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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-620

Filed 5 February 2025

Forsyth County, No. 22 JT 70

In the matter of: J.L.W.

Appeal by Respondent-Father from order entered 12 March 2024 by Judge Theodore Kazakos in Forsyth County District Court. Heard in the Court of Appeals 14 January 2025.

Assistant County Attorney Melissa Starr Livesay for Petitioner-Appellee Forsyth County Department of Social Services.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender J. Lee Gilliam, for Respondent-Appellant Father.

Administrative Office of the Courts, by N.C. GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

GRIFFIN, Judge.

Respondent-Father appeals from the trial court's order terminating his

parental rights to his minor son, Jacob.¹ Father argues the trial court abused its discretion in terminating his parental rights because proper weighing of record evidence indicated termination would be harmful to Jacob. We affirm.

I. Factual and Procedural Background

In April 2022, Forsyth County Department of Social Services initiated an investigation when staff at Jacob’s elementary school reported bruising on his arms and back. Jacob was nine years old at the time. Jacob told a social worker that Father beat him with a belt because he used a family heirloom towel to clean a spilled drink in his bedroom. Jacob went to the hospital, where a medical examination revealed “purplish blue bruises on [Jacob’s] thighs, buttocks, chest, arms, and back, including at least one 4-inch[-]wide half-circular bruise consistent with a belt buckle.” Jacob further reported Father often punished him by physically hitting him on the head, and that he once blacked out as a result.

Father ultimately admitted to beating Jacob and causing his injuries. DSS and law enforcement investigations also showed that Jacob had been exposed to his parents’ substance abuse, domestic violence, and improperly addressed mental health issues while in his parents’ care. As a result, Father was convicted of habitual assault and Jacob was adjudicated an abused and neglected juvenile.

¹ We use a pseudonym for ease of reading and to protect the anonymity of the juvenile. See N.C. R. App. P. 42(b).

Father was incarcerated from October 2022 until April 2023, released on parole from April 2023 to September 2023, and then reincarcerated from September 2023 until December 2023 for violating parole. Following Jacob's adjudication, the trial court ordered Father to complete a case plan with an aim to correct the circumstances which led to Jacob's adjudication. Father's case plan included requirements that he remain sober and submit to drug screens; maintain a safe and stable home environment; and complete assessments and related programs for parenting capacity, psychological wellness, domestic violence, and child welfare. Father's Parenting Capacity and Psychological Evaluation showed a diagnosis of bipolar disorder. Father completed courses for domestic violence and parenting education while incarcerated but was unable to demonstrate any skills or lessons learned from those courses. The evidence before the court tended to show that, during the twenty-one month period between Jacob's adjudication and the termination hearing, Father did not undergo therapy for his bipolar disorder; continued to display anger management concerns; repeatedly minimized his responsibility for Jacob's physical and mental injuries while blaming Jacob's foster placement; and was incarcerated or otherwise did not maintain stable housing or employment while released from incarceration.

Father suggested three possible familial placements for Jacob, but each either voluntarily withdrew from consideration or were deemed unfit by DSS. Jacob was placed in foster care. Jacob regularly expressed that he wished to live with Father

but also informed his GAL that he was deeply worried he would be in foster care until he was 18.

Jacob displayed psychological struggles throughout his time in foster care, which resulted in his movement to new, therapeutic foster homes in September 2022 and October 2022. Each movement required transfer to new schools, as well. In September 2022, shortly after Father explained he would be going to prison soon, Jacob began displaying significant anger management issues and harmful behaviors to his classmates and foster siblings. Jacob was diagnosed with “adjustment disorder mixed disturbance of emotions/conduct, post traumatic stress disorder (PTSD), Oppositional defiance, and ADHD.” Father refused consent for Jacob to receive medication for these diagnoses until September 2023.

Jacob’s GAL, social workers, and therapeutic caretakers expressed belief that Jacob’s mental health issues were caused by the impermanence of his circumstances and the drastic mood swings he experienced after interacting with Father. Father routinely attended supervised visitation with Jacob, but his behavior was unpredictable. Jacob interacted lovingly with Father and was very happy to see him, but his negative behaviors correlated with and increased after his visitations with Father. During their last visitation before the termination hearing, Father told Jacob that he would likely not see him again after the upcoming termination hearing and urged Jacob to find him after he turned 18. Jacob was very hurt and told his social worker that he believed it was his fault. DSS staff and Jacob’s GAL advised Father

that this sort of conversation was not appropriate for Jacob's mental health. When coached on how he should healthily interact with Jacob, Father responded, "No one's gonna f---in' tell me what I can or cannot say to my son." Father's visitation with Jacob ended that day when security escorted Father off the premises. Jacob's GAL assessed that Father regularly put "his needs and what [he] needed to do for himself above [Jacob's needs]."

