NO. COA14-410
NORTH CAROLINA COURT OF APPEALS

Filed: 4 November 2014

IN THE MATTER OF:

K.C., a minor child — Pitt County
No. 12 JT 90

Appeal by Respondent-Mother from orders entered 10 January 2014 by Judge G. Galen Braddy in District Court, Pitt County. Heard in the Court of Appeals 6 October 2014.

The Graham.Nuckolls.Conner Law Firm, P.L.L.C., by Jon G. Nuckolls, for Petitioner-Appellee Pitt County Department of Social Services.

Troutman Sanders LLP, by Jennifer M. Hall, for Guardian ad Litem.

W. Michael Spivey for Respondent-Appellant Mother.

McGEE, Chief Judge.

Respondent-Mother ("Mother") appeals from orders terminating her parental rights to her son, K.C.[1] Mother also petitions this Court to issue a writ of certiorari to review the

[1] We refer to the minor child as "K.C." throughout the opinion in order to protect his identity.

trial court's 9 November 2012 order ceasing her reunification efforts with K.C. We affirm the order of the trial court.

The Pitt County Department of Social Services ("DSS") has been involved with Mother and her children since March 2001. Less than one week after K.C.'s birth in April 2012, DSS filed a juvenile petition alleging that K.C. was neglected and dependent, and removed K.C. from Mother's care and custody. DSS alleged the following: that Mother was homeless and her whereabouts were unknown; that K.C.'s father was unknown; that Mother had been diagnosed with mental health issues "that continue to need to be addressed," including "affective disorder, mild mental retardation (MMR), and oppositional defiant disorder (ODD)," and had an IQ of 65; and that K.C.'s five older siblings had been removed from Mother's care and custody "due to neglect and dependency issues that related to her mental health and behavioral functioning."

After a hearing on 6 June 2012, based on Mother's stipulation that the allegations set out in the petition were true, the trial court adjudicated K.C. a dependent juvenile. The trial court then placed K.C. in the legal custody of DSS and ordered Mother to have supervised visitation with K.C. for two hours each week. The trial court also ordered Mother to submit to a psychological evaluation as soon as possible and to follow

any treatment recommendations arising therefrom.

The trial court held a three-month review hearing on 18 October 2012. By order filed 9 November 2012, the trial court made the following findings: that Mother was transported by law enforcement to her scheduled psychological evaluation because she was threatening to harm the DSS social worker who scheduled the appointment; that Mother "did not fully cooperate with the appointment," but the evaluation confirmed that Mother was mildly intellectually disabled; that DSS should pursue guardianship of Mother; and that, out of nineteen scheduled weekly visits, Mother missed thirteen visits with K.C. The trial court then ordered, pursuant to N.C. Gen. Stat. § 7B-507(b)(1), that reasonable efforts to eliminate the need for placement of K.C. should cease as to Mother.

The trial court held a permanency planning hearing on 13 December 2012, and ordered that the permanent plan for K.C.'s care be adoption and that the concurrent plan for his care be guardianship with a relative. DSS then filed a petition to terminate Mother's parental rights on 28 January 2013. DSS alleged that Mother's parental rights to K.C. were subject to termination on the grounds that K.C. was a neglected and dependent juvenile pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(6).

After hearing the matter in September 2013, the trial court entered orders terminating Mother's parental rights as to K.C. on 21 November 2013. The trial court then entered an order — and later entered an amended order — setting aside the termination orders due to concerns that Mother had not received proper notice of the September 2013 hearing, and conducted a second termination hearing. By orders filed 10 January 2014, the trial court concluded that K.C. was both neglected and dependent, and determined that termination of Mother's parental rights was in K.C.'s best interests.

Mother filed a notice of appeal from the 10 January 2014 orders terminating her parental rights to K.C. on 17 January 2014. However, DSS moved to dismiss Mother's purported appeal on the grounds that Mother failed to serve her notice on the parties or to provide proof of service as required by both the North Carolina Rules of Civil and Appellate Procedure, and further failed to include in her notice of appeal the content required by Rule 3(d) of the North Carolina Rules of Appellate Procedure. Although the trial court found that Mother's notice of appeal did not conform to North Carolina's Rules of Appellate or Civil Procedure, as alleged in DSS's motion to dismiss, the trial court, in an order entered 14 March 2014, denied DSS's motion to dismiss because it also found that DSS failed to

properly serve Mother with the termination orders. Thus, the trial court concluded that Mother's time for taking her appeal "should be tolled until [DSS] properly serves the parties with the Orders on Termination," and decreed that Mother had thirty days "after proper service" of the termination orders to "file a new Notice of Appeal or in the alternative properly serve the original Notice of Appeal." In accordance with the trial court's order, Mother then filed a new notice of appeal and re-filed her original notice of appeal and served both on the parties. Both notices of appeal designated that the orders from which Mother sought to appeal were the 10 January 2014 adjudication and disposition orders terminating her parental rights as to K.C.

