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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1298

Filed: 15 May 2018

Durham County, Nos. 15 JT 59-61

IN THE MATTER OF: A.L., N.L. & E.L.

Appeal by respondent from order entered 25 July 2017 by Judge Shamieka L. Rhinehart in Durham County District Court. Heard in the Court of Appeals 19 April 2018.

Senior Assistant County Attorney Bettyna B. Abney for petitioner-appellee Durham County Department of Social Services.

Kilpatrick Townsend & Stockton LLP, by John M. Moye, for guardian ad litem.

Leslie Rawls for respondent-appellant mother.

INMAN, Judge.

Respondent ("Mother") appeals from an order terminating her parental rights in the minor children "Angelo," "Nick," and "Erica" (collectively, "the children").[1] Although the order also terminates the rights of the children's father ("Father"), he has not appealed. We conclude the trial court did not abuse its discretion under N.C.

[1]Pseudonyms are used to protect the identity of the juveniles. *See* N.C.R. App. P. 3.1(b).

Gen. Stat. § 7B-1110(a) in assessing the children's best interests at the dispositional stage of the proceeding. Accordingly, we affirm the court's order.

On 1 April 2015, the Durham County Department of Social Services ("DSS") filed a juvenile petition alleging the children were neglected and dependent. The petition described the family's child protective services ("CPS") history dating to 2009 and noted that DSS began providing in-home services to Mother in 2013 to address issues of mental health and substance abuse. The petition further alleged that on 27 October 2014, DSS received a CPS report that Mother and Father

> engaged in a physical altercation in the home in the presence of the children. It was also reported that there was no food in the home, no running water, and that [Father] used crack cocaine in the presence of the children. At the time, the children were residing with the father due to the mother being in Durham County Detention Center for several weeks.

It averred that Mother and the children were living with her mother, that Mother "had not been consistent with her mental health services and substance abuse services," and that Father did not reside in the home or "provide financially for the children" and refused to meet with the DSS social worker. DSS also alleged that Angelo, then twelve years old, was not receiving treatment for his diagnosed attention-deficit/hyperactivity disorder ("ADHD").

After a hearing on 21 May 2015, the trial court adjudicated the children neglected and dependent by order entered 15 June 2015. The court found, *inter alia*, that Mother

> has a diagnosis of PTSD and Depression. She has symptoms of mania and goes days without sleep. [Mother] uses Marijuana, Cocaine, Percocet, Oxycodone, Buprenorphine, Suboxone, Heroin, and her son [Angelo's] prescription drugs Ritalin and Adderall. She has a history of not being consistent with her mental health services and substances abuse services. This impairs her ability to consistently care for, protect, supervise, and provide structure for her children.

The court further found that Angelo had been diagnosed with ADHD, Opposition Defiant Disorder, and Generalized Anxiety Disorder and was in danger of failing sixth grade due to excessive unexcused absences; that Nick was already behind one grade level due to excessive absences, would likely need to repeat the third grade, and exhibited emotional difficulties, sleep-deprivation, and poor hygiene when he attended school; and that Erica was "struggling academically" and behaviorally in first grade and "came to school unkempt, with dirty hair and clothes."

The trial court placed the children in DSS custody and ordered Mother to "consistently participate" in mental health and substance abuse treatment and refrain from substance abuse; maintain stable housing and employment; stay in contact with her DSS social worker; and otherwise "demonstrate her willingness and ability to meet the children's needs[.]" At a subsequent review hearing in December

2015, the court ordered Mother to participate in domestic violence treatment for victims.

On 17 March 2016, the trial court established a permanent plan for the children of reunification with Mother with a concurrent plan of guardianship with a court-approved caretaker. However, in its written order entered on 12 April 2016, the court found Mother had tested positive for marijuana and cocaine during the court session. Following a subsequent permanency planning hearing on 7 September 2016, at which Mother again tested positive for cocaine, the court relieved DSS of further reunification efforts and changed the permanent plan to adoption with a concurrent plan of guardianship.

DSS filed a motion for termination of parental rights on 1 March 2017. The trial court held an adjudicatory hearing on 3 and 12 May 2017. On 19 May 2017, the court announced its adjudication of grounds to terminate the parental rights of Father and Mother based on neglect and their willful failure to make reasonable progress to correct the conditions that led to the children's removal from the home in May of 2015. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2017). The court received additional evidence and argument with regard to disposition on 19 May 2017 and took the matter under advisement. When the hearing reconvened on 2 June 2017, the court announced its conclusion that the best interests of the children would be

served by terminating the parents' rights. The court entered its written termination order on 25 July 2017. Mother filed timely notice of appeal.

Mother now claims the trial court abused its discretion by concluding that termination of her parental rights is in the children's best interests. "After an adjudication that one or more grounds for terminating a parent's rights exist" under N.C. Gen. Stat. § 7B-1111(a), the trial court must "determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a). The court must consider the following factors in making its determination:

> (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). "As a discretionary decision, the trial court's disposition [under N.C. Gen. Stat. § 7B-1110(a)] will not be disturbed unless it could not have been the product of reasoning." *In re A.J.M.P.*, 205 N.C. App. 144, 152, 695 S.E.2d 156, 161 (2010).

