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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-753

No. COA22-290

Filed 15 November 2022

Henderson County, No. 20 JT 71

IN THE MATTER OF: G.L.P.

Appeal by respondent-mother from order entered 30 December 2021 by Judge Emily Cowan in Henderson County District Court. Heard in the Court of Appeals 24 October 2022.

Susan F. Davis, Assistant County Attorney, for petitioner-appellee Henderson County Department of Social Services.

Rebekah W. Davis for respondent-appellant mother.

Kathleen Arundell Jackson for guardian ad litem.

PER CURIAM.

¶ 1

Respondent appeals the trial court's order terminating her parental rights to her child, Grace,¹ on the grounds of neglect and failure to make reasonable progress to correct the conditions that led to removal. Respondent challenges the trial court's findings that those grounds for termination existed and the trial court's conclusion

¹ We use a pseudonym to protect the juvenile's identity and for ease of reading.

that termination of her parental rights was in Grace's best interests. Because we find that the trial court properly adjudicated the existence of the ground of neglect and that its best interests determination was not an abuse of discretion, we affirm the trial court's termination order.

Facts and Procedural History

¶ 2 On 13 April 2020, the Henderson County Department of Social Services filed a petition alleging that Grace was a neglected juvenile and obtained nonsecure custody of her. The petition alleged that Grace and her parents had a history with DSS and law enforcement due to issues with domestic violence, substance abuse, and mental health. DSS had set up a safety plan with Respondent, Grace's mother, after both parents were arrested for domestic violence in May 2019. According to the safety plan, Respondent was not to allow Grace's father around the child. However, the petition asserted that Respondent continued to allow Grace's father to visit and that there were recent reports of domestic violence.

¶ 3 On 7 April 2020, police were called to Respondent's home due to Grace's father being intoxicated and violently attempting to break in by punching out a window while Respondent and Grace were inside. Police made Grace's father leave after he received EMS treatment for wounds from his attempted break in, but he returned while still intoxicated and police were called for a second time.

¶ 4 Following this incident, a DSS social worker went to Respondent's home on 8

April 2020 to check on Grace, who was waiting at a neighbor's house until Respondent got home from work. The neighbor reported to the social worker that Grace's father was back at Respondent's home and had been staying at the home with Respondent and Grace. The neighbor also reported concerns that Grace's father may have touched Grace inappropriately when she was left alone with him.

¶ 5 On 29 June 2020, the trial court adjudicated Grace neglected based on findings consistent with the allegations in the petition concerning Grace's exposure to an injurious environment due to domestic violence and Respondent allowing Grace's father to be around her in violation of the safety plan. The court continued custody with DSS. Following the disposition hearing on 31 July 2020, the trial court ordered Respondent to obtain a substance abuse and mental health assessment and follow all resulting recommendations, submit to random drug screens, successfully complete an anger management and domestic violence prevention program, successfully complete a parenting program, participate in visitation, obtain stable income, and obtain and maintain appropriate and safe housing.

¶ 6 On 15 October 2020, the trial court held a permanency planning hearing. Following the hearing, the trial court set the primary permanent plan as reunification with Grace's parents and the secondary plan as termination of parental rights and adoption. Following a review and permanency planning hearing on 13 May 2021, the trial court entered an order finding that Respondent had not "made

adequate progress within a reasonable time” on her case plan, that she was “acting in a manner inconsistent with the health and safety” of Grace, and that it was not possible or likely that Grace could safely be returned to Respondent’s care within six months. Based on those findings, the trial court changed the primary plan to termination of parental rights and adoption.

¶ 7 On 12 July 2021, DSS filed a motion to terminate Respondent’s parental rights, alleging that grounds existed for termination based on neglect and failure to show reasonable progress in correcting the conditions which led to the removal of Grace from her home. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(2).

¶ 8 The trial court held a hearing on the motion to terminate Respondent’s parental rights on 18 November 2021. On 30 December 2021, the trial court entered an order terminating Respondent’s parental rights, concluding that both grounds to terminate Respondent’s parental rights existed as alleged in the motion and that termination was in Grace’s best interests.² Respondent appealed.

Analysis

¶ 9 Respondent argues that the trial court’s findings of fact do not support its conclusions that grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a)(1)–(2) and the trial court did not make adequate findings related

² The trial court also terminated the parental rights of Grace’s father, but he is not a party to this appeal.

to all criteria under N.C. Gen. Stat. § 7B-1110 to support its best interests determination.

