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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-213

Filed 1 October 2024

Yadkin County, No. 21JT34

IN THE MATTER OF: K.J.M.

Appeal by respondent-father from order entered 13 December 2023 by Judge Laura Luffman in Yadkin County District Court. Heard in the Court of Appeals 28 August 2024.

Attorney David A. Perez, for respondent-appellant mother.

Attorney James N. Freeman, Jr., for petitioner-appellee Yadkin County Human Services Agency.

Attorney Keith Karlsson, for the guardian ad litem.

FLOOD, Judge.

Respondent-Mother appeals from the trial court's order terminating her parental rights to her minor child K.J.M. ("Knox").¹ Upon careful review, we conclude the trial court did not abuse its discretion in determining that it was in Knox's best interests to terminate Respondent-Mother's parental rights. Accordingly, we affirm

¹ A pseudonym is used to protect the identity of the juvenile pursuant to N.C.R. App. P. 42.

the trial court's termination of Respondent-Mother's parental rights.

I. Factual and Procedural Background

On 3 August 2021, Yadkin County Human Services Agency ("YCHSA") received a report alleging Respondent-Mother's six-year-old minor child, Knox, was neglected.² The report alleged Knox was being cared for by Jeffery Sherrill, an unrelated adult male who was chosen by Knox's grandmother to care for Knox, and that Sherrill was in the process of being arrested for possession of methamphetamine at the time the report was made. The report further alleged that Respondent-Mother was incarcerated, Knox was present at the time of Sherrill's arrest, and Knox was found to have eczema and open sores. Knox's biological father is deceased; Respondent-Mother's brother and his wife have declined to care for Knox; and Knox's grandmother, his only other relative, was not deemed an appropriate caretaker due to her placing Knox in Sherrill's care. As a result, YCHSA took nonsecure custody of Knox the same day as Sherrill's arrest.

On 4 August 2021, YCHSA filed a juvenile petition alleging Knox was a neglected juvenile and requested custody of Knox; that same day, the trial court entered a nonsecure custody order, granting YCHSA temporary custody. A hearing was held on 5 August 2021, and the trial court entered an order on 16 February 2022, granting YCHSA temporary custody of Knox and setting a visitation schedule for

² The facts prior to March 2022 are presented here but are condensed and are described in more detail in a recently-decided case. *See In re K.J.M.*, 288 N.C. App. 332, 886 S.E.2d 589 (2023).

Respondent-Mother.

On 16 September 2021, the trial court held another hearing and adjudicated Knox a neglected juvenile, entering an order on 10 February 2022 (the “Adjudication Order”). The trial court found it was in Knox’s best interests that YCHSA be granted custody of Knox, and Respondent-Mother, who had recently been released from incarceration, was granted biweekly supervised visitation and was provided a reunification plan.

On 10 February 2022, the trial court held the first permanency planning hearing and continued YCHSA’s custody of Knox, who had, by the time of the hearing, been placed in foster care, and entered an order on 10 November 2022. The trial court found Respondent-Mother failed to appear at meetings with YCHSA to enter into a case plan, had sparse contact with YCHSA, failed to visit Knox, and otherwise made no contact with him. The trial court further found it was in Knox’s best interests that Respondent-Mother have no visitation or contact with him until Respondent-Mother entered into a case plan with YCHSA.

On 8 March 2022, Respondent-Mother filed a notice of appeal from the Adjudication Order. On 18 April 2023, this Court affirmed the trial court’s adjudication of Knox as a neglected juvenile. *See In re K.J.M.*, 288 N.C. App. 332, 886 S.E.2d 589 (2023).

On 15 June 2022, YCHSA filed a motion to terminate parental rights as to Respondent-Mother, alleging neglect, failing to pay the costs of care, and

abandonment of Knox. Respondent-Mother filed a response to the motion on 8 July 2022.

On 7 July 2022, the trial court held the second permanency planning hearing and entered an order on 23 November 2022. At the time of the hearing, Respondent-Mother had been incarcerated since March 2022 for probation violations. The trial court found Respondent-Mother failed to enter into a case plan with YCHSA, failed to visit Knox, and sent only one letter on 23 May 2022 to him, which YCHSA did not forward to him “due to concerns regarding the impact it might have had on [Knox’s] fragile mental state.”

On 5 January 2023, the trial court held the third permanency planning hearing and entered an order on 28 June 2023. Several months prior to the hearing, on 23 August 2022, Respondent-Mother had been released from incarceration. The trial court found that Respondent-Mother still had failed to enter into a case plan or visit Knox, and only had sparse contact with YCHSA.

