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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1215

Filed: 18 June 2019

Surry County, Nos. 17-JT-11-13

IN THE MATTER OF: K.M.B., K.N.B., C.G.B.

Appeal by Respondent-Mother from order entered 27 August 2018 by Judge Spencer G. Key, Jr., in Surry County District Court. Heard in the Court of Appeals 30 May 2019.

Susan Curtis Campbell for Petitioner-Appellee Surry County Department of Social Services.

James N. Freeman, Jr., for guardian ad litem.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for Respondent-Appellant Mother.

DILLON, Judge.

Respondent-mother ("Mother") appeals from an order terminating her parental rights in the minor children Kate, Kim, and Cam ("the children").[1] [2] We affirm.

I. Background

[1] We use pseudonyms to protect the juveniles' privacy and for ease of reading.

[2] The trial court also terminated the parental rights of the children's father, who is not a party to this appeal.

On 3 March 2017, Surry County Department of Social Services ("DSS") obtained non-secure custody of two-year-old Kate, four-year-old Kim, and eight-year-old Cam. Three days later, DSS filed juvenile petitions alleging neglect. The petitions described a lack of proper supervision for the children and an injurious home environment stemming from Mother's substance abuse and domestic violence between Mother and the children's father. On 23 March 2017, Mother entered into an Out-of-Home Family Services Case Plan with DSS agreeing to obtain mental health and substance abuse assessments and comply with their recommendations, to submit to random drug screens, and to attend parenting and domestic violence classes.

After a hearing on the matter, the trial court adjudicated the children as neglected on 19 July 2017. The court's findings noted "DSS has had significant involvement with the family dating back to October of 2013, due primarily to substance abuse and domestic violence." The court also found Mother had made no progress on the mental health, substance abuse, or domestic violence components of her case plan and had "several pending criminal charges related to drug and alcohol use." It maintained the children in DSS custody and ordered Mother to comply with the conditions of her case plan.

The trial court initially established reunification as the primary permanent plan for the children with a secondary plan of guardianship with a court-approved

caretaker. Due to Mother's persistent refusal to comply with their case plans, the court changed the primary permanent plan to termination of parental rights and adoption with reunification as the secondary plan.

On 27 June 2018, DSS filed a motion for termination of parental rights ("TPR Motion"), alleging Mother's neglect of the children, her willful failure to make reasonable progress in correcting the conditions that led to the children's removal from the home, and her willful failure to pay a reasonable portion of the children's cost of care while in DSS custody as grounds for termination. N.C. Gen. Stat. § 7B-1111(a)(1)-(3) (2017).

The TPR Motion was heard on 30 July 2018. Subsequently, on 27 August 2018, the trial court entered its order terminating Mother's parental rights. In its order, the trial court found that DSS had established each of its alleged grounds for termination by clear, cogent, and convincing evidence, and, further, that terminating Mother's parental rights was in the children's best interests. Mother timely appealed.

II. Analysis

On appeal, Mother argues that the trial court "exceeded its jurisdiction" by conducting the hearing on the TPR Motion on 30 July 2018, when she had not filed an answer to the TPR Motion and the statutory deadline for doing so did not expire until the end of that day. *See* N.C. Gen. Stat. §§ 7B-1106.1(a), -1107 (2018) (allowing the "respondent parent to file written answer to the petition or written response to

the motion within 30 days after service of the summons and petition or notice and motion"). Though her precise argument is obscure, Mother does not seem to challenge either the trial court's subject matter jurisdiction or its personal jurisdiction over her. *See* N.C. Gen. Stat. §§ 7B-1101, -1102 (2018). Rather, she faults the court for *exercising* its jurisdiction to conduct the hearing on the TPR Motion prior to the expiration of the 30-day period allotted for her to file a written response to DSS's motion under N.C. Gen. Stat. §§ 7B-1106.1(a) and 7B-1107. *See generally In re M.I.W.*, 365 N.C. 374, 379, 722 S.E.2d 469, 473 (2012) (distinguishing between a court's mere possession of jurisdiction and its exercise thereof).

As Mother notes, Section 7B-1108.1 of our General Statutes provides that the trial court "*shall* conduct a pretrial hearing" in all termination of parental rights proceedings. N.C. Gen. Stat. § 7B-1108.1(a) (2018). The statute further requires that the court "*shall* consider" at the pretrial hearing, *inter alia*, "[a]ny issues raised by any responsive pleading[.]" N.C. Gen. Stat. § 7B-1108.1(a)(5) (2018) (emphasis added). Based on this language, Mother contends "[t]he pretrial hearing . . . cannot be held before a respondent files a response *or fails to file a response in time*." (Emphasis added). Moreover, because a pretrial hearing is a statutory prerequisite to the court's exercise of jurisdiction to "hear and determine" a TPR motion, she insists that "[a] hearing held before that time is unauthorized and an order entered thereon is a nullity."

We accept, *arguendo*, Mother's calculation that the 30-day period for her to file a written answer to DSS's TPR Motion expired on Monday, 30 July 2018, the date of the termination hearing. *See* N.C. Gen. Stat. § 1A-1, Rules 5(b), 6(a), (e) (2018); *see also* N.C. Gen. Stat. § 7B-1102(b) (2018) (authorizing service of TPR motion and notice pursuant to N.C. R. Civ. P. 5(b)). However, we conclude she has failed to demonstrate an unauthorized exercise of jurisdiction by the trial court or any other ground for relief on appeal.

