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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-463

No. COA21-776

Filed 5 July 2022

Mecklenburg County, Nos. 19 JT 277-78

IN THE MATTER OF: J. S., K. S.

Appeal by respondent-mother and respondent-father from order entered 2 September 2021 by Judge Roy H. Wiggins in Mecklenburg County District Court. Heard in the Court of Appeals 25 May 2022.

Mecklenburg County DSS Youth & Family Services, by Senior Associate County Attorney Keith S. Smith, for petitioner-appellee Mecklenburg County DSS.

Ewing Law Firm, P.C., by Robert W. Ewing, for respondent-appellant mother.

Batch, Poore & Williams, PC, by Sydney J. Batch, for respondent-appellant father.

Parker Poe Adams & Bernstein LLP, by Ashley A. Edwards and Patricia M. Adcroft, for Guardian ad Litem.

ARROWOOD, Judge.

¶ 1 Respondent-mother and respondent-father (collectively, “respondent-parents”) appeal from the trial court’s termination of parental rights order. Both respondent-parents contend the trial court abused its discretion and the order must be vacated because the trial court failed to consider and make written findings of fact concerning

factors set forth in N.C. Gen. Stat. § 7B-1110(a). For the following reasons, we affirm the trial court.

I. Background

¶ 2

On 23 January 2019, Mecklenburg County Department of Social Services (“DSS”) received a report alleging that respondent-parents were panhandling with their children Kevin and Jim¹ in front of a Food Lion in low temperatures without adequate winter clothing. DSS was unable to locate the family until June 2019, at which time DSS requested the respondent-parents submit to substance abuse and mental health assessments. Neither respondent-parent complied with the assessment requests. DSS also requested that Kevin and Jim be seen by a doctor for evaluations, as Jim had never been to a doctor and Kevin had not been to a doctor since he was six months old.² Neither juvenile was seen by a doctor within two months of the request.

¶ 3

DSS filed two juvenile petitions in this case. The first, filed on 25 July 2019,³ alleged that Kevin and Jim were neglected and dependent juveniles based on the respondent-parents’ unstable housing as well as history of mental health and

¹ Pseudonyms are used throughout to protect the identity of the juveniles and for ease of reading.

² At the time of the request, Kevin was approximately four years old, and Jim was approximately two years old.

³ DSS had originally filed a juvenile petition on 18 July 2019, which it voluntarily dismissed on 25 July 2019.

substance abuse issues. DSS was awarded nonsecure custody that day, but was unable to locate the juveniles. The trial court entered an order on 5 August 2019 dissolving the nonsecure custody order and dismissing the petition. On 8 August 2019, DSS filed a second petition alleging that Kevin and Jim were neglected and dependent juveniles. DSS subsequently obtained nonsecure custody and the children were placed in foster care.

¶ 4 Respondent-parents completed assessments with the F.I.R.S.T. program in September 2019, and were recommended to obtain substance abuse assessments and participate in a treatment court program. Respondent-mother tested positive for marijuana and cocaine and respondent-father “tested positive for a substance as well.” Neither respondent-parent engaged in the treatment court program.

¶ 5 The trial court conducted an adjudication and disposition hearing on 25 September 2019. The trial court found that respondent-parents had a “long history of substance abuse and mental health concerns” and previously had their parental rights terminated to seven children, with another pending termination hearing before the court at the time. The trial court also found that there were concerns regarding the medical care of the juveniles and that respondent-father “was observed in front of a Family Dollar . . . receiving money” while “[t]here were “two children . . . in a stroller with him, presumably [Jim] and [Kevin], the two children at issue.” The trial court entered an order on 17 October 2019 adjudicating the children

as neglected juveniles and continuing custody with DSS. The primary plan of care was reunification, with secondary plans of legal guardianship and adoption.

¶ 6 The initial review hearing was conducted on 7 January 2020. The trial court entered an order on 27 January 2020 finding that it was unable to assess respondent-parents' statuses regarding substance abuse, mental health, or parenting ability as neither respondent-parent had obtained court-ordered mental health and substance abuse assessments. The trial court further found that respondent-parents needed to "address issues of sobriety, stability, mental health, and the issues identified in meeting the children's needs" before reunification could be achieved.

¶ 7 The following permanency planning hearing was delayed until 14 October 2020 due to the COVID-19 pandemic. The trial court entered an order on 2 November 2020 finding that neither respondent-parent was actively participating in reunification efforts by failing to submit to random drug screens or engage in mental health services. Regarding visitation, the trial court found that respondent-parents "have missed some visits, but overall have attended their visits with the children." After finding that neither respondent-parent had made reasonable progress, the trial court provided that the upcoming review period was "another opportunity to 'put up or shut up.' This is the parents' last opportunity before this Court would request the department to file a petition to terminate their . . . parental rights."