On 29 June 2023, the trial court held a termination of parental rights hearing. Kim Brown, on behalf of YCHSA, testified that YCHSA had concerns about Respondent-Mother’s criminal behavior, substance abuse issues, unstable housing, her ability to care for and parent Knox, and “whether [Respondent-Mother] ever desired to be a part of [Knox’s] life.” Brown testified that Knox’s foster home placement decided it could not adopt Knox, primarily because the foster family had older children, and the placement was not a good fit for the family. Brown testified,

however, that the foster family was assisting YCHSA to locate another foster home to adopt Knox, Knox had developed a strong bond with his current placement, and Knox had no remaining bond between him and Respondent-Mother. Brown further testified that Knox had a high likelihood of adoption, and the only barriers to adoption included finding the appropriate adoptive family and the termination of Respondent-Mother's parental rights. Brown's testimony in response to questioning reads, in relevant part:

Q. Well, considering that search process for an adoptive therapeutic foster placement, what would we consider to be the likelihood that [Knox] might be adopted in the near future?

A. There's a high likelihood. Like I said he's a very loving child. This family has bonded with him, and the only thing that is preventing them, like I said, is the age of their children that they've already adopted; and they did think about it for a long time. So they just came up with this decision about two and a half weeks ago.

Additionally, at the hearing, the guardian ad litem ("GAL") provided a report that documented Knox's ongoing behavior issues, Knox's efforts with ongoing therapy, and medication he took for these issues. The GAL's report also stated Knox had a high likelihood of adoption: "Likelihood of Adoption: He is a young, very sweet and loving child. With the right family, adoption is very possible."

Respondent-Mother also testified at the hearing, claiming she failed to enter into a case plan because she was "in and out of incarceration" and "was battling drugs[,] even though she was aware the plan would accomplish the objectives of a

“[d]rug assessment, mental health, a safe house, and a job.” She further testified that she had no excuse as to why she failed to visit Knox when she was out of incarceration, and that she failed to provide YCHSA with any documentation as to her treatment.

On 13 December 2023, the trial court entered an order on the motion to terminate parental rights, terminating Respondent-Mother’s parental rights upon finding grounds of neglect, abandonment, and failure to pay the costs of care. The trial court further found that it was in Knox’s best interests that Respondent-Mother’s parental rights be terminated. Among other findings, the trial court made Finding of Fact 51:

51. [Knox] is young and the likelihood of [Knox’s] adoption is extremely high and the only barriers that remain to [Knox] being adopted is termination of [Respondent-Mother’s] parental rights and procuring the right therapeutic foster to adopt home.

The trial court also made Conclusions of Law 4(a) and 5:

4. The movant has shown by clear, cogent and convincing evidence [t]hat termination of [Respondent-Mother’s] parental rights is in the best interest of [Knox] pursuant to [N.C. Gen. Stat.] § 7B-1110 in that:

a. There is a very high likelihood that [Knox] will be adopted.

....

5. For all the reasons outlined above it is in the best interests of [Knox] and is consistent with [Knox’s] health and safety for [Respondent-Mother’s] parental rights to be terminated.

On 14 December 2023, Respondent-Mother timely appealed.

II. Jurisdiction

This Court has jurisdiction to review the termination of Respondent-Mother's parental rights pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

III. Analysis

On appeal, Respondent-Mother argues the trial court erred in determining that it was in Knox's best interests to terminate Respondent-Mother's parental rights because the trial court improperly weighed the evidence, thus constituting an abuse of discretion. Specifically, Respondent-Mother disputes Finding of Fact 51 and Conclusions of Law 4(a) and 5, arguing that competent evidence does not exist to show that Knox's adoption prospects are "extremely high" or that they have a "very high likelihood" of success. We disagree.

"The trial court's determination of whether terminating the parent's rights is in the juvenile's best interest[s] . . . is reviewed solely for abuse of discretion." *In re A.M.O.*, 375 N.C. 717, 720–21, 850 S.E.2d 884, 887 (2020) (citation and internal quotation marks 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 N.C.E.*, 379 N.C. 283, 287, 864 S.E.2d 293, 297–98 (2021) (citation and internal quotation marks omitted). Upon our review, this Court will not "reweigh" the evidence considered by the trial court, as "such an approach would be inconsistent with . . . [our] standard of review, which focuses upon whether the trial court's dispositional decision constitutes an abuse of

discretion rather than upon the manner in which the reviewing court would weigh the evidence were it the finder of fact.” *In re I.N.C.*, 374 N.C. 542, 550–51, 843 S.E.2d 214, 220 (2020) (citation omitted). The trial court’s dispositional findings are binding on appeal if they are supported by competent evidence or if the parties do not specifically contest them. *See In re E.F.*, 375 N.C. 88, 91, 846 S.E.2d. 630, 632 (2020).

