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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-782

Filed 2 April 2024

Orange County, Nos. 21 JT 3-4

IN THE MATTER OF: Z.A., M.P.

Appeal by Respondent from orders entered 19 May 2023 by Judge Shelly Holt in Orange County District Court. Heard in the Court of Appeals 21 February 2024.

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

Parker Poe Adams & Bernstein LLP, by Thomas N. Griffin, III, for Guardian ad Litem.

Anné C. Wright, for Respondent-Appellant Mother.

WOOD, Judge.

I. Factual and Procedural History

Mother has two children, Ziggy, born in September 2015, and Max, born in October 2019.¹ In December 2019, child protective services (“CPS”) received a report

¹ Pseudonyms are used to protect the identity of the juveniles pursuant to N.C. R. App. P. 42(b).

due to substance abuse, an injurious environment, and improper supervision. Social worker Emily Allen (“Allen”) of the Orange County Department of Social Services (“DSS”) provided in-home services to Mother. Because Mother complied with the recommendations for services and had some negative drug screens, DSS closed the mandatory case in December 2020. However, Max’s father, who was also a father figure to Ziggy, died of a heroin overdose in November 2020, causing DSS to keep a voluntary case open to help connect Mother with grief and bereavement resources.

In January 2021, Allen arrived at Mother’s apartment for a regularly scheduled visit. A man unknown to Allen, named Chuck, answered the door. From the doorway, Allen could see Mother half-lying, half-sitting on a couch, appearing to be asleep or unconscious. Chuck allowed Allen to enter into the apartment, and they tried to wake up Mother. She was unresponsive, and they could not wake her. In coordination with Allen’s supervisor, DSS implemented a temporary plan whereby Chuck would stay overnight to watch the children and take them to daycare the next day.

On 14 January 2021, DSS filed juvenile petitions alleging Ziggy and Max were neglected juveniles. The petitions alleged that the day following Allen’s visit to Mother’s apartment, another social worker, Gabe Bishton (“Bishton”) initiated a safety assessment by visiting Mother’s apartment. Mother’s sister and godmother were inside Mother’s apartment speaking with Mother about her seeking substance abuse treatment. Mother’s sister directed Bishton to Mother’s bedroom, stating “lines

of Fentanyl” were on the dresser. Bishton observed Mother wiping a white powder from the dresser onto the floor and noticed a digital scale present in the room. Mother told him the white powder was makeup. DSS sought and was granted non-secure custody of the children on 14 January 2021.

Initially, the children were placed in a licensed foster home in Orange County. On 16 January 2021, Mother entered a detox program at Freedom House. On 26 January 2021, Crystal Lake Casaworks and Maternal Program (“Crystal Lake”) in Moore County accepted Mother for residential substance abuse treatment. On 29 January 2021, Allen transported the juveniles to reside with Mother at Crystal Lake. Allen testified Mother did well in the initial two-week period at Crystal Lake, and the trial court noted Mother participated in Substance Abuse Comprehensive Outpatient Treatment (“SACOT”) daily, received individual therapy and case management, and completed “observed, random urine drug screens.”

On 24 March 2021, the trial court entered its adjudication and disposition order. The trial court adjudicated the juveniles neglected within the meaning of N.C. Gen. Stat. § 7B-101(15)(a) and (e), in that the parent “[d]oes not provide proper care, supervision, or discipline” and that the parent “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” The trial court specifically found that the “juveniles are impaired or at substantial risk of impairment due to the impact of [Mother’s] substance use disorder which impairs her ability to provide proper care and supervision in a safe home and creates an

environment injurious to their welfare.” The trial court ordered Mother to “complete all requirements and recommendations of Crystal Lake,” to “follow treatment recommendations from her Eleanor Health provider and take medications as prescribed,” to “complete random drug screens as requested” providing that “any missed or diluted screen shall be considered a positive result,” and to “obtain further information regarding Family Treatment Court and how it can assist in her treatment goals.” The trial court found the “juveniles attend daycare on site at Crystal Lake and they have adjusted well” and ordered that the juveniles remain with Mother at Crystal Lake “as long as she is compliant with her treatment program” there.

