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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-674

Filed 06 June 2023

Union County, No. 19 JT 191

IN THE MATTER OF: N.M.

Appeal by respondents from an order entered 2 May 2022 by Judge Erin Hucks in Union County District Court. Heard in the Court of Appeals 15 May 2023.

Perry, Bundy, Plyler & Long, LLP, by Ashley J. McBride, for Union County Department of Social Services, petitioner-appellee.

Joshua D. Davey, for Guardian ad Litem.

Richard Croutharmel, for respondent-appellant mother.

Laura G. Hooks, for respondent-appellant father.

WOOD, Judge.

Respondent-mother and Respondent-father (“Respondents”) appeal from the trial court’s order concluding it was in their minor child’s best interests that their parental rights be terminated and terminating their parental rights. Respondents argue the trial court erred in denying their motion to hold open the dispositional hearing in order for them to appear and present evidence. Respondent-father argues

the trial court abused its discretion in concluding it was in his minor child's best interests that his parental rights be terminated. After careful review and based on the reasons stated herein, we affirm.

I. Background

N.M. ("Nehemiah")¹ was born in July 2017. On 3 December 2019, Union County Department of Social Services ("DSS") obtained nonsecure custody of Nehemiah and filed a juvenile petition alleging him to be a neglected and dependent juvenile. The petition alleged that Respondent-mother had a history of mental health issues and was involuntarily committed on 5 November 2019. Respondent-mother and Respondent-father had a history of homelessness, substance abuse, and domestic violence. They agreed to place Nehemiah with a temporary safety provider on 21 November 2019.

Following a hearing on 29 January 2020, the trial court entered an order on 26 February 2020 adjudicating Nehemiah to be a dependent juvenile. In order to achieve reunification with Nehemiah, Respondents were ordered to complete the activities of their Out of Home Service Agreements, which included completing services to address mental health, substance abuse, parenting skills, family relationships, and employment for Respondent-mother and substance abuse, parenting skills, family relationships, and employment for Respondent-father. Respondents were also

¹ A pseudonym is used to protect the identity of the juvenile.

ordered to submit to random drug screens. Respondents were awarded a minimum of one hour of weekly, supervised visitation with Nehemiah. On 24 July 2020, Nehemiah was removed from placement with his temporary safety provider and placed with foster parents.

Following a permanency planning hearing on 8 December 2020, the trial court entered an order on 6 January 2021 finding that Respondent-mother had not sought mental health or substance abuse treatment. Although she had started parenting classes, she had not completed them and was not currently engaged in them. Neither her housing nor employment had been verified, and her last known address was with Respondent-father. Respondent-mother had not visited Nehemiah since 30 October 2020. The trial court found that Respondent-father was employed and had housing. He was engaged in mental health and substance abuse services and had exercised regular visitation with Nehemiah. However, Respondent-father admitted using methamphetamines and marijuana within the prior three months and marijuana within the week prior to the hearing. The trial court set the permanent plan to adoption, with a secondary concurrent plan of reunification.

Following a permanency planning hearing on 19 January 2021, the trial court entered an order on 17 February 2021 finding the Respondents were not making adequate progress within a reasonable time period. Respondents had been living together for the past year. Neither of them had taken a drug screen since the filing of the juvenile petition. Respondent-mother completed a mental health and

substance abuse assessment four days prior to the hearing. Respondent-father continued to be engaged in mental health and substance abuse treatment and was engaged in parenting classes. However, he recently had been criminally charged on multiple counts, including possession of a firearm by a felon.

Following a permanency planning hearing on 23 March 2021, the trial court entered an order on 26 April 2021 finding that Respondents had only completed seven or eight out of thirteen parenting classes. Respondent-mother had refused to take drug screens since December 2019. She had participated in three therapy sessions but denied having any mental health needs. Respondent-father had completed one drug screen, but there were “concerns of tampering with the sample.” He had not engaged in mental health or substance abuse treatment since 16 February 2021.