Despite his mental health and behavioral issues, Jacob's GAL and social worker described him as a unique, "caring young man" dealing with trauma. Jacob was able to build strong bonds with the adults around him and perform well in school in-between episodes of misbehavior. They expressed a belief that he would be able to adjust and thrive if given a stable, permanent placement.

Following a termination of parental rights hearing on 31 January 2024, the trial court entered a written order concluding grounds existed to terminate Father's parental rights for abuse, neglect, and willfully failing to reasonably correct the circumstances for which Jacob had been placed in foster care under sections 7B-1111(a)(1) and (a)(2) of the North Carolina General Statutes. The court further concluded that termination of Father's parental rights was in Jacob's best interests.

Father timely appeals.

II. Analysis

Father contends the trial court abused its discretion in terminating his parental rights because "overwhelming evidence in the record indicated [termination]

would harm, not benefit, Jacob.” We hold Father’s arguments essentially request this Court reweigh evidence and therefore affirm.

A termination of parental rights proceeding occurs in two stages, adjudication and disposition, and each stage has its own standard of review. *In re Q.P.W.*, 376 N.C. 738, 741, 855 S.E.2d 214, 217 (2021). “At the adjudicatory stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence that one or more grounds for termination exist under section 7B-1111(a) of the North Carolina General Statutes.” *In re K.H.*, 375 N.C. 610, 612, 849 S.E.2d 856, 859 (2020) (cleaned up).

“At the dispositional stage, the trial court’s assessment of the best interests of the child is reviewed for abuse of discretion,” and this Court will thereby reverse only where “the 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 S.R.*, 384 N.C. 516, 520, 886 S.E.2d 166, 171 (2023) (citation omitted). “We review the trial court’s dispositional findings of fact to determine whether they are supported by competent evidence.” *In re J.J.B.*, 374 N.C. 787, 793, 845 S.E.2d 1, 5 (2020) (citation omitted). “Dispositional findings not challenged by respondents are binding on appeal.” *Id.* “At the dispositional stage, . . . the trial court’s conclusions of law are reviewable de novo on appeal.” *S.R.*, 384 N.C. at 520–21, 886 S.E.2d at 171.

The trial court’s determinations during the dispositional stage turn on “whether terminating the parent’s rights is in the juvenile’s best interest.” N.C. Gen.

Stat. § 7B-1110 (2023). The court must consider the following enumerated factors and make written findings on all that are relevant to its present case:

- (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.

Father does not challenge the trial court's adjudication that grounds existed to terminate his parental rights under sections 7B-1111(a)(1) and (a)(2). Father challenges only the trial court's determination during the dispositional stage. Father concedes the trial court made each of finding of fact required by section 7B-1110, but argues "[e]ach statutory factor in the instant case weighs strongly against termination of parental rights and the trial court acted contrary to reason in terminating Jacob's loving relationship with [Father]." Father then highlights several reasons why the trial court failed to appropriately weigh its section 7B-1110 findings.

Father's arguments appear to challenge the sufficiency of the evidence supporting parts of the following findings:

59. [Father] continued to exhibit concerning behaviors during visits with the Parenting Coach involved, including having difficulty controlling his temper and engaging in inappropriate topics of conversation with [Jacob]. There were occasions when the Parent Coach took [Father] to walk in the hall or outside until he could regulate his temper. [Father] would ask [Jacob] probing questions about his foster placement. At one visit, [Father] brought a pair of toy handcuffs, told [Jacob] about the last time he was arrested, and talked about a time he handcuffed the Mother and left her for an extended period.

...

65. As of January 2024, [Father] could not adequately manage his temper during the life of the case, consistent with the description of [the social worker], has been minimal.

...

69. The [c]ourt cannot reconcile all the discrepancies in the testimony about the events of January 26, 2024, but after considering and weighing the evidence and credibility of the witnesses the [c]ourt finds that at the visit on that day, [Father] knew he wasn't making the right choices for [Jacob]. He knew that there were better ways to go about telling his son the things he wanted to tell him. Going into the visit and during the visit, [Father] was focused on doing what he wanted to do without giving thought to the fallout for his son. [Father] prioritized his wants over his child's well-being.