On 7 April 2021, Crystal Lake discharged Mother from their program because she had two instances “of some rude and aggressive behaviors towards other residents and staff members.” After the second confrontation, the program became concerned that Mother being a resident “would cause [] harm to other residents, and that was a safety concern.” Mother “expressed her intent to get into another residential treatment program, the Cambridge Place,” and DSS gave approval for the juveniles to reside temporarily in the home of their maternal grandmother and aunt. Cambridge Place did not accept Mother into its program due to concerns arising from her conduct at Crystal Lake. The juveniles were then placed in a second licensed foster home that was willing and able to provide “very long-term and stable placement” for the juveniles, though the foster parents were unwilling to adopt them.

After leaving Crystal Lake, Mother then went to Freedom House, which provides “detox services, outpatient substance use services, mental health services, mental health and substance use assessment, and [has] . . . a women’s house . . . for substance use.” Although Freedom House had a small inpatient component on-site, Mother received outpatient services. In May 2021, Mother “opted into family treatment court and started to participate in family treatment court activities.”

Family treatment court is typically a twelve-month program, which requires two court dates per month “as well as drug screens and participating in the recommended and ordered services. There is also additional graduation and other events that are required.” An individual engaged in family treatment court can graduate if they satisfy all of its components “and work through all the phases, or someone can be unsuccessfully terminated from treatment court after . . . a last-chance contract.”

Ultimately, Mother’s engagement with family treatment court was terminated due, at least in part, to the following events. Mother missed some drug screens and some of the drug screens she did take were positive. In late June 2021, she was arrested for driving while under the influence (“DWI”) and involuntarily committed to the UNC psychiatric unit. After Mother’s discharge from UNC, Allen learned Mother’s relapse was connected to having taken a Valium as a result of “a scheduled dentist appointment.” Mother was not “forthcoming with that information to her dentist or with family treatment court” or with DSS, and she “minimized her relapse

and what occurred.” Accordingly, family treatment court put her on a last-chance contract to enter more intensive treatment at Freedom House, including SACOT treatment.

However, Freedom House was unable to meet Mother’s need for a “higher level of care, even with their facilities on-site, and [that is] when they recommended that she receive services elsewhere.” In August 2021, Mother was arrested for being drunk and disruptive and aggravated assault on a public official. Mother was terminated from the program on her next family treatment court date.

Around this time, DSS sought a “roadmap for reunification” for Mother and the juveniles. DSS made a referral for a parental competency psychological evaluation with Dr. Kristi Matala (“Matala”), who provides “psychological evaluations for various social services across North Carolina.” Matala began the evaluation on 20 September 2021 and finished on 29 September 2021. At the first appointment on 20 September 2021, Mother was “on time[,] . . . well-dressed[,] . . . polite, pleasant, [and] cooperative.” At the meeting on 29 September 2021, Matala had the opportunity to observe Mother with her children. Matala “didn’t have any concerns when [she] saw her with the kids. The interaction went well.” Matala observed that Mother had a “[l]ack of insight” into the extent of her substance use disorder and how it impacted the juveniles. Mother tended to have “her own ideas about what would be best for her substance abuse treatment.” Every request by DSS

was a “battle” in which Mother would say, “I don’t need to do that, and I want to do this instead.”

However, she agreed with DSS that she needed treatment regarding controlling her emotions. Matala administered Mother the Wechsler Adult Intelligence Scale test because DSS had communicated that they had challenges communicating with Mother and had to repeat things to her “over and over,” signaling possible “cognitive limitations.” The test determined that Mother’s full-scale IQ was seventy-four, within the borderline intellectual functioning range.

