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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-215

Filed 19 November 2024

Henderson County, No. 22JT84

IN THE MATTER OF: B.R.H.

Appeal by Respondent-Mother from order entered 29 November 2023 by Judge Mack Brittain in Henderson County District Court. Heard in the Court of Appeals 27 August 2024.

Peter Wood for Respondent-Appellant Mother.

Deputy County Attorney Sara Player for Petitioner-Appellee Henderson County Department of Social Services.

Kilpatrick Townsend & Stockton LLP, by Susan H. Boyles & Chelsea A. Simon, for the Guardian ad Litem.

CARPENTER, Judge.

Respondent-Mother appeals from the trial court's 29 November 2023 order (the "Order") terminating her parental rights to the minor child, B.R.H. ("Brian").¹ On appeal, Respondent-Mother argues the trial court abused its discretion by concluding it was in the best interest of Brian to terminate her parental rights at the

¹ A pseudonym is used to protect the identities of the minor children implicated in this appeal and for ease of reading. See N.C. R. App. P. 42(b).

dispositional stage. After careful review, we affirm the Order.

I. Factual & Procedural Background

In August 2021, Respondent-Mother gave birth to her first son, Walker. Respondent-Mother tested positive for methamphetamine while she was pregnant with Walker and when she delivered. When he was born, Walker tested positive for methamphetamine. The trial court placed Walker in the custody of the Henderson County Department of Social Services (“HCDSS”), who placed Walker with a foster family. On 16 September 2021, the trial court adjudicated Walker as neglected. As part of Respondent-Mother’s case plan concerning Walker, the trial court required Respondent-Mother to, in relevant part, participate in a comprehensive clinical assessment (“CCA”) and follow and successfully complete all of the CCA’s recommendations.

On 13 May 2022, while pregnant with her second son, Brian, Respondent-Mother participated in a CCA conducted by Family Preservation Services, disclosing personal use of up to .5 grams of methamphetamine daily. Family Preservation Services’ CCA recommended that Respondent-Mother, in relevant part: participate in a substance abuse intensive outpatient program (“SAIOP”), attend parenting and domestic violence classes, and undergo medication evaluation and management.

Respondent-Mother gave birth to Brian in June 2022. Again, Respondent-Mother tested positive for methamphetamine during her pregnancy and when she delivered. Brian was born premature, weighing approximately five pounds, and also

tested positive for methamphetamine. Additionally, Brian had “some irregular breathing” and “spitting up issues” for the first few weeks of his life. From September 2021 until Brian’s birth in June 2022, Respondent-Mother failed to participate in any of the recommendations from the first CCA.

On 7 June 2022, HCDSS filed an abuse, neglect, dependency petition for Brian. In the petition, HCDSS outlined Respondent-Mother’s history of substance abuse and noted it had “inquired into kinship placements,” including Brian’s biological father.

HCDSS was unable to identify Brian’s biological father despite requesting information from Respondent-Mother several times. In addition, HCDSS attempted to locate Brian’s biological father by referencing criminal records, public records, Department of Motor Vehicle records, Department of Corrections records, and conducting internet and social media searches. Initially, Respondent-Mother “refused to give [HCDSS] identifying information” about Brian’s biological father, but she later denied knowing who Brian’s father was, stating she was “an escort at the time of [Brian’s] conception.” Respondent-Mother did eventually provide HCDSS with the names of three potential fathers, but HCDSS was unable to locate any of them after conducting public record searches and requesting their addresses from Respondent-Mother.

On 4 August 2022, Brian was adjudicated as a neglected juvenile by consent of the parties. In the adjudication order, the trial court found that “[r]elatives of [Brian] have not been identified and notified as potential resources for placement or support.”

In the disposition order, the trial court made the following finding: “As this Judgment requires the out-of-home placement of [Brian], the Court has considered the release of the juvenile to a relative, guardian, custodian or other responsible adult The Court is unaware of any such relative willing and able to take responsibility for [Brian].” In the disposition order, the trial court placed certain requirements on Respondent-Mother as a part of her case plan “[t]o achieve reunification.” The trial court subsequently adopted a primary plan of reunification and a secondary plan of adoption in its first permanency-planning order.