...

98. [Jacob] is relatively young at 11 years of age. He has been described as a sweet, likeable child who has struggles which are in part based on the trauma he has experienced

in his life. He is now taking prescription medications, and some improvement has been seen with impulsivity.

...

101. [Jacob] does have a bond and connection with [Father], which is acknowledged by the Social Worker and the GAL which was also described as a sense of loyalty. During her testimony, the [GAL] expressed concern about the risk of emotional harm to [Jacob] based on [Father's] actions and inability to control himself for the good of his child, which is apt.

...

103. Based on the evidence presented, it does not appear that [Jacob's] bond with either parent is a typical parent-child bond in which a child can reliably look to their parent for the affection, nurturing, and support. It appears [Jacob] is more concerned with how his words and conduct will impact his parents' feeling and wellbeing than the reverse.

...

107. In light of the child's fear about turning 18 in foster care, and given the circumstances of this case, the [c]ourt finds [Jacob's] ability to form a bond and connection, the probability that he will be adopted if legally free, and [Jacob's] current primary plan of adoption to be deserving of greater weight in reaching the determination about best interest.

Summarily, Father's contentions manifest a challenge to the following conclusion of law, as well:

7. After due consideration of the factors enumerated in [N.C. Gen. Stat. § 7B-1110], it is in the best interests of [Jacob] that the parental rights of [Father] be terminated so the primary permanent plan of adoption can move

forward.

A. Age of the juvenile, likelihood of adoption, accomplishment of the permanent plan, and Jacob's bond with adoptive placements

Father contends the evidence did not support the trial court's findings that Jacob was "relatively young," in finding 98, and that the "probability that [Jacob] will be adopted if legally free," in finding 107, were each factors weighing in favor of terminating his parental rights. Jacob was eleven years old at the time of the termination hearing. This Court has previously rejected arguments that the age of eleven-year-olds weighed dispositively against a permanent plan of adoption in circumstances where other factors present in the case could be weighed more heavily than the child's age. *See In re S.M.*, 380 N.C. 788, 798, 869 S.E.2d 716, 726 (2022) (holding likelihood of adoption weighed in favor of termination where child was eleven years old and had mental health challenges, but could receive treatment and was demonstrating an ability to form bonds with foster placements).

Here, the trial court received evidence that Jacob was a likeable, behaved child whose outbursts appeared tied to the impermanence of his situation and his eagerness to please. Jacob's GAL testified that Jacob was a promising candidate for adoption because he could "certainly be integrated within a family and feel like somebody cares for him and wants him." Further, Jacob formed a bond with his initial foster placement before his behavior required his removal from that placement. Jacob's present placement in a therapeutic foster home that could not become an

adoptive placement was due to his behavioral issues, problems which his social worker, GAL, and therapeutic staff linked to his ongoing visitations with Father. Under these facts, we cannot say the court erred in weighing heavily that Jacob was likely to be adopted, giving little weight to the fact that Jacob did not have a current bond with a possible adoptive placement, and assigning greater weight to the positive effect that termination could have on Jacob’s adoptability. “Unquestionably, the termination of [Father’s] parental rights was a necessary precondition of [Jacob’s] adoption.” *In re E.F.*, 375 N.C. 88, 93, 846 S.E.2d 630, 633 (2020).

B. Jacob’s bond with Father

Father contends the trial court assigned inadequate weight to Jacob’s wishes to live with Father. Father offers this Court the following two citations for the principle that Jacob’s wishes should have been given substantial weight in this termination of parental rights case:

“The wishes of a child of sufficient age to exercise discretion in choosing a custodian is entitled to considerable weight” *James v. Pretlow*, 242 N.C. 102, 105, 86 S.E.2d 759, 761 (1955).

“[T]he preferences of the child . . . ha[ve] weight always with a court in [custody] cases according to the age and the intelligence of the child.” *Harris v. Harris*, 115 N.C. 587, 589, 20 S.E. 187, 188 (1894).

However, the portion Father removed from *Pretlow* via ellipsis clarify that this standard is a hallmark of child custody cases between two parents—not termination of parental rights hearings. *See Pretlow*, 242 N.C. at 105, 86 S.E.2d at 761

(concluding the quoted sentence with “when the contest is between parents, but is not controlling”); *Harris*, 115 N.C. at 589, 20 S.E. at 188 (discussing child’s wishes in the context of which parent the child wanted to live with following her parents’ divorce). Father’s framing of these cases conceals the fact that neither case is firmly applicable to the present matter.

