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NO. COA11-913
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

IN THE MATTER OF:

Gaston County
No. 09 JT 344

R.X.M.

Appeal by Respondent from order entered 25 April 2011 by Judge Thomas G. Taylor in Gaston County District Court. Heard in the Court of Appeals 21 November 2011.

Jill Y. Sanchez-Myers for Gaston County Department of Social Services, Petitioner-appellee.

Poyner Spruill LLP, by Danielle M. Barbour, for Guardian Ad Litem.

Edward Eldred for father, Respondent-appellant.

HUNTER, JR., Robert N., Judge.

Respondent-father appeals from an order terminating his parental rights to R.X.M., who will be referred to hereinafter by the pseudonym of "Ryan."[1] When Ryan was nine days old, the Gaston County Department of Social Services ("Petitioner") filed

[1] The parties stipulated in the record on appeal to the use of the pseudonym "Ryan" for the child's name. [R. 1]

a juvenile petition and obtained non-secure custody of him. On 26 March 2010, the court filed an order adjudicating Ryan as a neglected juvenile. The court ordered Respondent-father to comply with the terms of a case plan in order to regain custody of Ryan. After conducting a combined review and permanency planning hearing on 18 May 2010, the court established a permanent plan of reunification and custody to a court-approved caretaker. The court changed the permanent plan to a concurrent plan of guardianship and adoption at the conclusion of a review hearing on 21 September 2010. Petitioner filed a petition to terminate parental rights on 4 February 2011. The court held a hearing upon the petition to terminate rights on 11 April 2011. The court filed an order on 25 April 2011 terminating Respondent-father's parental rights based upon findings of two grounds which Respondent-father does not dispute. Respondent-father solely contests the court's conclusion of law that it is in Ryan's best interest that the parental rights of Respondent-father be terminated.

"It is within the trial court's discretion to terminate parental rights upon a finding that it would be in the best interests of the child. We review the trial court's decision to terminate parental rights for abuse of discretion." *In re*

Shermer, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406-07 (2003) (internal citation omitted). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

In reaching its conclusion that termination of parental rights is in the best interest of Ryan, the trial court made the following findings of fact:

> 1. That this child being born in November 2009, is now seventeen (17) months old. That this minor child has been in the custody of the Department for the last seventeen (17) months, since he was nine (9) days old. That the juvenile is at a developmentally crucial time in his young life.
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> 2. That the Court has no faith that the Respondent/Father will be available for this child, and that the damage of termination and severing the bond between this child and his father is outweighed by the damage of not terminating the Respondent/Father's parental rights.
>
> 3. That the minor child is in a placement that is willing to adopt and therefore the likelihood of adoption is high.
>
> 4. That the minor child has never lived with his Father.
>
> 5. Since the Court finds that adoption is the permanent plan for these children [sic],

termination is essential to the achievement of that plan.

6. That the Court finds that there is a bond between the Father and the minor child, however, this bond is based on less than one weeks [sic] time with the Father over the last seventeen (17) months. That severing this tenuous bond will cause less damage than allowing it to continue.

7. The Court finds by Clear, Convincing and Cogent Evidence that there is little likelihood that the parents can provide for this child due to their substance abuse issues.

8. That the minor child has a parental bond with the current foster parents. That the minor child has lived with the foster parents since he was nine (9) days old. That the minor child refers to the foster parents as Momma and Dada.

9. That the Department has appropriately explored relative placements. The Department contacted the Father regarding relatives [sic] names and contact information. That in particular the Department contacted Mr. Jackson who claims to be [Respondent-father's] brother-in-law. Ms. Turnage, social worker for the Department, testified to contacting several other relatives in addition to the Jackson's [sic]. Placement with a blood relative is still a possibility through the adoption committee and termination will aid that option.

10. Permanence for this juveniles [sic] is the polar star in this case and this Court finds that the juvenile should remain in the custody of the Gaston County Department of Social Services. That the parents have made

> very little progress in their case plans and have shown no evidence that placement with them would be reasonable in the near future.

Respondent-father challenges finding of fact five as not supported by the evidence. He submits that the permanent plan was not solely adoption but a concurrent plan of guardianship and adoption. He argues that to the extent the court found that termination of parental rights was essential to the achievement of the permanent plan of adoption, without also adequately addressing the concurrent plan of guardianship, the court operated under a misapprehension of the law. He asks this Court to remand the case for "proper findings on whether termination was necessary in light of the concurrent plan of guardianship."

This Court addressed a similar contention in the case of *In re T.M.*, No. COA10-835, slip op. at 10 (N.C. App. Dec. 21, 2010), whereby the father contended the trial court erroneously found that the permanent plan was adoption only when the plan actually was guardianship with a relative concurrent with adoption. We held that the trial court's failure to find that the permanent plan was adoption concurrent with guardianship was not error because it did not affect the court's conclusions regarding the juvenile's best interests. *Id.* We noted that it

was undisputed that adoption was a permanent plan and no authority was cited for the proposition that adoption must be the sole permanent plan for a juvenile before a trial court may terminate parental rights. *Id.* We also observed that termination of parental rights was required to further a permanent plan of adoption in the absence of the parent's relinquishment of parental rights. *Id.* at 10–11.

We ratify the same reasoning in the case at bar. The court's findings reflect that Ryan has lived with his foster parents since the age of nine days and that he has bonded with his foster parents to the extent he considers them his father and mother. On the other hand, Respondent-father has not bonded with Ryan nearly to the same extent, and Respondent-father has made very little progress in achieving his case plan, thereby making it unlikely that Ryan could be returned to the care of Respondent-father.

It is undisputed that adoption was a permanent plan for Ryan. There is no evidence that Respondent-father signed a form relinquishing Ryan for adoption or consenting to adoption; thus, involuntary termination of parental rights was necessary to effectuate the permanent plan of adoption. The foster parents desire to adopt Ryan.

We acknowledge that one of the purposes of the Juvenile Code is "to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents." N.C. Gen. Stat. § 7B-1100(2) (2009). However, another stated purpose of the Juvenile Code is "to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age[.]" *Id.* The Code is to be interpreted and construed "[t]o provide standards . . . for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time." N.C. Gen. Stat. § 7B-100(5) (2009). The court's order in the case at bar achieves this purpose.

Therefore, we find no abuse of discretion and affirm the order.

Affirmed.

Judges STEELMAN and GEER concur.

Report per Rule 30(e).