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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-627

Filed 04 April 2023

Stokes County, Nos. 20JT66-67

IN THE MATTER OF: A.K.R. & A.C.R.

Appeal by respondent from judgments entered 26 April 2022 by Judge Marion M. Boone in Stokes County District Court. Heard in the Court of Appeals 22 March 2023.

Peter Wood, for the respondent-appellant-mother.

Jennifer Oakley Michaud for petitioner-appellee Stokes County Department of Social Services.

Administrative Office of the Courts, by GAL Appellate Attorney James N. Freeman, Jr., for guardian ad litem.

TYSON, Judge.

Mother appeals from orders entered on 26 April 2022, which terminated Mother's parental rights and the parental rights for each child's respective Father. We affirm.

I. Background

Stokes County Department of Social Services ("DSS") obtained custody of Mother's children, Ava and Archie, who were adjudicated as neglected juveniles on

15 June 2020. *See* N.C. R. App. P. 42(b) (pseudonyms used to protect the identity of minors).

DSS began investigating Mother after receiving a Child Protective Services Report on 24 May 2020. The anonymous reporter (“Reporter”) watched and recorded a Facebook live video broadcasted from Mother’s account. According to Reporter, Mother “looked messed up” and told all of the viewers to “come to her apartment.” Reporter “could hear one of the kids [i]n the background and people commenting on the post.”

Reporter expressed concerns because they believed Mother had “recently overdosed and had to be given Narcan.” Reporter explained they had tried to reach out to Mother’s father for help, but they are estranged. Ava was five years old at the time the anonymous report was submitted, and Archie was three years old.

DSS assigned a social worker to investigate the report. The social worker was unable to locate the family or reach them *via* telephone, but she was able to gather additional information about Mother. The social worker confirmed Mother had overdosed in March 2020. She also learned Mother had pending criminal charges for driving while impaired and stalking, and she had been arrested for failure to cooperate.

The social worker also learned Rockingham County Department of Social Services (“RCDSS”) had previously obtained custody of Ava and Archie in 2017. RCDSS records revealed law enforcement officers had responded to a call regarding

an intoxicated female. When they arrived at the address, “they found [Mother] intoxicated and they felt that by her behaviors[,] such as attempting to bite others, cursing, and laughing to herself for no reason that she was possibly under the influence of flocka.” Law enforcement officers discovered the address they had arrived at was not Mother’s home, but “she had brought her children with her and they were inside the home with an unknown male who was also intoxicated.”

About one week after Reporter filed the anonymous report to DSS, Mother started another Facebook live video. Mother again “appeared impaired” and the video featured her children. The next day, the social worker was informed Mother “had overdosed and was taken to Morehead Hospital and transferred to Chapel Hill because she wasn’t going to make it.” While in the hospital, Mother told the social worker she would consent to a drug test and promised the test would only identify “pot.” Later that day, however, Mother refused to comply with any of DSS’s requests, and, “three days later, Mother refused a drug test.” Mother refused a second drug test on 11 June 2020.

Mother demonstrated a negative attitude towards DSS. When DSS tried to administer a drug test on 8 June 2020, Mother called the case plan “bullsh*t.” When DSS tried to schedule a Child and Family Team Meeting with Mother, she called the plan “illegal,” said she would not allow DSS to take her children, and told the social worker “you can’t expect me to drop my life and run because I have to work.” Mother also would not maintain contact with her attorney. As a result of Mother’s behaviors,

DSS obtained custody of Ava and Archie.

Mother agreed to and signed the following case plan with DSS on 11 June 2020:

- a. Schedule and complete a Parenting Psychological Assessment with a credentialed provider. Honestly report history and current presenting concerns and follow any and all recommendations of the provider.
- b. Sign consents for release of information allowing providers and Stokes DSS to communicate progress towards goals.
- c. Participate in the juvenile's medical appointments, school meetings and other important meetings for the juvenile.
- d. Schedule and complete a comprehensive clinical assessment for mental health and substance abuse from a credentialed agency. Honestly report history and current presenting concerns with the assessor and follow any and all recommendations of the provider.
- e. Submit to random substance use screenings and medications counts as requested by Stokes DSS.
- f. Maintain contact with Stokes DSS regarding the children's treatment and progress in therapy.
- g. Maintain contact with Stokes DSS regarding progress on case plan goals.
- h. Continue to have stable employment that provides legal income.
- i. Provide proof of employment or income to Stokes DSS.
- j. Maintain reliable transportation.
- k. Continue to reside in a safe and stable environment

that promotes consistency.

