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NO. COA05-1375

NORTH CAROLINA COURT OF APPEALS

Filed: 1 August 2006

IN THE MATTER OF:

DNUB & DTB

Guilford County
No. 03 J 08-09

Appeal by respondent from an order entered 27 January 2005 by Judge Teresa H. Vincent in Guilford County District Court. Heard in the Court of Appeals 10 May 2006.

Office of the Guilford County Attorney, by Assistant County Attorneys James A. Dickens and Sharron Kurtz, for petitioner-appellee.

David Perez for Guardian ad Litem.

Carol Ann Bauer for respondent-appellant.

HUNTER, Judge.

Respondent-mother appeals from an order terminating her parental rights to Dana and Dawn,¹ entered 27 January 2005. For the reasons stated herein, we affirm the trial court's order.

Respondent-mother is the parent of Dana and Dawn. On 15 December 2003, Guilford County Department of Social Services ("DSS") filed a petition to terminate respondent-mother's parental rights. A hearing was held on 26 July 2004, 29 July 2004, and 2 August 2004. After hearing the evidence presented, the trial court

¹ Names changed to protect the identity of the juveniles pursuant to N.C.R. App. P. 26(g)(4).

found that grounds existed for termination, as the children had been willfully left in placement outside the home by respondent-mother for more than twelve months without reasonable progress to correct the conditions leading to the removal of the children, and that respondent-mother had failed to pay a reasonable portion of care in the preceding six months, although able to do so. The trial court found that it was in the best interest of the children to terminate the parental rights of respondent-mother.

A consent order to late filing was entered on 27 January 2005, *nunc pro tunc* 1 September 2004. The written order terminating respondent-mother's parental rights was entered 27 January 2005. Respondent-mother appeals from this order.

I.

Respondent-mother first contends that the trial court erred by the entry of the written order more than thirty days following the hearing terminating her parental rights. We disagree.

N.C. Gen. Stat. § 7B-1110(a) (2003)² directs that:

(a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated. Any order shall be reduced to

² The North Carolina General Assembly has amended N.C. Gen. Stat. § 7B-1110 effective for petitions filed on or after 1 October 2005. As the petition to terminate respondent-mother's parental rights was filed 15 December 2003, we determine respondent-mother's claim under the version of N.C. Gen. Stat. § 7B-1110 in existence at that time.

writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing.

Id. Relying on *In re L.E.B., K.T.B.*, 169 N.C. App. 375, 610 S.E.2d 424, *disc. review denied*, 359 N.C. 632, 616 S.E.2d 538 (2005), respondent-mother contends that the trial court's delay in entering the written order nearly six months after the hearing was prejudicial. In *L.E.B.*, this Court found a delay of more than six months in entering a written order prejudicial as it adversely affected the family relationship between the respondent and the minors, as well as the foster parent and the minors, and delayed both subsequent procedural requirements and the finality of the matter. *Id.* at 379, 610 S.E.2d at 426-27. *L.E.B.* discussed the impact on adoption in its analysis of the demonstrated prejudice in that case, stating that if adoption became "the ordered permanent plan for the minors, the foster parent must wait even longer to commence the adoption proceedings. The minors are prevented from settling into a permanent family environment until the order is entered and the time for any appeals has expired." *Id.* The Court also noted the advanced age of the children which might decrease chances for adoption as a factor in determining prejudice in *L.E.B.* *Id.* at 379, 610 S.E.2d at 427.

However, as recognized by *L.E.B.*, "absent a showing of prejudice, the trial court's failure to reduce to writing, sign, and enter a termination order beyond the thirty day time window may be harmless error." *Id.* at 378-79, 610 S.E.2d at 426. "In order for respondent to obtain a new trial based on the trial court's

failure to file the order terminating his parental rights in a timely fashion, he must show prejudice." *In re S.B.M.*, ___ N.C. App. ___, ___, 619 S.E.2d 583, 585 (2005) (finding respondent failed to show prejudice in delay of five months). Although "[t]his Court has been more likely to find prejudice as the length of the delay increases, . . . this Court has consistently declined to adopt a *per se* standard even when long delays are involved." *Id.*

Here, respondent-mother contends that she was prejudiced by the trial court's failure to enter a written order within thirty days only as it delayed her filing a notice of appeal to begin the appellate process. Unlike in *L.E.B.*, however, respondent-mother argues no specific prejudice, such as the impact of the delay on a potential adoption for the children. As this Court has repeatedly rejected the adoption of a rule of prejudice *per se* even when there is a long delay in the entry of an order, respondent-mother fails to demonstrate prejudice sufficient to obtain a new trial. See *In re S.W.*, ___ N.C. App. ___, ___, 625 S.E.2d 594, 596 (2006) (holding respondent failed to demonstrate prejudice in late entry of order when respondent alleged that her appellate rights were compromised by the failure to timely file the written termination order, but failed to demonstrate which rights were compromised or in what way).

We further note that a Consent Order Extending Time To Enter Order was entered 1 September 2004 with the agreement of all parties, including respondent-mother, in order to permit sufficient

time for preparation and review of the order prior to submission to the trial court. Respondent-mother may not now argue that she was prejudiced by late entry of the written order made with her consent.

As respondent-mother fails to show prejudice and consented to the late entry of the order, this assignment of error is overruled.

II.

In a related assignment of error, respondent-mother contends that her counsel provided ineffective assistance in consenting to the late entry of the written order. We disagree.

"A parent has a right to counsel in termination of parental rights proceedings." *In re J.A.A.*, ___ N.C. App. ___, ___, 623 S.E.2d 45, 50 (2005). "To prevail in a claim for ineffective assistance of counsel, respondent must show: (1) her counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) her attorney's performance was so deficient she was denied a fair hearing." *Id.*

As discussed *supra*, respondent-mother has failed to show prejudice from the late entry of the order. As prejudice from the late entry of the order has not been established, respondent had failed to demonstrate that her attorney's consent to an untimely entry was so deficient a performance as to deny her a fair hearing. This assignment of error is overruled.

As respondent-mother failed to demonstrate prejudice from the trial court's late entry of the written order of termination and

failed to demonstrate that counsel provided ineffective assistance, we affirm the trial court's order of termination.

Affirmed.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).