On 20 April 2021, DSS filed a motion to terminate respondents’ parental rights to Nehemiah. DSS alleged grounds existed to terminate Respondents’ parental rights based on neglect, willfully leaving Nehemiah in foster care or placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to his removal, willfully failing to pay a reasonable portion of the cost of care for Nehemiah, and dependency. N.C. Gen. Stat. § 7B-1111(a)(1)–(3), (6) (2021).

The adjudicatory phase of the termination hearing was held on 16 February 2022, and the trial court entered an order on 17 March 2022 adjudicating the existence of grounds to terminate Respondents’ parental rights in Nehemiah

pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (6).² The dispositional phase of the termination hearing was held on 30 March 2022, and the trial court entered an order on 2 May 2022 concluding that it was in Nehemiah’s best interests that Respondents’ parental rights be terminated and terminated their parental rights. Respondents timely appealed.

II. Discussion

On appeal, Respondents argue that the trial court erred by denying their motion to hold open the dispositional phase of the termination hearing so that they could appear and present evidence. Respondent-father also argues that the trial court abused its discretion in concluding that it was in Nehemiah’s best interests for Respondent-father’s parental rights to be terminated. We address each argument in turn.

A. Respondents’ Motion to Reopen the Evidence

Respondents both argue the trial court erred by denying their motion to hold open the dispositional phase of the termination hearing to allow them to appear and present evidence. Specifically, Respondents contend that the trial court was acting under a misapprehension of law that it was required to deny their motion because it had already orally rendered its decision on disposition. We disagree.

² We note that while the trial court’s findings of fact suggest the trial court adjudicated the existence of all four grounds alleged by DSS, its conclusions of law indicate it adjudicated the existence of grounds under only N.C. Gen. Stat. § 7B-1111(a)(1) and (6).

“A trial court has the discretion to reopen the case and admit additional testimony after the conclusion of the evidence and even after argument of counsel.”

In re B.S.O., 225 N.C. App. 541, 543, 740 S.E.2d 483, 484 (2013) (cleaned up).

“[A]buse 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 T.L.H., 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (citation omitted).

Further, when the exercise of a discretionary power of the court is refused on the ground that the matter is not one in which the court is permitted to act, the ruling of the court is reviewable. Where a trial court, under a misapprehension of the law, has failed to exercise its discretion regarding a discretionary matter, that failure amounts to error which requires reversal and remand.

In re B.S.O., 225 N.C. App. at 543, 740 S.E.2d at 485 (cleaned up).

Here, Judge Erin Hucks presided at the adjudicatory phase of the termination hearing on 16 February 2022. Respondents were not present when the hearing began at 2:10 p.m. Counsel for Respondent-father made a motion to continue the hearing, stating Respondent-father was “on his way but has run into car trouble.” Judge Hucks denied the motion. DSS presented evidence. At the close of its evidence, counsel for Respondent-father renewed his motion to continue “to allow [respondents] to be present to finish up the hearing” and explained that he had just received an email from Respondent-mother stating that Respondents “had run into a little bit of car trouble at about 1:46 [p.m.]” Judge Hucks denied the renewed motion to continue. Following DSS’s closing argument, respondents arrived at the hearing at

approximately 2:54 p.m. Counsel for Respondent-father made a motion to reopen the evidence regarding his client, which was granted by Judge Hucks. Thereafter, Respondent-father testified. Respondent-mother did not testify. The order adjudicating grounds to terminate Respondents' parental rights was entered 17 March 2022.

The dispositional phase of the termination hearing was held on 30 March 2022 with Judge Hucks presiding. Respondents were not present at the beginning of the hearing, which began at 2:27 p.m. Counsel for Respondent-mother and counsel for Respondent-father made a motion to continue the hearing. Counsel for Respondent-father stated that he did not "have any information about where [Respondent-father] is, but we would like to have – I would like to have my client here for this hearing." Counsel for Respondent-mother stated "I did advise her by text on – back on March 2nd of the court date for today's hearing. We did email her [indiscernible] a few days ago [indiscernible], but I have not heard from her, and I don't know why she's not her[e]." DSS objected to the motion to continue, stating that notice of the dispositional phase of the hearing had been sent to Respondents' attorneys on 17 March 2022. Judge Hucks denied Respondents' motion to continue. DSS presented evidence, and the parties made their closing arguments. Judge Hucks announced her findings of fact and conclusion that it was in Nehemiah's best interests that Respondents' parental rights be terminated.

