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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-312

No. COA21-599

Filed 3 May 2022

Buncombe County, No. 17 JT 372; 19 JT 8

IN RE: K.D.H., M.K.H.

Appeal by Respondent-Father from judgments entered 19 July 2021 by Judge Susan M. Dotson-Smith in Buncombe County District Court. Heard in the Court of Appeals 9 March 2022.

Jack Densmore, for Buncombe County Department of Social Services, Petitioner-Appellee.

Jackson M. Pitts, for Guardian ad Litem.

Mary McCullers Reece, for Respondent-Appellant Father.

WOOD, Judge.

¶ 1 Respondent-Appellant Father (“Respondent”) appeals from judgments terminating his parental rights to his minor children, Kenny and Mark.¹ On appeal, Respondent argues the trial court erred by not considering guardianship in lieu of terminating his parental rights. After a careful review of the record and applicable

¹ Pseudonyms are used to protect the identities of the minor children. See N.C.R. App. P. 42(b).

law, we affirm the judgments of the trial court.

I. Factual and Procedural Background

¶ 2 The children’s mother (“Mother”) and Respondent began dating prior to 2016. At the time, Mother had three children² from previous relationships, and Respondent had a “significant criminal history” of fourteen separate convictions from 2008 to 2016. Respondent and Mother first came to the attention of Buncombe County DSS (“DSS”) in 2015 when one of Mother’s older children burned down their home with a lighter.

¶ 3 After their home burned down, Respondent and Mother experienced chronic homelessness and lived in shelters with the minor children. While at a shelter, two of Mother’s children were “observed destroying property, ignoring respondent mother and running up and down the street.” Ultimately, Respondent and Mother were asked to leave the shelters due to the children’s behavior. Respondent and Mother “expressed concern with the children’s behaviors and have stated that they have a hard time managing them without physical discipline.”

¶ 4 In August 2016, Respondent and Mother had their first child together, Kenny. In 2017, DSS found the family “in need of services.” Mother admitted “she could not care for the minor children” and requested the minor children be placed in foster care.

² Mother’s children from prior relationships are not subject to this appeal.

Respondent-Father objected, and thereafter, the family made alternate arrangements for the children.

¶ 5 Meanwhile, DSS continued to monitor the children. In one instance, a DSS worker observed one of Mother’s children, a three-year-old at the time, outside without adult supervision for more than ten minutes. Mother also began to report concerns about Respondent’s substance use. On one occasion, Mother found Respondent unconscious, could not wake him, and was afraid he had overdosed on a controlled substance. The children were present in the house when this event occurred.

¶ 6 DSS obtained nonsecure custody of Kenny on November 29, 2017. The next month, Respondent and mother had another child together, Mark. That same month, Respondent submitted to a drug test and tested positive for Methamphetamine, Cocaine, Morphine, and Benzodiazepines. Thereafter, three separate domestic violence incidents took place between Respondent and Mother from February to May 2018. During one of these domestic violence incidents, Respondent “pushed the mother down to the ground and punched her face multiple times.” Mark was present at the beginning of this altercation but was removed by his paternal aunt when Mother and Respondent’s arguing started to increase.

¶ 7 Five months later, on May 30, 2018, DSS took nonsecure custody of Mark. On July 13, 2018, the trial court adjudicated Kenny as a neglected and dependent

juvenile. The trial court based its adjudication of Kenny as a neglected juvenile “in part, upon domestic violence, improper supervision, and improper discipline.” On August 27, 2018, the trial court adjudicated Mark as a neglected juvenile.

¶ 8 The trial court continued to allow Respondent and Mother visitation with Kenny and Mark. However, Respondent failed to visit his minor children consistently. Respondent’s visitation rights with Kenny and Mark were thereafter suspended by the trial court due to not exercising his visits.

¶ 9 On May 6, 2019, DSS filed a petition to terminate Respondent’s and Mother’s parental rights to Kenny. The petition alleged Kenny was exposed to domestic violence, adjudicated neglected and dependent, abandoned for more than six months preceding the filing of the petition, and willfully left in placement outside the home for more than twelve months. On September 10, 2019, DSS filed a petition to terminate Respondent’s and Mother’s parental rights to Mark. In its petition, DSS alleged Mark had been adjudicated neglected, willfully left in foster care for more than twelve months, and abandoned by Respondent. DSS further stated Respondent was “currently being investigated for sexual abuse against the respondent mother’s five year old child[,] . . . has not completed court ordered services[,] . . . continues to remain in legal trouble[,] . . . [and] experience[s] continued substance abuse issues.”

