

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-1059

Filed 7 May 2024

Montgomery County, Nos. 21JT11–12

IN THE MATTER OF: A.F.L., M.R.L.L.

Appeal by respondent-father from order entered 5 July 2023 by Judge John R. Nance in Montgomery County District Court. Heard in the Court of Appeals 3 April 2024.

Jeannie L. Blake, for petitioner-appellee Montgomery County Department of Social Services.

Administrative Office of the Courts, by Brittany T. McKinney, for the guardian ad litem-appellee.

Office of the Parent Defender, by Parent Defender Wendy Sotolongo and Deputy Parent Defender Annick Lenoir-Peek, for respondent-appellant father.

FLOOD, Judge.

Respondent-Father appeals from the trial court's order terminating his parental rights in the two juveniles. On appeal, Respondent-Father argues the trial court erred in its best interests of the juveniles' determination, because the bond between Respondent-Father and the juveniles "was discounted, the oldest wanted contact with her father, and the foster family had not been properly vetted." After

review, we conclude the trial court made the necessary statutory considerations in its best interests determination, and we affirm the trial court's order.

I. Factual and Procedural Background

Prior to Montgomery County Department of Social Services ("DSS") becoming involved with this case, A.F.L. and M.R.L.L.¹ (collectively, the "juveniles") were living with their mother (the "Mother"). In March 2020, DSS received a report regarding substance abuse and domestic violence in the Mother's home, which prompted the juveniles to be moved to Respondent-Father's home. In April 2020, DSS received a report alleging that M.R.L.L. had been sexually abused by her Mother and her Mother's boyfriend, and both the Mother and her boyfriend were criminally charged for this abuse. Later, on 8 September 2021, the boyfriend was convicted of felony indecent liberties with a child, and on 9 September 2021, the Mother was convicted of felony child abuse.

On 27 January 2021, DSS received a report of Respondent-Father and his girlfriend engaging in substance abuse, as well as of sexual abuse by M.R.L.L.'s cousin against M.R.L.L. in Respondent-Father's home. M.R.L.L. was interviewed by the local child advocacy center ("CAC"), and disclosed to them multiple incidents of sexual abuse while living in Respondent-Father's home. At the request of DSS, Respondent-Father and his girlfriend provided drug screens, and they both tested

¹ Pseudonyms are used to protect the identities of the minor children pursuant to N.C.R. App. P. 42.

positive for amphetamines and methamphetamines.

Following the positive drug tests, and prior to 19 March 2021, DSS developed a case plan with Respondent-Father, which included him obtaining and maintaining safe housing for the juveniles, and employment; obtaining substance abuse assessments; agreeing to follow provider recommendations mental health assessments, and trauma-focused parenting classes; and attending mental health treatment for the juveniles.

On 19 May 2021, DSS filed a petition alleging the juveniles were abused, neglected, and dependent, and that same day, the juveniles came into DSS's custody pursuant to a Non-Secure Order entered by the trial court. The petition alleged Respondent-Father had not attended therapy appointments since 9 April 2021, and that neither of the juveniles had attended any mental health sessions since March 2021. The petition further alleged Respondent-Father had made no progress in housing or employment, and that he failed to complete a drug screen on 7 May 2021.

On 4 October 2021, this matter came before the trial court for an adjudication hearing. The trial court adjudicated the juveniles abused and neglected, and that same day, entered its adjudication order, which contained the following, relevant, findings of fact:

c. That at the time of filing this petition, the juveniles were in a temporary safety placement . . . due to [Respondent-Father's] inability to protect them from inappropriate behaviors by their cousin . . . and [Respondent-Father's] inability to provide safe, stable, and appropriate housing.

Opinion of the Court

d. That [Respondent-Father] entered into a case plan with . . . DSS prior to the filing of this petition; however, at the time of the filing of the petition, [Respondent-Father] had not completed his case plan objectives or secured stable, safe, and appropriate housing for himself and his children.