Mother told Matala she had diagnoses of “anxiety, depression, opioid use disorder, and borderline personality” disorder traits. Matala reviewed records from a treatment provider which affirmed Mother’s reported diagnoses of anxiety disorder and borderline personality disorder and also included dysthymia and substance abuse. The records also revealed Mother’s prescribed medications included Albuterol, Clonidine, Gabapentin, Latuda (mood stabilizer), and Suboxone (an opioid medicated assisted treatment). Mother’s prescriptions also included Adderall, potentially for ADHD, although she denied having problems with concentration. Moreover, Matala had Mother take the Conners Adult ADHD Rating Scale, and “she did not report any symptoms of ADHD on that scale.” Matala was aware that Adderall is an addictive substance and thought it was possible Mother may have abused Adderall, which could contribute to Mother’s “symptoms of mania because it’s a stimulant.”

Matala diagnosed Mother “with alcohol use disorder, sedative, hypnotic, or anxiolytic use disorder,” and severe opioid use disorder. Matala further made diagnoses unrelated to substance abuse: borderline personality disorder, generalized anxiety disorder, and major depressive disorder.

Matala’s first and primary recommendation to Mother was that she “needed intensive substance abuse treatment. She needed to understand what a problem it was, address the problem, and then [address] her mental health treatment, and then work on parenting.” Matala recommended a six-month period of inpatient substance abuse treatment because “even after DSS took her kids away and she had a spotlight shown on her, she was still relapsing.” Matala recommended that Mother not have the juveniles accompany her in an inpatient program “because of her history and how many times she has been unsuccessful with treatment. It’s just too risky to uproot the kids and put them in that situation when it hasn’t worked in the past.” She further recommended that after inpatient treatment, Mother engage in regressively intensive treatment options for “long-term sobriety” such as intensive outpatient treatment, Narcotics Anonymous (“NA”), and Alcoholics Anonymous (“AA”).

Matala also recommended that: (1) a psychiatrist review Mother’s medications; (2) Mother engage in dialectical behavioral therapy to treat borderline personality disorder; (3) Mother complete a parenting education program after successfully completing six months of residential substance abuse treatment; and (4) after Mother demonstrated sobriety, she identify an emotionally stable support person.

Mother could not return to Freedom House because it could not provide the higher level of care she needed. The program recommended that Mother “go to detox, and then to a higher level of care, such as an inpatient facility.” Mother was not receptive to this recommendation, though she ended up attending a detox and residential program pursuant to a criminal court order. Mother refused to attend Assisted Recovery Centers of America (“ARCA”), which would have provided a higher level of care, because it would have required her to go off her prescribed medications of Suboxone and Adderall. Instead of ARCA, Mother obtained services through Eleanor Health, which offers individual therapy, group therapy, medication management, and psychiatric services. Freedom House indicated Mother could return to its program if she attended detox and received a higher level of care. However, Mother continued to refuse to do so because it would require going off her medications.

On 11 October 2021, Mother was again arrested for DWI. Because “there [were] concerns that she was under the influence of opiates when she was arrested, . . . she was ordered to be referred to ADATC [Alcohol and Drug Abuse Treatment Center, a detox facility] and to remain in Orange County jail until she was accepted at ADATC.” However, Mother did not complete ADATC. She attempted to return to Freedom House to participate in SACOT but “was informed that because she didn’t complete ADATC, that she still needed a higher level of care and they were

not able to meet her needs for treatment,” and specifically that she needed six months or longer of inpatient residential treatment.

Mother “continuously asked” DSS to allow her “to go to a residential treatment program in which the children could be placed with her.” DSS refused her request because Mother “had several encounters with law enforcement, had acquired new substance use charges and had not willingly or successfully completed any substance use program, and had been discharged from family treatment court.” DSS believed that “if the children were placed with [Mother], there would be a very high likelihood that she would be discharged from that treatment facility,” and DSS “really wanted to limit the disruptions for the children in placement changes and provide stability for them.”

In November 2021, Mother had a court date for one of her pending DWI charges in Orange County. The judge ordered Mother to “return to jail and another referral be made to ADATC.” This time Mother complied. The Criminal Justice Resource Program made additional referrals for Mother, one of which was to the Myrover-Reese program in Fayetteville. On 2 December 2021, Mother was transported from Orange County jail to Myrover-Reese. On 11 March 2022, Mother used a day pass from Myrover-Reese to apply for employment. When she did not return by curfew time, staff attempted to contact her and searched for her. Myrover-Reese subsequently terminated Mother from the program for violating rules such as “violating HIPAA with other residents” of the program. Moreover, Mother failed to

meet certain “expectations within the house” with regard to her cleaning duties and where she was allowed to sleep. The same day, Mother simultaneously decided to leave the program voluntarily.

