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NO. COA09-1017

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

IN THE MATTER OF:

B.P., T.P., A.P., & C.P.,
Minor Children.

Caldwell County
Nos. 08 J 59-62

Appeal by respondent-father from order entered 11 May 2009 by Judge J. Gary Dellinger in Caldwell County District Court. Heard in the Court of Appeals 9 November 2009.

Lauren Vaughan for Caldwell County Department of Social Services petitioner-appellee.

Pamela Newell Williams for guardian ad litem.

Peter Wood for respondent-father appellant.

HUNTER, JR., Robert N., Judge.

Respondent-father ("Dave")¹ appeals the trial court's order terminating his parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (6) (2007). Dave contends on appeal that the trial court abused its discretion in terminating his parental rights because: (1) the trial court failed to follow the statutory guidelines contained in N.C. Gen. Stat. § 7B-1110(a) (2007); and (2) terminating his parental rights was not in the best interests

¹ This pseudonym will be used to ease the reading of this opinion.

of the juveniles given that the juveniles are not adoptable. We affirm the trial court's order.

Facts

The Caldwell County Department of Social Services ("DSS") first became involved with Dave's family in 1997 after receiving a report alleging neglect. DSS discovered that the juveniles' home was "filthy" and overcrowded, and that the juveniles were not properly supervised. DSS offered case management services to the family for sixteen months, and in 2001, DSS received a report that Dave had inappropriately disciplined one of the juveniles with a belt. Dave agreed not to use objects to discipline the children in the future and to get batteries for smoke detectors in the home.

On 30 April 2008, DSS conducted a home visit after receiving information that the juveniles had not attended daycare for four days. DSS found the children at home being watched by their maternal grandmother, who appeared to be intoxicated. DSS observed conditions at the family's home that were hazardous, including broken windows, a collapsing back porch, and trash scattered about including beer cans and medication.

The juveniles' mother signed a safety plan after DSS' 30 April 2008 home visit, and the safety plan stated that the juveniles would not be allowed to visit Dave. This provision was included in the safety plan because Dave had a history of domestic violence against his wife. In one incident on 2 March 2008, Dave broke the windshield on her van, slapped her, and attempted to choke her.

In addition to these allegations reported to DSS in 2008, the record shows that since 1988 Dave has been charged with: (1) misdemeanor probation violation on 12 October 1989; (2) felony possession with intent to sell or deliver marijuana, felony selling and delivering marijuana, felony selling marijuana, and felony probation violation on 11 December 1989; (3) driving while license revoked on 22 January 1990; (4) giving fictitious information to a police officer, driving while impaired, and driving while license permanently revoked on 11 October 1993; (5) felony conspiracy and maintaining a vehicle or dwelling place for controlled substances on 7 March 1994; (6) felony possession of marijuana with intent to sell, manufacture, or deliver on 8 March 1994; (7) felony selling and delivering marijuana on 8 March 1994; (8) failure to wear a seatbelt, giving fictitious information to a police officer, and driving while license revoked on 23 January 1996; (9) littering on 16 October 1996; (10) driving while license revoked, driving without registration, giving fictitious information to a police officer, and open container after consuming alcohol on 22 September 1997; (11) resisting a public officer on 29 June 2000; (12) operating a vehicle with no insurance, driving while license revoked, driving while impaired, and driving without registration on 4 December 2000; (13) reckless driving, driving while impaired, failure to heed light or siren, and driving while license revoked on 4 November 2003; and (14) misdemeanor sexual battery on 29 August 2006.

On 14 May 2008, Dave signed a case plan in which he agreed to obtain a psychological evaluation, undergo a substance abuse assessment, attend parenting skills training, have an anger management assessment, and obtain and maintain stable, hazard-free housing. Dave agreed to follow all recommendations resulting from the various assessments.

On 28 May 2008, Dave submitted to a psychological evaluation. The evaluator noted Dave's problems with drugs and alcohol, criminal history, and past incidents of domestic violence. The evaluator recommended that he undergo a substance abuse assessment and complete an abuser treatment program. Dave underwent the substance abuse evaluation on 19 June 2008, where he primarily blamed his drug and alcohol abuse on friends and his wife. The evaluator recommended that Dave complete substance abuse counseling, abstain from using drugs or alcohol, and be subjected to drug testing while this case was pending with DSS. On 20 August 2008, the trial court adjudicated all the juveniles neglected.

By November of 2008, Dave had failed to attend domestic violence treatment, and his housing, employment, and transportation problems remained unremedied. On 14 January 2009, DSS filed a motion to terminate Dave's parental rights to all four juveniles due to Dave's inability to correct these issues for the juveniles. As to Dave, DSS alleged grounds to terminate his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (3), and (6). On 9 March 2009, DSS filed an amended motion to terminate Dave's parental rights.

The case came on for a termination hearing on 29 April 2009. Prior to the termination hearing, respondent-mother relinquished her parental rights. In its termination order, the trial court found grounds to terminate Dave's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (6), and concluded that it was in the juveniles' best interests to terminate Dave's parental rights. Dave appeals.