Mother challenges several of the trial court's individual findings of fact under N.C. Gen. Stat. § 7B-1110(a). Unchallenged findings are binding on this Court, *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991), and challenged dispositional findings are binding if supported by competent evidence. *See In re C.M.*, 183 N.C. App. 207, 212, 644 S.E.2d 588, 593 (2007). "Credibility, contradictions, and discrepancies in the evidence are matters to be resolved by the trier of fact," not the reviewing court. *Smith v. Smith*, 89 N.C. App. 232, 235, 365 S.E.2d 688, 691 (1988).

Mother takes exception to a "portion" of the trial court's finding under N.C. Gen. Stat. § 7B-1110(a)(4), namely that she has "a somewhat strong bond with her children." She asserts this finding "minimize[s]" the "very strong parent-child bond" shown by the evidence and, therefore, "is unsupported."

Mother's argument is unpersuasive. The trial court's full finding on this issue reads as follows:

> **Bond with mother:** Mother has a somewhat strong bond with her children, which she has maintained through consistent visitation. [Angelo], the eldest child, has the strongest attachment to his mother. [Nick's] bond with mother is not as intense as [Angelo's], and his attachment to his sister [Ms. F.] appears stronger. [Erica], the youngest child, has a bond with her mother, but this bond is not as strong as that of her brothers. All three children have expressed to their [guardian *ad litem*] the desire to return to their mother's care.

This paragraph is an accurate accounting of the DSS social worker's hearing testimony, one that credits Mother's efforts to preserve her bond with the children and in no way minimizes their bond with her.[2]

It is true, as Mother observes, that the guardian *ad litem* described the parent-child bond as "[e]xceptionally strong" in his written report to the court. However, the guardian *ad litem* declined the opportunity to testify at the hearing, advising the court through counsel that the social worker's testimony "brought the Court up to date quite sufficiently. So he has nothing else to add." Even assuming a conflict in the evidence on this issue, the trial court acted properly in resolving it.

Mother also contests the trial court's finding of a "reasonable likelihood" that each of the children will be adopted. She contends that, "on these facts, there is slim to no likelihood of adoption." Her argument is without merit.

The trial court's findings regarding the likelihood of adoption are detailed, child-specific, and fully supported by the evidence. The court found that Angelo is in a non-adoptive, therapeutic foster placement, but his foster mother "is not opposed to adopting him." The findings acknowledge that Angelo is 14 years old and, therefore, generally required to consent to his adoption. *See* N.C. Gen. Stat. §§ 48-3-601(1), -603(b) (2017). They also reflect the social worker's testimony that Angelo would want

[2] Although the social worker described Nick's bond with Mother as the weakest of the children "because he's like the middle child," Mother did not challenge the finding that Erica's "bond is not as strong as that of her brothers."

to "know who the person is before he would consent" to being adopted. If anything, the court's findings understate the social worker's assessment of the likelihood that Angelo will be adopted by his therapeutic foster mother, given their growing relationship, her avowed long-term commitment to Angelo, and Angelo's bond with her older son.

With regard to 12-year-old Nick, the DSS social worker expressed her belief that he "would be adopted because he is a very good kid. There are no physical disabilities, no serious mental health issues. . . . And he's a very sweet child." The trial court found that Nick, though currently in a non-adoptive foster home, "has expressed his desire to live with his sister [Ms. F.], and she has expressed a willingness to have him in her home." Although Ms. F. cannot adopt a child until September 2017, when she turns 21, the trial court found she has received a favorable home study from DSS. Ms. F. attended the hearing and testified she would do whatever was required to adopt Nick.

Likewise, the trial court's findings reflect the evidence that nine-year-old Erica's current foster placement, where she has lived for two years, may develop into an adoptive placement inasmuch as her foster mother "has expressed wanting to provide care for [her] long-term . . . ." In her hearing testimony, the DSS social worker characterized Erica as "an adoptable child." We conclude the evidence supports the court's finding of a "reasonable likelihood" of adoption for each child.

Finally, Mother claims the trial court's properly-supported findings do not support its ultimate determination that "it is in the best interests of [Angelo], [Nick], and [Erica] that the parental rights of their mother . . . be terminated." Having upheld the evidentiary findings challenged by Mother, we further conclude the court's findings under N.C. Gen. Stat. § 7B-1110(a), support its assessment of the children's best interests. The court's findings reflect a careful consideration of Mother's lack of progress in addressing her issues with mental health, substance abuse, and domestic violence, as well as the children's need for permanence and prospects for adoption. The fact that the children were not in adoptive placements at the time of the hearing does not preclude a reasoned determination by the court that their best interests would be served by terminating the parents' rights. *Cf. In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983) ("It suffices to say that such a finding [of adoptability] is not required in order to terminate parental rights."). The trial court's assessment accords with the separate recommendations of DSS and the guardian *ad litem* that Mother's rights be terminated. Because the trial court did not abuse its discretion, we affirm the termination order.

AFFIRMED.

Judges CALABRIA and ARROWOOD concur.

Report per Rule 30(e).