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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-399

Filed 19 December 2023

Mecklenburg County, No. 19 JT 151

IN THE MATTER OF: D.A.M.

Appeal by Mother from order entered 28 October 2022 by Judge Faith A. Fickling-Alvarez in Mecklenburg County District Court. Heard in the Court of Appeals 1 November 2023.

*Marc S. Gentile for petitioner-appellee Mecklenburg County Youth and Family Services.*

*Sydney Batch for respondent-appellant mother.*

*North Carolina Office of Guardian ad Litem Services, by Matthew D. Wunsche and Brittany T. McKinney, for guardian ad litem.*

MURPHY, Judge.

At the dispositional stage of a termination of parental rights hearing, the trial court must determine whether terminating the parent's rights to their minor child is in the best interest of the child. We do not disturb the trial court's best interest determination absent an abuse of discretion. The trial court based its reasoned

decision that termination of Mother’s parental rights was in Boris’s<sup>1</sup> best interest on its dispositional findings, which were supported by competent evidence. We affirm the order terminating Mother’s parental rights.

**BACKGROUND**

Mother appeals from the trial court’s order terminating her parental rights to her minor child, Boris. Boris was born to Mother and an unknown father on 9 December 2018. Shortly after birth, Boris was diagnosed with hypoplastic right heart, a condition that requires “ongoing and long-term care to include multiple surgeries, all of which made [Boris] medically fragile[.]” On 12 December 2018, the hospital caring for Boris requested that Mother complete a psychology consult. During this screening, Mother’s neurocognitive functioning indicated “that Mother lacked the capacity for complex medical decision making on behalf of [Boris].” Mother displayed a lack of understanding of the severity and treatment of Boris’s medical condition, as well as impaired language performance and attention to detail. On 13 December 2018, Mecklenburg County Youth and Family Services (“YFS”) received a referral from medical staff indicating “that Mother had cognitive delays and lacked capacity to provide proper care and supervision for a medically fragile [j]uvenile.”

On 18 January 2019, Boris’s matter was sent to Family-In-Home services. Boris remained in the hospital from his date of birth until 29 March 2019, when YFS

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<sup>1</sup> We use a pseudonym to protect the juvenile’s identity and for ease of reading.

filed a juvenile petition alleging him to be neglected and dependent. Upon his release from the hospital, Boris was taken into the non-secure custody of YFS.

On 31 May 2019, the trial court adjudicated Boris neglected and dependent. The trial court held a dispositional hearing on 12 July 2019, at which time Mother and Boris's maternal grandmother ("Grandmother") had not completed the required training to care for Boris's medical condition. Medical providers recommended that Boris be placed with two caregivers who "were competent in meeting [Boris's] medical needs." The trial court established a primary permanent plan of reunification for Boris with a secondary plan of guardianship and ordered Mother to complete a Parental Capacity Evaluation.

On 22 October 2019, the trial court conducted its first review hearing, finding that "Mother continued to struggle with [Boris's] medical needs despite repeated trainings since December 2018." The trial court held a permanency planning hearing on 7 February 2020, during which it found that Mother and Grandmother both suffered from "cognitive delays that impaired [their] ability to act consistently with [Boris's] health and safety." The trial court further found that Boris's maternal grandfather ("Grandfather") "was unable to articulate [Boris's] medical needs and he worked 3 days per week," making him unavailable as a secondary caregiver. After a subsequent permanency planning hearing on 11 August 2020, the trial court ordered Grandmother to complete "testing to ensure that she would be appropriate as a secondary caregiver for Mother."

On 3 November 2020, the trial court held a third permanency planning hearing, during which it learned that Mother, Grandmother, and Grandfather were involved in “multiple acts of domestic violence [] that occurred earlier in 2020” which resulted in criminal charges being filed against Grandfather. Since the prior permanency planning hearing, Mother had also participated in a 48-hour visit with Bayada Nursing. Bayada Nursing staff reported that Mother and Grandmother required multiple prompts to care for Boris; that the residence was not babyproofed and did not have milk, cream, or appropriately-sized diapers; that Boris was able to pick up unsafe items; and that multiple people visited the residence, despite Boris’s medical fragility and the visits occurring during the COVID-19 pandemic. Upon learning of the domestic violence incidents, the trial court ceased visitation between Grandmother and Boris and deemed Grandfather’s home, where both Grandmother and Mother also lived, “as an unsafe placement[.]”

