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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-155

Filed: 3 December 2019

Rowan County, No. 16 JT 100

IN THE MATTER OF: D.D.H., Jr.

Appeal by respondent from order entered 19 November 2018 by Judge Marshall Bickett in Rowan County District Court. Heard in the Court of Appeals 31 October 2019.

Jane R. Thompson for petitioner-appellee Rowan County Department of Social Services.

Garron T. Michael for respondent-appellant mother.

Ellis & Winters LLP, by James M. Weiss, for guardian ad litem.

DIETZ, Judge.

Respondent appeals the trial court's order terminating her parental rights to her son, Don[1]. She challenges the trial court's best interests determination on the ground that the court failed to adequately consider Don's desire to continue having a relationship with Respondent and the availability of less drastic alternatives.

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

We reject this argument because the trial court properly considered all of the relevant statutory factors, including Don's views, before concluding that termination was in Don's best interests. The trial court's decision was a reasoned one and not an abuse of the court's sound discretion.

Facts and Procedural History

On 21 June 2016, the Rowan County Department of Social Services received a report that Don's maternal grandmother and caretaker was arrested in South Carolina. Don's grandmother and a friend had been in a car with Don for over six hours, made Don roll up the windows, and put "white and black stuff" into a "long black thing and smoked it." Don appeared to law enforcement and South Carolina social workers to be impaired by some substance. Don further reported to social workers that he had not eaten any meals the day before, and that his grandmother also had smoked "the long black thing at his dad's house." When DSS took temporary custody of Don, he was difficult to awaken, mumbled in response to questions, and struggled to relay simple information.

On 22 June 2016, DSS filed a petition alleging that Don was a neglected and dependent juvenile. DSS stated that Don's grandmother was arrested for driving under the influence of an impairing substance and remained incarcerated in South Carolina. Respondent, Don's mother, was incarcerated in North Carolina with a projected release date of November 2016. DSS asserted that Respondent had never

parented Don and had long-term, severe drug problems. Two of Don's older siblings were currently in DSS's care, one awaiting a final adoption decree and the second likely to be adopted. Another sibling previously in DSS's care already had been successfully adopted.

On 3 November 2016, the court adjudicated Don as a neglected and dependent juvenile based on a consent order entered by the parties. The trial court set the primary permanent plan for Don as reunification with a secondary plan of custody with a family member or other court-approved caretaker. At the time the order was entered, Respondent was still incarcerated, with a projected release date later that month.

Six months later, after Respondent's release, the court held a review and permanency planning hearing. Respondent did not appear at the hearing. The trial court found that Respondent did not make any progress towards substance abuse or mental health treatment and had been incarcerated twice since her release. The trial court therefore changed the primary permanent plan to adoption, with the secondary plan being reunification.

On 7 September 2017, DSS filed a petition to terminate Respondent's parental rights on the grounds of neglect, willful failure to make reasonable progress, and that Respondent's parental rights to another child had been involuntarily terminated and she lacked the ability or willingness to establish a safe home. N.C. Gen. Stat. § 7B-

1111(a)(1), (2), (6), and (9). On 19 November 2018, the trial court entered an order terminating Respondent's parental rights, concluding that grounds existed to terminate Respondent's parental rights as alleged in the petition and that termination of Respondent's rights was in Don's best interests. Respondent appealed.

Analysis

Respondent's sole argument on appeal is that the trial court abused its discretion in concluding that termination was in her child's best interests. We reject this argument.

This Court reviews the trial court's best interests determination for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis,* 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

After an adjudication that one or more grounds for terminating a parent's rights exist, the trial court must determine whether termination is in the juvenile's best interests by considering the following criteria and making written findings regarding those 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).

In the dispositional portion of its order, the trial court made findings of fact that addressed all of the required statutory factors in N.C. Gen. Stat. § 7B-1110(a):

> 3. [Don] resides in the foster home of [Mr. and Mrs. S.]. He has resided with [Mr. and Mrs. S.] since June 21, 2016.
>
> 4. [Don] attends the fourth grade at [ ] Elementary School, and his most recent progress report was straight As. [Don's] prior [Individualized Educational Plan] has been dismissed. He is now in the [Academically or Intellectually Gifted] program at school. [Don] enjoys playing soccer and basketball. [Don's grandmother] has attended some of [Don's] soccer games.
>
> 5. [DSS] introduced a letter from [Don's] third grade teacher . . . [which] highlights that from the time she met [Don] in July 2016 to now, [Don] has become a different child in a positive way in that he is very sociable, outgoing, and confident.
>
> 6. [Don] developed a quick bond with [Mr. and Mrs. S.], and he refers to [Mr. and Mrs. S.] as "Mom" and "Dad."
>
> 7. [Don] is bonded with [Mr. and Mrs. S.'s] family members, including [Don's] half brother [ ], who has been adopted by [Mr. and Mrs. S.]. [Don] had not previously known any of his siblings. [Don] loves his brothers and

sisters in [Mr. and Mrs. S.'s] home. [Don] shares a room with his "big brother" [ ].