In making a determination on the best interests of a juvenile:

After an adjudication that one or more grounds for terminating a parent’s rights exist, the [trial] court shall determine whether terminating the parent’s rights is in the juvenile’s best interest. The court may consider any evidence, including hearsay evidence as defined in [N.C. Gen. Stat. §] 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). The trial court must consider all factors set forth in section 7B-1110(a), but it need not make written findings for factors that are

irrelevant or where there is no conflict in the evidence. *See In re A.U.D.*, 373 N.C. 3, 10–11, 832 S.E.2d 698, 702–03 (2019); *In re D.H.*, 232 N.C. App. 217, 221, 753 S.E.2d 732, 735 (2014).

Our Supreme Court recently considered whether it was in the child’s best interests to terminate the parents’ rights where, in part, the parents challenged the trial court’s finding of fact that the child’s likelihood of adoption was high. *See In re A.J.T.*, 374 N.C. 504, 511, 843 S.E.2d 192, 197 (2020). The Court held the trial court did not abuse its discretion because evidence in the record, including the GAL’s report specifically stating that the child had a high likelihood of adoption, and the GAL’s testimony that the child had a high likelihood of adoption, supported the trial court’s findings. *Id.* at 511, 843 S.E.2d at 197.

Here, as in *In re A.J.T.*, there is evidence in the Record to support the trial court’s Finding of Fact 51 and Conclusions of Law 4(a) and 5 that Knox has a high likelihood of adoption. The trial court was presented with testimony from Brown that Knox had a high likelihood of adoption. The GAL’s report also stated that Knox’s likelihood of adoption was high: “Likelihood of Adoption: He is a young, very sweet and loving child. With the right family, adoption is very possible.” Just as the Court in *In re A.J.T.* held that evidence in the record of the GAL’s report and testimony stating that the child had a high likelihood of adoption supported the trial court’s finding of fact and was binding on appeal, so here does evidence of the GAL’s report and testimony by Brown stating that Knox had a high likelihood of adoption support

the trial court's Finding of Fact 51, which is thus binding on appeal. *See id.* at 511, 843 S.E.2d at 197.

Respondent-Mother also asserts that the trial court improperly weighed the evidence regarding Knox's likelihood of adoption. Specifically, Respondent-Mother contests Brown's testimony as to Knox's high likelihood of adoption, arguing contradictory evidence exists including Knox's behavior issues, the placement family's decision not to adopt him, the need for a "special family" to adopt him, and the lack of a family who was willing to adopt him. Only the trial court, however, may weigh contradictory evidence; this Court lacks the authority to reweigh the evidence. *See In re A.U.D.*, 373 N.C. at 12, 832 S.E.2d at 704 ("To be sure, evidence existed that would have supported a contrary decision. But this Court lacks the authority to reweigh the evidence that was before the trial court."). Further, the evidence does not contradict Knox's likelihood of adoption because the lack of an adoptive family being identified at the time of the hearing is not a bar to termination of parental rights, and no evidence was presented that any of these factors decreased Knox's likelihood of adoption. *See In re A.J.T.*, 374 N.C. at 513, 843 S.E.2d at 198 ("[T]he lack of a proposed adoptive placement for [the juvenile] at the time of the termination hearing is not a bar to terminating parental rights."). Respondent-Mother's arguments are therefore without merit.

The Record contains clear, cogent, and competent evidence to support the trial court's Finding of Fact 51, which in turn supports Conclusions of Law 4(a) and 5,

because the evidence demonstrates that Knox has a high likelihood of adoption; thus, the trial court's Finding of Fact 51 is binding on appeal. *See In re E.F.*, 375 N.C. at 91, 846 S.E.2d. at 632. The trial court considered the statutory factor of the likelihood of adoption set forth in section 7B-1110(a); made a written finding of fact and conclusions of law as to the likelihood of adoption; and in weighing the relevant statutory criteria, concluded it was in Knox's best interests to terminate Respondent-Mother's parental rights. *See In re A.U.D.*, 373 N.C. at 10–11, 832 S.E.2d at 702–03. Accordingly, the trial court did not abuse its discretion in determining that it was in Knox's best interests to terminate Respondent-Mother's parental rights, and we affirm the trial court's order terminating her parental rights. *See In re A.M.O.*, 375 N.C. at 720–21, 850 S.E.2d at 887–88.

IV. Conclusion

Upon review, we conclude the trial court's Finding of Fact 51 is supported by clear, cogent, and competent evidence in the Record, which in turn supports Conclusions of Law 4(a) and 5 that it was in Knox's best interests to terminate Respondent-Mother's parental rights. Accordingly, the trial court did not abuse its discretion in terminating Respondent-Mother's parental rights, and we affirm the trial court's order.

AFFIRMED.

Chief Judge DILLON and Judge THOMPSON concur.

IN RE: K.J.M.

Opinion of the Court

Report per Rule 30(e).