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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-893

Filed 4 June 2024

Stanly County, Nos. 14JT62 19JT25 20JT60

IN THE MATTER OF: H.D.B., R.B., and R.B.

Appeal by respondents from judgments entered 1 May 2023 by Judge Phillip L. Cornett in Stanly County District Court. Heard in the Court of Appeals 1 May 2024.

Robinson & Lawing, LLP, by Christopher M. Watford, for the appellant respondent-mother.

Peter Wood, for the appellant respondent-father.

Stanly County DSS, by Valeree R. Adams, for the petitioner-appellee.

Administrative Office of the Courts GAL Appellate Counsel Brittany T. McKinney for guardian ad litem.

TYSON, Judge.

Respondent-mother and Respondent-father (collectively “Respondents”) appeal from disposition orders terminating their parental rights to “Helen,” “Rachel,” and “Richie.” See N.C. R. App. P. 42(b) (pseudonyms used to protect the identity of minors). We affirm.

I. Background

Respondent-mother and Respondent-father are married. Respondents are the natural parents of three children: Helen, born 25 June 2014; Rachel, born 9 January 2016; and, Richie, born 4 November 2020.

Stanly County Department of Social Services (“DSS”) became involved with the family in 2014. DSS obtained non-secure custody of six-months-old Helen on 12 November 2014 and filed a juvenile petition alleging Helen was neglected and dependent on 18 November 2014. Respondents stipulated Helen was a dependent juvenile on 13 February 2015 and the family would continue to reside on Catalina Drive in Albemarle.

Helen was returned to Respondents on a home trial placement on 29 January 2015. Respondents completed all of the goals of their case plan and Helen was returned to the legal and physical custody of Respondents on 13 August 2015.

Respondents moved to the State of New Hampshire. The New Hampshire Department of Health and Human Services (“NHDHHS”) received a report and opened an investigation of Respondents for “chronic homelessness, hoarding of animals, and severe overall neglect” of Helen and Rachel in October 2018. NHDHHS reported Respondents had posted a Facebook advertisement for a babysitter and had left Helen and Rachel with a mentally-delayed woman, whom they did not know. A social worker visited the babysitter’s home and discovered the home was filthy and the children “had rashes, were dirty[,] and dressed inappropriately for the weather.” The investigation did not proceed because Respondents left New Hampshire and

returned with the children to North Carolina.

DSS filed petitions alleging Helen and Rachel were neglected and dependent on 13 May 2019. The juvenile petition alleged Helen and Rachel:

live in an environment injurious to their welfare as their parents are chronically homeless, have significant untreated mental health issues, do not properly feed or address medical issues of the children, have a history of fleeing the state to avoid child protective services investigations, continually make inappropriate child care arrangements and there is a current [allegation] of sexual abuse that has not yet been addressed.

DSS sought and was granted non-secure custody of Helen and Rachel the same day. Respondents stipulated on 31 July 2019 that Helen and Rachel were dependent at the time of the 13 May 2019 juvenile petition. Helen and Rachel were returned to Respondent's home on 17 April 2020. Respondents completed most of their goals of their case plans and Helen and Rachel were returned to their legal and physical custody on 11 June 2020.

Rachel was admitted to Levine Children's Hospital on 23 October 2020 and diagnosed with nephrotic syndrome. DSS began investigating a report on 28 October 2020 of alleged sexual abuse on Helen, who was displaying inappropriate sexualized behaviors, Respondents' refusal of medical care, track marks observed on Respondent-father's arm, and Respondent-mother using marijuana.

DSS met with Respondent-mother and Helen. The social worker reported they were staying with the alleged perpetrator of sexual abuse, there was no food in the

home, and dog feces was present on the floor. Staff at Levine Children's Hospital reported they had become aware of Respondents giving Rachel 100 mg of Benadryl/Nighttime Sleep Aids, when they had ordered only 12.5 mg to be administered.

Rachel was discharged from the hospital on 6 November 2020. Respondents were provided testing strips for Rachel's urine and a scale to weigh Rachel's urine, education on her diet, her fluid intake and restrictions, a notebook to chart her urine and weight results, and instructions on when to contact the clinic. Respondents did not return Rachel to her follow-up appointment on 12 November 2020.

