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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-547

Filed: 2 January 2018

Guilford County, Nos. 15 JT 136, 15 JT 232

IN THE MATTER OF: A.L.M., A.L.M.

Appeal by respondent-father from order entered 20 February 2017 by Judge K. Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 14 December 2017.

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

Assistant Appellate Defender J. Lee Gilliam for respondent-appellant father.

Ellis & Winters LLP, by James M. Weiss, for guardian ad litem.

ELMORE, Judge.

Respondent appeals from an order terminating his parental rights to his minor children, A.L.M. ("Amelia") and A.L.M. ("Ava").[1] The children's mother voluntarily relinquished her parental rights and is not a party to this appeal. We affirm.

I. Background

[1] Pseudonyms are used throughout to protect the identities of the minor children and for ease of reading.

On 19 February 2015, the Guilford County Department of Health and Human Services ("DHHS") received a report that the children's stepfather had shot a gun at Amelia and drawn a knife on her. At the time, respondent had been in the hospital for approximately one month due to severe health problems, and 10-year-old Amelia and 9-year-old Ava were living primarily with their mother and stepfather. The subsequent investigation revealed that both the mother and stepfather misused alcohol and had been unable to control Amelia's increasingly volatile behavior, which included running away from home, being sexually active, engaging in physical altercations with Ava, and regularly engaging in verbal and physical altercations with the mother.

Pursuant to a safety plan signed by the mother, Ava was removed from the home and placed with her adult stepsister, but the family was unsuccessful in finding an appropriate placement for Amelia. DHHS thus obtained nonsecure custody of Amelia, placed her in therapeutic foster care, and filed a petition on 24 February 2015 alleging that she was an abused, neglected, and dependent juvenile. No petition was filed at that time with respect to Ava, who remained in her adult stepsister's home.

On 15 May 2015, the trial court entered a written adjudication order following a 15 April 2015 hearing in which it concluded Amelia was neglected and dependent. The order indicated that as of the hearing date, respondent had not entered into a case plan with DHHS, had not established his paternity of Amelia, and was unable

to independently care for Amelia due to his poor health, including renal failure that required dialysis treatments at least three times per week. The court ordered respondent to establish his paternity and declined to grant him visitation with Amelia, who remained in the physical and legal custody of DHHS. After the hearing but prior to the entry of the court's written order, respondent entered into a case plan with DHHS. Respondent agreed to complete a parenting/psychological evaluation, comply with any resulting recommendations, complete the PATE parenting program, obtain and maintain suitable housing, and maintain suitable income.

On 11 June 2015, DHHS filed a petition alleging that Ava was also a neglected and dependent juvenile. Although Ava had been in the care of her stepsister since 23 February 2015, the stepsister told DHHS that she could not be a permanent placement for Ava, and the mother, stepfather, and respondent had thus far failed to comply with their established case plans. Additionally, both the mother and stepfather were intoxicated at an 11 June 2015 meeting with DHHS. After that meeting, DHHS obtained nonsecure custody of Ava and placed her in the home of her paternal grandmother.

On 28 October 2015, the trial court entered an order adjudicating Ava neglected and dependent. Respondent had again been hospitalized and was thus unable to attend the adjudication hearing, but an attorney appeared there on his behalf. In its adjudication order, the court found that respondent was in poor physical

health, which rendered him unable to care for Ava. The court ordered respondent to comply with his case plan and granted him one hour per week of supervised visitation with Ava.

On 3 May 2016, the trial court entered a permanency planning review order regarding both Amelia and Ava. The court found, *inter alia*, that respondent was not making adequate progress on his case plan and did not appear to be physically capable of caring for the children in light of his deteriorating health. The court changed the primary permanent plan for the children from reunification to adoption and relieved DHHS from making further reunification efforts.

On 6 July 2016, DHHS filed a petition to terminate respondent's parental rights to Amelia and Ava on the grounds of neglect, failure to make reasonable progress, willful failure to pay a reasonable portion of the children's care, and dependency. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1)–(3), (6) (2015). Respondent was present at the 24 January 2017 hearing on the petition, but in poor physical health. The mother voluntarily relinquished her parental rights on the hearing date, and on 20 February 2017, the trial court entered an order terminating respondent's parental rights to Amelia and Ava based on all of the grounds alleged by DHHS. The court also concluded that termination was in the children's best interests. Respondent filed timely notice of appeal.

II. Standard of Review

"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." *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). "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, 591 S.E.2d 1, 6 (2004) (citation omitted). Unchallenged findings are presumed to be supported by competent evidence and are binding on appeal. *See In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009).

