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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-722

Filed 20 June 2023

Mecklenburg County, No. 18 JT 325

IN THE MATTER OF: N.G.

Appeal by Respondent from an order entered 26 April 2022 by Judge Faith Fickling-Alvarez in Mecklenburg County District Court. Heard in the Court of Appeals 24 May 2023.

*Vitrano Law Offices, PLLC, by Sean P. Vitrano, for the Respondent-Appellant.*

*Mecklenburg County Department of Social Services, by Gretchen L. Caldwell, for the Petitioner-Appellee.*

*Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for the Guardian ad Litem.*

WOOD, Judge.

Respondent-Father (“Father”) appeals from an order terminating his parental rights to his child. For the reasons below, we affirm the trial court’s order.

**I. Factual and Procedural Background**

Nora<sup>1</sup> was born on 15 July 2018 to Father and B.G. (“Mother”).<sup>2</sup> DSS filed a juvenile petition alleging Nora was a neglected and dependent juvenile on 17 July 2018, and she was taken into non-secure custody when she was two days old. The juvenile petition alleged that Nora’s two siblings had been in DSS custody for two years because of exposure to domestic violence and that domestic violence was ongoing and remained the primary safety concern. Additionally, the petition alleged that Father had not substantially complied with his family services case plan and that both parents lacked an alternative, appropriate childcare arrangement for Nora.

On 27 August 2018, Nora’s case came on for adjudication and disposition. At adjudication, Father stipulated to findings of fact regarding ongoing domestic violence, including incidents that occurred after the entry of a no-contact order. Father stipulated that he was not complying with a substantial portion of his case plan in his two older children’s permanency planning case. This case plan required that Father (1) complete a Families in Recovery Stay Together (FIRST) assessment and comply with recommendations for substance abuse, domestic violence, and mental health services; (2) “refrain from future domestic violence”; (3) “maintain stable housing and employment”; (4) “participate in weekly visitation with the children and attend the children’s well-being appointments as appropriate”; and (5)

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<sup>1</sup> A pseudonym has been used to protect the juvenile’s identity.

<sup>2</sup> DSS dismissed the petition as to Mother because she executed a written relinquishment of her parental rights. She is not a party to this appeal.

maintain weekly contact with the social worker. The trial court found that Father had failed to complete domestic violence, substance abuse, and mental health services and lacked stable housing and employment. Father stipulated that neither parent had sufficiently addressed domestic violence concerns such that Nora could safely remain in their care. Based upon the stipulated findings of fact, the district court adjudicated Nora a neglected juvenile as it found that “due to the long history of severe and ongoing domestic violence between the parents, the parents’ repeated violation of the Court’s No Contact Order, and the most recent incident on June 10, 2018, there is a substantial risk of physical, mental, or emotional impairment to the juvenile.” The adjudication order was entered on 1 October 2018.

At disposition, the trial court adopted the parents’ existing case plan from Nora’s siblings’ cases and added that the parents were to have no contact with each other and required the social worker to monitor Mother’s efforts to “remain disengaged” from Father. The court concluded that it was in Nora’s best interest to remain in DSS custody, for the parents to have supervised visitation, and for the primary permanent plan to be reunification and the secondary plan to be adoption.

At the first review hearing on 7 November 2018, the court found that Father had not engaged in any recommended substance abuse and mental health services. Therefore, the trial court ordered Father to submit to random drug screens and provide proof of his attendance at Narcotics Anonymous meetings. The trial court found that Father’s barriers to reunification included stable housing and

employment, completion of substance abuse treatment and showing of sobriety, completion of domestic violence prevention services, mental health treatment, and showing consistent progress in meeting his case plan goals.

Father tested positive for marijuana in January 2019 and at the second review hearing on 8 February 2019, the court found that Father still had not engaged in substance abuse or mental health treatments. The court ordered that Father submit to frequent random drug screens, attend individual therapy to address his diagnoses of Alcohol Use Disorder Moderate, Cannabis Use Disorder Moderate, and Generalized Anxiety Disorder, and provide proof of attendance at AA/NA meetings. Additionally, the trial court maintained the primary permanent plan of reunification and a secondary permanency plan of adoption for Nora. Because of Mother's progress on her case plan, the court directed that a trial home placement for Nora begin during the next review period, although this placement never occurred.

