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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1241

Filed: 5 November 2019

Surry County, No. 17 JT 75

IN THE MATTER OF: B.M.B.

Appeal by Respondent-Mother from order entered 4 September 2018 by Judge Marion Boone in Surry County District Court. Heard in the Court of Appeals 4 September 2019.

DiRusso & DiRusso, by Gabriel H. Jimenez, for petitioner-appellee grandmother.

Richard Blake Cheek for petitioner-appellee father.

Richard Croutharmel for respondent-appellant mother.

Lori D. Watson for guardian ad litem.

BERGER, Judge.

Respondent-Mother appeals from an order terminating her parental rights. We affirm the trial court's order.

Factual & Procedural Background

B.M.B. ("Berta")[1] was born on January 12, 2007 to Respondent-Mother and her former husband ("Father"). Between 2011 and 2012, Respondent-Mother lived in a homeless shelter with Berta and Berta's half-sisters, A.S. and B.S., until Department of Social Services ("DSS") removed A.S. and B.S. from Respondent-Mother's custody. In the fall of 2013, Respondent-Mother and Father separated and agreed to share custody of Berta. In 2014, Respondent-Mother voluntarily placed Berta with her maternal grandmother ("Petitioner") and her boyfriend because she was unable to care for the child. Petitioner provides financial support, supplies clothing and necessities, and enrolls Berta in school.

On July 6, 2017, Petitioner was granted a domestic violence protection order (the "DVPO") against Respondent-Mother because she had pulled Berta's hair and stated that she was going to "kill" Berta for not leaving Petitioner's house. The DVPO prohibited Respondent-Mother from having any contact with Berta for one-year.

On September 29, 2017, Petitioner and her boyfriend filed a petition in Surry County District Court to terminate Respondent-Mother and Father's parental rights pursuant to Sections 7B-1111(a)(1), (a)(6), and (a)(9) of the North Carolina General Statutes. On August 2, 2018, the trial court terminated Respondent-Mother's parental rights to Berta; however, the trial court found insufficient grounds to

[1] Pseudonyms are used to protect the identities of the juveniles and for ease of reading. *See* N.C.R. App. P. 3.1(b).

terminate Father's parental rights. The adjudication order included the following relevant findings:

> 3. That, in 2014, the minor child [Berta], was living with the Petitioners on a primary basis, and there was no Court Order nor any other external obstruction in place preventing the Respondent/Mother from having or seeking custody of the child.
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> 4. That, in 2015, the Respondent Mother was charged and convicted of multiple crimes involving the unlawful possession and use of controlled substances, including, but not limited to, knowingly maintaining a vehicle, dwelling house, or any place whatever which was resorted to by persons using controlled substances unlawfully or used for the unlawful keeping or selling of controlled substances.
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> 5. That in 2015 the Court entered, following a contested action, a juvenile adjudication order finding that grounds to terminate the Respondent/Mother's parental rights to the minor children [A.S.] and [B.S.] and which justified terminating the Respondent/Mother parental rights existed and had been proven by clear and convincing evidence. That the same Court later entered a juvenile disposition order finding that the best interests and welfare of said children would be served by terminating the Respondent/Mother's parental rights. Respondent/Mother's parental rights to said children were terminated.
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> 6. That, in 2016, the Respondent/Mother exercised some sporadic visitation with the minor child, [Berta], on weekends, but that the minor child continued to live primarily with the Petitioners during this time. That the Respondent/Mother provided the Petitioners with some monies for the support of the minor child on a sporadic basis, but that she otherwise did not financially support the minor child and that she sent no gifts or cards during that period.

7. That between the years of 2016, through June 24, 2017, the Respondent/Mother continued to unlawfully use and abuse alcohol and other controlled substances.

8. That the last time the Respondent/Mother saw or communicated with [Berta] was on June 21, 2017. That, following the events which occurred on that day, Petitioner . . . requested and obtained an *ex parte* domestic violence protective order on behalf of the minor child.

10. That, on July 6, 2017, a hearing before the Honorable Judge William F. Southern was conducted whereat Respondent/Mother was afforded the opportunity to appear, testify and present evidence as to the veracity of the allegations contained in the initial complaint or to request that the order be dismissed such that she could visit and communicate with the minor child.

11. That the Petitioners were present at the same hearing, but that Respondent-Mother was not present and did not enter an appearance thereat.

12. That the Honorable Judge Southern thereafter did order and extend the domestic violence protective order, and the decretal portion thereof, to remain in full force and effect up to and through July 6, 2018.

13. That the Respondent/Mother has not now or any time prior to now filed an action for custody of the minor child. That the Respondent/Mother has taken no legal actions to acquire custody of the minor child.

24. Grounds to terminate the Respondent/Mother's parental rights and which justify terminating the Respondent/Mother's parental rights to [Berta] exist pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), 7B-1111(a)(6) and 7B-1111(a)(9). The Court finds (i) that Respondent/Mother has neglected the juvenile, (ii) that Respondent/Mother is incapable of providing for the proper

> care and supervision of the juvenile and that there is a reasonable probability that such incapability will continue for the foreseeable future, and (iii) that the parental rights of Respondent/Mother with respect to other minor children have been terminated involuntarily by a court of competent jurisdiction and that Respondent/Mother lacks the ability or willingness to establish a safe home for the minor child.
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> 25. That the facts and circumstances as alleged in paragraph 24, namely, that grounds to terminate the Respondent/Mother's parental rights and which justify terminating the Respondent/Mother's parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), 7B-1111(a)(6) and 7B-1111(a)(9), exist and have been proven by clear, cogent, and convincing evidence.

