

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-388

Filed: 15 November 2016

Guilford County, Nos. 15 JA 44-47

IN THE MATTER OF: M.F.B., L.B., III, M.E.W.B., Jr., and A.N.N.J.

Appeal by respondent-mother from order entered 6 January 2016 by Judge Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 24 October 2016.

*Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.*

*Leslie Rawls for respondent-appellant.*

*No brief filed on behalf of the guardian ad litem.*

DAVIS, Judge.

B.J. (“Respondent”) appeals from an order adjudicating her four children, A.N.N.J. (“Anna”), M.E.W.B., Jr. (“Max”), L.B., III (“Luke”), and M.F.B. (“Matthew”)<sup>1</sup> as dependent and neglected juveniles, adjudicating Anna as an abused juvenile, and ceasing reunification efforts with Respondent as to all four children. After careful review, we affirm.

### **Factual Background**

---

<sup>1</sup> Pseudonyms and initials are used throughout the opinion to protect the identities of the juveniles and for ease of reading. N.C. R. App. P. 3.1(b).

*Opinion of the Court*

Respondent is the mother of four minor children, Anna, Max, Luke, and Matthew. Luke and Matthew are the children of Respondent's boyfriend ("Mr. B."). Max and Anna have different fathers, and Anna's father is deceased.

Respondent has an extensive Child Protective Services ("CPS") history throughout multiple counties in North Carolina dating back to 2004. The Guilford County Department of Health and Human Services ("DHHS") most recently became involved with Respondent and her family on 9 March 2015 when it received a CPS report alleging inappropriate discipline, physical abuse, and sexual abuse of Anna.

DHHS originally filed juvenile petitions in April 2015 and then filed amended juvenile petitions on 9 September 2015 alleging that all four juveniles were neglected and dependent and that Anna was, in addition, an abused juvenile. The filing of the petitions stemmed from, *inter alia*, allegations of inappropriate touching of Anna by Mr. B., lack of supervision resulting in numerous sex offenses against Anna, substance abuse by the parents, domestic violence, and Respondent's failure to obtain or follow through with medical treatment for the juveniles. DHHS obtained non-secure custody of the children.

A hearing on adjudication, disposition, and permanency planning was held in Guilford County District Court before the Honorable Michelle Fletcher beginning 30 November 2015. The trial court entered an order on 6 January 2016 adjudicating Matthew, Luke, and Max to be dependent and neglected juveniles and adjudicating

*Opinion of the Court*

Anna to be an abused, dependent, and neglected juvenile. The trial court found that Respondent and Mr. B. had subjected the juveniles to chronic abuse and neglect, including medical and dental neglect and serious emotional abuse, and that they subjected Anna to sexual abuse. The trial court also found that “[t]he parents have had Department of Social Services involvement for over twelve (12) years, and services were put in place to help correct the conditions; however, they are unable to demonstrate anything taught; and [t]he parents’ history demonstrates a failure to gain any insight into the needs of the juveniles.”

In its 6 January 2016 order, the trial court (1) changed the permanent plan for Anna, Matthew, and Luke from reunification with a concurrent plan of adoption to adoption with a concurrent plan of reunification; and (2) changed the permanent plan for Max from reunification with a concurrent plan of adoption to reunification only with his biological father along with a concurrent plan of adoption. The court relieved DHHS of further reunification efforts with Respondent and ordered DHHS to pursue termination of her parental rights. Respondent filed a timely notice of appeal.

**Analysis**

Respondent’s counsel has filed a no-merit brief on Respondent’s behalf pursuant to Rule 3.1(d) of the North Carolina Rules of Appellate Procedure. Counsel states that “[a]fter conscientiously and thoroughly reviewing the record on appeal, trial court file, transcript, and relevant law,” counsel has concluded that “the record

*Opinion of the Court*

contains no issue of merit on which to base an argument for relief and the appeal is frivolous.” Respondent’s counsel requests that this Court conduct an independent examination of the case pursuant to Rule 3.1(d). In accordance with Rule 3.1(d), counsel sent a letter to Respondent on 1 June 2016 advising Respondent of counsel’s inability to find error, counsel’s request for this Court to conduct an independent review of the record, and Respondent’s right to file her own arguments directly with this Court within thirty days of the date of the filing of the no-merit brief. Counsel attached to the letter a copy of the record, the transcripts, and the brief filed by counsel. Respondent has not filed her own written arguments, and a reasonable time for doing so has passed.

In addition to seeking our review pursuant to Rule 3.1(d), counsel directs our attention to a potential issue with regard to the trial court’s order stemming from Finding of Fact No. 61, Conclusion of Law No. 14, and paragraph 7 of the decree where the trial court referenced subsections of N.C. Gen. Stat. § 7B-507 that had been repealed by the General Assembly effective 1 October 2015. *See* 2015 N.C. Sess. Laws 320, 324-25, 334-35, ch. 136, §§ 7, 18. Respondent, however, does not allege any prejudice resulting from the order’s references to the repealed provisions of N.C. Gen. Stat. § 7B-507.

In 2015, the General Assembly made a number of changes to Chapter 7B of the North Carolina General Statutes, including the repeal of subsections (b)-(d) of N.C.

*Opinion of the Court*

Gen. Stat. § 7B-507. Although the trial court's order does, in fact, cite to repealed provisions of N.C. Gen. Stat. § 7B-507, the court made the relevant necessary findings required by N.C. Gen. Stat. § 7B-906.1 to support its order ceasing reunification efforts with Respondent. Pursuant to N.C. Gen. Stat. § 7B-906.1, at each permanency planning review hearing, the trial court must consider certain statutory criteria and make written findings regarding those that are relevant, including

(3) Whether efforts to reunite the juvenile with either parent clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.

N.C. Gen. Stat. § 7B-906.1(d)(3) (2015).

Here, the trial court made the following pertinent finding of fact:

61. As of this hearing, efforts to reunify the juveniles with the mother . . . and the biological father . . . would clearly be futile and inconsistent with the juveniles' health, safety, and need for a safe, permanent home within a reasonable period of time pursuant to N.C.G.S. 7B-507(b)(1).

This language is nearly identical in substance to that contained in N.C. Gen. Stat. § 7B-906.1(d)(3).

Accordingly, we hold that there was no prejudicial error in the trial court's reference to provisions of N.C. Gen. Stat. § 7B-507 that have been repealed. Moreover, after conducting a thorough review of the record, we are unable to identify any basis for determining that the trial court committed reversible error.

**Conclusion**

IN RE: M.F.B., L.B., III, M.E.W.B. JR., A.N.N.J.

*Opinion of the Court*

For the reasons stated above, we affirm.

AFFIRMED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).