Respondents and the children traveled to Vermont. Respondent-mother informed the social worker at Levine Children's Hospital that Richie, the youngest child, needed to have his finger examined because it was turning red and yellow. Respondent-mother believed the cause was methicillin-resistant staphylococcus aureus ("MRSA").

Respondents were evicted from their home on 18 November 2020. The social worker at Levine Children's Hospital was informed Rachel had a relapse of her nephrotic syndrome on 30 November 2020. Respondents were informed of the substantial risk to Rachel's health without emergency care, including blood clot or stroke. Respondents did not want to take Rachel to an emergency department in Vermont, but would return to North Carolina for treatment.

The social worker was informed on 1 December 2020 they were out of Rachel's

iron supplements and they had one night's dose of prednisone remaining. Rachel was experiencing swelling and significant edema. Rachel's serum albumin was extremely low at 0.7, and her urine proteins were +3 or +4. The social worker made a report to the State of Vermont due to Respondents' unwillingness to follow medical advice for treatment and stabilization for Rachel.

Respondents took Rachel to the hospital in Vermont. The hospital registered Rachel's blood platelet count at 1238. Rachel was transferred to Dartmouth Hitchcock Medical Center in New Hampshire for treatment. Respondents attempted to remove Rachel from Dartmouth Hitchcock Medical Center against medical advice on 2 December 2020. Respondents could not communicate a plan for housing upon discharge from the hospital.

DSS filed juvenile petitions for Helen, Rachel, and Richie on 3 December 2020 alleging neglect, dependency, homelessness, Respondents not seeking medical care for Rachel, "the parents . . . history of fleeing the state to avoid child protective services investigations, untreated mental health concerns, substance abuse, sexual abuse, and improper discipline." DSS obtained nonsecure custody the same day. Respondents were served at their Albemarle address on 10 December 2020.

Respondents stipulated Helen, Rachel, and Richie were dependent on 22 April 2021. The district court entered an adjudication order reflecting the stipulations on 11 May 2021. The district court held a disposition hearing on 3 June 2021. The district court ordered Respondents to work on the goals of the case plan, including:

obtain clean and stable housing, following all medical recommendations made by medical professionals, communicate effectively with DSS and participate in shared parenting with foster parents, and obtain and maintain stable employment.

The district court held a permanency planning hearing on 14 October 2021 and found Respondent-mother was residing in Vermont with her stepfather. The district court adopted a primary plan of reunification with a concurrent plan of custody. Respondent-mother alleged she had spent the night with Respondent-father in his truck at a trucking terminal in the State of Connecticut and he had raped her.

The district court held a permanency planning hearing on 17 March 2022, and found:

25. The [Respondent]-mothers (sic) case plan is to locate stable housing, stable employment and to address domestic violence issues. She has made some efforts on each goal but it is very inconsistent at this point.

...

27. The respondent mother is living in a hotel and told the court that she is moving to a domestic violence shelter in Portsmouth [New Hampshire] and states that she will have stable housing in six months. However the court does not find that credible a[s] she has stated in past meetings that she has stable housing and it has been approved but the housing has fallen through. The children have been in care for 469 days and she still has no stable housing.

...

32. The [Respondents] are not actively participating in or cooperating with the plan, the department, or the guardian ad litem for the juvenile.

33. The respondent parents participation has been inconsistent based off lack of consistent virtual phone calls, participation in some meetings and not others, participation in court proceedings such as todays (sic) hearing where there is an important decision if whether to change the permanent plan and the [Respondent-]father has called the court and advised that he knew there was a hearing being held today but he chose not to come.

...

40. It is not possible to reunify the children with the [Respondents] within the next six months based on the [Respondents] lack of progress over the last 469 days.

The district court relieved DSS of further reunification efforts and changed the permanent plan to adoption with a concurrent plan of guardianship. The guardian *ad litem* filed a motion for the district court to appoint a surrogate parent to make educational decisions for Helen because Respondents had rescinded their permission for Helen to receive exceptional children's educational services. Following a hearing on 2 March 2023 the district court approved a surrogate to make educational decisions for Helen and ordered DSS to arrange for an Individualized Education Program ("IEP").

