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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-807

No. COA22-314

Filed 6 December 2022

Union County, No. 19 JT 18

IN RE: K.W.

Appeal by respondent-father from orders entered 14 and 28 December 2021 by Judge William F. Helms, III, in Union County District Court. Heard in the Court of Appeals 21 November 2022.

*Perry, Bundy, Plyler & Long, LLP, by Ashley J. McBride, for petitioner-appellee Union County Department of Social Services.*

*Peter Wood for respondent-appellant father.*

*Administrative Office of the Courts, Guardian Ad Litem Division, by Staff Counsel Michelle FormyDuval Lynch, for Guardian ad Litem.*

PER CURIAM.

¶ 1

Respondent-father appeals the trial court's orders terminating his parental rights to his minor child, K.W. ("Karen"<sup>1</sup>). He argues the trial court abused its discretion by concluding that termination was in Karen's best interests. After careful review, we affirm the termination orders.

I. Background

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<sup>1</sup> A pseudonym is used to protect the identity of the minor child and for ease of reading.

¶ 2

On 1 February 2019, the Union County Department of Social Services (“DSS”) filed a juvenile petition alleging that Karen was neglected and dependent.<sup>2</sup> In support of these allegations, DSS stated that on 22 May and 10 December 2018, it had received Child Protective Services referrals regarding the home where Karen and respondent lived with respondent’s girlfriend and her two children, “Samuel” and “Nathan.” In the May referral, DSS was informed that a teacher observed a bruise and cut on Samuel. When interviewed, Samuel stated that the injury was inflicted by respondent, who threw a toy at him. He also reported that respondent had committed other acts of domestic violence, including grabbing Samuel by the shirt and throwing him and pushing Samuel’s mother down the stairs. In the December referral, respondent’s girlfriend reported he had recently beaten and threatened to kill her and that there had been ongoing domestic violence, including while Karen was in the home. Respondent was arrested for assault on a female.

¶ 3

After respondent’s arrest, his girlfriend obtained a domestic violence protective order (“DVPO”) against him. Respondent was arrested for violating the DVPO on 24 December 2018, when he went to his girlfriend’s apartment. Soon after, the girlfriend took her children and moved to another state. Respondent was then unable to maintain consistent housing for Karen and himself. He was evicted from his

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<sup>2</sup> At the beginning of this case, Karen’s mother could not be found. Once she was located, she relinquished her parental rights to Karen on 3 September 2021.

residence in January 2019, and Karen was then placed with her paternal grandparents, which DSS noted was “not a legally secure placement.” Based on these circumstances, DSS filed the juvenile petition.

¶ 4 The petition was heard on 13 March 2019. Following the hearing, the trial court entered an order adjudicating Karen as dependent. Respondent was ordered to maintain a safe and stable housing environment, refrain from domestic violence, seek employment, and engage in and follow the recommendations of a domestic violence perpetrator program. Karen remained in place with her paternal grandparents.

¶ 5 Karen remained in their placement until a 6 November 2019 permanency planning hearing. In its written order entered following that hearing, the court found that on or about 26 September 2019, a drug deal occurred at the paternal grandparents’ home, which resulted in gunshots being fired, and Karen was in the home at the time of the incident. As a result, the court determined that the paternal grandparents’ home was no longer an appropriate placement. The court placed Karen in DSS custody, and DSS then placed her in foster care with foster parents Mr. and Mrs. P. Respondent was awarded one hour per week of visitation with Karen, supervised by DSS.

¶ 6 In a 28 August 2020 permanency planning order, the court found that the foster family was moving to Florida and that it was in Karen’s best interest to go with them. Respondent could have phone visitations with Karen after she moved.

¶ 7 In a 29 December 2020 permanency planning order, the court found that Karen had been in the foster parents' care for more than a year and that respondent was not making the necessary progress to have Karen returned to him. DSS was ordered to file a termination petition. Respondent was permitted phone or virtual visitations with Karen as the parties could arrange.

¶ 8 On 18 February 2021, DSS petitioned to terminate respondent's parental rights based on neglect, failure to pay a reasonable portion of Karen's care in the six months before the filing of the petition, and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (3), (6) (2021). The adjudication portion of the termination hearing was held on 23 November 2021. At the close of the hearing, the court orally rendered its determination that grounds existed to terminate respondent's parental rights. The court entered a written order on 14 December 2021 adjudicating the existence of all three grounds for termination alleged by DSS.

