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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-877

Filed 2 April 2024

Alamance County, Nos. 20 JT 156, 46, 155

IN THE MATTER OF: M.G.B., T.J.B., H.E.D.

Appeal by Respondent-Father from Order entered 25 April 2023 by Judge Bradley Reid Allen, Sr. in Alamance County District Court. Heard in the Court of Appeals 19 March 2024.

Jamie L. Hamlett for Petitioner-Appellee Alamance County Department of Social Services.

Mary McCullers Reece for Respondent-Appellant Father.

Matthew D. Wunsche for Guardian ad litem.

HAMPSON, Judge.

Factual and Procedural Background

Respondent-Father appeals from an Order entered 25 April 2023 terminating his parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), (2), (3), and (6). The Record before us tends to reflect the following:

On 10 August 2021, Alamance County Department of Social Services (DSS) filed petitions alleging the minor children M.G.B. (Maura) and T.J.B. (Theo) were neglected, and H.E.D. (Hattie) was abused and neglected.¹ These petitions alleged the children were neglected based on reports of drug use by Respondent-Father and Mother,² Respondent-Father selling drugs from the home, domestic violence, repeated overdoses by the Mother, and failure of both parents to address issues of concern. Further, in August 2021, Hattie tested positive for gonorrhea. Hattie indicated to a temporary safety provider that Respondent-Father had hurt her. Respondent-Father subsequently tested positive for gonorrhea.

On 16 February 2022, the trial court adjudicated Maura and Theo neglected and adjudicated Hattie abused and neglected consistent with the petitions. At disposition, Respondent-Father was ordered to develop a sufficient source of income; provide a safe, stable and appropriate home environment; refrain from allowing his substance abuse and/or mental health from impacting his parenting; demonstrate the ability to implement age-appropriate disciplinary practices; demonstrate the ability to meet the children's medical needs; demonstrate the ability to assure appropriate supervision; avoid relationships of domestic violence, attend domestic violence support groups and address issues of sexual abuse concerns that impact his children; establish a voluntary child support agreement; and sign release of information forms

¹ Each of the names here is a pseudonym stipulated to by the parties.

² Respondent-Mother is not a party to this appeal.

for service providers.

At the first permanency planning hearing on 13 April 2022, the trial court found Respondent-Father was non-compliant with nearly every goal of his family services agreement. At a permanency planning hearing held on 30 November and 1 December 2022, Respondent-Father was found to be non-compliant with all components of his family services agreement. Respondent-Father appealed the orders of adjudication and disposition to this Court, which affirmed the orders in an opinion dated 21 February 2023. *See In re M.G.B., T.J.B., H.E.D.*, 287 N.C. App. 694, 883 S.E.2d 226 (2023) (unpublished).

On 30 January 2023, DSS filed a Motion and Notice of Motion Seeking Termination of Respondent-Father's Parental Rights. The trial court heard evidence on this Motion on 19, 20, and 21 April 2023. Respondent-Father was called to testify and the trial court instructed him as follows:

[THE COURT]: You can plead the Fifth. You can answer the questions such as your name, your date of birth, who your children are. But when [DSS Counsel], if she asks you specifics about any gonorrhea with the child, gonorrhea with yourself, et cetera, you can plead the Fifth.

Respondent-Father took the stand and answered many of the questions posed by counsel for DSS; however, he asserted his Fifth Amendment right to decline to answer others. The trial court did not compel him to answer any question to which he invoked his Fifth Amendment right. On 25 April 2023, the trial court entered an Order terminating Respondent-Father's parental rights. Respondent-Father timely filed

Notice of Appeal on 23 May 2023.

On appeal, counsel for Respondent-Father filed a no-merit brief pursuant to Rule 3.1(e) and advised Respondent-Father of his right to file pro se written arguments on his own behalf. Further, counsel for Respondent-Father sought review by an attorney in the Office of the Parent Defender. Respondent-Father has not filed a pro se brief.

Analysis

Respondent-Father's appellate counsel's no-merit brief identified three issues that could arguably support the appeal including whether the trial court erred by: (I) concluding grounds existed to terminate Respondent-Father's parental rights; (II) requiring Respondent-Father to take the witness stand where he asserted his right to remain silent; and (III) determining it was in the best interest of the children to terminate Respondent-Father'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 supplemental 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

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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-Father’s appellate counsel complied with Rule 3.1(e) by providing Respondent-Father with a copy of the no-merit brief, transcript, and the printed Record on appeal. Appellate counsel also notified Respondent-Father in writing that he 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 omitted). “So long as the findings of fact support [such] a conclusion . . . the order terminating parental rights must be affirmed.” *Id.* (citation omitted).

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

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Father “neglected the juveniles within the meaning of G.S. 7B-101” and “[t]here is a high likelihood of repetition of neglect if returned to the care of [Respondent-Father].” This Finding, in turn, supports the Conclusion grounds existed to terminate Respondent-Father’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). “[A]n adjudication of any single ground in N.C. [Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citations omitted). Accordingly, we do not address the remaining grounds for termination adjudicated by the trial court. Moreover, we are satisfied competent evidence supports the conclusion that termination of Respondent-Father’s parental rights was in the children’s best interests.

Additionally, we are satisfied the trial court did not err in compelling Respondent-Father to take the witness stand. The trial court instructed Respondent-Father that he could invoke his Fifth Amendment right and decline to answer individual questions. On the stand, Respondent-Father answered many of DSS counsel’s questions, but he asserted his right not to answer others. The trial court did not compel him to answer any of the questions to which he asserted his Fifth Amendment right.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court’s Order terminating Respondent-Father’s parental rights to Maura, Theo, and Hattie.

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AFFIRMED.

Judges GRIFFIN and THOMPSON concur.

Report per Rule 30(e).