From Myrover-Reese, Mother “very quickly got into an Oxford House” in the Fayetteville area from which she obtained substance abuse intensive outpatient (“SAIOP”) treatment and dialectical behavioral therapy. Mother obtained a certificate of completion from Oxford House, and she completed SAIOP treatment in May 2022. On 15 June 2022, Mother completed a hair follicle and urine drug screen. The hair follicle drug screen was positive for cocaine, though Mother disputed the results. She subsequently had some negative drug screens. On 29 June 2022, Mother was charged with another DWI, driving with a revoked license, open container, reckless driving, and resisting a public officer. On 5 July 2022, Mother was charged with driving without a license after an impaired revocation notice.

While at Oxford House, Mother began working at a restaurant and received individual therapy, psychiatric services, dialectical behavioral therapy, and substance use treatment services by medication management through Eleanor Health. Additionally, she participated in NA and AA meetings. In September 2022, Mother failed to take a random drug screen requested by DSS.

On 8 December 2022, Chapel Hill Police Sergeant Kelly Berger (“Berger”) responded to a call regarding a woman passed out in an alleyway behind a bar. Upon arrival, she discovered Mother, whom she recognized from a previous encounter

approximately four months earlier. Berger observed that Mother was agitated and very upset. Other responding officers were trying to talk to her and to reason with her in an attempt to calm her down. Berger believed Mother was slurring her words and under the influence of a stimulant, based upon her irate and bizarre actions during the encounter. Mother appeared to be hallucinating and unable to cope with reality. Mother was “trying to hide behind her friend” who was also present at the scene. Officers placed Mother in handcuffs and transported her to the Chapel Hill police department. From there, they transported her to the magistrate’s office, but on the way, she began to have “labored breathing issues.” The officers pulled over and called an ambulance to the scene. Instead of going straight to the magistrate’s office, officers took her to UNC Hospital in Hillsborough. After treatment, officers were able to transport her to the magistrate in Hillsborough for processing. Mother was charged with simple assault, resisting a public officer, assault on a government official, and being intoxicated and disruptive. No drug testing was conducted on Mother pursuant to this arrest.

On 12 September 2022, DSS filed motions seeking the termination of Mother’s parental rights as to both juveniles on the grounds of neglect, failure to make reasonable progress under the circumstances, and dependency. The termination of parental rights hearing was held on 6 March 2023 during which DSS presented the testimony as stated *supra*.

Allen testified regarding Mother's visits with the juveniles while they were in foster care throughout the course of the case. Mother was "present and on time" and brought food, snacks, toys and games. Generally, the visits "went well" and Mother acted appropriately.

The juveniles were in one foster home from April 2021 to December 2022, but the placement providers requested a change in placement to another foster home. Accordingly, the juveniles had a placement change which, according to Allen, was disruptive for the juveniles because it was around Christmas. Allen testified that she and Mother agreed that the juveniles were well-bonded siblings and should remain together in placement. The trial court also had found that it was in their best interests to be placed together. Regarding potential placements within the juveniles' family, their paternal relatives would only commit to keeping one juvenile. The juveniles' maternal grandmother was not a placement option due to ongoing health concerns causing her to need a caregiver for herself. DSS conducted a background check on the maternal aunt, which showed she had "extensive substance-related charges." A background check on the maternal uncle showed he had "a history of criminal charges related to substance abuse."

Allen also testified that the results of Mother's drug screens varied. At times, there were positive results, while other times, there were negative results. The substances appearing on the positive drug screens varied, but they included benzodiazepine, amphetamines, a raw result later determined to be an Adderall

prescription, and cocaine. She further testified Mother often minimized her drug and alcohol usage, believing it was “not as big of an issue as [DSS was] making it out to be.”