The trial court conducted a fourth permanency planning hearing on 15 February 2021. At this time, Grandmother and Mother continued to reside with Grandfather and express concern about his “continued aggressive behavior.” The trial court ordered that Mother and Grandmother may have another overnight visit with Bayada Nursing, or another nursing service, as long as Grandfather was not present during the visit and began engaging in domestic violence services. Grandmother had not completed her medical testing at the time of this hearing.

On 12 May 2021, the trial court conducted a fifth permanency planning hearing. Grandmother had failed to complete her neuropsychological exam and sleep study, and Grandfather had failed to engage in domestic violence services. The trial court ordered YFS to file a petition to terminate Mother's parental rights.

The trial court conducted a termination hearing on 12 September 2022 and entered its order terminating Mother's parental rights on 28 October 2022. The trial court concluded that Mother's parental rights could be terminated pursuant to N.C.G.S. § 7B-1111(a)(1) for neglect by failure to provide proper care and supervision and pursuant to N.C.G.S. § 7B-1111(a)(3) for willful failure to pay a reasonable amount towards Boris's care while in YFS's custody in the six consecutive months preceding the filing of the TPR, despite physical and financial capability to do so.

The trial court proceeded to make, in pertinent part, the following dispositional findings:

6. The bond between [Boris] and [Mother] is strong. [Mother] visits regularly with [Boris]. [Mother] frequently brings [Grandmother] to visits. [Boris's] bond with [Grandmother] is also strong. [Mother] has provided toys and clothing and other gifts to [Boris]. [Mother] and [Grandmother] obviously love [Boris] and he loves them.

....

8. [C]oncerns remain about unaddressed domestic violence within the home. . . . Concerns also remain due to other adults in the home, [Mother's] inability to meet [Boris's] medical needs, and [Grandmother's] inability to demonstrate that she could be the second caregiver. . . .

9. [Boris] was placed with the [foster] family upon discharge [from the hospital] and he remains there. He has continued to grow, develop, and thrive in their home. . . . [Boris] is comfortable in the foster home which is a loving, caring, and supportive home. He feels safe and secure there. He has been observed asking for items that he likes, wants, and/or needs. As between [Boris] and the foster parents, there exists a loving and supportive parent-child relationship. [Boris's] reciprocal love and bond extends to the [foster parents'] biological children.

10. The foster parents have done well meeting his needs since he's been placed in their home. The foster parents have consistently said that they would adopt [Boris] if he were free for adoption. Consequently, there is a high likelihood of adoption.

11. As noted above, [Boris] has serious medical needs that will require ongoing complex medical decision-making in order to meet those needs. Both of the foster parents have demonstrated that they can competently engage in complex medical decision-making. [Mother] and [Grandmother] have not so demonstrated. There is an ongoing concern about [Mother's] ability to maintain [Boris's] health and safety and make complex medical decisions. . . .

12. YFS has made extensive efforts to identify a possible guardian and provide support to [Mother] and [Grandmother] so as to help them gain the ability to make complex medical decisions, but those efforts have not been successful.

13. If the parental rights of the parents are not terminated, then [Boris] is likely to remain in YFS custody for an indefinite period of time and remain in his current status. That is contrary to his best interest. [Boris's] best interest requires that he be given stability and permanency as quickly as possible. Stability and permanency can be achieved if the parents' parental rights are terminated.

14. The existence of a strong bond between [Boris] and Mother is outweighed by the need for permanence for [Boris], [Boris's] medical fragility, and the need for caregivers to be competent at complex medical decision-making.

15. Terminating the respondent parents' parental rights is in [Boris's] best interest.

Upon concluding that it was in Boris's best interest, the trial court terminated Mother's parental rights.