¶ 10 In October 2019, Respondent was incarcerated. While incarcerated, Respondent began to speak with the social worker for this case and ask questions

about Mark and Kenny. The termination of parental rights hearing occurred on April 21 and 22, 2021. At the time of the hearing, Respondent remained incarcerated while awaiting trial, and faced up to 15 years in prison if convicted. Respondent testified “I still want to be a part of my boys’ life. They’re mine.” Respondent explained,

I’m not just trying to give my rights up. I’d do guardianship or whatever, but I’m not trying to get rid of my rights. I still want to be engaged in my boys’ life. . . . You know, I started doing what I needed to do. Yeah, I was a little late on it, and I mentioned that, but everybody deserves a second chance.

¶ 11 According to the report to the court filed by DSS on April 21, 2022, Kenny and Mark had been living with and bonded to Respondent’s stepsister, Lainey Peterson (“Lainey”).³ According to DSS, Lainey “desperately wants to adopt” Kenny and Mark, and thus, DSS recommended Respondent’s and Mother’s parental rights be terminated. By judgments entered July 19, 2021, the trial court terminated Respondent’s and Mother’s parental rights to Kenny and Mark.⁴ Respondent timely filed a notice of appeal of both judgments.

II. Discussion

¶ 12 Respondent’s sole issue on appeal is whether the trial court erred by terminating his parental rights, instead of granting guardianship of his minor

³ Pseudonyms are used to protect the minor children’s identities. *See* N.C.R. App. P. 42(b).

⁴ Mother does not appeal these judgments.

children to Lainey. We discern no error in the trial court’s judgments.

¶ 13 A proceeding to terminate parental rights requires a two-step process. *In re H.N.D.*, 265 N.C. App. 10, 13, 827 S.E.2d 329, 332 (2019). “In the first phase of the termination hearing, the petitioner must show by clear, cogent and convincing evidence that a statutory ground to terminate exists.” *In re S.N., X.Z.*, 194 N.C. App. 142, 145-46, 669 S.E.2d 55, 58 (2008) (citation omitted), *aff’d per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009); *see In re H.N.D.*, 265 N.C. App. at 13, 827 S.E.2d at 332. If the trial court finds that grounds exist to terminate the parent’s rights, the trial court then proceeds to the dispositional phase where it must consider whether a termination of parental rights is in the child’s best interest. *In re S.N., X.Z.*, 194 N.C. App. at 146, 669 S.E.2d at 59.

¶ 14 Respondent does not argue the trial court erred as to the first phase of the termination hearing; rather, Respondent challenges whether a termination of his parental rights was in Kenny’s and Mark’s best interests. Thus, our review is limited to whether the trial court abused its discretion by determining that terminating Respondent’s parental rights were in the best interests of the minor children. *See id.*; *see also* N.C.R. App. P. 28(a).

¶ 15 At the dispositional stage, the “court must consider whether it is in the best interests of the juvenile to terminate parental rights.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 797 (2020) (quotation omitted). When considering the best interests

of the juvenile, the court is to consider the following factors:

- (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)(1)-(6) (2021); *see In re Z.L.W.*, 372 N.C. 432, 434-35, 831 S.E.2d 62, 64 (2019). We review a trial court’s determination that termination of parental rights is in the child’s best interest for abuse of discretion. *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019); *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016). An 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.” *In re A.U.D.*, 373 N.C. at 6, 832 S.E.2d at 700-01 (quoting *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015)); *see In re Z.L.W.*, 372 N.C. at 435, 831 S.E.2d at 64.

