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NO. COA10-835

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

IN THE MATTER OF:

T.M., IV

Durham County
No. 09 JT 54

Appeal by respondent parents from order entered 23 April 2010 by Judge James T. Hill in Durham County District Court. Heard in the Court of Appeals 30 November 2010.

Assistant County Attorney Cathy L. Moore for petitioner-appellee Durham County Department of Social Services.

Deana K. Fleming for the Guardian ad Litem.

Robert W. Ewing for respondent-appellant father.

Robin E. Strickland for respondent-appellant mother.

ELMORE, Judge.

A.M. (respondent-mother) and T.M. (respondent-father; together, respondents) appeal from an order entered 23 April 2010, which terminated their parental rights to their minor child T.M., IV (the juvenile). For the reasons stated herein, we affirm the trial court's order.

Respondent-mother has seven children, including five with respondent-father, none of whom are in either respondent's care and custody. Respondent-mother's two oldest children, who are not respondent-father's, are in the care of their maternal

grandparents. The maternal grandparents also have guardianship of two of respondents' other children. Respondents relinquished their parental rights to another child, who was adopted by C.M. C.M. is respondent-father's sister and lives in Maryland. Another child is in the guardianship of maternal relatives. The children were removed from respondents' custody because of respondent-mother's inability to provide proper care for the children, respondent-mother's mental health issues, or incidents of domestic violence by respondent-father.

Respondents have a long history of receiving services through various agencies including the Durham County Department of Social Services (petitioner or DSS). Respondent-mother has a diagnosis of schizoaffective disorder and has had periods of hospitalization and a history of mental illness dating back to 1994. Respondent-father has a diagnosis of explosive disorder with psychosis and has a history of domestic violence.

The juvenile was born in September 2008 and lived with respondents in the family home until March 2009. On 6 March 2009, petitioner filed a juvenile petition alleging that the juvenile was neglected and abused. The juvenile had been in the Emergency Room at Duke University Medical Center since 4 March 2009 because of abuse by respondent-father. Respondent-father had shaken the juvenile several weeks earlier, and neither parent had sought medical treatment for him. Petitioner assumed non-secure custody of the juvenile, and initially offered respondent-mother the opportunity to enter a shelter with the juvenile. However, because

she needed to obtain mental health treatment, respondent-mother declined and asked that the juvenile be placed in foster care. Respondent-mother entered Holly Hill Hospital on 25 March 2009.

After a hearing on 31 July 2009, the trial court entered an adjudication order on 25 August 2009 in which it concluded that the juvenile was abused and neglected. The court entered its dispositional order on 9 September 2009, wherein it concluded that further efforts to reunify the juvenile with respondents would be futile. The trial court continued custody of the juvenile with petitioner and awarded respondents weekly supervised visitation with him. The court set the permanent plan as guardianship with a relative with a concurrent plan of adoption.

By order entered 27 October 2009, the trial court approved placement of the juvenile with C.M., the juvenile's paternal aunt.

The court continued the permanent plan as guardianship with a relative with a concurrent plan of adoption and set out a plan for the transition of the juvenile to C.M.

On 22 December 2009, petitioner filed a motion to terminate respondents' parental rights to the juvenile. Petitioner alleged that grounds existed to terminate respondents' parental rights in that they had neglected the juvenile and were incapable of providing for his proper care and supervision such that he was a dependent juvenile. Additionally, petitioner alleged grounds existed to terminate respondent-father's parental rights in that he had abused the juvenile and had failed to pay support for the juvenile while the juvenile was in petitioner's custody.

Respondents filed individual responses to the motion to terminate parental rights in which each generally denied that grounds existed to terminate their parental rights.

After a hearing on 23 and 24 March 2010, the trial court entered an order on 23 April 2010, which terminated respondents' parental rights to the juvenile. The court found that grounds existed to terminate respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and (a)(6) (incapable of providing proper care and supervision). The court found grounds existed to terminate respondent-father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (abuse and neglect) and (a)(3) (wilful failure to pay support). Respondent-mother filed notice of appeal on 29 April 2010, and respondent-father filed notice of appeal on 11 May 2010.

On appeal, neither respondent challenges the trial court's conclusions that grounds existed to terminate their parental rights. Both respondents do, however, challenge the trial court's conclusion that it was in the best interests of the juvenile to terminate their parental rights. Respondent-father also argues that the trial court's dispositional findings of fact 4, 5, 6, 10, and 11(c) are not supported by sufficient evidence and that the trial court's conclusion to terminate his parental rights was not supported by sufficient findings of fact. We disagree.

