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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 21-754-2

Filed 3 October 2023

Henderson County, Nos. 15 JT 26, 27

IN THE MATTER OF: R.A.F., R.G.F., IV

On remand by order of the Supreme Court of North Carolina in *In re R.A.F., R.G.F.*, 384 N.C. 505, 886 S.E.2d 159 (2023), reversing and remanding a published opinion by a divided panel of the Court of Appeals in *In re R.A.F., R.G.F.*, 284 N.C. App. 637, 877 S.E.2d 84 (2022). Originally heard in the Court of Appeals on 26 April 2022.

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Petitioners-Appellees.*

Peter Wood, for Respondent-Appellant Mother.

WOOD, Judge.

This case returns on remand from the Supreme Court of North Carolina’s reversal of this Court’s prior decision, for the purpose of considering Respondent-Mother’s (“Mother”) additional issue not reached in the original appeal. After reviewing the Supreme Court’s opinion and the arguments advanced by the parties,

we affirm the trial court's order terminating Mother's parental rights to her children.

Mother argued before this Court that the trial court erred (1) by releasing her court-appointed attorney on its own motion without conducting an inquiry into the counsel's efforts to reach Mother pursuant to N.C. Gen. Stat. § 7B-1108.1 and (2) by not appointing a Guardian *Ad Litem* ("GAL") for her children pursuant to N.C. Gen. Stat. § 7B-1108(b). *See In re R.A.F.*, 284 N.C. App. 637, 643, 877 S.E.2d 84, 90 (2022) ("*In re R.A.F. I*"), *rev'd and remanded*, 384 N.C. 505, 886 S.E.2d 159 (2023) ("*In re R.A.F. II*"). By a 2-1 vote, this Court held the trial court's failure to adequately inquire into "Mother's provisional court-appointed attorney's efforts to contact [her] about the TPR hearing 'raise questions as to the fundamental fairness of the procedures that led to the termination of [Mother's] parental rights.'" *In re R.A.F. I*, 284 N.C. App. at 647, 877 S.E.2d at 92 (quoting *In re K.N.*, 181 N.C. App. 736, 741, 640 S.E.2d 813, 817 (2007)). This Court did not reach Mother's second argument on the prior appeal because we held the question of whether Mother was given notice of the pre-trial and termination hearings was dispositive.

Our Supreme Court reversed this Court's decision based on the dissenting opinion, which stated the trial court had complied with the statutory requirements of N.C. Gen. Stat. § 7B-1108.1 and N.C. Gen. Stat. § 7B-1101.1 and Mother has not shown the trial court committed reversible error. *See In re R.A.F. II*, 384 N.C. at 509, 886 S.E.2d at 162. We now consider Mother's remaining issue: whether the trial court committed prejudicial error by not appointing a GAL for her children. A thorough

summation of the facts and procedural history of this case was presented in this Court's decision in *In re R.A.F. I* and are incorporated herein. See *In re R.A.F. I*, 284 N.C. App. at 638-41, 877 S.E.2d at 87-89.

I. Discussion

Mother contends the trial court erred by failing to appoint a GAL for her children for the TPR proceeding. Mother asserts the card she wrote to her children and mailed to Petitioners' home constitutes an answer to the TPR petition, so that the appointment of a GAL was required pursuant to N.C. Gen. Stat. § 7B-1108. We disagree.

In certain instances, a trial court must appoint a GAL for minor children. *In re P.T.W.*, 250 N.C. App. 589, 605, 794 S.E.2d 843, 854-55 (2016). N.C. Gen. Stat. § 7B-1108 provides that when a parent files a response to a TPR petition or motion that “denies any material allegation of the petition or motion, the court shall appoint a [GAL] for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the [GAL] pursuant to [N.C. Gen. Stat. § 7B-1103], or a [GAL] has already been appointed pursuant to [N.C. Gen. Stat. § 7B-601].” N.C. Gen. Stat. § 7B-1108(b); *In re A.D.N.*, 231 N.C. App. 54, 65, 752 S.E.2d 201, 208 (2013).

Where the trial court fails to appoint a GAL in accordance with N.C. Gen. Stat. § 7B-1108(b), “it is an error constituting grounds for reversal of the trial court's order on appeal.” *In re J.L.S.*, 168 N.C. App. 721, 723, 608 S.E.2d 823, 824 (2005) (citation

omitted). Our statutes do not otherwise require the trial court to appoint a GAL, but “the court may, in its discretion, appoint a [GAL] for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.” N.C. Gen. Stat. § 7B-1108(c).

