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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-777

Filed: 6 March 2018

Harnett County, No. 13 JT 26

IN THE MATTER OF: J.W.M., Jr.

Appeal by respondent from order entered 21 April 2017 by Judge Paul A. Holcombe, III, in Harnett County District Court. Heard in the Court of Appeals 15 February 2018.

Staff Attorney Duncan B. McCormick for petitioner-appellee Harnett County Department of Social Services.

Julie C. Boyer for respondent-appellant.

Mobley Law Office, P.A., by Marie H. Mobley, for guardian ad litem.

DAVIS, Judge.

J.M. (“Respondent”) appeals from an order terminating his parental rights to his minor child, J.W.M., Jr. (“Jack”).¹ After a thorough review of the record and applicable law, we hold the trial court did not abuse its discretion in concluding that

¹ Pseudonyms and initials are used throughout for ease of reading and to protect the juvenile’s privacy.

termination of Respondent's parental rights was in Jack's best interests. We affirm the trial court's order.

Factual and Procedural Background

On 18 January 2013, the Harnett County Department of Social Services ("DSS") obtained non-secure custody of Jack and his sister, D.S.A.M. ("Denise") and filed a petition alleging that they were dependent juveniles. DSS alleged that Respondent and the children's mother were not appropriate caretakers and could not provide for the children's care or supervision because of their extensive history with Lee County Child Protective Services. Legal custody of the children had been given to T.G. ("Ms. Gates"), a non-relative of the children, by the Lee County District Court on 27 May 2010. However, on 16 January 2013 Ms. Gates informed DSS that she wished to be relieved of the responsibility of having custody of the children. DSS initially arranged for the children to temporarily stay with their paternal grandmother in Lee County. However, the Lee County Department of Social Services refused to approve the placement of the children with their grandmother, and they were placed in separate foster homes.

After a hearing on 26 April 2013, the trial court entered an adjudication and disposition order on 10 May 2013. In its order, the court (1) adjudicated Jack and Denise as dependent; (2) continued custody of the children with DSS and sanctioned their placement in foster care; (3) awarded Respondent supervised visitation with the

children; (4) directed Respondent and the children's mother to enter into a family service agreement with DSS and comply with the provisions of the agreement; and (5) set the plan for the children as reunification with Respondent. Over the next two years, the trial court periodically held a number of review and permanency planning hearings monitoring the status of the juvenile cases and efforts to reunify the children with their parents.

In an order entered 27 October 2015, the court found that reunification efforts with Respondent should cease because he was only "able to play a secondary, supportive role to someone else" with regard to caring for the children, as evidenced by his unapproved placement of the children with their paternal grandmother during what was intended to be a trial home placement with Respondent.² The court ordered that the reunification plan be changed to adoption and directed DSS to file a petition to terminate parental rights.

DSS filed a petition to terminate the parental rights of both Respondent and the children's mother on 1 March 2016. DSS alleged three grounds on which to terminate Respondent's parental rights: (1) neglect; (2) failure to make reasonable progress to correct the conditions that led to the children's removal; and (3) failure to pay a reasonable portion of the cost of care for the children while they were placed in DSS custody. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3) (2017). After a two-day hearing

² Reunification efforts with the children's mother had previously been ceased.

on 14 October 2016 and 3 February 2017, the trial court entered an order on 21 April 2017 holding that all three grounds alleged in the petition existed to terminate the parental rights of both Respondent and the children's mother to Jack and Denise. The court then determined that (1) it was in the best interests of both children that the parental rights of their mother be terminated; and (2) it was in Jack's best interests that the parental rights of Respondent be terminated.³ Respondent filed a timely notice of appeal.⁴

Analysis

Respondent's sole argument on appeal is that the trial court abused its discretion in concluding that termination of his parental rights to Jack was in the best interests of the child. Respondent contends that he has a strong bond with Jack and that the court's finding that "there is a strong likelihood" of Jack's adoption is unsupported by the evidence. We disagree.

"After an adjudication that one or more grounds for terminating a parent's rights exist, the [trial] court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2017). In making this determination, the trial court must consider the factors set forth in N.C. Gen. Stat.

³ The court concluded that termination of Respondent's parental rights to Denise was not in her best interests due to Respondent's recent efforts to become more involved with her and the separation of Denise's pre-adoptive foster parents.

⁴ Jack's mother is not a party to this appeal.

§ 7B-1110, which include the juvenile's age, likelihood of adoption, whether termination will accomplish the permanent plan for the juvenile, the bond between the juvenile and the parent, the quality of the relationship between the juvenile and the proposed adoptive parent, and any other relevant consideration. N.C. Gen. Stat. § 7B-1110(a)(1)-(6). "The decision to terminate parental rights is vested within the sound discretion of the trial [court] 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, the trial court made findings of fact explicitly addressing each of the factors set forth in section 7B-1110(a) in its 21 April 2017 order terminating Respondent's parental rights to Jack. In pertinent part, the court found that:

4. There is a strong likelihood of adoption of [Jack]. [Jack] is in a pre-adoptive home. He has been in the placement for most of the four-year period that he has been in DSS custody, with the primary exception being the trial home visit that occurred from June 2014 to September 2014. . . .

Respondent argues that this finding of fact is unsupported by the evidence because the proposed adoptive mother previously considered herself too old to adopt Jack and had testified at a June 2014 permanency planning hearing that she did not want to adopt him. However, Respondent's challenge relies on stale evidence from more than two years prior to the filing of the petition to terminate parental rights. At the termination hearing, Jack's proposed adoptive mother testified that she was

willing to provide Jack with a permanent home and was willing to adopt him. She further testified that she had thought about this decision for the past four years, that Jack calls her “mom,” and that she thinks of him as her son.

This evidence fully supports the trial court’s finding of fact that a strong likelihood exists that Jack will be adopted if Respondent’s parental rights are terminated. Furthermore, it is not the role of this Court to re-weigh the evidence before the trial court. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) (“The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject.” (citation omitted)); *see also In re C.L.C.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709-10 (2005) (holding that it is the province of the trial court to determine if any best-interest factor outweighs another), *aff’d per curiam and disc. review improvidently allowed*, 360 N.C. 475, 628 S.E.2d 760 (2006). Respondent has not challenged any of the court’s other dispositional findings and they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

We are satisfied that the trial court’s findings reflect due consideration of the dispositional factors in N.C. Gen. Stat. § 7B-1110(a) and constitute a valid exercise of its discretion in concluding that the termination of Respondent’s parental rights was in the best interests of Jack. Moreover, Respondent has not challenged the trial

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court's conclusion that grounds existed to terminate his parental rights. Accordingly, we affirm the court's order.

Conclusion

For the reasons stated above, we affirm the trial court's 21 April 2017 order terminating Respondent's parental rights to Jack.

AFFIRMED.

Judges CALABRIA and TYSON concur.

Report per Rule 30(e).