At the third review hearing on 17 April 2019, the trial court found that Father "made little to no progress during this review period." Although Father reported that he had three nervous breakdowns and almost committed suicide twice, he was not engaged in mental health or substance abuse services. In addition, he missed two drug screens in April 2019 and did not provide proof of his reported attendance at substance abuse meetings. Further, the trial court found he was terminated from his domestic violence treatment through NOVA in February 2019 for a third time due to excessive absences. The trial court also found that Father was evicted from his

apartment for nonpayment of rent but had sufficient income to pay his rent and the costs of the domestic violence program. The trial court found that Father had inconsistently visited with Nora in February and early March 2019 but had attended all visits since mid-March. The court expressed concerns for Nora's safety given Father's statements regarding his mental health and his refusal to complete drug screens or to engage in treatment, such that the court maintained supervised visits for Father and Nora.

On 7 May 2019, Father completed a mental health assessment at Amara Health and was diagnosed with Major Depressive Disorder, recurrent, unspecified, with Anxious Distress. He was referred for weekly outpatient therapy and peer support services six to ten times per week. He missed ten drug screens during the period from May to August but explained it was because of his work schedule. He canceled five out of ten visits with the children between 20 April and 22 June 2019 and subsequently told the social worker he would cease visitation until he could be more consistent.

The trial court held a permanency planning hearing on 28 August 2019 and subsequently entered an order on 22 October 2019. The court found that the parents had not complied with the no-contact orders as follows: on 2 August 2019, Father threatened to kill Mother and her male friend while they were sitting in a vehicle at her apartment complex; on 20 August 2019, Father threatened Mother and told her she would be dead after she dropped her male friend off at his apartment. The trial

court found that he had last visited with the children on 22 July 2019, and that he had requested on 15 August 2019 for visits to resume. However, because of his outstanding warrant and the impact an arrest would have on Nora, the court ordered that visitation be suspended until he resolved the warrant, attended three individual therapy sessions, and attended a CFT meeting to develop a visitation safety plan.

On 8 January 2020, the court held a permanency planning hearing and entered an order on 4 February 2020. In the order, the trial court found that Father had re-engaged with his case plan by resolving an outstanding arrest warrant, attending some therapy, and attending most of his reinstated visits. Father, however, refused to provide DSS with his address so that it could ensure that his housing was safe and appropriate for the children and had not provided paystubs to verify his employment. The court found that Father was referred for four random drug screens during this review period, only appeared for one test, and tested positive for marijuana, with levels indicating ongoing use. The trial court found that the parents had been provided more than three years to engage in services to address their safety issues but had failed to do so. The trial court changed the primary permanency plan to adoption and made reunification the secondary plan.

Father consented to the trial court changing his visitation with Nora to telephonic and video visits because of the COVID-19 Pandemic in May 2020. DSS filed a petition to terminate Father's and Mother's parental rights on 5 August 2020. The petition alleged grounds to terminate the parents' parental rights based on

willful failure to make reasonable progress, neglect, willful failure to pay a reasonable portion of the cost of care, and dependency.

The trial court held a permanency planning hearing on 2 September 2020 and 27 October 2020. It found that Father had attended only two virtual visits with Nora between March and June 2020, that his in-person visits had resumed on 19 June 2020, and that between then and 2 September 2020, he had attended six of ten visits offered. He was appropriately engaged during visits and provided reasons for the four missed visits. The court further found that Father's engagement in mental health services had been inconsistent and that he had attended only two random drug screens, both of which were negative. It ordered minimum supervised visitation of four hours per week at a DSS facility.

