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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-949

Filed 21 November 2023

Orange County, No. 21 JA 32

IN THE MATTER OF: A.G.G.

Appeal by respondent-mother from order entered 12 August 2022 by Judge Sherri Murrell in Orange County District Court. Heard in the Court of Appeals 9 November 2023.

Stephenson & Fleming, LLP, by Deana K. Fleming, for petitioner-appellee Orange County Department of Social Services.

North Carolina Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

Jeffrey L. Miller for respondent-appellant mother.

PER CURIAM.

Respondent-appellant mother (“Mother”) appeals from a permanency planning order that continued placement of her child Ann¹ in foster care and denied Ann’s placement with a distant relative. Because there is no right to appeal from the interlocutory order, we dismiss the appeal.

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading.

I. Background

Ann was born in September 2020. Orange County Department of Social Services (“DSS”) obtained nonsecure custody Ann on 28 May 2021, alleging in its petition that Ann was a neglected and dependent juvenile due to Mother’s substance abuse. In support of the allegations, the petition noted Mother’s extensive history with child protective services (“CPS”) due to substance abuse, unstable housing, and domestic violence, which had resulted in Mother losing custody of Ann’s six older siblings and termination of Mother’s parental rights to four of the children. The petition also detailed Mother’s continued substance abuse issues since Ann’s birth.

Specifically, the petition asserted that Ann was born while Mother was an inpatient at UNC Horizons Residential Treatment Program and that Ann resided with Mother in treatment and then in a sober house until March 2021, when Mother was asked to leave the sober house due to continued drug use. DSS reported that it received a CPS report for substance abuse on 25 March 2021 and assessed that Mother had overdosed while residing at the sober house and was revived with Narcan. DSS also reported that it received a second CPS report on 27 March 2021 concerning a domestic disturbance between Mother and friends with whom Mother and Ann had been staying since leaving the sober house.

The petition alleged Mother and Ann were transient for the period DSS conducted its investigation, but that Mother agreed to a Temporary Safety Plan (“TSP”) on 7 April 2021, providing for Ann’s placement with Mother’s aunt while Mother entered detox. Though Mother completed detox and began outpatient treatment, she continued to test positive for illicit substances. Mother missed a Child and Family Team (“CFT”) meeting on 20 May 2021, and her whereabouts were unknown until 28 May 2021 when she informed DSS she was returning to detox. DSS filed the petition at that time.²

Ann remained in the TSP placement with Mother’s aunt until the placement disrupted due to the aunt’s health issues on 7 June 2021. Two days later, Ann was briefly placed in foster care until she could be placed with Mother in another substance abuse treatment program. But when Mother was discharged from the program prior to completion, Ann was returned to foster care on 25 June 2021.

The petition was heard on 15 July 2021, and the trial court entered an order on 2 August 2021 adjudicating Ann neglected and dependent based on findings consistent with the petition allegations. The court additionally found that Mother participated in a CFT following discharge from treatment in June 2021 and entered a case plan to address her substance abuse, mental health, housing, and employment

² The petition named a putative father and alleged he was unreachable and his whereabouts were unknown. Paternity was established through genetic testing in April 2022. However, Ann’s father is not a party to this appeal.

issues. However, Mother was residing with her boyfriend who had convictions for second-degree rape and failing to register as a sex offender. Additionally, law enforcement had been called to the residence in response to altercations between Mother and her boyfriend's roommate. Based on Mother's circumstances and the lack of any relatives available for Ann's placement, the court ordered DSS to retain custody and for Ann to remain placed with her foster family. The court allowed Mother a minimum of one hour of weekly supervised visitation and ordered her to engage in her case plan.

In review and permanency planning hearings between October 2021 and July 2022, the trial court reviewed Mother's progress and found it to be insufficient. The court also considered Ann's placement with relatives and in her siblings' placements at each hearing, but determined such placement options were either unavailable or not in Ann's best interests.