Immediately after Judge Hucks announced her ruling, counsel for Respondent-

mother informed the court that he had “received word that [Respondents] have had car trouble” and requested that the court “hold off on entering that ruling until [Respondents] have the opportunity to come to court and testify on their behalf.” Counsel for Respondent-father joined in on the request, stating that he had just received “text messages from [Respondent-father] that the car is messed up and that they [indiscernible] start working on it.” Judge Hucks denied their motion.

Following the denial of Respondents’ motion to hold open the case, counsel for the guardian ad litem asked, “for the record, can we just state that those texts came in at 3:22 [p.m.]? It’s on there just in case this is appealed for the [indiscernible] in the order?” DSS joined in on the request, and Judge Hucks stated that “I will find that [Respondents] contacted their attorneys after my ruling had – was already given in open court; That those messages came in at approximately 3:22 [p.m.]” Judge Hucks further stated that “this hearing was set for 2:00 p.m.”; “the attorneys attempted to contact their clients prior to the hearing today days in advance”; “[Respondents] received proper notice that they needed to be here. They did not show up at 2:00 [p.m.] They did not show up at 2:30 [p.m.] when this Court began the hearing, and they did not contact their attorneys until . . . 3:20 [p.m.]” In the dispositional order entered 2 May 2022, Judge Hucks made the following relevant findings:

8. This Hearing began at approximately 2:30 p.m. pursuant to the Notice properly served upon the parties. The hearing was scheduled to start at 2:00 p.m. The juvenile’s parents

received proper notice of this hearing and did not show up for the hearing.

9. After the evidence portion of the hearing, a motion was made in open court by the parents' attorneys to continue the matter as texts were received at 3:20 p.m. and read in open court that the parents had car trouble and could not get to court. Said motion to continue was denied.

10. [Counsel for respondent-mother] had emailed and texted his client days in advance before the hearing with documents and information for the hearing.

After thoughtful review of Judge Huck's statements in open court and relevant findings in the 2 May 2022 dispositional order, we are not persuaded that the denial of Respondents' motion to hold open the case in order for Respondents to appear and present evidence was made on the basis that the best interests determination had already been announced. Judge Hucks was familiar with the process, as she had previously granted Respondent-father's motion to reopen the evidence during the adjudicatory hearing. At the dispositional hearing, she denied the motion in open court without explaining the basis of her exercise of discretion, and the dispositional order does not provide the reasoning behind the denial. Only after counsel for the guardian ad litem and DSS requested that the timing of Respondents' text messages be noted for the record did Judge Hucks find that Respondents had received proper notice of the dispositional hearing set to be heard at 2:00 p.m., the hearing started at 2:30 p.m., and Respondents did not make contact with their attorneys until 3:20 p.m., after the best interests determination had been announced.

Judge Hucks acted within her authority and discretion to deny Respondents' request to hold open the case and to proceed with the hearing. Respondents received proper notice of the date and time of the hearing but did not notify their attorneys they were having issues arriving at court until an hour and twenty minutes after the hearing was scheduled to commence. DSS had presented its evidence, and the parties had given their closing arguments. Consequently, we are unable to hold that Judge Hucks's denial was "manifestly unsupported by reason or [was] so arbitrary that it could not have been the result of a reasoned decision." *In re T.L.H.*, 368 N.C. at 107, 772 S.E.2d at 455.

B. Best Interests Determination

Respondent-father argues that the trial court abused its discretion in determining it was in Nehemiah's best interests that his parental rights be terminated. We are not convinced.