The trial court entered orders terminating Mother’s parental rights to both juveniles on 19 May 2023. The trial court concluded grounds existed to terminate Mother’s parental rights for neglect, willfully leaving the juveniles in placement outside the home for twelve months without making reasonable progress under the circumstances in correcting the conditions leading to the juveniles’ removal, and dependency pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6). The trial court further found that visitation with Mother is contrary to the juveniles’ health and safety and terminated Mother’s visitation. The trial court ordered that the juveniles remain together in the licensed foster home.

On 1 June 2023, Mother filed written notice of appeal pursuant to N.C. Gen. Stat. § 7B-1001(a)(7).

II. Analysis

A. Jurisdiction

N.C. R. App. P. 3.1 requires that appeals in cases governed by Subchapter I of the Juvenile Code be filed according to the “time and manner set out in N.C.G.S. § 7B-1001(b) and (c) and by serving copies of the notice of appeal on all other parties.” N.C. R. App. P. 3.1(b). N.C. Gen. Stat. § 7B-1001(c), in turn, requires that “[n]otice of appeal shall be signed by both the appealing party and counsel for the appealing

party, if any.” N.C. Gen. Stat. § 7B-1001(c). Here, Mother’s trial counsel did not sign her appeal; however, Mother filed a petition for writ of *certiorari*.

N.C. R. App. P. 21 provides that a writ of *certiorari* may be issued “in appropriate circumstances.” N.C. R. App. P. 21(a)(1). “This Court has held that an appropriate circumstance to issue writ of certiorari occurs when an appeal has been lost because of a failure of his or her trial counsel to give proper notice of appeal.” *In re J.C.B.*, 233 N.C. App. 641, 645, 757 S.E.2d 487, 490 (2014) (quotation marks omitted).

On 3 July 2023, Mother’s trial counsel submitted an affidavit stating she did not prepare Mother’s notice of appeal but “filed and served it as a courtesy.” Mother’s trial counsel stated she “did not sign the Notice of Appeal because [she did] not represent . . . Mother regarding her appeal.”

Mother indicated her intent to appeal the trial court’s order terminating her parental rights by timely filing her notice of appeal with her own signature. The failure to comply with the Rules of Appellate Procedure does not appear to be through any fault of her own. In our discretion, we grant Mother’s petition for writ of *certiorari* and deny DSS’s motion to dismiss the appeal.

B. Failure to Make Reasonable Progress Under the Circumstances

Mother argues she made reasonable progress under the circumstances because she engaged in many substance abuse treatment services throughout the life of the case. We disagree.

“The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent[,] and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 58–59 (2008). “An appellate court then considers whether the trial court abused its discretion in determining that termination of parental rights was in the best interests of the child.” *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016).

A trial court may terminate parental rights upon a finding that the “parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(2).

Our Supreme Court has explained that pursuant to N.C. Gen. Stat. § 7B-1111(a)(2):

[A] finding that a parent acted “willfully” for purposes of N.C.G.S. § 7B-1111(a)(2) does not require a showing of fault by the parent. A respondent’s prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness regardless of her good intentions, and will support a finding of lack of progress sufficient to warrant termination of parental rights under section 7B-1111(a)(2).

In re J.S., 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (cleaned up). We consider a parent’s reasonable progress “for the duration leading up to the hearing on the motion

or petition to terminate parental rights.” *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006).

This case began with Allen finding Mother apparently passed out and completely unresponsive while the juveniles were in the home with her. The next day, a different social worker visited Mother’s home where he was informed by Mother’s sister and godmother, who were apparently there to stage an intervention for Mother by encouraging her to seek treatment, that there were lines of fentanyl on the dresser in Mother’s bedroom.

Mother initially sought treatment at Crystal Lake, where she initially did well. However, Crystal Lake discharged her for rude and aggressive behavior. Mother then engaged in a family treatment court program and received outpatient services from Freedom House. However, Mother was arrested for DWI in June 2021, had an involuntary commitment in the UNC psychiatric unit, and relapsed. In August 2021, Mother was arrested for being drunk and disruptive and aggravated assault on a public official. She was then terminated from the family treatment court program.