The trial court held a permanency planning hearing on 23 March 2021 and 11 May 2021 and entered an order on 19 July 2021. The court found that Father had not complied with treatment recommendations for his substance use diagnoses, had failed to attend drug screens, and had failed to disclose his substance use diagnoses to his therapist. However, he had completed the batterer intervention program with NOVA and was actively involved in therapy with Monarch. The trial court ceased visitation with Nora as it found she exhibited behavioral issues including issues with sleeping, hitting, and spitting after visits with both parents and she had been in the home of the current foster parents since the age of two to three days old. The trial court found that her therapist recommended she "cease visits with her parents as it

would be in her best interests in order to protect her social and emotional well-being. The same or similar issues were identified by [Nora's] daycare teacher including aggression towards teachers and other children without provocation, which is unusual. It is in [Nora's] best interests to cease visits with her parents.”

The court conducted an additional permanency planning hearing on 5 October 2021 and entered an order on 16 November 2021. Father admitted that he was self-medicating with marijuana to deal with the stress of the court process, and the court found that he was not completing screens and had not obtained the previously ordered assessment. The court continued to order no visits between Father and Nora.

Prior to the termination hearing, Mother voluntarily relinquished her parental rights. The termination hearing occurred on 16 and 21 February 2022. At the adjudication phase of the termination of parental rights proceeding, the trial court found that Father had entered a case plan that required him to comply with any recommendations for domestic violence, substance abuse, and mental health services; that he refrain from any further domestic violence; that he maintain stable housing and employment and provide proof; that he participate in weekly visits; and that he maintain weekly contact with DSS.

During the hearing, social worker LaToya Thomas testified that Father had previously communicated that

he wasn't interested [in working toward reunification with Nora] by conversations we have had. There were several visits that may have been canceled due to DSS



discrepancies in scheduling. [Father] would only request to visit with the two older siblings. And if [Nora] couldn't make it on a day, he was always fine with her not participating.

Father testified on his own behalf, describing his bond with Nora as “cool,” “great,” and “developing.” Father also acknowledged that he had stated in court that he did not want to work on his case plan and testified that although agreeing to a case plan “was [his] biggest mistake,” his social worker had explained the requirements of the case plan to him. Further, Father’s therapist testified that Father only wanted to engage with DSS on his own terms, and that he did not want to submit to random drug screens.

During the hearing, Nora’s guardian ad litem (“GAL”) submitted a report which provided, “[Nora] has lived with her foster parents . . . since she was born and has never lived with biological father[.] There is no parent-child relationship with the biological father[.]” The GAL further testified that he had recommended ceasing visitation between Father and Nora because Father was not following his case plan, and that the lack of visits “would indicate that the bond does not exist.” The GAL also testified about the care and stability provided by Nora’s foster family.

On 21 February 2022, the trial court made an oral ruling finding that DSS “has proven grounds under [N.C. Gen. Stat. § 7B-1111] (a)(1), 1111(a)(2), 1111(a)(3), and 1111(a)(6)” to terminate Father’s parental rights. Moving to disposition, the court concluded that it was in Nora’s best interests that Father’s parental rights be

terminated. On 26 April 2022, the trial court entered an order terminating Father's parental rights, concluding that all grounds for termination existed and that it was in Nora's best interests that Father's parental rights be terminated. Father filed timely notice of appeal on 20 May 2022.

## **II. Analysis**

On appeal, Father challenges the disposition portion of the termination order, arguing that the trial court improperly found it was in Nora's best interests for his parental rights to be terminated. Although Father challenges several dispositional findings of fact, we note that Father does not challenge any of the trial court's adjudicatory findings; as such, they are binding on appeal. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citation omitted).

A termination of parental rights proceeding is a two-step process with an adjudicatory stage and a dispositional stage. *In re E.H.P.*, 372 N.C. 388, 391, 831 S.E.2d 49, 52 (2019). If a trial court adjudicates one or more grounds for terminating parental rights, it proceeds to the dispositional phase where it "shall determine whether terminating the parent's rights is in the juvenile's best interest" and shall consider 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). The trial court shall make written findings of fact as to those criteria which are relevant to its determination. *Id.* The best interest of the child 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) (citations omitted). “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.” *Id.* at 6-7, 832 S.E.2d at 700-01 (citations omitted).