¶ 16 Here, Respondent argues the trial court should not have terminated his parental rights and instead, should have granted only guardianship to Lainey, thus allowing him to retain a parent-child relationship with Kenny and Mark. Although

the paramount consideration at the dispositional phase is the best interest of the child, this Court has repeatedly held “the trial court should consider the parents’ right to maintain their family unit” *In re Parker*, 90 N.C. App. 423, 431, 368 S.E.2d 879, 884 (1988); *see In re T.K., D.K., T.K., & J.K.*, 171 N.C. App. 35, 39, 613 S.E.2d 739, 741 (2005), *aff’d per curiam*, 360 N.C. 163, 622 S.E.2d 494 (2005); *In re S.B.M.*, 173 N.C. App. 634, 637, 619 S.E.2d 583, 586 (2005). Guardianship, as opposed to termination of parental rights, allows a parent to maintain a relationship with their child. Because the termination of parental rights is a “grave and drastic step[,]” *a trial court should always* consider guardianship in the dispositional stage. *Bost v. Van Nortwick*, 117 N.C. App. 1, 17, 449 S.E.2d 911, 920 (1994) (quoting *In re Dinsmore*, 36 N.C. App. 720, 726, 245 S.E.2d 386, 389 (1978)). However, “if the interest of the parent conflicts with the welfare of the child, the latter should prevail.” *In re Parker*, 90 N.C. App. at 431, 368 S.E.2d at 884.

¶ 17 After careful review of the record, we find the trial court properly considered non-termination disposition alternatives for Kenny and Mark prior to terminating Respondent’s parental rights. Thus, our analysis is limited to whether the trial court considered the factors enumerated in N.C. Gen. Stat. § 7B-1110(a), and in turn, abused its discretion by terminating Respondent’s parental rights. *See In re Z.L.W.*, 372 N.C. at 435, 831 S.E.2d at 64.

¶ 18 The trial court made the following uncontested findings of fact for Kenny and

Mark regarding the dispositional factors enumerated in N.C. Gen. Stat. § 7B-1110(a):

[1.] The minor child and siblings are adoptable. The plan is adoption for all. All are in stable, safe placements. The minor child does not remember his father.

. . .

[2.] The minor child and siblings are likely to be adopted.

[3.] The minor child has a strong bond with the pre-adoptive placement providers.

[4.] The minor child has siblings in the same home as the pre-adoptive placement providers.

[5.] The minor child does not really know the respondent father, as the minor child and the respondent father have had very minimal contact.

. . .

[6.] The respondent father is at Polk Detention Center, awaiting trial for [sic] past 19 months. He was first arrested on these . . . [charges] on July 3, 2019. He got out in August, then was subsequently re-arrested on the same . . . [charges] in October. He has been in jail ever since then. He had a BIP assessment, after he requested a referral from SW Hempel. He wants to engage in services, yet is not able to do so. He is clean, clear-headed, and away from negative influences. The respondent father still wants to be involved in their lives. One charge involves one of his minor children, and he maintains his innocence. He started to engage prior to arrest. He is currently facing 15 years if convicted of charges in jury trial. He does not want his rights terminated, wants to be in the lives of his children.

[7.] The minor child's permanent plan is adoption

and, therefore, the parental rights of the respondent parents must be terminated in order to accomplish that plan.

[8.] By clear, cogent, and convincing evidence, it is in the best interest of the minor child that the parental rights of the respondent parents, be terminated.

¶ 19 From these uncontested findings of fact, the trial court concluded “the parental rights of the respondent father . . . to the minor child[ren], . . . [Kenny and Mark] should hereby be terminated.” Because the trial court “made sufficient dispositional findings and performed the proper analysis of the dispositional factors, we are satisfied the trial court’s best interests determination was not manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision.” *In re N.K.*, 375 N.C. 805, 821, 851 S.E.2d 321, 333 (2020) (quoting *In re Z.A.M.*, 374 N.C. at 101, 839 S.E.2d at 801). Accordingly, we hold the trial court did not abuse its discretion by determining Kenny and Mark’s best interests were served by terminating Respondent’s parental rights.

III. Conclusion

¶ 20 For the reasons set out above, we conclude the trial court made the required findings under N.C. Gen. Stat. § 7B-1110(a) to support its conclusion that it was in best interest of the minor children to terminate Respondent’s parental rights. The trial court properly considered a non-termination disposition alternative and did not abuse its discretion by terminating Respondent’s parental rights. Thus, we affirm

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Opinion of the Court

the trial court's termination of Respondent's parental rights.

AFFIRMED.

Judges DILLON and HAMPSON concur.

Report per Rule 30(e).