

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-462

Filed 3 December 2024

Mecklenburg County, No. 20JT000330-590

IN THE MATTER OF:

G.E.A.E., Minor child.

Appeal by respondent-father from order entered 29 January 2024 by Judge Faith A. Fickling-Alvarez in Mecklenburg County District Court. Heard in the Court of Appeals 5 November 2024.

*Mecklenburg County Attorney's Office, by Senior Associate Attorney Kristina A. Graham, for petitioner-appellee Mecklenburg County YFS.*

*Womble Bond Dickinson (US) LLP, by Reid C. Adams, Jr., for guardian ad litem.*

*Hooks Law, P.C., by Laura G. Hooks, for respondent-appellant-father.*

ZACHARY, Judge.

Respondent-Father appeals from the trial court's order terminating his parental rights to his child, "Gina,"<sup>1</sup> contending that the trial court abused its

---

<sup>1</sup> We use the pseudonym to which the parties stipulated, pursuant to N.C.R. App. P. 42(b). Additionally, we note that Respondent-Mother has not appealed from the trial court's order, which also terminated her parental rights to Gina; consequently, she is not a party to this appeal.

discretion in determining that termination of his parental rights was in Gina's best interest. After careful review, we affirm.

## **I. Background**

This matter returns to this Court after Respondent-Father previously appealed the trial court's adjudication of Gina as a neglected and dependent juvenile. *In re G.E.*, 291 N.C. App. 519, 894 S.E.2d 290, 2023 WL 8432012 (2023) (unpublished). In 2020, during the first year of Gina's life, Petitioner Mecklenburg County Department of Social Services, Division of Youth and Family Services ("YFS") received a pair of referrals concerning an incident of domestic violence between Respondents, which resulted in Respondent-Father being charged with assault by strangulation. *Id.* at \*1. On 6 August 2020, YFS filed a juvenile petition alleging that Gina was a neglected and dependent juvenile. *Id.* That same day, the trial court granted nonsecure custody of Gina to YFS, which placed her in foster care. The court also appointed a guardian ad litem ("GAL") for Gina. In 2022, the trial court adjudicated Gina as a neglected and dependent juvenile. *Id.*

Pertinent to the present appeal, in its disposition order, the trial court identified the conditions that led to Gina's removal from her parents' home as "severe domestic violence between [the] parents, the parents[] inability to provide appropriate care, supervision, and placement for the juvenile, parenting, and lack of stable housing." The court ordered Respondents to comply with a case plan consisting of the following relevant provisions:

- a. A FIRST assessment to screen for DV, substance abuse, and mental health issues, and to follow any treatment recommendations from the assessment . . . .
- b. Sign release forms so that YFS and GAL can monitor the parents' engagement in services.
- c. Complete parent education and demonstrate skills learned from the course.
- d. Obtain and maintain stable housing, and provide proof of housing to YFS.
- e. Obtain and maintain employment and provide proof of employment to YFS.
- f. Maintain bi-weekly contact with YFS and GAL.
- g. Refrain from participating in any illegal activity.

The trial court continued YFS's custody of Gina with placement in foster care and set a primary plan of guardianship with a secondary plan of reunification and guardianship. Additionally, the court granted Respondent-Father virtual visitation at least three times a week and supervised, in-person visitation at least once a month in Charlotte. This Court subsequently affirmed the trial court's adjudication and disposition orders. *Id.*

On 27 September 2022, the trial court entered an order following the first permanency planning hearing. During that hearing, the trial court learned of another incident of domestic violence that had occurred between Respondents, and also of Respondent-Mother's relocation to another state. The court determined that neither Respondent was "making adequate progress within a reasonable period of time under

the plan as neither parent ha[d] begun engaging in their case plan” and that both parents were acting in a manner inconsistent with Gina’s health and safety.

Specific to Respondent-Father, the trial court found that he had not made himself available to YFS and had denominated the case plan a “coerced agenda[.]” As for Gina, the court found that she was “thriving in her placement” with her maternal aunt and uncle, and that “all of her needs [we]re currently being met.” The court set concurrent primary permanent plans of adoption or guardianship for Gina, with concurrent secondary permanent plans of reunification with Respondents or guardianship.

On 8 May 2023, the trial court entered an order following the second permanency planning hearing, which contained similar findings regarding the Respondents’ lack of adequate progress with their case plans. The court found that Respondent-Father was appropriately visiting with Gina, but that he “refused to cooperate with YFS in order to engage or provide status updates with his case plan.” Although the trial court continued the concurrent primary permanent plans of adoption or guardianship for Gina, the court nevertheless concluded that termination of Respondents’ parental rights would be in Gina’s best interest and necessary to achieve the primary permanent plan of adoption. Therefore, the court ordered YFS to file a termination petition within 60 days, which YFS did on 9 May 2023.

This matter came on for termination hearings on 14 December 2023 and 5 January 2024 in Mecklenburg County District Court. On 29 January 2024, the trial

court entered an order terminating Respondents' parental rights to Gina. The court determined that grounds existed to terminate Respondents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1)–(3), and that termination of Respondent's parental rights was in Gina's best interest.