As a general matter, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired" and must have "obtain[ed] a ruling upon the party's request, objection, or motion." N.C. R. App. P. 10(a)(1). Here, Mother's counsel participated fully in the 30 July 2018 hearing and made no mention of Mother's unexpired deadline for filing a response to the TPR Motion.[3] Moreover, the transcript shows the trial court addressed pretrial matters before commencing the adjudicatory hearing, satisfying the requirements of N.C. Gen. Stat. § 7B-1108.1(a). We conclude Mother failed to preserve for our review any

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[3] Although Mother did not attend the hearing, her counsel advised the court that she was aware of the hearing but was in Virginia. Counsel moved to continue the hearing in light of Mother's absence but made no mention of the 30-day deadline for filing her response to the TPR Motion. The trial court denied the motion. We note counsel's general appearance at the hearing constitutes a waiver of any objection based on personal jurisdiction, sufficiency of process, or notice to Mother. *In re K.J.L.*, 363 N.C. 343, 346, 677 S.E.2d 835, 837 (2009); *In re T.D.W.*, 203 N.C. App. 539, 545-46, 692 S.E.2d 177, 181-82 (2010).

error by the trial court related to her deadline for responding to the TPR Motion or the content of the pretrial hearing. *See* N.C. R. App. P. 10(a)(1); *cf. also Latimer v. Latimer*, 136 N.C. App. 227, 228, 522 S.E.2d 801, 802 (1999) (affirming trial court order setting aside judgment of divorce where defendant filed a Rule 60(b) motion arguing the judgment "was entered prior to the expiration of 30 days after service" of process).

To the extent the trial court's error is deemed preserved without objection as a violation of a statutory mandate, *see, e.g.*, *In re Taylor*, 97 N.C. App. 57, 61, 387 S.E.2d 230, 232 (1990), we further conclude Mother has failed to demonstrate any possible prejudice arising from the 30 July 2018 hearing date. Mother concedes on appeal that "[t]here is no evidence in the record that [she] attempted or would have attempted to file a response [to the TPR Motion] if the trial court had not proceeded on that day." Nor does she now contend that she would have filed a response had the hearing been delayed by one day. Finally, unlike the cases upon which she relies, Mother did not suffer an entry of default or other sanction for failing to file a responsive pleading.[4] *See McIlwaine v. Williams*, 155 N.C. App. 426, 429, 573 S.E.2d 262, 264 (2002) ("It is uncontroverted that the entry of default was entered prematurely."); *G&M Sales of Eastern N.C., Inc., v. Brown*, 64 N.C. App. 592, 593,

[4] Notwithstanding the language in Section 7B-1107, we have held that "[t]he absence of an answer denying any of the material allegations of [a TPR motion or petition] does not authorize the trial court to enter a 'default type' order terminating the respondent's parental rights." *In re Tyner*, 106 N.C. App. 480, 483, 417 S.E.2d 260, 261 (1992).

307 S.E.2d 593, 594 (1983) ("[T]he entry of default and default judgment . . . were entered one day before the time to answer had expired. Thus the Clerk was without authority to make an entry of default and enter a default judgment . . ., and the same are nullities."). In the absence of any prejudice to Mother, the procedural error she identifies is harmless and does not justify disturbing the trial court's order. *See generally State v. Phachoumphone*, ___ N.C. App. ___, ___, 810 S.E.2d 748, 752 (2018) ("We agree that the trial court erred by failing to follow statutory procedure, but overrule defendant's challenges on the ground that he has failed to demonstrate how any of these alleged procedural errors prejudiced him."), *disc. review improvidently allowed*, ___ N.C. ___, 824 S.E.2d 397 (2019).

In her brief to this Court, Mother repeatedly invokes the requirements of the Uniform Child-Custody Jurisdiction and Enforcement Act ("UCCJEA"). She points to the explicit provision in the jurisdictional statute, Section 7B-1101, "that before exercising jurisdiction under this Article, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of [the UCCJEA]." N.C. Gen. Stat. § 7B-1101 (2018). Conspicuously absent from Section 7B-1101 is any comparable reference to the 30-day statutory period for filing a written response to a TPR motion. *See* N.C. Gen. Stat. §7B-1107. Mother's attempt to elevate a procedural aspect of the Juvenile Code to a jurisdictional requirement akin to those imposed by the UCCJEA is not supported by the relevant statutes or our case law. *See generally*

In re J.H., 244 N.C. App. 255, 259-60, 780 S.E.2d 228, 233 (2015) (noting "the jurisdictional requirements of the Uniform Child Custody Jurisdiction Enforcement Act ("UCCJEA") and the Parental Kidnapping Prevention Act ("PKPA") must also be satisfied for a court to have authority to adjudicate petitions filed pursuant to our juvenile code"). The UCCJEA is simply inapposite to the issue raised by Mother's appeal. Accordingly, her exception is overruled.

III. Conclusion

The order of the trial court terminating Mother's parental rights to the children is hereby affirmed.

AFFIRMED.

Judges TYSON and BERGER concur.

Report per Rule 30(e).