As a part of her case plan for Brian, the trial court required Respondent-Mother to, in relevant part: obtain another CCA, follow and successfully complete all of the recommendations from the new CCA, submit to random drug screens, complete an anger management domestic violence prevention program, complete parenting classes, maintain an appropriate and safe residence for Brian, and provide the social worker with a physical address and a mailing address if different from the physical address.

On 26 August 2022, Respondent-Mother participated in a second CCA conducted by Meridian Behavioral Health Services. Meridian’s CCA recommended that Respondent-Mother, in relevant part: engage in SAIOP, undergo medication evaluation and management, engage in peer support services, and complete a parenting class.

On 2 September 2022, Respondent-Mother started SAIOP. As of 24 October 2022, Respondent-Mother had attended seven out of twenty-two group sessions. From 1 June 2022 until 19 October 2022, Respondent-Mother either failed to submit drug screens requested by the social worker or tested positive for methamphetamine.

On 10 November 2022, the trial court held its first permanency-planning hearing concerning Brian. In the permanency-planning order, the trial court “considered the release of [Brian] to a relative,” but was “unaware of such a person.” Respondent-Mother did not appeal from the 10 November 2022 permanency-planning order.

In March 2023, Brian moved into the same foster home as his older brother, Walker. On 27 April 2023, Respondent-Mother relinquished her parental rights as to Walker. From 30 November 2022 until 22 February 2023, Respondent-Mother, again, either failed to submit drug screens requested by the social worker or tested positive for methamphetamine.

On 8 June 2023, the trial court held a second permanency-planning hearing at which Respondent-Mother was pregnant with her third child, Liam. The trial court determined the primary plan for Brian should be changed to adoption with a secondary plan of reunification. Respondent-Mother did not appeal from the 8 June 2023 permanency-planning order.

On 6 July 2023, HCDSS filed a petition to terminate Respondent-Mother’s and the unknown father’s parental rights as to Brian. HCDSS served Brian’s unknown

father by publication on three occasions in July and August 2023. In September 2023, Respondent-Mother gave birth to Liam, who was placed in the same foster home as Walker and Brian. In the weeks leading up to the termination hearing, Respondent-Mother completed a third CCA and started substance abuse classes; however, she continued to test positive for methamphetamine.

On 9 November 2023, the trial court conducted a termination hearing and found that Respondent-Mother had “not addressed her substance abuse issues [and] . . . ha[d] not stopped using illegal, controlled substances.” The trial court concluded Respondent-Mother: “neglected [Brian] . . . and there is a probability that such neglect would recur if [Brian] was in the care of [Respondent-Mother],” and “willfully left [Brian] in foster care or placement outside the home for more than twelve (12) months without showing to the satisfaction of the court that reasonable progress under the circumstances ha[d] been made in correcting those conditions which led to the removal of [Brian].” Accordingly, the trial court determined the existence of adjudication grounds sufficient to terminate Respondent-Mother’s parental rights as to Brian.

During disposition, the trial court concluded it was in Brian’s best interest to terminate Respondent-Mother’s parental rights. In the Order, the trial court made the following findings relevant to the best interest analysis:

1. [Brian] turned one (1) year old on June 2, 2023.

2. This Court has previously adopted adoption as the permanent plan for [Brian] and termination of the parental rights as ordered herein will aid in the accomplishment of this plan.

3. [Brian] is not eligible for adoption until the parental rights of [Respondent-Mother] and unknown biological father are terminated.

4. The likelihood of [Brian's] adoption is very high.

5. [Brian's] current foster parents wish to adopt him, should he be legally free to do so. [Brian] has been in this home since March 2023. [Brian's] older brother [Walker] is also in this home. The foster parents have already filed a petition to adopt [Walker]. [Brian's] younger brother [Liam] is also in the foster home. [Liam] was born in September 2023.

6. [Brian's] maternal great aunt Kimberly Hill has also expressed interest in adopting [Brian] and has requested HCDSS complete a pre-placement assessment on her home.

7. [Brian] has a bond with [Respondent-Mother] but not the unknown biological father.

8. [Brian's] visits with [Respondent-Mother] are overall very positive and appropriate. [Respondent-Mother] sees [Brian] for one (1) hour each week at HCDSS. [Brian] appears to enjoy visits with [Respondent-Mother], however it seems to be more of a playmate type of relationship. He recognizes her and calls her "mommy." She brings toys and plays with him during the visits, attempts to soothe him when he is upset, and is engaged the entire hour.