At the adjudication hearing held on 19 January 2022, the trial court entered identical findings for each juvenile in separate orders, stating:

19. That as of the date of today's hearing the Respondent Mother has not made reasonable progress on the goals laid out in his [sic] case plan.

a. The mother was not honest in her disclosure of her substance abuse history when her initial Comprehensive Clinical Assessment was completed on November 23rd, 2020, preventing the assessor from making recommendations which were truly tailored to the mother's substance abuse needs.

b. That the mother grossly underreported her substance abuse history in her initial Comprehensive Clinical Assessment and her Parenting Psychological Assessment.

c. That the mother has not maintained stable housing. The mother has entered rehabilitation facilities three different times and left all three prior to her successful completion of any of the rehabilitation programs and has not proffered her current address to Stokes DSS or the Court.

d. That the mother has not maintained employment.

e. That the mother does not currently have a driver's license or reliable means of transportation.

f. That the mother has not maintained consistent contact with Stokes DSS.

g. That the mother has not made herself available to drug screen for Stokes DSS on a regular

basis. (Give history of her failure to screen) [sic]

h. That the mother failed to show up for a requested drug screen on June 12th, 2020, which was one day after she entered into her case plan.

i. The mother tested positive for ethanol on June 23rd, 2020.

j. The mother tested positive for methamphetamines on October 7th, 2020.

k. The mother tested positive for amphetamines and methamphetamines on February 16th, 2021.

...

24. That the mother's current address remains unknown, as up until the last week the Court was led to believe that the mother was residing in a rehabilitation facility which would allow her children to reside with her when in fact the mother had voluntarily left that facility prior to last week without successfully completing the rehabilitation program. The mother has not made any offer of proof as to where she is currently residing.

...

28. That the juvenile is a neglected juvenile and there is a reasonable likelihood of such neglect continuing into the future as the mother has not adequately addressed her substance abuse needs.

29. That the mother has neglected the juvenile by previously exposing the juvenile to her substance abuse and by not making reasonable progress on attaining continued sobriety.

...

34. That the mother has not shown to the Court that she has the capability to provide proper care and supervision

to the juvenile.

35. That the mother cannot take care of herself and cannot reasonably proffer that she can take care of the juvenile.

36. That this matter has been going on for several months. The juvenile has been in the custody of Stokes DSS over nineteen months as of today's hearing.

37. That there have been at least three entrances into rehabilitation facilities by the mother during the pendency of this juvenile matter and the mother has quit each facility. The mother actually went AWOL from the last facility.

38. That the mother was residing in a different rehabilitation facility on the date that the Motion for Termination of Parental Rights was filed, almost six months ago, and subsequently left that facility prior to successfully completing the program.

39. That there has been no measurable progress by the mother in the last six months in addressing her substance abuse concerns.

40. That a new Comprehensive Clinical Assessment was never completed after the mother was dishonest in her substance abuse history reporting during the November 2020 Daymark Assessment.

41. That even after the mother had made some progress months ago with Intensive Outpatient Treatment, there were at least two positive drug screens.

42. That the mother has admitted she has a problem with alcohol which has not been addressed in treatment or therapy.

43. That the mother has not shown any reasonable initiative in complying with Stokes DSS and the Court in this matter.

The trial court concluded grounds existed for the termination of Mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6) (2021). The court specifically found Mother had: (1) neglected the juveniles and it was likely such neglect would recur; (2) willfully left the juveniles in foster care or placement outside of the home for more than twelve months without reasonable progress under the circumstances which led to the removal; and, (3) proved incapable of providing for the care of the juveniles and had not proffered an appropriate alternative childcare arrangement.

At the dispositional hearing, the trial court made identical findings in the disposition order for each child. After identifying the age of each child, the trial court found:

6. The juvenile needs and deserves a safe, stable and nurturing home in which the juvenile can receive proper care and love.
7. That the juvenile deserves to know that when they wake up in the middle of the night someone will be there and be capable of comforting them.
8. That the juvenile has been placed with [their] current placement provider since June 21st, 2020.
9. That the likelihood of adoption of the juvenile is strong.
10. That the juvenile loves the mother but does not see the mother as [their] caregiver. The juvenile is bonded with [their] mother.
- ...

13. That the juvenile is closely bonded with the placement provider. The juvenile has a very strong bond with the placement provider and calls her “Mom” as well.

14. That the juvenile is receiving care, love and needed services in [their] current placement. The juvenile is healthy and on track developmentally and medically.

15. That as of the date of this hearing, the juvenile has been in the custody of the Department of Social Services for approximately 19 months and has been placed with her prospective adoptive placement for 17 months.

16. Terminating the parental rights of the mother and father of the juvenile will assist in allowing the Department of Social Services in establishing a safe, stable, nurturing home as well as a highly necessary degree of permanency for the juvenile in these crucial developmental years.

17. The juvenile’s primary permanent plan was changed to adoption on May 13th, 2021. The secondary plan has been reunification.

18. That there have been some sporadic starts on the mother’s treatment for substance abuse, but never any completion.

19. That the TPR [hearing] has been continued for approximately six months in order to allow the mother to complete treatment which she has failed to do.

20. That the only barrier to effectuating the permanent plan of adoption for the juvenile is the termination of the parental rights of the mother and father of the juvenile.

