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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1127

Filed: 18 June 2019

Buncombe County, No. 16 JA 108

IN THE MATTER OF: D.F.J.

Appeal by respondents from order entered 23 August 2018 by Judge Andrea F. Dray in Buncombe County District Court. Heard in the Court of Appeals 12 March 2019.

Matthew J. Putnam for petitioner-appellee Buncombe County Department of Social Services.

Anné C. Wright for respondent-appellant mother.

Jeffrey William Gillette for respondent-appellant father.

Michael N. Tousey for guardian ad litem.

DIETZ, Judge.

Respondents appeal a dispositional order terminating their parental rights to their minor daughter. They argue that some of the trial court's findings are not supported by the record and that the trial court abused its discretion in its best interests determination.

As explained below, the trial court's findings are supported by sufficient evidence in the record and we are therefore bound by them. In light of those findings, the trial court's best interests determination was within the court's sound discretion. We therefore affirm the trial court's order.

Facts and Procedural History

Debbie[1] is a juvenile born to Respondents on 1 April 2016. Six days after Debbie was born, the Buncombe County Department of Social Services filed a juvenile petition alleging Debbie was neglected and dependent.

Before DSS's involvement with the family, Respondent-Father had a history of violence toward his other children. In 1993, he was sentenced to roughly two years in prison for voluntary manslaughter in the death of his six-week-old son. He was also convicted of felony child abuse in 2002 and was sentenced to twelve years in prison for breaking his eighteen-month-old daughter's femur and causing permanent injury to her leg.

Shortly after his release from prison in 2015, Respondent-Father began dating Respondent-Mother. Between 2004 and 2014, Respondent-Mother lost custody of her five children—a court terminated her parental rights to two children, she relinquished her parental rights to one child, and she granted her sister custody to the remaining two children.

[1] We use a pseudonym to protect the juvenile's identity.

On 29 June 2016, Debbie was adjudicated neglected and dependent. At the disposition phase, the trial court relieved DSS of its duty to make reasonable efforts toward reunification with Respondents and ordered that Debbie remain in DSS's custody. DSS placed Debbie in foster care with the same foster mother who adopted two of Respondent-Mother's other daughters. Respondents were allowed supervised visitation with Debbie for one hour per week.

On 13 September 2016, the court entered a dispositional order setting Debbie's permanent plan as adoption with a concurrent plan of guardianship. Three days later, DSS filed a petition to terminate Respondents' parental rights. On 10 March 2017, the trial court denied the petition, finding that while grounds existed to terminate Respondents' rights, it was not in Debbie's best interests to do so.

On 27 July 2017, Respondent-Father completed a psychological evaluation. According to the evaluating doctor's report, "[t]he fact that the two incidents of extreme abuse [Respondent-Father] exhibited were spaced by almost a decade would suggest that the personality deficits that led to these behaviors were ongoing over a long period of time without being sufficiently addressed." The doctor advised that "repetition of behavior has a higher predictive quality for future behavior," and therefore any reunification efforts needed to be contingent upon Respondent-Father obtaining therapy.

On 28 August 2017, DSS filed a second petition to terminate Respondents' parental rights to Debbie. On 30 April 2018, the parties met at a pretrial conference where Respondents waived their right to appeal any orders from the adjudicatory phase. Respondents did, however, reserve their right to appeal the trial court's disposition regarding the best interests of the child.

On 25 May 2018, the trial court entered an adjudicatory order finding grounds to terminate Respondents' parental rights. Following further hearings, the trial court entered a dispositional order on 23 August 2018 terminating Respondents' rights after concluding that it was in the best interests of the child to do so. Respondents timely appealed.

Analysis

I. Findings of Fact

Respondents challenge multiple findings of fact in the trial court's dispositional order as being unsupported by the evidence. We review the order "to see if there is clear . . . and convincing competent evidence to support the findings." *In re Hughes*, 74 N.C. App. 751, 758–59, 330 S.E.2d 213, 218 (1985).

First, Respondents challenge the findings regarding their bond with Debbie. At the dispositional hearing, two DSS social workers testified about Respondents' visits with Debbie, stating that Debbie's bond with them was that of "an acquaintance." One social worker testified that Debbie "doesn't really greet them"

when Respondents arrive for visits and shows "no emotional reaction to leaving them" when visits end. Both social workers testified that Debbie would cry whenever her foster mother tried to leave the room and that her foster mother had to try "really hard" to redirect Debbie back to her parents. This testimony is sufficient to support the challenged findings.