¶ 8 On 17 December 2020, Kevin engaged in an Independent Psychological Assessment (“IPA”) following a referral by DSS. A report following the IPA indicated that Kevin was “personable and engaging[;] as such, rapport was easily established.” The report also indicated that Kevin scored in the 99th percentile on an intellectual screening test and exhibited other social skills that were advanced and “impressive” given his age and history.

¶ 9 The next permanency planning hearing was held remotely on 5 January 2021, with neither respondent-parent present. The trial court found that respondent-parents had not engaged in their case plans, including failures to engage in parenting programs, submit to drug screens, and address mental health concerns. Regarding visitation, the trial court found that supervised visitation between respondent-parents and the juveniles was desirable, and that respondent-parents had attended six out of eight visits, also missing portions of attended visits due to tardiness or leaving to get food during the visit. The trial court found that the children were doing well in placement, with some challenges in a prior placement due to Kevin’s behavior, namely hitting Jim “so hard that [Jim] cried uncontrollably,” and “some behavior issues at daycare/pre-k, but those issues have moderated.”

¶ 10 Following these findings, the trial court found that filing a petition for the termination of parental rights was in the best interest of the juveniles and set the primary plan of adoption and concurrent plan of reunification. The trial court

directed DSS to file a motion to terminate parental rights within sixty days.

¶ 11 On 17 February 2021, DSS filed a motion to terminate parental rights. DSS argued that grounds existed to terminate parental rights pursuant to several subsections of N.C. Gen. Stat. § 7B-1111. The trial court conducted a termination of parental rights hearing, pursuant to N.C. Gen. Stat. § 7B-1111, on 1 June, 16 June, and 2 July 2021.

¶ 12 On 2 September 2021, the trial court filed an order terminating parental rights for both respondent-parents. The trial court noted that respondent-parents were not present at the 16 June court date because their car reportedly broke down near Lexington, North Carolina, and were not present at the 2 July court date without providing a reason for their absences. Counsel for both respondent-parents were present at all court appearances.

¶ 13 Regarding grounds for termination, the trial court found that respondent-parents had failed to participate in substance abuse assessments “and/or” treatment, failed to complete or consistently participate in parenting education programs, missed significant portions of visitation, and failed to appear for multiple court dates. The trial court found that based on the evidence in this case and in consideration of respondent-parents’ prior termination cases, “there is evidence that the children are highly likely to [be] subjected to neglect if returned to the home of the respondent mother and the respondent father.” Based on these findings, the trial court concluded

that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) for neglecting the juveniles and § 7B-1111(a)(2) for willfully leaving the juveniles in foster care for more than twelve months without reasonable progress in correcting the conditions that led to removal.

¶ 14 Regarding best interests, the trial court made the following findings:

1. The juveniles are both very young, [Kevin] is five years, turning six in September, and [Jim] just turned four years in June.
2. The juveniles are highly bonded to their parents.
3. The juveniles are eager to have a permanent home.
4. Although the children are not in an identified adoptive home now, the foster parents have not made a decision about the juveniles' adoption. The foster parents are considering adopting the juveniles.
5. [DSS] cannot pursue all adoption resources fully until the children are legally clear for adoption.
6. The juveniles are highly adoptable.
7. The Court is also examining "any relevant situation", and the court agrees that the parents care about the children and that they are bonded to the children. However, neither parent has addressed the issues of substance abuse and parenting that led to the children being placed in custody. The mother has not addressed her mental health concerns. The children have been in custody for slightly under two years, and it is unfortunate that the parents have yet to address the issues that led [Kevin] and [Jim] to being placed in [DSS] custody.

8. The respondent parents' pattern is of concern to this Court in light of their past history. The Court considers the pattern, because the parents' behavior and actions have not changed in this case.
9. The parents failed to appear at the hearings on 16 June 2021 and 2 July 2021 despite being aware of the court dates and the significance of the termination proceedings.
10. The best interests of the above-named juveniles would be served by the termination of parental rights of the respondent parents with respect to the juveniles.

Based on these findings, the trial court concluded that, pursuant to N.C. Gen. Stat. § 7B-1110(a)(1)-(6), "the best interests of the above-named juveniles would be served by the termination of parental rights of the respondent[-]parents with respect to the juveniles."

¶ 15 Respondent-parents each filed written notice of appeal on 30 September 2021.