I. Grounds for termination

¶ 10 Respondent first argues that the trial court’s findings of fact did not support its conclusions that grounds existed to terminate her parental rights for neglect and failure to make reasonable progress to correct the conditions that led to removal under N.C. Gen. Stat. § 7B-1111(a)(1)–(2).

¶ 11 We review the trial court’s adjudication of grounds for termination “to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

¶ 12 We begin by examining the trial court’s neglect determination. Under N.C. Gen. Stat. § 7B-1111(a)(1), a trial court may terminate parental rights upon a finding that the parent has neglected the juvenile within the meaning of N.C. Gen. Stat. § 7B-101. In pertinent part, a neglected juvenile is defined as a juvenile “whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision, or

discipline” or “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” *Id.* § 7B-101(15)(a), (e). Termination of parental rights on the ground of neglect “requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of a likelihood of future neglect by the parent.” *In re L.H.*, 378 N.C. 625, 2021-NCSC-110, ¶ 10.

¶ 13 “When determining whether such future neglect is likely, the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.” *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425, 430 (2019). “Relevant to the determination of probability of repetition of neglect is whether the parent has made any meaningful progress in eliminating the conditions that led to the removal of the children.” *In re O.W.D.A.*, 375 N.C. 645, 654, 849 S.E.2d 824, 831 (2020).

¶ 14 The trial court’s adjudication of neglect as a ground for termination of Respondent’s parental rights was based on its conclusions that “she has neglected [Grace]” and “there is a probability that such neglect would recur if [Grace] was in the care of [Respondent].” Respondent does not challenge the trial court’s findings regarding the past domestic violence issues. Respondent also agrees with DSS that Grace was removed from her care “because of [the father’s] domestic violence and aggressive behavior and [Respondent’s] unwillingness to distance Grace and herself

from [the father].”

¶ 15 But Respondent argues that the evidence and the trial court’s findings did not support the conclusion that neglect would reoccur if Grace was returned to Respondent’s care. Respondent spends considerable effort addressing the evidence and the trial court’s findings concerning her progress on case plan requirements other than domestic violence prevention and distancing herself from Grace’s father. However, those findings address other issues and are not necessary to support the determination on these key questions. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59.

¶ 16 In support of the conclusion that neglect was likely to reoccur, the trial court made findings regarding repeated incidents of domestic violence in the home since Grace’s adjudication as a neglected juvenile, Respondent’s failure to benefit from a recommended domestic violence program, and Respondent’s inability “to see the impact [that] domestic violence would have on the juvenile.” The trial court also found that “mother refuses to end her relationship with the father” despite admitting concerns that Grace’s father “would have killed” Grace if she were present during incidents of domestic violence. Finally, the trial court found that Respondent “does not have a safe and appropriate residence for the juvenile” because she continues to reside with Grace’s father.

¶ 17 These findings are based on sufficient evidence in the record. To be sure,

relying on her own testimony at the termination hearing, Respondent contends that there was evidence that she “had accepted the reality of [the father’s] potential domestic violence and shown substantial progress in addressing this concern” before the termination hearing.

¶ 18 But it is the trial court’s role to weigh the credibility of witnesses and the evidence and make findings of fact; it is not this Court’s role to reweigh the evidence. *In re J.A.M.*, 372 N.C. 1, 11, 822 S.E.2d 693, 700 (2019). It is apparent from the trial court’s findings that the court did not consider Respondent’s testimony about recent changes to be credible. And the trial court’s findings were supported by evidence at the termination hearing. Specifically, Grace’s social worker testified regarding recent evidence of Grace’s father living at Respondent’s home. When the social worker made an unannounced home visit in April 2021, Grace’s father was present at the home. The last time the social worker attempted to visit the home on 4 October 2021, Respondent would not let the social worker into the home. Despite Respondent’s denial of a continued relationship, the social worker testified that in visits before the 4 October 2021 attempted visit, she observed men’s clothing and boots in the residence.

¶ 19 Moreover, Respondent gave conflicting testimony at the termination hearing when questioned about her relationship with Grace’s father. At one point, she testified she had not resumed a relationship with Grace’s father since May 2021.