Rather, our precedent is clear that no one factor must bear more significant weight under section 7B-1110. See *In re I.N.C.*, 374 N.C. 542, 550, 843 S.E.2d 214, 220 (2020) (“[T]he responsibility for weighing the relevant statutory criteria delineated in N.C.G.S. § 7B-1110(a) lies with the trial court, which ‘is permitted to give greater weight to other factors,’ rather than with this Court.” (citation omitted)). While the child’s wishes is not an explicitly enumerated factor to be considered under section 7B-1110(a), it is evidence which tends to reflect the bonds between the child and his possible caregivers. As such, “the bond between parent and child is just one of the factors to be considered under N.C.G.S. § 7B-1110(a), 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). The child’s “preferences are not controlling given that the children’s best interests constitute ‘the polar star’ of the North Carolina Juvenile Code.” *In re M.A.*, 374 N.C. 865, 879, 844 S.E.2d 916, 926–27 (2020) (citation omitted). “To the extent that [Father is] asking this Court to reweigh the evidence contained in the record developed at the termination hearing and to substitute our preferred weighing of the relevant statutory criteria for that of the trial court, such

an approach would be inconsistent with the applicable standard of review[.]” *I.N.C.*, 374 N.C. at 550–51, 843 S.E.2d at 220.

Father highlights many examples of visitations where Jacob was overjoyed to see Father, expressed a loving relationship with Father, and was upset when Father was unable to attend or left visitations. Jacob also regularly told his GAL and social worker that he wanted to live with Father. But the GAL and social worker also testified that Jacob’s loving behaviors were emblematic of loyalty to Father and a focus not to upset him. Paired with evidence of Father’s poor anger management, history of physical abuse of Jacob, Jacob’s trauma stemming from that abuse, and Father’s refusal to correct inappropriate behaviors when interacting with Jacob, the trial court did not err by finding that Jacob’s GAL’s concern for the emotional harm that visitation with Father inflicts on Jacob is aptly supported by competent evidence. Even assuming it was most correct to consider Jacob’s wishes as genuine desires, the trial court did not err by giving those wishes less weight than Jacob’s emotional and physical safety, and the positive effect termination could have on achieving a permanent, stable placement for Jacob.

Father references findings 59 and 65 together, arguing only that the evidence did not support that Father “continued to exhibit concerning behaviors” or that Father made an “open threat” during a visitation. However, Father does not refute the remaining facts found within finding 59. These facts include that Father occasionally had to be temporarily removed from visitations due to anger

management concerns, said things that were almost certain to cause Jacob distress, and, on at least one occasion, brought up inappropriate conversation topics for an 11-year-old. During his last visitation, Father lashed out verbally, stating, “No one’s gonna f---in’ tell me what I can or cannot say to my son.” Those present felt threatened by Father’s inability to control his anger. Father is correct that the trial court did not receive testimony of an “open threat,” but we cannot say that this interpretation of Father’s actions is baseless error, much less an error material to the weight of the finding. We cannot hold the trial court erred in finding that Father was unable to manage his temper and prioritize Jacob’s needs—abilities required to correct the circumstances which caused Jacob’s adjudication.

The remainder of Father’s arguments reference record evidence that contradicts the trial court’s findings, and repeatedly present other record evidence which Father would have weighed more highly than the trial court. Our standard of review prevents this Court from reweighing evidence on appeal. *See In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167–68 (2016) (“Although there was conflicting testimony regarding the details of these encounters, the trial judge had the responsibility to ‘pass[] upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom.’” (citation omitted)). Competent evidence supports the challenged findings; we therefore hold Father’s contentions meritless. *See J.J.B.*, 374 N.C. at 793, 845 S.E.2d at 5.

C. Jacob’s best interests

Each of the findings Father challenges is supported by competent evidence. Those findings and the remaining, unchallenged findings of fact may be weighed in favor of terminating Father's parental rights, and we will not disturb the weight given to each by the trial court. *See I.N.C.*, 374 N.C. at 550–51, 843 S.E.2d at 220. We hold the trial court did not abuse its discretion in concluding that termination of Father's parental rights was in Jacob's best interest, so that Jacob can move toward a more permanent, stable home environment.

III. Conclusion

For the foregoing reasons, we hold the trial court did not err by terminating Father's parental rights to Jacob.

AFFIRMED.

Judges STROUD and CARPENTER concur.

Report per Rule 30(e).