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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-989

Filed: 7 May 2019

Durham County, Nos. 07 JA 262, 08 JA 352–53, 14 JA 88–89, 14 JA 157

IN THE MATTER OF: J.J., Y.J., J.J., E.J., E.J., M.S.

Appeal by respondent-mother from order entered 26 March 2018 by Judge Shamieka L. Rhinehart in Durham County District Court. Heard in the Court of Appeals 13 March 2019.

Bettyna Belly Abney for petitioner-appellee Durham County Department of Social Services.

The Law Office of Derrick J. Hensley, PLLC, by Derrick J. Hensley, for petitioner-appellee Durham County Department of Social Services.

Peter Wood for respondent-appellant mother.

Parker Poe Adams & Bernstein LLP, by John J. Butler, for guardian ad litem.

BRYANT, Judge.

Where the trial court did not abuse its discretion in terminating respondent's parental rights as it was in the children's best interest to do so, we affirm the trial court's ruling.

Respondent is the mother of "Joey,"[1] born in April 2005; "Yancey," born in June 2007; "Jerry," born in June 2008; "Ernie and Elwood," born in March 2012; and "Mick," born in August 2014.[2] All six children were adjudicated as being neglected juveniles in July 2014.

On 12 July 2017, DSS filed a petition to terminate respondent's parental rights detailing an extensive history of court proceedings dating back to 2007. On 26 March 2018, the trial court entered an order terminating respondent's parental rights to the six children. On appeal, respondent challenges only the trial court's ruling to terminate her parental rights as to Joey and Yancey. Therefore, the other children are not subjects of this appeal.[3]

In July 2007, Joey was hospitalized for failure to thrive due to significant weight loss, loss of height, and having below normal head circumference measurements. Joey significantly improved while in the hospital. However, he was later admitted back in the hospital when he again suffered from failure to thrive and fell significantly below normal percentiles for healthy children at 2 years old. DSS obtained nonsecure custody of Joey on 10 October 2007 due to his failure to thrive while in respondent's care. Although Yancey tested positive for marijuana when he

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[1] Pseudonyms are used to protect the juveniles' privacy and for ease of reading.

[2] In addition to these six children, respondent-mother gave birth to two more children in July 2017.

[3] The father of Joey and Yancey is not a party to this appeal.

was born, he was not involved in Joey's court action and was receiving in-home case management services from DSS.

The trial court authorized a trial placement for Joey with respondent, subject to the following: respondent must obtain a new apartment or, alternatively, follow a cleaning plan to exterminate roaches from her apartment; bring Joey to his medical appointments; attend mental health therapy and take medication; follow Joey's treatment plan and feeding schedules, and monitor Joey's weight. However, respondent was noncompliant with most of the requirements; therefore, the trial court discontinued Joey's trial placement and removed both children due to respondent having an injurious environment and lack of stability.

By 2010, after finding that respondent had made progress in maintaining stable housing and keeping a clean environment for the children, the trial court allowed the children a trial placement with respondent. Then the trial court granted legal custody to respondent, but ordered DSS to continue intensive in-home services.

On 21 March 2014, a social worker observed that Joey had "extreme eczema" and Yancey had dried blood in his ears. The social worker also observed that Joey and respondent's third child, Jerry, had skin flakes on their clothing. The children indicated that they would "itch and scratch all day." Jerry stated "that he has to take oral medication, but his mother does not give it to him every day. [Joey] stated [that] all he takes is cream and he puts it on after his bath." The school nurse observed

problems with Joey's behavior and noted that Jerry's wounds would "ooze" because he scratched so much. DSS contacted respondent following the social worker's report and respondent agreed to seek treatment for the children and follow treatment recommendations from medical staff. However, respondent did not attend the medical appointments.

On 29 April 2014, DSS received a report that Yancey was in intensive care after playing a "zombie game" with Joey, which involved hanging. Yancey had asphyxiated himself and sustained brain damage. While at the hospital, respondent made remarks to the care nurse that she thought it was okay to play the game as long as his younger siblings did not participate. Yancey remained in the hospital for several days. Following his release, Yancey required additional therapy and follow up with a neurologist. Again, respondent did not follow through with the necessary medical treatment for Yancey or the medical appointments for the other children.

Two months after Yancey's hospital visit, DSS received information that respondent had placed an ad on Craigslist which stated, "I am currently homeless and looking for someone to take my five kids until I can find a job and a place to live. . . . I am a certified nursing assistant but can't find work due to numerous doctors [appointments] because my 6 year old accidently hung himself. Please help anyone."

DSS implemented a safety plan for the children and assumed emergency custody. Joey and Yancey were eventually placed in foster care; DSS documented

reports from the foster parents complaining that both children exhibited aggressive and sexual behaviors. The children's school also reported that both children had severe behavioral issues. Joey and Yancey were later relocated to a level II therapeutic foster care placement for their behavioral issues.