### ANALYSIS

The termination of parental rights process is divided into two stages: adjudication and disposition. N.C.G.S. §§ 7B-1109, 7B-1110 (2021); *In re S.R.*, 384 N.C. 516, 520 (2023). During the adjudication stage, the trial court must determine whether the petitioner seeking termination provided clear, cogent, and convincing evidence of the existence of one or more of the grounds proscribed in N.C.G.S. § 7B-1111(a) which allow for the termination of the parent's rights. *In re S.R.*, 384 N.C. at 520. "After an adjudication that one or more grounds for terminating a parent's rights exist, the [trial] court" moves to the dispositional stage, during which it "shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a) (2021); *accord In re D.L.W.*, 368 N.C. 835, 842 (2016).

Mother concedes on appeal "that [YFS] met its burden in establishing grounds to terminate her parental rights." Mother appeals only from the trial court's dispositional order, arguing that the trial court abused its discretion by determining

that terminating her parental rights was in Boris’s best interest. Mother also claims “the trial court abused its discretion in finding that [Mother] was unable to provide care for [Boris] and that adoption was the only way to ensure that [Boris] would not languish in foster care.”

“We review the trial court’s dispositional findings of fact [challenged by Mother] to determine whether they are supported by competent evidence, mindful that N.C.G.S. § 7B-1110 provides that[,] at the disposition stage[,] ‘[t]he 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 re S.R.*, 384 N.C. at 520 (quoting N.C.G.S. § 7B-1110(a)) (some marks and citation omitted).

“We do not disturb [t]he [trial] court’s determination of the juvenile’s best interest . . . absent a showing of an abuse of discretion.” *In re E.M.*, 202 N.C. App. 761, 764, *cert. denied*, 364 N.C. 325 (2010). In determining the best interest of the child, the trial court must examine “any relevant consideration[,]” including, but not limited to, the age of the child, the likelihood that child would be adopted, whether termination of the parent’s rights will aid in achieving the permanent plan established for the child, the bond between the child and the parent, and the quality of the relationship between the child and the proposed permanent placement. N.C.G.S. § 7B-1110(a) (2021). To demonstrate that the trial court abused its discretion, Mother must show that it took an action “so arbitrary that it could not

have been the result of a reasoned decision.” *In re E.M.*, 202 N.C. App. at 764 (marks omitted) (quoting *White v. White*, 312 N.C. 770, 777 (1985)).

### **A. Challenged Findings of Fact**

Mother specifically challenges dispositional findings of fact numbered 8, 11, 12, 13, 14, and 15, *see supra* Background, and conclusion of law numbered 2: “It is in [Boris’s] best interest to terminate the parental rights of his biological parents, [Mother] and John Doe[, the unknown father].”

First, Mother argues that findings 8 and 11 are unsupported by competent evidence because Mother possessed the “ability to appropriately care for [Boris] during visitations.” Mother concedes that she “had cognitive limitations” but argues that “she utilized techniques to remember important information about [Boris].” Mother also contends that, “while [she] needed some assistance in caring for [Boris’s] complex medical needs, there was ample evidence that[,] with assistance, [Mother] could meet his needs.” Mother offers several references to the record that demonstrate ways in which she participated successfully in caring for Boris. However, in a juvenile proceeding, “the trial court is the finder of fact[]” and “has the responsibility for evaluating the credibility of the witnesses, weighing the evidence, and determining the relevant facts.” *Id.* at 517 (second alteration in original) (marks omitted). Our task on appeal is not to determine which findings the trial court should have made, but rather whether the findings it did make are supported by competent evidence. “If a trial court’s finding of fact is supported[,] . . . it will be deemed

conclusive even if the record contains evidence that would support a contrary finding.” *Id.* at 520 (first alteration and omission in original) (marks omitted).

