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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-59

Filed 19 September 2023

Jackson County, No. 20JT27

IN THE MATTER OF: J.L.

Appeals by respondent-father from two orders, one entered on 29 September 2021, and another entered on 5 October 2022, by Judge Monica H. Leslie in District Court, Jackson County. Heard in the Court of Appeals on 29 August 2023.

Jane Thompson for petitioner-appellee Jackson County Department of Social Services.

Peter Wood for respondent-appellant-father.

PER CURIAM.

Respondent, the father of a minor child, appeals from the trial court's order ceasing reunification efforts and an order terminating his parental rights. Counsel for Respondent-father has filed a no-merit brief under North Carolina Rules of Appellate Procedure 3.1(e). After review, we conclude the trial court properly ceased reunification efforts and terminated Respondent-father's parental rights, and we

affirm both the trial court's orders.

I. Background

Jackson County Department of Social Services (“DSS”) first responded to a report regarding John¹ in August 2019, a day after his birth, upon receiving a report that John was born testing positive for cannabis and amphetamines. In October 2019, DSS received a report that Respondent-father and mother were “high” and John’s 4-year-old sibling had been left unattended. In November 2019, DSS determined the family was in need of services, and from then until the filing of the petition, DSS worked to attempt to prevent the need for removal of John from the home. Both the mother² and Respondent-father repeatedly failed to show up for drug screen appointments and assessments at Meridian Behavioral Health; they engaged in physical altercations; and they generally failed to cooperate with services offered by DSS.

On 16 July 2020, DSS filed a petition alleging John was a neglected juvenile under North Carolina General Statute § 7B-101(15). N.C. Gen. Stat. § 7B-101(15) (2021). On 5 August 2020, the trial court held a hearing regarding adjudication, and both the mother and Respondent-father agreed to stipulated facts and recommended John should be adjudicated as neglected. On 8 September 2020, the trial court

¹ Pseudonyms are used to protect the juvenile’s identity.

² John’s mother is not a party to this appeal.

entered its order adjudicating John as neglected. The trial court based its adjudication on the stipulated facts, including (1) John testing positive for cannabis and amphetamines at birth, (2) the family being in need of services for domestic violence and substance abuse, and (3) John being at home during more than one act of domestic violence between his mother and Respondent-father.

On 22 July 2021, the trial court held a permanency planning hearing. On or about 29 September 2021, the trial court entered its order, entitled “Order on Permanency Planning Review Hearing,” ceasing reunification efforts which includes extensive findings of fact regarding both parents’ continuing failures to comply with DSS’s efforts to assist in reunification.³ Specifically as to Respondent-father, the trial court made findings regarding Respondent-father’s: failure to complete his mental health and substance abuse assessments; repeated failures to comply with drug testing; failure to appear for supervised visits with John; four pending felony charges for possession of methamphetamine; as well as “a number of misdemeanor charges, including Driving While Impaired.” The trial court found “the conditions that led to the removal of the juvenile from the home continue to exist” despite DSS’s reasonable efforts to reunify the family; the parents were not making adequate progress or cooperating with DSS; and it was “not possible to return the Juvenile to the home of

³ The file stamp date on the “Order on Permanency Planning Review Hearing” in our record is illegible, but the trial court signed the order on 21 September 2023 and the “Notice to Preserve Right of Appeal” states the order was filed on 29 September 2023.

a Respondent Parent within six months.” The trial court concluded that reunification efforts should cease between John and both parents on 21 September 2021. The trial court determined that a “primary concurrent permanent plan of adoption with a secondary plan of guardianship” was in the juvenile’s best interests. Respondent-father timely filed a “Notice to Preserve Right of Appeal” from this order.

DSS then filed a petition to terminate parental rights of both parents on 14 October 2021 based on (1) neglect under North Carolina General Statutes §§ 7B-1111(a)(1) and 7B-101(15) , and (2) “leaving the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions that led to removal of the juvenile” for reasons other than poverty, under North Carolina General Statute § 7B-1111(a)(2). On 31 March 2022, the trial court held a hearing on the petition for termination of parental rights. Neither the mother nor Respondent-father appeared for the hearing, despite proper notice. Respondent-father’s counsel was present for the entire hearing. On 5 October 2022, the court entered its “Order in a Proceeding to Terminate Parental Rights,” terminating the rights of both parents. The trial court made detailed and extensive findings of fact based on clear, cogent, and convincing evidence. The trial court found Respondent-father entered into a case plan on 22 September 2020, which included completing mental health and substance abuse assessments; entering a domestic violence prevention program; submitting to random drug screens; and obtaining and

maintaining stable housing and employment. The trial court found that Respondent-father delayed finishing the mental/health substance abuse assessment until 30 December 2021, more than a year after Respondent-father entered into his case plan. Respondent-father never followed up with the domestic violence prevention program and continued to have domestic violence issues with John's mother. Between 1 July 2020 and 14 March 2022 Respondent-father attended only two out of thirty-eight drug screenings, testing positive both times. With the exception of odd jobs, Respondent-father neither showed evidence of stable employment nor did he show evidence of stable housing.

The trial court also made detailed findings to support its conclusion that termination of parental rights would be in John's best interests. The trial court found John was two years old and he had "no bond with Father." Respondent-father had visited John "only 12 times in the past 21 months." Although John did recognize Respondent-father, after visits with him, John would "hit himself" and others and "display increased aggression." The likelihood that John would be adopted was "favorable" since several extended family members, as well as a former foster parent, were interested in pursuing adoption. Respondent-father filed a timely notice preserving his right to appeal both the 29 September 2021 order ceasing reunification efforts, and the 5 October 2022 order terminating parental rights.

II. No-Merit Brief

Respondent-father's appellate counsel has filed a no-merit brief on his behalf

pursuant to North Carolina Rules of Appellate Procedure 3.1(e). Counsel has also advised Respondent-father of his right to file *pro se* written arguments on his own behalf with this Court and provided Respondent-father with the documents necessary to do so. Respondent-father did not submit any written arguments.

This Court conducts an independent review of any issues identified in a no-merit brief filed under Rule 3.1(e). *See* N.C. R. App. P. 3.1(e); *see also In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). Respondent-father's counsel notes three potential issues for appeal in his brief: (1) whether the trial court erred prejudicially in finding grounds to terminate his parental rights; (2) whether the trial court abused its discretion in concluding it was in the best interests of the child to terminate Respondent-father's parental rights; and (3) whether the trial court abused its discretion by ceasing reunification efforts with Respondent-father. However, counsel concedes that he cannot make a meritorious argument regarding those issues.

Based upon our independent review of the issues identified in the no-merit brief and our consideration of the entire record, we are satisfied that the trial court's 29 September 2021 Order on Permanency Planning Review Hearing and the 5 October 2022 Order in a Proceeding to Terminate Parental Rights both include appropriate findings of fact made based on clear and convincing evidence, and both orders are based on proper legal grounds. Accordingly, we affirm the trial court's Order on Permanency Planning Review Hearing and Order in a Proceeding to

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Opinion of the Court

Terminate Parental Rights.

AFFIRMED.

Panel consisting of:

Chief Judge STROUD and Judges ARROWOOD and COLLINS.

Report per Rule 30(e).