NO. COA10-907

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

IN THE MATTER OF:

D.L.M. Pasquotank County
No. 08 JT 86

Appeal by respondent-father from order entered 22 April 2010 by Judge C. Christopher Bean in Pasquotank County District Court. Heard in the Court of Appeals 15 November 2010.

No brief filed for petitioner-appellee Pasquotank County Department of Social Services.

McDaniel & Anderson, L.L.P., by John M. Kirby, for guardian ad litem.

Peter Wood for respondent-appellant father.

BRYANT, Judge.

Respondent-father appeals from the trial court's order terminating his parental rights to juvenile D.L.M.[1] For the reasons discussed below, we dismiss.

Facts

On 14 October 2008, the Pasquotank County Department of Social Services ("DSS") received a report alleging that respondent-mother and her newborn child, D.L.M., had tested positive for marijuana.

[1] Initials have been used throughout to protect the identity of the juvenile.

Respondent-mother admitted to using marijuana. DSS had a history with respondent-mother and her two older children, one of whom also tested positive for marijuana and cocaine. On 15 October 2008, DSS filed a petition alleging that D.L.M. was a neglected and dependent juvenile. At that time, respondent-father had not been identified as D.L.M.'s father, and the petition identified another man as D.L.M.'s putative father. The district court entered an order placing D.L.M. in nonsecure custody.

Respondent-father was convicted of robbery and incarcerated in February of 2009. Prior to identifying respondent-father, respondent-mother named two putative fathers who were ruled out through paternity testing. In a review order entered 12 March 2009, the district court ordered respondent-father to submit to paternity testing. On 6 July 2009, paternity testing established that respondent-father was D.L.M.'s biological father.

In a review order entered 18 September 2009, the district court changed D.L.M.'s permanent plan to adoption, ceased reunification efforts with respondent-parents, and ordered DSS to proceed with termination of parental rights. On 3 December 2009, DSS filed a petition to terminate respondents' parental rights. The petition alleged grounds to terminate respondent-father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7)(2009), based on allegations of neglect and willful abandonment.

The case came on for a termination hearing on 25 February 2010. Respondents each testified at the adjudication phase, and social worker Kristen Harris and guardian ad litem Vivian Hunter,

as well as respondent-father, testified at the disposition phase. Respondent-mother testified that she sent respondent-father a letter in December of 2008 or January of 2009 informing him of the possibility that he was D.L.M.'s father. Respondent-father testified that he had been incarcerated since 4 February 2009. Respondent-father had not written, called, or otherwise contacted DSS to ask about D.L.M. since his incarceration, and had never provided any gifts or other monetary support for D.L.M. Respondent-father had not worked since 2007, but earned a stipend while working in prison. Respondent-father also testified that he had evaded law enforcement between 2003 and 2008, and faced other charges after he was released from prison. Respondent-father planned to live with his mother after he was released, and wrote to her while he was in prison.

On 22 April 2010, the trial court entered an order terminating respondents' parental rights. The trial court made numerous findings of fact, and concluded that grounds existed to terminate respondent-father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7). The trial court also concluded that it was in D.M.'s best interests to terminate respondents' parental rights. Respondent-mother is not a party to this appeal.

On 24 May 2010, respondent-father's trial counsel signed and filed a written notice of appeal from the trial court's order "served on undersigned counsel on the 25th day of May, 2010." Respondent-father's signature does not appear on the notice of appeal, but the document indicates that respondent-father requested

that trial counsel enter notice of appeal. In an attached handwritten letter, which is not signed, notarized, or dated, respondent-father requests that trial counsel enter notice of appeal. A photocopy of an envelope, also attached to the notice, indicates that the envelope was mailed from Caledonia Correctional Institution on 4 March 2010. Trial counsel filed an amended notice of appeal on 24 May 2010. In the amended notice, trial counsel gives notice of appeal from the trial court's order "served on undersigned counsel on 25th day of April, 2010." Respondent-father's purported letter is not attached to the amended notice of appeal.

At the outset, we note that respondent-father's counsel has filed a no-merit brief pursuant to N.C.R. App. P. 3.1(d), in which he contends that he has examined the record for possible issues of merit and determined that the appeal is frivolous. Respondent-father has not filed a brief with this Court. In response, the guardian ad litem argues the appeal should be dismissed because respondent-father did not sign the notice of appeal. We agree that the appeal must be dismissed.

Analysis

Notice of appeal from matters heard pursuant to the juvenile code must be made in writing and within thirty days after the entry and service of the order. N.C. Gen. Stat. § 7B-1001(b) (2009). "If the appellant is represented by counsel, both the trial counsel and appellant must sign the notice of appeal[.]" N.C.R. App. P.

3.1(a). "The signature requirement of [Rule 3.1] provides record evidence that the appellant desired to pursue the appeal, understood the nature of the appeal, and cooperated with counsel in filing the notice of appeal." *In re I.T.P-L.*, 194 N.C. App. 453, 459, 670 S.E.2d 282, 285 (2008) (citation omitted), *disc. review denied*, 363 N.C. 581, 681 S.E.2d 783 (2009). This Court has held that Rule 3.1 is "jurisdictional and if the requirements of this rule are not complied with, the appeal must be dismissed." *In re L.B.*, 187 N.C. App. 326, 331, 653 S.E.2d 240, 244 (2007) (internal quotation marks and citation omitted), *disc. review denied*, 362 N.C. 358, 661 S.E.2d 248, *affirmed per curiam*, 362 N.C. 507, 666 S.E.2d 751 (2008).

Here, respondent-father failed to comply with N.C.R. App. P. 3.1 by failing to sign the notice of appeal. Respondent-father's trial counsel apparently recognized this deficiency and attempted to correct it by substituting a letter for the signature required by the Appellate Rules. However, the letter, unlike a signed and filed notice of appeal, is not file-stamped, dated, or otherwise verifiable. Allowing trial counsel to subvert the signature requirement through substitution would undermine the purpose of Rule 3.1. Accordingly, we hold that respondent-father's notice of appeal does not comport with the Appellate Rules, and we must dismiss the appeal because we are without jurisdiction in the absence of a valid notice of appeal.

Dismissed.

Chief Judge MARTIN and Judge MCGEE concur.

Report per Rule 30(e).