II. Discussion

¶ 16 Both respondent-parents present arguments on appeal regarding the trial court's determination that termination of parental rights was in the best interests of the juveniles. Respondent-mother contends the trial court abused its discretion by failing to consider and make written findings of fact concerning whether the termination of parental rights will aid in the accomplishment of the permanent plan. Respondent-father contends the trial court abused its discretion by terminating his parental rights in light of his strong bond with the children and that Kevin's behavior

made adoption unlikely. We disagree.

A. Standard of Review

¶ 17 “Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020) (citation omitted). In the adjudicatory stage, the trial court must determine whether grounds exist pursuant to N.C. Gen. Stat. § 7B-1111 to terminate parental rights. N.C. Gen. Stat. § 7B-1109(e) (2021). If the trial court determines that one or more grounds are present, it proceeds to the dispositional stage, considering “whether it is in the best interests of the juvenile to terminate parental rights.” *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citations omitted).

¶ 18 Our appellate courts “review a trial court’s adjudication of grounds to terminate parental rights ‘to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.’” *In re I.J.W.*, 378 N.C. 17, 2021-NCSC-73, ¶ 14 (citation omitted). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (citation omitted). “The trial court’s assessment of a juvenile’s best interest at the dispositional stage is reviewed only for abuse of discretion.” *In re Z.L.W.*, 372 N.C. 432, 435, 831 S.E.2d 62, 64 (2019) (citation omitted).

B. Termination of Parental Rights

¶ 19 A trial court may terminate parental rights upon a finding that “[t]he parent has abused or neglected the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(1) (2021). Pursuant to N.C. Gen. Stat. § 7B-101, a neglected juvenile is one whose parent, guardian, custodian, or caretaker, *inter alia*, “[d]oes not provide proper care, supervision, or discipline[,] . . . [h]as not provided or arranged for the provision of necessary medical or remedial care[,] . . . [or] [c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15) (2021).

¶ 20 At the dispositional stage of a termination of parental rights proceeding, the trial court must determine whether termination is in the juvenile’s best interest, based on the following criteria:

- (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) (2021). The trial court shall consider all of the factors and make written findings regarding those that are relevant. *Id.* “[T]he trial court is permitted to give greater weight” to certain factors over others. *In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 66 (citations omitted) (affirming termination of parental rights where trial court found a strong bond existed between respondent and his children).

¶ 21 In this case, our review of the record reveals that the trial court did consider and make written findings regarding the required factors. The trial court made specific findings regarding the juveniles’ ages, that they were highly adoptable, that they were strongly bonded to the parents, the status of the current placement, and other relevant considerations.

¶ 22 Although respondent-mother argues that the trial court did not include a finding that directly mirrored the third factor regarding the permanent plan, the trial court did find that the juveniles were eager to have a permanent home and that DSS was unable to pursue all adoption resources fully until the children were legally clear for adoption. At this stage in the proceedings, the primary plan for the juveniles was adoption; accordingly, the trial court’s consideration of access to adoption resources was effectively a consideration of whether termination of parental rights would aid in the accomplishment of the permanent plan. Contrary to respondent-mother’s arguments, the trial court is not required to make written findings of fact that directly

track the language of the statute.

¶ 23 Respondent-father argues that the trial court abused its discretion in light of the strong bond between the juveniles and respondent-parents, as well as Kevin's behavioral issues. The trial court acknowledged the existence of a strong bond and that respondent-parents care about the children, but found that in spite of this bond, respondent-parents had not addressed the issues leading to the juveniles' placement during the nearly two-year reunification period. As previously stated, the trial court is permitted to give greater weight to certain factors over others in a best interest determination. *Id.* Accordingly, the trial court did not abuse its discretion in terminating parental rights while also acknowledging that a strong bond existed between the juveniles and respondent-parents.

¶ 24 Regarding adoptability, although respondent-father asserts that Kevin's behavioral issues were significant and contrary to the trial court's findings, the IPA report indicates that Kevin has advanced social and intellectual skills for his age. Additionally, although Kevin did exhibit behavioral issues in a prior placement, the IPA report and other evidence presented to the trial court were sufficient to support the trial court's finding that the juveniles were adoptable.

¶ 25 In order to warrant vacating the trial court's order, respondent-parents were required to establish that the trial court abused its discretion. The trial court's order sufficiently considered the required factors pursuant to N.C. Gen. Stat. § 7B-1110,

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and we hold that the trial court did not abuse its discretion.

III. Conclusion

¶ 26 For the foregoing reasons, we affirm the trial court's order terminating parental rights for respondent-mother and respondent-father.

AFFIRMED.

Judges MURPHY and CARPENTER concur.

Report per Rule 30(e).