On September 4, 2018, the trial court entered a TPR disposition order that terminated Respondent-Mother's parental rights pursuant to Sections 7B-1111(a)(1), (a)(6), and (a)(9). Respondent-Mother appeals, arguing that the trial court (1) erred by concluding that grounds existed to terminate her parental rights, and (2) abused its discretion in concluding it was in Berta's best interest to terminate Respondent-Mother's parental rights. We disagree.

Standard of Review

The standard of review for the adjudication stage "is to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact." *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (citation and quotation marks omitted). "If the trial court's findings of fact are supported by ample, competent evidence, they are

binding on appeal, even though there may be evidence to the contrary." *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (citations and quotation marks omitted). "So long as the findings of fact support a conclusion that one of the enumerated grounds exists the order terminating parental rights must be affirmed." *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (*purgandum*).

"The standard of review of the dispositional stage is whether the trial court abused its discretion in terminating parental rights." *In re C.C.*, 173 N.C. App. 375, 380-81, 618 S.E.2d 813, 817 (2005) (citations omitted). "A court abuses its discretion when an action is so arbitrary that it could not have been the result of a reasoned decision." *In re E.M.*, 202 N.C. App. 761, 764, 692 S.E.2d 629, 630 (2010) (citation and quotation marks omitted).

Analysis

"Under the North Carolina Juvenile Code, a termination of parental rights proceeding involves two distinct phases: an adjudicatory stage and a dispositional stage." *In re A.H.*, 183 N.C. App. 609, 613, 644 S.E.2d 635, 637 (2007). "First, in the adjudicatory stage, the trial court must determine whether the evidence clearly and convincingly establishes at least one ground for the termination of parental rights listed in N.C. Gen. Stat. § 7B-1111." *In re Fletcher*, 148 N.C. App. 228, 233, 558 S.E.2d 498, 501 (2002) (citation omitted). "A finding of any one of the grounds enumerated [in section 7B-1111], if supported by competent evidence, is sufficient to support a

termination." *In re J.L.K.*, 165 N.C. App. 311, 317, 598 S.E.2d 387, 391 (2004) (citation omitted). If the petitioner meets his or her burden of proving at least one ground for termination of parental rights, then the "trial court proceeds to the dispositional phase and must consider whether termination is in the best interests of the child." *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406 (2003).

The trial court may terminate "[t]he parental rights of the parent with respect to another child of the parent" if their parental rights "have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home." N.C. Gen. Stat. § 7B-1111(a)(9) (2017). Here, the trial court found, in addition to neglect and dependency, that Respondent-Mother's parental rights to other minor children had been terminated and that Respondent-Mother lacked the ability or willingness to establish a safe home for the juvenile.

It is undisputed that Respondent-Mother's parental rights to her older children, A.S. and B.S., were terminated in 2015. In addition, evidence presented at trial tended to show that Respondent-Mother lacked the ability or willingness to establish a safe home for the juvenile. Respondent-Mother voluntarily relinquished her parental duties to Petitioners in 2013 because, as she testified, she "wasn't living right." In doing so, Respondent-Mother acknowledged that she was unable to parent the juvenile, and had declined to parent the juvenile or otherwise accept her role as

a parent from that point through the termination proceedings. Respondent-Mother failed and appeared unable to provide necessities for the juvenile. Further, Respondent-Mother engaged in acts of domestic violence against Berta and has a history of substance abuse. Respondent-Mother's substance abuse concerns persisted as demonstrated by a positive drug test for controlled substances while on supervised probation in July 2017. Even though Respondent-Mother testified that she had been sober since July 23, 2017, her actions, when taken as a whole, show a failure on her part to recognize and appreciate that her behavior was potentially harmful, or may have had a harmful effect on the juvenile's well-being. Respondent-Mother has not progressed to a point that a reasonable person could conclude she had the ability or willingness to establish a safe home for the juvenile.

Thus, the evidence presented in the trial court supported the trial court's findings of fact, which in turn supported the conclusions of law, that grounds existed to terminate Respondent-Mother's parental rights under Section 7B-1111(a)(9). Because grounds to terminate Respondent-Mother's parental rights existed pursuant to Section 7B-1111(a)(9), we need not address her arguments on neglect and dependency. Respondent-Mother also argues that the trial court abused its discretion in concluding that it was in Berta's best interests to terminate her parental rights. She specifically contends that the trial court erred when it failed to make any findings regarding the likelihood of adoption. We disagree.

Section 7B-1110(a) of the North Carolina General Statutes states:

> After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest . . . . 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) (emphasis added).

The plain language of this section requires the trial court to make written findings *only of* those factors that are relevant. *See In re D.H.*, 232, N.C. App. 217, 221, 753 S.E.2d 732, 735 (2014) (interpreting the plain language of Section 7B-1110(a) to require a trial court to enter written findings in its order concerning only those factors "that are relevant"). "[I]t is not an abuse of discretion for the trial court to omit a specific written finding on a statutory factor under [S]ection 7B-1110(a), so long as it is apparent that the trial court *considered* all relevant factors." *In re S.R.*, 207 N.C. App. 102, 110, 698 S.E.2d 535, 541 (2010).

Here, the trial court made written findings regarding the factors set forth in Section 7B-1110 (a)(1), (a)(3), (a)(4), and (a)(5). These findings were consistent with

the evidence presented, and the trial court did not abuse its discretion when it made written findings which addressed only the *relevant* factors under Section 7B-1110(a).

Conclusion

For the reasons stated herein, we affirm the trial court's adjudication and disposition orders terminating Respondent-Mother's parental rights.

AFFIRMED.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).