Pertinent to this appeal, a DSS court report for a 17 February 2022 permanency planning hearing indicated that Mother's third cousin—who did not have a relationship with Mother, had never met Ann, and was unaware of Mother's issues—was identified as a potential placement option. DSS's report provided that a kinship assessment of the cousin was completed in December 2021 with no initial concerns, but that DSS reported concerns after the cousin began making plans for Ann without having placement and falsely informed others that DSS was attempting to terminate Mother's parental rights in January 2022. The report also noted that

Mother first stated a preference for Ann's placement with the cousin on 1 February 2022, whereas she previously resisted the disruption of Ann's placement while she worked towards reunification.

Following the permanency planning hearing on 17 February 2022, the trial court entered a permanency planning order on 18 March 2022. The court made findings about a potential placement for Ann with Mother's cousin but determined such a change in placement was contrary to Ann's best interests given her placement history, her need for stability, and her connections to the community, including relationships to siblings and extended family that live in the community. DSS retained custody, and Ann remained in her foster placement. Additionally, based on Mother's lack of progress and the recommendations of DSS and Ann's guardian ad litem ("GAL"), the trial court established the primary plan for Ann as adoption and the secondary plan as reunification.

On 12 July 2022, DSS filed a motion to terminate Mother's parental rights on grounds of neglect, failure to make reasonable progress, dependency, termination of her parental rights to another child, and her unwillingness to create a safe home. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6), (9) (2021).

On 18 July 2022, Mother filed a motion to revisit placement, requesting the trial court reconsider Ann's placement with Mother's cousin. Mother asserted the matter was subject to further review and her cousin had now had a visit with Ann.

The case came back on for a permanency planning hearing on 21 July 2022 before proceedings commenced on the motion to terminate parental rights. The trial court again considered Ann's placement with Mother's cousin, but found in a permanency planning order entered on 12 August 2022 that, although the cousin was willing and able to be a placement, circumstances had not changed, and Ann's placement with Mother's cousin was still contrary to Ann's best interests given Ann's placement history; her need for stability; the likelihood that disruption of the current placement would negatively impact her emotional stability and attachment; and Ann's connection to the community where she was placed in foster care, including her relationships with siblings and extended family in the area.

Mother appealed the 12 August 2022 permanency planning order on 9 September 2022, thereby staying any proceedings on the motion to terminate parental rights. *See* N.C. Gen. Stat. § 7B-1003(b)(1) (2021).

II. Analysis

On appeal, Mother contends the trial court erred by continuing Ann's placement with her foster family when Mother's cousin was willing and able to be a placement. She argues the trial court failed to abide by the mandate of N.C. Gen. Stat. § 7B-903(a1), which provides for priority placement of a juvenile with relatives who are willing and able to provide proper care and supervision in a safe home unless the court determines such a placement is contrary to the juvenile's best interests. N.C. Gen. Stat. § 7B-903(a1) (2021).

As an initial matter, we must determine whether Mother’s appeal from the August 2022 permanency planning order is properly before this Court. In the event the appeal is not proper, Mother has filed a petition for writ of certiorari as an alternative basis for review of the August order. Mother additionally requests in the petition that this Court allow review of the 18 March 2022 permanency planning order, asserting the March 2022 order presents the identical issue for review and is similar in findings, conclusions, and decrees. DSS and the GAL have filed a joint motion to dismiss the appeal and individual responses in opposition to the petition for writ of certiorari.

A. Appeal Pursuant to N.C. Gen. Stat. § 7B-1001

Balancing the rights of families, the best interests and safety of juveniles, and juveniles’ need for permanency within a reasonable amount of time, *see* N.C. Gen. Stat. § 7B-100 (2021), the Juvenile Code limits the right to appeal in abuse, neglect, and dependency proceedings to “only the . . . final orders” listed in N.C. Gen. Stat. § 7B-1001(a) (2021).

