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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-344

Filed 19 September 2023

Surry County, Nos. 22 JT 94–97

IN THE MATTER OF: D.S.R., A.N.R., K.M.R., and I.M.R.

Appeal by Respondent-Mother from orders entered 3 January 2023 by Judge Gretchen H. Kirkman in Surry County District Court. Heard in the Court of Appeals 29 August 2023.

*Surratt & Thompson, PLLC, by Christopher M. Watford, for Respondent-Mother.*

*No briefs filed on behalf of Petitioner-Father or the Guardian ad Litem.*

PER CURIAM.

Respondent-Mother appeals from orders entered 3 January 2023 (the “Orders”) terminating her parental rights to her four minor children, D.S.R. (“David”)<sup>1</sup>, A.N.R. (“Alice”), K.M.R. (“Kelly”), and I.M.R. (“Ike”). Respondent-Mother’s appointed appellate counsel filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. After careful consideration of the issues raised in the

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<sup>1</sup> Pseudonyms are used to protect the identities of the juveniles and for ease of reading. See N.C. R. App. P. 42(b) (2021).

no-merit brief and our independent review of the record, we affirm the Orders.

### **I. Factual and Procedural Background**

Petitioner-Father and Respondent-Mother were married in 2010 and have four children in common: David, Alice, Kelly, and Ike (collectively, the “Juveniles”). Respondent-Mother vacated the marital residence in August 2018, and the parties divorced on 9 June 2020. Petitioner-Father later remarried, and the Juveniles currently reside with Petitioner-Father and his wife in Surry County. Respondent-Mother has not visited or communicated with: David and Alice since March 2020; Kelly since March 2021; and Ike since March 2018.

Record evidence and testimony revealed Respondent-Mother and Petitioner-Father executed a handwritten document before a notary on 8 January 2020, whereby Respondent-Mother purported to “sign over [her] rights” to the Juveniles to Petitioner-Father. Furthermore, the guardian *ad litem* (the “GAL”) testified about an incident that occurred a year or two before the termination hearing: the Juveniles explained they were passengers in a vehicle on their way to a party when they observed Respondent-Mother walking near the street. “[A]ccording to the [Juveniles], [Respondent-Mother] saw them in the car and just did not react to the [Juveniles] at all, didn’t wave, didn’t smile, didn’t say anything, just kept on walking, essentially ignoring them.”

On 8 July 2022, Petitioner-Father filed petitions to terminate Respondent-Mother’s parental rights. In August 2022, the trial court held a pretrial hearing and

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released Respondent-Mother's appointed counsel. On 30 September 2022, the initial termination hearing commenced in Surry County District Court. Respondent-Mother briefly appeared *pro se*, before requesting counsel again. The trial court declared a mistrial, reappointed counsel, appointed the GAL, and rescheduled the hearing for 30 November 2022. Despite exchanging text messages with the GAL, Respondent-Mother inexplicably failed to appear at her scheduled appointment with the GAL on 29 November 2022.

Despite actual notice of the hearing and contact with her counsel and the GAL on 29 November 2022, Respondent-Mother failed to appear when the calendar was called at noon on 30 November 2022. As Respondent-Mother was not present, her attorney moved for a continuance, and the trial court denied the motion. After hearing testimony from Petitioner-Father and the GAL, the trial court terminated Respondent-Mother's parental rights by Orders entered 3 January 2023. Respondent-Mother filed notice of appeal on 2 February 2023.

**II. Jurisdiction**

This Court has jurisdiction over Respondent-Mother's appeal from the Orders terminating her parental rights pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 7B-1001(a)(7) (2021).

**III. Issues**

Respondent-Mother's appellate counsel filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure after concluding "there is

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no issue of merit on which to base an argument for relief.” When a no-merit brief is filed pursuant to Rule 3.1(e), this Court must “conduct an independent review of the issues set out in the no-merit brief filed by respondent’s counsel.” *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). As required under Rule 3.1(e), counsel provided Respondent-Mother with a copy of his no-merit brief, the transcript, the printed record on appeal, and advised Respondent-Mother that she may file written arguments on her own behalf. *See* N.C. R. App. P. 3.1(e). Respondent-Mother did not avail herself of this opportunity.