As to Mother’s contention that the card she sent to her children serves as a valid response under N.C. Gen. Stat. § 7B-1108, our Court has previously held a letter, “that is *filed* with the court and substantively responds to a complaint may constitute an answer, notwithstanding its failure to comply with all of the technical requirements of the Rules of Civil Procedure.” *Brown v. American Messenger Servs., Inc.*, 129 N.C. App. 207, 212, 498 S.E.2d 384, 387 (1998). However, Mother’s letter does not meet the requirements to serve as an answer pursuant to N.C. Gen. Stat. § 7B-1108(a). Mother did not file a copy of her letter with the trial court, nor did she respond to any of the material allegations made in the TPR petition in the correspondence. Rather, Mother’s card simply stated that she “was trying her best to get better, and to be better, and that she loved and missed [her children] very much.”

Thus, Mother’s card does not constitute an answer to the petition. Pursuant to N.C. Gen. Stat. § 7B-1108(c), the trial court was not required to appoint a GAL for the minor children, because Mother never filed an answer denying any material allegation of the TPR petition. *See* N.C. Gen. Stat. § 7B-1108(c). Therefore, the

decision of whether to appoint a GAL for the children rested in the trial court's discretion.

We have held previously that “in order to preserve for appeal the argument that the trial court erred by failing to appoint [a] child a GAL, a respondent must object to the asserted error below.” *In re P.T.W.*, 250 N.C. App. at 606, 794 S.E.2d at 855 (citation omitted). Rule 10 of our Rules of Appellate Procedure states, “In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1). Because Mother was not physically present at the TPR hearing and her court-appointed attorney had been released before the hearing, she did not object at trial to the court's failure to appoint a GAL for the children. Therefore, this issue is not preserved for appellate review. *In re P.T.W.*, 250 N.C. App. at 606, 794 S.E.2d at 855.

Notwithstanding, Rule 2 permits this Court to suspend or vary the requirements or provisions of any of the Rules of Appellate Procedure if necessary “[t]o prevent manifest injustice to a party.” N.C. R. App. P. 2. Rule 2 points to the “residual power of our appellate courts to consider, *in exceptional circumstances*, significant issues of importance in the public interest or to prevent injustice which appears manifest to the Court *and only in such instances*.” *State v. Campbell*, 369 N.C. 599, 603, 799 S.E.2d 600, 602 (2017) (citations omitted). Mother has not

demonstrated the facts of this case warrant the suspension of the Rules of Appellate Procedure to prevent a manifest injustice.

In the case of *In re P.T.W.*, our Court declined to invoke Rule 2 in order to reach the unpreserved issue of whether the trial court erred by failing to appoint a GAL for a child because “a GAL appointment was not statutorily required” and the respondent’s “willful failure to make progress” on her family case plan, “both before and after reunification efforts were ceased.” 250 N.C. App. at 608, 794 S.E.2d at 856 (citations omitted). Similarly, in *In re A.D.N.*, this Court did not invoke Rule 2 as the suspension of rules was not required to prevent manifest injustice to respondent or the child because the “appealing respondent had repeatedly chosen substance abuse over the child’s welfare throughout the child’s life and had almost entirely abdicated responsibility for the child to the petitioner.” 231 N.C. App. at 66, 752 S.E.2d at 209.

We consider Mother’s case as akin to *In re P.T.W.* and *In re A.D.N.* and decline to invoke Rule 2. The trial court clearly set forth the necessary steps Mother must take for reunification with her children. The evidence presented at the TPR hearing was sufficient to demonstrate Mother had failed to meet many of these requirements, including that she maintain regular contact and visitation with her children, provide safe and stable housing for her children, and maintain a lifestyle free from substance abuse. Here, the record demonstrates Mother had not taken any steps to regain greater custodial rights with her children or to correct the conditions which led to her children’s removal from her custody which subsequently resulted in their

adjudication of neglect in 2015. Similarly, the record indicates Mother had not been involved in her children's lives since 2019, did not take action to improve her respective relationships with her children prior to or after receiving the TPR petition, and the Petitioners had reared the children full-time since 2014.

As in the cases of *In re P.T.W.* and *In re A.D.N.*, we conclude Mother's willful failure to make reasonable progress under the terms of her reunification plan, Mother's abdication of responsibility for her children to the Petitioners, and because a GAL appointment was not statutorily required, Mother cannot demonstrate "manifest injustice" by our declination to invoke Rule 2. *In re P.T.W.*, 250 N.C. App. at 608, 794 S.E.2d at 856; *In re A.D.N.*, 231 N.C. App. at 66, 752 S.E.2d at 209.

II. Conclusion

For the foregoing reasons, we conclude the trial court did not err by not appointing a GAL on behalf of Mother's minor children. We affirm the trial court's order terminating Mother's parental rights.

AFFIRMED.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).