DSS filed a petition to terminate Respondents parental rights to Helen, Rachel, and Richie, on 9 June 2022, alleging grounds pursuant to N.C. Gen. Stat. § 7B-1111(a) (2), (3), (6) and (9) (2023): willful failure to make reasonable progress, willful failure to pay a reasonable portion of the child care costs, dependency, and Respondents rights to other children had been involuntarily terminated and Respondent lacked

the ability or willingness to establish a safe home.

The district court terminated Respondents parental rights to Helen, Rachel, and Richie on 1 May 2023. Respondents appeal.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(6) (2023).

III. Issues

Respondent-father argues the district court lacked subject matter jurisdiction. Respondent-mother argues: (1) the district court did not follow N.C. Gen. Stat. § 7B-906.2(D) (2023) in eliminating reunification from the permanent plan; (2) the trial court's findings of fact did not support eliminating reunification from the permanent plan; and, (3) terminating her parental rights was not in the children's best interests.

IV. Respondent-Father's Appeal

A. Standard of Review

"Whether or not a trial court possesses subject-matter jurisdiction is a question of law that is reviewed de novo." *In re A.L.L.*, 376 N.C. 99, 101, 843 S.E.2d 1, 4 (2020).

B. Analysis

Respondent-father argues the district court lacked jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). The jurisdictional requirements of the UCCJEA must be met before a district court can make any child custody determination. N.C. Gen. Stat. § 50A-201, 203, 204 (2023).

If a North Carolina court lacks jurisdiction to decide a matter, “then the whole proceeding is null and void, *i.e.*, as if it had never happened.” *In re K.U.-S.G.*, 208 N.C. App. 128, 131, 702 S.E.2d 103, 105 (2010) (citation omitted).

The UCCJEA defines home state as “the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding.” N.C. Gen. Stat. § 50A-102(7) (2023). Our General Statutes further define “commencement” as “the filing of the first pleading in a proceeding.” N.C. Gen. Stat. § 50A-102(5) (2023).

The uncontroverted evidence shows: “the juveniles were residing with their parents in Stanly County.” Once Rachel was to be discharged from the hospital the family was going to Stanly County. “The parents traveled to Vermont” after Rachel was discharged from the hospital. North Carolina was the parties home state at the time of the filing. Respondents “moved from North Carolina to Vermont approximately September or October 2021” and the juvenile petition was filed on 3 December 2020.

Respondent-father contends they had moved to Vermont when Rachel was discharged from the hospital, citing Respondent-mother’s testimony at the termination hearing. However, this assertion is contrary to the uncontroverted findings of fact. Respondents returned to Albemarle after the petition was filed and they “moved from North Carolina to Vermont approximately September or October 2021.” The district court correctly concluded North Carolina is the children’s home

state.

A child's home state retains:

exclusive, continuing jurisdiction over the determination until either (1) there is no longer a significant relationship between any of the parties and the state, and there is no longer any substantial evidence available in the state concerning the child's care, protection, training, and personal relationships, or (2) none of the parties reside in the state.

Hamdan v. Freitekh, 271 N.C. App. 383, 387, 844 S.E.2d 338, 341 (2020) (citation and quotation marks omitted).

Respondent-father further argues North Carolina should have contacted Vermont to determine which forum was the best for the children once the court became aware of the ties to Vermont. This argument is misplaced.

A court of a child's home state is not required to contact another state in order to exercise jurisdiction. See N.C. Gen. Stat. § 50A-203 (2023). Respondent-father cites *In re J.W.S.*, 194 N.C. App. 439, 452-53, 669 S.E.2d 850, 858 (2008), where a panel of this Court remanded a denial of a motion to set aside an adjudication order for the district court to contact the State of New York to exercise jurisdiction. *In re J.W.S.*, was reversed because the Carteret County Department of Social Services contacted New York directly and the district court did not in order for the court to exercise emergency jurisdiction. *Id.* at 452-53, 669 S.E.2d at 858.

The record shows the children and Respondent-father have a significant residence, schools, medical and other providers based in North Carolina. The district

court possessed subject matter jurisdiction under the UCCJEA. Respondent-father's argument is overruled.

V. Respondent-Mother's Appeal

A. Permanency Planning Order

1. Standard of Review

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based on credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007).