The court ordered the parental rights of Mother and the children’s respective Fathers to be terminated on 26 April 2022. Fathers did not appeal. Mother timely appealed.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021).

III. Termination of Parental Rights

Mother does not argue the trial court abused its discretion by finding grounds existed to terminate her parental rights. She instead argues the trial court abused its discretion “during the best interests phase” by “wrongly assum[ing] it either had to reunify Ava and Archie with their mother or terminate parental rights.” Mother asserts the trial court should have considered the “least restrictive alternative” prior to terminating her parental rights, because the juveniles would have benefited from having a continued relationship with her. She argues severing the juveniles’ relationship with her was not in their best interests.

A. Standard of Review

The trial court’s dispositional findings are binding on appeal if they are supported by any competent evidence or if they are not specifically contested by the parties. The trial court’s determination of whether terminating the parent’s rights is in the juvenile’s best interests under N.C.G.S. § 7B-1110(a) is reviewed solely for abuse of discretion. Under this deferential standard, we will reverse the court’s assessment of a child’s best interests only if its decision is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.

In re A.M.O., 375 N.C. 717, 720-21, 850 S.E.2d 884, 887-88 (2020) (citations, internal quotation marks, and alterations omitted).

B. Analysis

Our general statutes provide a list of factors the trial court may consider at a dispositional hearing:

- (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).

Our Supreme Court has addressed a situation in which juveniles were bonded with their biological parents, yet upheld the conclusion the juveniles' best interests were served by terminating parental rights.

[T]he trial court's findings in this case show that it considered the dispositional factors in N.C.G.S. § 7B-1110(a) and performed a reasoned analysis weighing those factors. In doing so, the trial court recognized the children's bond with respondents, but weighed that bond against its findings that adoption was previously ordered as the primary permanent plan; that termination was necessary to achieve the primary permanent plan; that the children have been placed in their potential adoptive home with their maternal grandparents since April 2017; that the potential adoptive home is a loving and stable home where the children's needs are being met; that the children have a very good relationship with the maternal

grandparents and are well bonded; and that it is very likely the children will be adopted. Based on its weighing of the factors, the trial court ultimately determined the best interests of the children would be served by terminating respondents' parental rights despite the children's bond with them. 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 Z.A.M., 374 N.C. 88, 101, 839 S.E.2d 792, 800-01 (2020).

The only finding of fact Mother disputes in the dispositional order is finding of fact number 16, which provided terminating Mother's parental rights would allow DSS to "establish[] a safe, stable, nurturing home as well as a highly necessary degree of permanency for the juvenile in these crucial developmental years." The other unchallenged findings of fact from the dispositional hearing are deemed supported by competent evidence and are binding on appeal. *In re E.F.*, 375 N.C. 88, 91, 846 S.E.2d 630, 632 (2020) ("The trial court's dispositional findings are binding on appeal if they are supported by any competent evidence. We are likewise bound by all uncontested dispositional findings." (citations and internal quotation marks omitted)).

Even if this Court were to hold that finding of fact 16 was not supported by competent evidence, the remaining findings of fact satisfy each of the enumerated factors in N.C. Gen. Stat. § 7B-1110(a). The trial court considered the juveniles' ages, the likelihood of adoption, whether termination would aid in reaching a permanent

plan for the juveniles, the bond between the juveniles and Mother, and the bond between the juveniles and their foster mother. N.C. Gen. Stat. § 7B-1110(a). While the juveniles' bond with their Mother and natural parent is unquestionably an important consideration, after "weighing [all] of the factors, the trial court ultimately determined the best interests of the children would be served by terminating respondents' parental rights despite the children's bond with them." *In re Z.A.M.*, 374 N.C. at 101, 839 S.E.2d at 801.

Additionally, our Supreme Court has explicitly rejected the "least restrictive disposition" test. *In re J.C.J.*, 381 N.C. 783, 798, 2022-NCSC-86, ¶ 28, 874 S.E.2d 888, 899 (2022) ("As a result, we hold that there is no basis for the use of a 'least restrictive disposition' test in this Court's termination of parental rights jurisprudence."). While the trial court must statutorily consider family placement and proffered alternatives in its disposition, Mother's argument, asserting the trial court should have applied the "least restrictive" disposition at the hearing, is overruled. *Id.*

IV. Conclusion

The trial court did not abuse its discretion by terminating Mother's parental rights despite finding the juveniles' strong bond with their Mother. *In re Z.A.M.*, 374 N.C. at 101, 839 S.E.2d at 801. The trial court was not compelled to make the "least restrictive disposition" and made a reasoned decision after finding and weighing each of the factors in N.C. Gen. Stat. § 7B-1110(a). *In re J.C.J.*, 381 N.C. at 798, 874 S.E.2d

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Opinion of the Court

at 899. The trial court's orders are affirmed. *It is so ordered.*

AFFIRMED.

Judges GRIFFIN and FLOOD concur.

Report per Rule 30(e).