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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1099

Filed: 1 October 2019

New Hanover County, No. 13 JT 296

IN THE MATTER OF: K.D.

Appeal by Respondent-Father from order entered 19 July 2018 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 5 September 2019.

*No brief filed on behalf of petitioner-appellee New Hanover County Department of Social Services.*

*K&L Gates LLP, by Erica Hicks, for guardian ad litem.*

*Peter Wood for respondent-appellant father.*

MURPHY, Judge.

Respondent-Father (“Gustav”<sup>1</sup>) appeals from the trial court’s order terminating his parental rights to Sebastien. He contends the trial court abused its discretion in concluding that termination of his parental rights was in Sebastien’s best interest. For the following reasons, we affirm.

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<sup>1</sup> We use pseudonyms for all relevant persons throughout this opinion to protect the juvenile’s identity and for ease of reading.

**BACKGROUND**

On 27 December 2013, the New Hanover County Department of Social Services (“DSS”) filed a juvenile petition alleging that Sebastien was an abused and neglected juvenile.<sup>2</sup> Gustav’s whereabouts were unknown when the petition was filed. DSS took Sebastien into nonsecure custody.

When DSS located Gustav, he indicated that he did not want to enter into a case plan because he faced pending criminal charges and anticipated a lengthy prison sentence. However, he eventually signed a Family Services Agreement requiring him to: complete a comprehensive clinical assessment to identify any mental health or substance abuse issues and follow all recommendations; submit to all drug screens as requested; obtain and maintain safe and stable housing and income to support himself and his children; participate in a parenting program; and sign any releases for DSS and the guardian ad litem (“GAL”).

A hearing on the juvenile petition was held 24 April 2014. Gustav had not yet been served and did not attend the hearing. The mother stipulated to the allegations of neglect set forth in the petition, and the trial court adjudicated Sebastien neglected in an order entered 22 May 2014. The allegations of abuse were dismissed. The trial

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<sup>2</sup> The petition also alleged that Sebastien’s younger brother was an abused and neglected juvenile. However, Gustav is not the father of the younger child, and the younger child is not part of this appeal. Therefore, we discuss the facts only as they pertain to Sebastien. Additionally, because this appeal solely concerns the dispositional phase of the trial court’s termination of parental rights to Sebastien, we do not discuss the facts underlying the juvenile petition.

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court ordered Gustav to comply with his Family Services Agreement and granted him one hour of supervised visitation per week to begin after he submitted a clean drug screen.

Gustav was convicted of multiple drug offenses and began serving an active sentence on or about 30 July 2014. Following a 14 January 2015 permanency planning hearing, the trial court entered an order on 10 February 2015 ceasing reunification efforts and changing the permanent plan from reunification to concurrent plans of guardianship with a relative and adoption. The trial court found that Wake County DSS received a positive home study of the paternal grandparents and that Gustav expressed a desire for the grandparents to become Sebastien's caregivers. The trial court continued Sebastien's custody with DSS but authorized placement with the paternal grandparents once services were in place. The trial court held subsequent permanency planning hearings on 16 April 2015, 29 July 2015, and 20 January 2016. In an order entered 8 February 2016, the trial court granted custody of Sebastien to his paternal grandparents and waived further review hearings.

In September 2016, DSS filed a *Motion for Review* after the paternal grandmother indicated that she no longer wished to serve as Sebastien's legal custodian. In a 27 September 2016 order, the trial court granted DSS custody of Sebastien, and DSS placed him in a foster home. On 12 May 2017, the trial court

changed the permanent plan to adoption and ordered DSS to proceed with filing a petition to terminate parental rights.

Gustav was released from incarceration on 30 September 2017 after serving 38 months. He contacted DSS on 23 October 2017 and asked for visitation with Sebastien. However, because Sebastien's placement was in a different town, the social worker requested Gustav call back when he had the time to visit. DSS had no further contact with Gustav and, as a result, was not aware of his location after his release from prison.

On 1 February 2018, DSS filed a petition to terminate Gustav's parental rights based on the grounds of neglect, willful failure to make reasonable progress to correct the conditions which led to the child's removal from the home, and willful abandonment under N.C.G.S. § 7B-1111(a)(1), (2), and (7), respectively. Because Gustav's whereabouts were still unknown, DSS properly served the petition via publication in accordance with Rule 4 of the North Carolina Rules of Civil Procedure.

The trial court held hearings on the petition to terminate Gustav's parental rights on 21 May and 4 June 2018. In an order entered 19 July 2018, the trial court terminated Gustav's parental rights, finding that all three alleged grounds existed and that termination of Gustav's parental rights was in Sebastien's best interest.<sup>3</sup> Gustav filed timely notice of appeal.

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<sup>3</sup> The trial court also terminated the parental rights of Sebastien's mother, but she did not appeal.