However, she also testified that she and Grace’s father were “keeping in touch” until approximately one month prior, in October 2021. Respondent also was pregnant with another child by Grace’s father at the time of the hearing. The social worker testified that Respondent had not addressed the danger created by the domestic violence between her and Grace’s father at the time of the termination hearing and had failed to see how the domestic violence was affecting Grace. The social worker also stated that DSS feared there was a probability of continued neglect if Grace was placed back in the home because Respondent had not “corrected the condition of domestic violence.”

¶ 20 In sum, the trial court’s findings are supported by sufficient evidence in the record and those findings, in turn, support the trial court’s determination that there was a likelihood of repetition of neglect if Grace was returned to Respondent’s care. Thus, the trial court properly found grounds to terminate Respondent’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). Because we hold that this basis for termination is appropriate, we need not address Respondent’s arguments on the remaining termination ground found by the trial court. *See In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019).

II. Best interests determination

¶ 21 Respondent next argues that the trial court did not make adequate findings pursuant to N.C. Gen. Stat. § 7B-1110, which governs the trial court’s best interests

determination.

¶ 22 “If [the trial court] determines that one or more grounds listed in section 7B-1111 are present, the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights.” *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016). We review a trial court’s best interests determination for abuse of discretion. *Id.* “An abuse of discretion results 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 T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015). A trial court’s dispositional findings are binding on appeal if supported by any competent evidence. *In re K.N.K.*, 374 N.C. 50, 57, 839 S.E.2d 735, 740 (2020).

¶ 23 Section 7B-1110 provides that “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.

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(6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a).

¶ 24 Here, the trial court made the following findings regarding the best interests factors:

1. The juvenile is 4 years of age.
2. It is very likely that the juvenile will be adopted.
3. This Court has previously adopted a permanency plan for this juvenile of adoption, and termination of the parental rights as ordered herein will aid in the accomplishment of this plan.

...
5. The mother visits with the juvenile weekly, and the juvenile calls the mother “mom”. However, the juvenile is not very bonded to the mother and is not upset when the visit is over.
6. The foster parents provide nurturing care for the juvenile. They make sure her basic needs are being met. The foster parents provide stability for the juvenile.

The trial court concluded, based on these findings, that terminating Respondent’s parental rights was in Grace’s best interests.

¶ 25 Respondent only challenges finding of fact 5; therefore, the trial court’s other findings as to Grace’s best interests are binding on appeal. *See In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). First, Respondent argues the trial court failed to

“account for the strength of the loving connection between [Respondent] and Grace.”

¶ 26 Although Respondent testified that she visits with Grace weekly, that she and Grace have a bond, and that Grace knows Respondent is her mother, Grace’s social worker testified that Grace does not see Respondent as her caretaker, and they do not have a bond. The social worker also testified that Grace refers to her potential adoptive family as “Mom” and “Dad.” Therefore, we conclude as to finding of fact 5 that there was sufficient evidence in the record to support this finding. *See In re K.N.K.*, 374 N.C. at 57, 839 S.E.2d at 740.

¶ 27 Respondent also argues the trial court should have considered additional factors such as Respondent’s “progress before the birth of Grace’s brother or the negative impact on Grace of [Respondent] retaining a parental relationship with her brother only.” However, these requested findings are not required by N.C. Gen. Stat. § 7B-1110.

¶ 28 Further, we have held that a trial court is permitted to weigh the best interests factors differently. *See In re C.L.C.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709 (2005), *aff’d*, 360 N.C. 475, 628 S.E.2d 760 (2006). Section 7B-1110(a) required the trial court to consider the statutory criteria and make written findings regarding those that are relevant. The trial court followed this directive by making findings regarding Grace’s age, likelihood of adoption, bond with her parents, relationship with her potential adoptive family, and how termination of parental rights would

accomplish the court's permanent plan. The trial court's conclusion that termination of Respondent's parental rights was in Grace's best interests reflected a reasoned weighing of the relevant evidence and Respondent has failed to show that the trial court's conclusion was "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. at 107, 772 S.E.2d at 455.

Conclusion

¶ 29

The trial court's findings of fact support its determination that Respondent's parental rights were subject to termination based on the ground of neglect and the court did not abuse its discretion when it determined that termination was in Grace's best interests. Accordingly, we affirm the trial court's termination order.

AFFIRMED.

Panel consisting of Judges DILLON, DIETZ, and HAMPSON.

Report per Rule 30(e).