On 12 December 2018, Mother underwent a neuropsychology examination. The psychologist who performed the examination reported that Mother “demonstrated impaired performance relative to language, memory, and attention” and “lacks the capacity for complex medical decision-making on behalf of [Boris] at this juncture.” The trial court ordered a forensic evaluation to determine whether Mother was competent to participate in the juvenile trial process. The doctor who performed Mother’s assessment measured Mother’s cognitive functioning “to be markedly low,” though “not . . . sufficiently low so as to preclude her from understanding basic court proceedings or to assist her attorney in a rational and reasonable manner.” On 28 May 2019, Levine Children’s Hospital workers prepared a letter indicating that Mother has “repeatedly demonstrated inability to administer appropriate doses of medications, retain medication, as well as differentiate between G-tube and J-tube” and that Grandmother “was unable to demonstrate independent medical care needs for [Boris,] . . . confused [Boris’s] G-tube and J-tube, needed frequent prompting for timing of medication administration, and required step by step instructions for setting up [his] feeding pump.”

On 11 February 2022, YFS reported that “[Boris’s] well-being needs are being met and he is receiving routine medical care, dental care, and therapy[]” in his foster parents’ care and that “[his] foster parents understand the complexity of [Boris’s]

medical and developmental needs[.]” YFS further reported that Grandmother had not completed her court-ordered neuropsychological exam, that Grandfather had not participated in any domestic violence services, that “[Mother’s] delays continue to present an issue with being able to care for [Boris] independently[.]” and that Grandmother “[has] difficulty with remembering her appointments and the purpose of each appointment.” Extensive competent evidence exists throughout the record to support the trial court’s findings numbered 8 and 11 that Boris’s foster parents have demonstrated they are able to make complex medical decisions for Boris’s benefit, that Mother and Grandmother have not demonstrated this same ability, that “[t]here is an ongoing concern about [Mother’s] ability to maintain [Boris’s] health and safety and make complex medical decisions[.]” and that “concerns remain about unaddressed domestic violence within [Mother and Grandmother’s] home.”

Next, Mother challenges finding of fact 12. Mother began receiving training from medical professionals instructing her how to care for Boris’s medical needs shortly after his birth. Mother and Grandmother received “training regarding how to feed [Boris], how to care for his G tube, and how to secure it.” Nevertheless, “[t]he G tube was seen dangling for some period of time during the aforesaid Bayada-supervised visit.” “[M]other’s cognitive challenges and status were unchanged throughout the underlying case” and “[M]other had ongoing challenges with complex medical decision making” but “never engaged with an Intellectual and Developmental Delay [] counselor beyond participating in an Intake Assessment . . . .” Grandmother

had “difficulty with remembering appointments and the purpose of different appointments” and never submitted to the neuropsychological evaluation which the trial court ordered her to obtain. Although “YFS made extensive searches and exhausted all possible resources to identify a potential placement who could become guardian for [Boris] which would preserve family bonds[,] [n]o guardian was ever identified.” Competent evidence supports the trial court’s finding that Mother and Grandmother received support to aid them in making necessary complex medical decisions for Boris, but that this support was ineffective, and that YFS made extensive efforts to find a relative guardian for Boris.

Mother also explicitly challenges finding of fact 13, contending that “[t]he trial court improperly found that [Boris] would likely remain in foster care for an indefinite period if [Mother’s] rights [weren’t] terminated.” Mother argues that “terminating [her] rights was not necessary to effectuate permanency for [Boris].” It is undisputed that Boris’s foster parents were unwilling to accept guardianship of Boris. Although unwilling to accept guardianship, the foster parents expressed a high likelihood that they would adopt Boris. Termination of Mother’s parental rights would help achieve Boris’s permanent plan of adoption, which the trial court established on 15 February 2021, after many failed attempts to find a guardian. Competent evidence exists to support the trial court’s findings that it was likely that, unless Mother’s rights were terminated, Boris would remain in foster care without permanency, and that terminating Mother’s parental rights would help achieve permanency for Boris.