In this case, Mother filed notice of appeal from the August 2022 permanency planning order “pursuant to N.C. Gen. Stat. § 7B-1001(a)(2),” which provides a right of appeal from “[a]ny order . . . which in effect determines the action and prevents a judgment from which appeal might be taken.” N.C. Gen. Stat. § 7B-1001(a)(2). However, Mother has abandoned her assertion that appeal is proper pursuant to § 7B-1001(a)(2), acknowledging that the August 2022 order is interlocutory. We agree.

Mother seeks to challenge the trial court's continued placement of Ann in foster care in the August 2022 permanency planning order. However, Ann's continued placement in foster care remained subject to review and modification. *See* N.C. Gen. Stat. § 7B-906.1(a) (2021) (requiring permanency planning hearings to be held at least every six months until a permanent plan is achieved); N.C. Gen. Stat. § 7B-1000 (2021) (providing the trial court jurisdiction to conduct hearings and modify dispositional orders during the minority of the juvenile or until terminated by court order); N.C. Gen. Stat. § 7B-1003(b)(1), (2) (2021) (requiring the trial court to continue to exercise jurisdiction, conduct hearings except for termination hearings, and enter orders affecting custody or placement of a juvenile pending disposition of an appeal); *see also* N.C. Gen. Stat. § 7B-908(b) (2021) (requiring the trial court to continue placement reviews after termination of parental rights). Thus, the August 2022 order is temporary in nature and does not "in effect determine[] the action" to qualify as an appealable final order under § 7B-1001(a)(2). Moreover, the August 2022 order did not find a lack of jurisdiction, is not an initial disposition or adjudication order, and does not change legal custody, eliminate reunification from the permanent plan, or allow or deny termination of parental rights. *See* N.C. Gen. Stat. § 7B-1001(a)(1), (3)–(8). Accordingly, the August 2022 permanency planning order is not an appealable final order under N.C. Gen. Stat. § 7B-1001(a).

B. Appeal Based on a Substantial Right

Besides those final appealable orders in § 7B-1001(a), orders entered in a

juvenile case that leave the case for further action are interlocutory and, generally, not immediately appealable. *See In re J.G.*, 186 N.C. App. 496, 501, 652 S.E.2d 266, 269 (2007). As our courts have long explained, “[a]ppellate procedure is designed to eliminate the unnecessary delay and expense of repeated fragmentary appeals,” *City of Raleigh v. Edwards*, 234 N.C. 528, 529, 67 S.E.2d 669, 671 (1951), as “[t]here is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeal from intermediate orders.” *Veazey v. City of Durham*, 231 N.C. 357, 363, 57 S.E.2d 377, 382 (1950). There are no cases where this is more true than juvenile cases. *See In re B.N.H.*, 170 N.C. App. 157, 161, 611 S.E.2d 888, 890 (2005) (noting that in conflict with the goals of the Juvenile Code, “repeated interim appeals unnecessarily delay resolution of juvenile[] cases, thus fostering an extended period of uncertainty and instability” and “inevitably prolong the involvement of the courts in most cases”).

Nevertheless, interlocutory orders that affect substantial rights are immediately appealable. N.C. Gen. Stat. § 1-277(a) (2021); N.C. Gen. Stat. § 7A-27(b)(3)(a).³ “[A]n interlocutory order affects a substantial right if the order deprive[s] the appealing party of a substantial right which will be lost if the order is

³ An interlocutory order is also immediately appealable if it “[i]n effect determines the action and prevents a judgment from which an appeal might be taken[.]” N.C. Gen. Stat. § 1-277(a)(3)(b); *see also* N.C. Gen. Stat. § 7A-27(b)(3)(b). Since the Juvenile Code provides that such an order in an abuse, neglect, and dependency case is an immediately appealable final order, *see* N.C. Gen. Stat. § 7B-1001(a)(2), it is unnecessary to separately consider an appeal on that basis under N.C. Gen. Stat. §§ 1-277(a) and 7A-27(b)(3)(b).