On appeal, we review the trial court’s “dispositional findings of fact to determine whether they are supported by the evidence received during the termination hearing, with a reviewing court being bound by all uncontested dispositional findings.” *In re S.C.C.*, 379 N.C. 303, 313, 864 S.E.2d 521, 522 (2021) (cleaned up). The trial court’s dispositional findings of fact are proper if they are supported by competent evidence, even if other evidence could have supported a different finding. *In re A.H.*, 250 N.C. App. 546, 569, 794 S.E.2d 866, 881 (2016). Further, the trial court’s dispositional “findings of fact ‘are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings.’ ” *In re C.M.*, 273 N.C. App. 427, 430, 848 S.E.2d 749, 752 (2020) (quoting *In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983)).

Father challenges finding of fact 74, which states:

There is no bond between [Nora] and [Father]. He hasn't had any visits with the juvenile since at least May 2021 and even before that his attendance at visits was inconsistent. Once the visits between [Father] and [Nora] were suspended by the Court, [Nora's] troubling behaviors that she was exhibiting after visits diminished, and her nightmares and physical aggression ceased altogether.

Father argues that his testimony at trial "established that there was a parent-child bond despite the restrictions on his visitation" and that "any deterioration in the parent-child bond during the period of no contact was not the result of Father not complying with his court-ordered case plan" because the trial court never ordered his visitations with Nora to resume.

Father also challenges finding of fact 75 which states:

[Father] previously made statements indicating that he wasn't concerned about [Nora] being in the care of the foster parents and that he wasn't focused on reunifying with her but with his older children. Additionally, when his visits were cancelled due to [Nora] being sick or for other reasons, [Father] didn't request make-up visits and he was fine with visits that he missed with her versus with his older children where he demonstrated that he did want visits with them.

Father argues that "many of his missed visits with Nora were for reasons beyond his control: that she was sick or on vacation, or that he missed the window to confirm a visit or had to work." Further, Father argues that his interest in reunification with Nora was established by the testimony of several witnesses at trial including Father's therapist. We disagree with both of these contentions.

Based upon our review of the record, there is ample evidence which supports

findings of fact 74 and 75. In the court report submitted for the disposition phase of the termination hearing, Nora's GAL's report stated, "[Nora] has lived with her foster parents . . . since she was born, and has never lived with biological father[.] There is no parent-child relationship with the biological father[.]" Additionally, the GAL testified that he had recommended ceasing visitation between Father and Nora because Father was not following his case plan, and that the lack of visits "would indicate that the bond does not exist" between the parent and child.

In addition to the GAL's report and testimony, Ms. Thomas testified that Father had "no bond or connection with [Nora]." Ms. Thomas testified that Father made a statement to her sometime in 2019 that "he did not know [Nora]. He was fine with her staying with her foster parents. . . He was just focused on [being reunified with her] older siblings." Ms. Thomas also testified that since Nora's visitations with her father ceased, she has observed that the child "seems to be more settled and less anxious" and that Nora's foster parents reported that Nora's "physical aggression had ceased, that she no longer has nightmares at night, and she sleeps well at this point." Thus, the competent evidence before the trial court supports its finding that Father had no bond with Nora. Further, Ms. Thomas provided testimony that Father:

clearly indicated to me that he wasn't interested [in working toward reunification with Nora] by conversations we have had. There were several visits that may have been canceled due to [DSS] discrepancies in scheduling. [Father] would only request to visit with the two older siblings. And if [Nora] couldn't make it on a day, he was always fine with her not participating.

Although Father had the opportunity to present his case and dispute the testimony and evidence before the trial court, there was evidence presented that directly supports the trial court's finding that Father had expressed ambivalence about working toward reunification with Nora, including that he was less concerned about missing visits with Nora than with his other children. Thus, the challenged portions of findings of fact 74 and 75 are supported by the evidence. Father's arguments are overruled.