. . . .

10. There is a strong bond between [Don] and [Don's grandmother]. [Don] indicates that on a scale of 1-10, a relationship and contact with [Respondent] and [his grandmother] is a "10" in importance to him. [Don] enjoys playing with [his grandmother] and watching football with her. He is affectionate, interactive, and close to [his grandmother]. When [Respondent] attended visits, she would play games and chess with [Don]. . . . During phone calls, [Don] is not very engaged with [Respondent] but is more engaged with [his grandmother].

11. [Respondent] and [Don's grandmother] agree that [Don] is in the best place he can be since they are not in a position to have him in their care. There are no available relative placements for [Don].

12. [Mr. and Mrs. S.] are willing to continue to allow [Don's grandmother] to have contact with [Don] as long as she is consistent and appropriate. [Don's grandmother] has not been consistent with telephone contact with [Don]. [She] is allowed weekly phone calls on Sundays with [Don]. [Don] spoke with [his grandmother] on the phone in June or July 2018, and prior to that it was in May 2018.

13. It is in the juvenile's best interest to be adopted at the earliest possible age.

14. Terminating the parental rights of [Respondent] . . . is necessary to accomplish the best permanent plan for the juvenile, which is adoption.

15. [Mr. and Mrs. S.] are willing and able to provide a permanent home for [Don]. Terminating the parental rights of [Respondent] . . . as early as possible will enable the juvenile to be adopted as soon as possible. There are no

> foreseeable barriers to adoption, and the likelihood of adoption by [Mr. and Mrs. S.] is very high.

Respondent does not challenge any of the trial court's dispositional fact findings and they are thus binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Respondent contends that the trial court failed to give adequate consideration to Don's strong desire to maintain contact with both herself and Don's grandmother. At the termination hearing, Don testified that on a scale of one to ten, he rated it a "ten" in importance that he maintain ongoing contact with his grandmother and Respondent. Respondent contends that although the trial court made a finding regarding Don's wishes, the trial court's conclusion that termination of her parental rights was in his best interests amounted an abuse of discretion because it conflicted with his expressed wishes. We disagree.

Our Supreme Court has repeatedly identified the child's best interests as "the 'polar star' of the North Carolina Juvenile Code." *In re T.H.T.*, 362 N.C. 446, 450, 665 S.E.2d 54, 57 (2008). Thus, "the expressed wish of a child is never controlling on a court." *Bost v. Van Nortwick*, 117 N.C. App. 1, 9, 449 S.E.2d 911, 915 (1994). As explained by our Supreme Court in *Clark v. Clark*, 294 N.C. 554, 576–77, 243 S.E.2d 129, 142 (1978):

> When the child has reached the age of discretion, the court may consider the preference or wishes of the child to live with a particular person. A child has attained an age of

> discretion when it is of an age and capacity to form an intelligent or rational view on the matter. The expressed wish of a child of discretion is, however, never controlling upon the court, since the court must yield in all cases to what it considers to be for the child's best interests, regardless of the child's personal preference. . . . The preference of the child should be based upon a considered and rational judgment, and not made because of some temporary dissatisfaction or passing whim or some present lure.

Here, it is apparent the trial court considered Don's wishes because it is reflected in the trial court's findings. Don's relationships with his grandmother and with Respondent, however, were just one of several factors to be considered when determining his best interests. After considering all of the relevant factors, the trial court determined that termination was in Don's best interests, despite his expressed desire to maintain contact with his grandmother and Respondent. This discretionary decision is neither arbitrary nor unsupported by reason, and thus we must defer to it under the applicable standard of review.

Respondent also contends that the trial court should have considered less restrictive means for achieving permanence. Respondent suggests that the trial court should have considered placing Don in a guardianship rather than terminating her parental rights. But although the trial court may consider alternatives at the dispositional phase, the law does not require the court to do so. *In re M.M.*, 200 N.C. App. 248, 258, 684 S.E.2d 463, 469 (2009). Moreover, guardianship was never the permanent plan for Don. Instead, adoption was the permanent plan, and the trial

court found as fact that it was in Don's best interests that he be adopted at the earliest possible age and that termination of Respondent's parental rights would accomplish that plan. The court was well within its sound discretion to evaluate Don's best interests based solely on the permanent plan.

In sum, the question before the trial court at disposition in a termination of parental rights proceeding is whether termination of parental rights is in the best interests of the juvenile. N.C. Gen. Stat. § 7B-1110(a). Respondent does not dispute that the trial court made findings regarding each of the factors set forth in N.C. Gen. Stat. § 7B-1110(a). Based on those findings, the trial court did not abuse its discretion in concluding that termination of Respondent's parental rights was in Don's best interests. We therefore affirm the trial court's order.

Conclusion

We affirm the trial court's order terminating Respondent's parental rights.

AFFIRMED.

Judges STROUD and HAMPSON concur.

Report per Rule 30(e).