not reviewed before a final judgment is entered.” *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (quotation marks and citation omitted). “The burden is on the appellant to establish that a substantial right will be affected unless he [or she] is allowed immediate appeal from an interlocutory order.” *In re J.G.*, 186 N.C. App. at 501, 652 S.E.2d at 269 (quoting *Embler v. Embler*, 143 N.C. App. 162, 166, 545 S.E.2d 259, 262 (2001)). The determination of whether an order affects a substantial right to justify immediate appeal “is rooted in the particular facts of a case and the procedural context in which the trial court’s order was made[.]” *In re A.R.G.*, 361 N.C. 392, 397, 646 S.E.2d 349, 352 (2007), and does not require a consideration of the merits of the appeal. *Hall v. Wilmington Health, PLLC*, 282 N.C. App. 463, 472, 872 S.E.2d 347, 357 (2022).

Here, instead of proceeding with an appeal pursuant to § 7B-1001(a)(2), as asserted in her notice of appeal, Mother argues the August 2022 permanency planning order denying Ann’s placement with Mother’s cousin is immediately appealable because it affects her substantial rights to protected family relationships and to statutorily mandated preferential placement for Ann with relatives. We recognize a parent’s constitutional rights regarding their children as substantial rights but are not persuaded that Ann’s temporary placement affects Mother’s rights to justify an immediate appeal.

“A parent has an interest in the companionship, custody, care, and control of his or her children that is protected by the United States Constitution.” *In re N.Z.B.*,

278 N.C. App. 445, 449, 863 S.E.2d 232, 236 (2021) (quoting *Boseman v. Jarrell*, 364 N.C. 537, 549, 704 S.E.2d 494, 502 (2010)). This Court has recognized the constitutional rights of parents as substantial rights. *See Graham v. Jones*, 270 N.C. App. 674, 683, 842 S.E.2d 153, 161 (2020).

However, a parent's rights concerning their children do not extend to relatives, *see Eakett v. Eakett*, 157 N.C. App. 550, 554, 579 S.E.2d 486, 489 (2003) (holding "[a] grandparent is a third party to the parent-child relationship" and does not have constitutionally protected rights), and are not absolute. *In re E.B.*, 375 N.C. 310, 315, 847 S.E.2d 666, 671 (2020); *see also In re Hughes*, 254 N.C. 434, 437, 119 S.E.2d 189, 191 (1961) ("When a parent neglects the welfare and interest of his child, he waives his usual right of custody."). A parent's "constitutionally protected paramount interest in the companionship, custody, care, and control of his or her child is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child." *Price v. Howard*, 346 N.C. 68, 79, 484 S.E.2d 528, 534 (1997) (citations omitted). "[A] parent may no longer enjoy a paramount status if his or her conduct is inconsistent with this presumption or if he or she fails to shoulder the responsibilities that are attendant to rearing a child." *Id.* Whenever state intervention is required, the best interests of a juvenile are the paramount consideration. N.C. Gen. Stat. § 7B-100(5); *see also In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251 (1984) (emphasizing a juvenile's best interests as the "polar star" of juvenile proceedings).

While the mandate for priority relative placement in N.C. Gen. Stat. § 7B-903(a1) recognizes the goal of maintaining family relationships after state intervention in a parent-child relationship is required, it does not expand a parent's rights beyond their constitutional rights, nor does it extend a parent's substantial rights to relatives or afford relatives an enforceable right in a child welfare case.

To protect a parent's substantial rights when state intervention is required, a court must find a parent is unfit or has acted inconsistently with their constitutionally protected status before considering the best interests of a child to award permanent custody or guardianship to a non-parent. *In re B.G.*, 197 N.C. App. 570, 574, 677 S.E.2d 549, 552 (2009). It is from orders changing legal custody and infringing on a parent's substantial rights, and orders eliminating reunification as a permanent plan or terminating parental rights that similarly infringe on a parent's protected status, that N.C. Gen. Stat. § 7B-1001(a) designates as final appealable orders. N.C. Gen. Stat. § 7B-1001(a)(3)–(8). But temporary orders, such as nonsecure custody orders and intermediate permanency planning orders concerning a juvenile's placement, are routinely entered without those findings required for orders permanently affecting a parent's substantial rights.

