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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-647

Filed: 18 December 2018

Surry County, No. 16 JT 64

IN THE MATTER OF: I.N.S.

Appeal by respondent-mother from order entered 6 April 2018 by Judge William F. Southern, III in Surry County District Court. Heard in the Court of Appeals 29 November 2018.

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

Rebekah W. Davis for respondent-appellant mother.

No brief filed for guardian ad litem.

ZACHARY, Judge.

Respondent-mother appeals from an order terminating her parental rights to her minor child I.N.S. (“Irene”).¹ Respondent-mother’s appellate counsel filed a no-merit brief pursuant to N.C.R. App. P. 3.1(d), requesting this Court to conduct an independent review of the record for possible prejudicial error. Respondent-mother

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading.

failed to exercise her right under Rule 3.1(d) to file a *pro se* brief. Accordingly, we must dismiss Respondent-mother's appeal.

Factual and Procedural Background

On 1 August 2016, the Surry County Department of Social Services ("DSS") obtained non-secure custody of one-month-old Irene and filed a petition alleging that she was a neglected juvenile. The petition alleged that on or about 29 July 2016, Respondent-mother moved into a homeless shelter with Irene after the maternal grandmother asked Respondent-mother and Irene to leave her home. At the homeless shelter, Respondent-mother was providing insufficient care to Irene by failing to change her diapers when needed, feeding her by "bottle propping," and handing her off to other residents of the homeless shelter. Respondent-mother admitted that the maternal grandmother had previously cared for Irene and that she was struggling to care for the child on her own. The petition further alleged that Respondent-mother was planning to leave the homeless shelter without having made housing arrangements.

On 4 November 2016, the trial court entered an order adjudicating Irene to be a neglected juvenile based on Respondent-mother's stipulation to the factual basis of the allegations of DSS's petition. In a separate dispositional order also entered on 4 November 2016, the trial court ordered Respondent-mother to comply with an out-of-home family services agreement ("OHFSA"), which required, *inter alia*: submitting

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to a mental health assessment and following recommendations; completing a parenting class; obtaining and maintaining stable housing and gainful employment; and visiting Irene regularly. Legal and physical custody were continued with DSS, and Respondent-mother was allowed weekly, two-hour supervised visitation. Respondent-mother was incarcerated from 21 August 2016 to 22 November 2016.

Following a review hearing on 1 December 2016, the trial court entered an order finding that Respondent-mother was unemployed upon her release from jail on 22 November 2016, that she had not reported an address to DSS since her release, and that she had not signed up for parenting classes as of 28 November 2016. The trial court also found that Respondent-mother had attended mental health therapy prior to her incarceration, but she had not attended any therapy sessions since her release from jail. Except for the period of time she was incarcerated, Respondent-mother had attended all scheduled visitation with Irene.

After another review hearing on 12 April 2017, the trial court entered an order on 16 May 2017. The trial court found that Respondent-mother lacked housing, was unemployed, and had not signed up for parenting classes. The trial court also found that Respondent-mother had completed a new mental health assessment, but she had not attended any of the recommended therapy sessions. Respondent-mother had missed one scheduled visit with Irene since the last hearing, and she had not provided for the basic needs of the child in any manner.

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After a hearing on 27 July 2017, the trial court entered a permanency planning order on 28 August 2017, finding that Respondent-mother had failed to make adequate progress on her OHFSA. She had not maintained stable housing or employment, and she was not seeking consistent treatment for her mental health diagnoses. Although Respondent-mother had attempted to enroll in parenting classes, she still had not provided for any of Irene's basic needs, and she had missed three visits since the last hearing. DSS continued to have custody of Irene, and Respondent-mother's visitation was reduced to one, two-hour supervised visit per month. The primary permanent plan was set as adoption, with a secondary permanent plan of guardianship with a court-approved caretaker.

On 15 September 2017, DSS filed a motion to terminate Respondent-mother's parental rights to Irene based upon the grounds of (1) neglect, and (2) leaving the child in foster care or placement outside the home for more than twelve months without showing reasonable progress toward correcting the conditions that led to her removal from the home. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2017). Respondent-mother was arrested on 17 February 2018 and remained incarcerated at the time of the termination hearing on 1 March 2018. On 6 April 2018, the trial court entered an order adjudicating the existence of both grounds alleged in DSS's motion. The trial court further determined that terminating Respondent-mother's parental rights

was in Irene’s best interest. *See* N.C. Gen. Stat. § 7B-1110(a) (2017). Respondent-mother timely appealed.

Discussion

Pursuant to North Carolina Rule of Appellate Procedure 3.1(d), Respondent-mother’s counsel has filed a no-merit brief on her behalf. Counsel states that she conducted “a conscientious and thorough review of the record on appeal” and concludes “that the record contains no issue of merit on which to base an argument for relief[.]” Respondent-mother’s counsel requests that this Court conduct an independent examination of the case for possible prejudicial error. In accordance with Rule 3.1(d), counsel has demonstrated that she advised Respondent-mother of her right to file written arguments in support of her appeal and provided Respondent-mother with the necessary materials to do so.

Respondent-mother’s counsel complied with all of Rule 3.1(d)’s requirements; however, Respondent-mother failed to exercise her right under Rule 3.1(d) to file her own written arguments, and a reasonable time for her to do so has passed. Accordingly, “[n]o issues have been argued or preserved for review in accordance with our Rules of Appellate Procedure.” *In re L.V.*, __ N.C. App. __, __, 814 S.E.2d 928, 929 (2018) (dismissing the respondent-mother’s appeal from orders terminating her parental rights because she “did not exercise her right under Rule 3.1(d) to file a *pro se* brief”); *accord In re L.E.M.*, No. COA18-380, __ N.C. App. __, __, __ S.E.2d __, __

(filed Oct. 2, 2018) (dismissing the respondent-father's appeal for the reasons stated in *In re L.V.*).

We are bound by our Court's decisions in *In re L.V.* and *In re L.E.M.* See *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."). Therefore, we dismiss Respondent-mother's appeal of the order terminating her parental rights to Irene.

APPEAL DISMISSED.

Judges CALABRIA and TYSON concur.

Report per Rule 30(e).