We first note that Mother's issue on appeal concerns only the trial court's 9 November 2012 three-month review order ceasing her reunification efforts with K.C. — an order from which Mother did not appeal. It has long been recognized that "the appellate court obtains jurisdiction only over the rulings specifically designated in the notice of appeal as the ones from which the appeal is being taken," *Craven Reg'l Med. Auth. v. N.C. Dep't of Health & Human Servs.*, 176 N.C. App. 46, 59, 625 S.E.2d 837, 845 (2006) (internal quotation marks omitted), and "[w]ithout proper notice of appeal, this Court acquires no

jurisdiction." *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990) (internal quotation marks omitted). Because the record does not reflect that Mother appealed from the 9 November 2012 order, we cannot consider the merits of Mother's argument on appeal with respect to this order. Nonetheless, since this Court may issue a writ of certiorari "when the right to prosecute an appeal has been lost by failure to take timely action," N.C.R. App. P 21(a)(1), we grant Mother's petition for certiorari to review this order. Additionally, because we have granted Mother's petition for certiorari, we decline to address the merits of the Guardian ad Litem's ("GAL") assertions that Mother's appeal should be dismissed because the trial court erred by concluding that the termination orders were not served on Mother, and because Mother did not give notice of her intent to appeal from the 9 November 2012 order in accordance with the then-applicable statutory requirements of N.C. Gen. Stat. § 7B-507 and § 7B-1001.

Mother's sole argument on appeal is that the trial court erred by ceasing her reunification efforts with K.C. in its 9 November 2012 order. Mother asserts that the trial court did not hold a "meaningful hearing on the issue of ceasing reunification efforts," because the evidence "consisted solely" of counsel's arguments. We disagree.

At the time of this action, N.C. Gen. Stat. § 7B-906[2] provided, in relevant part, that, at every review hearing of a case in which custody of a minor child is removed from a parent, the court "may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C. Gen. Stat. § 7B-906(a), (c) (2011). To that end, this Court has repeatedly recognized that "[t]he written reports of social workers and psychiatrists, and other written material in the court's file are competent evidence in a dispositional or review hearing in juvenile cases," *In re Shue*, 63 N.C. App. 76, 79, 303 S.E.2d 636, 638 (1983), *aff'd as modified by* 311 N.C. 586, 319 S.E.2d 567 (1984), and that "trial courts may properly consider all written reports and materials submitted in connection with [juvenile] proceedings." *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003) (internal quotation marks omitted). However, "[d]espite this authority, the trial court may not delegate its fact finding duty," *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004), and "should not broadly incorporate these written reports from outside sources as its

[2] The version of N.C. Gen. Stat. § 7B-906 that governs this appeal was repealed by the General Assembly in 2013 and replaced by N.C. Gen. Stat. § 7B-906.1. *See* 2013 N.C. Sess. Laws 305, 317–19, ch. 129, §§ 25–26.

findings of fact." *Id.* Moreover, "[s]tatements by an attorney are not considered evidence." *In re D.L.*, 166 N.C. App. 574, 582, 603 S.E.2d 376, 382 (2004).

In the present case, Mother asserts that the trial court only considered the arguments of counsel for DSS and the GAL when determining whether to continue reunification efforts between Mother and K.C. However, in its 9 November 2012 three-month review order, the trial court indicated that it considered the following evidence at the hearing: the court report prepared by the DSS social worker assigned to the case, which included Mother's neuropsychological evaluation, the family reunification assessment, and the reunification safety assessment that found it was "unsafe" for K.C. to be returned to Mother and recommended a termination of Mother's parental rights to K.C.; the addendum to the court report prepared by the DSS social worker; paternity test results; prior orders of the trial court in the present case; and the court report prepared by the GAL. Mother does not dispute that the materials in the court file were competent evidence to support the trial court's findings that continuing reunification efforts would be futile or inconsistent with K.C.'s welfare. Nor does Mother suggest that the court improperly incorporated these written reports as its findings of fact without conducting its own independent

review. *Cf. In re M.R.D.C.*, 166 N.C. App. 693, 698, 603 S.E.2d 890, 893 (2004) ("[A]lthough the trial court may properly incorporate various reports into its order, it may not use these as a substitute for its own independent review."), *disc. review denied*, 359 N.C. 321, 611 S.E.2d 413 (2005). According to the record before us, the trial court "received and incorporate[d]" the materials in the court file and, after reviewing the evidence, made numerous additional findings of fact to support its conclusion that reunification efforts would be futile or "inconsistent with [K.C.'s] health, safety, and need for a safe, permanent home within a reasonable period of time." Therefore, we conclude the trial court did not rely solely on counsels' respective arguments when it considered whether to cease Mother's reunification efforts with K.C., and did not err by ordering that such reunification efforts should cease.

Affirmed.

Judges HUNTER and ELMORE concur.

Report per Rule 30(e).