¶ 9 The court held its hearing to determine Karen's best interests on 1 December 2021. A DSS social worker testified during this hearing that Karen's foster father "died of COVID" in August 2021. On cross-examination from respondent's counsel, the social worker admitted she had not verified either foster parent's COVID vaccination status, but she did know that Karen's health needs had consistently been met. Karen and the foster mother had recently received their annual flu vaccination.

¶ 10 On 28 December 2021, the trial court entered an order concluding that termination of respondent's parental rights was in Karen's best interests. Accordingly, the court terminated respondent's rights. Respondent appeals.

## II. Best Interests

¶ 11 Respondent does not challenge the trial court's determination that three grounds for termination existed. He focuses his arguments on challenging the court's conclusion that termination of his parental rights was in Karen's best interests. Respondent contends the trial court abused its discretion in reaching this conclusion because it did not adequately assess whether the foster mother was a suitable adoptive placement for Karen.

¶ 12 Under N.C. Gen. Stat. § 7B-1110, a court making a best interests determination 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.

N.C. Gen. Stat. § 7B-1110(a) (2021). The trial court’s dispositional findings are binding on appeal if they are either unchallenged or supported by any competent evidence. *In re K.N.K.*, 374 N.C. 50, 53, 57, 839 S.E.2d 735, 738, 740 (2020) (citation omitted). “The trial court’s assessment of a juvenile’s best interests at the dispositional stage is reviewed solely for abuse of discretion. 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 A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700-701 (2019) (citations and brackets omitted).

¶ 13 In this case, the trial court made the following findings pursuant to N.C. Gen. Stat. § 7B-1110 best interests factors:

- (A) The age of the juvenile: The juvenile is 9 years old.
- (B) The likelihood of adoption of the juvenile: there is a 100% likelihood that the juvenile’s foster mother will pursue adoption once the juvenile is cleared for adoption. The juvenile has been with this foster parent since November 6, 2019. [The foster] father passed away on August 10, 2021.
- (C) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile: Adoption is the permanent plan, so TPR will aid in the adoption.
- (D) The bond between the juvenile and her father: [Karen] and her father have a strong bond. [Karen] looks forward to talking with her father every Thursday. [Karen] video chats with her father at

times and misses him when [respondent-father] misses his visits. When [respondent-father] visits with [Karen], the visitations are appropriate, and [Karen] and her father interact during the entire visit. [Karen] understands the possibility that she could live with her father.

- (E) The quality of the relationship between the juvenile and the proposed adoptive parent: The relationship between the juvenile and the proposed adoptive parent is close. [Karen] refers to her foster parent as “mom” when speaking to the GAL. [Karen] has lived with her foster mother since September of 2019. Her foster father passed away August of 2021. [Karen]’s [foster] mother has been providing care for [Karen] without any financial assistance. There are other children in the home. One is 14 years old and the other 2 children in the home are adults. The foster family calls [Karen] “Bell” which is the name she prefers. [The foster mother] provides for the juvenile’s basic needs, shelter, food, education and clothing. She has helped engage [Karen] in dance, clubs, girl scouts and other activities in Florida. They relate to one another as Mother and Daughter. The [foster family] moved from North Carolina to Florida when [the foster father] obtained a better job opportunity. The move included a better life for the [foster] family including [Karen].
- (F) Other relevant factors to consider: [Karen] has not been in her father’s care for approximately three years. [Karen] considers her foster mother family and [the foster mother] is very involved with [Karen] and family. The [foster family] moved to Florida without financial assistance. [Karen] loves her life in Florida. [Karen] has not been a consistent advocate for living with [the foster mother]. On numerous occasions she has gone from wanting to live with her foster family to wanting to live with her father.

Respondent does not challenge any of these findings and they are binding on appeal.

*In re K.N.K.*, 374 N.C. at 58, 839 S.E.2d at 741.

¶ 14 Respondent challenges two findings from the trial court's best interests order:

20. Considering the evidence and testimony in this proceeding there is no evidence that [the foster father] died of complications from Covid-19. The court has no knowledge of whether [the foster parents] were vaccinated.
21. The court has evidence that [Karen] has gotten the flu shot. There is insufficient evidence of whether [the foster mother] has information about the Covid-19 vaccination which is consistent with science and common sense.