On 1 November 2021, this matter came before the trial court for a disposition hearing, where the trial court found the juveniles are doing well in their current placement, receiving therapy, and are current in all educational, medical, and dental needs. The trial court further found that Respondent-Father: is inconsistent with participating in mental health and substance abuse treatment; tested positive for amphetamine and methamphetamine on 7 July 2021, 27 August 2021, and 3 September 2021; did not participate in requested drug screens on 9 June 2021, 25 June 2021, 2 July 2021, 23 July 2021, 6 August 2021, 27 September 2021, 4 October 2021, 6 October 2021, 15 October 2021, 22 October 2021, and 25 October 2021; and, at the time of the disposition hearing, had not secured safe and stable housing for himself and the juveniles.

This matter came before the trial court for a review hearing on 24 January 2024, where the trial court found the juveniles are still doing well in their placement, up-to-date on all medical, dental, and mental health needs, enrolled in the appropriate level of therapy, and making “great progress” on catching up to their school grade level. The trial court further found Respondent-Father: is “inconsistent” with his visits to the juveniles, having attended only six out of fourteen opportunities;

Opinion of the Court

is hostile and uncooperative towards participation in drug screenings; has not obtained secure and stable housing; has not engaged in mental health and substance abuse treatment; has not completed any parenting education; and has reported to the social worker that he is employed.

After being rescheduled from the originally scheduled date of 18 April 2022, the trial court heard a permanency planning hearing on 2 May 2022. As to the juveniles, the trial court found they remained together in foster care, were up-to-date on their immunizations and medical and dental needs, and were receiving an adequate level of mental health treatment. Regarding Respondent-Father, the trial court found: Respondent-Father and the juveniles had in-person visits every other week, with virtual visits on the “off weeks”; Respondent-Father missed five in-person visits and nine virtual visits between 1 November 2022 and 2 May 2022; Respondent-Father “has made little progress towards achieving his case plan goals”; and Respondent-Father has not engaged in recommended follow-up treatment, has refused to test or tested positive in multiple drug screens, has not procured appropriate housing, and has not maintained stable employment. The trial court further found that reunification between Respondent-Father and the juveniles would not be possible in the following six months.

After being rescheduled for good cause from the originally scheduled date of 15 August 2022, a subsequent permanency planning hearing was heard by the trial court on 26 September 2022. The trial court’s findings regarding the juveniles were

Opinion of the Court

largely unchanged from the prior permanency planning hearing, other than a finding that the juveniles were scheduled to begin additional therapy with a trauma therapist specializing in sexually-based issues. Regarding Respondent-Father, the trial court again found he had not made significant progress on his case plan goals—specifically, that Respondent-Father: had completed fourteen out of thirty-one requested drug screenings since June 2021, with his most recent test being positive for amphetamine and methamphetamine; had not participated in follow-up mental health and substance abuse treatment; did not have appropriate housing; and could not obtain stable employment. The trial court ordered Respondent-Father to re-engage with his therapist and comply with every request by DSS for drug testing, have four consecutive drug screenings, and attend every appointment with his therapist.

On 12 December 2022, the trial court held another permanency planning hearing, where there were no changes to the status of the juveniles or visitation schedule. Regarding Respondent-Father, the trial court found: he missed three out of five possible visits with the juveniles between 26 September 2022 and 12 December 2022; he had not made any further progress on his case plan objectives; and he had participated in two out of four drug screenings, with one of them testing positive for amphetamine and methamphetamine and the other still pending at the time of the hearing. The trial court changed the juveniles' permanent plan to that of adoption.

On 10 March 2023, DSS filed a motion to terminate Respondent-Father's parental rights in the juveniles, alleging adjudication of abuse, failure to make

Opinion of the Court

reasonable progress, failure to pay a reasonable cost of care, and dependency. Prior to the termination of parental rights (“TPR”) hearing, on 13 March 2023, the trial court held a final permanency planning hearing. There were no changes as to the juveniles, and as to Respondent-Father, the trial court found: the pending drug test from the last hearing was positive for amphetamine and methamphetamine; Respondent-Father refused a drug screening in February 2023; and Respondent-Father was no longer a client of his therapist.