Here, Ann was adjudicated neglected and dependent and placed in DSS custody. Mother did not appeal. Mother has presented no authority from child welfare cases to establish that intermediate permanency planning orders concerning a juvenile's temporary placement, which are subject to further statutorily prescribed

review and modification as set forth above, deprive a parent who has lost custody of their child of a substantial right absent immediate appeal. Mother has identified several unpublished cases in which this Court contemplated review of interlocutory child welfare orders based on the substantial rights of a parent. However, those cases are unpublished and thus not controlling, *see* N.C.R. App. P. 30(e)(3) (2023), and none of those cases allowed immediate review. *See, e.g., In re J.M.*, 259 N.C. App. 250, 812 S.E.2d 413, 2018 WL 1802020 at *1-2 (2018) (unpublished).

The only cases cited by Mother allowing review based on a substantial right are civil custody cases under Chapter 50B of the General Statutes, and those appeals did not directly challenge awards of custody. *See Johnson v. Johnson*, 259 N.C. App. 823, 826, 817 S.E.2d 466, 470 (2018) (holding an order denying a motion to set aside a separation agreement affected substantial rights where the agreement impacted pending claims for custody, division of marital property, and spousal support); *In re Adoption of C.H.M.*, 282 N.C. App. 102, 105, 871 S.E.2d 136, 138–39 (2022) (holding an order denying a parent a right to participate in adoption proceedings affected a parent’s substantial right to the care, custody and control of their child). Even in the context of Chapter 50B custody disputes, “[n]ormally, a temporary child custody order is interlocutory and does not affect any substantial right which cannot be protected by timely appeal from the trial court’s ultimate disposition on the merits.” *Brewer v. Brewer*, 139 N.C. App. 222, 227, 533 S.E.2d 541, 546 (2000) (quotation marks, ellipses, and citations omitted). Furthermore, we note that all the cases cited by Mother in

support of her argument that the trial court erred in applying § 7B-903(a1) are appeals from appealable final orders under § 7B-1001(a)(4). *See, e.g., In re A.N.T.*, 272 N.C. App. 19, 29, 845 S.E.2d 176, 182 (2020) (appeal of guardianship). Mother cites no controlling cases, and we have found no cases, holding an intermediate permanency planning order affects a substantial right entitling a parent to immediate appeal of a juvenile's temporary placement.

Mother instead emphasizes the procedural posture of this case and contends that, because DSS is pursuing termination of her parental rights by motion filed 12 June 2022, the trial court's denial of a relative placement in the permanency planning order "can[not] and never will be reviewed for error" absent immediate appeal. She asserts it is a "given" that her parental rights will be terminated. While we do consider the procedural context of the court's permanency planning order, *see In re A.R.G.*, 361 N.C. at 397, 646 S.E.2d at 352, we will not assume that Mother's parental rights will be terminated, especially in light of the facts that the trial court continued reunification as a concurrent plan for Ann, ordered Mother to comply with services, and warned Mother that her failure to cooperate may result in reunification efforts ceasing, and given that it has been over one year since this appeal stayed any action on the termination motion.

Given that Mother lost custody of Ann and control over her placement, that the placement decision appealed is temporary and subject to further review and modification, and that reunification remains a concurrent plan while DSS pursues

termination, we are not satisfied Mother has established Ann's temporary placement affects a substantial right that will be lost absent immediate review.

III. Conclusion

Because the August 2022 permanency planning order was not an appealable final order and because Mother has not established the order affects a substantial right to allow immediate appeal, we allow the motion to dismiss the appeal filed by DSS and the GAL and dismiss Mother's appeal. In our discretion, we deny Mother's petition for writ of certiorari. *See In re J.A.K.*, 258 N.C. App. 262, 266, 812 S.E.2d 716, 719 (2018) (exercising discretion to deny a petition for writ of certiorari where parent had no right to appeal a permanency planning order).

DISMISSED.

Panel consisting of: Judges DILLON, ARROWOOD, and GRIFFIN.

Report per Rule 30(e).