IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1413

Filed: 17 April 2018

Mecklenburg County, No. 16 JA 89

IN THE MATTER OF: J.M.

Appeal by respondent-mother from order entered 22 August 2017 by Judge Elizabeth T. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 5 April 2018.

Associate County Attorney Marc S. Gentile, for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Richard Croutharmel, for respondent-appellant mother.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem.

HUNTER, JR., Robert N., Judge.

Respondent-mother appeals from an order suspending visitation between her and her minor child, J.M. ("Jill").[1] We dismiss the appeal.

I. Factual and Procedural Background

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading. N.C. R. App. P. 3.1 (2017).

On 29 February 2016, the Mecklenburg County Department of Social Services, Youth and Family Services ("YFS"), filed a petition alleging Jill was a neglected juvenile. Following a 30 March 2016 hearing, the trial court entered an order adjudicating Jill to be a neglected juvenile and ceasing reunification efforts with respondent-mother. Respondent-mother appealed, and on 20 December 2016, this Court issued an opinion reversing the trial court's adjudication and disposition order. *In re J.A.M.*, ___ N.C. App. ___, 795 S.E.2d 262 (2016). On 6 January 2017, YFS and the guardian ad litem ("GAL") filed a petition for discretionary review in our Supreme Court, which was allowed on 8 June 2017. On 2 March 2018, our Supreme Court reversed this Court's decision and remanded to this Court for reconsideration. *In re J.A.M.*, ___ N.C. ___, 809 S.E.2d 579 (2018).

Following a 31 July 2017 hearing, the trial court entered an order on 22 August 2017, suspending respondent-mother's visits with Jill. Respondent-mother gave timely notice of appeal.

II. Analysis

In her only contention on appeal, respondent-mother contends the trial court abused its discretion in suspending visitation while respondent-mother's appeal of the adjudication and disposition order was pending in the appellate courts. Respondent-mother concedes she does not have an appeal of right from the trial court's order, *see* N.C. Gen. Stat. § 7B-1001(a) (2017), but contends she has an appeal

from the interlocutory order because the order affects a substantial right. We disagree.

The General Statutes permit an interlocutory appeal from any order "affect[ing] a substantial right claimed in any action or proceeding[.]" N.C. Gen. Stat. § 1-277(a) (2017). "The burden is on the appellant to establish that a substantial right will be affected unless [s]he is allowed immediate appeal from an interlocutory order." *Embler v. Embler*, 143 N.C. App. 162, 166, 545 S.E.2d 259, 262 (2001) (citation omitted). Our Supreme Court recognized a two-part substantial right test: (1) the right itself must be substantial; and (2) the deprivation of that substantial right will potentially injure the appellant's rights if left uncorrected before appeal from final judgment. *Goldston v. American Motors Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990) (citation omitted). "Interlocutory appeals are disfavored in order to 'prevent fragmentary, premature and unnecessary appeals by permitting the trial divisions to have done with a case fully and finally before it is presented to the appellate division.' " *Crowley v. Crowley*, 203 N.C. App. 299, 301, 691 S.E.2d 727, 729 (2010) (quoting *Waters v. Qualified Pers., Inc.*, 294 N.C. 200, 207, 240 S.E.2d 338, 343 (1978)).

In this case, the trial court's order did affect respondent-mother's substantive right to visit with her child. However, respondent-mother is unable to demonstrate her rights will be injured if this Court does not intervene prior to appeal from final

judgment. N.C. Gen. Stat. § 7B-906.1 requires review hearings be held at least every six months, and at each hearing, the court is to consider "whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1." N.C. Gen. Stat. § 7B-906.1(a), (d)(2) (2017). Not only is there statutorily-prescribed periodic review of visitation plans, but N.C. Gen. Stat. § 7B-905.1 gives a parent "the right to file a motion for review of any visitation plan entered pursuant to this section." N.C. Gen. Stat. § 7B-905.1(d) (2017). Thus, the trial court's order suspending visitation did not work permanent injury to respondent-mother, as there are multiple ways by which she can regain visitation rights prior to final judgment.

Furthermore, respondent-mother does not identify any meaningful way in which her case differs from any other in which a parent's visitation rights are suspended in an interlocutory order. While it is true the trial court's adjudication and disposition order was under review at the Supreme Court when the trial court suspended visitation, and the adjudication and disposition order is now under further review in this Court, those facts weigh against allowing immediate review of the trial court's order suspending visitation, as doing so would only further fragment this matter. Allowing interlocutory review of the trial court's order in this case would be tantamount to creating a new category of orders subject to immediate appeal, allowing appeal anytime visitation is suspended. Respondent-mother has not shown she is entitled to an appeal from the trial court's order suspending visitation.

Respondent-mother filed a petition for writ of certiorari as an alternative basis for review of her case in the event this Court determines the order is not immediately appealable. "A petition for the writ must show merit or that error was probably committed below. *Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown." *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citations omitted), *cert. denied*, 362 U.S. 917, 4 L. Ed. 2d 738 (1960). Thus, if a petitioner fails to set forth a "meritorious claim or reveal error in the proceedings below" she has "failed to present good cause for the issuance of a writ of certiorari." *State v. Rouson*, 226 N.C. App. 562, 567, 741 S.E.2d 470, 473 (2013).

Respondent-mother has an extremely high bar to meet in establishing merit to her claim that the trial court abused its discretion in suspending visitation, and respondent-mother fails to meet that bar. Respondent-mother contends the trial court suspended visitation based solely on the fact respondent-mother failed to disclose the father of her *in utero* child.[2] Even if respondent-mother's characterization of the trial court's basis for suspending visitation is correct, we still cannot conclude the court abused its discretion in making that determination. Dating

[2] While respondent-mother begins her argument by stating the trial court abused its discretion in suspending visitation while appeal of the adjudication and disposition order was pending in the appellate courts, respondent-mother does not contend the pending appeal affected the trial court's authority to suspend visitation. To the extent respondent-mother intended to raise this as an issue, she has abandoned it through her failure to make an argument in support thereof. *See* N.C. R. App. P. 28(b)(6) (2017) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

back to 2007, child protective services received multiple referrals related to domestic violence involving respondent-mother and different partners. Respondent-mother's parental rights were terminated to six other children due in large part to their exposure to domestic violence within the home. One of Jill's half-siblings was nearly beaten to death in the home. Despite all of this, respondent-mother never sought help for her domestic violence issues, and then could not provide assurance to the court she was not currently involved with a partner who would perpetuate domestic violence in the home. While it is true, as respondent-mother points out, visits would occur at a YFS facility, and therefore would not involve the father of her *in utero* child, it does not follow that the effects of domestic violence would not appear in those visits. Furthermore, the trial court may have been concerned it would be contrary to Jill's best interests to form a bond with respondent-mother at a YFS facility if respondent-mother was never going to address the domestic violence issues and demonstrate Jill could continue her bond with respondent-mother in the home without being exposed to domestic violence. Given respondent-mother's failure to demonstrate the trial court abused its discretion, we deny her petition for writ of certiorari. The trial court's order suspending visitation is not subject to immediate review, and we therefore dismiss the appeal.

III. Conclusion

For the foregoing reasons, we dismiss respondent-mother's appeal.

DISMISSED.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).