2. N.C. Gen. Stat. § 7B-906.2 Findings

Our General Statutes mandate: "Reunification shall remain a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or . . . makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety." N.C. Gen. Stat. § 7B-906.2(b) (2023).

In order to cease reunification efforts, the statute mandates:

the court shall make written findings as to each of the following, which shall demonstrate lack of success:

- (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
- (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.

- (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
- (4) Whether the parent is acting in a manner inconsistent with the health and safety of the juvenile.

N.C. Gen. Stat. § 7B-902.2(d) (2023). Respondent-mother argues the district court failed to make findings related to her availability and whether she had acted in a manner inconsistent with the health and safety of the juveniles.

“The trial court’s written findings must address the statute’s concerns, but need not quote its exact language.” *In re L.M.T.*, 367 N.C. 165, 168 752 S.E.2d 453, 455 (2013). Our Supreme Court held when reviewing an order that eliminates reunification from the permanent plan in conjunction with an order terminating parental rights, an appellate court follows N.C. Gen. Stat. § 7B-1001(a2) (2023) and “consider[s] both orders together.” *Id.* at 170, 752 S.E.2d at 457.

“A finding that the parent has remained available to the trial court and other parties under N.C.G.S. § 7B-906.2(d)(3) does not preclude the trial court from eliminating reunification from the permanent plan based on the other factors in N.C. G.S. § 7B-906.2(d).” *In re L.R.L.B.*, 377 N.C. 311, 326, 857 S.E.2d 105, 117-18 (2021). The district court found in the permanency planning order: “The respondent parents participation has been inconsistent based off lack of consistent virtual phone calls, participation in some meetings and not others[.]” This finding addresses Respondent-mother’s inconsistent participation to satisfy N.C. Gen. Stat. § 7B-906.2(d)(3).

The TPR order contains sufficient findings of fact to satisfy N.C. Gen. Stat. § 7B-906.2(d)(4), including: (1) Respondents not seeking immediate medical care for Rachel upon a relapse of her nephrotic syndrome; (2) not having a plan for housing following her discharge from Levine Children’s Hospital due to “safety and unsanitary conditions with the home[.]”; (3) domestic violence, (4) traveling out of state when told not to travel following Rachel’s discharge from Levine Children’s Hospital; (5) failure to find suitable housing; (6) failure to complete domestic violence training; and, (7) substance abuse components. Respondent-mother’s argument is overruled. ***Challenged Findings of Fact***

Respondent-mother challenges the following findings of fact:

24. The Court finds that reunification efforts would be unsuccessful in accordance with NCGS 7b 906.2(b)&(D), which addresses in part, whether the parents have made reasonable progress within a reasonable period of time under the plan.

...

28. As to her domestic violence treatment that has also been inconsistent as recently as Sunday there was an allegation of rape between the mother and the father therefore the domestic violence is severe and on going.

...

32. The parents are not actively participating in counseling but that to (sic) has been inconsistent.

37. The court will find that it is the best interests of the children that the Department is relieved of relieved (sic) of reunification efforts with the parents.

38. The court will change the primary permanent plan to adoption with a concurrent plan of guardianship.

39. The SCDS is relieved of further efforts towards reunification with the parents as continued efforts would be unsuccessful.

...

41. The SCDS has made reasonable efforts in this matter toward developing a permanent plan by working with the respondent parents to develop a family services case plan and visitation plan, providing for foster care placement, working to ensure the children's needs were being met, providing for visitations, arranging for the children to receive medical and dental checks, inviting parents to team meetings, working with the parents trying to encourage them to work on the goals of their case plans.

Properly admitted testimony and substantial evidence in the record exists to support each of the legally-necessary findings of fact Respondent-mother challenges on appeal. Respondent-mother's arguments challenging the above findings of fact are without merit.

B. Best Interests Determination

Respondent-mother argues the district court abused its discretion by holding termination was in the children's best interest because the bond between Helen and her was weakened by the provisions of the permanency planning order and the evidence did not support the findings of Helen's likelihood of adoption.