9. [Respondent-Mother] has never had unsupervised visitation with [Brian] or provided full-time care for him. She has never had supervised visits longer than one (1) hour, other than a couple of makeup visits that were two (2) hours long.

10. [Brian] has a strong bond with his foster parents. He is more at ease with the foster parents than with [Respondent-Mother].

11. [Brian] is not walking yet. His doctor made a referral for physical therapy, which he has once a week. The therapy sessions occur at the home of the foster parents and they participate.

12. The foster parents also participate in shared parenting with [Respondent-Mother]. They have offered her supervised visits on holidays. They also attend Child and Family Team meetings at HCDSS and share photos of [Brian] with SW Pettit for [Respondent-Mother] to receive.

13. The foster parents are open to ongoing contact with [Respondent-Mother].

14. [Respondent-Mother] does not want her rights terminated. She said she may not have been committed to her case plan before, but is now.

On 29 November 2023, the trial court entered the Order. On 18 December 2023, Respondent-Mother gave written notice of appeal.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7B-1001(a)(7) (2023).

III. Issue

The sole issue on appeal is whether the trial court abused its discretion by concluding it was in Brian's best interest to terminate Respondent-Mother's parental rights at the dispositional stage.

IV. Analysis

Respondent-Mother argues the trial court abused its discretion during the dispositional stage of the termination proceeding. Specifically, she asserts the trial court abused its discretion because: (1) it failed to consider the “strong bond [she had] with her son;” and (2) “the prospects of a relative placement [were] not [] adequately investigated by [HC]DSS.” We disagree with Respondent-Mother.

A. Standard of Review

“The trial court’s assessment of a juvenile’s best interest at the dispositional stage is reviewed solely for abuse of discretion.” *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019). “An ‘[a]buse of discretion results where the trial 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 T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)).

Because Respondent-Mother does not challenge any of the trial court’s findings of fact as unsupported, they are “deemed supported by competent evidence and are binding on appeal.” *See In re T.N.H.*, 372 N.C. 403, 497, 831 S.E.2d 54, 58 (2019) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

B. Applicable Law

“The termination of a parent’s parental rights in a juvenile matter is a two-stage process consisting of an adjudicatory stage and a dispositional stage.” *In re C.B.*, 375 N.C. 556, 559, 850 S.E.2d 324, 327 (2020) (citing N.C. Gen. Stat. §§ 7B-1109, -1110 (2019)). “At the adjudicatory stage, the petitioner bears the burden of

proving by ‘clear, cogent, and convincing evidence’ the existence of one or more grounds for termination” *In re A.B.C.*, 374 N.C. 752, 757, 844 S.E.2d 902, 907 (2020) (quoting N.C. Gen. Stat. §§ 7B-1109(e), (f) (2019)). Once the trial court finds the existence of one or more adjudication grounds, “the case then proceeds to the dispositional stage where the trial court must ‘determine whether terminating the parent’s rights is in the juvenile’s best interest.’” *Id.* at 757, 844 S.E.2d at 907 (quoting N.C. Gen. Stat. § 7B-1110(a) (2019)).

Under section 7B-1110(a), there are several factors the trial court must consider when performing a best interest analysis at the disposition stage. *In re A.R.A.*, 373 N.C. 190, 199, 835 S.E.2d 417, 424 (2019); N.C. Gen. Stat. § 7B-1110(a) (2023). These factors include:

- (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).

Even though the trial court is required to consider all of the factors provided in section 7B-1110(a), it only has to make written findings for the factors that are

relevant. *In re C.J.C.*, 374 N.C. 42, 48, 839 S.E.2d 742, 747 (2020); *see also In re A.R.A.*, at 200, 835 S.E.2d at 424 (explaining “[t]he statute does not . . . explicitly require written findings as to each factor”). “[A] factor is relevant if there is conflicting evidence concerning the factor, such that it is placed in issue by virtue of the evidence presented before the trial court.” *In re H.D.*, 239 N.C. App. 318, 327, 768 S.E.2d 860, 866 (2015) (citation omitted). The trial court’s failure to consider each of the factors under section 7B-1110(a) “constitute[s] an abuse of discretion.” *In re D.H.*, 232 N.C. App. 217, 220–21, 753 S.E.2d 732, 735 (2014).

