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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-986

Filed 05 July 2023

Randolph County, Nos. 21 JT 41, 21 JT 42

IN THE MATTER OF:

A.L.J.W., P.L.H.W.

Appeal by Respondent-Mother from Order entered 23 August 2022 by Judge Robert Wilkins in Randolph County District Court. Heard in the Court of Appeals 16 June 2023.

Chrystal Kay, for Petitioner-Appellee Randolph County Department of Social Services.

Office of the Parent Defender, by Parent Defender Wendy C. Sotolongo and Assistant Parent Defender J. Lee Gilliam, for Respondent-Appellant Mother.

Ward and Smith, P.A., by Mary V. Cavanagh and Alexandra E. Ferri, for Guardian ad Litem.

RIGGS, Judge.

Appellant-Mother (“Mother”) appeals an order terminating her parental rights to her two children A.L.J.W. (“Aiden”)¹ and P.L.H.W. (“Paul”) (collectively “the children”). Mother’s appointed appellate counsel filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure (2023).

After careful consideration of the issues presented in the no-merit brief and an independent review of the record, we affirm the trial court’s order for termination of parental rights.

I. FACTS AND PROCEDURAL HISTORY

On 8 March 2021, the Randolph County Department of Social Services (“DSS”) was directed to Mother’s residence due to concerns that two-year-old Aiden and six-year-old Paul were living in unsuitable conditions and being exposed to drug use. After visiting the home, DSS filed juvenile petitions alleging the children were neglected and dependent. The petitions alleged Mother was living with the children in a one-bedroom camper without running water and Mother did not have sufficient income to support the children. The petitions also alleged that Mother was diagnosed with anxiety but was not in treatment. Finally, the petitions alleged Mother had a history of substance abuse; she was using drugs around the children and appeared to be under the influence of an impairing substance while DSS was at her home. DSS considered kinship placement with both the maternal and paternal grandmothers;

¹Pseudonyms will be used to protect the identities of the children as allowed by N.C. R. App. P. 42(b) (2023).

however, neither placement was deemed appropriate because maternal grandmother's ex-boyfriend sold drugs out of her home and paternal grandmother admitted to using drugs. The children were taken into DSS custody.

The trial court granted continued custody to DSS, and the children were placed together in a foster home in Randolph County on 23 March 2021. On 9 June 2021, the children were adjudicated neglected and dependent.

On 28 July 2021, the trial court entered a Disposition Order, under which the children were continued in DSS custody and Mother was ordered to complete certain services and activities in order to reunify with the children including:

- a. Comply with all recommended substance abuse treatment from all treatment providers until successfully discharged. Refrain from abusing impairing substances and submit to all random hair and urine drug screens on the days and times requested by [DSS] and treatment providers.
- b. Comply with all treatment recommendations from her mental health assessment to include individual mental health therapy until discharged and medication management and take any/all medications as prescribed.
- c. Complete parenting classes and utilize skills learned in parenting the minor children.
- d. Obtain and maintain verifiable income to support herself and the minor children and provide proof to [DSS].
- e. Obtain and maintain safe and stable housing that meets basic standards of safety and cleanliness and provide proof to [DSS].
- f. Sign release of information forms with all service providers allowing [DSS] to receive information and

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exchange information with the service providers, the GAL, and the [c]ourt.

- g. Contact the Social Worker within 48 hours (2 days) of any change to her phone number, mailing address, or the place where she stays. If the Social Worker is not available, the Mother will leave a detailed voicemail or message that includes her correct contact information.

On the issue of child support, the trial court held a hearing 8 June 2021 and entered a Child Support Establishment Order on 5 November 2021, which obligated Mother to pay child support in the amount of \$50.00 per month beginning on 1 June 2021.

At a permanency planning hearing on 23 February 2022, the trial court found that due to Mother's lack of progress, ongoing reunification efforts were not likely to lead to successful reunification in the next six months. The trial court changed the primary plan for the children to adoption with a secondary plan of reunification.

On 31 March 2022, DSS filed Motions to Terminate Parental Rights for both children.² DSS alleged Mother's parental rights should be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), (a)(2) (willful leaving of children in foster care for more than twelve months), (a)(3) (willful failure to pay a reasonable portion of the cost of care for the juveniles), and (a)(6) (incapable of providing proper care and supervision of the juveniles).

² DSS also filed Motions to Terminate Parental Rights for the father of the children. The father of the children is not a party to this appeal.

