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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1056

Filed 18 June 2024

Cabarrus County, No. 22 JT 130

IN THE MATTER OF: C.J.S.

Appeal by Respondent-Mother from order entered 9 August 2023 by Judge Nathaniel M. Knust in Cabarrus County District Court. Heard in the Court of Appeals 28 May 2024.

*Hartsell & Williams, PA, by E. Garrison White, for Petitioner-Appellee Cabarrus County DSS.*

*Smith, Anderson, Blount, Dorsett, Mitchell, & Jernigan, LLP, by John E. Harris and Michael W. Mitchell, for Guardian ad Litem.*

*Peter Wood for Respondent-Appellant Mother.*

COLLINS, Judge.

Respondent-Appellant Mother appeals from the trial court's order terminating her parental rights to her minor child, Clark,<sup>1</sup> on the grounds of neglect; willfully leaving the minor child in foster care for more than twelve months without showing

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<sup>1</sup> We use a pseudonym to protect the identity of the minor child. See N.C. R. App. P. 42.

reasonable progress in correcting the conditions which led to the minor child's removal; willfully failing to pay a reasonable portion of the cost of care for the minor child; abandonment; and dependency. Mother's appellate counsel filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. Upon independent review of the record, we affirm the trial court's order terminating Mother's parental rights to Clark.

### **I. Background**

Mother is the biological mother of Clark, a minor child who was approximately three years old at the time of the hearing to terminate Mother's parental rights.<sup>2</sup> On 15 June 2022, Cabarrus County Department of Social Services ("DSS") received reports that: Mother had been using drugs while Clark was in her custody and care; Clark was not supervised by any other adult; there were ongoing domestic issues in the home between Mother, Mother's boyfriend, and Mother's mother; and drugs and drug paraphernalia were found in the home where Mother and Clark were living. DSS investigated the reports, finding Mother intoxicated and locating methamphetamines in her home. Upon inspecting Clark, DSS discovered that he could not speak and that he was malnourished and underweight. DSS filed a petition in June 2022 alleging that Clark was neglected and dependent and Clark was immediately placed into foster care; Clark was still in his original foster care

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<sup>2</sup> The identity of Clark's biological father is unknown.

placement at the time of the hearing to terminate Mother's parental rights.

On 19 October 2022, the trial court adjudicated Clark to be abused, neglected, and dependent, and it adopted a primary plan of reunification with a secondary plan of adoption. The trial court ordered Mother to comply with her case plan in order to reunite with Clark. The case plan required her to: complete a parenting capacity and psychological evaluation and follow recommendations; attend a parenting course and follow recommendations; complete a substance abuse assessment and follow recommendations; submit to random drug screenings and alcohol screenings; attend medical appointments for Clark; obtain and maintain suitable housing; provide verification of income; follow a visitation plan; and sign all required releases of information and maintain contact with DSS.

At a review hearing in December 2022, the trial court found that Mother had made "very little progress" on her case plan. Mother completed only two parenting classes out of the required twelve classes, completed the substance abuse assessment, and she submitted to a single drug screening out of the five requested drug screenings, which she failed by testing positive for amphetamines. The trial court found that Mother had otherwise "not actively participated in or cooperat[ed] with the plan, [DSS], [or] the guardian ad litem for [Clark]." The trial court maintained the primary plan of reunification with a secondary plan of adoption. At a subsequent review hearing in February 2023, the trial court again found that Mother had "made very little progress on the services previously ordered, the progress made was

insufficient for the court to be assured that [Clark] could safely return to her care.” The trial court then changed the primary plan to adoption and adopted a secondary plan of reunification.

DSS moved to terminate Mother’s parental rights on 2 March 2023, and the matter came on for a hearing on 29 June 2023. At the time of the termination hearing, Mother had failed to complete the majority of her case plan: Mother was still living with her mother in the home from which Clark was originally removed by DSS; Mother still did not have a bed for Clark and instead left mattresses “on the floor[,]” which was where Clark previously slept; Mother never provided proof of employment to DSS and had been unemployed since April 2023; Mother last visited with Clark in October 2022 and missed five out of the eight visits with Clark; the trial court suspended Mother’s visitation due to her lack of attendance; Mother did not attend any of Clark’s medical appointments; and Mother did not complete a parenting capacity and psychological evaluation.

The trial court entered an order terminating Mother’s parental rights on 9 August 2023, finding that Mother: neglected Clark; willfully left Clark in placement outside of the home for more than twelve months without showing reasonable progress in correcting the conditions which led to Clark’s removal; willfully failed to pay a reasonable portion of the cost of care for Clark; caused Clark to be dependent in that Mother is incapable of providing for the proper care and supervision of Clark; and willfully abandoned Clark. The trial court found that it was in Clark’s best

interest to terminate Mother's parental rights.

## **II. Discussion**

When a no-merit brief is filed pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure, this Court must “conduct an independent review of the issues set out in the no-merit brief filed by respondent’s counsel[.]” *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). “We review a trial court’s adjudication of grounds to terminate parental rights to determine whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law.” *In re I.J.W.*, 378 N.C. 17, 21, 859 S.E.2d 148, 151 (2021) (citations omitted). We review a trial court’s conclusions of law de novo. *Id.* “The trial court’s assessment of a [minor child’s] best interest at the dispositional stage is reviewed only for abuse of discretion.” *In re Z.L.W.*, 372 N.C. 432, 435, 831 S.E.2d 62, 64 (2019) (citations omitted).

Here, counsel filed a no-merit brief on Mother’s behalf pursuant to N.C. R. App. P. 3.1(e), explaining that he could find no merit upon which to base an argument for relief and that he had consulted with another attorney in the Office of the Parent Defender who also concluded that there was no merit upon which to base an argument for relief. Mother was advised of her right to file a pro se brief and provided with written instructions on how to do so; Mother did not file a pro se brief. Pursuant to N.C. R. App. P. 3.1(e), we have conducted an independent review of Mother’s appeal. *In re L.E.M.*, 372 N.C. at 402, 831 S.E.2d at 345.

In the no-merit brief, counsel identified five potential issues that arguably could support an appeal but then explained why he believed the issues would not “achieve any sort of relief from the appellate division[.]” Counsel explained that there is clear, cogent, and convincing evidence to support the grounds of neglect and willfully leaving Clark in placement outside of the home, and he stated that any possible errors in the remaining three grounds would not affect the outcome of the appeal as there was clear, cogent, and convincing evidence to support the first two grounds and that the trial court only needed to find one ground in order to terminate Mother’s parental rights. We agree that counsel cannot make a meritorious argument on appeal, as the trial court’s findings of fact are supported by clear, cogent, and convincing evidence, and those findings of fact support the trial court’s conclusions of law. *Id.*

### **III. Conclusion**

Based upon our independent review of the issues identified in the no-merit brief and our consideration of the entire record, we determine that the trial court did not abuse its discretion in determining that it was in Clark’s best interest to terminate Mother’s parental rights. We affirm the trial court’s order terminating Mother’s parental rights.

**AFFIRMED.**

Judges ZACHARY and STADING concur.

Report per Rule 30(e).