Finally, Father argues that the trial court failed to consider other relevant circumstances pursuant to N.C. Gen. Stat. § 7B-1110(a)(6). In support of this argument, Father contends that evidence was presented at trial showing that: (1) he was earning a stable income from his business and had stable housing; (2) he had successfully completed the NOVA batterer's intervention program in May 2021, and there were no reported contacts between him and Mother after January 2021; (3) he offered testimony concerning the lessons he learned related to communication and accepting responsibility for his role in the relationship with Mother; (4) he was in treatment for depression, anxiety, anger, and cannabis use and had been working with a licensed clinical mental health counselor and clinical addiction specialist for a year; (5) he had conducted a comprehensive clinical assessment covering mental health and substance abuse in September 2021; and (6) he testified that he was not using drugs for self-medicating. We are not persuaded by Father's argument.

We note that N.C. Gen. Stat. § 7B-1110(a)(6) permits the trial court to consider “[a]ny relevant consideration,” so that this “catch-all” provision allows “the trial court a means to consider any additional relevant information aside from the statutorily-enumerated criteria in the course of making its dispositional decision.” *In re R.L.R.*, 381 N.C. 863, 882, 874 S.E.2d 579, 594 (2022). However, the trial court “is not required to make findings of fact on all the evidence presented, nor state every option it considered.” *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005) (citation omitted). Instead, “the trial court may—and should—consider evidence introduced during the adjudicatory stage of a termination hearing in determining the children’s best interests during the disposition stage.” *In re E.F.*, 375 N.C. 88, 93-94, 846 S.E.2d 630, 634 (2020) (citations omitted).

Here, the trial court made several findings of fact during adjudication which addressed the evidence Father highlights in his appeal. In finding of fact 43, the trial court found that Father “has had periods of unstable or sporadic employment throughout this case” and that prior “to starting his self-employment, he had at least eight employers over the two-year period from August 2018 when [Nora] was adjudicated through July 2020.” The trial court noted that Father was “still working for his own company at this time.” Finding of fact 44 further states that the last time Father provided information to DSS “regarding his income was in July 2021 at which time he indicated that he was self-employed.” Thus, the trial court documented Father’s employment history and income. In finding of fact 42, the trial court also

addressed Father's housing, finding that he had provided a copy of his lease for the period of September 2020 through "either July 2021 or September 2021" but that during "other periods of time, [DSS] was unable to verify that he had stable housing."

The trial court also addressed Father's involvement with domestic violence services in finding of fact 41. The trial court found that Father "completed domestic violence services through NOVA in January 2021 but was unable to obtain the completion certificate until May 2021 when he resolved all outstanding court fees." The trial court noted that Father's completion of domestic violence services occurred "after attempting three previous times to complete NOVA services and three previous times to complete Impact services but having been unsuccessfully discharged each time for issues including lack of attendance and participation" and as a result of DSS advocating for Father's re-enrollment when the "Impact and NOVA staff . . . were reluctant to allow him to re-engage again due to his prior behavior."

In finding of fact 48, the trial court addressed Father's engagement in mental health services as it found that in September 2021, Father was diagnosed with major depressive disorder, PTSD, and cannabis use disorder, and since that assessment, a therapist has been working with him "to address issues of depression, anxiety, anger, PTSD, and cannabis use" and that he is "conducting his sessions via telephone or telehealth." In finding of fact 45, the trial court made findings concerning Father's failure to complete his substance abuse treatment or to consistently submit random drug screenings, so that Father's sobriety could not be monitored throughout this



case. Finally, in finding of fact 46, the trial court found that Father “has reported to the permanency planning [social worker] that he continues to use marijuana to cope with the fact that his children are in foster care.”

Because Father does not challenge any of the above findings, they are binding on appeal. Further, the above unchallenged findings demonstrate that the trial court considered the evidence Father deems as a “relevant consideration” under N.C. Gen. Stat. § 7B-1110(a)(6) in determining the best interest of Nora during disposition. Thus, the trial court’s dispositional findings are based upon competent evidence and adequately address the statutory dispositional factors enumerated in N.C. Gen. Stat. § 7B-1110(a).

### **III. Conclusion**

For the foregoing reasons, we conclude that the trial court did not abuse its discretion in concluding that the termination of Father’s parental rights would be in Nora’s best interests. Accordingly, we affirm the trial court’s order terminating the parental rights of Father.

**AFFIRMED.**

Judges GORE and ARROWOOD concur.

Report per Rule 30(e).