III. Grounds for Termination

Respondent argues that the trial court erred by concluding that grounds existed to terminate his parental rights to Ava.[2] We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(6), a trial court may terminate parental rights upon finding

> [t]hat the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the

[2] Respondent concedes that the trial court properly concluded that his rights to Amelia were subject to termination on the ground of dependency. Accordingly, we only address the grounds for termination of his parental rights to Ava.

> juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6). When determining whether a juvenile is dependent, "the trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

Respondent does not dispute that he was incapable of caring for his daughters due to his medical issues, but he does take issue with the trial court's determination that he lacked alternative child care arrangements. Respondent specifically contends that his mother, with whom Ava had previously resided, was proffered as an appropriate alternative child care arrangement. As to that contention, the trial court's order includes the following finding regarding the paternal grandmother:

> 23. . . .
>
> > c. [Respondent] has not proposed an acceptable alternative for [Amelia]. [Respondent] proposed the paternal grandmother . . . as an alternative placement provider for [Ava]. [Ava] was placed with [paternal grandmother] for a period of time, but was removed from [paternal grandmother's] home and placed in a licensed foster home after [paternal grandmother] contacted the social worker on at least four separate occasions asking for [Ava] to be removed from her home. [Paternal grandmother] expressed that she was unable to handle [Ava's] typical pre-teen behaviors. [Respondent] has not proposed any other alternative placement options for [Ava].

Respondent does not challenge this finding, making it binding on appeal. Nonetheless, he argues that the finding merely reflects that the paternal grandmother had one "difficult weekend" with Ava. This assertion, however, is not supported by the social worker's testimony:

> Q: Since [Amelia] and [Ava] have been in foster care, has [respondent] ever provided any alternative placement option for the juveniles?
>
> A: None for [Amelia]. [Ava] was placed with his mother.
>
> Q: And would that be [paternal grandmother]?
>
> A: Yes. Yes.
>
> Q: And is [Ava] still placed with [paternal grandmother]?
>
> A: She is not. [Ava] is placed in a licensed foster home.
>
> Q: Could you explain to the Court why [Ava] is no longer placed with [paternal grandmother]?
>
> A: [Ava] was having some typical pre-teen behavioral issues — things like putting gel in her hair, not listening to her grandmother. I would get phone calls on Sunday from [paternal grandmother] saying, "Okay, I can't do this anymore. I need you guys to come and get her." I called, talked to her on Monday and she said, "me and [Ava] made up." She apologized for [indiscernible]. After I got that fourth call on a Sunday telling me she couldn't take it anymore, that something had to be done, that we needed to find placement for [Ava], I started to seek placement for [Ava].
>
> Q: And to the best of your recollection, when did these phone calls start? When did [paternal grandmother] first start calling you asking you for [Ava] to be moved?

> A: It was back in maybe September is when the phone calls started.
>
> Q: Of which year?
>
> A: 2016.
>
> Q: And when was [Ava] ultimately moved?
>
> A: [Ava] was moved during the school year. I want to say it was in October.
>
> Q: Of which year?
>
> A: 2016.

The social worker's testimony demonstrates that the paternal grandmother was having trouble with Ava multiple times over a period of weeks before DHHS removed Ava from her care. This is also supported by the trial court's 15 November 2016 permanency planning order,[3] which included a finding that paternal grandmother "contacted the social worker on three separate occasions asking that [Ava] be moved because she could not control her behaviors." The order noted that the paternal grandmother had asked for Ava to be placed with her again, but that the court denied the request.

The only evidence before the trial court at the termination hearing was that DHHS no longer considered the paternal grandmother as a viable placement, and

[3] The trial court took judicial notice of "the entire underlying juvenile proceeding entered into the Court file[.]"

respondent did not offer any other alternative childcare arrangement. Accordingly, the court did not err by concluding that respondent's parental rights were subject to termination on the ground of dependency. Because we hold that termination was proper on this ground, we do not consider respondent's arguments regarding the remaining grounds. *See In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233–34 (1990) (holding that any one of the enumerated grounds is sufficient to support termination).

IV. Best Interests

Respondent also argues the trial court erred by concluding that termination was in the children's best interests. We disagree.

In deciding whether terminating parental rights is in a juvenile's best interests, the trial court must consider and make relevant findings regarding the following criteria:

> (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) (2015). Respondent does not contend the trial court failed to consider and make findings on the relevant statutory factors. Instead, he argues (1) the court was acting under a misapprehension of law when it concluded that termination was in the children's best interests, and (2) the court's finding that Amelia had a high likelihood of adoption was not supported by the evidence.

