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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-506

Filed 19 December 2023

Randolph County, No. 21 JT 69

IN THE MATTER OF: T.L.A

Appeal by respondent-mother from order entered 6 March 2023 by Judge Barron Thompson in Randolph County District Court. Heard in the Court of Appeals 21 November 2023.

Lauren Vaughan for petitioner-appellee Randolph County Department of Social Services.

Katelyn Bailey Hodgins for guardian ad litem.

Sydney Batch for respondent-appellant mother.

PER CURIAM.

Respondent appeals the trial court's order terminating her parental rights to T.L.A. ("Tim").¹ Because the trial court did not abuse its discretion in concluding that terminating respondent's parental rights was in Tim's best interests, we affirm.

I. Background

¹ A pseudonym is used to protect the juvenile's identity.

The Randolph County Department of Social Services (“DSS”) first became involved with respondent in March 2018, when it received a report regarding respondent’s substance abuse. At the time, respondent had two children, and the report alleged that the oldest child was present when respondent overdosed. Respondent was taken to the hospital following her overdose, where she reported it was her third overdose in two weeks, and she used 0.5 grams of heroin daily. DSS placed the two children in a temporary safety placement with the maternal grandmother. Following DSS’s assessment, the case was transferred to in-home services.

In August 2019, respondent signed a services agreement to address concerns related to her parenting, mental health, substance abuse, housing, and employment. Respondent completed three mental health and substance abuse assessments—in October 2019, March 2020, and March 2021—which resulted in diagnoses of post-traumatic stress disorder, unspecified personality disorder, unspecified anxiety disorder, severe amphetamines-type disorder, and opioid-type disorder. She failed to comply with the recommendations for outpatient treatment following her first two assessments and participated in only three group therapy sessions after her third assessment.

Tim was born in March 2021. Because he displayed withdrawal symptoms and his meconium tested positive for methamphetamines, Tim was placed in a temporary

safety placement with his maternal grandmother. Respondent's subsequent hair drug screen was positive for methamphetamines.

On 14 April 2021, respondent and Tim's father² went to the maternal grandmother's home, physically assaulted the maternal aunt, and removed Tim from the home. It took several hours for DSS to locate Tim. That same day, DSS discovered the maternal grandmother had previously allowed respondent to have unsupervised visitation with Tim, in violation of the safety agreement.

DSS filed a juvenile petition on 15 April 2021 alleging that Tim was a neglected and dependent juvenile. Because of the altercation between the parents and the maternal grandmother, DSS also sought and obtained nonsecure custody. Tim was placed in a licensed foster home.

In July 2021, respondent completed another mental health and substance abuse assessment. She attended two group therapy appointments before she stopped participating in August 2021.

Following the 4 August 2021 adjudication hearing, Tim was adjudicated neglected based on respondent's stipulations.³ Respondent stipulated that she needed treatment for her substance abuse and mental health issues, and that she lacked sufficient income and safe and appropriate housing for her children. Following

² Tim's father is not a party to this appeal.

³ Tim's father was not present and did not have any representation. Tim's older half-siblings were also adjudicated neglected based on respondent's and their fathers' stipulations.

the initial disposition hearing on 27 October 2021, respondent was ordered to: comply with the recommendations for treatment specified in the 6 July 2021 mental health and substance abuse assessment until successfully discharged; refrain from using impairing substances; submit to random drug screens; complete parenting classes and consistently demonstrate safe and appropriate parenting; obtain and maintain stable income and housing; participate in her children's medical or other treatment, as requested; sign necessary release of information forms; and keep DSS apprised of any changes to her address or contact information. The order continued custody of Tim with DSS and allowed respondent alternating weeks of at least one hour of supervised in-person visitation or supervised virtual contact.

A permanency planning hearing was held on 9 February 2022. The trial court found that respondent was not making adequate progress in complying with her case plan within a reasonable time, as she had not complied with the recommended mental health or substance abuse treatment; had failed to consistently submit to drug screens, and she tested positive for the two she did; and had not maintained verifiable employment or suitable housing. The court also found that while respondent had attended the majority of the provided in-person visitation, she was inconsistent in her participation in the virtual visitation. The court set a primary plan of adoption with a secondary plan of reunification. The court again ordered respondent to comply with her case plan and reduced her visitation to a minimum of one hour of supervised, in-person visitation each month.