DSS then sought a roadmap for reunification for Mother and referred her to Matala, whose primary recommendation to Mother was that she undergo a six-month period of inpatient substance abuse treatment unaccompanied by her children. Mother never completed a six-month inpatient program. She continuously refused throughout the life of the case to complete such a program, citing her concern that she may have to go off her medicated assisted treatments, Suboxone and Adderall.

Mother then obtained substance abuse treatment services from Myrover-Reese but was discharged from that program for rules violations. Mother completed SAIOP treatment while obtaining services from Oxford House. However, she then had a positive drug screen result for cocaine. She also failed to take a subsequent random drug screen requested by DSS in September 2022.

Mother had further legal troubles largely related to substance abuse from October 2021 to December 2022, shortly before the termination of parental rights hearing at the beginning of March 2023. In October 2021, Mother was arrested for DWI. In June 2022, Mother was charged with DWI, driving with a revoked license, open container, reckless driving, and resisting a public officer. In July 2022, Mother was charged with driving without a license after an impaired revocation notice. In December 2022, Mother had an incident of intoxication so severe that officers responded to the scene where she acted belligerently. Instead of being taken directly from the police department to the magistrate's office, officers had to transport her to the hospital because of labored breathing. She was ultimately charged with simple assault, resisting a public officer, assault on a government official, and intoxicated and disruptive conduct.

Merely participating in numerous substance abuse treatment programs and showing varying levels of commitment to addressing substance abuse does not demonstrate Mother made reasonable progress under the circumstances. It is true Mother entered various treatment programs, but she was also terminated from

participation in Crystal Lake, family treatment court, and Myrover-Reese. Mother was arrested after she was found by police passed out behind a bar and was taken to a hospital for labored breathing just a few months before the termination of parental rights hearing. Therefore, the facts support Allen's observation of Mother's pattern of behavior by which she would have a stable period of "three or four months" and then would regress to unstable behavior, substance abuse, and running into legal trouble related to substance abuse. This pattern of behavior is extensively supported by the evidence and prevented Mother from making reasonable progress in correcting the conditions which led to the removal of the juveniles from Mother's care. Mother consistently minimized her substance abuse issues by failing to complete a six-month inpatient program, refusing to participate in treatment which would require her to go off her medications, staying on her Adderall prescription despite the test administered by Matala indicating Mother did not exhibit ADHD symptoms and despite Mother's denial that she had issues with concentration, and insisting that she had a better idea of what course of treatment would be best for her despite recommendations from treatment providers and DSS. The trial court did not err in finding that Mother's failure to address her substance abuse prohibited and would continue to prohibit her from exercising "proper care and supervision of the juveniles . . . which requires constant supervision of a sober caregiver." In summary, despite beginning substance abuse treatment several times, Mother failed to complete

treatment and to achieve and maintain sobriety, the key measure by which she could have reunified with her children.

III. Conclusion

Clear and convincing evidence supports the trial court's finding that Mother "has not adequately addressed her substance use and mental health needs" which posed a potential threat to the children and led to their removal. N.C. Gen. Stat. § 7B-1111(b). In turn, the trial court's findings support its conclusion of law that Mother failed to make reasonable progress under the circumstances in correcting the conditions leading to the removal of the juveniles. Accordingly, we affirm the trial court's conclusion that grounds existed to terminate Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Because we affirm the trial court's conclusion that grounds existed to terminate Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), we need not address Mother's arguments regarding the other grounds the trial court concluded existed. A trial court "may terminate the parental rights upon a finding of one or more" grounds. N.C. Gen. Stat. § 7B-1111(a). We also note that on appeal, Mother does not contest the trial court's conclusion that termination of her parental rights was in the juvenile's best interests. Therefore, we do not address the issue. We affirm the trial court's orders terminating Mother's parental rights.

AFFIRMED.

Judge TYSON concurs.

IN RE: Z.A., M.P.

Opinion of the Court

Judge MURPHY concurs in the result only.

Report per Rule 30(e).