"Termination of parental rights is a two-step process. In the first phase of the termination hearing, the petitioner must show by clear, cogent and convincing evidence that a statutory ground to

terminate exists." *In re S.N. & X.Z.*, 194 N.C. App. 142, 145-46, 669 S.E.2d 55, 58 (2008) (citations omitted), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009). If the petitioner meets the burden of proving that at least one ground for termination exists, "the trial court moves to the second, or dispositional, stage, where it determines whether it is in the best interests of the child to terminate the parental rights." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 5 (quotations and citations omitted) (2004). When determining whether it is in the best interests of a child to terminate parental rights, the trial court must consider the following factors:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2009).

"On appeal, our standard of review for the termination of parental rights is whether the [trial] court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law." *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003) (quotations and citations

omitted). "The trial court's conclusions of law are fully reviewable *de novo* by the appellate court." *S.N.*, 194 N.C. App. at 146, 669 S.E.2d at 59 (quotations and citation omitted). However, "[t]he decision to terminate parental rights is vested within the sound discretion of the trial judge and will not be overturned on appeal absent a showing that the [trial court's] actions were manifestly unsupported by reason." *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005) (citation omitted).

Here, by concluding that termination of respondents' parental rights was in the juvenile's best interests, the trial court made the following dispositional findings of fact:

1. The findings of fact [on adjudication] set forth above are incorporated herein as if set forth in full.
2. The GAL court report was accepted into evidence and considered by the [c]ourt.
3. The [c]ourt heard the testimony of the social worker and the child's guardian ad litem and reviewed the Interstate Home Study of the paternal aunt.
4. The DSS permanent plan for the child is adoption.
5. It is necessary in order to promote the healthy and orderly physical and emotional well being for the child that the permanent plan for his care be advanced at this time.
6. The child is 18 months old and would benefit from the most permanent plan.
7. He has lived with his aunt since October, 2009.
8. His paternal aunt is willing to adopt the child and provide him with a permanent home. She has adopted a sibling of his. The child has a bond with his brother.

9. There is no bond between the child and the father and no significant bond between the child and the mother.

10. Termination of parental rights will aid in the accomplishment of the permanent plan as relinquishment is not an option.

11. The [c]ourt has considered the following additional factors:

a. When the child was initially placed in DSS custody, the mother did not want to visit the child, and only began visiting the child after the father's release from jail. The parents last visited with the child on September 15, 2009, when he was a year old. They have not seen him in six months. The visit on September 22, 2009, was cancelled because the father was in jail. The parents cancel[l]ed the visits on September 28, 2009, stating that they had important business to take care of. The visit on October 6, 2009, was cancelled by the parents because the parents had decided to agree to placement of the child with the aunt in Baltimore and they did not want to see the child knowing that he would be far away. The parents do not have the means to travel to Maryland and the father has been incarcerated since January 5, 2010. The parents did visit the child approximately nine times from the time he was taken into custody in March 2009 until he moved to Baltimore in October 2009.

b. The child receives physical therapy for significant delays in gross motor skills. He had [sic] made great improvements in his skills since coming into foster care.

c. It is in the child's best interest to be adopted and have the same status in the family as his brother who was adopted by the aunt.

d. There was only one visit where the father acted like a father. Otherwise he spent time talking on the telephone, arranging trips to the grocery store and his schedule.

Respondent-father first argues that dispositional findings of fact 4 and 10 are not supported by the evidence. Respondent-father contends that dispositional finding of fact 4 is incorrect because the permanent plan for the juvenile was one of guardianship with a relative with a concurrent plan of adoption. Respondent-father argues that dispositional finding of fact 10 is incorrect because the plan of guardianship with a relative does not require the termination of parental rights. Respondent-father's arguments are misplaced.

We agree with respondent-father that the trial court never changed the permanent plan for the juvenile solely to one of adoption. However, the trial court's failure to find that the permanent plan for the juvenile was adoption concurrent with guardianship with a relative does not affect the trial court's conclusions regarding the juvenile's best interests. It is undisputed that adoption was a permanent plan for the juvenile, and respondent-father provides no authority to support his contention that adoption must be the sole permanent plan for a juvenile before a trial court may terminate parental rights. See also *In re Z.T.*, 2010 N.C. App. Lexis 654, at *7 (2010) (unpublished) (affirming an order terminating parental rights when the juvenile's permanent plan was "a concurrent plan of guardianship with a relative or adoption"). Further, because respondents refused to relinquish

their parental rights, termination of their parental rights to the juvenile was required to further the permanent plan of adoption. Accordingly, respondent-father's arguments regarding the trial court's dispositional findings of fact 4 and 10 are without merit.