The trial court held the TPR hearing on 5 June 2023. At the close of the hearing, the trial court made the following, oral findings:

In this matter the [c]ourt finds by clear, cogent, and convincing evidence that the minor children were placed in pre-adoptive placement which is a licensed foster home and have been there for approximately two years, having been outside of family placement for approximately two and a half years.

In that placement they are well bonded with the foster parents. That the foster parents are willing to adopt the children. That the children currently are [twelve] and [eleven] years old and are in an age-range that they are in fact adoptable. That the foster parents are potentially able to provide for the children.

That there is somewhat of a bond that exists between the children and [R]espondent[-F]ather. That the children, however, are very happy with their current placement and refer to the foster parent as mom.

That [] [R]espondent[-F]ather has been told some things he needs to do as far as substance abuse and mental health issues by way of assessments, however, he has done virtually none of those that need to be done to rectify the

Opinion of the Court

situation, [and] appears to continue to suffer from depression and substance abuses.

. . . .

That termination of parental rights would accomplish . . . the permanent plan of adoption and the [c]ourt therefore concludes that the children are in fact adoptable children, that there exists still situations where returning the children to . . . [Respondent-Father] would not be in the minor children’s best interests, and therefore, it would be in the minor children’s best interests that the parental rights of [] [R]espondent[-F]ather . . . be terminated.

Following the hearing, on 5 July 2023, the trial court issued two largely identical orders—one concerning A.F.L. and one concerning M.R.L.L.—terminating Respondent-Father’s parental rights in the juveniles, where it found, in the order’s adjudication portion, grounds to terminate his parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), (2), and (6). The terminations orders’ relevant dispositional findings of fact were substantively identical to those orally stated by the trial court at the termination hearing—the trial court found, in relevant part:

3. That the juvenile[s] . . . are [each] twelve years old and reside[] in therapeutic foster care[.] . . .
4. That the [juveniles have] a strong relationship with [the foster mother]; that the juvenile[s] . . . call [the foster mother] “mom.”
5. That [the foster mother] is willing to adopt the [juveniles].
6. That [the juveniles] see[their] father every other week for two hours.

Opinion of the Court

....

8. That there is a strong likelihood of [the juveniles] being adopted; and [Respondent-Father's] rights being terminated will aid in achieving this.

9. That the conduct of [Respondent-Father] has been such to demonstrate that he will not promote the healthy and order physical and emotional well-being of the juvenile[s].

....

11. That the juvenile[s are] in need of a permanent plan of care at the earliest possible age and this can be accomplished only by the severing of the relationship between the juvenile[s] and [Respondent-Father] by the termination of parental rights of [Respondent-Father].

....

13. That it is in the best interest[s] of the juvenile[s] . . . that the parental rights of [Respondent-Father] . . . be terminated.

Further, in dispositional Conclusion of Law 10 of both orders, the trial court concluded that it is in the best interests of the juveniles that the parental rights of Respondent-Father be terminated. Respondent-Father timely appealed.

II. Jurisdiction

Respondent-Father's appeal from trial court's orders terminating parental rights is properly before this Court pursuant to N.C. Gen. Stat. §§ 7B-1001(a)(7) and 7A-27(b)(2) (2023).

III. Analysis

Respondent-Father challenges only the trial court's best interests of the juveniles determination, and to that effect raises one argument on appeal: that the trial court abused its discretion by terminating Respondent-Father's parental rights in the juveniles when "their bond was discounted, the oldest wanted contact with her father, and the foster family had not been properly vetted." We disagree with Respondent-Father's contentions.