Respondent is correct that the first part in finding of fact 20 is contradicted by the evidence presented during the dispositional hearing. The only testimony about the cause of the foster father's death was a DSS social worker who stated he "died of COVID." Additionally, the DSS court report submitted for the termination hearing also noted that "[Karen]'s foster father . . . passed away from Covid-19 complication[s] on August 9, 2021." Thus, we will disregard the trial court's finding of fact 20 that "there is no evidence that [the foster father] died of complications from Covid-19." *See In re L.H.*, 378 N.C. 625, 2021-NCSC-110, ¶ 14 (disregarding factual findings not supported by the record).

¶ 15 The rest of the challenged findings are supported by competent evidence. When asked during cross-examination, the DSS social worker repeatedly stated she



was unaware of the foster parents' vaccination status and that she had not asked the foster mother directly about it. The social worker also testified that the foster mother would send pictures of Karen wearing a mask, that the foster family reported that they maintained social distancing when Karen would play with other children in the neighborhood, and that Karen and the foster mother had recently received their annual flu vaccination. This testimony supports both the portion of the trial court's finding of fact 20 in which the court stated it had "no knowledge of whether [the foster parents] were vaccinated" and the entirety of finding of fact 21.

¶ 16 The rest of respondent's arguments challenge the trial court's ultimate finding and conclusion that termination of his parental rights was in Karen's best interests. He contends that the court abused its discretion in reaching this determination because it failed to adequately inquire into whether the foster mother could provide for Karen financially or whether she would adequately protect Karen's health considering the foster father's COVID death. Respondent notes that, when awarding guardianship, a trial court must verify that the proposed guardians "will have adequate resources to care appropriately for the juvenile." N.C. Gen. Stat. § 7B-903(a)(4) (2021). He suggests "the same logic" should apply when considering a proposed adoptive placement as part of the determination of whether termination is in a child's best interests.

¶ 17 However, as respondent concedes, "the requirement to verify the financial

stability and caregiving ability of prospective guardians is statutorily based,” and there is no analogous provision to N.C. Gen. Stat. § 7B-903(a)(4) in N.C. Gen. Stat. § 7B-1110. Thus, respondent has not shown the trial court needed to consider the foster mother’s financial stability and health views as part of its best interests determination.

¶ 18 Even so, the evidence from the hearing and the trial court’s unchallenged findings show due consideration of the foster mother’s ability to meet Karen’s financial and health needs. As for finances, the court found that the foster mother “has been providing care for [Karen] without any financial assistance[,]” that she “provides for [Karen]’s basic needs, shelter, food, education, and clothing[,]” and that she has engaged Karen “in dance, clubs, girl scouts, and other activities in Florida.” The DSS social worker also testified that the foster mother would “probably . . . be eligible for adoption assistance due to [Karen]’s age.” There was no evidence suggesting the foster mother lacked the financial resources to continue to care for Karen.

¶ 19 As to Karen’s health, the DSS social worker testified that Karen was provided with “medical appointments, dental appointments, everything.” DSS reports submitted for the hearing reflected that Karen was up-to-date on her immunizations and that she had received a routine physical, dental care, ophthalmological care, and therapy while residing with her foster family. As noted previously, the trial court

also found, consistent with the social worker's testimony, that Karen and the foster mother recently received their annual flu shot. There was no evidence suggesting that the foster mother was neglecting Karen's health needs.

¶ 20 Thus, the only evidence presented at the termination hearing showed that the foster mother had provided for Karen's financial and health needs. Respondent's concerns about these issues rest on his own speculation, rather than the record evidence.

¶ 21 The trial court also made the necessary findings about each of the statutory factors in N.C. Gen. Stat. § 7B-1110. Its ultimate determination, based on its weighing of these factors, was that termination of respondent's parental rights was in Karen's best interests. Respondent has not shown an abuse of discretion in this conclusion.

### III. Conclusion

¶ 22 The trial court did not abuse its discretion when it concluded that termination of respondent-father's parental rights was in Karen's best interests. The termination orders are affirmed.

AFFIRMED.

Before a panel consisting of Judges ZACHARY, MURPHY, and ARROWOOD.

Report per Rule 30(e).