The trial court held an adjudication hearing on the termination of parental rights petition on 1 June 2022. In the order from the hearing, the trial court found by clear and convincing evidence that Mother had not successfully completed nor consistently engaged in substance abuse treatment or counseling. Mother also failed to submit to multiple requested hair and urine drug screens. The trial court found Mother had not successfully completed mental health therapy, was not currently engaging in therapy, and was not taking prescribed medication for her mental health disorders.

Further, the trial court found Mother did not demonstrate that she had obtained and maintained verifiable income and, indeed, was not employed at the time of the termination hearing. The trial court found Mother did not pay any child support prior to April 2022 even though she was under a child support order. Additionally, Mother had not obtained and maintained safe and stable housing. While Mother had completed parenting classes as ordered by the trial court, she did not consistently engage in visitation, and she did not demonstrate appropriate parenting skills.

At the time of the hearing, Aiden and Paul were in different foster homes. However, Paul was scheduled to move to the same foster home as Aiden later that month. The foster family expressed a desire to adopt both children if they were to become free for adoption.

In the order terminating parental rights, the trial court found there was clear, cogent, and convincing evidence to terminate Mother's parental rights on all four grounds alleged, namely: (1) neglect; (2) willfully leaving the children in foster care for more than twelve months; (3) willfully failing to pay a reasonable portion of the cost of care for the juveniles; and (4) incapability of providing proper care and supervision of the juveniles. The trial court found it was in the children's best interest that Mother's parental rights be terminated. The trial court entered an order on 23 August 2022 terminating Mother's parental rights and allowing DSS to proceed with adoption efforts for the children.

Mother entered a timely notice of appeal on 26 August 2022.

II. ANALYSIS

Appellate counsel, finding no merit upon which to base an argument for relief, filed a no-merit brief on Mother's behalf pursuant to N.C. R. App. P. 3.1(e). The no-merit brief raised three possible appellate issues: (1) the trial court erred by terminating Mother's parental rights on N.C. Gen. Stat. § 7B-1111(a)(3) grounds without considering her income and living expenses; (2) the trial court erred by concluding that other grounds existed to terminate Mother's parental rights; and (3) the trial court erred by concluding that termination of Mother's parental rights was in the children's best interest. Mother's counsel advised her of her right to file a *pro se* brief and provided her with written instructions on how to do so; Mother did not file any additional briefing.

When a no-merit brief is filed pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure, this Court must “conduct an independent review of the issues set out in the no-merit brief filed by respondent’s counsel[.]” *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019).

Based upon our review of the issues identified in the no-merit brief and our independent review of the entire record, we are satisfied the trial court’s order terminating Mother’s parental rights was based on proper legal grounds and affirm the trial court’s order.

A. Grounds for Termination of Parental Rights

In the no-merit brief, Mother’s counsel identifies potential error when the trial court terminated Mother’s parental rights on N.C. Gen. Stat. § 7B-1111(a)(3) grounds without considering her income and living expenses. Mother’s brief ultimately concludes this argument is without merit. We agree.

1. Standard of Review

This Court reviews a trial court’s adjudication of the existence of statutory grounds for termination of parental rights to first determine whether the trial court’s findings are supported by clear, cogent, and convincing evidence. *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (internal citation and quotation omitted). The trial court’s findings of fact are conclusive on appeal when supported by competent evidence, even if that evidence could sustain contrary findings. *In re L.T.R. & J.M.R.*, 181 N.C. App. 376, 381, 639 S.E.2d 122, 125 (2007) (internal quotations omitted). The

trial court's conclusions of law are reviewed *de novo*. *In re S.N., X.Z.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008).

2. Discussion

Here, the trial court properly terminated Mother's parental rights on N.C. Gen. Stat. § 7B-1111(a)(3) grounds that the juveniles have been placed in the custody of a county department of social services or a foster home and the parent has willfully failed to pay a reasonable portion of the cost of the care for the juveniles for a continuous period of six months immediately preceding the filing of the motion to terminate parental rights although physically and financially able to do so. N.C. Gen. Stat. § 7B-1111(a)(3) (2021). The burden of proof is and remains on the petitioner, DSS, to prove the facts justifying the termination by clear and convincing evidence. N.C. Gen. Stat. § 7B-1111(b). However, the petitioner need not prove, and a termination order need not find as a fact, the parent's ability to pay support during the relevant period if the parent is under an existing child support order as a proper decree for child support must be based on the parent's ability to pay. *In re S.T.B.*, 235 N.C. App. 290, 296, 761 S.E.2d 734, 738 (2014).

