NO. COA11-522

NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

IN THE MATTER OF: Robeson County
J.T. and M.T. Nos. 07 JT 378 & 379

Appeal by Respondent-Mother from order entered 17 February 2011 by Judge John B. Carter, Jr. in District Court, Robeson County. Heard in the Court of Appeals 12 September 2010.

J. Hal Kinlaw, Jr. for Robeson County Department of Social Services, Petitioner-Appellee.

Susan J. Hall for Respondent-Appellant Mother.

Parker, Poe, Adams & Bernstein LLP, by Charles E. Raynal, IV and Kristy L. Rice, for Guardian ad Litem.

McGEE, Judge.

Respondent-Mother appeals from an order terminating her parental rights to J.T. and M.T.

The Robeson County Department of Social Services (DSS) filed petitions on 11 October 2007, alleging that J.T. and M.T. were neglected juveniles. DSS stated it had substantiated allegations of neglect due to domestic violence, improper discipline, and substance abuse. DSS further cited concerns that Respondent-Mother

had a personality disorder and was "causing emotional damage to the children." Additionally, a counselor reported to a DSS social worker that J.T. and M.T. "did not want to live with [Respondent-Mother] because she talks to herself and they are afraid she might do something crazy." DSS assumed custody of J.T. and M.T. by non-secure custody order. They were adjudicated neglected juveniles on 19 March 2008.

DSS filed petitions to terminate Respondent-Mother's parental rights to J.T. and M.T. on 14 May 2010. DSS filed a calendar request on 8 October 2010 seeking to have the matter set for hearing on 20 October 2010. On 18 November 2010, *nunc pro tunc* 20 October 2010, the matter was continued due to the guardian *ad litem* being on medical leave. All parties consented to the continuance. The matter was heard on 19 January 2011. The trial court concluded that grounds existed to terminate Respondent-Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111, and that it was in J.T.'s and M.T.'s best interests that Respondent-Mother's parental rights be terminated. Respondent-Mother appeals.

Respondent-Mother's sole argument on appeal is that the trial court erred by failing to promptly conduct the termination hearing. Respondent-Mother claims that, from the time of the filing of the petition until 18 November 2010, no orders granting a continuance appear in the record. Respondent-Mother asserts that the trial

court failed to comply with N.C. Gen. Stat. § 7B-1109, and that she was prejudiced by the delay. We are not persuaded.

Pursuant to N.C. Gen. Stat. § 7B-1109(a), a termination of parental rights hearing must be held within ninety days of the filing of the juvenile petition. N.C. Gen. Stat. § 7B-1109(a) (2009). However, this Court has held that the time limitations in the Juvenile Code are directory, not jurisdictional, "and do not require reversal of orders in the absence of a showing by the appellant of prejudice resulting from the time delay." *In re C.L.C.*, 171 N.C. App. 438, 443, 615 S.E.2d 704, 707 (2005) (citation omitted). "[E]gregious delay alone will not give rise to a claim of prejudice per se. The appellant must still articulate some specific prejudice that he or she has suffered." *In re R.L. & N.M.Y.*, 186 N.C. App. 529, 537, 652 S.E.2d 327, 333 (2007) (citations omitted); *see also In re R.R.*, 180 N.C. App. 628, 636-37, 638 S.E.2d 502, 507 (2006).

In the case before us, the hearing did occur outside of the ninety-day statutory limit. Respondent-Mother claims that she has been denied visitation with J.T. and M.T. since August 2009, and contends that this delay denied J.T. and M.T. permanency. Respondent-Mother does not explain, however, how the outcome of the hearing would have been different absent the delay. The unchallenged findings of fact demonstrate that J.T. and M.T. have been in DSS's care since the filing of the neglect petition in October

2007, and that Respondent-Mother was uncooperative with DSS's efforts at reunification. Moreover, the trial court found that Respondent-Mother suffered from mental illness that she failed to adequately address, and that the "long term prognosis is not good for her being able to take care of [J.T. and M.T.] in a responsible way." Given these facts, we find that Respondent-Mother has failed to demonstrate that she suffered any prejudice as a result of the delay.

Finally, we note that our Supreme Court has specifically held that "[m]andamus is the proper remedy when the trial court fails to hold a hearing or enter an order as required by statute." *In re T.H.T.*, 362 N.C. 446, 454, 665 S.E.2d 54, 59 (2008). Respondent-Mother did not utilize that remedy, instead arguing that the delay is a basis for relief on appeal. However, at this point in time, a new hearing in the proceedings would serve no purpose and would only compound the delay in obtaining permanency for J.T. and M.T. *See id.* at 450-53, 665 S.E.2d at 57-59. Accordingly, we affirm the trial court's order terminating Respondent-Mother's parental rights.

Affirmed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).