C. Respondent-Mother’s Bond with Brian

Respondent-Mother argues the trial court abused its discretion in weighing the statutory factors because she “wanted to have a relationship with her son . . . [and] made efforts to maintain a strong relationship with [him].” Respondent-Mother, however, does not challenge any of the trial court’s findings, but rather argues that the trial court’s best interest conclusion “flew in the face of [the trial court’s] findings about the bond [Respondent-Mother] had with Brian[.]” We disagree with Respondent-Mother.

“The bond between the juvenile and the parent” must be considered by the trial court. N.C. Gen. Stat. § 7B-1110(a)(4); *See In re A.R.A.*, at 199, 835 S.E.2d at 424. This factor, however, “is just one of the factors to be considered . . . and the trial court is permitted to give greater weight to other factors.” *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 66 (2019); *see also In re J.C.L.*, 374 N.C. 772, 787, 845 S.E.2d 44, 56

(2020) (explaining “[i]t is the province of the trial court to weigh the relevant factors in determining [the child’s] best interests”).

Here, it is clear the trial court considered the bond between Respondent-Mother and Brian. Indeed, the trial court found that:

7. [Brian] has a bond with [Respondent-Mother] but not the unknown biological father.

Therefore, the trial court complied with the statute because it considered the bond between Respondent-Mother and Brian. *See* N.C. Gen. Stat. § 7B-1110(a)(4). Because there was conflicting evidence regarding the quality and depth of the bond between Respondent-Mother and Bryan, it was a “relevant factor” for which the trial court was required to make a written finding. *See In re H.D.*, 239 N.C. App. at 327, 768 S.E.2d at 866. The trial court complied with this requirement as demonstrated in finding 7. Furthermore, the trial court made other unchallenged findings and was permitted to give those findings greater weight. *See In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 66; *see also In re J.C.L.*, 374 N.C. at 787, 845 S.E.2d at 55. Thus, the trial court did not abuse its discretion in terminating Respondent-Mother’s parental rights.

D. Prospects of a Relative Placement

Respondent-Mother also argues the trial court abused its discretion because “the prospects of a relative placement had not been adequately investigated by [HCDSS].” Specifically, Respondent-Mother asserts that the trial court did not

consider Brian’s maternal grandmother or maternal aunt as placements for Brian and “should have made findings about the two relatives.” We disagree with Respondent-Mother.

Although the trial court is “required to consider whether a relative placement is available for a juvenile in deciding the issues raised in an abuse, neglect, and dependency proceeding,” it is “not expressly directed to consider the availability of a relative placement in the course of deciding a termination of parental rights proceeding.” *In re S.D.C.*, 373 N.C. 285, 290, 837 S.E.2d 854, 858 (2020). Instead, the trial court, “*may* treat the availability of a relative placement as a ‘relevant consideration[.]’” *Id.* at 290, 837 S.E.2d at 858 (quoting N.C. Gen. Stat. §7B-1110(a)(6)) (emphasis added). Whether it would be appropriate for the trial court to do so depends on “the extent to which the record contains evidence tending to show [that] such a relative placement is, in fact, available.” *Id.* at 290, 837 S.E.2d at 858.

Here, prior to the termination hearing, the trial court repeatedly found, based on HCDSS’ investigation and inquiries, that no relative placements had been identified and that no relatives were willing and able to take responsibility for Brian. Respondent-Mother did not appeal either of the trial court’s permanency-planning orders and, for the first time on appeal, suggests that Brian’s maternal grandmother and maternal aunt were “interested” in taking Brian.

Importantly, while testifying at the termination hearing, Respondent-Mother did not mention these two relatives and there was no discussion regarding possible

relative placements for Brian. Instead, the social worker testified that Brian's maternal aunt was only interested in *adopting* Brian, following the potential termination of Respondent-Mother's parental rights. Because there was no "conflicting evidence concerning the availability of a potential relative placement," Brian's potential placement with a relative was not a factor the trial court was required to include in its written dispositional findings. *See id.* at 290, 837 S.E.2d at 858. Thus, the trial court did not abuse its discretion in terminating Respondent-Mother's parental rights.

V. Conclusion

In sum, the trial court did not abuse its discretion by concluding it was in Brian's best interest to terminate Respondent-Mother's parental rights. Accordingly, we affirm the Order.

AFFIRMED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).