1. Standard of Review

"We review the trial court's dispositional findings of fact to determine whether they are supported by the evidence received during the termination hearing[.]" *In re*

S.C.C., 379 N.C. 303, 313, 864 S.E.2d 521, 528 (2021) (citation omitted). “The trial court’s assessment of a juvenile’s best interests at the dispositional stage is reviewed for [an] abuse of discretion.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (citation omitted). “Under this standard, we defer to the trial court’s decision unless it is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.” *In re J.J.B.*, 374 N.C. 787, 791, 845 S.E.2d 1, 4 (2020) (citation and quotation marks omitted).

2. Analysis

Our General Statutes provide:

The court may consider any evidence, including hearsay evidence as defined in 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) (2023).

“[O]ur appellate courts are bound by the trial courts’ findings of fact where [substantial] evidence . . . supports those findings, even though the evidence might sustain findings to the contrary.” *In re S.M.M.*, 374 N.C. 911, 916, 845 S.E.2d 8, 13 (2020) (citation omitted).

The district court made the following unchallenged findings of fact during the best interests determination:

2. The juveniles who are subject of this petition are: [Helen] who is 8 years old; [Rachel] who is 7 years old; and [Richie] who is 2 years old.

6. [Helen] has been in foster care on two prior occasions. [Rachel] has been in foster care on one prior occasion. [Richie] has been in foster care since he was approximately 3 weeks old. The girls have spent at least 45% of their lives in foster care. [Richie] has spent approximately 97% of his life in foster care.

7. [Helen] has not had any contact with Respondent Parents in at least one year. She has stated on, more than one occasion, that she wants to be adopted. Contact with Respondent Parents has caused mental distress to [Helen] in the past. On a recent visit with her GAL, [Helen] said she was “abused” by her parents and that her father “hit [me] with a belt and hit [me] in the head.” Respondent Mother made claims in her DVPO filings that Respondent Father had struck the children in the head.

. . .

9. In coordination with [Helen’s] therapist, the Social worker and GAL explained the plan change to [Helen]. [Helen] expressed she wants permanence and to be adopted.

...

20. The juveniles need permanence. They have been in care multiple times, except for [Richie], and have been in custody for over two years on this occasion.

The district court's termination order includes unchallenged findings addressing each of the relevant factors under N.C. Gen. Stat. § 7B-1110(a). Respondent-mother argues termination of parental rights was not in the children's best interest because the bond between Helen and her was weakened by the provisions of the permanency planning order and was not due to her willful desire.

During the best interests phase, the guardian *ad litem* volunteer testified she did not "observe any kind of bond" between Helen and Respondent-mother, Helen did not mention her parents in "months" and only to mention abuse, Helen no longer asks about her parents, and had not spoken with them in over a year at the time of the hearing.

Respondent-mother further argues the district court abused its discretion by not supporting its findings concerning likelihood of Helen's adoption. The social worker testified during the best interest phase that Helen had demonstrated the ability to bond with a potential foster placement and had the possibility of being adopted. The DSS supervisor testified to resources available to Helen and any adoptive placement and concluded, based on her twenty-six years of experience with foster care and adoption, there would not be a significant hurdle for Helen to be adopted with the correct recruitment of an adoptive family.

The district court's findings directly address the relevant statutory criteria for Helen, including her age, likelihood of adoption, whether termination would aid in achieving the permanent plan of adoption the bond between Helen and Respondent-mother, and the amount of Helen's life spent in DSS custody. *See* N.C. Gen. Stat. § 7B-1110(a). The district court made the required findings regarding the relevant dispositional factors and reached a reasoned decision based on those factors. Respondent-mother fails to show an abuse of discretion in the district court's order. Respondent-mother's argument is overruled.

VI. Conclusion

The district court possessed subject matter jurisdiction over the Respondents, juveniles, and termination of parental rights proceeding. The district court did not err in eliminating reunification from Respondent-mother's permanent plan. Clear, cogent, and convincing evidence supports each of the legally relevant and necessary findings of fact Respondent-mother has challenged on appeal.

The district court properly addressed all statutory factors outlined in N.C. Gen. Stat. § 7B-1110(a). Respondent-mother has not shown any abuse of discretion in its conclusion that termination was in Helen's, Rachel's, or Richie's best interests. The trial court's order is affirmed. *It is so ordered.*

AFFIRMED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).