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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-499

Filed: 4 December 2018

Greene County, Nos. 16 JT 26-27

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

Appeal by respondent from orders entered 9 February 2018 by Judge Les Turner in Greene County District Court. Heard in the Court of Appeals 8 November 2018.

Delaina Davis Boyd for petitioner-appellee mother.

David A. Perez for respondent-appellant father.

TYSON, Judge.

Respondent-father appeals from orders terminating his parental rights. We affirm.

I. Background

Respondent is the father of the juveniles M.A.K. ("Mary") and L.A.K. ("Luke"). N.C. R. App. P. 3.1(b) (Pseudonyms used to protect the identity of the juveniles). Petitioner is Mary and Luke's mother. Respondent and Petitioner were married in 1999 and separated on 18 January 2013. Mary and Luke were born in 2010 and 2012,

respectively, and have lived continuously with Petitioner since their births. On 2 May 2014, Petitioner was granted custody of Mary and Luke and Respondent was allowed supervised visitation at times that were "mutually agreeable" between the parties.

On 7 December 2016, Petitioner filed petitions to terminate Respondent's parental rights. Petitioner asserted that Respondent had no contact with Mary and Luke for over six months, and contact between Respondent and the juveniles had been sporadic since the parties' separation. Petitioner alleged as grounds for termination that Respondent: (1) neglected Mary and Luke; (2) willfully failed to pay child support; and, (3) abandoned the juveniles. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (4), and (7) (2017). On 9 February 2018, the trial court found grounds existed to terminate Respondent's parental rights, concluded that termination was in the juveniles' best interests, and entered orders terminating Respondent's parental rights. Respondent appeals.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(6) (2017).

III. Issue

Respondent's sole argument on appeal asserts the trial court abused its discretion when it determined that termination of his parental rights was in the juveniles' best interests. We disagree.

IV. Standard of Review

This Court reviews the trial court's best interests determination for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "An abuse of discretion is a decision manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *In re J.D.L.*, 199 N.C. App. 182, 189, 681 S.E.2d 485, 490 (2009) (citation and quotation marks omitted).

V. Analysis

After concluding and adjudicating that one or more grounds exists to terminate a parent's parental rights, the trial court must determine whether terminating the parent's rights is in the juvenile's best interests.

> In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:
>
> (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) (2017).

Respondent contends the trial court failed to make findings regarding his bond with his children under N.C. Gen. Stat. § 7B-1110(a)(4). In both termination orders, the trial court expressly found Respondent had "no relationship and no bond with the minor child from December 2013/January 2014 until the filing of the Petition in this matter."

Respondent argues the court's finding only describes the bond between him and his children as of the time the petition to terminate his parental rights was filed. He asserts this finding does not describe his bond with his children at the time of the termination hearing. Respondent contends this issue was relevant and a finding was required, since he had testified at the hearing that Mary and Luke "want to see me. That's what I sensed from my kids. And I'm very happy and I'm glad to see them happy when they see me." Respondent argues the trial court failed to make any finding regarding the bond between Respondent and his children as of the termination hearing and abused its discretion by concluding termination was in the best interest of Mary and Luke. We disagree.

A statutory factor is considered relevant if conflicting evidence is admitted concerning the factor presented at the termination hearing, such that it is placed in

issue. *In re H.D.*, 239 N.C. App. 318, 327, 768 S.E.2d 860, 866 (2015) (citation omitted). Respondent testified he sensed his children wanted to and were happy to see him. Respondent asserts this testimony indicates a strong bond exists between him and his children at the time of the termination hearing. Respondent produced no other evidence evincing a bond between himself and his children.

Respondent cites *In re E.M.*, 202 N.C. App. 761, 692 S.E.2d 629 (2010), for the proposition that the trial court committed reversible error when it did not make a specific finding regarding the father's bond with his children at the time of the termination hearing. Respondent's reliance on *In re E.M.* is misplaced.

