

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA08-1014

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

IN THE MATTER OF:

N.L.O.

Guilford County
No. 06 JT 794

Appeal by Respondent from order entered 11 June 2008 by Judge Lawrence McSwain in District Court, Guilford County. Heard in the Court of Appeals 26 January 2009.

Court of Appeals

Hill Evans Jordan & Beatty, PLLC, by Michele G. Smith and Robert E. Gray, III, for petitioner-appellee Children's Home Society of North Carolina, Inc.

Jon W. Myers, for Respondent-appellant.

Slip Opinion

WYNN, Judge.

Respondent appeals from an order terminating his parental rights as the biological father of the minor child N.L.O.¹ After careful review, we affirm.

Shortly after giving birth in May 2006, the mother of the newborn child, N.L.O., relinquished her parental rights and placed N.L.O. for adoption with the Children's Home Society of North Carolina, Inc. ("Children's Home"). N.L.O.'s mother, who was not married at the time, informed the Children's Home that Respondent

¹ The minor child's mother relinquished her parental rights and is not a party to this appeal.

was the child's father and provided his last known address. However, after several months of searching, the Children's Home was unable to locate Respondent.

On 18 October 2006, Children's Home filed a petition to terminate the parental rights of Respondent and any "unknown father" of N.L.O., on grounds of failing to legitimate the child, neglect, and abandonment. At a preliminary hearing held on 27 October 2006, the trial court entered an order requiring Respondent and "the unknown father" be served with notice of the termination proceeding by publication. Children's Home complied.

After the hearing, Children's Home learned that Respondent was residing in Virginia and made attempts to contact him there. On 30 November 2006, Respondent filed a letter with the trial court seeking appointed counsel and stating his desire to retain his parental rights to N.L.O. On 20 February 2007, Respondent, through counsel, filed a response to the petition to terminate his parental rights, requesting that the petition be dismissed.

The termination hearing was held in May 2008. At the close of the adjudication phase, the trial court found as grounds for termination that Respondent had neglected the minor child pursuant to section 7B-1111(a)(1), and had failed to establish paternity or legitimate the child pursuant to section 7B-1111(a)(5). N.C. Gen. Stat. § 7B-1111(a) (2007).

During the disposition phase of the hearing, the trial court heard evidence regarding the best interests of the child. Children's Home social workers Paulette Johnson and Jamaica

Pfister, as well as the foster parents with whom N.L.O. had been living for the past two years, offered their testimony. Two of Respondent's aunts also testified that they would have offered to "take" N.L.O. if they had known about the minor child and the mother's decision to place him with Children's Home. The trial court then determined that termination of Respondent's parental rights would be in the best interests of the child, and issued an order terminating his rights.

Upon reviewing Respondent's appeal, we note that a trial court's findings of fact are binding on appeal when supported by competent evidence, even though there may be evidence to the contrary. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). Further, a trial court's determination that termination of parental rights is in the best interests of the child will not be disturbed absent an abuse of discretion. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001).

Respondent contends that the trial court abused its discretion when it failed to consider and place N.L.O. with one of the relatives who testified at the termination hearing that they would be willing to take custody of the minor child. We disagree.

In a proceeding to terminate parental rights, there are only two issues before the trial court: (1) whether there is at least one ground for termination of parental rights (adjudication) and (2) whether termination of parental rights is in the best interests of the child (disposition). N.C. Gen. Stat. § 7B-1110(a) (2007); *In*

re Blackburn, 142 N.C. App. 607, 610, 543 S.E.2d 906, 906 (2001). In the disposition phase of the hearing, the trial court is free to consider, in its assessment of whether termination is in the best interests of the child, whether there is a relative who can take custody of the minor child. *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005) ("If a fit relative were to come forward and declare their desire to have custody of the child, the court *could* consider this during the dispositional phase as grounds for why it would *not* be in the child's best interests to terminate the respondent's parental rights.") (emphasis added). Thus, while a trial court *may* consider the existence of relatives as potential custodians at termination of parental rights proceedings, it is not *required* to do so. *Id.*

Contrary to Respondent's claim, the trial court did take into consideration the testimony by Respondent's relatives when determining that termination of Respondent's parental rights was in the best interests of the child. Indeed, the trial court's findings of fact 23, 25, 67, 68, and 70-72 directly reference the testimony of Respondent's relatives. Further, because Respondent failed to assign error to these findings, they are treated as conclusive and binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Accordingly, the record shows that the trial court acted within its discretion in considering the existence of fit relatives, but determined that it would still be in the child's best interests to terminate the Respondent's parental rights.

Further, the trial court properly considered and made findings of fact regarding the statutory factors set forth in N.C. Gen. Stat. § 7B-1110(a) for determining whether termination is in the child's best interests. Indeed, the trial court made findings that: (1) the minor child was placed in the current foster-to-adopt placement at sixteen days old, and at the time of the hearing was two years old; (2) the child has a strong bond with his foster parents and he is thriving under their care; (3) the foster parents want to adopt N.L.O.; (4) termination of Respondent's parental rights will aid in the adoption of the child; and (5) Respondent has never seen or visited with the child and has no relationship with the child. These findings are supported by evidence in the transcript and record, which in turn support the trial court's conclusion that termination of Respondent's parental rights is in the best interests of the child.

In sum, we uphold the trial court's order terminating Respondent's parental rights.

Affirmed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).