Respondents point to contrary evidence from the hearing, especially two videos showing Respondents comforting Debbie and Debbie calling Respondent-Father "daddy." But because there was clear and convincing evidence to support the trial court's findings, they are binding on appeal, "even though the evidence might support a finding to the contrary." *Id.* at 759, 330 S.E.2d at 218. Moreover, it was the trial court's task to weigh the evidence and determine the "reasonable inferences to be drawn therefrom." *Id.* Here, the trial court specifically found the social workers' testimony to be "credible and relevant," and it is not this Court's function to reweigh the evidence on appeal. *Burger v. Smith*, 243 N.C. App. 233, 248, 776 S.E.2d 886, 896 (2015).

Next, Respondent-Mother specifically challenges a finding regarding Debbie's relationship with her foster family, contending that "the trial court dismissed guardianship as a viable disposition for Debbie with findings of fact that were not supported by the evidence." Again, we reject this argument.

The trial court found that if Respondents' rights "are not terminated, as [Debbie] continues to develop she will become increasingly aware of the distinction of her relationship to the foster parents [sic] as opposed to the relationship of her half-siblings." The court further found that as Debbie "becomes more verbal and aware of her circumstances," she would be more likely to share information with Respondents about "the location of the foster home, the situation of the siblings, and other matters that the foster parents may not want revealed." Respondent-Mother argues that there was no evidence to support these findings because the foster mother did not testify. But as Respondent-Mother acknowledges, a DSS social worker testified about the foster mother's concerns. Moreover, there was supporting evidence in the guardian ad litem's court report. This evidence is sufficient to support the trial court's findings.

Next, Respondent-Father challenges the finding that he did "nothing" to obtain the therapy services recommended to him at his July 2017 psychological evaluation, claiming that he was still waiting for his mental health provider to follow up with DSS about scheduling an appointment. But when asked at the dispositional hearing what he had done to obtain these services, he replied "[w]ell, nothing." Respondent-Father's testimony supported the trial court's finding, and it was for the trial court alone to determine "the reasonable inferences to be drawn therefrom." *Hughes*, 74 N.C. App. at 759, 330 S.E.2d at 218.

Finally, both Respondents challenge the finding that they have made "no progress" in developing "basic parenting skills." One of the DSS social workers testified that Respondents failed to display such skills "over the past two years." He noted that Respondents "don't go out of their way to try to meet Debbie's physical or emotional needs" and that whenever Debbie "wants something or has hurt herself, their response is to give her a snack, and it is a constant move about every 25 minutes from one snack to another to try to coax her attention back to them." This evidence is sufficient to support the trial court's finding.

II. Best Interests of the Child

Respondents next argue that the trial court abused its discretion when it determined that terminating their rights was in Debbie's best interests. We disagree.

The trial court "may consider any evidence . . . that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile." N.C. Gen. Stat. § 7B-1110(a). In turn, the court must make written findings about certain criteria, including (1) the juvenile's age, (2) the likelihood of the juvenile's adoption, (3) whether termination will aid in accomplishing the juvenile's permanent plan, (4) the bond between the juvenile and the parents, (5) the "quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement," or (6) "any relevant consideration." *Id.* The trial court's best

interests determination will not be disturbed on appeal absent an abuse of discretion. *In re J.H.*, 244 N.C. App. 255, 269, 780 S.E.2d 228, 238 (2015).

Here, the trial court properly considered and entered written findings for each criterion in N.C. Gen. Stat. § 7B-1110(a) and then made a best interests determination well within the court's sound discretion. Respondent-Mother argues that the same trial court "came to the opposite conclusion under essentially the same facts" when it denied DSS's first termination petition. But the facts were not the same. Since the denial of the first termination petition, Respondent-Father's psychological evaluation was released and he failed to obtain the therapy services his evaluator recommended. Moreover, at the hearing on the second petition, Respondent-Mother revealed her new plans to marry Respondent-Father if they regained custody of Debbie, which the trial court found left "no possibility that the child could be reunified with the respondent mother without the juvenile being subjected to the risk of violent treatment by the respondent father." In any event, Respondents overlook the reality of discretionary decisions—a court can reach two different outcomes on essentially the same facts, and both can fall within the court's sound discretion. That is the nature of discretionary rulings. *See Mason v. Dwinnell*, 190 N.C. App. 209, 232, 660 S.E.2d 58, 73 (2008) ("[T]he mere fact that contrary evidence may exist does not justify reversal.").

In short, the trial court's best interests determination was within its sound discretion and was not so arbitrary that it could not have been the result of a reasoned decision. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). Accordingly, we affirm the trial court's order.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Chief Judge McGEE and Judge COLLINS concur.

Report per Rule 30(e).