Respondent-Father timely filed notice of appeal.

## **II. Discussion**

On appeal, Respondent-Father does not challenge the trial court's determination that grounds existed to terminate his parental rights. Rather, Respondent-Father argues that "[t]he trial court abused its discretion at disposition by concluding it was in Gina's best interests to terminate [his] parental rights when [he] continually visited Gina, father and daughter were bonded, and Gina was not in an adoptive placement." We disagree.

### **A. Standard of Review**

"When reviewing a trial court's actions at the dispositional stage, appellate courts review the trial court's assessment of a juvenile's best interests solely for an abuse of discretion." *In re K.N.L.P.*, 380 N.C. 756, 759, 869 S.E.2d 643, 646 (2022). "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." *Id.* (citation omitted). "The trial court's dispositional findings are binding on appeal if supported by the evidence received during the termination

hearing or not specifically challenged on appeal.” *Id.* at 759, 869 S.E.2d at 646–47.<sup>2</sup>

## **B. Analysis**

“After an adjudication that one or more grounds for terminating a parent’s rights exist, the court shall determine whether terminating the parent’s rights is in the juvenile’s best interest.” N.C. Gen. Stat. § 7B-1110(a) (2023). When making that determination,

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.

*Id.*

“In its termination order, the trial court made detailed findings of fact that addressed each of the relevant statutory criteria.” *In re M.A.*, 374 N.C. 865, 876, 844

---

<sup>2</sup> In *K.N.L.P.*, our Supreme Court clarified that “the evidence that the trial court receives and considers when determining the best interests of the juvenile need not be admissible under the North Carolina Rules of Evidence.” *Id.* at 759 n.3, 869 S.E.2d at 647 n.3. Accordingly, the *K.N.L.P.* Court used the statutory term “evidence” rather than the term “competent evidence” to describe the standard of review applicable to dispositional findings of fact. We follow suit.

S.E.2d 916, 924 (2020). The pertinent dispositional findings of fact read as follows:

3. The permanent plan for [Gina] is adoption. [Respondents] having their parental rights is a barrier to adoption.
4. [Gina] will turn 4 years old less than a week after this Court issued [its] oral ruling. [Gina] has been in YFS custody since she was 7 months old.
5. Terminating [Respondents'] parental rights will aid in the accomplishment of the permanent plan of adoption. Neither the family nor any other prospective adoptive home can adopt [Gina] unless [Respondents] consent to an adoption or their parental rights are terminated. [Respondents] have made no meaningful progress on alleviating the removal conditions. Given that lack of progress, significant barriers to reunification remain. Therefore, the best option available for [Gina] is for her to be adopted which requires that the parental rights of [Respondents] be terminated.

. . . .

7. The bond between [Gina] and her father is not significant and appears to be more transactional in nature in that he brings food or a gift to a visit which [Gina] enjoys. [Gina] has been unable to build a strong relationship with her father as she does not see him every day or for significant periods of time.
8. [Gina] is presently placed in foster care in Mecklenburg County. There is an ICPC [home study] pending with a maternal aunt . . . who resides in Minnesota. [She] is working to obtain her foster parent license in Minnesota. The ICPC home visit with [her] occurred the same week as the December hearing date. That same aunt has [Gina's] younger sibling in her home. [Gina] is having multiple virtual visits per week with [her aunt]. Those visits thus far are going well and their bond is developing. [Gina's

aunt] has indicated that she is interested in adoption so her residence is a potential adoptive placement. [She] has developed a good working relationship with the current foster parents.

9. It is not in [Gina]’s best interest to remain in YFS custody indefinitely for either of [Respondents] to have more time to show progress or engage in services. Their history of the last three years indicates that they will not show progress or engage in services. By contrast, it is in [Gina]’s best interest to be placed in a safe, stable, and permanent home which [Gina’s aunt] can, and is willing to, provide. Permanence with a family member is in [Gina]’s best interest.
10. The likelihood of [Gina] being adopted is high based upon what YFS currently knows.
11. Terminating [Respondents’] parental rights is in [Gina]’s best interest.

Respondent-Father challenges a pair of the trial court’s dispositional findings of fact relating to the achievement of the primary permanent plan for Gina. *See* N.C. Gen. Stat. § 7B-1110(a)(3). He first alleges that the trial court erred by only recognizing adoption as a primary permanent plan for Gina in its finding of fact #3, while failing to recognize that guardianship was a concurrent primary permanent plan. Respondent-Father contends that “[i]t was not necessary to terminate [his] parental rights when guardianship was a viable option,” citing our Supreme Court’s recent statement that “[w]hile it is true that termination of [the] respondents’ parental rights would aid in the permanent plan of adoption, it is not legally necessary to accomplish the concurrent permanent plan of guardianship[.]” *In re*



*A.K.O.*, 375 N.C. 698, 704, 850 S.E.2d 891, 895 (2020) (citation omitted). However, Respondent-Father's reliance on *A.K.O.* is misplaced.