Appellate counsel’s no-merit brief identified the following issues for our independent review: (1) whether the trial court erred in concluding that grounds existed to terminate Respondent-Mother’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (a)(7); and (2) whether the trial court erred in denying the motion to continue brought by Respondent-Mother’s trial counsel.

**IV. Analysis**

“Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020) (citations omitted). This Court reviews “a trial court’s adjudication of grounds to terminate parental rights to determine whether the findings are supported by clear, cogent[,] and convincing evidence and the findings support the conclusions of law.” *In re A.L.*, 378 N.C. 396, 400, 862 S.E.2d 163, 166 (2021) (citations and quotation marks omitted). “[A]n

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adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citations omitted). We review the trial court’s assessment of a juvenile’s best interest at the dispositional stage for abuse of discretion. *In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797.

**A. Termination Grounds**

Before terminating parental rights on the ground of willful abandonment, our statutes require a trial court to find the petitioner has presented clear, cogent, and convincing evidence tending to show the respondent-parent “has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion.” N.C. Gen. Stat. § 7B-1111(a)(7); *see* N.C. Gen. Stat. § 7B-1103(a)(1) (either parent is authorized to petition for the termination of parental rights of the other parent). “[A]lthough the trial court may consider a parent’s conduct outside the six-month window in evaluating a parent’s credibility and intentions, the ‘determinative’ period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition.” *In re B.R.L.*, 379 N.C. 15, 18, 863 S.E.2d 763, 767 (2021) (citation omitted).

Here, the record clearly shows Respondent-Mother’s conduct is consistent with a settled purpose to forgo all claims to the Juveniles, as evidenced by Respondent-Mother’s execution of the letter before a notary public forgoing her rights. Respondent-Mother made no attempt to contact the Juveniles in several years and

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failed to acknowledge them in public on at least one occasion. Our independent review of the record reveals the trial court properly found and concluded Respondent-Mother willfully abandoned the Juveniles for the determinative period. *See In re B.R.L.*, 379 N.C. at 18, 863 S.E.2d at 767. Having affirmed the Orders on willful abandonment, we need not review the additional termination ground of neglect. *See In re E.H.P.*, 372 N.C. at 395, 831 S.E.2d at 53.

**B. Motion to Continue**

“Ordinarily, a motion to continue is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court’s ruling is not subject to review.” *In re A.M.C.*, 381 N.C. 719, 722, 874 S.E.2d 493, 496 (2022) (quoting *In re A.L.S.*, 374 N.C. 515, 516–17, 843 S.E.2d 89, 91 (2020)). A trial court abuses its discretion when its ruling “is so arbitrary that it could not have been the result of a reasoned decision.” *In re P.Q.M.*, 232 N.C. App. 419, 421, 754 S.E.2d 431, 433 (2014).

Here, the trial court afforded Respondent-Mother ample notice and multiple opportunities to attend and receive a fair hearing. The orders denying the motion to continue are supported by detailed findings of fact and testimony. After one mistrial for similar reasons, the trial court was well within its discretion to deny a subsequent motion to continue absent a showing of good cause. *See In re A.M.C.*, 381 N.C. at 722, 874 S.E.2d at 496.

**V. Conclusion**

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In sum, the trial court properly found and concluded that sufficient grounds existed to terminate Respondent-Mother's parental rights. Furthermore, the trial court did not abuse its discretion in denying Respondent-Mother's motion to continue where Respondent-Mother had actual notice of the hearing and was in contact with the GAL and her trial counsel the day before the hearing. Accordingly, we affirm the Orders.

AFFIRMED.

Panel Consisting of:

Judges TYSON, CARPENTER, and GORE.

Report per Rule 30(e).