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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-456

Filed 19 December 2023

Durham County, Nos. 18 JT 130; 132-33

IN THE MATTER OF:

N.T., N.R., and A.C., Minor Children.

Appeal by Respondent-Appellant Mother from Order entered 23 February 2023 by Judge Doretta L. Walker in Durham County District Court. Heard in the Court of Appeals 20 November 2023.

Senior Assistant County Attorney Keith Roberson for Petitioner-Appellee Durham County Department of Social Services.

J. Thomas Diepenbrock for Respondent-Appellant Mother.

Brittany T. McKinney, Guardian ad litem.

PER CURIAM.

Factual and Procedural Background

Respondent-Mother appeals from an Order terminating her parental rights as to her three children. The Record before us reflects the following:

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On 29 June 2018, Durham County Department of Social Services (DSS) filed Petitions alleging all three children were neglected juveniles. On 9 August 2018, the trial court entered an Order adjudicating the children as neglected juveniles. On 18 December 2020, the trial court held a permanency planning hearing. On 3 March 2021, the trial court entered a Permanency Planning Order, which is captioned as being entered with the consent of the parties. This Permanency Planning Order established adoption as the primary permanent plan for the children and a secondary permanent plan of guardianship.

On 21 October 2021, DSS filed a Petition for Termination of Parental Rights. On 23 February 2023, following a hearing, the trial court entered an Amended Order Terminating Parental Rights.¹ The trial court adjudicated grounds to terminate Respondent-Mother's parental rights on the grounds Respondent-Mother neglected the minor children pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and had willfully left the children in foster care for more than twelve months without demonstrating reasonable progress to correct the conditions leading to the children's removal pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). The trial court further concluded at disposition that it was in the best interests of the children to terminate Respondent-Mother's parental rights. Respondent-Mother timely filed Notice of Appeal on 8 March 2023 from the Amended Order Terminating Parental Rights and was

¹ The amendment was to correct a clerical error in the designation of the Attorney-Advocate representing the interests of the minor children.

appointed appellate counsel. Respondent-Mother's appellate counsel filed a no-merit brief with this Court pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure 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 identifies three main issues that might arguably support the appeal including whether: (I) the trial court's Conclusion grounds exist to terminate Respondent-Mother's parental rights were supported by the Findings of Fact in turn supported by competent evidence; (II) the 3 March 2021 Permanency Planning Order was validly entered with Respondent-Mother's consent; and (III) the trial court abused its discretion in determining it was in the children'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

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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 has 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. In addition, Appellate counsel has conscientiously identified issues which might support an appeal and further explained why in counsel’s opinion they lack merit or would not alter the outcome.

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).

I. Grounds for Termination

Appellate counsel raises the potential arguments that both grounds for termination of parental rights adjudicated by the trial court are unsupported by the findings of fact themselves supported by competent evidence. Appellate counsel notes prior decisions of this Court which support the trial court’s adjudication of grounds under both N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(2) in this case. Upon review of the Record, we are satisfied the key findings made by the trial court are supported by

evidence in the Record and that those findings support grounds for termination under either section (a)(1) or (a)(2).

II. Permanency Planning Order

Appellate counsel also challenges the validity of the 3 March 2021 Permanency Planning Order entered after the 18 December 2020 permanency planning hearing, which is captioned as being entered by consent. Appellate counsel acknowledges that no appeal was properly taken from this Order and that no Petition for Writ of Certiorari has been filed to seek review of this Order. Nevertheless, counsel notes that the Order itself is unclear as to whether Respondent-Mother was, in fact, present at the Permanency Planning Hearing and, thus, validly consented to the entry of the Order. Indeed, the Order itself does not reflect either Respondent-Mother or her then trial counsel's written consent to the Order. We agree the Order itself is not entirely clear. The Order indicates Respondent-Mother had not been in recent contact with her trial attorney who was permitted to withdraw at this hearing. However, it does identify the Respondent-Fathers as not being present at the hearing but includes no such designation of Respondent-Mother. Further, a separate Order from another later Permanency Planning Hearing does affirmatively reflect Respondent-Mother was not present at that hearing.

Appellate counsel acknowledges there is no transcript of that hearing before us and no evidence in the Record to demonstrate Respondent-Mother was not, in fact, present at the hearing or did not indicate her assent to the permanent plan.

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Moreover, no objection to the entry of this Order is reflected in the Record. Furthermore, the Permanency Planning Order itself contains Findings of Fact and Conclusions of Law, which are unchallenged, supporting the permanent plan. Where the Record fails to demonstrate error, we cannot assume error occurred. *See Pharr v. Worley*, 125 N.C. App. 136, 139, 479 S.E.2d 32, 34 (1997) (“ ‘An appellate court is not required to, and should not, assume error by the trial judge when none appears on the record before the appellate court.’ ” (quoting *State v. Williams*, 274 N.C. 328, 333, 163 S.E.2d 353, 357 (1968))). As such we agree with counsel that—on this Record—there is no merit to this argument.

III. Best Interests

Finally, appellate counsel raises the issue of whether the trial court abused its discretion in determining it was in the best interests of the children to terminate Respondent-Mother’s parental rights. Counsel concedes the trial court made findings regarding the relevant statutory criteria under N.C. Gen. Stat. § 7B-1110(a) to support the best interest determination and that those findings are supported by competent evidence. We agree with appellate counsel and deem this issue non-meritorious.

Conclusion

Accordingly, having discerned no meritorious arguments supporting Respondent-Mother’s appeal, we affirm the trial court’s Order Terminating Parental Rights.

IN RE: N.T., N.R., A.C.

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AFFIRMED.

Panel consisting of Judges ARROWOOD, HAMPSON and GRIFFIN.

Report per Rule 30(e).