Our Supreme Court in *A.K.O.* considered a very different fact pattern from that presented by this case, involving a 17-year-old teenager who "clearly expressed that [he] did not wish to be adopted and would not give consent to being adopted." *Id.* at 705, 850 S.E.2d at 896. Despite this, the trial court made findings of fact suggesting that the termination of parental rights would "aid in the accomplishment of the permanent plan of [a]doption or [g]uardianship" for the teenager, "legally freeing" him for adoption or guardianship. *Id.* at 702, 850 S.E.2d at 894. It was in this context, with a trial court's decision to terminate parental rights apparently based upon a misapprehension of law, that our Supreme Court vacated and remanded to the trial court "to reconsider guardianship as a dispositional alternative, which does not require termination[.]" *Id.* at 706, 850 S.E.2d at 897.

Respondent-Father can show no such misapprehension on the part of the trial court here, in that the court found in its dispositional order that Respondents' "having their parental rights is a barrier to adoption." Moreover, in its 8 May 2023 permanency planning order, the trial court had already concluded that termination of Respondents' parental rights would be in Gina's best interest and necessary to achieve the primary permanent plan of adoption. As YFS notes in its brief: "It was not error for the trial court to make a final determination that adoption was the permanent plan that was in Gina's best interest." *See In re S.M.*, 380 N.C. 788, 796–

97, 869 S.E.2d 716, 724–25 (2022) (finding no error in the trial court’s failure to address the concurrent permanent plan of guardianship when determining that termination of parental rights would aid in accomplishing the primary permanent plan of adoption).

Respondent-Father also challenges the trial court’s finding of fact #5, concerning Respondents’ lack of “meaningful progress” toward alleviating the conditions that led to Gina’s removal. Respondent-Father contends, *inter alia*, that his “charges related to domestic violence were resolved” and that Respondent-Mother “had moved to Minnesota[.]” Yet the existence of severe domestic violence was not the sole condition leading to Gina’s removal from the home. Accordingly, Respondent-Father’s claims are simply insufficient to show that the trial court’s determination that he had not made meaningful progress was unsupported by the evidence. *See K.N.L.P.*, 380 N.C. at 759, 869 S.E.2d at 646–47.

Respondent-Father next turns to the likelihood of Gina’s adoption, *see* N.C. Gen. Stat. § 7B-1110(a)(2), by challenging the trial court’s finding of fact #10. He asserts that this “finding is unsupported” because, *inter alia*, Gina’s aunt did not have the required licensing and the ICPC home study had not been completed. He also speculates that, because “Gina’s previous placement provider declined placement due to Gina’s behaviors[.]” it is possible that Gina’s “aunt could do the same, thus providing no further permanence for Gina.” Speculation aside, our Supreme Court has explained that “the absence of [an adoptive] placement does not preclude the

termination of a parent's parental rights in his or her children." *M.A.*, 374 N.C. at 877, 844 S.E.2d at 925.

Further, our Supreme Court in *K.N.L.P.* determined that there was "evidence supporting the trial court's finding that the likelihood of [the juvenile]'s adoption is high" where it was unchallenged that the juvenile's "paternal grandmother had expressed interest in having [the juvenile] stay with her, a home study of the paternal grandmother's home had been requested, and [the juvenile]'s paternal grandmother would be able to apply to adopt" the juvenile. 380 N.C. at 764, 869 S.E.2d at 649. Respondent-Father is unable to distinguish this case from *K.N.L.P.*; therefore, the evidence supports the trial court's finding that "[t]he likelihood of [Gina] being adopted is high[.]"

Finally, Respondent-Father challenges the trial court's finding of fact #7, concerning his bond with Gina. He contends that "[t]his finding is unsupported and does not give proper weight to the acknowledged bond." However, Respondent-Father recognizes in his brief that the guardian ad litem "described Gina and [his] relationship as transactional"—thus, demonstrating that this finding is "supported by the evidence received during the termination hearing[.]" *Id.* at 759, 869 S.E.2d at 646.

As with his claims concerning his progress toward alleviating the removal conditions, Respondent-Father's argument concerning his bond with Gina is essentially a request that this Court reweigh the evidence presented to the trial court.

It is well established that an appellate court reviewing a trial court's dispositional findings of fact in a termination order "cannot reweigh the evidence or judge its credibility; [the appellate court] must uphold that trial court's fact findings if they are supported by *any* evidence in the record." *In re H.B.*, 384 N.C. 484, 492, 886 S.E.2d 106, 112, *reh'g denied*, 385 N.C. 325, \_\_\_ S.E.2d \_\_\_ (2023). Consequently, we uphold the trial court's finding that "[t]he bond between [Gina] and her father is not significant and appears to be more transactional in nature" as it is supported by the evidence.

### **III. Conclusion**

For the foregoing reasons, the trial court did not abuse its discretion in determining that Gina's best interest would be served by terminating Respondent-Father's parental rights. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges STROUD and CARPENTER concur.

Report per Rule 30(e).