Respondent specifically contends that the trial court's best-interests conclusion cannot be reconciled with its additional conclusions that it was in the children's best interests to be allowed continued contact with respondent and the paternal grandmother. He notes that the decretal portion of the termination order includes the following:

> 1. The parental rights of the father . . . as to the juveniles [Ava] and [Amelia] are hereby terminated, including the right to consent or object to the juveniles' adoption.
>
> 2. This Order completely and permanently terminates all rights and obligations of the mother to the juveniles and of the juveniles to the mother arising from the parental relationship, except that the juveniles' right of inheritance from the juveniles' father shall not terminate until a final order of adoption is issued.
>
> . . .
>
> 4. The juveniles shall have supervised visits with [respondent] . . . at times and places determined by [DHHS].

Respondent argues that paragraphs 1 and 2 attempt to establish different legal consequences of termination for him and the children's mother. He further contends

that the differences between these two paragraphs, when considered together with the visitation awarded in paragraph 4, demonstrate a misapprehension of law by the trial court regarding the effect of termination with respect to respondent.

It is clear from the remainder of the order that the references to "the mother" in paragraph 2 are typographical errors. As noted in the order, the children's mother "signed a relinquishment of her parental rights . . . ." As a result, the order also bifurcated the cases and continued the mother's case until a later date. Thus, the court could not have meant to refer to the mother in paragraph 2.

Regarding paragraph 4, the decision to grant respondent visitation even after his rights were terminated does not reflect a misapprehension of law. The evidence showed that respondent would not be able to care for the children due to his medical condition, which was likely terminal. The court made unchallenged findings that termination of respondent's parental rights "would also allow for a wider search for pre-adoptive placements for the juveniles" and that "it is in the best interests of the juveniles to seek permanence sooner rather than delaying it to wait for the death of the [respondent] . . . ." It is clear the court carefully considered the facts of the case and made a discretionary decision to terminate respondent's parental rights in order to facilitate a permanent plan, while also permitting respondent to visit with the children as long as he was able. We therefore find no abuse of discretion in the court's decision.

Respondent further contends that the trial court's finding that Amelia has a high likelihood of adoption "is unreasonable on its face." He notes that Amelia had demonstrated behavioral problems necessitating placement in a Level II group home and that these issues would render her unadoptable and a "legal orphan" under the theory set forth in *In re J.A.O.*, 166 N.C. App. 222, 601 S.E.2d 226 (2004). In *In re J.A.O.*, the 14-year-old juvenile had severe medical and behavioral disorders, had been in foster care since he was 18 months old, and had been in 19 different treatment centers. *Id.* at 227–28, 601 S.E.2d at 230. The juvenile's guardian *ad litem* ("GAL") argued that it was "highly unlikely that a child of [the juvenile]'s age and physical and mental condition would be a candidate for adoption, much less selected by an adoptive family." *Id.* While recognizing there was a small possibility that the juvenile could be adopted, this Court was "unconvinced that the remote chance of adoption . . . justifie[d] the momentous step of terminating respondent's parental rights." *Id.* Accordingly, we held that the trial court abused its discretion by concluding that termination of the mother's parental rights was in the best interest of the juvenile. *Id.*

This case is distinguishable from *In re J.A.O.* Here, no evidence was presented that Amelia's prior behavioral issues would interfere with her ability to be adopted in the future. The court made an unchallenged finding that Amelia was "doing as well as can be expected and get[ting] along with the majority of the [group home's]

staff members." When asked about the children's likelihood of adoption, Amelia's GAL Program Supervisor testified, "I think the likelihood of adoption is high for both girls. They are smart. They are sweet. They are very engaging, and you know, they both want to be some place where they know they will be forever." We find this testimony to be sufficient to support the court's finding that Amelia had a high likelihood of adoption.

The trial court's dispositional findings reflect that the court considered all of the factors required by N.C. Gen. Stat. § 7B-1110 and made a reasoned decision based on that consideration. We therefore hold that the trial court did not abuse its discretion by concluding that termination was in the children's best interests.

V. Conclusion

The trial court's findings of fact support its conclusion that respondent's parental rights to Ava were subject to termination on the ground of dependency. The court did not abuse its discretion by concluding that termination was in Amelia and Ava's best interests. The trial court's order is hereby:

AFFIRMED.

Judges BERGER and ARROWOOD concur.

Report per Rule 30(e).