Both children continued to exhibit severe behavioral issues—the trial court noted that Joey was frequently urinating on himself, a condition for which he was taking medication, and Yancey was receiving medication to help him sleep at night. The trial court concluded that continued reunifications efforts "would be inconsistent with the children's health, safety, and need for a safe permanent home within a reasonable period of time" as respondent has been "unable to provide for the children's needs consistently."

A hearing was held on 26 March 2018 in Durham County District Court before the Honorable Shamieka L. Rhinehart, Judge presiding. Judge Rhinehart concluded it was in the children's best interest to terminate respondent's parental rights. Respondent appeals.

On appeal, respondent-mother does not challenge the trial court's findings of fact or conclusions of law that grounds exist to terminate parental rights. In her sole argument on appeal, she contends the trial court abused its discretion by terminating

her parental rights where it was not in the children's best interests to do so. For the reasons discussed herein, we disagree.

> 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. 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) (internal citation and quotation marks omitted).

"Termination of parental rights is a two-step procedure." *Id.* at 221, 591 S.E.2d at 5. After the petitioner proves that at least one ground exist to terminate parental rights, the trial court then determines whether it is in the best interest of the child to terminate parental rights. *See* N.C. Gen. Stat. § 7B-1110 (2017). "Although severing parental ties is a harsh judicial remedy, the best interests of the children must be considered paramount." *In re Shepard,* 162 N.C. App. at 221, 591 S.E.2d at 5 (quoting *In re Adcock*, 69 N.C. App. 222, 227, 316 S.E.2d 347, 350 (1984)). Under N.C. Gen. Stat. § 7B-1110, the trial court is directed to consider the following factors when making a determination of the best interest of a child:

> (1) The age of the juvenile.
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> (2) The likelihood of adoption of the juvenile.
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> (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.G.S. § 7B-1110.

In the instant case, respondent relies on this Court's ruling in *In re J.A.O.*, 166 N.C. App. 222, 601 S.E.2d 226 (2004), in arguing that the trial court did not consider the likelihood of adoption for the children when terminating her parental rights. In *J.A.O.*, this Court held that termination of a mother's parental rights was not in the best interest of the child where the child was considered a troubled teenager and had a history of violent tendencies and mental health issues. This Court reasoned that terminating parental rights would render the child a "legal orphan" because the child would be an unlikely candidate for adoption. *Id.* at 227–28, 601 S.E.2d at 230. The child's GAL in *J.A.O.* also agreed that it was not in the child's best interest to terminate parental rights. *Id.* at 226–27, 601 S.E.2d at 229–30.

J.A.O. is inapposite to this case. Here, the trial court, in its order determining the best interests of the children and terminating parental rights, considered the likelihood of adoption and determined that although adoption was "not likely to immediately occur[,]" it was not impossible. The trial court found that both children had a prospective adoptive parent who was willing to adopt after the children

completed therapeutic treatment. Additionally, the children's GAL argued that termination of respondent's parental rights was in the best interest of the children. While we recognize that the children did not have an adoptive placement at the time of termination, "this Court has held that the absence of an adoptive placement for a juvenile at the time of the termination hearing is not a bar to terminating parental rights." *Matter of A.H.*, 250 N.C. App. 546, 568, 794 S.E.2d 866, 881 (2016) (citation and quotation marks omitted). Therefore, respondent's argument that the trial court did not consider the likelihood of adoption is overruled.

Respondent also argues that the trial court did not consider her bond with her children before terminating her rights, because "the trial court did not consider the mother's ability to care for *only* two children." (emphasis added). However, the record reveals that leading up the termination of respondent's parental rights, the trial court made considerable efforts to reunite the children with respondent against the recommendations of DSS. Given the children's relationship with respondent, the trial court attempted trial placements with conditions for respondent to correct in order to regain custody of the children; however, respondent was unable to consistently maintain a stable environment for the children. The trial court, while noting the children's relationship with respondent, also made the following pertinent findings:

> c. While there is a bond between the children and their mother, . . . the [c]ourt finds that the bond is outweighed by the need for these children to have certainty, peace, and safety.

> d. Both [Yancey] and [Joey] have complex mental health needs causing them to struggle to maintain control over their emotions. These two children will require consistent and uninterrupted therapy and medical treatment if they are to thrive and be safe.
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> e. [T]he court considers the ten-month placement with [respondent], which failed because [respondent] was overwhelmed with tending to her own needs and the needs of her six children. She missed appointments for the children, they were late to school, she failed to make sure they had their skin medication, and she failed to keep a de-cluttered home that could be safe for the children. Because of her inconsistency in her mental health treatment and other causes that affected her judgment, [respondent] cannot provide a safe and permanent home. . . .

Based on these findings, the trial court considered respondent's bond with her children and determined it was in the best interest of the children to terminate respondent's parental rights. Respondent has failed to show that the trial court's decision was not supported by reason, and therefore, we conclude the trial court did not abuse its discretion in terminating her parental rights.

AFFIRMED.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).