The Motions to Terminate Parental Rights were filed on 31 March 2022. The children were placed in DSS custody on 8 March 2021 and have remained in the custody of DSS since that time. Accordingly, the relevant six-month period was from 1 October 2021 to 31 March 2022.

The trial court was not required to consider Mother's income beyond its recognition of the existence of the child support order. *Id.* The Child Support Establishment Order entered on 5 November 2021 obligated Mother to pay \$50.00 per month beginning on 1 June 2021. In the order, the trial court found by a preponderance of the evidence that Mother was unemployed but capable of earning minimum wage and Mother had the means and ability to pay child support in the amount ordered. Mother never moved to modify or set aside the order.

At the termination hearing, Mother testified that she did not pay any child support prior to April 2022. Mother suggests that she contributed to the support of the children by purchasing several items for their use. However, a sporadic provision of items would not preclude a finding that Mother failed to provide a reasonable portion of the cost of care for the children. *In re M.C.*, 381 N.C. 832, 837, 874 S.E.2d 549, 553 (2022). Thus, there is competent evidence to support the trial court's finding that Mother failed to pay a reasonable portion of the cost of the care for the children.

Because Mother's ability to pay support was established by the Child Support Establishment Order and Mother's failure to challenge or pay was established by her own testimony at the termination hearing, we hold the trial court had clear, cogent, and convincing evidence to support its conclusion that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(3).

The trial court may terminate an individual's parental rights upon a finding of one or more of the eleven grounds found in N.C. Gen. Stat. § 7B-1111. This Court,

after affirming the existence of one ground for termination, need not address challenges to any additional grounds for termination. *In re T.N.H.*, 372 N.C. 403, 412, 831 S.E.2d 54, 61 (2019). *See also In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019) (stating that a finding of only one ground is necessary to support a termination of parental rights). Thus, in this case, the Court need not address challenges to the other grounds for termination.

Therefore, we affirm the trial court's holding that grounds existed for the termination of Mother's parental rights.

B. Children's Best Interest

1. Standard of Review

On appeal, the trial court's assessment of the juvenile's best interests is reviewed for abuse of discretion. *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019). This Court will defer to the trial court's decision unless it is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. *In re Z.A.M.*, 374 N.C. 88, 100, 839 S.E.2d 792, 800 (2020) (internal quotation and citation omitted).

2. Discussion

The trial court properly found that termination of Mother's parental rights was in the best interest of the children. The trial court considers all relevant factors to determine if terminating parental rights is in the best interest of the children. *In re A.U.D.*, 373 N.C. at 6, 832 S.E.2d at 700. The relevant factors may include: (1) the

age of the juvenile; (2) the likelihood of adoption; (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; and (6) any other relevant consideration. *In re Z.A.M.*, 374 N.C. at 99, 839 S.E.2d at 799; N.C. Gen. Stat. § 7B-1110(a) (2021). The trial court's decision will be upheld if the court considered all relevant factors, and the factors were supported by evidence. *In re Z.A.M.*, 374 N.C. at 101, 839 S.E.2d at 801.

At the time of the termination hearing, Aiden was three years old, and Paul was seven years old. The children had been out of Mother's care for approximately fourteen months, the maternal bond had deteriorated, and Mother had been unable to demonstrate appropriate parenting skills. Mother only attended seventeen of her thirty allowed in-person visits with the children. DSS considered placement with other family members but was unable to find a suitable placement.

The trial court found that Aiden and Paul have a high likelihood of being adopted and that termination of parental rights would help to accomplish this permanent plan. The foster parents of Aiden have expressed a desire to adopt the children. The trial court found that the children had a quality relationship with the foster parents. The social worker assigned to the children had observed Aiden call his foster parents mommy and daddy. Aiden would also run to them for affection and when he was hurt. At the time of the hearing, DSS planned to move Paul to the same

foster home as Aiden. Paul had stayed at this foster home in respite care previously and had expressed that he really enjoyed the home.

After our independent review of the record, this Court holds the trial court did not abuse its discretion when it found that termination of Mother's parental rights was in the best interest of the children.

III. CONCLUSION

After careful review of the issues identified in the no-merit brief and after consideration of the entire record, we affirm the trial court's order terminating Mother's parental rights.

AFFIRMED.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).