An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-927

Filed: 18 June 2019

New Hanover County, No. 16 JT 70

IN THE MATTER OF: K.C.W.

Appeal by respondent-father from order entered 14 June 2018 by Judge J.H. Corpening II in New Hanover County District Court. Heard in the Court of Appeals 30 May 2019.

No brief filed for petitioner-appellee New Hanover County Department of Social Services.

David A. Perez for respondent-appellant father.

Poyner Spruill LLP, by John M. Durnovich and Christopher S. Dwight for guardian ad litem.

TYSON, Judge.

Respondent-father appeals from an order terminating his parental rights to his minor child, K.C.W. ("Keith"). *See* N.C. R. App. P. 42(b) (pseudonym used to protect the identity of the child). We affirm.

I. Background

On 23 March 2016, the New Hanover County Department of Social Services ("DSS") filed a petition alleging Keith was a neglected juvenile. DSS obtained non-secure custody of Keith the following day. Respondent and Keith's mother stipulated at the hearing to amended allegations of neglect based upon their inability to provide care for their son. The trial court entered an adjudication and disposition order on 14 July 2016.

The court concluded Keith was a neglected juvenile, continued physical custody of Keith with DSS, granted Respondent and Keith's mother supervised visitation, and ordered them to comply with the family services agreements they had entered into with DSS. Respondent's case plan included that he: (1) obtain and maintain stable employment; (2) maintain a stable residence; (3) successfully complete parenting classes; (4) submit to random drug screens; and, (5) sign all releases for service providers.

In a review order entered 26 September 2016, the trial court found Respondent: (1) had not participated in any visitation with Keith since 8 July 2016; (2) had not submitted to any drug screens requested by DSS; and, (3) had not otherwise been in compliance with the requirements of his case plan. The trial court set the primary permanent plan for Keith as reunification with a parent and set the secondary plan as adoption by order entered 5 April 2017.

Both Respondent and Keith's mother continued to make minimal progress toward their case plans over the following several months. The trial court changed the primary permanent plan for Keith to adoption by order entered 7 December 2017. Keith's secondary plan was set as reunification with a parent.

DSS filed a petition to terminate parental rights to Keith on 13 February 2018. DSS alleged grounds of neglect, failure to make reasonable progress to correct the conditions that led to Keith's removal from the home, failure to legitimate, and abandonment. *See* N.C. Gen. Stat. § 7B-1111(a) (1)-(2), (5), (7) (2017).

After a hearing on 7 May 2018, the court found grounds to terminate based upon neglect and failure to make reasonable progress to correct the conditions that led to Keith's removal and concluded Keith's best interests required termination of Respondent's parental rights. The trial court entered an order terminating Respondent's parental rights to Keith on 14 June 2018. The Respondent filed timely notice of appeal from the termination order.

II. Jurisdiction

Jurisdiction lies in this Court from a final order of the district court entered 29 June 2018 pursuant to N.C. Gen. Stat. § 7B-1001(a)(6) (2017).

III. Issues

Respondent argues the trial court abused its discretion and committed reversible error when it (1) denied his counsel's oral motion to continue the

termination hearing; and, (2) concluded it was in Keith's best interests to terminate Respondent's parental rights.

IV. Standard of Review

"A trial court's decision regarding a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation." *In re J.B.*, 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005) (internal citation omitted).

An abuse of discretion occurs when the trial court's decision is "manifestly unsupported by reason." *In re R.B.B.*, 187 N.C. App. 639, 648, 654 S.E.2d 514, 521 (2007), *disc. review denied*, 362 N.C. 235, 659 S.E.2d 738 (2008). Additionally, continuances in termination of parental rights proceedings are disfavored:

> The court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

N.C. Gen. Stat. § 7B-1109(d) (2017).

V. Analysis

A. Motion to Continue

The petition to terminate parental rights was filed on 13 February 2018. The hearing date had initially been set for 9 April 2018, but pursuant to a previous motion filed by DSS, the hearing was continued until 7 May 2018. Any further continuance would likely have pushed the hearing date beyond 14 May 2018, which is more than 90 days after the petition had been filed. *See id.* Such additional extensions should "be granted only in extraordinary circumstances." *Id.*

Respondent was not present in court when the hearing was called at 9:44 a.m. Respondent had been seen in the courthouse earlier that morning and had spoken with his counsel. Respondent's trial counsel moved for a continuance, but offered no excuse for Respondent's absence from the hearing, even though she had spoken with Respondent that morning. Counsel asserted the continuance was also needed to allow Respondent to obtain necessary documents from his service providers. Respondent had told his counsel he had contacted the providers three days earlier, but that he had not heard back from all of them.

Upon these facts, Respondent failed to demonstrate the "extraordinary circumstances" necessary to justify his requested continuance, and has failed to show the trial court abused its discretion in denying Respondent's motion to continue. *See id.*

B. Findings of Fact

Respondent argues the trial court failed to make adequate findings of the factors set forth in N.C. Gen. Stat. § 7B-1110 (2017) and abused its discretion in concluding that it was in Keith's best interests to terminate his parental rights.

"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) (emphasis supplied). When determining whether it is in a juvenile's best interests to terminate parental rights, the trial court must consider multiple factors and make findings of fact regarding those the court determines to be relevant. *Id.* The factors include:

> (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.

Id. "[A] factor is 'relevant' if there is 'conflicting evidence concerning' the factor, such that it is 'placed in issue by virtue of the evidence presented before the trial court[.]'" *In re H.D.*, 239 N.C. App. 318, 327, 768 S.E.2d 860, 866 (2015) (quoting *In re D.H.*, 232 N.C. App. 217, 220 n.3, 753 S.E.2d 732, 735 n.3 (2014)).

"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).

Respondent contends that although the trial court found termination of his parental rights was necessary to achieve "*a* permanent plan of care," the court's finding is insufficient to support its conclusion because it never identified *the* permanent plan of care to be achieved. Respondent also argues the trial court's finding that the foster parents would like to adopt Keith is insufficient because it fails to address how likely it was that the adoption would occur.

Respondent has not demonstrated conflicting evidence was presented before the trial court concerning these two factors. Instead, Respondent merely objects to the findings as found and argues they are insufficient to address the corresponding statutory factors.

Respondent has not asserted there was a conflict in the evidence on the factors before the trial court. Respondent has failed to show the factors were "relevant" and that the court had to make findings of fact in order to resolve asserted evidentiary conflicts. *In re D.H.*, 232 N.C. App. at 221-22, 753 S.E.2d at 735 ("Since respondent fails to point to any evidence in the record demonstrating that age was placed in issue as a relevant factor, such that it had an impact on the trial court's decision, we do not

believe that the trial court erred in not making specific findings concerning the children's ages in its order."). Respondent has failed to show the trial court abused its discretion in determining that termination of Respondent's parental rights is in Keith's best interests.

VI. Conclusion

Respondent does not otherwise challenge the trial court's order terminating his parental rights.

The trial court did not abuse its discretion when it denied Respondent's motion to continue or determined termination of Respondent's parental rights was in the juvenile's best interests. The trial court's order terminating Respondent's parental rights is affirmed. *It is so ordered.*

AFFIRMED.

Judges DILLON and BERGER concur.

Report per Rule 30(e).