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NO. COA10-468

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2010

IN THE MATTER OF:

S.N.W. and A.Z.W.

Haywood County  
Nos. 07 JT 10-11

Appeal by respondent-mother from orders entered 15 October 2009 and 23 November 2009 by Judge Richard K. Walker in Haywood County District Court. Heard in the Court of Appeals 7 September 2010.

*Ira L. Dove for petitioner-appellee Haywood County Department of Social Services.*

*Leslie C. Rawls for respondent-appellant mother.*

BRYANT, Judge.

Where this Court conducts an independent review of the record on appeal, as requested by counsel for respondent-mother in her No-Merit Brief, and concludes the appeal presents no issues of merit upon which to base an argument for relief, we hold the appeal is frivolous and affirm the trial court order terminating respondent-mother's parental rights.

Haywood County Department of Social Services ("DSS") filed juvenile petitions on 23 January 2007 alleging neglect and

dependency of respondent's minor children, Sarah and Adam.<sup>1</sup> By order filed 12 March 2007, the minor children were adjudicated neglected and dependent.<sup>2</sup> Permanency planning review hearings were held in January and October 2008. At the 29 October 2008 permanency planning hearing, the trial court changed the permanent plan from reunification to adoption.

On 3 February 2009, DSS filed juvenile petitions to terminate respondent-mother's parental rights, alleging: (1) neglect, N.C. Gen. Stat. § 7B-1111(a)(1); (2) failure to make reasonable progress, N.C. Gen. Stat. § 7B-1111(a)(2); (3) failure to pay cost of care, N.C. Gen. Stat. § 7B-1111(a)(3); and (4) incapability to provide proper care and supervision, N.C. Gen. Stat. § 7B-1111(a)(6). The petitions came on for hearing 22 and 23 September 2009. The trial court heard testimony from several DSS social workers, two foster care supervisors, and respondent-mother. In its adjudication order filed on 15 October 2009, the trial court made sixty-eight findings of fact based upon clear, cogent and convincing evidence and concluded as a matter of law that grounds existed to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), (a)(3), and (a)(6). The hearings on disposition were held on 9 and 10 November 2009. By order filed 23 November 2009, the trial court determined that

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<sup>1</sup> Sarah and Adam are pseudonyms that will be used throughout the remainder of this opinion for ease of reading and to protect the identity of the children.

<sup>2</sup> Respondent-mother's two older children were also adjudicated neglected and dependent. Sadly, the two older children and their maternal grandmother died in a house fire in May 2008.

termination of respondent-mother's parental rights was in the best interests of Sarah and Adam. Respondent-mother filed notice of appeal from the 23 November 2009 disposition order, and on 17 February 2010 this Court allowed respondent-mother's petition for writ of certiorari to review the 15 October 2009 adjudication order.

Pursuant to our Rules of Appellate Procedure, Rule 3.1(d), counsel for respondent-mother submitted a "No Merit Brief" stating that after making a "conscientious and thorough review of the Record on Appeal and all material in the underlying case files[,] " counsel for respondent-mother "concluded that this appeal presents no issue of merit on which to base an argument for relief and that the appeal [would be] frivolous."<sup>3</sup> Respondent-mother did not file separate written arguments.

#### *Standard of Review*

In the adjudicatory stage, "the court's decision must be supported by clear, cogent and convincing evidence with the burden of proof on the petitioner." *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001) (citation omitted). "The trial court's findings of fact will be overturned only if respondent can show a lack of clear, cogent and convincing competent evidence to support the findings." *Id.* at 612, 543 S.E.2d at 909 (citation omitted). "After the trial court has determined grounds exist for

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<sup>3</sup> In compliance with Rule 3.1, counsel notified respondent-mother of her intent to file a No-Merit brief, and provided respondent-mother with copies of the brief, transcripts from the hearings held 22 and 23 September and 9 and 10 November, the record on appeal, and exhibits filed in the Court of Appeals.

termination of parental rights at adjudication, the court is required to issue an order of termination in the dispositional stage, unless it finds the best interests of the child would be to preserve the parent's rights." *Id.* at 613, 543 S.E.2d at 910 (citation omitted). Such a finding is in the discretion of the trial court. *Id.* at 614, 543 S.E.2d at 911.

#### *Issues*

On appeal, respondent-mother, through her counsel, submitted a brief "to identify any possible issues and to direct the court's attention to relevant law in order to show why the issues lack merit or would not alter the result." The following possible issues were identified: whether the trial court erred (1) when it held that respondent-mother failed to make reasonable progress; (2) by failing to find in the adjudication order that there was a reasonable probability that the neglect would be repeated; (3) by finding that respondent-mother failed to pay a reasonable portion of the cost of care; (4) by finding the children dependent; and (5) whether the trial court abused its discretion by finding that the children's best interests were served by terminating respondent-mother's parental rights.

After reviewing the record on appeal, we hold the trial court's conclusion that sufficient grounds existed to terminate respondent-mother's parental rights was supported by clear, cogent and convincing evidence. Specifically, a court may terminate parental rights upon a finding that "[t]he 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) (2009). Here, there was clear, cogent and convincing evidence presented that Sarah and Adam were initially removed from respondent-mother's home on 21 February 2007 for reasons including and related to respondent-mother's substance abuse, and despite respondent-mother's interim participation in substance abuse treatment programs, respondent-mother tested positive for cocaine, methamphetamines, and marijuana as many as seven times in 2008 and 2009. Therefore, the trial court's conclusion that it was in the best interest of Sarah and Anthony that respondent-mother's parental rights to them be terminated was not an abuse of the trial court's discretion. See N.C. Gen. Stat. § 7B-1110(a).

Accordingly, we hold there was no prejudicial error in the trial court's finding that grounds exist for termination and the trial court's order terminating respondent-mother's parental rights as to Sarah and Adam. Further, we have reviewed the entire record for other issues of merit that might provide relief for respondent-mother and find none. Therefore, we hold this appeal is frivolous and affirm the trial court.

Affirmed.

Judges MCGEE and GEER concur.

Report per Rule 30(e).