Here, in addition to finding "no relationship and no bond" existed between Respondent and his children when the petitions were filed, the trial court also found:

> 53. In more than three years, (since December 2013/January 2014) Respondent has visited with the [juveniles] five times, each of the five times has been after the service of the Petition to Terminate Parental Rights in this matter. Respondent Father had two visits in May 2017, one visit in June 2017, one visit during Christmas of 2017 and the day prior to the hearing of the Termination of Parental Rights. Of the five visits, two visits were directly related to a court appearance for the Petition filed in this matter, one visit was for [each of] the [juvenile's] birthday[s], and one visit was for Christmas. Even after the service of the Termination of Parental Rights Petition, the Respondent Father went from June, 2017-December 2017 without a visit [with the juveniles].

The trial court repeated its finding later in the orders, stating:

> 90. That the Respondent Father has had no contact with

> the [juveniles] for more than six months prior to the filing of the petition and only began to see the [juveniles] after the petition had been filed and served, *but even then, Respondent Father has only seen the [juveniles] five times in almost a year period since being contacted about signing a consent to adoption*. (Emphasis supplied).

Respondent does not challenge any of the trial court's dispositional findings, and these findings are binding upon appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

The court found Petitioner had maintained the same telephone number since 2006, prior to the birth of the parties' children, and had done nothing to block or inhibit contact between Respondent and his minor children. The court also found until the petition was filed, Respondent did not even inquire of Petitioner about the status, health, or well-being of his children. Respondent testified and the court found that he did not visit with his children since summer of 2013, and did not attempt to see them at all during the years of 2014, 2015, or 2016.

Respondent offered no evidence showing any relationship existed between himself and his children other than his own statement that he had "sensed" his children were happy to see him. When questioned about his attempt to re-establish a relationship with his children in 2016, Respondent acknowledged he had only made the five post-petition visits.

Respondent offered no evidence of actions taken by his children to indicate a relationship. He testified that the day before the termination hearing he played "hide

and seek" with his children. He offered no testimony or other evidence to show his children's responses, only that "just sitting and watching them giving me energy back, you know, giving me good feeling. Make me [sic] that I am alive again." In response to a question regarding what he gave Mary for Christmas, Respondent asked "with the boy?" Respondent did not call his son by his name.

The trial court did not specifically state no bond existed between Respondent and the juveniles at the time of the hearing. It found no bond existed prior to the filing of the petition, Respondent had minimally visited with the juveniles thereafter and prior to the termination hearing, with no visits with his children at all in the three years prior to the filing of the petition. These findings demonstrate the trial court considered the statutory factor set forth in N.C. Gen. Stat. § 7B-1110(a)(4) and made relevant findings.

Further, in the case of *In re E.M.* cited by Respondent, this Court pointed out that the trial court had made written findings on only two of the six criteria set out in N.C. Gen. Stat. § 7B-1110(a). 202 N.C. App. at 764-65, 692 S.E.2d at 631. The trial court had failed to make any findings regarding the likelihood of adoption, bond between the juvenile and the respondent, or the quality of the relationship between the juvenile and the prospective adoptive parent. *Id.* This Court noted the record contained such evidence and remanded the case for entry of the necessary additional findings of fact. *Id.*

Both the orders and the transcript of the hearing in the record on appeal show the trial court considered each of the statutory criteria listed in N.C. Gen. Stat. § 7B-1110(a) including the ages of the children, the likelihood of adoption by the Petitioner's current husband, and the quality of the relationship between Mary and Luke and Petitioner's current husband. The trial court's orders contain the statutorily required findings of fact based upon properly admitted evidence. *See* N.C. Gen. Stat. § 7B-1110(a). The trial court's ultimate conclusion that termination of Respondent's parental rights was in the juveniles' best interests is not manifestly unsupported by reason. Respondent has failed to show any abuse of discretion by the trial court. His argument is overruled.

VI. Conclusion

Respondent failed to show the trial court abused its discretion by finding "no relationship and no bond" existed between Respondent and his children or with its conclusion that termination of Respondent's parental rights was in the best interests of the juveniles. The trial court's orders terminating Respondent's parental rights are affirmed. *It is so ordered.*

AFFIRMED.

Judges CALABRIA and ZACHARY concur.

Report per Rule 30(e).