"With regard to the trial court's assessment of a juvenile's best interests at the dispositional stage, . . . we review that decision solely for abuse of discretion." *In re R.D.*, 376 N.C. 244, 248, 852 S.E.2d 117, 122 (2020) (citation and internal quotation marks omitted). "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." *In re N.C.E.*, 279 N.C. 283, 287, 864 S.E.2d 293, 297–98 (2021) (citation and internal quotation marks omitted). Upon our review, this Court will not "reweigh" the evidence considered by the trial court, as "such an approach would be inconsistent with . . . [our] standard of review, which focuses on whether the trial court's dispositional decision constitutes an abuse of discretion rather than upon the manner in which the reviewing court would weigh the evidence were it the finder of fact." *In re I.N.C.*, 374 N.C. 542, 550–51, 843 S.E.2d 214, 220 (2020) (citation omitted). Further, any unchallenged dispositional findings made by the trial court are binding on appeal. *See In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019).

Opinion of the Court

In making a determination on the best interests of a juvenile:

After an adjudication that one or more grounds for terminating a parent's rights exist, the [trial] court shall determine whether terminating the parent's rights is in the juvenile's best interest. The court may consider any evidence, including hearsay evidence as defined in [N.C. Gen. Stat. §] 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, 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.

N.C. Gen. Stat. § 7B-1110(a) (2023). While the trial court must *consider* all factors set forth in section 7B-1110(a), the trial court need not make written findings for factors where there is no conflict in the evidence. *See In re A.U.D.*, 373 N.C. 3, 10–11, 832 S.E.2d 698, 702–03 (2019).

Regarding a trial court's consideration of the bond between the juvenile and parent, our Supreme Court has provided that "the bond between parent and child is just one of the factors to be considered under N.C. Gen. Stat. § 7B-1110(a), and the

trial court is permitted to give greater weight to other factors.” *In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 66 (citation omitted). Further, our Supreme Court has provided that “while the trial court is entitled to consider the children’s wishes in determining whether termination of their parents’ parental rights would be appropriate, their 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 and internal quotation marks omitted); *see also Clark v. Clark*, 294 N.C. 554, 577, 243 S.E.2d 129, 142 (1978) (“The expressed wish of a child . . . is . . . never controlling upon the court, since the court must yield in all cases to what it considers to be for the child’s best interests, regardless of the child’s personal preference[.]”).

As a preliminary matter, Respondent-Father makes an argument immaterial to his appeal from the trial court’s best interests determination—specifically, that this Court must reverse the trial court’s termination order, as the court was operating under a “misapprehension of law” where it found in the adjudication portion of the order that it would be in the juveniles’ best interests to terminate Respondent-Father’s parental rights. We find there is nothing in the Record that suggests the trial court was acting under a misapprehension of law. In the adjudication portion of the orders, the trial court was tasked with determining whether one or more grounds exist to terminate parental rights, and in the dispositional stage, with determining whether under N.C. Gen. Stat. § 7B-1110(a) it is in the juveniles’ best interests to

terminate Respondent-Father's parental rights. *See In re C.S.*, 280 N.C. 709, 712, 869 S.E.2d 650, 653 (2022). Although the trial court did state in the adjudication portion of the orders that it is in the juveniles' best interests to terminate Respondent-Father's parental rights, the trial court also made the requisite findings of grounds in the adjudication portion, and the requisite best interests determination in the disposition section. This supports a conclusion that the trial court adhered to its statutory duties, which is further bolstered by the structure of its orally-articulated findings at the termination hearing—separating its adjudicatory findings from its dispositional findings. Respondent-Father's initial argument is dismissed.

We now address Respondent-Father's argument regarding his bond with the juveniles. As set forth above, pursuant to N.C. Gen. Stat. § 7B-1110(a)(4), in making a best interests determination the trial court is tasked with considering the bond between a parent and juvenile. *See* N.C. Gen. Stat. § 7B-1110(a)(4). The Record, here, demonstrates that the trial court considered the bond between Respondent-Father and the juveniles—specifically, the trial court found orally that “somewhat of a bond [] exists between the [juveniles] and [R]espondent[-F]ather[.]” and in Finding of Fact 6 found that “[the juveniles] see[their] father every other week for two hours.” The trial court, however, was permitted to afford greater weight to other factors in making its best interests determination. *See In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 66. As supported by the findings of fact set forth orally at the termination hearing, and by Findings of Fact 3, 4, 5, 8, 9, and 11—which are unchallenged by Respondent-

