-merit brief is filed pursuant to Rule 3.1(e), it "will, in fact be considered by the appellate court and . . . an independent review will be conducted of the issues identified therein." *In re K.M.S.*, 380 N.C. 56, 59, 867 S.E.2d

868, 870 (2022) (citation and quotation marks omitted). “This Court conducts a careful review of the issues identified in the no-merit brief in light of our consideration of the entire record.” *Id.* (citation and quotation marks omitted). “On review, this Court must determine whether the trial court’s findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur” *In re Humphrey*, 156 N.C. App. 533, 539-40, 577 S.E.2d 421, 426 (2003) (citation and quotation marks omitted). “So long as the findings of fact support such a conclusion . . . the order terminating parental rights must be affirmed.” *Id.* (citation and quotation marks omitted).

Here, we have reviewed the issues in the no-merit brief in light of the entire Record and are satisfied competent evidence supports the Finding Respondent-Mother:

willfully left the minor child in foster care or placement outside of the home for more than twelve (12) months without showing to the satisfaction of the court that reasonable progress under the circumstances have been made in correcting the conditions that led to the removal of the minor child pursuant to N.C.G.S. § 7B-1111(a)(2).

This Finding, in turn, supports the Conclusion grounds existed to terminate Respondent-Mother’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). Moreover, we are satisfied competent evidence supports the Conclusion termination of Respondent-Mother’s parental rights was in Amelia’s best interests.

IN RE: A.L.C.H.

Opinion of the Court

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court's Order terminating Respondent-Mother's parental rights to Amelia.

AFFIRMED.

Judges DILLON and COLLINS concur.

Report per Rule 30(e).