"If [the trial court] determines that one or more grounds listed in section 7B-1111 are present, the court proceeds to the dispositional stage, at which the court must consider 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) (citing *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614-15 (1997); N.C. Gen. Stat. § 7B-1110). Unchallenged dispositional findings are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). A trial court's best interests determination "is

reviewed solely for abuse of discretion.” *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019) (citing *In re D.L.W.*, 368 N.C. at 842, 788 S.E.2d at 167).

In determining whether termination of parental rights is in the best interests of a juvenile:

The court may consider any evidence, including hearsay evidence as defined in [N.C.]G.S. [§]8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. 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) (2021).

In the instant case, the trial court made the following findings of fact regarding the statutory criteria set forth in N.C. Gen. Stat. § 7B-1110(a):

- [7.](A) Age of the child: the juvenile is four years and 8 months old.
- (B) Likelihood of adoption: there is a very high likelihood

of adoption for the juvenile in that his foster parents desire to adopt him.

(C) Whether termination will help achieve the permanent plan for the child: the termination of the parents' rights will aid in the accomplishment of the permanent plan for the juvenile. The permanent plan is adoption.

(D) The bond between the child and the parents: . . . There is a bond between the juvenile and his father. The juvenile is happy to see his father during visits and worries if the father does not show up. There are a number of visits that the father has missed specifically: August 20, 2021; September 3, 2021; October 1, 2021; November 23, 2021; December 3, 2021; December 31, 2021; January 13, 2022; January 27, 2022; February 10, 2022; February 18, 2022; March 16, 2022; and March 24, 2022.

(E) The quality of the relationship between the juvenile and the proposed adoptive parents: there is a high-quality relationship between the juvenile and his foster parents. He has been placed with them since July 24, 2020 and they treat him as if he is their own child. The juvenile considers his foster parents to be his mother and father and their parents to be his grandparents. [T]he foster parents ensure the juvenile's wellbeing needs are being met. The Foster Parents have 2 other children in their home who are 5 and 6 years old, respectively. [Nehemiah] looks to them as his natural siblings. He is involved in activities such as T-ball.

The trial court also found that Nehemiah had been in DSS custody "fifty percent of his life."

Respondent-father does not challenge any of the dispositional findings as not being supported by the evidence; therefore, they are binding on appeal. *In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 65. Instead, he contends the trial court abused its discretion in determining it was in Nehemiah's best interests that Respondent-

father's parental rights be terminated due to the strong bond they shared. He maintains that their strong bond did not waiver throughout the case nor diminish despite Nehemiah moving to another state with his foster parents.

The trial court noted the bond Respondent-father and Nehemiah shared in its dispositional findings, providing that Nehemiah was happy to see Respondent-father during their visits and would worry when Respondent-father failed to appear at their scheduled visits. However, "the bond between parent and child is just one of the factors to be considered under N.C. [Gen. Stat.] § 7B-1110(a), and the trial court is permitted to give greater weight to other factors." *In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 66. Here, the trial court also found that Nehemiah was four years and eight months old; there was a very high likelihood of adoption; termination of Respondent-father's parental rights would aid in achieving the permanent plan of adoption; and there was a high-quality relationship between the proposed adoptive parents and Nehemiah. "[T]his Court lacks the authority to reweigh the evidence that was before the trial court." *In re A.U.D.*, 373 N.C. at 12, 832 S.E.2d at 704. We are satisfied that the trial court properly considered each of the statutory factors and performed a reasoned analysis of those factors. As such, we are unable to conclude that the trial court abused its discretion in concluding that the termination of Respondent-father's parental rights was in Nehemiah's best interests.

III. Conclusion

The trial court properly found that one or more grounds existed pursuant to

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N.C. Gen. Stat. § 7B-1111 to support the termination of both Respondent-mother's and Respondent-father's parental rights. We conclude the trial court did not abuse its discretion, when it determined that termination of Respondents' parental rights was in the best interest of Nehemiah. Consequently, we affirm the orders of the trial court.

AFFIRMED.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).