Father and therefore binding on appeal—the trial court gave greater weight to the likelihood of adoption of the juveniles, and the conclusion that termination of Respondent-Father’s parental rights would aid in accomplishment of adoption of the juveniles. *See* N.C. Gen. Stat. § 7B-1110(a)(3)–(4); *see also In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 65. As the trial court considered the bond between Respondent-Father and the juveniles, but ultimately afforded greater weight to other factors in its decision to terminate Respondent-Father’s parental rights—which was well within its purview—we cannot say, despite Respondent-Father’s contention, that the bond between Respondent-Father and the juveniles was “discounted.”

We next address Respondent-Father’s argument that it was an error to disregard M.R.L.L.’s wish to be with Respondent-Father, as, according to Respondent-Father, this is relevant as “[a]ny relevant consideration” and it supports a conclusion that Respondent-Father’s parental rights should not have been terminated. *See* N.C. Gen. Stat. § 7B-1110(a)(6). As articulated by our Supreme Court, “while the trial court is entitled to consider the children’s wishes in determining whether termination of their parents’ parental rights would be appropriate, their 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. at 879, 844 S.E.2d at 926–27.

Here, while the juveniles’ wishes may be a “relevant consideration” for a best interests determination, it is not controlling of the trial court’s determination and, as

discussed above, the trial court was permitted to afford greater weight to other factors that may fall under the statutory “relevant consideration.” *See In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 66. Specifically, as demonstrated by Finding of Fact 9, the trial court afforded greater weight to Respondent-Father’s conduct being “such to demonstrate that he will not promote the healthy and orderly physical and emotional well-being of the juvenile[s,]”—which is supported by evidence of Respondent-Father’s continuous failure to comply with his case plan and pass drug screens—and it was well within the trial court’s purview to do so. *See id.* at 437, 831 S.E.2d at 66. Further, our review for abuse of discretion proscribes this Court from “reweigh[ing]” the unchallenged evidence given due consideration by the trial court, and we decline to do so here. *See In re I.N.C.*, 374 N.C. at 550–51, 843 S.E.2d at 220.

Finally, Respondent-Father argues DSS did not “fully investigat[e]” the foster home in which the juveniles have been placed, and that “[we are] too quick to terminate parental rights without doing our due diligence in placing children for adoption.” Respondent-Father, in making this argument, cites no binding authority, nor does he set forth how this argument is relevant to the trial court’s best interests determination—the only matter that is properly before us on appeal. It is not the job of this Court to devise arguments for appellants, and we will not do so here. *See Gyger v. Clement*, 263 N.C. App. 118, 126, 823 S.E.2d 400, 406 (2018) (“It is not the job of this Court to create an argument for an appellant.”); *see also* N.C.R. App. P. 28(b)(6) (“Issues not presented in a party’s brief, or in support of which no reason or

argument is stated, will be taken as abandoned.”).

Upon our review, in light of the above-delineated factors given due consideration by the trial court, we conclude the trial court’s decision to terminate Respondent-Father’s parental rights was not so manifestly unsupported by reason or arbitrary that it could not have been the result of a reasoned decision. *See In re N.C.E.*, 279 N.C. at 287, 864 S.E.2d at 297–98. The trial court therefore did not abuse its discretion, and its orders terminating Respondent-Father’s parental rights are affirmed.

IV. Conclusion

Respondent-Father has failed to demonstrate that the trial court erred in terminating his parental rights in the juveniles, as the Record shows the trial court gave due consideration to the relevant factors of N.C. Gen. Stat. § 7B-1110(a). We therefore affirm the trial court’s TPR orders.

DISMISSED in part, and AFFIRMED in part.

Judges ARROWOOD and WOOD concur.

Report per Rule 30(e).