**ANALYSIS**

On appeal, Gustav does not challenge the trial court's findings of fact or conclusions of law that grounds existed to terminate his parental rights to Sebastien. Rather, his argument is that the trial court abused its discretion by concluding termination of his parental rights was in Sebastien's best interest. We disagree.

"Termination of parental rights is a two-step procedure." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 5, *disc. review denied*, 358 N.C. 543, 599 S.E.2d 42 (2004). After the petitioner proves that at least one ground exists to terminate parental rights, the trial court must then determine at disposition whether termination is in the best interest of the child. N.C.G.S. § 7B-1110(a) (2017). The trial court must consider the following factors in making this 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.

*Id.*

“The court’s determination of the juvenile’s best interest will not be disturbed absent a showing of an abuse of discretion.” *In re E.M.*, 202 N.C. App. 761, 764, 692 S.E.2d 629, 630 (2010) (citation omitted). An abuse of discretion “occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *In re P.Q.M.*, 232 N.C. App. 419, 421, 754 S.E.2d 431, 433-34 (2014).

Gustav solely challenges the trial court’s consideration of the bond between himself and Sebastien. The trial court made the following Finding of Fact regarding the bond between Sebastien and Gustav:

15. . . . [T]here is no bond between [Sebastien] and [Gustav]. There is a bond between [Sebastien] and Respondent-Mother. [Sebastien] is eight (8) years old, has been in his current foster home for with [sic] months and is bonded with his foster parents and foster siblings. They are interested in exploring the adoption of [Sebastien]. While [Sebastien] has continued to have behavioral issues, he is doing well academically and fitting in well in his foster environment. The termination of parental rights of Respondent-Parents will aid in the establishment of the permanent plan of adoption, as this is the only obstacle to adoption at this time.

Gustav does not challenge this finding, making it binding on appeal. *In re J.M.W.*, 179 N.C. App. 788, 792, 635 S.E.2d 916, 919 (2006).

Gustav admits he does not have a bond with Sebastien, but contends the trial court abused its discretion in determining termination was in Sebastien’s best interest as he never had a chance to form a bond due to his incarceration. Gustav argues that he “did the best he could under the circumstances” during his over-three-

year incarceration by writing to Sebastien and speaking with him on the telephone and that he could not begin to form a more meaningful bond until after his release. Therefore, Gustav argues he did not willfully fail to have a bond with Sebastien and that the trial court failed to make “adequate findings” of whether he had the ability to develop a bond with Sebastien.

In support of his argument, Gustav points us to *In re Shermer*, 156 N.C. App. 281, 576 S.E.2d 403 (2003), *In re T.C.B.*, 166 N.C. App. 482, 602 S.E.2d 17 (2004), and *In re Young*, 346 N.C. 244, 485 S.E.2d 612 (1997). His reliance on these cases, however, is misplaced. These cases address whether the parents’ failure to contact their children constituted willfulness in the context of assessing whether the willful abandonment ground for termination existed under N.C.G.S. § 7B-1111(a)(7). N.C.G.S. § 7B-1111(a)(7) (2017) (“The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion . . .”).

The question before us, however, is not whether grounds existed for termination of parental rights for willful abandonment under N.C.G.S. § 7B-1111(a)(7). Rather, our inquiry is solely into whether the trial court abused its discretion in its determination at disposition that termination of parental rights was in the best interest of Sebastien. N.C.G.S. § 7B-1110 controls the trial court’s best interest determination at disposition. The statute requires the trial court to consider

the state of the bond between the parent and the juvenile when deciding whether termination is in the child's best interest. Nothing in the language of the statute compels the trial court to inquire into whether that bond (or lack thereof) resulted from the parent's willful behavior.

We conclude that the trial court properly considered the bond between Gustav and Sebastien. The trial court made the unchallenged finding that "there is no bond between [Sebastien] and [Gustav]." Also relevant to that bond, the trial court found that prior to Gustav's incarceration, "he would miss scheduled visits with [Sebastien] or would have to be redirected during the visits." During Gustav's incarceration, the trial court found that he replied to the social worker only once, that his subsequent contact was "minimal at best[,] and that he requested not to be transported from prison for further court hearings after the April 2015 hearing. Finally, the trial court found that after his release from incarceration, Gustav did not attend any court hearings, did not engage in any services, and did not contact DSS to reschedule visits with Sebastien. Due to Gustav's lack of contact, DSS was not aware of his housing or employment status. The trial court was not required to conduct a willfulness analysis as Gustav argues. Accordingly, the trial court did not abuse its discretion in determining that termination was in Sebastien's best interest.

### **CONCLUSION**



IN RE: K.D.

*Opinion of the Court*

The trial court's order terminating Gustav's parental rights to Sebastien is affirmed.

AFFIRMED.

Chief Judge McGEE and Judge COLLINS concur.

Report per Rule 30(e).