On 11 March 2022, DSS filed a motion alleging grounds existed to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (3), and (6). Both the termination hearing and the second permanency planning hearing were continued several times.

In July 2022, DSS requested and received records regarding respondent's progress toward mental health and substance abuse treatment and learned she had been denied placement at one facility due to her being pregnant. Respondent entered a nine-month residential substance abuse treatment program for pregnant women on 23 August 2022, where she was provided psychiatry appointments, attended both group and individual therapy sessions, and would be assisted with obtaining employment. After giving birth on 4 November 2022, respondent continued in her residential program and was reportedly "doing very well in therapy."

The second permanency planning hearing was held on 21 December 2022. The trial court noted that, while respondent had improved on being available to DSS and the court and had been more consistent with visitation, her progress toward her case plan goals was still inadequate. Tim's permanent plan and respondent's visitation remained the same, and respondent was again ordered to comply with her case plan.

The termination hearing was held over four days, with the adjudication occurring two days in November 2022, and disposition occurring two days in January 2023. In the resulting 6 March 2023 order, the trial court found and concluded that respondent's parental rights could be terminated under all three grounds alleged in

the petition. The court determined that it was in Tim's best interests that respondent's parental rights be terminated. Respondent appeals.

II. Analysis

Respondent does not challenge the trial court's adjudication of grounds to terminate her parental rights, but argues the court abused its discretion in determining that termination of her parental rights was in Tim's best interests. We disagree.

A. Challenges to the Findings of Fact

Respondent first challenges the trial court's Findings of Fact 33, 85, 132, 133, 141, 142, 152, and 163, arguing these findings were not supported by competent evidence.⁴ "During the dispositional stage, we review the trial court's factual findings to determine if they are supported by competent evidence." *In re R.D.*, 376 N.C. 244, 258, 852 S.E.2d 117, 129 (2020) (citing *In re K.N.K.*, 374 N.C. 50, 57, 839 S.E.2d 735, 740 (2020)). We are bound by the trial court's findings of fact "where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984) (citations omitted).

1. Findings of Fact 33, 141, and 142

⁴ Respondent also challenges Findings of Fact 146, 153, and 216, but as they are more in the vein of ultimate findings regarding the weighing of the best interests factors, we discuss them below.

Respondent contends the trial court erred in finding that she was unfit and had acted contrary to her constitutionally protected right to parent, as reflected in Findings of Fact 33, 141, and 142. However, “a finding under any of the provisions in section 7B-1111 will result in a parent ‘forfeit[ing] his or her constitutionally protected status.’” *In re A.C.V.*, 203 N.C. App. 473, 481, 692 S.E.2d 158, 164 (2010) (quoting *Owenby v. Young*, 357 N.C. 142, 145, 579 S.E.2d 264, 267 (2003)). As respondent does not challenge the trial court’s adjudication of grounds, her argument is without merit. *See In re K.N.K.*, 374 N.C. 50, 60, 839 S.E.2d 735, 742 (2020) (following an adjudication of grounds to terminate a parent’s rights, “the trial court was obliged by N.C.G.S. § 7B-1110(a) to determine whether it was in [the child’s] best interests to terminate respondent’s parental rights, and to do so without regard to any competing interest of respondent.”).

2. Findings of Fact 85, 132, and 133

Respondent contends the trial court erred by finding that her progress was limited, that her substance abuse history called into question her ability to care for Tim, and that it was uncertain whether she would successfully complete her substance abuse treatment. However, the record is replete with evidence supporting these challenged findings. While the court did find that respondent had made “great” progress in her substance abuse treatment since beginning the residential program, the unchallenged findings of fact that she had only completed roughly a third of the residential program by the time of the termination hearing and had made no progress

on any of her other case plan requirements, support the trial court's finding that her progress was limited. *See In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) ("Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal."). Similarly, the record evidence and unchallenged findings of fact regarding her extensive history of substance abuse, her inability to successfully complete any other treatment programs, and her partial success in a "very restrictive and protective environment" where only half of the participants who enter complete the program, support the trial court's findings that she was unable to care for Tim and it was uncertain if she would be able to in the future.