Finally, Mother challenges findings of fact 14 and 15. YFS contends, and we agree, that these findings are most appropriately classified as ultimate findings of fact. “An ultimate finding is a finding supported by other evidentiary facts reached by natural reasoning.” *In re G.C.*, 384 N.C. 62, 65 n. 3, 67 (2023). “A trial court’s finding of an ultimate fact is conclusive on appeal if the evidentiary facts reasonably support the trial court’s ultimate finding.” *State v. Fuller*, 376 N.C. 862, 864 (2021). The ultimate findings of fact that “[t]he existence of a strong bond between [Boris] and Mother is outweighed by the need for permanence for [Boris], [Boris’s] medical fragility, and the need for caregivers to be competent at complex medical decision-making[]” and that terminating Mother’s rights is in Boris’s best interest are “supported by the trial court’s evidentiary findings of fact and reached by natural reasoning from the evidentiary findings of fact.” *In re G.C.*, 384 N.C. at 67.

### **B. Abuse of Discretion**

As Mother argues, the existence of one or more grounds for termination does not inherently indicate that termination is in the best interest of the child. *In re Montgomery*, 311 N.C. 101, 107 (1984) (noting that our General Assembly “has properly recognized that[,] in certain situations[] where the grounds for termination could be legally established, the best interests of the child, considering the intangibles, indicate that the family unit should not be dissolved”). However, an appellant must meet a “high bar” to establish an abuse of discretion. *State v. Corbett*, 269 N.C. App. 509, 580 (2020), *aff’d*, 376 N.C. 799 (2021) (“Abuse of discretion is

certainly a high bar to overcome, with the burden of demonstrating prejudice even more cumbersome.”); *see In re A.J.L.H.*, 384 N.C. 45, 57 (2023) (holding that if we “determine[] that the trial court’s order meets the high bar for abuse of discretion, the appropriate remedy is to explain how the trial court abused its discretion, vacate the disposition order, and remand for the trial court to . . . exercise [its] discretion”).

Mother contends that “[t]he trial court properly found that [Boris] and [Mother] had a strong bond, but abused its discretion in finding that [Boris’s] need for permanence outweighed his strong bond with [Mother].” YFS “does not contest that [Mother] has a strong bond with [Boris] or that [Boris] has a bond with [Grandmother].” As Mother notes, the trial court found that Mother and Grandmother each had a strong bond with Boris. However, the trial court ultimately found the “strong bond between [Boris] and Mother is outweighed by the need for permanence for [Boris], [Boris’s] medical fragility, and the need for caregivers to be competent at complex medical decision-making.” YFS argues, and we agree, that our Supreme Court “has repeatedly ruled—and recently—that trial courts are well within their authority to determine that the bond between a parent and child, where one exists, is outweighed by the remaining dispositional factors.” For example, in *In re Z.L.W.*, “the trial court made extensive findings regarding the strong bond between [the father] and [his children].” *In re Z.L.W.*, 372 N.C. 432, 437 (2019). Nevertheless, our Supreme Court held that the trial court did not abuse its discretion in terminating the respondent father’s parental rights to his minor children:

[T]he trial court appropriately considered the factors stated in N.C.G.S. § 7B-1110(a) when determining [the children's] best interests and . . . the trial court's determination that other factors outweighed respondent's strong bond with [his children] was not manifestly unsupported by reason.

. . . .

While the stated policy of the Juvenile Code is to prevent the unnecessary or inappropriate separation of juveniles from their parents, we note that the best interests of the juvenile are of paramount consideration by the court and . . . when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time[.]

We therefore hold the trial court's conclusion that termination of respondent's parental rights was in [the children's] best interests did not constitute an abuse of discretion. Accordingly, we affirm the trial court's order terminating respondent's parental rights.

*Id.* at 438 (emphasis omitted) (citations and marks omitted). As in *In re Z.L.W.*, the trial court's conclusion that the termination of Mother's parental rights was in Boris's best interest was not an abuse of discretion, as it resulted from a reasoned decision.

### **CONCLUSION**

The trial court did not abuse its discretion by determining it was in Boris's best interest to terminate Mother's parental rights.

AFFIRMED.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).