Analysis

Dave's sole argument on appeal is that the trial court abused its discretion when it concluded that it was in the juveniles' best interests to terminate his parental rights. We disagree.

This Court reviews the trial court's decision to terminate parental rights under an abuse of discretion standard. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "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." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

In the first stage of a termination of parental rights case, labeled the adjudicatory stage, "the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists." *Anderson*, 151 N.C. App. at 97, 564 S.E.2d at 602. "If the trial court determines that grounds for termination exist, it proceeds to the dispositional stage, and must consider whether terminating

parental rights is in the best interests of the child." *Id.* at 98, 564 S.E.2d at 602.

In determining the best interests of a juvenile at the dispositional stage, section 7B-1110(a) states that the trial court shall consider the following:

- (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.G.S. § 7B-1110(a).

In its disposition order, the trial court expressly adopted the findings of fact from the adjudication order, and made the following additional findings:

1. [B.P.] is three years old, [T.P.] is four years old, [A.P.] is five years old and [C.P.] is eight years old. They are not presently placed in an adoptive home but the Department intends to make every effort to place the children together, along with their half-sibling. The Department has recently identified a possible placement which would be appropriate for these children and the half-sibling. There is also a newly identified family member who may also be an appropriate placement for these children and the half-sibling.

2. The minor children are very bonded to each other. [C.P.] is placed in the same cottage with his half-sibling and with [T.P.]. [A.P.] is placed in a different cottage and is in counseling. [B.P.] is in speech therapy and is starting to have serious temper tantrums.

3. The minor children have continued to have visits with [Dave] but they do not ask about him between visits.

BASED ON THE FOREGOING FINDINGS OF FACT[], THE COURT CONCLUDES AS A MATTER OF LAW THAT:

1. The best interests of the juveniles . . . will be served by termination of the parental rights of [Dave].

Dave does not contest any findings on appeal, and therefore, they are binding in this Court. *Matthews v. Prince*, 90 N.C. App. 541, 545, 369 S.E.2d 116, 117 (1988). Applying the trial court's collective findings to the first five mandatory factors of N.C.G.S. § 7B-1110(a), it is evident that the trial court considered: (1) the ages of the juveniles; (2) the juveniles' current and future adoption situations and DSS' intent to find adoptive homes; (3) whether the juveniles' best interests would be furthered by terminating Dave's parental rights; (4) the strength of the bonds between the juveniles themselves as opposed to their bond with Dave, and the quality of Dave's relationship with the juveniles, including their attitudes in his absence; and (5) the fact that the juveniles are not bonded to a potential adoptive family because DSS has yet to find an adoptive home for the juveniles. See N.C.G.S. § 7B-1110(a)(1)-(5).

Section 7B-1110(a)(6) further mandates that the trial court "shall" examine any other relevant considerations. N.C.G.S. § 7B-1110(a)(6).

During the adjudicatory stage, the trial court made findings of fact outlining Dave's former and current inability to maintain a stable home for the juveniles, quit his drug habits, follow DSS' management plan, and provide a suitable environment in which to raise the juveniles in this case. These findings, in conjunction with the findings in the dispositional stage, show that the trial court addressed each of the mandatory considerations of N.C.G.S. § 7B-1110(a), and determined accordingly that terminating Dave's parental rights was in the best interests of the juveniles.

Dave argues that the juveniles are not adoptable, and therefore, terminating his parental rights was not in their best interests. However, on review in this Court, the trial court's findings are binding "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) (citing *In re Montgomery*, 311 N.C. 101, 112-13, 316 S.E.2d 246, 252-53 (1984)). "[I]t is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citation omitted). As to conclusions of law, we examine "'whether the findings support the conclusions of law.'" *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003) (citations omitted).

Here, the trial court made findings concerning the juveniles' best interests in accordance with N.C.G.S. § 7B-1110(a), and our review shows that its findings are amply supported by the record. Thus, Dave's presentation of contrary evidence already considered by the trial court as to the juveniles' ability to be adopted is not relevant.

Moreover, Dave's reliance on *In re J.A.O.*, 166 N.C. App. 222, 601 S.E.2d 226 (2004) (Bryant, J. concurring) is distinguishable. In *J.A.O.*, the respondent challenged the trial court's findings of fact and conclusions of law. *In re D.K.B.*, No. COA09-293, 2009 WL 2751045, at *5 (N.C. App. Sept. 1, 2009) (Bryant, J.). After evaluating the entire record to examine whether J.A.O. was likely to be adopted, we held that "'balancing the minimal possibilities of adoptive placement against the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring, we must conclude that termination would only cast [J.A.O.] further adrift.'" *J.A.O.*, 166 N.C. App. at 228, 601 S.E.2d at 230 (quoting *In re A.B.E.*, 564 A.2d 751, 757 (D.C. 1989)). Dave contests no findings here, and our review of the record shows that the findings of fact support the conclusion of law that terminating Dave's parental rights is in the best interests of the children. See *Baker*, 158 N.C. App. at 493, 581 S.E.2d at 146. This assignment of error is overruled, and the trial court's order is

Affirmed.

Judges McGEE and GEER concur.

Report per Rule 30(e).