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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-971

Filed 16 April 2024

Guilford County, No. 20JT63

IN THE MATTER OF:

K.F.C.

Appeal by respondent-mother from order entered 8 August 2023 by Judge Brian K. Tomlin in Guilford County District Court. Heard in the Court of Appeals 20 March 2024.

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

*N.C. Administrative Office of the Courts, Guardian Ad Litem Division, by Michelle FormyDuval Lynch, for respondent-appellee Guardian Ad Litem.*

*Richard Croutharmel for respondent-appellant-mother.*

PER CURIAM.

Respondent-mother appeals from the trial court's order terminating her parental rights to Kevin.<sup>1</sup> Respondent-mother's appellate counsel filed a "no-merit" brief on his client's behalf pursuant to N.C.R. App. P. 3.1(e). After careful

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<sup>1</sup> A pseudonym agreed upon by the parties pursuant to N.C.R. App. P. 42(b).

consideration of the record, we conclude that the issues identified by respondent-mother's counsel as arguably supporting an award of relief from the trial court's termination order lack merit. We, therefore, affirm the trial court's termination of parental rights ("TPR") order.

On 30 June 2020, the Guilford County Department of Health and Human Services ("DHHS") received a Child Protective Services report stating the following:

[respondent-mother] was brought into the emergency department (ED) at High Point Medical Center last night under an Involuntary Commitment (IVC) for alcohol abuse and assault. Reporter stated that [respondent-mother] and [Kevin] reside with the maternal grandmother (MGM) . . . . Reporter stated that MGM advised that [respondent-mother] is extremely aggressive when she drinks alcohol[,] and she drinks every day after work . . . . MGM advised that [respondent-mother] was intoxicated last night and threatened to kill the MGM and [Kevin] by slitting their necks and then spitting on their graves. MGM advised that [respondent-mother] was extremely belligerent to law enforcement (LE) and LE had her handcuffed and taken to the ED. Reporter stated that [respondent-mother] has been extremely belligerent to staff. Reporter stated that [respondent-mother] fought with the medical staff all night and was calling them racial slurs . . . . MGM advised that mom plans to move away with [Kevin] soon, which is extremely concerning. Reporter stated that she is unaware of where the father of the child is located. Reporter stated that [respondent-mother] will probably not be admitted.

On 1 July 2020, the DHHS filed a juvenile petition alleging neglect and dependency of Kevin after respondent-mother was involuntarily committed. The trial court addressed DHHS's petition on 8 April 2021. In an Order on Pre-Adjudication, Adjudication, and Disposition filed 1 July 2021, the trial court found that the evidence

supported DHHS's allegations, noting that respondent-mother "has consumed alcohol to excess on several occasions[,] . . . drinks to excess in the presence of the juvenile[,] . . . [and that] [c]onsuming such an amount of alcohol has impaired [respondent-mother's] ability to care for the juvenile in a safe and adequate manner, thereby rendering [Kevin] neglected during those periods of impairment." Based on its findings of fact, the trial court adjudicated Kevin neglected and dependent as defined by N.C.G.S. § 7B-101(9) and (15).

On disposition, the trial court ordered respondent-mother to enter a case plan that included paying child support, resolving her pending criminal charges and refraining from further criminal activity, and participating in anger management classes. The trial court authorized respondent-mother to have weekly supervised visitation with Kevin, but ordered, "[i]f [respondent-mother] appears intoxicated and/or under the influence of any illegal substance during her scheduled visit with the juvenile, the visit will be ceased immediately."

The trial court reviewed the matter periodically throughout 2021 and into early 2022. In a Permanency Planning Order entered 12 May 2022, the trial court found that respondent-mother was "not in substantial compliance with the components of her service agreement[,]" changed Kevin's primary permanent plan to adoption, and ordered DHHS to file a TPR within 60 days.

On 15 July 2022, DHHS filed a TPR Motion in the Cause to terminate respondent-mother's parental rights on grounds of neglect (N.C.G.S. § 7B-1111(a)(1)),

willfully leaving Kevin in foster care for more than 12 months with inadequate progress on a case plan (§ 7B-1111(a)(2)), failure to pay a reasonable portion of the costs of care for the juvenile (§ 7B-1111(a)(3)), and dependency (§ 7B-1111(a)(6)).