Respondent-father also challenges the trial court's dispositional findings of fact 5 and 11(c) and the latter portion of finding of fact 6. Although these findings do address other relevant considerations regarding the best interests of the juvenile, we note that they are not necessary to show the consideration of any of the required factors enumerated in N.C. Gen. Stat. § 7B-1110(a). Even assuming *arguendo* that these findings are erroneous, the error would not support the conclusion that the trial court abused its discretion because there are ample other findings of fact to support the trial court's conclusion that termination of parental rights was in the juvenile's best interest. See *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (stating that, where there are "ample other findings of fact" to support a particular conclusion, "erroneous findings unnecessary to the determination do not constitute reversible error"). Accordingly, we conclude any possible error made by the trial court in dispositional findings of fact 5, 6, and 11(c) does not constitute reversible error.

Respondents further contend that the trial court failed to consider the second and fifth factors of N.C. Gen. Stat. § 7B-1110(a), "the likelihood of the adoption of the juvenile" and "the quality of the relationship between the juvenile and the proposed

adoptive parent[.]” This Court has held that it is an abuse of discretion to terminate parental rights where the trial court’s order does not “reflect” consideration of the relevant statutory factors. *In re E.M.*, ___ N.C. App. ___, ___, 692 S.E.2d 629, 631 (2010). However, so long as it is apparent that the trial court considered all of the relevant factors, a trial court does not abuse its discretion by omitting a finding on a statutory factor. *In re S.C.H.*, ___ N.C. App. ___, ___, 682 S.E.2d 469, 475 (2009) (holding that the trial court did not abuse its discretion where there was no specific finding regarding the bond between the parent and the child, but it was clear that the trial court had considered the factor), *aff’d per curiam*, 363 N.C. 828, 689 S.E.2d 858 (2010); see also *In re S.R.*, ___ N.C. App. ___, ___, 698 S.E.2d 535, 542 (2010) (affirming an order terminating parental rights where the trial court “did not make specific findings regarding the bond between respondent-mother and the juveniles and the bond between the foster parents and the juveniles” but there was “evidence in the record that demonstrate[d] that the trial court considered these factors in making its dispositional decision”).

Here, in dispositional finding of fact 2, the trial court stated that it accepted into evidence and considered the report by the guardian *ad litem* (GAL). In the report, the GAL stated that the juvenile’s aunt had “adopted [the juvenile’s] biological brother and had expressed that she would very much like to adopt [the juvenile]. The likelihood of adoption is very high.” The GAL further states that the juvenile “has bonded to [his aunt] and his

four-year-old brother [The juvenile] calls her 'Mama' and that he and his brother have become very close." Additionally, in dispositional finding of fact 8, the trial court found as fact that the juvenile's paternal aunt was willing to adopt the juvenile, had previously adopted the juvenile's older brother, and the brother had a bond with the juvenile. Dispositional findings of fact 2 and 8 are not challenged by either respondent and are thus binding on this Court on appeal. N.C.R. App. P. 28(b)(6) (2009); see also *In re M.D.*, ___ N.C. App. ___, ___, 682 S.E.2d 780, 785 (2009) ("Respondent-Father has not challenged any of the above findings of fact made by the trial court as lacking adequate evidentiary support. As a result, these findings of fact are deemed to be supported by sufficient evidence and are binding on appeal."). Thus, it is clear from the record before this Court that the trial court considered the likelihood of the adoption of the juvenile and the quality of the relationship between the juvenile and his paternal aunt, C.M. While "the better practice is for trial courts to make specific findings related to the factors listed in section 7B-1110(a) in orders terminating parental rights," *S.R.*, ___ N.C. App. at ___, 698 S.E.2d at 542, we hold that the trial court properly considered the second and fifth factors set forth in N.C. Gen. Stat. § 7B-1110(a).

After careful review of the record, we conclude that the trial court properly exercised its discretion by holding that it is in the juvenile's best interests to terminate respondents' parental rights. In dispositional findings of fact 6 and 9, the trial court

found that the juvenile was eighteen months old, that respondent-father had no bond with the juvenile, and that respondent-mother had no significant bond with the juvenile. Again, neither respondent challenges finding of fact 9 and it is binding on appeal. Respondent-father does challenge finding of fact 6, but only as to whether the juvenile would benefit from adoption and not as to the juvenile's age. These findings, taken with dispositional findings of fact 4 and 10, the trial court's consideration of the likelihood of the adoption of the juvenile, and the quality of the relationship between the juvenile and the proposed adoptive parent, show that the trial court properly considered all of the relevant factors of N.C. Gen. Stat. § 7B-1110(a) in determining whether termination of parental rights was in the juvenile's best interests. Moreover, the trial court's conclusion that it is in the juvenile's best interests to terminate respondents' parental rights was not manifestly unsupported by reason. Accordingly, we affirm the order of the trial court terminating respondents' parental rights to their minor child, T.M., IV.

Affirmed.

Judges HUNTER, Robert C. and CALABRIA concur.

Report per Rule 30(e).