3. *Finding of Fact 163*

Respondent included Finding of Fact 163 in her list of findings she asserts lack sufficient evidentiary support, yet she provides no specific argument as to how it is unsupported. We presume it may relate to the inartful language describing when respondent visited with Tim: "The Mother did not visit the minor child from April, 2022 to August, 2022 and had a visit in August, 2022." Regardless, there was sufficient evidence to support the trial court's finding that respondent did not exercise her visitation during April, May, June, or July 2022, as is reflected in that finding, including testimony from the social worker and the DSS permanency planning report, which respondent admitted into evidence at the 17 January 2023 hearing.

Thus, we conclude all the challenged evidentiary findings are supported by

sufficient evidence, regardless of whether the evidence could have supported contrary findings. *In re Montgomery*, 311 N.C. at 110-11, 316 S.E.2d at 252-53.

B. Best Interests Determination

In a termination of parental rights proceeding, once the trial court has adjudicated the existence of one or more grounds under N.C. Gen. Stat. § 7B-1111(a), “it then proceeds to the dispositional stage.” *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019). The court shall determine whether termination of parental rights is in the child’s best interests by considering and making written findings regarding:

- (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).

We review a trial court’s best interests determination for abuse of discretion. *In re J.B.*, 172 N.C. App. 1, 24, 616 S.E.2d 264, 278 (2005) (citation omitted). An “[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 A.U.D.*, 373 N.C. at 6-7, 832 S.E.2d at 700-01 (quotation marks and citation omitted).

Here, the trial court made findings about each of the relevant statutory criteria, including (1) Tim was not quite two years old at the time of the termination hearing; (2) it was highly likely that Tim would be adopted given his young age and his foster family's desire to adopt him; (3) termination of parental rights was necessary in achieving Tim's primary permanent plan of adoption; (4) Tim's relationship with respondent was minimal "at best[.]" as she had only exercised visitation five times in the thirteen months preceding the dispositional portion of the hearing; and (5) there appeared to be a "substantial bond that resemble[d] a parent/child bond" between Tim and his foster parents, with whom he had resided since coming into DSS custody. The court also made extensive findings regarding its consideration of the relevant factor of respondent's substance abuse.

Respondent does not challenge any of the findings of fact related to the five enumerated statutory considerations, thus they are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019) (citations omitted). Instead, she contends that the court erred in relying "heavily on the uncertainty of [her] successfully completing the substance abuse treatment program and her past history of substance abuse and mental health issues" to justify terminating her parental rights, specifically challenging Findings of Fact 153 and 216. She argues that the trial court's failure to credit her "tremendous progress" in her residential treatment program was an abuse of discretion.

Contrary to respondent's argument, Findings of Fact 153 and 216 exhibit the

trial court's thoughtful consideration of respondent's sobriety and treatment progress:

153. Also, the Mother's sobriety is only one factor and the [c]ourt must consider the other factors set forth in N.C. Gen. Stat. 7B-1110. When the [c]ourt considers and weighs the other specific factors set forth in the statute, the [c]ourt finds there is overwhelming evidence that it would be in the best interest[s] of the minor child to terminate [respondent's] parental rights.

....

216. Just like this trial court cannot consider just the strong bond the child has with his current foster parents as the sole basis for finding it in the best interest[s] of the minor child to terminate the Respondent Mother's right, the trial court cannot take just the factor of the Mother's progress in treatment as the sole reason not to terminate the Mother's rights. That is why the [c]ourt has carefully weighed the factors set forth in N.C. Gen. Stat. § 7B-1110 and after careful examination of the evidence presented the [c]ourt finds it in the best interest[s] of the minor child to terminate the Mother's . . . parental rights.

Moreover, it is entirely within the discretion of the trial court to decide how each factor should be weighed. *In re I.N.C.*, 374 N.C. 542, 550, 843 S.E.2d 214, 220 (2020). This Court may not “substitute our preferred weighing of the relevant statutory criteria for that of the trial court[.]” *Id.* at 550-51, 843 S.E.2d at 220. We conclude that the trial court properly considered all the relevant factors of N.C. Gen. Stat. § 7B-1110, and its determination that termination of respondent's parental rights was in Tim's best interests, as reflected in Findings of Fact 146, 153, and 216 and Conclusions of Law 9 and 11, “was not manifestly unsupported by reason.” *In re*

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Z.L.W., 372 N.C. at 438, 831 S.E.2d at 66.

III. Conclusion

The trial court did not abuse its discretion in concluding that termination of respondent's parental rights was in Tim's best interests. Accordingly, we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

Panel consisting of Judges MURPHY, COLLINS, and HAMPSON.

Report per Rule 30(e).