The trial court called this matter for a hearing on 15 May 2023. A social worker testified that respondent-mother failed to attend visitation for a period of time; there was not much interaction between respondent-mother and Kevin; respondent-mother would encourage Kevin not to cooperate with his foster mother or the social worker; Kevin's negative behaviors in the foster home would increase after visits with respondent-mother; and respondent-mother would attempt to bring the maternal grandmother to visits without authorization and then argue when confronted. The social worker further opined that while respondent-mother had completed components of her case plan and had shown some improvement, she believed that respondent-mother had not exhibited behavioral changes and had not addressed substance abuse issues. At the close of DHHS's evidence, the trial court denied respondent-mother's motion to dismiss for insufficient evidence.

Respondent-mother elected to testify and stated, among other things, that she could not visit Kevin early in the case due to work constraints. She testified that her mental health was fine, she got upset with strangers around Kevin, and that she believed Kevin had been "kidnapped" by DHHS from a good home. She maintained that she had no problem with alcohol, and that she only drank on holidays and at family gatherings.

At the close of the adjudicatory evidence, the trial court concluded that grounds existed to terminate respondent-mother's parental rights to Kevin on all grounds alleged. On disposition, the trial court heard testimony from the social worker, Kevin's guardian ad litem, and respondent-mother. At the conclusion of all testimony, the trial court determined that it was in Kevin's best interests to terminate respondent-mother's parental rights.

The trial court entered a TPR order on 8 August 2023 with findings and conclusions consistent with the trial judge's oral pronouncements at the TPR hearing. The TPR order did not conclude the existence of the TPR ground of failure to pay financial support. Respondent-mother timely filed written notice of appeal from the TPR order on 15 August 2023.

Appellate counsel for respondent-mother filed a "no-merit" brief with this court pursuant to N.C.R. App. P. 3.1(e). In compliance with the provisions of N.C.R. App. P. 3.1(e), counsel states that after conscientious and thorough review of the record and the relevant law, and in consultation with other experienced appellate attorneys, counsel is unable to identify any issues with sufficient merit on which to base an argument for relief on appeal. He respectfully asks this Court to conduct a full and independent review of the record to determine whether he overlooked any meritorious issues and decide if any reversible error exists.

Appellate counsel identified several issues that could potentially provide a basis for challenging the propriety of the trial court's TPR order, but also provides an

explanation for why those issues are frivolous. Counsel sent respondent-mother copies of his “no-merit” brief, the record on appeal, and the transcript of proceedings, along with a letter informing her that she can file her own *pro se* brief with instructions on how to proceed. Counsel for both DHHS and the guardian ad litem filed briefs expressing agreement with the conclusion reached by respondent-mother’s appellate counsel that the record does not disclose the existence of any arguably meritorious issues on appeal. Respondent-mother elected to file a *pro se* brief with this Court, but her written arguments lack legal basis or factual support in the record.

“This Court independently reviews issues identified by counsel in a no-merit brief filed pursuant to N.C.R. App. P. 3.1(e) for the purpose of determining if any of those issues have potential merit.” *In re C.M.F.*, 379 N.C. 216, 220 (2021).

The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

*In re Shepard*, 162 N.C. App. 215, 221–22 (2004) (quotation marks and citations omitted).

Having conducted an independent review of the issues identified by counsel in the “no-merit” brief, we determine that the TPR order contains sufficient findings of fact based on clear, cogent, and convincing evidence in the record. Further, the trial

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*Opinion of the Court*

court's findings of fact support its conclusions of law that grounds exist to terminate respondent-mother's parental rights under § 7B-1111(a)(1), (a)(2), and (a)(6). We also discern no abuse of discretion in the trial court's determination that termination of respondent-mother's parental rights is in Kevin's best interests. As a result, we affirm the trial court's order terminating respondent-mother's parental rights to Kevin.

AFFIRMED.

Panel consisting of:

Judges DILLON, COLLINS, and GORE.

Report per Rule 30(e).